

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 3 April 2025

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

With public annexes A, B, C, D, E, F, G, H and I

Request for Reconsideration of the “Decision on the criteria for holding confirmation of charges proceedings *in absentia*” (ICC-02/04-01/05-532)

Source: Defence for Mr Joseph Kony

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I. INTRODUCTION

1. New information not previously before Pre-Trial Chamber III (“the Chamber”) warrants reconsideration of the Decision of 29 October 2024 to hold an *in absentia* confirmation of charges hearing in the case against Joseph Kony (the “Decision”),¹ to avoid an injustice.

2. In the Decision, the Chamber found cause to hold an *in absentia* confirmation hearing on the basis that (i) efforts to bring Mr Kony before the Court may be renewed and sustained;² (ii) a hearing would be in the interests of victims who may not otherwise be able to express their views and concerns;³ and (iii) Mr Kony cannot be found.⁴ The Chamber was also “not persuaded that the fact that the Ugandan authorities have tried another person signals their intention to proceed against Mr Kony on the basis of [the] domestic arrest warrant.”⁵ The Decision relied on submissions from the Office of Public Counsel for Victims (“OPCV”) which made representations as to the views of Joseph Kony’s victims⁶ and submissions from the Prosecution about the intentions of the Ugandan Government.⁷

3. The current request contains evidence that: (i) the confirmation of charges will make it less rather than more likely that Joseph Kony will be brought before the Court; (ii) should Joseph Kony return or be returned to Uganda, he will face justice in Uganda; (iii) members of the affected community in northern Uganda consider there to be concrete risks from the International Criminal Court (“ICC”) confirmation of charges process; and (iv) Joseph Kony is not someone

¹ [Decision on the criteria for holding confirmation of charges proceedings in absentia](#), ICC-02/04-01/05-532, 29 October 2024 (“Decision”).

² *Id.*, para. 105.

³ *Id.*, citing to [Decision on the Prosecution’s request to hold a confirmation of charges hearing in the Kony case in the suspect’s absence](#), ICC-02/04-01/05-466, 23 November 2023 (“November Decision”), paras 65-67 “The Chamber is also mindful that, at the moment, a confirmation hearing *in absentia* may be the only way for the victims of Mr Kony’s alleged crimes to voice their views and concerns.”

⁴ [Decision](#), paras 95-96.

⁵ *Id.*, para. 84.

⁶ [Victims’ Views and Concerns on the “Prosecution’s Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence”](#), ICC-02/04-01/05-457, 30 March 2023 (“Victims Views and Concerns on the *In Absentia* Hearing Request”), paras 17-19 “The Legal Representatives were able to track back all 41 victims concerned. Unfortunately, victims a/0081/07, a/0082/07, a/0095/06, a/0098/06, a/0122/06, and a/0090/07 passed away. Members of their respective families are willing to resume the action on their behalf. ... they reaffirmed their unwavering support for the Court and unanimously agreed that it would be desirable to hold a confirmation hearing in the absence of Mr Kony. Indeed, they believe that it would permit to revive the case and prepare in advance for a potential trial. Victims perceive such a hearing as a meaningful step in the right direction and are eager to genuinely contribute to the pursuit of justice, not only by conveying their views and concerns on all relevant issues, but also by testifying against Mr Kony.”

⁷ [Prosecution’s Reply to Defence Observations](#), ICC-02/04-01/05-520-Conf, 5 September 2024, para. 12 “Moreover, to the Prosecution’s knowledge, there is no material change in circumstances, concerning the admissibility of the case. In particular, the Prosecution notes that: a) it has no knowledge of a warrant of arrest in Uganda for Mr KONY despite having liaised with the Ugandan authorities on this matter in the past, and b) Uganda has neither challenged the admissibility of the case, nor expressed any intention of doing so. In these circumstances, it is no more than speculation whether or not Uganda might itself be willing to institute proceedings against Mr KONY.”

who “cannot be found”. In the submission of the Defence, the new information makes the identified findings unsustainable and warrants reconsideration of the Decision.

4. The instant submissions are made without prejudice to the Defence’s primary position, currently before the Appeals Chamber,⁸ that an *in absentia* confirmation hearing is impermissible under the Rome Statute, absent an initial appearance.

II. PROCEDURAL HISTORY

5. On 24 November 2022, the Office of the Prosecutor submitted a request to hold a confirmation of charges hearing in the case against Joseph Kony in his absence.⁹

6. On 23 November 2023, Pre-Trial Chamber II rendered its “Decision on the Prosecution’s request to hold a confirmation of charges hearing in the *Kony* case in the suspect’s absence”, finding that Joseph Kony qualified as a person who “cannot be found” and that there would be cause to hold a confirmation of charges hearing against him in his absence.¹⁰

7. On 4 March 2024, Pre-Trial Chamber II rendered its “Second Decision on the Prosecution’s request to hold a confirmation of charges hearing in the *Kony* case in the suspect’s absence”.¹¹ On 12 March 2024, the *Situation in the Republic of Uganda* was reassigned to the Chamber.¹²

8. On 28 August 2024, the Defence submitted the “Kony Defence Observations on the Decisions and Registry Report concerning the request to hold a confirmation of charges hearing in the *Kony* case in the suspect’s absence”.¹³ On 29 October 2024, the Chamber rendered the Decision.¹⁴ On 4 November 2024, the Defence sought leave to appeal the Decision.¹⁵ On 28 January 2025, the Pre-Trial Chamber rendered its “Decision on the Defence Request for Leave to Appeal”, partially granting it.¹⁶

⁸ [Decision on the ‘Kony Defence request for leave to appeal \[the\] “Decision on the criteria for holding confirmation of charges proceedings in absentia”](#)”, ICC-02/04-01/05-551, 28 January 2025 (“Decision on Defence Request for Leave to Appeal”).

⁹ [Public Redacted Version of the “Prosecution’s Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence”](#), ICC-02/04-01/05-446-Red, 24 November 2022 (“Prosecution’s Request to Hold an *In Absentia* Confirmation of Charges Hearing”).

¹⁰ [November Decision](#).

