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Le Bureau du Procureur  
The Office of the Prosecutor

# Guidelines for Agreements Regarding Admission of Guilt

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## I. Introduction

1. Article 65 of the Rome Statute (“Statute”) provides that an accused person may accept criminal responsibility for the crimes with which he or she is charged. Article 65 uses the term “admission of guilt” (rather than “guilty plea”) and prescribes an abbreviated trial procedure by which the Trial Chamber may accept, or reject, the admission of guilt. It has been observed that article 65 represents a compromise between traditional common law and civil law approaches.

2. To date, one person has made an admission of guilt at the International Criminal Court (“ICC” or “Court”) under article 65. More generally, however, guilty pleas and plea agreements have become an established feature of international criminal justice.<sup>1</sup> Since the first guilty plea at an *ad hoc* tribunal in 1996,<sup>2</sup> 29 other accused persons at the International Criminal Tribunal for the former Yugoslavia (“ICTY”) and the International Criminal Tribunal for Rwanda (“ICTR”) have pleaded guilty,<sup>3</sup> in all but two instances<sup>4</sup> pursuant to agreements with the Prosecutors of those tribunals. Guilty plea provisions also appear, but have not been used, in the Rules of Procedure and Evidence of the Special Court for Sierra Leone (“SCSL”)<sup>5</sup> and the Rules of Procedure and Evidence of the Special Tribunal for Lebanon (“STL”).<sup>6</sup>

3. In light of this history and the provisions of article 65 itself, admissions of guilt—and agreements regarding the same—are a tool available to the ICC Prosecutor in combating impunity through the prosecution of individuals responsible for serious international crimes within the jurisdiction of the ICC. The purpose of these guidelines is to set forth the ICC Prosecutor’s policy with respect to agreements regarding admission of guilt, in particular, whether and

<sup>1</sup> See rule 62*bis*, ICTY Rules of Procedure and Evidence; rule 62(B), ICTR Rules of Procedure and Evidence; rule 62, SCSL Rules of Procedure and Evidence; rules 99 and 100, STL Rules of Procedure and Evidence.

<sup>2</sup> [Erdemović Sentencing Judgment \(SJ\)](#), 29 November 1996, para. 3 (referring to the guilty plea entered by Dražen Erdemović on 31 May 1996).

<sup>3</sup> ICTY: [Babić Plea Agreement](#), 22 January 2004; [Banović Plea Agreement](#), 2 June 2003; [Bralo Plea Agreement](#), 18 July 2005; [Češić Plea Agreement](#), 8 October 2003; [Deronjić Plea Agreement](#), 29 September 2003; [Sikirica et al. SJ](#), 13 November 2001, paras. 15, 26-31 (concerning Damir Došen), paras. 12-13, 32-37 (concerning Dragan Kolundžija), paras. 15, 18-25 (concerning Duško Sikirica); [Jokić SJ](#), 18 March 2004, paras. 5, 7-14; [Jelisić Trial Judgment \(TJ\)](#), 14 December 1999, para. 11; [Mrđa SJ](#), 31 March 2004, para. 4; [Nikolić SJ](#), 18 December 2003, para. 35; [Nikolić Joint Motion for Consideration of Amended Plea Agreement between Momir Nikolić and the Office of the Prosecutor](#), 7 May 2003, Annex A; [Obrenović Plea Agreement](#), 20 May 2003; [Plavšić Plea Agreement](#), 30 September 2002; [Rajić Plea Agreement](#), 25 October 2005; [Simić SJ](#), 17 October 2002, paras. 9-16; [Todorović SJ](#), 31 July 2001, paras. 5, 7-17; [Zelenović Joint Motion for Consideration of Plea Agreement between Dragan Zelenović and the Office of the Prosecutor Pursuant to Rule 62 Ter](#), 14 December 2006, Annex A; ICTR: [Bagaragaza SJ](#), 17 November 2009, paras. 8, 10-11, 14-16; [Bisengimana TJ](#), 13 April 2006, paras. 12, 19-25; [Kambanda TJ](#), 4 September 1998, paras. 3-7; [Nzabirinda SJ](#), 23 February 2007, paras. 7-14; [Rugambarara SJ](#), 16 November 2007, paras. 4-9; [Ruggiu TJ](#), 11 April 2000, paras. 7, 10; [Rutaganira TJ](#), 14 March 2005, paras. 27-30; [Serugendo TJ](#), 12 June 2006, paras. 2-11; [Serushago SJ](#), 5 February 1999, paras. 4-9; [GAA TJ](#), 4 December 2007, paras. 2-4.

