

Annex A

Public



DIRECTIONS FOR THE CONDUCT OF PROCEEDINGS

I. INTRODUCTION

1. These Directions aim at setting out the general guidelines of the presentation of evidence and related matters.

2. For the purposes of these Directions:

- “Accused” refers to Alfred YEKATOM, and/or Patrice Edouard NGAISSONA;
- “article” refers to an article of the Rome Statute;
- “Calling Party” refers to the Party calling the witness;
- “Chamber” refers to Trial Chamber V;
- “Court” refers to the International Criminal Court;
- “day” refers to a calendar day;
- “Defence or Defence team” refers to the defence teams of the Accused;
- “document” refers to a document or any other form of non-testimonial evidence;
- “dual status witness” refers to an individual who is concurrently a witness and a participating victim in the proceedings;
- “ICCPP” refers to the International Criminal Court Protection Programme;
- “Legal Representative” refers to a Legal Representative of Victims;
- “Participant” refers to a Legal Representative;
- “Party” refers to the Prosecution and the Defence;
- “prior statement” refers to a statement taken under rule 111, an interview recorded pursuant to rule 112, or any other previously recorded statement or testimony;
- “rule” refers to a rule of the Rules of Procedure and Evidence;
- “VPRS” refers to the Victims Participation and Reparations Section;
- “VWU” refers to the Victims and Witnesses Unit;

- “working day” refers to a work day of the week, *i.e.* excluding official Court holidays and weekends.

II. PROCEDURE FOR READING THE CHARGES

3. Before the Parties and Participants, as the case may be, deliver their opening statements, the charges as set out at pages 104 to 112 of the Decision Confirming the Charges,¹ shall be read to the Accused.

III. OPENING STATEMENTS

A. LENGTH

4. The Prosecution shall have a maximum of six hours for its opening statement. Each Defence team shall have ~~a maximum of [insert]~~ at least three hours for its opening statement, including any unsworn statement by the Accused. Each team of Legal Representatives shall have a maximum of [insert] hours for its opening statement.

5. The Defence and Legal Representatives may choose to deliver their opening statements either after the Prosecution, or right before the commencement of their presentation of evidence. Similarly, the Accused may make an unsworn statement during the respective Defence’s opening statement, and ~~or~~ at such other time as the Chamber may deem appropriate. ~~The Accused may make only one unsworn statement during the trial.~~ It is not permissible for the Defence or Legal Representatives to divide the time allotted to them between both the commencement of trial and prior to the commencement of their presentation of evidence.

B. MATERIAL USED DURING THE OPENING STATEMENTS

6. As a general rule, the Parties and Participants shall endeavour to use material during their opening statements that has already been disclosed.

7. Excepting visual aids, should the Parties and Participants intend to use material which has not previously been disclosed, they shall identify this material, along with the reasons why it was not previously disclosed, by email to the Chamber, the other Parties and Participants, at least 10 days before the date of the

¹ ICC-01/14-01/18-403.

opening statements. By the same deadline, the Parties and Participants shall indicate to the other Parties and Participants which materials they intend to use during their opening statements.

8. Any objections to the use of this material shall be filed five days prior to this date.

IV. ORDER OF PROCEEDINGS

9. Unless otherwise directed by the Chamber in the interests of justice, evidence at the trial shall be presented in the following sequence: i) evidence for the Prosecution; ii) evidence for the victims; iii) evidence for the Accused; iv) Prosecution evidence in rebuttal; v) the Accused's evidence in rejoinder; vi) evidence ordered by the Chamber; and vii) any further relevant information that may assist the Chamber in determining an appropriate sentence if the Accused are found guilty on one or more of the charges.

9.10. The Defence teams will decide amongst themselves which team is to call Defence witnesses first.

~~10. [Option 1: At no time will "no case to answer" motions be considered.]~~

~~11.~~

~~—— [Option 2: "No case to answer" motions may be considered by the Chamber as a matter of discretion, upon conclusion of the Prosecution's case in chief.]~~

11. The Chamber will, in principle, permit the Defence to enter submissions, at the close of the case for the Prosecution, asserting that there is no case for it to answer at the end of the Prosecution's presentation of evidence.

~~V. WITNESS PREPARATION~~

~~C. GENERAL PRINCIPLES~~

~~12. The purpose of witness preparation is:~~

~~i) To assist the witness who will be giving evidence during the proceedings:~~

~~i. to help ensure that the witness gives relevant, accurate and structured testimony; and~~

~~ii. — to help ensure the well being of the witness;~~

~~ii) — For the Calling Party to assess and clarify the witness's evidence in order to facilitate the focused, efficient and effective questioning of the witness during the proceedings; and~~

~~iii) — Importantly, for the Calling Party meaningfully to exercise its statutory right to effectively prepare and present its case.~~

~~13. — Subject to the provisions contained in these Directions, witness preparation shall not be conducted for the purpose of seeking new evidence or continuing the Calling Party's investigations. However, if the witness volunteers new information relevant to the case, the Calling Party may follow up and shall disclose such information to the non-calling Parties in accordance with these Directions.~~

~~14. — Witness preparation is to be carried out in good faith and in keeping with the applicable standards of professional conduct and ethics.~~

~~D. — RESPONSIBILITY FOR CONDUCTING WITNESS PREPARATION~~

~~15. — Witness preparation is the responsibility of the Calling Party, who shall make the practical arrangements in co-ordination with the VWU. The Calling Party shall exercise particular care with regard to vulnerable witnesses, and call upon VWU's assistance if necessary.~~

