

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 21 May 2025

PRE-TRIAL CHAMBER III

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

SITUATION IN THE REPUBLIC OF UGANDA

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

Public
With confidential Annex A

Public Redacted Version of “Kony Defence Request for Disclosure of Materials Relating to P-0455”, ICC-02/04-01/05-602-Conf, 9 May 2025

Source: Defence for Mr Joseph Kony

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Section

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I. INTRODUCTION

1. [REDACTED].¹ [REDACTED].² [REDACTED].³ [REDACTED].⁴
2. [REDACTED].⁵ [REDACTED].⁶ [REDACTED].⁷ [REDACTED].⁸ [REDACTED]⁹
3. [REDACTED], the Prosecution appears to have then decided that [REDACTED] was someone who was able to give (presumably) credible evidence on the Prosecution's behalf. The Prosecution has disclosed that "in July 2022, the Prosecution addressed a written request [REDACTED] to interview P-0455 for the purposes of the case against Joseph Kony." Without indicating the timing of [REDACTED] subsequent consent, the Prosecution stated that [REDACTED] responded, indicating [REDACTED] agreement".¹⁰
4. The Prosecution's request to interview [REDACTED] was made while the Prosecution was still [REDACTED].¹¹ The Prosecution's interview request and the interviews pre-dated any submissions being made, or decisions being taken, on [REDACTED].
5. The Prosecution's interviews of [REDACTED], which spanned ten days, ran between 15 May 2023 and 2 June 2023.¹² The interviews took place at the ICC Headquarters,¹³ with members of the Office of the Prosecutor attending in person and remotely.¹⁴ The Prosecution stated during the interviews that they were being audio- and video-recorded in accordance with the Rules.¹⁵

¹ [REDACTED].

² [REDACTED].

³ [REDACTED].

⁴ [REDACTED].

⁵ [REDACTED].

⁶ [REDACTED].

⁷ [REDACTED].

⁸ *Id.*, para. 524 (emphasis added).

⁹ [REDACTED].

¹⁰ Annex A, p. 1.

¹¹ The Prosecution indicated it addressed its request to [REDACTED] in July 2022, [REDACTED]. See Annex A, p. 1; [REDACTED].

¹² [UGA-OTP-00000849-R01](#); [UGA-OTP-00000850-R01](#); [UGA-OTP-00000851-R01](#); [UGA-OTP-00000852-R01](#); [UGA-OTP-00000853-R01](#); [UGA-OTP-00000854-R01](#); [UGA-OTP-00000855-R01](#); [UGA-OTP-00000856-R01](#); [UGA-OTP-00000857-R01](#); [UGA-OTP-00000858-R01](#); [UGA-OTP-00000859-R01](#); [UGA-OTP-00000860-R01](#); [UGA-OTP-00000861-R01](#); [UGA-OTP-00000862-R01](#); [UGA-OTP-00000863-R01](#); [UGA-OTP-00000864-R01](#); [UGA-OTP-00000865-R01](#); [UGA-OTP-00000866-R01](#); [UGA-OTP-00000867-R01](#); [UGA-OTP-00000868-R01](#); [UGA-OTP-00000869-R01](#); [UGA-OTP-00000870-R01](#); [UGA-OTP-00000871-R01](#); [UGA-OTP-00000872-R01](#); [UGA-OTP-00000873-R01](#); [UGA-OTP-00000874-R01](#); [UGA-OTP-00000875-R01](#); [UGA-OTP-00000876-R01](#); [UGA-OTP-00000877-R01](#); [UGA-OTP-00000878-R01](#); [UGA-OTP-00000879-R01](#); [UGA-OTP-00000880-R01](#); [UGA-OTP-00000881-R01](#); [UGA-OTP-00000882-R01](#); [UGA-OTP-00000883-R01](#); [UGA-OTP-00000884-R01](#); [UGA-OTP-00000885-R01](#); [UGA-OTP-00000886-R01](#); [UGA-OTP-00000887-R01](#).

¹³ See, e.g., [UGA-OTP-00000886-R01](#), ln. 8.

