



Original: **English**

No.: ICC-02/04-01/15  
Date: 27 February 2015

**PRE-TRIAL CHAMBER II**

**Before: Judge Ekaterina Trendafilova, Single Judge**

**SITUATION IN UGANDA**

**IN THE CASE OF  
*THE PROSECUTOR v. DOMINIC ONGWEN***

**Public  
With two public annexes**

**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**

Fatou Bensouda, Prosecutor

Benjamin Gumpert, Senior Trial Lawyer

**The Defence**

Kripus Ayena Odongo

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

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

Xavier-Jean Keita

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Herman von Hebel

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**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

**Judge Ekaterina Trendafilova**, acting as Single Judge on behalf of Pre-Trial Chamber II (the “Chamber”) of the International Criminal Court (the “Court” or “ICC”),<sup>1</sup> renders this decision setting a regime for the disclosure of evidence between the parties and other related matters for the purpose of the organization of the upcoming proceedings in the present case.

## I. PROCEDURAL HISTORY

1. On 8 July 2005, the Chamber, in its previous composition, issued the “Decision on the Prosecutor’s application for the warrants of arrest under Article 58”,<sup>2</sup> along with a warrant of arrest for Dominic Ongwen (“Mr. Ongwen”),<sup>3</sup> for his alleged responsibility for crimes against humanity and war crimes. At the time, Mr. Ongwen was prosecuted together with others forming the case of the *Prosecutor v. Joseph Kony et al.* (ICC-02/04-01/05).
2. On 16 January 2015, Mr. Ongwen consented to appear voluntarily before the ICC and was transferred, on the same day, to the custody of the Court.<sup>4</sup>
3. On 21 January 2015, Mr. Ongwen arrived to the ICC detention centre.<sup>5</sup> The same day, the Chamber designated Judge Ekaterina Trendafilova as Single Judge.<sup>6</sup>
4. On 26 January 2015, Mr. Ongwen made his initial appearance before the Single Judge during which, *inter alia*, the date of the confirmation of charges hearing was set for 24 August 2015.<sup>7</sup> During the initial appearance, Mr. Ongwen was assisted by duty counsel, Ms Hélène Cisse.
5. On 28 January 2015, the Single Judge held an *ex parte* status conference only with the Prosecutor (the “Status Conference”), during which issues “related to

<sup>1</sup> Pre-Trial Chamber II, “[Decision Designating a Single Judge](#)”, 21 January 2015, ICC-02/04-01/05-415.

<sup>2</sup> Pre-Trial Chamber II, “[Decision on the Prosecutor’s application for the warrants of arrest under Article 58](#)”, 8 July 2005, ICC-02/04-01/05-1.

<sup>3</sup> Pre-Trial Chamber II, “[Warrant of Arrest for Dominic Ongwen](#)”, 8 July 2005, ICC-02/04-01/15-6.

<sup>4</sup> ICC-02/04-01/05-419-Conf-Exp, para. 4; ICC-02/04-01/05-419-Conf-Exp-Anx2.

<sup>5</sup> ICC-02/04-01/05-419-Conf-Exp, para. 18.

<sup>6</sup> Pre-Trial Chamber II, “[Decision Designating a Single Judge](#)”, 21 January 2015, ICC-02/04-01/05-415.

<sup>7</sup> Pre-Trial Chamber II, Transcript of Hearing, 26 January 2015, ICC-02/04-01/05-T-10-ENG, p. 14, lines 7-9.

disclosure of the Prosecutor's evidence, protection of witnesses and other related matters" were discussed.<sup>8</sup>

6. On 6 February 2015, the Single Judge severed the case against Mr. Ongwen from the case of the *Prosecutor v. Joseph Kony et al.*<sup>9</sup>

## II. APPLICABLE LAW

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

## III. DETERMINATION BY THE SINGLE JUDGE

### a) Principles governing disclosure and related time-frame

8. 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. Central to this is the creation of a system that regulates the disclosure of evidence between the parties and its communication to the Chamber.
9. 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 developed the principles underlying evidence disclosure between the parties for

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<sup>8</sup> Pre-Trial Chamber II, "[Decision on Setting the Date for the Initial Appearance of Dominic Ongwen and the Date for a Status Conference](#)", 21 January 2015, ICC-02/04-01/05-418, para. 8; Pre-Trial Chamber II, Transcript of Hearing, 28 January 2015, ICC-02/04-01/05-T-11-Conf-Exp-ENG.

<sup>9</sup> Pre-Trial Chamber II, "[Decision Severing the Case against Dominic Ongwen](#)", 6 February 2015, ICC-02/04-01/05-424.

the purposes of the confirmation hearing (the “31 July 2008 Decision”).<sup>10</sup> Following that decision, the principles were further developed in a set of decisions in other cases.<sup>11</sup> The Chamber has no reason to depart from the principles laid down in its previous case law. Accordingly, the Single Judge shall apply these principles in the present case.

10. As previously held, disclosure of evidence as envisaged by the language of rule 121(2)(c) of the Rules is an *inter partes* process which takes place between the Prosecutor and the person in respect of whom a warrant of arrest has been issued. It is facilitated or implemented through the channel of the Registry. The Chamber receives all evidence disclosed “between the Prosecutor and the person for the purposes of the confirmation hearing” by way of communication in order to ensure that disclosure takes place under satisfactory conditions in line with the requirements of article 61(3) of the Statute together with rule 121(2)(b) of the Rules. This approach places the Chamber in a position to discharge its responsibilities under article 69(3) of the Statute and to take an informed decision in accordance with its statutory mandate under article 61(7) of the Statute.<sup>12</sup>

11. 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 case *sub judice* to trial, requires that all evidence disclosed between the parties be communicated to the Chamber, regardless of whether the parties intend to rely on or present said evidence during the confirmation hearing. This reading is consistent with a literal and a contextual interpretation of the Statute and the

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<sup>10</sup> Pre-Trial Chamber III, “[Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties](#)”, 31 July 2008, ICC-01/05-01/08-55.

<sup>11</sup> Pre-Trial Chamber II, “[Decision Setting the Regime for Evidence Disclosure and Other Related Matters](#)”, 6 April 2011, ICC-01/09-01/11-44; Pre-Trial Chamber II, “[Decision Setting the Regime for Evidence Disclosure and Other Related Matters](#)”, 6 April 2011, ICC-01/09-02/11-48; Pre-Trial Chamber II, “[Decision Setting the Regime for Evidence Disclosure and Other Related Matters](#)”, 12 April 2013, ICC-01/04-02/06-47.

<sup>12</sup> Pre-Trial Chamber III, “[Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties](#)”, 31 July 2008, ICC-01/05-01/08-55, paras 16 and 42.

Rules thereto. In particular, the last sentence of rule 121(2)(c) of the Rules, requires that “all evidence disclosed [...] be communicated to the Pre-Trial Chamber”.<sup>13</sup>

12. Moreover, the Chamber’s unique mandate reflected in its filtering function and responsibility to *contribute* to the establishment of the truth, is another reason in support of this interpretation. As this Chamber has previously stated:

Such contribution by the Pre-Trial Chamber is made in the framework of the confirmation of charges stage when determining whether or not there are substantial grounds to believe that the suspect has committed the crime(s) charged. Fulfilling its mandate to contribute to the establishment of the truth as mentioned above, the Chamber may resort to article 69(3), second sentence, of the Statute, which authorizes the Chamber “to request the submission of all evidence that it considers necessary” for its specific determination at the end of the pre-trial stage, in addition to other evidence which has been presented by the parties. Hence, article 69(3), second sentence, of the Statute implies that such evidence must not have been presented previously by either party, but is known to the Chamber, and could, after it is submitted by dint of article 69(3) of the Statute, be discussed, contested and analyzed by both the Prosecutor and the Defence during the confirmation of charges hearing. Thus, it is entirely for the Chamber to base its determination, or parts thereof, on such evidence namely, after the Chamber has requested its submission at the confirmation of charges hearing and after the parties have made their observations, if any, at the hearing.<sup>14</sup>

13. This indicates 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 she believes shows or tends to show the innocence of the suspect, or to mitigate his 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 of the Rules); (c) all rule 77 material 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

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<sup>13</sup> See also Pre-Trial Chamber I, “[Decision adjourning the hearing on the confirmation of charges pursuant to article 61\(7\)\(c\)\(ii\) of the Rome Statute](#)”, 3 June 2013, ICC-02/11-01/11-432, operative part (d); Partly Dissenting Opinion of Judge Cuno Tarfusser, annexed to Pre-Trial Chamber I, “[Second Decision on issues relating to Disclosure](#)”, 15 July 2009, ICC-02/05-02/09-35; Pre-Trial Chamber I, “[Decision on issues relating to disclosure](#)”, 29 June 2010, ICC-02/05-03/09-49, para. 6.