~~16. — Witness preparation shall be conducted by lawyers of the Calling Party.~~

~~17. — If the witness so requests, his or her legal adviser appointed pursuant to rule 74 shall be permitted to attend the preparation session.~~

~~E. — LOCATION~~

~~18. — Witness preparation may be conducted at the seat of the Court, at the place of testimony, or at any other place.~~

~~19. — In determining where to conduct witness preparation, the Calling Party shall give due regard to the security of the witness.~~

~~F. — TIMING~~

~~20. The Calling Party shall conduct its witness preparation after the witness's statement(s) in the proceedings has/have been taken and disclosed.~~

~~21. Subject to witness availability and travel logistics, the Calling Party shall endeavour to complete its witness preparation as early as possible and in any event, at least the day before the witness's testimony is due to commence.~~

~~G. RECORD KEEPING~~

~~22. The Calling Party shall video record those parts of the witness preparation during which the lawyers of the Calling Party are present (excluding for example the time the witness is reading his or her statement outside their presence).~~

~~23. Should a non-calling Party wish to access the video recording of the preparation session, it shall apply to the Chamber orally or in writing, setting out: (i) the reason why access to the video recording is necessary; and (ii) the information, evidentiary or other, substantiating the application. If the Chamber considers it necessary, it may review the recording or order its disclosure.~~

~~24. The Calling Party shall keep a log of each witness preparation session, listing the location, the duration, and the attendees of the session.~~

~~25. After conducting the session, the Calling Party shall promptly provide the other Parties and Participants with a copy of the relevant log entry.~~

~~H. REQUIRED AND PERMISSIBLE CONDUCT~~

~~26. During witness preparation, the lawyers of the Calling Party must:~~

- ~~i) reiterate the witness's obligation to tell the truth;~~
- ~~ii) explain the purpose of witness preparation;~~
- ~~iii) provide the witness with an opportunity to review his or her prior statements; and~~
- ~~iv) provide the witness with an opportunity to confirm whether his or her prior statements are accurate and to explain any changes as necessary.~~

~~27.— During witness preparation, the lawyers of the Calling Party may:~~

- ~~i) — review the witness's prior statements with him or her and clarify with him or her any inconsistencies;~~
- ~~ii) — explain, in general and neutral terms, the topics that will be covered during his or her testimony;~~
- ~~iii) — explain to the witness that certain matters addressed by the investigators might not be raised during testimony;~~
- ~~iv) — show the witness potentially relevant exhibits to ascertain whether the witness can usefully comment on them during testimony;~~
- ~~v) — explain the role of the various Parties, Participants and other actors in the courtroom;~~
- ~~vi) — inform the witness about appropriate witness behaviour, including the need to speak slowly and concisely;~~
- ~~vii) — subject to the restrictions below, answer any questions the witness may have.~~

~~I. — PROHIBITED CONDUCT~~

~~28.— During witness preparation, the lawyers of the Calling Party must not seek to improperly influence the substance of the witness's testimony, either directly or indirectly, including by:~~

- ~~i) — informing the witness of the type of evidence that would assist the Calling Party's case, suggesting whether or not the witness's answers are right, or leading the witness in an inappropriate way;~~
- ~~ii) — rehearsing questions and answers expected during the witness's testimony; or~~
- ~~iii) — informing the witness of the identities of other witnesses and their oral testimony and/or prior statements.~~

~~J. — DISCLOSURE~~

~~29. As soon as practicable, and in any event before the witness begins his or her testimony, the Calling Party shall provide the Parties and Participants with a list of all materials that were shown to the witness during witness preparation, as well as any other disclosable information, including:~~

- ~~i) any clarifications, changes or corrections made by the witness to his or her previous statements and the reasons advanced by the witness, if any, to justify the change or correction; and~~
- ~~ii) any new information obtained from the witness that has not been disclosed yet.~~

~~30. If the Calling Party becomes aware of any information related to or affecting the witness's security, it shall inform the VWU accordingly.~~

VI.V. CALLING OF WITNESSES

A. ORDER OF WITNESSES

12. Pursuant to Article 64(3)(a) and having due regard to Article 67(l)(b) of the Statute, the Chamber shall have the power to identify issues critically relevant to its determination of the charges and to instruct the parties to prioritise and bring forward evidence relating to such issues first, subject to adequate notice.

13. The Parties and Participants (where applicable) shall provide an overall witness order ~~30~~ 40 days before the commencement of their respective cases-in-chief or presentation of evidence, as appropriate. The list should also set out a final time estimate for each examination-in-chief; the dual status of the witnesses, if applicable; and details of any in-court protective measures that will be or have been sought.

14. An updated version of this ordered witness list must be sent to the other participants and Chamber before the start of the questioning of the last ten witnesses of the previous list and no later than 40 days before the questioning of the first witness on the list. Pursuant to Article 67(l)(b) of the Statute, if there is any compelling reasons to change an order of witnesses in the next 40 days, the Calling Party shall promptly inform the Chamber, the other parties and the participants.

15. With a view to facilitating the exercise of the Chamber's trial managing powers, and as a working document in preparation of a witness's testimony, the Calling Party shall provide, via email, and no later than five days prior to the start of the

testimony of each given witness, a concise Witness Examination Sheet, containing the following information:

i. A concise statement of factual topics that the witness will be questioned about and how they relate to the charges, unless obvious;

ii. A realistic estimate of the amount of time the Calling Party will need to question the witness;

iii. Details of any in-court protective measures, including special measures;

iv. An indication of the status of the witness (i.e. dual status, vulnerability, potential self-incrimination, etc.);

v. Any other relevant information.

