

ANNEX A

Public

Directions on the conduct of proceedings

Table of contents

A.	Commencement of trial	3
B.	Reading of the charges.....	3
C.	Opening statements.....	6
D.	Presentation of evidence	7
	1. Presentation of evidence by the Prosecution	8
	2. Presentation of evidence by the LRVs.....	9
	3. Presentation of evidence by the Defence.....	9
E.	Admissibility of evidence	10
F.	Witnesses.....	14
	1. Solemn undertaking	14
	2. Order of questioning	14
	3. Scope of questioning.....	15
	4. Mode of questioning	16
	5. Use of video-link	18
	6. Use of materials during questioning	18
	7. Prior recorded testimony under Rule 68(3) of the Rules.....	20
	8. Expert witnesses	21
	9. Self-incrimination of witnesses	22
	10. In-court protective and special measures.....	23
G.	Documentary and other type of evidence	24
	1. Submission of evidence other than through a witness.....	24
	2. Prior recorded testimony under Rule 68(2) of the Rules.....	24
H.	Use of private and/or closed session	25
I.	Public versions of filings	25
J.	Public redacted transcripts of hearings	26
K.	Modalities of victim participation in hearings	27

A. Commencement of trial

1. The trial is set to commence on 14 July 2020.¹ The Chamber recalls that all motions which require resolution prior to the start of trial shall be filed by 1 June 2020.² By the same date, the Prosecution and the Defence shall also raise any objections or observations within the meaning of Rule 134(2) of the Rules.

B. Reading of the charges

2. There are two decisions before the Chamber relating to the charges against the accused, namely the decision confirming the charges issued by Pre-Trial Chamber I on 30 September 2019,³ and the subsequent decision amending the confirmed charges issued by Pre-Trial Chamber I on 23 April 2020,⁴ after the Chamber had received the submissions on the conduct of proceedings from the parties and participants. For the assessment of these submissions, the Chamber has also considered the decision amending the confirmed charges.
3. The Chamber first notes that the Prosecution submits that it is sufficient if pages 451 to 466 of the Confirmation Decision are read out pursuant to Article 64(8) of the Statute.⁵ The Defence submits that it would be helpful for the Defence and Mr Al Hassan to have a clear understanding as to what constitutes the charges in order to take a decision on waiver of the reading of charges.⁶
4. The Chamber further notes that the purpose of reading the charges to the accused at the start of trial, as required by Article 64(8) of the Statute, is for the Chamber to ensure that the accused ‘understands the nature of the charges’

¹ [Decision Setting the Commencement Date of the Trial](#), 6 January 2020, ICC-01/12-01/18-548, p. 9.

² [Decision Setting the Commencement Date of the Trial](#), 6 January 2020, ICC-01/12-01/18-548, para. 19.

³ Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, ICC-01/12-01/18-461-Conf (a corrected version of the decision was filed on 8 November 2019, ICC-01/12-01/18-461-Conf-Corr; [a public redacted version of the decision](#) was filed on 13 November 2019, ICC-01/12-01/18-461-Corr-Red) (the ‘Confirmation Decision’).

⁴ Décision portant modification des charges confirmées le 30 septembre 2019 à l’encontre d’Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, ICC-01/12-01/18-767-Conf (with a confidential Annex, ICC-01/12-01/18-767-Conf-Anx) (a corrected version of the decision was filed on 1 May 2020, ICC-01/12-01/18-767-Conf-Corr).

⁵ [Prosecution Submissions](#), ICC-01/12-01/18-615, para. 12.

⁶ Defence Submissions, ICC-01/12-01/18-618-Conf, para. 5.

and this is reflected on the record. In this respect, the Chamber does not agree with the submission of the Prosecution that a reading of pages 451 to 466 of the Confirmation Decision would achieve this purpose.⁷

5. The Chamber fully recognises that it is bound by the Confirmation Decision with respect to the determination by the Pre-Trial Chamber as to the confirmed charges in the case. As set out in Regulation 52 of the Regulations, the document containing the charges, which forms the basis for the confirmation proceedings, must include a ‘statement of the facts, including the time and place of the alleged crimes which provides a sufficient legal and factual basis to bring the person or persons to trial [...]’. On the basis of a document containing charges with this content, pursuant to Article 61(7) of the Statute, a Pre-Trial Chamber must assess the evidence adduced to determine whether it is sufficient to the relevant standard to confirm the charges as described. The outcome of that process is a set of confirmed charges with this content which is binding on the Trial Chamber. For the trial proceedings, Article 74(2) of the Statute prescribes that the decision of the Trial Chamber must be based on its evaluation of the evidence and the entire proceedings, but that it ‘shall not exceed the facts and circumstances described in the charges and any amendments to the charges’.
6. In accordance with this statutory regime, the charges to be read pursuant to Article 64(8) of the Statute must contain this description of facts and circumstances. The Confirmation Decision in this case contains a list of the charges in the concluding section at pages 451 to 466. However, this part of the decision sets out only the very basic contours of the charges without a description of the relevant facts and circumstances. Instead, the Pre-Trial Chamber opted to include a series of cross-references within each count referring back to the relevant paragraphs of the decision. The cross-referenced paragraphs in each instance contain the full reasoning by the Pre-Trial Chamber and thus include descriptions of evidence, legal analysis as well as factual findings. As a result of the methodology utilised by the Pre-Trial

⁷ [Prosecution Submissions](#), ICC-01/12-01/18-615, para. 12.

