



Original: English

No. ICC-02/04-01/05

Date: 28 May 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

Decision on the Defence request for reconsideration of the ‘Decision on the criteria for holding confirmation of charges proceedings *in absentia*’ (ICC-02/04-01/05-532)

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 Defence request for reconsideration of the “Decision on the criteria for holding confirmation of charges proceedings *in absentia*” (ICC-02/04-01/05-532)’.

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 24 November 2022, the Prosecution submitted a request to hold a hearing on the confirmation of charges against Mr Kony in his absence.²
3. On 23 November 2023, Pre-Trial Chamber II issued its ‘Decision on the Prosecution’s request to hold a confirmation of charges hearing in the Kony case in the suspect’s absence’,³ (the ‘First Decision’) thereby *inter alia*: (i) finding that Mr Kony qualifies as a person who ‘cannot be found’ within the meaning of article 61(2)(b) of the Statute, all reasonable steps to secure his appearance had been taken, and, under the prevailing circumstances, there would be cause to hold a confirmation of charges hearing against him, in his absence; and (ii) deferring the final decision on whether to proceed with a confirmation of charges hearing in the absence of Mr Kony.
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’, thereby *inter alia* finding ‘that all reasonable steps to inform Mr Kony of the charges against him as set out in the [Document Containing the Charges] have been taken, within the meaning of article 61(2)(b) of the Statute’.⁴

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 Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence, ICC-02/04-01/05-446-Conf, confidential (a public redacted version was filed on the same day, [ICC-02/04-01/05-446-Red](#)).

³ [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, public.

⁴ [ICC-02/04-01/05-481](#), public.

5. On 12 March 2024, the Presidency reassigned the Situation in the Republic of Uganda to the Chamber.⁵
6. On 2 May 2024, the Single Judge, *inter alia*, authorised the Registry to start the procedure for the selection of counsel for Mr Kony, and ordered counsel for Mr Kony, once appointed, to make observations on, *inter alia*, the First Decision.⁶
7. On 21 June 2024, Mr Peter Haynes was appointed as counsel for Mr Kony.⁷
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’ (the ‘28 August 2024 Observations’).⁸
9. On 5 September 2024, following an order from the Single Judge,⁹ the Prosecution replied to the Defence Observations¹⁰ and, on 9 September 2024, the Defence submitted further observations on the same matters.¹¹
10. On 29 October 2024, the Chamber issued the ‘Decision on the criteria for holding confirmation of charges proceedings *in absentia*’ (the ‘29 October 2024 Decision’),¹² determining *inter alia* that all requirements set forth in article 61(2)(b) of the Statute to hold a confirmation of charges hearing were met in the present case.
11. On 4 November 2024, the Defence sought leave to appeal the 29 October 2024 Decision.¹³

⁵ [Decision assigning judges to divisions and recomposing Chambers](#), ICC-02/04-01/05-485, public.

⁶ [Decision on the Procedure for Appointing Counsel](#), ICC-02/04-01/05-499, public, para. 27.

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

⁸ ICC-02/04-01/05-517-Conf, confidential with a confidential annex (public redaction versions were filed on the same day, [ICC-02/04-01/05-517-Red](#) and ICC-02/04-01/05-517-Anx1-Red).

⁹ Email from Pre-Trial Chamber III to the Prosecution, 3 September 2024, at 15:12; see [annex 26 to Report on decisions and orders issued by way of email for the period November 2022 – September 2024](#), 25 October 2024, ICC-02/04-01/05-530-Anx26, public, [adjudicating Prosecution’s Request for Leave to Reply to Defence Observations](#), 2 September 2024, ICC-02/04-01/05-518, public and [Kony Defence Response to Prosecution’s Request for Leave to Reply to Defence Observations](#), 3 September 2024, ICC-02/04-01/05-519, public.

