

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

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PRE-TRIAL CHAMBER III

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

SITUATION IN UGANDA

**IN THE CASE OF
*THE PROSECUTOR v. JOSEPH KONY***

Public

Public redacted version of "Joint submissions on the Registry assessment regarding a possible *in situ* hearing in Uganda," ICC-02/04-01/05-542-Conf

Source: Office of the Prosecutor
The Office of Public Counsel for Victims

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

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☒ Counsel for the Defence

☒ Legal Representatives of the Victims

☐ 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

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M. Zavala Giler, Osvaldo

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and Reparations Section ☒ Other

I. INTRODUCTION

1. While acknowledging that the Registry worked under considerable time constraints, the Prosecution and the Office of Public Counsel for Victims (the “OPCV”) jointly and respectfully submit that the Registry Assessment¹ and the available Annex I² do not include critical factors which could assist the Chamber in reaching a decision on an *in situ* confirmation hearing or make recommendations pursuant to rule 100(1) and (2) of the Rules of Procedure and Evidence (“Rules”).
2. The Prosecution and the OPCV therefore respectfully request that the Chamber instructs the Registry to provide a supplementary assessment, which includes a fulsome assessment of Lira as a possible location for the hearing. The assessment should also include different scenarios to an *in situ* hearing, the technical possibilities for connecting different locations, and take into account recent engagement with national and local stakeholders in Uganda.
3. The Prosecution and the OPCV also respectfully request that Annex II and communications from the Ugandan authorities are made available to enable the Parties and Participants to assess the parameters of the budget implications presented by the Registry, and fully understand the Registry’s evaluation.
4. Lastly, the Prosecution and the OPCV respectfully request a status conference to be held in the early part of 2025 on these matters.

II. CONFIDENTIALITY

5. These submissions are filed confidential pursuant to Regulation 23*bis* (2) of the Regulations of the Court as they relate to submissions of the same designation.

¹ Registry’s submission pursuant to the “Order to the Registry requesting assessment for in situ confirmation hearing, ICC-02/04-01/05-541-Conf (“Registry Assessment”).

² ICC-02/04-01/05-541-Conf-Anx1.

III. SUBMISSIONS

6. Rule 100(1) allows the Court to sit in a State other than the host State where this “would be in the interests of justice”. The Prosecution submitted its Request for *in situ* proceedings with the goal of bringing this part of the proceedings as close as possible to the victims.³ The OPCV supported this request.⁴ The victims—who mainly reside in northern Uganda—continue to be profoundly affected by the alleged crimes, are in large part poverty stricken, and have little, if any, means of travel. They not only have a right to participate meaningfully in the proceedings, but also have a genuine interest in following the confirmation hearing.
7. Unfortunately, the Registry’s Assessment does not assess the viability of a full or partial hearing in Uganda in relation to a number of points. Most importantly, a fulsome assessment of Lira as a possible location, an engagement with different types of scenarios and an assessment of the technical possibilities to connect different court rooms within Uganda as well as with the Court’s premises would be helpful to the Chamber. The same goes for information on the engagement with national and local stakeholders, including on security issues for the purpose of these assessments. Absent of these factors, the Chamber lacks a sufficient basis to take a decision on *in situ* proceedings or make a recommendation to the Presidency.
 1. *The Registry assessment should include Lira and alternative scenarios*
8. The Prosecution and the OPCV agree with the Registry’s assessment that the security situation in Uganda is likely to remain stable in the relevant region throughout 2025, and that any security and safety risks outlined can be mitigated through various measures in place on the ground.⁵ Indeed, engaging with the national and local stakeholders to overcome any logistical, technical or security

³ ICC-02/04-01/05-490.

⁴ ICC-02/04-01/05-494, para. 3.

⁵ ICC-02/04-01/05-541-Conf-Anx1, para. 31.

hurdles is therefore imperative and will ensure successful proceedings. In this regard, [REDACTED] and, as noted in Annex I. Moreover, the Prosecutor and many Court staff, including members of the OPCV, have travelled there without incidents, including in 2024.