<sup>14</sup> See recently, Pre-Trial Chamber II, “[Decision on the ‘Prosecution’s Application for leave to Appeal the ‘Decision Setting the Regime for Evidence Disclosure and Other Related Matters’ \(ICC-01/09-02/11-48\)](#)”, 2 May 2011, ICC-01/09-02/11-77, para. 37; *id.*, “[Decision on the ‘Prosecution’s Application for leave to Appeal the ‘Decision Setting the Regime for Evidence Disclosure and Other Related Matters’ \(ICC-01/09-01/11-42\)](#)”, 2 May 2011, ICC-01/09-01/11-74, para. 37.

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 of the Rules, on which the suspect intends to rely, to establish an alibi or a ground for excluding criminal responsibility.

14. In this regard, 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 in the record of the case. 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 the Prosecutor 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.
15. In addition, should the Prosecutor intend to present new evidence at the hearing, rule 121(5) of the Rules dictates that she 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.
16. With respect to the Defence, pursuant to rule 121(6) of the Rules, if the person (i.e. the suspect) intends to present evidence, he shall provide a list of evidence *no later* than 15 days before the start of the confirmation hearing.
17. In this regard, it should be emphasised that the deadlines referred to in rule 121 of the Rules are only indicative of the *minimum* time limits a party can avail itself to comply with its disclosure obligations. This interpretation finds support in the

express wording of “no later than”, reflected in rule 121(3)-(6) and (9) of the Rules. That said, the Single Judge wishes to underline that the Rules serve the application of the Statute and accordingly they are subordinate to the Statute in all cases. Therefore, the *minimum* time limits established in rule 121 of the Rules, especially the time limit set up in rule 121(3) of the Rules regarding the disclosure by the Prosecutor, must be read in conjunction with and subject to article 67(1)(b) of the Statute which provides that the “accused”<sup>15</sup> must have adequate time for the preparation of his or her defence. Consequently, the disclosure of large portions of the evidence for the purposes of the confirmation hearing *only* 30 days before the date of the confirmation hearing might interfere with the right of the suspect to have adequate time for the preparation of his defence. The early initiation of the process of disclosure better guarantees also the expeditiousness of the proceedings, guided by the overarching principle of fairness. For these reasons, the Single Judge expects that the parties fulfil their disclosure obligations as soon as practicable and not only on the date when the deadline indicated by the statutory documents expires.<sup>16</sup> A disclosure calendar will be established in due course for the purposes of organizing a smooth disclosure process in conformity with the above considerations.

18. In this context, it is significant to make particular reference to exculpatory evidence which, according to article 67(2) of the Statute, shall be disclosed “as soon as practicable”. In this regard, the Single Judge notes that the Statute or the Rules do not provide for particular time limits for the disclosure of exculpatory evidence to the Defence. However, in the view of the Single Judge, the reference to the phrase “as soon as practicable” must be understood as being the earliest opportunity after the evidence comes into the Prosecutor’s possession. Therefore, the Prosecutor shall disclose such evidence immediately after having identified any such

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<sup>15</sup> In accordance with rule 121(1) of the Rules, the person enjoys the rights set forth in article 67 of the Statute from the moment of the initial appearance.

<sup>16</sup> See also, Pre-Trial Chamber III, “[Decision establishing a disclosure system and a calendar for disclosure](#)”, 24 January 2012, ICC-02/11-01/11-30, para. 37; Pre-Trial Chamber I, “[Decision establishing a system for disclosure of evidence](#)”, 14 April 2014, ICC-02/11-02/11-57, para. 8.



evidence, unless some justifiable reasons prevent her from doing so.<sup>17</sup> Indeed, the Defence must receive such evidence sufficiently in advance prior to the commencement of the confirmation hearing in order to make effective use of the right provided in article 61(6) of the Statute.<sup>18</sup>

19. With a view to establishing a disclosure calendar relating to both incriminating and exculpatory evidence, the Single Judge orders the Prosecutor, as the triggering force of the proceedings, to submit her views and proposals as to possible staggered deadlines for in particular the incriminating evidence on which she intends to rely at the confirmation hearing. This will assist to effectuate disclosure under satisfactory conditions and on a rolling basis in order to place the Defence in a position to adequately prepare for the confirmation of charges hearing as guaranteed in article 67(1)(b) of the Statute. Factors which the Prosecutor may take into consideration when putting forth her proposals for such a calendar could be the following: (i) the time when the pieces of evidence came into the Prosecutor's possession; (ii) whether the evidence concerned can be disclosed without redactions or any other protective measures, or whether it requires authorisation by the Chamber for certain redactions or other protective measures; (iii) the time needed for the consultation process between the Prosecutor's Office and the Defence on translation issues, as developed in paragraph 35 below; and (iv) the time needed to translate the core pieces of the evidence into Acholi, the language Mr. Ongwen fully speaks and understands within the meaning of article 67(1)(a) of the Statute<sup>19</sup>.

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<sup>17</sup> See also Pre-Trial Chamber II, "[Decision on the 'Prosecution's application requesting disclosure after a final resolution of the Government of Kenya's admissibility challenge' and Establishing a Calendar for Disclosure Between the Parties](#)", 20 April 2011, ICC-01/09-01/11-62, para. 21; *id.*, "[Decision on the 'Prosecution's application requesting disclosure after a final resolution of the Government of Kenya's admissibility challenge' and Establishing a Calendar for Disclosure Between the Parties](#)", 20 April 2011, ICC-01/09-02/11-64, para. 21.

<sup>18</sup> The need for timely disclosure became a live issue in the disclosure process in the *Ntaganda* case, see Pre-Trial Chamber II, "[Redacted Sixth Decision on the Prosecutor's Requests for Redactions](#)", 3 July 2014, ICC-01/04-02/06-233-Red2, para 23 and footnote 37.

<sup>19</sup> Pre-Trial Chamber II, Transcript of Hearing, 26 January 2015, ICC-02/04-01/15-T-4-ENG, p. 5 lines 13-14.

20. Finally, the Single Judge stresses once more that only such evidence is disclosed which is relevant and apt to support a particular factual allegation underlying the requisite legal element. As stated in the 31 July 2008 Decision, the Prosecutor should not “disclose the greatest volume of evidence, but (...) disclose the evidence which is of true relevance to the case, whether that evidence be incriminating or exculpatory”.<sup>20</sup> The same applies for the Defence, should it invoke its right to present evidence in accordance with article 61(6)(c) of the Statute. This approach prevents the case record from expanding with irrelevant material which would otherwise unnecessarily engage the Prosecutor and the Defence in processing and analysing such material and also requesting protective measures where appropriate, thereby bearing the risk to delay proceedings without any reasonable justification. As to the different requests concerning protective measures for witnesses including redactions, the Single Judge wishes to make clear already at this early stage of the pre-trial proceedings that any such request must be submitted as soon as practicable, but no later than the date which shall be specified in the calendar to be established in due course.