¹⁰ Prosecution’s Reply to Defence Observations, ICC-02/04-01/05-520-Conf, confidential (a public redacted version was filed on the same day, [ICC-02/04-01/05-520-Red](#)).

¹¹ Kony Defence Reply to Prosecution’s Submissions in Response to Defence Observations, ICC-02/04-01/05-524-Conf, confidential (a public redacted version was filed on the same day, [ICC-02/04-01/05-524-Red](#)), with annex A, public.

¹² [ICC-02/04-01/05-532](#), public.

¹³ [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, public.

12. On 28 January 2025, the Chamber rendered the ‘Decision on the ‘Kony Defence request for leave to appeal [the] “Decision on the criteria for holding confirmation of charges proceedings *in absentia*”’, partially granting it.¹⁴

13. On 12 December 2024, the Chamber issued the ‘Decision Setting the Date of the Confirmation of Charges Hearing and Related Time Limits’,¹⁵ setting 9 September 2025 as the date for the confirmation hearing and instructing the Registry *inter alia* to commence outreach and notification activities regarding the new date of the commencement of the confirmation of charges hearing and report to the Chamber.

14. On 13 March 2025, the Chamber issued the ‘Decision on the notification of the date of the confirmation hearing’ finding that all reasonable steps were taken to inform Mr Kony of the new date of the confirmation hearing, as set in article 61(2)(b) of the Statute.¹⁶

15. On 3 April 2025, the Defence submitted the ‘Request for Reconsideration of the “Decision on the criteria for holding confirmation of charges proceedings *in absentia*” (ICC-02/04-01/05-532)’¹⁷ (the ‘Request’), asking the Chamber to reconsider its 29 October 2024 Decision, in light of new information not previously before the Chamber. According to the Defence, new information warrants reconsideration of some findings in the 29 October 2024 Decision ‘to avoid an injustice’, in particular those to the effect that: (i) efforts to bring Mr Kony before the Court may be renewed and sustained; (ii) a hearing would be in the interests of victims who may not otherwise be able to express their views and concerns; and (iii) Mr Kony cannot be found. In support, the Defence submits statements and reports, including from community and religious leaders, and contends that: (i) the confirmation of charges will make it less, rather than more, likely that Mr Kony will be brought before the Court; (ii) should Mr Kony return or be returned to Uganda, he will face justice there; (iii) members of the affected community in northern Uganda consider there to be concrete risks from the Court’s confirmation of charges process; and (iv) Mr Kony is not someone who ‘cannot be found’.

16. On 14 April 2025, the Prosecution submitted the ‘Prosecution’s response to “Request for Reconsideration of the ‘Decision on the criteria for holding confirmation

¹⁴ [ICC-02/04-01/05-551](#), public.

¹⁵ [ICC-02/04-01/05-539](#), public.

¹⁶ [ICC-02/04-01/05-573](#), public.

¹⁷ [ICC-02/04-01/05-583](#), public, with public annexes A-I.

of charges proceedings *in absentia*' (ICC-02/04-01/05-532)',¹⁸ (the 'Prosecution Response'), asking the Chamber to reject the Defence Request, on the basis that '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'.¹⁹ It argues that the Request fails to meet these conditions, *inter alia* since: (i) the claim that these proceedings may undermine efforts to apprehend Mr Kony is 'tenuous and misdirected since the Chamber's original reasoning concerned the renewal of efforts by the *international community* to apprehend Mr Kony';²⁰ (ii) the Defence attempts to relitigate prior arguments already rejected by the Chamber, including those relating to the admissibility of the case;²¹ (iii) concerning alleged risks that the Court's proceedings undermine transitional justice and reconciliation mechanisms, the Defence seeks to amplify and relitigate arguments already raised before the Chamber;²² and (iv) the claim that Mr Kony whereabouts are known is speculative.²³

17. Also on 14 April 2025, the Office of Public Counsel for Victims submitted the 'Victims' Response to the "Request for Reconsideration of the 'Decision on the criteria for holding confirmation of charges proceedings *in absentia*'" (ICC-02/04-01/05-532)',²⁴ opposing the Defence Request on the basis that it fails to meet the specific requirements for reconsideration of a judicial decision. According to the OPCV, the Defence's arguments do not introduce *new* facts or information that were not available at the time the Chamber rendered the 29 October 2024 Decision, and fail to demonstrate a clear error of reasoning that has been made therein or the need to reconsider it in order to prevent an injustice.

