

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 6 April 2011

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Single Judge

**SITUATION IN THE REPUBLIC OF KENYA
IN THE CASE OF THE PROSECUTOR V. FRANCIS KIRIMI MUTHAURA,
UHURU MUIGAI KENYATTA AND MOHAMMED HUSSEIN ALI**

Public

Decision Setting the Regime for Evidence Disclosure and Other Related Matters

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

The Office of the Prosecutor
Luis Moreno-Ocampo, Prosecutor
Fatou Bensouda, Deputy Prosecutor

Counsel for Francis Kirimi Muthaura
Karim A. Khan and Kennedy Ogeto

Counsel for Uhuru Muigai Kenyatta
Steven Kay and Gillian Higgins

Counsel for Mohammed Hussein Ali
Evans Monari, John Philpot and
Gershom Otachi Bw'omanwa

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar
Silvana Arbia, Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

Other

Judge Ekaterina Trendafilova, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”)¹ of the International Criminal Court (the “Court”) issues this decision setting a regime for the disclosure of evidence between the parties and other related matters for the purpose of organization, efficiency and expeditiousness of the upcoming proceedings until the confirmation of the charges hearing.

1. On 8 March 2011, the Chamber, by majority, decided to summon Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali to appear before the Court on 7 April 2011.²

2. On 18 March 2011, the Chamber decided that the initial appearance hearing shall be convened on Friday, 8 April 2011 at 14.30 hours.³

3. The Single Judge notes articles 21 (1)(a), (2)-(3), 54(3)(e), 61 (3),(7), 67(1)(a)-(b), (2), 69(3), 72 and 93(8) of the Rome Statute (the “Statute”), rules 15, 63(1), 76-83, 121(2-10) and 122 of the Rules of Procedure and Evidence (the “Rules”), regulation 26 of the Regulations of the Court and regulations 15-19, 21, 24, 28 and 53(3) of the Regulations of the Registry (“RoR”).

I. Principles governing disclosure and the time-frame thereto

4. The Single Judge reminds the Prosecutor and the Defence that in order to reach the stage of holding a hearing on whether to confirm the charges, the Court’s statutory documents envisage several procedural steps that must be undertaken by the Chamber as well as by the parties throughout the proceedings leading to that hearing. Central to this is the creation of a system that regulates the disclosure of evidence between the parties and its communication to the Chamber.

5. In this regard, the Single Judge recalls the decision of 31 July 2008 issued by Pre-Trial Chamber III in the case of the *Prosecutor v. Jean-Pierre Bemba Gombo*, in which it

¹ Pre-Trial Chamber II, “Decision Designating Single Judge”, ICC-01/09-01/11-6.

² Pre-Trial Chamber II, “Decision on the Prosecutor’s Application for Summonses to Appear for Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, ICC-01/09-02/11-01.

³ Pre-Trial Chamber II, “Decision Setting a New Date for the Initial Appearance”, ICC-01/09-02/11-8.

developed the principles underlying evidence disclosure between the parties for the purposes of the confirmation hearing (the “31 July 2008 Decision”).⁴ The Single Judge has no reason to depart from the principles as laid down in the 31 July 2008 Decision, and accordingly, will apply them in the present decision.

6. As stated in the 31 July 2008 Decision, disclosure of evidence as envisaged by the language of rule 121(2)(c) of the Rules is an *inter partes* process that takes place between the Prosecutor and the Defence. It is facilitated or implemented through the channel of the Registry. The Chamber receives “all evidence disclosed for the purposes of the confirmation hearing” by way of communication in order to carry out its main duty, which is “to ensure that disclosure takes place under satisfactory conditions” in accordance with article 61(3) of the Statute together with rule 121(2)(b) of the Rules.

7. In this context, the Single Judge considers that ensuring an effective disclosure process, which ultimately aims at reaching a proper decision as to whether or not to send the cases to trial, requires that all evidence disclosed between the parties, shall be communicated to the Chamber, regardless of whether the parties intend to rely on or present the said evidence at the confirmation hearing. This reading is compatible with a literal as well as a contextual interpretation of the Statute and the Rules thereto and in particular, the last sentence of rule 121(2) (c) of the Rules, which requires that “all evidence disclosed [...] be communicated to the Pre-Trial Chamber”. This means that the Chamber shall have access to the following disclosed evidence: (a) all evidence in the Prosecutor’s possession or control (pursuant to article 67(2) of the Statute) which he believes shows or tends to show the innocence of the suspects, or to mitigate their alleged guilt, or may affect the credibility of the Prosecutor’s evidence; (b) all names of witnesses and copies of their prior statements on which the Prosecutor intends to rely at the confirmation hearing, regardless of whether the Prosecutor intends to call them to testify (rule 76); (c) all rule 77 material

⁴ Pre-Trial Chamber III, “Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties”, ICC-01/05-01/08-55.

in possession or control of the Prosecutor (incriminatory, exculpatory, or mixed in nature), which is material to the preparation of the Defence or are intended for use by the Prosecutor as evidence for the purposes of the confirmation hearing or was obtained from or belonged to the person; (d) all rule 78 material in possession or control of the Defence, which is intended for use as evidence for the purposes of the confirmation hearing; and (e) all evidence the Defence may present as per rule 79, on which the suspect intends to rely, to establish an alibi or a ground for excluding criminal responsibility.

8. The Single Judge reminds the Prosecutor and the Defence that the Court's statutory documents impose different time-limits on both parties, by which to file the material and evidence *stricto sensu* in the record of the case. In this respect, according to rule 121(3) of the Rules, the Prosecutor shall provide a document containing a detailed description of the charges together with a list of evidence, for the purposes of the confirmation hearing, no later than 30 days before the date of its commencement. If he intends to amend the charges or the list of evidence, rule 121(4) of the Rules requires that the Defence be notified no later than 15 days prior to the date of the hearing of the amended charges or/and list of evidence.

9. Moreover, should the Prosecutor intend to present new evidence at the hearing, rule 121(5) of the Rules dictates that he shall also provide a list of that evidence no later than 15 days before the date of the hearing. In this respect, the Single Judge wishes to point out that for the purpose of this rule "new evidence" refers to any information, material or evidence which came into the Prosecutor's control or possession after the deadline provided for in rule 121(3) of the Rules. Accordingly, evidence presented to the Chamber (including new evidence) after the time limits, as specified by the provision referred to above shall not be considered.