¹¹ [Second decision on the Prosecution’s request to hold a confirmation of charges hearing in the *Kony* case in the suspect’s absence](#), ICC-02/04-01/05-481, 4 March 2024.

¹² [Decision assigning judges to divisions and recomposing Chambers](#), ICC-02/04-01/05-485, 12 March 2024.

¹³ [Kony Defence Observations on the Decisions and Registry Report concerning the request to hold a confirmation of charges hearing in the *Kony* case in the suspect’s absence](#), ICC-02/04-01/05-517-Conf, 28 August 2024.

¹⁴ [Decision](#).

¹⁵ [Kony Defence request for leave to appeal “Decision on the criteria for holding confirmation of charges proceedings in absentia”](#), ICC-02/04-01/05-533, 4 November 2024.

¹⁶ [Decision on Defence Request for Leave to Appeal](#).

9. On 7 February 2025, the Defence submitted its “Defence Appeal brief against Pre-Trial Chamber III’s “Decision on the criteria for holding confirmation of charges proceedings *in absentia*””.¹⁷

III. APPLICABLE LAW

10. Chambers have an inherent power to reconsider their own decisions, *proprio motu* or upon request by a party.¹⁸ Reconsideration is an exceptional step, which should only be undertaken if a clear error of reasoning has been demonstrated, or if it is necessary to prevent an injustice.¹⁹ The Chamber may reconsider its past decisions when they are “manifestly unsound and their consequences are manifestly unsatisfactory”.²⁰ A clear error may be “something which the court manifestly or obviously overlooked in its reasoning and which is material to the achievement of substantial justice.”²¹ The unavailability of alternative means to remedy the alleged injustice may be taken into account in determining whether reconsideration is necessary.²²

¹⁷ [Defence Appeal brief against Pre-Trial Chamber III’s “Decision on the criteria for holding confirmation of charges proceedings *in absentia*”](#), ICC-02/04-01/05-557, 7 February 2025.

¹⁸ *Prosecutor v. Al Hassan*, [Decision on Defence request for reconsideration and, in the alternative, leave to appeal the ‘Decision on witness preparation and familiarisation’](#), ICC-01/12-01/18-734, 9 April 2020 (“*Al Hassan* Decision on Request for reconsideration on Witness preparation and familiarisation”), para. 11; *Prosecutor v. Lubanga*, [Decision on the defence request to reconsider the “Order on numbering of evidence” of 12 May 2010](#), ICC-01/04-01/06-2705, 30 March 2011 (“*Lubanga* Decision on Request for Reconsideration of the Order on numbering of evidence”), para. 12; *Prosecutor v. Kenyatta*, [Decision on the Prosecution’s motion for reconsideration of the decision excusing Mr Kenyatta from continuous presence at trial](#), ICC-01/09-02/11-863, 26 November 2013, para. 11 (“*Kenyatta* Decision on Request for Reconsideration on continuous presence at trial”).

¹⁹ *Prosecutor v. Ongwen*, [Decision on Defence Request for Reconsideration of or Leave to Appeal the Directions on Closing Briefs and Closing Statements](#), ICC-02/04-01/15-1259, 11 May 2018 (“*Ongwen* Decision on Request for Reconsideration on Closing Briefs and Statements”), para. 12; *Prosecutor v. Ntaganda*, [Decision on the Prosecution’s request for reconsideration or, in the alternative, leave to appeal](#), ICC-01/04-02/06-519, 18 March 2015, para. 12; *Prosecutor v. Ntaganda*, [Decision on Prosecution’s requests relating to in-court protective and special measures for Witness P-0039](#), ICC-01/04-02/06-1049-Red, 10 December 2015, para. 12 (“*Ntaganda* Decision on Request for Reconsideration on Court protective measures”); *Prosecutor v. Ongwen*, [Decision on Request for Reconsideration of the Order to Disclose Requests for Assistance](#), ICC-02/04-01/15-468, 15 June 2016, para. 4; *Situation in Ukraine*, [Annex A, Corrigendum to the Prosecution response to Mongolia’s “Request for reconsideration of the ‘Decision on Mongolia’s request for leave to appeal, temporary stay of the proceedings, and related matters’”](#), ICC-01/22-116-AnxA, 11 December 2024, para. 3; *Prosecutor v. Abd-Al-Rahman*, [Decision on the Defence’s request for reconsideration or, alternatively, leave to appeal the oral ruling maintaining the disclosure deadline and start of the Defence case](#), ICC-02/05-01/20-1015, 11 September 2023 (“*Abd-Al-Rahman* Decision on Request for Reconsideration on Disclosure Deadline and start of the Defence case”), para. 15; *Prosecutor v. Bemba et al.*, [Decision on Prosecution’s Motion for Reconsideration of the Closing Submissions Directions](#), ICC-01/05-01/13-1552, 15 January 2016, para. 6; *Prosecutor v. Bemba et al.*, [Decision on Requests to Exclude Western Union Documents and other Evidence Pursuant to Article 69\(7\)](#), ICC-01/05-01/13-1854, 29 April 2016, paras 75-76.

²⁰ [Lubanga Decision on Request for Reconsideration of the Order on numbering of evidence](#), para. 18.

²¹ ICTY, *Prosecutor v. Mucić*, Judgment on Sentence Appeal, [Separate opinion of Judge Shahabuddin](#), IT-96-21-Abis, 8 April 2003, para. 15.

²² *Prosecutor v. Yekatom & Ngaïssona*, [Decision on the Prosecutor’s request for reconsideration or, in the alternative, leave to appeal the ‘Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona’](#), ICC-01/14-01/18-447, 11 March 2020 (“*Yekatom & Ngaïssona* Decision on Request for Reconsideration of the Decision on the confirmation of charges”), paras 22-23.

