

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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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
with Confidential Annexes A, B, and C**

Public redacted version of "Prosecution's submission of witness materials and related requests for protective measures, witness preparation, and testimony via video link," ICC-02/04-01/05-579-Conf, 28 March 2025

Source: Office of the Prosecutor

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

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☒ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

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(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

I. INTRODUCTION

1. Pursuant to Pre-Trial Chamber III's "Decision Setting the Disclosure Regime",¹ the Prosecution respectfully submits its witness materials in Annex A, containing the list of five *viva voce* witnesses ("Witnesses") for the confirmation hearing, summaries of their evidence and relevance to the Prosecution's case.
2. In accordance with articles 64, 68, and 69(2) of the Statute, rules 67, 87, and 88 of the Rules of Procedure and Evidence, and Regulation 43 of the Regulations of the Court, the Prosecution respectfully requests that the Chamber adopt the Witness Preparation Protocol in Annex B,² and allow for testimony via audio-visual link ("AVL"). Furthermore, the Prosecution requests in-court protective and special measures for the Witnesses ("Request").
3. With the exception of [REDACTED] and P-1052, the Witnesses reside in [REDACTED] Uganda. The witnesses from [REDACTED] Uganda are exposed to the residual trauma and stigma of having survived crimes perpetrated by the Lord's Resistance Army ("LRA") and/or being in their captivity. Furthermore, all witnesses from [REDACTED] Uganda qualify as vulnerable. In the case of P-1052, measures are requested due to [REDACTED].
4. Consequently, the Prosecution requests the following three general types of protective and supportive measures for its witnesses (i) measures intended to protect a witness's identity from the public; (ii) closed or private session intended to protect particular portions of a witness's testimony from public disclosure; and (iii) measures intended to support a witness's psychological well-being. The requested measures with key justifications are detailed in Annex C.
5. The requested measures are necessary and proportionate in view of the objectively justified risk the Witnesses face if their identity becomes known to the public. They are requested on a case-by-case basis and are the least restrictive means available

¹ ICC-02/04-01/05-537, para. 27.

² The protocol was previously adopted in the *Al Rahman* and *Said* cases.

to appropriately balance Mr Joseph KONY's ("Mr KONY") right to a fair and public hearing with the Court's obligation to protect the interests of victims and witnesses who appear before it.

II. CONFIDENTIALITY

6. Pursuant to regulation 23bis(1) of the Regulations, this Request and the annexes are filed as confidential since they contain sensitive witness-related information that should not become public. A public redacted version will be filed within three working days.

III. SUBMISSIONS

A. Request for in-court protective and supportive measures

7. The Prosecution proposes calling five witnesses to testify live (*viva voce*) before the Chamber at the confirmation hearing scheduled to commence on 9 September 2025. These witnesses are four victims of the LRA and one expert. Their testimony concerns charged incidents not adjudicated in the *Ongwen* trial judgment.
8. Annex C to this Request sets out for each witness: (i) the witness's pseudonym; (ii) the witness's name; (iii) the intended mode of testimony; (iv) the location of testimony; (v) the in-court protective measures requested; (vi) the in-court special measures requested; (vii) participation as a victim; and (viii) key facts that demonstrate the need for protective measures.
9. This Request addresses the in-court protective measures that are reasonably foreseeable at this moment. The Prosecution monitors the situation of each witness and will promptly approach the Chamber if there is any change in circumstances.

1. Applicable law

10. Pursuant to article 68(1) of the Statute, "[t]he Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and

privacy of victims and witnesses.”³ Rule 87 of the Rules empowers the Prosecution to request the Chamber to grant measures to protect witnesses at risk because of their testimony. In particular, a Chamber may order measures such as expunging the witnesses' names and identifying information from public records, prohibiting the Prosecution, Defence, and any other participant in the proceedings from disclosing such information to a third party and using a pseudonym for a victim, witness, or other person at risk because of their testimony.⁴

11. The jurisprudence of the Court establishes that in-court protective measures are aimed at preventing harm to the witnesses, particularly physical or psychological harm, irrespective of whether “objectively justifiable risks exist.” Furthermore, assessing “objectively justifiable risks” of harm involves assessing future harm based on the general and specific circumstances of the witnesses.⁵ In relation to special measures rule 88 of the Rules applies.

2. Objectively justifiable risks exist for the Witnesses

12. The requested measures, with key justifying factors, are set out in detail in Annex C for each witness.
13. [REDACTED] either themselves or their close family members still reside in [REDACTED] Uganda. They have all expressed fear of harassment and/or stigmatisation should their testimony become known publicly. Uganda's security situation is currently stable, and the Witnesses have not recently reported security incidents related to their cooperation with the Court. Furthermore, the LRA no longer operates in Uganda and thus has limited capability to conduct organised campaigns to intimidate witnesses.⁶ However, witnesses, who are victims of the

³ Pursuant to article 43(6) and 68(4) of the Statute and rules 16-19 of the Rules, the Victims and Witnesses Section shall advise on appropriate protective measures for witnesses and victims, as well as others who are at risk on account of testimony given by such witnesses, in consultation with the Prosecution; ICC-01/14-01/21-481-Red, para. 13.