#### **b) Role of the Registry and registration procedure**

21. 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.<sup>21</sup> The Single Judge will apply the modalities of disclosure of evidence and communication of that evidence to the Chamber as laid down in previous decisions and summarized below.

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<sup>20</sup> Pre-Trial Chamber III, “[Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties](#)”, 31 July 2008, ICC-01/05-01/08-55, para. 67.

<sup>21</sup> Pre-Trial Chamber III, “[Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties](#)”, 31 July 2008, ICC-01/05-01/08-55, para. 34; Pre-Trial Chamber II, “[Decision Setting the Regime for Evidence Disclosure and Other Related Matters](#)”, 6 April 2011, ICC-01/09-01/11-44, para. 13; Pre-Trial Chamber II, “[Decision Setting the Regime for Evidence Disclosure and Other Related Matters](#)”, 6 April 2011, ICC-01/09-02/11-48, para. 14; Pre-Trial Chamber II, “[Decision Setting the Regime for Evidence Disclosure and Other Related Matters](#)”, 12 April 2013, ICC-01/04-02/06-47, para. 21. See also Pre-Trial Chamber III, “[Decision establishing a disclosure system and a calendar for disclosure](#)”, 24 January 2012, ICC-02/11-01/11-30, paras 60-61.

22. As referred to in rule 121(10) of the Rules and regulations 15-19, 24-28 and 53(3) of the RoR, the Registry has different responsibilities related to the process of evidence disclosure, its communication and its registration. 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 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.
23. In this regard, the Single Judges recalls that the representative of the Prosecutor during the Status Conference indicated that he would meet the same day with duty counsel of Mr. Ongwen to disclose to her certain evidence.<sup>22</sup> Accordingly, should disclosure have taken place prior to the issuance of this decision, the Registry is ordered to immediately communicate to the Chamber any such evidence which has been disclosed *inter partes*.
24. 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 retain for the purpose of the confirmation proceedings its unique document ID number<sup>23</sup> as given by the parties. Evidence shall be submitted by the parties in its original form and a corresponding electronic copy. In case of tangible objects, “the original form of the evidence, whether it is a paper document or an object, shall be placed in the custody of the Registrar”, as provided for in regulation 53(3) of the RoR; an electronic photograph thereof should also be submitted.

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<sup>22</sup> Pre-Trial Chamber II, Transcript of Hearing, 28 January 2015, ICC-02/04-01/15-T-5-Conf-Exp, p. 10, lines 21-24; p. 44, line 23-p. 45, line 7.

<sup>23</sup> See e-Court Protocol (Annex 1 to this decision), para. 21.

25. Unless a party raises an objection against the authenticity of a piece of evidence,<sup>24</sup> the Registry shall not conduct an authentication process confirming that the electronic copy is an exact replica of the original piece of evidence.
26. In case a piece of evidence or part of it needs to be replaced in the record of the case upon an objection, that piece of evidence or part of it shall be provided in accordance with the e-Court protocol (see Annex 1).
27. When submitting evidence under rule 76 of the Rules, the Prosecutor is reminded to provide, if need be, and with the support of the Registry, where necessary, a translation (rule 76(3) of the Rules) which will be reflected accordingly in the record of the case. This translation of the document shall be provided in accordance with the e-Court protocol (see Annex 1). As regards the extent of translation of core pieces of incriminating evidence falling under the ambit of rule 76 of the Rules, the Single Judge, as announced during the initial appearance of Mr. Ongwen,<sup>25</sup> provides further guidance in the following section of the present decision.
28. 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.
29. 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. It is incumbent upon the parties to indicate such classification when submitting the

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<sup>24</sup> Pre-Trial Chamber III, "[Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties](#)", 31 July 2008, ICC-01/05-01/08-55, para. 59; Pre-Trial Chamber II, "[Decision Setting the Regime for Evidence Disclosure and Other Related Matters](#)", 6 April 2011, ICC-01/09-01/11-44, para. 16; Pre-Trial Chamber II, "[Decision Setting the Regime for Evidence Disclosure and Other Related Matters](#)", 6 April 2011, ICC-01/09-02/11-48, para. 17; Pre-Trial Chamber II, "[Decision Setting the Regime for Evidence Disclosure and Other Related Matters](#)", 12 April 2013, ICC-01/04-02/06-47, para. 24.

<sup>25</sup> Pre-Trial Chamber II, Transcript of Hearing, 26 January 2015, ICC-02/04-01/15-T-4-ENG, p. 17, lines 18-24.

evidence for disclosure and to provide the factual and legal basis for any proposal to classify (as non-public) the evidence submitted.

**c) Translation of documents and evidence into Acholi**

30. The Single Judge recalls that Mr. Ongwen indicated during the initial appearance that he fully understands and speaks Acholi.<sup>26</sup> Mr. Ongwen's duty counsel requested that he receive "as soon as possible (...) all documents of proceedings and evidence, especially declaration of witness if possible in Acholi audio transcription" so as to safeguard Mr. Ongwen's rights under article 67(1)(f) of the Statute.<sup>27</sup>

31. As announced during the initial appearance, the Single Judge provides herewith further clarification as to the legal framework governing the question of translation of documents and evidence into a language which the suspect fully understands and speaks. At the outset, the Single Judge wishes to inform Mr. Ongwen that he does not have an absolute right to have *all* documents, including decisions, contained in the case record translated into Acholi. This interpretation is consistent with the drafting history of the Statute<sup>28</sup> and the jurisprudence of the Court<sup>29</sup> and also with internationally recognized human rights which do not grant an unfettered right to the defence "[requiring] a written translation of all items of written evidence or official documents in the procedure".<sup>30</sup>

<sup>26</sup> Pre-Trial Chamber II, Transcript of Hearing, 26 January 2015, ICC-02/04-01/15-T-4-ENG, p. 5, lines 13-14.

<sup>27</sup> Pre-Trial Chamber II, Transcript of Hearing, 26 January 2015, ICC-02/04-01/15-T-4-ENG, p. 17, lines 5-13.

<sup>28</sup> See references in Pre-Trial Chamber III, "[Decision on the Defence's Request Related to Language Issues in the Proceedings](#)", 4 December 2008, ICC-01/05-01/08-307, footnote 28.

<sup>29</sup> Pre-Trial Chamber I, "[Decision on the Requests of the Defence of 3 and 4 July 2006](#)", 4 August 2006, ICC-01/04-01/06-268, pp. 5-6; Pre-Trial Chamber I, "[Decision on the Defence Request concerning time limits](#)", 27 February 2008, ICC-01/04-01/07-304, p. 4; Pre-Trial Chamber I, "[Decision on the Defence for Mathieu Ngudjolo Chui's Request concerning translation of documents](#)", 15 May 2008, ICC-01/04-01/07-477, p. 5; Pre-Trial Chamber I, "[Decision on the Defence for Mathieu Ngudjolo Chui's request for leave to appeal the Decision concerning the translation of documents](#)", 2 June 2008, ICC-01/04-01/07-538, p. 6; Pre-Trial Chamber III, "[Decision on the Defence's Request Related to Language Issues in the Proceedings](#)", 4 December 2008, ICC-01/05-01/08-307, paras 11-18;

<sup>30</sup> See, for example, European Court of Human Rights, *Kamasinski v Austria*, Application no. 9783/82, Judgment of 19 December 1989, para. 74; see also *Hermi v Italy*, Application no. 18114/02, Judgment of