Chamber, there is no self-contained part of the decision which sets out the charges in full.⁸

7. Therefore, if only pages 451 to 466 of the Confirmation Decision are read to the accused, as suggested by the Prosecution, the requirement of Article 64(8) of the Statute to read ‘the charges’ would not be met, since the necessary facts and circumstances which the charges must identify are not sufficiently described in that part of the decision.
8. Given this, the Chamber is of the view that a clarification of the charges is necessary.⁹ It is relevant not only for the requirements of Article 64(8) of the Statute, but also to ensure the accused is fully aware of the charges against him and that there is a common understanding on the part of the parties, participants, and the Chamber as to the facts and circumstances of the charges prior to the start of trial.
9. As a result, in this case it is incumbent on the Chamber to draw out the ‘facts and circumstances’ of the charges, as it considers appropriate, from the decision of the Pre-Trial Chamber in its totality, while respecting the Pre-Trial Chamber’s findings as to the scope of the charges.
10. This approach to the Confirmation Decision finds support in the comments of the Pre-Trial Chamber in a preliminary decision on the Prosecution request for amendment.¹⁰ In rejecting the Prosecution’s request for certain corrections in the charges, the Pre-Trial Chamber stated that these were matters which could ultimately be resolved by the Trial Chamber, which has a broad discretion to

⁸ For a clear description of the charges, the Chambers Practice Manual recommends that the confirmation decision include an operative part which replicates the confirmed charges, as formulated in the document containing charges, including both the material facts and circumstances and the confirmed legal characterisation. The Chambers Practice Manual advises that this part should be self-contained without cross references or footnotes. The Trial Chamber should then accept those charges as binding for the trial proceedings. The Pre-Trial Chamber did not follow this practice in its decision. *See* Chambers Practice Manual, fourth edition, 29 November 2019, <https://www.icc-cpi.int/iccdocs/other/191129-chamber-manual-eng.pdf>, paras 61, 67.

⁹ Defence Submissions, ICC-01/12-01/18-618-Conf, para. 5.

¹⁰ Pre-Trial Chamber I, *Décision sur la procédure applicable suite au dépôt par le Procureur de sa requête pour corrections et modifications de la Décision de confirmation des charges*, 21 February 2020, ICC-01/12-01/18-608-Conf (the ‘PTC I Preliminary Decision’). [A public redacted version](#) was filed simultaneously (ICC-01/12-01/18-608-Red).

interpret the facts. Specifically, the Pre-Trial Chamber acknowledged that although the Trial Chamber cannot go beyond the facts and circumstances described in the charges, it may nevertheless appreciate them differently.¹¹

11. While these comments were made in the specific context of the request before the Pre-Trial Chamber, the principles are applicable, by analogy, to the Trial Chamber drawing from the Confirmation Decision its own conclusion as to the facts and circumstances of the charges.
12. Therefore, on the basis of a detailed review of the findings of the Pre-Trial Chamber, the Chamber has incorporated the facts and circumstances into each count set out by the Pre-Trial Chamber in its concluding section, creating in Annexes B and C to this decision a self-contained set of charges. In the preparation of the same, the Chamber focused on including the information which is sufficient to identify the particular incidents factually. At the same time, the Chamber has fully respected the scope of the charges confirmed by the Pre-Trial Chamber and has included only facts and circumstances identified by the Pre-Trial Chamber.
13. The Chamber decides Annexes B and C to the present decision will constitute the charges to be read to the accused pursuant to Article 64(8) of the Statute. It is for the Defence to now determine if it is prepared to waive reading of the charges. The Chamber may subsequently decide that the charges will be read for the benefit of the public.

C. Opening statements

14. The opening statements will be presented in the following order: (1) Prosecution (four hours); (2) LRVs (one hour, to be divided within the team as they see fit); and (3) Defence (four hours).
15. The LRVs and Defence may make their opening statements either at the commencement of the trial or prior to the presentation of their evidence, if

¹¹ [PTC I Preliminary Decision](#), ICC-01/12-01/18-608-Red, para 46.

any. In the interest of streamlining the presentation of these statements, they must be presented all at one time – the LRVs and Defence are not allowed to reserve unused time from their opening statements and continue them later during the trial. The LRVs and Defence are to inform the Chamber within 15 days of the commencement of trial if they do not intend to present their opening statements at the commencement of the trial.

16. The parties and participants are directed to indicate by email any materials they intend to use in the course of their opening statements to the Chamber and the other party and participants by no later than eight days prior to the commencement of trial, and to ensure that disclosure of any such material was duly effected. Any objections to the use of such material shall be provided via email no later than five days prior to the commencement of trial. The parties and participants will be permitted to use audio/visual material during opening statements.
17. The opening statements shall be presented entirely in public session. The parties and participants are therefore instructed to prepare accordingly.

D. Presentation of evidence

18. Unless otherwise directed by the Chamber, evidence will be presented in the following sequence:
 - i. presentation of evidence by the Prosecution;
 - ii. presentation of evidence by the LRVs, if leave is granted by the Chamber;
 - iii. any presentation of evidence by the Defence;
 - iv. presentation of evidence by the Prosecution in response/rebuttal, if leave is granted by the Chamber; and
 - v. presentation of evidence by the Defence in reply/rejoinder, if leave is granted by the Chamber.

