

# Evidence in International Criminal Trials

SUMMER SCHOOL ON THE INTERNATIONAL CRIMINAL COURT  
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The presentation is based on publicly available information and images. References to ICC documents, jurisprudence and other relevant material is hyperlinked for ease of access, where possible (links verified and operational as of 10 June 2026).

Participants are invited to review and consult the ICC website for further jurisprudence, and are specifically invited to visit and review the sources available at the ICC Legal Tools Project, including the [ICC Case Law Database](#) for further research and familiarisation with ICC case law.

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## Topics/Objectives

- 1) Type and Scale of Evidence in International Criminal Trials
- 2) Collection of Evidence and Disclosure
- 3) Presentation of Evidence in Trial Proceedings
- 4) Admissibility of Evidence
- 5) Evaluation of Evidence
- 6) The changing nature of evidence in international criminal proceedings: challenges and opportunities

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## What is evidence?

...information that may be used to prove or disprove the existence of a fact.

### **Types of evidence (broadly speaking):**

- Witness evidence (witnesses of crimes, insiders, experts, overview witnesses)
- 'Real' (physical) evidence: DNA sample, bullet-case, clothes, etc.
- Documentary evidence: various written documents, videos, photographs, call-data records, recordings, satellite images, media articles, intercepts, social media posts... i.e. writings on paper *or* any other media

❖ Testimonial vs Non-testimonial evidence

❖ Direct (proves the fact directly) vs. circumstantial (drawing inferences)

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*“Where a factual finding is based on an inference drawn from circumstantial evidence, the finding is only established beyond reasonable doubt if it was the only reasonable conclusion that could be drawn from the evidence.*

(Prosecutor v Bemba et al, [Appeals Judgment](#), 8 March 2018, para. 868)

*“[...] an inference drawn to establish a fact on which the conviction relies, the standard is only satisfied if the inference drawn was the only reasonable one that could be drawn from the evidence presented”*

(ICTY, *Stakić* Appeal Judgment, para. 219; see also ICTY, *Čelebići* Appeal Judgement, para. 458)

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## Who introduces evidence in ICC proceedings?

- Prosecution, Defence, Victims
- Judges

“The Court shall have the authority to request the submission of all evidence that it considers necessary for the determination of the truth.” (Article 69(3))

“The Trial Chamber may order the production of evidence in addition to that already collected prior to the trial or presented during the trial by the parties (Article 64(6)(d)).

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## Volume of evidence in ICC trials: Examples

### **Prosecutor v. Yekatom and Ngaïssona (2025)**

- 114 witnesses (Prosecution)
- 3 witnesses (Legal Representatives of Victims)
- 56 witnesses (both Defence Teams)
- 1 witness called by the Trial Chamber
- 19,590 items of documentary evidence recognised as formally submitted

### **Prosecutor v. Al Hassan (2024)**

- 69 witnesses (Prosecution)
- 2 witnesses (Legal Representatives of Victims)
- 36 witnesses (Defence)

### **Prosecutor v. Ongwen (2021)**

- 116 witnesses (Prosecution)
- 7 witnesses (Legal Representatives of Victims)
- 63 witnesses (Defence)
- 5149 individual items of documentary evidence recognized as formally submitted



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## Key provisions on evidence/presentation of evidence

Every legal system has rules dealing with issues of evidence: collection of evidence, (disclosure of evidence), introduction of evidence, admissibility of evidence, exclusion of evidence, assessment of evidence.