~~16. The Prosecution will provide updated witness schedules on a weekly basis.~~
The same procedure will be applicable during the Defence case.

B. ORDER OF QUESTIONING

~~31.17.~~ The Chamber shall remind witnesses, prior to their solemn undertaking and start of their testimony, of their duty to tell the truth.

18. Witnesses will normally be examined as follows: (i) the Calling Party shall conduct an examination-in-chief; (ii) the non-calling Parties may subsequently cross-examine the witness; (iii) the Calling Party may then conduct a re-examination; (iv) the non-calling Parties may conduct a re-cross-examination subject to paragraphs ~~35~~ 22 and 3645; and (v) the Calling Party may conduct a further re-examination subject to paragraph 22 and 3645.

19. The Defence teams shall agree amongst themselves the order in which they will question witnesses called by the Prosecution. When the Calling Party is either of the Defence teams, the Defence team not calling the witness may question the witness before the Prosecution starts her questioning.

~~32.20.~~ The Chamber may question witnesses at any stage of their testimony. If, at that moment, the witness has already been questioned by one or more of the Parties,

such Parties shall be given the opportunity to ask any questions arising from the evidence elicited by the Chamber.

~~33.21.~~ If the Legal Representatives are allowed to question a particular witness, in accordance with the procedure set out below in section VIII.D, they may do so after the Prosecution has finished its examination-in-chief or cross-examination, as the case may be.

~~34.22.~~ According to rule 140(2)(d), the Defence has the right to be the last to examine a witness. This means that if a witness was not called by an Accused, the Defence shall have the right to ask additional questions of the witness after he or she was re-examined by the Calling Party. Such additional questions are limited to matters raised since the Defence last had the opportunity to question the witness. If the Defence does not exercise its right to cross-examine a particular witness, it also waives its right to ask final questions of that witness, unless new matters are raised by additional questions of the Chamber or the Legal Representatives after the examination-in-chief.

C. SCOPE AND MODE OF QUESTIONING

i) *General*

23. The Parties shall avoid unnecessary repetition of evidence already on the record. In particular, the Defence is encouraged to avoid cross-examination on grounds already covered by a prior cross-examiner. The Parties shall avoid lengthy, complicated, or compound questions that may confuse the witness. The Chamber shall prohibit inappropriate, misleading, or irrelevant questions.

24. Parties are directed to focus their questioning on facts and to refrain from asking the witness to speculate or to provide opinion evidence. It is the responsibility of examining counsel to elicit the basis of the witness's knowledge for every relevant fact.

25. Refreshing the witness memory with his previous statements is not allowed.

~~35.26.~~ Where practicable, the Parties shall avoid paraphrasing the testimony or statement of the witness, but shall quote the directly relevant passage and indicate the exact page numbers (including ERNs where applicable), paragraph numbers, and/or relevant lines. The Parties shall limit such quotations to situations where it is strictly necessary for the understanding of the question.

27. The Parties may put to a witness evidence obtained from a witness which has previously been received in the record. Parties may only reveal the source of any witness' evidence or statement if the witness has already testified in public. Parties may not use any identifying information when putting to a witness another witness' testimony or previous statement, when that witness has not yet testified, or when his identity was not revealed publicly. The Parties shall quote directly the relevant passages and give the precise references, including the relevant lines.~~During their examinations, the Parties may not reveal the source of any witness's evidence without the Chamber's authorisation.~~

28. Parties may not ask witnesses to comment on the credibility of other witnesses. The credibility of a witness may be impeached by any Party, including the Calling Party.

29. The Parties shall have the discretion to determine whether the questioning will be conducted by one or more persons within their team, subject to the Chamber directing otherwise in light of the circumstances specific to each questioning and to each witness.

36.—Objections to the ~~form~~ mode, manner or scope of questioning ~~or other matters~~ shall be timely, specific and brief, and will be decided on a case-by-case basis. ~~A Party waives an objection when not made in a timely manner.~~

30. ~~Hearsay evidence is admissible.~~

ii) *Examination-in-chief*

31. The Party conducting an examination-in-chief shall use non-leading questions, except in respect of preliminary matters that are necessary to provide background or context and/or which are not in dispute, or in respect of any other areas that the Chamber may deem appropriate.

32. Examination in chief shall be limited to questions directly related to the material, temporal and geographical scope of the charges.

iii) *Cross-examination*

~~37.~~33. The cross- examining Party may use leading questions.

~~38.34.~~ In light of the Chamber's mandate to discover the truth, and also in order to avoid recalling witnesses, the questioning by the non-calling Party is not limited to issues raised during the questioning by the Calling Party. Cross-examination may also relate to, *inter alia*, ~~shall be limited to the subject matter of the evidence in chief,~~ matters affecting the credibility of the witness and – where the witness is able to give evidence relevant to the case for the cross-examining Party – to the subject-matter of that case. The Chamber may, in the exercise of its discretion, permit inquiry into additional matters.

iv) *Re-examination, re-cross-examination and further re-examination*

~~39.35.~~ The re-examination of a witness shall be conducted under the same conditions as the examination-in-chief and shall be limited to the issues raised during cross-examination.