11. New facts or information that were previously unavailable may cause a Chamber to reconsider its decision.²³ In an oral decision in *Bemba*, a Prosecution request for reconsideration was rejected because the Prosecution did not provide “new or different evidence [...] such as to merit the Chamber’s reconsideration of the matter.”²⁴ In *Lubanga*, the revelation of “particular new circumstances” caused the Chamber to rescind a previous order.²⁵

IV. THE FINDING THAT THERE IS CAUSE TO HOLD A CONFIRMATION HEARING AGAINST MR KONY *IN ABSENTIA* IS CONTRADICTED BY NEW INFORMATION

A. The confirmation process will not renew or sustain efforts to bring Mr Kony before the Court

12. When seeking a confirmation of charges hearing to be convened in Mr Kony’s absence, the Prosecution submitted that the hearing “would lead States and other stakeholders to further galvanise and accelerate their efforts to apprehend Mr KONY and surrender him to the Court.”²⁶ In the Decision, the Chamber agreed that, should an *in absentia* hearing be convened, “efforts to bring Mr Kony before the Court may be renewed and sustained.”²⁷

13. As set out below, religious, political and cultural leaders in northern Uganda believe that the ICC confirmation of charges process will have the opposite effect and will risk undoing years of work centred around a multifaceted and inter-state program of Lord Resistance Army (“LRA”) repatriation. These leaders, many of whom are personally involved in repatriations, are of the united view that the ICC’s attempt to hold *in absentia* proceedings disrupts these reconciliation efforts and that now “Joseph Kony will never emerge”.²⁸

²³ [Onwen Decision on Request for Reconsideration on Closing Briefs and Statements](#), para. 12; [Ntaganda Decision on Request for Reconsideration on Court protective measures](#), para. 12; *Prosecutor v. Bemba et al.*, [Decision on Defence Request for Reconsideration of or Leave to Appeal ‘Decision on “Defence Request for Disclosure and Judicial Assistance”’](#), ICC-01/05-01/13-1282, 22 September 2015, paras 8-9; [Al Hassan Decision on Request for reconsideration on Witness preparation and familiarisation](#), para. 11; *Prosecutor v. Ruto & Sang*, [Decision on the Sang Defence’s Request for Reconsideration of Page and Time Limits](#), ICC-01/09-01/11-1813, 10 February 2015, para. 19; [Abd-Al-Rahman Decision on Request for Reconsideration on Disclosure Deadline and start of the Defence case](#), para. 21; [Kenyatta Decision on Request for Reconsideration on continuous presence at trial](#), paras 11-12.

²⁴ *Prosecutor v. Bemba*, [Transcript of Trial Hearing](#), ICC-01/05-01/08-T-42-Red2-ENG, 2 December 2010, p. 3, lines 16-18, p. 4, lines 10-12. See also [Yekatom & Ngaïssona Decision on Request for Reconsideration of the Decision on the confirmation of charges](#), para. 18; *Prosecutor v. Bemba*, [Public Redacted Version of the Decision on the “Demande de mise en liberté provisoire de M. Jean-Pierre Bemba Gombo afin d’accomplir ses devoirs civiques en République Démocratique du Congo” of 2 September 2011](#), ICC-01/05-01/08-1691-Red, 6 September 2011, para. 17.

²⁵ *Prosecutor v. Lubanga*, [Decision on the defence request for leave to appeal “Decision on disclosure by the defence”](#), ICC-01/04-01/06-1313, 8 May 2008, para. 24.

²⁶ [Prosecution’s Request to Hold an *In Absentia* Confirmation of Charges Hearing](#), para. 36.

²⁷ [Decision](#), para. 105.

²⁸ Annex A, Statement of Mr Lyandro Komakech, p. 3.

14. The repatriation of former LRA fighters to northern Uganda has been ongoing for many years.²⁹ Early returns were the result of defections, captures or rescue operations.³⁰ More recently, LRA members have started to be repatriated to Uganda from the Central African Republic (“CAR”) as the result of a joint initiative of the two governments,³¹ referred to as a “five year repatriation plan”.³²

15. Since 2021, LRA members have entered into negotiations with the Central African government to be integrated into the Disarmament, Demobilization, Repatriation, Reintegration and Resettlement (“DDRRR”) process.³³ In 2022, the disarmament of LRA fighters started in the CAR.³⁴ In January 2023, an LRA commander signed a declaration initiating dialogue towards a DDRRR process.³⁵ In May 2023, Jean Willybiro Sako, the Central African Minister in charge of Disarmament, Demobilization and Reintegration stated that meetings and negotiations had been organised between the Ministry of Foreign Affairs and Uganda to find a definitive solution to their repatriation.³⁶

16. In 2023, the governments of the Democratic Republic of Congo (“DRC”), South Sudan, the CAR and Uganda collaborated to negotiate a four-party agreement on the demobilisation and repatriation process.³⁷ In the following months, three operations of repatriation were organised on 21 July, 14 August and 28 September 2023, and more than 100 people, including former LRA fighters, women and children, returned to Uganda from the CAR.³⁸ The governments of the CAR and of Uganda, as well as two non-governmental organisations, PAX and *Action pour la*

²⁹ [“Back but not home: supporting the reintegration of former LRA abductees into civilian life in Congo and South Sudan”](#), *Conciliation resources*, August 2014, pp 9-11; T. Allen, J. Atingo, M. Parker, [Rejection and Resilience: Returning from the Lord’s Resistance Army in Northern Uganda](#), 2022(4) *Civil Wars*, p. 359.

³⁰ *Id.*

³¹ [Final report of the Panel of Experts on the Central African Republic extended pursuant to Security Council resolution 2693 \(2023\)](#), United Nations Security Council, S/2024/444, 10 June 2024, para. 83; [“Uganda And Central African Republic Sign Memorandum Of Understanding On Military Cooperation”](#), UPDF, 17 January 2024.

³² [Kony’s family returns to Uganda as govt urges more LRA rebels to surrender](#), *The Monitor*, 26 February 2025.

³³ [“Rapatriement annoncé des ex-combattants congolais membres de la LRA”](#), *Agence Congolaise de Presse*, 26 July 2023. See also, J.F. Koena, [“Centrafrique : des éléments de la LRA veulent se rendre”](#), *DW*, 21 January 2022.

³⁴ J.F. Koena, [“Le désarmement de combattants de la LRA a commencé”](#), *DW*, 22 April 2022.

³⁵ [“PAX and APRu negotiated demobilization of two LRA groups”](#), *PAX*, 9 October 2023.