32. For the sake of clarity, the Single Judge wishes to recall the main points for this interpretation. Firstly, this approach stems from the reading and interpretation of article 67(1)(f) together with article 67(1)(a) of the Statute in context. According to these provisions, being part of the minimum guarantees provided by the Statute, Mr. Ongwen is entitled to know of the charges against him, including having translations of those documents into Acholi which are necessary to meet the requirements of fairness. Secondly, Mr. Ongwen is entitled to be tried without undue delay, as enshrined in article 67(1)(c) of the Statute. Naturally, if *all* documents and decisions, beyond what is actually necessary to guarantee the right of Mr. Ongwen to be informed promptly and in detail of the nature, cause and content of the charges, would be translated into Acholi, this would seriously jeopardize the expeditiousness of the proceedings due to the substantial time that such translation would require. In sum, the Chamber's approach to this question is best summarized in the following excerpt of a decision adopted by this Chamber in the *Bemba* case as early as December 2008:

In light of the foregoing, the Single Judge is of the opinion that the use of the phrase "as are necessary to meet the requirements of fairness" in article 67(1)(f) of the Statute shall not be read as granting [the suspect] the right to have *all* evidentiary material disclosed by the Prosecutor and *all* documents in the proceedings translated into the language he fully understands and speaks. Rather, in accordance with article 67(1)(a) and (f) of the Statute, [the suspect] should enjoy the right to interpretation throughout the whole proceedings but is only entitled to receive the (...) translation of such documents that inform him in detail of the nature, cause and content of the charges brought against him. Accordingly, [the suspect] should be provided with a [translation] of the following documents: (i) the Prosecutor's application for a warrant of arrest and the Chamber's decision thereon; (ii) the Document Containing the Charges and the List of Evidence as well as any amendment thereto; and (iii) the statements of prosecution witnesses.<sup>31</sup>

33. And thirdly, the Single Judge notes that Mr. Ongwen is not conducting his defence in person but is assisted by counsel,<sup>32</sup> as guaranteed under article 67(1)(d) of the Statute. It is recalled that appointed counsel satisfies the criteria set forth in rule 22 of the Rules, in particular to "have an excellent knowledge of and be fluent in at

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18 October 2006, paras 69-70; *Lagerblom v Sweden*, Application no. 26891/95, Judgment of 14 January 2003, para. 61.

<sup>31</sup> Pre-Trial Chamber III, "[Decision on the Defence's Request Related to Language Issues in the Proceedings](#)", 4 December 2008, ICC-01/05-01/08-307, para. 16.

<sup>32</sup> ICC-02/04-01/15-201 and annexes.

least one of the working languages of the Court”. Thus, the combination of having the assistance of a competent defence counsel, fluent in either of the working languages of the Court (article 50(2) of the Statute), together with the core documents (and pieces of evidence, as further contemplated in paragraph 35 below) having been translated into Acholi, satisfies, in the view of the Single Judge, the fairness of the proceedings at this stage.

34. In this context, it is worth mentioning that Mr. Ongwen has been served with the warrant of arrest in English and Acholi.

35. Concerning the translation of witness statements which the Prosecutor intends to rely upon for the purposes of the confirmation of charges hearing pursuant to rule 76 of the Rules, the Single Judge refers to the established practice of this Chamber, namely that the Defence will be requested to review the witness statements disclosed with a view to identifying portions which require to be translated and to “request, to the extent necessary, the translation of evidence which is core to the preparation of the defence”.<sup>33</sup> In this case, the Defence of Mr. Ongwen will be requested to liaise with the Prosecutor on the final amount of pages to be translated into Acholi and the estimated time required. In a common report, the Prosecutor and the Defence shall inform the Chamber accordingly. Thus, the Chamber will be in a position to resolve any disagreement between the parties in conformity with its statutory powers to ensure fairness of the proceedings with full respect for the rights of the suspect.

36. As a final point, the Single Judge notes that the issue of translation of witness statements appears not to be problematic in this case. According to the Prosecutor, a significant part of the witness statements potentially falling under rule 76(3) of the Rules, is available in Acholi as the witnesses were interviewed on videotape in that language. Accordingly, the transcripts of those interviews are available both

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<sup>33</sup> See, for example, Pre-Trial Chamber II, “[Decision Establishing a Calendar for the Disclosure of Evidence Between the Parties](#)”, 17 May 2013, ICC-01/04-02/06-64, paras 21-22; Pre-Trial Chamber II, “[Decision on the ‘Demande de la Défense aux fins de traduction en Kinyarwanda de certains des principaux elements de preuve’](#)”, 24 September 2013, ICC-01/04-02/06-115, para. 12.



in Acholi and English.<sup>34</sup> Under these circumstances, translations into Acholi of those witness statements, if to be disclosed, do not seem necessary.

#### **d) Required analysis of the evidence**

37. The Single Judge recalls the Chamber's earlier finding in the 31 July 2008 Decision, as recalled in subsequent decisions, wherein particular emphasis was placed on the significance to provide 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 [...] 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 the 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.<sup>35</sup>

38. In the context of the present decision, the Single Judge favours the approach adopted in the 31 July 2008 Decision which was clarified and refined in a 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,

<sup>34</sup> Pre-Trial Chamber II, Transcript of Hearing, 28 January 2015, ICC-02/04-01/15-T-5-Conf-Exp-ENG, p. 36, lines 19-21.

<sup>35</sup> Pre-Trial Chamber III, "[Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties](#)", 31 July 2008, ICC-01/05-01/08-55, paras 66-70; Pre-Trial Chamber II, "[Decision Setting the Regime for Evidence Disclosure and Other Related Matters](#)", 6 April 2011, ICC-01/09-01/11-44, para. 21; Pre-Trial Chamber II, "[Decision Setting the Regime for Evidence Disclosure and Other Related Matters](#)", 6 April 2011, ICC-01/09-02/11-48, para. 22.



following the structure of a draft model chart annexed thereto.<sup>36</sup> The Chamber also requested the Defence to follow the exact approach 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 [...]”.<sup>37</sup> 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 this decision.

39. As has been explained in previous decisions, the in-depth analysis chart follows a “law-driven” approach insofar as it follows the elements of the crimes (context and individual acts) and the forms of participation, as defined in the Statute.<sup>38</sup> The Single Judge believes that requesting from the parties to complement the disclosure of evidence with said analytical chart serves the efficient disclosure of evidence which is relevant to the subject-matter of the case. It is clear that such power derives directly from article 61(3), second sentence, of the Statute to issue any order regarding the disclosure of evidence, as well as rule 121(2), first sentence, of the Rules entrusting the Single Judge to take “the necessary decisions regarding disclosure”. Hence, the in-depth analysis chart, an auxiliary document next to the document containing the charges and the list of evidence, is embedded in the statutory documents of the Court.

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<sup>36</sup> Pre-Trial Chamber III, “[Decision on the Submission of an Updated, Consolidated Version of the In-depth Analysis Chart of Incriminatory Evidence](#)”, 10 November 2008, ICC-01/05-01/08-232, paras 5-8; [ICC-01/05-01/08-232-Anx](#); The same approach was followed in subsequent decisions setting out the disclosure regime, see Pre-Trial Chamber II, “[Decision Setting the Regime for Evidence Disclosure and Other Related Matters](#)”, 6 April 2011, ICC-01/09-01/11-44, paras 21-23; Pre-Trial Chamber II, “[Decision Setting the Regime for Evidence Disclosure and Other Related Matters](#)”, 6 April 2011, ICC-01/09-02/11-48, paras 22-24; Pre-Trial Chamber II, “[Decision Setting the Regime for Evidence Disclosure and Other Related Matters](#)”, 12 April 2013, ICC-01/04-02/06-47, paras 29-32.

<sup>37</sup> Pre-Trial Chamber III, “[Decision on the Submission of an Updated, Consolidated Version of the In-depth Analysis Chart of Incriminatory Evidence](#)”, 10 November 2008, ICC-01/05-01/08-232, para. 9; see also Pre-Trial Chamber III, “[Decision on the Disclosure of Evidence by the Defence](#)”, 5 December 2008, ICC-01/05-01/08-311, paras 9-10.

