

Confidential

Redacted

Annex A

Responses to the Queries of the Single Judge

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The figures and proposed dates in this document are the best available to the compilers at the time of writing. Significant departures from the same will be notified to the Chamber immediately.

Investigations (Question 1)

- ***Does the Office of the Prosecutor intend to re-investigate the case? Yes***
 - **Witness Availability** Additional investigations will depend in part on the availability of current core witnesses. If witnesses on the current list of witnesses are unavailable, this will increase the need for additional investigations.
 - **Re-Interviews** Certain current witnesses may have to be re-interviewed on discrete topics (e.g. Further questioning of current insiders about Ongwen, further questioning of radio operators for voice identification etc)
 - **Potential Witnesses** Several potential witnesses remain to be interviewed. For example, only three victim witnesses have been interviewed in depth by the Office regarding the attack on Lukodi. Certain potential witnesses have already been identified but not yet interviewed. Some who could not be interviewed previously because of security issues (in particular LRA presence at the time in northern Uganda) may now be newly available.
 - **Analysis and follow-up investigations** will be required. For example, additional analysis is required of large tranches of intercept evidence. This will include:
 - analysis of almost **8000** pages of summarized radio intercepts, much of which is handwritten as well as analysis of approximately **770** audio recordings, and summaries made of the same.
 - transcription and translation (into English) of audio recordings identified as relevant.
 - forensic enhancement of audio tapes identified as relevant, but currently inaudible.

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- authentication of relevant audio intercepts via witnesses such as radio operators or by technical means, such as voice recognition.
- ***How much time does the Prosecutor estimate this will take?*** The bulk of the additional investigations will be completed within the timeframe of the evidence review process within the coming year. (See question 4)

Amendment of Charges (Question 2):

- ***Does the Prosecutor consider amending the charges for the purpose of the confirmation of charges hearing?***
 - The Prosecutor is considering the addition of charges relating to **Pajule** (The Pajule attack, already investigated for the purposes of the Application for Warrants of Arrest), **sexual and gender-based violence** (Only partially investigated) and recruitment / enlistment of **child soldiers**.
- ***If yes, how much time does the Prosecutor estimate this will take?***
 - 3 months
- ***What will be the implications for the start of the confirmation of charges hearing, taking into consideration not only the time to collect the evidence but also the time needed to take measures of protection, including presenting requests for redactions to the Chamber?*** The amendment process itself will take only three months. However, the associated processes of taking measures of protection, including presenting requests for redactions to the Chamber etc will require more time. In any case, this will not extend beyond the time required for the current disclosure review process – i.e. one year. (See question 4).

Proceedings against Kony, Otti & Odhiambo (Question 3):

- ***What is the position of the Prosecutor with regard to the possibility to initiate proceedings against Joseph Kony, Vincent Otti and Okot Odhiambo in absentia (article 61(2) of the Statute) at the same time?***

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- o No: The Prosecution does not intend to initiate proceedings *in absentia* against Kony, Otti or Odhiambo at the same time. The Prosecution considers that the significant delay, impact on witnesses and outlay of limited resources that would be caused by such proceedings outweighs any potential benefit.
 - o The Prosecution notes in this context that it has already submitted information regarding the reported death of Vincent Otti to the Chamber and is also investigating the reported death of Odhiambo. Additionally, there is currently no indication that Joseph Kony will surrender himself to the Court.
- ***In case the Prosecutor would need to re-investigate the case in relation to those suspects, how much time does the Prosecutor estimate this will take?***
 - o See above

Disclosure (Question 4)

- ***What is the overall amount of evidence that the Office of the Prosecutor is currently in possession of and intends to use for the purpose of the confirmation of charges hearing? (Question 4)***
 - o **Total:** Number of items in the Uganda collection: **17791 (94620)** pages
 - o All **17791** documents (**94620** pages) have to be reviewed afresh for INCRIM, Rule 77 and PEXO disclosure. It is important to note here that disclosure review, including redaction requests, could not have been completed prior to this point without knowing the scope of the case, concrete risks at the time of an eventual arrest and surrender or the security situation on the ground at that moment.
 - o **Unsearchable** Number of electronically “unsearchable” documents (i.e. requiring manual review): **15612 (72490)** pages). This may include partly searchable documents.