⁴ Rule 87(3)(a), (b), and (d) of the Rules.

⁵ ICC-01/14-01/21-481-Red, para. 19; *See also* ICC-01/12-01/18-1019-Red2; ICC-01/09-01/20-276-Red; ICC-02/05-01/20-645-Red2.

⁶ *See*, Day, Christopher. R. (2017). “Survival Mode”: Rebel Resilience and the Lord’s Resistance Army. *Terrorism and Political Violence*, 31(5), 966–986. <https://doi.org/10.1080/09546553.2017.1300580>.

LRA, continue to face stigma in their communities. This is especially true for survivors of [REDACTED].⁷ Testifying with their identities known publicly would increase the witnesses' profile, which could result in pressure and retaliation against them within their communities and/or from LRA-affiliated individuals or groups.⁸ Consequently, the requested protective measures are necessary to protect the Witnesses from [REDACTED] Uganda from heightened stigma and invasion of their privacy by the public, including their local communities, family, and/or friends. The Requested measures will enable these Witnesses to provide their testimonies in complete confidence and without any fears for their safety or facing the opinions or judgment of the public, including stigma, questions, or remarks.⁹

14. By contrast, P-1052 is an expert witness, for whom the Prosecution would not ordinarily have requested protective measures. However, the Witness is a [REDACTED]¹⁰ [REDACTED], it establishes an objectively justified risk of harm to the witness were [REDACTED] cooperation with the Court become known publicly.

3. Overview of requested measures

a) Measures intended to protect the witnesses' identities from the public

⁷ See, Anna Macdonald, Raphael Kerali, Being Normal: Stigmatization of Lord's Resistance Army Returnees as 'Moral Experience' in Post-war Northern Uganda, *Journal of Refugee Studies*, Volume 33, Issue 4, December 2020, Pages 766–790, <https://doi.org/10.1093/jrs/fez117>. Report: UGA-OTP-0233-1434 at 1437; UGA-OTP-0233-1441 at 1441-1443; VIDEO: UGA-OTP-0283-01550; UGA-OTP-0283-2066, at 00:05:30 – 00:11:10.

⁸ See an example case scenario from the *Ongwen* case, Jackline Atingo, Tim Allen, Anna Macdonald, *Witnessing Ongwen: A Betrayal of Expectations?*, *Journal of International Criminal Justice*, 2024, <https://doi.org/10.1093/jicj/mqae029>, pp. 7-8.

⁹ See, e.g., in the cases of *Abu Garda*, ICC-02/05-02/09-T-13-ENG CT WT 20-10-2009 12/101 NB PT, p. 11, lns. 13-29; *Al Hassan*, ICC-01/12-01/18-1019-Red2, para. 15; *Gicheru*, ICC-01/09-01/20-276-Red, para. 25; *Kushayb*, ICC-02/05-01/20-645-Red2.

¹⁰ [REDACTED].

15. As set out in Annex C, the Prosecution requests using pseudonyms and face and/or voice distortion for the Witnesses. Together, these measures would minimise the risks of identification to the public.

b) *Closed and/or private session intended to protect particular portions of a witness's testimony from public disclosure*

16. The Prosecution will make every effort to ensure that each witness's testimony is broadcast to the public to the fullest extent possible, except for identifying information. As set out in Annex C, the Prosecution requests the use of closed and/or private sessions during the testimony on a case-by-case basis to deal with particularly private or sensitive identifying information.

c) *Measures intended to provide psychological support to a witness*

17. The Prosecution defers to the Registry to determine whether any supportive special measures are needed for the Witnesses pursuant to rule 88 of the Rules. All witnesses have expressed willingness and are assessed to be able to testify without negative impacts on their psychological well-being. However, the Prosecution observes that all of the witnesses, except P-1052, are crime-based witnesses; as such, it is important that they be provided additional support to testify to minimise the impact of testifying through psychological and emotional support measures.

18. The Requested measures will enable the Witnesses to provide their testimonies in complete confidence and without any fears for their safety or facing the opinions or judgment of the public, including stigma, questions, or remarks.

4. The Requested measures are necessary, proportionate, and consistent with the rights of Mr KONY

19. While recognising the exceptional nature of an *in-absentia* confirmation proceeding, the Prosecution submits that the requested measures are not

prejudicial to or inconsistent with the rights of Mr KONY. They are necessary and justified, as set out in Annex C.

