

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original:

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

Date: 14 April 2025

PRE-TRIAL CHAMBER III

Before: Judge Althea Violet Alexis-Windsor, Presiding Judge
Judge Iulia Antoanella Motoc
Judge Haykel Ben Mahfoudh

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

**Public
with confidential Annex**

Prosecution's response to "Request for Reconsideration of the 'Decision on the criteria for holding confirmation of charges proceedings *in absentia*' (ICC-02/04-01/05-532)"

Source: Office of the Prosecutor

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I. INTRODUCTION

1. The Chamber should reject the Defence's request for reconsideration ("Request")¹ of the Chamber's "Decision on the criteria for holding confirmation of charges proceedings *in absentia*"² ("Decision"). The Request fails to meet the conditions of this exceptional remedy.

II. CONFIDENTIALITY

2. The Annex to these submissions is filed confidential pursuant to regulation 23bis(2) of the Regulations of the Court as it cites submissions of the same designation. A public redacted version will be filed as soon as possible.

III. SUBMISSIONS

3. Reconsideration is exceptional and should only take place if a clear error of reasoning has been demonstrated or if it is otherwise necessary to prevent an injustice, including because of a relevant change of circumstances since the original decision was rendered.³ The exceptional nature of the remedy is consistent with the duty of the Court to ensure fair and expeditious proceedings, and the judicial interest in legal certainty and procedural economy.
4. None of the issues raised by the Defence meets the necessary requirements. The Decision contains no error of reasoning of any kind material to the Request, nor is reconsideration required to prevent an injustice. To the contrary, far from showing any relevant change of circumstances, the Request at most presents further information concerning arguments which were previously and unsuccessfully advanced by the Defence. Nothing in this information alters the Chamber's understanding and assessment of the relevant facts, or the reasoning in the

¹ ICC-02/04-01/05-583.

² ICC-02/04-01/05-532 ("Decision").

³ ICC-01/12-01/18-2414, para. 7; ICC-02/05-01/20-650-Red, para. 10; ICC-01/12-01/18-734, para. 11; ICC-01/04-02/06- 2241, para. 4; ICC-02/04-01/15-468, para. 4; ICC-01/09-01/11-1813, para. 19. *See also* ICC-01/14-01/22-43, para. 19; ICC-01/14-01/18-447, para. 16; ICC-01/14-01/18-206.

Decision.⁴ The exceptional remedy of reconsideration is not a licence to relitigate issues which have previously been decided by the Chamber⁵—especially in the present case, where the Defence had ample opportunity to present all the relevant arguments under generous deadlines.

5. In attempting to substantiate the Request, the Defence relies significantly on statements of various third parties. It is important to consider these statements in their proper context. Not only does the Defence fail to show that this or substantially similar information was not previously available, but in any event this information is at most only potential support of the Defence’s own claims.
6. In particular, the statements now presented by the Defence may not be understood as any independent legal intervention in this case by the persons named in those statements,⁶ either for the purpose of representing the views and concerns of victims or as *amici curiae*. To consider otherwise would circumvent the established procedures for such interventions under provisions including article 68(3) of the Statute and rules 85-86, 93, and 103(1). The Defence previously requested the Chamber to invite *amici curiae* submissions based on similar considerations and for similar topics,⁷ which the Chamber rejected.⁸ Likewise, while Annexes H and I apparently contain the views of alleged victims, there has been no judicial exercise to assess and determine whether the alleged victims are even linked to the *Kony* case.⁹

⁴ ICC-01/05-01/08-T-42-Red2-ENG, p. 3, lns. 15-18, p. 4, lns. 1-12; ICC-01/05-01/08-1691-Red, paras. 16-17; ICC-02/05-01/20-710, para. 13.

⁵ ICC-01/12-01/18-2414, para. 7; ICC-02/05-01/20-650-Red, para. 10; ICC-01/04-02/06-2426, para. 6.

