

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-02/04-01/05**  
Date: **12 February 2025**

**THE PRESIDENCY**

**Before:** Judge Rosario Salvatore Aitala, Acting President  
Judge Reine Alapini-Gansou, Acting First Vice-President  
Judge Luz del Carmen Ibáñez Carranza, Acting Second Vice-President

**SITUATION IN THE REPUBLIC OF UGANDA**

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

**Public, with two public annexes**

**Decision Replacing a Judge in the Appeals Chamber**

**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**

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### **Registrar**

Mr Zavala Giler, Osvaldo

☐ **Counsel Support Section**

☒ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and Reparations  
Section**

☒ **Other**  
Appeals Chamber

1. The *ad hoc* Presidency of the International Criminal Court (the ‘Court’) takes note of Pre-Trial Chamber III’s ‘Decision on the criteria for holding confirmation of charges proceedings *in absentia*’ dated 28 January 2025, in the case of *The Prosecutor v. Joseph Kony*, in which leave to appeal was granted pursuant to article 82(1)(d) of the Rome Statute (the ‘Interlocutory Appeal’).<sup>1</sup>
2. On 30 January 2025, Judge Tomoko Akane transmitted to her fellow members of the Presidency a request to be excused from the Appeals Chamber in the Interlocutory Appeal pursuant to article 41(1) of the Rome Statute and rule 33 of the Rules of Procedure and Evidence (the ‘Rules’), on the basis that, as a member of Pre-Trial Chamber II she had previously participated in several decisions in the case which appear to be connected to the subject-matter of the Interlocutory Appeal<sup>2</sup> (‘Request for Excusal’).<sup>3</sup> An *ad hoc* Presidency, consisting of Judge Rosario Salvatore Aitala, Judge Reine Alapini-Gansou and Judge Luz del Carmen Ibáñez Carranza, considered the Request for Excusal and granted it on 10 February 2025.<sup>4</sup>
3. The *ad hoc* Presidency notes that rule 38 of the Rules provides for the replacement of judges for objective and justified reasons and that, pursuant to regulation 15 of the Regulations of the Court, the Presidency is responsible for the replacement of judges.
4. The *ad hoc* Presidency, acting by majority consisting of Judges Rosario Salvatore Aitala and Reine Alapini-Gansou, hereby decides that Judge Akane will be replaced in the Appeals Chamber for the purpose of the Interlocutory Appeal by Judge Joanna Korner and hereby temporarily attaches Judge Korner to the Appeals Chamber for this purpose. The majority of the *ad hoc* Presidency notes that the Court’s legal texts do not prescribe rigid criteria for the replacement of judges, with regulation 15 of the Regulations of the Court indicating that the replacement of judges should occur in accordance with article 39 of the Statute and shall also take into account ‘to the extent possible, gender and

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<sup>1</sup> Pre-Trial Chamber III, *The Prosecutor v. Joseph Kony*, Decision on the ‘Kony Defence request for leave to appeal [the] “Decision on the criteria for holding confirmation of charges proceedings *in absentia*”’, 28 January 2025, ICC-02/04-01/05-551.

<sup>2</sup> Pre-Trial Chamber II, *The Prosecutor v. Joseph Kony*, Decision on the Prosecution’s request to hold a confirmation of charges hearing in the Kony case in the suspect’s absence, 23 November 2023, ICC-02/04-01/05-466; Pre-Trial Chamber II, *The Prosecutor v. Joseph Kony*, Second decision on the Prosecution’s request to hold a confirmation of charges hearing in the Kony case in the suspect’s absence, 4 March 2024, ICC-02/04-01/05-481.

<sup>3</sup> Annex 1.

<sup>4</sup> Annex 2.

equitable geographic representation'. The majority of the *ad hoc* Presidency notes that the general prescription in article 39(1) of the Statute is that assignments of judges shall be based on their qualifications and experience. In applying these criteria, the majority of the *ad hoc* Presidency notes that different methodologies have been used by different Presidencies over time, including, for example, drawing by lot. The majority of the *ad hoc* Presidency considers it necessary to ensure that replacements are made in accordance with objective criteria.

5. The majority of the *ad hoc* Presidency has decided to assign Judge Korner to the Interlocutory Appeal after objectively assessing the workload of all judges of the Court able to sit in the case, noting that Judge Korner is one of only two such judges of the Court who is currently serving in a single chamber. The majority of the *ad hoc* Presidency emphasises that of the judges of the Court with a comparable judicial workload, Judge Korner is the most appropriate judge on the basis of seniority. The majority of the *ad hoc* Presidency further considers that involvement in the Interlocutory Appeal will not inhibit Judge Korner's capacity to perform her functions in Trial Chamber I. The majority of the *ad hoc* Presidency further notes that this replacement is additionally sound in view of the broader need to ensure the proper management of anticipated future judicial workload. Returning to the requirements of regulation 15(1) of the Regulations of the Court, the majority of the *ad hoc* Presidency considers that Judge Korner has the appropriate qualifications and expertise to serve in the Appeals Chamber and that her replacement of Judge Akane maintains the balance of gender representation in that Chamber. In addition, it ensures that the Appeals Chamber is formed in a matter respecting equitable geographic representation for the Interlocutory Appeal, being formed of one judge from each regional grouping. Accordingly, this replacement is both objectively motivated and in full compliance with all applicable provisions of the Court's legal texts.
6. Noting the need to ensure that the Interlocutory Appeal moves forward in a procedurally correct manner with filings made before the properly composed Appeals Chamber,<sup>5</sup> the majority of the *ad hoc* Presidency considers it necessary to move forward with the present

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<sup>5</sup> See e.g. Defence for Mr Joseph Kony, *The Prosecutor v. Joseph Kony*, Defence Appeal brief against Pre-Trial Chamber III's "Decision on the criteria for holding confirmation of charges proceedings in absentia", 7 February 2025, ICC-02/04-01/05-557, which was filed before an Appeals Chamber including Judge Akane.

replacement acting by majority. Judge Luz del Carmen Ibáñez Carranza dissents from the present replacement decision for different objective reasons.

7. A majority of the *ad hoc* Presidency, consisting of Judges Rosario Salvatore Aitala and Reine Alapini-Gansou, decides that the Appeals Chamber shall be composed, for the purpose of the Interlocutory Appeal, as follows:

Judge Luz del Carmen Ibáñez Carranza

Judge Solomy Balungi Bossa

Judge Joanna Korner

Judge Gocha Lordkipanidze

Judge Erdenebalsuren Damdin.

Done in both English and French, the English version being authoritative.



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**Judge Rosario Salvatore Aitala**  
**Acting President**

Dated this 12 February 2025

At The Hague, The Netherlands