9. However, the Registry assessment is focussing on Gulu and does not include a fulsome engagement with the possibility of Lira as a location to hold the confirmation of the charges hearing.⁶ Both the Prosecution and the OPCV highlighted Lira as a possible location for the hearing, because the region of Lira is home to a particularly large number of the affected victims. The area of Soroti and Lira form part of the so called “Teso campaign” of the LRA, an important aspect of the present case. Moreover, Gulu has already been the epicentre of both the *Ongwen* and the *Thomas Kwoyelo* cases. While the outreach activities of the Court during the *Ongwen* case concentrated around Gulu, *Kwoyelo* was even tried in Gulu. This has contributed to a sentiment within the communities that victims from the Acholi sub-region have been given fuller consideration in comparison to those from the Lango and Teso regions.
10. Lira as a possible location should not have been ruled out based on the alleged “limited options for a court room and limited availability of accommodations in line with the standards set by the [REDACTED].⁷ In November 2024, a joint Registry/Prosecution mission took place in northern Uganda for ten days and included visits to the High Court in Gulu and the High Court in Lira. The team inspected the courtrooms, buildings, and available technology. [REDACTED].⁸ The mission team spent time in Lira and surrounding areas and is able to provide feedback on potential accommodations in the city, travel and other important logistics, which was considered appropriate for the confirmation hearing. The

⁶ Registry Assessment, para. 14.

⁷ *Ibid.*

⁸ [REDACTED].

mission team also exchanged with local political leaders, CSOs, as well as cultural and religious leaders on the potential holding of *in situ* proceedings.

11. While Lira has a slightly smaller court house than the High Court in Gulu, it has sufficient space, technology for broadcasting and transcription, as well as accommodation for ICC staff to make it a viable option for hosting the Court, especially in a hybrid scenario. The available technology was used in national trials to link the court house to the one in Gulu. To ensure a fulsome assessment about viable means to bring the proceedings close to the victims, the Prosecution and the OPCV respectfully request that the Chamber instructs the Registry to conduct a supplementary assessment which includes Lira as a possible location.
12. In addition, the assessment should include different models, not just one scenario as currently. A complete assessment would set out several scenarios. For instance, hybrid seating arrangements could be contemplated with the Parties and Participants *in situ* with a limited number of staff and the Chamber in The Hague, as well as technological possibilities of connecting the court room in Lira to other court rooms in Uganda and to ICC headquarters.

2. *Annex II and communications from the Ugandan authorities should be made available*

13. The Prosecution and the OPCV note that Annex II has been classified as confidential *ex parte*. As a consequence, the Parties and Participants are not able to review the parameters underlying the budget assessment as well as the details of the underlying single scenario presented to the Chamber. The Prosecution and OPCV cannot meaningfully engage on any budgetary discussions, without being able to assess what has been set out by the Registry. This includes whether the Prosecution may contribute to the process with logistical expertise and funds.
14. Furthermore, the communications from the [REDACTED] referred to at paragraphs 15-16 of the Registry Assessment should be made available to all Parties and Participants, if needed in redacted form, to be able to fully understand the assessment.

3. *Request for status conference*

15. Finally, upon delivery of the requested supplementary assessment by the Registry as well as the reclassification of Annex II, the Prosecution and the OPCV respectfully request that a status conference be held early in 2025. This status conference would allow the Parties and Participants to make submissions on the security situation, the different models of *in situ* proceedings as well as the budgetary implications thereof, and to ask pertinent questions, thereby assisting the Chamber in making meaningful determinations. In the alternative, the Prosecution and the OPCV reserve the right to make additional submissions once Annex II has been reclassified and before the Chamber issues any decisions on the matter.

IV. CONCLUSION AND RELIEF SOUGHT

16. The decision of whether or not the Court can at least partially hold the confirmation proceedings *in situ* should be taken based on a fulsome assessment on how proceedings can be brought as closely as possible to the victims. The Prosecution and the OPCV therefore respectfully request:
 - a. that the Chamber instruct the Registry to submit a supplementary assessment, which includes a more fulsome assessment of Lira as a location for the hearing, different scenarios for an *in situ* hearing, including technical possibilities, taking into account recent engagement with national and local stakeholders in Uganda;
 - b. that Annex II in its entirety and communications from the [REDACTED], if needed in redacted form, are made available to the Parties and Participants; and

- c. that the Chamber schedule a status conference early in 2025 to resolve any outstanding issues and hear the Parties and Participants before making a determination.



Karim A. A. Khan KC, Prosecutor



Paolina Massidda, Office of Public Counsel for Victims



Sarah Pellet, Office of Public Counsel for Victims

Dated this 10th day of March 2025
At The Hague, the Netherlands