~~40.~~ On an exceptional basis and upon a showing of good cause, the Chamber may authorise the re-cross-examination and further re-examination of a witness on limited and specific issues. Any questioning during re-examination shall be restricted to matters raised in re-cross-examination.

~~36.~~

~~D. — USE OF VIDEO LINK~~

~~41.~~ As a general rule, it is preferable for witnesses to testify in the courtroom. However, where there are security concerns or significant logistical considerations which prevent the witness from travelling to The Hague, the witness may testify by video link.

~~42.~~ The Parties shall specify which witnesses they propose to testify by video link in their final list of witnesses. Any objections to the use of video link shall be filed sufficiently in advance of the witness's testimony.

~~E.~~ — USE OF MATERIAL WITH WITNESSES

~~D.~~

i) ~~Use of documents during examination~~

~~43.37.~~ Parties shall only question a witness on documents that are relevant to that witness's testimony or documents relevant to the case that the witness may be able to authenticate or comment on. It is for a Party to demonstrate a connection between the exhibit and the substance of the testimony of that witness.

~~44.38.~~ Five working days prior to the witness's appearance, the Calling Party shall email the Chamber, the Registry, the other Parties and Participants a list of the

documents or other material it intends to use with the witness during the examination-in-chief. In case of lengthy documents, the Calling Party shall specifically indicate which part, or parts, it intends to use. It is the duty of the Calling Party to notify the Chamber, the Registry, and the other Parties and Participants as soon as possible of any changes thereto.

~~45.39.~~ Objections by the other Parties or Participants to the use of particular documents, if any, shall be filed at least 24 hours ~~two working days~~ before the examination, or – in exceptional circumstances - made orally.

~~46.40.~~ 24 hours ~~Three working days~~ prior to the expected commencement of cross-examination, the cross-examining Party shall provide the Chamber, the Registry, the other Parties and Participants with a list of the documents it intends to use during cross-examination. Where necessary, the other Parties may request a short adjournment in order to examine the material. Objections to the use of any of the documents during cross- examination shall be raised prior to the start of the cross-examination.

~~47.41.~~ If any of the documents that the Calling or non-calling Party wishes to use during the witness's appearance are not included on the original list, it must apply for leave of the Chamber to use them with the witness, showing good cause.

~~48.42.~~ As a rule, Parties can only use documents during their examinations that have been properly ~~uploaded into ecourt~~ disclosed. If a Party wishes to use material that has not been ~~disclosed~~ uploaded into ecourt in advance, it may only do so with leave of the Chamber. In that case, the Party shall provide copies of the material to the Chamber, the other Parties, and Participants as soon as possible before the use of the document. ~~at least the day before the commencement of the cross-examination.~~

~~ii) — Refreshing the memory of the witness~~

~~49. — Where a witness demonstrates an inability to independently recall a particular fact, the Calling Party may, *inter alia*, use a prior statement of the witness to refresh the witness's recollection, regardless of whether the prior statement has been received as evidence.~~

~~50. — A Party shall first establish that the witness cannot recall a particular issue, and that he or she has provided a prior statement. Subsequently, the Calling Party shall provide the witness with an opportunity to read the identified paragraphs, or read them to the witness. The Calling Party must further ascertain whether the witness's recollection has been refreshed, and if so, may examine the witness again on the matter at issue.~~

~~51. Prior statements used for the purpose of refreshing memory shall not be deemed [Option 1: formally submitted] [Option 2: admitted] into evidence for that purpose alone.~~

~~F.E.~~ F.E. FALSE TESTIMONY UNDER SOLEMN DECLARATION

~~52.43.~~ During the examination, the Parties may repeat the witness's duty to tell the truth. Further, on the Parties' request, the Chamber may remind the witness of the consequences that may result from a failure to do so. Such request shall be made outside the hearing of the witness.

~~G.F.~~ G.F. HOSTILE OR ADVERSE WITNESSES

~~53.44.~~ The Calling Party may request that the Chamber declare a witness "hostile" or "adverse" if it believes that the witness does not wish to tell the truth to the Court.

~~54. Prior to applying to declare a witness "hostile" or "adverse", the Calling Party may seek to refresh the witness's memory about issues on which the witness's evidence has deviated, following the procedure set out above at paragraph 55. If the witness disputes the correctness of a prior statement or account, the Calling Party may question the witness on the reason for the deviation.~~

~~55.45.~~ The Chamber will determine whether there is an objective basis for a witness to be declared "hostile" or "adverse", including on the basis of one or more of the following factors:

- i) whether the witness has been hostile in general demeanour;
- ii) whether there is an impression of evasiveness on the part of the witness;
- iii) whether the present testimony of the witness before the Court has been in whole, or in part, deliberately or systematically inconsistent with a prior statement in relation to a material issue or issues before the Court;
- iv) whether the witness has been systematically adverse to the Calling Party not only by deliberately impugning the credibility of the case of the Calling Party, but also by appearing systematically to support the case of the Party opposed in interest to the Calling Party.

~~56.46.~~ If the witness is declared “hostile” or “adverse”, the Calling Party will be permitted to cross-examine him or her on all relevant issues, including his or her credibility and character.

~~H.G.~~ POTENTIAL SELF-INCRIMINATION OF WITNESSES²

~~57.47.~~ When a Calling Party believes that its witness may incriminate him or herself during testimony, it shall notify the VWU and the Chamber as soon as practicable. Where the witness in question is a dual witness, the Party shall also notify the witness’s Legal Representative.

