

Annex 3

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Annex 3 Public

Annex 3¹

This document is an 8 page report entitled “Arms Embargo in Sector 6” and was provided by the UN. It contains information on alleged violations of the arms embargo in Sector 6 (Ituri region) from September 2003 until May 2004.² The prosecution submitted it contains Rule 77 material to the extent that it indicates that from September 2003 to December 2003, ammunition coming from UPDF factories in Uganda was supplied to armed groups in Ituri. In addition, the information suggests that Rwanda continued to supply weapons to the UPC.³ The information provider proposed disclosure of the document with redactions to the identity of two sources – a child and an individual whose name he supplied.⁴ The Trial Chamber asked the prosecution to consider making an admission on the involvement of foreign powers, and the prosecution agreed to consider the document in more detail, indicating it may be able to concede facts.⁵ The Trial Chamber requested further information on the two individuals who were the subject of the proposed redactions, although the prosecution was unaware of whether the UN was in contact with them.⁶ The Trial Chamber enquired whether the issue related to the potential risk if their identities were disclosed, which the prosecution confirmed.⁷ Subsequently, the prosecution informed the Chamber that the UN had no further information on their whereabouts and argued that the redactions were necessary for their safety and security.⁸ The prosecution also submitted that the following admission covers the Rule 77 value of the document: *From September to December 2003 Uganda and Rwanda had a role in the events in Ituri and supplied ammunition and weapons to the UPC.*⁹

Having reviewed the document and given that the proposed redactions are not in the portion containing the Rule 77 information, the Trial Chamber authorised its disclosure with the proposed redactions. This serves to protect, to the extent that is

¹ ICC-01/04-01/06-1477-Conf-Exp-Anx3.

² ICC-01/04-01/06-1477-Conf-Exp-Anx3 (ERN: DRC-00002-254 — DRC-00002-261).

³ Prosecution’s submission of 93 documents highlighting the passages of potentially exculpatory value or falling within the parameters of Rule 77, 22 October 2008, ICC-01/04-01/06-1488-Conf-Exp-Anx72 (ERN: DRC-OTP-0202-0647 – DRC.OTP-0202-0654) and ICC-01/04-01/06-1488-Conf-Exp-Anx94 (no ERN as this is a prosecution generated table).

⁴ ICC-01/04-01/06-1477-Conf-Exp-Anx124 (ERN: DRC-OTP-0202-0647 – DRC-OTP-02020-654).

⁵ Transcript of hearing on 29 October 2008, ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 3, lines 15-20.

⁶ Transcript of hearing on 29 October 2008, ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 5, lines 12-15.

⁷ Transcript of hearing on 29 October 2008, ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 5, lines 17-24.

⁸ Confidential- *ex parte*-Prosecution Only Prosecution’s Provisions of Further Information on Undisclosed Items pursuant to Trial Chamber’s Orders at 29 October 2008 *Ex Parte* Hearing, 12 November 2008, ICC-01/04-01/06-1496-Conf-Exp, paragraph 10.

⁹ Confidential- *ex parte*-Prosecution Only Prosecution’s Provisions of Further Information on Undisclosed Items pursuant to Trial Chamber’s Orders at 29 October 2008 *Ex Parte* Hearing, 12 November 2008, ICC-01/04-01/06-1496-Conf-Exp, paragraph 11.

necessary, persons who may be at risk on account of the activities of the Court, when no lesser measure is available. Although the redactions are to the names of the sources, one of them was a child at the time he supplied the information, and the current whereabouts of both of them is uncertain, thereby raising safety issues. The redactions are limited and the Chamber is satisfied that the document remains intelligible and usable.

Furthermore, the prosecution's admission of fact will ensure the fairness of the trial of the accused. The Chamber has assessed the evidential "value" of this material, given that the names of the sources are not to be disclosed when they otherwise would have been, and it has decided that the admission is a sufficient alternative, because the essential elements revealed by the information are not in dispute. Accordingly, the defence will be able to rely on the prosecution's admission concerning these events rather than seeking to establish them through the currently unidentified sources. Indeed, arguably the defence is put in a more favourable evidential position than it otherwise would have been because of the "certainty" provided by the admission (which is not in itself binding on the Chamber).

The prosecution disclosed a redacted version of the document in the form approved by the Chamber, accompanied by the admission of fact set out above, in accordance with the Trial Chamber's direction.¹⁰

Annex 4¹¹

This 5 page document entitled "Arms Embargo in Sector 6" was provided by the UN.¹² It contains information on the modus operandi of militia groups involved in arms supply, and it makes recommendations for checking illegal activity in this regard, along with facilitating an arms embargo in Sector 6. The proposed redactions cover the name and identifying affiliations of a single source.¹³ The prosecution submitted that the Rule 77 content, namely that the main actors in the arms supply in Ituri are Uganda (including UPDF officers) and Rwanda,¹⁴ is not affected by the proposed redactions.¹⁵ The information provider did not have further information on

¹⁰ Prosecution's Notification of Disclosure of Exculpatory and Rule 77 Material to the Defence on 18 and 20 November 2008, 21 November 2008, ICC-01/04-01/06-1502-Conf-AnxC, page 2.

¹¹ ICC-01/04-01/06-1477-Conf-Exp-Anx4 (ERN: DRC-00002-298 – DRC-00002-302).

¹² ICC-01/04-01/06-1477-Conf-Exp-Anx4 (ERN: DRC-00002-298 – DRC-00002-302).

¹³ Prosecution's provision of Further Information on Undisclosed Items pursuant to Trial Chamber's Order at 29 October 2008 *ex parte* Hearing, 12 November 2008, ICC-01/04-01/06-1496-Conf-Exp-Anx1 (ERN: DRC-OTP-0204-0285 – DRC-OTP-0204-0289). An earlier redacted version was provided, ICC-01/04-01/06-1477-Conf-Exp-Anx125 (ERN: DRC-OTP-0202-0655 – DRC-OTP-0202-659), but it contained errors in the initial proposed redactions.

¹⁴ ICC-01/04-01/06-1488-Conf-Exp-Anx73 (ERN: DRC-OTP-0202-0655 – DRC-OTP-0202-659) and ICC-01/04-01/06-1488-Conf-Exp-Anx94 (no ERN as this is a prosecution generated table).

¹⁵ Transcript of hearing on 29 October 2008, ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 7, lines 1-4.

the whereabouts of the source and it was submitted that disclosing information about him could create the risk of reprisals.¹⁶

The Trial Chamber authorised disclosure of the document with the proposed redactions. Although these are to the name of the source, his current whereabouts are not known, and the redactions are the least necessary to mitigate any risks to him which arise on account of the activities of the Court. The suggested redactions are not in the portion of the document containing the Rule 77 information and they are limited. The document remains intelligible and usable and no lesser measure is feasible.

The Chamber has assessed the evidential "value" of this material, given that the name of the source is not to be disclosed when it otherwise would have been, and has decided that disclosure of his name is unnecessary, because it is irrelevant to the Rule 77 information within this annex.

The prosecution effected disclosure by way of a redacted version, in accordance with the Trial Chamber's decision.¹⁷

Annex 5¹⁸

This document is a single page letter provided by the UN. It describes a UN [REDACTED] interview of a Ugandan citizen who claimed to be a member of the People's Resistance Army ("PRA").¹⁹ The information that the interviewee provided, namely that the PRA and the UPC are each supported by Rwanda, and that the UPC buys weapons from UPDF officers, was identified by the prosecution as having Rule 77 value.²⁰ The information provider indicated that disclosure with redactions was appropriate, and in the final version of the document the name of the UN staff member who is the author of the letter was removed, as well as [REDACTED] position and telephone numbers.²¹ The prosecution submitted that the redactions were necessary in order to minimize risks the [REDACTED] may face, given that [REDACTED] remains in the DRC.²² The prosecution further submitted that they do not affect the Rule 77 value of the document.²³

¹⁶ ICC-01/04-01/06-1496-Conf-Exp, paragraph 14.

¹⁷ ICC-01/04-01/06-1502-Conf-AnxC, page 2 (there is no ERN for this annex since it is a prosecution work product).

¹⁸ ICC-01/04-01/06-1477-Conf-Exp-Anx5.

¹⁹ ICC-01/04-01/06-1477-Conf-Exp-Anx5 (ERN: DRC-00002-307).

²⁰ ICC-01/04-01/06-1488-Conf-Exp-Anx74 (ERN: DRC-OTP-0202-0650).

²¹ ICC-01/04-01/06-1496-Conf-Exp-Anx2 (ERN: DRC-OTP-0204-0290). An earlier redacted version was proposed which only redacted the staff member's name. ICC-01/04-01/06-1477-Conf-Exp-Anx126 (ERN: DRC-OTP-0202-0660).

²² ICC-01/04-01/06-1496-Conf-Exp, paragraph 16.

²³ ICC-01/04-01/06-1496-Conf-Exp, paragraph 17.

Bearing in mind that [REDACTED] and may thus face real risks to [REDACTED] personal safety and security if [REDACTED] identity is revealed, the Trial Chamber authorised disclosure of the document with the proposed redactions. They do not affect the Rule 77 information and they are limited; the Chamber is satisfied that the document remains intelligible and usable; and no lesser measure is feasible. [REDACTED]

The Chamber has assessed the evidential “value” of this material, given that the name of the source, the UN employee who spoke to the Ugandan citizen about the relevant events, is not to be disclosed when otherwise it may have been, and it has decided that disclosure of her name is unnecessary, because it has little, if any, effect on the Rule 77 material within this annex. This UN employee simply acted as a “conduit” for the information in question, and providing her identity is unlikely to strengthen its value.

The prosecution disclosed this document in a redacted version, in accordance with the Trial Chamber’s decision.²⁴

Annex 6²⁵

This 10 page document, provided by the UN, is a chart detailing the “Major Events in Ituri District” between 22 June 1999 and 7 May 2004.²⁶ The prosecution submitted that the document contains Rule 77 material as it touches upon the following matters: the UPDF support for the UPC in August 2002; the UPC alliance in December 2002 with RCD-Goma (“Rwanda’s proxy”); that in March 2003, the UPDF took Bunia from the UPC; that later on in March 2003 the Ugandans facilitated a cease-fire, excluding the UPC; that in April 2003 the UPC participated in the Ituri Pacification Commission and they handed over command of the airport to MONUC; and that in May 2003 the UPDF withdrew from Bunia.²⁷ The final proposal for disclosure contains one redaction, requested by the information provider, to the name of a crew member from a boat of one of the victims, who claimed to have survived the Gobu massacre.²⁸ The Trial Chamber requested further information on this individual, given the security concerns in the DRC.²⁹ Although the UN was unable to provide additional assistance as regards this crew member, it maintained the redaction was necessary because he or she provided the UN with information concerning FNI/FRPI atrocities, and therefore, could be the subject of reprisals by

²⁴ ICC-01/04-01/06-1502-AnxC, page 2 (there is no ERN for this annex since it is a prosecution work product).

²⁵ ICC-01/04-01/06-1477-Conf-Exp-Anx6.

²⁶ ICC-01/04-01/06-1477-Conf-Exp-Anx6 (ERN: DRC-00003-339 – DRC-00003-348).

²⁷ ICC-01/04-01/06-1488-Conf-Exp-Anx1 (ERN: DRC-00003-339 – DRC-00003-348).

²⁸ ICC-01/04-01/06-1490-Conf-Exp-Anx9 (ERN: DRC-OTP-0204-0122 – DRC-OTP-0204-0131). An earlier redacted version was provided, ICC-01/04-01/06-1477-Conf-Exp-Anx127 (ERN: DRC-OTP-0202-0661 – DRC-OTP-0202-0670), but it contained errors in the initial proposed redactions

²⁹ Transcript of hearing on 29 October 2008, ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 9, lines 1-18.

these organisations or other related groups.³⁰ The prosecution submitted that the proposed redaction does not affect the Rule 77 value of the document.³¹

The concerns about the safety and security of this individual because of the Court's activities appear to be well-founded, and the Trial Chamber authorised disclosure with the proposed redaction. The Chamber is satisfied that this is a limited step, which does not affect the intelligibility of the document. No lesser measure appears feasible given that the current whereabouts of the individual remain unknown. Furthermore, the redaction does not have a material impact on the Rule 77 material.

The prosecution disclosed this document in accordance with the Trial Chamber's decision.³²

Annex 7³³

This 30 page document is an activity report of MONUC's Ituri Brigade during September 2003, provided by the UN.³⁴ According to the prosecution, it comes within Rule 77 in that the information indicates that in September 2003, PUSIC received weapons from Uganda and in September 2003, child soldiers were present within the FRPI and PUSIC.³⁵ The prosecution submitted a final proposal for disclosure that redacted the identity of a source who had reported, first, an incident involving a death and, second, the identity of a 17 year old girl who had been abducted.³⁶ The Trial Chamber sought further information,³⁷ but none was available as regards the whereabouts of either the source or the kidnapped girl. The prosecution submitted that the redactions were necessary because the source could be the subject of reprisals, and in order to maintain the privacy of a child victim who may still be alive.³⁸ Moreover, the prosecution contended that the proposed redactions do not affect the Rule 77 value of the document.³⁹

In this instance there are concerns about two civilians: one who is at risk having provided information on a fatal attack and a second, a child victim, for whom it is said there are significant privacy concerns. The Chamber adds that for the latter this is not just an issue of privacy and, given the circumstances, this child's safety may be at risk if her identity is revealed. The current whereabouts of both individuals

³⁰ ICC-01/04-01/06-1496-Conf-Exp, paragraph 18.

³¹ ICC-01/04-01/06-1496-Conf-Exp, paragraph 19.

³² ICC-01/04-01/06-1502-Conf-Anx C, page 2 (there is no ERN for this annex since it is a prosecution work product).

³³ ICC-01/04-01/06-1477-Conf-Exp-Anx7.

³⁴ ICC-01/04-01/06-1477-Conf-Exp-Anx7 (ERN: DRC.00006.089 – DRC.00006.118).

³⁵ ICC-01/04-01/06-1488-Conf-Exp-Anx75 (ERN: DRC-OTP-0202-0671 – DRC-OTP-0202-0700) and ICC-01/04-01/06-1488-Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

³⁶ ICC-01/04-01/06-1477-Conf-Exp-Anx128 (ERN: DRC-OTP-0202-0671 – DRC-OTP-0202-700)

³⁷ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 9 lines 19-21.

³⁸ ICC-01/04-01/06-1496-Conf-Exp, paragraph 20.

³⁹ ICC-01/04-01/06-1496-Conf-Exp, paragraph 21.

remains unknown and they may be in danger on account of the Court's activities. These concerns led the Trial Chamber's to authorise disclosure of the document with the proposed redactions. The Chamber is satisfied that these are limited, the document remains intelligible and no lesser measures are feasible. The proposed redactions do not affect the Rule 77 value of the material.

The prosecution disclosed this document in accordance with the Trial Chamber's decision.⁴⁰

Annex 8⁴¹

This document is a 35 page monthly incident report with a daily narrative setting out incidents of note in the region of Ituri, dated December 2003, obtained from the UN.⁴² The prosecution submitted that it contained potentially exculpatory material insofar as the information indicates a rift within the UPC involving Thomas Lubanga on the one hand, and "Kisembo" on the other (reported gunfire may be related to that rift), and that the two factions were separately represented at a meeting with MONUC on 12 December 2003.⁴³ The prosecution submitted that this document also contains Rule 77 material, insofar as it indicates that the pro-Lubanga faction of the UPC contained 6 Rwandans; there is reference to a PUSIC child soldier; and it suggests that the FAPC in Aru and Kandoi was comprised of 30% and 35% children respectively.⁴⁴ The prosecution indicated that the UN had consented to the disclosure of this document to the defence, subject to redactions⁴⁵ to the identities of, first, a young male victim of a UPC attack and, second, an alleged affiliate of the UPC.⁴⁶ It was submitted by the prosecution that these measures are necessary for the safety and privacy of both individuals, [REDACTED].⁴⁷

Given the proposed redactions are not contained in the portions containing the potentially exculpatory or the Rule 77 material, the Trial Chamber authorised disclosure as requested in order to protect third parties who may be at risk on account of the activities of the Court. The Chamber is satisfied that these redactions are limited and do not render the document unintelligible or unusable. No lesser measure is feasible.

⁴⁰ ICC-01/04-01/06-1502-AnxC, page 2 (there is no ERN for this annex since it is a prosecution work product).

⁴¹ ICC-01/04-01/06-1477-Conf-Exp-Anx8.

⁴² ICC-01/04-01/06-1477-Conf-Exp-Anx8 (ERN: DRC.00007.015 – DRC.00007.049).

⁴³ ICC-01/04-01/06-1488-Conf-Exp-Anx76 (ERN: DRC-OTP-0202-0707 and DRC-OTP-0202-0718) and Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

⁴⁴ ICC-01/04-01/06-1488-Conf-Exp-Anx76 (ERN: DRC-OTP-0202-0712, DRC-OTP-0202-0732, and DRC-OTP-0202-0735) and ICC-01/04-01/06-1488-Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

⁴⁵ ICC-01/04-01/06-1477-Conf-Exp, paragraph 17 (ii)

⁴⁶ ICC-01/04-01/06-1477-Conf-Exp-Anx129 (ERN: DRC-OTP-0202-0722 and DRC-OTP-0202-0733).

⁴⁷ ICC-01/04-01/06-1496-Conf-Exp, paragraph 22.

On 21 November 2008, the prosecution indicated that it had disclosed this document in accordance with the Trial Chamber's decision.⁴⁸

Annex 9⁴⁹

This document is a 7 page monthly incident report which includes a daily chart of notable events in Ituri, dated September 2003, and obtained from the UN.⁵⁰ The prosecution submitted that it contains potentially exculpatory material insofar as the information indicates that the UPC voluntarily disarmed, and that its leadership stated it would cooperate with MONUC during an informal meeting.⁵¹ The UN consented to disclosure to the defence with redactions⁵² to the identity of a child victim,⁵³ to ensure his or her safety.⁵⁴ Later, however, the prosecution informed the Trial Chamber that the UN had revised this justification, suggesting instead that the redactions are necessary to maintain the privacy of the child victim who may still be alive.⁵⁵

The Chamber authorised the removal of the name of this child victim. Given the proposed redactions are not within the portion containing the potentially exculpatory material, disclosure to the defence in this form was necessary in order to protect a young person who could be at risk on account of the activities of the Court. Notwithstanding the revised reasons for the redactions as submitted by the UN, the Chamber considers that this step is necessary, not only for the privacy of the child victim, but also for his or her security. Further, the Chamber is satisfied that the redactions are limited and they do not render the document unintelligible or unusable. No lesser measure is feasible. Furthermore, the redactions are irrelevant to the potentially exculpatory material.

On 21 November 2008, the prosecution informed the Chamber that it had disclosed this document in accordance with the Trial Chamber's decision.⁵⁶

⁴⁸ ICC-01/04-01/06-1502, paragraphs 3-4, and ICC-01/04-01/06-1502-Conf-Exp-AnxC (there is no ERN for this annex since it is a prosecution work product).

⁴⁹ ICC-01/04-01/06-1477-Conf-Exp-Anx9.

⁵⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx9 (ERN: DRC.00008.462 – DRC.00008.468).

⁵¹ ICC-01/04-01/06-1488-Conf-Exp-Anx77 (ERN: DRC-OTP-0202-0739 - DRC-OTP-0202-0741) and ICC-01/04-01/06-1488-Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

⁵² ICC-01/04-01/06-1477-Conf-Exp, paragraph 17 (ii).

⁵³ ICC-01/04-01/06-1477-Conf-Exp-Anx130 (ERN: DRC-OTP-0202-0738).

⁵⁴ ICC-01/04-01/06-1496-Conf-Exp, paragraph 23.

⁵⁵ ICC-01/04-01/06-1496-Conf-Exp, paragraph 23; ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 10, line 6-14.

⁵⁶ ICC-01/04-01/06-1502, paragraphs 3-4, and ICC-01/04-01/06-1502-Conf-Exp-AnxC (no ERN as this is a prosecution generated table).

Annex 10⁵⁷

This 18 page document was provided by the UN and contains a report, written in Spanish, from the UN Mission in the DRC, on the situation in that country between 27 October and 7 November 2003.⁵⁸ The prosecution submitted that it contains Rule 77 material, insofar as it indicates that in October 2003 the UPC received support from Rwanda and from Rwandan and Ugandan mercenaries, and that Rwandans were recruited for the UPC in Goma.⁵⁹ The UN consented to disclosure of this document with redactions, which were submitted by the prosecution.⁶⁰ These were explained on the basis of the risk the persons mentioned in the document would be exposed to should it be disclosed to the defence in a non-redacted form. Following a request from the Chamber,⁶¹ the prosecution provided detailed information on the circumstances of each person whose name was proposed for redaction.⁶² Additionally, the prosecution informed the Chamber that the UN suggested further redactions to the identifying information (in addition to the names of the persons concerned), and that it agreed to provide the name of a person who had died since the original redactions were proposed.⁶³ The prosecution also offered an admission of facts which, as submitted, would cover the Rule 77 value of the document.⁶⁴

The Chamber is satisfied that disclosure can be effected with the proposed redactions. On close analysis, they do not affect the Rule 77 value of the document which, in any event, is adequately covered by the prosecution's general admission of fact, namely that: *In or around November 2003 Rwanda and mercenaries from both Rwanda and Uganda were involved in the events in the DRC.*⁶⁵

The Chamber is satisfied that disclosure of the names and other identifying information of the persons described above would pose a danger to their security that can only be sufficiently reduced through the proposed redactions. The Chamber is satisfied that other, lesser protective measures are not available because those concerned are currently living in the DRC and their whereabouts, shortly before the trial commences, are unknown. In the Chamber's view, the redactions are limited and the document remains intelligible and usable.

⁵⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx10.

⁵⁸ ICC-01/04-01/06-1477-Conf-Exp-Anx10 (ERN: DRC-00014-394 – DRC-00014-410).

⁵⁹ ICC-01/04-01/06-1488-Conf-Exp-Anx93 (ERN: DRC-OTP-0203-0211 - DRC-OTP-0203-0228).

⁶⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx147 (ERN: DRC-OTP-0203-0211 - 0203-0228); ICC-01/04-01/06-1496-Conf-Exp-Anx 3 (ERN: DRC-OTP-0204-0291- DRC-OTP-0204-0304).

⁶¹ Transcript of hearing on 29 October 2008, ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 10 lines 15-17. This general issue was dealt with during the hearing on 29 October 2008, ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 5 lines 17-22 and page 6 lines 2-9.

⁶² ICC-01/04-01/06-1496-Conf-Exp, paragraphs 25-31.

⁶³ ICC-01/04-01/06-1496-Conf-Exp, paragraph 27.

⁶⁴ ICC-01/04-01/06-1496-Conf-Exp, paragraphs 32-34.

⁶⁵ ICC-01/04-01/06-1496-Conf-Exp, paragraphs 32-34.

The prosecution disclosed this document along with the admission of fact, in accordance with the Trial Chamber's direction.⁶⁶

Annex 11⁶⁷

This 6 page document was provided by the UN [REDACTED].⁶⁸ The prosecution submitted that it contains Rule 77 material [REDACTED].⁶⁹ The provider proposed disclosure with redactions to identifying details [REDACTED].⁷⁰ [REDACTED].

Notwithstanding that some redactions are within the relevant sections of this note, and that the individual's identity is concealed, the account given remains intelligible and usable. The underlying Rule 77 value of the document is unaffected and in consequence the Trial Chamber authorised disclosure with the proposed redactions in order to protect an individual who could be at risk on account of the activities of the Court. Although efforts have been made to establish the whereabouts of the person, these were not successful. Therefore, there is a real risk that the interviewee may be subject to reprisals if his or her identity is disclosed. No lesser measure is feasible, and given the circumstances, the Trial Chamber agreed to the protective measures sought by the UN.⁷¹

The prosecution disclosed the document in redacted form to the defence in accordance with the Trial Chamber's decision, subject to the protective measures which are agreed by the Trial Chamber.⁷²

Annex 12⁷³

This document,⁷⁴ entitled "Note to File: Expert Panel Staff Meeting #13" was provided by the UN and is 4 pages long. It summarizes a meeting between various members of the UN Expert Panel on the Illegal Exploitation of the Natural Resources and Other Forms of Wealth of the DRC ("Expert Panel") and others. The prosecution identified information pertinent to Rule 77 to the extent that, on or about 3 April 2003, there were ties between the UPC leader Thomas Lubanga and Rwanda which

⁶⁶ ICC-01/04-01/06-1502-Conf-AnxC. page 2 (there is no ERN for this annex since it is a prosecution work product).

⁶⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx11.

⁶⁸ ICC-01/04-01/06-1477-Conf-Exp-Anx11 (ERN: DRC.0018.0129 – DRC.0018.0134).

⁶⁹ ICC-01/04-01/06-1488-Conf-Exp-Anx83 and Anx94. page 3 (ERN: DRC-OTP-0202-0803 – DRC-OTP-0202-0808).

⁷⁰ ICC-01/04-01/06-1496-Conf-Exp-Anx4 (DRC-OTP-0204-0309 – DRC-OTP-0204-0314).

⁷¹ Email communication from the Trial Chamber through the Legal Adviser to the Trial Division to the prosecution on 19 November 2008

⁷² ICC-01/04-01/06-1502-Conf-AnxC. page 2 (there is no ERN for this annex since it is a prosecution work product).

⁷³ ICC-01/04-01/06-1477-Conf-Exp-Anx12.

⁷⁴ ICC-01/04-01/06-1477-Conf-Exp-Anx12 (ERN: DRC-00042-199 – DRC-00042-202).

included Rwanda providing the UPC with supplies and military equipment.⁷⁵ The information provider proposed redactions to the name of a source the Panel relied upon and to other relevant identifying information.⁷⁶ The Trial Chamber requested the prosecution to enquire as to the level of risk the source may face if [REDACTED] identity is disclosed.⁷⁷ The provider indicated that the redactions were sought to protect his role as [REDACTED] and submitted that if [REDACTED] identity is disclosed, this could lead to repercussions for the MONUC [REDACTED] as well as its operations in neighbouring countries.⁷⁸

The Chamber is satisfied that revealing the insider's "existence", identity and work would significantly compromise the operational capacity of MONUC, and would have negative effects on the security of civilians protected by MONUC. Moreover, the exculpatory value of the document remains unaffected if disclosure is effected with these redactions. Thus, they are justified and the Chamber has noted that they are limited in scope – none are made in the body of the document, which remains intelligible and usable. Furthermore, the Chamber has satisfied itself that these steps are strictly necessary and that no lesser measures are feasible.

The prosecution disclosed this document in accordance with the Trial Chamber's decision.⁷⁹

Annex 13⁸⁰

This 5 page document,⁸¹ provided by the UN, contains field notes from a visit of certain Expert Panel members to Uganda in May 2003. The prosecution indicated it contains Rule 77 material, in that it referred to the creation by Museveni in August 2002 of the FIPI, in order to counter the "Rwanda-controlled UPC". The information also states that the UPC was receiving support from UPDF/Uganda at the same time as it was receiving weapons from Rwanda in June/July 2002. Rwanda along with Uganda sought to retain control of Ituri's natural resources.⁸² Initially the provider proposed redactions to the identity of a source⁸³ but following consultations it agreed to full disclosure of the document.

⁷⁵ ICC-01/04-01/06-1488-Conf-Exp-Anx64 (ERN: DRC-OTP-0202-0186 – DRC-OTP-0202-0189).

⁷⁶ ICC-01/04-01/06-1477-Conf-Exp-Anx116 (ERN: DRC-OTP-0202-0186 – DRC-OTP-0202-0189).

⁷⁷ Transcript of hearing on 29 October 2008, ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 12, lines 2-8.

⁷⁸ ICC-01/04-01/06-1496-Conf-Exp, paragraph 37.

⁷⁹ ICC-01/04-01/06-1502-AnxC, page 3 (there is no ERN for this annex since it is a prosecution work product).

⁸⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx13.

⁸¹ ICC-01/04-01/06-1477-Conf-Exp-Anx13 (ERN: DRC-00043-0058 – DRC-00043-062).

⁸² ICC-01/04-01/06-1488-Conf-Exp-Anx65 (ERN: DRC-OTP-0202-0190 – DRC-OTP-0202-0194) and ICC-01/04-01/06-1488-Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

⁸³ ICC-01/04-01/06-1477-Conf-Exp-Anx117 (ERN: DRC-OTP-0202-0190- DRC-OTP-0202-0194).

According to the Prosecution's filing on 21 November 2008, this document was disclosed in redacted form.⁸⁴ However, the prosecution accepted this was an error,⁸⁵ and the field notes were disclosed to the defence in full on 8 December 2008.⁸⁶

Annex 14⁸⁷

This UN-provided document⁸⁸ comprises one page of notes from a visit conducted by members of the UN Expert Panel to Uganda. The prosecution identified as Rule 77 material information that indicates Rwanda supplied weapons to the UPC at least between August 2002 and April 2003. The weapons were flown in by Ukrainian pilots to an unspecified delivery point in Ituri.⁸⁹ The prosecution submitted that disclosure with redactions to the initials of the Expert Panel members was appropriate.⁹⁰ These were sought on the recommendation of a security expert who expressed concerns that since the members engaged in sensitive contacts with intelligence sources, risks would be created if their identities were disclosed.⁹¹

Given the dangers identified by the security expert, the Chamber accepts that the disclosure of the initials of the Expert Panel members may place them at risk on account of the Court's activities. The Chamber is satisfied that the redactions are appropriately limited (there are none in the body of the document); it remains intelligible and usable; and the Rule 77 value is not affected. No lesser measures appear feasible. The Trial Chamber thus authorised the disclosure of the document with the proposed redactions.

According to the Prosecution's filing of 21 November 2008, this document has been disclosed in accordance with the Trial Chamber's decision.⁹²

Annex 15⁹³

This UN-provided 6 page document is entitled "RDC, La Guerre par procuration et pour la poursuite des pillages."⁹⁴ The prosecution did not highlight any material

⁸⁴ ICC-01/04-01/06-1502-Conf-AnxC, page 3 (there is no ERN for this annex since it is a prosecution work product).

⁸⁵ Email communication to the Chamber through the Legal Adviser to the Trial Division on 4 December 2008.

⁸⁶ Email communication to the Chamber through the Legal Adviser to the Trial Division on 8 December 2008.

⁸⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx 14.

⁸⁸ ICC-01/04-01/06-1477-Conf-Exp-Anx 14 (ERN: DRC-00043-072).

⁸⁹ ICC-01/04-01/06-1488-Conf-Exp-Anx63 (ERN: DRC-OTP-0199-0405) and ICC-01/04-01/06-1488-Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

⁹⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx 115 (ERN: DRC-OTP-0199-0405).

⁹¹ ICC-01/04-01/06-1496-Conf-Exp, paragraph 39.

⁹² ICC-01/04-01/06-1502-Conf-AnxC, page 3 (there is no ERN for this annex since it is a prosecution work product).

⁹³ ICC-01/04-01/06-1477-Conf-Exp-Anx 15.

⁹⁴ ICC-01/04-01/06-1477-Conf-Exp-Anx 15 (ERN: DRC-00043-080 – DRC-00043-085). The allegedly redacted version, ICC-01/04-01/06-1477-Conf-Exp-Anx 112 (ERN: DRC-OTP-0181-0492 – DRC-OTP-0181-0497) did not in fact contain any redactions.

relevant to Rule 77 or of a potentially exculpatory nature. In submissions before the Chamber it was revealed that the document did not form part of the undisclosed evidence and had been included in error.⁹⁵ This was confirmed in filing 1496.⁹⁶ It has been disclosed and has not featured in any of the prosecution's further filings.

Annex 16⁹⁷

This [REDACTED].⁹⁸ The prosecution submitted that it contains Rule 77 material [REDACTED].⁹⁹

The provider initially proposed disclosure with redactions to the name and further identifying information [REDACTED].¹⁰⁰

The Chamber asked the prosecution to investigate whether any further information could be provided about the persons whose names were to be redacted.¹⁰¹ The prosecution informed the Trial Chamber that the UN did not "have more information as to the whereabouts of the persons concerned".¹⁰² However, the UN subsequently agreed to disclosure of the email to the defence in full, although it requested that if the document is used at trial, this occurs in closed session and it is received under seal.¹⁰³ The prosecution informed the Chamber that the portions marked out in black in all the available copies – concealing the identity of the source [REDACTED] – were present when the document was first received and do not impact on its Rule 77 value.¹⁰⁴

The Trial Chamber authorised disclosure in the form suggested by the prosecution, subject to the protective measures agreed with the UN. A small portion of the potentially exculpatory material is illegible (on page DRC-00043-100). This may be due to the poor quality of the copy provided. The prosecution submitted that it was not in possession of a more legible version and the Chamber accepts this explanation. The essential elements of the information, namely [REDACTED], can be fully understood.

⁹⁵ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 13, lines 11 et seq.

⁹⁶ ICC-01/04-01/06-1496-Conf-Exp, 12 November 2008, page 14, footnote 47.

⁹⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx 16.

⁹⁸ ICC-01/04-01/06-1477-Conf-Exp-Anx 16 (ERN: DRC-00043.086 – DRC-00043.101).

⁹⁹ ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 17.

¹⁰⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx118 (ERN: DRC-OTP-0202-0195 - DRC-OTP-0202-0210); ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 17 (there is no ERN for this annex since it is a prosecution work product).

¹⁰¹ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 14, lines 15 et seq.

¹⁰² ICC-01/04-01/06-1496-Conf-Exp, 12 November 2008, page 14.

¹⁰³ ICC-01/04-01/06-1498-Conf-Anx2, page 2.

¹⁰⁴ ICC-01/04-01/06-T-96-CONF-EXP-ENG, pages 6, lines 12-25, and page 7, lines 1-4.

According to the prosecution's filing on 21 November 2008, this document was disclosed in its original form, subject to the protective measures which are agreed by the Trial Chamber.¹⁰⁵

Annex 17¹⁰⁶

This document is a 1 page typed note of a meeting between a MONUC [REDACTED] and a UN Expert Panel member dated 17 June 2003, obtained from the UN.¹⁰⁷ The prosecution submitted that it contains Rule 77 material insofar as it indicates that Rwanda was airlifting weapons to the UPC.¹⁰⁸ The UN consented to disclosure to the defence with redactions¹⁰⁹ to the identity of the [REDACTED], [REDACTED] office and email address.¹¹⁰ It is submitted by the prosecution that these are necessary for the safety of the person concerned.¹¹¹ Following the request of the Trial Chamber, the prosecution informed the court that the UN sought further redactions as regards the position of the participant.¹¹² The prosecution submitted a final proposed version with deletions to the name, position, office and email address of the [REDACTED].¹¹³

The Chamber authorised redactions (which are similar to those granted for Annex 5 above) to the name and identifying information of a person who may be at risk on account of the activities of the Court. The Chamber is satisfied that they are limited and they do not undermine the value of the Rule 77 material. The document remains intelligible and usable and no lesser measures appear feasible.

On 21 November 2008, the prosecution disclosed this document in redacted form in accordance with the Trial Chamber's decision.¹¹⁴

¹⁰⁵ ICC-01/04-01/06-1502-Anx C, page 3 (there is no ERN for this annex since it is a prosecution work product); Email communication from the Trial Chamber through the Legal Adviser to the Trial Division to the prosecution on 19 November 2008.

¹⁰⁶ ICC-01/04-01/06-1477-Conf-Exp-Anx17.

¹⁰⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx17 (ERN: DRC.00043.129).

¹⁰⁸ ICC-01/04-01/06-1488-Conf-Exp-Anx86 (ERN: DRC-OTP-0202-0821) and ICC-01/04-01/06-1488-Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

¹⁰⁹ ICC-01/04-01/06-1477-Conf-Exp, paragraph 17(ii).

¹¹⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx139 (ERN: DRC-OTP-0202-0821).

¹¹¹ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 14, lines 24-25 and page 15, lines 1-8.

¹¹² ICC-01/04-01/06-1496-Conf-Exp, paragraph 41.

¹¹³ ICC-01/04-01/06-1496-Conf-Exp-Anx5 (ERN: DRC-OTP-0204-0327), and ICC-01/04-01/06-1496-Conf-AnxC (no ERN as this is a prosecution generated table).

¹¹⁴ ICC-01/04-01/06-1502, paragraphs 3-4, and ICC-01/04-01/06-1502-Conf-ExpAnxC (no ERN as this is a prosecution generated table).

Annex 18¹¹⁵

This document is a 3 page typed “Report DRC Trip 28 May – 5 June 2003, Note to the File Expert Panel Consultations, Meeting with the “White Fathers” 1 June 2003” which summarises two interviews by members of the UN-Expert panel (Alf Gorsjo and Bruno Schiemsy) with two “White Fathers”, obtained from the UN.¹¹⁶ The prosecution submitted that it contains Rule 77 material insofar as the information indicates that “the Hema-Sud have been trained by the UPDF since 2000”.¹¹⁷ The UN consented to disclosure of the Note to the defence, subject to redacting¹¹⁸ the identities, contact details and certain other identifying information of those interviewed, and of another source.¹¹⁹ It is submitted by the prosecution that these steps are necessary for the safety of the persons concerned.¹²⁰

The Trial Chamber authorised disclosure in this form because revealing the names of those interviewed may place them at risk on account of the activities of the Court (given, *inter alia*, their current whereabouts are not known); the redactions, which not affect the Rule 77 value of the document, are limited; the document remains intelligible and usable; and no lesser measures appear feasible.

On 21 November 2008, the prosecution disclosed this document in accordance with the Trial Chamber’s decision.¹²¹

Annex 19¹²²

This document is a 2 page typed report concerning a DRC trip in the period 28 May – 5 June 2003, dated 1 June 2003 and obtained from the UN, which summarises two meetings between certain Expert Panel members and others.¹²³ The prosecution submitted that this document contains Rule 77 material insofar as the information indicates that the UPC took over Bunia with Ugandan support in August 2002 and that the UPC asked for support from Rwanda after Uganda’s withdrawal of assistance.¹²⁴ The prosecution informed the court that the UN consented to disclosure to the defence with redactions¹²⁵ to the identities of two UN staff members.¹²⁶ The

¹¹⁵ ICC-01/04-01/06-1477-Conf-Exp-Anx18.

¹¹⁶ ICC-01/04-01/06-1477-Conf-Exp-Anx18 (ERN: DRC.00043.132 – DRC.00043.133).

¹¹⁷ ICC-01/04-01/06-1488-Conf-Exp-Anx61 (ERN: DRC-OTP-0199-0111) and ICC-01/04-01/06-1488-Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

¹¹⁸ ICC-01/04-01/06-1477-Conf-Exp, paragraph 17(ii).

¹¹⁹ ICC-01/04-01/06-1477-Conf-Exp-Anx113 (ERN: DRC-OTP-0199-0110 - DRC-OTP-0199-0112).

¹²⁰ ICC-01/04-01/06-1496-Conf-Exp, paragraphs 43-45

¹²¹ ICC-01/04-01/06-1502, paragraphs 3-4, and ICC-01/04-01/06-1502-Conf-Exp-AnxC (there is no ERN for this annex since it is a prosecution work product).

¹²² ICC-01/04-01/06-1477-Conf-Exp-Anx19.

¹²³ ICC-01/04-01/06-1477-Conf-Exp-Anx19 (ERN: DRC.00043.134 – DRC.00043.135)

¹²⁴ ICC-01/04-01/06-1488– Conf-Exp-Anx87 (ERN: DRC-OTP-0202-0822) and ICC-01/04-01/06-1488-Conf-Exp-Anx94 (no ERN as this is a prosecution generated table)

¹²⁵ ICC-01/04-01/06-1477-Conf-Exp, paragraph 17(ii).

Trial Chamber asked the prosecution to enquire of the UN whether the identity of a third representative of the UN Expert Panel should also be excised.¹²⁷ It was submitted by the prosecution that the redactions proposed by the UN are necessary for the safety of particular individuals [REDACTED].¹²⁸ The prosecution subsequently informed the Trial Chamber that additional redactions are not necessary in the view of the UN, as the risk to the third representative is sufficiently low.¹²⁹

The Trial Chamber authorised disclosure of this document to the defence in the form suggested in order to protect third parties (given their possible whereabouts) who could be at risk on account of the activities of the Court. The Chamber is satisfied that the redactions are limited; they are not contained in the portion of the document containing the Rule 77 material; the document remains intelligible and usable; and no lesser measures appear feasible.

On 21 November 2008, the prosecution disclosed this document in accordance with the Trial Chamber's decision.¹³⁰

Annex 20¹³¹

This 2 page document is a memorandum of the UN Expert Panel and was provided by the UN.¹³² It contains information regarding the activities of various militia groups, namely the FAPC, the RCD-National, the SPLA, and the UPC in 2003. The prosecution highlighted, as Rule 77 material, the suggestion that on 23 June 2003, two truckloads of UPDF arrived at Mongbwalu for the purpose of "cooperating" with the Lendu, and that the RCD-National and Roger Lumbala are under the control of Uganda.¹³³ The information provider proposed redactions to the name and initials of the Panel member who wrote the memo, as well as to the name of a source from whom the information was obtained.¹³⁴ The prosecution submitted a redacted version of the document to the Chamber, based on these proposals.¹³⁵ The Trial Chamber enquired into the security concerns of these individuals.¹³⁶ The provider responded that the panel member is still in the DRC and indicated the redactions are

¹²⁶ ICC-01/04-01/06-1477-Conf-Exp-Anx140 (ERN: DRC-OTP-0202-0822)

¹²⁷ Transcript of hearing on 29 October 2008. ICC-01/04-01/06-T-95- CONF-EXP-ENG. page 16, lines 11-17

¹²⁸ Transcript of hearing on 29 October 2008. ICC-01/04-01/06-T-95-CONF-EXP-ENG. page 16, lines 11-25 and page 17, lines 1-5.

¹²⁹ ICC-01/04-01/06-1496-Conf-Exp. paragraph 46.

¹³⁰ ICC-01/04-01/06-1502, paragraphs 3-4, and ICC-01/04-01/06-Conf-Exp-AnxC (there is no ERN for this annex since it is a prosecution work product).

¹³¹ ICC-01/04-01/06-1477-Conf-Exp-Anx20.

¹³² ICC-01/04-01/06-1477-Conf-Exp-Anx20 (ERN: DRC-00043-154 – DRC-00043-155).

¹³³ ICC-01/04-01/06-1488-Conf-Exp-Anx67 (ERN: DRC-OTP-0202-0211 – DRC-OTP-0202-0212) and ICC-01/04-01/06-1488-Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product)

¹³⁴ ICC-01/04-01/06-1477-Conf-Exp-Anx111.

¹³⁵ ICC-01/04-01/06-1477-Conf-Exp-Anx119 (ERN: DRC-OTP-0202-0211 – DRC-OTP-0202-0212).

¹³⁶ ICC-01/04-01/06-T-95-CONF-EXP-ENG. page 17, lines 7-13.

necessary to protect his security and that of the source, although the UN does not have further information as to the whereabouts of the latter.¹³⁷

The Trial Chamber authorised disclosure with the proposed redactions in order to protect two people who could be at risk on account of the activities of the Court. The Rule 77 value is not affected and the concerns as to the safety of these individuals are clear, given one is still in the DRC and the location of the other is unknown. The document remains intelligible and usable, and no lesser measures appear feasible.