10. As to the Defence, pursuant to rule 121(6) of the Rules, if the persons intend to present evidence, they shall provide a list of evidence no later than 15 days before the start of the confirmation hearing.

11. In this regard, it is the view of the Single Judge that the deadlines established by rule 121 of the Rules are only indicative of the minimum time limits that a party can avail itself to comply with its disclosure obligations. This conclusion finds support in the express wording of “no later than”, reflected in rule 121(3)-(6) and (9) of the Rules. Thus, the early initiation of the process of disclosure better guarantees the expeditiousness of the proceedings, guided by the overarching principle of fairness. For these reasons, the Single Judge encourages the parties to fulfill their disclosure obligations as soon as practicable and not only on the date when the deadline as provided by the statutory documents expires.

12. Finally, all evidence disclosed by both parties for the purposes of the confirmation hearing and contained in the record of the case shall be presented to the Chamber as decided by the Presiding Judge in accordance with rule 122(1) of the Rules.

13. With respect to the different requests related to protective measures for witnesses including redactions, the Single Judge wishes to make clear that any such request must be submitted as soon as practicable, but no later than the date which shall be specified in a calendar to be issued in due course. This prevents unnecessary delays for the start of the confirmation hearing and ensures that the Defence is put on sufficient notice for its preparation.

II. Role of the Registry and registration procedure

14. The Single Judge reiterates that the process of evidence disclosure is facilitated by the Registry, which is not a party to the proceedings but rather “a communication channel” between the parties and the Chamber.⁵ The Single Judge will apply the modalities of disclosure of evidence and communication of that evidence to the Chamber as laid down in the 31 July 2008 Decision.

⁵ Pre-Trial Chamber III, “Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties”, ICC-01/05-01/08-55, para. 34.

15. The Registry has different responsibilities related to this process as referred to in rule 121(10) of the Rules and regulations 15-19, 24-28 and 53(3) of the RoR. Among these responsibilities is to maintain a full and accurate record of the proceedings containing the evidence disclosed, and subject to restrictions regarding confidentiality or national security information, the Registry facilitates having access to the record by the parties and the Chamber. Thus, the Registry must register and transmit all evidence disclosed between the parties and communicated to the Chamber expeditiously.

16. In relation to the registration procedure, the Single Judge wishes to explain that upon receipt of the relevant evidence, the Registry will register each piece of evidence to be disclosed and communicated to the Chamber. Each piece of evidence submitted shall be assigned with an independent "EVD number". Evidence shall be submitted by the parties in its original form and a corresponding electronic copy. In case of tangible objects, evidence shall be submitted in the form of an electronic photograph.

17. Unless a party raises an objection against the authenticity of a piece of evidence,⁶ the Registry shall not conduct an authentication process confirming that the electronic copy is an exact replica of the original piece of evidence.

18. In case a piece of evidence or part of it needs to be replaced in the record of the case upon an objection, the document shall be provided in accordance with the e-Court protocol (see Annex 1).

19. When submitting evidence under rule 76 of the Rules, the Prosecutor is reminded to provide a translation which will be reflected accordingly in the record of the case. That translation of the document shall be provided in accordance with the e-Court protocol (see Annex 1).

⁶ *Ibid.*, para. 59.

20. The parties are reminded to include in their submission of evidence the following documentation: (i) a list of evidence enlisting all pieces of evidence enclosed with their respective document ID as defined in the e-Court protocol (see Annex 1) and (ii) a list of recipients including the level of confidentiality applicable to each item.

21. In view of the principle of publicity of proceedings, the evidence submitted shall in principle be registered as public unless there is a reason to classify it otherwise.

III. Required analysis of the evidence exchanged between the parties

22. The Single Judge recalls Pre-Trial Chamber's III earlier findings in the 31 July 2008 Decision in which it stressed the significance of providing the Defence with:

[A]ll necessary tools to understand the reasons why the Prosecutor relies on any particular piece of evidence and that, consequently, the evidence exchanged between the parties and communicated to the Chamber must be the subject of a sufficiently detailed legal analysis relating the alleged facts with the constituent elements corresponding to each crime charged[...] This analysis consist of presenting each piece of evidence according to its relevance in relation to the constituent elements of the crimes presented by the Prosecutor in his application under article 58 of the Statute and taken into account by the Chamber in its [decision on the said application]. Each piece of evidence must be analyzed – page by page or, where required, paragraph by paragraph – by relating each piece of information contained in that page or paragraph with one or more of the constituent elements of one or more of the crimes with which the person is charged, including the contextual elements of those crimes, as well as the constituent elements of the mode of participation in the offence with which person is charged. The same analysis technique shall apply *mutatis mutandis* to photographs, maps, videodiscs, tangible objects and any other support disclosed by the Prosecutor [...]this analysis should be presented in the form of a summary table which shows the relevance of the evidence presented in relation to the constituent elements of the crimes with which the person is charged. It should enable the Chamber to verify that for each constituent element of any crime with which the person is charged, including their contextual elements, as well as for each constituent element of the mode of participation in the offence with which he or she is charged, there are one or more corresponding pieces of evidence, either incriminating or

exculpatory, which the Chamber must assess in light of the criteria set under article 61(7) of the Statute.⁷

23. In the context of the present decision, the Single Judge favours the same approach adopted in the 31 July 2008 Decision,⁸ which was further clarified in a subsequent decision issued by the same Chamber on 10 November 2008 (the “10 November 2008 Decision”). In the latter decision, the Chamber requested the Prosecutor to present a consolidated version of his in-depth analysis chart of incriminating evidence, following the structure of a draft model chart annexed to the 10 November 2008 Decision.⁹ The same request to follow the exact approach was addressed to the Defence if it “intend[ed] to present evidence under article 61(6) of the Statute and in accordance with rules 78, 79 and 121(6) of the Rules or rely on evidence disclosed by the Prosecutor [...]”.¹⁰ For the purposes of the present proceedings, the Single Judge expects that the parties follow the *sample* draft model chart attached as Annex 2 to the present decision.

24. The approach advanced in the referenced decisions and reiterated in the present one aims at streamlining the process of evidence disclosure, thus ensuring that the Defence is prepared under satisfactory conditions, and that the Presiding Judge is in a position to “organise the presentation of evidence by the parties according to the crimes charged with one party responding to the other on each count consecutively”.¹¹ This prevents any unnecessary delays that might negatively impact upon the commencement of the confirmation hearing on the date envisaged by the Chamber.

