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No. ICC-02/04-01/05

Date: 26 June 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

Decision on the Defence Request for Disclosure of Materials relating to P-0455

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

☒ The Office of the Prosecutor

☒ 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

☐ Amicus Curiae

REGISTRY

Registrar
Mr Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and Reparations
Section

☐ Other

PRE-TRIAL CHAMBER III of the International Criminal Court (the ‘ICC’ or ‘Court’) issues this ‘Decision on the Defence Request for Disclosure of Materials relating to P-0455’, pursuant to article 61 of the Rome Statute (the ‘Statute’) and rule 77 of the Rules of Procedure and Evidence (the ‘Rules’).

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 8 July 2005, Pre-Trial Chamber II issued a warrant of arrest against Joseph Kony (‘Mr Kony’), which was amended on 27 September 2005.¹
2. On 19 January 2024, the Prosecution submitted the ‘Document Containing the Charges’ (the ‘DCC’),² which was amended on 17 April 2025.³
3. On 29 October 2024, the Chamber issued the ‘Decision on the criteria for holding confirmation of charges proceedings *in absentia*’.⁴
4. On 12 December 2024, the Chamber issued the ‘Decision Setting the Disclosure Regime’, instructing, *inter alia*, the Prosecution to ‘complete the disclosure process by no later than 28 March 2025’, in respect of ‘all the evidence it intends to rely upon at the confirmation of charges hearing, including the totality of the witness statements and their translations, the exculpatory material that it has identified thus far, and the material falling under rule 77 of the Rules’.⁵
5. On the same day, the Chamber issued the ‘Decision Setting the Date of the Confirmation of Charges Hearing and Related Time Limits’,⁶ which set 9 September 2025 as the date for the confirmation hearing and instructed parties and participants *inter alia* ‘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’.

¹ Warrant of Arrest for Joseph Kony Issued on 8 July 2005 as Amended on 27 September 2005, 27 September 2005, ICC-02/04-01/05-28-US-Exp, under seal and *ex parte*, only available to the Prosecution (public redacted version issued on 13 October 2005, [ICC-02/04-01/05-53](#)).

² [ICC-02/04-01/05-474](#).

³ [Amended Document Containing the Charges](#), ICC-02/04-01/05-591.

⁴ [ICC-02/04-01/05-532](#).

⁵ [ICC-02/04-01/05-537](#), para. 43.

⁶ [ICC-02/04-01/05-539](#).

6. On 9 May 2025, the Defence submitted its ‘Kony Defence Request for Disclosure of Materials relating to P-0455’ (‘Defence Request’),⁷ requesting the Chamber to order the Prosecution to disclose several materials relating to Witness P-0455 (‘P-455’ or ‘the Witness’). More specifically, the Defence requests disclosure of the following: (i) all audio and/or video recordings of Witness P-455’s interviews; (ii) any additional transcripts of P-0455, including in particular one transcript from the interview held on 15 May 2023 containing the biographical and security questionnaire (the ‘BSQ Transcript’); (iii) all notes and documentation concerning Witness P-0455’s personal situation at the time of the interviews; (iv) any prior correspondence relating to the interviews commencing in May 2023; and (v) any related communication (collectively, ‘the P-455 Materials’ or ‘Materials’). In the view of the Defence, all of the P-0455 Materials are ‘material to the preparation of the defence’ within the meaning of rule 77 of the Rules, and should therefore be disclosed.

7. As regards the audio/video recordings, the Defence submits *inter alia* that (i) Witness P-0455 ‘gave highly and uniquely incriminating evidence against Mr Kony’,⁸ is relied upon extensively as the second-most cited witness in the Pre-Confirmation Brief and the sole witness supporting some allegations key to Mr Kony’s individual criminal responsibility;⁹ (ii) Witness P-0455’s personal situation at the time of the interview was such that the Witness stood to benefit from cooperating with the Prosecution,¹⁰ which might have influenced the evidence, thus making it necessary for the Defence to access the audio-video recordings of the interviews in order to assess the Witness’ ‘demeanour, disposition, conduct, attitude and expressions’ during such interviews;¹¹ (iii) the language of the interviews being Acholi, the availability of the audio and video recordings would allow the Defence Acholi-speaking Language Assistant to assess whether the Witness’ evidence ‘has been adequately interpreted and accurately transcribed’.¹²

⁷ ICC-02/04-01/05-602-Conf (a public redacted version was filed on 21 May 2025: [ICC-02/04-01/05-602-Red](#)).

⁸ Defence Request, para. 5.

⁹ Defence Request, para. 29.

¹⁰ Defence Request, para. 8.

¹¹ Defence Request, paras 8, 30, 40.

¹² Defence Request, para. 32.