¹⁴ See, e.g., [UGA-OTP-00000849-R01](#), at 0009.

¹⁵ See, e.g., [UGA-OTP-00000850-R01](#), lns 484-485 "[REDACTED]"

During these interviews, [REDACTED] gave highly and uniquely incriminating evidence against Mr Kony.

6. [REDACTED].¹⁶ [REDACTED].¹⁷ [REDACTED].¹⁸ [REDACTED].

7. [REDACTED].¹⁹ The Prosecution, with whom [REDACTED] has now cooperated, will then be entitled to [REDACTED].²⁰

8. As such, [REDACTED] stood to benefit from his cooperation with the Prosecution, on matters as significant as [REDACTED]. On this basis, the Defence asked the Prosecution to disclose materials related to the process of [REDACTED] becoming a key witness against Mr Kony, and a full record of his interviews, on the basis that they are subject to disclosure pursuant to Rule 77 of the Rules of Procedure and Evidence (“Rules”).²¹ Not having been able to resolve this issue *inter partes*, the Defence now comes before the Pre-Trial Chamber with the following request for disclosure.

II. LEVEL OF CONFIDENTIALITY

9. The Defence files this request as confidential, pursuant to regulation 23*bis*(1) and (2) of the Regulations of the Court, as it includes sensitive information about Prosecution witnesses.

III. PROCEDURAL HISTORY

10. [REDACTED].²²

11. At some point in July 2022, the Prosecution asked [REDACTED] to consent to be interviewed by the Prosecution for the purposes of its case against Mr Kony.²³ At the time of this request, [REDACTED].²⁴

12. [REDACTED].²⁵

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ Annex A.

²² [REDACTED].

²³ Annex A, p. 1.

²⁴ [REDACTED].

²⁵ [REDACTED].

13. On 24 November 2022, the Prosecution filed its request for an *in absentia* confirmation of charges hearing against Mr Kony.²⁶

14. Between 15 May 2023²⁷ and 2 June 2023,²⁸ the Prosecution interviewed [REDACTED] the ICC Headquarters for this purpose.²⁹

15. [REDACTED].³⁰ [REDACTED].³¹ [REDACTED].³² [REDACTED],³³ [REDACTED].

16. On 12 December 2024, Pre-Trial Chamber III ordered the parties and participants in the *Kony* case to “bring any matter arising from the disclosure process to the attention of the Chamber by way of a formal filing by no later than 9 May 2025, or within six weeks of the date of the formal completion of the Prosecution’s disclosure process, whichever date comes earlier.”³⁴

17. On 27 February 2025, the Prosecution disclosed materials relating to P-0455.³⁵ This disclosure contained only transcripts of its interviews with [REDACTED], and not the audio and video-recordings of these interviews. The Prosecution also withheld a transcript of an interview it conducted with [REDACTED] on 15 May 2023.

18. On 1 April 2025, the Prosecution concluded its pre-confirmation disclosure.³⁶

19. On 9 April 2025, the Defence requested the Prosecution to disclose, in relation to [REDACTED]:

All audio and/or video recordings of all interviews;

Any additional transcripts of P-0455’s interviews, including the missing transcripts from 15 May 2023;

All notes and documentation concerning P-0455’s [REDACTED], at the time of the interview [REDACTED];

Any prior correspondence related to the interviews commencing May 2023, including exchanges between the OTP and P-0455’s [REDACTED]; and

²⁶ [Public Redacted Version of the “Prosecution’s Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence”](#), ICC-02/04-01/05-446-Red, 24 November 2022.

²⁷ [UGA-OTP-00000849-R01](#).

²⁸ [UGA-OTP-00000887-R01](#).

²⁹ See, e.g., [UGA-OTP-00000886-R01](#), ln. 8.

³⁰ [REDACTED].

³¹ *Id.*, para. 4.

³² *Id.*

³³ [REDACTED].

³⁴ [Decision Setting the Date of the Confirmation of Charges Hearing and Related Time Limits](#), ICC-02/04-01/05-539, 12 December 2024, para. 12.

³⁵ [Prosecution’s Thirteenth Communication of the Disclosure of Evidence](#), ICC-02/04-01/05-571, 28 February 2025.