⁷ Pre-Trial Chamber III, “Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties”, ICC-01/05-01/08-55, paras 66-70.

⁸ *Ibid.*, paras. 66-73.

⁹ Pre-Trial Chamber III, “Decision on the Submission of an updated, Consolidated Version of the In-depth Analysis Chart of incriminatory Evidence Disclosure of evidence by the Defence”, ICC-01/05-01/08-232, paras 5-8; ICC-01/05-01/08-232-Anx, pp. 8-9.

¹⁰ *Ibid.*, para. 9; see also Pre-Trial Chamber III, “Decision on the Disclosure of evidence by the Defence”, ICC-01/05-01/08-311, paras 9-10.

¹¹ Pre-Trial Chamber III, “Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties”, ICC-01/05-01/08-55, paras 72-73.

IV. Documents affected by articles 54(3)(e), 72 and 93(8) of the Statute

25. The Single Judge recalls the obligation of the Prosecutor to disclose as soon as practicable to the Defence all exculpatory evidence in his possession or control in accordance with article 67(2) of the Statute or otherwise material for the preparation of the Defence in accordance with rule 77 of the Rules. In this respect, it is the Prosecutor's duty, in case he has received materials to be disclosed to the Defence pursuant to article 67(2) of the Statute or rule 77 of the Rules and protected under articles 54(3)(e), 72 and 93(8) of the Statute, to ensure that disclosure can take place without undue delay. To that end, the Prosecutor should conduct the necessary consultations with any information provider to reach an agreement on a waiver of that condition. In any event, the Prosecutor must bring those documents or any problem that might arise with the information provider to the attention of the Chamber as soon as practicable.¹²

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

- a) decides** that the disclosure process between the parties shall be facilitated through the Registry;
- b) orders** the parties submitting any evidence to submit the original of the evidence as well as its electronic copy or, in case of tangible objects, its electronic photograph to the Registry;
- c) orders** the parties to submit any evidence with the appropriate metadata in accordance with the e-Court protocol as set out in Annex 1 to this decision;

¹² Appeals Chamber, "Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I entitled "Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference of 10 June 2008", ICC-01/04-01/06-1428, paras 2 and 3.

d) orders the parties to submit the evidence in due time and within official filing hours of the Registry;

e) decides that, when submitting any evidence to the Registry, the parties shall provide the following accompanying documentation:

1. A list of evidence listing all pieces of evidence enclosed with their respective document ID;

2. A list of identified recipients for each evidentiary item also reflecting the access and level of confidentiality for each item;

3. An analysis of each piece of evidence reflecting its relevance as described in part III of this decision (see Annex 2);

f) orders the parties to comply with the registration procedure of any evidence as described in part II of this decision;

g) orders the Registrar to register electronic copies of any evidence in the record of the case and to store its original in the Registry vault;

h) orders the Registrar to provide unrestricted access to the Chamber of all evidence disclosed between the parties;

i) orders the Registrar to report any related practical or security concern to the Single Judge as soon as possible;

j) orders the parties to provide the factual and legal basis for any proposal to classify (as non-public) the evidence submitted;

k) decides that any delays in the process of disclosure, which result from procedures concerning articles 54(3)(e), 72 and 93(8) of the Statute, shall be brought to the attention of the Chamber as soon as practicable;

l) orders the Prosecutor at the latest by 15 April 2011 at 16,00 hours to submit a report to the Single Judge indicating the number of documents of exculpatory nature pursuant to article 67(2) of the Statute or otherwise material for the preparation of the Defence in accordance with rule 77 of the Rules that he has received in the present

case, which are protected under articles 54(3)(e), 72 and 93(8) of the Statute and the possibility, if any, for waiving the restrictions imposed by the information provider.

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



Judge Ekaterina Trendafilova
Single Judge

Dated this Wednesday, 6 April 2011

At The Hague, The Netherlands

ANNEX 1

Unified Technical protocol (“E-court Protocol”) for the provision of evidence, witness and victims information in electronic form

I. Introduction

1. The International Criminal Court is using an electronic system to support its daily judicial proceedings pursuant to regulation 26, paragraph 1 of the Regulations of the Court (“the Regulations”). The Registry is responsible for the implementation of this electronic system, taking into account the specific requirements of the judicial activity of the Court, including the need to ensure authenticity, accuracy, confidentiality and preservation of the record of proceedings (see regulation 26, paragraph 2, of the Regulations). Pursuant to regulation 26, paragraphs 3 and 4, of the Regulations, documents and evidence other than live testimony shall be presented, whenever possible, in electronic form.
2. This Protocol is established pursuant to regulation 26, paragraph 1, and is essential for Registry’s implementation of the system described in this provision. It is designed to ensure that all the necessary information is available electronically during the proceedings to the Court. To this end, this Protocol defines the standards according to which the participants should prepare and provide evidence, potential evidence and material in electronic form with the Court. Furthermore, this Protocol defines metadata which should accompany the materials submitted. These standards are designed to minimise the document management and technology costs to the participants and the Court and to allow for the efficient management of proceedings.
3. The Registry will provide an “in-court” presentation solution for viewing evidence and material.

II. Provision of (potential) evidence, and witness and victims information in electronic form

A. Potential evidence

4. In order to ensure that potential evidence, evidence and material that a participant intends to submit to a Chamber in hearing can be processed by the Court’s electronic system, it must comply with the system’s standards. Therefore, prior to the hearing, the participant will have to format the potential evidence, evidence and material and provide metadata for it in accordance with the standards set out in section III D of this Protocol.
5. Once the potential evidence, evidence and material and the metadata have been formatted and prepared, the participant can provide them in electronic form to the Registry.
6. Upon the receipt of the potential evidence, evidence and material and the related metadata in electronic form, the Registry will upload all data into the electronic system.
7. Once the data has been uploaded into the system, the participant will be requested to control the quality of the data uploaded. If errors are found in the data, the responsible participant shall re-issue the entire record that has been amended including the table references. For images, only the single TIFF (Text Image File Format) file or the affected page(s) shall be re-issued in the appropriate directory/level structure named herein. Any updates shall be accompanied with a letter outlining the Document ID(s) and the information that has been changed.
8. If, prior to the hearing, the participant after the provision of the first lot of potential evidence, wants to provide additional items, the standards outlined in this Protocol shall be followed.