8. As regards the request for disclosure of any additional agreements and correspondence relating to the arrangements for the interviews, the Defence submits that they would allow it to determine ‘how the parties understood and reflected’ about P-455’s forthcoming cooperation.¹³ The Statement of Limited Use signed by the Witness, disclosed by the Prosecution following *inter partes* exchanges, would not by itself allow the Defence to properly make that determination.¹⁴

9. Finally, as regards the BSQ Transcript, the Defence submits that any request for assistance, including in matters of security, may affect a witness’s credibility and maintains that, accordingly, that transcript is also disclosable. In the alternative, the Defence requests that the item be provided to the Pre-Trial Chamber, for it to assess its materiality in light of the Defence Request.¹⁵

10. The Defence further recalls that it had initially requested the Materials from the Prosecution on an *inter partes* basis¹⁶, and clarifies that, in case the Materials are not disclosed, they will request ‘that the transcripts be excluded from the confirmation proceedings’.¹⁷

11. On 16 May 2025, the Prosecution filed the ‘Prosecution’s Response to Defence’s Request for Disclosure of Materials Relating to P-0455’ (‘Prosecution Response’), requesting the Chamber to reject the Defence Request.¹⁸ The Prosecution submits *inter alia* that ‘[t]here is no undisclosed material in the Prosecution’s possession in relation to the interview with P-0455 that warrants disclosure’ and that the Defence arguments are ‘highly speculative’ and fail to demonstrate the Materials’ materiality within the meaning and for the purposes of rule 77 of the Rules.¹⁹

12. The Prosecution further indicates that it reassessed the Materials in light of the Defence Request.²⁰ As regards the audio/video recordings, the Prosecution takes the

¹³ Defence Request, para. 40.

¹⁴ Defence Request, para. 41.

¹⁵ Defence Request, paras 45-48.

¹⁶ Confidential Annex A, ICC-02/04-01/05-602-Conf-AnxA, contains the *inter partes* exchanges relevant to the Defence Request.

¹⁷ Defence Request, para. 31.

¹⁸ ICC-02/04-01/05-604-Conf (a public redacted version was filed on 22 May 2025: [ICC-02/04-01/05-604-Red](#)).

¹⁹ Prosecution Response, para. 3.

²⁰ Prosecution Response, paras 5 and 11.

view that there is no need ‘to delve into such fine points as the witness’s demeanour at interview’ at the confirmation stage, especially since Witness P-455’s interview is just ‘part of a larger body of evidence’ relied upon to substantiate the charges, as detailed in the Pre-Confirmation Brief and in the List of Evidence, especially in the absence of a basis to call into question the accuracy of the interpretation and transcription of the Witness’ words.²¹ Furthermore, the Prosecution notes that the original words spoken in Acholi by the Witness are included in the disclosed transcripts, thus making it possible for the Defence to check the adequacy of the translation, and that the case-law relied upon by the Defence is either cited out of context or not relevant to confirmation proceedings.²² As regards the BSQ Transcript, it submits that it refers to a section of the interview pertaining to sensitive information about the witness’ family and security situation, typically conducted separately from the substantive part of the interview and therefore not considered as recorded statements and not disclosed, unless containing information material to the Defence within the meaning of rule 77 of the Rules, or potentially exculpatory under article 67 (2) of the Statute. The Prosecution further submits that it is incumbent on the Defence to sufficiently demonstrate that either of these scenarios applies, which the Defence has failed to do in respect of the Materials.²³

13. As regards the agreements and correspondence in relation to Witness P-0455’s interview, the Prosecution submits that all that it is in their possession consists of ‘logistical correspondence’ with P-0455’s legal representatives,²⁴ addressing ‘routine arrangements’ such as booking of rooms where the interview would be held.²⁵

14. The Prosecution indicates they are prepared to submit the BSQ recording and the Other Materials to the Chamber’s review.²⁶

15. On 16 May 2025, the Single Judge ordered the parties to liaise so as to agree on redactions to be applied to the public version of their filings;²⁷ the public redacted

²¹ Prosecution Response, paras 14-15.

²² Prosecution Response, para. 15.

²³ Prosecution Response, paras 8-10.

²⁴ Prosecution Response, para. 3.

²⁵ Prosecution Response, para. 6.

²⁶ Prosecution Response, paras 5 and 13.

²⁷ Single Judge email Decision, 16 May 2025, at 18:09.

versions of the Defence Request and the Prosecution Response were respectively filed on 21²⁸ and 22²⁹ May 2025.