<sup>38</sup> Pre-Trial Chamber III, “[Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties](#)”, 31 July 2008, ICC-01/05-01/08-55, paras 69-70; Pre-Trial Chamber II, “[Decision Setting the Regime for Evidence Disclosure and Other Related Matters](#)”, 6 April 2011, ICC-01/09-01/11-44, para. 22; Pre-Trial Chamber II, “[Decision Setting the Regime for Evidence Disclosure and Other Related Matters](#)”, 6 April 2011, ICC-01/09-02/11-48, para. 23; Pre-Trial Chamber II, “[Decision Setting the Regime for Evidence Disclosure and Other Related Matters](#)”, 12 April 2013, ICC-01/04-02/06-47, para. 31. A sample model in-depth analysis chart is contained in Annex 2 to this decision, following the counts as contained in the warrant of arrest for Mr. Ongwen.

40. Moreover, and most importantly, as the judicial guarantor of the proceedings, it is the duty of the Chamber to ensure the overall efficiency and fairness of the proceedings, including that disclosure takes place under satisfactory conditions within the meaning of rule 121(2)(b) of the Rules so that the parties can prepare adequately for the confirmation of charges hearing. Proper case management is an integral and crucial part of the Chamber's responsibilities. Given the voluminous amount of evidence, a typical feature in the cases brought before this Court, the Chamber must develop and promote practices which will avert exchanges of copious but irrelevant pieces of evidence between the parties and prevent that disclosure takes place in a disorganized manner and unnecessarily time-consuming. *Streamlining* the disclosure process in this fashion brings along the advantage that (i) the disclosing parties focus their analysis on truly relevant evidence; (ii) the confirmation of charges hearing remains focused; and (iii) the parties (and the Chamber) know of the underlying reasons for a party to rely on a particular piece of evidence. In short, the Chamber's approach minimizes any detrimental effects on the effective and timely preparation for the confirmation hearing and the Chamber's timely issuance of the article 61(7) decision pursuant to regulation 53 of the Regulations.

41. To this end, it is essential that the parties indicate in the in-depth analysis chart the relevant information *as specific as possible* by referring to the document ID number, the page, paragraph and/or lines, which provide the factual allegation contained in the evidence supporting the particular legal requirement. In addition, the Single Judge requests the parties to include in the analytical chart a hyperlink directing the reader to the relevant piece of evidence as uploaded in the electronic system of the Court.

42. The Single Judge opines that both parties, having progressively analysed and reviewed the evidence collected in this case,<sup>39</sup> with a view to be fully prepared to fulfil their duties, are in a position to provide the above information. The parties

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<sup>39</sup> Pre-Trial Chamber III, "[Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties](#)", 31 July 2008, ICC-01/05-01/08-55, para. 69.

are requested to update and file with each disclosure batch an analytical chart of the evidence disclosed between the parties and communicated to the Chamber. A consolidated in-depth analytical chart shall be submitted by the Prosecutor no later than 30 days prior to the commencement of the confirmation of charges hearing pursuant to rule 121(3) of the Rules; and in case she intends to present new evidence at the confirmation hearing, to provide the Defence and the Chamber with a supplement in-depth analysis chart reflecting the new evidence. The same applies to the Defence, namely to submit a consolidated analytical chart no later than 15 days before the date of the confirmation of charges hearing pursuant to rule 121(6) of the Rules.

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

43. The Single Judge recalls the obligation of the Prosecutor to disclose as soon as practicable to the Defence all exculpatory evidence in her 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 regard, it is the duty of the Prosecutor, in case she 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.<sup>40</sup> In this context, it is recalled that the Prosecutor assured the Single Judge during the Status Conference that the process of seeking the consent of the information providers to lift restrictions undertaken under article 54(3)(e) of the Statute is underway.<sup>41</sup> The Single Judge acknowledges the Prosecutor's efforts and requests that the necessary consultations with the information providers to reach an agreement on a waiver of

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<sup>40</sup> 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 on 10 June 2008'](#)", 21 October 2008, ICC-01/04-01/06-1486 (OA13).

<sup>41</sup> Pre-Trial Chamber II, Transcript of Hearing, 28 January 2015, ICC-02/04-01/15-T-5-Conf-Exp-ENG, p.21, lines 16-22.

that condition be further pursued. The Prosecutor must bring these documents to the attention of the Chamber as soon as practicable.

44. Should any problem arise, the Prosecutor must also bring it to the attention of the Chamber as soon as practicable.<sup>42</sup> With a view to efficiently organizing the disclosure process, the Single Judge deems it necessary that the Prosecutor submit an informative progress report on a monthly basis as to the status of documents to be disclosed and which are affected by article 54(3)(e) confidentiality agreements and said consultation process with the information providers.<sup>43</sup>

#### 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 Registry to communicate to the Chamber immediately any evidence that has already been disclosed *inter partes* in the present case;
- c) **orders** the Prosecutor to submit her views and proposals for the establishment of a calendar for disclosure with staggered deadlines for in particular the incriminating evidence on which she intends to rely at the confirmation hearing, following the Single Judge's guidelines set out in paragraph 19 of the present decision, until **Monday, 30 March 2015**;
- d) **orders** the parties submitting any evidence to present the original of the evidence as well as its electronic copy or, in case of tangible objects, the object itself together with an electronic photograph to the Registry;
- e) **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;

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<sup>42</sup> 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"](#)", 21 October 2008, ICC-01/04-01/06-1486, paras 2 and 3.

<sup>43</sup> Pre-Trial Chamber II, "[Decision Regarding the Non-Disclosure of 116 Documents Collected Pursuant to Article 54\(3\)\(e\) of the Rome Statute](#)", 27 January 2014, ICC-01/04-02/06-229, operative part (c).

- f) **orders** the parties to submit the evidence in due time, preferably *much earlier* than the deadlines as envisaged in rule 121(3)-(6) and (9) of the Rules and according to the deadlines to be established in the disclosure calendar; and **orders** the parties to submit the evidence within official filing hours of the Registry;
- g) **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);
- h) **decides** that a consolidated list of evidence and in-depth analysis chart shall be submitted by the Prosecutor no later than 30 days prior to the commencement of the confirmation of charges hearing pursuant to rule 121(3) of the Rules; and in case she intends to present new evidence at the confirmation hearing, to provide the Defence and the Chamber with a supplement in-depth analysis chart reflecting the new evidence;
- i) **decides** that a consolidated list of evidence and in-depth analysis chart shall be submitted by the Defence no later than 15 days prior to the commencement of the confirmation of charges hearing pursuant to rule 121(6) of the Rules;
- j) **orders** the parties to comply with the registration procedure of any evidence as described in part III of this decision;
- k) **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;
- l) **orders** the Registrar to ensure unrestricted access to the Chamber of all evidence disclosed between the parties;

- m) orders** the Registrar to report any related practical or security concern to the Chamber as soon as identified;
- n) orders** the parties to provide the factual and legal basis for any proposal to classify (as non-public) the evidence submitted;
- o) orders** the Prosecutor to submit a progress report on the status of documents affected by article 54(3)(e) confidentiality agreements on a monthly basis, and to bring to the attention of the Chamber as soon as practicable any delays in the process of disclosure, which result from procedures concerning articles 54(3)(e), 72 and 93(8) of the Statute;
- p) rejects** the Defence request that all documents, including decisions, be translated into Acholi.

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



Judge Ekaterina Trendafilova  
Single Judge

Dated this Friday, 27 February 2015

At The Hague, The Netherlands

# **Annex 1**

## **PUBLIC**

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

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## 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. Material may also be provided to the Registry in its original electronic form if the file formats are supported by Ringtail as specified in Appendix C.
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. Material collected in physical form (documents or tangible objects) shall be converted into a 'Standard Image Format' by scanning or other digitization:
  - Single page TIFF for all potential evidence, evidence and material, and WMV (Windows Media Video), WMA (Windows Media Audio) for video and audio material.
  - An OCR (Optical Character Recognition) text-file for potential evidence, evidence and material containing text including for any translation thereof.
16. Material collected in electronic form may be provided in its original electronic format, the following shall apply:
  - The collecting party or participant shall be responsible for the preservation of the original electronic items and, if applicable, the original host storage electronic media.