On 21 November 2008, the prosecution disclosed this document in redacted form in accordance with the Trial Chamber's decision.¹³⁸

Annex 21¹³⁹

This document is an 11 page UN memorandum entitled, "Trip Report: Kampala, Uganda 1-5 July 2003".¹⁴⁰ It contains summaries of several meetings held by the Expert Panel during a trip to Kampala. The prosecution submitted that the document has exculpatory value because it contains information about Thomas Lubanga's "insufficient command and control" over the UPC. It indicates that the real "leader" of the UPC might be the Bishop of Goma and describes an event in which, despite Thomas Lubanga's opposition, UPC forces attacked UPDF positions. It also sets out the "role of foreign powers" (Rwanda and Uganda) in the Ituri conflict.¹⁴¹ The final document submitted for disclosure contains redactions which are not extensive: they are limited to names and other information which may identify the sources of this information.¹⁴² Following the Chamber's request,¹⁴³ the prosecution, after consultation with the security expert of the UN Panel, provided detailed information about the suggested justification for each redaction.¹⁴⁴ In essence, these relate to concerns over the security of UN staff and sources, and the organisation's continuing ability to operate in the field: it is said the information provided by the representatives of the rebel group justifies the relevant redactions because greater specificity could identify the sources. This reasoning also applies to the redactions to the names of companies and NGOs who provided information to the Panel. The prosecution submitted, further, that the proposed redactions do not affect the Rule 77 or exculpatory value of the document.¹⁴⁵

¹³⁷ ICC-01/04-01/06-1496-Conf-Exp. paragraph 47.

¹³⁸ ICC-01/04-01/06-1502-Conf-AnxC. page 3 (there is no ERN for this annex since it is a prosecution work product).

¹³⁹ ICC-01/04-01/06-1477-Conf-Exp-Anx21.

¹⁴⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx21 (ERN: DRC.00043.344– DRC.00043.354).

¹⁴¹ ICC-01/04-01/06-1488-Conf-Exp-Anx68 (ERN: DRC-OTP-0202-0213 – DRC-OTP-0195-0223)

¹⁴² ICC-01/04-01/06-1488-Conf-Exp-Anx68 (ERN: DRC-OTP-0202-0213 – DRC-OTP-0195-0223).

¹⁴³ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 17, line 24 to page 19, line 20

¹⁴⁴ ICC-01/04-01/06-1496-Conf-Exp. paragraph 48.

¹⁴⁵ ICC-01/04-01/06-1496-Conf-Exp. paragraph 49.

The Trial Chamber authorised disclosure in this form because the redactions are necessary to assist in mitigating the real risks to the sources which, as confirmed by the UN security expert, could arise on account of the activities of the Court if these identities are revealed. The Chamber is persuaded that these measures do not compromise the potentially exculpatory or the Rule 77 value of the document, which remains intelligible and usable. Moreover, no lesser measures appear feasible.

On 21 November 2008, the prosecution disclosed this document in redacted form in accordance with the Trial Chamber's decision.¹⁴⁶

Annex 22¹⁴⁷

This [REDACTED].¹⁴⁸ The prosecution submitted that this document contains potentially exculpatory material [REDACTED].¹⁴⁹ Furthermore, the prosecution submitted that it contains Rule 77 material [REDACTED].¹⁵⁰ The prosecution informed the Chamber that the UN had consented to the disclosure of this document to the defence with redactions to the identities of the author [REDACTED], as well as the source of the information (including his identifying features).¹⁵¹ [REDACTED]. It was submitted by the prosecution, on behalf of the UN, that these redactions were necessary for the safety of the persons concerned.¹⁵²

The Trial Chamber asked the prosecution to verify the basis on which one of the proposed redactions to this document was sought: the Chamber sought confirmation that there would be a security risk to a particular individual whose name had been redacted, if the name was disclosed.¹⁵³ The prosecution thereafter informed the Trial Chamber that the UN agreed to lift the redactions to the source of the information, as the person concerned had died.¹⁵⁴ The prosecution subsequently informed the Trial Chamber that all of the proposed redactions could be lifted,¹⁵⁵ although the UN requested that the document, if used at trial, is presented in closed session and received under seal.¹⁵⁶

¹⁴⁶ ICC-01/04-01/06-1502-Conf-AnxC, page 23 (there is no ERN for this annex since it is a prosecution work product).

¹⁴⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx22.

¹⁴⁸ ICC-01/04-01/06-1477-Conf-Exp-Anx22 (ERN: DRC.00043.384 – DRC.00043.386).

¹⁴⁹ ICC-01/04-01/06-1488-Conf-Exp-Anx92 (ERN: DRC-OTP-0203-0207 - DRC-OTP-0202-0208) and Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

¹⁵⁰ ICC-01/04-01/06-1488-Conf-Exp-Anx92 (ERN: DRC-OTP-0203-0208) and Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

¹⁵¹ ICC-01/04-01/06-1477-Conf-Exp-Anx146 (ERN: DRC-OTP-0203-0207 and DRC-OTP-0203-0209).

¹⁵² ICC-01/04-01/06-1477-Conf-Exp-Anx146 (ERN: DRC-OTP-0203-0207 and DRC-OTP-0203-0209), ICC-01/04-01/06-1477-Conf-Exp, paragraph 17 (ii), and ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 19, lines 24-25 and page 20, lines 1-5

¹⁵³ ICC-01/04-01/06-T-95- CONF-EXP-ENG, page 20, lines 1-7.

¹⁵⁴ ICC-01/04-01/06-1496-Conf-Exp, paragraph 50.

¹⁵⁵ ICC-01/04-01/06-T-96-CONF-EXP-ENG, page 6, lines 10-13, page 7, lines 3-4.

¹⁵⁶ ICC-01/04-01/06-1498-Anx2-Conf, page 2.

Given the information provided no longer requires any redactions, the Trial Chamber authorised full disclosure to the defence, and granted the protective measures.¹⁵⁷

On 21 November 2008, the prosecution disclosed this document in accordance with the Trial Chamber's decision.¹⁵⁸

Annex 23¹⁵⁹

This [REDACTED].¹⁶⁰ The prosecution submitted that it contains Rule 77 material [REDACTED].¹⁶¹

The prosecution initially proposed disclosure with redactions to the name of the source [REDACTED], and any information which might further identify them.¹⁶² The Chamber asked the prosecution to verify whether these individuals would be placed at risk if the document is disclosed without redactions.¹⁶³ The prosecution subsequently informed the Trial Chamber that all of the proposed redactions could be lifted,¹⁶⁴ although the UN requested that the document, if used at trial, is presented in closed session and received under seal to protect the sensitive nature of the information.¹⁶⁵

The Trial Chamber authorised full disclosure of the email to the defence, and granted the protective measures.¹⁶⁶

The prosecution informed the Chamber that it had disclosed this document in accordance with the Trial Chamber's decision.¹⁶⁷

¹⁵⁷ Email communication from the Trial Chamber through the Legal Adviser to the Trial Division to the prosecution on 19 November 2008.

¹⁵⁸ Prosecution's Notification of Disclosure of Exculpatory and Rule 77 Material to the Defence on 18 and 20 November 2008, 21 November 2008, ICC-01/04-01/06-1502, paragraphs 3-4, and ICC-01/04-01/06-1502-Conf-Exp-AnxC (there is no ERN for this annex since it is a prosecution work product), and ICC-01/04-01/06-T-96-CONF-EXP-ENG page 7, lines 3-4.

¹⁵⁹ ICC-01/04-01/06-1477-Conf-Exp-Anx23.

¹⁶⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx23 (ERN: DRC-00043 439 – DRC-00043.422).

¹⁶¹ ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 18.

¹⁶² ICC-01/04-01/06-1477-Conf-Exp-Anx121 (ERN: DRC-OTP-0202-0227 - DRC-OTP-0202-0230); ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 18.

¹⁶³ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 20, lines 19 et seq.

¹⁶⁴ ICC-01/04-01/06-T-96-CONF-EXP-ENG, page 6, lines 10-13, page 7, lines 3-4

¹⁶⁵ ICC-01/04-01/06-1498-Conf-Anx2, page 2

¹⁶⁶ Email communication from the Trial Chamber through the Legal Adviser to the Trial Division to the prosecution on 19 November 2008

¹⁶⁷ ICC-01/04-01/06-1502-Conf-AnxC, page 3

Annex 24¹⁶⁸

This [REDACTED].¹⁶⁹ As to Rule 77, the prosecution highlighted the information in the document showing [REDACTED].¹⁷⁰

The information provider initially proposed that there should be redactions to the name of the author, and any further identifying information [REDACTED], and to other sources of information named [REDACTED].¹⁷¹ The Chamber asked the prosecution to confirm that the redactions had been proposed on the basis that full disclosure of the document would lead to security risks to those protected by the proposed redactions. The Chamber also sought confirmation that the redacted names were not of exculpatory or Rule 77 relevance.¹⁷²

The prosecution subsequently informed the Trial Chamber that all of the proposed redactions to this document could be lifted,¹⁷³ although the UN requested that if used at trial, it is presented in closed session and received under seal, in order to protect the sensitive nature of the information.¹⁷⁴

The Trial Chamber authorised full disclosure of this email to the defence, and granted the protective measures.¹⁷⁵

According to the prosecution's filing on 21 November 2008, this document was disclosed in accordance with the Trial Chamber's decision.¹⁷⁶

Annex 25¹⁷⁷

This [REDACTED] ¹⁷⁸ [REDACTED]. The prosecution submitted that it contains information relevant to both Article 67(2) and Rule 77, [REDACTED].¹⁷⁹ The prosecution initially proposed disclosure with redactions to the name of, and other identifying information relevant to, the author, [REDACTED] and other sources of

¹⁶⁸ ICC-01/04-01/06-1477-Conf-Exp-Anx24.

¹⁶⁹ ICC-01/04-01/06-1477-Conf-Exp-Anx24 (ERN: DRC.00043.466 – DRC.00043.475).

¹⁷⁰ ICC-01/04-01/06-1488-Conf-Exp-Anx70 (ERN: DRC-OTP-0202-0231 – DRC-OTP-0202-0239) and ICC-01/04-01/06-1488-Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

¹⁷¹ ICC-01/04-01/06-1477-Conf-Exp-Anx122 (ERN: DRC-OTP-0202-0231 – DRC-OTP-0202-0239).

¹⁷² ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 21, lines 1-3

¹⁷³ ICC-01/04-01/06-T-96-CONF-EXP-ENG, page 6, lines 10-13, page 7, lines 3-4.

¹⁷⁴ ICC-01/04-01/06-1498-Conf-Anx2, page 2.

¹⁷⁵ Email communication from the Trial Chamber through the Legal Adviser to the Trial Division to the prosecution on 19 November 2008.

¹⁷⁶ ICC-01/04-01/06-1502-Conf-AnxC, page 3.

¹⁷⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx25.

¹⁷⁸ ICC-01/04-01/06-1488-Conf-Exp-Anx25 (ERN: DRRCR.00043.481-DRC.00043.483).

¹⁷⁹ ICC-01/04-01/06-1488-Conf-Exp-Anx71 (ERN: DRC-OTP-0202-0240 – DRC-OTP-0202-0242) and ICC-01/04-01/06-1488-Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product)

information named [REDACTED].¹⁸⁰ The Chamber asked the prosecution to confirm that the redactions to the names had been proposed to protect the security of those individuals, and that these are not of significance to the defence.¹⁸¹

The prosecution subsequently informed the Trial Chamber that all of the proposed redactions could be lifted,¹⁸² although the UN requested that the document, if used at trial, is presented in closed session and received under seal to protect the sensitive nature of the information contained therein.¹⁸³

The Trial Chamber authorised full disclosure of this email to the defence and granted the protective measures.¹⁸⁴

According to the prosecution's filing on 21 November 2008, this document was disclosed in accordance with the Trial Chamber's decision.¹⁸⁵

Annex 26¹⁸⁶

This document comprises a 58 page typed series of summaries of discussions during meetings between representatives of the UN Expert Panel, UN missions and various other agencies, dated 21-29 July 2003, and obtained from the UN.¹⁸⁷ It refers to an annex which has not been made available.¹⁸⁸ The prosecution submitted that this document contains Rule 77 material insofar as the information indicates that a member of the UN Expert Panel stated that Ugandan and Rwandan intelligence had become adept at controlling their proxies in the DRC and providing them with training and arms; that the Rwandan and Ugandan governments, through their proxies, intended to control parts of the DRC's territory and resources; that there exists a risk that the conflict may broaden in scope to involve Kinshasa; that Uganda supports the PUSIC and the FAPC by direct UPDF involvement; and that arms are brought into the DRC from the Middle East, Africa and the West.¹⁸⁹

¹⁸⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx123 (ERN: DRC-OTP-0202-0240 – DRC-OTP-0202-0242).

¹⁸¹ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 21, lines 1-3.

¹⁸² ICC-01/04-01/06-T-96-CONF-EXP-ENG, page 6, lines 10-13, page 7, lines 3-4.

¹⁸³ ICC-01/04-01/06-1498-Conf-Anx2, page 2 (there is no ERN for this annex since it is a prosecution work product).

¹⁸⁴ Email communication from the Trial Chamber through the Legal Adviser to the Trial Division to the prosecution on 19 November 2008.

¹⁸⁵ ICC-01/04-01/06-1502-Conf-AnxC, page 3 (there is no ERN for this annex since it is a prosecution work product).

¹⁸⁶ ICC-01/04-01/06-1477-Conf-Exp-Anx26.

¹⁸⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx26 (ERN: DRC.00044.104 – DRC.00044.161).

¹⁸⁸ ICC-01/04-01/06-1477-Conf-Exp-Anx26 (ERN: DRC.00044.105).

¹⁸⁹ ICC-01/04-01/06-1488-Conf-Exp-Anx45 (ERN: DRC.00044.0113–DRC.00044.114, DRC.00044.117, DRC.00044.121–DRC.00044.122, DRC.00044.124, DRC.00044.126, DRC.00044.133– DRC.00044.134, DRC.00044.139–DRC.00044.142, and DRC.00044.147) and ICC-01/04-01/06-1488-Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

On 12 November 2008, the prosecution submitted a redacted version to the Chamber.¹⁹⁰ This comprises 36 pages, while the original document consists of 58 pages.¹⁹¹ The proposed redactions relate to a report of a meeting with an NGO, in that it was suggested that the identifying features of the NGO and its staff should not be disclosed.¹⁹² However, the prosecution informed the Trial Chamber that the UN had consented, with two exceptions, to the disclosure of all the Rule 77 material in the document.¹⁹³ The UN suggested that these two redactions could not be lifted since they were disclosed in confidence to the UN by a State. The prosecution also provided the Chamber with 10 items of alternative evidence and an admission of fact, in order to fulfil its disclosure obligations with respect to the redacted information.¹⁹⁴

On 2 December 2008, the prosecution informed the Chamber that the UN, having spoken with the relevant State party, was now able to agree to disclosure without redactions to any of the Rule 77 material.¹⁹⁵ Therefore, the prosecution submitted, the admissions of fact are no longer necessary.¹⁹⁶

The Chamber noted that none of the redactions to the latest version of this document are contained in those portions which have Rule 77 value.¹⁹⁷ Furthermore, the Chamber is satisfied that the redactions are strictly necessary, no lesser measures are feasible and the document remains intelligible and usable. In the circumstances, the Chamber authorised disclosure, without any accompanying admissions of fact.

The prosecution disclosed to the defence an earlier version of this document, containing redactions to the Rule 77 material, together with 10 items of alternative

¹⁹⁰ ICC-01/04-01/06-1496-Conf-Exp, paragraphs 53-56, ICC-01/04-01/06-1496-Conf-Exp-Anx7 (ERN: DRC-OTP-0204-0332 – DRC-OTP-0204-0366), and ICC-01/04-01/06-1496-Conf-AnxC (there is no ERN for this annex since it is a prosecution work product).

¹⁹¹ The following pages, including Rule 77 material, are redacted in their entirety: ICC-01/04-01/06-1477-Conf-Exp-Anx26, ERN: DRC.00044.111, DRC.00044.113, DRC.00044.119 - DRC.00044.121, DRC.00044.125, DRC.00044.128 – DRC.00044.132, DRC.00044.144 – DRC.00044.152, and DRC.00044.155-DRC.00044.159, and ICC-01/04-01/06-1488-Conf-Exp-Anx45, ERN: DRC.00044.111, DRC.00044.113, DRC.00044.119 - DRC.00044.121, DRC.00044.125, DRC.00044.128 – DRC.00044.132, DRC.00044.144 – DRC.00044.152, and DRC.00044.155-DRC.00044.159

¹⁹² ICC-01/04-01/06-1477-Conf-Exp-Anx141 (ERN: DRC-OTP-0202-0845).

¹⁹³ ICC-01/04-01/06-1496-Conf-Exp, paragraph 53. ICC-01/04-01/06-1496-Conf-Exp-AnxA. These exceptions concern two passages, comprising 12 lines: ICC-01/04-01/06-1477-Conf-Exp-Anx26 (ERN: DRC.00044.124, paragraph 7 and DRC.00044.147, paragraph 5), and ICC-01/04-01/06-1488-Conf-Exp-Anx45 (ERN: DRC.00044.124, paragraph 7 and DRC.00044.147, paragraph 5).

¹⁹⁴ ICC-01/04-01/06-1496-Conf-Exp, paragraph 54. ICC-01/04-01/06-1496-Conf-Exp-Anx61-70; ICC-01/04-01/06-1496-Conf-AnxC (there is no ERN for this annex since it is a prosecution work product), and ICC-01/04-01/06-1496-Conf-Exp, paragraph 55- 56; Email communication from the prosecution to the Trial Chamber through the Legal Adviser to the Trial Division on 17 November 2008.

¹⁹⁵ Prosecution's Provision of Further Information Concerning Undisclosed Item of Evidence Annex 26 Obtained from the United Nations, ICC-01/04-01/06-1527, paragraph 4.

¹⁹⁶ Prosecution's Provision of Further Information Concerning Undisclosed Item of Evidence Annex 26 Obtained from the United Nations, ICC-01/04-01/06-1527, paragraph 5.

¹⁹⁷ ICC-01/04-01/06-1527-Conf-Anx1.

evidence and an admission of fact.¹⁹⁸ The Chamber orders the prosecution to furnish the defence forthwith with the up-to-date copy of this document, having removed the redactions to the Rule 77 material.

Annex 27¹⁹⁹

This document is a coded cable. The document was presented as one page of nine, typed in English, dated 3 June 2003, obtained from the UN.²⁰⁰ At Annex 142, however, the document was re-presented with all 9 pages.²⁰¹ The document sets out a summary of events of a “tumultuous week” in Ituri. It was sent by MONUC Kinshasa to USG Guehenno, New York. The prosecution submitted that it contains potentially exculpatory material insofar as the information indicates that Thomas Lubanga is considering a “less hard line” approach, emphasising the UPC’s recent demobilisation of 70 child soldiers.²⁰² The prosecution informed the Chamber that the UN had consented to disclosure to the defence with redactions²⁰³ to the author, the name of a victim of a UPC attack and the organisation that assisted that individual. It is submitted by the prosecution that these redactions are necessary for the safety of those involved, and their ability to continue to operate [REDACTED].²⁰⁴ The prosecution informed the Trial Chamber that the author [REDACTED], although it has no information as to the current whereabouts of the other individuals set out above.²⁰⁵

The proposed redactions are not contained in the portion containing potentially exculpatory and Rule 77 material, and in the circumstances the Trial Chamber authorised disclosure to the defence in this form in order to protect individuals who, on account of their location and their continued work in the field, could be at risk on account of the activities of the Court. The document remains intelligible and usable, and no lesser measures appear feasible.

The prosecution notified the Trial Chamber that it had disclosed this document in accordance with the decision of the Chamber.²⁰⁶

¹⁹⁸ ICC-01/04-01/06-1502-Conf-Exp-Anx C, page 4 (there is no ERN for this annex since it is a prosecution work product).

¹⁹⁹ ICC-01/04-01/06-1477-Conf-Exp-Anx27.

²⁰⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx27 (ERN: DRC.00052.164).

²⁰¹ ICC-01/04-01/06-1477-Conf-Exp-Anx142 (ERN: DRC-OTP-0202-0847 – DRC-OTP-0202-0855).

²⁰² ICC-01/04-01/06-1488-Conf-Exp-Anx88 (ERN: DRC-OTP-0202-0847) and Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

²⁰³ ICC-01/04-01/06-1477-Conf-Exp-Anx142 (ERN: DRC-OTP-0202-0847 – DRC-OTP-0202-0855).

²⁰⁴ ICC-01/04-01/06-1477-Conf-Exp, paragraph 17 (ii), and ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 21, line 9, and ICC-01/04-01/06-1496-Conf-Exp, paragraph 57.

²⁰⁵ ICC-01/04-01/06-1496-Conf-Exp, paragraph 57, and ICC-01/04-01/06-1496-Conf-AnxC (there is no ERN for this annex since it is a prosecution work product).

²⁰⁶ Prosecution’s Notification of Disclosure of Exculpatory and Rule 77 Material to the Defence on 18 and 20 November 2008, 21 November 2008, ICC-01/04-01/06-1502, paragraphs 3-4, and ICC-01/04-01/06-1502-Conf-Exp-AnxC (there is no ERN for this annex since it is a prosecution work product).

Annex 28²⁰⁷

This document is a 15 page file note of a number of meetings over 10 and 11 July 2002 in the vicinity of Bunia with some handwritten changes dated 10 July 2002, obtained from the UN.²⁰⁸ The prosecution submitted that it contains potentially exculpatory material insofar as the information indicates that the Hema have a tradition that the oldest son is meant to be educated as a soldier in order to defend the group.²⁰⁹ The prosecution submitted that this document contained Rule 77 material insofar as it indicates that the UPDF supports Hema groups and that Rwandan soldiers were present within Hema ranks.²¹⁰ The prosecution informed the Chamber that the UN had consented to disclosure to the defence with redactions²¹¹ to the identities of the author, the author's interlocutors and sources, and a recipient of a letter, along with a handwritten telephone number.²¹² The Trial Chamber requested the prosecution to confirm with the UN that the redactions were sought on the basis that there would be a security risk to those concerned if the document was disclosed in full.²¹³ The prosecution informed the Trial Chamber that the redactions to the various individuals and entities are necessary in the view of the UN since there is a substantial risk to the safety of the persons concerned.²¹⁴ At the suggestion of the Chamber, the prosecution proffered the following admission of fact to reflect other potentially relevant information not identified by the prosecution: *The President of Uganda had encouraged co-operation between Lubanga and Tibasima.*²¹⁵

The proposed redactions are limited and they are not contained in the portion of the document containing potentially exculpatory and Rule 77 material, and in the circumstances the Trial Chamber authorised disclosure to the defence in this form in order to protect individuals who could be at risk on account of the activities of the Court. The document remains intelligible and usable, and no lesser measures appear feasible.

Furthermore, the prosecution's admission of fact provides additional information for the defence which otherwise would not have been available.

²⁰⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx28.

²⁰⁸ ICC-01/04-01/06-1477-Conf-Exp-Anx28 (ERN: DRC.00055.488 – DRC.00055.502).

²⁰⁹ ICC-01/04-01/06-1488– Conf-Exp-Anx89 (ERN: DRC-OTP-0202-0862) and Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

²¹⁰ ICC-01/04-01/06-1488– Conf-Exp-Anx89 (ERN: DRC-OTP-0202-0856 - DRC-OTP-0202-0867) and Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

²¹¹ ICC-01/04-01/06-1477-Conf-Exp, paragraph 17(ii).

²¹² ICC-01/04-01/06-1477-Conf-Exp-Anx143 (ERN: DRC-OTP-0202-0856 - DRC-OTP-0202-0861, DRC-OTP-0202-0863 - DRC-OTP-0202-0864, DRC-OTP-0202-0866, and DRC-OTP-0202-0869).

²¹³ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 21, lines 10-23.

²¹⁴ ICC-01/04-01/06-1496-Conf-Exp, paragraph 58.

²¹⁵ Email communication to the Trial Chamber through the Legal Adviser to the Trial Division on 17 November 2008.

The prosecution notified the Trial Chamber that it had disclosed this redacted document with the proposed admission of fact in compliance with the Trial Chamber's decision.²¹⁶

Annex 29²¹⁷

This document is a 3 page daily report for 27 May 2002, dated 28 May 2002, and obtained from the UN.²¹⁸ The prosecution submitted that it contains Rule 77 material insofar as the information indicates that 25 soldiers who defected from the RCD-G are reported to have joined the MLC.²¹⁹ The prosecution informed the Chamber that the UN had agreed that it could be disclosed to the defence with redactions²²⁰ to the identities of two people who had sought refuge in the UN compound, along with the identities of two information providers.²²¹ It is submitted by the prosecution that the redactions are necessary because of the risk of reprisals from relevant groups (particularly the RCD-G) and to ensure the ability of some individuals or organisations to work effectively in the region.²²² The Chamber noted that the redactions do not fall within the portions of the document containing Rule 77 information.²²³

The proposed redactions are not within in the portion of the document containing the Rule 77 material, and in the circumstances the Trial Chamber authorised disclosure to the defence in this form in order to protect individuals who could be at risk on account of the activities of the Court. The document remains intelligible and usable, and no lesser measures appear feasible.

The prosecution notified the Trial Chamber that it had disclosed this document in compliance with the Trial Chamber's decision.²²⁴

²¹⁶ Prosecution's Notification of Disclosure of Exculpatory and Rule 77 Material to the Defence on 18 and 20 November 2008, 21 November 2008, ICC-01/04-01/06-1502, paragraphs 3-4, and ICC-01/04-01/06-1502-Conf-ExpAnxC (there is no ERN for this annex since it is a prosecution work product).

²¹⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx29.

²¹⁸ ICC-01/04-01/06-1477-Conf-Exp-Anx29 (ERN: DRC.00056.456 – DRC.00056.458).

²¹⁹ ICC-01/04-01/06-1488-Conf-Exp-Anx90 (ERN: DRC-OTP-0202-0872) and Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

²²⁰ ICC-01/04-01/06-1477-Conf-Exp, paragraph 17(ii).

²²¹ ICC-01/04-01/06-1477-Conf-Exp-Anx144 (ERN: DRC-OTP-0202-0872 - DRC-OTP-0202-0873).

²²² ICC-01/04-01/06-1496-Conf-Exp, paragraph 60.

²²³ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 23, lines 11-14.

²²⁴ Prosecution's Notification of Disclosure of Exculpatory and Rule 77 Material to the Defence on 18 and 20 November 2008, 21 November 2008, ICC-01/04-01/06-1502, paragraphs 3-4, and ICC-01/04-01/06-1502-Conf-Exp-AnxC (there is no ERN for this annex since it is a prosecution work product).

Annex 30²²⁵

This document is a 5 page daily report for 15 September 2003, dated 16 September 2003, obtained from the UN.²²⁶ The prosecution submitted that it contains potentially exculpatory material, insofar as it indicates that as part of the disarmament initiative called “Weapons Free Bunia”, 10 weapons from the armed guards of the UPC leadership were handed over to MONUC.²²⁷ Furthermore, the prosecution submitted that the document contained Rule 77 material insofar as the information reveals the use of a child as a soldier by the RCD-G.²²⁸ The prosecution informed the Chamber that the UN had consented to the disclosure of this document to the defence with proposed redactions,²²⁹ namely to the identity of the author of the report.²³⁰ The prosecution submitted, on behalf of the UN, that this is necessary for the safety of the person concerned, [REDACTED].²³¹

The proposed redactions are within the portion containing potentially exculpatory and Rule 77 material, and in the circumstances the Trial Chamber authorised disclosure to the defence in this form in order to individuals who could be at risk on account of the activities of the Court. The document remains intelligible and usable, and no lesser measures appear feasible.

The prosecution notified the Trial Chamber that it had disclosed this document in compliance with the Trial Chamber’s decision.²³²

Annex 31²³³

This 19 page document was provided by the UN and is a report on the situation of child soldiers in Ituri; it includes a table listing interviews carried out for the purposes of the report as well as the individual history of some child soldiers. The report covers the period from 25 March to 3 April 2003.²³⁴

²²⁵ ICC-01/04-01/06-1477-Conf-Exp-Anx30.

²²⁶ ICC-01/04-01/06-1477-Conf-Exp-Anx30 (ERN: DRC.00061.042 – DRC.00061.046).

²²⁷ ICC-01/04-01/06-1488-Conf-Exp-Anx91 (ERN: DRC-OTP-0202-0874) and Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

²²⁸ ICC-01/04-01/06-1488-Conf-Exp-Anx91 (ERN: DRC-OTP-0202-0876) and Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

²²⁹ ICC-01/04-01/06-1477-Conf-Exp, paragraph 17(ii).

²³⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx 145 (ERN: DRC-OTP-0202-0878) and ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 23, lines 15-22

²³¹ ICC-01/04-01/06-1496-Conf-Exp, paragraph 61

²³² Prosecution’s Notification of Disclosure of Exculpatory and Rule 77 Material to the Defence on 18 and 20 November 2008, 21 November 2008, ICC-01/04-01/06-1502, paragraphs 3-4, and ICC-01/04-01/06-1502-Conf-Exp-AnxC (there is no ERN for this annex since it is a prosecution work product)

²³³ ICC-01/04-01/06-1477-Conf-Exp-Anx31

²³⁴ ICC-01/04-01/06-1477-Conf-Exp-Anx31 (ERN: DRC.00065.030 – DRC.00065.048).

The prosecution submitted that it contains potentially exculpatory material insofar as it refers to the recruitment of child soldiers above the age of 15 and some who had joined the UPC voluntarily. It also refers to the demobilisation efforts of Thomas Lubanga.²³⁵ The prosecution, moreover, highlighted that the document contains potentially exculpatory material information relating to insufficient command and control by Thomas Lubanga, since it indicates that the military structure of the UPC was, at times, unclear and that there was no apparent chain of command.²³⁶ The prosecution also submitted that the document contains Rule 77 information relating to the use of child soldiers by other armed groups, namely the Lendu militia.²³⁷

The UN proposed disclosure with redactions which involve, in the main, the identity of the children interviewed in order to prepare the report: their names, dates of birth, and the names of parents (of 36 children).²³⁸ The prosecution informed the Chamber the UN seeks to maintain the redactions on account of privacy concerns relating to child victims and their families, and the UN has no further information on the whereabouts of the individuals concerned.²³⁹

The proposed redactions do not affect the potentially exculpatory or Rule 77 value of the material. Given that the whereabouts of the children referred to in the document are unknown, there would be a material risk in disclosing their identities. Additionally, the Chamber has considered the privacy concerns relevant to the child victims, although it stresses these have not been determinative of this application. However, given the evident security risks, no lesser measures than those proposed appear feasible, and the document remains usable and intelligible. Therefore, the Trial Chamber authorised the redactions.²⁴⁰

The prosecution notified the Trial Chamber that it had disclosed this document in accordance with the decision of the Chamber.²⁴¹

Annex 32²⁴²

This UN document is a "Special Report" that comprises five pages and covers the humanitarian situation in Rwenbisengo and Ntoroko districts, the insecurity in the

²³⁵ ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 21 (there is no ERN for this annex since it is a prosecution work product); and Conf-Exp-Anx78 (ERN: DRC-OTP-0202-0761 – DRC-OTP-0202-0779).

²³⁶ ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 21 (there is no ERN for this annex since it is a prosecution work product); and Conf-Exp-Anx78 (ERN: DRC-OTP-0202-0761 – DRC-OTP-0202-0779).

²³⁷ ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 21 (there is no ERN for this annex since it is a prosecution work product); and Conf-Exp-Anx78 (ERN: DRC-OTP-0202-0761 – DRC-OTP-0202-0779).

²³⁸ ICC-01/04-01/06-1477-Conf-Exp-Anx131 (ERN: DRC-OTP-0202-0761 – DRC-OTP-0202-0779).

²³⁹ ICC-01/04-01/06-1496-Conf-Exp, paragraph 62.

²⁴⁰ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 23, line 23 to page 24, line 4.

²⁴¹ ICC-01/04-01/06-1502-Conf-AnxC, page 3 (there is no ERN for this annex since it is a prosecution work product).

²⁴² ICC-01/04-01/06-1477-Conf-Exp-Anx32.

region as a result of Lendu attacks, and the role of Uganda in the violence.²⁴³ The prosecution submitted that it contained Rule 77 material relating to the use of child soldiers by armed groups other than the UPC, in that the information indicates that there were child soldiers among the PUSIC militia.²⁴⁴ The UN has consented to the disclosure of this document in redacted form.²⁴⁵ The proposed redactions are minimal and only cover the name and function of a witness to events which are unrelated to the Rule 77 material.²⁴⁶ The Chamber asked the prosecution to ensure that this individual [REDACTED] and is, therefore, at risk.²⁴⁷ After further consultation with the UN, the prosecution submitted that the proposed redactions (to the relevant name and function), are necessary as the individual [REDACTED], and accordingly there is a continuing risk of reprisals.²⁴⁸ The UN does not have further information as to his or her whereabouts.²⁴⁹ In these circumstances it is submitted other protective measures, short of redactions, are not available.

The proposed redactions do not affect the Rule 77 information in relation to child soldiers, and in all the circumstances the Chamber authorised disclosure in this form in order to protect someone who could be at risk on account of the activities of the Court.²⁵⁰ The document remains intelligible and usable, and no lesser measures appear feasible.

The prosecution informed the Chamber that it has disclosed this document in accordance with the Chamber's decision.²⁵¹

Annex 33²⁵²

This 7 page document is entitled "Rapport de l'enquête diligentée par la MONUC sur les violations des droits de l'homme commises à Bunia et à Bogoro dans l'Ituri" and is in French.²⁵³ The prosecution submits that it contains Rule 77 material insofar as the information indicates that, until 5 March 2003, the UPC received military support from the UPDF (Uganda), and thereafter the UPDF supported Lendu and

²⁴³ ICC-01/04-01/06-1477-Conf-Exp-Anx32 (DRC-00065-0063 – DRC-00065-0067).

²⁴⁴ ICC-01/04-01/06-1488-Conf-Exp-Anx79 (ERN: DRC-OTP-0065-0063 – DRC-OTP-0065-0067).

²⁴⁵ ICC-01/04-01/06-1477-Conf-Exp-Anx101 and ICC-01/04-01/06-1477-Conf-Exp-Anx103.

²⁴⁶ ICC-01/04-01/06-1496-Conf-Exp-Anx8 (ERN: DRC-OTP-0204-0315 – DRC-OTP-0204-0319). Previously a redacted version had been submitted, in which only the name, but not the function of the person had been redacted: ICC-01/04-01/06-1477-Conf-Exp-Anx132 (ERN: DRC-OTP-0202-0781 – DRC-OTP-0202-0784)

²⁴⁷ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 24, lines 7-9.

²⁴⁸ ICC-01/04-01/06-1496-Conf-Exp, paragraph 63

²⁴⁹ ICC-01/04-01/06-1496-Conf-Exp, paragraph 65.

²⁵⁰ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 24, lines 5-9; ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 23, lines 23-25, page 24, line 1.

²⁵¹ ICC-01/04-01/06-1502-Conf-AnxC, page 5 (there is no ERN for this annex since it is a prosecution work product).

²⁵² ICC-01/04-01/06-1477-Conf-Exp-Anx33.

²⁵³ ICC-01/04-01/06-1477-Conf-Exp-Anx33 (ERN: DRC-00065-0068 – DRC-00065-0074).

Ngiti militias.²⁵⁴ The proposed redactions are minor and concern the names of a rape victim and a person who reported this incident,²⁵⁵ and the prosecution submits these measures do not affect the Rule 77 material.²⁵⁶ Following a request from the Chamber for further information regarding these redactions, the prosecution reported that the UN seeks to maintain them because of its concerns for the privacy of the victim and the risk of reprisals against the source.²⁵⁷ The UN has no further information as to the whereabouts of these two individuals.²⁵⁸

The Trial Chamber authorised disclosure in its current form as the redactions are minor and are wholly unrelated to the Rule 77 issue, namely the support provided by Uganda.²⁵⁹ Lesser protective measures, in light of the fact that the whereabouts of the persons concerned are unknown, are not possible. The document remains intelligible and usable, and the Chamber considers that the security of the source and the privacy of an alleged rape victim merit these protective measures.

The prosecution informed the Chamber that it has disclosed this document in accordance with this decision.²⁶⁰

Annex 34²⁶¹

This 2 page document was provided by the UN and is entitled “Historique de la situation dans les territoires alur”.²⁶² The document gives an overview of incidents in the Alur territory between 1999 and 2003, from the perspective of the person interviewed. The prosecution submitted that it contains Rule 77 material insofar as the information indicates that the FNI was created on 6 March 2003 at the initiative of the Ugandan government, in order to control the various Lendu armed groups, and to permit it to conduct negotiations for a “unified group”.²⁶³ The information provider had proposed redactions to the name, title, affiliation and training of the source.²⁶⁴ The Trial Chamber asked the prosecution to verify the security risk to this individual if the document is disclosed in its original form.²⁶⁵ The prosecution informed the Trial Chamber that the UN is unaware of the whereabouts of this

²⁵⁴ ICC-01/04-01/06-1488-Conf-Exp-Anx80 (ERN: DRC-OTP-0202-0785 – DRC-OTP-0202-0791), ICC-01/04-01/06-1488-Conf-Exp-Anx94 (No ERN number as this is a chart generated by the prosecution).

²⁵⁵ ICC-01/04-01/06-1477-Conf-Exp-Anx133 (ERN: DRC-OTP-0202-0785 – DRC-OTP-0202-0791).

²⁵⁶ ICC-01/04-01/06-1488-Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

²⁵⁷ ICC-01/04-01/06-1496-Conf-Exp. paragraph 67.

²⁵⁸ ICC-01/04-01/06-1496-Conf-Exp. paragraph 67.

²⁵⁹ ICC-01/04-01/06-T-95-CONF-EXP-ENG. page 24, lines 10-11.

²⁶⁰ ICC-01/04-01/06-1502-Conf-Exp-AnxC. page 5 (there is no ERN for this annex since it is a prosecution work product).

²⁶¹ ICC-01/04-01/06-1477-Conf-Exp-Anx34.

²⁶² ICC-01/04-01/06-1477-Conf-Exp-Anx34 (ERN: DRC-00065-146 – DRC-00065-147).

²⁶³ ICC-01/04-01/06-1488-Conf-Exp-Anx62 (ERN: DRC-OTP-0199-0275- DRC-OTP-0199-0276).

²⁶⁴ ICC-01/04-01/06-1477-Conf-Exp-Anx114 (ERN: DRC-OTP-0199-275 – DRC-OTP-0199-276).

²⁶⁵ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 24, lines 14 et seq.

person, and it submitted that disclosure of his identity would endanger his security.²⁶⁶ The prosecution further contended that the proposed redactions do not affect the Rule 77 value of the document.²⁶⁷

The proposed redactions do not affect the Rule 77 value of this document, and in all the circumstances the Trial Chamber authorised disclosure in this form in order to protect someone who could be at risk on account of the activities of the Court. The Chamber is satisfied that revealing the name of, and other identifying information about, the source would pose a risk to his or her security, and that this risk can be significantly reduced through the proposed redactions. The Chamber is further satisfied that other protective measures, short of these redactions, are unavailable, not least because the whereabouts of this individual are unknown. The document remains usable and intelligible.

The prosecution informed the Chamber that this document was disclosed with the proposed redactions, in accordance with the Trial Chamber's decision.²⁶⁸

Annex 35²⁶⁹

This 5 page document was provided by the UN [REDACTED].²⁷⁰ The prosecution submitted that this document contains potentially exculpatory and Rule 77 material, insofar as it refers [REDACTED].²⁷¹ The provider proposed disclosure with redactions to the name and further identifying information of some of the persons named in the document.²⁷²

The Chamber asked the prosecution to investigate whether the people whose names were redacted would still be at risk if their identities were disclosed to the defence and the accused,²⁷³ and to verify the suggested justification for some of the redactions.²⁷⁴ The prosecution furnished the Chamber with the detailed reasons for each proposed redaction, as indicated by the UN; in essence the redactions were based on the continued security risks to the persons concerned.²⁷⁵

²⁶⁶ ICC-01/04-01/06-1496-Conf-Exp, page 20.

²⁶⁷ ICC-01/04-01/06-1496-Conf-Exp, page 20.

²⁶⁸ ICC-01/04-01/06-1502-Conf-AnxC, page 3 (there is no ERN for this annex since it is a prosecution work product).

²⁶⁹ ICC-01/04-01/06-1477-Conf-Exp-Anx35.

²⁷⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx35 (ERN: DRC-00065.249 – DRC-00065.253).

²⁷¹ ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 17 (there is no ERN for this annex since it is a prosecution work product).

²⁷² ICC-01/04-01/06-1477-Conf-Exp-Anx137 (ERN: DRC-OTP-0202-0809 - DRC-OTP-0202-0813); ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 29 (there is no ERN for this annex since it is a prosecution work product).

²⁷³ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 24, lines 22 et seq.

²⁷⁴ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 25, lines 3 et seq.

²⁷⁵ ICC-01/04-01/06-1496-Conf-Exp, paragraphs 70-75.

The suggested redactions do not affect its potentially exculpatory or Rule 77 value, and in all the circumstances the Trial Chamber authorised disclosure in this form in order to protect people who could be at risk on account of the activities of the Court. The Chamber is satisfied that disclosure of their names and other identifying information may threaten their continued safety and security. The Chamber is further satisfied that lesser protective measures, short of redactions, are not available because these individuals [REDACTED] or their whereabouts are unknown.²⁷⁶ The document remains intelligible and usable.

The prosecution informed the Chamber that this document was disclosed in accordance with the Trial Chamber's decision.²⁷⁷

Annex 36²⁷⁸

This document is a 4 page, typed interview with Chief Kahwa Panga Mandro, dated 11 March 2004, obtained from the UN.²⁷⁹ The prosecution submitted that it contained Rule 77 material insofar as it records that Chief Kahwa stated that although he was the first to negotiate the support of the Rwandans, since 2002 he had been supported by the Ugandans; that "Bosco" had good relations with Kigali; and that "Gérôme" had support from Uganda.²⁸⁰ The prosecution informed the Chamber that the UN had consented to the disclosure of this document to the defence with proposed redactions,²⁸¹ concerning the identity of the author; it was submitted by the prosecution, on behalf of the UN, that these are necessary for the safety of the person concerned.²⁸²

The proposed redactions are not from the portion containing Rule 77 material, and in all the circumstances the Trial Chamber authorised disclosure to the defence in this form in order to protect someone who could be at risk on account of the activities of the Court. Moreover, no lesser measures appear feasible, and the document remains usable and intelligible.

The prosecution informed the Trial Chamber that it had disclosed this document in accordance with the Chamber's decision.²⁸³

²⁷⁶ ICC-01/04-01/06-1496-Conf-Exp, paragraphs 70-75.

²⁷⁷ ICC-01/04-01/06-1502-Conf-AnxC, page 3 (there is no ERN for this annex since it is a prosecution work product); Email communication from the Trial Chamber through the Legal Adviser to the Trial Division to the prosecution on 19 November 2008.

²⁷⁸ ICC-01/04-01/06-1477-Conf-Exp-Anx36.