B. Witness and Victim Information

9. Should a participant intend to call a witness in a hearing before a Chamber, the participant shall prepare a *Witness Information List* in accordance with the standards set out below in section III E. and provide the list to the Registry. The same will apply when the appearance of a victim is scheduled.
10. Upon receipt of the Witness/Victim Information, the Registry will upload the data into the electronic system.
11. Once the data has been uploaded into the system, the participant will be requested to control the quality of the data uploaded.
12. If, prior to the hearing, the participant wishes to amend the Witness/Victim Information, the standards outlined in this Protocol shall be followed.

III. Standard for the provision of evidence and material in electronic form

13. Participants shall provide to the Registry potential evidence, evidence or material in electronic form either on one or more CD ROMs, DVDs or using the Court's internal electronic infrastructure. The format, imaging standards and numbering regime shall comply with the requirements set out in sections A. to C., below.
14. Together with the evidence and material in electronic form, metadata information relating to evidence and material shall be provided in electronic form, as set out in section D, below.

A. Format requirements

15. Potential evidence, evidence and material shall be provided in the following format:
 - Single page TIFF for all potential evidence, evidence and material, and WMV (Windows Media Video), WMA (Windows Media Audio) for video and audio materials.
 - An OCR (Optical Character Recognition) text-file for potential evidence, evidence and material containing text including for any translation thereof.
16. The following requirements shall be met:

Data File Format

CSV (Comma Separated Values) including double quotes around the record and a header record. There shall be 1 document record per row in the table. Zipped files are acceptable or as agreed between the participants, or

XLS (Microsoft Excel Worksheet) Witness Information Excel format (see witness information under Part D) and Evidence List format respectively (see evidence and material under Part E) is to be provided, or

MDB (Microsoft Office Access Application): database file compatible with a Ringtail Legal database (export.mdb)

Media

- ⊗ CD ROM - 650/700Mb,
- ⊗ DVD or,
- ⊗ ICC network infrastructure to be agreed

Disk or folder content	2 Files for formats (i) and (ii) above – One main table and one image table (referencing each image on the disk). A header record shall be included for each file. Header record shall contain the metadata field names.
Disk or folder name	<p>If physical media (CD/DVD) then specify volume name as</p> <p>Participant-Situation-Case-Date-Sequential Number</p> <p>If ICC network then create a root folder</p> <p>\Participant-Situation-Case-Date-Sequential Number\</p> <p>Where:</p> <p>Participant: Participant Code</p> <p>Situation and Case codes: to be provided by the Registry</p> <p>Date: YYYYMMDD format</p> <p>Seq. Number: 2 digits padded with zeros (starting at 01)</p> <p>Example: PPP-0101-0202-20051201-01</p>

B. Imaging and Data standards

17. When hard-copy documents are larger than A3 size they shall be provided to the Registry in hardcopy and recorded on the database as such by (i) imaging a page that states that the originals reside at the Registry vault due to its size or (ii) by submitting a photograph of the potential evidence or material or artifact (in JPEG compression within color tiff files) can be submitted as a representation of the original.
18. Originals (under A3 but larger than A4) can be reduced to A4 size and then imaged at the reduced size before submission to the Registry. Originals of these reduced documents shall be made available if required for viewing in the hearing or by Chambers or by the Participants.
19. Image and Data file formats and exchange shall be set out as follows:
 - a. **Medium** The files shall reside in the same media and location specified in paragraph 16, above, under a folder named "images".
 - b. **Image Directory Structure** Images must reside in directories and sub directories. The sub directory structure must reflect the levels in the numbering regime.
 - c. **Content** Single page tiff files (ie a four-page document will have four distinct images).
 - d. **Resolution of Image** Black and White, Grayscale or Color images – 300 dpi (or above) TIFF subtype CCITT group 4 compressed, 1 bit (bi-tonal). For practical purposes, it is recommended that the physical file size of any image should not exceed 700 Kilobytes. It should be noted that 200 K is the average target size of all images.
 - e. **Suffix page numbering** In the event that additional pages are required to be inserted after bar-coding (or labeling) and imaging, the suffix pages convention will be applied to images

as per paragraph 22.

f. Video file sizes

For practical purposes and until such time as a feasible alternative can be found, it is recommended that the physical file size of any video material to be submitted should not exceed 700 Megabytes. Whilst the participants may continue to submit one large video file, those video materials which are greater than 700Mb should also be split accordingly and submitted as separate files or “pages” within the one Document.

C. Numbering regime

20. The participant providing evidence or material shall number each piece of potential evidence, evidence or material according to the following numbering regime. This number will be used as the unique document identification (‘doc id’) for all potential evidence, evidence and material and will be used to reference them at all times during the proceedings. The ‘doc id’ will appear in readable format. The numbering regime will also be used to name the images files associated to a piece of evidence or material.
21. This numbering regime has four levels, SSS-PPP-FFFF-DDDD where:
- SSS** is the prefix that acts as an identifier for the situation the evidence or material has been collected for. Padded characters will be used (i.e. must be 3 alpha/numeric characters) (e.g. AUS);
- PPP** is the participant identifier. This field represents the participant that electronically registers the item of potential evidence, which is the participant that collected the item from the source¹³. Padded characters will be used (i.e. must be 3 Characters – may be alpha/numeric digit) in accordance with the prefixes in Appendix A attached (e.g. OTP). The Registry shall ensure the uniqueness of the participant identifiers;
- FFFF** is the potential evidence, evidence or material group/folder/batch number. Padded with zeros, maximum value of 9999 (eg. 0120); and
- DDDD** is the unique “page” identifier within the document. Padded with zeros, maximum value of 9999 (eg, 0087). The first page number of a document is also the document number. (See appendix D below).
22. Where pages have been inserted due to human error, the following convention will be used: Insert a fifth level where a suffix (two numeric characters, padded zero, preceded with an underscore). For example:
- SSS-PPP-FFFF-0001
- SSS-PPP-FFFF-0001_01
- SSS-PPP-FFFF-0002
- Meaning that a page SSS-PPP-FFFF-0001_01 has been inserted after SSS-PPP-FFFF-0001 yet before SSS-PPP-FFFF-0002.