- In circumstances when redaction is required, the original electronic items shall be converted to the standard image format as specified in paragraph 15.1 and in accordance with paragraph 21.2.
- The metadata set out in the table in section D shall be provided.
- In circumstances when the original electronic file is not in a format that may be searched, the provider shall endeavour to ensure that original electronic files are made searchable, by the provision of OCR Text.
- In circumstances where a party or participant intends to rely upon the material for the purpose of court room proceedings, the party or participant shall convert the material into the standard image format as specified in paragraph 15.1 and in accordance with paragraph 21.2.

17. 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,
- Encrypted External Hard Drives

**Disk or folder content**

2 Files for formats (i) and (ii) above – One main table and one image table (referencing each image or electronic item on the disk). A header record shall be included for each file. Header record shall contain the metadata field names.

**Disk or folder name**

**If physical media (CD/DVD) then specify volume name as**

Participant-Situation-Case-Date-Sequential Number

## B. Imaging and Data standards

18. 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 artefact (in JPEG compression within colour tiff files) can be submitted as a representation of the original.

19. 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.

20. Image and Data file formats and exchange shall be set out as follows:

- |  |   |
|--|---|
| <b>a. Media</b>  | The files shall reside in the same media and location specified in paragraph 16, above, under a folder named “images”.  |
| <b>b. File Directory Structure</b>                         | Standard Images and original electronic items must reside in directories and sub directories. The sub directory structure must reflect the levels in the numbering regime.  |
| <b>c. Content files</b>                                    | <p>Standard images: single page tiff files (ie a four-page document will have four distinct images);</p> <p>Original Electronic items: the files in their original format. Additional extensions may be identified and categorised within the types listed in annex C. These additional file types must have an associated free tool for viewing the file in its native format, or the file type should be supported by the Court Electronic Document Management System viewer.</p> |
| <b>d. Resolution of TIFF Image (Standard Image Format)</b> | Black and White, Grayscale or Colour 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 200K is the average target size of all images.  |
| <b>e. Suffix page numbering</b>                            | In the event that additional pages are required to be inserted after bar-coding (or labelling) and imaging, the suffix pages convention will be applied to images as per paragraph 22.  |
| <b>f. Video file sizes</b>                                 | 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

21. 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. For material provided in standard image format, the ‘Doc ID’ will appear readable on every page and image. The numbering regime will also be used to name the image files. For material provided in original electronic format, the ‘Doc ID’ will be the document number of the item, reflected in the filenames of the items provided.
22. The base numbering regime for the ‘Doc ID’ has four levels, SSS-PPP-BBBB-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 source<sup>1</sup>. 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;
  - BBBB:** is the potential evidence, evidence or material group/folder/batch number. Padded with zeros, maximum value of 9999 (e.g. 0120); and
  - DDDD:** For material collected in physical form, DDDD is the unique “page” identifier within the document. Padded with zeros, maximum value of 9999 (e.g. 0087). The first page number of a document is also the ‘Doc ID’. (See appendix D below). For material provided in original electronic form, DDDD is the item number which increments by one for each item, regardless of the number of pages in an item. In contrast to documents provided in standard image format, documents comprising more than one page that are provided in its original electronic format will therefore not bear a range of numbers.

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<sup>1</sup> 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.

## 23. Conversion of Original Electronic items to Standard Image Format

Where an original electronic item must be converted to the standard image format, an additional four digit suffix will be used for each page. The suffix shall be padded with zeros, to a maximum value of 9999.

### ***Numbering Errors and Corrigendum Pages***

24. Where pages must be inserted into the electronic system due to an error in the physical numbering and registration, the following convention will be used: Insert the page at its correct location and in the page label, use a fifth level as a suffix (two numeric characters, padded zero, preceded with an underscore). For example:

SSS-PPP-BBBB-0001  
 SSS-PPP-BBBB-0001\_01  
 SSS-PPP-BBBB-0002

Meaning that a page SSS-PPP-BBBB-0001\_01 has been inserted at its correct location after SSS-PPP-BBBB-0001 yet before SSS-PPP-BBBB-0002.

25. Where corrigendum pages must be inserted to make corrections to the content of the evidence<sup>2</sup>, the following convention will be used: A corrigendum page shall be prepared and inserted with the following information: description of the correction, reason and date of the correction, exact location/s of the correction, original text, and corrected text. Insert the corrigendum page before the original page, and mark the corrigendum page with the Doc ID of the original page plus an underscore and two numeric characters, with a padded zero (i.e. \_01). For example:

SSS-PPP-BBBB-0005\_01 (the corrigendum page)  
 SSS-PPP-BBBB-0005 (the original page)  
 SSS-PPP-BBBB-0006

In the event of a recurring error throughout a document, the error may be noted with a single corrigendum page at the location of the first error in the document and indicating all locations of the error.

### ***Specific measures for translated documents.***

26. 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

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<sup>2</sup> For Example: Transcription or translation errors, or pages of material that were missing in an original submission and provided after the initial registration.

***Specific measures for redacted documents***

27. 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 - DRC-OTP-0004-0001-R01.

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

28. 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 - DRC-OTP-0004-0001-R01

***Specific Measures for Excerpts from Video and Audio Recordings***

29. Digitised video information should display time codes that reflect the full duration of content that is contained on the original media. Where an entire video cannot be provided during disclosure, and in exceptional circumstances, then an excerpt may be provided. Any video excerpt should display the original time-coding so that it is possible to associate it to scenes from the original complete video.
30. Where an excerpt is created, a suffix should be appended to the Doc ID number. The Doc ID of an excerpt should carry the suffix –Exnn [nn reflecting the sequential excerpt number – one for each extracted passage of video]. For example, DRC-OTP-0004-0001-Ex01. An equivalent system numbering system for audio excerpts shall be implemented.

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

31. The following two tables (in paragraphs 32 and 33) list the format of the metadata that is transmitted for potential evidence, evidence and material provided in electronic format.
32. Table 1 is the table of potential evidence, evidence and material, containing the metadata for these items. Items provided in their original electronic format are addressed either as email or as e-files (all other electronic files).

Table 1 (potential) evidence and material

Field Name	Data Type	Explanation	Example	One to
Document ID	Text	The unique identifier for each original document (record) in the database as specified in paragraph 20.	CAR-OTP-0001-0001 or CAR-OTP-0001-0002-0001	ONE
Date Filed	Date	The date the Participant files the data table with the Registry in the date format DD-MMM-YYYY	20-Aug-2005	MANY
Main Date	Date	<p>The date of the item 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 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</p>	<p>21-Mar-1997</p> <p>Leave blank</p> <p>04-Aug-2004</p> <p>22-Sep-2001</p>	ONE

Field Name	Data Type	Explanation	Example	One to
		<p>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> <p>e-Files: Taken from the date last modified metadata property from the electronic file.</p> <p>e-Mail: Taken from the date sent metadata of the email message.</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	N/A
Type	Text	<p>A simple classification of the item, such as a letter, map, artefact. Attachment C contains a list of suggested document types.</p> <p><b><u>e-Files and e-Mail:</u></b> Determined by the file extension of the electronic file in accordance with Appendix C.</p>	Letter	ONE
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	ONE
Title	Text	When a piece of (potential) evidence or material has a title, the complete title shall be entered exactly as indicated on the item. If the item has	Human Rights Report	ONE