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- o **Searchable:** Number of electronically searchable documents **2179** (**22130** pages)
 - o The office estimates that approximately **3928** documents (**12090** pages) relate to the 32 core Prosecution witnesses.¹
 - o Number of documents responsive to key search terms: **Total number** (excluding overlaps): **8909 documents (54646 pages)**²
 - o Core documents prioritized for review: **167 items** including those relied-on
 - In the Lukodi investigative report (an in-house analytical product) – **112** documents.³
 - In the Ongwen Profile (an in-house analytical product) - **55** documents
- ***Is the Office of the Prosecutor in a position to disclose this evidence in the coming weeks? (Question 4 contd.)***
 - o The Prosecution cannot yet disclose the bulk of the above evidence. Prior to disclosure, the material in the Prosecution's possession must be reviewed
 - as per the Prosecution's obligations under article 68 and Rule 81 to ensure the security of victims, witnesses and other persons via the application of appropriate redactions,
 - as per article 67(2) and Rule 77, to adequately review all materials in its collection for the purposes of disclosure to the Defence and
 - as per article 54(3)(e), to seek consent from providers for lifting of conditions once materials relevant for disclosure have been identified; (See question 13).

¹ This is a conservative estimate obtained by searching for witness codes in Ringtail.

² The equivalent numbers for the Pajule incident are **5737 documents (49711 pages)**.

³ The equivalent numbers for the Pajule Investigative report: **132 documents (1,931 pages)**.

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- o The Prosecution can disclose, immediately, several open source documents used for the purposes of the Application for Warrants of Arrest⁴ comprising **538 pages** and intends to do so shortly after the *ex parte* hearing today.
- ***How much time will disclosure review require? (Question 4 contd.)***
 - o From experience in previous cases, the average time required to review documents, including "unsearchables" is **50 pages per person per day**. This will mean approximately **one year** for disclosure review, assuming that the Prosecution deploys **10** disclosure reviewers. The re-allocation / hiring of such personnel may take several weeks and will place considerable pressure upon the Prosecution's budget. The Prosecution will disclose documents on a rolling basis.

Redactions (Question 5 & 6)

- ***Will certain documents/witness statements require redactions vis-à-vis the Defence? (PTC Question 5) Yes*** The estimated amount of evidence currently in possession of the Prosecutor that would require redactions includes:
 - o **Prosecution witness statements** Redaction requests will be necessary for a minimum of 32 Prosecution witnesses. This may require standard redactions such as to identities of family members, investigators/interpreters/psycho-social experts, innocent third parties, and/interview locations.

⁴ UGA-OTP-0231-0148, UGA-OTP-0231-0150, UGA-OTP-0231-0153, UGA-OTP-0231-0188, UGA-OTP-0231-0265, UGA-OTP-0231-0269, UGA-OTP-0231-0270, UGA-OTP-0231-0271, UGA-OTP-0231-0383, UGA-OTP-0231-0438, UGA-OTP-0231-0484, UGA-OTP-0231-0662, UGA-OTP-0231-0670, UGA-OTP-0231-0672, UGA-OTP-0231-0684.

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- o **Other witnesses** The material relating to the other approximately 140 witnesses interviewed by the Prosecution, which may be of PEXO or R77 relevance, will also likely require standard redactions.
 - o **Need for assessment** Some statements may require temporary identity redactions – this can be established only after an assessment of the current security circumstances of witnesses.
 - o **54(3) (e)** Prosecution may also need to redact certain documents provided by former 54(3) (e) sources. (See question 13)
 - o **Other documents** The Prosecution will identify documents that require redactions as part of its evidence review.
- ***With regard to the documents/witness statements currently in the possession of the Prosecutor requiring redactions, when would the Prosecutor be in a position to submit those requests for redactions to the Chamber? (PTC Question 5 contd.)***
 - o **Prosecution witnesses** The Prosecution will make requests for redactions regarding the **32** core witnesses (some of whom were interviewed multiple times) on a rolling basis. Some requests will be necessarily delayed by the need to assess the current security circumstances of witnesses. Since the individual risk assessments are due to be complete by 7 April 2015, the prosecution expects to complete its redactions applications (on a rolling basis) by 8 May 2015. Of course, this date is necessary tentative, and will change if there are problems in, for example, accessing witnesses.
 - o The Prosecution notes that the nature and extent of the redactions depend on the current security situation which requires an up-to-date assessment for all witnesses. Moreover redaction requests can be very intricate, as the reasons for redaction often arises via the inter-relationship of various pieces of information throughout a lengthy document or even a series of documents. Care must be taken, particularly where the risk of missing an element that should be redacted is higher, as is the case with lengthy documents or witness statements. Accordingly, redactions require multiple reviews.