- [ICC Rome Statute](#): Articles 54, 56, 67, 69(!), 74
  - [ICC Rules of Procedure and Evidence](#): Rules 63-84
  - [Regulations of the Court](#)
  - [Chambers Practice Manual](#)\*
- No application of national laws governing evidence (Article 69(8), Rule 63(5))



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## 4 features of evidence law in ICL trials\*

### 1) GREAT FLEXIBILITY AND DISCRETION AFFORDED TO CHAMBERS

- Few 'technical' rules
- Judges have broad discretion to resolve evidentiary questions

### 2) FREE ASSESSMENT OF EVIDENCE

- No restrictions re type of evidence capable of proving a fact
- No prescription/restriction of how much weight to be afforded to an item of evidence → judges decide in each case (NB: exclusionary rules)

### 3) SEARCH FOR THE TRUTH

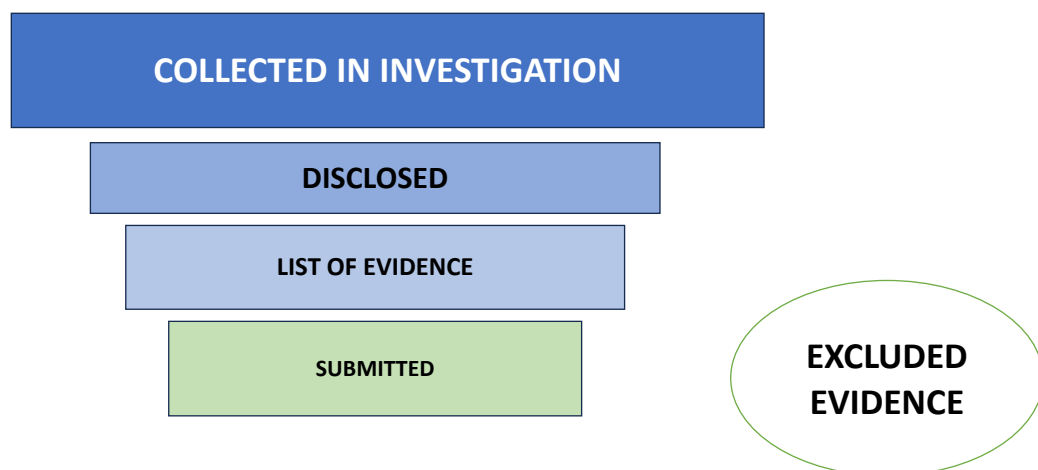
### 4) CENTRALITY OF FAIRNESS

- Judges have an obligation to ensure that proceedings are fair and expeditious, conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses

\* See – similarly – on four key factors, *Prosecutor v Lubanga*, Decision on the admissibility of four documents, [ICC-01/04-01/06-1399](#), 13 June 2008, paras. 19-24)

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## Evidence in the ICC procedure:



\* Depiction **not** in scale

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## Evidentiary standards in ICC (case) proceedings:

### Arrest Warrant/Summons: REASONABLE GROUNDS TO BELIEVE

- existence of facts or information which would satisfy an objective observer that the person **may have committed** the alleged crime; means that **a reasonable conclusion that the person committed a crime within the jurisdiction of the Court can be drawn**. It does not mean that this is the only reasonable conclusion that can be drawn from the evidence.

### Confirmation of charges: SUBSTANTIAL GROUNDS TO BELIEVE\*

- evidence must be sufficiently solid to warrant the testing of the evidence at trial; the Prosecutor must offer **concrete and tangible proof** demonstrating a clear line of reasoning underpinning specific allegations.

### Judgment – Conviction: BEYOND REASONABLE DOUBT

- ‘The reasonable doubt standard in criminal law cannot consist in imaginary or frivolous doubt based on empathy or prejudice. It must be based on logic and common sense, and have a rational link to the evidence, lack of evidence or inconsistencies in the evidence’. *Ngudjolo*, ICC-01/04-02/12-271-Corr, para. 109.<sup>1</sup>

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## \* Substantial grounds to believe standard: excerpt from recent Decision on Confirmation of Charges

The evidentiary standard applicable at this stage of proceedings is lower than that required at trial and is met if the Prosecution offers concrete and tangible proof demonstrating a clear line of reasoning underpinning the charges.