~~58.48.~~ The Registry shall make all necessary arrangements to provide independent legal advice from a qualified lawyer to such witnesses. Once a lawyer has been appointed by the Registry, the latter shall inform the Calling Party, who shall be responsible for providing the lawyer with any prior statements by the witness as well as any other relevant material. In the case of a dual witness, the witness’s Legal Representative shall provide this advice.

~~59.49.~~ If the witness considers that he or she requires an assurance under rule 74(3)(c), the Calling Party, advising lawyer or Legal Representative shall seize the Chamber with a relevant application, and if one of the latter, on notice to the Calling Party. The Calling Party shall then present its views to the Chamber in such time as to allow the Chamber to rule before the commencement of the witness's testimony.

~~60.50.~~ The advising lawyer or Legal Representative shall also inform the witness, in advance of his or her first appearance before the Chamber, of the offence defined in article 70(1)(a) for the purposes of rule 66(3).

~~I.H.~~ EXPERT WITNESSES

~~61.51.~~ The Parties shall identify expert witnesses in their lists of witnesses and specify their area(s) of expertise.

52. Within thirty days of disclosure of the statement and/or report of the expert witness, or such other time prescribed by the Trial Chamber, the other Parties should file a notice indicating whether they challenge the qualifications of the witness as an expert.

² See also the Prosecution’s proposed Protocol on Witness Familiarisation, section 2.6.

53. No later than thirty days before the anticipated testimony of an expert witness, the other Parties should file a notice indicating whether they:

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- i) accept the expert witness statement and/or report;
- ii) wish to cross-examine the expert witness; and/or
- iii) challenge ~~the qualifications of the witness as an expert or the~~ relevance of all or parts of the statement and/or report and, if so, which parts.

~~62. If the parties accept the statement and/or report of the expert witness, the statement and/or report may be formally [Option 1: submitted] [Option 2: admitted] into evidence by the Trial Chamber without calling the expert witness to testify in person.~~

~~VII.VI.~~ INTRODUCTION OF EVIDENCE

~~A.~~ GENERAL APPROACH

~~A.~~

[Option 1:]

~~63. The Chamber will not deem formally submitted evidence that it considers to be without relevance and probative value. It is for the submitting Party to demonstrate the relevance and probative value of the evidence.~~

~~64. The Chamber shall defer its assessment of the relevance, probative value and potential prejudice of the evidence submitted throughout the trial, until its final article 74 judgment, unless there is a specific basis for exclusion under the Statute or Rules, or where doing so may affect the Parties' rights referred to in article 64(2).³~~

~~65. Where a Party submits evidence into the case record, it must do so in clear language, whether orally during proceedings or by way of written filing. Where only a part of a given document is relied upon, the submitting Party shall clearly identify that part.~~

~~66. Any objections to the relevance or admissibility of evidence shall be made upon submission, although consistently with paragraph 70 above, the Chamber is~~

³ This includes, *inter alia*, ensuring that the Parties are provided with sufficient clarity and certainty regarding the disposition of evidence, particularly of high probative value, during the conduct of the trial.

~~generally not required to rule on such objections. Objections may be made to documents in whole or in part, and may be directed towards a specific purpose.⁴ Only objections to applications under rule 68,⁵ those identifying a specific basis for exclusion under the Statute or Rules, or those that may affect the Parties' article 64(2) rights shall be ruled upon by the Chamber during the course of proceedings. The Parties and Participants (where applicable) shall have 10 days following the notification of application or the submission to raise such objections requiring a ruling. The Chamber shall deliver its ruling as soon as practicable.~~

~~67. Subject to any ruling by the Chamber under paragraph 72, the Registry shall update and maintain eCourt metadata to indicate which documents have been formally submitted.]~~

~~68.—~~

~~[Option 2:~~

~~69.54.~~ The Chamber will not admit evidence that it considers to be without relevance and probative value. It is for the submitting Party to demonstrate the relevance and probative value (including authenticity) of the evidence.

~~70.55.~~ The Chamber shall rule on the admissibility of the evidence when it is submitted, based on its consideration of its relevance, probative value, and potential prejudice. Questions of weight shall be left until the Chamber's final article 74 judgment.

~~71.56.~~ Where a Party submits evidence into the case record, it must do so in clear language, whether orally during proceedings or by way of written filing. Where only a part of a given document is relied upon, the submitting Party shall clearly identify that part. Pursuant to Article 69(3) of the Statute, documentary evidence other than testimonial shall be considered as being before the Chamber in its entirety, irrespective of the fact that the Parties intended only to rely on portion(s) thereof.

~~72.57.~~ Any objections to the relevance or admissibility of evidence shall be made upon submission. Objections may be made to documents in whole or in part, and may be directed towards a specific purpose.⁶ The Parties and Participants (where applicable) shall have 15 10 days following the notification of application or the submission to raise any objections. In case of oral submission during proceedings, objections, if any, shall be raised pursuant to paragraph 39 above.

⁴ ~~For example, a Party may not object a document being used for an impeachment purpose, but it may object to the same document being admitted into evidence for the truth of its content.~~

⁵ ~~See section VII.C.~~

⁶ For example, a Party may not object a document being used for an impeachment purpose, but it may object to the same document being admitted into evidence for the truth of its content.

~~73.58.~~ The Registry shall update and maintain eCourt metadata to indicate which documents have been formally admitted into evidence.