³⁶ [Prosecution’s Seventeenth Communication of the Disclosure of Evidence](#), ICC-02/04-01/581, 1 April 2025, para. 8.

Any related communications between your Office and P-0455's [REDACTED] concerning these interviews.³⁷ ("P-0455 Materials")

20. On 14 April 2025, the Prosecution indicated its refusal to disclose the P-0455 Materials.³⁸

21. On 23 April 2025, the Defence responded, further explaining the relevance of Defence access to the P-0455 Materials.³⁹

22. On 30 April 2025, the Prosecution responded to the Defence's email, maintaining its position.⁴⁰

IV. APPLICABLE LAW

23. [REDACTED].

24. Article 55(2) of the Rome Statute provides that "[w]here there are grounds to believe that a person has committed a crime within the jurisdiction of the Court and that person is about to be questioned either by the Prosecutor, or by national authorities pursuant to a request made under Part 9" that person shall be entitled to the rights set out in that article.

25. Rule 112 then provides that whenever the Prosecutor questions a person to whom Article 55(2) applies, or for whom a warrant of arrest or a summons to appear has been issued under Article 58(7), "the questioning shall be audio- or video-recorded."

26. Rule 77 of the Rules of Procedure and Evidence provides that:

The Prosecutor shall, subject to the restrictions on disclosure as provided for in the Statute and in rules 81 and 82, permit the defence to inspect any books, documents, photographs and other tangible objects in the possession or control of the Prosecutor, which are material to the preparation of the defence or are intended for use by the Prosecutor as evidence for the purposes of the confirmation hearing or at trial, as the case may be, or were obtained from or belonged to the person.

V. SUBMISSIONS

A. The audio and video recordings of [REDACTED] interviews with the Prosecution are disclosable

³⁷ Annex A, pp. 5-7.

³⁸ *Id.*, pp. 3-5.

³⁹ *Id.*, pp. 1-3.

⁴⁰ *Id.*, p. 1.

27. [REDACTED] was interviewed by the Prosecution under Article 55(2) of the Statute. In his initial interview on 15 May 2023, the Prosecution explained that “[REDACTED]”⁴¹

28. The same day, [REDACTED] signed a “Statement of Limited Use”,⁴² drafted by the Prosecution,⁴³ which provides that:

[REDACTED].⁴⁴

[REDACTED].⁴⁵

29. [REDACTED] is relied on, extensively, by the Prosecution in its confirmation case against Mr Kony. Only one witness, P-0070, is cited more times in the Prosecution’s Pre-Confirmation Brief.⁴⁶ Importantly, the Prosecution relies on [REDACTED] interviews purportedly to provide linkage evidence which otherwise does not exist. [REDACTED] is the **sole** witness relied on by the Prosecution to assert, for example, that Mr Kony took decisions and issued orders such as “decisions on the movements of units”.⁴⁷ [REDACTED] is the **sole** witness relied on by the Prosecution to submit that Mr Kony took decisions and issued orders such as “the necessity for meeting between commanders”.⁴⁸ [REDACTED] is the **sole** witness relied on by the Prosecution to assert that Mr Kony “gave instructions on dividing the weapons and ammunition between the different units”.⁴⁹ The Prosecution submits, for example, that “[r]egarding victimisation of children born to enslaved women and girls, the Prosecution relies on the testimony of insider witnesses.”⁵⁰ Despite the Prosecution’s use of the plural “witnesses”, the **sole** witness the Prosecution cites, is [REDACTED].

30. Rule 77 requires the Prosecution to disclose documents which are material to the preparation of the defence. [REDACTED], undoubtedly, stands to significantly benefit from his cooperation with the Prosecution, and therefore may have had a propensity to be influenced by these benefits in giving his evidence. To this end, it is significant that the Prosecution asked to interview [REDACTED] not in order to learn more about the events in question, for example, but “to

⁴¹ [UGA-OTP-00000849-R01](#), 0016-0017 (interpretation omitted).

⁴² [UGA-OTP-00000289-R01](#).

