

ANNEX 3

PUBLIC

From: Pre-Trial Chamber III Communications
Sent: 22 January 2025 15:17
To: OTP Kony Communications
Cc: D35 Kony Defence team; Kony LRV Team OPCV; Chamber Decisions Communication; Pre-Trial Chamber III Communications
Subject: ICC-02/04-01/05 – Decision on the Prosecution Request for Clarification on victims schedules as annexes to the Pre-Confirmation Brief – public

[ICC] CONFIDENTIAL

Dear Counsel,

The Chamber considers that an annex listing identifying data of victims as well as corresponding references of evidence without any form of argumentation regarding the substance of the Prosecution's allegations does not count towards the word limit for the pre-confirmation brief.

Accordingly, the Chamber authorises the Prosecution to append such an annex to its pre-confirmation brief.

Thank you and kind regards.

On behalf of Pre-Trial Chamber III

From: OTP Kony Communications [REDACTED]
Sent: 15 January 2025 12:50
To: Pre-Trial Chamber III Communications [REDACTED]
Cc: D35 Kony Defence team [REDACTED]; Kony LRV Team OPCV [REDACTED]
Subject: Request for clarification on victims schedules as annexes to the PCB

[ICC] CONFIDENTIAL

Dear Single Judge, dear all,

the Prosecution respectfully requests clarification of whether victim schedules could be appended to the Pre-Confirmation Brief as annexes.

In its order ICC-02/04-01/05-538, para. 29, the Chamber instructed the Prosecution to file a Pre-Confirmation Brief not exceeding 60 pages. This page limit is paired with the requirement "to ensure that the list of evidence to be submitted pursuant to rule 121(3) of the Rules only contains the evidentiary items referenced in the Pre-Confirmation Brief." Furthermore, regulation 36(2)(b) of the Regulations of the Court stipulates that annexes should not contain any argument on substance or evidentiary excerpts or summaries of the same and should be strictly limited to accessory non-substantial information.

Against this background the Prosecution seeks the guidance of the Chamber as to whether confidential Annexes which include tables listing only identifying data of victims as well as corresponding references of evidence could be appended to the brief, and not count for the page limit. Such tables would complement the descriptive text of the victimisation and approximate numbers in the brief and avoid overly convoluted footnotes where the evidence

concerns the victims affected by the crimes. In past cases such victim schedules have been accepted by Chambers as Annexes (*see, e.g.*, in the Abd-Al-Rahman case: ICC-02/05-01/20-346 (annexes A7, A8, A10 and A12); ICC-02/05-01/20-550 (annexes 11, 12, 17 and 23); ICC-02/05-01/20-1206 (annexes 11, 12, 17 and 23)).

Allowing the Prosecution sufficient space to set out who has been victimised is important, both legally and factually. The case against Joseph Kony is unprecedented in its breadth compared to other cases brought thus far. The Prosecution bears the burden of proving whether there are substantial grounds to believe that Kony has committed the alleged crimes, which includes who was affected by them, how, where and when. Victim schedules are an aide to set out the scope of the individuals concerned. The Prosecution would avoid adding legal or factual assessments in the schedules. Attached is a proposed example of the potential structure for such a schedule for the Chamber's consideration. The schedules would be linked to the respective charged crimes.

In preparation of its brief, the Prosecution would benefit from the guidance of the Chamber.

Kind regards, [REDACTED]

[REDACTED]
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