

Annex 1

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From: Trial Chamber VI Communications
Sent: 02 April 2024 13:41
To: OTP CAR IIA Communications; D33 Said Defence Team; Said LRV Team OPCV
Cc: Chamber Decisions Communication; FS Items Communication; Associate Legal Officer-Court Officer; Trial Chamber VI Communications; [REDACTED]
Subject: Streamlined procedure for the formal submission of evidence through witnesses
Attachments: Streamlined Procedure for the Formal Submission of Evidence Through Witnesses.pdf

Dear parties and participants,

The Chamber has considered the current procedure for the formal submission of evidence through witnesses, as laid down in the Directions on the Conduct of Proceedings (ICC-01/14-01/21-251, paras 15-24) and further refined in a number of oral and email decisions. Although this system has generally worked satisfactorily, the Chamber has continued to reflect on the formal submission process, with a view to identifying ways in which it can be streamlined. Going forward, the Chamber will institute a new process for the formal submission of evidence through a witness, as set out in the annex to this message.

The new process is designed to be simpler and less time-consuming for everyone involved, but it will require some technical changes in terms of how the List of Materials and the e-Binders are prepared. The Registry will invite you for a training session to explain these new requirements. The Chamber will start implementing the new procedure as soon as you are able to comply with new requirements.

Kind regards,
Trial Chamber VI

STREAMLINED PROCEDURE FOR THE FORMAL SUBMISSION OF EVIDENCE THROUGH WITNESSES

1. The Chamber has considered the current procedure for the formal submission of evidence through witnesses, as laid down in the Directions on the Conduct of Proceedings (ICC-01/14-01/21-251, paras 15-24) and further refined in a number of oral and email decisions. Although this system has generally worked satisfactorily, it has imposed a certain burden on the parties and the Registry.
2. The Chamber has continued to reflect on the formal submission process, with a view to identifying a number of ways in which the process can be streamlined. Accordingly, going forward, the Chamber will institute a new process for the formal submission of evidence through a witness, as set out below.
3. At the outset, the Chamber emphasises that the new procedure does not change anything fundamental about the submission process. As outlined in the Directions on the Conduct of Proceedings, the Chamber will generally not consider the standard evidentiary criteria at the time of submission. In other words, paragraphs 16 to 21 of the Directions on the Conduct of Proceedings shall remain in force.

Submission of items that were used during the hearing

4. The key change going forward is that the Chamber will, in principle, formally recognise the submission of an item of evidence during the hearing, immediately after it is used by any of the parties.
5. Once an item has been used during a hearing, it shall in principle be recognised as formally submitted, unless there are specific reasons against this. Accordingly, there is no need for the parties to ask for the Chamber's authorisation to formally submit an item via email after it has been displayed during the hearing.
6. Nevertheless, in order to have a complete record and to assist the Court Officer, parties must state clearly that they wish the item to be formally submitted after they have finished using it in court.
7. The same rules in terms of which items can be submitted through a witness that were applied during the email procedure shall continue to apply. For example, parties are not allowed to ask for the formal submission of prior recorded testimony without complying with the conditions of rule 68 of the Rules, even if (part of) a witness' statement was read out during the hearing.
8. If the non-using party wishes to raise an objection to the formal submission of a particular item, it must do so immediately after the using party has stated its wish to have it formally submitted.
9. The Chamber hereby instructs the Court Officer to mark items that were displayed during the hearing to be marked as formally submitted if:
 - a. The using party has stated its wish to submit the item and there is no opposition to this; or
 - b. The Chamber decides that the item should be recognised as formally submitted.

Inclusion of all versions in List of Material

10. As before, when one version of an item is used (e.g. the translation of a statement), then all versions of this item will be formally recognised as formally submitted. To facilitate the identification of all the different versions of items to be submitted, the parties must:
 - List all versions of an item they wish to use with the witness in the corresponding List of Material. This includes redacted versions, transcripts and translations. All versions must be

listed under the tab number of the parent file. The parent file is the original version of the item or the least redacted version thereof in e-Court. Different versions must be given the same tab number as the original but must receive unique decimals to facilitate identification during the hearing.

- If an item on the List of Material is already recognised as formally submitted, this should be indicated in the table.
- If possible, parties should make the relation between different versions of an item visible in the List of Material.

