

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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No.: **ICC-02/04-01/05**

Date: **12 April 2024**

**PRE-TRIAL CHAMBER III**

**Before: Judge Althea Violet Alexis-Windsor , Single Judge**

**SITUATION IN UGANDA**

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

**Public Document**

**Victims' response to Prosecution's requests for the adoption of certain protocols  
and an *in situ* hearing in Uganda (No. ICC-02/04-01/05-490)**

**Source: Office of Public Counsel for Victims**

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

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**Detention Section**

**Victims Participation and Reparations  
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**Other**

## I. INTRODUCTION

1. Counsel of the Office of Public Counsel for Victims, appointed to represent the victims authorised to participate in the *Kony* case,<sup>1</sup> as well as the victims and applicants in the Situation in Uganda (the “Legal Representatives”),<sup>2</sup> submit the views and concerns of the victims in relation to the requests for the adoption of the Redaction Protocol and the Protocol on the handling of confidential information and contacts with witnesses (the “Proposed Protocols”), and an *in situ* hearing in Uganda filed by the Prosecution (the “Requests”).<sup>3</sup>

2. The Legal Representatives do not oppose the adoption of the Proposed Protocols. In addition, they submit that they have to be consulted on any request for lifting redactions which may impact on previous rulings granting said redactions in application forms and related victims’ material and should be afforded an opportunity to challenge any such request before the Pre-Trial Chamber, as per the Court’s established practice. Additionally, the Legal Representatives propose the adoption of a Protocol on dual status individuals.

3. Finally, the Legal Representatives support the Prosecution’s request to hold the confirmation of charges hearing in Uganda, and submit that Lira and Gulu would be

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<sup>1</sup> See the “Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06” (Pre-Trial Chamber II), [No. ICC-02/04-101](#) and [No. ICC-02/04-01/05-252](#), 13 August 2007; the “Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06” (Pre-Trial Chamber II), [No. ICC-02/04-125](#), 14 March 2008; the “Decision on legal representation of Victims a/0090/06, a/0098/06, a/0101/06 a/0112/06, a/0118/06, a/0119/06 and a/0122/06” (Pre-Trial Chamber II), [No. ICC-02/04-01/05-267](#), 15 February 2008; and the “Decision on legal representation of Victims a/0065/06, a/0066/06, a/0068/06, a/0088/06, a/0090/06 to a/0096/06, a/0098/06, a/0102/06, a/0103/06, a/0112/06, a/0115/06, a/0117/06, a/0118/06, a/0120/06 to a/0126/06, a/0076/07 to a/0078/07, a/0081/07, a/0082/07, a/0084/07, a/0085/07, a/0090/07 to a/0103/07, a/105/07 to a/0108/07, a/0112/07, a/0115/07, a/0117/07, a/0118/07 and a/0123/07”, [No. ICC-02/04-176](#) (Pre-Trial Chamber II), 9 February 2009.

<sup>2</sup> See the “Decision on Victim’s Participation in Proceedings Related to the Situation in Uganda” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/04-191](#), 12 March 2012.

<sup>3</sup> See the “Prosecution’s Observations on the conduct of the confirmation proceedings *in absentia* and Requests for the adoption of certain protocols and an *in situ* hearing in Uganda”, [No. ICC-02/04-01/05-490](#), 28 March 2024 (the “Requests”).

the most suitable locations in order for said proceedings to produce the desired effect of accessibility, transparency and visibility, as well as a meaningful participation of victims.

## II. PROCEDURAL HISTORY

4. On 8 July 2005, the Pre-Trial Chamber, in its previous composition, issued the Warrant for the Arrest of Mr Joseph Kony (“Mr Kony”).<sup>4</sup>

5. On 23 November 2023, ruling on a Prosecution’s request,<sup>5</sup> the Pre-Trial Chamber found that there is cause to hold a confirmation of charges hearing in the absence of Mr Kony, pending further steps to be taken by the Prosecution and the Registry.<sup>6</sup>