⁶ See ICC-02/04-01/05-583-Anx A, with the views of Mr Lyandro Komakech (“Annex A”); ICC-02/04-01/05-583-Anx B, with the views of Mr Denis Godwin Okello, Traditional Prime Minister of Kwer Kwaro Purunga (“Annex B”); ICC-02/04-01/05-583-Anx C, with the views of the Ker Kwaro Acholi (Acholi Cultural Institute) (“Annex C”); ICC-02/04-01/05-583-Anx D, a report on the position of the Acholi Heritage Foundation (“Annex D”); ICC-02/04-01/05-583-Anx E, containing the views of Mr Sheikh Musa Khalil (Regional Assistant to the Mufti of Northern Uganda) (“Annex E”); ICC-02/04-01/05-583-Anx F, with the views of Bishop Macleord Baker Ochola (retired Anglican Bishop of the Diocese of Kitgum) (“Annex F”); ICC-02/04-01/05-583-Anx G, containing an undated article authored by Bishop Macleord Baker Ochola (“Annex G”); ICC-02/04-01/05-583-Anx H, containing the views of Ms. Pamela Judith Angwech (Gulu Women’s Economic Development & Globalization organisation) (“Annex H”); ICC-02/04-01/05-583-Anx I, with a report of the Refugee Law Project (“Annex I”).

⁷ ICC-02/04-01/05-517, paras. 60.

⁸ Decision, para. 90; ICC-02/04-01/05-551, para. 41.

⁹ ICC-02/04-01/05-540, paras. 38-44. See also paras. 45-48.

7. The Request contains four principal arguments: (i) that the confirmation process will not renew or sustain efforts to bring Mr Kony before the Court;¹⁰ (ii) that the case against Mr Kony may become inadmissible;¹¹ (iii) that the confirmation process may jeopardise peace in northern Uganda,¹² and (iv) that Mr Kony is no longer a person who “cannot be found”.¹³ The Prosecution respectfully submits that each of these arguments should be dismissed.

A. The Chamber’s view that confirmation proceedings may renew and sustain efforts to apprehend Mr Kony is unaffected

8. The Request fails to show any basis for the Chamber to reconsider the Decision with regard to its observation that the confirmation proceedings may renew and sustain efforts to apprehend Mr Kony, on the basis that (i) the confirmation may affect the ongoing return and reconciliation of former LRA fighters; and that, if it does, (ii) this may make it less likely that Mr Kony will voluntarily “emerge”.¹⁴ This argument is tenuous and misdirected since the Chamber’s original reasoning concerned the renewal of efforts *by the international community* to apprehend Mr Kony.¹⁵ Moreover, the information presented by the Defence is not new, but at most constitutes further information concerning facts which already existed when the Decision was rendered. Finally, there is no clear basis to consider that any of the Court’s proceedings to date have hindered the return and reconciliation process.
9. As the Defence itself acknowledges, the repatriation to northern Uganda of persons once active in the Lord’s Resistance Army “has been ongoing for many

¹⁰ See Request, paras. 12-26.

¹¹ See Request, paras. 27-29.

¹² See Request, paras. 30-37.

¹³ See Request, paras. 38-41.

¹⁴ *Contra* Request, paras. 12-13, 26.

¹⁵ See *e.g.* Decision, para. 105 (text accompanying fn. 200, citing *inter alia* ICC-02/04-01/05-466 (“PTC II Decision”), para. 67, which states materially “as expressed by the Prosecution and the OPCV, a confirmation of charges in the absence of Mr Kony will *remind the international community* that he is a wanted fugitive and may reinvigorate efforts to locate him and bring him before the Court”, emphasis added). See also Request, para. 12.

