

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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No.: ICC-02/04-01/05

Date: 3 January 2025

**PRE-TRIAL CHAMBER III**

**Before:** Judge Althea Violet Alexis-Windsor, Presiding Judge  
Judge Iulia Antoanella Motoc  
Judge Haykel Ben Mahfoudh

**SITUATION IN UGANDA**

***THE PROSECUTOR v. JOSEPH KONY***

**Confidential**

**Prosecution's Request to Deviate from the E-Court Protocol**

**Source:** Office of the Prosecutor

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

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## I. INTRODUCTION

1. The Prosecution respectfully requests to deviate from certain restrictions newly included by the Registry in the E-court Protocol<sup>1</sup> and elaborated upon herein. In the alternative, the Prosecution requests the Chamber to instruct the Registry to liaise with the Prosecution and submit a revised E-court Protocol for the reasons submitted below.

## II. CONFIDENTIALITY

2. This Request is filed as confidential pursuant to Regulation 23bis(1) of the Regulations of the Court, as it refers to ongoing operational discussions between the Office of the Prosecutor and the Registry.

## III. SUBMISSIONS

3. The E-court Protocol filed by the Registry on 20 December 2024, following the Chamber's order to file the currently applicable version together with any necessary adaptations in the circumstances of the present case,<sup>2</sup> differs in several important respects from the versions applied in other recent cases.<sup>3</sup> While these updates are for the most part improvements, there are various aspects that would not only make disclosure more cumbersome and ultimately less efficient, but would likely lead to a delay in disclosure in the present case. The Prosecution was not able to foresee these adaptations and requests to be allowed to deviate from the E-court Protocol as filed in the aspects detailed below.
4. *First*, the Protocol as filed limits the size of each disclosure package to 2 gigabyte ("GB").<sup>4</sup> While this 2GB limit became an agreed practice to allow disclosure to occur during the remote working period of the COVID-19 pandemic, there is no

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<sup>1</sup> ICC-02/04-01/05-543-AnxI ("E-court Protocol").

<sup>2</sup> See ICC-02/04-01/05-537, para. 16.

<sup>3</sup> See e.g. in the cases of *Said* ([ICC-01/14-01/21-610AnxI](#)), *Mokom* and *Yekatom & Ngaissona* ([ICC-01/14-01/18-64-Anx](#)).

<sup>4</sup> E-court Protocol, para. 5.

technical or logistical necessity to limit the size of disclosure packages in a non-remote work setting. Further, such a limit would require the production of many small packages per disclosure theme, requiring more resources and time on all sides to manage data upload and input. In recent cases, including at the arrest warrant stage, the Prosecution and Registry have successfully uploaded disclosure packages of a much larger size than 2GB. While it is submitted that no GB limit is required, should the Chamber deem this nonetheless necessary, then the Prosecution would propose a maximum size of 100GB as adequate for each disclosure package. This would have no bearing on the Prosecution's obligation to conduct its disclosure on a rolling basis and with manageable package sizes.

5. *Second*, the Protocol as filed limits the size of each single disclosure file (*i.e.* item of evidence identified by individual ERN) to 200 megabyte ("MB").<sup>5</sup> Also for this adaptation there is no technical or logistical necessity to limit the size of single files. On the other hand, the Prosecution intends to disclose items of evidence which exceed 200MB. Such items include the logbooks created by the Ugandan authorities in which the content of intercepted radio communications of the LRA was recorded, which were disclosed without impediment in their original format during the *Ongwen* case. It would be artificial and inefficient to require the Prosecution to split such files before upload. Most significantly, it would impact upon the ability of the Parties and Participants to properly read and analyse these comprehensive items of evidence which are best understood in their entirety.
6. *Third*, the Protocol as filed foresees only three data file formats: CSV, XLS, and MDB.<sup>6</sup> The Prosecution seeks a deviation to this provision in order to use the DAT file format. A DAT file is a load file format which stores data in a structured way, ensuring full compatibility with the Nuix software.<sup>7</sup> The use of DAT would

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<sup>5</sup> E-court Protocol, para. 15.

<sup>6</sup> E-court Protocol, para. 17.

<sup>7</sup> See

[https://documentation.nuix.com/en/content/server/general/projects\\_frameless/Nuix%20Discover%2010.18%20Online%20Help/Project\\_Source\\_Files/Case\\_Admin/Manage\\_Documents/Imports/IMPEX\\_Import\\_flat\\_files.htm?type=frameless&area=general&project=Nuix%20Discover%2010.18%20Online%20Help](https://documentation.nuix.com/en/content/server/general/projects_frameless/Nuix%20Discover%2010.18%20Online%20Help/Project_Source_Files/Case_Admin/Manage_Documents/Imports/IMPEX_Import_flat_files.htm?type=frameless&area=general&project=Nuix%20Discover%2010.18%20Online%20Help).

streamline workflows by eliminating the need to manipulate files into a single format of MBD. This saves time, minimises potential errors, and increases flexibility for all Parties and Participants. The Registry is able to process DAT files, as is evidenced by the practice in recent other cases, where data with this format was successfully imported. Therefore, this file format should have also been included in the Protocol.