19. As regards the length of the presentation of evidence by the Prosecution, the Trial Chamber will make a decision in due course.
20. In principle, the parties and participants shall always be prepared to continue with the following witness, even if the testimony of the previous witness has required less time than estimated.
21. The Chamber commends the parties for their efforts to find possible areas of agreement when it relates to evidence in accordance with Rule 69 and recalls that they are instructed to file a joint filing once they come to an agreement.¹² The Prosecution and the Defence are encouraged to have ongoing consultations to see whether they can agree on additional uncontested facts, including throughout the presentation of evidence, as appropriate. These agreements can relate to the case as a whole or the expected testimony of specific witnesses. The parties are further encouraged to agree on a mechanism for the introduction of undisputed evidence.

1. Presentation of evidence by the Prosecution

22. The Chamber recalls that the Prosecution was instructed to provide, by 14 April 2020, a final list of witnesses it intends to call and, by 12 May 2020, additional details to this list, including the expected order of calling of its witnesses.¹³ While the Chamber found that this information would assist in the preparation of the trial, it also indicated that the details so provided consisted of ‘anticipations and estimates’ and noted that adjustments would be made during the course of the Prosecution’s case.¹⁴

¹² [Transcript of hearing, 12 December 2019](#), ICC-01/12-01/18-T-008-ENG ET, p. 48, lines 11-24, and p. 51, line 6; transcript of hearing, 18 February 2020, ICC-01/12-01/18-T-011-CONF-ENG ET, p. 66, line 15 to p. 67, line 13,

¹³ [Decision Setting the Commencement Date of the Trial](#), 6 January 2020, ICC-01/12-01/18-548, para. 10; and [Decision on the Prosecution request for extension of deadlines relating to the disclosure of evidence and a postponement of the starting date for trial](#), 20 March 2020, ICC-01/12-01/18-677, para. 15.

¹⁴ [Decision Setting the Commencement Date of the Trial](#), 6 January 2020, ICC-01/12-01/18-548, para. 11.

23. The modalities for the provision of further and updated lists of witnesses by the Prosecution, notably to give notice of their upcoming appearance, will be regulated by the Chamber upon receipt of updated information.¹⁵

2. Presentation of evidence by the LRVs

24. The LRVs shall file any request for leave to present evidence no later than three days after the Prosecution concludes its presentation of evidence. The request shall contain submissions of how the evidence sought to be presented may contribute to the determination of the truth. If the request includes leave for witnesses to be called, it shall include a summary of the expected testimony and an estimate of the time needed for their examination. Any request for admission of documentary evidence shall be filed within the same time limit. Such an application shall contain a short description of the content of each item, its relevance, probative value and any potential prejudice to the accused. If the materials were not already disclosed by the Prosecution or the Defence, the LRVs must communicate any such document by the time their request for the admission of documentary evidence is filed.

3. Presentation of evidence by the Defence

25. Towards the end of the presentation of evidence by the Prosecution, the Defence will be instructed to file a notice of whether it intends to call evidence. Subsequently, if applicable, the Chamber will issue a decision setting out the procedure to be followed for any applicable disclosure by the Defence, including the provision of a list of witnesses the Defence intends to call, and the filing of an outline of the legal and factual issues the Defence intends to raise during the presentation of its evidence.
26. In the context of the abovementioned notice, the Defence will also be instructed to indicate whether the accused intends to exercise his right under Article 67(1)(h) of the Statute to make an unsworn oral or written statement,

¹⁵ [Order to provide information on methods of work to minimise the impact of COVID-19 and related measures on the conduct of proceedings](#), ICC-01/12-01/18-776.

so as to allow the Chamber to rule on the appropriate moment and modalities for the statement to be made. Any such statement will not constitute evidence.

E. Admissibility of evidence

27. Article 69(4) of the Statute accords the Chamber discretion to choose between the submission approach and the admission approach. Under the submission approach, the Chamber will not make individualised rulings on the admissibility of evidence but will rather assess the relevance, probative value and potential prejudice of the evidence (the ‘standard evidentiary criteria’) in its judgment pursuant to Article 74 of the Statute.¹⁶ This interpretation is consistent with the unequivocal finding of the Appeals Chamber that ‘[a]s borne out by the use of the word “may” in article 69 (4), the Trial Chamber has the power to rule *or not* on relevance or admissibility when evidence is submitted to the Chamber’.¹⁷ The Chamber also notes Rule 63(2) of the Rules, which provides that the Chamber has the authority in accordance with its discretion under Article 64(9) of the Statute to assess *freely all evidence submitted* in order to determine its relevance or admissibility, which provides further support to the concept of assessing the submitted evidence in a holistic manner as a part of the final determination of the guilt or innocence of the accused.¹⁸

¹⁶ Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, [Public Redacted Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled “Judgment pursuant to Article 74 of the Statute”](#), 8 March 2018, ICC-01/05-01/13-2275-Red (hereinafter ‘*Bemba et al.* Appeals Judgment’), paras 576-77; Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, [Decision on Prosecution Request to Submit Interception Related Evidence](#), 1 December 2016, ICC-02/04-01/15-615 (hereinafter ‘*Ongwen* Interception Decision’), para. 7.

¹⁷ Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Judgment on the appeals of Mr Jean-Pierre Bemba Gombo and the Prosecutor against the Decision of Trial Chamber III entitled “Decision on the admission into evidence of materials contained in the prosecution’s list of evidence”](#), 3 May 2011, ICC-01/05-01/08-1386 (hereinafter ‘*Bemba* OA5 OA6 Judgment’), para. 37.

¹⁸ This interpretation is specifically supported by the drafting history of Rule 63. See [Bemba et al. Appeals Judgment](#), para. 591.