Field Name	Data Type	Explanation	Example	One to
		no title this field shall be left blank. e-Files: Taken from the original file name of the electronic file.  e-Mail: Taken from the subject line in the message.		
Author	Pick List	Person or persons who authored the document. To be completed using information on the face of the document. The LAST NAME is separated by comma from the first name. Semi-colon must separate multiple entries. Other ways of addressing multiple entries can be agreed between the parties.  e-Mail: Taken from the 'From' Field in the message.	SMITH, Brian	MANY
Author Organisation	Pick List	Organisation from which the document emanated. To be completed from information on the face of the document. Semi-colon must separate multiple entries. Other ways of addressing multiple entries can be agreed between the parties.	ACME	MANY
Recipient	Pick List	Person or persons to whom the document was addressed. To be completed using information on the face of the document. The LAST NAME is separated by comma from the first name. Semi-colon must separate multiple entries. Other ways of addressing multiple entries can be agreed between the parties.  e-Mail: Taken from the 'To' field in the email message.	SMITH, Brian	MANY
Recipient Organisation	Pick List	Organisation receiving the document. To be completed from	ACME	MANY

Field Name	Data Type	Explanation	Example	One to
		information on the face of the document. Semi-colon must separate multiple entries. Other ways of addressing multiple entries can be agreed between the parties.		
Copy Recipient		e-Mail: Taken from the 'CC' Field in the message.		MANY
Blind Copy Recipient		e-Mail: Taken from the 'BCC' Field in the message.		MANY
Parties to an agreement	Text	Identifies parties to an agreement or other legal document	ACME	MANY
Language of the item	Pick List	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 FRA - French. Where languages are not foreseen in the ISO tables, the ICC Registry language services (STIC) will decide on the appropriate code to be used.	ENG - English	MANY
Translation status	Pick List	When the document is a translation, choose one of the following options to indicate by whom the translation has been done: ICC – Registry services OTP – OTP services EXT– External services  And whether it is a draft or has been revised.  List to be chosen from: ICC - draft ICC - revised OTP – draft OTP – revised EXT – draft EXT - revised	ICC – draft	ONE
Redaction version	Text	This field records the number of the redaction version. It is reflected by	R01	ONE

Field Name	Data Type	Explanation	Example	One to
		"R" and the respective two digit number, padded with zero, starting at 01.		
Redaction Approval date	Date	This field records the date (DD-MMM-YYYY) that redaction was approved by the Chamber.	30-May-2008	MANY
Excerpt History	Text	This field will record the date of the preparation of each excerpt	30-May-2008	ONE
Host Document Number	Text	<p>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.</p> <p>A host document and any attachments should be listed and numbered separately as per the rules listed in Appendix B.</p> <p>e-Files: If the e-file was extracted from a container file, the Doc ID of the container file should appear in this field. If the e-file was attached to an email message, the Doc ID of the email message should appear in this field.</p> <p>e-Mail: If the e-mail message was attached to another email message, the Doc ID of that email message should be in this field.</p>	CAR-OTP-0001-0001 or CAR-OTP-0001-0002-0001	ONE
Digital Signature	Text	<p>e-Files and e-Mail only</p> <p>The unique cryptographic code that is generated for an electronic item that may be used to verify authenticity of evidence, if authenticity is challenged. The cryptographic hashing standard to be adopted is MD5.</p>	2355F27DC45 E67894795898 B552BBFCB	MANY
Source Media Information	Text	<p>e-Files and email only</p> <p>Contains a reference to the original physical media container from which the electronic file or email was</p>	CAR-OTP-0001-0001	ONE

Field Name	Data Type	Explanation	Example	One to
		extracted. This field may contain the Doc ID of the original physical electronic media item.		
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	MANY
Chain of Custody	Text	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	MANY
Date Source Restriction Lifted	Date	Date on which the respective correspondence was received, giving authorisation lifting disclosure restrictions.	03-Dec-2007	MANY
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).  The codes used for the protected individuals shall be the id number as described in Section E below.	DAVIS, Jonathan	ONE
Related to Witness	Pick	This field is to be completed for items of potential evidence that are generated by a participant and are a result of the participant's direct interactions with the witness. E.g.	DRC-OTP-P-0001	MANY

Field Name	Data Type	Explanation	Example	One to
		Statements, Summaries, Transcripts prepared by a participant and emanating from the witness. The field should be completed with the Person ID of the witness (created according to Section E of this protocol).		
Search Limitations	Pick List	This field records the degree to which the text content of the electronic version of the evidence can be searched: Combined Data (Meaning: typed data and handwritten text or images) Handwritten Text No text Typed - no Latinic script Typed data - Partly Searchable Typed data - Searchable Typed data - Unsearchable	Typed data - Searchable	ONE
Disclosures	Pick List	This field records information about disclosures and any other distribution of potential evidence made in the context of a case. 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] 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. 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 may be used if there is more than one defendant and disclosure is made to each on different dates.	Pre confirmation INCR package 26 07-Nov-2006  Pre confirmation INCR D02 package 26 07-Nov-2006	MANY

Field Name	Data Type	Explanation	Example	One to
		[Batch number] : This is a sequential number maintained by 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)

33. 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.`

**Table 2 Image Table**

Field Name	Data Type	Explanation	Example
Item ID	Text	Document ID	SSS-PPP-BBBB-DDDD SSS-PPP-BBBB-DDDD-nnnn
*Path	Text	Full relative path and filename of the image file or electronic item. For each page of each document provided in Standard Image Format there will be a single file. The file name format is : SSS-PPP-BBBB-DDDD.tif or SSS-PPP-BBBB-DDDD_01.tif (if it is an inserted page) For each item provided in original electronic format, the filename should be : SSS-PPP-BBBB-DDDD.(ext) Where (ext) is the extension of the original file. The format of the file path should be a standard windows compatible folder structure.	SSS-PPP-BBBB-DDDD.tif SSS\PPP\BBBB\SSS-PPP-BBBB-DDDD.tif or SSS\PPP\BBBB\SSS-PPP-BBBB-DDDD.xxx or SSS\PPP\BBBB\SSS-PPP-BBBB-DDDD-nnnn.tif
*Pages	Text	Number of pages per document (maximum 4 characters)	0003

## **E. Witness and Victim information**

34. The following table lists the format of metadata for the witnesses and victims.

35. “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	ONE TO
Person ID	Text	<p>To be matched with DOC ID default field in Ringtail</p> <p>Number given to a witness or victim. The ID number is structured as follows:</p> <p>SSS is the situation code</p> <p>PPP is the code for the participant first introducing the witness to the Court.</p> <p>P remains P for any witness ID number and shows that this is a person</p> <p>XXXX is a consecutive number assigned by the participant.</p>	DRC-OTP-P-0001 or DRC-D01-P-0001	ONE
Title	Text	This is the title of a witness /victim such as Dr., Mr., Major, General etc.	Major	MANY
Name	Text	The LAST NAME is separated by comma from the first name.	SMITH, Robert	ONE
Other name(s) and/or nickname(s)	Text	Nickname or commonly used name of witness/victim if it differs from their actual name. Semi-colon must separate multiple entries.	Bob	MANY
Gender	Pick List	Gender of the witness/victim. Permissible values Male, Female or Unknown	Male	ONE
Birth Date	Date Field	DD-MMM-YYYY	04-Aug-1963	ONE

Field Name	Data Type	Explanation	Example	ONE TO
Estimated Birth Date	Boolean	This field records whether the age of the person is an estimate only.	No	N/A
Status	Pick List	This field records the basis on which a person is called before the proceedings: Fact Witness Expert Witness Victim Fact Witness & Victim	Victim	MANY
Victim code	Text	If the person called before the proceedings is a Victim enter the victim code	a_0011_08	ONE
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	ONE
Witness Statement Doc ID	Text	If the witness statement has been attributed a document ID in accordance with section D above, please indicate the document ID. All prior witness statements should be recorded in this field, including the document ID. Semi-colon must separate multiple entries.	SSS-PPP-BBBB-DDDD	MANY
Application reference	Text	If the victim's application has been attributed a document ID in accordance with section D above, please indicate the document ID. All prior victim's applications should be recorded in this field, including the	SSS-PPP-BBBB-DDDD	MANY



Field Name	Data Type	Explanation	Example	ONE TO
		document ID. Semi-colon must separate multiple entries		
Appearance	Pick List	Please indicate how the witness will testify or how the victim will express his/her views and concerns: Permissible values are; Audio/Video In person Transcript Written Statement	In person	ONE
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	ONE

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

## IV. General provisions

### A. Virus responsibility

36. 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

37. 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.

