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No. ICC-02/04-01/05

Date original: 20 February 2025

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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

Public redacted version of ‘Decision on the Prosecution Request for an *In Situ* Hearing’

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 ‘Court’) issues this ‘Decision on the Prosecution Request for an *In Situ* Hearing’, pursuant to articles 3(3) and 61 of the Rome Statute (the ‘Statute’), and rule 100 of the Rules of Procedure and Evidence (the ‘Rules’).

I. PROCEDURAL HISTORY

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 23 November 2023, Pre-Trial Chamber II issued the ‘Decision on the Prosecution’s request to hold a confirmation of charges hearing in the Kony case in the suspect’s absence’ (the ‘23 November 2023 Decision’).²
3. On 19 January 2024, the Prosecution submitted the ‘Document Containing the Charges’,³ pursuant to the 23 November 2023 Decision.
4. On 4 March 2024, Pre-Trial Chamber II issued the ‘Second decision on the Prosecution’s request to hold a confirmation of charges hearing in the Kony case in the suspect’s absence’.⁴
5. On 28 March 2024, the Prosecution submitted 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’ (the Prosecution Request’).⁵
6. On 12 April 2024, the OPCV submitted the ‘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)’ (the ‘OPCV Response’).⁶

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 (a public redacted version was issued on 13 October 2005, [ICC-02/04-01/05-53](#)).

² [ICC-02/04-01/05-466](#), public.

³ [ICC-02/04-01/05-474](#), public.

⁴ [ICC-02/04-01/05-481](#), public.

⁵ [ICC-02/04-01/05-490](#), public, with [annex A](#), public, and annex B, confidential and *ex parte*, only available to the Prosecution.

⁶ [ICC-02/04-01/05-494](#), public.

7. On 21 June 2024, Mr Peter Haynes was appointed as counsel to Mr Kony (the ‘Defence’).⁷

8. On 11 September 2024, the Defence, in accordance with the Single Judge’s order⁸ and the subsequent decision authorising an extension of the time limit,⁹ submitted the ‘Kony Defence Response to Prosecution’s Observations and Victims’ response on the conduct of the confirmation proceedings *in absentia* and Requests for the adoption of certain protocols and an *in situ* hearing in Uganda’ (the ‘Defence Response’).¹⁰

9. On 12 September 2024, the Chamber vacated the date of the confirmation of charges hearing, and postponed the hearing until further notice.¹¹

10. On 29 October 2024, the Chamber issued the ‘Decision on the criteria for holding confirmation of charges proceedings in absentia’, thereby finding that all requirements for conducting the proceedings in the absence of Mr Kony have been met.¹²

11. On 10 December 2024, the Chamber instructed the Registry to conduct a detailed assessment regarding a potential *in situ* hearing addressing: (i) security and safety, with a focus on identifying potential risks and evaluating local security measures, including identifying potential risks to Judges, OTP personnel, court staff, defence counsel, witnesses, victims, and other participants, as well as examining the adequacy of existing resources and protocols to address the identified risks and ensure safety; and (ii) financial implications, including a breakdown of projected costs for conducting proceedings in situ and an analysis of the impact on the 2025 budget.¹³

12. On 12 December 2024, the Chamber issued the ‘Decision Setting the Date of the Confirmation of Charges Hearing and Related Time Limits’, thereby *inter alia*

⁷ Registry, [Notification of the Appointment of Mr Peter Haynes KC as Counsel for Mr Joseph Kony](#), ICC-02/04-01/05-503, public, with annexes I, III and IV, public, and annex II, confidential.

⁸ [Decision on the Procedure for Appointing Counsel](#), 2 May 2024, ICC-02/04-01/05-499, public, para. 27.

⁹ [Decision on the ‘Defence Request for Variation of Deadlines and for a Status Conference’](#), 5 July 2024, ICC-02/04-01/05-508, public.

¹⁰ [ICC-02/04-01/05-525](#), public.

¹¹ [Decision Postponing the Confirmation of Charges Hearing](#), ICC-02/04-01/05-526, public.

¹² [ICC-02/04-01/05-532](#), public.