28. Further, the Chamber remains unconvinced that Article 74 of the Statute requires the Chamber to rely on ‘admitted’ evidence in its judgment. As noted by the Appeals Chamber in *Bemba et al.*, Article 74 of the Statute:

expressly provides that the decision on the guilt or innocence of the accused may only be based on evidence which has been “submitted” and “discussed” at trial. Importantly, this provision does not stipulate that the evidence upon which a trial chamber may rely in its final decision under that provision is evidence which has been *admitted*. Rather, the focus of this provision is on the fact that the evidence was *submitted*. [...] it is the evidence that is presented (“submitted”) by the parties that – insofar as “discussed” – constitutes the basis of the eventual decision under article 74 (2) of the Statute¹⁹

29. Having satisfied itself that the statutory framework and appellate jurisprudence accords the Chamber the discretion to adopt the submission approach, the Chamber will follow that option. Specifically, the Chamber will not issue rulings on admissibility for each item of evidence during the course of proceedings. Rather, the Chamber will recognise the submission of items of evidence without a prior ruling on relevance and/or admissibility and will consider its relevance and probative value as part of the holistic assessment of all evidence submitted when deciding on the guilt or innocence of the accused.²⁰
30. The Chamber considers that adopting this approach is appropriate for the purpose of the present case as: (i) the Chamber will be able to more accurately assess relevance and probative value with all the evidence submitted and all the submitted evidence will be subjected to a uniform treatment; (ii) a significant amount of time will be saved; (iii) there is no reason for the Chamber to screen itself from considering materials inappropriately; and (iv) there is no reason to assume that professional judges would consider irrelevant or unduly prejudicial materials, noting in particular the requirement of a reasoned judgment.²¹

¹⁹ [Bemba et al. Appeals Judgment](#), paras 576-77 [footnote omitted]. See also [Ongwen Interception Decision](#), para. 7.

²⁰ [Bemba et al. Appeals Judgment](#), para. 598.

²¹ Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, [Initial Directions on the Conduct of Proceedings](#), 13 July 2016, ICC-02/04-01/15-497, para. 25; Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, [Decision on the submission and admission of evidence, 29 January 2016](#), ICC-02/11-01/15-405, paras 11-16; Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, [Decision on Prosecution Requests for Admission of Documentary Evidence \(ICC-01/05-](#)

31. That being said, the Chamber notes that its discretion under Article 69(4) of the Statute needs to be balanced with the need for a fair and expeditious trial under Article 64(2) of the Statute. In this regard, the Chamber emphasises that while in general it will defer to the judgment assessments of the evidence on the basis of standard evidentiary criteria, it may still be necessary to make some discrete determinations on the admissibility of specific evidence or categories of evidence. On this point, the Chamber observes that Rule 64(1) of the Rules requires the parties and participants to raise issues as to admissibility of evidence, including on any of the standard evidentiary criteria, at the time when the evidence is submitted to the Chamber or immediately after such an issue becomes known.²² The Chamber in its discretion may decide to rule on any such specific objection in advance of the judgment, particularly when it is necessary for a fair and expeditious trial.
32. Moreover, in its approach to evidence the Chamber recalls that the legal framework of the Court contains a number of exclusionary rules which mandate that certain evidence is inadmissible in the proceedings. Rulings on the potential application of any such rule must be rendered separately from, and preliminarily to, the assessment of evidence for a decision under Article 74 of the Statute.²³ For example, Rule 63(3) of the Rules mandates that rulings on admissibility shall be made by the Chamber when an application is made by a party or the Chamber by its own motion under Article 69(7) of the Statute.²⁴ The Chamber will rule on these issues, as appropriate, in the course of the trial or at the end of the proceedings. The Chamber will take a similar approach to other procedural requirements, including those arising under Rules 68 (prior recorded testimony of a witness), 71 (evidence of the prior or subsequent sexual conduct of a victim or witness) and 72 (evidence in cases of sexual violence) of the Rules.

[01/13-1013-Red, ICC-01/05-01/13-1113-Red, ICC-01/05-01/13-1170-Conf](#)), 24 September 2015, ICC-01/05-01/13-1285, paras 10-13.

²² [Bemba OA5 OA6 Judgment](#), para. 48.

²³ [Bemba et al. Appeals Judgment](#), para. 580.

²⁴ This Article sets out procedural bars to the admission of evidence obtained in violation of the Statute or of internationally recognised human rights under specified circumstances.

33. Finally, the Chamber recognises the imperative to ensure that the system for evidence being used is clear to the parties and participants from the earliest possible moment. In addition to setting out its principled approach as outlined above, the Chamber considers it necessary to detail the applicable procedure to ensure the necessary clarity. In that regard each item of evidence which is submitted (in batches or otherwise) will be formally recognised as submitted. Its status as submitted will accordingly be reflected in the eCourt metadata of each item of evidence.²⁵
34. In conclusion, the approach of the Chamber with respect to the submission of evidence will be as follows:²⁶
- i. as a general rule, the Chamber will not rule on the standard evidentiary criteria at the point of submission. These considerations will be deferred until the point when the Chamber is deliberating its judgment pursuant to Article 74 of the Statute. During its deliberations, the Chamber will consider all the standard evidentiary criteria for each item of evidence submitted, though it may not necessarily discuss in the judgment every submitted item;
 - ii. the parties and participants will formally request the submission of evidence either via the relevant procedures as specified in sections I.D.2, I.F.7, I.G.1 and I.G.2 of the present decision or, for items used during a hearing, by sending an email to the Chamber and the other participants clearly identifying these items no later than one working day after the conclusion of the examination of the relevant witness by the parties and participants;
 - iii. no later than three working days following receipt of the email in item (ii) above, the other party and participants may send emails in response, raising issues related to the relevance or admissibility of the items submitted.