<sup>4</sup> [Erdemović SJ](#), 29 November 1996, paras. 3, 10-20; [Serushago SJ](#), 5 February 1999, paras. 4-9.

<sup>5</sup> Rule 62, SCSL Rules of Procedure and Evidence.

<sup>6</sup> Rules 99 and 100, STL Rules of Procedure and Evidence.

when it may be appropriate for the Office of the Prosecutor to enter into such agreements, and if so under what circumstances and subject to which terms.

## **II. Admissions of Guilt under the Rome Statute**

4. The Statute explicitly contemplates the possibility that an accused person may choose to admit guilt. Articles 64(8)(a) and 65 provide that if an accused elects to make an admission of guilt at the start of trial, the Trial Chamber must take a number of steps to protect the rights of the accused as well as the integrity of the judicial process. The Trial Chamber must ensure that the accused understands the nature and consequences of the admission of guilt, has had sufficient opportunity to consult with Defence counsel, and is offering the admission of guilt voluntarily. Further, the Trial Chamber must satisfy itself that the admission is supported by facts contained in the charges brought by the Prosecutor and admitted by the accused, any supplemental materials offered by the Prosecutor and accepted by the accused, and any other evidence presented by the Prosecutor or the accused.

5. When an accused makes an admission of guilt, article 65 provides the Trial Chamber with three options:

a) If the Trial Chamber is satisfied that the accused understands the nature and consequences of the admission of guilt, that the admission is voluntarily made after sufficient consultation with Defence counsel, and that the admission is supported by the facts of the case, the Trial Chamber must consider all the essential facts required to prove the crime as having been established and may convict the accused of that crime. In that event, the Trial Chamber should proceed to the sentencing phase and the assessment of reparations under articles 75 and 76.

b) If the Trial Chamber is not satisfied that the above requirements—set out in article 65(1)—are met, it must consider the admission of guilt as having not been made and order that the trial proceed, either before the original Trial Chamber or another Trial Chamber.

c) In the event the Trial Chamber is of the opinion that a more complete presentation of the facts of the case is in the interests of justice, in particular the interests of the victims, the Trial Chamber has two options: it may request the Prosecutor to present additional evidence, including the testimony of witnesses, or order that the case proceed to trial, either before the original or another Trial Chamber, in which case it shall consider the admission of guilt as not having been made.

### III. Agreements Regarding Admission of Guilt

6. An accused person may choose to admit his or her guilt before the Chamber without any prior discussion or agreement with the Prosecutor. This was the case of the first guilty plea at the ICTY, for example,<sup>7</sup> and it is also possible under article 65. In such a case, the Prosecutor's role is to ensure that the requirements of the Statute are fulfilled, and that all relevant facts, evidence and arguments are provided to the Trial Chamber so that it may properly make a determination of guilt and impose an appropriate sentence.

7. However, the Rome Statute also contemplates another possibility—the admission of guilt pursuant to an agreement between the parties. Article 65(5) implicitly authorises such agreements, noting that “[a]ny discussions between the Prosecutor and the Defence regarding modification of the charges, the admission of guilt or the penalty to be imposed shall not be binding on the Court.”

8. Such agreements, which have preceded most of the guilty pleas at the *ad hoc* tribunals, have a number of significant advantages. For example, plea agreements provide the accused and the Prosecution with greater certainty regarding the other party's positions as to the facts, the law, and sentencing. Written agreements also ensure transparency, allowing the Judges (and in appropriate cases the public) to see what has been agreed between the Prosecution and the Defence.