²⁷⁹ ICC-01/04-01/06-1477-Conf-Exp-Anx36 (ERN: DRC.00098.078 – DRC.00098.081).

²⁸⁰ ICC-01/04-01/06-1488-Conf-Exp-Anx81 (ERN: DRC-OTP-0202-0792 - DRC-OTP-0202-0795) and Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

²⁸¹ ICC-01/04-01/06-1477-Conf-Exp-Anx134. (ERN: DRC-OTP-0202-0792 - DRC-OTP-0202-0795).

²⁸² ICC-01/04-01/06-1477-Conf-Exp, paragraph 17(ii), and ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 25, lines 11-25 and page 26, lines 1-5.

²⁸³ ICC-01/04-01/06-1502-Conf-AnxC, page 5 (there is no ERN for this annex since it is a prosecution work product)

Annex 37²⁸⁴

This document is a 6 page report provided by the UN, entitled: “Bunia Daily Consolidated Report.”²⁸⁵ It describes the activities of various militias and MONUC, in Bunia, on 22 August 2003. The prosecution submitted that the report contained Rule 77 material, insofar as it indicates that all the armed groups in Ituri received requests to demobilize child soldiers, and that NGOs had been conducting missions and preparing for the demobilization of child soldiers from these armed groups, with particular emphasis on children among the troops of the Lendu-Ngiti.²⁸⁶ The prosecution indicated to the Chamber that the UN had consented to disclosure, with redactions to the names of two individuals: the person who provided the information and his brother.²⁸⁷ The Trial Chamber enquired into their security situation,²⁸⁸ and the prosecution indicated that the UN did not have additional information as to their whereabouts, but it nonetheless maintained that since one of them had provided information concerning the UPC, there would be a risk of reprisals by former UPC elements if his name was disclosed.²⁸⁹

The Trial Chamber authorised disclosure of the document with the proposed redactions. They are necessary to mitigate the risks to the source, who provided information concerning the UPC and whose whereabouts remain unknown, on account of the activities of the Court. The same reasoning applies to his brother, since disclosure of either identity causes a material risk to both of them. This conclusion was reached after careful review of the document, and having ensured that the proposed redactions are not in the portion containing the Rule 77 information. Moreover, no lesser measures appear feasible, and the document remains usable and intelligible.

The prosecution informed the Chamber that this document was disclosed in accordance with the Trial Chamber’s decision.²⁹⁰

Annex 38²⁹¹

This 4 page document is entitled “Military Daily Report – 12 November 2003” and was provided by the UN.²⁹² The report discusses MONUC activities on 12 November

²⁸⁴ ICC-01/04-01/06-1477-Conf-Exp-Anx37.

²⁸⁵ ICC-01/04-01/06-1477-Conf-Exp-Anx37 (ERN: DRC-00111-662 – DRC-00111-667).

²⁸⁶ ICC-01/04-01/06-1488-Conf-Exp-Anx82 (ERN: DRC-00111-662 – DRC-00111-667) and ICC-01/04-01/06-1488-Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

²⁸⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx135 (ERN: DRC-OTP-0202-0796 – DRC-OTP-0202-0801)

²⁸⁸ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 26, lines 10-13.

²⁸⁹ ICC-01/04-01/06-1496-Conf-Exp, paragraph 79.

²⁹⁰ ICC-01/04-01/06-1502-Conf-Anx C, page 6 (there is no ERN for this annex since it is a prosecution work product).

²⁹¹ ICC-01/04-01/06-1477-Conf-Exp-Anx38

2003 in Bunia, Ituri. It contains information about an escaped soldier, aged 15 years old, who was allegedly captured by the APC two years earlier (in 2001). The prosecution identified this information as falling within the scope of Rule 77.²⁹³ The prosecution proposed disclosure of the document to the defence with redactions to the identity of the escaped child soldier.²⁹⁴ The UN, through the prosecution, indicated that the redactions were necessary to protect the safety and privacy of the source who was then a child.²⁹⁵

The proposed redactions do not affect the Rule 77 value of the document, and in all the circumstances the Trial Chamber authorised disclosure in this form to protect the privacy and security of a former child soldier. Whilst it is some years since he escaped, the Trial Chamber has no up-to-date information on his current situation and in these circumstances there remains a significant possibility that he may be at risk on account of the activities of the Court. Moreover, no lesser measures appear feasible, and the document remains usable and intelligible.

The prosecution informed the Chamber that this document was disclosed in accordance with the Trial Chamber's decision.²⁹⁶

Annex 39²⁹⁷

This document is an 8 page, hand-written report provided by the UN, entitled, "Report on the Plunder of Natural Resources in the Congo (DRC) since 1998".²⁹⁸ There is no discernable date on the document. The prosecution submitted that it contains Rule 77 material, insofar as the information indicates that Uganda became the ally of the rebel movement RCD-K in order to exploit natural resources.²⁹⁹ The UN expressed concerns about the safety of its staff if the document is disclosed.³⁰⁰ The prosecution submitted 8 documents by way of alternative evidence.³⁰¹ In addition, the prosecution provided a summary version of the original document,

²⁹² ICC-01/04-01/06-1477-Conf-Exp-Anx38 (ERN: DRC-OTP-0195-1617 – DRC-OTP-0195-1620).

²⁹³ ICC-01/04-01/06-1488-Conf-Exp-Anx85 (ERN: DRC-OTP-0195-1617 – DRC-OTP-0195-1620 and DRC-OTP-0202-0815 – DRC-OTP-0202-0818) and ICC-01/04-01/06-1488-Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

²⁹⁴ ICC-01/04-01/06-1477-Conf-Exp-Anx138 (ERN: DRC-OTP-0195-1617 – DRC-OTP-0195-1620 and DRC-OTP-0202-0815 – DRC-OTP-0202-0818).

²⁹⁵ ICC-01/04-01/06-1496-Conf-Exp, paragraph 80.

²⁹⁶ ICC-01/04-01/06-1502-Conf-Anx C, page 6 (there is no ERN for this annex since it is a prosecution work product).

²⁹⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx39.

²⁹⁸ ICC-01/04-01/06-1477-Conf-Exp-Anx39 (ERN: DRC.00053.247 – DRC.00053.254). An English translation of this document is contained at ICC-01/04-01/06-1477-Conf-Exp-Anx168 (ERN: DRC-OTP-200-0006 – DRC-200-0013).

²⁹⁹ ICC-01/04-01/06-1488-Conf-Exp-Anx46 (ERN: DRC.00053.247 – DRC.00053.254) and Conf-Exp-Anx94 (there is no ERN for this Annex since it is a prosecution work product).

³⁰⁰ ICC-01/04-01/06-1477-Conf-Exp, paragraph 17(iii) and footnote 20.

³⁰¹ ICC-01/04-01/06-1488-Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product); ICC-01/04-01/06-1492-Conf-Exp and Conf-Exp-Anx19, 45, 46, 47, 48, 49, 57, 58

containing the portions of the material which the prosecution submits have Rule 77 value copied verbatim.³⁰² The prosecution also proffered an admission of fact which it submits covers the Rule 77 material contained in the original document. The proposed admission is: *Uganda became the ally of the rebel movement RCD-K in order to exploit the natural resources.*³⁰³ The prosecution agreed to provide the above-mentioned alternative evidence, the summary and the admission in order to fulfil its disclosure obligations with respect to the information contained in the original document.³⁰⁴

The 8 documents of proposed alternative evidence provided by the prosecution consist of: (1) a 29 page French article from the Commission des Recours entitled, "République Démocratique du Congo: les zones de rébellion" which contains information regarding Uganda's alliance with the RCD (regrouped in the RCD-ML); Uganda's involvement in the area controlled by the MLC; the influence of Uganda, and Uganda's assistance being requested by Wamba di Wamba; and the deteriorating relationship between Uganda and Bemba in August 2000;³⁰⁵ (2) a 32 page copy of a Congolese independent newspaper, "Le Millénaire", from April 2001, containing information about the exploitation of resources in the DRC by Rwanda, Burundi and Uganda; and which set out that key witnesses from the RCD had stated that Ugandan forces were ready to enter and occupy regions in which gold and diamond mines are situated;³⁰⁶ (3) a 9 page timeline, documenting the changing political situation in the DRC from 2 August 1998 until October 2003, specifically mentioning the illegal exploitation of DRC's resources by the UPDF;³⁰⁷ (4) a 16 page French language bulletin produced by the European Congo Network, "Réseau Européen Congo", dated 28 June 2002, containing information "not reported in the media at large", concerning politico-military and socio-economic situations and the operation of civil society in the DRC;³⁰⁸ (5) a 69 page French research paper written for the 2002 "Sciences Po Centre d'Études et de Recherches Internationales (CERI) Convention d'Études", on "Guerre et recomposition des forces politiques en RDC". It condemns the involvement of officers in the bloody confrontations between units of the UPDF and the APC, and protests about the behaviour of the RCD-ML and their Ugandan allies, in particular the diversion of taxes by the RCL-ML to the Ugandans;³⁰⁹ (6) a 14 page UN article detailing meetings held with contacts in Bunia, Beni and Butembo on and around 10 and 11 July 2002, and the situation observed in those areas. Although the document is redacted, none appear in the

³⁰² ICC-01/04-01/06-1496-Conf-Exp, paragraph 82 and Conf-Exp-Anx10 (ERN: DRC-OTP-0204-0401).

³⁰³ ICC-01/04-01/06-1496-Conf-Exp, paragraph 83; ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 27, lines 2 – 24.

³⁰⁴ ICC-01/04-01/06-T-96-CONF-EXP, page 13, lines 4 -10.

³⁰⁵ ICC-01/04-01/06-1492-Conf-Exp-Anx45 (ERN: CAR-OTP-0005-0231 – CAR-OTP-0005-0258).

³⁰⁶ ICC-01/04-01/06-1492-Conf-Exp-Anx46 (ERN: DRC.00077.488; DRC.00077.471- DRC.00077.472; DRC.00077.469 – DRC.00077.470; DRC.00077.473 – DRC.00077.499).

³⁰⁷ ICC-01/04-01/06-1492-Conf-Exp-Anx47 (ERN: DRC.00001.251 - DRC.0000.251).

³⁰⁸ ICC-01/04-01/06-1492-Conf-Exp-Anx48 (ERN: DRC.00038.126 - DRC.00038.141).

³⁰⁹ ICC-01/04-01/06-1492-Conf-Exp-Anx49 (ERN: DRC.00038.493 – DRC 00038.562)

sections of proposed alternative evidence which compare the capacity to organise of the RCD-Kis-ML and the RCD-Goma, suggesting that the former is inferior to the latter. The document describes the RCD-Kis ML as being composed of individuals who are not united in their aims, reflecting Uganda's interests, whereas the influence of Rwanda tends more to coherence;³¹⁰ (7) [REDACTED];³¹¹ (8) a 4 page confidential UN cable from Kinshasa to New York, on 25 June 2002, concerning the situation in Ituri which suggests that Uganda has taken advantage of ethnic tensions.³¹² The Trial Chamber considers that all of the information contained in the proposed alternative evidence relates to the relevant subject matter of the original document.

Similarly, the summary provided by the prosecution corresponds to the information in the original report, and additionally it sets out, clearly and in full, the names of those individual RCD-Kis members named in the latter.³¹³ The portions of the summary which have been transcribed verbatim from the original document appropriately correspond with the evidence submitted by the prosecution to be Rule 77 material.

The Trial Chamber decided that the proposed alternative evidence, the summary and the admission of fact enable the prosecution to satisfy its disclosure obligations in a way that ensures the protection of individuals who could be at risk on account of the activities of the Court. The Trial Chamber therefore authorised the prosecution to provide the defence with these items. No lesser measures appear feasible, and the information, overall, is usable and intelligible.

On 21 November 2008, the prosecution notified the Trial Chamber that it had disclosed the summary, the admission of fact and the 8 documents containing alternative evidence as listed above, in compliance with the Chamber's decision.³¹⁴

Annex 40³¹⁵

This document is a 28 page typed witness statement, dated 12 July 2006, and obtained from the UN.³¹⁶ The prosecution submitted that it contains potentially exculpatory material insofar as the information indicates (1) "Article 31 grounds": Thomas Lubanga was seen in a complete state of intoxication; (2) "Voluntariness": that young people were infatuated with the idea of joining the military; (3)

³¹⁰ ICC-01/04-01/06-1492-Conf-Exp-Anx19 (ERN: DRC-OTP-0202-0856 – DRC-OTP-0202-0870).

³¹¹ ICC-01/04-01/06-1492-Conf-Exp-Anx57 (ERN: DRC.00047.056 – DRC.00047.072).

³¹² ICC-01/04-01/06-1492-Conf-Exp-Anx58 (ERN: DRC.00049.634 – DRC.00049.637).

³¹³ ICC-01/04-01/06-1496-Conf-Exp-Anx10 (ERN: DRC-OTP-0204-0401).

³¹⁴ ICC-01/04-01/06-1502-Conf-AnxC, page 6 (there is no ERN for this annex since it is a prosecution work product).

³¹⁵ ICC-01/04-01/06-1477-Conf-Exp-Anx40.

³¹⁶ ICC-01/04-01/06-1477-Conf-Exp-Anx40 (ERN: DRC-OTP-0159-0408 – DRC-OTP-0159-0435). The English translation is contained at ICC-01/04-01/06-1477-Conf-Exp-Anx169 (ERN: DRC-OTP-0200-0015 – DRC-OTP-0200-0044).

“Insufficient command and control”: that Detchuvi, Lotsove and Lonema made the real decisions in the UPC; and (4) “Child soldiers”: that it was claimed that “kadosos” existed in the DGM.³¹⁷ Furthermore, the prosecution submitted that this document contains Rule 77 *tu quoque* material, insofar as the information indicates that the majority of UPC leaders, as with the Lendu leaders, used child soldiers.³¹⁸ The prosecution informed the Chamber that the UN has not consented to disclosure of the witness statement to the defence. It was submitted by the prosecution that the statement cannot be disclosed due to safety concerns relating to the witness.³¹⁹

The prosecution submitted 6 documents to the Trial Chamber containing alternative evidence regarding potentially exculpatory material on Article 31 grounds.³²⁰ These consist of: (1) the 41 page witness statement of [REDACTED] (DRC-OTP-WWWW-0040)³²¹ which contains information regarding Thomas Lubanga being under considerable pressure from the international community and his escapism through drink.³²² This document contains redactions to the identity of the witness (including any information which may identify him) and to certain other passages. The prosecution indicated that the statement has been disclosed to the defence with authorised redactions to protect the identity of the witness who was to be contacted by the Registry to determine whether he will co-operate with the Court.³²³ This situation may be temporary, and is dependent on a final determination as to the status of this witness and the implementation of any necessary security measures;³²⁴ (2) the 104 page statement of [REDACTED] (DRC-OTP-WWWW-0014), which contains information regarding Thomas Lubanga drinking heavily and smoking marijuana, and describes how the smoking and drinking influenced Thomas Lubanga’s decision-making abilities;³²⁵ (3) the 35 page statement of [REDACTED]

³¹⁷ ICC-01/04-01/06-1488-Conf-Exp-Anx52 (ERN: DRC-OTP-0159-0417, DRC-OTP-0159-0422, DRC-OTP-0159-0425, and DRC-OTP-0159-0428) and Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

³¹⁸ ICC-01/04-01/06-1488-Conf-Exp-Anx52 (ERN: DRC-OTP-0159-0414, and DRC-OTP-0159-0416 - DRC-OTP-0159-0417) and Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

³¹⁹ ICC-01/04-01/06-1488-Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

³²⁰ ICC-01/04-01/06-1477-Conf-Exp, paragraph 17(iii), and ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 31, line 10 to page 33, line 23; ICC-01/04-01/06-1488-Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product); ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 31, lines 10-16 and page 32, lines 8-21.

³²¹ See Decision on disclosure issues, responsibilities for protective measures and other procedural matters, 24 April 2008, ICC-01/04-01/06-1295-US-Exp; 8 May 2008, ICC-01/04-01/06-1311-Conf-Anx1, and ICC-01/04-01/06-1311-Anx2, paragraphs 96-102, and relevant parts of ICC-01/04-01/06-1295-US-Exp-AnxC.

³²² ICC-01/04-01/06-1492-Conf-Exp-Anx1 (ERN: DRC.00148.334, paragraph 162), and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

³²³ ICC-01/04-01/06-1295-US-Exp-AnxC, and ICC-01/04-01/06-1492-Conf-Exp, paragraph 6.

³²⁴ ICC-01/04-01/06-1492-Conf-Exp, paragraph 6.

³²⁵ ICC-01/04-01/06-1492-Conf-Exp-Anx2, (ERN: DRC-OTP-0165-1006), paragraphs 32-33, and (ERN: DRC-OTP-0165-1056), paragraph 252, and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

(DRC-OTP-WWWW-0026),³²⁶ which contains information regarding Thomas Lubanga heavy drinking and smoking;³²⁷ (4) the 38 page statement of [REDACTED] (DRC-OTP-WWWW-0041), which contains information regarding Thomas Lubanga drinking heavily and the witness having remarked to him that he should not drink heavily;³²⁸ (5) the 13 page witness statement of [REDACTED] (DRC-OTP-WWWW-0091),³²⁹ which contains information regarding Thomas Lubanga drinking whisky;³³⁰ (6) a 2 page note taken by the prosecution relating to a meeting with Mr Braud in December 2004, which contains information regarding Thomas Lubanga frequently being either drunk or under the influence of drugs.³³¹

The prosecution submitted 16 documents containing alternative evidence regarding potentially exculpatory material on voluntariness.³³² These consist of: (1) the 20 page statement of [REDACTED] (DRC-OTP-WWWW-0111),³³³ which contains information regarding young, or very small, people getting involved in combat, and that this was perhaps a way of escaping the misery and hunger that they had to endure given their poor economic conditions;³³⁴ (2) the 30 page statement of [REDACTED] (DRC-OTP-WWWW-0015), which contains information regarding some parents voluntarily taking their children to enrol in militia groups, and which states that as far as the witness could see this was done voluntarily, and that children between 10 and 12 years old were recruited as any adult would have been;³³⁵ (3) the 39 page witness statement of [REDACTED] (DRC-OTP-WWWW-0139),³³⁶ which reports that most of the witness' Hema colleagues who lived in Mudzipela avoided sending their children to the Mandro training camp, but that a certain Ngbagaro, an adviser on primary school teaching in the diocese, sent his son to the camp; and that Hema

³²⁶ The Trial Chamber authorized the prosecution's withdrawal of this witness on 3 March 2009, ICC-01/04-01/06-T-139-CONF-ENG, pages 92 – 93.

³²⁷ ICC-01/04-01/06-1492-Conf-Exp-Anx3 (ERN: DRC.00109.097), paragraph 109, and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

³²⁸ ICC-01/04-01/06-1492-Conf-Exp-Anx4 (ERN: DRC.00147.017), paragraph 90, and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

³²⁹ See Decision on disclosure issues, responsibilities for protective measures and other procedural matters, 24 April 2008, ICC-01/04-01/06-1295-US-Exp; 8 May 2008, ICC-01/04-01/06-1311-Conf-Anx1, and ICC-01/04-01/06-1311-Anx2, paragraphs 96-102, and relevant parts of ICC-01/04-01/06-1295-US-Exp-AnxC.

³³⁰ ICC-01/04-01/06-1492-Conf-Exp-Anx5 (ERN: DRC.00150.421), paragraph 45, and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

³³¹ ICC-01/04-01/06-1492-Conf-Exp-Anx6 (ERN: DRC.00151.0669), paragraph 21, and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

³³² ICC-01/04-01/06-1492-Conf-Exp, paragraphs 2-6, and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product). The prosecution originally identified 18 documents of proposed alternative, ICC-01/04-01/06-1488-Conf-Exp-Anx94, and ICC-01/04-01/06-1492-Conf-Exp-AnxA.

³³³ The prosecution notified the Trial Chamber of its intention to withdraw this witness by email sent to the Legal Advisor to the Trial Division on 4 March 2009.

³³⁴ ICC-01/04-01/06-1492-Conf-Exp-Anx7 (ERN: DRC-OTP-0152-0089), paragraph 72, and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

³³⁵ ICC-01/04-01/06-1492-Conf-Exp-Anx8 (ERN: DRC-OTP-00127-083, paragraph 60), and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

³³⁶ See Decision on disclosure issues, responsibilities for protective measures and other procedural matters, 24 April 2008, ICC-01/04-01/06-1295-US-Exp; 8 May 2008, ICC-01/04-01/06-1311-Conf-Anx1, and ICC-01/04-01/06-1311-Anx2, paragraphs 96-102, and relevant parts of ICC-01/04-01/06-1295-US-Exp-AnxC.

families had to give either a child or money to the Hema militias, and those who refused were harassed;³³⁷ (4) the 13 page witness statement of [REDACTED] (DRC-OTP-WWWW-0091),³³⁸ which contains information regarding child soldiers, and sets out that all the young people who escaped being killed by the Lendu went to Mandro;³³⁹ (5) an 84 page report by Beth Verhey of the NGO Save the Children entitled “Le Retour au Bercaïl – La démobilisation et la réintégration d’enfants soldats en République Démocratique du Congo”.³⁴⁰ The report states that children in the Ituri district were sent by their parents to join armed groups or “the movement” and, in some cases, Save the Children had been able to help parents to visit an armed group to ask for their return;³⁴¹ (6) a 70 page report from the UN Mission in the DRC (MONUC) on the events in Ituri between January 2002 and December 2003, attached to a short letter dated 16 July 2004, addressed to the President of the UN Security Council from the UN Secretary-General.³⁴² The report contains information regarding, first, the profile of children associated with armed groups and, second, the recruitment campaigns of the UPC throughout the whole of 2002 and the beginning of 2003;³⁴³ (7) the 41 page witness statement of [REDACTED] (DRC-OTP-WWWW-0040),³⁴⁴ which reports that Tinanzabo, the Secretary-General of the UPC, mentioned that the parents of Hema children voluntarily gave them up to become soldiers, and in which it is maintained that boys and girls as young as 8 years old entered the FPLC.³⁴⁵ This document contains redactions to the identity of the witness (including any information which may identify him) and to identified passages within the proposed alternative evidence (see above, document 1) of set of 6 documents submitted as alternative evidence);³⁴⁶ (8) the 41 page redacted witness statement of [REDACTED] (DRC-OTP-WWWW-0110),³⁴⁷ which records that the majority of the children who arrived at the witness’s CTO mentioned that they had

³³⁷ ICC-01/04-01/06-1492-Conf-Exp-Anx9 (ERN: DRC.00150.245 – DRC.00150.246), paragraph 128, and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

³³⁸ See Decision on disclosure issues, responsibilities for protective measures and other procedural matters, 24 April 2008, ICC-01/04-01/06-1295-US-Exp; 8 May 2008, ICC-01/04-01/06-1311-Conf-Anx1, and ICC-01/04-01/06-1311-Anx2, paragraphs 96-102. and relevant parts of ICC-01/04-01/06-1295-US-Exp-AnxC.

³³⁹ ICC-01/04-01/06-1492-Conf-Exp-Anx5 (ERN: DRC.00150.422), paragraph 55, and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

³⁴⁰ ICC-01/04-01/06-1492-Conf-Exp-Anx10 (ERN: DRC.00100.080 - DRC.00100.163), and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

³⁴¹ ICC-01/04-01/06-1492-Conf-Exp-Anx10 (ERN: DRC.00100.130), and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

³⁴² ICC-01/04-01/06-1492-Conf-Exp-Anx11 (ERN: DRC.00129.329 – DRC.00129.398), and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

³⁴³ ICC-01/04-01/06-1492-Conf-Exp-Anx11 (ERN: DRC.00129.372 – DRC.00129.374), and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

³⁴⁴ See Decision on disclosure issues, responsibilities for protective measures and other procedural matters, 24 April 2008, ICC-01/04-01/06-1295-US-Exp; 8 May 2008, ICC-01/04-01/06-1311-Conf-Anx1, and ICC-01/04-01/06-1311-Anx2, paragraphs 96-102, and relevant parts of ICC-01/04-01/06-1295-US-Exp-AnxC.

³⁴⁵ ICC-01/04-01/06-1492-Conf-Exp-Anx1 (ERN: DRC.00148.342), paragraph 213, and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

³⁴⁶ ICC-01/04-01/06-1295-US-Exp-AnxC, and ICC-01/04-01/06-1492-Conf-Exp, paragraph 6

³⁴⁷ See Decision on disclosure issues, responsibilities for protective measures and other procedural matters, 24 April 2008, ICC-01/04-01/06-1295-US-Exp; 8 May 2008, ICC-01/04-01/06-1311-Conf-Anx1, and ICC-01/04-01/06-1311-Anx2, paragraphs 96-102, and relevant parts of ICC-01/04-01/06-1295-US-Exp-AnxC.

been taken by force by the armed group that controlled their village, whilst one quarter told them that they had followed the militia voluntarily.³⁴⁸ None of the redactions are contained in the identified proposed alternative evidence. The prosecution submitted that the statement has been disclosed to the defence with authorised redactions to protect the identity of the witness who was to be contacted by the Registry to determine whether he will co-operate with the Court.³⁴⁹ This situation may be temporary, and is dependent on a final determination as to the status of this witness and the implementation of any necessary security measures;³⁵⁰ (9) the 30 page redacted witness statement of [REDACTED] (DRC-OTP-WWWW-0034),³⁵¹ which contains information regarding voluntary recruitment, including children who were voluntarily recruited because their parents had been killed or because of a lack of food.³⁵² None of the redactions are contained in the identified proposed alternative evidence. The prosecution indicated that the statement has been disclosed to the defence with authorised redactions to protect the identity of the witness who was to be contacted by the Registry to determine whether he will co-operate with the Court.³⁵³ This situation may be temporary, and is dependent on a final determination as to the status of this witness and the implementation of any necessary security measures;³⁵⁴ (10) a 145 page redacted transcript of an interview with [REDACTED] (DRC-OTP-WWWW-0003),³⁵⁵ conducted on 24 September 2005 by investigators from the prosecution, which contains information regarding child soldiers whose mothers or whole family had already been killed by Lendu combatants and who were not recruited but just simply asked the army to keep them.³⁵⁶ None of the redactions are within the proposed alternative evidence. The prosecution submitted that the statement has been disclosed to the defence with authorised redactions to protect the identity of the witness who was to be contacted by the Registry to determine whether he will co-operate with the Court.³⁵⁷ This situation may be temporary, and is dependent on a final determination as to the status of this witness and the implementation of any necessary security measures;³⁵⁸

³⁴⁸ ICC-01/04-01/06-1492-Conf-Exp-Anx12 (ERN: DRC-OTP-0162-0074), paragraph 53, and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

³⁴⁹ ICC-01/04-01/06-1295-US-Exp-AnxC, and ICC-01/04-01/06-1492-Conf-Exp, paragraph 6.

³⁵⁰ ICC-01/04-01/06-1492-Conf-Exp, paragraph 6.

³⁵¹ See Decision on disclosure issues, responsibilities for protective measures and other procedural matters, 24 April 2008, ICC-01/04-01/06-1295-US-Exp; 8 May 2008, ICC-01/04-01/06-1311-Conf-Anx1, and ICC-01/04-01/06-1311-Anx2, paragraphs 96-102, and relevant parts of ICC-01/04-01/06-1295-US-Exp-AnxC.

³⁵² ICC-01/04-01/06-1492-Conf-Exp-Anx13 (ERN: DRC.00138.341 and DRC.00138.360), paragraphs 25 and 119, and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

³⁵³ ICC-01/04-01/06-1295-US-Exp-AnxC, and ICC-01/04-01/06-1492-Conf-Exp, paragraph 6.

³⁵⁴ ICC-01/04-01/06-1492-Conf-Exp, paragraph 6.

³⁵⁵ See Decision on disclosure issues, responsibilities for protective measures and other procedural matters, 24 April 2008, ICC-01/04-01/06-1295-US-Exp; 8 May 2008, ICC-01/04-01/06-1311-Conf-Anx1, and ICC-01/04-01/06-1311-Anx2, paragraphs 96-102, and relevant parts of ICC-01/04-01/06-1295-US-Exp-AnxC.

³⁵⁶ ICC-01/04-01/06-1492-Conf-Exp-Anx14 (ERN: DRC-OTP-0161-0957 - DRC-OTP-0161-0958, DRC-OTP-0161-0969 - DRC-OTP-0161-0970, DRC-OTP-0161-0978, and DRC-OTP-0161-0985), and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

³⁵⁷ ICC-01/04-01/06-1295-US-Exp-AnxC, and ICC-01/04-01/06-1492-Conf-Exp, paragraph 6.

³⁵⁸ ICC-01/04-01/06-1492-Conf-Exp, paragraph 6.

(11) a 56 page redacted French witness statement of [REDACTED] (DRC-OTP-WWWW-0021),³⁵⁹ which contains information about the forced recruitment and voluntary enrolment of minors of less than 15 years old in armed groups.³⁶⁰ The redactions concern the identity of the witness. There are also redactions that appear in the identified passages of proposed alternative evidence. The prosecution submitted that the statement has been disclosed to the defence with authorised redactions to protect the identity of the witness who was to be contacted by the Registry to determine whether he will co-operate with the Court.³⁶¹ This situation may be temporary, and is dependent on a final determination as to the status of this witness and the implementation of any necessary security measures;³⁶² (12) a 4 page handwritten exercise book from [REDACTED] which describes a child soldier who chose to join the militia to avenge his parents' deaths (who had been killed by the Lendu in an attack on his house);³⁶³ (13) a 5 page redacted hand-written page extract from a child's exercise book, which contains reports of people telling the child that they have joined one of the armed groups, and records that the child also wanted to become a member.³⁶⁴ There is a name on the third page of the book which is to be redacted; (14) an 11 page hand-written extract from the exercise book of a child, [REDACTED], which explains that he envied those in military service for some months before he joined a Hema military group under the command of "Bosco", with the permission of his parents, in April 2000;³⁶⁵ (15) a 15 page redacted UN article recording meetings held with contacts in Bunia, Beni and Butembo on and around 10 and 11 July 2002, and which describes the situation observed in those areas. The article also contains information regarding the infiltration of Rwandan soldiers into Hema ranks in a Hema training camp called Mandro; on Hema parents taking their 9-12 year boys out of school and sending them to the training camps at Mandro; and it describes the Hema tradition of requiring one son of the family to be trained as a fighter to defend the group.³⁶⁶ The identities of the contacts that provide much of the proposed alternative evidence for this document have been redacted; (16) a 19 page report entitled, "Investigation Mission – Ituri, Child Soldiers Issues", written by trial witness Kristine Peduto (DRC-OTP-WWWW-0046), a Child Protection Adviser of MONUC. The document consists of 20 pages and is partially

³⁵⁹ See Decision on disclosure issues, responsibilities for protective measures and other procedural matters, 24 April 2008, ICC-01/04-01/06-1295-US-Exp; 8 May 2008, ICC-01/04-01/06-1311-Conf-Anx1, and ICC-01/04-01/06-1311-Anx2, paragraphs 96-102, and relevant parts of ICC-01/04-01/06-1295-US-Exp-AnxC.

³⁶⁰ ICC-01/04-01/06-1492-Conf-Exp-Anx15 (ERN: DRC.00132.381), paragraphs 191-192, and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

³⁶¹ ICC-01/04-01/06-1295-US-Exp-AnxC, and ICC-01/04-01/06-1492-Conf-Exp, paragraph 6.

³⁶² ICC-01/04-01/06-1492-Conf-Exp, paragraph 6.

³⁶³ ICC-01/04-01/06-1492-Conf-Exp-Anx16 (ERN: DRC.00140.011), and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

³⁶⁴ ICC-01/04-01/06-1492-Conf-Exp-Anx17 (ERN: DRC.00140.156), and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

³⁶⁵ ICC-01/04-01/06-1492-Conf-Exp-Anx18 (ERN: DRC.00140.202), and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

³⁶⁶ ICC-01/04-01/06-1492-Conf-Exp-Anx19 (ERN: DRC-OTP-0202-0857 and DRC-OTP-0202-0862), and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

redacted.³⁶⁷ The report contains a redacted table listing those children and young persons who were interviewed and who stated they voluntarily enrolled in the UPC.³⁶⁸ The redactions are in the sections identified as containing alternative evidence, and they concern the identities of those who were interviewed.

The prosecution submitted 14 documents containing alternative evidence regarding potentially exculpatory material on insufficient command and control.³⁶⁹ These consist of: (1) a 23 page report from local newspaper in Ituri in which the author mentions in the editorial that Thomas Lubanga and Floribert Ndjabu are nothing but “marionettes et des bouc emissaires de leurs communautés”;³⁷⁰ (2) a 12 page French newspaper article, which questions Thomas Lubanga’s leadership of the UPC;³⁷¹ (3) a 9 page witness statement of [REDACTED] (DRC-OTP-WWWW-0062),³⁷² which records that Thomas Lubanga did not participate in meetings to plan military operations with the General Staff;³⁷³ (4) a 10 page witness statement of [REDACTED] (DRC-OTP-WWWW-0092),³⁷⁴ which sets out that Thomas Lubanga, Ngudjolo and Kahwa were the “toys” of people acting behind them and that they are used by others;³⁷⁵ (5) the 12 page witness statement of [REDACTED] (DRC-OTP-WWWW-0095),³⁷⁶ which records that others such as John Tibashima, Lokuni Nembe et Mafuta Savo had influence or control over Thomas Lubanga;³⁷⁷ (6) a 5 page article from the Institute for War and Peace, dated 24 March 2006, entitled, “ICC Enters Uncharted Territory”, which reports that a group of leaders make decisions, sometimes without Thomas Lubanga’s knowledge;³⁷⁸ (7) a 6 page report from MONUC, entitled “Bunia Consolidated Report”, dated 21 August 2003, which contains information regarding

³⁶⁷ ICC-01/04-01/06-1492-Conf-Exp-Anx20 (ERN: DRC-OTP-0202-0761 and DRC-OTP-0202-0779), and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

³⁶⁸ ICC-01/04-01/06-1492-Conf-Exp-Anx20 (ERN: DRC-OTP-0202-0767 - DRC-OTP-0202-0771 and DRC-OTP-0202-0774), and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

³⁶⁹ ICC-01/04-01/06-1492-Conf-Exp, paragraphs 2-6, and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product). The prosecution originally identified 18 documents of proposed alternative, ICC-01/04-01/06-1488-Conf-Exp-Anx94, and ICC-01/04-01/06-1492-Conf-Exp-AnxA.

³⁷⁰ Prosecution’s Provision of Alternative Evidence further to the Trial Chamber’s Confidential, *ex parte* order dated 29 October 2008, 31 October 2008, ICC-01/04-01/06-1492-Conf-Exp-Anx21, (ERN: DRC-00134-862 – DRC-00134-883, at DRC-00134-862).

³⁷¹ ICC-01/04-01/06-1492-Conf-Exp-Anx22 (ERN: DRC.00107.841-DRC.00107.852, at DRC.00107.847).

³⁷² See Decision on disclosure issues, responsibilities for protective measures and other procedural matters, 24 April 2008, ICC-01/04-01/06-1295-US-Exp; 8 May 2008, ICC-01/04-01/06-1311-Conf-Anx1, and ICC-01/04-01/06-1311-Anx2, paragraphs 96-102, and relevant parts of ICC-01/04-01/06-1295-US-Exp-AnxC.

³⁷³ ICC-01/04-01/06-1492-Conf-Exp-Anx23 (ERN: DRC.00150.293-DRC.00150.301, at DRC.00150.299).

³⁷⁴ See Decision on disclosure issues, responsibilities for protective measures and other procedural matters, 24 April 2008, ICC-01/04-01/06-1295-US-Exp, 8 May 2008, ICC-01/04-01/06-1311-Conf-Anx1, and ICC-01/04-01/06-1311-Anx2, paragraphs 96-102, and relevant parts of ICC-01/04-01/06-1295-US-Exp-AnxC.

³⁷⁵ ICC-01/04-01/06-1492-Conf-Exp-Anx24 (ERN: DRC.00150.100-DRC.00150.109, at DRC.00150.107).

³⁷⁶ See Decision on disclosure issues, responsibilities for protective measures and other procedural matters, 24 April 2008, ICC-01/04-01/06-1295-US-Exp, 8 May 2008, ICC-01/04-01/06-1311-Conf-Anx1, and ICC-01/04-01/06-1311-Anx2, paragraphs 96-102, and relevant parts of ICC-01/04-01/06-1295-US-Exp-AnxC.

³⁷⁷ ICC-01/04-01/06-1492-Conf-Exp-Anx25 (ERN: DRC-OTP-0152-0144 - DRC-OTP-0152-0155, at DRC-OTP-0152-0152 and DRC-OTP-0152-0153).

³⁷⁸ ICC-01/04-01/06-1492-Conf-Exp-Anx26 (DRC-OTP-0159-0241 – DRC-OTP-0159-0245, at DRC-OTP-0159-0244)

Thomas Lubanga only having control over some 500 militiamen (out of 2000) at the time of the seizure of Bunia;³⁷⁹ (8) an 11 page Internet text from www.congonet.dds.nl, entitled "Current Situation: Exploitation, arm flows and trends", which contains information that many UPC officers report directly to the Rwandan army, including General Kisémbó of the UPC. It also states that many Rwandans have high-level positions in the UPC;³⁸⁰ (9) the 87 page statement of trial witness [REDACTED] (DRC-OTP-WWWW-0012), which reports that the UPC is controlled by the Rwandans and the Savo family and that no decision is taken without their authorisation. He also refers to Kisémbó carrying out attacks without the knowledge of Thomas Lubanga;³⁸¹ (10) the 49 page statement of trial witness [REDACTED] (DRC-OTP-WWWW-0016), which includes information that Thomas Lubanga could not prevent military operations;³⁸² (11) the 10 page article from the Concertation Chrétienne pour l'Afrique Centrale, entitled "Ituri, éviter l'explosion", which contains the information that on 17 April 2003 the commander was Jérôme Kakwavu Bokande;³⁸³ (12) a 53 page report of the DRC government in Bunia, dated November 2003, entitled "Rapport sur la situation générale en Ituri présenté par l'organe exécutif intérimaire à l'assemblée spéciale intérimaire de l'Ituri lors de sa 5e session", which contains information regarding lack of control of the UPC by its superiors and regarding a revolt of UPC militiamen in Nyamamba;³⁸⁴ (13) a 22 page report of the UN Secretary General to the Security Council on the MONUC mission, dated 25 March 2004, which reports that the UPC had split into two factions the UPC-L (headed by Lubanga) and the UPC-K (headed by Kisémbó);³⁸⁵ (14) a 2 page note of a prosecution meeting with Mr Braud, in December 2004, which records that Thomas Lubanga was the official leader, but that decisions were also taken by others.³⁸⁶

The prosecution submitted 7 documents containing alternative evidence in place of the redacted exculpatory material relating to the lack of recruitment of child soldiers.³⁸⁷ These consist of: (1) the 26 page statement of trial witness [REDACTED] (DRC-OTP-WWWW-0157), in which the witness states that although children were

³⁷⁹ ICC-01/04-01/06-1492-Conf-Exp-Anx27 (ERN: DRC-00111-625-DRC-00111-630, at DRC-00111-625 and DRC-00111-626).

³⁸⁰ ICC-01/04-01/06-1492-Conf-Exp-Anx28 (ERN: CAR-OTP-0005-0381-CAR-OTP-0005-0391, at CAR-OTP-0005-0385).

³⁸¹ ICC-01/04-01/06-1492-Conf-Exp-Anx29 (ERN: DRC.00105.085-DRC.00105.171, at DRC.00105.112, DRC.00105.118, DRC.00105.119).

³⁸² ICC-01/04-01/06-1492-Conf-Exp-Anx30 (ERN: DRC.00126.422-DRC.00126.470, at DRC.00126.446).

³⁸³ ICC-01/04-01/06-1492-Conf-Exp-Anx31 (ERN: DRC.00038.629-DRC.00038.638, at DRC.00038.634).

³⁸⁴ ICC-01/04-01/06-1492-Conf-Exp-Anx32 (ERN: DRC-00091-218-DRC-00091-268, at DRC.00038.633 and DRC-00091-245).

³⁸⁵ ICC-01/04-01/06-1492-Conf-Exp-Anx33 (DRC-00074-261 – DRC-00074-282, at DRC-00074-266).

³⁸⁶ ICC-01/04-01/06-1492-Conf-Exp-Anx6 (ERN: DRC-OTP-0151-0669).

³⁸⁷ ICC-01/04-01/06-1492-Conf-Exp, paragraphs 2-6, and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product); ICC-01/04-01/06-1477-Conf-Exp-Anx40 (ERN: DRC-OTP-0159-0408 – DRC-OTP-0159-0435)

used by the UPC, he never saw them in Thomas Lubanga's house;³⁸⁸ (2) the 104 page statement of trial witness [REDACTED] (DRC-OTP-WWWW-0014), in which he states that Thomas Lubanga's bodyguards were all between 18 and 20 years old;³⁸⁹ (3) a single page document from MONUC on child protection, which contains information that no children were seen during a visit to a UPC camp;³⁹⁰ (4) the 145 page statement of [REDACTED] (DRC-OTP-WWWW-0003),³⁹¹ in which he states that no children were with Kisembo or Bosco and that children were only present when they needed to eat;³⁹² (5) a 19 page report of trial witness Kristine Peduto (DRC-OTP-WWWW-0046), entitled "Child soldiers issues" dated 12 April 2003, in which she refers to having interviewed children and young men enlisted or conscripted when they were 15 or older;³⁹³ (6) a single page report on Child Protection from MONUC, dated June 2003, which records that a 17 year old boy and his younger brother were abducted by UPC soldiers;³⁹⁴ (7) the 4 page statement of Justin Lobho taken by "Pro Justitia", in which the witness states that children were not forcibly recruited and that those who decided to join the UPC did so to avenge the deaths of others and to protect their families.³⁹⁵

The prosecution submitted 9 documents containing alternative evidence for the redacted Rule 77 *tu quoque* material in the original document.³⁹⁶ These consist of: (1) the 104 page English statement of trial witness [REDACTED] (DRC-OTP-WWWW-0014), in which he states that all armed groups had child recruits;³⁹⁷ (2) a 19 page report of trial witness Kristine Peduto (DRC-OTP-WWWW-0046) entitled, "Child soldiers issues", dated 12 April 2003, in which she records that all armed groups have child soldiers (see above document 5),³⁹⁸ (3) a 5 page UN Code Cable, dated 23 June 2003, in which the author (Mr Guehenno) states that all armed groups in Ituri recruit child soldiers;³⁹⁹ (4) a MONUC Child Protection report of 29 September 2003 stating that 50 children as young as 10 were spotted with the FNI;⁴⁰⁰ (5) a 7 page

³⁸⁸ ICC-01/04-01/06-1492-Conf-Exp-Anx34 (ERN: DRC-OTP-1006-0054- DRC-OTP-1006-0078, at DRC-OTP-1006-0077).

³⁸⁹ ICC-01/04-01/06-1492-Conf-Exp-Anx2 (ERN: DRC-OTP-0165-1024).

³⁹⁰ ICC-01/04-01/06-1492-Conf-Exp-Anx35 (ERN: DRC-OTP-0172-0244).