¹³ This is subject to the technical feasibility. Currently, the materials already registered by one party/participant are re-registered if submitted by another party. If re-registered a participant identifier of the party/participant re-registering the item shall be indicated.

If evidence has been provided in an illegible or otherwise unusable form, the suffix is added to the ERN number of the material which has been re-submitted.

SSS-PPP-FFFF-0001_Corr

Specific measures for translated documents.

23. Each translation shall be recorded as a "translation" in the field "document type", in the following manner: for any language required, the field takes the value "Translation", a blank space, a hyphen, a blank space, and then the 3 characters ISO code of the language in which the original document has been translated.

Example:

Translation – ENG

Translation – FRA

The translation suffix (ex: trFRA or trENG) should be appended to the Doc ID number on each page of the physical file. For example: KEN-OTP-0004-0001-trFRA (page 1), KEN-OTP-0004-0002-trFRA (page 2), etc.

Specific measures for redacted documents

24. Redacted documents shall be provided as full documents with all the metadata anew. The Doc ID of a redacted version should carry a suffix RXX (XX reflecting the version number). For example: 1st redacted version of a document: Doc ID - KEN-OTP-0004-0001-R01.

The redaction suffix should be appended to the Doc ID number on each page of the physical file. For example: KEN-OTP-0004-0001-R01 (page 1), KEN-OTP-0004-0002-R01 (page 2), etc.

The field "Host Document Number" (see below table at section D) of any redacted version should indicate the Doc ID of the original unredacted version (for example: KEN-OTP-0004-0001).

25. For a translation of a redacted version, the "Host Document Number" should be that of the redacted version. For example: French translation of the redacted version referred to in paragraph 24: Doc ID of the translation will have its own Doc ID and the "Host Document Number" will be: Doc ID - KEN-OTP-0004-0001-R01

D. Provision of metadata information relating to evidence and material in electronic form

26. The following two tables list the format of the metadata that is transmitted to the Registry for potential evidence, evidence and material provided in electronic format.
27. Table 1 is the table of potential evidence, evidence and material, containing the metadata for these items.

Table (potential) evidence and material

Field Name	Data Type	Explanation	Example
Document ID	Text	<p>The unique identifier for each original document (record) in the database.</p> <p>The electronic version of the document (record) shall have the unique page identifier indicated on each page.</p>	<p>SSS-PPP-FFFF-DDDD</p> <p>Ex: KEN-OTP-0001-0001</p>
Date Filed	Date	The date the Participant files the data table with the Registry in the date format DD-MMM-YYYY	20-Aug-2005
Document Date	Date	<p>The date of the document as it appears on the document in the format DD-MMM-YYYY. The date to be entered is the one which indicates when the document came into existence, or was signed, putting it into effect.</p> <p>If the item only has a partial date and a clear year, then the first day of that partial date shall be entered and the field "estimate date" tagged YES</p> <p>Where a document has no determinable date the document will be recorded as undated.</p> <p>Where a document has more than 1 date appearing on it the date which is earliest in time shall be entered and the field "estimate date" tagged YES</p> <p>Date ranges cannot be used due to this field being a true date field and only the earliest date in time shall be entered and estimate date field tagged YES</p> <p>If an agreement has an original</p>	<p>21-Mar-1997</p> <p>Leave blank</p> <p>04-Aug-2004</p> <p>22-Sep-2001</p>

Field Name	Data Type	Explanation	Example
		<p>date as well as a subsequent later date as a result of alterations being made to the document, then the later date is taken as the document date and estimated date is left blank.</p> <p>If a newspaper clipping has the date/reference handwritten on to the document, then the document is dated according to the handwritten notation and the field "estimated date" is tagged "yes".</p>	
Estimated Date	Boolean	<p>No = If the exact full date is on the document (for example 04-MAR-1963).</p> <p>Yes = Where we cannot be certain of the actual date. For example if there is a partial date (e.g. August 1979), the date is stamped on, the date has been amended by hand or the only visible date is on the fax track.</p>	No or Yes
Type	Text	A simple classification of the item, such as a letter, map, artifact. Attachment C contains a list of suggested document types.	Letter
Confidentiality Level	Pick List	<p>A security classification of the item of potential evidence, evidence and material.</p> <p>The level "public" is assigned to items which can be seen by the general public.</p> <p>The level "confidential" is assigned to items which can only be seen by the parties/participants and chambers assigned to the case.</p>	Public
Title	Text	When a piece of (potential) evidence or material has a title, the complete title shall be entered	Human Rights Report

Field Name	Data Type	Explanation	Example
		exactly as indicated on the item. If the item has no title this field shall be left blank.	
Author	Pick List	<p>Person or persons who authored the document. To be completed using information on the face of the document.</p> <p>The LAST NAME is separated by comma from the first name.</p> <p>Semi-colon must separate multiple entries.</p> <p>Other ways of addressing multiple entries can be agreed between the parties.</p>	SMITH, Brian
Author Organisation	Pick List	<p>Organisation from which the document emanated. To be completed from information on the face of the document.</p> <p>Semi-colon must separate multiple entries.</p> <p>Other ways of addressing multiple entries can be agreed between the parties.</p>	ACME
Recipient	Pick List	<p>Person or persons to whom the document was addressed. To be completed using information on the face of the document.</p> <p>The LAST NAME is separated by comma from the first name.</p> <p>Semi-colon must separate multiple entries.</p> <p>Other ways of addressing multiple entries can be agreed between the parties.</p>	SMITH, Brian
Recipient Organisation	Pick List	<p>Organisation receiving the document. To be completed from information on the face of the document.</p> <p>Semi-colon must separate multiple entries.</p> <p>Other ways of addressing multiple entries can be agreed between the parties.</p>	ACME

Field Name	Data Type	Explanation	Example
Parties to an agreement	Text	Identifies parties to an agreement or other legal document	ACME
Language of the item	Pick List	<p>The language of the item is to be recorded in this field in accordance with ISO language code 639-3, indicating both the code and the full English description of the language in the ISO definition tables, as follows: ISO code, space, hyphen, space, full description: example: ENG – English</p> <p>FRA - French.</p> <p>Where languages are not foreseen in the ISO tables, the ICC Registry language services (STIC) will decide on the appropriate code to be used.</p>	ENG – English
Translation status	Pick List	<p>When the document is a translation, choose one of the following options to indicate by whom the translation has been done:</p> <p>ICC – Registry services OTP – OTP services EXT– External services</p> <p>And whether it is a draft or has been revised.</p> <p>List to be chosen from: ICC - draft ICC - revised OTP – draft OTP – revised EXT – draft EXT - revised</p>	ICC – draft
Redaction version	Text	This field records the number of the redaction version. It is reflected by "R" and the respective two digit number, padded with zero, starting at 01.	R01
Redaction Approval date	Date	This field records the date (DD- MMM-YYYY) that redaction was approved by the Chamber.	30-May-2008