7. *Additionally*, the Protocol as filed contains various points that do not reflect the current operational reality of the Court. To avoid any confusion or technical breaches of the Protocol which may otherwise occur, the Prosecution requests the following detailed deviations:

- The Protocol as filed require users uploading documents to “submit the original version of documents, if available, alongside the PDF version.”<sup>8</sup> The Prosecution requests not to be bound by this requirement: while uploading native documents may be a requirement under the Judicial Workflow Platform (“JWP”), this is not the case with Nuix. As such, the requirement would place an additional unnecessary burden upon the Prosecution as well as the other Parties and Participants in their potential future disclosures. Relatedly, should this deviation be accepted, it would also be necessary to remove the final sentence of para. 27 of the E-court Protocol.<sup>9</sup> This is because the absence of an original unredacted version in the database would make it impossible to import a redacted version by reference to a non-existent host document number; quite simply, the import would fail.
- Appendix C to the Protocol as filed sets out a list of various Document Type names to be used. However, this list is obsolete and

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<sup>8</sup> E-court Protocol, para. 15, first bullet point.

<sup>9</sup> “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 or DRC-OTP-00000004).”

does not conform with the updated Document Type names agreed upon by all parties in the process of developing an updated eCourt Protocol for the future use of JWP.<sup>10</sup> The Prosecution subsequently updated its system to accommodate this agreement. To revert to the previous Document Type names would be unduly onerous and resource-intensive upon the Prosecution and may lead to delays in disclosure. The Prosecution asks to be able to implement the previously agreed system with respect to the Document Type names, in deviation from the filed Protocol.

- Specifically, and by way of example, in relation to translated documents, the Protocol as filed sets out the applicable Document Type names as "Translation – ENG" and "Translation – FRA".<sup>11</sup> However, the Prosecution's system is set up in line with the agreed revision such that the applicable Document Type simply bears the name "Translation", while a separate metadata field "Language of the Item" specifies the relevant language (*i.e.* English, French, or another language).
- The Protocol as filed establishes that page-numbering is to occur by way of a six-digit page level (e.g. OTP-UGA-00000001-000001).<sup>12</sup> The Prosecution's current page-numbering system runs only to a four-digit page level (e.g. OTP-UGA-00000001-0001), as there are no items numbering 10,000 pages or over. The Prosecution seeks to deviate from the six-digit page level requirement, as it is unnecessary and would place a high burden upon the Prosecution to implement at this juncture.

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<sup>10</sup> See the list set out at Annex C of the "[Unified Technical Protocol \("E-court Protocol"\) for the provision of records of proceedings in electronic form in the Judicial Workflow Platform \(JWP\)](#)".

<sup>11</sup> Appendix C to the Protocol; *see also* para. 26.

<sup>12</sup> Protocol, para. 22(B).

- Finally, the Prosecution takes issue with three aspects of the Protocol's approach to metadata fields:<sup>13</sup>
    - While the list of metadata fields is presumably not intended to be exhaustive, the Prosecution notes the absence of the following three fields habitually included in disclosure protocols in recent years, and which it intends to use in the present case: "Basis of Confidentiality" (pick list); "Disclosure Notes" (memo); and "Pseudonyms" (memo).
    - In relation to the specific fields "Digital Signature" and "Participant", the Prosecution further suggests that the cardinality should be "One", and not "Many", as currently provided in the Protocol.
    - In addition, the field "Record Type" should be a "Pick List" field, rather than a "Text" field, to promote better data uniformity.
8. The Prosecution respectfully submits that the limitations imposed in the Protocol as filed are not rooted in software capabilities or technical feasibility. Software application systems and tools used by CMS are fully capable of handling larger files and packages. The proposed deviations regarding the size of disclosure packages and single files reflect the realities of contemporary evidence handling and the operational requirements of the Prosecution. Deviating from these limits will fully enable organised, rolling and thematic disclosure, streamline disclosure processes, avoid splitting evidence files, and reduce administrative burdens.
9. For the foregoing reasons, and with a view to avoiding unnecessary delays in the disclosure process, the Prosecution seeks as a matter of primary relief permission to deviate from the E-court Protocol as filed. If granted, this would allow the Prosecution to begin disclosure immediately upon approval by the Chamber of its

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<sup>13</sup> Protocol, para. 32.

thematic disclosure. In the alternative, the Prosecution requests the Chamber to instruct the Registry to liaise with the Prosecution, Parties and Participants and submit a revised E-court Protocol as a matter of urgency.

#### IV. CONCLUSION AND RELIEF SOUGHT

10. For the reasons set out above, the Prosecution respectfully requests that the Chamber allow the Prosecution to deviate from the E-court Protocol as filed, in relation to the maximum size of individual files, the maximum size of disclosure packages, the approved file formats, and the other miscellaneous aspects detailed herein.
11. In the alternative, the Chamber should instruct the Registry to liaise with the Prosecution, Parties and Participants and file an amended E-court Protocol, which includes the proposed changes.



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**Karim A. A. Khan KC, Prosecutor**

Dated this 3<sup>rd</sup> day of January 2025  
At The Hague, the Netherlands