6. On 19 January 2024, the Prosecution filed the “Document Containing the Charges” (the “DCC”).<sup>7</sup>

7. On 4 March 2024, the Pre-Trial Chamber found that all reasonable steps to inform Mr Kony of the charges against him, within the meaning of article 61(2)(b) of the Rome Statute (the “Statute”), have been taken and decided that the confirmation of charges hearing will be held in the Suspect’s absence, should he not appear, starting on 15 October 2024.<sup>8</sup>

8. On 28 March 2024, the Prosecution filed the Requests.<sup>9</sup>

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<sup>4</sup> See the “Warrant of Arrest for Joseph Kony issued on 8 July 2005 as amended on 27 September 2005” (Pre-Trial Chamber II), [No. ICC-02/04-01/05-53](#), 27 September 2005. A lesser redacted version, [No. ICC-02/04-01/05-456-Anx](#), was notified on 13 March 2023.

<sup>5</sup> See the “Public Redacted Version of the ‘Prosecution’s Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence’” (Pre-Trial Chamber II), [No. ICC-02/04-01/05-446-Red](#), 24 November 2022.

<sup>6</sup> See the “Decision on the Prosecution’s request to hold a confirmation of charges hearing in the *Kony* in the suspect’s absence” (Pre-Trial Chamber II), [No. ICC-02/04-01/05-466](#), 23 November 2023, p. 24.

<sup>7</sup> See the “Document Containing the Charges”, [No. ICC-02/04-01/05-474](#), 19 January 2024 (the “DCC”).

<sup>8</sup> See the “Second decision on the Prosecution’s request to hold a confirmation of charges hearing in the *Kony* case in the suspect’s absence”, (Pre-Trial Chamber II) [No. ICC-02/04-01/05-481](#), 4 March 2024.

<sup>9</sup> See the Requests, *supra* note 3.

### III. SUBMISSIONS

#### 1. The adoption of the Proposed Protocols and the e-Court Protocol

9. The Legal Representatives have no observations on the Protocol on the handling of confidential information and contacts with witnesses,<sup>10</sup> and reserve their right to make observations on the new e-Court Protocol once the updated version is submitted by the Registry to the Pre-Trial Chamber.<sup>11</sup>

10. Like the Prosecution, the Legal Representatives deem it necessary to adopt the Redaction Protocol as included in the *Chambers Practice Manual*.<sup>12</sup> Indeed, this matter is all the more pertinent in the present case since the Prosecution intends to disclose documentary evidence from the *Ongwen* case.<sup>13</sup>

11. In addition, in accordance with the established practice,<sup>14</sup> the Legal Representatives posit that they have to be consulted on any request for lifting redactions which may impact on previous rulings granting said redactions in application forms and related material of victims and that they shall be afforded an opportunity to challenge any such request before the Pre-Trial Chamber. In this regard, the Legal Representatives recall the practice established at the pre-trial stage of the *Yekatom & Ngaiissona* case, in which Pre-Trial Chamber II instructed the Prosecution to apply redactions in consultation with the legal representatives, further adding that “*the Chamber’s authorisation for the non-disclosure of information granted in relation to evidence provided by an individual in his/her capacity as witness extends, where*

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<sup>10</sup> See the Annex to the [Chambers Practice Manual](#), seventh edition, 13 July 2023, pp. 1-11.

<sup>11</sup> See the Requests, *supra* note 3, para. 29.

<sup>12</sup> See the [Chambers Practice Manual](#), *op. cit. supra* note 10, pp. 26-30, paras. 98-100.

<sup>13</sup> See, for instance, the Requests, *supra* note 3, para. 35.

<sup>14</sup> See, *inter alia*, the “Decision on Prosecutor’s requests for lifting of certain redactions in victim application forms (ICC-02/11-01/15-465 and ICC-02/11-01/15-493)” (Trial Chamber I), [No. ICC-02/11-01/15-506](#), 9 May 2016. See also, the “Decision on Defence request for lifting of redactions in documents related to victims authorised to present evidence”(Trial Chamber VI), [No. ICC-01/04-02/06-1835](#), 24 March 2017.