¹³ Email from the Chamber to the Registry, 10 December 2024, at 14:35.

determining that the confirmation of charges hearing shall commence on 9 September 2025 (the ‘12 December 2024 Decision’).¹⁴

13. On 17 December 2024, the Registry submitted the ‘Registry’s submission pursuant to the “Order to the Registry requesting assessment for *in situ* confirmation hearing”’ (the ‘Registry Assessment’).¹⁵

14. On 19 December 2024, the Prosecution and OPCV submitted the ‘Joint submissions on the Registry assessment regarding a possible *in situ* hearing in Uganda’ (the ‘Joint Submissions’).¹⁶

15. On 23 December 2024, the Defence informed the Chamber that it does not intend to file a response to the Joint Submissions, while requesting that, in the event that the Chamber is minded to schedule a status conference, a sufficient period of notice is given to facilitate the attendance of Counsel.¹⁷

II. SUBMISSIONS

A. Prosecution Request

16. The Prosecution requests that the Chamber: (i) instruct the Registry to prepare an assessment on the feasibility of holding the confirmation hearing *in absentia* entirely or partially in Uganda; and (ii) should this assessment be favourable, recommend to the Presidency to hold the confirmation hearing in Uganda.¹⁸

17. In its view, it is in the interest of justice to hold the hearing in Uganda as: (i) the alleged crimes were committed in northern Uganda; (ii) the victims as well as Mr Kony are from Uganda; (iii) it would bring the Court close to the victims and the affected communities; (iv) it would reinforce the importance of justice and the Court’s work to the population of Uganda; and (iv) it would raise the profile of the case in Uganda and

¹⁴ [ICC-02/04-01/05-539](#).

¹⁵ ICC-02/04-01/05-541-Conf, confidential, with Annex I, confidential and *ex parte*, only available to the Prosecution and Registry (a confidential redacted version was provided on the same day) and Annex II, confidential and *ex parte*, only available to the Registry.

¹⁶ ICC-02/04-01/05-542-Conf, confidential.

¹⁷ Email from the Defence to the Chamber, 23 December 2024, at 12:22.

¹⁸ [Prosecution Request](#), para. 30.

surrounding countries, which could lead to the identification of Mr Kony's current location and improve interests and opportunities to arrest and surrender him for trial.¹⁹

18. According to the Prosecution, holding the hearing with the full Court present in Uganda would not face any unsurmountable obstacles since: (i) the Republic of Uganda is sufficiently stable and secure; (ii) the potential additional Court resources and time would be well spent; and (iii) witnesses would not face unmanageable security concerns, nor would they have to fear Mr Kony's presence.²⁰ It adds that its recent inquiries with the Ugandan authorities on *in situ* proceedings have been positive and three locations have been identified, namely Lira, Gulu and Kampala.²¹

B. OPCV Response

19. The OPCV concurs with the Prosecution that it would be in the interests of justice to hold the confirmation of charges hearing in Uganda, considering that it would: (i) bring the Court closer to the victims and affected communities; (ii) contribute to the transparency of the proceedings; (iii) ensure the wide dissemination of information; (iv) make justice more visible for the victims; (v) have a positive impact on the Court's perception; (vi) reinforce the victims' confidence in the Court; and (vii) have a significant impact on the victims' effective participation in the proceedings.²²

20. The OPCV adds that, for the confirmation of charges hearing to produce the desired effect with regard to accessibility, transparency and visibility, as well as meaningful participation of victims, it should take place in Lira or Gulu.²³

C. Defence Response

21. The Defence submits that, while it is not in a position to elect on Mr Kony's behalf the location where the confirmation of charges hearing should be held, conducting this hearing in Uganda may raise questions amongst both the public at large and victims about the legitimacy, propriety and purpose of such proceedings, as well as

¹⁹ [Prosecution Request](#), para. 31.

²⁰ [Prosecution Request](#), para. 32.

²¹ [Prosecution Request](#), paras 33-34.

²² [OPCV Response](#), paras 14-15.

²³ [OPCV Response](#), paras 15-17.

the quality and nature of justice being rendered, since *in absentia* criminal proceedings are not legal within the Ugandan justice system.²⁴ It adds that a more real and enduring commitment to local justice would be reflected by the ICC handing over the Kony case to the International Crimes Division of the Ugandan High Court.²⁵

22. The Defence is further of the view that the Prosecution's suggestion that *in situ* hearings will 'improve interests and opportunities' to arrest Mr Kony is highly speculative and unexplained.²⁶ It also avers that victim participation may well be more effectively accomplished by holding a genuine truth and reconciliation process.²⁷ The Defence further asserts that the Prosecution's request for *in situ* proceedings should not have been made before Defence Counsel had been appointed.²⁸