The Appeals Chamber has held that: *[i]n determining whether to confirm charges under article 61 of the Statute, the Pre-Trial Chamber may evaluate ambiguities, inconsistencies and contradictions in the evidence or doubts as to the credibility of witnesses. Any other interpretation would carry the risk of cases proceeding to trial although the evidence is so riddled with ambiguities, inconsistencies, contradictions or doubts as to credibility that it is insufficient to establish substantial grounds to believe the person committed the crimes charged.*

At the same time, the Pre-Trial Chamber, by the very design of the pre-trial proceedings, is not in a position to conclusively determine issues relating to the probative value of evidence, including with respect to the credibility of witnesses, whose declarations are, as a rule, brought before it only in written form. Indeed, as also indicated by the Appeals Chamber, ‘the Pre-Trial Chamber’s determinations will necessarily be presumptive’, and the Pre-Trial Chamber ‘should take great care in finding that a witness is or is not credible’, as the credibility of witnesses can only be properly addressed at trial.

(Prosecutor v Duterte, [Decision on Confirmation of Charges](#), ICC-01/21-01/25-417, 23 April 2026, paras. 27-28)

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## Collection of evidence, preservation of evidence for trial:

- Collection of evidence by the Office of the Prosecutor (OTP), Defence, Victims.
- Investigation and Collection by OTP: obligation to investigate incriminating and exonerating circumstances equally (Article 54(1)(a))  
 [Note: Submission of information via [OTP Link](#)]
- ‘Technical aspects’: Storing and management of evidence (Reg. 15(1) RoR)
- Article 56: Unique investigative opportunity/Preservation of evidence for trial
- Article 56: The *Ongwen* example (See it discussed in an article by Paul Bradfield: [‘Preserving Vulnerable Evidence at the International Criminal Court – the Article 56 Milestone in Ongwen’](#), ICL Review, 2019)

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## Article 56: Unique investigative opportunity (preservation of evidence for trial)

**Article 56(1)(a):** Where the Prosecutor considers an investigation **to present a unique opportunity to take testimony or a statement from a witness or to examine, collect or test evidence, which may not be available subsequently for the purposes of a trial**, the Prosecutor shall so inform the Pre-Trial Chamber.

**Article 56(1)(b):** Request to PTC to take measures to preserve evidence, PTC decides

**Article 56(2):** List of measures (non-exhaustive)

**Article 56(3):** PTC preserving evidence *proprio motu*

**Article 56(4):** Admissibility decided by TC, weight decided by TC

**Article 57(3)(b):** Chamber acting upon request by Defence to preserve evidence

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## Disclosure of evidence:

- OTP obligation (“evidence in control or possession of the OTP”)
- Ongoing obligation
- Incriminating evidence (INCRIM) – **OTP discretion** (NB: Rule 76 re disclosure related to Prosecution witnesses)
- Potentially exculpatory evidence (PEXO) + evidence material for preparation of the defence – **OTP obligation**

### Prosecution must disclose:

- Potentially exculpatory evidence (Article 67(2))
- Evidence material for the preparation of defence (Rule 77)
- Witness’ prior statements (Rule 76)

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## Article 67(2): Disclosure of PEXO

*The Prosecutor shall, **as soon as practicable**, disclose to the defence evidence in the Prosecutor’s possession or control which *he or she believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence*. **In case of doubt as to the application of this paragraph, the Court shall decide.***

### So:

Evidence is in possession or control of the OTP *and*

- (i) Shows or tends to show the innocence of the accused *or*
- (ii) mitigates the guilt of the accused *or*
- (iii) may affect the credibility of Prosecution evidence

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## Rule 77: Disclosure of items material for preparation of defence

The Prosecutor shall, subject to the restrictions on disclosure as provided for in the Statute and in rules 81 and 82, permit the defence to inspect any books, documents, photographs and other tangible objects in the possession or control of the Prosecutor, which are material to the preparation of the defence or are intended for use by the Prosecutor as evidence for the purposes of the confirmation hearing or at trial, as the case may be, or were obtained from or belonged to the person.

