



Original: English

No. ICC-02/04-01/05

Date: 4 December 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 request for leave to appeal the confirmation decision

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 request for leave to appeal the confirmation decision’.

I. PROCEDURAL HISTORY

1. On 6 November 2025, Pre-Trial Chamber III (the ‘Chamber’) issued 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’¹ (the ‘Confirmation Decision’), confirming the charges brought against Mr Joseph Kony (‘Mr Kony’). The confirmation proceedings that resulted in the Confirmation Decision took place in Mr Kony’s absence, and he was represented during the proceedings by Mr Peter Haynes (‘Mr Haynes’).²

2. On 12 November 2025, Mr Haynes filed 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)’³ (the ‘Request for Leave to Appeal’), seeking leave to appeal the Confirmation Decision in respect of two issues.

3. On 17 November 2025, the Prosecution filed its response to the Request for Leave to Appeal⁴ (the ‘Prosecution Response’), requesting that the Chamber reject the request. On the same day, the Common Legal Representatives of Victims filed their response⁵ (the ‘CLRV’s Response’), also requesting that the request be rejected.

4. On 20 November 2025, Mr Haynes filed a request for leave to reply to the Prosecution’s Response.⁶ On 21 November 2025, he informed the Chamber by way of

¹ [ICC-02/04-01/05-633](#).

² [Notification of the Appointment of Mr Peter Haynes KC as Counsel for Mr Joseph Kony](#), 21 June 2024, ICC-02/04-01/05-503 (‘Notification of Appointment’), public, with annex II, confidential, and annexes I, III and IV, public.

³ [ICC-02/04-01/05-635](#).

⁴ [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”’ \(ICC-02/04-01/05-633\)](#), ICC-02/04-01/05-636.

⁵ [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.

⁶ [Defence Request for Leave to Reply to the Prosecution Response \(ICC-02/04-01/05-636\)](#), ICC-02/04-01/05-638.

email of the withdrawal of this request.⁷ In light of the withdrawal of the request, the Chamber has not taken account of this filing in its consideration of the issues.

II. DETERMINATION

5. In the Confirmation Decision, the Chamber decided that ‘the time limit for filing an application for leave to appeal this decision shall be suspended until Mr Kony is notified of this decision upon his surrender to the Court’.⁸ In light of this ruling and recalling that Mr Haynes had been appointed until the end of the confirmation proceedings, the Chamber noted that the issuance of the Confirmation Decision marked the end of these proceedings.⁹

6. Based on these findings in the Confirmation Decision, the Prosecution submits that the Request for Leave to Appeal should be dismissed *in limine*, arguing that Mr Haynes lacks standing to seek leave to appeal the Confirmation Decision, and that the Confirmation Decision, by suspending the time limit, ‘unequivocally vest[ed] My Kony [...] with the opportunity to fully assess the advisability or feasibility of a request for leave to appeal’ that decision.¹⁰ The Common Legal Representatives of Victims, while noting the suspension of the time limit, submit that the confirmation in absentia process should be completed by disposing of the Request for Leave to Appeal now.¹¹

7. The Chamber recalls that it decided in the Confirmation Decision to suspend the time limit to file applications for leave to appeal to fully protect Mr Kony’s rights, in case he is surrendered to the Court. By suspending the time limit, the Chamber ensured that Mr Kony will be able to decide whether, and if so, on what grounds, he wishes to seek leave to appeal the Confirmation Decision. This decision was based on comparable practice in other confirmation proceedings.¹² Notably, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Pre-Trial Chamber II decided to suspend *proprio motu* the time limit for the filing of applications for leave to appeal until the suspects received translations into French of the confirmation decision. Pre-Trial Chamber II underlined the importance of the confirmation decision and that ‘counsel must be able to rely on their client’s contribution to properly assess the

⁷ Email of 21 November 2025, at 08:59h.

⁸ Confirmation Decision, p. 103.

⁹ Confirmation Decision, para. 259.

¹⁰ Prosecution Response, paras 2-6.

¹¹ CLRV Response, paras 2-3.

¹² Confirmation Decision, para. 258.

advisability and feasibility of applying for leave to appeal.’¹³ Pre-Trial Chamber II adopted the same reasoning in the confirmation decision in the case of *The Prosecutor v. Mahamat Saïd Abdel Kani*.¹⁴

8. The decision to suspend the time limit to seek leave to appeal protects Mr Kony’s rights as it necessarily entails that, until he is surrendered to the Court and is notified of the Confirmation Decision, no applications for leave to appeal can be brought on his behalf and thus without his contribution. Indeed, if the Chamber were to consider the merits of the Request for Leave to Appeal now, and regardless of the outcome of the Chamber’s consideration, and the outcome of any eventual appeal, Mr Kony would no longer be able to challenge the Confirmation Decision because the right to seek leave to appeal would have been exercised already – by Mr Haynes on his behalf.

9. Accordingly, leave to appeal the Confirmation Decision cannot be sought unless and until Mr Kony has been surrendered to the Court and is notified of the decision.

¹³ *Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, [Corrected version of ‘Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona’](#), 28 June 2021, ICC-01/14-01/18-403-Corr-Red, para. 240

¹⁴ *Prosecutor v. Mahmat Saïd Abdel Kani*, [Decision on the confirmation of charges against Mahamat Saïd Abdel Kani](#), 9 December 2021, ICC-01/14-01/21-218-Red.

**FOR THESE REASONS, THE CHAMBER HEREBY
DISMISSES *IN LIMINE* the Request for Leave to Appeal.**

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 Thursday, 4 December 2025.

At The Hague, The Netherlands.