D. Registry Assessment

23. The Registry submits that, given the limited time frame, it has taken into account baseline parameters chosen, in order to give Chamber an indication as to what can be expected in terms of security, logistics and financial resources required for such type of judicial activity.²⁹ According to the Registry, Gulu is the most feasible place given the existence of judicial infrastructure and accommodations as well as its proximity to victims, while Kampala was ruled out given the distance that victims would need to travel, and Lira was excluded given the limited options for a court room and limited availability of accommodations.³⁰ The Registry adds that the security concerns and costs would differ slightly between Gulu and Kampala, but there would be little difference between Gulu and Lira albeit with additional travel costs and limited availability for accommodations.³¹

24. Furthermore, the Registry indicates that, during recent interactions with the Court's Country Office, and prior to the issuance of the 12 December 2024 Decision,

²⁴ [Defence Response](#), para. 21.

²⁵ [Defence Response](#), para. 22.

²⁶ [Defence Response](#), para. 23.

²⁷ [Defence Response](#), para. 24.

²⁸ [Defence Response](#), para. 28.

²⁹ Registry Assessment, para. 11.

³⁰ Registry Assessment, para. 14.

³¹ Registry Assessment, para. 14.

[REDACTED].³² The Registry adds that [REDACTED] expressed a preference for a hybrid arrangement, whereby some participants would remain in The Hague.³³

25. The Registry additionally details that, while it is feasible to hold *in situ* hearings, it has substantial financial implications and recourse would have to be made to the Contingency Fund.³⁴

E. Joint Submissions

26. According to the Prosecution and OPCV, the Registry Assessment does not contain: (i) a fulsome assessment of Lira as a possible location, an engagement with different types of scenarios, and an assessment of the technical possibilities to connect different court rooms within Uganda as well as with the Court's premises; and (ii) information on the engagement with national and local stakeholders, including on security issues.³⁵ The Prosecution and OPCV, therefore, request the Chamber to instruct the Registry to provide a supplementary assessment.³⁶

27. The Prosecution and the OPCV submit that they are not able to review the parameters underlying the Registry's budget assessment and the details of the underlying single scenario as Annex II is classified as confidential and *ex parte*, only available to the Registry.³⁷ They further aver that the communications from the Ugandan authorities should be made available to all parties and participants, if needed in redacted form, to be able to fully understand the assessment.³⁸ The Prosecution and OPCV, therefore, request that Annex II in its entirety and communications from the Ugandan authorities, if needed in redacted form, are made available.³⁹

28. Lastly, the Prosecution and the OPCV request that, upon delivery of the requested supplementary assessment and the reclassification of Annex II, a status conference be held early in 2025 to allow the parties and participants to make submissions on the security situation, the different models of *in situ* proceedings, the budgetary

³² Registry Assessment, paras 15-16.

³³ Registry Assessment, para. 16.

³⁴ Registry Assessment, para. 20.

³⁵ Joint Submissions, paras 1, 7-12.

³⁶ Joint Submissions, paras 2, 16(a).

³⁷ Joint Submissions, para. 13.

³⁸ Joint Submissions, para. 14.

³⁹ Joint Submissions, paras 3, 16(b).

implications thereof, and to ask pertinent questions.⁴⁰ In the alternative, the Prosecution and the OPCV reserve the right to make additional submissions once Annex II has been reclassified and before the Chamber issues any decisions on the matter.⁴¹

III. DETERMINATION

29. At the outset, the Chamber considers that it has been adequately and sufficiently informed by the Registry's assessment and the observations provided by the parties and participants. Therefore, no further submissions, either written or oral, are necessary, and the Chamber will make its determination on the matter at hand based on the written submissions already before it. Accordingly, the Prosecution and OPCV's requests: (i) to instruct the Registry to provide a supplementary assessment; (ii) that Annex II and communications from the Ugandan authorities be made available; and (iii) for a status conference, are rejected.

30. Regarding the Prosecution Request, the Chamber recalls that, pursuant to article 3(3) of the Statute, the 'Court may sit elsewhere whenever it considers it desirable'. In this respect, rule 100(1) of the Rules stipulates that, '[i]n a particular case, where the Court considers that it would be in the interests of justice, it may decide to sit in a State other than the host State, for such period or periods as may be required, to hear the case in whole or in part'.