⁴³ [UGA-OTP-00000849-R01](#), 0024-0025.

⁴⁴ [UGA-OTP-00000289-R01](#), para. 3.

⁴⁵ *Id.*, para. 7 (emphasis added).

⁴⁶ See [Pre-Confirmation Brief](#), ICC-02/04-01/05-593-Conf, 17 April 2025 (“Pre-Confirmation Brief”), fns 7, 13, 21-23, 26-30, 33, 34, 38, 42, 45, 46, 88, 91, 92, 98, 104-106, 109, 112, 118, 134, 144, 147, 165, 167, 168, 179, 185, 187, 192, 218, 220, 221, 252, 254, 258, 399, 412, 413, 418, 419, 431, 463-465, 471, 503, 520.

⁴⁷ *Id.*, fn. 114.

⁴⁸ *Id.*, fn. 116.

⁴⁹ *Id.*, fn. 122.

⁵⁰ *Id.*, para. 150.

interview P-0455 **for the purposes of the case against Joseph Kony.**⁵¹ The Chamber should know the extent of these benefits to be able to assess whether they undermine [REDACTED] credibility. Given the sensitivity and importance of the testimony and the propensity for it to have been impacted by the benefits he expected to receive, [REDACTED] demeanour, disposition, conduct, attitude and expressions during his Prosecution interview – and not just the transcript – are material and important to the preparation of the defence.

31. Relevantly, the ICC Appeals Chamber has held that “[a] complete audio- or video-record of the questioning of a person will provide the fullest and most accurate account of the questioned person’s statements.”⁵² Accordingly, the disclosure of the video and audio recordings of the Prosecution’s interview of [REDACTED] aligns with the best evidence rule, which the Prosecution has previously submitted is “a general principle of international criminal law, which requires the Parties to submit and the Chamber to ‘rely on the best evidence available in the circumstances of the case’, depending on the particularities of each document.” Citing to ICTY practice, the ICC Prosecution has asserted that “[t]he Chamber has broad discretion to exclude evidence where a Party withholds the ‘best evidence’ within their possession or control.”⁵³ The Defence agrees, and notes that the Prosecution’s refusal to disclose the underlying audio and video recordings of its interviews with [REDACTED] will form the basis of a Defence request that the transcripts be excluded from the confirmation proceedings. As Trial Chamber I has held, “it is self-evident that greater caution is mandated when considering the admission – under the relevant rules – of statements made by ‘insider’ witnesses who may well have a motive to assign responsibility for their actions to others.”⁵⁴

32. In addition to demonstrating matters directly relevant to the credibility of [REDACTED] evidence, the Prosecution’s interviews were conducted through interpretation. The transcripts record [REDACTED] speaking in Acholi, and being translated into English. The Defence would accordingly like the opportunity for its Acholi-speaking Language Assistant to assess whether

⁵¹ Emphasis added.

⁵² *Prosecutor v. Banda & Jerbo*, [Judgment on the appeal of the Prosecutor against the decision of Trial Chamber IV of 12 September 2011 entitled “Reasons for the Order on translation of witness statements \(ICC-02/05-03/09-199\) and additional instructions on translation”](#), ICC-02/05-03/09-295, 17 February 2012, paras 27-28.

⁵³ *Prosecutor v. Bemba et al.*, [Public redacted version of “Prosecution’s Motion for an Order of Disclosure or, in the Alternative, Partial Exclusion of D21-0003’s Evidence”](#), 22 March 2016, ICC- 01/05-01/13-1738-Conf, ICC-01/05-01/13-1738-Red, 23 March 2016, paras 12, 17, citing *Prosecutor v. Halilović*, [Decision on Interlocutory Appeal Concerning Admission of Record of Interview of the Accused from the Bar Table](#), IT-01-48-AR73.2, 19 August 2005, para. 19; *Prosecutor v. Perišić*, [Order for Guidelines on the Admission and Presentation of Evidence and Conduct of Counsel in Court](#), IT-04-81-T, 29 October 2008, para. 36.