~~74.59.~~ There is no rule prohibiting the admission into evidence of documents merely because the source or custodian was not called to testify. The Party submitting the evidence must however demonstrate *prima facie* that the evidence is authentic.

~~75.60.~~ Where a Party submits an item of evidence in a language other than a working language of the Court, it shall provide a translation into French or English of all portions relied upon.

A. "BAR TABLE" APPLICATIONS

~~76.61.~~ The Parties may submit evidence from the bar table via more than one application, during the presentation of their case, unless the Chamber sets an earlier deadline. ~~and at any point during trial proceedings.~~ However, the Parties are encouraged to submit such evidence in as practicable and efficient a manner as possible and avoid as much as possible piecemeal applications.

~~77.62.~~ Bar table applications shall generally include, for each document or group of documents: (i) a description of the document(s); (ii) the asserted authenticity/reliability, relevance and probative value of the document(s); and (iii) the reason for not tendering the item through a witness. ~~asserted relevance and probative value of the document(s).~~

B. RULE 68 APPLICATIONS

i) *Applications under rule 68(2)*

~~78.63.~~ In accordance with rule 68(2), the Chamber may admit, in whole or in part, the evidence of a witness who is not present before the Chamber, in the form of previously recorded testimony.

~~79.64.~~ Motions for the admission of previously recorded testimony pursuant to rule 68(2) may be submitted to the Chamber, during the presentation of their case, unless the Chamber set an earlier deadline, at any time during the trial, provided that sufficient notice is given to the other Parties and Participants. The application shall address the applicable scenario envisaged under rule 68(2) together with any supporting material and shall identify the passages the Party wishes to admit as evidence. If the prior recorded testimony references other material available to the Calling Party, these shall be attached to the application where they comprise an

inseparable or indispensable part thereof, or would render it of less probative value or incomprehensible, if excluded.

80.65. As per paragraph ~~[Option 1: 72]~~ ~~[Option 2: 5777]~~ above, the non-calling Parties and Participants, where applicable, shall have ~~1540~~ days following the notification of the application to raise any objections.

ii) *Applications under rule 68(3)*

81.66. In accordance with rule 68(3), the Chamber may admit, in whole or in part, the evidence of a witness who is present before the Chamber, in the form of previously recorded testimony.

82.67. Motions for the admission of previously recorded testimony pursuant to rule 68(3) should, in principle, be submitted to the Chamber at least as early as feasible and no later than 21 days before the witness is scheduled to appear. The application shall be accompanied by a copy of the previously recorded testimony. If the recorded testimony contains references to other material, this shall be attached to the application where they comprise an inseparable or indispensable part thereof, or would render it of less probative value or incomprehensible, if excluded.

83.68. As per paragraph ~~[Option 1: 72]~~ ~~[Option 2: 7757]~~ above, the other Parties and Participants, where applicable, shall have ~~40~~ 15 days following the notification of the application to raise any objections.

84.69. Upon the witness's appearance at the hearing, the Parties may be directed to read a summary of the relevant parts of the witness's previously recorded testimony into the record of the proceedings.

C. INTRODUCTION OF AUDIO-VISUAL MATERIAL

85.70. As early as practicable, a Party shall indicate which audio-visual material it intends to use during proceedings, and – unless the entire item is to be used – the timestamps of the relevant excerpts.

86.71. The Party shall also provide transcripts and translations for any excerpts of audio-visual material it intends to use that are not in the working languages of the Court. The other Parties or Participants shall raise any areas of disagreement with the Party introducing the audio-visual material. If any disagreement cannot be resolved, the parties shall notify the Chamber, who may ask the Registry to advise on the transcription or translation.

D. JUDICIAL NOTICE AND AGREEMENTS AS TO EVIDENCE

~~87.72.~~ Pursuant to article 69(6), a Trial Chamber shall not require proof of facts of common knowledge, but may take judicial notice thereof. ~~These include, inter alia, the authenticity of evidence from other proceedings of the Court.~~

~~88.73.~~ At the request of ~~a Party~~ the Parties or *proprio motu*, the Chamber, after hearing the Parties, may consider proven agreed uncontested facts, pursuant to rule 69.

~~89.74.~~ Within seven days of notification of the facts agreed on by the Parties, the Participants shall file any observations thereon.

~~VIII.~~ VII. MODALITIES OF VICTIMS' PARTICIPATION

A. PARTICIPATION IN OPENING AND CLOSING STATEMENTS

~~90.75.~~ The Legal Representatives shall be entitled to make opening and closing statements.

B. PARTICIPATION IN HEARINGS

~~91.76.~~ The Legal Representatives shall be entitled to attend trial hearings whether they are in a public, private, or closed session. Attendance at *ex parte* hearings shall be decided on a case-by-case basis.

~~92.77.~~ Participating victims are not Parties to the proceedings, and do not have an unfettered right to lead or challenge evidence. Upon a showing of how the interests of participating victims are affected by the evidence or by a particular issue arising, the Chamber may decide whether or not to allow the form of participation sought.

C. PRESENTATION OF VIEWS BY INDIVIDUAL VICTIMS

~~93.78.~~ As a general principle, victims should submit their views and concerns through their Legal Representatives. If any individual victims wish to present their views and concerns directly to the Chamber, their Legal Representatives shall seek authorisation by written application before the close of the Prosecution case. The

Chamber shall grant such applications only where the victims' testimony could genuinely contribute to the determination of the truth.