³⁹¹ See Decision on disclosure issues, responsibilities for protective measures and other procedural matters, 24 April 2008, ICC-01/04-01/06-1295-US-Exp; 8 May 2008, ICC-01/04-01/06-1311-Conf-Anx1, and ICC-01/04-01/06-1311-Anx2, paragraphs 96-102, and relevant parts of ICC-01/04-01/06-1295-US-Exp-AnxC.

³⁹² ICC-01/04-01/06-1492-Conf-Exp-Anx14 (ERN: DRC-OTP-0161-0978).

³⁹³ ICC-01/04-01/06-1492-Conf-Exp-Anx20 (ERN: DRC-OTP-0202-0761-DRC-OTP-0202-0779), pages DRC-OTP-0202-0768 – DRC-OTP-0202-0779.

³⁹⁴ ICC-01/04-01/06-1492-Conf-Exp-Anx36 (ERN: DRC-OTP-0172-0239).

³⁹⁵ ICC-01/04-01/06-1492- Conf-Exp-Anx37 (ERN: DRC-OTP-1010-0150 – DRC-OTP-1010-0153), page DRC-OTP-1010-0153.

³⁹⁶ ICC-01/04-01/06-1492-Conf-Exp, paragraphs 2-6, and ICC-01/04-01/06-1492-Conf-Exp-AnxA (there is no ERN for this annex since it is a prosecution work product).

³⁹⁷ ICC-01/04-01/06-1492-Conf-Exp, Anx2 (ERN: DRC-OTP-0165-1046).

³⁹⁸ ICC-01/04-01/06-1492-Conf-Exp-Anx20 (ERN: DRC-OTP-0202-0761- DRC-OTP-0202-0779), page DRC-OTP-0202-0762.

³⁹⁹ ICC-01/04-01/06-1492-Conf-Exp-Anx38 (ERN: DRC-OTP-0171-0679- DRC-OTP-0171-0688), page DRC-OTP-0171-0685

⁴⁰⁰ ICC-01/04-01/06-1492-Conf-Exp-Anx39 (ERN: DRC.00001.067-DRC.00001.071), page DRC.00001. 069.

report on Child Protection from MONUC Child Protection, dated 9 November 2003, which records that a FNI commander acknowledged the presence of child soldiers;⁴⁰¹ (6) a 5 page document, entitled “Mission d’évaluation conjointe-Nyankunde”, dated 6 April 2003, which records that children were spotted in two FNI camps;⁴⁰² (7) a 2 page report from MONUC dated 20 October 2003, which records that there were 1430 children under 18 in the ranks of the FRPI;⁴⁰³ (8) a 2 page investigator’s note on the interview of trial witness [REDACTED] (DRC-OTP-WWWW-0157), dated 16 January 2006, in which it is recorded that he was forcibly recruited by the FNI;⁴⁰⁴ (9) a 2 page investigator’s note on the interview of trial witness [REDACTED] (DRC-OTP-WWWW-0116), in which it is suggested that an NGO worked with demobilized children who had been recruited by the RCD-K/ML.⁴⁰⁵

The prosecution further provided a summary of Annex 40 and proffered 2 admissions of fact.⁴⁰⁶ The prosecution indicated that the summary contains the Rule 77 and potentially exculpatory portions of the original document in verbatim form, as well as a passage containing Rule 77 *tu quoque* material, referring to Hema and Lendu-led attacks in the Ituri region.⁴⁰⁷ The prosecution submitted that the admissions of fact cover the potentially exculpatory material regarding voluntariness and the *tu quoque* material contained in the original document.⁴⁰⁸ The admission of fact regarding the potentially exculpatory material reads as follows: *Young children voluntarily joined the UPC/FLPC*,⁴⁰⁹ and the admission of fact regarding the Rule 77 *tu quoque* material sets out that: *Other militia groups in Ituri also used child soldiers*.⁴¹⁰ The prosecutor agreed with the Chamber’s suggestion that the summary of Annex 40, together with the alternative evidence and admissions already in existence, should be disclosed to the defence.⁴¹¹

The Chamber is satisfied that although the original document may not be disclosed to the defence, the alternative evidence, the summary and the proposed admissions of fact fulfil the prosecution’s disclosure obligations. The Chamber has assessed the evidential “value” of this information and has concluded that the essential elements

⁴⁰¹ ICC-01/04-01/06-1492-Conf-Exp-Anx40 (ERN: DRC.00001.076- DRC.00001.082), page DRC.00001.078.

⁴⁰² ICC-01/04-01/06-1492-Conf-Exp-Anx41 (ERN: DRC-OTP-0199-0196- DRC-OTP-0199-0200), at DRC-OTP-0199-0198.

⁴⁰³ ICC-01/04-01/06-1492-Conf-Exp-Anx42 (ERN: DRC-OTP-0199-0078- DRC-OTP-0199-0079), at DRC-OTP-0199-0078.

⁴⁰⁴ ICC-01/04-01/06-1492-Conf-Exp-Anx43 (ERN: DRC.00150.144- DRC.00150.145), page DRC.00150.144.

⁴⁰⁵ ICC-01/04-01/06-1492-Conf-Exp-Anx44 (ERN: DRC.00150.272- DRC.00150.273, at DRC.00150.272).

⁴⁰⁶ ICC-01/04-01/06-1496-Conf-Exp-Anx 11 (ERN: DRC-OTP-0204-0404-DRC-OTP-0204-0407), and ICC-01/04-01/06-1496-Conf-AnxC (there is no ERN for this annex since it is a prosecution work product).

⁴⁰⁷ ICC-01/04-01/06-1496-Conf-Exp, paragraphs 84-85, ICC-01/04-01/06-1496- Conf-Exp-Anx 11 (ERN: DRC-OTP-0204-0404-DRC-OTP-0204-0407), and ICC-01/04-01/06-1496-Conf-AnxC (there is no ERN for this annex since it is a prosecution work product).

⁴⁰⁸ ICC-01/04-01/06-1496- Conf-Exp, paragraph 85.

⁴⁰⁹ ICC-01/04-01/06-1496-Conf-Exp, paragraph 85.

⁴¹⁰ ICC-01/04-01/06-1496-Conf-Exp, paragraph 85.

⁴¹¹ ICC-01/04-01/06-T-96-CONF-EXP, page 13, lines 4-10.

of the potentially exculpatory and Rule 77 material, revealed in the original document, are sufficiently covered. The Chamber has ensured that the disclosure, together with the alternative measures, has provided the defence with material that encapsulates and reflects the potentially exculpatory or Rule 77 value of the original material, in a form that is usable and intelligible. The Chamber noted that a number of the documents submitted as alternative evidence have already been disclosed to the defence (statements of trial witnesses and material from witnesses whose statements contain potentially exculpatory material and which the prosecution was ordered to disclose in the Trial Chamber's decision of 24 April 2008).⁴¹² Whilst some of the documents submitted as alternative evidence contain redactions, these were authorized by the Chamber prior to their original disclosure and they do not undermine its value for these particular purposes. Having reviewed the summary provided by the prosecution, the Trial Chamber is satisfied that the information contained therein corresponds to the information in the original document. The portions of the summary which have been transcribed verbatim from the original document appropriately correspond with the evidence considered by the prosecution to be potentially exculpatory and Rule 77 material. Furthermore, the prosecution's admission of fact will ensure the fairness of the trial of the accused. The admission is a suitable additional alternative, particularly since the essential elements revealed by the information are accepted by the prosecution. In deciding whether the latter has fulfilled its disclosure obligations to the defence, the Chamber is persuaded that non-disclosure of the original document is strictly necessary and that no lesser measures are feasible. These conclusions are not dependent on the defence being provided with the identities of witnesses DRC-OTP-WWWW-0021, DRC-OTP-WWWW-0003, DRC-OTP-WWWW-0034, DRC-OTP-WWWW-0110, and DRC-OTP-WWWW-0040 (in relation to whom final disclosure decisions are pending), since, overall, the material is sufficient, regardless of whether their identities are revealed.

The prosecution notified the Trial Chamber on 21 November 2009 that it had disclosed the summary, the alternative evidence and the proposed admissions of fact as listed above, in compliance with the Trial Chamber's decision.⁴¹³

Annex 41⁴¹⁴

This 3 page document was provided by the UN and is a report on the situation in Bunia, dated September 2003.⁴¹⁵ The document contains information on a former

⁴¹² Decision on disclosure issues, responsibilities for protective measures and other procedural matters, 24 April 2008, ICC-01/04-01/06-1295-US-Exp; 8 May 2008, ICC-01/04-01/06-1311-Conf-Anx1, and ICC-01/04-01/06-1311-Anx2, paragraphs 96-102, and relevant parts of ICC-01/04-01/06-1295-US-Exp-AnxC.

⁴¹³ Prosecution's Notification of Disclosure of Exculpatory and Rule 77 Material to the Defence on 18 and 20 November 2008, 21 November 2008, ICC-01/04-01/06-1502, paragraphs 3-4, and ICC-01/04-01/06-1502-Conf-Exp-AnxC (there is no ERN for this annex since it is a prosecution work product).

⁴¹⁴ ICC-01/04-01/06-1477-Conf-Exp-Anx41.

UPC recruiter; it describes the control of the Hema community by the UPC, the relationships between Hema and Lendu, the strategy for peace and the financing of UPC; and it contains other information on the UPC and its members, and on persons identified as the “real chiefs of the UPC”. An English translation of the original French document was provided.⁴¹⁶

The prosecution submitted that this document contains potentially exculpatory material in that it refers to Thomas Lubanga’s lack of command and control in the UPC.⁴¹⁷ The prosecution also suggests that the document included Rule 77 information relating to the support of the UPC by Rwanda, who gave arms to the UPC to attack a Lendu village.⁴¹⁸

In an *ex parte* status conference on 29 October 2008, the prosecution informed the Chamber that the UN had agreed to disclose the document to the defence, but it needed to consult with a third party (*viz.* a State).⁴¹⁹ In a further filing, the prosecution informed the Chamber that the State had refused to consent to the UN lifting the Article 54(3)(e) restrictions on the exculpatory portion of the document.⁴²⁰ In a later submission, the prosecution informed the Chamber that the State had consented to the UN providing a summary of the document to the defence. The prosecution informed the Chamber that this encompassed the Rule 77, but not the exculpatory, elements.⁴²¹ The proposed single-page summary was attached to the submission.⁴²²

The Trial Chamber instructed the prosecution to provide the Chamber with alternative evidence, for disclosure to the defence.⁴²³

In its filing of 31 October 2008, the prosecution submitted individual items of alternative evidence to replace the relevant potentially exculpatory and Rule 77 information contained in this annex.⁴²⁴

As regards potentially exculpatory information on insufficient command and control, the prosecution provided the Chamber with 9 documents as alternative evidence. These consist of: (1) a 30 page UN Document entitled, “Ituri Follow-Up”,

⁴¹⁵ ICC-01/04-01/06-1477-Conf-Exp-Anx41 (ERN: DRC-00112-669 – DRC-00112-671).

⁴¹⁶ ICC-01/04-01/06-1477-Conf-Exp-Anx170 (ERN: DRC-0200-0045 – DRC-0200-0048).

⁴¹⁷ ICC-01/04-01/06-1488-Conf-Exp-Anx48 (ERN: DRC-00112-669 – DRC-00112-671); ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 23 (there is no ERN for this annex since it is a prosecution work product).

⁴¹⁸ ICC-01/04-01/06-1488-Conf-Exp-Anx48 (ERN: DRC-00112-669 – DRC-00112-671); ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 23 (there is no ERN for this annex since it is a prosecution work product).

⁴¹⁹ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 35, lines 6 to 21, page 36, lines 2 to 6.

⁴²⁰ ICC-01/04-01/06-1495-Conf-Exp-Anx, paragraphs 9-10.

⁴²¹ ICC-01/04-01/06-1496-Conf-Exp, paragraph 87, Conf-Exp-AnxA, Conf-Exp-AnxC, page 10.

⁴²² ICC-01/04-01/06-1496-Conf-Exp-Anx12 (ERN: DRC-OTP-0204-0280 – DRC-OTP-0204-0282).

⁴²³ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 35, lines 6 to 21, page 36, lines 2 to 6.

⁴²⁴ ICC-01/04-01/06-1492-Conf-Exp.

dated 28 July 2003, in which it is stated that the businessmen Liripa, Exodus, Savo and Kpadyu, are the real decision-makers in the UPC, and that Thomas Lubanga is “more the forefront person than a key decision-maker”;⁴²⁵ (2) a 15 page UN document containing the minute of a meeting, although the identities of the individuals at the meeting are redacted. It is suggested in the document that Rwanda controlled much of the high-ranks within the UPC;⁴²⁶ (3) the 87 page statement of trial witness [REDACTED] (DRC-OTP-WWWW-0012), in which he states that the UPC is controlled by the Rwandans and the Savo family, and that no decision is taken without their authorisation. He also refers to Kisémbó carrying out attacks without the knowledge of Thomas Lubanga;⁴²⁷ (4) the 49 page statement of trial witness [REDACTED] (DRC-OTP-WWWW-0016), in which he indicates that Thomas Lubanga was unable to prevent military operations;⁴²⁸ (5) a 1 page UPC document signed by Floribert Kisémbó as its President;⁴²⁹ (6) a 53 page document of the DRC government in Bunia that mentions the lack of control of the UPC by its superiors and that in Nyamamba there was a revolt of UPC militiamen;⁴³⁰ (7) a 22 page report of the UN Secretary General to the Security Council on the MONUC mission of 25 March 2004, stating that the UPC had split into two factions: the UPC-L, headed by Lubanga, and the UPC-K, headed by Kisémbó;⁴³¹ (8) a 2 page note of a prosecution meeting with Mr Braud in December 2004, in which it is stated that Lubanga was the official leader of the UPC, but that decisions were also taken by others;⁴³² (9) the 35 page witness statement of [REDACTED] (DRC-OTP-WWWW-0026),⁴³³ in which he states that although Thomas Lubanga had the “last word”, he was influenced by the Rwandans and the Savo family, the latter having financial power over Thomas Lubanga.⁴³⁴

The Chamber considered that the alternative evidence submitted to the Chamber appropriately reflects the potentially exculpatory information included in the

⁴²⁵ ICC-01/04-01/06-1492-Conf-Exp-Anx50 (ERN: DRC.00044.333 – DRC.00044.362), at DRC.00044.343.

⁴²⁶ ICC-01/04-01/06-1492-Conf-Exp-Anx19 (ERN: DRC-OTP-0202-0856 – DRC-OTP-0202-0870), page 3.

⁴²⁷ ICC-01/04-01/06-1492-Conf-Exp-Anx29 (ERN: DRC.00105.085 – DRC.00105.171), paragraphs 150, 177 and 182. The same document and highlighted paragraphs are offered as alternative evidence for ICC-01/04-01/06-1477-Conf-Exp-Anx40.

⁴²⁸ ICC-01/04-01/06-1492-Conf-Exp-Anx30 (ERN: DRC.00126.422 – DRC.00126.470), paragraph 131. The same document and highlighted paragraphs are offered as alternative evidence for ICC-01/04-01/06-1477-Conf-Exp-Anx40.

⁴²⁹ ICC-01/04-01/06-1492-Conf-Exp-Anx51 (ERN: DRC-OTP-0185-0866), page 2.

⁴³⁰ ICC-01/04-01/06-1492-Conf-Exp-Anx32 (ERN: DRC-00091-218 – DRC-00091-268), pages 5 and 28. The same document and highlighted paragraphs are offered as alternative evidence for ICC-01/04-01/06-1477-Conf-Exp-Anx40.

⁴³¹ ICC-01/04-01/06-1492-Conf-Exp-Anx33 (ERN: DRC-00074-261 – DRC-00074-282), paragraph 24. The same document and highlighted paragraphs are offered as alternative evidence for ICC-01/04-01/06-1477-Conf-Exp-Anx40.

⁴³² ICC-01/04-01/06-1492-Conf-Exp-Anx6 (ERN: DRC-OTP-0151-0669 – DRC-OTP-0151-0670), page 2. The same document and highlighted paragraphs are offered as alternative evidence for ICC-01/04-01/06-1477-Conf-Exp-Anx40.

⁴³³ The Trial Chamber authorized the prosecution’s withdrawal of this witness on 3 March 2009, ICC-01/04-01/06-T-139-CONF-ENG, pages 92-93.

⁴³⁴ ICC-01/04-01/06-1492-Conf-Exp-Anx3 (ERN: DRC.00109.065 – DRC.00109.099), page 23.

original annex. The Chamber noted that the alternative evidence did not include information on a particular individual who was referred to in the original annex as one of the “real chiefs” of the UPC, and in consequence instructed the prosecution to provide the Chamber with further alternative evidence.⁴³⁵

The prosecution then provided the Chamber with a further 9 documents as alternative evidence in relation to this information. Some of the previous 9 documents were re-submitted identifying additional portions in which proposed alternative evidence appears. These 9 documents consist of: (1) the 35 page statement of [REDACTED] (DRC-OTP-WWWW-0026),⁴³⁶ in which the witness states that top-level decisions were made not only by Thomas Lubanga, but also by Rafiki, Kahwa, Beiza, Bosco, Ntaganda and Kisembo; (2) the 87 page statement of trial witness [REDACTED] (DRC-OTP-WWWW-0012),⁴³⁷ in which the witness outlines that Thomas Lubanga controlled the UPC with the help of Rafiki and Bosco; (3) the 13 page witness statement of [REDACTED] (DRC-OTP-WWWW-0091),⁴³⁸ which suggests that Thomas Lubanga, Rafiki, Lonema and Savo represented the first level in the decision making structure.⁴³⁹ (4) the 104 page statement of trial witness [REDACTED] (DRC-OTP-WWWW-0014), in which he describes how Rafiki was sent to the UPC by Rwanda as a spy, and that, on the direction of Rwanda as a condition of their supply of arms to the UPC, he held the position of intelligence officer, reporting directly to Thomas Lubanga;⁴⁴⁰ (5) an 11 page www.congoned.dds.nl text entitled, “Current situation: Exploitation, arms flows and trends”, in which it is stated that Rwandan officers, including Rafiki, occupied high level positions within the UPC;⁴⁴¹ (6) the 38 page statement of trial witness [REDACTED] (DRC-OTP-WWWW-0041), in which it is maintained that apart from the official meetings of the “Exécutif”, there were unofficial meetings in which the “real decisions” were taken, and that Rafiki was amongst the attendees;⁴⁴² (7) a 9 page Expert Panel report, entitled, “Note to the File, Overview of MM, Field Trip to Kinshasa II, August 2003,” dated 13 August 2003 and drafted in Nairobi.⁴⁴³ The document states that Rafiki was one of the Rwandans occupying a high-level position in the UPC, and that both

⁴³⁵ ICC-01/04-01/06-T-96-CONF-EXP-ENG, page 13, line 14 to page 15, line 25.

⁴³⁶ ICC-01/04-01/06-1496-Conf-Exp-Anx80 (ERN: DRC.00109.065 – DRC.00109.099). The Trial Chamber authorized the prosecution’s withdrawal of this witness on 3 March 2009, ICC-01/04-01/06-T-139-CONF-ENG, pages 92-93.

⁴³⁷ ICC-01/04-01/06-1496-Conf-Exp-Anx81 (ERN: DRC.00105.085 – DRC.00105.0171)

⁴³⁸ See Decision on disclosure issues, responsibilities for protective measures and other procedural matters, 24 April 2008, ICC-01/04-01/06-1295-US-Exp; 8 May 2008, ICC-01/04-01/06-1311-Conf-Anx1, and ICC-01/04-01/06-1311-Anx2, paragraphs 96-102, and relevant parts of ICC-01/04-01/06-1295-US-Exp-AnxC.

⁴³⁹ ICC-01/04-01/06-1492-Conf-Exp-Anx5 (ERN: DRC.00150.413 – DRC.00150.425).

⁴⁴⁰ ICC-01/04-01/06-1492-Conf-Exp-Anx2 (ERN: DRC-OTP-0165-0999 – DRC-OTP-0165-1102).

⁴⁴¹ ICC-01/04-01/06-1496-Conf-Exp-Anx66 (ERN: CAR-OTP-0005-0381 – CAR-OTP-0005-0391). In the original filing, this Annex was recorded as DRC-OTP-0005-0381; however this appears to have been a typographical mistake.

⁴⁴² ICC-01/04-01/06-1496-Conf-Exp-Anx78 (ERN: DRC.00147.002 – DRC.00147.039).

⁴⁴³ Document attached to email communication to the Chamber through the Legal Advisor to the Trial Division on 17 November 2008 (ERN: DRC-OTP-0181-0459 – DRC-OTP-0181-0467), page 0460.

Bosco and Rafiki reported to Rwanda; (8) a 7 page document with the title "Interview Notes" in which it is suggested that Rafiki, Kisembo and Bosco, rather than Thomas Lubanga, were in control, while Lotsove and Detchuvi were the real extremists.⁴⁴⁴ The document is extensively redacted, but none appear in the parts identified by the prosecution as alternative evidence; (9) the 19 page French transcript of a prosecution interview with [REDACTED] (DRC-OTP-WWWW-0067),⁴⁴⁵ in which he describes how Rafiki and Lonema coordinated the politics of the movement, and that after taking Bunia, Kahwa and Rafiki met with Thomas Lubanga and informed him of the strategy adopted regarding Tumba Luaba.⁴⁴⁶

In relation to Rule 77 information on the support of Rwanda, the prosecution provided the Chamber with 6 documents containing alternative evidence. These consist of: (1) the 56 page witness statement of [REDACTED] (DRC-OTP-WWWW-0021),⁴⁴⁷ describing how the Savo family and the Ugandans had control over the UPC;⁴⁴⁸ (2) a 16 page email provided by the UN in which it is observed that the UPC received weapons from South Africa through Rwanda.⁴⁴⁹ The names of the sender and recipient of the email have been redacted; (3) a 1 page UN Expert Panel Report, containing redactions to the names of individuals, to the effect that Rwanda was airlifting weapons to the UPC;⁴⁵⁰ (4) a 13 page UN document containing a speech on behalf of the Expert Panel Report suggesting that Rwanda airlifted weapons to the UPC;⁴⁵¹ (5) a 2 page document containing a photograph of weapons taken by witness DRC-OTP-WWWW-0012 and comments from the witness indicating that they were given by the UPDF (Uganda) to PUSIC;⁴⁵² (6) a 5 page report signed by six individuals referring to the Ugandan occupation of Ituri. It is said that the Ugandans trained and recruited militias and provided them with weapons.⁴⁵³

The Chamber is satisfied that although the original document may not be disclosed to the defence, the proposed summary and the alternative evidence fulfil the prosecution's disclosure obligations, in that together they sufficiently encapsulate

⁴⁴⁴ Document attached to communication by email through the Legal Advisor to the Trial Division on 18 November 2008. (ERN: DRC-OTP-0172-0296 – DRC-OTP-0172-0303), page 0298.

⁴⁴⁵ Decision on disclosure issues, responsibilities for protective measures and other procedural matters, 24 April 2008. ICC-01/04-01/06-1295-US-Exp; 8 May 2008, ICC-01/04-01/06-1311-Conf-Anx1, and ICC-01/04-01/06-1311-Anx2, paragraphs 96-102, and relevant parts of ICC-01/04-01/06-1295-US-Exp-AnxC.

⁴⁴⁶ Document attached to communication by email through the Legal Advisor to the Trial Division on 18 November 2008. (ERN: DRC-OTP-0173-0028 – DRC-OTP-0173-0047), page 0036

⁴⁴⁷ Decision on disclosure issues, responsibilities for protective measures and other procedural matters, 24 April 2008, ICC-01/04-01/06-1295-US-Exp; 8 May 2008, ICC-01/04-01/06-1311-Conf-Anx1, and ICC-01/04-01/06-1311-Anx2, paragraphs 96-102, and relevant parts of ICC-01/04-01/06-1295-US-Exp-AnxC.

⁴⁴⁸ ICC-01/04-01/06-1492-Conf-Exp-Anx15 (ERN: DRC.00132.343 – DRC.00132.397), page 10.

⁴⁴⁹ ICC-01/04-01/06-1492-Conf-Exp-Anx52 (ERN: DRC-OTP-0202-0195 – DRC-OTP-0202-0210), page 4. This document is Annex 16 to ICC-01/04-01/06-1477-Conf-Exp dealt with above.

⁴⁵⁰ ICC-01/04-01/06-1492-Conf-Exp-Anx53 (ERN: DRC-OTP-0202-0821), page 2. This document is Annex 17 to ICC-01/04-01/06-1477-Conf-Exp dealt with above.

⁴⁵¹ ICC-01/04-01/06-1492-Conf-Exp-Anx54 (ERN: DRC.00060.173 –DRC.00060.184), page 7.

⁴⁵² ICC-01/04-01/06-1492-Conf-Exp-Anx55 (ERN: DRC.00105.213), page 2.

⁴⁵³ ICC-01/04-01/06-1492-Conf-Exp-Anx56 (ERN: DRC.00038.258 – DRC.00038.261), page 4.

and reflect the potentially exculpatory and Rule 77 information included in the original, in a form that is usable and intelligible. These steps counter-balance any impact that non-disclosure of this document could have on the rights of the accused. Moreover, no lesser measures appear feasible.

The prosecution disclosed the alternative evidence and the summary in accordance with the Trial Chamber's decision.⁴⁵⁴

Annex 42⁴⁵⁵

This 132 page report, provided by an NGO, was submitted to the Office of the Prosecutor on [REDACTED].⁴⁵⁶ The prosecution submitted that it contained Rule 77 material insofar as it refers to the support of Kinshasa to the FNI/FRPI, through the provision of training; to the support of Rwanda to the UPC, through the delivery of heavy weapons from Kigali; and to the support of Uganda to the FNI and UPC.⁴⁵⁷ The provider proposed disclosure by way of a 10 page summary [REDACTED].⁴⁵⁸ Two of the quotes have limited redactions to an individual's identity and to the location of the house of a witness interviewed by the NGO. The prosecution informed the Chamber that these redactions are requested by the information provider.⁴⁵⁹ The prosecution however submitted that the summary sufficiently captured the Rule 77 value of the document, thereby obviating the need for full disclosure.⁴⁶⁰

The prosecution informed the Chamber that it had already disclosed analogous evidence to the defence.⁴⁶¹ These items included: (1) a 65 page UN "Special Report" on the events in Ituri between January 2002 and December 2003;⁴⁶² (2) an 82 page Human Rights Watch Report, entitled "Ituri: Covered in Blood", dated 1 July 2003;⁴⁶³ (3) a 33 page International Crisis Group Report entitled "Congo Crisis: Military intervention in Ituri", in which it is documented that the FNI seeks Kinshasa's support;⁴⁶⁴ (4) a 3 page report from witness DRC-OTP-WWWW-0285, entitled "Cahier de charge du FNI à l'intention de la médiation ougandaise", in which the

⁴⁵⁴ ICC-01/04-01/06-1502-Conf-AnxC, pages 10-11 (there is no ERN for this annex since it is a prosecution work product).

⁴⁵⁵ ICC-01/04-01/06-1477-Conf-Exp-Anx42

⁴⁵⁶ ICC-01/04-01/06-1477-Conf-Exp-Anx210 (DRC-OTP-0202-0530 – DRC-OTP-0202-0573).

⁴⁵⁷ ICC-01/04-01/06-1488-Conf-Exp-Anx47 (DRC.00085.003- DRC.00085.134) and Conf-Exp-Anx94, page22 (there is no ERN for this annex since it is a prosecution work product).

⁴⁵⁸ ICC-01/04-01/06-1496-Conf-Exp, paragraph 89; Conf-Exp-AnxC, page 10, (there is no ERN for this annex since it is a prosecution work product); and Conf-Exp-Anx13 (DRC-OTP-0204-0391 – DRC-OTP-0204-0399).

⁴⁵⁹ ICC-01/04-01/06-1496-Conf-Exp, paragraph 89.

⁴⁶⁰ ICC-01/04-01/06-1496-Conf-Exp, paragraph 89, AnxC, page 10, and Anx13.

⁴⁶¹ ICC-01/04-01/06-1488-Conf-Exp-Anx94, page22.

⁴⁶² DRC-OTP-0074-0422 (ERN: DRC-OTP-0074-0422 - DRC-OTP-0074-0486).

⁴⁶³ DRC-OTP-0074-0797 (ERN: DRC-OTP-0074-797 – DRC-OTP-0074-878).

⁴⁶⁴ DRC-OTP-0003-0424 (ERN: DRC- OTP-0003-0424- DRC- OTP-0003-0456).

relationship between FNI and Kinshasa is discussed;⁴⁶⁵ (5) the same report from witness DRC-OTP-WWWW-0285, describing how the UPDF supported the FNI;⁴⁶⁶ (6) the 104 page statement of trial witness [REDACTED] (DRC-OTP-WWWW-0014), in which it is stated that Rwanda gives weapons, officers and training to the UPC;⁴⁶⁷ (7) an 11 page www.congoned.dds.nl text "Current situation: Exploitation, arms flows and trends", which sets out that Uganda supported UPC until December 2002;⁴⁶⁸ (8) a 53 page Amnesty International Report "Democratic Republic of Congo Ituri: a need for protection, a thirst for justice", in which it is described that Uganda and the UPC were allies after the fall of Bunia in 2002;⁴⁶⁹ (9) a UN report entitled, "Timeline of events from August 1998 to October 2003", in which it is explained how the UPDF supported the UPC;⁴⁷⁰ (10) an Amnesty International report entitled "Democratic Republic of Congo: Arming the East", containing the assertion that Rwanda provided the UPC with heavy weapons.⁴⁷¹

During an *ex parte* status conference the Chamber requested the prosecution to provide the Chamber with alternative evidence in relation to the Rule 77 information contained in this document.⁴⁷²

The prosecution identified the following alternative evidence:⁴⁷³ (1) the 56 page French statement of [REDACTED] (DRC-OTP-WWWW-0021),⁴⁷⁴ in which he refers to the support of Uganda in the creation of the UPC;⁴⁷⁵ (2) a 5 page report signed by six individuals referring to the Ugandan occupation of Ituri, stating that the Ugandans trained and recruited militias and provided them with weapons;⁴⁷⁶ (3) an 82 page Human Rights Watch Report, entitled "Ituri: Covered in Blood", dated 01 July 2003, which indicates Kinshasa's support for the FNI/FRPI; Rwanda's support for the UPC; and Ugandan support of the FNI and the UPC;⁴⁷⁷ (4) an 11 page www.congoned.dds.nl text entitled, "Current situation: Exploitation, arms flows and trends", containing the assertion that Uganda supported the UPC until December

⁴⁶⁵ DRC-OTP-0043-0287 (ERN: DRC-OTP-0043-0287 - DRC-OTP-0043-0289).

⁴⁶⁶ DRC-OTP-0043-0287 (ERN: DRC-OTP-0043-0287 - DRC-OTP-0043-0289).

⁴⁶⁷ DRC-OTP-0165-0999 (ERN: DRC-OTP-0165-0999 - DRC-OTP-0165-1102).

⁴⁶⁸ CAR-OTP-0005-0381 (ERN: CAR-OTP-0005-0381 - CAR-OTP-0005-0391).

⁴⁶⁹ DRC-OTP-0019-0153 (ERN: DRC-OTP-0019-0153 - DRC-OTP-0019-0185).

⁴⁷⁰ DRC-OTP-0001-0251 (ERN: DRC-OTP-0001-0251 - DRC-OTP-0001-0255).

⁴⁷¹ DRC-OTP-0074-0526 (ERN: DRC-OTP-0074-0526 - DRC-OTP-0074-0626).

⁴⁷² ICC-01/04-01/06-T-96-CONF-EXP-ENG, page 16, lines 1 to 10.

⁴⁷³ Email communication to the Trial Chamber through the Legal Adviser to the Trial Division on 17 November 2008.

⁴⁷⁴ Decision on disclosure issues, responsibilities for protective measures and other procedural matters. 24 April 2008, ICC-01/04-01/06-1295-US-Exp; 8 May 2008, ICC-01/04-01/06-1311-Conf-Anx1, and ICC-01/04-01/06-1311-Anx2, paragraphs 96-102, and relevant parts of ICC-01/04-01/06-1295-US-Exp-AnxC.

⁴⁷⁵ Email communication to the Trial Chamber through the Legal Adviser to the Trial Division on 17 November 2008; ICC-01/04-01/06-1492-Conf-Exp-Anx15 (ERN: DRC.00132.343 - DRC.00132.397).

⁴⁷⁶ Email communication to the Trial Chamber through the Legal Adviser to the Trial Division on 17 November 2008; ICC-01/04-01/06-1492-Conf-Exp-Anx56 (ERN: DRC.00038.258 - DRC.00038.261), page 4.

⁴⁷⁷ Email communication to the Trial Chamber through the Legal Adviser to the Trial Division on 17 November 2008; ICC-01/04-01/06-1496-Conf-Exp-Anx65 (ERN: DRC-00074-797 - DRC-00074-878).

2002;⁴⁷⁸ (5) a 51 page All Party Parliamentary Group report, in which it is stated that Rwanda organized airdrops to UPC camps in Mandro;⁴⁷⁹ (6) a 34 page International Crisis Group Report entitled, "Congo Crisis: Military intervention in Ituri", in which it is documented that the FNI seeks Kinshasa's support;⁴⁸⁰ (7) the 36 page statement of [REDACTED] (DRC-OTP-WWWW-0026),⁴⁸¹ wherein he states that in May 2002, Rwanda parachuted arms at Tchomia and Mandro;⁴⁸² (8) the 88 page statement of trial witness [REDACTED] (DRC-OTP-WWWW-0012), in describing a meeting he [REDACTED], in part to secure the provision of weapons and ammunition;⁴⁸³ (9) a 44 page extract from the UPC website, written in French, that indicates that the FNI, the PUSIC and the FPDC were created by Kinshasa and Kampala.⁴⁸⁴

The Chamber is satisfied that although the original document may not be disclosed to the defence the proposed summary and the additional alternative evidence fulfil the prosecution's disclosure obligations. These items cover the Rule 77 information provided by the NGO and they counter-balance any impact that non-disclosure of the original document could have on the rights of the accused. Put otherwise, the Chamber has ensured that this disclosure, together with the alternative measures, has given the defence material that sufficiently encapsulates and reflects the Rule 77 value of the original material, in a form that is usable and intelligible. Moreover, no lesser measures appear feasible and non-disclosure of the original document is strictly necessary.

The prosecution notified the Trial Chamber that it had disclosed the summary document and the alternative evidence, in compliance with the Trial Chamber's decision.⁴⁸⁵

⁴⁷⁸ Email communication to the Trial Chamber through the Legal Adviser to the Trial Division on 17 November 2008; ICC-01/04-01/06-1496-Conf-Exp-Anx66 (ERN: CAR-OTP-0005-0381 – CAR-OTP-0005-0391).

⁴⁷⁹ Email communication to the Trial Chamber through the Legal Adviser to the Trial Division on 17 November 2008; ICC-01/04-01/06-1496-Conf-Exp-Anx70 (DRC.00099.061 – DRC.00099.210).

⁴⁸⁰ Email communication to the Trial Chamber through the Legal Adviser to the Trial Division on 17 November 2008; ICC-01/04-01/06-1496-Conf-Exp-Anx75 (DRC-OTP-1015-0592 – DRC-OTP-1015-0624).

⁴⁸¹ The Trial Chamber authorized the prosecution's withdrawal of this witness at a hearing on 3 March 2009, ICC-01/04-01/06-T-139-CONF-ENG-ET, pages 92 – 93.

⁴⁸² Email communication to the Trial Chamber through the Legal Adviser to the Trial Division on 17 November 2008, ICC-01/04-01/06-1496-Conf-Exp-Anx80 (ERN: DRC.00109.065 – DRC.00109.099).

⁴⁸³ Email communication to the Trial Chamber through the Legal Adviser to the Trial Division on 17 November 2008; ICC-01/04-01/06-1496-Conf-Exp-Anx81 (ERN: DRC.00105.085 – DRC.00105.0171).

⁴⁸⁴ Email communication to the Trial Chamber through the Legal Adviser to the Trial Division on 17 November 2008, ICC-01/04-01/06-1496-Conf-Exp-Anx82 (ERN: DRC-OTP-0193-0296 – DRC-OTP-0193-0338).

⁴⁸⁵ Prosecution's Notification of Disclosure of Exculpatory and Rule 77 Material to the Defence on 18 and 20 November 2008, 21 November 2008, ICC-01/04-01/06-1502, paragraphs 3-4, and ICC-01/04-01/06-1502-Conf-Exp-AnxC, page 12 (there is no ERN for this annex since it is a prosecution work product).

Annex 43⁴⁸⁶

Annex 43 is a 5 page document, [REDACTED], produced by an NGO, recording events in and around Bunia [REDACTED] 2002, with particular reference to militia activities.⁴⁸⁷

The prosecution submitted that the document contains potentially exculpatory material on whether child soldiers volunteered. The information contains a report from Commander Bosco of the UPC, stating that the child soldiers were orphans who had volunteered to join their forces. It suggests that 20% of the children at Mandro were orphans.⁴⁸⁸ In addition, the prosecution submitted that the document contains Rule 77 material insofar as it indicates that Rwanda was supplying the UPC with arms.⁴⁸⁹

The NGO information provider did not authorise disclosure of this document,⁴⁹⁰ on the basis that disclosure would raise serious concerns regarding the protection of [REDACTED]. Furthermore, the NGO was concerned that [REDACTED].⁴⁹¹ The prosecution submitted that it would be willing to make admissions of fact concerning the potentially exculpatory or Rule 77 information contained in the document⁴⁹² and it submitted three admissions of fact,⁴⁹³ together with five pieces of alternative evidence, which it submitted encompass the relevant material, thereby obviating the need for disclosure of the original.⁴⁹⁴

The prosecution provided the following admissions of fact:

- i) Bosco said that the underage soldiers are orphans who were being looked after by the UPC;*
- ii) Children joined the UPC voluntarily, and*
- iii) On or about 16 September 2002 a Rwandan airplane dropped arms, ammunition and uniforms at Mandro.*⁴⁹⁵

The alternative evidence relating to voluntariness comprises: (1) an 82 page Human Rights Watch report: "Ituri: Covered in Blood", which sets out that a MONUC team reported that Rwanda had dropped arms and uniforms in Mandro in September 2002, and that a UPC Commander (Bosco) had told them that recruitment of the

⁴⁸⁶ ICC-01/04-01/06-1477-Conf-Exp-Anx43.

⁴⁸⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx43 (ERN: DRC.00126.318 – DRC.00126.320).

⁴⁸⁸ ICC-01/04-01/06-1488-Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

⁴⁸⁹ ICC-01/04-01/06-1488-Conf-Exp-Anx49 (ERN: DRC.00126.318- DRC.00126.321), DRC.00126.319.

⁴⁹⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx148, page 7.

⁴⁹¹ ICC-01/04-01/06-1477-Conf-Exp-Anx148, page 7.

⁴⁹² ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 38, lines 13-21 and page 39, lines 22-24.

⁴⁹³ ICC-01/04-01/06-1496-Conf-Exp, paragraph 90.

⁴⁹⁴ ICC-01/04-01/06-1496-Conf-Exp, paragraph 90

⁴⁹⁵ ICC-01/04-01/06-1496-Conf-Exp, paragraph 90.

orphans at Mandro as child soldiers had been voluntary;⁴⁹⁶ (2) a MONUC report on child soldiers, demonstrating that recruitment was neither completely voluntary nor completely forced.⁴⁹⁷ Although the document is redacted, the Trial Chamber authorized the redactions since they have no impact on the potentially exculpatory and Rule 77 information and there are evident reasons as to why there is a material risk if the identities of the individuals referred to in the document are disclosed;⁴⁹⁸ (3) a 71 page Amnesty International Report titled, "Children at War: Creating hope for their future," which gives reasons why some children voluntarily enrol as child soldiers.⁴⁹⁹

The alternative evidence relating to the Rule 77 material on the support of the UPC by Rwanda comprises: (1) the statement of trial witness [REDACTED] (DRC-OTP-WWWW-0015), in which he describes an airdrop of a cargo of arms to the Mandro training site;⁵⁰⁰ and (2) a UN Special Report on the events in Ituri in January 2002 - December 2003, reporting that Rwanda supplied arms by airdrop to the UPC camps in Mandro, Tchomia, Bule, Bulukwa and Dhego.⁵⁰¹

The Chamber is satisfied that although the original document may not be disclosed to the defence, the alternative evidence and the proposed admissions of fact satisfy the prosecution's disclosure obligations. The Chamber assessed the evidential "value" of the original and concluded that all of the potentially exculpatory and Rule 77 material is provided in an alternative form in the equivalent information and in the admissions of fact, in a form that is usable and intelligible.⁵⁰² The defence will be able to rely on the prosecution's admissions concerning these events rather than seeking to establish them through the currently unidentified sources. Indeed, arguably the defence is put in a more favorable evidential position than it otherwise would have been because of the "certainty" provided by the admissions (which are not in themselves binding on the Chamber). These steps are strictly necessary and no lesser measures are feasible. Therefore, the Trial Chamber authorised the non-disclosure of this document to the defence in order to protect individuals at risk on account of the activities of the Court.

In accordance with the directions of the Trial Chamber, the admissions of fact and the alternative evidence were disclosed by the prosecution.⁵⁰³

⁴⁹⁶ ICC-01/04-01/06-1496-Conf-Exp-Anx65 (ERN: DRC-00074-799 – DRC – 00074-878).

⁴⁹⁷ ICC-01/04-01/06-1496-Conf-Exp-Anx71 (ERN: DRC-OTP-0202-0761 – DRC-OTP-0202-0779), DRC-0202-0764.

⁴⁹⁸ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 23, line 23 to page 24, line 4.

⁴⁹⁹ ICC-01/04-01/06-1496-Conf-Exp-Anx72 (ERN: DRC-OTP-0165-0788 – DRC-OTP- 0165-0858), DRC-0165-0802.

⁵⁰⁰ ICC-01/04-01/06-1496-Conf-Exp-Anx73 (ERN: DRC.00127.074- DRC.00127.103).

⁵⁰¹ ICC-01/04-01/06-1496-Conf-Exp-Anx74 (ERN: DRC-00129-267 – DRC- 00129-328), DRC-0129-0279.

⁵⁰² ICC-01/04-01/06-T-96-CONF-EXP-ENG, page 16, line 11 to page 17, line 14.