⁵⁴ *Prosecutor v. Abd Al Rahman*, [Decision on the Prosecution’s second application to introduce a prior recorded testimony under Rule 68\(2\)\(c\)](#), ICC-02/05-01/20-680-Red, 2 May 2022, para. 14.

[REDACTED] evidence has been adequately interpreted and accurately transcribed. Indeed, ensuring a verifiable and accurate record of conversations is the very purpose of audio and video recording which is mandatory under Rule 112. The Defence merely seeks access to the record that is necessary in the specific circumstances of a suspect interview according to the Court's statutory instruments.

33. For these reasons, on 9 April 2025, the Defence asked the Prosecution to disclose all audio and/or video recordings of its interviews with [REDACTED]. The Prosecution responded that it is "under no obligation to disclose the audio or video recordings of the witness's interview as these are duplicative of the written transcriptions and therefore not routinely disclosed together" and cited to decisions in *Yekatom and Ngaïssona*, *Mbarushimana* and *Ruto and Sang* in support.⁵⁵ In these decisions, Pre-Trial and Trial Chambers rejected Defence requests for the disclosure of the underlying audio and/or video recordings. Each of these Defence requests had been made in relation to multiple Prosecution witnesses. In *Mbarushimana*, for example, the Defence had asked for recordings in relation to thirteen witnesses.⁵⁶ None of these cases concerned the audio and video recording of suspect interviews under Article 55(2), let alone the interviews of someone who was [REDACTED], who stood to benefit from his interviews, and who was also arguably the main witness being presented by the Prosecution in the case, notwithstanding [REDACTED] as to his total lack of credibility. In *Yekatom and Ngaïssona*, for example, the Defence had sought disclosure of the recordings of interviews of a witness whom the Prosecution had not yet even decided to call.⁵⁷ Moreover, while the Chamber in *Ruto and Sang* denied the request for disclosure of the audio recordings, it went on to find that "different factors may govern the necessity or desirability of disclosing underlying audio recordings" such as "the higher probability of the material being contested."⁵⁸ In this case, [REDACTED] evidence will likely be the most highly contested in the confirmation phase. These decisions are entirely distinguishable and no bar to an application for disclosure of the audio and video recordings of [REDACTED] interviews.

⁵⁵ Annex A, pp. 3-5.

⁵⁶ *Prosecutor v. Mbarushimana*, [Decision on "Defence request to deny the use of certain incriminating evidence at the confirmation hearing" and postponement of confirmation hearing](#), ICC-01/04-01/10-378, 16 August 2011, paras 20-22.

⁵⁷ *Prosecutor v. Yekatom & Ngaïssona*, [Decision on the Yekatom Defence Request for Disclosure of Witness Statements in their Original Language](#), ICC-01/14-01/18-535, 29 May 2020.

⁵⁸ *Prosecutor v. Ruto & Sang*, [Transcript of Trial Hearing](#), ICC-01/09-01/11-T-137-Red-ENG, p. 16, ln. 20 – p. 17, ln. 3

34. Nor is the Prosecution correct to assert that the recordings “are duplicative of the written transcriptions” and therefore not disclosable. In *Gicheru*, for example, the Pre-Trial Chamber ordered the disclosure of the video-recordings of a Prosecution witness interview, despite the Prosecution having already disclosed “(i) P-0800’s witness preparation log; (ii) the transcripts of his testimony in the *Ruto and Sang* Case; and (iii) the transcripts of his re-interview with the [Prosecution].”⁵⁹ Disclosure was nonetheless ordered on the basis that “the video-recording may affect the credibility of the Prosecution’s evidence insofar as it pertains to the question of [REDACTED]”.⁶⁰ In doing so, the Pre-Trial Chamber recalled that “the term ‘material to the preparation of the defence’ is to be interpreted broadly, and should be understood as referring to all objects that are relevant to the preparation of the defence” and that “items which are not directly linked to exonerating or incriminating evidence may nevertheless be material to the defence’s preparation.”⁶¹