9. Although articles 64(8)(a) and 65 clearly afford an accused the opportunity to make an admission of guilt at the commencement of the trial, the Statute does not address the timing of agreements regarding the admission of guilt. In principle, such agreements could be reached at any time prior to or even during trial.

10. As suggested by article 65(5), an agreement regarding admission of guilt may touch on various topics. The first and most important is the admission of guilt itself. In this regard, the parties may reach an agreement regarding all of the charges in a case, or only with respect to some charges and not to others. An agreement may also include an admission of individual criminal responsibility pursuant to one or more modes of liability under the Statute, but not pursuant to other modes of liability.

11. Agreements regarding admission of guilt will often, though not always, address sentencing.<sup>8</sup> The parties may agree to jointly recommend a particular sentence of imprisonment or a sentence within a particular range, or to not

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<sup>7</sup> [Erdemović SJ](#), 29 November 1996, para. 3.

<sup>8</sup> E.g. [Babić Plea Agreement](#), 22 January 2004, paras. 4(b), 11-15; [Banović Plea Agreement](#), 2 June 2003, paras. 8-10; [Češić Plea Agreement](#), 8 October 2003, paras. 13-17; [Deronjić Plea Agreement](#), 29 September 2003, para. 11(a); [Nikolić Joint Motion for Consideration of Amended Plea Agreement between Momir Nikolić and the Office of the Prosecutor](#), 7 May 2003, Annex A, para. 4(a); [Obrenović Plea Agreement](#), 20 May 2003, para. 5(a).

oppose a certain sentence or a sentence within a particular range. Agreements may also address the penalties envisaged in article 77(2), explain the subsequent reparations proceedings pursuant to article 75, and list the facts and evidence that the accused accepts.

12. Agreements regarding admission of guilt may include a waiver of appeal.<sup>9</sup> In appropriate cases, such a waiver furthers the interests of finality, certainty, and efficiency. However, a waiver of appeal should generally be subject to an exception preserving the parties' ability to appeal sentences outside a range specified in the agreement, and shall preserve the parties' rights to appeal any error that manifestly undermines the fairness of the proceedings.

13. All agreements regarding admission of guilt shall explicitly acknowledge that the Judges are not bound by the terms of the agreement, nor by any sentencing recommendations or agreements between the parties. Further, every agreement shall acknowledge that it is binding only on the accused and the Office of the Prosecutor and does not bind any other Organ of the Court or national or international jurisdiction unless that Organ or jurisdiction is a party to the agreement.

14. Every agreement regarding admission of guilt shall include a recitation of the elements of the charged crime or crimes which the Prosecution would have to establish at trial, the mode or modes of liability alleged by the Prosecution and accepted by the accused, the maximum possible sentence upon conviction, and a list of rights waived by the accused, as well as a declaration by the accused that he or she enters into the agreement voluntarily and after sufficient consultation with his or her counsel. The agreement shall confirm that the accused has been represented by counsel at all stages of his or her discussions with the Prosecution, unless the accused has voluntarily waived his or her right to counsel on the record.

15. Agreements regarding admission of guilt are not limited to the topics referenced above. For example, the practice of the *ad hoc* tribunals suggests that the accused's cooperation with the Prosecutor's investigations and prosecutions will be a common topic of agreement,<sup>10</sup> and the Statute leaves open the possibility that other topics might also be included.

16. Finally, all terms of an agreement regarding admission of guilt shall be in writing. All agreements shall be signed by the Prosecutor, the accused, and the accused's counsel before becoming final.

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<sup>9</sup> E.g. [Babić Plea Agreement](#), 22 January 2004, para. 16(h); [Nikolić Joint Motion for Consideration of Amended Plea Agreement between Momir Nikolić and the Office of the Prosecutor](#), 7 May 2003, Annex A, paras. 14-15; [Obrenović Plea Agreement](#), 20 May 2003, paras. 14-15.

<sup>10</sup> E.g. [Zelenović Joint Motion for Consideration of Plea Agreement between Dragan Zelenović and the Office of the Prosecutor Pursuant to Rule 62 Ter](#), 14 December 2006, Annex A, paras. 9-11; [Rajić Plea Agreement](#), 25 October 2005, para. 17; [Obrenović Plea Agreement](#), 20 May 2003, paras. 9-11.

