

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 7 April 2025

PRE-TRIAL CHAMBER III

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

SITUATION IN IN THE REPUBLIC OF UGANDA

IN THE CASE OF THE PROSECUTOR v. JOSEPH KONY

Public Redacted Version of ICC-02/04-01/05-584-Conf

Victims' Response to the "Prosecution's submission of witness materials and related requests for protective measures, witness preparation, and testimony via video link"

Source: Office of Public Counsel for Victims

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

I. INTRODUCTION

1. Counsel of the Office of Public Counsel for Victims (the “OPCV”) appointed to represent the Victims in the present case (the “Legal Representatives”)¹ hereby submit their response to the “Prosecution’s submission of witness materials and related requests for protective measures, witness preparation, and testimony through video link” (the “Request”).²

2. The Legal Representatives agree with the Prosecution that the Chamber should adopt the Witness Preparation Protocol contained in Annex B of the Request (the “Preparation Protocol”) and allow for testimony through audio-visual link (“AVL”) for the witnesses the Prosecution intends to call at the confirmation of charges hearing. The Legal Representatives further support the Prosecution’s request for in-court protective and special measures (the “Protective Measures”) for the five witnesses appearing at the hearing.

¹ See the “Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/04-101](#) and [No. ICC-02/04-01/05-252](#), 10 August 2007; the “Decision on legal representation of Victims a/0090/06, a/0098/06, a/0101/06 a/0112/06, a/0118/06, a/0119/06 and a/0122/06” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/04-01/05-267](#), 15 February 2008; the “Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/04-125](#), 14 March 2008; the “Decision on victim’s applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/04-01/05-356](#), 21 November 2008; and the “Decision on victim participation, legal representation, and on the OPCV’s Application for recognition of the status of victims in the *Kony* case to the victims participating in the *Ongwen* case (Pre-Trial Chamber III), [No. ICC-02/04-01/05-540](#), 13 December 2024. See also, the “Decision on Victim’s Participation in Proceedings Related to the Situation in Uganda” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/04-191](#), 9 March 2012.

² See the “Prosecution’s submission of witness materials and related requests for protective measures, witness preparation, and testimony via video link”, [No. ICC-02/04-01/05-579-Conf](#) and [No. ICC-02/04-01/05-579-Red](#), 28 March 2025 (the “Request”).

II. PROCEDURAL BACKGROUND

3. On 8 July 2005, then Pre-Trial Chamber II issued the Arrest Warrant for Mr Kony.³

4. On 24 November 2022, the Prosecution filed a Request to hold a confirmation of charges hearing in the absence of Mr Kony (the “Prosecution’s Initial Request”).⁴ On 7 February 2023, Pre-Trial Chamber II in its previous composition (the “Former Chamber”) invited, *inter alia*, the Legal Representatives to gather the views and concerns of the Victims about holding *in absentia* confirmation proceedings against Mr Kony.⁵ The observations were submitted on 30 March 2023.⁶

5. On 23 November 2023, the Former Chamber issued the Decision on the Prosecution’s Initial Request finding, *inter alia*, that all reasonable steps to secure Mr Kony’s appearance had been taken and there would be cause to hold a confirmation of charges hearing *in absentia* (the “First Decision”).⁷ On 4 March 2024, the Former Chamber further decided to hold the confirmation of charges hearing on 15 October 2024 (the “Second Decision”).⁸

6. On 12 March 2024, the Presidency reassigned the situation in Uganda to Pre-Trial Chamber III.⁹

³ See the “Warrant of Arrest for Joseph Kony issued on 8 July 2005 as amended on 27 September 2005” (Pre-Trial Chamber II), [No. ICC-02/04-01/05-53](#), 27 September 2005. A lesser redacted version was notified on 13 March 2023. See [No. ICC-02/04-01/05-456-Anx](#).

⁴ See the “Public Redacted Version of the ‘Prosecution’s Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence’”, [No. ICC-02/04-01/05-446-Red](#), 24 November 2022 (the “Prosecution’s Initial Request”).

⁵ See the “Order on procedural matters and decision on request for a lesser redacted version of the arrest warrant” (Pre-Trial Chamber II), [No. ICC-02/04-01/05-453](#), 7 February 2023.

⁶ See the “Victims’ Views and Concerns on the ‘Prosecution’s Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence’”, [No. ICC-02/04-01/05-457](#), 30 March 2023.

⁷ See the “Decision on the Prosecution’s request to hold a confirmation of charges hearing in the Kony case in the suspect’s absence” (Pre-Trial Chamber II), [No. ICC-02/04-01/05-466](#), 23 November 2023 (the “First Decision”).

⁸ See the “Second decision on the Prosecution’s request to hold a confirmation of charges hearing in the Kony case in the suspect’s absence” (Pre-Trial Chamber II), [No. ICC-02/04-01/05-481](#), 4 March 2024 (the “Second Decision”).

