

**Cour
Pénale
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**International
Criminal
Court**

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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 "Prosecution's supplementary information regarding the request to hear *viva voce* witnesses at the confirmation hearing (ICC-02/04-02/05-579)," ICC-02/04-01/05-589-Conf, 14 April 2025

Source: Office of the Prosecutor

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I. INTRODUCTION

1. Following the Chamber's order,¹ the Prosecution hereby respectfully provides further information supplementing previous submissions² as to why the proposed oral testimony of the requested witnesses cannot be properly substituted by written statements or other documentary evidence at the *in absentia* confirmation hearing.

II. CONFIDENTIALITY

2. These submissions are submitted as confidential pursuant to regulation 23bis(1) and (2) of the Regulations of the Court as they relate to submissions of the same designation which include sensitive information about the Prosecution's witnesses. A public redacted version will be filed within the time limits set by the Chamber.

III. SUBMISSIONS

3. The *Chambers Practice Manual* recommends that "[u]se of live evidence at the confirmation hearing should be exceptional", but authorised by the Pre-Trial Chamber when the parties "satisfactorily demonstrate that the proposed oral testimony cannot be properly substituted by a written statement or other documentary evidence."³ On the other hand, it also recognises a certain margin for "the parties to determine the best way to persuade the Chamber", and emphasises that "there is no basis for the Chamber to impose on the parties a particular modality/format to argue their case and present their evidence."⁴ This margin of appreciation for the parties should—within the context of the particular

¹ Order delivered by way of email, 10 April 2025, 16:15 hrs.

² Prosecution's Observations on the conduct of the confirmation proceedings *in absentia* and Requests for the adoption of certain protocols and an in situ hearing in Uganda, ICC-02/04-01/05-490 ("Observations"); 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 ("Request").

³ Chambers Practice Manual, 8th. Ed. (2024), para. 44.

⁴ Chambers Practice Manual, 8th. Ed. (2024), para. 43.

circumstances of the case at hand—inform the Chamber’s understanding of whether the proposed oral testimony can “properly” be substituted by written evidence. Accordingly, the Prosecution submits that, when the recommendations in the *Chambers Practice Manual* are balanced against the reasons for a confirmation hearing *in absentia* in this case, the testimony of the five proposed witnesses should be allowed.

4. Article 61(5) of the Statute—which is equally applicable to confirmation hearings *in absentia*⁵—simply states that “the Prosecutor *may* rely on documentary or summary evidence and *need not* call the witnesses expected to testify at the trial” (emphasis added). This leaves open appropriate procedural flexibility in light of the needs of fair and expeditious proceedings. While the *Chambers Practice Manual* recommends that live testimony is generally not appropriate for confirmation hearings, this was informed by the experience of cases heard at the Court to date—all concerning confirmation proceedings where the suspect has been present, and where a trial will immediately ensue, if the charges are confirmed. By contrast, in the present case, the confirmation proceedings will be conducted in the absence of the suspect. As such, it currently cannot be foreseen whether there will ever be a trial, and whether any victim witness may have a chance to recount their story. At the very least, this is relevant to the Chamber’s exercise of discretion in allowing the judicious use of live testimony as part of *in absentia* confirmation proceedings.
5. Specifically, in weighing whether the testimony of the requested witnesses cannot be properly substituted by written statements (the test recommended by the *Chambers Practice Manual*), the Chamber should consider why an *in absentia* confirmation hearing was convened in this case. This included the importance of affording victims an opportunity to express their views, as well as further confirming the evidentiary basis—even in the absence of a trial—for the Prosecution’s allegation that crimes were perpetrated on a large scale, and that Mr

⁵ Rule 126(1), 121, 122 of the Rules of Procedure and Evidence.

Kony played a central role. This is especially relevant for those parts of the case which were not addressed in the *Ongwen* trial.⁶

6. The Prosecution proposes just four victim-witnesses and one expert witness for *viva voce* testimony. This ensures that the proceedings will remain expeditious. Each witness was chosen by the Prosecution against the backdrop of the reasons for convening these *in absentia* proceedings. In particular, the victim-witnesses represent aspects of the case not adjudicated in the *Ongwen* case. These victim-witnesses have thus had no opportunity to tell their story before the Court. All five have confirmed that they would welcome the possibility to testify before the Chamber.⁷ Furthermore, the victim-witnesses are also in the process of applying for participation in this case.
7. The Prosecution also notes that, like most witnesses in this case, the interviews of the proposed victim-witnesses, with the exception of P-0467, were conducted over 20 years ago.⁸ With the opportunity to refresh their memory and prepare them for testimony in the ordinary manner, the evidence of these witnesses could not only be presented for the consideration of the Chamber in these confirmation proceedings but also better preserved for any trial that may ultimately occur. Even if the Defence has announced it declines to cross-examine the victim-witnesses,⁹ the Chamber would be able to appreciate the full scope of the narrative including important nuances through the Prosecution's examination in chief and would have the ability to ask questions. The witnesses' live evidence may also clarify certain aspects of their statements.
8. Finally, the testimony of these five witnesses would also contribute to ensuring that justice is not only done but seen to be done. This is of even greater importance since the Chamber has declined to hold the hearing *in situ* even in part.¹⁰

⁶ See for these criteria, ICC-02/04-01/05-532, para. 105.