²⁵ Similarly see [Bemba et al. Appeals Judgment](#), para. 600.

²⁶ Similarly see [Ongwen Interception Decision](#), para. 4.

- iv. no later than one working day following receipt of any response emails in item (iii) above, the tendering party or participant may send a second email indicating its position on the arguments raised by the other party or participant.
- v. the Chamber will then send a final email identifying which items are recognised as being formally submitted evidence;
- vi. the Registry will then reflect all formally submitted items in the eCourt metadata. The Registry must also submit reports for each witness who testifies, indicating which items have been formally submitted by the parties and participants in relation to that witness. The email exchanges referenced in items (ii) to (v) above are to be annexed to this filing, applying redactions as appropriate;
- vii. the Chamber will rule upfront on certain issues related to the admissibility of evidence, notably when it is a procedural requirement under the statutory framework; and
- viii. exceptionally, it may rule upfront on the admissibility of other evidence if deemed appropriate for a fair and expeditious trial.

F. Witnesses

1. Solemn undertaking

35. Witnesses will be reminded in court, at the start of their testimony, of their duty to tell the truth prior to their solemn undertaking. Witnesses will read a solemn undertaking in a language they understand. If they are unable to do so, the Presiding Judge will read the solemn undertaking, which witnesses will then be asked to accept.

2. Order of questioning

36. The calling party will conduct the examination-in-chief of the witness first, followed by the questioning by the LRVs, if any, and thereafter the cross-examination by the non-calling party.

37. The calling party may then apply to re-examine the witness after the cross-examination has concluded. Re-examination of the witness by the calling party shall only be allowed to the extent that it bears upon and is limited to issues having first arisen during cross-examination.
38. After this re-examination by the calling party, the non-calling party shall have the right to ask additional questions.
39. The Defence has the right to be the last to question a witness.
40. The Chamber may put questions to the witnesses at any stage of their testimony, including before the questions from the calling party.

3. Scope of questioning

41. Questions shall be directly relevant to the charges and limited to relevant and/or contested issues. Cross-examination is not limited to issues raised during the questioning by the calling party. Indeed, the Chamber will allow inquiry into additional matters. During cross-examination, the non-calling party may, for example, seek to ask questions related to the credibility of a witness, the reliability of the evidence presented, as well as mitigating and/or aggravating circumstances.
42. The cross-examination shall last no longer than the questioning by the calling party. Upon request, the Chamber may decide, on a case-by-case basis, and only after having heard the questioning by the calling party, that additional time is warranted for the cross-examination.
43. Questions shall be focused on facts and refrain from asking the witness to speculate or to provide opinion evidence, including about the credibility of other witnesses. It is the responsibility of examining counsel to elicit the basis of the witness' knowledge for every relevant fact.

44. In accordance with Regulation 56 of the Regulations, the Chamber will decide on questions bearing on issues potentially relevant to an order for reparations on a case-by-case basis.
45. The calling party or participant may exceptionally request permission to refresh a witness' recollection using his/her previous statement where the witness is unable to independently recall a particular fact. In this scenario, the party or participant shall provide the witness with an opportunity to read the relevant paragraphs, or read these paragraphs to the witness. Once the party or participant has ascertained that the witness' recollection has been refreshed, it may question the witness again on the matter at issue.
46. The parties and participants may put to a witness another witness' testimony or previous statement, without providing the identity of the witness. When doing so, counsel questioning the witness shall quote directly the relevant passages and provide precise references.
47. Re-examination of the witness by the calling party is limited to issues having first arisen during cross-examination. In turn, the questioning conducted by the non-calling party after re-examination is limited to issues related to matters raised during the re-examination.

4. Mode of questioning

48. All questioning shall be conducted in an appropriate, focused, precise and succinct manner. Parties and participants are strongly encouraged to avoid long and compound questions, which may confuse or mislead the witness. Repetitive lines of questioning will not be allowed.
49. Where considered appropriate, the Chamber may direct the calling party or participant to first elicit a narrative from the witness about certain matters or events before (more specific) further questions are asked.

50. In principle, the party or participant calling the witness shall examine the witness by way of neutral questioning. Leading and closed questions are allowed during cross-examination, and may be permissible for the calling party when they are conducive to the expeditiousness of the proceedings and determination of the truth. If, during the testimony of a witness, the calling party believes that a witness is hostile to it and not desirous of providing the expected evidence, it may – having provided the witness with an opportunity to explain deviations from the expected testimony – request the Chamber to declare the witness as ‘hostile’. If the Chamber grants the request, the calling party may ask the witness leading questions, including questions pertaining to the witness’s credibility.
51. The non-calling party shall put to a witness the substance of its case which in its view conflicts with the evidence of the witness, as well as any facts or evidence upon which the non-calling party intends to rely to impeach his or her credibility in order to give the witness an opportunity to respond thereto. Failure to do so may result in the Chamber disregarding or assigning less weight to the impeaching evidence.
52. Counsel questioning a witness shall refrain from paraphrasing the witness’ statement or testimony in the courtroom or from unnecessarily requesting the witness to reiterate such testimony. Where necessary for the understanding of a question, counsel shall quote the directly relevant passage from the statement or transcript and indicate the exact page numbers, paragraph numbers, and/or relevant lines.
53. Objections by a party to a question must be brief, specific and raised with the Chamber at the time the question is asked. The party making the objection has the responsibility to indicate, before making any substantive submission on its objection, whether it is appropriate to discuss the reasons for objecting in the presence of the witness, and provide the Chamber with an opportunity to decide if the matter is best dealt with in the absence of the witness. The Chamber will decide on a case-by-case basis on any objections.