Field Name	Data Type	Explanation	Example
Excerpt History	Text	This field will record the date of the preparation of each excerpt	30-May-2008
Host Document Number	Text	Contains Doc ID of the host document to which an attachment is attached. There will never be multiple entries in this field, as each attachment should only ever have one host document. A host document and any attachments should be listed and numbered separately as per the rules listed in Appendix B.	SSS-PPP-FFFF-DDDD
Participant	Pick List	This field records the participant who is providing the evidence or material to the Registry as per Participant codes in Appendix A.	OTP
Chain of Custody	Text and Number	This field should list all entities/persons who had custody of the item, in chronological order. The following format is to be respected: YYYY-MM-DD from XXX to XXX Semi-colon must separate multiple entries.	03-Dec-2004 From witness to OTP investigator
Date Source Restriction Lifted	Date	Date on which the respective correspondence was received, giving authorisation lifting disclosure restrictions.	03-Dec-2007
Source Identity	Text	In principle, the name of the person providing the document shall be reflected. In case that person is protected, a special reference number given to the person shall be stated as authorized by the Chamber. The LAST NAME is separated by comma from the first name. When the person is a victim, the victim code must be entered (i.e. a_001_08).	DAVIS, Jonathan

Field Name	Data Type	Explanation	Example
		The codes used for the protected individuals shall be the id number as described in Section E below.	
Search Limitations	Pick List	<p>This field records the degree to which the text content of the electronic version of the evidence can be searched:</p> <p>Combined Data (<i>Meaning: typed data and handwritten text or images</i>)</p> <p>Handwritten Text</p> <p>No text</p> <p>Typed - no Latinic script</p> <p>Typed data - Partly Searchable</p> <p>Typed data - Searchable</p> <p>Typed data - Unsearchable</p>	Typed data - Searchable
Disclosures	Pick List	<p>This field records information about disclosures and any other distribution of potential evidence made in the context of a case.</p> <p>The pick list values are generally comprised of the following parts: [Phase] [Category of disclosure] {Defendant Code}[package or tranche number] [Date of the disclosure]</p> <p>In the situation of joined proceedings disclosure to each counsel may take place on two different dates. This pick list can record such variations. It also allows description of other distributions of documents, such as to the OPCV or any re-issue of corrected data etc.</p> <p>The possible values for the parts of the field include: [Phase] : Pre trial; Trial; Appeal; Revision [Category of Disclosure] : INCR; PEXO; Rule 77; {Defendant Code} : This <u>may</u> be used if there is more than one defendant and disclosure is made to each on different dates. [Batch number] : This is a sequential number maintained by</p>	<p>Pre confirmation INCR package 26 07-Nov-2006</p> <p>Pre confirmation INCR D02 package 26 07-Nov-2006</p>

Field Name	Data Type	Explanation	Example
		the party disclosing the sequential count of disclosures made in that category. [Date of the disclosure]: dd-mmm-yyyy: The date of the actual disclosure recorded at the time of transfer or after the transfer takes place.	

Note: All text fields shall be in ISO 8859 Latin 1 (West European)

28. Table 2 below lists the filename for every page of every imaged piece of potential evidence or material. In order to derive the correct order of pages to a piece of potential evidence or material, the database query shall select the images matching the Item ID, ordered by the path.

Image Table

Field Name	Data Type	Explanation	Format
*Item ID	Text and Number	Document ID	SSS-PPP-FFFF-DDDD
*Path	Text (100 char)	Full relative path and filename of the image file. There will be a single file for each page of each document. The format is SSS-PPP-FFFF-DDDD.tif or SSS-PPP-FFFF-DDDD_01.tif (if it is an inserted page)	SSS-PPP-FFFF-DDDD.tif
*Pages	Text	Number of pages per document (maximum 4 characters)	0003

E. Witness and Victim information

29. The following table lists the format of metadata for the witnesses and victims.
30. "Witness" for the purpose of this protocol means: person who has provided statements on which the Prosecution or the Defence intends to rely at the hearing. "Victim" for the purpose of this protocol means a person authorised to participate in the proceedings or appearing before the Chamber in accordance with rule 93 of the Rules of Procedure and Evidence.

Table of Witness and Victim Information

Field Name	Data Type	Explanation	Example
ID number	Number	<p>Number given to a witness or victim.</p> <p>The ID number is structured as follows:</p> <p>SSS is the situation code</p> <p>PPP is the code for the participant introducing the witness</p> <p>P remains P for any witness ID number and shows that this is a person</p> <p>XXXX is the witness number being a consecutive number assigned by the participant</p>	KEN-OTP-PPPP-0001 or KEN-DEF-PPPP-0001
Title	Text	This is the title of a witness /victim such as Dr., Mr., Major, General etc.	Major
Name	Text	The LAST NAME is separated by comma from the first name.	SMITH, Robert
Other name(s) and/or nickname(s)	Text	<p>Nickname or commonly used name of witness/victim if it differs from their actual name.</p> <p>This is a one to many field.</p> <p>Semi-colon must separate multiple entries.</p>	Bob
Gender	Pick List	<p>Gender of the witness/victim.</p> <p>Permissible values Male, Female or Unknown</p>	Male
Birth Date	Date Field	DD-MMM-YYYY	04-Aug-1963
Estimated Birth Date	Boolean	This field records whether the age of the person is an estimate only.	No