31. The Chamber has taken note of the Registry's assessment, as well as of the position expressed by the Prosecution and the OPCV in their Joint Submissions. It acknowledges that, in principle and under ordinary circumstances, bringing the work of the Court closer to the communities affected by the crimes alleged by the Prosecution could be valuable. The Chamber, however, considers that, in this case, any such advantages are limited in view of the nature of the proceedings conducted before the Chamber. In this regard, the Chamber recalls the limited scope of the confirmation of charges proceedings, which focus on the assessment on whether or not the evidence presented by the Prosecution allows for the charges to be confirmed against a suspect, as opposed to a full-fledged trial aiming at determining the criminal responsibility of

⁴⁰ Joint Submissions, paras 4, 15, 16(c).

⁴¹ Joint Submissions, para. 15.

an accused person. Furthermore, the Chamber notes that the duration of a confirmation of charges hearing is usually limited to a few days.

32. More broadly, the Chamber also considers that the limited advantages of conducting (part of) the confirmation of charges hearing in Uganda should be balanced against the challenges and risks arising from an *in situ* hearing. While the Chamber has taken note that there are currently no specific concerns for the parties and participants or victims and witnesses in relation to the present case,⁴² it is duty-bound to make its assessment in light of the overall context in which the Court is currently operating. The increased attention towards the Court in the recent period, has translated concretely into heightened threats against the (cyber)security of the Court and its elected officials, with a view to undermining the Court's ability to administer justice. Considering the inherent challenges and potential dangers brought about by transferring parts of the Court's operations to the field, the Chamber considers that delocalising the hearing to Uganda would increase the Court's vulnerability to external threats. Furthermore, the Chamber observes that the current scheduling of the confirmation of charges hearing in the second half of 2025 [REDACTED].⁴³

33. In addition to the above security concerns, the Chamber notes that such a hearing, although of a limited scope, represents a serious burden on the finances of the Court, at a time when the Court is under increasing pressure to make the most effective use of its limited resources.

34. Lastly, the Chamber finds that the Prosecution's argument regarding the likelihood that holding the hearing *in situ* would enhance the possibilities of arresting Mr Kony is unsubstantiated.

35. For these reasons and considering its duty to ensure the integrity and safety of the proceedings, the Chamber concludes that it is not in the interests of justice to hold the confirmation of charges hearing *in absentia* in Uganda. Accordingly, the Prosecution Request is rejected. The Chamber does not deem it necessary to address the Defence's arguments on handing the case against Mr Kony over to the Ugandan judiciary or conducting a truth and reconciliation process, seeing as such arguments exceed the Prosecution Request.

⁴² See Registry Assessment, para. 19.

⁴³ See Registry Assessment, para. 16.

36. The Chamber nevertheless emphasises that alternative options are available to enhance the accessibility and visibility of the proceedings for affected communities. Specifically, measures such as live broadcasting of the hearing and targeted outreach activities would benefit the communities by bringing the proceedings held at the seat of the Court closer to them. Furthermore, with its recent decision on victims' representation and participation,⁴⁴ adopted as early as nine months in advance of the date of the confirmation hearing, the Chamber has already signalled its determination to make it possible for victims to meaningfully and effectively participate at this stage of the proceedings without undue delay. The width and breadth of the outreach activities specifically targeted on this case, by now spanning over a year, likewise attest to the Court's desire to always be as close to victims and affected communities as circumstances allow.

⁴⁴ See [Decision on victim participation, legal representation, and on the OPCV's Application for recognition of the status of victims in the Kony case to the victims participating in the Ongwen case](#), 13 December 2024, ICC-02/04-01/05-540, public.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Prosecution and OPCV's request to instruct the Registry to provide a supplementary assessment;

REJECTS the Prosecution and OPCV's request that Annex II of the Registry Assessment and communications from the Ugandan authorities be made available;

REJECTS the Prosecution and OPCV's request for a status conference; and

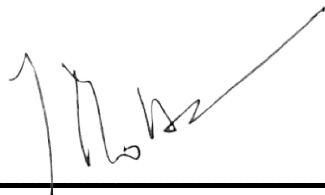
REJECTS the Prosecution Request.

Done in English. A French translation will follow. The English version remains authoritative.

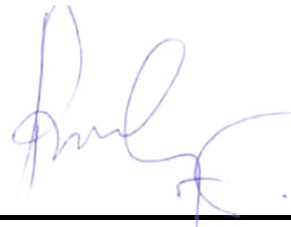


Judge Althea Violet Alexis-Windsor

Presiding Judge



Judge Iulia Antoanella Motoc



Judge Haykel Ben Mahfoudh

Dated this Friday, 28 February 2025.

At The Hague, The Netherlands.