35. Of course, the bigger question here is: “Why not?” Why would the Prosecution object to disclosing the underlying and original material to the Defence? The Prosecution has attempted an objectively extraordinary procedure: interviewing [REDACTED], in circumstances where he stands to benefit from his cooperation, eliciting uniquely and highly incriminating evidence, which passed through interpretation. As held in relation to another Defence request for disclosure of the video recording of a proofing session, “[t]here is no legal or rational reason why the video-recording should not be disclosed. The whole purpose of video-recording the proofing sessions is to **ensure transparency**. This is especially so when there is a high probability of there being fertile ground for relevant and indispensable confrontation [...]”⁶²

36. Nor could the Prosecution reasonably claim that disclosure of the underlying material is somehow prejudicial. There is no prejudice to the Prosecution, their disclosure will not be unduly onerous and the transcripts show that any redactions required will be minimal. The recordings are material to the preparation of the Defence and should be disclosed.

⁵⁹ *Prosecutor v. Gicheru*, [Decision on the Request for Disclosure of Video-Recording of P-0800’s Witness Preparation Session in the *Ruto and Sang* Case](#), ICC-01/09-01/20-278-Red, 4 February 2022 (“*Gicheru* Decision on Request for Disclosure of Video-Recording of P-0800 Materials”), para. 3.

⁶⁰ *Id.*, para. 9.

⁶¹ *Id.*, paras 8-11. See also *Prosecutor v. Banda & Jerbo*, [Judgment on the appeal of Mr Abdallah Banda Abakaer Nourain and Mr Saleh Mohammed Jerbo Jamus against the decision of Trial Chamber IV of 23 January 2013 entitled “Decision on the Defence’s Request for Disclosure of Documents in the Possession of the Office of the Prosecutor”](#), ICC-02/05-03/09-501, 28 August 2013 (“*Banda & Jerbo* Judgment on the appeal of the Defence Request for disclosure”), paras 34-40.

⁶² *Prosecutor v. Gicheru*, [Public redacted version of “Request for disclosure of video-recording of P-0516’s proofing session,” 16 March 2022, ICC-01/09-01/20-304-Conf](#), ICC-01/09-01/20-304-Red, 25 March 2022, para. 13.

B. The requested agreements and correspondence are material to the preparation of the Defence

37. [REDACTED] interviews resulted from a Prosecution request in July 2022, which was followed by [REDACTED] consent. The Prosecution has withheld the date of this consent from the Defence, which prevents the Defence from knowing the length of time spent on any negotiations between the Prosecution and [REDACTED]. What is known, is the interviews took place 10 months after the Prosecution request. The Prosecution has declined to disclose the correspondence or details surrounding the agreement it came to with [REDACTED] to facilitate these interviews, or the conditions under which the interviews were conducted.

38. [REDACTED].⁶³ [REDACTED]⁶⁴ [REDACTED].⁶⁵ [REDACTED]⁶⁶

39. In the context of the Prosecution's stated position to [REDACTED] that he has [REDACTED], there is no doubt that [REDACTED] decision to be interviewed by the Prosecution came at significant personal risk. Particularly given that the Statement of Limited Use [REDACTED].⁶⁷

40. It is also inconceivable that [REDACTED] was ignorant of the significance of his cooperation with the Prosecution, and the Prosecution's position in [REDACTED]. [REDACTED] would have been required, [REDACTED], to inform him of the risks and benefits of deciding to [REDACTED] a central Prosecution witness [REDACTED]. Even in the absence of a formal written agreement in which [REDACTED] cooperation was offered in exchange for [REDACTED], it is material to the preparation of the Defence to understand how the parties understood and reflected [REDACTED] agreement and cooperation.

41. While the Defence has been provided with the Statement of Limited Use, and informed that this was "provided at the subsequent request of P-0455's [REDACTED]",⁶⁸ these requests, negotiations, and exchanges which prompted the transformation of [REDACTED] role, are material to the preparation of the Defence, and not just their outcome. [REDACTED] cooperation and collaboration must have been the result of communication between the Prosecution and either himself or [REDACTED]. The transcripts reveal that the interviews took place at the ICC

⁶³ [REDACTED].

⁶⁴ [REDACTED].

⁶⁵ [REDACTED].

⁶⁶ [REDACTED].