⁹ See the “Decision assigning judges to divisions and recomposing Chambers” (Presidency), [No. ICC-02/04-01/05-485](#), 13 March 2024.

7. On 28 August 2024, the Defence submitted its observations on the First and Second Decisions.¹⁰ On 5 September 2024, having been authorised by the Chamber,¹¹ the Prosecution filed its reply.¹² On 9 September 2024, the Defence submitted additional observations on the same matter.¹³

8. On 12 September 2024, after having received further submissions from the parties and participants,¹⁴ the Chamber postponed the confirmation of charges hearing and vacated the 15 October 2024 date.¹⁵

9. On 29 October 2024, the Chamber issued a third decision and found that all the requirements set forth in article 61(2)(b) of the Rome Statute (the “Statute”) are met.¹⁶ On 12 December 2024, the Chamber further decided that the confirmation of charges hearing shall commence on 9 September 2025.¹⁷

10. On 31 March 2005, the Prosecution filed the Request.¹⁸

¹⁰ See the “Kony Defence Observations on the Decisions and Registry Report concerning the request to hold a confirmation of charges hearing in the Kony case in the suspect’s absence”, [No. ICC-02/04-01/05-517-Conf](#) and [No. ICC-02/04-01/05-517-Red](#), 28 August 2024.

¹¹ See email from the Chamber to the Prosecution sent on 3 September 2024 at 15:12 in the Report on decisions and orders issued by way of email for the period November 2022 – September 2024, [No. ICC-02/04-01/05-530-Anx26](#), 25 October 2024.

¹² See the “Prosecution’s Reply to Defence Observations”, [No. ICC-02/04-01/05-520-Conf](#) and [No. ICC-02/04-01/05-520-Red](#), 5 September 2024.

¹³ See the “Kony Defence Reply to Prosecution’s Submissions in Response to Defence Observations”, [No. ICC-02/04-01/05-524-Conf](#) and [No. ICC-02/04-01/05-524-Red](#), 9 September 2024.

¹⁴ See the “Victims Observations on the date of the confirmation of charges hearing”, [No. ICC-02/04-01/05-521](#), 6 September 2024, the “Defence Observations on the Date of the Confirmation of Charges Hearing”, [No. ICC-02/04-01/05-522](#), 6 September 2024 and the “Prosecution’s observations on the date of the confirmation of charges hearing”, [No. ICC-02/04-01/05-523](#), 6 September 2024.

¹⁵ See the “Decision Postponing the Confirmation of Charges Hearing” (Pre-Trial Chamber III), [No. ICC-02/04-01/05-526](#), 12 September 2024.

¹⁶ See the “Decision on the criteria for holding confirmation of charges proceedings *in absentia*” (Pre-Trial Chamber III), [No. ICC-02/04-01/05-532](#), 29 October 2024, p. 46.

¹⁷ See the “Decision Setting the Date of the Confirmation of Charges Hearing and Related Time Limits” (Pre-Trial Chamber II), [No. ICC-02/04-01/05-539](#), 12 December 2024, p. 10.

¹⁸ See the Request, *supra* note 2.

III. CONFIDENTIALITY

11. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this document is filed as confidential following the level of classification chosen by the Prosecution. A public redacted version will be filed in due course.

IV. SUBMISSIONS

A. Preparation Protocol

12. The Legal Representatives concur with the Prosecution that the Chamber should adopt the Preparation Protocol.¹⁹ The adoption of said Protocol appears necessary to take into account both the specific factual circumstances of the case and the personal situation of the witnesses concerned. Indeed, relevant, accurate and complete witness testimony facilitates a fair, effective and expeditious proceedings.²⁰ Live testimony of witnesses constitutes a very significant body of evidence under the principle of the primacy of orality, pursuant to article 69(2) of the Statute.²¹ Thus, a witness who testifies in an incomplete, confused and ill-structured manner because of lack of preparation is of limited assistance to the Chamber's truth-finding function.²²

13. Specifically, a proper preparation procedure is required to refresh the witnesses' memory in order to allow them to provide clear, focused and reliable testimony to the Chamber. In fact, a significant amount of time – almost 20 years – has elapsed since some of the witnesses initially provided their statements. Accordingly, permitting witnesses to re-engage with the facts underlying their testimony aids the process of human recollection, better enables witnesses to tell their stories accurately on the witness stand and can assist in ensuring that their testimony is structured and clear.²³ This will also assist the Chamber to avoid unnecessarily lengthy questioning

¹⁹ See the Request, *supra* note 2, paras. 23-27.

²⁰ See, *inter alia*, the "Decision on witness preparation" (Trial Chamber V), [No. ICC-01/09-01/11-524](#), 3 January 2013, para. 31 and the "Decision on witness preparation" (Trial Chamber VI), [No. ICC-01/04-02/06-652](#), 16 June 2015, para. 18.