#### IV. Factors for Consideration

17. Because agreements regarding admission of guilt touch upon core issues such as the charges, the accused's guilt, and the sentencing recommendations of the parties, it is critical that the Prosecutor carefully weigh all relevant factors before deciding to enter into such an agreement and also in assessing the particular terms to include. Every case must be approached individually and assessed in light of all relevant circumstances. However, in most cases, the Prosecutor should consider at least the factors discussed below.

18. *Consistency with the Rome Statute.* Fundamentally, the Prosecutor shall enter into an agreement regarding admission of guilt only if he or she determines after due deliberation, and consideration of all relevant factors and circumstances, that the agreement is consistent with the purpose and requirements of the Rome Statute and the goals of the Office of the Prosecutor.

19. *Acceptance of responsibility.* An accused person's acceptance of responsibility can provide some measure of closure and recognition for the victims. An admission of guilt also offers finality and certainty to the proceedings, which can benefit victims, the public, the parties, and the Court. Moreover, when an accused person accepts responsibility, and especially when he or she admits in detail the facts upon which his or her guilt is based, it is more difficult for others, including future generations, to contest those facts. Consequently, the Prosecutor shall not enter into any agreement in which the accused disputes the essential facts establishing his or her guilt, namely, the facts underlying the elements of the charged crimes and the applicable modes of liability. The Prosecutor should insist, as a condition of every agreement regarding admission of guilt, that the accused person provide the Prosecutor with a full and truthful account of his or her own conduct relevant to the charged crimes.

20. *Charges.* Although agreements regarding the admission of guilt may be reached at any time, under articles 64(8)(a) and 65, an admission of guilt itself can be made no earlier than the beginning of trial. At that point, the Pre-Trial Chamber will have confirmed the charges, having already found, pursuant to article 61, substantial grounds to believe that the accused person committed the charged crimes. Consequently, the Prosecutor should ordinarily insist as part of any agreement that the accused admit guilt with respect to all confirmed charges. However, there may be instances in which amendment or withdrawal of charges in accordance with article 61(9) is appropriate, such as for example where discussions between the Prosecution and Defence elicit facts that cause the Prosecution to revise its view of the accused's criminal responsibility or its ability to prove particular charges at trial.<sup>11</sup> The Prosecutor should exercise

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<sup>11</sup> The Prosecution sought to amend or withdraw charges after a plea agreement was reached in several cases before the ICTY and ICTR, e.g. ICTY: [Plavšić SJ](#), 27 February 2003, para. 5; [Babić Plea Agreement](#), 22 January 2004, para. 4(a); [Sikirica et al. SJ](#), 13 November 2001, paras. 14-15; [Jelisić TJ](#),

particular caution before agreeing to seek the withdrawal or amendment of charges which have been traditionally under-prosecuted, such as crimes against or affecting children, sexual and gender-based crimes, attacks against cultural, religious, historical and other protected objects, as well as attacks against humanitarian and peacekeeping personnel.

21. *Cooperation.* An admission of guilt can be an opportunity for an accused person to provide critical information relevant to other investigations or prosecutions. For example, a number of accused who pled guilty at the *ad hoc* tribunals agreed, as part of their plea agreements, to testify on behalf of the Prosecution in other trials.<sup>12</sup> Wherever appropriate, the Prosecutor should require, as a condition of any agreement, that the accused agree to assist in other investigations and prosecutions by providing all relevant and requested information to investigators and also by agreeing to testify truthfully, fully and accurately at any relevant trial. However, there may be instances where it is appropriate and in the interests of justice to proceed with an agreement regarding admission of guilt that does not include the accused's cooperation in other cases. It should be understood, in any event, that only those accused who cooperate with the Prosecution to the full extent they are able will receive the maximum benefit (in terms of recommendations by the Prosecutor and, most likely, in terms of consideration from the Trial Chamber) at the time of sentencing.