³⁶ J.F. Koena, [“Revenons à la paix, soyons constructifs pour le pays”](#), *DW*, 17 May 2023.

³⁷ [“Rapatriement annoncé des ex-combattants congolais membres de la LRA”](#), *Agence Congolaise de Presse*, 26 July 2023; [Final report of the Panel of Experts on the Central African Republic extended pursuant to Security Council resolution 2693 \(2023\)](#), United Nations Security Council, S/2024/444, 10 June 2024, para. 83.

³⁸ [Final report of the Panel of Experts on the Central African Republic extended pursuant to Security Council resolution 2693 \(2023\)](#), United Nations Security Council, S/2024/444, 10 June 2024, para. 83; [“Communiqué de presse conjoint. Dernière phase de rapatriement volontaire d’ex-combattants de la LRA et leurs dépendants vers l’Ouganda”](#), MINUSCA, Government of the Central African Republic, 28 September 2023; [“Uganda receives 14 former LRA rebel fighters repatriated from CAR”](#), *Xinhua*, 23 July 2023; [“Govt repatriates second batch of ex-LRA rebels”](#), *The Monitor*, 15 August 2023; [“Last batch of former LRA rebels return”](#), *New Vision*, 29 September 2023.

promotion rurale (“APRu”), were involved in the repatriation processes, with the logistical support of the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (“MINUSCA”).³⁹ These repatriation efforts were highlighted in UN Security Council Resolution 2759 extending MINUSCA’s mandate in November 2024.⁴⁰ Following repatriation to Uganda, LRA returnees were housed in a transit camp at Migyera Town Council in Nakasongola district, under the supervision of the Ministry of Defence, before being hosted in a camp in Gulu in December 2023, under the supervision of the Office of the Prime Minister, in order for them to be rehabilitated.⁴¹

17. In February 2024, a memorandum of association (“MOA”) was signed between the Ugandan government, PAX and APRu.⁴² The government of Uganda committed to guarantee the security of the returnees, and provide them with water, electricity and medical care while they stayed in a camp in Gulu until they resettled.⁴³ The then-State Minister for northern Uganda, Grace Freedom Kwiya Cwiny confirmed that the MOA would enable the two NGOs to cooperate with the government to meet the returnees’ basic needs, including food, healthcare, education and contact with family members,⁴⁴ stating that the government would “encourage traditional justice ceremony with customary chiefs and religious leaders for [the] purpose of reconciliation and reintegration”.⁴⁵ The State Minister reassured the returnees and told them that “[t]he President didn’t bring [them] home to suffer but to enjoy peace and live a good life. [The] government doesn’t segregate, discriminate and it will look after [them] as any other citizen of [the] country.”⁴⁶ The returnees have also been granted amnesty.⁴⁷

18. At the same time, some members of Joseph Kony’s family returned to Uganda taking a different route, through the Ugandan embassy in Juba, South Sudan.⁴⁸ They were welcomed by

³⁹ [“La localité de Mboki ne compte plus des membres de la LRA”](#), Note d’information MINUSCA, 4 October 2023; [“Fin du programme DDRRR-LRA de l’ONG APRu en Ouganda”](#), APRu, 28 September 2024; [“Centrafrique : une quinzaine d’ex-combattants de la LRA rapatriés volontairement vers l’Ouganda”](#), *Radio Guira*, 16 August 2023; [“SRSG Statement to the UN Security Council”](#), MINUSCA, 27 June 2024, para. 7.

⁴⁰ [Resolution 2759](#), United Nations Security Council, S/RES/2759, 14 November 2024, para. 10.

⁴¹ [“LRA returnee reintegration boosted as govt, NGOs team up”](#), *New Vision*, 5 February 2024; [“Gov’t Secures Rehabilitation Center for Ex-LRA Rebels in Gulu”](#), *The Independent*, 16 December 2023.

⁴² [“LRA returnee reintegration boosted as govt, NGOs team up”](#), *New Vision*, 5 February 2024; [“Fin du programme DDRRR-LRA de l’ONG APRu en Ouganda”](#), APRu, 28 September 2024.

⁴³ [“LRA returnee reintegration boosted as govt, NGOs team up”](#), *New Vision*, 5 February 2024.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ [“Ex-LRA Combatants Return to Gulu Amidst Calls for Forgiveness & Reconciliation”](#), *Soft Power News*, 31 December 2023.

⁴⁷ E. Kamurungi, [“Surrender while you still can, govt tells LRA”](#), *The Monitor*, 27 February 2025.

⁴⁸ K. Titeca, [“Ali Kony and the twilight of the Lord’s Resistance Army”](#), *The New Humanitarian*, 24 February 2025; T.J. Owiny, [“Kony family appeals to Museveni to fulfil pledge”](#), *The Monitor*, 5 December 2023.

the President of Uganda, who promised to support them.⁴⁹ In February 2025, a new group comprised of four family members of Joseph Kony was also repatriated to Uganda from the CAR.⁵⁰ These family members would join the others in a camp and would be resettled in May,⁵¹ and the Ker Kwaro Acholi, the cultural institution of the Acholi People in northern Uganda, called for them to undergo a ritual cleansing.⁵² The State Minister for Northern Uganda, Dr Kenneth Omona, called upon all LRA members remaining in the CAR to return “because the door is still open”.⁵³ He also recalled the understanding between his government and that of the CAR, represented by Fulbert Dabira, “to ensure that any person or any former combatant that surrenders in the CAR will be returned [to Uganda]” and the close cooperation “for the development of the two countries in terms of defence, in terms of DDRR”.⁵⁴

19. Rather than renewing and sustaining efforts to bring Joseph Kony before the Court, those involved in these repatriation efforts believe that the re-intervention of the ICC means that Joseph Kony will now never emerge, and that others may also foreswear the reconciliation process. Former Member of Parliament for Gulu, Mr Lyandro Komakech, is involved in ongoing LRA repatriations from the CAR to Uganda, and believes that:

the ICC’s intervention at this critical stage is self-interested, and risks destabilising ongoing efforts for sustainable peace. For a start, it will frustrate the current ongoing initiatives to repatriate LRA commanders, including Joseph Kony, to Uganda. In my view, if Joseph Kony hears that the ICC will move against him *in absentia*, he will simply choose to die in the bush. The ICC’s involvement will thus mean Joseph Kony will never emerge, and an important opportunity will be lost and the extremely sensitive work of so many stakeholders will be wasted.⁵⁵