⁶⁷ [UGA-OTP-00000849-R01](#), at 0024-0025.

⁶⁸ Annex A, p. 1.

Headquarters.⁶⁹ Reference is made to the unavailability of “the room” on a particular day,⁷⁰ and to members of the Office of the Prosecutor attending remotely.⁷¹ [REDACTED] was being provided with the assistance of a psycho-social expert daily throughout the interviews.⁷² These many logistical aspects, including [REDACTED], would have required significant arrangements, negotiations, requests on one side, and acceptance of requests by the other. [REDACTED] would likely have agreed to answer questions related to some topics, and not others, or even just have agreed that no topics were off the table. Correspondence or records concerning the conditions, preparation, and arrangements for these interviews is material to the preparation of the Defence case, given its direct relevance to the credibility of the evidence [REDACTED] ultimately provided.

42. The Prosecution has never denied the existence of this correspondence, asserting instead that “it does not contain any information material to Defence preparation under rule 77, or potentially exonerating under article 67(2).”⁷³ The Appeals Chamber has been clear that “the term ‘material to the preparation of the defence’ must be interpreted broadly” and that documents “not directly linked to exonerating or incriminating evidence” were nevertheless material to the preparation of the accused’s defence in that case.⁷⁴ Indeed, “self-interest” is a key factor taken into account when assessing the credibility of insider witness testimony.⁷⁵ The ICTY Trial Chamber in *Martić* found that the assistance two witnesses sought and received from the Prosecution in support of their asylum claims cast “significant doubt as to the credibility of both witnesses”, leading to their accounts only being given weight where they were independently corroborated.⁷⁶ Given the uniquely and highly incriminating nature, and centrality, of [REDACTED] allegations against Mr Kony, the Defence is entitled to know about, and may wish to be in a position to inform the Chamber of, the conditions and understandings on the basis of which [REDACTED] provided the information that is now being placed before the Chamber. These conditions could be particularly relevant to understanding whether [REDACTED] felt induced to provide particular

⁶⁹ See, e.g., [UGA-OTP-00000886-R01](#), ln. 8.

⁷⁰ [UGA-OTP-00000863-R01](#), lns 64-65.

⁷¹ See, e.g., [UGA-OTP-00000849-R01](#), at 0009 “[REDACTED]”.

⁷² See, e.g., [UGA-OTP-00000884-R01](#), lns 48-57; [UGA-OTP-00000881-R01](#), lns 773-774; [UGA-OTP-00000880-R01](#), lns 51-55.

⁷³ Annex A, p. 1.

⁷⁴ [Banda & Jerbo Judgment on the appeal of the Defence Request for disclosure](#), paras 34-40.

⁷⁵ G. Chlevickaitė, B. Holá, C. Bijleveld, “Suspicious minds? Empirical analysis of insider witness assessments at the ICTY, ICTR and ICC” (2023) 20(1) *European Journal of Criminology*, 185-207. In *Al Hassan*, the Trial Chamber considered the “personal circumstances” of an insider witness, including whether they had any incentive to incriminate the accused: *Prosecutor v. Al Hassan*, [Trial Judgment](#), ICC-01/12-01/18-2594, 26 June 2024, para. 62.

⁷⁶ *Prosecutor v. Martić*, [Trial Judgement](#), IT-95-11, 12 June 2007, paras 36-38.

information, whether through the hope of benefit or by avoiding the Sword of Damocles reflected in the Limited Use Agreement. To this end, having a clear picture of how this extraordinary procedure came about, is undoubtedly material to the preparation of the Defence.

43. In this context, the question of “Why not?” arises again. If indeed there is no “formal” *quid pro quo* agreement between [REDACTED] and the Prosecution, why is the Prosecution not favouring transparency and disclosing the requested correspondence, particularly given the extreme importance it is placing on [REDACTED] evidence, and the manifest novelty of this situation? Why leave any room for doubt? Particularly when, less than three weeks after the Prosecution interview was completed, [REDACTED]⁷⁷

[REDACTED]

44. Materials and correspondence showing the conditions under which [REDACTED] gave evidence, and the arrangements which were put in place for these interviews, are plainly disclosable.