For example :

Tab	ERN (E-Court)	Description	Status	Confidentiality	Page No.	Passages to be used	To be shown to the public	To be shown to the witness	Rule 68(3)
1.	CAR-OTP-2062-0468-R04	Witness Statement of P-1524 signed on 28 September 2017		CONF	24	All	No	Yes	Yes
1.1	CAR-OTP-2062-0468-R03	Redacted version		CONF					
1.2	CAR-OTP-2062-0468-R02	Redacted version		CONF					
1.3	CAR-OTP-2062-0468-R01	Redacted version		CONF					
1.4	CAR-OTP-2130-1902-R03	French Translation of P-1524 Witness Statement (CAR-OTP-2062-0468-R03)		CONF	24	All	No	Yes	Yes
1.5	CAR-OTP-2130-1902-R02	Redacted version of translation		CONF					
1.6	CAR-OTP-2130-1902-R01	Redacted version of translation		CONF					
2.	CAR-OTP-2062-0492	Annex 1 of P-1524 Witness Statement – Map of Bangui showing Seleka bases and checkpoints as annotated by the witness.		CONF	1	All	No	Yes	Yes
3.	CAR-OTP-2065-3188	AA007901.MXF (video)	FS	CONF	N/A	All	No	Yes	No
3.1	CAR-OTP-2107-1547	Transcript of video CAR-OTP-2065-3188	FS	CONF	2	All	No	Yes	No
3.2	CAR-OTP-2605-0411	Translation of transcript	FS	CONF	3	All	No	Yes	No
4	CAR-OTP-2000-0516	11_6H30 Yé so i lingbi ti inga Rencontre Bozizé avec les Fo.mp3							Yes
4.1.	CAR-OTP-2087-9671	Transcript of CAR-OTP-2000-0516							No
4.2	CAR-OTP-2087-9671-R01	Redacted version of transcript							
4.3.	CAR-OTP-2087-9673	Translation of transcript							Yes
4.4	CAR-OTP-2087-9673-R01	Redacted version of translation							

11. Before the start of the witness' testimony, the List of Material should :

- be converted into PDF by the parties
- be given an ERN as follows: CAR-OTP-LOM-XXXX where XXXX is the witness number
- be registered in JEM under "Document Type" "is" "List of Material"
- be uploaded in the dedicated field in e-Court and bear **tab** number **0**.

For example:

Nuix Discover ICC_0114_0121 Test Case Documents					
"OTP-P-1524" has a value					
CAR-OTP-LOM-1524 14 documents (0 selected)					
List of Material					
# OTP-P-1524	Document ID	Document Title	Document Type	EVD - Status	Confidentiality Level
0	CAR-OTP-LOM-1524	List of Material CAR-OTP-P-1524	List of Material		Confidential

Updated versions of List of Material

12. If Parties and participants intend to update their List of Material, they will need to upload the new version replacing the previous version, while keeping the original ERN. The case manager must then supply a metadata update package to reflect the new ordering.

- A metadata update must be issued to add or update the tab numbers.
- An image update package containing the updated version of the List of Material must be issued

New tab numbering for e-Binder.

13. The tab numbering in the e-Binder in e-Court should follow the same structure and order as the List of Material. For example:

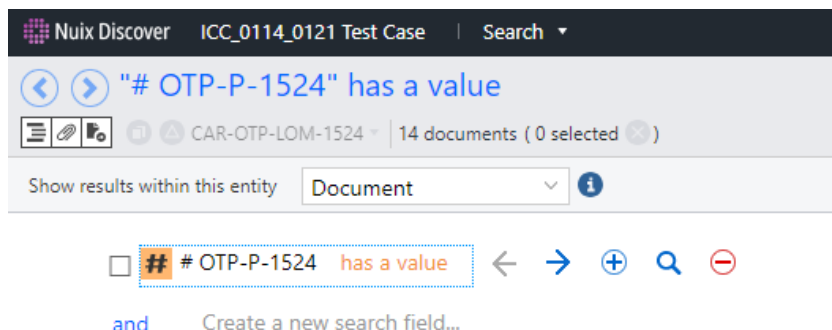
14. The parties may use any version during the hearing by referring to the tab number and the corresponding decimal (e.g. "tab 4.4"). As noted, when one version has been used, the Court Officer shall mark all the other versions that are listed under the main tab number as formally submitted as well.