5. Use of video-link

54. Noting the insignificant differences between in-court and video-link testimony,²⁷ no request to hear a witness via video-link is necessary; it suffices that the calling party or participant clearly provides notice of the prospective use of video-link in its list of witnesses, or any subsequent update thereof. The deference afforded to the parties, and LRVs as applicable, in this regard is always subject to the Chamber's obligation to ensure a fair and expeditious trial. The Registry should be consulted sufficiently in advance to allow for the relevant practical arrangements to be made.

55. The Chamber recalls that the Prosecution was instructed to provide notice of the intended mode of questioning of its witnesses by 12 May 2020.²⁸ This shall include the prospective use of video-link, as well as summary reasons therefor.

6. Use of materials during questioning

56. As a rule, parties and participants can only use during their questioning materials which have been previously disclosed. The party or participant intending to use any documents shall ensure that electronic, searchable copies of the documents have been uploaded into eCourt prior to their use, in accordance with the eCourt Protocol.²⁹

²⁷ Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, [Initial Directions on the Conduct of Proceedings](#), 13 July 2016, ICC-02/04-01/15-497, para. 17; Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, [Decision on Video-Link Testimony for Defence Witnesses](#), 4 March 2016, ICC-01/05-01/13-1697, paras 8-16.

²⁸ [Decision on the Prosecution request for extension of deadlines relating to the disclosure of evidence and a postponement of the starting date for trial](#), 20 March 2020, ICC-01/12-01/18-677, para. 15.

²⁹ [Annex to the Décision relative au système de divulgation et à d'autres questions connexes](#), 31 July 2018, ICC-01/12-01/18-31-Anx-tENG.

57. The calling party or participant will provide by email to the Chamber and the other party and participants, at least five days before a witness commences testifying, a list (hereinafter: ‘List of Material’) setting out:
- i. the materials³⁰ it intends to use during the questioning of the witness;
 - ii. any passages intended to be used within any lengthy document; and
 - iii. whether the materials are intended to be tendered as evidence, including under Rule 68, where appropriate.
58. If parties or participants wish to present audio-visual material to a witness, they must establish the relevance of this exercise, for example that the witness has personal knowledge of the making of the recording or its contents. This may be achieved by playing a brief excerpt of the audio-visual material to the extent strictly necessary, and without sound where appropriate, for the witness to confirm his/her personal knowledge of it. Once this has occurred, the party or participant may play the excerpt(s) of the recording it intended to present to the witness.
59. The Registry shall inform the parties and participants of the relevant procedure in relation to the use of audio-visual recordings during hearings. In principle, video or audio recordings may only be used in court if a transcript, and translation if applicable, are available. The party or participant intending to use a video or audio recording shall indicate in its List of Material the sections of the transcript, if any, corresponding to the excerpts of the material it intends to use; as well as, if applicable, the corresponding sections of the translation. To avoid taking up hearing time to address these matters, the parties and participants shall consult to try and resolve any disagreement as to the transcription or translation of the excerpts. If the disagreement cannot be resolved, the parties and participants shall notify the Chamber by email.

³⁰ The only materials which will not always be in eCourt are the witness preparation log and disclosure notes, as these will often become available less than five days prior to the start of a witness’s testimony. For all other materials, the ERN number should be provided.

60. The opposing party shall provide, by way of email, no later than two days prior to the start of the witness's testimony, notice of its objection to the use of any material with the witness. This is without prejudice to the possibility to object, during the testimony, to the manner in which the material is presented to the witness.
61. The non-calling party or participant will provide, by way of email to the Chamber and the other party and participants, at least one day before they commence their questioning of the witness, a list of any materials they intend to use during questioning. Exceptionally, if the materials were not already disclosed, copies shall be attached to the email. Objections to the use of any material by the non-calling party shall be raised orally, prior to the start of the cross-examination.

7. Prior recorded testimony under Rule 68(3) of the Rules

62. The Chamber recalls that the Prosecution was instructed to provide, by 14 April 2020, a final list of witnesses it intends to call and, by 12 May 2020, additional details to this list, including notice of the expected mode of testimony.³¹
63. Within 20 days of the provision of these details, the Prosecution shall file a first batch of motivated applications seeking the Chamber's authorisation to introduce any prior recorded testimony pursuant to Rule 68(3) of the Rules for witnesses expected to be called before the end of the year 2020. These applications shall be filed together with:
- i. copies of the previously recorded testimony, identifying precisely which passages thereof are tendered into evidence;

³¹ [Decision Setting the Commencement Date of the Trial](#), 6 January 2020, ICC-01/12-01/18-548, para. 10; and [Decision on the Prosecution request for extension of deadlines relating to the disclosure of evidence and a postponement of the starting date for trial](#), 20 March 2020, ICC-01/12-01/18-677, para. 15.

