

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04-01/05
Date: 14 February 2024

PRE-TRIAL CHAMBER II

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

SITUATION IN UGANDA

THE PROSECUTOR v. JOSEPH KONY

Public

**Prosecution's Response to the OPCD Request
related to Notification and Outreach Activities**

Source: 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

Karim A.A. Khan KC
Mame Mandiaye Niang
Leonie von Braun

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**

Paolina Massidda
Sarah Pellet

**The Office of Public Counsel for the
Defence**

Marie O'Leary

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Oswaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The request related to the notification efforts and outreach activities by the Office of Public Counsel for the Defence (“OPCD”) (“Request”) should be dismissed *in limine* as the OPCD lacks standing. In the alternative, the Request should be dismissed on its merits.

II. SUBMISSIONS

2. While the OPCD was permitted to provide submissions on the Prosecution’s request to hold a confirmation hearing in Mr Kony’s absence¹, this does not equate to *ongoing* standing to make submissions on the Chamber’s decisions in the case, on behalf of Mr Kony. The Chamber recently held that it has neither instructed the OPCD nor granted it leave to advance submissions on behalf of Mr Kony beyond those already made in the context of the Prosecution’s Request.² Like its recent request to access the case record³, the Request should therefore be dismissed.

3. Alternatively, were the Chamber to find that the OPCD has standing to make the Request, the latter should be rejected on its merits. *First*, the Chamber has made clear in its Order to initiate notification efforts and related outreach activities (“Order”) that the provided summary of the Document containing the charges (“DCC”) is “*without prejudice to the Chamber’s assessment of the content of this document and the charges*”.⁴ Furthermore, the summary is introduced with the phrase “*according to the Prosecution’s submissions*”, making it clear that it contains allegations of the Prosecution, which has not been the subject of any assessment by the judges. The

¹ ICC-02/04-01/05-453 (“Prosecution’s Request”).

² ICC-02/04-01/05-472, para. 3. This included the OPCD’s request for leave to appeal, which was still substantially linked to the Prosecution’s original article 61(2)(b) request, see ICC-02/04-01/05-470, 16-18.

³ ICC-02/04-01/05-471.

⁴ ICC-02/04-01/05-475, para. 4.

summary merely lists the different counts in the DCC with reference to the charged mode of perpetration, without any substantive comments.

4. Creating such a summary is clearly within the Chamber's discretion to facilitate this particular process, which also includes the power to take a number of other legal and practical steps within the framework of article 61(2) on a case-by-case basis as well as providing guidance to the Registry and the Prosecution. The Chamber encouraged the Prosecution to file a concise DCC whilst at the same time ensuring that all material facts are included in order to inform the suspect of the charges.⁵

5. *Second*, no further safeguards are required to protect Mr Kony's presumption of innocence at this stage. Currently, the process concerns the notification of the *charges*. It is evident from the title of the DCC that it contains factual assertions and legal qualifications proposed by the Prosecution, like any other DCC. Filing of a DCC does not interfere with the suspect's presumption of innocence. Accepting the OPCD's argument would mean that the mere filing of a DCC, in any proceedings, would amount to a violation of the presumption of innocence. Furthermore, the presumption of innocence is enshrined in article 66(1) and therefore always features in the messaging of the Court's at this stage of the proceedings, rendering a specific order as requested unnecessary.

⁵ ICC-02/04-01/05-466, para. 53 ("A very concise document would be easier to transmit for this purpose. **However**, for a suspect to be properly informed of the charges, the Prosecution must specify for each charge the place, time, and approximate number of victims, and it must provide the necessary particulars that comprise the elements of the crimes.")

III. RELIEF SOUGHT

6. For the reasons set out above, the Prosecution respectfully requests the Chamber to dismiss the Request *in limine* or in the alternative, dismiss the Request on its merits.



Karim A. A. Khan KC, Deputy Prosecutor

Dated this 14th day of February 2024
At The Hague, The Netherlands