

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: **ICC-02/04-01/05**
Date: **20 November 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

Defence Request for Leave to Reply to the Prosecution Response (ICC-02/04-01/05-636)

Source: Defence for Mr Joseph Kony

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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☒ Counsel for the Defence

☒ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
(Participation/Reparation)

☒ The Office of Public Counsel for
Victims

☐ The Office of Public Counsel for the
Defence

☐ States' Representatives

☐ Amicus Curiae

REGISTRY

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Mr Zavala Giler, Osvaldo

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

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Section

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I. INTRODUCTION

1. The Prosecution response to the Defence request for leave to appeal the confirmation of charges decision against Joseph Kony contains misstatements of fact and law that necessitate a limited reply.¹ The present request identifies three discrete issues, all of which are novel and could not properly have been foreseen, which involve the provision of important information to assist the Chamber in its adjudication of the Defence request.²

II. PROCEDURAL HISTORY

2. 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, and "instruct[ed] the Registry to commence the process of selection of counsel to represent the rights and interests of Mr Kony during the confirmation process and the confirmation hearing, should this take place in Mr Kony's absence".³

3. On 21 June 2024, Peter Haynes KC was appointed as Counsel to represent the rights and interests of Mr Kony during the confirmation proceedings.⁴ Mr Haynes's appointment became public on 24 June 2024.⁵

4. On 9 and 10 September 2025, the confirmation of charges hearing was held.⁶

5. On 6 November 2025, the Pre-Trial Chamber issued its Decision on the confirmation of charges *in absentia* against Mr Kony ("Impugned Decision").⁷

¹ [Prosecution's Response to 'Defence Request for Leave to Appeal the "Decision on the confirmation of charges in absentia against Joseph Kony pursuant to articles 61\(2\)\(b\) and 61\(7\) of the Rome Statute"' \(ICC-02/04-01/05-635\)](#), ICC-02/04-01/05-636, 17 November 2025 ("Prosecution Response").

² [Defence Request for Leave to Appeal the "Decision on the confirmation of charges in absentia against Joseph Kony pursuant to articles 61\(2\)\(b\) and 61\(7\) of the Rome Statute" \(ICC-02/04-01/05-633\)](#), ICC-02/04-01/05-635, 12 November 2025.

³ [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, para. 15 ("Second *in absentia* Decision").

⁴ [Notification of the Appointment of Mr Peter Haynes KC as Counsel for Mr Joseph Kony](#), ICC-02/04-01/05-503, 21 June 2024 ("Notification of the Appointment of Counsel").

⁵ *Id.*

⁶ [Transcript of Confirmation of Charges Hearing](#), ICC-02/04-01/05-T-015-ENG, 9 September 2025; [Transcript of Confirmation of Charges Hearing](#), ICC-02/04-01/05-T-016-Red-ENG, 10 September 2025.

⁷ [Decision on the confirmation of charges in absentia against Joseph Kony pursuant to articles 61\(2\)\(b\) and 61\(7\) of the Rome Statute](#), ICC-02/04-01/05-633, 6 November 2025 ("Decision on the confirmation of charges in absentia").

6. On 12 November 2025, the Defence representing the interests of Mr Kony (“Defence”) filed a request for leave to appeal the Impugned Decision.⁸ On 17 November 2025, the Prosecutor and the Common Legal Representatives of Victims responded to the Defence Request.⁹

III. APPLICABLE LAW

7. Regulation 24(5) of the Regulations of Court provides that:

Participants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations. Unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated.

8. A Pre-Trial Chamber may grant a request for leave to reply where these conditions are met.¹⁰

9. In addition, Pre-Trial Chambers have granted leave to reply where “the information [the party] might provide in respect of those issues might assist the Chamber in its determinations [...]”,¹¹ “to present evidence and/or arguments which were either not available or otherwise not foreseeable”,¹² or “considering the importance of the issue under consideration” and “to enable the Chamber to have before it all the relevant information and arguments from the parties prior to its determination of the matter *sub judice*.”¹³

⁸ [Defence Request for Leave to Appeal the “Decision on the confirmation of charges *in absentia* against Joseph Kony pursuant to articles 61\(2\)\(b\) and 61\(7\) of the Rome Statute” \(ICC-02/04-01/05-633\)](#), ICC-02/04-01/05-635, 12 November 2025.

⁹ [Prosecution Response; Victims’ Response to the “Defence Request for Leave to Appeal the ‘Decision on the confirmation of charges *in absentia* against Joseph Kony pursuant to articles 61\(2\)\(b\) and 61\(7\) of the Rome Statute’ \(ICC-02/04-01/05-633\)”](#), ICC-02/04-01/05-637, 17 November 2025.