22. *Sentence.* The Prosecutor may agree to recommend, or not to oppose, a specific sentence or a sentence within a particular range. The Prosecutor shall bear in mind the factors identified in article 78 of the Statute and rule 145 of the Rules of Procedure and Evidence, including aggravating and mitigating circumstances. In particular, the Prosecutor shall ensure that any sentencing recommendation by the Prosecution properly reflects the gravity of the crime and the accused's role therein. At the same time, rule 145(2)(a)(ii) expressly recognises an accused's cooperation with the Court as a mitigating factor, and acceptance of responsibility is generally viewed as a factor warranting some reduction in sentence. The Prosecutor shall balance all relevant circumstances to recommend a sentence—or a sentencing range—that reflects the overall culpability of the accused.

23. *Factual basis.* Admissions of guilt will ordinarily shorten trial proceedings. While this has many advantages, it may also result in less fully developed records in some cases. For this reason, the provisions in article 65 requiring a sufficient factual and evidentiary basis to establish the truth of the charges against the accused are critical. The Prosecutor should seek to ensure

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14 December 1999, para. 8; ICTR: [Serushago SJ](#), 5 February 1999, para. 4; [Serugendo TJ](#), 12 June 2006, para. 5.

<sup>12</sup> E.g., [Babić Plea Agreement](#), 22 January 2004, para. 8; [Češić Plea Agreement](#), 8 October 2003, para. 10; [Deronjić Plea Agreement](#), 29 September 2003, para. 12; [Obrenović Plea Agreement](#), 20 May 2003, para. 9; [Rajić Plea Agreement](#), 25 October 2005, para. 17; [Zelenović Joint Motion for Consideration of Plea Agreement between Dragan Zelenović and the Office of the Prosecutor Pursuant to Rule 62 Ter](#), 14 December 2006, Annex A, para. 9.



that all agreements contain a detailed and thorough statement of the facts underlying the admission of guilt. Such facts should address all the essential facts required for a conviction. In no circumstances should the Prosecutor agree to withhold from the Trial Chamber any fact material to the determination of the accused's criminal responsibility or of an appropriate sentence.

24. The Prosecutor should also consider further developing the factual record through the mechanisms provided in article 65(1)(c)(ii) and (iii) of the Statute. Those provisions allow the Prosecutor to present to the Trial Chamber "materials [...] which supplement the charges and which the accused accepts," and "any other evidence, such as the testimony of witnesses." For example, the Prosecutor may present any type of admissible evidence, such as documentary evidence, expert evidence, summary evidence, prior recorded testimony and even *viva voce* witnesses in appropriate cases.

25. *Impact on victims and witnesses.* An admission of guilt will ordinarily eliminate or reduce the need for victims and witnesses to testify at trial, which can be a traumatic experience. Witnesses who might require intrusive security measures or even relocation as a result of their testimony can also be spared this significant disruption to their lives. In most cases, therefore, the Prosecutor should consider developing the record of the case through mechanisms such as an agreed statement of facts and one or more of the article 65(1)(c)(ii) and (iii) mechanisms discussed above without the need for *viva voce* testimony from vulnerable witnesses.

26. In reaching an admission of guilt agreement, the Prosecutor shall take into account the interests of the victims,<sup>13</sup> as well as their expressed views and concerns.<sup>14</sup> Further, the Prosecutor should consult, to the extent feasible, with their legal representatives.

27. *Efficiency.* Admissions of guilt can allow significant resources (such as time, money, personnel or court space) that would have been used for trial and appeal to be devoted to other important investigations and prosecutions and thus advance the course of international justice. The freeing of resources for other cases can lead to greater accountability, both through a greater number of prosecutions and also prosecutions against those most responsible for crimes. A greater number of investigations and prosecutions can also further develop the historical record. The Prosecutor may therefore consider the efficient use of resources as one factor, although never the dominant factor, in favour of entering into an agreement regarding admission of guilt, particularly where the agreement will eliminate the need for a lengthy trial. The timeliness of an agreement may also be considered in formulating a sentencing recommendation, with earlier agreements ordinarily warranting greater consideration.

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<sup>13</sup> Articles 54(1)(b) and 68(1) of the Rome Statute.

<sup>14</sup> Article 68(3) of the Rome Statute.