*applicable, to his/her victim application form*".<sup>15</sup> Mindful of this procedure, Trial Chamber V amended the Redaction Protocol finding it appropriate for the legal representatives concerned to be consulted in advance of lifting redactions in victims' application forms and related material, and to be provided with the possibility of approaching the chamber in case of dispute.<sup>16</sup> Consequently, the Legal Representatives request that the Pre-Trial Chamber adopt the same approach.

12. In light of the peculiarity of the present case in which the Prosecution will rely on a number of witnesses who testified in the *Ongwen* case, the Legal Representatives also favour the adoption of a Protocol on dual status individuals as implemented in other cases before the Court.<sup>17</sup> Said protocols reflect the efforts of various Chambers to create a uniform practice and have proven to be workable Court-wide. They also take into account the specific circumstances of individuals enjoying dual status of participating victims and witnesses. Furthermore, the *Chambers Practice Manual* recommends that a protocol specifically governing dual status individuals may be appropriate.<sup>18</sup> In this regard, Trial Chamber IX also emphasised that: "[...] *special considerations apply to such witnesses and that something like a protocol is required to regulate the exchange of information regarding them*".<sup>19</sup> Moreover, in the present case, a practice is already in place whereby the Prosecution informs the Legal Representatives before

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<sup>15</sup> See the "Decision on Motion for Disclosure of Witnesses with Dual Status" (Pre-Trial Chamber II), [No. ICC-01/14-01/18-339](#), 13 September 2019, para. 11(iii).

<sup>16</sup> See the "Decision on Protocols at Trial" (Trial Chamber V), [No. ICC-01/14-01/18-677](#), 8 October 2020 paras. 76-77 (the "*Yekatom & Ngaïssona* Decision on Protocols at Trial").

<sup>17</sup> See the "Decision adopting the Protocol on dual status witnesses and the Protocol on vulnerable witnesses" (Trial Chamber VI), [No. ICC-01/04-02/06-464](#), 18 February 2015; and the "Victims and Witnesses Unit's submission of the proposed mechanisms for exchange of information on individuals enjoying dual status pursuant to Order n° ICC-01/04-02/06-416", [No. ICC-01/04-02/06-430](#), with [Anx1](#), 23 January 2015. See also, the "Decision adopting mechanisms for exchange of information on individuals enjoying dual status", with one public annex (Trial Chamber I), [No. ICC-02/11-01/15-199](#) and [Anx](#), 31 August 2015; the "Decision on Protocols to be Adopted at Trial" (Trial Chamber IX), [No. ICC-02/04-01/15-504](#), 22 July 2016 (the "*Ongwen* Decision on Protocols to be Adopted at Trial"); the "Decision on the 'Protocol on the handling of confidential information during investigations and contact between a party or participant and witnesses of the opposing party or of a participant', the 'Dual Status Witness Protocol', and related matters" (Trial Chamber X), [No. ICC-01/12-01/18-674](#), 19 March 2020; and the *Yekatom & Ngaïssona* Decision on Protocols at Trial, *supra* note 16.

<sup>18</sup> See the [Chambers Practice Manual](#), *op. cit. supra* note 10, p. 21, para. 80.

<sup>19</sup> See the *Ongwen* Decision on Protocols to be Adopted at Trial, *supra* note 17, para. 31.

contacting dual status individuals. Accordingly, the Legal Representatives suggest the adoption of a protocol on dual status individuals similar to the one implemented in the *Ongwen*<sup>20</sup> and in the *Yekatom & Ngaïssona* cases.<sup>21</sup>

## 2. Holding the confirmation of charges hearing in Uganda

13. The Legal Representatives concur with the Prosecution that it would be in the interest of justice to hold the confirmation of charges hearing in Uganda. It would indeed bring the Court closer to the victims and affected communities, thereby providing maximum access to a large public.<sup>22</sup> It would also contribute to the transparency of the proceedings, as well as to a wide dissemination of information and to making justice more visible for the victims. As a result, it would have a positive impact on the Court's perception, as it would reinforce victims' confidence in the Court.