20. This view is echoed by cultural leaders who also have direct knowledge and involvement in repatriations. The Prime Minister of Ker Kwaro Puranga has been working on the issue of LRA returnees to Uganda since 2000, including his current role of “supporting reintegration of those returning from Joseph Kony’s LRA camps.” He explains that “[r]ecent community dialogues have highlighted the need for domestic solutions to justice and reparations over reliance on

⁴⁹ [“President Museveni Meets Joseph Kony Family, Pledges Support”](#), State House Uganda, 25 August 2023; T.J. Owiny, [“Kony family appeals to Museveni to fulfil pledge”](#), *The Monitor*, 5 December 2023.

⁵⁰ L. Mushabe, [“Joseph Kony’s Family Repatriated to Uganda from Central African Republic”](#), *Nile Post*, 26 February 2025.

⁵¹ E. Kamurungi, [“Surrender while you still can, govt tells LRA”](#), *The Monitor*, 27 February 2025.

⁵² J. Ocungi, [“Acholi Cultural Institution Urge Gov’t to Regard Ritual Cleansing for LRA Returnees”](#), *Uganda Radio Network*, 1 March 2025. See also, [“Kony’s wife, children set for Acholi cleansing ritual”](#), *The Monitor*, 4 March 2025.

⁵³ E. Kamurungi, [“Surrender while you still can, govt tells LRA”](#), *The Monitor*, 27 February 2025.

⁵⁴ *Id.*

⁵⁵ Annex A, Statement of Mr Lyandro Komakech, p. 3.

international frameworks” and that “the ICC’s involvement in the Joseph Kony case, while significant, introduces complexities that risk disrupting peacebuilding efforts”.⁵⁶

21. Similarly, the Ker Kwaro Acholi chiefs consider that it is “difficult to understand” why a confirmation of charges hearing would be held against Joseph Kony “at the time of relative peace in Acholi.”⁵⁷ The Ker Kwaro Acholi considers that the confirmation hearing may “complicate ongoing peace efforts by hindering negotiations and prolonging suffering.”⁵⁸

22. This view is supported by the Acholi Heritage Foundation, an organisation headed by the former Prime Minister of the Ker Kwaro Acholi. Citing the February 2025 repatriation of Joseph Kony’s family members as an example, the Foundation believes that “if the ICC indictment was not there, Joseph Kony would have contemplated returning home since the conditions at home were not worrisome or threatening to his personal safety”.⁵⁹ Against this backdrop, the Foundation concludes that “going ahead with the hearing makes the ICC insensitive to these realities and makes whatever outcomes short of being valid.” For the Foundation, the confirmation hearing “risks undoing many of these achievements” of the repatriation process.⁶⁰

23. The position of the political and cultural leaders is shared by the religious leaders. Sheikh Musa Khalil is the Regional Assistant to the Mufti of northern Uganda, and the Vice-Chairman of the Acholi Religious Leaders Peace Initiative (“ARLPI”). He was part of the last delegation to meet with Joseph Kony in 2008 and recalls Kony stating that “had it not been for the ICC, he would have come to Juba to sign the final peace agreement”. In Sheikh Musa Khalil’s view, “the ICC caused the war to drag on, meaning that many more people were abducted, and caused much more suffering”. Now, in 2025, he believes that the ICC should withdraw from this process, stating that his view “reflects the view of the community, which is that an amnesty is the best way to bring Joseph Kony out of the bush. The path of arrest and the ICC did not work, and still, more bloodshed, more abductions, and more punitive acts have occurred. Joseph Kony has committed crimes, but if he shows remorse, he has to be forgiven.”⁶¹

24. The views of Sheikh Musa Khalil are shared by the former Anglican Bishop of Kitgum, and Co-Founder of ARLPI, the Rt. Rev Macleord Baker Ochola II. Born in 1932, Bishop Ochola is

⁵⁶ Annex B, Statement of Mr Godwin Okello, pp 3-4.

⁵⁷ Annex C, Report of Ker Kwaro Acholi, p. 7.

⁵⁸ *Id.*, p. 8.

⁵⁹ Annex D, Report of the Acholi Heritage Foundation, p. 17.

⁶⁰ *Id.*, pp 16, 19.

⁶¹ Annex E, Statement of Sheikh Musa Khalil, pp 3-4.

an icon of peace in northern Uganda. He is a victim, having lost his wife, and daughter, to the conflict. The circumstances of his daughter's death, about which he has written publicly, are particularly haunting. Having been abducted and gang raped by the rebels, Bishop Ochola's daughter decided her life was no longer worth living, and committed suicide.⁶² Despite this unimaginable loss, Bishop Ochola has forgiven the LRA, stating "[n]evertheless, I personally chose the way of God to bring about peace, forgiveness and reconciliation into our own situations".⁶³ Bishop Ochola has been a long-time outspoken critic of the ICC's involvement in northern Uganda, saying he has personally witnessed "how the issuance of arrest warrants against five LRA commanders worked against efforts to end the war peacefully" and worries that "the current proceedings against Joseph Kony will again act as an obstacle to reconciliation efforts." He believes that "the ICC's involvement has been, and still is, an obstacle to meaningful peace in northern Uganda. I fear the ICC risks destroying efforts for a lasting peace, because people want this war to stop".⁶⁴

25. The same reservations have also been shared by the Catholic Archbishop Emeritus of Gulu and Chairman of the ARLPI, John Baptist Odama. As early as 2005, Archbishop Odama has been open in his view that the ICC proceedings risked preventing peace negotiations. He insisted that the ICC "must recognise they are working within a process and not seek to destabilise that process, [...] first we must find peace, then we will seek reconciliation and then we can secure justice."⁶⁵ For him, "the main reason the 2008 peace initiative did not succeed was a failure of trust" as Kony "was still very afraid that he could be arrested by the International Criminal Court or that he might be killed".⁶⁶ He thought that if the ICC "had not kept on hammering away about Kony, a final peace agreement would have been signed".⁶⁷