years”,¹⁶ including throughout the *Ongwen* trial.¹⁷ The returns and repatriations set out by the Defence all occurred while the confirmation proceedings were already ongoing, including after Pre-Trial Chamber II’s decision of 23 November 2023,¹⁸ as well as subsequent decisions by this Chamber. Likewise, the process of return and repatriation continued notwithstanding the continuous and widespread outreach conducted by the Registry on the nature and scope of the proceedings as part of the notification efforts,¹⁹ as well as by the Prosecution.²⁰ In this regard, none of the views expressed in the statements collected by the Defence are new, as the Defence itself concedes in part.²¹

10. In addition, the views expressed are equivocal. For example, Annexes A, B, C, D, E, and F contain the statements of individuals and organizations observing that the *in absentia* proceedings *may* cause Mr Kony to elect to remain in the bush,²² and *may* disrupt peace building and reconciliation efforts.²³ While the Prosecution takes seriously the considerations, opinions and beliefs held by religious, political and cultural leaders and stakeholders in northern Uganda, the Defence fails to demonstrate a clear nexus between the confirmation proceedings and Mr Kony’s refusal to surrender to the Court through the submitted materials. To the contrary, Mr Kony has continuously sought to evade justice even before the start of these confirmation proceedings, and for many years—which was one of the main factors leading to these proceedings in the first place.

¹⁶ Request, para. 14-18; *see also* Borzello, A. 2007, “[The challenge of DDR in Northern Uganda: The Lord’s Resistance Army](#)”, *Conflict, Security & Development*, 7(3), pp. 387 - 415, Routledge, Oxford; [Uganda: Numerous challenges ahead for formerly abducted children and adults](#), published 15 December 2004, Relief Web.

¹⁷ [Ali Kony and the twilight of the Lord’s Resistance Army, the New Humanitarian](#), 24 February 2025.

¹⁸ *See* ICC-02/04-01/05-466.

¹⁹ *See* Registry reports at ICC-02/04-01/05-563 and ICC-02/04-01/05-491.

²⁰ *See inter alia*, Teso LRA victims seek to participate in Kony’s ICC trial, Daily Monitor, 19 November 2024, at <https://www.monitor.co.ug/uganda/news/national/teso-lra-victims-seek-to-participate-in-kony-s-icc-trial-4829008>; Why ICC lawyers want Kony case held in Uganda, The Independent, 19 November 2024, at <https://www.independent.co.ug/why-icc-lawyers-want-kony-case-held-in-uganda-and-not-in-the-hague/>; Office of the Prosecutor Annual Report 2024, p. 37-28, at <https://www.icc-cpi.int/news/office-prosecutor-annual-report-2024>.

²¹ Request, para. 25.

²² *See* Request Annex A, Request, paras. 19, 22.

²³ *See* Annexes B, C, D, E, F, and I, pp. 2, 4-5. *See* Request, paras. 17, 18, 23-24.

B. The Chamber's exercise of discretion not to determine admissibility at this stage is unaffected

11. The Defence previously—and unsuccessfully—argued that there is no cause to hold the confirmation hearing *in absentia* because the proceedings against Mr Kony are now, or will become, inadmissible.²⁴ It now attempts to relitigate this issue further by providing alleged utterances of the Ugandan President made to the Defence team.²⁵ At most, these submissions merely repeat the thrust of its previous arguments, which were rejected by the Chamber.²⁶ To the Prosecution's knowledge, the Ugandan authorities have made no official communication to the Court with the effect claimed by the Defence. As such, the Defence assertions on this matter can sustain very little weight, if any at all.
12. Furthermore, even if the unverified information provided by the Defence were to be considered *new*, it does not justify reconsideration of the Decision since it does not call into question any aspect of the Chamber's reasoning. In this regard, it is important to recall that the Chamber found no cause to exercise its discretion to assess the admissibility of the case against Mr Kony at the present time.²⁷ The Chamber recalled that the admissibility of the case had previously been assessed *proprio motu* by Pre-Trial Chamber II in a different composition.²⁸ It rejected the Defence arguments concerning the possible intention of the Ugandan authorities to prosecute Mr Kony in the event of his arrest as "having no bearing on the particular question whether the Chamber, within the context of the Court's legal framework, should avail itself of its discretion to review the admissibility of the case against Mr Kony in the particular circumstances of the present proceedings."²⁹
13. For all these reasons, in the absence of an admissibility challenge by Uganda, the procedural posture remains the same.