- ii. other material referred to in the passages tendered into evidence, without which the passages would not be understandable, if this material is available to the Prosecution; and
 - iii. a specification as to whether the Prosecution seeks to ask questions to the witness, the specific time sought for such examination, and an indication of the topics to be addressed orally with the witness.
64. Objections, if any, shall be filed within 15 days of notification of any Rule 68(3) application.³²
65. The Chamber will issue preliminary rulings ahead of the relevant in-court testimony, but its final determination pursuant to Rule 68(3) will, in principle, only be made when the witness appears before the Chamber and attests to the accuracy of his or her prior recorded testimony sought to be introduced. The Chamber expects the calling party to streamline its questioning considerably when the introduction of the previously recorded testimony is allowed.

8. Expert witnesses

66. The Prosecution was instructed to provide, by 14 April 2020, its final list of witnesses, including any witnesses it wishes to call as an expert, and, by 12 May 2020 at the latest, disclosure of all evidence it intends to rely on.³³ This includes the full statement and/or report of any expert witness to be called by the Prosecution.
67. At the latest 20 days after the full disclosure deadline, the Prosecution shall file motivated applications seeking the Chamber's authorisation to call any of its witnesses as an expert.

³² The Chamber clarifies that all relevant objections must be filed by this deadline and that it does not retain the two-step approach requested by the Defence. *See* Defence Submissions, ICC-01/12-01/18-618-Conf, para. 68.

³³ [Decision Setting the Commencement Date of the Trial](#), 6 January 2020, ICC-01/12-01/18-548, para. 10; and [Decision on the Prosecution request for extension of deadlines relating to the disclosure of evidence and a postponement of the starting date for trial](#), 20 March 2020, ICC-01/12-01/18-677, para. 15.

68. Objections, if any, shall be filed within 10 days of notification of any such application and shall set out:
- i. any challenge to the report prepared by a witness sought to be considered as an expert's report;
 - ii. any challenge to the qualifications of a witness as an expert or to the relevance of the report; and/or
 - iii. notice of the participant's wish to question the witness.
69. Where the Defence accepts the statement and/or report of a proposed Prosecution expert witness and does not wish to question his or her, the Chamber may decide that the relevant materials can be tendered into evidence without calling the expert witness to testify in person.
70. The procedure set out in sections I.F.3 and I.F.4 in relation to the scope and mode of questioning of witnesses appearing in court shall, unless otherwise ordered, apply *mutatis mutandis* to the examination of expert witnesses.

9. Self-incrimination of witnesses

71. The calling party or participant shall notify the Victim and Witnesses Unit (the 'VWU') as soon as it believes a witness may make self-incriminating statements during his/her testimony. Where foreseeable, notice shall be provided by way of an indication in the party or participant's list of witnesses. The Registry shall make all necessary arrangements to provide independent legal advice to witnesses who may be at risk of incriminating themselves during their testimony. Unless otherwise ordered by the Chamber, the LRVs shall provide this advice for dual-status witnesses.
72. The lawyer advising the witness who may be at risk of self-incriminating during testimony shall seize the Chamber of any application for assurances under Rule 74(3)(c) of the Rules, if required. The Prosecution and the party or participant calling the witness, where the Prosecution is not the calling party, shall be notified of such an application.

73. The lawyer advising the witness shall also be responsible for informing the witness of the offence defined in Article 70(1)(a) of the Statute, in accordance with Rule 66(3) of the Rules.

10. In-court protective and special measures

74. Applications for in-court protective or special measures pursuant to Rules 87 and 88 of the Rules shall be made as soon as possible.

75. In this regard, the Chamber recalls that the Prosecution was instructed to provide, by 14 April 2020, a final list of witnesses it intends to call and, by 12 May 2020, additional details to this list, including notice of the expected protective measures to be sought.³⁴

76. The Prosecution shall file a motivated application seeking relevant in-court protective measures pursuant to Rule 87 of the Rules for all Prosecution witnesses for whom it is reasonably foreseeable that protective measures are required no later than 40 days before the start of the presentation of evidence. This will allow the Chamber to receive submissions on any request and the VWU to fulfil its mandate in due time. The Chamber will rule on these applications as much as possible in advance of the witnesses' appearance, with the possibility to modify any determination on protective measures subject to further information provided by the VWU immediately prior to the testimony as necessary.

³⁴ [Decision Setting the Commencement Date of the Trial](#), 6 January 2020, ICC-01/12-01/18-548, para. 10; and [Decision on the Prosecution request for extension of deadlines relating to the disclosure of evidence and a postponement of the starting date for trial](#), 20 March 2020, ICC-01/12-01/18-677, para. 15.

G. Documentary and other type of evidence

1. Submission of evidence other than through a witness

77. A party or participant wishing to tender evidence without it being introduced through a witness shall file an application³⁵ accompanied by a table containing:

- i. a short description of the content of each item;
- ii. in the case of a lengthy document, an index of the most relevant portions of the document or recording; and
- iii. a description of its relevance, and *prima facie* probative value.

78. Before submitting the application, the tendering participant shall first inquire whether the opposing participant consents or objects to the tendering of the items, and, if applicable, the grounds for any such objection, and include them in the table referred to above.

2. Prior recorded testimony under Rule 68(2) of the Rules

79. In accordance with Rule 68(2) of the Rules, the parties may file applications for the admission, in whole or in part, of the previously recorded testimony of witnesses. These applications shall be filed together with:

- i. copies of the previously recorded testimony and any supporting material, identifying precisely which passages thereof are tendered into evidence; and
- ii. other material referred to in the passages tendered into evidence, without which the said passages would not be understandable, if this material is available.