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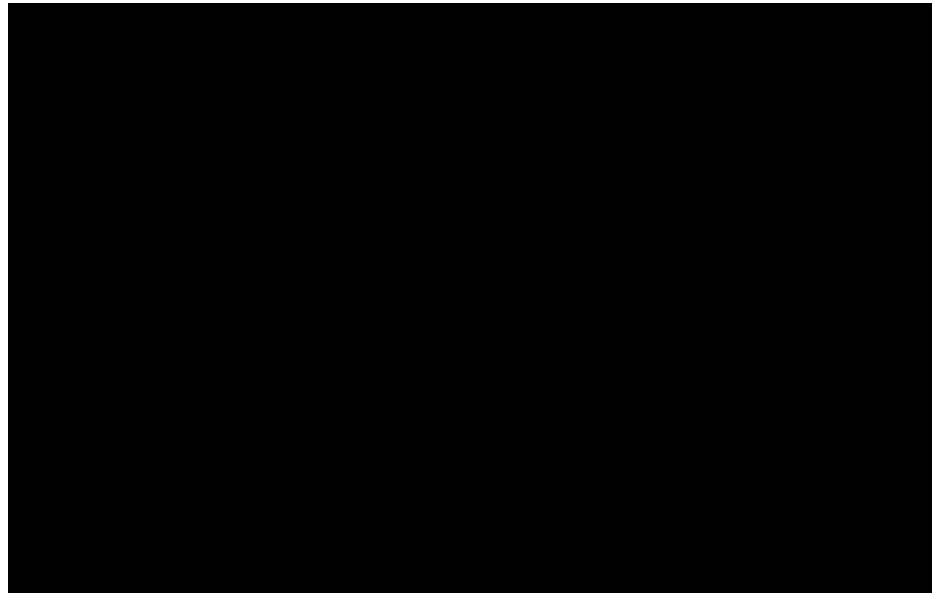
- ***Which pieces of evidence can be disclosed immediately to the suspect, in un-redacted form (PTC Question 6)?***
 - As noted previously, the Prosecution can disclose, immediately, several open source documents used for the purposes of the Application for Warrants of Arrest⁵ comprising 538 pages and intends to do so shortly after the *ex parte* hearing today.

Re-classification of the Prosecutor's application under article 58 and the warrant of arrest (Questions 7 & 8)

- ***The Prosecutor's application under article 58 is still treated under seal (ICC02/04-8-US-Exp, Including 73 annexes). A proposal for a redacted version of the Prosecutor's application is also available, albeit under seal ex parte. Prosecutor only (ICC-02/04-9-US-Exp). When would the Office of the Prosecutor be in a position to submit appropriate redaction proposals to the Chamber in order for the Prosecutor's article 58 application (including its annexes, as the case may be) be promptly communicated to the suspect? (Question 7)***
 - The Prosecution can provide recommendations for redactions by no later than **9 February 2015**. The recommendations will be broadly similar to those in the prior proposed redacted version of the Application for Arrest Warrants, with some additional precautionary redactions, based upon up to date security assessments.
 - The above would be based on reasonable assumptions regarding the security situation and their impact on redactions required.
 - The working assumption is that it will be unnecessary to maintain redactions on the locations of the incidents (Lukodi, Pajule, Barlonyo and Abia), other than [REDACTED]

⁵ UGA-OTP-0231-0148, UGA-OTP-0231-0150, UGA-OTP-0231-0153, UGA-OTP-0231-0188, UGA-OTP-0231-0265, UGA-OTP-0231-0269, UGA-OTP-0231-0270, UGA-OTP-0231-0271, UGA-OTP-0231-0383, UGA-OTP-0231-0438, UGA-OTP-0231-0484, UGA-OTP-0231-0662, UGA-OTP-0231-0670, UGA-OTP-0231-0672, UGA-OTP-0231-0684.

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- *The warrant of arrest for Dominic Ongwen is currently classified as confidential. Crucial information (e.g. locations, time) is redacted and cannot be referred to in public. Most importantly, the Registry cannot inform victims about the scope of the case. Could the Prosecutor explain why the 2005 warrant of arrest cannot at this point in time made public? If not, what measures should be taken prior to the re-classification as public? (Question 8)*
 - o The Prosecution believes that the warrant of arrest for Dominic Ongwen can now be made public.