26. This evidence is relevant to the Chamber's finding that should an *in absentia* hearing be convened, "efforts to bring Mr Kony before the Court may be renewed and sustained."⁶⁸ It indicates the opposite, that the ICC's decision to hold a confirmation of charges hearing in Joseph Kony's absence may jeopardise ongoing efforts for accountability in the region and make it less

⁶² Bishop Ocholla II Foundation, "Celebrating and Honouring the Life and Legacy of Bishop Macleord Baker Ochola II, Order of Service and Tributes", 12 November 2023, p. 15; Bishop Ocholla II Foundation, "The Man, The Mission, The Word. Bishop Ocholla II Autobiography", 2023, p. 19.

⁶³ Annex F, Statement of Bishop MacLeord Baker Ochola, p. 2.

⁶⁴ *Id.*, pp 3-4.

⁶⁵ "Peace in Uganda cannot be given a deadline", *Christian Aid on Relief Web*, 13 July 2006.

⁶⁶ M. Wooldridge, "LRA: Ugandan bishop urges negotiated settlement", *BBC*, 19 January 2011.

⁶⁷ "Uganda: Calls for Kony arrest 'counter-productive'", *TNH on Relief Web*, 7 October 2008.

⁶⁸ *Decision*, para. 105.

likely that he will emerge and engage in these efforts. This information was not previously before the Chamber and warrants reconsideration of the Decision to prevent an injustice.

B. The Ugandan Government intends that Joseph Kony will face justice in Uganda

27. In the Decision, the Chamber relied on submissions from the Prosecution to conclude that it was “not persuaded that the fact that the Ugandan authorities have tried another person signals their intention to proceed against Mr Kony on the basis of [the] domestic arrest warrant”⁶⁹ and that an *in absentia* hearing would renew and sustain efforts to bring Mr Kony before the Court.⁷⁰

28. The Defence met with the President of the Republic of Uganda, H.E. Yoweri Kaguta Museveni in December 2024, who affirmed that should Joseph Kony be arrested in Uganda, or be returned to Uganda, he will be brought before Ugandan courts. In subsequent meetings with the Attorney General of Uganda, the Deputy Attorney General of Uganda, the Solicitor General of Uganda, the Deputy Solicitor General of Uganda, the Minister of State for Northern Uganda, and the Chief Justice, no suggestion has been made to the contrary. It thus appears clear that the position of the Ugandan government is that, if detained in or transferred to Uganda, Joseph Kony would face justice there, rather than being surrendered to the ICC. In this context, it is also relevant that the Central African authorities have reaffirmed, in February 2025, that any person or former combatant that surrenders in the CAR will be surrendered to Uganda.⁷¹

29. This information affects the Chamber’s findings on the Ugandan government’s intentions,⁷² as well as its conclusion that a confirmation hearing will contribute to efforts to bring Mr Kony before the Court. This information was not previously before the Chamber and warrants reconsideration of the Decision to prevent an injustice.

C. The confirmation process risks destabilising the affected community in northern Uganda and jeopardising a sustainable peace

30. In seeking an *in absentia* confirmation of charges hearing, the Prosecution submitted that the hearing would constitute “a meaningful milestone for victims of Mr KONY’s alleged crimes who have waited for justice for almost two decades.”⁷³ OPCV submitted that the victims “unanimously agreed that it would be desirable to hold a confirmation hearing in the absence of

⁶⁹ *Id.*, para. 84.

⁷⁰ *Id.*, para. 105.

⁷¹ E. Kamurungi, [“Surrender while you still can, govt tells LRA”](#), *The Monitor*, 27 February 2025.

⁷² [Decision](#), paras 83-84.

⁷³ [Prosecution’s Request to Hold an In Absentia Confirmation of Charges Hearing](#), paras 7, 38.

Mr Kony. Indeed, they believe that it would permit to revive the case and prepare in advance for a potential trial. Victims perceive such a hearing as a meaningful step in the right direction and are eager to genuinely contribute to the pursuit of justice, not only by conveying their views and concerns on all relevant issues, but also by testifying against Mr Kony.”⁷⁴ OPCV’s submissions were based on the views of 35 people.⁷⁵ In the Decision, the Chamber found “cause to hold a confirmation hearing in the absence of Mr Kony on the basis that [...] victims will have an opportunity to express their views and concerns in accordance with article 68(3) of the Statute”.⁷⁶

31. Pamela Judith Angwech is the head of the Gulu Women’s Economic Development & Globalization (“GWED-G”), which she founded in 2004 with the goal of assisting with the rehabilitation of victims of the conflict in northern Uganda, including victims of conflict-related sexual and gender-based violence, and those who suffered physical harm as a result of the war. Her deep and lengthy engagement with the victim community has led her to the view that “the confirmation process in the *Kony* case will again divide people”, and that the current discussions are “opening old wounds in our community”. She has said:

If I am a victim of Joseph Kony, I will realise that I will not receive reparations from the ICC like other victims. If I see victims of Dominic Ongwen or Thomas Kwoyelo getting reparations, I will feel discriminated against, and not supported. I will feel that my situation is worse than theirs, because I did not hear any apology from Joseph Kony himself, whereas Thomas Kwoyelo stood in the courtroom and apologised. I will not feel any redress, nobody will tell me what my future will look like, or what the future of my family will look like. So victims of Joseph Kony will be different, and will feel different. There is also a problem with it being done in his absence. Joseph Kony will not be there. There is no human aspect to this process, unlike in the other cases.⁷⁷

32. Ms Angwech also cautions that:

looking backwards can cause much harm and pain for victims. Many victims do not want to be reminded of what they went through. Focusing on the past and remembering bad things with no tangible support or meaningful redress does not make sense. The confirmation hearing in the *Kony* case will require victims to look backwards, but with no meaningful outcomes for them. This is not a reconciliation process, there will be no apology, there will be no fulfilment. We should work instead to give the entire community reparations, and support. We need a practical impact. Any legal redress must be accompanied by comprehensive reparative support, including reintegration, and access to livelihood options. The ICC confirmation process brings none of

⁷⁴ [Victims Views and Concerns on the *In Absentia* Hearing Request](#), para. 19.