38. As appropriate updates to the Protocol text shall be implemented or submitted to the Chamber for approval.

39. 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 Defence	D01 to D99; DAB.... (each defence 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: DRC for Republic Democratic of Congo
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 / Unattached<sup>3</sup>

- Documents that make reference to attached documents should be linked with the host and attachment structure.
- 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”.
- 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.

#### 2.1. e-Files

- If the e-file was extracted from a container file, the Doc ID of the container file should be the host.
- If the e-file was attached to an email message, the Doc ID of the email message should be the host.

#### 2.2. e-Mail:

- If the e-mail message was attached to another email message, the Doc ID of that email message should be in this field.

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<sup>3</sup> 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.

## Appendix C - 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 types<sup>4</sup>.

Items provided in original electronic format (e-files and email) shall be assigned a type according to the types listed, and based on their file extension, or as otherwise determined by the forensic processing software, additional extensions may be identified and categorised within the types listed.

Type (e-Files and email only)	Explanation / Example file extensions
Text Document	.Doc .txt .rtf .pdf .html .htm
Spreadsheet	.xls .123
Presentation	.ppt
Database	.mdb .dat
Correspondence (e-mail)	.eml .msg
Audio Recording	.mp3 .wma
Video Recording	.mpeg .wmv
Graphics File	.jpg .jpeg .bmp .tif .tiff .png
Container File	.cab .zip .pst .rar

Materials collected in physical form

Type	Explanation
Calendar / Diary	Any chronological overview or record by an individual (printed, electronic or handwritten); any form of calendar.
Certificate	Any type of certificate given by a private or public body.
Complaint	Any document containing a complaint to an official instance.
Contact list	Any list containing primarily names or contact details.
Contract / agreement	Any kind of commercial contract including employment contracts.
Correspondence (e-mail)	Any email, including emails attaching reports, letters or other documents.
Correspondence (envelope)	Any envelope, whether posted or not.
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.
Correspondence (internal memorandum)	Any type of memorandum between people within a group / organization / government (not the ICC), including e.g. mission orders.
Correspondence (invitation)	Any kind of public or private invitation to attend any place or event, that clearly identifies an addressee.
Correspondence (letter)	Any letter, including covering letters and documents drafted as a letter that were also transmitted by fax.

<sup>4</sup> The impact of the proposed changes to the document types list should be investigated prior to the amendment of the latter.

Type	Explanation
Court Document (ICC)	Any legal document (submissions, judgments) in court procedures conducted before the ICC.
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.
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.
Financial document (invoice)	Any invoice or bill issued, seeking payment or other remuneration.
Financial document (other)	Any other document of a financial nature, including cheques.
ICC Statement - ICC screening	Screening assessment taken by someone who is a member of the ICC.
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.
ICC Statement – Electronic Media	A statement which is recorded by a member of the ICC by audio and/or video means
ICC Statement - General	Any statement taken by someone who is a member of the ICC.
ICC Statement - ICC investigator interview notes	Notes taken during an interview by someone who is a member of the ICC.
Identifying document	Any official document that identifies a person, such as a passport, identity card, membership card of an organization.
Internal guidelines / instruction /orders	Any guidelines or instructions, given by a non-public or non-governmental entity and which are not technical instructions.
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.
List / table	Any other list or table that does not primarily contain names or contact details.
Map	Any document representing the layout of a location, including clear sketches that indicate a geographical location.
Media / Press article	Media articles that are public, regardless whether they are taken from Internet, newspapers, newsletters, etc. including press briefings and press releases.
Minutes of meetings	Any record of the proceedings or outcome of a meeting which is clearly identified as such.
National judicial Document (Non ICC)	Any legal document (submissions, claims, judgments, brief) in court procedures conducted before any court except the ICC.
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

Type	Explanation
	means, but has been reduced to written form at a later date.
Notebook	Any notebook (not just a few pages) that includes handwritten notes.
Organisation diagram	The structure of a group / organization, including command structure, where in diagram format.
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).
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.
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.
Physical item	Any physical item which is not a document (on either physical or electronic media).
Pre-Registration Form	An ICC preregistration form documenting the collection of evidence.
Presentation	Any presentation given in a relatively public environment, including public presentation, public speech or declaration, slides, but that is not a witness statement.
Receipt	Any receipt issued, acknowledging payment for any kind of commercial transaction, or the receipt of goods.
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).
Sketch	Any draft of any object / person / location which is not clearly a map.
Surrogate page	These sheets mark the place of evidence that cannot otherwise be included in the system.
Technical manual	Any kind of technical manual.
Transcript	Written version of audio/video material that cannot be considered the recording of a statement (e.g. transcript of film).
Translation - ENG	Any translation into English of one of the above
Translation – FRA	Any translation into French of one of the above
Travel related and other administrative document	Any documents relating to travel, including route plans, tickets, itineraries.

## Appendix D - Numbering Example

- Document A: Document collected in physical form
- Document B: Item collected in electronic form
- Document C: Electronic item converted to standard image format (Conversion of document B)

Document A	Document B	Document C
Original Paper document Situation: UGA Batch: 0123 Participant: Office of the Prosecutor (OTP) No Pages: 5	Original Electronic Document Situation: UGA Batch: 0123 Participant: Office of the Prosecutor (OTP) No Pages: 3	Converted Electronic Document Situation: UGA Batch: 0123 Participant: OTP No Pages: 3

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

# **ANNEX 2**

## **Public**



**Sample for a Draft Model Chart on the Presentation of Evidence by the Parties**

LEGAL ELEMENTS	REFERENCE TO EVIDENCE Type of document Source (page, paragraph and/or line)
CRIMES	
1. Crimes against Humanity	
Common (contextual) elements	
(1) Attack	Statement of witness P-001, <u>UGA-OTP-0001-0334</u> , at 46, para. 5-6
	Transcript of interview with witness P-002, <u>UGA-OTP-0003-1334</u> , at 22, line 7, to 23, line 5
	UN Report "Title" <u>UGA-OTP-3345-1122</u> , at 50, para. 12, 55, para 4, 112, para 2-5.
(2) Directed against any civilian population	
(3) Widespread or systematic	
(4) Pursuant to an organizational policy	
(5) Knowledge of the attack	

<b>Specific constituent elements of the counts</b>	
<i>Murder Article 7(1)(a)</i>	
Specific elements following the text of the Elements of Crimes	
<i>Enslavement – Article 7(1)(C)</i>	
Specific elements following the text of the Elements of Crimes	
<i>Inhumane acts – Article 7(1)(k)</i>	
Specific elements following the text of the Elements of Crimes	
<b>2. War Crimes</b>	
<b>Common (contextual) elements</b>	
(1) Armed conflict	
(2) International or non-international	
(3) General requirement: i.e. awareness of the factual circumstances that establish the existence of an armed conflict	
<b>Specific constituent elements of the counts</b>	
<i>Murder – Article 8(2)(c)(i)</i>	
Specific elements following the text of the Elements of Crimes	
<i>Cruel treatment – Article 8(2)(c)(i)</i>	

Specific elements following the text of the Elements of Crimes	
<b><i>Intentional attack against civilians – Article 8(2)(e)(i)</i></b>	
Specific elements following the text of the Elements of Crimes	
<b><i>Pillaging – Article 8(2)(e)(v)</i></b>	
Specific elements following the text of the Elements of Crimes	
<b>MODE(S) OF LIABILITY</b>	
<b><i>Article 25(3)(b)</i></b>	
Orders (...) the commission of such crime	