Witnesses (Question 9)

- *How many witnesses whose statements were used for the purpose of the issuance of the warrant of arrest does the Prosecutor need to contact again, if any? (Question 9 contd.)*
 - o The Prosecution will have to contact all 32 core witnesses mentioned above to assess their availability and security circumstances.

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- o Only intermittent contact (2010, 2013) has been maintained with witnesses and that too only with high priority witnesses.
- ***How many witness statements does the Prosecutor currently intend to disclose pursuant to rule 76 of the Rules? (Question 9)***
 - o The number of Prosecution/Rule 76 witnesses currently assessed to be probative of the offences set out in the Warrant of Arrest is 32⁶
- ***Number of witnesses if any, OTP intends to call to testify at the confirmation hearing(Question 9 contd.): None***
- ***Does the Prosecutor intend to rely on witness summaries? (Question 9 contd.)***
 - o No, the Prosecution expects, generally, to rely on appropriately redacted statements/transcripts of witnesses.
 - o However, the Prosecution cannot rule out the possibility that it may rely on one or more witness summaries, depending on the security circumstances of witnesses.

Protective Measures (Questions 10-12)

- ***The Chamber would like to receive an updated risk assessment for each witness that the Prosecutor intends to rely on for the purposes of the confirmation of charges process. (Question 10)***
 - o The Prosecution estimates it will take about **1.5 days** to update each risk assessment, assuming there is total cooperation and no delays in locating witnesses.

⁶ If the attack on Pajule is charged, the Prosecution will seek to add approximately 13 further witnesses (excluding overlap with the current 32 witnesses). If charges on Sexual and Gender Based Violence are added, this will also result in the addition of approximately 6 witnesses (excluding overlap with the current 32 witnesses).

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- o Based on the above, the Prosecution assumes that risk assessments for the 32 core witnesses will take approximately **48 days**.
 - o The process of carrying out risk assessment will **start in approximately 1.5 weeks** due to restrictions in terms of availability of staff.
 - o The above does not take into account any the risk assessments that would be need if any charges were added
- ***In case the Prosecutor intends to make use of the same witnesses relied upon for the warrant of arrest, has the information about those witnesses been shared with the Victims and Witnesses Unit (VWU) at the time? If not, will the Prosecutor share this information with the VWU in the near future? (Question 10 contd.)***
 - o Information about witnesses has not been shared with the VWU with the exception of those who have been referred to the VWU for protection or support advice:
 - None of the witnesses referred to VWU for protection or support advice relate are currently on the list of 32 core Prosecution witnesses.
- ***Does the Prosecutor anticipate that further protective measures could be necessary for witnesses to be relied upon? (Question 10 contd.)***
 - o In the coming weeks, the Prosecution will contact the 32 core witnesses to assess their availability and security circumstances, until that is done, no definite answer can be given.
 - o After the above assessment, the Prosecution can update the chamber on further protective measures.

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- ***Are any of the Prosecutor's witnesses in the protection programme of the Court? (Question 11) No.***
- ***Have they been "preventively" relocated, contrast to the principles enunciated in the Appeals Chamber judgment of 26 November 2008 (ICC- 01/04-01/07-776)? (Question 11 contd.)***
 - No
- ***Are there any other protection issues which the office of the Prosecutor wishes to raise with the Chamber at this point in time? (Question 12)***
 - No

Evidence affected by "confidentiality agreements" (Question 13)

- ***Is some of the exculpatory evidence (article 67(2) of the Statute) or evidence that is material for the preparation of the defence (rule 77 of the Rules) affected by "confidentiality agreements" within the meaning of article 54(3) (e), 72 or 93 of the Statute? If yes, how many? (Question 13)***
 - Pending a disclosure review, the Prosecution cannot assess how many documents subject to Article 54(3) (e) restrictions may constitute potentially exonerating evidence or be material for the preparation of the defence.
 - The Prosecution has carried out a PEXO, Rule 77 & and INCRIM review of documents subject to Article 54(3)(e) restrictions – reviewing **3992** documents (**29322** pages) out of a total of **47, 073** pages. However, this review was carried out in the context of the original case (i.e. Using review guidelines designed for multiple suspects). Hence, all documents subject to Article 54(3)(e) will have to be reviewed anew.
 - As mentioned above, the total number of article 54(3) (e) documents in the Prosecution's possession is **47, 073** pages. The Prosecution notes that not all 54(3)(e) materials are in documentary form. A significant number (for

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example, the approximately **770 taped intercepted radio communications**) are audio/video material the bulk of which are still to be transcribed.