III. DETERMINATION

18. The Defence seeks reconsideration of the 29 October 2024 Decision 'to avoid an injustice'. While reconsideration is not a procedural remedy expressly provided for in

¹⁸ [ICC-02/04-01/05-587](#), public, with confidential annex.

¹⁹ Prosecution Response, para. 3.

²⁰ Prosecution Response, para. 8.

²¹ Prosecution Response, para. 11.

²² Prosecution Response, paras 14-15.

²³ Prosecution Response, para. 18.

²⁴ [ICC-02/04-01/05-588](#), public with public annexes 1 and 2.

the Court's statutory framework,²⁵ Chambers of the Court have, on an exceptional basis, entertained such requests on the understanding that they have the power to reconsider their own decisions, at the request of the parties or *proprio motu*.²⁶

19. The threshold for granting a request for reconsideration is high, requiring demonstration of a clear error of reasoning, or that doing so is necessary to prevent an injustice.²⁷ New facts and arguments arising since the decision was rendered may be relevant to this assessment.²⁸ Furthermore, critically, a request for reconsideration is not an opportunity to re-litigate arguments already made before the Chamber²⁹ or to present new submissions that could have been raised at the time the original decision was under consideration.³⁰

20. The Defence argues that the information submitted in support of the Request 'was not before the Chamber, was previously unavailable, and its submission comprises new circumstances',³¹ contradicting some of the findings underlying the Chamber's determination that there is cause to hold a confirmation hearing *in absentia* in this case.³²

21. In the 29 October 2024 Decision, the Chamber confirmed that the requirements in article 61(2)(b) of the Statute were met; it determined that there was cause to hold a

²⁵ Pre-Trial Chamber II, Situation in Ukraine, [Decision on Mongolia's request for reconsideration](#), 18 March 2025, ICC-01/22-123, para. 16, and references cited therein; Pre-Trial Chamber II, The Prosecutor v. Alfred Yekatom and Patrice-Édouard Ngaïssona, [Decision on the Request for Reconsideration of the Order on Reclassification](#), 8 May 2019, ICC-01/14-01/18-190, para. 11, and references cited therein.

²⁶ Trial Chamber I, The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb"), [Public redacted version of Decision on Defence request for reconsideration of "Decision on Defence submissions on cooperation with Sudan"](#), 29 March 2022, ICC-02/05-01/20-650-Red, public, para. 10.

²⁷ Pre-Trial Chamber I, Situation in the Republic of the Philippines, [Decision on the Prosecutor's Second request for extension of page limit for article 15\(3\) Request](#), 11 May 2021, ICC-01/21-6, public, para. 9; Trial Chamber X, The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, [Decision on Defence request for reconsideration of Decision on requests related to the submission into evidence of Mr Al Hassan's statements](#), ICC-01/12-01/18-2414, public, para. 7.

²⁸ Pre-Trial Chamber I, Situation in the Republic of the Philippines, [Decision on the Prosecutor's Second request for extension of page limit for article 15\(3\) Request](#), 11 May 2021, ICC-01/21-6, public, para. 9.

²⁹ See Trial Chamber X, The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, [Decision on Defence request for reconsideration of Decision on requests related to the submission into evidence of Mr Al Hassan's statements](#), ICC-01/12-01/18-2414, public, para. 7, and references cited therein.