⁷⁵ *Id.*, para. 17.

⁷⁶ [Decision](#), para. 105.

⁷⁷ Annex H, Statement of Ms Pamela Judith Angwech, paras 13-14.

this, but will still require victims to look backwards, but with no reward or support.⁷⁸

33. Concerns over divisions and opening of old wounds are shared by others. The Acholi Heritage Foundation believes that the narrow focus and scope of the ICC's case against Joseph Kony is "converse to the fact that the conflict, literally touched every segment of Acholi society" which leads to the possibility that the ICC may be "sanctioning the split of communities in terms of beneficiaries and non-beneficiaries or victims and non-victims".⁷⁹

34. The Refugee Law Project ("RLP") has been closely following the impact of the ICC's intervention in Uganda since its inception, and conducted broad consultations and focus group discussions in northern Uganda in 2023, "to assess survivors' perspectives on the *Kony* proceedings". The results were published,⁸⁰ and reveal that "[s]urvivors were unwilling to be re-traumatised without any hope of tangible benefits that could improve the lives of their families." The RLP remains concerned that "the Prosecution's intentions are not aligned with the needs of victims and the well-being of the community" and "the risks of re-traumatisation through the proposed hearings are high." In the words of one focus group participant from Kitgum, "the trial of Kony will open a healing wound."⁸¹

35. In addition to the risk of individual re-traumatisation, the RLP is also "gravely concerned about the potential risks to the community", including the rekindling of conflict. RLP explains that without broad consultations,

...the confirmation hearings will polarise people, split communities, and jeopardise peace. We are aware that the ICC has no safeguards to ensure communities do not relapse into violence, and that people in northern Uganda have already expressed their fear that these hearings could lead to a second wave of war.

This fear that the ICC proceedings against Kony could rekindle the conflict is not unwarranted. The forgiveness and healing that has already occurred has led to a shift in the mindset of the community in northern Uganda resulting in changes in the sense of estrangement among communities, and provides the foundation for dialogue and reconciliation. This is also very much consistent with the views of some respondents from affected communities in the north that deeply believe in communal sense of fairness. If the ICC comes in with a narrative of estrangement between communities, this will create a rupture in this dialogue. People will be forced to relive the events and the story, whether

⁷⁸ *Id.*, para. 13.

⁷⁹ Annex D, Report of the Acholi Heritage Foundation, pp 14-15.

⁸⁰ ["The Trial of Joseph Kony in Double Absentia: Too Little, Too Late?"](#), Refugee Law Project, 2 October 2023.

⁸¹ Annex I, Report of the Refugee Law Project, pp 2-4.

they want to or not, including the young people who did not live it themselves.⁸²

36. The Ker Kwaro Acholi shares these concerns and has identified concrete risks of an ICC confirmation hearing as a “possible increase in community tension” which will “spark divisions among the community between those who view Joseph Kony as a victim and those who view him as a perpetrator, creating tensions between Acholi community, Government of Uganda, and any other groups”.⁸³ The Ker Kwaro Acholi is concerned that “collective trauma experienced by the entire Acholi sub region may be overlooked because the ICC focuses on individual accountability, instead of the communal holistic healing and rebuilding under traditional justice system”.⁸⁴ In its view, the absence of Joseph Kony from the dock “will make the community perceive and feel that justice is not being done, prolonging their healing process” and may lead to “further mistrust in both formal legal processes and governmental institutions and resentment by the Acholi Community.”⁸⁵

37. The decision whether to hold a confirmation of charges hearing where an accused cannot be found, is a matter for the Pre-Trial Chamber’s – not the Prosecution’s – discretion.⁸⁶ Where high level and informed authorities from among the affected population are of the view that to do so would risk causing fractures and divisions within a society which has made potentially unprecedented strides towards achieving peace, this is relevant to a consideration of whether this discretion should be exercised, or whether the Pre-Trial Chamber should consult further with the communities in whose interest the proceedings are purportedly being held. This information was not previously before the Chamber and warrants reconsideration of the Decision to prevent an injustice.

D. Joseph Kony is not someone who “cannot be found”

38. In the Decision, the Chamber held that Joseph Kony qualifies as a person who “cannot be found” within the meaning of Article 61(2)(b) of the Statute.⁸⁷ The Chamber also held, relying on language from the November Decision, that the phrase “cannot be found” “**does not cover** a situation in which the **approximate whereabouts of the person are known** but the Court is

⁸² Annex I, Report of the Refugee Law Project, pp 4-5.

⁸³ Annex C, Report of Ker Kwaro Acholi, p. 11.

⁸⁴ *Id.*, p. 11.

⁸⁵ *Id.*, p. 11.

⁸⁶ [Rome Statute](#), Article 61(2). See further [Decision](#), para. 23, citing [November Decision](#), para. 26.

⁸⁷ [Decision](#), para. 95.

unable to have an arrest warrant executed due to reasons unrelated to the identification of the suspect's location, for instance due to lack of cooperation from relevant States.”⁸⁸

39. The approximate whereabouts of Mr Kony are known and have been publicly reported in recent months.⁸⁹ Moreover, it can be safely presumed that the many former LRA fighters and Kony family members who have been repatriated in February and March 2025 and are now living in Gulu, know Mr Kony's approximate whereabouts.

40. Mr Kony's approximate whereabouts also appear to be known by the Registry. On 14 February 2025, the Registry submitted a report to the Pre-Trial Chamber which contained an Annex II which was redacted on the basis that it “contains sensitive and detailed information on possible whereabouts and personal data of Mr Kony.”⁹⁰ The Registry has also submitted that it has taken all reasonable steps to inform Mr Kony of the new date for the commencement of the confirmation hearing, which the Chamber accepted, noting that the Registry's indication that “it followed a more focused approach in the CAR by choosing ‘key local community radios in locations where it is believed there are communities close to Mr Kony’”.⁹¹

41. The Registry's information on the possible whereabouts of Joseph Kony is redacted from the Defence. The Defence has asked the Prosecution for disclosure of any information about Joseph Kony's current whereabouts, to which the Prosecution has responded that tracking information is not disclosable. However, it would appear that information as to Joseph Kony's

⁸⁸ *Id.*, para. 96 (emphasis added).