Field Name	Data Type	Explanation	Example
Status	Pick List	<p>This field records the basis on which a person is called before the proceedings:</p> <p>Fact Witness Expert Witness Victim Fact Witness & Victim</p> <p>This is a multi value field</p>	Victim
Victim code	Text	If the person called before the proceedings is a Victim enter the victim code	a_0011_08
Participant Introducing Witness/Victim	Pick List	Name of the participant whose list this witness or victim appears on:- as per Participant codes in Appendix A	OTP
Witness Statement Doc ID	Text	<p>If the witness statement has been attributed a document ID in accordance with section D above, please indicate the document ID.</p> <p>All prior witness statements should be recorded in this field, including the document ID.</p> <p>This is a one to many field. Semi-colon must separate multiple entries.</p>	SSS-PPP-FFFF-DDDD
Application reference	Text	<p>If the victim's application has been attributed a document ID in accordance with section D above, please indicate the document ID.</p> <p>All prior victim's applications should be recorded in this field, including the document ID.</p> <p>This is a one to many field. Semi-colon must separate multiple entries</p>	SSS-PPP-FFFF-DDDD

Field Name	Data Type	Explanation	Example
Appearance	Pick List	Please indicate how the witness will testify or how the victim will express his/her views and concerns: Permissible values are; <ul style="list-style-type: none"> ▪ Audio/Video ▪ In person ▪ Transcript ▪ Written Statement 	In person
Expected Appearance Length	Text	Please indicate the length of time the witnesses testimony or victim's appearance may take in hours and minutes (hh:mm) format to assist the Court in arranging the hearing	02:00

Note: All text fields shall be in ISO 8859 Latin 1 (West European)

IV. General provisions

A. Virus responsibility

31. It is the responsibility of the recipient of the electronic data to test for viruses. The sender shall take all reasonable precautions to ensure that their data is virus free.

B. Protocol updates

32. The Registry will co-ordinate consultation involving representatives from the Registry, Chambers and all interested situation participants to review:
- Suggestions to update and improve the protocol;
 - Determine codes to be set for any additional participants who may be added to the proceedings and to organize exchange of data with any such participants.
 - Attempt to resolve any issues which arise in the course of the application of this Protocol.
33. As appropriate updates to the Protocol text shall be implemented or submitted to the Chamber for approval.
34. The amended Protocol shall be filed in the record of the case and, where appropriate, the Registry may suggest updating the Protocols already implemented in other cases.

Appendix A – Participant Codes

Prefix in numbering regime being PPP	Code
Chambers	PT1, PT2, etc for Pre Trial Chamber TC1, TC2, etc. for Trial Chamber

	APP for Appeals Chamber
In Court Evidence	ICE This would also include any evidence generated on the SmartBoard
Prosecution	OTP
Defence If more than one Defendant Office of Public Counsel for Defense	D01 to D99; DAB.... (each defense team is assigned a unique code across all the cases) PCD would stand for OPCD.
Office of Public Counsel for Victims Legal Representatives for Victims	PCV would stand for OPCV VZB; V04; V99....(each team is assigned a unique code across all the cases)
State	XXX, the three identifying letters chosen for the situation concerning the State Example: KEN for Republic of Kenya
XXX	Documents which are handed up in Court in Hardcopy are given an XXX number until the relevant participant provides the court with the electronic version in the proper format

Appendix B - Methodology for Host/Attachment Determination

1. Document Delimiting

- Any document that stands on its own with individually identifiable characteristics should be delimited separately.
- The back of pages with any text or markings should be included within documents and not, without compelling reasons to the contrary, be delimited as separate documents.

2. Host / Attachment / Unattached¹⁴

- Documents that make reference to attached documents should be linked with the host and attachment structure.
- Translated documents will bear the DOC ID number of the original document with a suffix "tr" as set out under paragraph 23. Translated documents will be linked in the database through the host and attachment structure where the original document will play the "host" and any translations of that document will be "attachment(s)".
- Redacted versions of the host document will have their own Doc ID and be linked in the database through the host and attachment structure where the original document will play the "host" and any redaction version or corrigendum will be the "attachment".

¹⁴ The Registry shall investigate an alternative way of relating the documents (records). This part of the protocol may be amended in the future depending on findings.

- Transcripts of media should also be linked through the host attachment structure where the original media item will play the “host” and any transcriptions of that item will be “attachment(s)”.
- Documents which have been created in the Court (for example by a witness drawing on the “original” document and captured by the smartboard technology) will be given an ICE (In Court Evidence) number and will be linked to the “original” document through the “host/attachment” field where the “original” document will be the “host” and the “newly” created document will play the “attachment”.
- Annexures and appendices should be delimited as one document unless the annexures can be regarded as having individual and identifiable characteristics. E.g. a binder with tabbed appendices where the appendices have identifiable characteristics (e.g. each doc has a date, title, author etc) would result in the first document being the host and subsequent appendices being the attachments.

Appendix C - Document Types

It is acknowledged that this list is not exhaustive.

OTP, as the participant that commences coding evidence and material, shall provide and update periodically as required their list of document types¹⁵.

#	Type	Explanation
1.	Extra page	Any extra page that is not part of a document, such as cover sheets (other than covering letters), dividers, separators pages, empty files.
2.	Surrogate page	These sheets mark the place of evidence that cannot otherwise be included in the system.
3.	Calendar / Diary	Any chronological overview or record by an individual (printed, electronic or handwritten); any form of calendar.
4.	Contact list	Any list containing primarily names or contact details.
5.	List / table	Any other list or table that does not primarily contain names or contact details.
6.	Minutes of meetings	Any record of the proceedings or outcome of a meeting which is clearly identified as such.
7.	Report	Any report that is not publicly available (including a chronology that is not a calendar nor a diary), which will generally be regarding past events (contrasted with an internal memorandum, which will contain advice, opinion, or instructions for future action); or Any report that is publicly available (usually from a NGO, IGO or government).
8.	Other notes	Any notes recorded by a person other than an investigator, and that are not a memorandum or report, and are not a dated and chronological record (which is a diary).
9.	Notebook	Any notebook (not just a few pages) that includes handwritten

¹⁵ The impact of the proposed changes to the document types list should be investigated prior to the amendment of the latter.