- o Approximately 90% of the above **47, 073** pages – that is **42, 779** pages - was obtained from only 4 sources [REDACTED]
- ***Can consent of the information providers be secured in the near future? Has the process of seeking their consent already started? (Question 13 Contd.)***
 - o The Office has already made efforts to seek lifting of 54(3)(e) (e) restrictions. The OTP commenced this process in April of 2014. Specifically, the OTP has made formal requests for the lifting of restrictions to the 4 main providers. The OTP has also conducted missions to meet and discuss this issue with providers on at least two occasions (in April and July 2014).
 - o In terms of progress: The OTP has received formal written consent from one of the 4 main providers [REDACTED] and another organisation [REDACTED] has verbally confirmed its willingness to lift restrictions (confirmed as recent as 21 January 2015) - formal written consent will follow. These two agreements mean that the OTP has secured the lifting of some 33,283 pages (approximately 70% of total Article 54(3)(e) documents).
 - o In relation to the remaining material:
 - i. Discussions to lift restrictions from the other 2 main providers, [REDACTED] [REDACTED] are currently ongoing.
 - ii. The OTP will also now formally request the lifting of Article 54(3)(e) restrictions from all remaining providers.
 - o The OTP will update the Chamber on all developments.

Language (Questions 14-15)

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- ***The language the suspect fully understands and speaks is Acholi. Portions of core pieces of evidence will need to be translated into Acholi as well. Has evidence been translated into this language? (Question 14)***
 - o Article 55(2) interviews of the current 32 core Prosecution witnesses were conducted in Acholi & English. Hence a transcript that includes both the Acholi and English text exists for all **16** Article 55(2) witnesses within the pool of 32 core Prosecution witnesses.
 - o Some of the intercepted radio communications (The 770 tape recordings of intercepted radio communications) are in Acholi already, in audio form.
 - o A few key audio intercepts have been transcribed into written Acholi in draft form.
- ***How much time will be required to translate incriminating portions of witness statements or other pieces of evidence, currently in possession of the Office of the Prosecutor, into Acholi? (Question 14 contd.)***

The evidence to be translated

- o The challenge;
 - None of the statements of victim/overview witnesses (i.e. non-Article 55(2)) within the pool of 32 core Prosecution witnesses have been translated into Acholi. This amounts to **16** witnesses who have provided statements totalling **332 pages**.
 - it is likely that several audio intercept sound recordings (out of the **770** sound recordings mentioned previously) will require transcription. The Prosecution will be in a better position to provide an estimate regarding the number of relevant sound recordings after further analysis of written intercept material in the coming weeks.
 - Other material relate to or referred to by these witnesses may also need to be transcribed and translated.

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- o The time needed for translation will depend, to an extent, on what aspects of the evidence (i.e. key portions of the evidence) the Defence want translated. The Prosecution can liaise with the Defence to identify the key portions of evidence that require translation. As per recent practice (e.g. in the *Ntaganda* case) the Prosecution expects that this will not extend to complete translation of *all* INCRIM materials.
- o The Prosecution also intends to explore with the Defence the possible provision of audio/video materials in lieu of certain translation requirements.

Resource limitations and related challenges

- o The Office does not currently have Acholi language staff and is currently seeking to hire them on an expedited basis.
 - o The Prosecution notes in this context that transcription (which is a pre-requisite for translation) is a time consuming process. It takes approximately 3 days to finalize the transcription of one hour of an Acholi interview; 2 days to finalize the transcription of one hour of an English interview. Therefore transcription of an hour of an English/Acholi article 55(2) interview will take 5 days.
 - o In terms of translating English text (for example, in a written statement) into Acholi, this will be at the speed of 1500 words per translator per day. If the written text is non-narrative (like most intercepted communications) then this speed will reduce to 1200 words per translator per day.
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- ***In case further witness statements or other pieces of evidence are collected, how will the translation issue impact on the length of proceedings before the Chamber and the date of the start of the confirmation of charges hearing? (Question 15)***
 - o This will hinge on the nature and extent of the new evidence collected. Once an investigation plan has been prepared in the coming weeks, the Prosecution can provide an estimate to the Chamber.

