

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04-01/05

Date: 21 January 2025

PRE-TRIAL CHAMBER III

Before: Judge Althea Violet Alexis-Windsor, Presiding Judge
Judge Iulia Motoc
Judge Haykel Ben Mahfoudh

SITUATION IN IN THE REPUBLIC OF UGANDA

IN THE CASE OF THE PROSECUTOR v. JOSEPH KONY

Public Document

**Redacted version of the “Observations of the Victims and Witnesses Unit on the
Further Unsealing of Documents of the Record”
(ICC-02/04-01/05-254-US-Exp) dated 24-08-2007**

Source: Registry

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

☒ The Office of the Prosecutor

☒ Counsel for the Defence
D35

☒ Legal Representatives of the Victims
V49

☐ Legal Representatives of the
Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
(Participation/Reparation)

☒ The Office of Public Counsel for
Victims

☐ The Office of Public Counsel for the
Defence

☐ States' Representatives

☐ Amicus Curiae

REGISTRY

Registrar
M. Zavala Giler, Osvaldo

☐ Counsel Support Section

☒ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

In response to the Order to the Prosecutor and the Victims and Witnesses Unit to Submit Observations on the Unsealing of Certain Documents in the Record Both of the Situation and the Case of the Single Judge dated 12 July 2007¹, the Victims and Witnesses Unit respectfully submits its observations.

Background

1. In the 12 July Order, the Single Judge ordered the Prosecutor to submit “*a proposal detailing the treatment of any document filed in the record of the situation and of the case until the present day which have not been the subject of a previous decision by the Chamber or the Single Judge.*”² On 2 August the Prosecutor submitted its observations on the further unsealing of documents.³
2. In the 12 July Order, the Single Judge ordered the Victims and Witnesses Unit (VWU) “*in respect of the proposals made by the Prosecutor, to submit its observations on the treatment of the corresponding documents in the record of both the situation and of the case, and on the possibility of unsealing said documents [...], including the need, if any, to maintain the redactions proposed by the Prosecutor prior to unsealing, and the scope of those redactions or the need for other redactions.*”⁴

Legal Basis and Victims and Witnesses Unit mandate related to redaction

3. Redactions made by Chambers may be necessary prior to the unsealing and publication of certain documents.⁵ Chambers have taken great care to ensure that all documents are given “*the correct and appropriate treatment, with specific regard to the safety and security of victims and witnesses.*”⁶
4. Article 43(6) of the Rome Statute stipulates that the VWU shall provide *inter alia* protective measures and security arrangements for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses. According to Article 68(4) of the Rome Statute the VWU may provide advice to the Prosecutor and the Court on these issues.

¹ *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Raska Lukwiya, Dominic Ongwen*, Order to the Prosecutor and the Victims and Witnesses Unit to Submit Observations on the Unsealing of Certain Documents in the Record Both of the Situation and of the Case, 12 July 2007, ICC-02/04-01/05-249, hereinafter the “12 July 2007 Order”.

² “12 July Order”.

³ *Situation in Uganda*, Prosecutor’s Submission of Observations on the Further Unsealing of Documents of the Record, 2 August 2007, ICC-02/04-99, hereinafter “Prosecutor’s Submission”; *Situation in Uganda*, Annexes to Prosecution’s Submission of Observations on the Further Unsealing of Documents of the Record, ICC-02/04-99-US-Exp-AnxA-C, hereinafter “Prosecutor’s Submission Annexes A-C”.

⁴ “12 July Order”.

⁵ See *Situation en Ouganda, Affaire 01/05, Le Procureur c/ Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen*, Ordonnance sollicitant de la division d’aide aux victimes et aux témoins des observations relatives à la levée des scellées concernant certains documents dans les dossiers de la situation et de l’affaire, ICC-02/04-02/05-107-US-Exp, 29 August 2006, p. 4-5; *Situation in Uganda, Case 01/05*, Decision on the Prosecutor’s application for unsealing of the warrants of arrest, 13 October 2005, ICC-02/04-01/05-52, p. 6.

⁶ *Situation in Uganda*, Order to the Prosecutor to provide information on further unsealing of documents of the record, 18 April 2006, ICC-02/04-01/05-82, p. 2; see also *Situation in Uganda*, Decision to unseal further documents of the record, 9 March 2006, ICC-02/04-01/05-78, p.3.