#	Type	Explanation
		notes.
10.	ICC Statement - General	Any statement taken by someone who is a member of the ICC.
11.	Non-ICC Statement (Note / Screening / Transcript)	Any type of witness statement that is not an ICC witness statement, ICC interview notes or non-ICC interview notes; notes taken during an interview by someone who is not a member of the ICC; written version of a statement that was initially recorded by a person who is not a member of the ICC by audio and/or video means, but has been reduced to written form at a later date.
12.	ICC Statement - ICC investigator interview notes	Notes taken during an interview by someone who is a member of the ICC.
13.	ICC Statement - ICC transcribed statement	Written version of a statement that was initially recorded by a member of the ICC by audio and/or video means, but has been reduced to written form at a later date.
14.	ICC Statement - ICC screening	Screening assessment taken by someone who is a member of the ICC.
15.	ICC Statement - Electronic Media	A statement which is recorded by a member of the ICC by audio and/or video means
16.	Transcript	Written version of audio/video material that cannot be considered the recording of a statement (e.g. transcript of film).
17.	Correspondence (letter)	Any letter, including covering letters and documents drafted as a letter that were also transmitted by fax.
18.	Correspondence (e-mail)	Any email, including emails attaching reports, letters or other documents.
19.	Correspondence (fax)	Any type of fax, or record that a fax was sent. If the document concerns a letter that also has been faxed, it should be classified as a letter.
20.	Correspondence (internal memorandum)	Any type of memorandum between people within a group / organization / government (not the ICC), including e.g. mission orders.
21.	Correspondence (envelope)	Any envelope, whether posted or not.
22.	Correspondence (invitation)	Any kind of public or private invitation to attend any place or event, that clearly identifies an addressee.
23.	Contract / agreement	Any kind of commercial contract including employment contracts.
24.	Financial document (bank record)	Records kept by any financial institution, including internal records and records that are sent or otherwise provided to customers. This includes details of accounts and account statements.
25.	Financial document (invoice)	Any invoice or bill issued, seeking payment or other remuneration.
26.	Receipt	Any receipt issued, acknowledging payment for any kind of commercial transaction, or the receipt of goods.

#	Type	Explanation
27.	Financial document (other)	Any other document of a financial nature, including cheques.
28.	Identifying document	Any official document that identifies a person, such as a passport, identity card, membership card of an organization.
29.	Personal data	Any document that records data relating to a person / group / organization which is given in text-format possibly with photographs, including Biography / Curriculum Vitae / Resume / Profile.
30.	Travel related and other administrative document	Any documents relating to travel, including route plans, tickets, itineraries.
31.	Photograph/s	Any document with mainly photographic images (even if those images were captures from another media such as video). The document may have wording, such as captions.
32.	Map	Any document representing the layout of a location, including clear sketches that indicate a geographical location.
33.	Sketch	Any draft of any object / person / location which is not clearly a map.
34.	Organisation diagram	The structure of a group / organization, including command structure, where in diagram format.
35.	Legislation / government instruction / public guidelines	Any legal or official document issued by the legislative body or government [official body] such as decrees, directives, ministerial instructions, etc.
36.	Internal guidelines / instruction /orders	Any guidelines or instructions, given by a non-public or non-governmental entity and which are not technical instructions.
37.	Technical manual	Any kind of technical manual.
38.	Certificate	Any type of certificate given by a private or public body.
39.	Media / Press article	Media articles that are public, regardless whether they are taken from Internet, newspapers, newsletters, etc. including press briefings and press releases.
40.	Presentation	Any presentation given in a relatively public environment, including public presentation, public speech or declaration, slides, but that is not a witness statement.
41.	National judicial Document (Non ICC)	Any legal document (submissions, claims, judgments; brief) in court procedures conducted before any court except the ICC.
42.	Court Document (ICC)	Any legal document (submissions, judgments) in court procedures conducted before the ICC.
43.	Complaint	Any document containing a complaint to an official instance.
44.	Physical item	Any physical item which is not a document (on either physical or electronic media).
45.	Pre-Registration Form	An ICC pre registration form documenting the collection of evidence.
46.	Audio / Video Material	An audio or video recording.
47.	Translation - ENG	Any translation into English of one of the above
48.	Translation - FRA	Any translation into French of one of the above

Appendix D - Numbering Example

Document A	Document B	Document C
Original file: documentA.pdf	Original file: documentB.pdf	Original file: documentC.xls
Situation: KEN	Situation: KEN	Situation: KEN
Batch: 0123	Batch: 0123	Batch: 0001
Participant: Office of the Prosecutor (OTP)	Participant: Office of the Prosecutor (OTP)	Participant: Victim Counsel V01
No Pages: 5	No Pages: 3	No Pages: 4
Images:	Images:	Images:
From	From	From
KEN-OTP-0123-0001.tif	KEN-OTP-0123-0006.tif	KEN-V01-0001-0001.tif
To	To	To
KEN-OTP-0123-0005.tif	KEN-OTP-0123-0008.tif	KEN-V01-0001-0004.tif

Doc ID	Image Location	Image Files	Page No	
A	KEN-OTP-0123-0001	images\KEN\OTP\0123\	KEN-OTP-0123-0001-tif	1
			KEN-OTP-0123-0002-tif	2
			KEN-OTP-0123-0003-tif	3
			KEN-OTP-0123-0004-tif	4
			KEN-OTP-0123-0005-tif	5
B	KEN-OTP-0123-0006	images\KEN\OTP\0123\	KEN-OTP-0123-0006-tif	1
			KEN-OTP-0123-0007-tif	2
			KEN-OTP-0123-0008-tif	3
C	KEN-V01-0001-0001	images\UGA\V01\0001\	KEN-V01-0001-0001-tif	1
			KEN- V01-0002-tif	2
			KEN- V01-0003-tif	3
			KEN- V01-0004-tif	4

ANNEX 2

Sample for a Draft Model Chart on the Presentation of Incriminating and Exculpatory Evidence by the Parties

ELEMENTS	REFERENCE TO INCRIMINATORY EVIDENCE
CRIMES	
1. Crimes against humanity	
Common (contextual) elements	
(1) Attack	
(2) Widespread	
(3) Systematic	
(4) Directed against a civilian population	
(5) Knowledge of the attack	
Specific constituent elements of the counts	
Count 1 – Murder - Article 7(1)(a)	
Specific elements following the text of the elements of crimes	
Count 2 – Forcible Transfer - Article 7(1)(d)	
Specific elements following the text of the elements of crimes	
Count 3 – Rape - Article 7(1)(g)	
Specific elements following the text of the elements of crimes	
Count 4 – Other inhumane acts - Article 7(1)(k)	
Specific elements following the text of the elements of crimes	
Count 5 – Persecution - Article 7(1)(h)	
Specific elements following the text of the elements of crimes	
MODES OF LIABILITY	
Article 25(3) (a)	
Jointly through another person (...)	
Article 25(3)(d)	
Contributed to a crime committed by a group of persons (...)	