²⁴ ICC-02/04-01/05-517, paras. 49; ICC-02/04-01/05-533, para. 46.

²⁵ Request, paras. 27-29.

²⁶ Decision, paras. 81-85.

²⁷ Decision, paras. 81-83.

²⁸ Decision, para. 83.

²⁹ Decision, para. 84.

C. The Chamber's understanding that the confirmation process will provide an opportunity for the victims to express their views and concerns is unaffected

14. The Request fails to show any basis for the Chamber to reconsider the Decision with regard to its view that the confirmation proceedings provides an opportunity for the victims. To the contrary, the Request merely seeks to amplify and relitigate the Defence's previously submitted arguments on this issue.³⁰ The Request³¹ and its Annexes contain the statements of individuals and organisations observing that proceedings at the Court may reopen "old wounds", "divide" the community,³² and allegedly negate available traditional justice and reconciliation mechanisms.³³ The Defence already presented similar arguments in these proceedings, even asking the Chamber to seek alternative ways of giving victims a voice,³⁴ outside the established procedure of victims participation. In fact most of these arguments have been voiced publicly in the past, also during the *Ongwen* proceedings.³⁵
15. Yet, as the Chamber observed, proceedings at the Court do not prevent the use of other avenues available under international or domestic law.³⁶ While the Defence submissions raised broad considerations regarding accountability within the wider context of transitional justice and alternative reconciliation mechanisms in

³⁰ See Request, paras. 30-37.

³¹ Request, paras. 32-36.

³² See Annexes C, H, and I. See Request, paras. 31, 32, 34, 35.

³³ See Annexes C, D and I, pp. 1, 4. See Request, paras. 20, 36.

³⁴ ICC-02/04-01/05-517, paras. 59, 60; ICC-02/04-01/05-533, para. 49.

³⁵ See Annex G of the Request, which focusses on the *Ongwen* proceedings. On restorative justice initiatives in the *Ongwen* proceedings see Defence Brief on Sentencing, ICC-02/04-01/15-1809-Corr-Red, paras. 32-39, Prosecution's oral response, ICC-02/04-01/15-T-260-ENG, pp. 31-34, Sentence, ICC-02/04-01/15-1819-Red, paras. 17-43. Further sources demonstrate that the views brought forth by the Defence have been prevalent and are not new, see [Former Acholi Cultural Institution Premier Ambrose Olaa Testifies in Kwoyelo's Defence Trial](#), dated May 2024; Retired Ugandan bishop seeks restorative justice for former child soldiers, dated 15 February 2017, see <https://www.christiancentury.org/article/retired-ugandan-bishop-seeks-restorative-justice-former-child-soldiers>, citing both Bishop Ochola and Sheikh Musa Khalil ; "Peace in Uganda cannot be given a deadline", *Christian Aid on Relief Web*, 13 July 2006, at <https://reliefweb.int/report/uganda/peace-uganda-cannot-be-given-deadline>; M. Wooldridge, "LRA: Ugandan bishop urges negotiated settlement", *BBC*, 19 January 2011, at <https://www.bbc.com/news/world-africa-12226701>; "Uganda: Calls for Kony arrest 'counter-productive'", *TNH on Relief Web*, 7 October 2008, at <https://reliefweb.int/report/uganda/uganda-calls-kony-arrest-counter-productive>, and <https://www.ijmonitor.org/2017/09/q-a-archbishop-john-baptist-odama-on-the-trial-of-dominic-ongwen/>; see also Annex I, which repeats the main arguments of the public report "The Trial of Joseph Kony in Double Absentia: Too Little, Too Late?", Refugee Law Project, published already on 2 October 2023, at https://www.refugeelawproject.org/index.php?option=com_content&view=article&id=301:the-trial-of-joseph-kony-in-double-absentia-too-little-too-late&catid=15&Itemid=101.