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## Disclosure: Restrictions, Limitations

- Evidence obtained by OTP pursuant to confidentiality assurances (Article 54(3)(e)) → *Lubanga* litigation
  - Protection of national security information (Article 72, Article 93(4))
  - Privileged communications and information (Rule 73)
  - Internal documents of a party, e.g. internal reports or memoranda (Rule 81(1))
  - Disclosure warranted but may prejudice further/ongoing Prosecution's investigations (Rule 81(2)) - Chamber decides
- Use of **redactions** (standard, non-standard; see Chambers Practice Manual)

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## Presentation of evidence at trial

- Testimonial vs. Non-testimonial
- 'Bar Table Motions' (Documentary Evidence)
- Decision on the Conduct of Proceedings – deadlines, sequence, modalities set by the Trial Chamber
- List of Evidence by each Party/Participant – important!
- List of Witnesses + other information



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## Witness evidence in ICC trials:

- Categories of witnesses: FACT WITNESSES vs. EXPERT (OPINION) WITNESSES
- Live Testimony vs. Introducing Prior Recorded Testimony (Rule 68)
- Modalities of live testimony: in person, video-link
- Oath
- Adversarial in nature at trial: Examination - cross-examination; Judges can intervene any time
- Trial Chamber may call witnesses (See: *Yekatom/Ngaissona*)
- Protective measures (protect witness's safety, security, dignity) must be authorised by the Chamber
- Special measures (help witness testify unimpeded) – must be authorised by the Chamber
- Witness preparation?

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## Rule 68: Prior recorded testimony

Witness is not present before the Chamber

**Rule 68(2)(a):** Prosecution and Defence both examined the witness

**Rule 68(2)(b):** Evidence does not relate to acts and conduct of the accused  
→ TC will consider various factors before it decides (relates to issues materially in dispute/background, cumulative or corroborative in nature, sufficient indicia of reliability) + Declaration by the Witness

**Rule 68(2)(c):** Witness died/presumed dead/otherwise unavailable → TC will consider different factors (is it prejudicial?)

**Rule 68(2)(d):** Witness was subject to interference (See provision for details)

**Rule 68(3):** Witness present, can be examined + witness does not object

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## Article 69: Central provision on evidence

1. Before testifying, each witness shall, in accordance with the Rules of Procedure and Evidence, give an undertaking as to the truthfulness of the evidence to be given by that witness.
2. **The testimony of a witness at trial shall be given in person, except to the extent provided by the measures set forth in article 68 or in the Rules of Procedure and Evidence.** The Court may also permit the giving of viva voce (oral) or recorded testimony of a witness by **means of video or audio technology**, as well as the introduction of documents or written transcripts, subject to this Statute and in accordance with the Rules of Procedure and Evidence. These measures shall not be prejudicial to or inconsistent with the rights of the accused.
3. The parties may submit evidence relevant to the case, in accordance with article 64. The Court shall have the authority to request the submission of all evidence that it considers necessary for the determination of the truth.
4. **The Court may rule on the relevance or admissibility of any evidence, taking into account, inter alia, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence.**
5. The Court shall respect and observe privileges on confidentiality as provided for in the Rules of Procedure and Evidence.
6. The Court shall not require proof of facts of common knowledge but may take judicial notice of them.
7. **Evidence obtained by means of a violation of this Statute or internationally recognized human rights shall not be admissible if:**
  - (a) **The violation casts substantial doubt on the reliability of the evidence; or**
  - (b) **The admission of the evidence would be antithetical to and would seriously damage the integrity of the proceedings.**
8. **When deciding on the relevance or admissibility of evidence collected by a State, the Court shall not rule on the application of the State's national law.**

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- Rule 64(1): Objections to evidence, issues re relevance or admissibility must be raised when evidence is submitted (i.e. presented to the Chamber)
- **Article 74(2): The Court can base its decision only on evidence submitted and discussed before it at the trial**

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**ADMISSIBILITY:** Should the Court consider the evidence?

**WEIGHT OF EVIDENCE:** How persuasive is the evidence?

**Note:**

Evidence can be admissible but still carry little weight. However, evidence that is deemed inadmissible cannot be considered at all, regardless of its potential weight.