³⁰ See Trial Chamber I, The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb"), [Decision on the Defence's request for reconsideration of the Decision on the Defence's and the CLRV's Requests seeking an extension of the page limit for their final briefs under Regulation 37\(2\) of the Regulations of the Court](#), 4 November 2024, ICC-02/05-01/20-1205-Red, paras 10-11.

³¹ Request, para 45.

³² Request, paras 2-3.

confirmation hearing in the absence of Mr Kony, after considering several factors.³³ The Chamber notes that the Request seeks reconsideration of the Chamber's findings in respect to: (i) two of the factors weighted by the Chamber in its determination that there is *cause* to hold a confirmation hearing in Mr Kony's absence (namely, that efforts to bring him before the Court may be renewed and sustained as a result and that a hearing would be in the interests of victims); and (ii) the requirement that Mr Kony is a person who 'cannot be found'. The Chamber will address these two sets of arguments separately.

22. Regarding the first set of arguments, the Chamber recalls that the determination as to whether there is *cause* to hold a confirmation of charges hearing *in absentia* is discretionary³⁴ and notes that the Defence had the opportunity to present arguments on this matter prior to the 29 October 2024 Decision. Specifically, the 28 August 2024 Observations addressed the availability of 'a range of transitional justice and human rights options' to hear the victims of this case,³⁵ as well as the claim that, should he surrender, Mr Kony would likely face justice in Uganda.³⁶ The 29 October 2024 Decision considered and rejected these claims.³⁷ Therefore, the Chamber finds that these arguments represent an attempt to re-litigate matters already dismissed. While the arguments developed in the Request expand upon those examined by the Chamber in its 29 October 2024 Decision, the elements relied upon by the Defence do not qualify as new facts warranting reconsideration of a finding adopted on the basis of largely similar arguments.

23. Concerning the claim that Mr Kony's whereabouts are known because they have been reported in the media and in one of the Registry's reports, the Chamber finds the allegations unpersuasive. First, the existence of media articles addressing the issue of Mr Kony's whereabouts does not *per se* contradict the Chamber's finding that he is a person who cannot be found for the purposes of article 61(2)(b) of the Statute. Similar reports were already available at the time of the 29 October 2024 Decision, and relied upon by the Defence in support of its submission that Mr Kony might be dead.³⁸ They

³³ 29 October 2024 Decision, para 105.

³⁴ 29 October 2024 Decision, para 75; First Decision, para. 58.

³⁵ 28 August 2024 Observations, para. 44.

³⁶ 28 August 2024 Observations, para. 49.

³⁷ See 29 October 2024 Decision, paras 80-84 and 90.

³⁸ See 28 August 2024 Observations, para. 26, fn. 35 and para. 35, fn. 66.

were found by the Chamber insufficient to disturb the conclusion that Mr Kony's whereabouts remained unknown for the purposes of the determination to authorise confirmation proceedings *in absentia*. Second, the fact that the Registry may hold some information relevant to Mr Kony's whereabouts does not *per se* indicate that he is no longer a person 'who cannot be found'. Given the extensive efforts of the Court to locate Mr Kony, it is indeed normal that such information should be in the Court's possession. Nevertheless, the fact that arrest has so far failed to materialise demonstrates that this information is and remains insufficient to precisely locate him. This is therefore not a situation where a suspect's approximate location is known but the suspect's arrest is not possible for other reasons.

24. Considering the foregoing, the Chamber determines that the Defence has failed to satisfy the high threshold for reconsideration: it has neither demonstrated the existence of new facts or a change in the conditions warranting reconsideration of the 29 October 2024 Decision, nor that doing so is necessary to prevent an injustice.

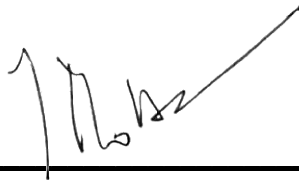
**FOR THESE REASONS, THE CHAMBER HEREBY
REJECTS** the Request.

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 Wednesday, 28 May 2025.

At The Hague, The Netherlands.