

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **11 March 2024**

**PRE-TRIAL CHAMBER II**

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

**SITUATION IN UGANDA  
IN THE CASE OF  
*THE PROSECUTOR v. JOSEPH KONY***

*Public*

**OPCD Request to Advance Submissions on the Victims' Concerns**

**Source:** Office of Public Counsel for the Defence

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

**The Office of the Prosecutor**

Mr Karim A. A. Khan KC

Mr Mame Mandiaye Niang

**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**

Ms Paolina Massidda

Ms Sarah Pellet

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

Ms Marie O'Leary

**Amicus Curiae**

**States Representatives**

**REGISTRY**

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**Registrar**

Mr Osvaldo Zavala Giler

**Counsel Support Section**

Mr Pieter Vanaverbeke

**Victims and Witnesses Unit**

**Detention Unit**

**Victims Participation and  
Reparations Section**

**Trust Fund for Victims**

**Other**

1. The Office of Public Counsel for Victims (“OPCV”) filed the *Victims’ Concerns on the Document Containing the Charges*<sup>1</sup> on 27 February 2024 asking “the Chamber to remedy the defect in the DCC by instructing the Prosecutor to make the necessary adjustments pleading sexual slavery as a war crime and a crime against humanity” in the charges against Mr Joseph Kony.<sup>2</sup> Thereafter, on 4 March 2024, the Pre-Trial Chamber rendered its Second Decision setting the commencement date for the ICC’s first *in absentia* confirmation hearing<sup>3</sup> without directions regarding the OPCV’s Request, which remains pending. While the Chamber instructed the Registry to begin the process of selecting counsel,<sup>4</sup> such counsel will unlikely be appointed by the time of the response deadline for other participants in the case on 11 March 2024.<sup>5</sup> As such, the Office of Public Counsel for the Defence (“OPCD”) respectfully requests leave to advance submissions seeking preservation of an opportunity to respond to the OPCV’s Request to safeguard Mr Joseph Kony’s interests.
2. Up until counsel’s appointment, the OPCD must fulfil its mandate under Regulation 77(4)(d) of the Regulations of the Court. As acknowledged in the OPCV’s Request, the issues raised have the potential to prejudice Mr Kony because they may “affect [...] the possible penalties imposed [on Mr Kony] if convicted”.<sup>6</sup> The expiry of the normal deadline for other participants to respond, however, leaves an ambiguity as to whether Mr Kony will be able to be heard on the matter before a potential decision is taken by the Chamber, which has the power to issue decisions before hearing from all the participants.
3. Therefore, the OPCD respectfully requests leave to advance the following submissions:
  - a. that the OPCV’s Request has not been “effectively sent” to Mr Kony or his potential counsel under regulation 31(2) of the Regulations of the Court and

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<sup>1</sup> *Victims’ Concerns on the Document Containing the Charges*, 27 February 2024, ICC-02/04-01/05-480 (“OPCV’s Request”).

<sup>2</sup> OPCV’s Request, p. 22.

<sup>3</sup> Second decision on the Prosecution’s request to hold a confirmation of charges hearing in the *Kony* case in the suspect’s absence, 4 March 2024, ICC-02/04-01/05-481, (“Second Decision”), para. 12.

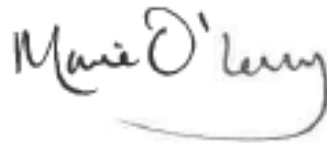
<sup>4</sup> Second Decision, para. 15. The Chamber instructed the Registry to report back on the progress of the selection counsel within three weeks of the notification of the Second Decision, “with a view of counsel being appointed by the time the Prosecution files the information on disclosure”, which was set at four weeks after notification of the Second Decision.

<sup>5</sup> The OPCV’s Request was filed on 27 February 2024 and notified to the Prosecution and the OPCD on the same day. According to the regulations on calculating time limits (regulation 33 of the Regulations of the Court), and the normal time limit of ten days within which participants must file a response (regulation 34(b) of the Regulations of the Court), the OPCD understands that participants duly notified on that day must respond by 11 March 2024.

<sup>6</sup> OPCV’s Request, para. 24.

regulation 34(1) of the Regulations of the Registry, and that neither Mr Kony nor his potential counsel can yet be “deemed notified” of the OPCV’s Request; and,

- b. that the time limit under regulation 34(b) of the Regulations of the Court for Mr Kony or his potential counsel to respond, therefore, is not yet triggered, and will only start counting once counsel is appointed and is deemed notified of the OPCV’s Request; or, in the alternative,
- c. should the Chamber consider that Mr Kony’s time limit to respond expires on 11 March 2024, that good cause exists to vary the time limit under regulation 35 of the Regulations of the Court until such time that counsel is appointed and has had an opportunity to respond; and
- d. that the Chamber should reserve consideration of the OPCV’s Request until Mr Kony’s counsel has had an opportunity to respond.



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Marie O’Leary  
Acting Principal Counsel of the OPCD

dated this, 11<sup>th</sup> day of March 2024  
at The Hague, The Netherlands