20. The rights and interests of Mr KONY are represented by counsel who will have the opportunity to ask probing questions of the Witnesses. Furthermore, counsel knows the identity of the Witnesses and can conduct independent queries to test the truth of the respective testimonies.
21. The measures are needed to ensure that the witnesses are able to provide unfettered evidence, and in so doing, assist the Court in establishing whether the charges against Mr KONY should be confirmed. Although the public will not know the identity of the affected witnesses, most of their testimony will still be given in public. Notably, the Prosecution has not requested the totality of the testimony of any witness be given in closed session.
22. Under the requested measures, closed and/or private sessions will be used only for portions of the testimony to protect the identity of witnesses or information that is particularly private or sensitive and, therefore, likely to affect their physical and psychological well-being, dignity, or privacy if broadcast publicly.

B. Request for witness preparation

23. The Prosecution respectfully requests to be allowed to prepare the Witnesses for their testimony within the framework of the protocol submitted in Annex B. Witness preparation would streamline the testimony and contribute to efficient confirmation proceedings.
24. The requested protocol has been accepted in two consecutive cases before the Court.¹¹ Further, witness preparation is generally permissible under articles 64 and 68(1) of the Statute.¹² The assessment of whether a Chamber should permit witness preparation is based on the circumstances of each case.¹³

¹¹ ICC-01/14-01/21-251, para. 44; ICC-02/05-01/20-478, para. 54. See also, ICC-01/14-01/21-251-AnxA; ICC-02/05-01/20-478-AnxA.

¹² ICC-01/04-02/06-652, para. 16; ICC-01/12-01/18-666, para. 10.

¹³ ICC-01/04-02/06-652, para. 17.

25. In the case at hand, three of the five witnesses provided their statements almost two decades ago¹⁴ concerning events relevant to the charged period. The preparation procedure is therefore critical to enable them to refresh their memory and provide focused and accurate testimony to the Chamber.
26. These limited preparatory sessions would also benefit all Witnesses in view of their testimony and achieve judicial economy. They would be able to review their statements, confirm whether the statements are accurate, and explain any inaccuracies. They would be informed of the broad topics likely to be covered in the in-court examination, view any exhibits and familiarise themselves with them, and ask questions on the process of testifying and what to expect in court.
27. The witness preparation sessions would not unfairly impact Mr KONY's rights and interests, as they are limited to refreshing the Witnesses' memory and amount to a supportive measure to improve their familiarity and comfort in testifying. Moreover, as the Protocol requires, the witness preparation sessions would be recorded and a log disclosed to the Defence prior to testimony. Prosecuting counsel are also constrained in their conduct based on relevant professional protocols,¹⁵ which further safeguard the integrity of the witness preparation process.

C. Request for the use of Audio-Visual Link Testimony

28. The Prosecution also respectfully requests to organise the testimony of four of the Witnesses through AVL. The testimony through AVL¹⁶ is now a routine feature of trials at the Court, subject to the permission of the Chamber.

¹⁴ P-0011's statement dated 17 February 2005, P-0015's statement dated 15 December 2004 and 10 July 2006, P-0056's statements dated 30 January 2005 and 6 August 2005.

¹⁵ See articles 7 and 31, Code of Professional Conduct for counsel.

¹⁶ See article 69(2) of the Statute and rule 67 of the Rules of Procedure and Evidence. *See also*, ICC-01/05-01/13-1697, para. 11; ICC-01/14-01/18-631, para. 29; ICC-02/11-01/15-721, para. 16; ICC-01/05-01/13-1697, paras. 10-11; ICC-02/11-01/15-T-103-Red2-ENG CT, p. 82, lns. 5-6.

29. For the purposes of the confirmation proceedings, AVL is equally effective as in-person testimony but more beneficial to the well-being of the witnesses as well as the resources of the Court. The [REDACTED]. The facilities available would allow their testimony to be broadcast into the courtroom and publicly, just as if they were personally present. For [REDACTED], AVL could be organised from [REDACTED]. Counsel and Chambers would have a full view of the Witnesses and be able to interact with no delays. The costs of transportation and accommodation of witnesses would be limited.
30. AVL would also be beneficial for the witnesses themselves as it would not require travel and long absences from home. Furthermore, travel and prolonged absences from their homes would raise the risk of their identity being disclosed as *viva voce* witnesses as the confirmation proceedings are likely to attract a high amount of media coverage in Uganda.
31. [REDACTED] status is under review in [REDACTED] and limits [REDACTED] travel options; consequently, using AVL testimony from [REDACTED] would assure the witness's welfare and comfort. [REDACTED] have never travelled internationally, and their presence in their homes is essential to sustaining their family members through work and emotional support. Consequently, AVL testimony is the least disruptive means for the Witnesses to participate in the judicial process.

IV. CONCLUSION AND RELIEF SOUGHT

32. For the foregoing reasons, the Prosecution respectfully requests:
- a. the in-court protective and supportive measures for the Witnesses as specified in Annex C;
 - b. the adoption of the protocol as set out in Annex B; and
 - c. that four of the Witnesses can testify via AVL.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A. A. Khan KC, Deputy Prosecutor

Dated this 28th day of March 2025
At The Hague, The Netherlands