³⁵ The Chamber does not consider it necessary to direct the parties and participants to submit such application after the Chamber has heard all relevant testimony on the issues covered by the documentary evidence, as requested by the Defence. *See* Defence Submissions, ICC-01/12-01/18-618-Conf, para. 47.

80. The Prosecution is instructed to file any Rule 68(2) applications as soon as possible and no later than by the end of the year 2020. The procedure set out above does not exclude later applications, notably pursuant to Rule 68(2)(c) of the Rules, should a witness become unavailable to testify orally during the course of the Prosecution's case.

H. Use of private and/or closed session³⁶

81. Insofar as possible, witness testimony should be given in public. If in-court protective measures are in place for a witness, parties and participants shall at all times be cautious and ensure that questions asked during public sessions do not compromise these measures.

82. Requests for private and/or closed sessions shall be made in a neutral and objective way, if possible, referring to the topics that will be covered.

83. It is the responsibility of examining counsel to ensure that the use of private and/or closed sessions is limited to what is strictly necessary. As such, examining counsel shall immediately request moving back to open session when the reasons that motivated the use of private or closed session are no longer present.

84. To the extent possible, parties and participants are directed to group identifying questions together and to ask these questions at the beginning of the testimony in order to avoid unnecessary recourse to private and/or closed sessions. Similarly, other questions necessitating recourse to private and/or closed session are to be grouped as much as possible.

I. Public versions of filings

85. Pursuant to Regulation 23 *bis* of the Regulations, filings shall be in principle public and only, if duly justified, marked as confidential, or *ex parte*. The

³⁶ For private sessions, the public in the gallery is not removed, but no audio-visual broadcast is made to the gallery or outside the Court. Closed sessions are held entirely *in camera*.

parties and participants shall file public and confidential redacted versions together with any confidential or *ex parte* filing (to the extent possible, at the same time, and if not, no later than 5 days after the filing). Where the basis for the original classification no longer exists, the parties and participants shall request reclassification or file lesser redacted versions, to ensure that their respective filings are as publicly available as possible.

J. Public redacted transcripts of hearings

86. The Registry shall make public the redacted version of the transcripts within two working days of the notification of the edited confidential version. This public redacted version will exclude the private and/or closed sessions, as well as the passages for which the Chamber ordered that redactions be applied.
87. These orders will be issued by the Presiding Judge during the course of a hearing, or immediately after, notably on the basis of the parties' or participants' request pursuant to Regulation 21(8) of the Regulations of the Court. Any such requests must be formulated via email, clearly identifying the word(s) to be redacted and the corresponding timestamps of the real time transcript, and be made as soon as possible, copying all parties and participants, and no later than 20 minutes after the information at issue was revealed.
88. Thereafter, the calling party or participant shall review the transcript and propose a lesser redacted version within 21 days following the conclusion of the hearing where the relevant witness last testified. Parties and participants should draw the attention of the Chamber to any part of the transcript of a private session that, following more detailed analysis or a change in circumstances, may be reclassified as public. Discrete requests for additional redactions may also be proposed in the context of this review, but will require the Chamber's subsequent authorisation before they can be applied.
89. Within 10 days of receiving the proposed lesser-redacted version, the other party or participant 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.

90. The Registry shall inform the parties and participants of the relevant procedure for preparing requests for verification of the transcripts. The Registry shall apply eventual corrections to the transcripts in accordance with its transcript verification methods.

K. Modalities of victim participation in hearings³⁷

91. The LRVs are entitled to attend all hearings, unless the Chamber decides that a particular hearing is to be conducted *ex parte*, without participation of the LRVs.
92. The LRVs may question a witness with leave of the Chamber. The LRVs shall file a written application seeking authorisation to examine a witness no later than one working day prior to the start of the witness' testimony, identifying the areas of questioning they seek to pursue. The parties shall have the opportunity to orally respond to the LRVs' request towards the end of the examination-in-chief.
93. The LRVs shall file any request for victims to the present their views and concerns in person no later than three days after the Prosecution concludes its presentation of evidence. The request shall include an estimate of the time needed for the presentation of this material but not a summary thereof, since this material is not evidence subject to consideration by the Chamber pursuant to Article 74(2) of the Statute.³⁸

³⁷ The Chamber notes that, subject to the provisions of this decision, the LRVs shall continue to enjoy the other procedural rights referred to in Pre-Trial Chamber I, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [Public redacted version of Decision on Principles Applicable to Victims' Applications for Participation, to Legal Representation of Victims, and to the Manner of Victim Participation in the Proceedings](#), 20 March 2019, ICC-01/12-01/18-289-Red-tENG-Corr, paras 45-53, as applicable *mutatis mutandis* to the trial stage of proceedings.

³⁸ Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, [Decision on the request by victims a/0225/06, a/0229/06 and a/0270/07 to express their views and concerns in person and to present evidence during the trial](#), ICC-01/04-01/06-2032-Anx, 26 June 2009, para. 25; Trial Chamber III, *The*

Prosecutor v. Jean-Pierre Bemba Gombo, [Decision on the supplemented applications by the legal representatives of victims to present evidence and the views and concerns of victims](#), ICC-01/05-01/08-2138, 22 February 2012, para. 19; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Decision on requests to present additional evidence and submissions on sentence and scheduling the sentencing hearing](#), ICC-01/05-01/08-3384, 4 May 2016, para. 34.