³⁶ Decision, para. 90. See also ICC-02/04-01/15-T-260-ENG, p. 33, lns. 18- p. 34, ln. 1.

the Acholi culture,³⁷ the Chamber correctly assessed matters before it within the legal framework of the Court.³⁸

16. Importantly, the Chamber also took into account the views of the victims admitted to participate in this case.³⁹ These participating victims are not only linked to the Acholi tradition, but also to other parts of northern Uganda. The participation process ensures that all those linked to the charged crimes – also from the Lango and Teso regions – not only have a voice, but also standing, and can participate meaningfully with due regard to the personal harm suffered. Lastly, the Court’s outreach activities will also ensure that the affected communities can follow, comment and discuss the proceedings, just like during the *Ongwen* trial.⁴⁰

D. The Chamber’s conclusion that Mr Kony cannot be found is unaffected

17. The Request fails to show any basis for the Chamber to reconsider the Decision with regard to its conclusion that Mr Kony is a person who cannot be found within the meaning of article 61(2)(b).
18. After first alleging Mr Kony is deceased, the Defence now submits open source reporting to allege his approximate whereabouts are known.⁴¹ Even if the Court were to consider such reporting as sufficient and reliable, the reports cited contradict each other and underscore that Mr Kony is moving across borders and in difficult terrain. It is no more than speculation whether persons who have returned from being held captive by Mr Kony can provide new and current information to the Ugandan authorities or the Court on his whereabouts.
19. Moreover, the Defence misconstrues the content of the Registry outreach report of 14 February 2025 as well as the Prosecution’s reply to its related disclosure request.⁴² As the confidential Annex demonstrates, Mr Kony’s approximate

³⁷ Request, paras. 14-26, 33-36.

³⁸ Decision, para. 90.

³⁹ ICC-02/04-01/05-483, para. 20; ICC-02/04-01/05-457, paras. 2, 23

⁴⁰ See for example the “Access to justice” project, at <https://www.icc-cpi.int/get-involved/pages/aj-story/from-courtroom-to-communities>.

⁴¹ See Request, fn. 89, noting CAR, Sudan and the DRC, and that his whereabouts are unknown.

⁴² Request, paras. 40-41.

whereabouts cannot be deduced from the latest Registry outreach report. Contrary to its present argument, the Defence was specifically informed that Annex II to that report did *not* contain any information relevant to Mr Kony's whereabouts. Although the Registry had indeed inadvertently suggested that Annex II included information on possible whereabouts and personal data of Mr Kony, the Prosecution had explained to the Defence that this was not correct⁴³—and even provided a general description of Annex II—having confirmed this matter with the Registry.⁴⁴

20. As stated previously,⁴⁵ the Prosecution and Registry continue their tracking efforts and monitor the situation to ascertain Mr Kony's whereabouts. Further, the Registry made its previous reports on efforts to locate and arrest Mr Kony available to the Defence, with redactions as approved by the Chamber.

IV. RELIEF SOUGHT

21. For the foregoing reasons, the Prosecution respectfully requests that the Chamber reject the Request.



Karim A. A. Khan KC, Prosecutor

Dated this 14th day of April 2025
At The Hague, The Netherlands

⁴³ See Annex A.

⁴⁴ As it was the Registry's remit to proceed with the required steps to determine whether the content of Annex II could be reclassified, and to submit a request to the Chamber, the Prosecution alerted the Registry to the issue and received confirmation that the Registry was proceeding with all required steps.

⁴⁵ See ICC-02/04-01/05-520-Conf, para. 4.