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- o Generally an insider interview will comprise several days' worth of interview time.
 - o In any case, the Office does not envision a delay caused by translation difficulties beyond the year envisioned for disclosure review.
- **What will be the measures adopted by the Office of the Prosecutor in this respect?**
 - o The Office does not currently have in-house Acholi language staff, but has already contacted potential candidates. Qualified candidates will be hired as soon as possible, with the first hire envisioned to take in approximately 10 day's time.

Reasons for delaying the confirmation until early 2016

The current date for the confirmation hearing has been provisionally fixed for the 24th of August 2015. This is too soon. The Prosecution proposes a confirmation date in early 2016. The timelines proposed by the Prosecution, while necessarily being estimates, are reasonable. Central to this point is the fact that Mr Ongwen **eluded arrest for a decade**. In particular, Mr Ongwen's right to an expeditious trial must be balanced against the following **obligations of the Prosecutor**:

- **Obligations towards victims and witnesses** Under article 68, to victims and witnesses who were interviewed many years ago and need to be contacted regarding the immediate disclosure of their statements and whose security situation must be assessed and protected;
 - o **Witness contacts** have to be renewed with current witnesses and their availability and security circumstances have to be assessed. Only intermittent contact (2010, 2013) has been maintained with witnesses, and that too only with high priority witnesses. Some witnesses may have moved or changed contact details in the interim period.
- **Disclosure** The obligation, under article 67(2) and Rule 77, to adequately review all materials in its collection for the purposes of disclosure to the Defence;

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- o **Disclosure review** will take one year. **17791 documents (94620 pages)** will have to be reviewed at rate of **50 pages per day** per person with ten reviewers working full time. It will be necessary to hire or re-allocate reviewers for this purpose.
- o **The preparation of redaction requests** will be a significant part of this process and time frame.
- **Confidentiality** The obligation under article 54(3)(e), to seek consent from providers for lifting of conditions once materials relevant for disclosure have been identified; **Lifting of 54(3)(e) restrictions** have to be negotiated with regard to a large number of documents.
- **Effective, comprehensive investigation** The obligation under article 54(1) (a) to seek to establish the truth via a comprehensive investigation and to investigate incriminating and exonerating circumstances equally;
 - o **Mustering Office resources** As mentioned earlier, the case has been in hibernation for significant period.⁷ The most recent substantive collection missions took place in June/July 2006. In July 2007 all investigators were assigned to other cases. It is inevitable that this period of time will have an effect on the state of the investigation and the evidence. The office needs to adjust its process and resources to the current circumstances. The Prosecution has had to reconstitute a Prosecution and Investigation team.

As noted by the SJ in Ntaganda, the *"internal organization of the Office... "...should be considered among others when deciding the issue at stake, in light of the particularities and developments in the present case."*⁸

The SJ (i.e. your honour) also found in Ntaganda that she

*"...cannot ignore the realities surrounding the operation of international judicial institutions, such as the ICC, in terms of the **complexity of the judicial process** and the **instant challenges** arising in the context of each relevant*

⁷ Date of original AWA 6 May 2005, as amended and supplemented by the Prosecutor on the 18th of May 2005 (ICC-02/04-8-US-Exp.), Warrant of Arrest Issued 8 July 2005, Decision & WA unsealed 13 October 2005, (i.e. the warrant against Ongwen has been public for almost a decade).

⁸ ICC-01/04-02/06-73, para. 34.

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*situation or case. A court such as the ICC facing a constantly growing number of situations and cases over the past years cannot but direct its efforts towards those cases where there is a compelling need for a prompt action on the part of the relevant organ. Where the suspect is **evading justice for many years**, it is **neither possible nor reasonable to impose on the Prosecutor a permanent stand-by availability** of the teams for years"⁹*

- o **Potential witnesses** have to be located and interviewed. This number will increase if previous witnesses are now unavailable. Since security circumstances have improved, it may be that previously unavailable witnesses are now available.
 - o **Intercept evidence:** As mentioned earlier, additional analysis is required of large tranches of intercept evidence.
 - o **Potential addition of charges** re Pajule and SGBV charges.
- **Language of disclosure** The obligation under rule 76(3) to provide materials into a language that he fully understands and speaks.

Similar delays have been made in several other cases at the Court. For example, in the *Ntaganda* case the relevant period for comparison is from initial appearance on **26 March 2013** to the commencement of the confirmation hearing on **10 February 2014**.

⁹ ICC-01/04-02/06-73, para. 35.