⁵⁰³ ICC-01/04-01/06-1502-Conf-AnxC, page 13 (there is no ERN for this annex since it is a prosecution work product)

Annex 44⁵⁰⁴

This document is a 20 page [REDACTED], provided to the prosecution by an NGO. The document provides an [REDACTED].⁵⁰⁵ The prosecution submitted that the document contains potentially exculpatory material concerning insufficient command and control of the UPC by the accused: the information indicates that it is difficult to establish responsibility for the UPC during the attack of August 2002 on Bunia, since Thomas Lubanga was under house arrest from June of that year. Even after his return, the source states, it was difficult to establish whether he was truly in charge.⁵⁰⁶ In addition, the prosecution submitted that the document contains Rule 77 material insofar as it indicates the involvement of Uganda, Rwanda and the DRC central government in the conflict, and notes the shifting allegiances between the participating groups.⁵⁰⁷

The NGO only consented to disclosure of a summary of parts of this document.⁵⁰⁸ It was not prepared for a redacted version to be disclosed as it was concerned [REDACTED], and it was afraid that [REDACTED].⁵⁰⁹ Although certain relevant information cannot be disclosed, therefore, even in summary form, the information provider submitted that this is available in any event in public documents.⁵¹⁰ The prosecution submitted the summary on behalf of the information provider,⁵¹¹ together with 12 pieces of alternative evidence, which it submitted encompass the salient parts of the document, so as to obviate the need to disclose the original.⁵¹² The first 9 of these documents relate to insufficient command and control by Thomas Lubanga and the final 3 to Rule 77 material (concerning UPC support from Uganda, Rwanda and Kinshasa).⁵¹³

The summary consists of 3 paragraphs, which contain information relating to the Article 67(2) material.⁵¹⁴ The first group of 9 documents of proposed alternative evidence consists of: (1) a 30 page UN report entitled "Ituri Follow Up" and dated 28 July 2003.⁵¹⁵ It tends to establish that businessmen played a crucial role in the UPC collegial structure and that Thomas Lubanga was "more the forefront person than

⁵⁰⁴ ICC-01/04-01/06-1477-Conf-Exp-Anx44

⁵⁰⁵ ICC-01/04-01/06-1477-Conf-Exp-Anx44 (ERN: DRC-OTP-0171-1849 – DRC-OTP- 0171-1868).

⁵⁰⁶ ICC-01/04-01/06-1488-Conf-Exp-Anx 53 (DRC-OTP-0171-1849 – DRC-OTP-0171-1868).

⁵⁰⁷ ICC-01/04-01/06-1488-Conf-Exp-Anx 94 (there is no ERN for this annex since it is a prosecution work product).

⁵⁰⁸ ICC-01/04-01/06-1477-Conf-Exp-Anx148, page 7.

⁵⁰⁹ ICC-01/04-01/06-1477-Conf-Exp-Anx148, page 7.

⁵¹⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx148, page 7.

⁵¹¹ ICC-01/04-01/06-1496-Conf-Exp-Anx14 (ERN: DRCR-OTP-0204-0409).

⁵¹² ICC-01/04-01/06-1496-Conf-Exp, paragraphs 91 and 92.

⁵¹³ ICC-01/04-01/06-1496-Conf-Exp-AnxC (there is no ERN for this annex since it is a prosecution work product).

⁵¹⁴ ICC-01/04-01/06-1496-Conf-Exp-Anx14 (ERN: DRC-OTP-0204-0409).

⁵¹⁵ ICC-01/04-01/06-1496-Conf-Exp-Anx64 (ERN: DRC.00044.333- DRC.00044.362).

the key decision maker”;⁵¹⁶ (2) an 82 page Human Rights Watch report, “Ituri: Covered in Blood”.⁵¹⁷ The relevant information suggests that Thomas Lubanga was under house arrest in Kinshasa in June 2002;⁵¹⁸ that other groups were participating in the massacres at the time; and that the UPC received support from Rwanda and Uganda;⁵¹⁹ (3) a report by the International Crisis Group dated 13 June 2003, which comprises 33 pages. It carries the title “Congo Crisis: Military Intervention in Ituri, 13 June 2003” and it describes how Thomas Lubanga was arrested before the UPC captured Bunia town on 9 August 2002 with the support of the UPDF;⁵²⁰ (4) a 29 page statement of trial witness [REDACTED] (DRC-OTP-WWWW-0014). The interviewee describes the confused structure of the UPC, particularly while Thomas Lubanga was under arrest in Kinshasa;⁵²¹ (5) an NGO report by ASADO, CEJA and Justice Plus with the title “Rapport sur les manoeuvres en cours dans l’est et le nord-est de la RDC”. It is dated 1 June 2004 and comprises 6 pages. It questions whether Lubanga had complete influence over the UPC;⁵²² (6) a 38 page statement given by trial witness [REDACTED] (DRC-OTP-WWWW-0041). The witness discusses the leadership of the UPC while Thomas Lubanga was detained;⁵²³ (7) a 104 pages statement by the same trial witness DRC-OTP-WWWW-0014 mentioned above, [REDACTED]. It discusses Lonema’s role as coordinator of the UPC while Lubanga was absent;⁵²⁴ (8) a 35 page statement of witness [REDACTED] (DRC-OTP-WWWW-0026),⁵²⁵ which describes the structure of power in the UPC while Thomas Lubanga was under arrest in August 2002.⁵²⁶ It also states that even when Thomas Lubanga was present he was strongly influenced by Rwanda and the Savo family;⁵²⁷ and (9) an 87 page statement from trial witness [REDACTED] (DRC-OTP-WWWW-0012). The witness states that while Thomas Lubanga had control of the UPC, not all decisions were made by him.⁵²⁸ Rwanda and the Savo family had considerable influence⁵²⁹ and at times direction came from Kisembo, Chief Kahwa and Ntaganda.⁵³⁰

⁵¹⁶ ICC-01/04-01/06-1496-Conf-Exp-Anx64 (ERN: DRC.00044.333- DRC.00044.362), DRC.00044.343.

⁵¹⁷ ICC-01/04-01/06-1496-Conf-Exp-Anx65 (ERN: DRC-00074-799 – DRC – 00074-878).

⁵¹⁸ ICC-01/04-01/06-1496-Conf-Exp-Anx65 (ERN: DRC-00074-799 – DRC – 00074-878), DRC-00074-809.

⁵¹⁹ ICC-01/04-01/06-1496-Conf-Exp-Anx65 (ERN: DRC-00074-799 – DRC – 00074-878), DRC-00074-818.

⁵²⁰ ICC-01/04-01/06-1496-Conf-Exp-Anx75 (ERN: DRC-OTP-1015-0592 – DRC-OTP-1015-0624), DRC-OTP-1015-0602.

⁵²¹ ICC-01/04-01/06-1496-Conf-Exp-Anx76 (ERN: DRC.00066.002- DRC.00066.030), DRC.00066.025.

⁵²² ICC-01/04-01/06-1496-Conf-Exp-Anx77 (ERN: DRC-OTP-0173-0012 – DRC-OTP-0173-0017), DRC-OTP-0173-0014.

⁵²³ ICC-01/04-01/06-1496-Conf-Exp-Anx78 (ERN: DRC.00147.002 – DRC.00147.039), DRC.00147.012.

⁵²⁴ ICC-01/04-01/06-1496-Conf-Exp-Anx79 (ERN: DRC-OTP-0165-0999 – DRC-OTP-0165-1102), DRC-OTP-0165-1008.

⁵²⁵ The Trial Chamber authorized the prosecution’s withdrawal of this witness on 3 March 2009, ICC-01/04-01/06-T-139-CONF-ENG, pages 92-93.

⁵²⁶ ICC-01/04-01/06-1496-Conf-Exp-Anx80 (ERN: DRC.00109.065 – DRC.00109.099) DRC.00109.085.

⁵²⁷ ICC-01/04-01/06-1496-Conf-Exp-Anx80 (ERN: DRC.00109.065 - DRC.00109.099), DRC.00109.086.

⁵²⁸ ICC-01/04-01/06-1496-Conf-Exp-Anx81 (ERN: DRC.00105.085 - DRC.00105.171), DRC.00105.112.

⁵²⁹ ICC-01/04-01/06-1496-Conf-Exp-Anx81 (ERN: DRC.00105.085 – DRC.00105.171), DRC.00105.112.

⁵³⁰ ICC-01/04-01/06-1496-Conf-Exp-Anx81 (ERN: DRC.00105.085 – DRC.00105.171), DRC.00105.118.

The final 3 documents, proposed as alternative evidence, consist of: (1) a 43 page extract from the UPC website, which indicates that the UPC had support from Uganda in its Nyankunde attack,⁵³¹ that the FIPI was created in Uganda⁵³² and that Kinshasa provided arms to the RCD-ML;⁵³³ (2) a 26 page statement from trial witness [REDACTED] (DRC-OTP-WWWW-0116), compiled on the basis of interviews conducted by the prosecution [REDACTED] between the [REDACTED], which suggests that Thomas Lubanga and Chief Kahwa received training in Uganda;⁵³⁴ and (3) a 101 page Amnesty International report entitled “Democratic Republic of Congo: Arming the East”. It describes the support rendered by Rwanda to the UPC in 2002 and 2003.⁵³⁵

The Trial Chamber is satisfied that all of the potentially exculpatory and Rule 77 material contained in Annex 44 is provided in alternative form in the summary of the Annex and in the equivalent information proffered by the prosecution.⁵³⁶ Therefore, the Trial Chamber authorised disclosure of these documents to the defence in order to protect third parties who could be at risk on account of the activities of the Court. No lesser measures appear feasible, and the information, overall, is usable and intelligible.

In accordance with the directions of the Trial Chamber, the summary and the alternative evidence have now been disclosed by the prosecution.⁵³⁷

Annex 45⁵³⁸

This document is a 13 page [REDACTED] provided to the prosecution by an NGO. The document [REDACTED].⁵³⁹ The prosecution submitted that the document contains Rule 77 material insofar as it suggests the conflict was three-layered: an ethnic conflict on the local level; between rebel groups and the government at the national level; and finally involving Uganda, Rwanda and Kinshasa through proxies.⁵⁴⁰ The prosecution further suggested that the document contained other information of possible assistance to the defence. [REDACTED] provides some

⁵³¹ ICC-01/04-01/06-1496-Conf-Exp-Anx82 (ERN: DRC-OTP-0193-0296 – DRC-OTP-0193-0338), DRC-OTP-0193-0299.

⁵³² ICC-01/04-01/06-1496-Conf-Exp-Anx82 (ERN: DRC-OTP-0193-0296 – DRC-OTP-0193-0338), DRC-OTP-0193-0307

⁵³³ ICC-01/04-01/06-1496-Conf-Exp-Anx82 (ERN: DRC-OTP-0193-0296 – DRC-OTP-0193-0338), DRC-OTP-0193-0316.

⁵³⁴ ICC-01/04-01/06-1496-Conf-Exp-Anx83 (ERN: DRC-OTP-0174-0025- DRC-OTP-0174-0050), DRC-OTP-0174-0029.

⁵³⁵ ICC-01/04-01/06-1496-Conf-Exp-Anx68 (ERN: DRC-00074-526 –DRC-00074-626), pages 48-49.

⁵³⁶ ICC-01/04-01/06-T-96-CONF-EXP-ENG, page 17, lines 24-25 to page 18, lines 1-2.

⁵³⁷ ICC-01/04-01/06-1502-Conf-AnxC, page 14 (there is no ERN for this annex since it is a prosecution work product).

⁵³⁸ ICC-01/04-01/06-1477-Conf-Exp-Anx45.

⁵³⁹ ICC-01/04-01/06-1477-Conf-Exp-Anx45 (ERN: DRC-OTP-0171-1924 – DRC-OTP- 0171-1937).

⁵⁴⁰ ICC-01/04-01/06-1488-Conf-Exp-Anx54 (ERN: DRC-OTP-0171-1924 - DRC-OTP-0171-1937).

background to the conflicts in Ituri, showing how the ethnic, national and international groups related to each other. It also refers to some specific events where Uganda, Rwanda and Kinshasa provided support, sponsorship or training to the various national and ethnic groups.⁵⁴¹ The information provider consented to disclosure of this document with redactions.⁵⁴² Concealing certain names was requested on the basis that [REDACTED] should the document be disclosed to the defence in non-redacted form. Further, the NGO was reluctant for its name to be disclosed, fearing that it may [REDACTED]; it requested also that [REDACTED].⁵⁴³ The redaction of potentially exculpatory information was justified on the basis that its substance was contained in alternative information.⁵⁴⁴ Following an enquiry by the Chamber,⁵⁴⁵ the information provider continued to resist [REDACTED].⁵⁴⁶ Although the prosecution submitted that the redactions do not impact on the Rule 77 portions of the document, it nonetheless provided 6 pieces of alternative evidence, which it argued encompass the salient portions of the Annex, so as to obviate further the need to disclose the original.⁵⁴⁷

These consist of: (1) a 28 page UN report entitled “Ituri Province Follow up”, dated 28 July 2003, which contains information alleging that Lubanga was not a key decision maker in the UPC, but merely a “forefront person” and that the group received external, foreign support;⁵⁴⁸ (2) an 82 page Human Rights Watch Report entitled “Ituri: Covered in Blood”.⁵⁴⁹ This evidence mentions that the war in Ituri is a complex web of local, national, and regional conflicts and that most of Ituri’s 10 armed groups have at one point or another received support from Uganda, Rwanda or Kinshasa; (3) a 43 page French document from the UPC website.⁵⁵⁰ The relevant information relates to the FNI, the PRISNUC and the FPDC being created by Kampala, and Kinshasa and Uganda creating the FIPI; (4) a 51 page All Party Parliamentary Group report entitled “Arms flows in Eastern DR Congo”.⁵⁵¹ This states that armed groups from the Kivus and Ituri have been backed by Rwanda, Uganda and the Kinshasa government; (5) a 46 page Human Rights Watch report from March 2001 entitled “Uganda in Eastern DRC: Fuelling political and ethnic strife”.⁵⁵² The relevant information concerns Uganda’s role in the conflict and its support of the Hema; and (6) an 11 page text from the www.congoned.dds.nl

⁵⁴¹ ICC-01/04-01/06-1488-Conf-Exp-Anx54 (ERN: DRC-OTP-0171-1924 - DRC-OTP-0171-1937).

⁵⁴² ICC-01/04-01/06-1477-Conf-Exp-Anx148, page 5; ICC-01/04-01/06-1496-Conf-Exp-Anx15. (ERN: DRC-OTP-0171-1928– DRC-OTP-0171-1929).

⁵⁴³ ICC-01/04-01/06-1477-Conf-Exp-Anx 148, page 6.

⁵⁴⁴ ICC-01/04-01/06-1477-Conf-Exp-Anx 148, page 6.

⁵⁴⁵ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 40, lines 10-25, page 41, lines 1-18.

⁵⁴⁶ ICC-01/04-01/06-1496-Conf-Exp-AnxB.

⁵⁴⁷ ICC-01/04-01/06-1496-Conf-Exp, paragraph 93- 95.

⁵⁴⁸ ICC-01/04-01/06-1496-Conf-Exp-Anx64 (ERN: DRC.00044.333 – DRC.00044.362).

⁵⁴⁹ ICC-01/04-01/06-1496-Conf-Exp-Anx65 (ERN: DRC-00074-798 – DRC-00074-878).

⁵⁵⁰ ICC-01/04-01/06-1496-Conf-Exp-Anx82 (ERN: DRC-OTP-0193-0296 – DRC-OTP-0193-0338).

⁵⁵¹ ICC-01/04-01/06-1496-Conf-Exp-Anx70 (ERN: DRC.00099.163 – DRC.00099.210).

⁵⁵² ICC-01/04-01/06-1496-Conf-Exp-Anx84 (ERN: DRC-00100-164 – DRC- 00100-209).

website entitled “Current situation: Exploitation, arms flows and trends”.⁵⁵³ The relevant information concerns Rwandan support of the UPC against the Uganda and Kinshasa-linked networks for control over a wealthy region of the DRC.

Having reviewed the documents, the Trial Chamber noted that significant portions of the information contained in Annex 45 were missing from the redacted version.⁵⁵⁴ However, the Trial Chamber established that the relevant Rule 77 and other material relevant to the defence are contained in the alternative evidence.⁵⁵⁵ Therefore, the Trial Chamber authorised disclosure of this document, with the proposed redactions, in order to protect individuals who could be at risk on account of the activities of the Court. No lesser measures appear feasible, and the information, overall, is usable and intelligible.

In accordance with the directions of the Trial Chamber, the redacted document and the alternative evidence were disclosed by the prosecution.⁵⁵⁶

Annex 46⁵⁵⁷

This document is a 20 [REDACTED], provided to the prosecution by an NGO. It [REDACTED].⁵⁵⁸ The prosecution submitted that [REDACTED] contains potentially exculpatory material concerning insufficient command and control of the UPC by the accused; the information indicates that the UPC troops were commanded by Thomas Lubanga, Lonema, Bosco and Kisembo, and that Lonema was in charge in Bunia during the Bunia attack in August 2002, because Thomas Lubanga was under house arrest in Kinshasa.⁵⁵⁹ In addition, the prosecution submitted that the document contains Rule 77 material insofar as it indicates that the trainers in the UPC training camp in Mandro were Rwandan, that Uganda assisted in the attack to take over Bunia by the UPC on 9 August 2002, and that the UPC received arms and ammunition from Rwanda.⁵⁶⁰ The prosecution further submitted that the document contained other information that may assist the defence, in that [REDACTED] provides some background to the various conflicts in Ituri, showing how ethnic, national and international groups related to each other. It also refers to some specific events where Uganda, Rwanda and Kinshasa provided support or arms to the various national and ethnic groups.⁵⁶¹ The information provider consented to

⁵⁵³ ICC-01/04-01/06-1496-Conf-Exp-Anx66 (ERN: CAR-OTP-0005-0381 – CAR-OTP-0005-0391).

⁵⁵⁴ ICC-01/04-01/06-T-96-CONF-EXP-ENG, page 19, lines 5-7.

⁵⁵⁵ ICC-01/04-01/06-T-96- CONF-EXP-ENG, page 20, lines 12-15.

⁵⁵⁶ ICC-01/04-01/06-1502-Conf-AnxC, page 15 (there is no ERN for this annex since it is a prosecution work product).

⁵⁵⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx46.

⁵⁵⁸ ICC-01/04-01/06-1477-Conf-Exp-Anx46 (ERN: DRC-OTP-0171-1971 – DRC-OTP- 0171-1991).

⁵⁵⁹ ICC-01/04-01/06-1488-Conf-Exp-Anx55 (ERN: DRC-OTP-0171-1971 - DRC-OTP-0171-1991), DRC-OTP-0171-1988.

⁵⁶⁰ ICC-01/04-01/06-1488-Conf-Exp-Anx55 (ERN: DRC-OTP-0171-1971 - DRC-OTP-0171-1991).

⁵⁶¹ ICC-01/04-01/06-1488-Conf-Exp-Anx55 (ERN: DRC-OTP-0171-1971 - DRC-OTP-0171-1991).

disclosure of this document with redactions⁵⁶² and, as regards names, these were justified on the basis that [REDACTED] if the document is disclosed to the defence in non-redacted form. Further, the NGO was reluctant for its name to be revealed, fearing that [REDACTED]; it also requested that [REDACTED].⁵⁶³ The redaction of potentially exculpatory information was justified on the basis that its substance was contained in other publicly available documents.⁵⁶⁴ Following a request from the Chamber,⁵⁶⁵ the information provider agreed that [REDACTED];⁵⁶⁶ however, it continued to decline [REDACTED].⁵⁶⁷ Although the prosecution submitted that the redactions do not impact on the Rule 77 portions of the document, it nonetheless provided 10 pieces of alternative evidence, which it suggested encompass the salient portions of the Annex, so as to obviate the need to disclose the original.⁵⁶⁸ The first 4 of these documents relate to the support of the UPC by Uganda, Rwanda and Kinshasa, and the final 6 to the suggested insufficient command and control of the accused.⁵⁶⁹

The first group of 4 documents therefore consist of: (1) a 51 page document produced by the All Party Parliamentary Group (APPG) on the Great Lakes Region, entitled: Arms Flows in Eastern DR Congo.⁵⁷⁰ It describes how Rwanda organised arms airdrops into UPC camps in Mandro and other UPC camps, and that Rwanda reportedly trained Hema elements in the UPC; (2) a 70 page report from CERI entitled "Convention d'Etudes 2002, Provision pour consultations – Guerre et recomposition des forces politiques en RDC".⁵⁷¹ It indicates that the UPC training camps had foreign instructors, both Ugandan and Rwandan;⁵⁷² (3) a 2 page report sent via email on behalf of the Lendu community, Kinshasa, entitled "Toute la Verité sur la declaration de la communauté Hema du 3 Aout 2002", dated August 2002.⁵⁷³ The document refers to Rwandan soldiers providing training in Mandro, and Rwanda supplying weapons and ammunition to the training camp in Mandro;⁵⁷⁴ (4) an 11 page text from a website (www.congoned.dds.nl) entitled "Current situation: Exploitation, arms flows and trends."⁵⁷⁵ The relevant information contained within

⁵⁶² ICC-01/04-01/06-1477-Conf-Exp-Anx148, page 6.

⁵⁶³ ICC-01/04-01/06-1477-Conf-Exp-Anx148, page 6.

⁵⁶⁴ ICC-01/04-01/06-1477-Conf-Exp-Anx148, page 7.

⁵⁶⁵ ICC-01/04-01/06-T-95- CONF-EXP-ENG, page 42, lines 20-25, page 43, lines 1-6

⁵⁶⁶ ICC-01/04-01/06-1496-Conf-Exp-Anx16 (ERN: DRC-OTP-0171-1975).

⁵⁶⁷ ICC-01/04-01/06-1496-Conf-Exp-AnxB.

⁵⁶⁸ ICC-01/04-01/06-1496-Conf-Exp, paragraph 93- 95.

⁵⁶⁹ ICC-01/04-01/06-1496-Conf-Exp-AnxC (ERN: none as this is a computer generated chart by the prosecution).

⁵⁷⁰ ICC-01/04-01/06-1496-Conf-Exp-Anx70 (ERN: DRC.00099.163 – DRC.00099.210).

⁵⁷¹ ICC-01/04-01/06-1496-Conf-Exp-Anx85 (ERN: DRC.00038.493 – DRC.00038.562).

⁵⁷² ICC-01/04-01/06-1496-Conf-Exp-Anx85 (ERN: DRC.00038.493 - DRC.00038.562), DRC.00038.549.

⁵⁷³ ICC-01/04-01/06-1496-Conf-Exp-Anx86 (ERN: DRC.00077.305 – DRC.00077.307).

⁵⁷⁴ ICC-01/04-01/06-1496-Conf-Exp-Anx86 (ERN: DRC.00077.305 – DRC.00077.307), DRC.00077.307

⁵⁷⁵ ICC-01/04-01/06-1496-Conf-Exp-Anx66 (ERN: CAR-OTP-0005-0381 – CAR-OTP-0005-0391).

the document concerns Rwanda providing officers and senior staff to the UPC, as well as providing training within Rwanda and the DRC and providing arms.⁵⁷⁶

The second group of 6 documents of proposed alternative evidence (relating, as described above, to insufficient command and control of the accused) consist of: (1) a report from the International Crisis Group, dated 13 June 2003, entitled, “Congo Crisis: Military Intervention in Ituri, June 2003”.⁵⁷⁷ The relevant information relates to Thomas Lubanga’s arrest by Ugandan authorities and his transfer to Kinshasa in July 2002, before the UPC/UPDF attack on Bunia. It also suggests that Kahwa organised the kidnapping of the DRC Minister for Human Rights; (2) a 38 page statement of trial witness [REDACTED] (DRC-OTP-WWWW-0041).⁵⁷⁸ The witness describes how Lonema assumed the interim leadership of the UPC in Bunia during Lubanga’s detention, between June – August 2002;⁵⁷⁹ (3) a 104 page statement of trial witness [REDACTED] (DRC-OTP-WWWW-0014).⁵⁸⁰ This indicates how leadership of the UPC was shared between Lonema, Thomas Lubanga, Kisembo, Kahwa and Ntaganda; (4) an 82 page Human Rights Watch Report entitled “Ituri: Covered in Blood”. This document refers to Thomas Lubanga being under house arrest in Kinshasa on 26 August 2002; (5) a 35 page statement of [REDACTED] (DRC-OTP-WWWW-0026).⁵⁸¹ This outlines that Thomas Lubanga was detained in Kinshasa during the Bunia attack, and that the political decisions in relation to Bunia were taken principally by Kahwa but he worked in concert with Kisembo, Rafiki, Litsha, Lonema, Beiza and Bosco; (6) a 29 page statement of trial witness [REDACTED] (DRC-OTP-WWWW-0014).⁵⁸² The relevant information is to the effect that Thomas Lubanga, and others, were arrested and transferred from Kampala to Kinshasa, where the accused remained in custody with Lonema.

Although significant portions of information contained in Annex 46 were missing from the redacted version,⁵⁸³ the Trial Chamber concluded that the Rule 77 and other material relevant to the defence is contained in the alternative evidence.⁵⁸⁴ Therefore, the Trial Chamber authorised disclosure of these document to the defence, with the redactions, in order to protect individuals who could be at risk on account of the activities of the Court. No lesser measures appear feasible; the information, overall,

⁵⁷⁶ ICC-01/04-01/06-1496-Conf-Exp-Anx66 (ERN: CAR-OTP-0005-0381 – CAR-OTP-0005-0391), CAR-OTP-0005-0383- CAR-OTP-0005-0385

⁵⁷⁷ ICC-01/04-01/06-1496-Conf-Exp-Anx75 (ERN: DRC-OTP-1015-0592 – DRC-OTP-1015-0624).

⁵⁷⁸ ICC-01/04-01/06-1496-Conf-Exp-Anx78 (ERN: DRC.00147.002 – DRC.00147.039).

⁵⁷⁹ ICC-01/04-01/06-1496-Conf-Exp-Anx78 (ERN: DRC.00147.002 – DRC.00147.039), DRC.00147.012.

⁵⁸⁰ ICC-01/04-01/06-1496-Conf-Exp-Anx79 (DRC-OTP-0165-0999- DRC-OTP-0165-1102).

⁵⁸¹ ICC-01/04-01/06-1496-Conf-Exp-Anx80 (ERN: DRC.00109.065 – DRC.00109.099). The Trial Chamber authorized the prosecution’s withdrawal of this witness on 3 March 2009. ICC-01/04-01/06-T-139-CONF-ENG pages 92-93.

⁵⁸² ICC-01/04-01/06-1496-Conf-Exp-Anx76 (ERN: DRC.00066.002 – DRC.00066.030).

⁵⁸³ ICC-01/04-01/06-1496-Conf-Exp-Anx16 (ERN: DRC-OTP-0171-1975).

⁵⁸⁴ ICC-01/04-01/06-T-96-CONF-EXP-ENG, page 20, lines 12-15.

is usable and intelligible, and the alternative evidence is sufficient for the purposes of a fair trial.

In accordance with the directions of the Trial Chamber, the redacted version of the document and the alternative evidence were disclosed by the prosecution.⁵⁸⁵

Annex 47⁵⁸⁶

This document is a 14 page [REDACTED], provided to the prosecution by an NGO. It [REDACTED].⁵⁸⁷ The prosecution submitted that [REDACTED] contains Rule 77 material to the extent that it indicates the support of the UPC by Rwanda, Uganda and the Kinshasa government during 2002. In addition, the prosecution submitted that the document contained other information that may assist the defence, in that the table provides some background to the conflicts in Ituri, showing the inter-relationship between ethnic, national and international groups. It also refers to some specific events where Uganda, Rwanda and Kinshasa provided support and or arms to the various national and ethnic groups.⁵⁸⁸ The information provider consented to disclosure of this document with redactions,⁵⁸⁹ which were justified on the basis that [REDACTED] should it be disclosed to the defence in non-redacted form. Further, the NGO was reluctant for its name to be disclosed, fearing that [REDACTED]⁵⁹⁰ Following a request from the Chamber,⁵⁹¹ the information provider consented to disclosure [REDACTED];⁵⁹² however, it continued to decline [REDACTED]⁵⁹³ Although the prosecution submitted that the redactions do not impact on the Rule 77 portions of the document, it nevertheless provided 11 pieces of alternative evidence, which it contended encompass the salient portions of the Annex, so as to obviate the need for disclosure of the original.⁵⁹⁴

The 11 documents consist of: (1) the 82 page Human Rights Watch report on the DRC, from July 2003, "Ituri: Covered in Blood."⁵⁹⁵ The report details the involvement of the governments of Uganda, Rwanda and the DRC in aggravating ethnic hostilities and supporting the UPC, RCD-Goma and RCD-ML respectively.

⁵⁸⁵ ICC-01/04-01/06-1502-Conf-AnxC, page 16 (there is no ERN for this annex since it is a prosecution work product).

⁵⁸⁶ ICC-01/04-01/06-1477-Conf-Exp-Anx47.

⁵⁸⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx47 (ERN: DRC-OTP-0171-1992 – DRC-OTP-0171-2006).

⁵⁸⁸ ICC-01/04-01/06-1488-Conf-Exp-Anx56 (ERN: DRC –OTP-0171-1993 – DRC –OTP-0171-2006).

⁵⁸⁹ ICC-01/04-01/06-1477-Conf-Exp-Anx148, page 6; ICC-01/04-01/06-1496-Conf-Exp-Anx17 (ERN: DRC-OTP-0171-1996 – DRC-OTP-0171-1997).

⁵⁹⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx148, page 6.

⁵⁹¹ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 44, lines 10-14, where the Trial Chamber refers the prosecution to its comments on a previous document, Annex 45, at page 40, lines 8-25, page 41, lines 1-25, page 42, lines 1-25 and page 43, lines 1-8.

⁵⁹² ICC-01/04-01/06-1496-Conf-Exp-Anx 17 (ERN: DRC-OTP-0171-1996 – DRC-OTP-0171-1997).

⁵⁹³ ICC-01/04-01/06-1496-Conf-Exp-AnxB.

⁵⁹⁴ ICC-01/04-01/06-1496-Conf-Exp, paragraph 93.

⁵⁹⁵ ICC-01/04-01/06-1496-Conf-Exp-Anx 65 (ERN: DRC -00074-797 – DRC -010074-878).

The economic motivations of Uganda and Rwanda in the mineral-rich Ituri are highlighted; (2) an 11 page www.congoned.dds.nl report entitled, "Current situation: Exploitation, arms flows and trends,"⁵⁹⁶ indicating that the UPC received support training and arms from both the Ugandan and Rwandan governments, and the RCD-ML was assisted from Kinshasa; (3) a 34 page report by the International Crisis Group of 13 June 2003, entitled, "Congo Crisis: Military Intervention in Ituri,"⁵⁹⁷ in which it is argued that the UPC captured Bunia on 9 August 2002 with UPDF support; (4) a 70 page report published in 2002, by the Centre d'Études de Recherches Internationales, entitled "Guerre et reconstitution des forces politiques en RDC"⁵⁹⁸ suggesting that several military training centres, with Ugandan and or Rwandan teachers, fed the militias; (5) a 4 page handwritten document entitled "Temoignage". This is an account, written in French, of the expulsion of Governor Lompondo from Bunia in August 2002 by the UPC.⁵⁹⁹ The text refers to the support given by the UPDF to the UPC in carrying this out; (6) a 34 page transcript of an interview with witness [REDACTED] (DRC-OTP-WWWW-0026),⁶⁰⁰ in French, conducted by the prosecution.⁶⁰¹ It sets out that Rwanda parachuted arms onto the Tchomia plain and into Mandro in 2002. (7) a 50 page report produced for the All Party Parliamentary Group on the Great Lakes Region of the United Kingdom in December 2004⁶⁰² bearing the title "Arms flows in Eastern DR Congo" and which provides details of the relationships between the RCD-ML, RCD-Goma and the UPC, and Rwanda and Uganda; (8) a 145 page Human Rights Watch report dated March 2001, entitled, "Uganda in Eastern DRC: Fuelling Political and Ethnic Strife",⁶⁰³ which indicates Uganda's role in the conflict in the region and its support of the Hema; (9) a 109 page statement given by trial witness [REDACTED] (DRC-OTP-WWWW-0014) concerning meetings and arrangements between the UPC and Rwanda, to which he was privy;⁶⁰⁴ (10) the 15 page statement of trial witness [REDACTED] (DRC-OTP-WWWW-0004) provided to the prosecution in October 2007, describing the support given to the UPC by Rwanda in 2002;⁶⁰⁵ (11) the 48 page statement of trial witness [REDACTED] (DRC-OTP-WWWW-0016) which concerns arms deliveries to the UPC and to RCD-Goma from Rwanda in 2002.⁶⁰⁶

Although significant portions of information contained in Annex 47 were missing from the redacted version, the Trial Chamber determined that the Rule 77 and other

⁵⁹⁶ ICC-01/04-01/06-1496-Conf-Exp-Anx 66 (ERN: CAR-OTP-0005-0381 – CAR-OTP-0005-0391).

⁵⁹⁷ ICC-01/04-01/06-1496-Conf-Exp-Anx 75 (ERN: DRC-OTP-1015-0592 – DRC-OTP-1015-0624).

⁵⁹⁸ ICC-01/04-01/06-1496-Conf-Exp-Anx 85 (ERN: DRC.00038.493 – DRC.00038.562).

⁵⁹⁹ ICC-01/04-01/06-1496-Conf-Exp-Anx 87 (ERN: DRC.00127.139 – DRC.00127.142).

⁶⁰⁰ The Trial Chamber authorized the prosecution's withdrawal of this witness on 3 March 2009. ICC-01/04-01/06-T-139-CONF-ENG pages 92-93.

⁶⁰¹ ICC-01/04-01/06-1496-Conf-Exp-Anx 80 (ERN: DRC.00109.065 – DRC.00109.099).

⁶⁰² ICC-01/04-01/06-1496-Conf-Exp-Anx 70 (ERN: DRC.00099.160 – DRC.00099.210).

⁶⁰³ ICC-01/04-01/06-1496-Conf-Exp-Anx 84 (ERN: DRC-00100-064 – DRC-00100-209).

⁶⁰⁴ ICC-01/04-01/06-1496-Conf-Exp-Anx 79 (ERN: DRC-OTP-0165-0999 – DRC-OTP-0165-1102).

⁶⁰⁵ ICC-01/04-01/06-1496-Conf-Exp-Anx 88 (ERN: DRC-OTP-0174-0002 – DRC-OTP-0174-0017)

⁶⁰⁶ ICC-01/04-01/06-1496-Conf-Exp-Anx 89 (ERN: DRC.00126.422 – DRC.00126.470).

material of relevance to the defence were set out sufficiently in the alternative evidence.⁶⁰⁷ Therefore, the Trial Chamber authorised disclosure of these documents to the defence, with the proposed redactions, in order to protect individuals [REDACTED] which could be at risk on account of the activities of the Court. The Chamber satisfied itself that the redactions are strictly necessary and that no lesser measures are feasible, and that the alternative evidence is sufficient for the purposes of a fair trial.

In accordance with the directions of the Trial Chamber, the document in redacted form and the alternative evidence were disclosed by the prosecution.⁶⁰⁸

Annex 48⁶⁰⁹

This 4 page document provided by an NGO is [REDACTED].⁶¹⁰ The prosecution submitted that this document contains potentially exculpatory information pursuant to Article 67(2) of the Statute, in that it may assist the accused as regards his role in the UPC to the extent that it indicates insufficient command and control on his part.⁶¹¹ The information relates to Thomas Lubanga being under house arrest at the time of the early August UPC attack on Bunia and indicates that some individuals claimed that he did not truly hold the power in the UPC.⁶¹² The information provider repeatedly expressed serious concern regarding the protection of [REDACTED], fearing that [REDACTED], depending on the method of disclosure.⁶¹³ It is suggested that [REDACTED].⁶¹⁴ The information provider consented to disclosure of a substantially redacted version, which was submitted to the Chamber.⁶¹⁵ Although the prosecution contended that the redactions do not impact on the potentially exculpatory evidence,⁶¹⁶ it nonetheless provided several items of alternative evidence to replace the redacted parts of the document.

The 9 documents of proposed alternative evidence consist of: (1) a 31 page UN report entitled "Ituri Province Follow Up" referring to the crucial role of businessmen within the collegial structure of the UPC. It contains the statement that "Thomas Lubanga is more the forefront person than a key decision-maker", and further lists names of the most prominent businessmen allegedly involved in the

⁶⁰⁷ ICC-01/04-01/06-T-96-CONF-EXP-ENG, page 20, lines 12-15.

⁶⁰⁸ ICC-01/04-01/06-1502-Conf-AnxC, page 16 (there is no ERN for this annex since it is a prosecution work product).

⁶⁰⁹ ICC-01/04-01/06-1477-Conf-Exp-Anx48.

⁶¹⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx48 (ERN: DRC-OTP-0170-2007 – DRC-OTP-0171-2011).

⁶¹¹ ICC-01/04-01/06-1488-Conf-Exp-Anx57 (ERN: DRC-OTP-0170-2007 – DRC-OTP-0171-2011).

⁶¹² ICC-01/04-01/06-1488-Conf-Exp-Anx57 (ERN: DRC-OTP-0170-2007 – DRC-OTP-0171-2011).

⁶¹³ ICC-01/04-01/06-1477-Conf-Exp-Anx148; ICC-01/04-01/06-1496-Conf-Exp-AnxB

⁶¹⁴ ICC-01/04-01/06-1477-Conf-Exp-Anx148; ICC-01/04-01/06-1496-Conf-Exp-AnxB

⁶¹⁵ ICC-01/04-01/06-1477-Conf-Exp-Anx148; ICC-01/04-01/06-1496-Conf-Exp-Anx18 (ERN: DRC-OTP-0170-2010).

⁶¹⁶ ICC-01/04-01/06-1496-Conf-Exp, paragraph 93.

UPC;⁶¹⁷ (2) the Human Rights Watch report “Ituri: Covered in Blood” comprising 82 pages that makes reference to Thomas Lubanga’s arrest by the Ugandan authorities in June 2002 and his house arrest in Kinshasa;⁶¹⁸ (3) a statement of trial witness [REDACTED] (DRC-OTP-WWWW-0014), comprising 29 pages, in which the witness describes Thomas Lubanga’s arrest and transfer to Kinshasa, and suggests that a person referred to by the name of Lonema acted as interim president of the UPC while Thomas Lubanga was detained;⁶¹⁹ (4) a statement of trial witness [REDACTED] (DRC-OTP-WWWW-0041) comprising 38 pages that refers to Lonema having acted as interim president of the UPC while Thomas Lubanga was detained;⁶²⁰ (5) a further statement of trial witness DRC-OTP-WWWW-0014 comprising 104 pages, in which the witness recalls hearing Thomas Lubanga announce that Lonema and Mbuna were to develop further the military branch in his absence. The witness states that when he returned to Bunia in 2002, “it was clear to [him] that Lonema had indeed assumed the role of coordinator and interim UPC leader, just as Lubanga had stipulated during the meeting in Kampala”;⁶²¹ (6) a 35 page statement of [REDACTED] (DRC-OTP-WWWW-0026)⁶²² relating to the control of the UPC during the period of Thomas Lubanga’s house arrest, and the suggestion that while the latter had the last word in the UPC, he was strongly influenced by the Savo family (who had extensive financial power) and the Rwandans. Thomas Lubanga allegedly refrained from implementing certain decisions made during executive meetings of the UPC after having conferred with the Savo family;⁶²³ (7) an 87 page statement of trial witness [REDACTED] (DRC-OTP-WWWW-0012), relating, *inter alia*, to insufficient command and control over the UPC by Thomas Lubanga. The witness refers to actions taken by other people while Thomas Lubanga was under house arrest, and claims that whilst Thomas Lubanga had control over the UPC, not all the decisions were made by him (e.g. some decisions concerning policy and strategy were made with the approval of the Rwandans and the Savo family);⁶²⁴ (8) a 53 page report entitled “Rapport sur la situation générale en Ituri présenté par l’organe exécutif intérimaire à l’Assemblée spéciale intérimaire de l’Ituri lors de sa 5e session” dated 19 November 2003. Reference is made, first, to the lack of control over the armed groups by their chiefs, and, second, to a mutiny amongst the UPC troops in Nyamamba;⁶²⁵ (9) notes taken by the prosecution relating to a meeting with a witness in December 2004, and comments provided by him via email on 13 April 2006. The witness relates that he viewed Thomas Lubanga to be only one, and not

⁶¹⁷ ICC-01/04-01/06-1496-Conf-Exp-Anx64 (ERN: DRC-00044-333 – DRC-00044-362).

⁶¹⁸ ICC-01/04-01/06-1496-Conf-Exp-Anx65 (ERN: DRC-00074-797 – 00074-878).

⁶¹⁹ ICC-01/04-01/06-1496-Conf-Exp-Anx76 (ERN: DRC-00066-002 – DRC-00066-030).

⁶²⁰ ICC-01/04-01/06-1496-Conf-Exp-Anx78 (ERN: DRC-00147-002 – DRC-00147-039).

⁶²¹ ICC-01/04-01/06-1496-Conf-Exp-Anx79 (ERN: DRC-OTP-0165-0999 – DRC-OTP-0165-1102).

⁶²² The Trial Chamber authorized the prosecution’s withdrawal of this witness on 3 March 2009, ICC-01/04-01/06-T-139-CONF-ENG, pages 92-93.

⁶²³ ICC-01/04-01/06-1496-Conf-Exp-Anx80 (ERN: DRC-00109-065 – DRC-00109-099).

⁶²⁴ ICC-01/04-01/06-1496-Conf-Exp-Anx81 (ERN: DRC-00105-085 – DRC-00105-171).

⁶²⁵ ICC-01/04-01/06-1496-Conf-Exp-Anx90 (DRC-00091-218 – DRC-00091-270)

the most important, of the decision makers in the UPC, and that he was under house arrest in Kinshasa in August 2002 when ethnic crimes were committed in Bunia.⁶²⁶

The Trial Chamber considers that the information contained in the proposed alternative evidence covers the subject matter of the original document. However, following a request from the Chamber, the prosecution raised with the NGO [REDACTED].⁶²⁷

Upon review of the original document, its redacted version and the proposed alternative evidence, the Chamber is satisfied that the prosecution's proposals suffice to fulfil its disclosure obligations. These measures remove the need to disclose the original document and the identity of the source, while ensuring the protection of people at risk on account of the activities of the Court. The Chamber authorised the prosecution to provide the defence with the redacted document together with the items of proposed alternative evidence.

However, the prosecution was advised to change the layout of the documents provided by the NGO prior to disclosure, so as to preserve its anonymity. The prosecution indicated in an email of 17 November 2008 that it would provide the further information requested by the Chamber before the 18 November status conference.⁶²⁸ The prosecution notified the Chamber on 21 November 2008 that it had disclosed the redacted version of the document and the items of alternative evidence to the defence.⁶²⁹

On 23 December 2008, having further consulted with the information provider, the prosecution provided the Chamber with a summary of the document, which contained a description of the document along with the portions of the potentially exculpatory information, which were copied verbatim.⁶³⁰ Overall, the proposals satisfy the prosecution's disclosure obligations, whilst fulfilling the Court's duty to protect individuals following its activities. No lesser measures appear feasible, and the information, overall, is usable and intelligible. The Chamber therefore orders the prosecution to provide this summary to the defence forthwith.

⁶²⁶ ICC-01/04-01/06-1496-Conf-Exp-Anx91 (DRC-OTP-0151-0669 – DRC-OTP-0151-0670).

⁶²⁷ ICC-01/04-01/06-1496-Conf-Exp, paragraph 95. A letter from the NGO setting out its concerns in detail and expressing the NGO's willingness to discuss further options with the Chamber was submitted as ICC-01/04-01/06-1496-Conf-Exp-AnxB.

⁶²⁸ Email communication to the Chamber through the Legal Adviser to the Trial Division on 17 November 2008.

⁶²⁹ ICC-01/04-01/06-1502, paragraph 4: ICC-01/04-01/06-1502-Conf-AnxC (there is no ERN for this annex since it is a prosecution work product).