II. DETERMINATION

16. The Chamber notes that the subject matter of the Defence Request is twofold: on one hand, the audio/visual recordings of Witness P-455's interviews and the BSQ transcript (points i and ii of the Materials: the 'Existing Materials'); on the other, 'any other' note, documentation, correspondence or other material concerning Witness P-0455's personal situation at the time of the interviews, or their organisation (points iii, iv and v of the Materials: the 'Other Materials'). For the purposes of this decision, the Chamber will address the two categories separately.

A. Determination as to the Existing Materials

17. As regards the audio/video transcripts of interviews conducted pursuant to article 55(2) of the Statute, the arguments relied upon by the Defence to support its need to access the audio/video recordings focus to a large extent on Witness P-455's testimony's critical importance to the Prosecution case. More specifically, the Defence submits that it is necessary for it to know the circumstances surrounding the Witness' decision to cooperate with the Prosecution for the purposes of these proceedings; this, because of the potential impact of this cooperation on the Witness' personal situation at the time of the interviews and the ensuing possibility that this might have impacted the tenor and content of the evidence. In the view of the Defence, Witness P-455's 'demeanour, disposition, conduct, attitude and expressions' during the Prosecution's interview - and not just the transcript - would be important to its preparation and therefore are 'material' within the meaning of rule 77 of the Rules.

18. Without prejudice to its own determination as to the evidentiary assessment of the relevant items, the Chamber finds that the Defence has failed to demonstrate why access to the audio/video recordings of the interviews would be necessary for it to identify and develop its arguments as regards the credibility, relevance or probative value of Witness P-455's testimony. The Chamber is not persuaded by the Defence's

²⁸ [ICC-02/04-01/05-602-Red.](#)

²⁹ [ICC-02/04-01/05-604-Red.](#)

arguments challenging the reliability of the transcripts. Furthermore, and critically, the Chamber notes that the disclosure of audio/video recordings in addition to their transcripts is the exception rather than the rule and that the materiality of an item for the purposes of its disclosure cannot be determined in the abstract, but must always be assessed in light of the specific circumstances of the proceedings. While the Court's jurisprudence has since long determined that the requirement of 'materiality' within the meaning of rule 77 of the Rules 'must be interpreted broadly',³⁰ it has also been clarified that the Prosecution's responsibilities in connection with this rule are not discharged 'by making everything that is in its possession or control' available to the suspect.³¹ This is especially so at the stage of the confirmation proceedings, in light of their specific scope and purpose, which is limited to determining whether the evidentiary basis relied upon by the Prosecution is sufficient to establish 'substantial grounds to believe' that the suspect committed the crimes with which he is charged, and that a trial is accordingly warranted.³²

19. The Defence's assertion that it needs to analyse Witness P-0455's 'demeanour, disposition, conduct, attitude and expressions' during the interview points to a type and depth of analysis which is not appropriate for the purposes of pre-trial proceedings. The Chamber further notes that the jurisprudence relied upon by the Defence does not support the Request: some of the cited decisions do not directly³³ (or even indirectly)³⁴

³⁰ See Appeals Chamber, *The Prosecutor v. Abdallah Banda Abakaer Nourain*, [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"](#), 28 August 2013, ICC-02/05-03/09-501, para. 38; Appeals Chamber, *Prosecutor v. Thomas Lubanga Dyilo*, [Judgment on the appeal of Mr. Lubanga Dyilo against the Oral Decision of Trial Chamber I of 18 January 2008](#), 11 July 2008, ICC-01/04-01/06-1433 Lubanga OA 11, para 77.

³¹ Pre-Trial Chamber II, *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, [Order on the conduct of the confirmation of charges proceedings](#), 27 June 2022, ICC-01/14-01/22-62, para. 29.

³² Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')*, [Corrected version of 'Decision on the confirmation of charges against Ali Muhammad Ali Abd-Al-Rahman \('Ali Kushayb'\)'](#), 23 November 2021, ICC-02/05-01/20-433-Corr, para. 34.

³³ Appeals Chamber, *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, [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"](#), 17 February 2012, ICC-02/05-03/09-295, para. 24 (the question addressed by the Appeals Chamber was not whether audio-video recordings should be disclosed in addition to the transcripts of those interviews, but rather whether the Prosecution was required 'to create an additional signed, written record of the statements of questioned persons when the statements had been audio- or video-recorded').