¹⁰ *Situation in Ukraine*, [Decision on Mongolia’s request for leave to reply](#), ICC-01/22-103, 14 November 2024, para. 10 partially granting leave to reply in respect of two issues for which “it could have been difficult for Mongolia to anticipate the overall scope and the level of detail of the arguments provided in the Prosecution’s Response”; *Situation in the Bolivarian Republic of Venezuela I*, [Decision on Venezuela’s request for leave to reply](#), ICC-02/18-37, 3 April 2023, para. 11 partially granting leave to reply in respect of one issue that “could not have been anticipated by Venezuela.”; *Prosecutor v. Abd-Al-Rahman*, [Decision on Defence Request for Leave to Reply](#), ICC-02/05-01/20-99, 17 July 2020, para. 13 “The Single Judge notes that the novel arguments raised in the Prosecutor’s Response pertaining to article 58(1)(b)(ii) of the Statute could not have been reasonably anticipated by the Defence”; *Prosecutor v. Bemba*, [Decision on Mr. Bemba’s Request for Leave to Reply to Prosecution’s Response and Registry’s Observations to Mr. Bemba’s Claim for Compensation and Damages](#), ICC-01/05-01/08-3684, 13 May 2019, para. 3 “The Chamber, being aware of the novelty and complexity of several of the issues raised in these compensation proceedings, and noting that both the Prosecutor and the Registry raised new facts and information in their submissions, finds that there exist sufficient reasons to grant the Request.”

¹¹ *Prosecutor v. Bemba et al.*, [Decision on “Narcisse Arido’s request for leave to reply to the ‘Prosecution’s Response to Arido’s request for Interim Release’”](#), ICC-01/05-01/13-543, 7 July 2014, p. 3 (“Decision on Arido’s Request for leave to reply on interim release”).

¹² *Prosecutor v. Gaddafi & Al-Senussi*, [Decision on the request of Abdullah Al-Senussi for leave to reply](#), ICC-01/11-01/11-324, 26 April 2013, para. 11.

¹³ *Prosecutor v. Gaddafi & Al-Senussi*, [Decision on Libya’s application for leave to reply to the Defence of Abdullah Al-Senussi](#), ICC-01/11-01/11-335, 10 May 2013, para. 8. See also *Prosecutor v. Mbarushimana*, [Decision on the Prosecution’s request for leave to reply to the “Defence Response to Prosecution’s Request for the Review of](#)

10. A Pre-Trial Chamber has also held that “in order to be granted leave to file a reply, a party needs to demonstrate that good cause exists, in particular when one or more issues arising from the response could not have been anticipated in its initial submissions or when it would be beneficial for the Chamber to receive further submissions prior to its disposal of the matter under consideration”.¹⁴

IV. SUBMISSIONS

A. First Issue: Counsel’s mandate to represent the interests of Mr Kony extends as a matter of law, fact and procedure up to and including any appeal against the confirmation of charges decision

11. The submission of the Prosecution that Counsel assigned to represent the interests of the absent Mr Kony had no standing to represent him once the hearing was concluded is absurd.¹⁵ One needs only to posit the situation where the Prosecution itself sought leave to appeal the confirmation decision to appreciate the unsustainability of that suggestion. The Prosecution, furthermore, argued at the confirmation hearing that the decision was an integral part of the hearing.¹⁶ Necessarily, Counsel’s mandate includes considering any decision and whether grounds of appeal exist.

12. As a matter of fact, Counsel remains assigned, with full access to the case file and *inter partes* communications. No termination of his assignment has been served upon him by the Registry.

13. This practical approach is consistent with the Court’s constitutive documents and jurisprudence, Article 17 of the Code of Professional Conduct for Counsel, in particular.¹⁷

[Potentially Privileged Material](#)”, ICC-01/04-01/10-61, 24 February 2011, p. 4 “CONSIDERING the importance and potential effect of the issues raised in the Prosecution Request and the Defence Response [...]”.

¹⁴ [Decision on Arido’s Request for leave to reply on interim release](#), p. 3.

¹⁵ [Prosecution Response](#), paras 1-2.

¹⁶ [Transcript of Confirmation of Charges Hearing](#), ICC-02/04-01/05-T-016-Red-ENG, 10 September 2025, p. 57, lns 18-24.

¹⁷ *Prosecutor v. Ongwen*, [Decision constituting Trial Chambers VIII and IX and referring to them the cases of The Prosecutor v. Ahmad Al Fagi Al Mahdi and The Prosecutor v. Dominic Ongwen](#), ICC-02/04-01/15-430, 2 May 2016, p. 3. See also, *Prosecutor v. Ongwen*, [Decision on the Defence request for leave to appeal the decision on the confirmation of charges](#), ICC-02/04-01/15-428, 29 April 2016, para. 40; *Prosecutor v. Yekatom & Ngaissona*, [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 Ngaissona’](#), ICC-01/14-01/18-447, 11 March 2020, para. 35; *Prosecutor v. Katanga*, [Decision on the Applications for Leave to Appeal the Decision on the Admission of the Evidence of Witnesses 132 and 287 and on the Leave to Appeal on the Decision on the Confirmation of Charges](#), ICC-01/04-01/07-727, 24 October 2008, p. 18; *Prosecutor v. Gbagbo*, [Decision on the Defence request for leave to appeal the “Decision on the Confirmation of Charges against Laurent Gbagbo”](#), ICC-