⁶³⁰ Narrative summary of document DRC-OTP-0171-2007 attached to email communication to the Chamber through the Legal Adviser to the Trial Division on 23 December 2008

Annex 49⁶³¹

This document is a 46 page report provided by [REDACTED] NGOs [REDACTED]. It is not dated other than the date which appears within the following heading or title [REDACTED].⁶³² The prosecution submitted that this document contains potentially exculpatory material insofar as it assists the accused as regards his role in the UPC relating to “insufficient command and control” and it includes Rule 77 material relating to support of the UPC by Uganda/Rwanda/the Kinshasa government.⁶³³ Due to the security concerns of [REDACTED] document, the prosecution proposed a summary of the relevant information, which was provided to the Trial Chamber.⁶³⁴

Having reviewed the summary,⁶³⁵ the Trial Chamber decided that the information contained therein adequately covers the potentially exculpatory and Rule 77 material in the original document, and that redactions are necessary to ensure the protection of people who could be at risk on account of the activities of the Court [REDACTED]. Therefore, the Trial Chamber authorised the prosecution to provide the defence with the summary by way of disclosure. Overall, the proposals satisfy the prosecution’s disclosure obligations, whilst fulfilling the Court’s duty to protect individuals following its activities. No lesser measures appear feasible, and the information, overall, is usable and intelligible.

On 21 November 2008, the prosecution notified the Trial Chamber that it had disclosed the summary to the defence, in compliance with the Trial Chamber’s decision.⁶³⁶

Annex 50⁶³⁷

Annex 50 is a French language version of Annex 49 and is listed as an original version in the prosecution’s chart of 21 October 2008.⁶³⁸ Annex 19 of the prosecution’s 12 November 2008 filing therefore relates to Annexes 49 and 50.⁶³⁹

⁶³¹ ICC-01/04-01/06-1477-Conf-Exp-Anx49.

⁶³² ICC-01/04-01/06-1477-Conf-Exp-Anx49 (ERN: DRC.00020.003 – DRC.00020.048). The prosecution’s highlighted version of this document is contained at ICC-01/04-01/06-1488-Conf-Exp-Anx2 (ERN: DRC.00020.003 – DRC.00020.048).

⁶³³ ICC-01/04-01/06-1488-Conf-Exp-Anx2 (ERN: DRC.00020.003 – DRC.00020.048) and Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

⁶³⁴ ICC-01/04-01/06-1496-Conf-Exp-Anx19 (ERN: DRC-OTP-0204-0369- DRC-OTP-0204-0370), as requested by the Trial Chamber at the *ex parte* status conference on 29 October 2008: Transcript of hearing on 29 October 2008, ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 45, line 20 to page 47, line 15.

⁶³⁵ ICC-01/04-01/06-1496-Conf-Exp-Anx19 (ERN: DRC-OTP-0204-0369- DRC-OTP-0204-0370).

⁶³⁶ ICC-01/04-01/06-1502-Conf-AnxC

⁶³⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx50.

⁶³⁸ ICC-01/04-01/06-1485-Anx.

⁶³⁹ ICC-01/04-01/06-1496-Conf-Exp, paragraph 96

Since they are the same document, the analysis and conclusions detailed for Annex 49 above apply equally to Annex 50.

Annex 51⁶⁴⁰

This 4 page document was provided by an NGO. It reports on a series of events that mainly took place in the spring of 2003; it describes the change in the security situation in Bunia, and it provides general information and a chronology of events.⁶⁴¹ The prosecution submitted that the document contained Rule 77 material insofar as it refers to the support of Uganda and the DRC government to Lendu militias in April 2003.⁶⁴²

The NGO provider of the document expressed serious security concerns [REDACTED].⁶⁴³ The prosecution informed the Chamber that three documents containing analogous evidence had already been disclosed to the defence.⁶⁴⁴

After reviewing these documents, the Chamber is satisfied that the proposed summary and the additional alternative evidence previously provided by the prosecution cover the Rule 77 information included in the original document. The Chamber specifically noted that the Rule 77 information had been included in the summary as exact quotes from the original document. The Chamber also noted the concerns expressed by the NGO, that, [REDACTED]. The Chamber considered that the disclosure of the summary of the document and the alternative evidence (already provided) sufficiently counter-balance any impact that the non-disclosure of this document might have on the rights of the accused. Overall, the proposals satisfy the prosecution's disclosure obligations, whilst fulfilling the Court's duty to protect individuals on account of the activities of the Court. No lesser measures appear feasible, and the information, overall, is usable and intelligible.

On 21 November 2008, the prosecution notified the Trial Chamber that it had disclosed the summary to the defence, in compliance with the Trial Chamber's decision.⁶⁴⁵

⁶⁴⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx51.

⁶⁴¹ ICC-01/04-01/06-1477-Conf-Exp-Anx51 (ERN: DRC.00021.034 – DRC.00021.037) and English translation thereof ICC-01/04-01/06-1477-Conf-Exp-Anx193 (ERN: DRC-OTP-0202-0481 – DRC-OTP-0202-0484).

⁶⁴² ICC-01/04-01/06-1488-Conf-Exp-Anx4 (ERN: DRC.00021.034 – DRC.00021.037).

⁶⁴³ ICC-01/04-01/06-1496-Conf-Exp, paragraph 96; ICC-01/04-01/06-1496-Conf-Exp-AnxC, page 16, item 51; and ICC-01/04-01/06-1496-Conf-Exp-Anx20 (ERN: DRC-OTP-0204-0371).

⁶⁴⁴ ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 4; ERN's: DRC-OTP-0003-0424, DRC-OTP-0154-1301, and DRC-OTP-0074-0797.

⁶⁴⁵ ICC-01/04-01/06-1502-Conf-AnxC, page 17.

Annex 52⁶⁴⁶

This 37 page document was provided by an NGO and is a report resulting from [REDACTED]. It describes the confrontations that occurred in Bunia and its environs on [REDACTED].⁶⁴⁷ The prosecution submitted that it contained Rule 77 material in its description of the support of Uganda to the UPC and other militia groups, and how the UPC received assistance from Rwanda, as well as having formed an alliance with a pro-Rwandan RCD-Goma armed group. It is suggested in the report that as a result the Ugandans fought against the UPC in Bunia in March 2003 and they held a meeting with militia leaders following the UPC defeat. The prosecution submitted that the document also contained information relating to the use of child soldiers by other armed groups, namely the Lendu, Ngiti and RCD-ML militias.⁶⁴⁸

Due to security concerns, the provider – who is not the author of the document – proposed disclosure was by way of a [REDACTED] summary [REDACTED].⁶⁴⁹ The prosecution informed the Chamber that analogous evidence had already been disclosed to the defence.⁶⁵⁰

After reviewing the information provided by the prosecution, the Chamber is satisfied that the proposed summary, along with the additional analogous evidence, adequately cover the Rule 77 information within the original document. The Chamber noted that the proposals are intended to protect the identity of [REDACTED]. As the information provider was not the author of the document, its identity is irrelevant. The Chamber considered that the summary and the additional analogous evidence counter-balance any impact that non-disclosure of this document could have on the rights of the accused. Overall, the proposals satisfy the prosecution's disclosure obligations, whilst fulfilling the Court's duty to protect individuals following its activities. No lesser measures appear feasible, and the information, overall, is usable and intelligible.

On 21 November 2008, the prosecution notified the Trial Chamber that it had disclosed the summary to the defence, in compliance with the Trial Chamber's decision.⁶⁵¹

⁶⁴⁶ ICC-01/04-01/06-1477-Conf-Exp-Anx52.

⁶⁴⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx52 (ERN: DRC.00021.038 – DRC.00021.074) and English translation thereto: .ICC-01/04-01/06-1477-Conf-Exp-Anx205.

⁶⁴⁸ | ICC-01/04-01/06-1488-Conf-Exp-Anx5 (ERN: DRC.00021.038 – DRC.00021.074).

⁶⁴⁹ ICC-01/04-01/06-1496-Conf-Exp, paragraph 96; ICC-01/04-01/06-1496-AnxC, page 16, item 52; and ICC-01/04-01/06-1496Anx21 (ERN: DRC-OTP-0204-0372 – DRC-OTP-0204-0376).

⁶⁵⁰ ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 5 ERN's: DRC-OTP-0165-0999; DRC-OTP-0074-0797; and DRC-OTP-0074-0422.

⁶⁵¹ ICC-01/04-01/06-1502-Conf-AnxC, page 18.

Annex 53⁶⁵²

This 44 page document was provided by an NGO and is a report from the Commission de Pacification de l'Ituri (CPI) to which a number of documents from different sources are attached: letters (July 2003), reports (June-May 2003) and tables referring to the general political, security, military and ethnic situation in Bunia.⁶⁵³ The NGO providing the information is not the author of the document. The prosecution submitted that this document contained Rule 77 material insofar as it refers to how in June 2003 the FRPI attacked Tchomia but was pushed back by the UPDF troops, who were supporting Chief Kahwa. The prosecution indicated that the information also related to the use of child soldiers by other armed groups, including that of Chief Kahwa.⁶⁵⁴ Due to [REDACTED], it proposed disclosure of this document with redactions.⁶⁵⁵ The redacted version omits all the documents, save one, which contains all the Rule 77 information highlighted by the prosecution in its 22 October 2008 filing.⁶⁵⁶ This single document is served in its entirety. The other documents contain no potentially exculpatory or Rule 77 information (as highlighted by the prosecution).⁶⁵⁷ The prosecution indicated that analogous evidence to the aforementioned Rule 77 material had already been disclosed to the defence.⁶⁵⁸

After reviewing the information provided by the prosecution, the Chamber is satisfied that although the document cannot be disclosed to the defence in full, the proposed redacted version includes, in non-redacted form, all of the Rule 77 information as identified by the prosecution. The Chamber considered that the non-disclosure of the other documents was necessary to protect [REDACTED]. Given that this material does not contain any potentially exculpatory or Rule 77 information, there is no prejudice to the defence. Furthermore, the prosecution has already disclosed analogous information. The Chamber considered that the proposals counter-balance any impact that non-disclosure of the other documents could have on the rights of the accused. Overall, the prosecution has discharged its disclosure obligations, whilst fulfilling the Court's duty to protect individuals following its activities. No lesser measures appear feasible, and the information, overall, is usable and intelligible.

⁶⁵² ICC-01/04-01/06-1477-Conf-Exp-Anx53.

⁶⁵³ ICC-01/04-01/06-1477-Conf-Exp-Anx53 (ERN: DRC.00021.116 - DRC.00021.159) and partial English translation thereof. ICC-01/04-01/06-1477-Conf-Exp-Anx211 (ERN: DRC-OTP-0203-0231 - DRC-OTP-0203-0233).

⁶⁵⁴ ICC-01/04-01/06-1488-Conf-Exp-Anx6 (ERN: DRC.00021.116 - DRC.00021.159).

⁶⁵⁵ ICC-01/04-01/06-1496-Conf-Exp, paragraph 97; ICC-01/04-01/06-1496-Conf-Exp-AnxC, page 17, item 53; and ICC-01/04-01/06-1496-Conf-Exp-Anx22 (ERN: DRC.00021.140 - DRC.00021.159).

⁶⁵⁶ ICC-01/04-01/06-1496-Conf-Exp, paragraph 97; ICC-01/04-01/06-1496-Conf-Exp-AnxC, page 17, item 53; ICC-01/04-01/06-1496-Conf-Exp-Anx22 (ERN: DRC.00021.140 - DRC.00021.159), and ICC-01/04-01/06-1488-Conf-Exp-Anx6 (ERN: DRC.00021.116 - DRC.00021.159), page 35.

⁶⁵⁷ ICC-01/04-01/06-1488-Conf-Exp-Anx6 (ERN: DRC.00021.116 - DRC.00021.159).

⁶⁵⁸ ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 5, ERN's: DRC-OTP-0019-0153; DRC-OTP-0004-0058; DRC-OTP-0152-0072; DRC-OTP-0074-0024; DRC-OTP-0105-0209

On 21 November 2008, the prosecution notified the Trial Chamber that it had disclosed the redacted version to the defence (in other words, the non-redacted version of the single document), in compliance with the Trial Chamber's decision.⁶⁵⁹

Annex 54⁶⁶⁰

This 69 page document was provided by an NGO and consists of various world press articles extracted from sources such as Le Monde, Le Soir en Ligne, UN news Service, Le Phare and the BBC between 10 March and November 2003. The articles report ongoing events relating to the wars or conflict in Bunia, and on the particular involvement by Ugandan and Rwandan.⁶⁶¹ The prosecution submitted that the document contains potentially exculpatory information relating to so-called "benevolent acts" of Thomas Lubanga in collaborating with humanitarian organisations and reveals that he was prepared to negotiate and co-operate with others.⁶⁶² The prosecution submitted that the document contains Rule 77 material, namely the support provided by the neighbouring countries of Uganda, Rwanda, Zimbabwe, Angola and Namibia, *inter alia*, by arming both sides (Lendu and Hema) as proxy militias.⁶⁶³

The prosecution submitted that disclosure could be made either in the form of a summary of the document or by making redactions so as to protect the safety and security of [REDACTED].⁶⁶⁴ At the request of the Trial Chamber, the prosecution provided a version of this document, which contained one minor redaction that did not relate to any potentially exculpatory or Rule 77 material.⁶⁶⁵

It is to be stressed that the information provider was not the author of these documents and therefore withholding its identity and that of its staff does not disadvantage the defence and it does not affect the substance of the document; nevertheless this step is necessary to ensure the protection of people who may be at risk on account of the activities of the Court. The document remains intelligible and an alternative protective measure is not available. The Trial Chamber authorised the prosecution to provide the defence with the redacted version by way of disclosure,

⁶⁵⁹ ICC-01/04-01/06-1502-Conf-AnxC, page 18.

⁶⁶⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx54.

⁶⁶¹ ICC-01/04-01/06-1477-Conf-Exp-Anx54 (ERN: DRC.00021.160 – DRC.00021.228). The English translation of this document is contained at ICC-01/04-01/06-1477-Conf-Exp-Anx213 (ERN: DRC-OTP-0203-0129 – DRC-OTP-0203 - 0148) and the prosecution's hi-lighted version of this document is contained at ICC-01/04-01/06-1488-Conf-Exp-Anx7 (ERN: DRC.00021.160 – DRC.00021.228).

⁶⁶² ICC-01/04-01/06-1488- Conf-Exp-Anx7 (ERN: DRC.00021.160 – DRC.00021.228) and Conf-Exp-Anx94 (no ERN as this is a prosecution work product).

⁶⁶³ ICC-01/04-01/06-1488- Conf-Exp-Anx7 (ERN: DRC.00021.160 – DRC.00021.228) and Conf-Exp-Anx94 (no ERN as this is a prosecution work product)

⁶⁶⁴ ICC-01/04-01/06-1430-Conf-Exp, paragraphs 36-38 and ICC-01/04-01/06-1477-Conf-Exp, paragraph 19(ii).

⁶⁶⁵ ICC-01/04-01/06-1496-Conf-Exp-Anx23 (ERN: DRC.00021.160 – DRC.00021.228) as requested by the Trial Chamber at the *ex parte* status conference on 29 October 2008. Transcript of hearing on 29 October 2008, ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 45, line 20 to page 47, line 15.

having satisfied itself that this is strictly necessary and that no lesser measures are feasible.

On 21 November 2008, the prosecution notified the Trial Chamber that it had disclosed the redacted version to the defence, in compliance with the Trial Chamber's decision.⁶⁶⁶

Annex 55⁶⁶⁷

This document is a 9 page document provided by an NGO. It contains a United Nations press release dated 21 June 2003 and a report [REDACTED] following reports of fighting in these areas.⁶⁶⁸ The prosecution submitted that it contains Rule 77 material in relation to support of the UPC by Uganda/Rwanda/Kinshasa, and *tu quoque* evidence, namely that several witnesses stated that hundreds of young recruits from the PUSIC were brought to Uganda for training.⁶⁶⁹

The prosecution submitted that disclosure could be effected either in the form of a summary of the document or by making redactions so as to protect the safety and security of [REDACTED].⁶⁷⁰ At the request of the Trial Chamber the prosecution provided a summary for disclosure.⁶⁷¹ This covers the only document which the prosecution identified as containing Rule 77 material.

Having reviewed the summary,⁶⁷² the Trial Chamber determined that it adequately reflects the information contained in the original document. The Chamber cross-referenced the portions of the summary that have been transcribed verbatim with the evidence considered by the prosecution to include Rule 77 material, and it concluded that these portions sufficiently correspond. As it appears there is no potentially exculpatory or Rule 77 information in the other documents of this annex, the Chamber resolved that providing the summary of this single relevant document was acceptable. It noted that if the document is disclosed in its original, complete form, the safety and welfare of [REDACTED], and possibly others, may be at risk on

⁶⁶⁶ Prosecution's Notification of Disclosure of Exculpatory and Rule 77 Material to the Defence on 18 and 20 November 2008, 21 November 2008. ICC-01/04-01/06-1502-Conf-AnxC.

⁶⁶⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx55.

⁶⁶⁸ ICC-01/04-01/06-1477-Conf-Exp-Anx55 (ERN: DRC.00021.240 – DRC.00021.248). The English translation of this document is contained at ICC-01/04-01/06-1477-Conf-Exp-Anx203 (ERN: DRC-OTP-0203-0149 – DRC-OTP-0203 - 0158) and the prosecution's hi-lighted version of this document is contained at ICC-01/04-01/06-1488-Conf-Exp-Anx8 (ERN: DRC.00021.240 – DRC.00021.248).

⁶⁶⁹ ICC-01/04-01/06-1488-Conf-Exp-Anx8 (ERN: DRC.00021.240 – DRC.00021.248) and Conf-Exp-Anx94 (no ERN as this is a prosecution work product).

⁶⁷⁰ ICC-01/04-01/06-1430-Conf-Exp, paragraphs 36 – 38 and ICC-01/04-01/06 – 1477-Conf-Exp, paragraph 19(ii)

⁶⁷¹ ICC-01/04-01/06-1496-Conf-Exp-Anx24 (ERN: DRC-OTP-0204-0377 – DRC-OTP-0204-378) as requested by the Trial Chamber at the *ex parte* status conference on 29 October 2008: Transcript of hearing on 29 October 2008, ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 45, line 20 to page 47, line 15.

⁶⁷² ICC-01/04-01/06-1496-Conf-Exp-Anx24 (ERN: DRC-OTP-0204-0377 – DRC-OTP-0204-378)

account of the activities of the Court. It is to be emphasised that while the proposal for disclosure was a summary rather than a redacted document, those sections that had been identified as Rule 77 material were quoted verbatim. The Chamber is, therefore, satisfied that the necessary protective measures do not infringe upon the rights of the accused, and it authorised the prosecution to disclose the summary to the defence. Overall, the proposals satisfy the prosecution's disclosure obligations, whilst fulfilling the Court's duty to protect individuals following its activities. No lesser measures appear feasible, and the information, overall, is usable and intelligible.

On 21 November 2008, the prosecution notified the Trial Chamber that it had disclosed the summary to the defence, in compliance with the Trial Chamber's decision.⁶⁷³

Annex 56⁶⁷⁴

This document is a 22 page [REDACTED] narrative account of the confrontations in the Ituri district, dating back to 1960 through to June 2003. It describes when certain leaders took up their positions, including Thomas Lubanga, and it refers to crimes committed in the area, along with dates of specific attacks.⁶⁷⁵ The prosecution submitted that the document contains Rule 77 material relating to the support of the UPC by Uganda/ Rwanda/ Kinshasa, as well as certain *tu quoque* material. In particular the document indicates that the UPC pursued the RCD-ML in August 2002 with the support of the UPDF; Rwanda delivered weapons to UPC in Mandro in 2002; and in May 2003, the Ugandans undertook to train young recruits of the PUSIC.⁶⁷⁶ The information provider consented to providing either a summary or a redacted version of the document since it fears [REDACTED].⁶⁷⁷ Having liaised with the NGO, the prosecution agreed to provide a summary of the document⁶⁷⁸ which was submitted to the Trial Chamber on 12 November 2008.⁶⁷⁹

Having reviewed the summary, the Trial Chamber determined that it corresponds sufficiently to the information contained in the original document. There was, however, an error in translation in the English at paragraph 2.1. The French original

⁶⁷³ ICC-01/04-01/06-1502-Conf-AnxC.

⁶⁷⁴ ICC-01/04-01/06-1477-Conf-Exp-Anx56.

⁶⁷⁵ ICC-01/04-01/06-1477-Conf-Exp-Anx56 (ERN: DRC.00021.311 – DRC.00021.332). The English translation of this document is contained at ICC-01/04-01/06-1477-Conf-Exp-Anx208 (ERN: DRC-OTP-0202-0492 – DRC- OTP-0202 - 0504) and the prosecution's hi-lighted version of this document is contained at ICC-01/04-01/06-1488-Conf-Exp-Anx9 (ERN: DRC.00021.311 – DRC.00021.332).

⁶⁷⁶ ICC-01/04-01/06-1488- Conf-Exp-Anx9 (DRC.00021.311 – DRC.00021.332) and Conf-Exp-Anx94 (no ERN as prosecution work-product).

⁶⁷⁷ ICC-01/04-01/06-1385-Conf-Exp ; ICC-01/04-01/06-1430-Conf-Exp, paragraphs 36-38, ICC-01/04-01/06-1477-Conf-Exp, paragraph 19(ii).

⁶⁷⁸ Transcript of hearing on 29 October 2008, ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 45, line 20 to page 47, line 15.

⁶⁷⁹ ICC-01/04-01/06-1496-Conf-Exp-Anx25 (ERN: DRC-OTP-0204-0379).

(which is also copied verbatim) states, “Le 9 Août 2002, l’UPC de Thomas Lubanga prend [...]”⁶⁸⁰ whereas the English translation reads, “the UPC chased [...] in August 2002”; therefore, in the latter version neither the precise date of the event nor the UPC’s connection with Thomas Lubanga is included.⁶⁸¹ The Trial Chamber informed the prosecution of this error, which it undertook to rectify.⁶⁸²

The Chamber noted that the summary reflects the content of the document and contains all the Rule 77 material, highlighted by the prosecution, in full. It further noted the fears of the NGO with regard to the security of [REDACTED], and determined that on these facts [REDACTED] should not be put at risk on account of activities of the Court. The necessary and consequential protective measures do not infringe upon the rights of the accused, as all the relevant information had been made available to him in the summary. Overall, the proposals satisfy the prosecution’s disclosure obligations, whilst fulfilling the Court’s duty to protect individuals following its activities. No lesser measures appear feasible, and the information, overall, is usable and intelligible.

On 21 November 2008, the prosecution notified the Trial Chamber that it had disclosed the summary to the defence, in compliance with the Trial Chamber’s decision.⁶⁸³

Annex 57⁶⁸⁴

This 9 page document is a report of [REDACTED], provided by an NGO.⁶⁸⁵ The prosecution submitted that it contains Rule 77 information relating to the support provided by Uganda and Rwanda,⁶⁸⁶ in that the document refers to the UPC being supported by the UPDF and Rwandan soldiers, as well as Rwanda having made investments of arms, ammunition and troops.⁶⁸⁷ The NGO resisted disclosure of its identity [REDACTED].⁶⁸⁸ It did, however, consent to providing either a summary or a redacted version of the document.⁶⁸⁹ In the event, the prosecution submitted the

⁶⁸⁰ ICC-01/04-01/06-1496-Conf-Exp- Anx 25 (ERN: DRC-OTP-0204-0379).

⁶⁸¹ ICC-01/04-01/06-1496-Conf-Exp-Anx25 (ERN: DRC-OTP-0204-0379).

⁶⁸² Transcript of hearing on 17 November 2008, ICC-01/04-01/06-T-96-CONF-EXP, page 23, lines 3-5 and Email communication to the Trial Chamber through the Legal Adviser to the Trial Division on 17 November 2008.

⁶⁸³ ICC-01/04-01/06-1502-Conf-AnxC.

⁶⁸⁴ ICC-01/04-01/06-1477-Conf-Exp-Anx57.

⁶⁸⁵ ICC-01/04-01/06-1477-Conf-Exp-Anx57 (ERN: DRC-00021-340 – DRC-00021-348). An English translation can be found in ICC-01/04-01/06-1477-Conf-Exp-Anx194 (ERN: DRC-OTP-0202-0505 – DRC-OTP-0202-0514).

⁶⁸⁶ ICC-01/04-01/06-1488-Conf-Exp-Anx10 (ERN: DRC-00021-340 – DRC-00021-348) and ICC-01/04-01/06-1488-Conf-Exp-Anx94 (No ERN as this is prosecution work product).

⁶⁸⁷ ICC-01/04-01/06-1488-Conf-Exp-Anx10 (ERN: DRC-00021-340 – DRC-00021-348) and ICC-01/04-01/06-1488-Conf-Exp-Anx94 (No ERN as this is a prosecution work product).

⁶⁸⁸ ICC-01/04-01/06-1430-Conf-Exp. paragraphs 36-38.

⁶⁸⁹ ICC-01/04-01/06-1477-Conf-Exp. paragraph 19(ii).

former for the Chamber's consideration⁶⁹⁰ and the sections identified by the prosecution as containing Rule 77 material (indicating support of the UPC by Uganda/Rwanda/the Kinshasa government) were included as verbatim quotes from the French original (with English translations).

Upon review of the document, the Chamber authorised disclosure of the summary in order to protect the NGO and others who could be at risk on account of the activities of the Court. The Court noted that the NGO was not the author of the document and would, therefore, be unable to elaborate on the information contained therein. A lesser alternative protective measure was not available. Since the proposed disclosure contains all the Rule 77 information – by way of exact quotations, within a general summary of the remainder of the document – the Chamber considers that the rights of the accused are not prejudiced.

On 21 November 2008, the prosecution notified the Trial Chamber that it had disclosed the summary to the defence, in compliance with the Trial Chamber's decision.⁶⁹¹

Annex 58⁶⁹²

This 33 page annex was provided by an NGO and includes several reports concerning the abuse of human rights, the more general human rights situation and the peace process in Ituri. It includes [REDACTED].⁶⁹³ The prosecution submitted that this document contained potentially exculpatory material insofar as it refers to insufficient command and control by Thomas Lubanga, and in particular that there were two opposing factions within the UPC. The prosecution also submitted that there is Rule 77 material relating to the support given by Rwanda to the UPC (by providing arms and ammunition), and the alliance reached between the UPC and RCD-Goma, while the Ugandans formed a coalition with enemies of the UPC (the PUSIC, FNI and FPDC) and UPC dissidents.⁶⁹⁴

As the information provider expressed concern about the security [REDACTED], it consented to disclosure by way of a summary and an extract from the document. The prosecution divided this annex into three parts. As regards the first, the prosecution submitted a summary that refers very generally to the structure and content of the original document, and thereafter each of the sections highlighted by the prosecution as providing potentially exculpatory material or Rule 77 material are

⁶⁹⁰ ICC-01/04-01/06-1496-Conf-Exp-Anx26 (ERN: DRC-OTP-0204-0380 – DRC-OTP-0204-0382).

⁶⁹¹ ICC-01/04-01/06-1502-Conf-AnxC.

⁶⁹² ICC-01/04-01/06-1477-Conf-Exp-Anx58.

⁶⁹³ ICC-01/04-01/06-1477-Conf-Exp-Anx58 (ERN: DRC.00021.349 – DRC.00021.381). An English translation can be found in ICC-01/04-01/06-1477-Conf-Exp-Anx191 (ERN: DRC-OTP-0202-0418 – DRC-OTP-0202-0420)

⁶⁹⁴ ICC-01/04-01/06-1488-Conf-Exp-Anx11 (ERN: DRC.00021.349 – DRC.00021.381).

quoted in full. These quotes are accompanied by an introductory sentence and an English translation.⁶⁹⁵ In relation to the second part – [REDACTED] – the prosecution informed the Chamber that this could be disclosed to the defence in full.⁶⁹⁶ The prosecution informed the Chamber that the pages comprising the third part had already been disclosed to the defence since they are duplicates of incriminatory evidence disclosed on 21 July 2006.⁶⁹⁷ Additionally, the prosecution had already disclosed analogous information to the defence.⁶⁹⁸

After reviewing the information provided by the prosecution, the Chamber is satisfied that although the document cannot be disclosed to the defence in full, due to the risks for the [REDACTED] NGO, the proposed summarized version of the first part includes, in non-redacted, form all of the potentially exculpatory and Rule 77 information in the original document, as identified by the prosecution. The Chamber noted that of the other two parts of the document, one had already been disclosed and the prosecution proposed disclosing the other in non-redacted form. Furthermore, the prosecution has disclosed analogous evidence to the defence. The Chamber also accepted that the NGO was not the author of the reports and would, therefore, not be able to elaborate on them, and no lesser alternative protective measure was available. The Chamber concluded that disclosure of this summary (which includes the key elements in non-redacted form) and the additional analogous evidence counter-balances any impact that non-disclosure of the entire document might have on the rights of the accused.

On 21 November 2008, the prosecution notified the Trial Chamber that it had disclosed the summary to the defence, in compliance with the Trial Chamber's decision.⁶⁹⁹

Annex 59⁷⁰⁰

This 10 page document is an NGO report [REDACTED].⁷⁰¹ The prosecution submitted that it contained Rule 77 material insofar as it refers to Uganda's support of the UPC.⁷⁰² The information indicates that on 9 August 2002 the UPC, led by Thomas Lubanga and assisted by contingents of the Ugandan Army, attacked the

⁶⁹⁵ ICC-01/04-01/06-1496-Conf-Exp, paragraphs 98-99; ICC-01/04-01/06-1496-Conf-Exp-AnxC, page 19, item 58; and ICC-01/04-01/06-1496-Conf-Exp-Anx27 (ERN: DRC-OTP-0204.0383 – DRC-OTP-0386).

⁶⁹⁶ ICC-01/04-01/06-1496-Conf-Exp, paragraphs 98-99.

⁶⁹⁷ The prosecution informs that this document is a duplicate of document DRC-OTP-0043-0003 disclosed to the defence as incriminating evidence on 21 July 2006.

⁶⁹⁸ ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 8, DRC-OTP-0001-0251, DRC-OTP-0163-0218, DRC-OTP-0165-0999, DRC-OTP-0174-0002, DRC-OTP-0126-0422, DRC-OTP-0181-0459, DRC-OTP-0162-0002, DRC-OTP-0127-0074, CAR-OTP-0005-0381, DRC-OTP-0019-0153, DRC-OTP-0074-0015, DRC-OTP-0105-0085.

⁶⁹⁹ ICC-01/04-01/06-1502-Conf-AnxC.

⁷⁰⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx59.

⁷⁰¹ ICC-01/04-01/06-1477-Conf-Exp-Anx59 (ERN: DRC-00021-456 – DRC-00021-465).

⁷⁰² ICC-01/04-01/06-1488-Conf-Exp-Anx12 (ERN: DRC-00021-456 – DRC-00021-465), ICC-01/04-01/06-1488-Conf-Exp-Anx94 (No ERN as this is a prosecution work product).

city of Bunia.⁷⁰³ The prosecution proposed disclosing a version of the document in which only [REDACTED].⁷⁰⁴ The prosecution indicated that the name of the institution that published the report could be disclosed.⁷⁰⁵ It is to be noted that the NGO providing the document was neither the author nor the publisher of this report.

Having reviewed the document and noting that the redactions are very limited and that the content of the document is to be disclosed in full, the Trial Chamber authorised disclosure of the redacted version. [REDACTED], the Chamber found that this is acceptable in view of the security situation in the DRC [REDACTED]. The rights of the accused are adequately protected by making the content of the document fully available, including the Rule 77 material, which has not been redacted. The Chamber further noted that disclosing the identity of the information provider was not necessary, as it was neither the author nor publisher of the document, and would not be able to assist further. It considered that the concerns expressed by the provider in relation to [REDACTED] were reasonable, and that in consequence non-disclosure of its identity was necessary to give adequate protection to those endangered on account of the activities of the Court. Overall, the proposals satisfy the prosecution's disclosure obligations, whilst enabling the Court to protect those put at risk by the activities of the Court. No lesser measures appear feasible, and the information, overall, is usable and intelligible.

On 21 November 2008, the prosecution notified the Trial Chamber that it had disclosed the summary to the defence, in compliance with the Trial Chamber's decision.⁷⁰⁶

Annex 60⁷⁰⁷

This 16 page document is a compilation of 8 letters in French from communities of different ethnic origin addressed to various officials or persons deemed to have influence.⁷⁰⁸ The NGO providing the information was not the author of any of the letters. The prosecution submitted that they contain Rule 77 material indicating Ugandan support of the UPC, and specifically that the Ugandans supported the

⁷⁰³ ICC-01/04-01/06-1488-Conf-Exp-Anx12 (ERN: DRC-00021-456 – DRC-00021-465), ICC-01/04-01/06-1488-Conf-Exp-Anx94 (No ERN as this is a prosecution work product).

⁷⁰⁴ ICC-01/04-01/06-1496-Conf-Exp-Anx28 (ERN: DRC-00021-456 – DRC-00021-465).

⁷⁰⁵ Transcript of hearing on 17 November 2008, ICC-01/04-01/06-T-96-CONF-EXP-ENG, page 23 lines 6-14; Email communication to the Chamber through the Legal Adviser to the Trial Division on 17 November 2008.

⁷⁰⁶ ICC-01/04-01/06-1502 paragraphs 3 and 4; ICC-01/04-01/06-1502-Conf-AnxB; ICC-01/04-01/06-1502-Conf-AnxC (No ERN as the two charts are prosecution work products).

⁷⁰⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx60.

⁷⁰⁸ ICC-01/04-01/06-1477-Conf-Exp-Anx60 (ERN: DRC-00021-616 – DRC-00021-631). An English translation of one of the letters (ERN: DRC-00021.627 – DRC-00021.630) can be found in ICC-01/04-01/06-1477-Conf-Exp-Anx209 (ERN: DRC-OTP-0202-0515 – DRC-OTP-0202-0517).

Hema tribe.⁷⁰⁹ The prosecution submitted a final non-redacted version for disclosure,⁷¹⁰ which the Chamber approved.

In due course, the prosecution confirmed that the document had been disclosed to the defence in full non-redacted form.⁷¹¹

Annex 61⁷¹²

This 2 page document is a hand-written letter, addressed to MONUC, and provided by an NGO which is not the author.⁷¹³ The prosecution submitted that it contains Rule 77 material relating to support of the UPC by Uganda, insofar as the information indicates that the UPDF was protecting the Hema militias.⁷¹⁴ The prosecution proposed disclosure of this document with redactions concealing the [REDACTED].⁷¹⁵

The redactions are, therefore, very limited and the document remains intelligible and usable. Bearing in mind that the Rule 77 information is provided to the defence in full, and given the danger of [REDACTED], the Chamber approved disclosure of the redacted version. The NGO expressed serious concerns in relation to the safety of [REDACTED], and since it is not the author of the letter and would, therefore, not be able to provide further information, the Chamber determined that protecting its identity would not undermine the rights of the accused. No lesser measures are feasible.

The prosecution notified the Chamber on 21 November 2008 that it had disclosed the document as ordered.⁷¹⁶

⁷⁰⁹ ICC-01/04-01/06-1488-Conf-Exp-Anx13 (ERN: DRC-00021-616 – DRC-00021-631); ICC-01/04-01/06-1488-Conf-Exp-Anx94 (no ERN as this is a prosecution work product).

⁷¹⁰ ICC-01/04-01/06-1496-Conf-Exp-Anx29 (ERN: DRC-00021-616 – DRC-00021-631); The table in Annex 94 to filing 1496 indicates that it is a redacted version, but the prosecution confirmed that the submitted version without redactions is the one to be disclosed, Transcript of hearing on 17 November 2008, ICC-01/04-01/06-T-96-CONF-EXP-ENG, page 23 lines 23-25, page 24 lines 1-11.

⁷¹¹ Email communication to the Chamber through the Legal Adviser to the Trial Division on 8 December 2008.

⁷¹² ICC-01/04-01/06-1477-Conf-Exp-Anx61.

⁷¹³ ICC-01/04-01/06-1477-Conf-Exp-Anx61 (ERN: DRC-00021-632 – DRC-00021-633). An English translation was filed as ICC-01/04-01/06-1477-Conf-Exp-Anx195 (ENR: DRC-OTP-0202-0518 – DRC-OTP-0202-0519).

⁷¹⁴ ICC-01/04-01/06-1488-Conf-Exp-Anx94 (No ERN as the table is a prosecution work product); ICC-01/04-01/06-1488-Conf-Exp-Anx14 (ERN: DRC-00021-632 – DRC-00021-633).

⁷¹⁵ ICC-01/04-01/06-1496-Conf-Exp-Anx30 (ERN: DRC-00021-632 – DRC-00021-633).

⁷¹⁶ ICC-01/04-01/06-1502, paragraph 4; ICC-01/04-01/06-1502-Conf-AnxC (No ERN as this is a prosecution work product).

Annex 62⁷¹⁷

This 6 page document comprises 3 letters written in French and provided by an NGO.⁷¹⁸ The prosecution submitted that the document contained Rule 77 material relating to Ugandan support for the UPC, insofar as the information indicates that the UPDF acted in support of Thomas Lubanga's group.⁷¹⁹ The prosecution had submitted a version for approval by the Chamber, in which [REDACTED] were redacted, [REDACTED].⁷²⁰ [REDACTED]. While the source of the document, therefore, is not revealed and there are other limited redactions, the Rule 77 information is made available to the defence in full. The document remains intelligible and an alternative protective measure was not available.

Upon review of the document, the Chamber determined that withholding [REDACTED], having balanced the rights of the accused against the need to protect those whose lives may be put at risk due to the activities of the Court. Moreover, the Chamber noted the concerns of the NGO with regard to the safety of [REDACTED], and concluded that protecting its identity would not lead to an infringement of the rights of the accused, particularly since the NGO was not the author of the document and would, therefore, not be able to provide further information. The Rule 77 value of this material is contained in the non-redacted text, and in all the circumstances the Chamber approved disclosure of the redacted version to the defence, given the proposals satisfy the prosecution's disclosure obligations, whilst fulfilling the Court's duty to protect individuals following its activities. No lesser measures appear feasible, and the information, overall, is usable and intelligible.

The prosecution notified the Chamber on 21 November 2008 that it had disclosed the document in accordance with the decision of the Chamber.⁷²¹

Annex 63⁷²²

This document is a 94 page report on Peace and Reconstruction in Ituri, dated 14 April 2003, provided by an NGO that is not the author. The report sets out the mission of the Commission de Pacification de l'Ituri (Ituri Pacification Commission)

⁷¹⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx62.

⁷¹⁸ ICC-01/04-01/06-1477-Conf-Exp-Anx62 (ERN: DRC-00021-656 – DRC-00021-661). An English translation was submitted as ICC-01/04-01/06-1477-Conf-Exp-Anx204 (ERN: DRC-OTP-0203-0159 – DRC-OTP-0203-0164).

⁷¹⁹ ICC-01/04-01/06-1488-Conf-Exp-Anx15 (ERN: DRC-00021-656 – DRC-00021-661).

⁷²⁰ Transcript of hearing on 29 October 2008, ICC-01/04-01/06-T-95-Conf-Exp-ENG, page 45, line 20 to page 47, line 15; ICC-01/04-01/06-1496-Conf-Exp-Anx31 (ERN: DRC-00021-656 – DRC-00021-661).

⁷²¹ ICC-01/04-01/06-1502, paragraph 4; ICC-01/04-01/06-1502-Conf-AnxC (No ERN as this is a prosecution work product).

⁷²² ICC-01/04-01/06-1477-Conf-Exp-Anx63.

and details hostilities in the region as well as proposals for peace.⁷²³ The prosecution submitted that it contains potentially exculpatory information relating to efforts to demobilise, by indicating that the armed groups participating in the Commission de Pacification de l'Ituri agreed to stop using child soldiers; and in relation to pacification efforts, that the UPC had participated in the Commission de Pacification de l'Ituri.⁷²⁴ The prosecution submitted that all of the relevant content of this document is already available to the defence in a disclosed item of evidence.⁷²⁵ The NGO consented to providing either a summary or a redacted version of the document since it fears [REDACTED], and that [REDACTED] if the document is disclosed in full.⁷²⁶ Following liaison, the prosecution agreed to provide a final version⁷²⁷ which it submitted to the Trial Chamber on 12 November 2008.⁷²⁸ The prosecution confirmed, in the event, that this final version did not contain any redactions and could be disclosed in full.⁷²⁹

The Trial Chamber authorised disclosure to the defence of the non-redacted document. The identity of the information provider is not revealed in the original version, and therefore the NGO remains protected.

On 21 November 2008, the prosecution notified the Trial Chamber that it had effected disclosure, in compliance with the Trial Chamber's decision.⁷³⁰

Annex 64⁷³¹

This 5 page document, dated 8 July 2003, is a speech by the defendant entitled "Discours prononcé par Thomas Lubanga à l'occasion du rally UPC tenu à Bunia le mardi 8 juillet 2003", provided by an NGO.⁷³² The prosecution submitted that it contains potentially exculpatory information, namely that Thomas Lubanga asked all tribes to return to Bunia, and that he wanted to establish unity, not by waging an

⁷²³ ICC-01/04-01/06-1477-Conf-Exp-Anx63 (ERN: DRC.00021.685 – DRC.00021.778). The prosecution's highlighted version of this document is contained at ICC-01/04-01/06-1488-Conf-Exp-Anx16 (ERN: DRC.00021.685 – DRC.00021.778).

⁷²⁴ ICC-01/04-01/06-1488-Conf-Exp-Anx16 (ERN: DRC.00021.685 – DRC.00021.778) and Conf-Exp-Anx94 (no ERN as this is a prosecution work product).

⁷²⁵ DRC-OTP-0107-0223.

⁷²⁶ ICC-01/04-01/06-1385-Conf-Exp; ICC-01/04-01/06-1430-Conf-Exp. paragraphs 36-38; ICC-01/04-01/06-1477-Conf-Exp. paragraph 19(ii).

⁷²⁷ Transcript of hearing on 29 October 2008, ICC-01/04-01/06-T-95-CONF-EXP-ENG. page 45, line 20 to page 47, line 15.

⁷²⁸ ICC-01/04-01/06-1496-Conf-Exp-Anx32 (ERN: DRC.00021.685 – DRC.00021.778).

⁷²⁹ Transcript of hearing on 17 November 2008, ICC-01/04-01/06-T-96-CONF-EXP. page 23, lines 18- page 24 line 3.

⁷³⁰ ICC-01/04-01/06-1502-Conf-AnxC.

⁷³¹ ICC-01/04-01/06-1477-Conf-Exp-Anx64.

⁷³² ICC-01/04-01/06-1477-Conf-Exp-Anx64 (ERN: DRC.00021.782 – DRC.00021.786). The English translation of this document is contained at ICC-01/04-01/06-1477-Conf-Exp-Anx200 (ERN: DRC-OTP-0202-0600 - DRC-OTP-0202-0605). The prosecution's hi-lighted version of this document is contained at ICC-01/04-01/06-1488-Conf-Exp-Anx17 (ERN: DRC.00021.782 – DRC.00021.786).

ethnic war but by political means.⁷³³ The information provider consented to providing either a summary or a redacted version of the document since it fears [REDACTED].⁷³⁴ The prosecution informed the Trial Chamber that it did not have the speech made by Thomas Lubanga in its possession, and agreed that it could be made available to the defence once any references to the NGO had been removed.⁷³⁵ On 12 November 2008, the prosecution provided the Trial Chamber with the version proposed for disclosure to the defence.⁷³⁶ The Trial Chamber noted, however, that it did not contain any redactions or references to the NGO.