C. [REDACTED] missing interview is disclosable

45. The transcripts reveal that one of the Prosecution interviews with [REDACTED] has not been disclosed. Following a request for its disclosure from the Defence, the Prosecution responded that:

[...] the only transcript which has not been provided relates to the audio recording of the biographical and security questions (“BSQ”) of P-0455. In this audio, the Prosecution only elicited material about P-0455’s family and security; as such, it ought not to be considered a recorded statement for the purposes of Rule 76 of the Rules of Procedures and Evidence. Furthermore, these questions concern the Prosecution’s protection obligations under article 68(1) of the Statute for its witnesses (see ICC-01/12-01/18-777-Red, paras. 15, 16). However, the Prosecution recognises that where information from this process contains information material for the preparation of the Defence, it is obligated to disclose this information by extracting relevant information and disclose it to the Defence (see ICC-01/04- 02/06-840-Red, para. 54). Accordingly, the Prosecution thoroughly examined the content of this audio. The review established that the audio does not contain any disclosable material. Moreover, in light of your request, we reviewed the content again, and our assessment remains unchanged.

46. In one of the disclosed transcripts, the Prosecution representative makes the following statement to [REDACTED]: “[REDACTED]”⁷⁸ This statement raises two issues.

⁷⁷ [REDACTED].

⁷⁸ [UGA-OTP-00000850-R01](#) lns 207-358, specifically lns 339-358 (emphasis added).

47. Firstly, the Prosecution has recognised, following a request for assistance from one of [REDACTED] who was also a Prosecution witness, that these kinds of requests are disclosable.⁷⁹ As noted by the *Ongwen* Trial Chamber, “the Prosecution already recognises that witness requests for assistance, financial or otherwise, may implicate witness credibility or be otherwise material to the preparation of the defence”.⁸⁰ Any requests for any kind of assistance made by [REDACTED] concerning “[REDACTED], and the security of people close to [him]”, are material to the preparation of the Defence. The identifying information and current location of [REDACTED] family members, as well as details about their security concerns, could be the subject of appropriate redactions.

48. Second, the Prosecution has represented to the Defence that “[a]s to your request in relation to P-0455’s [REDACTED], we can confirm that there was no discussion of these matters between the OTP and P-0455, either directly or [REDACTED].”⁸¹ The above excerpt demonstrates that a separate interview was conducted, of which the transcript has been withheld, in which [REDACTED] security “as it is currently”, [REDACTED], and the security of his family was discussed. On their face, these statements are incompatible. [REDACTED] and the Prosecution discussed his security [REDACTED]. The withheld transcript is material to the preparation of the Defence, and should be disclosed. In the alternative, the Defence asks that the Pre-Trial Chamber order the Prosecution to provide the withheld transcript to the Pre-Trial Chamber, in order for it to conduct an assessment of whether any material contained therein is material to the preparation of the Defence, in light of the present submissions.

VI. CONCLUSION AND RELIEF REQUESTED

49. The present Defence request for disclosure must be considered in the context of an *in absentia* procedure. In other ICC cases, where charges were being confirmed with a view to proceeding to a criminal trial, the Defence would be entitled to cross-examine [REDACTED] during his eventual trial testimony, and elicit evidence about the process that facilitated his [REDACTED] to Prosecution witness. The Defence will likely never have this opportunity in relation to [REDACTED]. This mitigates in favour of disclosure and transparency, to allow the parties and Pre-Trial Chamber to have the complete picture of the circumstances in which this evidence was created. The evidence in question is central to the Prosecution case, likely to be

⁷⁹ [REDACTED].

⁸⁰ [REDACTED].

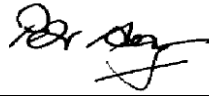
⁸¹ Annex A, p. 1.

contested and was given by [REDACTED], who stands to materially benefit from having given it.

50. On this basis, the Defence requests Pre-Trial Chamber III to:

ORDER the Prosecution to disclose the P-0455 Materials.

The whole respectfully submitted



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Dated this 21 May 2025

At The Hague, Netherlands