



Original: English

No. ICC-02/04-01/05

Date: 4 July 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 concerning the publicity of proceedings (ICC-02/04-01/05-607)

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 concerning the publicity of proceedings’, pursuant to articles 67(1) and 68 of the Rome Statute (the ‘Statute’) and rules 87 and 88 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 29 October 2024, the Chamber issued the ‘Decision on the criteria for holding confirmation of charges proceedings *in absentia*’.²
3. 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’.³
4. On the same day, the Chamber issued the ‘Decision Setting the Date of the Confirmation of Charges Hearing and Related Time Limits’ (the ‘Decision on Time Limits’),⁴ 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’.
5. On 28 May 2025, the Defence submitted the ‘Kony Defence Request Concerning the Publicity of Proceedings’ (the ‘Defence Request’).⁵ The Defence submits that the

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 (lesser public redacted version issued on 13 March 2023, [ICC-02/04-01/05-456-Anx](#)).

² [ICC-02/04-01/05-532](#).

³ [ICC-02/04-01/05-537](#), para. 43.

⁴ [ICC-02/04-01/05-539](#), para. 12.

⁵ ICC-02/04-01/05-607-Conf, with confidential Annexes A and B (a public redacted version was filed on 2 June 2025: [ICC-02/04-01/05-607-Red](#), [AnxA-Red](#) and [AnxB-Red](#)).

Prosecution should have sought protective measures under rule 87(1) of the Rules in order to designate certain witness-related material as confidential and, accordingly, requests the Chamber (i) to order the Prosecution ‘to submit requests pursuant to Rule 87 and/or 88 of the Rules, accompanied by the completed security assessments, for any witnesses whose identity or evidence it considers should not be made public during the confirmation proceedings’ (the ‘Defence First Request’); and (ii) to invite the Prosecution ‘to review the confidentiality of the evidence it seeks to rely on at confirmation, with a view to classifying as much as possible as public in order to ensure a transparent and public hearing’ (the ‘Defence Second Request’).

6. On 4 June 2025, the Prosecution filed the ‘Prosecution’s Response to Defence’s Request Concerning the Publicity of Proceedings (ICC-02/04-01/05-607-Conf)’,⁶ requesting the Chamber to either dismiss the Defence Request *in limine*, since it concerns matters arising from the disclosure process, which should have been raised by 9 May 2025, pursuant to the Decision on Time Limits; or, alternatively, to reject it on the merits, on the basis that the designation of evidentiary material as confidential, including witness-related material, falls within the Prosecution’s prerogatives and obligations towards the protection of victims and witnesses and is not contingent upon the granting of protective measures pursuant to rule 87(1) of the Rules. The Prosecution also indicated that it did not object to the reclassification of its Response as public.

7. On 5 June 2026, the Legal Representatives of Victims filed the ‘Victims’ Response to the “Kony Defence Request Concerning the Publicity of Proceedings” (ICC-02/04-01/05-607-Conf)’ , supporting the Prosecution position.⁷

II. DETERMINATION

8. The Chamber underscores that the protection of victims and witnesses is of paramount importance in proceedings before the Court, pursuant to article 68 of the Statute. It is the responsibility of Chambers to uphold this protection in a manner consistent with the principle of the publicity of proceedings and the rights of the defence, pursuant to article 67(1) of the Statute.

⁶ ICC-02/04-01/05-611-Conf.

⁷ ICC-02/04-01/05-612-Conf, reclassified as public ([ICC-02/04-01/05-612](#)) pursuant to Single Judge email order on 11 June 2025, at 8:53.

9. In its Decision Setting the Disclosure Regime the Chamber stated that evidence disclosed by the parties “*shall, in principle, be classified as public, unless a reason exists to classify it otherwise*”, further noting that ‘*[i]t is incumbent upon the parties to indicate the level of classification when submitting the evidence for disclosure, and to provide the factual and legal basis for any proposal to use a level of classification other than public.*’⁸

10. The Decision on Time Limits instructed the parties and participants to bring any matter arising from the disclosure process by no later than 9 May 2025. The Chamber considers that the issues raised in the Defence Request, since they pertain to the confidentiality classification of evidence disclosed by the parties, are matters arising from disclosure and, as such, should have been brought to the Chamber’s attention within the aforementioned deadline. However, the Chamber notes that those issues can also be regarded more broadly, as arising from the proceedings preceding the confirmation of charges hearing and related to its conduct. Furthermore, although email exchanges between the Defence and the Prosecution related to the points at issue date back to 6 May 2025, the broad disagreement over the classification of witness-related material as confidential did not materialise until after the deadline set by the Chamber for raising disclosure-related matters.

11. In light of this, and considering the relevance of the subject matter to the fundamental principle of the publicity of proceedings, the Chamber will address the merits of the Request.

12. Contrary to the Defence’s submission, the Chamber finds that disclosure classifications are separate from, and not contingent upon, protective measures being granted under rules 87 or 88 of the Rules, which apply specifically to witnesses called to testify before the Court. Given that the Chamber has rejected the Prosecution’s request to call *viva voce* witnesses, there is no need to order protective measures for witnesses whose written statements and interview transcripts are relied upon for the purposes of the confirmation hearing. As submitted by the Prosecution, the well-established practice of Pre-Trial Chambers at the confirmation stage is to preserve the confidentiality of witnesses’ identity *vis-à-vis* the public without the need to previously adopt protective measures under rule 87 of the Rules for each and every one of them.

⁸ Decision Setting the Disclosure Regime, paras 39 and 40.

To hold otherwise would not only run contrary to this practice, but would also prove impractical, considering the very large number of witnesses typically relied upon in recent confirmation proceedings.

13. Notwithstanding the above, the Chamber notes the Defence's submission that out of 11,596 items of evidence, only 382 were classified as public at the time of its Request, including publicly available media articles. Mindful of the need for parties and participants to publicly discuss the evidence to the maximum extent compatible with the Court's protection obligations, and noting the Prosecution's indication that it *'takes no issue with conducting a review of its current confidentiality classifications'*, the Chamber instructs the Prosecution to review whether material currently classified as confidential could be reclassified as public, in consultation with the Defence and the LRV where appropriate.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Defence First Request;

INSTRUCTS the Prosecution to review its current classifications in accordance with the principle of publicity of the proceedings, as ordered in the Decision Setting the Disclosure Regime; and

ORDERS the Registry to reclassify filing ICC-02/04-01/05-611-Conf as public.

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 Friday, 4 July 2025

At The Hague, The Netherlands