5. Pursuant to Rule 87(3)(a) of the Rules of Procedure and Evidence a Chamber may order, as a protective measure, that the name of the victim, witness or other person at risk on account of testimony given by a witness or any information, which could lead to his or her identification, be expunged from the public records of the Chamber. Furthermore, Regulation 92 of the Regulations of the Registry requires that all procedures and measures for the protection and security to ensure the safety of witnesses, victims, who appear before the Court and persons at risk, shall be confidential.
6. Additionally, international good practices require a high level of confidentiality in relation to the identity of victims and witnesses as well as information about procedural and operational protection and support measures as applied by the VWU and other parts of the Court.
7. When reviewing the documents and the redactions as submitted by the Prosecutor, the VWU keeps its specific mandate in mind. Consequently, the VWU focuses in its observations on the protection of the identity of victims and witnesses and any information which could first lead to his or her identification and second reveal procedural and operational measures related to the work of the VWU. Assessment of other possible reasons for redaction falls outside the mandate of VWU.
8. It appears that the level of classification of some decisions has been confirmed by the Appeal Chamber. It would be appropriate to consult the Appeal Chamber on the treatment of the corresponding relevant documents and on the possibility of unsealing the concerned documents.

Observations

9. In light of the foregoing the VWU submits the following observations on the treatment of the documents as identified by the Prosecution in the record of the case and on the possibility of unsealing said documents.⁷ For ease of reference the observations are listed below in the order in which they appear in the chart submitted by the Prosecution on 2 August 2007.⁸

- a. ICC-02/04-01/05-46-US-Exp, Prosecutor's Submission of ICC Security and Safety Report Into the [REDACTED] as Relied Upon at Hearing Held on 6 October 2005

The Office of the Prosecutor (OTP) proposes to unseal the title as follows "Prosecutor's Submission of ICC Security and Safety Report" and to keep the remainder of the title and the document under sealed.

The VWU agrees with the treatment of the document as proposed by the Prosecution. The fact of filing and the title of the filing up to "... safety report" can be unsealed, whereas the remainder of the title and the document should be kept under seal. The document [REDACTED]

⁷ "Prosecutor's Submission" and "Prosecutor's Submission Annexes A-C".

⁸ "Prosecutor's Submission Annexes A-C".

- b. ICC-02/04-01/05-81-US-Exp+Anx1-3, Report from the Registrar to Pre-Trial Chamber II regarding the progress conducted by the Republic of Uganda to execute the warrants of arrest

The OTP proposes to unseal Annex 1 in a redacted form and does not object to the unsealing of the report from the Registrar and the Annexes 2 and 3.

The VWU agrees with the treatment as proposed by OTP. The report itself and Annexes 2 and 3 can be unsealed. Annex 1 should only be unsealed in a redacted form. The extracts for which redaction is requested contain information on the identity of potential witnesses. Any indication that could lead to the conclusion that family members were involved, and which ones of them were involved should be avoided. The VWU agrees with the redactions in Annex 1 as proposed by OTP.

- c. ICC-02/04-01/05-83-US-Exp-AnxB, Annex B to Prosecutor's Submission of Information on Further Unsealing of Documents of the Record

The OTP proposes the continued sealing of documents which constitutes Annex B.

The VWU agrees with the continued sealing of the documents which constitute Annex B. The documents contain information about the fact [REDACTED]
The documents also include information [REDACTED]
Disclosure of such information would jeopardize [REDACTED]
The same applies to the [REDACTED] information on people and organisations [REDACTED]
[REDACTED]

- d. ICC-02/04-01/05-83-US-Exp-AnxC, Annex C to Prosecutor's Submission of Information on Further Unsealing of Documents of the Record

The OTP proposes the continued sealing of this document.

The document includes references to material that is under seal. The VWU agrees with the continued sealing of the document.

- e. ICC-02/04-01/05-84-US-Exp, Application for Appeals Chamber to Give Suspensive Effect to Prosecutor's Application for Extraordinary Review

The OTP does not object to the unsealing of the document in its entirety.

The VWU does not object to the unsealing of the document in its entirety.

- f. ICC-02/04-01/05-84-US-Exp-AnxA, Annex to Application for Appeals Chamber to Give Suspensive Effect to Prosecutor's Application for Extraordinary Review

The OTP proposes to unseal the document in a redacted form.

The redactions proposed by the OTP correspond to the redacted version of the same document already made public. The VWU agrees with the proposals by the OTP.

