

ANNEX B
PUBLIC REDACTED



RE: Witness Protective Measures Inquiry

From D35 Kony Defence team [REDACTED]
Date Tue 2025-05-27 12:06 PM
To OTP Kony Communications [REDACTED] D35 Kony Defence team
[REDACTED]

Dear colleagues at the Office of the Prosecutor,

Thank you for your message.

With regard to the Ongwen protective measures, we acknowledge receipt. We will await the list, along with your indication as to the Defence access to the relevant material.

Concerning the confidential evidence, the Defence does not share the view that the Prosecution may unilaterally determine the application of protective measures and anonymity to all witnesses. As we have no information on the basis for the confidentiality classifications, we are not in a position to meaningfully engage in a discussion. As a starting point, however, we would appreciate your indication as to which items of evidence may be referred to in public, and would be grateful for this information as soon as possible.

Sincerely,
Kony Defence Team

From: OTP Kony Communications [REDACTED]
Sent: 23 May 2025 11:05
To: D35 Kony Defence team [REDACTED]; OTP Kony Communications
[REDACTED]
Subject: RE: Witness Protective Measures Inquiry

[ICC] RESTRICTED

[ICC] RESTRICTED

Dear Defence team,

The Prosecution maintains that it is within its right to designate as confidential evidence that it discloses to the Parties, Participants and the Chamber at the confirmation stage, pursuant to its protection obligations under the Court's statutory framework. To the extent that the Parties disagree on any or all of the Prosecution's designations and their underlying reasons as communicated, these can of course be litigated before the PTC.

That said, and as indicated in our previous correspondence, we remain open to discussing with you in advance of the confirmation hearing whether and to what extent information can be made public, on a case-by-case basis.

On the protective measures applicable from the *Ongwen* case, the Prosecution will provide you with a list of the overlapping witnesses subject to protective measures in the *Ongwen* case, including the respective filing numbers of the *Ongwen* Trial Chamber's decision, as soon as possible. Based on this list we will also indicate whether there are any issues with full access or not. While we assemble this, please note that you have in your possession

already the confidential version of the *Ongwen* Trial Judgment, which states who testified with protective measures in that case.

Kind regards,

OTP Kony Team

From: D35 Kony Defence team [REDACTED]
Sent: 21 May 2025 11:25
To: OTP Kony Communications [REDACTED]
Cc: D35 Kony Defence team [REDACTED]
Subject: HPRM: Witness Protective Measures Inquiry

[ICC] RESTRICTED

Dear colleagues at the Office of the Prosecutor,

Returning to your email of 13 May 2025, about the “confidentiality of witness identities vis-à-vis the public”. In this email, you referenced a “consistent practice at the Court to discuss witness evidence at the confirmation stage publicly only if revealing the information would not pose an objectively justified risk of harm to the witness” and inviting us to liaise as to “whether and to what extent information can be made public”.

The Court’s statutory framework requires that proceedings are public (Articles 67(1), 64(7), Rule 121, Regulation 20) unless otherwise provided in the Statute, Rules, these Regulations or ordered by the Chamber. Of course, where an objectively justified risk of harm to a witness exists, the Prosecution is able to bring an application for protective measures under Rule 87(1), including a request to keep the identifying particulars of a Prosecution witness confidential vis-à-vis the public. The Defence is entitled to respond to such a request pursuant to Rule 87(2)(b). It is then for the Pre-Trial Chamber to determine whether an objectively justified risk of harm has been demonstrated, and whether the subsequent encroachment on the right of the suspect to a public hearing is justified. This also allows the Pre-Trial Chamber to define the scope of protective measures, and tailor them to the needs of the witnesses, rather than their unilateral imposition by a party in a blanket manner and without justification. This is why, for example, the Pre-Trial Chamber in *Duterte* ordered the Prosecution to “submit any requests pursuant to rules 87 and/or 88 of the Rules, **including** with regard to the witnesses it intends to call to testify *viva voce*, accompanied by the completed security assessments for the witnesses in question” (*Duterte*, [ICC-01/21-01/25-114](#), para. 22).

The Prosecution’s decision to unilaterally impose protective measures for each of the 182 people on whom it seeks to rely in the *Kony* confirmation process, circumvents the Rule 87 procedure for the imposition of protective measures, and the role of the Pre-Trial Chamber in balancing any request for protective measures against the rights of the suspect. It also gives rise to prejudice to the Defence, particularly as regards our ability to investigate, and our ability to publicly challenge evidence at the confirmation hearing.

We understand that some of the 182 people are the subject of protective measures in the *Ongwen* case. We intend to seek reclassification of these orders from Trial Chamber II, to allow our access. We would therefore be grateful if you would confirm which of the 182 people are subject to protective measures in *Ongwen*, and whether you would consent to our access to these underlying orders.

Moreover, given the above, we would also ask whether you maintain your position that the Defence should consider the identifying information of each of the 182 people on whom the Prosecution intends to rely at confirmation to be confidential, unless informed otherwise.

Sincerely,
 Kony Defence Team

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