³⁴ Trial Chamber I, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')*, [Decision on the Prosecution's second application to introduce a prior recorded testimony under Rule 68\(2\)\(c\)](#), 2 May 2022, ICC-02/05-01/20-680-Red.

address the issue as to whether audio-video recordings are subject to disclosure; others explicitly find that the Prosecution's disclosure obligations are adequately met by the disclosure of the relevant transcripts of interviews, with the disclosure of audio of the same interviews being unnecessary;³⁵ most pertain to litigation at the trial stage,³⁶ and, even then, clarify that, 'for persons interviewed pursuant to Rule 112 of the Rules, the Prosecution must disclose either the audio/video recording, or the transcript thereof'.³⁷

20. The Chamber has already repeatedly clarified that the *in absentia* nature of these proceedings, whilst calling for few adaptations as made necessary by the applicable statutory framework (especially in its early stages)³⁸, does not require, or justify, amending the framework governing confirmation proceedings beyond what is strictly necessary.³⁹

21. As regards the Defence assertion that it needs to assess the correctness of the Acholi translation, the Chamber finds that, as stated by the Prosecution, the inclusion of the original Acholi statement in the transcripts already allows the Defence to perform that task.

22. Accordingly, the Chamber is not satisfied that access to the audio-video recordings of the interviews is necessary for the Defence to prepare *vis-à-vis* the testimony of Witness P-455 in the context of the confirmation hearing pursuant to article 61(7) of the Statute.

³⁵ Pre-Trial Chamber I, *The Prosecutor v. Callixte Mbarushimana*, [Decision on "Defence request to deny the use of certain incriminating evidence at the confirmation hearing" and postponement of confirmation hearing](#), 16 August 2011, ICC-01/04-01/10-378, para. 22.

³⁶ Trial Chamber VII, *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, [Decision on Prosecution Request to Order the Disclosure of Material in Possession of the Defence](#), 20 April 2016, ICC-01/05-01/13-1820; Trial Chamber III, *The Prosecutor v. Paul Gicheru*, [Decision on the Request for Disclosure of Video-Recording of P-0800's Witness Preparation Session in the Ruto and Sang Case](#), 4 February 2022, ICC-01/09-01/20-278-Red (mistakenly attributed to the Pre-Trial Chamber in the Defence Request: see footnote 59 and corresponding text).

³⁷ Trial Chamber V, *Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, [Decision on the Yekatom Defence Request for Disclosure of Witness Statements in their Original Language](#), 29 May 2020, ICC-01/14-01/18-535, para.11.

³⁸ [Decision on the criteria for holding confirmation of charges proceedings in absentia](#), 29 October 2024, ICC-02/04-01/05-532, para. 33.

³⁹ [Decision on the Prosecution Request for an In Situ Hearing](#), 20 February 2025, ICC-02/04-01/05-564-Red, para. 31; [Decision on the Prosecution's request to hear viva voce witnesses at the confirmation of charges hearing](#), 28 May 2025, ICC-02/04-01/05-609, para. 19.

23. As regards the BSQ Transcript, the Chamber notes the Prosecution's statement to the effect that, having reassessed the item in light of the Defence Request, it has confirmed its conclusion that it does not contain any element which would trigger its materiality to the Defence within the meaning of rule 77 of the Rules. The Defence argument that this document might contain offers from, or requests to the Prosecution for assistance suitable to affect the Witness's credibility or to otherwise making it material is speculative, and hence unpersuasive.

B. Determination as to the Other Materials

24. As regards 'any other material' related to the circumstances surrounding the organisation and the holding of P-455's interviews, as well as the Witness's personal situation at the relevant time, the Chamber notes the Prosecution's statement to the effect that, to the extent that such material exists, it is limited to strictly organisational matters, such as bookings and other logistical arrangements. The Chamber has no reason to doubt that this is the case: the Defence arguments, as made apparent by the reliance on rhetorical questions as to the reasons possibly underlying the Prosecution's indication that the existing correspondence does not qualify as material within the meaning of rule 77 of the Rules,⁴⁰ are centred around the twofold assumption that the Witness would have had a motive for accepting to testify and that this motive would have influenced the content of the testimony. The Chamber finds that both components of this assumption are speculative, and are therefore dismissed.

C. Determination as to the alternative request to have the Materials examined by the Chamber

25. Finally, the Chamber has noted the Defence's alternative request to have the BSQ transcript examined by the Chamber,⁴¹ and the Prosecution's willingness to make it, as well as existing, relevant correspondence, available⁴². In light of the above considerations, the Chamber is satisfied that none of the Materials is disclosable and that, accordingly, it is not necessary for it to proceed to their assessment.

⁴⁰ Defence Request, para. 35.

⁴¹ Defence Request, para. 48.

⁴² Prosecution Response, paras 6 and 13.

FOR THESE REASONS, THE CHAMBER HEREBY
REJECTS the Defence Request.

Done in English. A French translation will follow. The English version remains authoritative.



Judge Althea Violet Alexis-Windsor

Presiding Judge



Judge Iulia Antoanella Motoc



Judge Haykel Ben Mahfoudh

Dated this Thursday, 26 June 2025.

At The Hague, The Netherlands