⁷ ICC-02/04-01/05-579-Conf-AnxC.

⁸ [REDACTED]

⁹ ICC-02/04-01/05-585-Red, para. 13.

¹⁰ ICC-02/04-01/05-564-Red.

9. In the following, the Prosecution sets out the specific reasons for allowing the proposed live testimony of each of the five witnesses, including by reference to previously submitted materials.

P-0011

10. P-0011 is a central witness to the crimes alleged related to the attack on the Pagak IDP camp, which did not form part of the *Ongwen* case.¹¹ Since P-0011 did not testify in the *Ongwen* case, no detailed court transcripts exist. Refreshing [REDACTED] memory, preparing [REDACTED] for testimony, and then allowing [REDACTED] to give evidence *viva voce* would assist the Chamber to fully appreciate the narrative [REDACTED] has to provide. For example, P-0011 uses the term “rebels” to describe the attacking force.¹² The confirmation hearing process would allow P-0011 to explain why [REDACTED] referred to these individuals as rebels and to share [REDACTED] observations regarding their language and clothing. This information would help the Chamber identify the uniform characteristics of these individuals.

P-0015

11. P-0015 is a central witness to the attack on the Lwala Girls Secondary School as well as for the Prosecutions allegations of systemic crimes committed against children as well as women abducted and integrated into the LRA.¹³ Both aspects were not part of the *Ongwen* case. [REDACTED]. P-0015 could be asked to clarify certain important aspects of [REDACTED] written statement, provided almost 20 years ago, [REDACTED].

¹¹ ICC-02/04-01/05-579-Conf-AnxA, pp. 1-2.

¹² UGA-OTP-0069-0202 at 0206, para. 27.

¹³ ICC-02/04-01/05-579-Conf-AnxA, pp. 2-3.

P-0056

12. P-0056 is a central witness of the Prosecution concerning the charged crimes alleged at the Abia IDP camp, which did not form part of the *Ongwen* case.¹⁴ [REDACTED] testimony would therefore be of particular importance concerning the victims linked to the attack on the Abia IDP Camp as well as those who were abducted as children by the LRA. P-0056's statement is brief; thus, [REDACTED] would be able to elaborate on the experience of children abducted and integrated into the LRA, including on the harm [REDACTED] and other children suffered.

P-0467

13. P-0467 is a central witness concerning crimes alleged at Barlonyo IDP camp as well as the systemic crimes alleged against children in the LRA.¹⁵ Both aspects were not part of the *Ongwen* case. P-0467 was allegedly violently abducted, initiated and trained to become a fighter [REDACTED]. [REDACTED] story is emblematic of many other [REDACTED] children, who were taken from their homes and turned into soldiers. [REDACTED] testimony would be particularly meaningful for this group of victims. P-0467 would be able to elaborate on the experience of children abducted and integrated into the LRA, including on the harm [REDACTED] and other children suffered. P-0467 can also provide evidence about pillaged items carried by abductees such as flour, maize and beans.¹⁶ The hearing would allow for clarification on how these pillaged items were used within the LRA. Furthermore, P-0467 could provide information about [REDACTED].¹⁷

¹⁴ ICC-02/04-01/05-579-Conf-AnxA, pp. 3-4.

¹⁵ ICC-02/04-01/05-579-Conf-AnxA, pp. 4-5.

¹⁶ UGA-OTP-00000510 at 0006, para. 40.

¹⁷ UGA-OTP-00000510 at 0006, para. 41.

P-1052

14. P-1052 is an expert witness, whose report is relied on by the Prosecution [REDACTED].¹⁸ [REDACTED] testimony would therefore be of particular importance to all those victims [REDACTED].
15. The live testimony of this witness is likely to assist the Chamber in appreciating the complex methodology of the assessed data and how the conclusions in the expert report were reached. This is critical given the Prosecution's allegation that the crimes were committed on a large scale, [REDACTED].¹⁹ The expert would also be able to explain the limitations of [REDACTED] study, thus enabling the Chamber to better understand [REDACTED] for the purposes of confirming the charges.

IV. CONCLUSION AND RELIEF SOUGHT

16. For the reasons set out above, in the exceptional circumstances of these *in absentia* confirmation proceedings, the proposed *viva voce* testimony of the five witnesses "cannot be properly substituted by a written statement or other documentary evidence".
17. The Prosecution therefore respectfully requests the Chamber's authorisation to call the five proposed witnesses *viva voce* at the confirmation hearing.



Karim A. A. Khan KC, Prosecutor

Dated this 16th day of April 2025
At The Hague, The Netherlands

¹⁸ ICC-02/04-01/05-579-Conf-AnxA, pp. 5-6.

¹⁹ [REDACTED] of the DCC. This will be further explained in the Prosecution's Pre-Confirmation Brief to be submitted on 17 April 2025.