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## Admissibility of Evidence:

Article 69(4): The Court may rule on the relevance or admissibility of any evidence, taking into account, *inter alia*, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence.

- Relevance
- Probative value/Weight (degree of persuasiveness)
- Potential prejudice to the accused?

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## Submission vs. Admission System

### **SUBMISSION SYSTEM:**

- Party/Participant 'submits' evidence
- Chamber recognizes the evidence as formally submitted (does not rule on admissibility, except in specific circumstances)
- Admissibility determination in the Judgment (exception: obligatory exclusion criteria, ruled upon at point of submission)

### **ADMISSION SYSTEM:**

- Party/Participant 'submits' evidence
- Chamber rules and admits (or not) evidence immediately

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## Mandatory exclusionary rules: Article 69(7)

Evidence obtained **by means of a violation of this Statute or internationally recognized human rights** shall not be admissible if:

- (a) The violation casts substantial doubt on the reliability of the evidence; *or*
- (b) The admission of the evidence would be antithetical to and would seriously damage the integrity of the proceedings.

Examples:

- *Al-Hassan case*: Public redacted Version of ‘Decision on requests related to the submission into evidence of Mr Al Hassan’s statements’, ICC-01/12-01/18-1475-Red, 20 May 2021
- *Abd-Al-Rahman case*: Decision on admissibility of a video and telephone calls, ICC-02/05-01/20-876, 17 February 2023

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*“The Chamber recalls that in the context of a determination on the admissibility under Article 69(4) of the Statute, if a challenge is made to the admissibility of evidence, the burden rests with the party seeking to introduce the evidence.”*

*“In relation to challenges under Article 69(7) of the Statute, the Chamber observes consistent jurisprudence of this Court that the party bringing the motion under Article 69(7) of the Statute bears the burden to show that the criteria for the exclusion of evidence has been met.”*

*(Prosecutor v Al Hassan, Public redacted Version of ‘Decision on requests related to the submission into evidence of Mr Al Hassan’s statements’, ICC-01/12-01/18-1475-Red, 20 May 2021, paras. 36-37)*

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## Mandatory exclusionary rules: Rule 71

(Evidence of other sexual conduct)

In the light of the definition and nature of the crimes within the jurisdiction of the Court, and subject to article 69, paragraph 4, a Chamber shall not admit evidence of the prior or subsequent sexual conduct of a victim or witness.

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## Evaluation of Evidence

- Limited guidance on evaluation of evidence in Statute/Rules
- Free evaluation of evidence
- Holistic approach – TC has access to all evidence submitted and decides on the probative value of each item
- No prohibition of relying on hearsay, circumstantial evidence
- Rule 63(4): The Chamber shall not impose a legal requirement that corroboration is required in order to prove any crime
- Rule 70: Principles of evidence in cases of sexual violence (no inference of consent)

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## Rule 70

In cases of sexual violence, the Court shall be guided by and, where appropriate, apply the following principles:

- (a) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent;
- (b) consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent;
- (c) consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence;
- (d) credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct of a victim or witness.

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## Evaluation of Evidence

- **CREDIBILITY:** How trustworthy is the source?
- **RELIABILITY:** Quality of the information provided
- Scrutiny of individual item of evidence or individual witness
- Weighing the evidence as a whole
- Role of culture in the international courtroom?
- By way of example: credibility assessments in *Abd-Al-Rahman* Trial Judgment Annex B - The Chamber's assessment of witnesses' evidence, [ICC-02/05-01/20-1240-AnxB-Red](#), 6 October 2025

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## Evaluation of witness evidence

### Groups of factors to consider:

#### 1) Witness' objectivity:

- Does the witness have a reason to be dishonest?
- Is there an animus against the accused, potential bias in favour/against?
- Is there some sort of incentive not to be truthful: financial gain or promise of non-prosecution in exchange for their testimony
- Is there continued loyalty or fear of retaliation from former allies?

#### 2) Witness' competence:

- Ability to observe, remember, communicate

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#### 3) Testimonial quality:

Is evidence internally consistent + supported by other evidence?