²¹ See the "Decision on witness preparation" (Trial Chamber V), *ibid.*

²² *Ibid.*

²³ *Idem*, para. 32.

by the parties and participants and frequent interruptions required to refresh the witnesses' memory, thus contributing to the judicial economy.

14. Moreover, the crimes under the jurisdiction of the Court are complex, both as regards the factual circumstances and legal issues involved. This is especially true taking into account the high number of charges brought by the Prosecution against Mr Kony. Consequently, the witnesses will have to give complicated and sensitive evidence – concerning the events that occurred many years ago – in the courtroom while residing in places far from the seat of the Court [REDACTED], coupled with the fact that they have no experience in a courtroom and are most likely unfamiliar with the Court's system of questioning.²⁴

15. Additionally, the proper witness preparation will also enhance the protection and well-being of witnesses, including by helping to reduce their stress and anxiety about testifying.²⁵

16. Lastly, the adoption of the Preparation Protocol will not infringe upon Mr Kony's fair trial rights since there exist several safeguards preventing any negative effects on the reliability of the evidence adduced at the confirmation hearing, including the possibility by the Defence to cross examine the witnesses, as well as a list of permissible and prohibited conducts prescribed in said Protocol.²⁶

B. Testimony through AVL

17. The Legal Representatives also agree with the Prosecution that the Chamber should allow the witnesses to testify through AVL.²⁷ Requiring the witnesses concerned to testify in person, at the seat of the Court, for the purposes of conducting *in absentia* confirmation hearing will be overly cumbersome. Indeed, ensuing international travel to The Netherlands and associated logistics will cause unnecessary

²⁴ *Idem*, para. 36.

²⁵ *Idem*, para. 37.

²⁶ *Idem*, paras. 43-49.

²⁷ See the Request, *supra* note 2, paras. 28-31.

burden to their daily lives and plans for the immediate future. As mentioned by the Prosecution, this is especially true with regards to P-0015 ([REDACTED]), P-0011, P-0056 and P-0467 ([REDACTED]).²⁸ The Legal Representatives also agree with the Prosecution that the witnesses' travel and absences from their homes would heighten the risk of disclosure of their identities.²⁹ Certainly, facilitating their testimonies through AVL appears to be the most conducive means of providing truthful and open testimonies, as well as to protect the safety, physical and psychological well-being, dignity, privacy and personal circumstances of the individual witnesses. Lastly, the witnesses may also be remotely examined by the Defence and the Legal Representatives in the same manner. Therefore, the use of AVL will not be prejudicial to, or inconsistent with, Mr Kony's rights and will meet the conditions set out in rule 67 of the Rules of Procedure and Evidence (the "Rules").³⁰ Finally, the use of AVL will reduce the economic burden on the Court, at a time when resources are essential to the functioning of the institution.

C. Protective and Supportive Measures

18. The Legal Representatives also support the Prosecution's request for Protective Measures.³¹ Indeed, objectively justifiable risks do exist for the witnesses. It is already highly concerning that witnesses [REDACTED].³² Therefore, the requested protective measures are absolutely necessary to protect the witnesses from stigma and invasion of their privacy, pursuant to articles 68(1) and (2) of the Statute and rule 87 of the Rules. The Legal Representatives also share the Prosecution's concern for witness [REDACTED].³³ In this regard, in the *Al Hassan* case, in-court protective measures were granted for expert witnesses due to the fact that the possibility of being labelled as a

²⁸ *Idem*, paras. 29 and 31.

²⁹ *Idem*, para. 30.

³⁰ See, *inter alia*, the "Decision on the Use of Audio-Video Link Technology (Trial Chamber VI), [No. ICC-01/14-01/21-442](#), 4 August 2022, paras. 9-10.

³¹ See the Request, *supra* note 2, paras. 7-22.

³² *Idem*, para. 13.

³³ *Idem*, para. 14.

“collaborator” of the Court may have a dramatic impact on their safety and life and thus qualifies as an objectively justifiable risk.³⁴

19. Furthermore, the requested measures will enable the witnesses to provide their testimonies in confidence and without any fears for their safety and well-being, while remaining necessary, proportionate, and consistent with Mr Kony’s fair trial rights. Consequently, the requested protective measures, including (a) the use of pseudonyms and face and/or voice distortion; (b) the use of closed and/or private sessions; and (c) the provision of psychological or emotional support, should be granted.

FOR THE FOREGOING REASONS, the Legal Representatives respectfully request the Chamber to grant the Prosecution’s Request.



Paolina Massidda



Sarah Pellet

Dated this 7th day of April 2025

At The Hague (The Netherlands)

³⁴ See the “Public redacted version of ‘First decision on in-court protective measures’” (Trial Chamber X), [No. ICC-01/12-01/18-1019-Red2](#), 5 January 2021, para. 14-15.