~~94.79.~~ Should the Chamber grant such authorisation, the victim(s) shall be called following the conclusion of the Prosecution's case. After making the solemn undertaking, the victim shall be questioned by their Legal Representative. The Legal Representative of the victim testifying may also allow the other Legal Representatives to ask questions. After this, the Prosecution will have an opportunity to examine the victim, followed by the Defence.

D. AUTHORISATION TO QUESTION A WITNESS OR PRESENT EVIDENCE

~~95.80.~~ Should a Legal Representative wish to question a witness called by a Party, the Legal Representative shall apply to the Chamber by means of a filing notified to the Parties 14 days in advance of the witness's testimony. After the examination-in-chief, and in the absence of the witness, the Parties shall be given an opportunity to make oral submissions on such a request prior to the Chamber's oral ruling on the application.

~~96.81.~~ If, after examination-in-chief by the Calling Party, the Chamber is of the view that the matters raised in the proposed question(s) of the victims have not been sufficiently addressed by the witness, it may authorise the Legal Representative to put the question(s) before cross-examination commences.

~~97.82.~~ Where a Legal Representative does not anticipate putting questions to a particular witness, but during examination-in-chief by the Calling Party, an unforeseen issue arises that directly pertains to the interests of the victims, the Legal Representative may submit a question to the Chamber, which upon hearing the parties and leave being granted may decide to put it to the witness, if it considers this necessary for the ascertainment of the truth or to clarify the witness's testimony.

~~98.83.~~ As a matter of principle, Legal Representatives should not be able to call witnesses other than the victims they represent. However, where a Legal Representative has identified persons other than participating victims, who may be able to give evidence to the Chamber about issues that concern the victims' interests, they may bring this to the Chamber's attention. If the Chamber considers that the proposed witness may indeed provide the Chamber with important information that was not hitherto included in the evidence called by the Parties, it may decide to call the witness on its own motion, in accordance with articles 64(6)(b) and (d), and 69(3).

~~99.84.~~ If the victims wish to have certain evidence produced in the courtroom, their Legal Representatives shall file a written application setting out the reasons why the

victims' personal interests are affected and shall satisfy the Chamber that such evidence is necessary for the determination of the truth within the terms of article 69(3), in which case the Chamber will order its submission.

E. SCOPE AND MODE OF QUESTIONING

~~100.85.~~_____ The Legal Representatives shall only be authorised to question a witness to the extent relevant to their clients' interests. The scope of questioning is therefore limited to questions that have the purpose of clarifying the witness's evidence and to elicit additional facts. Questioning by the LRV shall not be repetitive of questioning by other Parties.

~~101.86.~~_____ The Legal Representatives shall conduct their questioning in a neutral manner and avoid leading or closed questions, unless specifically authorised by the Chamber to use such questions. If the Legal Representatives are authorised to challenge the credibility or accuracy of a witness's testimony, questions that are leading, closed and/or challenge the witness's reliability may be allowed, subject to the same limitations outlined in relation to cross-examination.

~~IX.~~VIII. **DUAL STATUS WITNESSES**

A. INFORMATION TO BE SHARED IN RESPECT OF DUAL STATUS WITNESSES

~~102.87.~~_____ Where a Legal Representative believes that a victim he or she represents has dual status, he or she shall provide the Prosecution with the victim's name, date of birth and other identifying information, to the extent possible. The Prosecution shall then check whether or not the victim has dual status, and if so, communicate this to the victim's Legal Representative.

~~103.88.~~_____ In these or any other circumstances, as soon as the Parties or Legal Representatives become aware of a witness's dual status, they shall communicate this to each other, to the other Parties, and to the VPRS.

~~104.89.~~_____ The Parties or Legal Representatives shall also communicate this to the VWU where they seek the dual status witness's inclusion in the ICCPP. Likewise, the VWU shall ask witnesses during assessment interviews whether they have applied for participation and/or reparation.

B. PROTECTIVE OR SPECIAL MEASURES

~~105.90.~~_____The Prosecution shall advise the Legal Representative of a dual status witness whether it intends to make an application for protective or special measures under rules 87 and 88.

C. CONTACT BETWEEN PARTIES AND DUAL STATUS WITNESSES

~~106.91.~~_____When a Party wishes to contact a witness whose dual status is known to the Party, it shall notify the witness's Legal Representative. Exceptionally, where the Calling Party needs to urgently contact the dual status witness in order to preserve or collect evidence, it may forego the notice requirement. In this case, the Calling Party shall inform the dual status witness's Legal Representative of the contact and disclose any relevant information as soon as possible thereafter.

D. CONTACT WITH DUAL STATUS WITNESSES PARTICIPATING IN THE ICCPP

~~107.92.~~_____The participation of all witnesses in the ICCPP – including dual status witnesses – shall remain confidential.

~~108.93.~~_____If a Legal Representative wishes to contact the dual status witness in the ICCPP that he or she represents, or if such witness wishes to contact their Legal Representative, the VWU shall facilitate such contact. The VWU will have no obligation to disclose to the Legal Representative the contact details of the dual status witness, unless the Chamber orders otherwise.

~~109.94.~~_____If a dual status witness participating in the ICCPP wishes to contact the Calling Party, the VWU will also facilitate this contact, and the Calling Party shall notify his or her Legal Representative of the contact.

E. PROVISION OF MATERIALS TO THE LEGAL REPRESENTATIVES BY THE PARTIES

~~110.95.~~_____The Legal Representative of a dual status witness shall be provided with a copy of his or her prior statement(s) taken by the Calling Party.