Counsel was assigned for the duration of the confirmation of charges process, which includes any appeal (or rejection thereof).¹⁸

B. Second Issue: The Prosecution misunderstands and/or misrepresents the jurisprudence of the Special Tribunal for Lebanon; assigned Counsel has a mandate to seek leave to appeal interlocutory decisions in the interests of the Accused

14. The decision of the Appeal’s Chamber of the Special Tribunal for Lebanon (“STL”) to reject the admissibility of a Defence appeal against the trial judgment was limited to the trial judgment.¹⁹ In fact, Defence interlocutory appeals at the STL were explicitly and routinely entertained, often in relation to important procedural steps in the case.²⁰

C. Third Issue: The Prosecution is estopped from relying on arguments as to Counsel’s standing and/or mandate by reason of its prior practices in the case to date

15. This is not the first request by the Defence for leave to appeal.²¹ However, it is the first occasion on which the Prosecution has raised the issue of Defence instructions to act proactively in Mr Kony’s interests.²² In reality, the Prosecution has waived the right to object to the standing of the lawyers assigned to represent the interests of Mr Kony on the basis of an absence of instructions. Similarly, in the period between the conclusion of the confirmation of charges hearing and the filing of the request for leave to appeal, the Prosecution has continued to serve

02/11-01/11-680, 11 September 2014, para. 53. See further [Rome Statute](#), article 61(2) “In that case [*in absentia* confirmation procedure], the person shall be represented by counsel where the Pre-Trial Chamber determines that it is in the interests of justice.”

¹⁸ [Decision on the confirmation of charges *in absentia*](#), para. 259; [Notification of the Appointment of Counsel](#), paras 1, 9; [Second *in absentia* Decision](#), para. 15.

¹⁹ STL, *Prosecutor v. Ayyash et al.*, [Decision on Admissibility of “Notice of Appeal on Behalf of Mr Ayyash against Conviction and Sentence”](#), STL-11-01/A-1/AC, 29 March 2021, para. 63 “Assigned Defence counsel were permitted to file interlocutory appeals on behalf of the Accused during the trial proceedings conducted *in absentia*. However, interlocutory appeals are to be distinguished from appeals against a judgment pursuant to Rule 168 and a sentencing judgment pursuant to Rule 171.”

²⁰ Given the nomenclature of the filings at the STL, it can be understood that there were at least 11 decisions on interlocutory appeal, under STL, [Rules of Procedure and Evidence](#), last amended on 10 April 2019, STL-BD-2009-01-Rev.10, Rule 126. For example, see STL, *Prosecutor v. Ayyash et al.*, [Decision on Defence Appeals Against Trial Chamber’s Decision on Reconsideration of the Trial *In Absentia* Decision](#), STL-11-01/PT/AC/AR126.1, 1 November 2012; STL, *Prosecutor v. Ayyash et al.*, [Decision on Appeal by Counsel for Mr Merhi Against the Trial Chamber’s Decision on the Resumption of Trial Proceedings](#), STL-11-01/T/AC/AR126.8, 5 June 2014; STL, *Prosecutor v. Ayyash et al.*, [Decision on Appeal by Counsel for Mr Oneissi Against the Trial Chamber’s Decision on the Legality of the Transfer of Call Data Records](#), STL-11-01/T/AC/AR126.9, 28 July 2015; STL, *Prosecutor v. Ayyash et al.*, [Decision on Interlocutory Appeal Against the Trial Chamber’s Decision regarding the Conditions of Assignment of Defence Expert Consultant](#), STL-11-01/T-AC/AR126.10, 3 May 2016; STL, *Prosecutor v. Ayyash et al.*, [Decision on Badreddine Defence Interlocutory Appeal of the “Interim Decision on the Death of Mr Mustafa Amine Badreddine and Possible Termination of Proceedings”](#), STL-11-01/T-AC/AR126.11, 11 July 2016.

²¹ See also [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.

²² [Prosecution Response](#), para. 5.

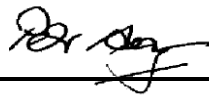
confidential and other case material on Counsel representing Mr Kony, thereby asserting his full standing as a party in the case.²³ Similarly, it has thereby waived any right to raise this objection at this time.

16. The preceding issues are all novel, could not properly have been foreseen (given the extent of the misstatements of law and fact) and involve the provision of important information to assist the Chamber in reaching a just decision.

V. RELIEF REQUESTED

17. Leave accordingly is requested to submit a reply in respect of each of the above issues in a filing not to exceed 3 pages, within five days of a decision by the Pre-Trial Chamber.

The whole respectfully submitted



Peter Haynes, KC
Counsel for Joseph Kony

Dated this 20 November 2025

At Gulu, Uganda

²³ [Updated List of Evidence](#), ICC-02/04-01/05-631, 16 September 2025, with one confidential annex; [Prosecution's Twenty-Fourth Communication of the Disclosure of Evidence](#), ICC-02/04-01/05-632, 9 October 2025, with one confidential annex. Both distributed to D35 Kony Defence Team Confidential.