In the circumstances, the Trial Chamber authorised full disclosure.

On 21 November 2008, the prosecution notified the Trial Chamber that it had disclosed the non-redacted version to the defence, in compliance with the Trial Chamber's decision.⁷³⁷

Annex 65⁷³⁸

This 1 page document is a chart entitled "Diag 7: Liens entre l'Ouganda et les groupes armés en Ituri avant Août 2002," provided by an NGO.⁷³⁹ The prosecution submitted that the whole chart contained Rule 77 material relating to support rendered to the UPC by Uganda, Kinshasa and Rwanda, as it indicates the links between Kinshasa, Uganda and Rwanda, and the different armed groups in Ituri before August 2002.⁷⁴⁰ The prosecution agreed to disclose the chart, having removed all references to the NGO.⁷⁴¹ However, since there is no information relating to the NGO on the chart, a non-redacted version was submitted and approved for disclosure.⁷⁴²

The prosecution notified the Chamber on 21 November 2008 that it had disclosed the document in accordance with the decision of the Chamber.⁷⁴³

⁷³³ ICC-01/04-01/06-1488-Conf-Exp-Anx17 (ERN: DRC.00021.782 – DRC.00021.786) and Conf-Exp-Anx94 (no ERN as this is a prosecution work product).

⁷³⁴ ICC-01/04-01/06-1385-Conf-Exp; ICC-01/04-01/06-1430-Conf-Exp, paragraphs 36-38; ICC-01/04-01/06-1477-Conf-Exp, paragraph 19(ii).

⁷³⁵ Transcript of hearing on 29 October 2008, ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 48, lines 4-13.

⁷³⁶ ICC-01/04-01/06-1496-Conf-Exp, paragraph 100 and Conf-Exp-Anx33 (ERN: DRC.00021.782 – DRC.00021.786)

⁷³⁷ ICC-01/04-01/06-1502-Conf-AnxC

⁷³⁸ ICC-01/04-01/06-1477-Conf-Exp-Anx65.

⁷³⁹ ICC-01/04-01/06-1477-Conf-Exp-Anx65 (ERN: DRC-00021.854). An English translation was submitted as ICC-01/04-01/06-1477-Conf-Exp-Anx192 (ERN: DRC-OTP-0202-0451 – DRC-OTP-0202-0452).

⁷⁴⁰ ICC-01/04-01/06-1488-Conf-Exp-Anx18 (ERN: DRC-00021-854); ICC-01/04-01/06-1488-Conf-Exp-Anx94 (No ERN as this is a prosecution work product).

⁷⁴¹ Transcript of hearing on 29 October 2008, ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 48, lines 18-23.

⁷⁴² ICC-01/04-01/06-1496-Conf-Exp-Anx34 (ERN: DRC-00021-854).

⁷⁴³ ICC-01/04-01/06-1502, paragraphs 3 and 4; ICC-01/04-01/06-1502-Conf-AnxA (No ERN as this is a prosecution work product); ICC-01/04-01/06-1502-Conf-AnxC (No ERN as this is a prosecution work product); ICC-01/04-01/06-1502-Conf-AnxC (No ERN as this is a prosecution work product).

Annex 66⁷⁴⁴

This 1 page annex provided by an NGO is a chart entitled “Ensemble des alliances en Ituri” (Web of alliances in Ituri), showing the links between different actors in the conflict.⁷⁴⁵ The NGO providing the chart was not the author of the document. The prosecution submitted that the whole chart constitutes Rule 77 material, which relates to the support of the UPC by Uganda, Rwanda and Kinshasa, insofar as the information reveals the links between Kinshasa, Uganda and Rwanda and the different armed groups in Ituri as of May 2003.⁷⁴⁶ The prosecution submitted a final non-redacted version for disclosure,⁷⁴⁷ confirming that there was no need for redactions,⁷⁴⁸ which the Chamber approved the disclosure. As the Rule 77 material was made available in full, and since the NGO that provided the document was not the author, the Chamber considered there was no need to order disclosure of its identity.

The prosecution notified the Chamber on 21 November 2008 that it had disclosed the document in accordance with the decision of the Chamber.⁷⁴⁹

Annex 67⁷⁵⁰

This 18 page document was provided by an NGO and includes a [REDACTED] events that took place in Bunia in May 2003.⁷⁵¹ The prosecution submitted that it contains Rule 77 information to the effect that a Lendu child soldier was present at the massacre of [REDACTED].⁷⁵² The Chamber was informed that analogous evidence had already been disclosed to the defence,⁷⁵³ [REDACTED]. In the circumstances, the NGO consented to disclosure by way of, first, a 1 page summary that refers very generally to the structure and content of the original document and, second, an exact quotation from the Rule 77 portion of the document in French (with

⁷⁴⁴ ICC-01/04-01/06-1477-Conf-Exp-Anx66.

⁷⁴⁵ ICC-01/04-01/06-1477-Conf-Exp-Anx66 (ERN: DRC-00021-855). An English translation of the French original was submitted as ICC-01/04-01/06-1477-Conf-Exp-Anx196 (ENR: DRC-OTP-0202-0525 – DRC-OTP-0202-0526).

⁷⁴⁶ ICC-01/04-01/06-1488-Conf-Exp-Anx19 (ERN: DRC-00021-855); ICC-01/04-01/06-1488-Conf-Exp-Anx94 (No ERN as this is a prosecution work product); The prosecution chart indicates that the table refers to the links before August 2002. However, the table indicates that the information is relevant as of May 2003.

⁷⁴⁷ ICC-01/04-01/06-1496-Conf-Exp-Anx35.

⁷⁴⁸ Email communication to the Chamber through the Legal Adviser to the Trial Division on 17 November 2008.

⁷⁴⁹ ICC-01/04-01/06-1502, paragraph 4; ICC-01/04-01/06-1502-Conf-AnxC (No ERN as this is a prosecution work product).

⁷⁵⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx67.

⁷⁵¹ ICC-01/04-01/06-1477-Conf-Exp-Anx67 (ERN. DRC.00022.005 – DRC.00022.022) and partial English translation thereof: ICC-01/04-01/06-1477-Conf-Exp-Anx212 (DRC-OTP-0202-0642 – DRC-OTP-0202-0643).

⁷⁵² ICC-01/04-01/06-1488-Conf-Exp-Anx20 (ERN: DRC.00022.005 – DRC.00022.022)

⁷⁵³ ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 10, DRC-OTP-0035-0002, DRC-OTP-0017-0023, DRC-OTP-0154-1236

an English translation).⁷⁵⁴ Otherwise [REDACTED] have been redacted because the prosecution submitted they do not contain potentially exculpatory or Rule 77 information.⁷⁵⁵

After reviewing the information provided by the prosecution, the Chamber is satisfied that although the document cannot be disclosed to the defence in full due to the serious security risk this would pose to [REDACTED], the proposed summary includes, in non-redacted form, all of the potentially exculpatory and Rule 77 information identified by the prosecution. Furthermore, the prosecution has already disclosed analogous evidence to the defence. The Chamber decided that disclosure of the summary, together with the alternative evidence, counter-balances any adverse impact that disclosure of a redacted version might have on the rights of the accused. Overall, the proposals satisfy the prosecution's disclosure obligations, whilst fulfilling the Court's duty to protect individuals following its activities. No lesser measures appear feasible, and the information, overall, is usable and intelligible.

The prosecution notified the Chamber on 21 November 2008 that it had disclosed the document in accordance with the decision of the Chamber.⁷⁵⁶

Annex 68⁷⁵⁷

This 1 page document, which was provided by an NGO, is a cease-fire agreement between the UPDF and militia commanders, dated 5 April 2003 ("Accords entre l'UPDF et les commandants des milices signataires de l'accord de cessez-le-feu").⁷⁵⁸ The prosecution submitted that it contains Rule 77 information insofar as it refers to the support provided by the UPDF to militia commanders in Ituri, and the UPDF's involvement in the cease-fire.⁷⁵⁹ The prosecution informed the Chamber that alternative evidence in this regard has already been disclosed to the defence.⁷⁶⁰ However, in the event, the NGO consented to disclosure without redactions since it was not referred to in the document.⁷⁶¹

After reviewing the information provided by the prosecution, and noting that the provider was not the author of the document, the Chamber is satisfied that the non-disclosure of the NGO's name does not affect its potentially exculpatory value.

⁷⁵⁴ ICC-01/04-01/06-1496-Conf-Exp, paragraph 101; AnxC, page 20; and ICC-01/04-01/06-1496-Conf-Exp-Anx36 (ERN: DRC.00098.078 – DRC.00098.081).

⁷⁵⁵ ICC-01/04-01/06-1488-Conf-Exp-Anx20.

⁷⁵⁶ ICC-01/04-01/06-1502-Conf-AnxC, page 19.

⁷⁵⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx68.

⁷⁵⁸ ICC-01/04-01/06-1477-Conf-Exp-Anx68 (ERN: 00022.675) and English translation thereof: ICC-01/04-01/06-1477-Conf-Exp-Anx197 (ERN: DRC-OTP-0202-0527).

⁷⁵⁹ ICC-01/04-01/06-1488-Conf-Exp-Anx21 (ERN: DRC.00022.675).

⁷⁶⁰ ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 11 (DRC-OTP-0083-0008 and DRC-OTP-0019-0087).

⁷⁶¹ ICC-01/04-01/06-1496-Conf-Exp-Anx37 (ERN: DRC.00022.675).

Furthermore, the prosecution had already disclosed analogous evidence to the defence. The Chamber considered that the disclosure of this document (in full), along with the previously disclosed analogous evidence, counter-balances any impact that non-disclosure of the name of the provider could have on the rights of the accused. Overall, the proposals satisfy the prosecution's disclosure obligations, whilst fulfilling the Court's duty to protect individuals following its activities. No lesser measures are feasible, and the information, overall, is usable and intelligible.

The prosecution notified the Chamber on 21 November 2008 that it had disclosed the document in accordance with the decision of the Chamber.⁷⁶²

Annex 69⁷⁶³

The document is a 1 page chart entitled "Diagramme des principaux pays et groupes impliqués dans le conflit en RDC" provided by an NGO (who was not the author) showing the major countries and armed groups involved in the conflict in the DRC.⁷⁶⁴ The prosecution highlighted its Rule 77 potential, in that it demonstrates various aspects of the support given to the UPC, via different armed groups, on the part of the DRC, Uganda, Rwanda, and Burundi.⁷⁶⁵ The prosecution proposed disclosing a redacted version in which only the source of the chart was concealed.⁷⁶⁶ The prosecution submitted that although this document appeared to be in the public domain in any event, this copy had not been obtained from the public website of the UPC.⁷⁶⁷ The Chamber instructed the prosecution to inform the defence that it is available on the internet.⁷⁶⁸

In addition, the prosecution disclosed the chart to the defence with the limited redaction set out above.⁷⁶⁹

Annex 70⁷⁷⁰

This is a 6 page a chart entitled [REDACTED], provided by an NGO. It analyses the [REDACTED], for crimes that fall within the jurisdiction of the ICC, committed between these dates.⁷⁷¹ The prosecution submitted this document contains Rule 77

⁷⁶² ICC-01/04-01/06-1502-Conf-AnxC, page 19.

⁷⁶³ ICC-01/04-01/06-1477-Conf-Exp-Anx69.

⁷⁶⁴ ICC-01/04-01/06-1477-Conf-Exp-Anx69 (ERN: DRC-00022-856).

⁷⁶⁵ ICC-01/04-01/06-1488-Conf-Exp-Anx22 (ERN: DRC-00022-856); ICC-01/04-01/06-1488-Conf-Exp-Anx94 (No ERN as this is a prosecution work product).

⁷⁶⁶ ICC-01/04-01/06-1496-Conf-Exp-Anx38 (ERN: DRC-00022-856).

⁷⁶⁷ ICC-01/04-01/06-1496-Conf-Exp, paragraph 102 and footnote 100.

⁷⁶⁸ Transcript of hearing on 17 November 2008, ICC-01/04-01/06-T-96-CONF-EXP-ENG, page 24, lines 12-16.

⁷⁶⁹ ICC-01/04-01/06-1502, paragraphs 3 and 4; ICC-01/04-01/06-1502-Conf-AnxB; ICC-01/04-01/06-1502-Conf-AnxC (No ERN as these charts are prosecution work products).

⁷⁷⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx70

⁷⁷¹ ICC-01/04-01/06-1477-Conf-Exp-Anx70 (ERN: DRC.00144.475 – DRC.0144 480) The English translation of this document is contained at ICC-01/04-01/06-1477-Conf-Exp-Anx198 (ERN: DRC-OTP-0202-0574 -

material, in that it shows the support of foreign powers, and in particular it indicates that the [REDACTED].⁷⁷² The information provider consented to providing a summary or a redacted version of the document since it fears [REDACTED].⁷⁷³ At an *ex parte* status conference on 29 October 2008, the prosecution indicated that the NGO preferred to disclose a summary, and the prosecution submitted that the slight exculpatory value of this document could be adequately provided to the defence in summary form.⁷⁷⁴ As a consequence, the prosecution provided the Trial Chamber with a summary which comprises 3 pages and contains some verbatim quotations.⁷⁷⁵

Having reviewed the summary, the Trial Chamber decided that it sufficiently reflects the substance of the document. It noted that although the source could not be disclosed so as to protect individuals who may be at risk on account of the activities of the Court, the Rule 77 material identified by the prosecution has been made available to the defence in verbatim quotations. In view of the volatile environment [REDACTED], the Chamber considered that a less restrictive protective measure is unavailable. Overall, the proposals satisfy the prosecution's disclosure obligations, whilst fulfilling the Court's duty to protect individuals following its activities. The information, overall, is usable and intelligible.

On 21 November 2008, the prosecution notified the Trial Chamber that it had disclosed the summary to the defence, in compliance with the Trial Chamber's decision.⁷⁷⁶

Annex 71⁷⁷⁷

This document is a 2 page document entitled [REDACTED], provided by an NGO. The document discusses the plunder of natural resources in the Congo brought about, in part, by the massive Ugandan army.⁷⁷⁸ The prosecution submitted that this document contains Rule 77 material in that it indicates the role of Uganda/Rwanda/the Kinshasa government; in particular, it contains information

DRC-OTP-0202-0580). The prosecution's hi-lighted version of this document is contained at ICC-01/04-01/06-1488-Conf-Exp-Anx51 (ERN DRC.00144.475 – DRC.0144.480).

⁷⁷² ICC-01/04-01/06-1488-Conf-Exp-Anx51 (ERN: DRC.00144.475 – DRC.0144.480) and Conf-Exp-Anx-94 (no ERN as this is a prosecution work product).

⁷⁷³ ICC-01/04-01/06-1385-Conf-Exp; ICC-01/04-01/06-1430-Conf-Exp, paragraphs 36-38; ICC-01/04-01/06-1477-Conf-Exp, paragraph 19(ii).

⁷⁷⁴ Transcript of hearing on 29 October 2008, ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 51, lines 1-23.

⁷⁷⁵ ICC-01/04-01/06-1496-Conf-Exp, paragraph 103 and Conf-Exp-Anx39 (ERN: DRC-OTP-0204-388 – DRC-OTP-0204-389).

⁷⁷⁶ ICC-01/04-01/06-1502-Conf-AnxC.

⁷⁷⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx71.

⁷⁷⁸ ICC-01/04-01/06-1477-Conf-Exp-Anx71 (ERN: DRC.00037.017 – DRC.00037.018). The English translation of this document is contained at ICC-01/04-01/06-1477-Conf-Exp-Anx171 (ERN: DRC-OTP-0202-0281 - DRC-OTP-0202-0283). The prosecution's hi-lighted version of this document is contained at ICC-01/04-01/06-1488-CONF-EXP-Anx26 (ERN: DRC.00037.017 – DRC.00037.018)

demonstrating that since 1996 Uganda has been an ally of rebel groups in Ituri such as the AFDL, RCD, MLC, RCD-ML, supplying them with arms and ammunition in exchange for wealth. It also suggests that Uganda never left the Congo, despite national and international demands.⁷⁷⁹ The prosecution informed the Chamber that the NGO [REDACTED]. In light of these circumstances, the prosecution proposed disclosure of a summary of the document, and, where necessary, redactions to the identity of the NGO [REDACTED] or others who may be at risk.⁷⁸⁰ In the event, the prosecution provided the Chamber with a redacted version rather than a summary of this document.⁷⁸¹

Having reviewed the redacted version, the Trial Chamber noted that [REDACTED] have been redacted. The Rule 77 information is not affected by these limited redactions and the document remains intelligible and usable. The Trial Chamber, therefore, authorised disclosure of this document to the defence in this form in order to protect individuals who could be at risk on account of the activities of the Court. Overall, the proposals satisfy the prosecution's disclosure obligations, whilst fulfilling the Court's duty to protect individuals following its activities. No lesser measures appear feasible, and the information, overall, is usable and intelligible.

On 21 November 2008, the prosecution notified the Trial Chamber that it had disclosed this document, in compliance with the Trial Chamber's decision.⁷⁸²

Annex 72⁷⁸³

This is a 6 page document comprising [REDACTED], provided by an NGO. The [REDACTED] address various organisations and issues including, *inter alia* the ICP, the UPC, the peace efforts, child soldiers and the involvement of Uganda in the conflict.⁷⁸⁴ The prosecution submitted that it contains potentially exculpatory material in that it indicates (1) the UPC's interest in transforming itself into a political party once the DRC is unified and the national army constituted; and that the UPC was intended to be a party based on reunification; and, (2) "voluntariness": that many child soldiers who had been demobilised by NGOs from the UPC later

⁷⁷⁹ ICC-01/04-01/06-1488-Conf-Exp-Anx26 (ERN: DRC.00037.017 – DRC.00037.018) and Conf-Exp-Anx94 (no ERN as this is a prosecution work product).

⁷⁸⁰ ICC-01/04-01/06-1430-Conf-Exp, paragraphs 28 – 30.

⁷⁸¹ Transcript of hearing on 29 October 2008, ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 52, lines 3-8; ICC-01/04-01/06-1496-Conf-Exp, paragraph 104 and Conf-Exp-Anx40 (ERN: DRC.00037.017 – DRC.00037.018).

⁷⁸² ICC-01/04-01/06-1502-Conf-AnxC.

⁷⁸³ ICC-01/04-01/06-1477-Conf-Exp-Anx72.

⁷⁸⁴ ICC-01/04-01/06-1477-Conf-Exp-Anx72 (ERN: DRC.00037.053 – DRC.00037.058). The English translation of this document is contained at ICC-01/04-01/06-1477-Conf-Exp-Anx172 (ERN: DRC-OTP-0202-0284 - DRC-OTP-0202-0290). The prosecution's hi-lighted version of this document is contained at ICC-01/04-01/06-1488-Conf-Exp-Anx27 (ERN: DRC.00037.053 – DRC.00037.058).

returned to join the militia voluntarily, because their basic needs were not met at home.⁷⁸⁵

The prosecution informed the Chamber that the [REDACTED]. In light of this, the prosecution proposed disclosing summaries of the relevant documents, and, where necessary, removing [REDACTED] and partners, or others who may be at risk.⁷⁸⁶ The prosecution provided the Trial Chamber with a redacted version of this document.⁷⁸⁷

The Trial Chamber noted that the redaction of [REDACTED] does not cover any of the relevant substantive information. A brief [REDACTED] at the end of the document, which similarly does not contain any relevant information, has been redacted in full. [REDACTED]. In view of the security situation in the DRC, the [REDACTED], the Chamber concluded that the redactions are appropriate and proportionate. The Chamber noted that they do not cover the potentially exculpatory information identified by the prosecution and that the substantive information contained in the document is therefore available to the defence. Considering all these factors, the Chamber is satisfied that the rights of the defence are preserved, and it authorised the disclosure with the proposed redactions. The proposals satisfy the prosecution's disclosure obligations, whilst fulfilling the Court's duty to protect individuals following its activities. No lesser measures appear feasible, and the information, overall, is usable and intelligible.

On 21 November 2008, the prosecution notified the Trial Chamber that it had disclosed this document in redacted form, in compliance with the decision of the Chamber.⁷⁸⁸

Annex 73⁷⁸⁹

This is a 2 page document containing [REDACTED] in relation to events in the DRC [REDACTED]. The document was provided by an NGO.⁷⁹⁰ The prosecution submitted that the document contains potentially exculpatory information in that a MONUC spokesman allegedly asserts that there were the beginnings of co-operation between the MONUC and the UPC of Thomas Lubanga.⁷⁹¹ The prosecution informed

⁷⁸⁵ ICC-01/04-01/06-1488–Conf-Exp-Anx27 and Conf-Exp-Anx94.

⁷⁸⁶ ICC-01/04-01/06-1430-Conf-Exp, paragraphs 28 – 30.

⁷⁸⁷ Transcript of hearing on 29 October 2008, ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 52, lines 3-8 and ICC-01/04-01/06-1496-Conf-Exp, paragraph 104 and Conf-Exp-Anx41 (ERN: DRC.00037.053 – DRC.00037.058).

⁷⁸⁸ ICC-01/04-01/06-1502-Conf-AnxC.

⁷⁸⁹ ICC-01/04-01/06-1477-Conf-Exp-Anx73.

⁷⁹⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx73 (ERN: DRC.00037.069 – DRC.00037.070). The English translation of this document is contained at ICC-01/04-01/06-1477-Conf-Exp-Anx173 (ERN: DRC-OTP-0202-0291 - DRC-OTP-0202-0294). The prosecution's hi-lighted version of this document is contained at ICC-01/04-01/06-1488-Conf-Exp-Anx28 (ERN: DRC.00037.069 – DRC.00037.070).

⁷⁹¹ ICC-01/04-01/06-1488–Conf-Exp-Anx28 (ERN: DRC.00037.069 – DRC.00037.070) and Conf-Exp-Anx94 (no ERN as this is a prosecution work product).

the Chamber that the NGO [REDACTED]. In the light of these factors, the prosecution proposed disclosing summaries of the relevant documents, where necessary, removing the identity of the NGO [REDACTED] or others who may be at risk.⁷⁹² The prosecution agreed that the document (which is public) could be released to the defence as long as the source is protected⁷⁹³ and it provided the Trial Chamber with a final version of this document.⁷⁹⁴

However, in the event, no redactions are proposed for this document and the Trial Chamber authorised its disclosure to the defence in non-redacted form.

On 21 November 2008, the prosecution notified the Trial Chamber that it had complied with the decision of the Chamber.⁷⁹⁵

Annex 74⁷⁹⁶

This is a 2 page press release from [REDACTED]. The document was provided by an NGO.⁷⁹⁷ The prosecution submitted that it contains Rule 77 material relating to the support of Uganda/Rwanda/the Kinshasa government, in particular that the information indicates [REDACTED].⁷⁹⁸ The prosecution informed the Chamber that the NGO [REDACTED]. In light of this, the prosecution initially proposed disclosing summaries with, where necessary, redactions to the identity of the NGO, [REDACTED] or third parties who may be at risk.⁷⁹⁹ However, in the event the prosecution proposed disclosure of the document to the defence with one redacted [REDACTED], subject to the undertaking that the prosecution ensured that it did not contain Rule 77 material.⁸⁰⁰ The prosecution provided the Chamber with the redacted version on 12 November 2008.⁸⁰¹

Having reviewed this redacted version, the Trial Chamber noted that the prosecution had not redacted [REDACTED]. Since the document remains intelligible, and the redactions are minimal and do not impact on the Rule 77

⁷⁹² ICC-01/04-01/06-1430-Conf-Exp, paragraphs 28 – 30.

⁷⁹³ Transcript of hearing on 29 October 2008, ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 52, lines 16- 18.

⁷⁹⁴ ICC-01/04-01/06-1496-Conf-Exp, paragraph 104 and Conf-Exp-Anx42 (ERN: DRC.00037.069 – DRC.00037.070).

⁷⁹⁵ ICC-01/04-01/06-1502-Conf-AnxC.

⁷⁹⁶ ICC-01/04-01/06-1477-Conf-Exp-Anx74.

⁷⁹⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx74 (ERN: DRC.00037.088– DRC 00037.089). The English translation of this document is contained at ICC-01/04-01/06-1477-Conf-Exp-Anx174 (ERN: DRC-OTP-0202-0295 - DRC-OTP-0202-0297). The prosecution's hi-lighted version of this document is contained at ICC-01/04-01/06-1488-Conf-Exp-Anx29 (ERN:DRC.00037.088– DRC.00037.089).

⁷⁹⁸ ICC-01/04-01/06-1488–Conf-Exp-Anx29 (ERN: DRC.00037.088– DRC.00037.089) and Conf-Exp-Anx94 (no ERN as this is a prosecution work product).

⁷⁹⁹ ICC-01/04-01/06-1430-Conf-Exp, paragraphs 28 – 30.

⁸⁰⁰ Transcript of hearing on 29 October 2008, ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 52, lines 21-23 and page 53, lines 4-6.

⁸⁰¹ ICC-01/04-01/06-1496-Conf-Exp, paragraph 104 and Conf-Exp-Anx43 (ERN: DRC.00037.088– DRC.00037.089).

material, the Trial Chamber authorised disclosure in this form so as to protect third parties potentially at risk on account of the activities of the Court. Overall, the proposals satisfy the prosecution's disclosure obligations, whilst fulfilling the Court's duty to protect individuals following its activities. No lesser measures appear feasible, and the information, overall, is usable and intelligible.

On 21 November 2008, the prosecution notified the Trial Chamber that it had disclosed this document in redacted form, in compliance with the decision of the Chamber.⁸⁰²

Annex 75⁸⁰³

This 2 page [REDACTED], was submitted by an NGO.⁸⁰⁴ The prosecution submitted that it contained Rule 77 information insofar as it refers to support provided by the DRC government troops to the RCD-ML/APC, the Interhamwe and the Lendu armed groups in attacks on the UPC.⁸⁰⁵ The prosecution indicated that alternative evidence had already been disclosed to the defence.⁸⁰⁶ The NGO providing the document expressed serious concerns about the [REDACTED]. However, it consented to full disclosure, save for redactions to its identity.⁸⁰⁷

The Chamber is satisfied that disclosure of the document, in the form proposed, does not undermine the Rule 77 material contained in the document, especially since the NGO was not the author of the [REDACTED] and it has [REDACTED]. Disclosure of the [REDACTED] in full, together with the additional evidence, counter-balances any impact that non-disclosure of the name of the NGO might have on the rights of the accused.

On 21 November 2008, the prosecution notified the Trial Chamber that it had disclosed the document to the defence in accordance with the decision of the Chamber.⁸⁰⁸

⁸⁰² ICC-01/04-01/06-1502-Conf-AnxC.

⁸⁰³ ICC-01/04-01/06-1477-Conf-Exp-Anx75.

⁸⁰⁴ ICC-01/04-01/06-1477-Conf-Exp-Anx75 (DRC.00037.274 – 00037.275) and English translation thereof ICC-01/04-01/06-1477-Conf-Exp-Anx175 (DRC-OTP-0202-0298 – DRC-OTP-0202-0301).

⁸⁰⁵ ICC-01/04-01/06-1488-Conf-Exp-Anx30 (DRC.00037.274 – 00037.275).

⁸⁰⁶ ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 13, (ERN : CAR-OTP-0005-0381).

⁸⁰⁷ ICC-01/04-01/06-1496-Conf-Exp. paragraph 104; ICC-01/04-01/06-1496-Conf-Exp-AnxC, page 21; and ICC-01/04-01/06-1496-Conf-Exp-Anx44 (DRC.00037.274 – 00037.275).

⁸⁰⁸ ICC-01/04-01/06-1502-Conf-AnxC, page 20.

Annex 76⁸⁰⁹

This 1 page document contains [REDACTED].⁸¹⁰ The prosecution submitted that the document contains potentially exculpatory information pursuant to Article 67(2) of the Statute insofar as it indicates that the UPC-RP sought to participate in the Inter-Congolese dialogue on solutions for peace.⁸¹¹ The prosecution proposed disclosing a non-redacted version of this document,⁸¹² which the Chamber approved, noting that the identity of the information provider is not revealed. The latter was not the author of the document [REDACTED], and as a result non-disclosure of its identity will not prejudice the defence.

The prosecution disclosed the document in accordance with the decision of the Chamber.⁸¹³

Annex 77⁸¹⁴

This 1 page document, provided by an NGO, is a [REDACTED] press release entitled [REDACTED].⁸¹⁵ The prosecution submitted that it contains potentially exculpatory information pursuant to Article 67(2) of the Statute, insofar as it describes how Thomas Lubanga met with representatives of ethnic groups in Ituri and Lendu leaders in Aru, to discuss peace.⁸¹⁶ The prosecution indicated that the previously proposed redactions were unnecessary, as the information was already publicly available, and it submitted a non-redacted version, whilst maintaining that the identity of the source should not be disclosed.⁸¹⁷ The prosecution therefore re-submitted the non-redacted version for disclosure.⁸¹⁸ Given the NGO was not the author of the document (which has been made available in full) and [REDACTED], the Chamber approved the disclosure of the non-redacted document, without reference to the information provider. The identity of the NGO is irrelevant to the content of the press release.

⁸⁰⁹ ICC-01/04-01/06-1477-Conf-Exp-Anx76.

⁸¹⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx76 (ERN: DRC-00037-280), An English translation was submitted as ICC-01/04-01/06-1477-Conf-Exp-Anx176 (ERN: DRC-OTP-0202-0302 – DRC-OTP-0202-0303).

⁸¹¹ ICC-01/04-01/06-1488-Conf-Exp-Anx31 (ERN: DRC-00037-280); ICC-01/04-01/06-1488-Conf-Exp-Anx94 (No ERN as the chart is a prosecution work product).

⁸¹² ICC-01/04-01/06-1496-Conf-Exp-Anx45 (ERN: DRC-00037-280); Transcript of hearing on 17 November 2008, ICC-01/04-01/06-T-96-CONF-EXP-ENG, page 24, lines 18-24.

⁸¹³ ICC-01/04-01/06-1502, paragraphs 3 and 4; ICC-01/04-01/06-1502-Conf-AnxA; ICC-01/04-01/06-1502-Conf-AnxC (No ERN as these charts are prosecution work products).

⁸¹⁴ ICC-01/04-01/06-1477-Conf-Exp-Anx77.

⁸¹⁵ ICC-01/04-01/06-1477-Conf-Exp-Anx77 (ERN: DRC-00037-285).

⁸¹⁶ ICC-01/04-01/06-1488-Conf-Exp-Anx32 (ERN: DRC-00037-285); ICC-01/04-01/06-1488-Conf-Exp-Anx94 (No ERN as the document is a prosecution work product).

⁸¹⁷ ICC-01/04-01/06-1490; ICC-01/04-01/06-1490-Conf-Exp-Anx10 (ERN: DRC-00037-285); Transcript of hearing on 29 October 2008, ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 54, lines 12-16.

⁸¹⁸ ICC-01/04-01/06-1496-Conf-Exp-Anx46 (ERN: DRC-00037-285); Transcript of hearing on 17 November 2008, ICC-01/04-01/06-T-96-CONF-EXP-ENG, page 24, lines 18-24.

The prosecution served the non-redacted document on the defence in accordance with the decision of the Chamber.⁸¹⁹

Annex 78⁸²⁰

This 1 page press release, provided by an NGO, is entitled [REDACTED].⁸²¹ The prosecution submitted that it contains potentially exculpatory information pursuant to Article 67(2) of the Statute insofar as the information indicates that the UPC called for the support of all Congolese people in Ituri in order to pacify and reunify the region.⁸²² In the event, the prosecution indicated that the redactions it had previously sought were no longer necessary, as the information was already publicly available, and it submitted a non-redacted version [REDACTED]⁸²³ (This was later resubmitted.⁸²⁴)

The Chamber noted particularly that the information provider, [REDACTED], was not the author of the document and that the potentially exculpatory information has been made available to the defence in full. The Chamber therefore, approved the disclosure of the non-redacted document (which does not reveal the identity of the information provider). It is to be stressed that the identity of the NGO is irrelevant to the content of the press release.

The prosecution notified the Chamber on 21 November 2008 that it had served the non-redacted document on the defence in accordance with the decision of the Chamber.⁸²⁵

Annex 79⁸²⁶

This 1 page [REDACTED] press release entitled [REDACTED] was provided by an NGO.⁸²⁷ The prosecution submitted that it contains potentially exculpatory information pursuant to Article 67 (2) of the Statute insofar as it suggests that the UPC, characterized in the document as a diverse ethnic group, cooperated with

⁸¹⁹ ICC-01/04-01/06-1502, paragraphs 3 and 4; ICC-01/04-01/06-1502-Conf-AnxA; ICC-01/04-01/06-1502-Conf-AnxC (No ERN as these charts are prosecution work products).

⁸²⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx78.

⁸²¹ ICC-01/04-01/06-1477-Conf-Exp-Anx78 (ERN: DRC-00037-291); An English translation was submitted as ICC-01/04-01/06-1477-Conf-Exp-Anx177 (ERN: DRC-OTP-0202-0304 – DRC-OTP-0202-0306).

⁸²² ICC-01/04-01/06-1488-Conf-Exp-Anx33 (ERN: DRC-00037-291); ICC-01/04-01/06-1488-Conf-Exp-Anx94 (No ERN as this is a prosecution work product).

⁸²³ ICC-01/04-01/06-1490; ICC-01/04-01/06-1490-Conf-Exp-Anx11 (ERN: DRC-00037-291); Transcript of hearing on 29 October 2008, ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 54, lines 12-16.

⁸²⁴ ICC-01/04-01/06-1496-Conf-Exp-Anx47 (ERN: DRC-00037-291).

⁸²⁵ ICC-01/04-01/06-1502, paragraphs 3 and 4; ICC-01/04-01/06-1502-Conf-AnxA; ICC-01/04-01/06-1502-Conf-AnxC (No ERN as these charts are prosecution work products).

⁸²⁶ ICC-01/04-01/06-1477-Conf-Exp-Anx79.

⁸²⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx79 (ERN: DRC-00037-293); The English translation was submitted as ICC-01/04-01/06-1477-Conf-Exp-Anx178 (ERN: DRC-OTP-0202-0307 – DRC-OTP-0202-0308).

MONUC to restore peace in the DRC.⁸²⁸ The prosecution submitted that it also contains Rule 77 material relating to the involvement of external actors insofar as the information indicates that the DRC government was providing military support to the RCD/ML.⁸²⁹ The prosecution submitted that the relevant content of this document is already available to the defence in a previously disclosed item of evidence numbered DRC-OTP-0193-0212.⁸³⁰ The prosecution submitted that it may be disclosed to the defence avoiding any references to the NGO.⁸³¹ Since the latter [REDACTED] is not the author of the press release, and given the risk [REDACTED], the Chamber authorised disclosure of the non-redacted version absent any reference to the information provider's identity.

The prosecution served the non-redacted document on the defence in accordance with the decision of the Chamber.⁸³²

Annex 80⁸³³

This annex was provided by an NGO and it includes two documents⁸³⁴ the titles of which are [REDACTED], and [REDACTED]. Both are [REDACTED]: the first – [REDACTED], and the second [REDACTED]. An English translation of the original French document was provided.⁸³⁵ On this basis, the prosecution submitted that the annex contains potentially exculpatory information insofar as it refers to the “insufficient command and control” of Thomas Lubanga over others in the UPC, since on 3 December 2003 Thomas Lubanga may not have been in charge of the UPC.⁸³⁶ The prosecution indicated that alternative evidence had already been disclosed.⁸³⁷ The NGO agreed to disclose the document in full to the defence, if its name is removed,⁸³⁸ and the prosecution submitted a final version on 12 November 2008.⁸³⁹

The original document, however, contains no references to the information provider and the final version proposed for disclosure by the prosecution is without

⁸²⁸ ICC-01/04-01/06-1488-Conf-Exp-Anx34 (ERN: DRC-00037-293); ICC-01/04-01/06-1488-Conf-Exp-Anx94 (No ERN as the chart is a prosecution work product).

⁸²⁹ ICC-01/04-01/06-1488-Conf-Exp-Anx34; ICC-01/04-01/06-1488-Conf-Exp-Anx94.

⁸³⁰ ICC-01/04-01/06-1488-Conf-Exp-Anx94 (No ERN as the chart is a prosecution work product).

⁸³¹ Transcript of hearing on 29 October 2008, ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 54, lines 3-8; ICC-01/04-01/06-1496-Conf-Exp-Anx48.

⁸³² ICC-01/04-01/06-1502, paragraphs 3 and 4; ICC-01/04-01/06-1502-Conf-AnxA; ICC-01/04-01/06-1502-Conf-AnxC (No ERN as these charts are prosecution work products).

⁸³³ ICC-01/04-01/06-1477-Conf-Exp-Anx80.

⁸³⁴ ICC-01/04-01/06-1477-Conf-Exp-Anx80 (ERN: DRC.00037.337 – DRC.00037.338).

⁸³⁵ ICC-01/04-01/06-1477-Conf-Exp-Anx179 (ERN: DRC-OTP-0202.0309 – DRC-OTP-0202-0311).

⁸³⁶ ICC-01/04-01/06-1488-Conf-Exp-Anx35 (ERN: DRC.00037.337 – DRC.00037.338).

⁸³⁷ DRC-OTP-0155-0145, DRC-OTP-0074-0261, DRC-OTP-0134-0246, DRC-OTP-0150-0303, DRC-OTP-0089-0073, ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 14.

⁸³⁸ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 54, lines 18 to 21.

⁸³⁹ ICC-01/04-01/06-1496-Conf-Exp-Anx49 (ERN: DRC.00126.318 – DRC.00126.321).

redactions; the Chamber, therefore, authorised disclosure of this document. The identity of the NGO is irrelevant to the content of these two documents.

In accordance with the directions of the Trial Chamber, this document was disclosed to the defence by the prosecution.⁸⁴⁰

Annex 81⁸⁴¹

This [REDACTED] document was provided by an NGO and is an [REDACTED]. The annexes to this document [REDACTED].⁸⁴² A partial English translation was provided.⁸⁴³ The prosecution submitted that it contained Rule 77 material insofar as it referred to the support of the Ugandans to the different armed groups in Ituri. There is a description of how Ugandans helped the Hema militia attack Lendu villages in early 2002, and that they also assisted the Lendu fight the Hema. Further it sets out that in May 2002, the Ugandans supplied arms to the Hema militias. The prosecution informed the Chamber that all the relevant information has been disclosed already in other documents, or, alternatively, could be made immediately available.⁸⁴⁴ The prosecution submitted that it was unable to disclose the document even with redactions [REDACTED].⁸⁴⁵

The prosecution submitted 10 documents as alternative evidence to the Rule 77 information within the undisclosed document,⁸⁴⁶ of which all except one have already been disclosed to the defence: (1) a 33 page Amnesty International report, “Democratic Republic of Congo Ituri: a need for protection, a thirst for justice”, which refers to the support provided by Uganda to Ituri’s armed groups during 2002 and 2003;⁸⁴⁷ (2) an 82 page Human Rights Watch report, “Ituri: Covered in Blood”, which includes information on the support provided by the Ugandan and DRC governments to the Lendu militias operating against the UPC. The report mentions particularly the attacks on Bunia, Ndroromo and Mongbwalu;⁸⁴⁸ (3) an 11 page text from www.congonet.dds.nl, entitled “Current situation: Exploitation, arms flows and trends”, which indicates that the UPC was aligned with Uganda until mid-2002 and which refers to the involvement of Rwanda with the UPC;⁸⁴⁹ (4) a 67 page Human Rights Watch report entitled “L’Ouganda dans l’est de la RDC: une présence

⁸⁴⁰ ICC-01/04-01/06-1502-Conf-AnxC, page 20.

⁸⁴¹ ICC-01/04-01/06-1477-Conf-Exp-Anx81.

⁸⁴² ICC-01/04-01/06-1477-Conf-Exp-Anx81 (ERN: DRC.00037.362 – DRC.00037.434).

⁸⁴³ ICC-01/04-01/06-1477-Conf-Exp-Anx206 (ERN: DRC-OTP-0202-0256 – DRC-OTP-0202-0274).

⁸⁴⁴ DRC-OTP-0163-0540 and DRC-OTP-0198-0021, ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 14, (there is no ERN for this annex since it is a prosecution work product).

⁸⁴⁵ ICC-01/04-01/06-1430-Conf-Exp, paragraphs 29-30.

⁸⁴⁶ ICC-01/04-01/06-1496-Conf-Exp-AnxC, page 22 (there is no ERN for this annex since it is a prosecution work product).

⁸⁴⁷ ICC-01/04-01/06-1496-Conf-Exp Anx62 (ERN: DRC.00019.153 – DRC.00019.185).

⁸⁴⁸ ICC-01/04-01/06-1496-Conf-Exp Anx65 (ERN: DRC.00074-797 – DRC-00074-797-878).

⁸⁴⁹ ICC-01/04-01/06-1496-Conf-Exp-Anx66 (ERN: CAR-OTP-0005-0381 – CAR-OTP-0005-391).

qui a attisé les conflits politiques et ethniques” that explains how the Ugandans helped the Hema against the Lendu and how, on at least one occasion, the Ugandans assisted the Lendu against the Hema;⁸⁵⁰ (5) an article from “Le Soir” which suggests that Uganda provided the Hema with weapons in May 2002;⁸⁵¹ (6) a 33 page report from the International Crisis Group, “Congo Crisis: Military Intervention in Ituri”, which describes how Uganda supported the UPC prior to, and during, February 2003, and thereafter supported Lendu militias (from around March 2003);⁸⁵² (7) a 169 page Human Rights Watch report, “The Curse of Gold”, which refers to how Uganda discontinued its support to the Hema and formed an alliance with the Lendu, attacking the village of Kilo in March 2003;⁸⁵³ (8) an article by IRIN Africa, “DRC-Uganda: Return of UPDF will not be welcomed, Kinshasa warns Kampala”, in which it is set out that Uganda provided support to different armed groups for 5 years;⁸⁵⁴ (9) a 30 page Amnesty International report, entitled “Democratic Republic of Congo on the Precipice: the deepening human rights and humanitarian crisis in Ituri”, which refers to the involvement of Uganda, Rwanda and the DRC government in northeast DRC, namely by providing arms and training to the UPC and to other armed groups;⁸⁵⁵ (10) a 6 page table, bearing the name “Tableau chronologique de massacres et des tentatives de conciliation dans les territoires de Djugu, d’Irumu et Mahagi en Ituri, RDC”.⁸⁵⁶

The prosecution additionally made the following admission of fact: *Uganda was present in Ituri throughout 2002. During this period it helped Hema militias to attack Lendu villages and Lendu militia to attack Hema villages. Reportedly, it was Uganda who provided the Hema militias its first weapons.*⁸⁵⁷

The Chamber is satisfied that although this document cannot be disclosed to the defence, even with redactions, the alternative evidence and the proposed admission of fact satisfy the prosecution’s disclosure obligations. The Chamber assessed the evidential “value” of the prosecution’s proposals and concluded that all of the potentially exculpatory and Rule 77 material in Annex 81 has been provided in a replacement form that is usable and intelligible.⁸⁵⁸ The analogous evidence and the admission of fact counter-balance any impact that the non-disclosure of the document could have on the rights of the accused, and they ensure the fairness of the trial. The defence will be able to rely on the prosecution’s admission concerning these events rather than seeking to establish them through the currently unidentified

⁸⁵⁰ ICC-01/04-01/06-1496-Conf-Exp-Anx92 (ERN: DRC-OTP-0163-0540 – DRC-OTP-0163-0606).