→ **internal factors:** knowledge (direct observation or not?) + coherence of testimony

→ **external factors:** consistency with prior statements and other evidence

- the precision and level of detail in the testimony
- corroboration with other evidence
- consistency with the witness's earlier statements
- clarity of the witness's account and its perceived plausibility

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## Academic Study: Evaluation of Insider Witnesses

- Researchers conducted an analysis of insider witness assessments in Judgments of the ICTY, ICTR and ICC – interesting findings
- See G Chlevickaite et al: '[Suspicious Minds? Empirical analysis of insider witnesses](#)', European Journal of Criminology, 2021

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## Evaluation of documentary evidence:

- Formal components (signature, original/copy, stamped, certified in any way, for digital evidence – has value, metadata?)
- Is the source known?
- Timing (contemporaneous?)
- Chain of custody?
- Was the document authenticated, commented on by any witness?
- Content: precision, contradictions, corroborated by other evidence?

➤ Requires Expert Opinion?

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## Digital evidence in ICC proceedings

- Scale and type evolving compared to early cases
- Videos, photographs, satellite imagery, intercepted communications, social media posts, etc
- Digital v. digitised evidence
- User generated evidence, Open source evidence (related but different)
- Examples:
  - **Recorded conversations (intercepts) in Ongwen:** TC in the judgment discussed the audio recordings submitted by the Prosecution. It considered that it did not itself have the requisite ability to identify voices on the audio recordings and resorted to witness testimony for such identifications.
  - **Facebook evidence in Yekatom/Ngaissona:** The TC in the judgment was satisfied that the Facebook Material obtained through the respective RFAs was overall authentic, rejected the argument that all Facebook Material should be considered unreliable. Case-by-case approach by the TC. However, the TC noted that 'in the absence of a statement or testimony from an individual who participated in a Facebook exchange or authored a post, or otherwise has information about the contents, the related Facebook Material has little probative value(Trial Judgment, para. 154)'
  - **Social media evidence in Al Werfalli :** Facebook and Youtube videos relied upon in the AW.
  - **Videos relied upon in Al Mahdi:** Admission of guilt, key evidence consisted of videos and photographs.

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## Evidence: Evaluation and reasoning

- Evaluation of evidence during deliberations
- Reasoned assessment – Judgment
- ICC Judgment Structure and Drafting Guidelines: [Chambers Practice Manual - Eighth edition](#)

See how judges evaluate evidence and reason our findings in these ICC Judgments (Trial Chambers):

*Prosecutor v Abd-Al-Rahman (6 October 2025):* [Trial Judgment](#)  
*Prosecutor v Yekatom and Ngaissona (24 July 2025):* [Trial Judgment](#)  
*Prosecutor v. Al-Hassan (26 June 2024):* [Trial Judgment](#)  
*Prosecutor v. Dominic Ongwen (4 February 2021):* [Trial Judgment](#)  
*Prosecutor v. Bosco Ntaganda (8 July 2019):* [Trial Judgment](#)

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## Looking ahead: Lessons, Challenges, Opportunities

- Importance of diversification of sources in international criminal trials
- Growing volume of evidence collected, presented
- Use of AI for analysis?
- Digital evidence, open-source evidence: challenges and opportunities
- Danger of deepfakes, careful scrutiny of authenticity of digital evidence
  - [Evaluating digital open source imagery: A guide for judges and fact-finders \(Academic/CSO Initiative\), 2024](#)
  - [Leiden Guidelines on the Use of Digitally Derived Evidence](#)
  - [TRUE Project UK](#), Swansea University (See databases)
  - McDermott/Hausknecht/Liefgreen: [ICC Judges' perspectives on user-generated evidence and judging in the art of artificial intelligence](#), 2026
- Technical advancements - need for continuous education of lawyers, judges
- Mechanisms for collection, preservation, analysis of evidence (i.e. Mechanisms for Syria, Myanmar, documentation by CSOs)

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