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

Date: 3 April 2023

**PRE-TRIAL CHAMBER II**

**Before:** Judge Rosario Salvatore Aitala, Presiding Judge  
Judge Tomoko Akane  
Judge Sergio Gerardo Ugalde Godinez

**SITUATION IN UGANDA**

***THE PROSECUTOR v. JOSEPH KONY AND VINCENT OTTI***

**Public**

**Prosecution request for leave to reply to “OPCD Observations on the Prosecution’s Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence” (ICC-02/04-01/05-458)**

**Source:** The Office of the Prosecutor

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

**The Office of the Prosecutor**

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(Participation/Reparation)**

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Victims**

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Mr Xavier-Jean Keïta

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Other**

**Victims Participation and Reparations  
Section**

1. On 24 November 2022, the Prosecution filed its Request to hold a hearing on the confirmation of charges against Joseph KONY in his absence ("Request").<sup>1</sup> In accordance with the Pre-Trial Chamber's order on procedural matters,<sup>2</sup> the Office of Public Counsel for Defence ("OPCD"), the Office of Public Counsel for Victims ("OPCV") and the Registry filed their observations on 30 March 2023.
2. Pursuant to regulation 24(5) of the Regulations of the Court, the Prosecution seeks leave to reply to a specific issue raised in the observations made by the OPCD.<sup>3</sup> Such a reply would not exceed five pages (not including cover pages), to be filed within seven days of grant of leave.
3. The Prosecution submits that it could not reasonably have anticipated that the OPCD would put in issue relevant aspects of the consistent practice of the Court applying articles 58, 60 and 61 of the Statute, such as the principle that "[t]he Prosecutor may expand the factual basis of the charges beyond that for which a warrant of arrest [...] was issued".<sup>4</sup> This is implicit in the OPCD's submissions concerning its view that an initial appearance is a precondition of article 61(2)(b) and that the Prosecution should seek a further warrant of arrest for Mr KONY.<sup>5</sup>
4. In this context, the Prosecution submits that a brief reply addressing the relationship between the arrest warrant(s), first appearance under article 60(1), and the confirmation of charges under article 61 would assist the Pre-Trial Chamber in evaluating the OPCD Observations concerning the correct interpretation of article 61(2)(b) and therefore in determining the Request.

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<sup>1</sup> ICC-02/04-01/05-446.

<sup>2</sup> ICC-02/04-01/05-453.

<sup>3</sup> ICC-02/04-01/05-458 ("OPCD Observations").

<sup>4</sup> *Chambers Practice Manual*, 6<sup>th</sup> Ed., para. 31 (cited in Request, para. 49).

<sup>5</sup> See *e.g.* OPCD Observations, paras. 2, 16-17, 43-47.



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**Karim A. A. Khan KC, Prosecutor**

Dated this 3<sup>rd</sup> day of April 2023

At The Hague, The Netherlands