⁸⁵¹ ICC-01/04-01/06-1496-Conf-Exp-Anx93 (ERN: DRC-OTP-0198-0021 – DRC-OTP-0198-0026).

⁸⁵² ICC-01/04-01/06-1496-Conf-Exp-Anx94 (ERN: DRC.00003.424 – DRC.00003.456).

⁸⁵³ ICC-01/04-01/06-1496-Conf-Exp-Anx95 (ERN: DRC-00074-628 – DRC-00074-796).

⁸⁵⁴ ICC-01/04-01/06-1496-Conf-Exp-Anx96 (DRC-OTP-0173-0019 – DRC-OTP-0173-0020).

⁸⁵⁵ ICC-01/04-01/06-1496-Conf-Exp-Anx97(ERN: DRC-OTP-0154-1301 – DRC-OTP-0154-1330).

⁸⁵⁶ ICC-01/04-01/06-1496-Conf-Exp-Anx98 (ERN: DRC.00035.069 – DRC.00035.074).

⁸⁵⁷ ICC-01/04-01/06-1496-Conf-Exp. paragraph 107.

⁸⁵⁸ ICC-01/04-01/06-T-96-CONF-EXP-ENG. page 16, line 11 to page 17. line 14.

sources. Indeed, arguably the defence is put in a more favorable evidential position than it otherwise would have been because of the “certainty” provided by the admission (which is not in itself binding on the Chamber). Moreover, the Chamber has satisfied itself that the non-disclosure of the original document and the alternative form of disclosure are strictly necessary steps, fulfilling the Court’s duty to protect individuals following its activities whilst preserving the accused’s fair-trial rights. No lesser measures are feasible.

In accordance with the decision of the Trial Chamber, the admission of fact and the alternative evidence were disclosed by the prosecution.⁸⁵⁹

Annex 82⁸⁶⁰

This 4 page report [REDACTED] was provided by an NGO.⁸⁶¹ The prosecution submitted that it contains Rule 77 material relating to the support of the UPC by Uganda, by indicating that the UPDF intervened in Bunia between the various warring parties, and that in [REDACTED].⁸⁶² The prosecution submitted a redacted version of the document to the Chamber, in which [REDACTED].⁸⁶³ The Chamber established with the prosecution that the proposed redactions refer to [REDACTED] and thereafter approved these redactions.⁸⁶⁴ However the prosecution subsequently sought to revise the redactions, [REDACTED].⁸⁶⁵ A further redacted version for consideration by the Chamber was submitted by the prosecution on 18 November 2008.⁸⁶⁶

The Chamber notes that none of the proposed redactions affect the document’s Rule 77 value. The Chamber accepts that [REDACTED], and it is satisfied that the redactions do not undermine the rights of the accused. Accordingly, these proposals are proportionate and the identity of the information provider is not to be revealed, since the NGO and [REDACTED] and in any event they will be unable to provide more information relating to the Rule 77 material as the author of the document was not from the NGO. The Chamber, therefore, approved the disclosure of the redacted version of this document to the defence. Overall, the proposals satisfy the prosecution’s disclosure obligations, whilst fulfilling the Court’s duty to

⁸⁵⁹ ICC-01/04-01/06-1502-AnxC, page 21.

⁸⁶⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx82.

⁸⁶¹ ICC-01/04-01/06-1477-Conf-Exp-Anx82 (ERN: DRC-00037-451 – DRC-00037-454); an English translation can be found at ICC-01/04-01/06-1477-Conf-Exp-Anx180 (ERN: DRC-OTP-0202-0312 – DRC-OTP-0202-0316).

⁸⁶² ICC-01/04-01/06-1488-Conf-Exp-Anx37 (ERN: DRC-00037-451 – DRC-00037-454), ICC-01/04-01/06-1488-Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product).

⁸⁶³ ICC-01/04-01/06-1496-Conf-Exp-Anx50 (ERN: DRC-00037-451 – DRC-00037-454).

⁸⁶⁴ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 54, line 25, page 55, lines 1-12.

⁸⁶⁵ ICC-01/04-01/06-T-96-CONF-EXP-ENG, page 25, lines 3-7.

⁸⁶⁶ Document attached to an email communication to the Trial Chamber through the Legal Adviser to the Trial Division on 18 November 2008, (ERN: DRC-00037-451 – DRC-00037-454).

protect individuals following its activities. No lesser measures appear feasible, and the information, overall, is usable and intelligible.

The document was disclosed to the defence in accordance with the decision of the Chamber.⁸⁶⁷

Annex 83⁸⁶⁸

This 2 page document is a report provided by an NGO entitled, [REDACTED].⁸⁶⁹ The report describes massacres allegedly committed by Lendu fighters allied with the RCD-ML's APC soldiers, and the Interahamwe and Bira fighters. The prosecution submitted that this document contains potentially exculpatory information pursuant to Article 67(2) of the Statute insofar as it indicates that battles took place in Bunia [REDACTED].⁸⁷⁰ The objective of the FRP is stated to have been ending the massacres and the genocide in Ituri and establishing a durable peace without tribal or regional discrimination.⁸⁷¹ The prosecution submitted a redacted version of the document to the Chamber, in which [REDACTED] at the end of the report were concealed.⁸⁷²

The Chamber noted that the limited redaction to the [REDACTED] does not affect the potentially exculpatory information contained in the document and does not make the document less legible or usable.⁸⁷³ As the [REDACTED] as a result of the activities of the Court if his or her identity is disclosed, a less restrictive protective measure is not available. Therefore, the Trial Chamber authorised the disclosure of the document with the proposed redactions in order to protect third persons that could be at risk on account of the activities of the Court. Overall, the proposals satisfy the prosecution's disclosure obligations, whilst fulfilling the Court's duty to protect individuals following its activities. No lesser measures appear feasible, and the information, overall, is usable and intelligible.

The prosecution notified the Trial Chamber on 21 November 2008 that it had disclosed the redacted version in accordance with the decision of the Chamber.⁸⁷⁴

⁸⁶⁷ ICC-01/04-01/06-1502, paragraph 4; ICC-01/04-01/06-1502-Conf-AnxC (there is no ERN for this annex since it is a prosecution work product).

⁸⁶⁸ ICC-01/04-01/06-1477-Conf-Exp-Anx83.

⁸⁶⁹ ICC-01/04-01/06-1477-Conf-Exp-Anx83 (ERN: DRC-00037-455 – DRC-00037-456); an English translation was submitted as ICC-01/04-01/06-1477-Conf-Exp-Anx181 (ERN: DRC-OTP-0202-0317 – DRC-OTP-0202-0320).

⁸⁷⁰ ICC-01/04-01/06-1488-Conf-Exp-Anx38 (ERN: DRC-00037-455 – DRC-00037-456).

⁸⁷¹ ICC-01/04-01/06-1488-Conf-Exp-Anx38 (ERN: DRC-00037-455 – DRC-00037-456).

⁸⁷² ICC-01/04-01/06-1496-Conf-Exp-Anx51 (ERN: DRC-00037-455 – DRC-00037-456).

⁸⁷³ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 55, lines 13-15.

⁸⁷⁴ ICC-01/04-01/06-1502, paragraph 4; ICC-01/04-01/06-1502-Conf-AnxC (there is no ERN for this annex since it is a prosecution work product).

Annex 84⁸⁷⁵

This 2 page document is a [REDACTED].⁸⁷⁶ The prosecution submitted that the document contains Rule 77 material relating to the support of the UPC by Uganda insofar as it indicates that the Hema were supported by Ugandans, and that Ugandan troops helped the Hema conquer Bunia in August 2002.⁸⁷⁷ The prosecution indicated that the NGO that provided the document [REDACTED].⁸⁷⁸ In view of the security situation, the Chamber decided that the redactions set out in the translated version⁸⁷⁹ were in all likelihood acceptable,⁸⁸⁰ but it instructed the prosecution to recheck the redactions, [REDACTED].⁸⁸¹ The Chamber instructed the prosecution to submit a redacted version of this document, rather than a summary.⁸⁸² In the final version from the prosecution the proposed redactions [REDACTED].⁸⁸³

Upon review of the document, the Chamber noted that the Rule 77 material is not affected by the proposed redactions. Taking into consideration the security situation in the DRC and the fact that [REDACTED], the Chamber is satisfied that these measures are necessary and do not undermine the rights of the accused. The document remains legible and usable, and lesser protective measures are unavailable. Therefore, the Chamber approved the disclosure of the redacted version of this document. Overall, the proposals satisfy the prosecution's disclosure obligations, whilst fulfilling the Court's duty to protect individuals following its activities.

The prosecution notified the Trial Chamber on 21 November 2008 that it had disclosed the redacted version in accordance with the decision of the Chamber.⁸⁸⁴

Annex 85⁸⁸⁵

This 2 page document was provided by an NGO, which was not the author, and is a press article dated [REDACTED].⁸⁸⁶ An English translation of the original French

⁸⁷⁵ ICC-01/04-01/06-1477-Conf-Exp-Anx84.

⁸⁷⁶ ICC-01/04-01/06-1477-Conf-Exp-Anx84 (ERN: DRC-00037-457 – DRC-00037-458); an English translation was submitted as ICC-01/04-01/06-1477-Conf-Exp-Anx182 (ERN: DRC-OTP-0202-0321 – DRC-OTP-0202-0326).

⁸⁷⁷ ICC-01/04-01/06-1488-Conf-Exp-Anx39 (ERN: DRC-00037-457 – DRC-00037-458).

⁸⁷⁸ ICC-01/04-01/06-1430-Conf-Exp, paragraphs 29-30.

⁸⁷⁹ ICC-01/04-01/06-1477-Conf-Exp-Anx182 (ERN: DRC-OTP-0202-0321 – DRC-OTP-0202-0326).

⁸⁸⁰ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 55, lines 22-24.

⁸⁸¹ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 55, lines 16-22.

⁸⁸² ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 55, lines 24, 25, page 56, lines 1-3

⁸⁸³ ICC-01/04-01/06-1496-Conf-Exp-Anx52 (ERN: DRC-00037-457 – DRC-00037-458)

⁸⁸⁴ ICC-01/04-01/06-1502, paragraph 4; ICC-01/04-01/06-1502-Conf-AnxC (there is no ERN for this annex since it is a prosecution work product).

⁸⁸⁵ ICC-01/04-01/06-1477-Conf-Exp-Anx85.

⁸⁸⁶ ICC-01/04-01/06-1477-Conf-Exp-Anx85 (ERN: DRC.00037.508 – DRC.00037.509).

document was provided.⁸⁸⁷ The prosecution submitted that it contains Rule 77 material insofar as it refers to the support of Uganda to the Lendu and Hema armed groups, by providing them with weapons and military training, and the former wanting to control all the armed groups in order to exploit natural resources in the region.⁸⁸⁸ The prosecution observed that analogous evidence has already been disclosed to the defence.⁸⁸⁹ The provider proposed disclosure of the document with redactions only to the [REDACTED].⁸⁹⁰ These were authorised by the Chamber on 29 October 2008.⁸⁹¹ The prosecution submitted a final redacted version of the document in accordance with the Chamber's oral decision.⁸⁹²

After reviewing the information provided by the prosecution, the Chamber is satisfied that the omission of the [REDACTED] does not affect the Rule 77 material identified by the prosecution, and that, further, the prosecution has already disclosed analogous evidence to the defence. The document remains legible and a protective measure other than these minor redactions is not available to protect [REDACTED], which has emphasised the serious risks [REDACTED]. Additionally, the information provider [REDACTED].⁸⁹³ The Chamber authorised disclosure of this redacted document in order to protect those who may be at risk on account of the activities of the Court.

Overall, the proposals satisfy the prosecution's disclosure obligations, whilst fulfilling the Court's duty to protect individuals following its activities. No lesser measures appear feasible, and the information, overall, is usable and intelligible.

The prosecution disclosed this document in redacted form, in accordance with the Trial Chamber's decision.⁸⁹⁴

Annex 86⁸⁹⁵

This 2 page document [REDACTED], was provided by an NGO and is [REDACTED].⁸⁹⁶ An English translation was provided.⁸⁹⁷ The NGO is not the author.

⁸⁸⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx183 (ERN: DRC-OTP-0202-0327 – DRC-OTP-0202-0332).

⁸⁸⁸ ICC-01/04-01/06-1488-Conf-Exp-Anx40. (ERN: DRC.00037.508 – DRC.00037.509).

⁸⁸⁹ The prosecution referred the Chamber to documents, DRC-OTP-0100-0164, DRC-OTP-0165-0999, and DRC-OTP-0074-0797. ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 15.

⁸⁹⁰ ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 15 and Conf-Exp-Anx40 (ERN: DRC.00037.508-DRC.00037.509).

⁸⁹¹ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 56, line 4.

⁸⁹² ICC-01/04-01/06-1496-Conf-Exp, paragraph 104; and Conf-Exp-Anx53 (ERN: DRC.00037.508 – DRC.00037.509).

⁸⁹³ ICC-01/04-01/06-1430-Conf-Exp-Anx1.

⁸⁹⁴ ICC-01/04-01/06-1502-Conf-AnxC, page 22 (there is no ERN for this annex since it is a prosecution work product).

⁸⁹⁵ ICC-01/04-01/06-1477-Conf-Exp-Anx86.

⁸⁹⁶ ICC-01/04-01/06-1477-Conf-Exp-Anx86 (ERN: DRC.00037.534 – DRC.00037.535).

⁸⁹⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx184 (ERN: DRC-OTP-0202-0333 – DRC-OTP-0202-0336).

The prosecution submitted that it contained potentially exculpatory information, namely that the UPC was not an exclusively Hema group, but that all ethnicities within Ituri were represented. The prosecution furthermore suggested that this document included Rule 77 information relating to the arrest of APC soldiers by the UPDF in May 2002.⁸⁹⁸ The prosecution informed the Chamber that certain analogous evidence had already been disclosed to the defence.⁸⁹⁹ The information provider proposed disclosure of the document with one redaction, namely the name of the author of the document.⁹⁰⁰ However, in a later filing, the prosecution submitted that this redaction was unnecessary and that the document could be disclosed to the defence in full, which the Chamber authorised.⁹⁰¹

The prosecution disclosed the document to the defence in accordance with the Trial Chamber's decision.⁹⁰²

Annex 87⁹⁰³

This document comprises [REDACTED], written [REDACTED], provided to the prosecution by an NGO. [REDACTED].⁹⁰⁴ However, it refers to the alleged involvement of foreign powers in the conflict, and specifically Ugandan support to the Hema. It also [REDACTED] and comments on the peace process. The prosecution submitted that these documents contain potentially exculpatory material to the extent that they indicate that the conflict in the Ituri region is not of an ethnic nature, but rather involves continuing terrorism, perpetrated by Gegere extremists.⁹⁰⁵ The alleged involvement of Uganda and Rwanda in the conflict is detailed, highlighting alleged manipulation of the parties by both states, and the supply of arms by Uganda. Further, it was suggested that the documents contained Rule 77 material insofar as the author notes that it is well known that the massacres in Bunia, in July and August of 2002, were perpetrated by Hema-Gegere militias, with Ugandan support.⁹⁰⁶ The final proposal for disclosure of this document, on 12 November 2008, was in redacted form.⁹⁰⁷ The only proposed redactions were to [REDACTED]. The redactions were proposed on behalf of the NGO and it was

⁸⁹⁸ ICC-01/04-01/06-1488-Conf-Exp-Anx41 (ERN: DRC.00037.534 – DRC.00037.535).

⁸⁹⁹ DRC-OTP-0038-0493, DRC-OTP-0122-0031, CAR-OTP-0010-040, ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 15 (there is no ERN for this annex since it is a prosecution work product).

⁹⁰⁰ ICC-01/04-01/06-1488-Conf-Exp-Anx41 (ERN: DRC.00037.534- DRC.00037.535)

⁹⁰¹ ICC-01/04-01/06-1496-Conf-Exp, paragraphs 104-105; Conf-Exp-AnxC, page 23 (there is no ERN for this annex since it is a prosecution work product); and Conf-Exp-Anx54 (ERN: DRC.00037.534- DRC.00037.535).

⁹⁰² ICC-01/04-01/06-1502-Conf-AnxC, page 22 (there is no ERN for this annex since it is a prosecution work product).

⁹⁰³ ICC-01/04-01/06-1477-Conf-Exp-Anx87.

⁹⁰⁴ ICC-01/04-01/06-1477-Conf-Exp-Anx87 (ERN: DRC.00037.0543 – DRC.00037.0544).

⁹⁰⁵ ICC-01/04-01/06-1488-Conf-Exp-Anx42 (ERN: DRC.00037.0543 – DRC.00037.0544).

⁹⁰⁶ ICC-01/04-01/06-1488-Conf-Exp-Anx42 (ERN: DRC.00037.0543 – DRC.00037.0544).

⁹⁰⁷ ICC-01/04-01/06-1496-Conf-Exp--Anx55 (ERN: DRC-OTP-00037-0543– DRC-OTP-00037-0544).

submitted that they were necessary for the safety of the persons concerned, as well [REDACTED].⁹⁰⁸

The Chamber noted that the redactions proposed by the prosecution are limited and are not contained in the Rule 77 portions of the document; in addition, the document remains legible and usable. Having reviewed the submissions of the prosecution, the Chamber decided that no lesser protective measure is available in order to protect [REDACTED]. The Trial Chamber, therefore, authorised disclosure of this document to the defence with the proposed redactions in order to protect individuals who could be at risk on account of the activities of the Court. Overall, the proposals satisfy the prosecution's disclosure obligations, whilst fulfilling the Court's duty to protect individuals following its activities. The information, overall, is usable and intelligible.

In accordance with the directions of the Trial Chamber, this document has now been disclosed by the prosecution.⁹⁰⁹

Annex 88⁹¹⁰

The 6 page document submitted by the prosecution was provided by an NGO and contains [REDACTED] a report on the situation in [REDACTED] since January 2001, as regards the inter-ethnic conflict, [REDACTED].⁹¹¹ The NGO is not the author of the report [REDACTED]. The prosecution submitted that this document contains Rule 77 material, namely that for the 5 September 2002 attack between the APC and the UPC, the APC received support from the DRC government (Kinshasa).⁹¹² The final proposal by the prosecution included redactions.⁹¹³ These affect [REDACTED]. The section containing the Rule 77 material does not contain any redactions. The redactions were proposed on behalf of the NGO and it was submitted that they were necessary for the safety of some of the individuals identified [REDACTED].⁹¹⁴

The Chamber concluded that the Rule 77 material is unaffected. The proposed method of disclosure represents an acceptable balance between the risk to [REDACTED] and the rights of the accused. The Trial Chamber, therefore,

⁹⁰⁸ ICC-01/04-01/06-1430-Conf-Exp, paragraphs 29-30.

⁹⁰⁹ ICC-01/04-01/06-1502- Conf-AnxC, page 22 (there is no ERN for this annex since it is a prosecution work product).

⁹¹⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx88.

⁹¹¹ ICC-01/04-01/06-1477-Conf-Exp-Anx88 (ERN: DRC-OTP-0037-562 – DRC-OTP-0037-567).

⁹¹² ICC-01/04-01/06-1488-Conf-Exp-Anx43 (ERN: DRC-OTP-0037-562 – DRC-OTP-0037-567) and ICC-01/04-01/06-1488-Conf-Exp-Anx94 (there is no ERN for this annex since it is a prosecution work product)

⁹¹³ Email communication to the Trial Chamber through the Legal Adviser to the Trial Division on 18 November 2008. A previous redacted version was submitted as ICC-01/04-01/06-1496-Conf-Exp-Anx56 (ERN: DRC-OTP-0037-562 – DRC-OTP-0037-567) and in the hearing on 17 November, the Chamber indicated that further redactions may be necessary to protect certain individuals, ICC-01/04-01/06-T-96-CONF-EXP-ENG, page 25, lines 10-19.

⁹¹⁴ ICC-01/04-01/06-1430-Conf-Exp, paragraphs 29-30.

authorised disclosure to the defence with the proposed redactions in order to protect those who could be at risk on account of the activities of the Court. Overall, the proposals satisfy the prosecution's disclosure obligations, whilst fulfilling the Court's duty to protect individuals following its activities. No lesser measures appear feasible, and the information, overall, is usable and intelligible. The fair-trial rights of the accused are not undermined.

The prosecution notified the Trial Chamber on 21 November 2008 that it had disclosed the redacted version in accordance with the decision of the Chamber.⁹¹⁵

Annex 89⁹¹⁶

This 16 page [REDACTED] was provided by an NGO and although it is [REDACTED] regarding the Ituri conflict [REDACTED].⁹¹⁷ The prosecution submitted that this document contained Rule 77 information insofar as it refers to the support given by Uganda to the Hema militia in attacking Lendu villages and how, [REDACTED], the Ugandans supported the Lendu.⁹¹⁸ The prosecution informed the Chamber that analogous evidence had already been provided to the defence.⁹¹⁹ The information provider proposed disclosure with limited redactions to certain names, [REDACTED] and others who may be at risk should their identities be revealed.⁹²⁰

The Chamber noted that the NGO had expressed serious concerns about the security of its [REDACTED]. Given the proposed redactions are limited and they are not contained in the portion of the document containing the Rule 77 information, the Trial Chamber authorised disclosure in this form to protect the identity of the information provider and others who could be at risk on account of the activities of the Court. Overall, the proposals satisfy the prosecution's disclosure obligations, whilst fulfilling the Court's duty to protect individuals following its activities. No lesser measures appear feasible, and the information, overall, is usable and intelligible.

⁹¹⁵ ICC-01/04-01/06-1502, paragraph 4; ICC-01/04-01/06-1502-Conf-AnxC (there is no ERN for this annex since it is a prosecution work product).

⁹¹⁶ ICC-01/04-01/06-1477-Conf-Exp-Anx89.

⁹¹⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx89 (ERN: DRC.00037.570 – DRC.00037.585) and partial English translation thereof: ICC-01/04-01/06-1477-Conf-Exp-Anx207 (ERN: DRC-OTP-0202-0275 – DRC-OTP-0202-0280).

⁹¹⁸ ICC-01/04-01/06-1488-Conf-Exp-Anx44 (ERN: DRC.00037.570 – DRC.00037.585).

⁹¹⁹ ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 16 (DRC-OTP-0074-0422, DRC-OTP-037-0072, DRC-OTP-0074-0061, DRC-OTP-0074-0117, DRC-OTP-0077-0429, DRC-OTP-0119-0024, CAR-OTP-0005-0074, DRC-OTP-0001-0251, DRC-OTP-0005-0025, DRC-OTP-0074-0195).

⁹²⁰ ICC-01/04-01/06-1496-Conf-Exp, paragraphs 104; ICC-01/04-01/06-1496-Conf-Exp-AnxC, page 24; and ICC-01/04-01/06-1496-Conf-Exp-Anx57, ICC-01/04-01/06-1430-Conf-Exp, paragraphs 28-30.

The prosecution notified the Trial Chamber on 21 November 2008 that it had disclosed the redacted version of the document to the defence in accordance with the decision of the Chamber.⁹²¹

Annex 90⁹²²

This 3 page press release from [REDACTED], was provided by an NGO [REDACTED].⁹²³ The prosecution submitted that it contains potentially exculpatory information insofar as it refers to the pacification efforts of the UPC around June 2003.⁹²⁴ The prosecution informed the Chamber that analogous exculpatory information had already been disclosed to the defence.⁹²⁵ However, the information provider proposed full disclosure to the defence save for redactions to its own identity.⁹²⁶

The Chamber is satisfied that withholding the name of the NGO does not affect the potentially exculpatory value of the document, especially as the provider is not the [REDACTED]. [REDACTED]. The Chamber considered that the disclosure of this document in non-redacted form (save for any reference to the name of the NGO) along with the previously disclosed additional evidence counter-balances any impact the non-disclosure of the name of the provider might have on the rights of the accused.

The prosecution disclosed the document in accordance with the decision of the Chamber.⁹²⁷

Annex 91⁹²⁸

This 14 page document dated [REDACTED] was provided by an NGO and it [REDACTED].⁹²⁹ The prosecution submitted that it contains Rule 77 information insofar as it refers to the purpose of the UPC, its history, its creation, objectives, political-military movement, composition, pacification efforts, and activities during

⁹²¹ ICC-01/04-01/06-1502-Conf-AnxC, page 22.

⁹²² ICC-01/04-01/06-1477-Conf-Exp-Anx90.

⁹²³ ICC-01/04-01/06-1477-Conf-Exp-Anx90 (ERN: DRC-OTP-0197-0050 – DRC-OTP-0197-0052) and English translation thereof: ICC-01/04-01/06-1477-Conf-Exp-Anx201 (ERN: DRC-OTP-0202-0606 – DRC-OTP-0202-0608).

⁹²⁴ ICC-01/04-01/06-1488-Conf-Exp-Anx58 (ERN: DRC-OTP-0197-0050 – DRC-OTP-0197-0052).

⁹²⁵ ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 28 (DRC-OTP-0089-0160. DRC-OTP-0089-0379, DRC-OTP-0019-0007).

⁹²⁶ ICC-01/04-01/06-1496-Conf-Exp, paragraph 104; ICC-01/04-01/06-1496-Conf-Exp-AnxC, page 24; and ICC-01/04-01/06-1496-Conf-Exp-Anx58 (ERN: DRC-OTP-0197-0050 – DRC-OTP-0197-0052).

⁹²⁷ ICC-01/04-01/06-1502-Conf-AnxC, page 22.

⁹²⁸ ICC-01/04-01/06-1477-Conf-Exp-Anx91.

⁹²⁹ ICC-01/04-01/06-1477-Conf-Exp-Anx91 (ERN: DRC-OTP-0197-0296 – DRC-OTP-0197 – 0309) and English translation thereof: ICC-01/04-01/06-1477-Conf-Exp-Anx199 (ERN: DRC-OTP-0202-0581 – DRC-OTP-0202-0599)

its tenure in Ituri. The document also refers to the support given to it by Uganda and Rwanda, and the UPC relationship with MONUC and Artemis, as well as background information on Thomas Lubanga, and the UPC relationship with the Lendu.⁹³⁰ The prosecution has already disclosed analogous evidence to the defence,⁹³¹ and the NGO has expressed fears about dangers to [REDACTED], and therefore disclosure was proposed with minor redactions to the identities of the source and [REDACTED]. The prosecution submitted that the redactions do not affect the substance of the document, since they merely concern the identity of [REDACTED], none of which relate to its substantive Rule 77 content.⁹³²

In view of the dangerous environment [REDACTED] and bearing in mind the concerns as to the security of [REDACTED] and other individuals, and given the redactions do not affect the substance of the document, the Trial Chamber authorised the disclosure of the document with the proposed redactions in order to protect those who could be at risk on account of the activities of the Court. Overall, the proposals satisfy the prosecution's disclosure obligations, whilst fulfilling the Court's duty to protect individuals following its activities. No lesser measures appear feasible, and the information, overall, is usable and intelligible.

The prosecution disclosed the document in accordance with the decision of the Chamber.⁹³³

Annex 92⁹³⁴

This document comprises [REDACTED], provided by an NGO.⁹³⁵ The prosecution submitted that it contains Rule 77 material, namely an unsigned letter purportedly from Thomas Lubanga dated 6 January 2008.⁹³⁶ The prosecution informed the Chamber that the NGO [REDACTED]. In the circumstances, the prosecution proposed that documents provided by this NGO should be disclosed as summaries, and, where necessary, with redactions to the identity of the NGO [REDACTED] or others who may be at risk.⁹³⁷ At the *ex parte* status conference on 29 October 2008, the

⁹³⁰ ICC-01/04-01/06-1488-Conf-Exp-Anx59 (ERN: DRC-OTP-0197-0296 – DRC-OTP-0197-0309).

⁹³¹ ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 29.(DRC-OTP-0132-0343, DRC-OTP-1010-0067, DRC-OTP-0091-0836, DRC-OTP-0173-0028, DRC-OTP-0083-0008, DRC-OTP-0135-0521, DRC-OTP-0165-0249, DRC-OTP-0113-0161).

⁹³² ICC-01/04-01/06-1496-Conf-Exp, paragraph 104, ICC-01/04-01/06-1496-Conf-Exp-AnxC, page 24; and ICC-01/04-01/06-1496-Conf-Exp-Anx59 (ERN: DRC-OTP-0197-0296 – DRC-OTP-0197-0309).

⁹³³ ICC-01/04-01/06-1502-Conf-AnxC, page 23.

⁹³⁴ ICC-01/04-01/06-1477-Conf-Ecp-Anx92.

⁹³⁵ ICC-01/04-01/06-1477-Conf-Exp-Anx92 (ERN: DRC-OTP-0197-0310 – DRC-OTP-0197-0327). The English translation of this document is contained at ICC-01/04-01/06-1477-Conf-Exp-Anx202 (ERN: DRC-OTP-0204-0006 – DRC-OTP-0204-0035). The prosecution's hi-lighted version of this document is contained at ICC-01/04-01/06-1488-Conf-Exp-Anx60 (ERN: DRC-OTP-0197-0310 – DRC-OTP-0197-0327).

⁹³⁶ ICC-01/04-01/06-1488-Conf-Exp-Anx60 (ERN: DRC-OTP-0197-0310 – DRC-OTP-0327) and Conf-Exp-Anx94 (no ERN as this is a prosecution work product).

⁹³⁷ ICC-01/04-01/06-1430-Conf-Exp, paragraphs 28 – 30.

Trial Chamber decided that this document could be disclosed to the defence if references to the NGO were redacted.⁹³⁸ The identity of the NGO is irrelevant to the Rule 77 material. The prosecution provided the Chamber with a version comprising only one page whereas the original comprises 19 pages.⁹³⁹ However, the prosecution acknowledged that this was a mistake and in the event confirmed that it could be disclosed in full to the defence.⁹⁴⁰

Given that the prosecution agreed to disclose the document in non-redacted form, thereby making any Rule 77 material available to the defence in full, the Trial Chamber authorised this proposal.

On 21 November 2008, the prosecution notified the Trial Chamber that it had complied with the decision of the Chamber.⁹⁴¹

Annex 93⁹⁴²

This 35 page report entitled [REDACTED] provided by an NGO [REDACTED].⁹⁴³ It sets out various matters relating to human rights issues in Ituri, Uganda and Rwanda and provides [REDACTED]⁹⁴⁴ The prosecution submitted that this document contains potentially exculpatory information on insufficient command and control, and particularly that, “by 14 November 2003, there was a disfunction between the political direction of the UPC and the command of the army”, that “while Lubanga was detained in Kinshasa the UPC was directed by a group composed of Jokaba, Ngona and Tinazbo,” that there “was a climate of distrust between the political-military direction of the UPC between those (like Kisémbó) who want to collaborate with MONUC and others (like Lubanga and Bosco) who think that the UN tries to ‘smother’ the leadership of the movement”, and that there were tensions between Kisémbó and Thomas Lubanga in December 2003.⁹⁴⁵ The prosecution submitted that the document also contains Rule 77 material indicating support of Uganda, Rwanda and Kinshasa, suggesting that the militias of Ituri were manipulated by their Ugandan and Rwandan sponsors and that the UPC received the support of Rwanda.⁹⁴⁶

⁹³⁸ ICC-01/04-01/06-T-95-CONF-EXP-ENG, page 58, lines 24-25, page 59, lines 1-6.

⁹³⁹ ICC-01/04-01/06-1496-Conf-Exp, paragraph 104 and Conf-Exp-Anx60 (ERN: DRC-OTP-0197-0311).

⁹⁴⁰ Email communication to the Trial Chamber through the Legal Adviser to the Trial Division on 13 November 2008.

⁹⁴¹ ICC-01/04-01/06-1502-Conf-AnxC.

⁹⁴² ICC-01/04-01/06-1477-Conf-Exp-Anx93.

⁹⁴³ ICC-01/04-01/06-1430-Conf-Exp, footnote 58.

⁹⁴⁴ ICC-01/04-01/06-1477-Conf-Exp-Anx93 (ERN: DRC-OTP-0132-289 – DRC-OTP-0132-323). The English translation of this document is contained at ICC-01/04-01/06-1477-Conf-Exp-Anx190 (ERN: DRC-OTP-0202-0381 – DRC-OTP-0202-0417). The prosecution’s hi-lighted version of this document is contained at ICC-01/04-01/06-1488-Conf-Exp-Anx50 (ERN: DRC-OTP-00132-289- DRC-OTP-0132-323)

⁹⁴⁵ ICC-01/04-01/06-1488-Conf-Exp-Anx50 (ERN: DRC-OTP-00132-289- DRC-OTP-0132-323) and Conf-Exp-Anx94 (no ERN as this is a prosecution work product).

⁹⁴⁶ ICC-01/04-01/06-1488-Conf-Exp-Anx94 (no ERN as this is a prosecution work product).

The prosecution submitted that the NGO fears [REDACTED], and indicated it had only consented to the document's disclosure if redactions were implemented.⁹⁴⁷ The prosecution informed the Chamber that a redacted version had already been submitted to the Trial Chamber in a previous filing.⁹⁴⁸

The only redactions are to the signature and position of the author on the last page. Therefore, these are limited and do not affect the substance of the document. They do not affect the potentially exculpatory information or Rule 77 material, and in light of the fears expressed by the NGO, they are necessary to protect the author and the NGO. Accordingly, the Trial Chamber authorised disclosure of this document to the defence with the proposed redactions in order to protect those at risk on account of the activities of the Court. Overall, the proposals satisfy the prosecution's disclosure obligations, whilst fulfilling the Court's duty to protect individuals following its activities. No lesser measures appear feasible, and the information, overall, is usable and intelligible.

On 21 November 2008, the prosecution notified the Trial Chamber that it had complied with the Trial Chamber's decision.⁹⁴⁹

Annex 94⁹⁵⁰

This 5 page [REDACTED]. It contains a brief message from Jean-Baptiste Dhetchuvi indicating that the text of the response to the Hema Community's declaration of 03/08/2002 by Mr Jean-Gaston Kitabo Dhekwa of the Kinshasa Lendu community is attached. In addition, [REDACTED] a message dated 5 August 2002 written by the governor-military commander of Ituri, Mr. Jean-Pierre Moloondo Lopondo in which he threatens Mr. Dhetchuvi.⁹⁵¹ The prosecution submitted that this document contains Rule 77 material relating to the support of Uganda/Rwanda/the Kinshasa government, in particular, the information indicates that in 1999 there was a Hema-Uganda coalition, that young Hemas were sent to Uganda for training, and that the Ugandans attacked the Lendu. The prosecution submitted that the information also indicates that Rwandans trained UPC soldiers in Mandro.⁹⁵² The NGO was

⁹⁴⁷ ICC-01/04-01/06-1385-Conf-Exp-Anx2; ICC-01/04-01/06-1430-CONF-EXP, paragraphs 31 – 32. ICC-01/04-01/06-1477-Conf-Exp, paragraph 19 (iii). ICC-01/04-01/06-1385-Conf-Exp-Anx33 (ERN: DRC.00132-289 – DRC.00132.323).

⁹⁴⁸ ICC-01/04-01/06-1496-Conf-Exp, paragraph 108 and ICC-01/04-01/06-1385-Conf-Exp-Anx33 (ERN: DRC.00132-289 – DRC.00132.323).

⁹⁴⁹ ICC-01/04-01/06-1502-Conf-AnxC.

⁹⁵⁰ ICC-01/04-01/06-1477-Conf-Exp-Anx94.

⁹⁵¹ ICC-01/04-01/06-1477-Conf-Exp-Anx94 (ERN: DRC-00033.063 – DRC-00033-067). The English translation of this document is contained at ICC-01/04-01/06-1477-Conf-Exp-Anx187 (ERN: DRC-OTP-0202-0348 – DRC-OTP-0202-035). The prosecution's hi-lighted version of this document is contained at ICC-01/04-01/06-1488-Conf-Exp-Anx23 (ERN: DRC-00033.063 – DRC-00033-067).

⁹⁵² ICC-01/04-01/06-1488-Conf-Exp-Anx23 (ERN: DRC-00033.063 – DRC-00033-067) and Conf-Exp-Anx94 (no ERN as this is a prosecution work product).

concerned about [REDACTED], and therefore it sought disclosure of a summary of a redacted version of the document,⁹⁵³ which was provided to the Trial Chamber.⁹⁵⁴

The proposed redactions concern only the [REDACTED]. Neither [REDACTED], including any of the information identified as Rule 77 material by the prosecution, is redacted. In view of the dangerous situation in the DRC and the fact that [REDACTED] a volatile environment, the Chamber considered that the redactions were necessary and appropriate. It is to be stressed that they do not undermine the Rule 77 value of this document. The Trial Chamber authorised disclosure in this form so as to protect those at risk on account of the activities of the Court. Overall, the proposals satisfy the prosecution's disclosure obligations, whilst fulfilling the Court's duty to protect individuals following its activities. No lesser measures appear feasible, and the information, overall, is usable and intelligible.

On 21 November 2008, the prosecution notified the Trial Chamber that it had complied with the decision of the Chamber.⁹⁵⁵

Annex 95⁹⁵⁶

This 2 page document dated September 2002 was provided by an NGO and it is a political declaration of the UPC.⁹⁵⁷ The prosecution submitted that it contained potentially exculpatory information insofar as it refers to Thomas Lubanga's statement that the UPC/RP is "a political movement which is composed by and for all the Congolese living in the North-East of the DRC and that the UPC tries to carry out its objectives (re-establishment of human dignity, dialogue, security, decent administration, etc.)." The prosecution also submitted that the document included Rule 77 information related to the support of the Kinshasa government to two armed groups, the ADF and the RCD-ML, by providing various materials and troops.⁹⁵⁸ The prosecution indicated that analogous evidence had already been disclosed to the defence.⁹⁵⁹ In the event, the information provider consented to disclosure in full to the defence.

Since this document can be disclosed in full to the defence, the prosecution has fulfilled its disclosure obligations in accordance with Article 67(2) and Rule 77.

⁹⁵³ ICC-01/04-01/06-1385-Conf-Exp. ICC-01/04-01/06-1430-Conf-Exp, paragraphs 33 – 35. ICC-01/04-01/06-1477-Conf-Exp, paragraph 19 (v)

⁹⁵⁴ ICC-01/04-01/06-1496-Conf-Exp, paragraph 108 and ICC-01/04-01/06-1488-Conf-Exp-Anx23 (ERN: DRC-00033.063 – DRC-00033-067).

⁹⁵⁵ ICC-01/04-01/06-1502-Conf-AnxC.

⁹⁵⁶ ICC-01/04-01/06-1477-Conf-Exp-Anx95.

⁹⁵⁷ ICC-01/04-01/06-1477-Conf-Exp-Anx95 (ERN: DRC.00033.077 – DRC.00033.078) and English translation thereof: ICC-01/04-01/06-1477-Conf-Exp-Anx188 (ERN: DRC-OTP-0202.0355 – DRC-OTP-0202-0357).

⁹⁵⁸ ICC-01/04-01/06-1488-Conf-Exp-Anx24 (ERN: DRC.00033.077 – DRC.00033.078).

⁹⁵⁹ ICC-01/04-01/06-1488-Conf-Exp-Anx94, page 12 (DRC-OTP-0089-0338, DRC-OTP-0091-0019, DRC-OTP-0091-0665, DRC-OTP-0127-0065, CAR-OTP-0005-0381).

On 21 November 2008, the prosecution notified that Trial Chamber that it had disclosed this document in full to the defence.⁹⁶⁰

Annex 96⁶¹

This is a 3 page [REDACTED] a letter with a heading [REDACTED].⁹⁶² The author sought to inform [REDACTED] about Kinshasa government troops allegedly joining soldiers from the RCD-ML (APC) as well as the Interahamwe and the Lendu fighters. He portrayed the aims of the UPC as wanting to bring peace to Ituri. The prosecution submitted that this document contains potentially exculpatory information in that it indicates that “the UPC intends to end the violence in Ituri and to reinstate peace”, that “the UPC is against hate, tribalism, massacres and genocide”, and that “they are willing to negotiate directly with Kinshasa and with the other political groups.”⁹⁶³ The prosecution also submitted that this document contains Rule 77 material in that it sets out that “Kinshasa is supporting RCD-ML (APC) in their fight against UPC, including providing weapons.”⁹⁶⁴ The NGO had informed the prosecution that it was concerned about [REDACTED], and it sought disclosure of a summary or a redacted version of the document.⁹⁶⁵ The prosecution provided the Trial Chamber with a redacted version.⁹⁶⁶

The redactions concern only the [REDACTED] and they are unrelated to the potentially exculpatory or Rule 77 material as identified by the prosecution in this document. The full content of the [REDACTED] is available to the defence. In view of the dangerous situation in the DRC and the fact that [REDACTED] a volatile environment, the Chamber considered that the redactions are necessary and appropriate. The Trial Chamber authorised disclosure in this form so as to protect those at risk on account of the activities of the Court. The Chamber was satisfied that the redactions are necessary and that no lesser measures are feasible.

⁹⁶⁰ ICC-01/04-01/06-1502-Conf- AnxC, page 23.

⁹⁶¹ ICC-01/04-01/06-1477-Conf-Exp-Anx96.

⁹⁶² ICC-01/04-01/06-1477-Conf-Exp-Anx96 (ERN: DRC-00033.079 – DRC-00033-081). The English translation of this document is contained at ICC-01/04-01/06-1477-Conf-Exp-Anx189 (ERN: DRC-OTP-0202-0358 – DRC-OTP-0202-0361). The prosecution’s hi-lighted version of this document is contained at ICC-01/04-01/06-1488-Conf-Exp-Anx25 (ERN: DRC-00033.079 – DRC-00033-081)

⁹⁶³ ICC-01/04-01/06-1488-Conf-Exp-Anx25 (ERN: DRC-00033.079 – DRC-00033-081) and Conf-Exp-Anx94 (no ERN as this is a prosecution work product).

⁹⁶⁴ ICC-01/04-01/06-1488-Conf-Exp-Anx25 (ERN: DRC-00033.079 – DRC-00033-081) and Conf-Exp-Anx94 (no ERN as this is a prosecution work product).

⁹⁶⁵ ICC-01/04-01/06-1385-Conf-Exp. ICC-01/04-01/06-1430-Conf-Exp. paras 33 – 35 ICC-01/04-01/06-1477-Conf-Exp, paragraph 19 (v).

⁹⁶⁶ ICC-01/04-01/06-1496-Conf-Exp, paragraph 108 and ICC-01/04-01/06-1488-Conf-Exp-Anx25 (ERN: DRC-00033 079 – DRC-00033-081).

On 21 November 2008, the prosecution notified that Trial Chamber that it had disclosed this document in redacted form, thereby complying with the decision of the Chamber.⁹⁶⁷

⁹⁶⁷ ICC-01/04-01/06-1502-Conf-AnxC.