14. Importantly, the Legal Representatives are convinced that *in situ* proceedings would have a significant impact on the victims' effective participation in the proceedings insofar as they will feel that their concerns are duly taken into account and that justice is being done. In this regard, they underline once more the importance of ensuring a meaningful participation of the victims in these proceedings, especially since this could potentially be their only opportunity to be heard and to present their views and concerns.<sup>23</sup>

15. The Legal Representatives further note that Lira, Gulu, and Kampala have been identified as suitable locations to hold *in situ* proceedings.<sup>24</sup> In order for said

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<sup>20</sup> See Annex 2 to the *Ongwen* Decision on Protocols to be Adopted at Trial, [No. ICC-02/04-01/15-504-Anx2](#), 22 July 2016.

<sup>21</sup> See Annex 2 to the *Yekatom & Ngaïssona* Decision on Protocols at Trial, [No. ICC-01/14-01/18-677-Anx2](#), 8 October 2020.

<sup>22</sup> See the Requests, *supra* note 3, para. 31.

<sup>23</sup> See the "Victims' Views and Concerns on the 'Prosecution's Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence'", [No. ICC-02/04-01/05-457](#), 30 March 2023, paras. 24-25.

<sup>24</sup> See the Requests, *supra* note 3, para. 33.

proceedings to produce the desired effect with regard to accessibility, transparency and visibility, as well as a meaningful participation of victims, the Legal Representatives find it crucial that the hearing would take place as close as possible to the affected communities, *i.e.* in Lira or in Gulu.

16. Victims from Lira have repeatedly voiced their frustration as well as a general sense of abandonment due to their long wait for justice and the lack of activity in the case. During consultations recently undertaken, victims have indicated feeling let down by the Court, which in their eyes has concentrated its efforts on another region of the country, namely the Acholi region, as a result of the proceedings held against Mr Ongwen.<sup>25</sup> This state of mind was also voiced by non-governmental organisations supporting victims in the area and was recently reinforced by the publicity surrounding the *Ongwen* Reparations Order. Therefore, the Legal Representatives submit that it would be most desirable to hold the confirmation of charges hearing in Lira. Given its proximity to the events of which Mr Kony is charged in the DCC, as well as the enthusiasm about the possibility of holding proceedings *in situ*, expressed by victims during a recent mission in the area, Gulu would also be a suitable location.

17. Finally, the Legal Representatives posit that a confirmation of charges hearing in Kampala, far away from affected communities, would not drastically enhance the accessibility, transparency and visibility of justice, and thus not facilitate the victims' effective participation, thereby defeating the purpose of any potential *in situ* proceedings.

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<sup>25</sup> See the "Victims' Views and Concerns on the 'Prosecution's Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence'", *supra* note 23, paras. 20, and 22. See also, in this sense, the Requests, *supra* note 3, para. 16: "[...] Although the case against Mr Ongwen was successfully prosecuted in the Uganda situation, a large victim community remains, who allegedly suffered due to the conduct by the Lord's Resistance Army, under Mr Kony's control, and who were not represented in proceedings at the Court"; and Annex I to the "Registry's Report on the implementation of the 'Second decision on the Prosecution's request to hold a confirmation of charges hearing in the Kony case in the suspect's absence' dated 4 March 2024 (ICC-02/04-01/05-481)", [No. ICC-02/04-01/05-491-Conf-AnxI](#), 2 April 2024 (dated 28 March 2024), para. 40.



18. Considering that the confirmation of charges hearing is scheduled to start on 15 October 2024, the Legal Representatives request the Chamber to already instruct the Registry to explore the possibility of holding said hearing *in situ* and to set a date for reporting on the feasibility thereof.

**FOR THE FOREGOING REASONS**, the Legal Representatives respectfully request the Chamber to: (i) adopt the Protocol on the handling of confidential information and contacts with witnesses; (ii) adopt the Redaction Protocol including the Legal Representatives' concerns as indicated in paragraph 11; (iii) adopt a Protocol on dual status individuals; and (iv) instruct the Registry to explore the possibility to hold the confirmation of charges hearing in Uganda, be it in Lira or in Gulu, and to report to the Chamber within a deadline to be fixed.



**Paolina Massidda**



**Sarah Pellet**

Dated this 12<sup>th</sup> day of April 2024

At The Hague, The Netherlands