~~111.96.~~_____The Legal Representative may also seek access to further materials relating to the dual status witness they represent, including any documents produced with the dual status witness's involvement or assistance. To that effect, the Legal Representative shall submit a detailed request to the Calling Party outlining the reasons why access should be provided.

~~112.~~97. Unless reasons exist for refusing access, the Calling Party shall provide the Legal Representative with a copy of these materials, under conditions of confidentiality. Where the Calling Party considers that there are reasons to refuse access in whole or in part, it shall inform the Chamber and the Legal Representative of the reasons. The Chamber will then consider the matter, if seized by the Legal Representative.

F. ATTENDANCE OF LEGAL REPRESENTATIVES AT MEDICAL EXAMINATIONS

~~113.~~98. The Legal Representative may be present during a medical examination of their client, provided he or she has so consented. The presence of the Legal Representative must not in any way obstruct a proper medical examination.

G. ATTENDANCE OF LEGAL REPRESENTATIVES AT INTERVIEWS

~~114.~~99. A dual status witness shall be entitled to have his or her Legal Representative present during his or her interview by a Party. He or she shall not be influenced in this choice. Where applicable, the interviewing Party shall provide the Legal Representative with any relevant material

100. The presence of the Legal Representative must not obstruct a proper interview. Should the interviewing Party consider the conduct of the Legal Representative to be inappropriate or impracticable, it shall promptly inform the Legal Representative of its objection. In exceptional cases, where a dispute over the presence of a Legal Representative cannot be resolved, the interviewing Party may seek authorisation from the Chamber to proceed with the interview in their absence.

101. No witness preparation can be allowed for Legal Representatives, in the context of dual status witnesses.

H. PROVISION OF INFORMATION TO LEGAL REPRESENTATIVES OF DUAL STATUS WITNESSES UNDER THE AGE OF 18

~~115.~~102. Where a dual status witness is a minor, the Calling Party shall – with such minor's consent – provide their Legal Representative with information on their legal guardianship and/or family situation.

~~116.~~103. Where a dual status minor is in the ICCPP, the VWU is responsible for providing this information to their Legal Representative, subject to their consent, and provided that doing so would not place the minor or the operation of the ICCPP at risk.

~~X.~~IX. PROTECTIVE MEASURES

A. IN-COURT PROTECTIVE AND SPECIAL MEASURES

~~117.~~104. The Parties shall make applications for in-court protective measures for witnesses pursuant to rules 87(1) and (2) in such time as to enable the Chamber to consult with the VWU, the other Parties and Participants (where applicable) to file responses, and ultimately the Chamber to rule on the application before the commencement of the witness's testimony. Such applications shall be filed at least ~~five days~~four weeks before the commencement of testimony.

~~118.~~105. In exceptional cases, upon good cause shown, applications for protective measures that are not filed within this timeframe, including applications by witnesses themselves or at their behest, may be considered.

~~119.~~106. Applications for in-court protective measures shall be filed confidentially, but not *ex parte*. Any information which the applying Party seeks to withhold from the other Parties shall be provided in an *ex parte* annex to the application.

~~120.~~107. The Chamber shall determine the need for any special measure pursuant to rule 88 on receipt of the VWU's report of the vulnerability assessment of a witness, carried out after their arrival at the location of the testimony.

B. PRIVATE/CLOSED SESSIONS

~~121.~~108. Insofar as possible, all testimony shall be given in public. Requests for private and/or closed sessions shall specify the reasons justifying the request. To the extent that this does not unduly inhibit the sequence of questioning, the Parties and Participants shall endeavour to group together potentially identifying questions.

C. PUBLICATION OF PUBLIC REDACTED TRANSCRIPTS

109. The Registry shall publish the public redacted version of the French and English transcripts within two days of the notification of the edited confidential

version. Thereafter, the Calling Party shall review the transcript and propose a lesser redacted version within two weeks of notification by the Registry of both the English and the French versions of the transcript. Within 10 days of receiving the proposed lesser-redacted version, the other parties may raise any objections. Should no objections to the proposed lesser-redacted version be made, the Registry shall file it in the record of the case with the appropriate document number designation.

~~122. The Calling Party shall propose public redacted versions of any confidential transcripts within 30 working days from the time of notification of the edited version of the transcript. The other Parties and Participants (where applicable) shall have 15 working days to review and provide their position on the proposed public redacted version.~~

~~XI.X.~~ INTERPRETATION AND TRANSCRIPTS

~~123.~~110. It is primarily the Registry's duty to review and correct transcripts. Under rule 15, the Registrar is tasked with the maintenance of all case records. This review shall be conducted on the basis of the audio-visual recording of the hearing. This will ensure that all speech is accurately reflected on the record and that corrections the Parties and Participants might need to make are minimal.

~~124.~~111. If, during proceedings, a Party or Participant detects problems with transcription or interpretation on a significant issue, they shall note the page and line number and raise the matter orally with the Chamber so that it will appear on the record. Minor errors shall be reported via email to the relevant section of the Registry immediately after the hearing, copying the other Parties, Legal Representatives and the Chamber. Enduring difficulties shall be raised with the Chamber during the next court hearing or as soon as the problem is identified, providing the page and line numbers together with a brief explanation of the suggested difficulty.

~~125.~~112. Upon notification of the edited version of the transcript, a Party or Legal Representative may submit any requested corrections to the responsible person within the Registry within 20 working days.