- g. ICC-02/04-01/05-85-US-Exp, Application to Suspend or Stay Consideration of Prosecutor's Application for Leave to Appeal

The OTP does not object to the unsealing of the document.

The VWU does not object to the unsealing of the document.

- h. ICC-02/04-01/05-86-US-Exp, Decision on the Presiding Judge of the Appeals Chamber

The OTP does not object to the unsealing of the document in its entirety, but notes that the document was rendered by the Appeals Chamber.

The VWU does not object to the unsealing of the document.

- i. ICC-02/04-01/05-91-US-Exp, Scheduling Order for "Decision on the Prosecutor's Application for Appeals Chamber to Give Suspensive Effect to Prosecutor's Application for Extraordinary Review

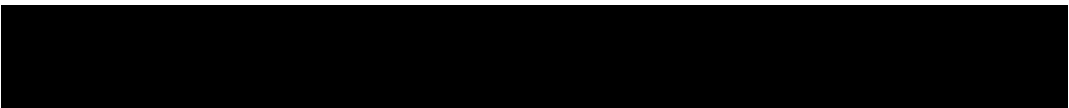
The OTP does not object to the unsealing of the document in its entirety, but notes that the document was rendered by the Appeals Chamber.

The VWU does not object to the unsealing of the document.

- j. ICC-02/04-01/05-92-US-Exp, Decision on the Prosecutor's "Application for Appeals Chamber to Give Suspensive Effect to Prosecutor's Application for Extraordinary Review"

The OTP does not object to the unsealing of the document in its entirety, but notes that the document was rendered by the Appeals Chamber.

The VWU does not object to the unsealing of the document.

- k. 

The OTP proposes to unseal the document in a redacted form.

The parts for which redaction is requested contain information on the identity of potential witnesses. Any indication that could lead to the conclusion that family members were involved, and which ones of them were involved should be avoided. The VWU does not object the redactions as proposed by the OTP. However, the VWU sees no need to redact the part "to identify and solicit the cooperation" (p. 6, paragraph 2, *see below*) and would like to note the following inconsistency in the redactions proposed by OTP:

p. 2, paragraph 1: *“to identify and solicit the cooperation of witnesses and family members [...]”*

p. 6, paragraph 2: *“to identify and solicit the cooperation of witnesses and the victim’s family members, [...]”*

l. ICC-02/04-01/05-126-US, Information sur le décès de Raska LUKWIYA

The OTP does not object to the unsealing of the document except for the annexes which should be unsealed in redacted form.

The VWU does not object to the unsealing of the document (for annexes see below).

m. ICC- 02/04-01/05-126-US-Anx, Annexes d’Information sur le décès de Raska LUKWIYA

The OTP proposes to unseal this document in a redacted form.

The VWU agrees with the redactions as proposed by the OTP. The extracts for which redaction is requested contain information on the identity of potential witnesses. Any indication that could lead to the conclusion that family members were involved, and which ones of them were involved should be avoided.

n. ICC-02/04-01/05-229-US-Exp, Prosecution’s Request that the Warrant of Arrest for Raska LUKWYIA Be Withdrawn and Rendered Without Effect Because of His Death

The OTP proposes to unseal the document in a redacted form.

- i. It is the VWU’s objective to redact those parts that contain information on the identity of potential witnesses. Any indication that could lead to the conclusion that and which family members were involved should be avoided. In order to protect the [REDACTED] and to harmonise the redactions, the redactions should be expanded to the following:

- paragraph 8, line 11: *“through DNA testing, identification of the body by family members and [...]”*

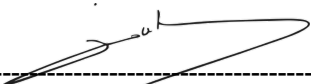
- paragraph 14, line 8: *“by Lukwiya’s family members and former LRA [...]”*

- ii. The VWU does not object the further redactions as proposed by the OTP.
- iii. Should the Chamber decide to accept the redactions as proposed by the OTP in paragraphs 10 and 16, the VWU suggests to also redact footnote 31 for the sake of consistency.

o. ICC-02/04-01/05-229-US-Exp-Anx1, Annex 1 to Prosecution’s Request that the Warrant of Arrest for Raska LUKWYIA Be Withdrawn and Rendered Without Effect Because of His Death

The OTP does not object to the unsealing of the document in its entirety.

The VWU does not object to the unsealing of the document.



Marc Dubuisson, Director, Division of Judicial Services,
on behalf of
Osvaldo, Zavala Giler, Registrar

Dated this 21st January 2025
At The Hague, The Netherlands