15. When calling for an item to be displayed, parties must indicate whether or not it is already recognised as formally submitted.

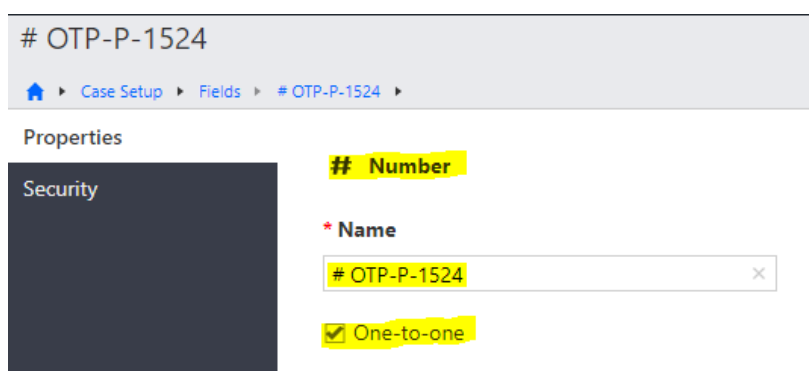
16. After every hearing, the Court Officer will circulate a report (possibly as part of the Registry Minutes), indicating which items were marked as formally submitted during that hearing. It is the responsibility of the parties to raise potential errors or omissions. The opposing party and the Chamber should be copied but, in principle, they are not required, nor are they expected, to intervene at this stage, barring possible mistakes or irregularities.

Permanent e-Binders

17. Henceforth, each witness will have a dedicated field : **# OTP-P-XXXX** or **# D33-P-XXXX** through which parties, participants and the Chamber will have access to the items and the List of Material (as is currently the case with the rotating e-Binders).



18. The field must be created as a number field (**#Number**) and may hold only one entry per item to allow the sorting of materials by the assigned tab numbers:



19. These fields may be created in bulk well in advance to ease the exporting and importing process between OTP Ringtail, Jem Nuix and Defence Jem. Once imported, security must be set on the new fields to allow visibility to the Chamber and other parties and participants.

20. This field will remain in e-Court through the duration of the proceedings so the Chamber, parties and participants can access the list of items and its related List of Material later on. This replaces the system of rotating e-Binders.

21. The Chamber, parties and participants will also be able to run a search based on the filter "Document Type is "List of Material" to access all the Lists of Material provided for each witness during the proceedings

Submission of large numbers of items during a hearing

22. In principle, the submitting party must indicate its wish to formally submit each item individually. However, the Chamber recognises that there may be circumstances where a party wishes to submit a large number of related/similar items through a witness during a hearing. For example, when a party wishes to submit a number of items that belong together (e.g. a series of photographs that were taken of the same object on the same occasion), but which are registered under different ERNs, it may be more efficient to submit them all at once, by clearly referencing the range of tab numbers and providing an opportunity for the witness to comment on them collectively.

23. After the hearing, the submitting party must send a comprehensive list of all the items (in all their versions) that were submitted in bulk to the Registry. The opposing party and the Chamber should be copied but, in principle, they are not required, nor are they expected, to intervene at this stage, barring possible mistakes or irregularities.

Evidence submitted through witnesses whose prior recorded testimony was introduced pursuant to rule 68(3) of the Rules.

24. In relation to items that were included as Associated Material in the calling party's request pursuant to rule 68 of the Rules, the procedure remains unaltered: after the conditions of rule 68(3) of the Rules are met and the Chamber has formally authorised the introduction of the witness' prior recorded testimony, all items included in the list of Associated Material are, in principle, also considered as formally submitted. If the calling party does not want a particular item to be formally submitted they must state so clearly at the hearing.

25. As with items that were submitted in bulk, the calling party is instructed to send a comprehensive list containing all versions of the items to the Registry following the conclusion of the witness' testimony.

26. In relation to annexes to witness preparation logs, the Chamber recalls its instruction that, if the calling party wishes to show or discuss new exhibits to the witness which the witness has not seen before, then the calling party is encouraged to do so in the courtroom during the questioning of the witness.

New versions of items that are already formally recognised as submitted

27. As before, in all instances, it is the responsibility of the party uploading new versions/transcripts/translations of items that were already formally recognised as submitted to alert the Registry of this fact. The Registry must then mark the new version/related item as formally submitted.