⁸⁹ [“New details on Kony whereabouts emerge, Russians join hunt”](#), *New Vision*, February 2025 “Moor said that although Kony moves between the border areas of Sudan and CAR, it was difficult to tell his exact hideout since he has been, of recent, on the move after the situation became difficult for him in Sudan.”; [“The Meaning of Kony 2012”](#), *Jacobin*, 9 March 2025 “Kony is still sitting safe and sound in Kafia Kingi, a disputed territory in Darfur”; [“End of the Road: Kony on the run as Russia's Wagner forces intensify hunt for LRA – Fighters Abandon Rebel Leader”](#), *Mulengera News*, 28 February 2025 “The Wagner Group, known for its mercenary work, has been arresting and forcing the LRA combatants to surrender, especially in the conflict-ridden areas of Darfur, Sudan, and the Central African Republic.”; [“Kony's family returns to Uganda as govt urges more LRA rebels to surrender”](#), *The Monitor*, 26 February 2025 “Once commanding hundreds of anti-government fighters, Kony is now believed to be moving with a dwindling force of fewer than 100 men, evading capture in the CAR jungles. Since being pushed out of Northern Uganda in 2006, Kony and the LRA have largely operated in CAR, South Sudan, and the Democratic Republic of Congo.”; [“Wife and children of warlord Joseph Kony return to Uganda from Central African Republic”](#), *Associated Press*, 26 February 2025 “Kony is believed to be hiding somewhere in Central African Republic, said Kulayigye.”; [“Kony's Daughters Held Hostage by Russian Mercenaries for Four Months”](#), *Uganda Radio Network*, 5 March 2025 “Although his exact location remains unknown, Kony is believed to be operating a smaller group of loyal fighters between the border of Sudan and Central African Republic, according to security sources. In August last year, the Ugandan army struck LRA bases in the Eastern Town of Sam Oundja, resulting in the capture of vital military equipment and destruction of accommodation facilities.”

⁹⁰ [Registry's Report on the implementation of Pre-Trial Chamber III's “Decision Setting the Date of the Confirmation of Charges Hearing and Related Time Limits” dated 12 December 2024 \(ICC-02/04-01/05-539\)](#), ICC-02/04-01/05-563, 14 February 2025, para. 12.

⁹¹ [Decision on the notification of the date of the confirmation hearing](#), ICC-02/04-01/05-573, 13 March 2025, para. 19.

approximate whereabouts is in the possession of various organs of the Court, and this information reflects the broad knowledge in the public domain. As such, the case has moved into a situation where “the ***approximate whereabouts of the person are known*** but the Court is unable to have an arrest warrant executed due to reasons unrelated to the identification of the suspect’s location, for instance due to lack of cooperation from relevant States.”⁹² As the Pre-Trial Chamber held, the phrase “cannot be found” is not intended to cover such a situation.

V. CONCLUSION

42. The primary position of the Defence is that an *in absentia* confirmation hearing is impermissible under the Statute, absent an initial appearance. Regardless, it is undisputed that this first attempt to convene a confirmation hearing against an absent accused, can only proceed if the Chamber finds that there is ***cause*** to do so and decides to exercise its discretion accordingly.⁹³

43. The question of cause is multifaceted. In the instant case, the exercise of the Chamber’s discretion was prefaced on the above-listed factual determinations.⁹⁴ Those findings were based on the submissions of the Prosecution and OPCV, which, in turn, were grounded in limited and, in essential areas, speculative information – indeed, a distance from anything which might properly be termed evidence. Directly relevant information exists, which the Chamber is in a position to collect and consider.

44. In the exercise of its discretion, in the Defence submission, it is of the utmost importance that the Chamber should observe the principle that it must “do no harm”.⁹⁵ Where the available evidence or information suggests that the holding of confirmation hearings in the absence of the accused might cause harm, the principle should apply to cause the Chamber to exercise its discretion against the request to order them to take place. Such an assessment, necessarily, must be an informed one. Before the Chamber is able properly to exercise its discretion, it needs information from those who are in a position to know whether such a hearing will or might, indeed, cause harm.

⁹² [Decision](#), para. 96 (emphasis added).

⁹³ [Rome Statute](#), Article 61(2). See further [Decision](#), para. 23, citing [November Decision](#), para. 26.

⁹⁴ See *supra* paragraph 2.

⁹⁵ *Prosecutor v. Ntaganda*, [Reparations Order](#), ICC-01/04-02/06-2659, 8 March 2021, para. 50: “Do no harm” is an internationally recognised principle that “complements the humanitarian principles of humanity, impartiality, neutrality and independence”.

45. The new information in the present request suggests that the risk of harm is real, and present. It therefore litigates in favour of the Defence request for reconsideration of the Decision, to avoid an injustice. This information was not before the Chamber, was previously unavailable, and its submission comprises new circumstances, warranting reconsideration of the Decision. In the alternative, the Chamber should engage in a consultation process with those who can speak to these central questions of harm, risks and benefits of this novel procedure, so as to be in a position to make an informed decision about whether cause to proceed exists.

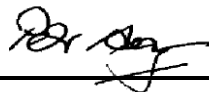
VI. RELIEF REQUESTED

On this basis, the Defence asks that the Chamber:

RECONSIDER its Decision on the criteria for holding confirmation of charges proceedings *in absentia*, or, in the alternative;

ISSUE an order inviting observations from interested parties within Uganda on the question of whether there is cause to hold a confirmation of charges hearing in the absence of Joseph Kony, pursuant to Rule 103 of the Rules of Procedure and Evidence.

The whole respectfully submitted



Peter Haynes, KC
Counsel for Joseph Kony

Dated this 3 April 2025

At The Hague, Netherlands