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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 Document
With Public Annexes 1 and 2**

**Victims' Response to the "Request for Reconsideration of the 'Decision on the
criteria for holding confirmation of charges proceedings in absentia'"
(ICC-02/04-01/05-532)**

Source: Office of Public Counsel for Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the****Court to:*** **The Office of the Prosecutor** **Counsel for the Defence**

D35

 Legal Representatives of the Victims

V49

 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

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 Counsel Support Section **Victims and Witnesses Unit** **Detention Section** **Victims Participation and
Reparations Section** **Other**

I. INTRODUCTION

1. Counsel of the Office of Public Counsel for Victims (the “OPCV”) appointed to represent the Victims in the present case (the “Legal Representatives”)¹ hereby submit their response to the “Request for Reconsideration of the “Decision on the criteria for holding confirmation of charges proceedings in absentia” (ICC-02/04-01/05-532)” (the “Reconsideration Request”).²

2. The Legal Representatives oppose the Reconsideration Request in its entirety and argue that the Defence fails to meet the specific requirements for reconsideration of a judicial decision. In particular, the Defence’s arguments do not introduce *new* facts or information that were not available at the time the Chamber rendered the “Decision on the criteria for holding confirmation of charges proceedings in absentia” (the “Third Decision”).³ The Defence also fails to demonstrate a clear error of reasoning that has been made in the Third Decision or the need to reconsider it in order to prevent an injustice.

3. The Legal Representatives also contend that religious, political and/or cultural leaders do not have *locus standi* before the Court, unless expressly authorised to file

¹ See the “Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/04-101](#) and [No. ICC-02/04-01/05-252](#), 10 August 2007; the “Decision on legal representation of Victims a/0090/06, a/0098/06, a/0101/06 a/0112/06, a/0118/06, a/0119/06 and a/0122/06” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/04-01/05-267](#), 15 February 2008; the “Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/04-125](#), 14 March 2008; the “Decision on victim’s applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/04-01/05-356](#), 21 November 2008; and the “Decision on victim participation, legal representation, and on the OPCV’s Application for recognition of the status of victims in the *Kony* case to the victims participating in the *Ongwen* case (Pre-Trial Chamber III), [No. ICC-02/04-01/05-540](#), 13 December 2024. See also, the “Decision on Victim’s Participation in Proceedings Related to the Situation in Uganda” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/04-191](#), 9 March 2012.

² See the “Request for Reconsideration of the “Decision on the criteria for holding confirmation of charges proceedings in absentia” (ICC-02/04-01/05-532)”, [No. ICC-02/04-01/05-583](#), 3 April 2025 (the “Reconsideration Request”).

³ See the “Decision on the criteria for holding confirmation of charges proceedings *in absentia*” (Pre-Trial Chamber III), [No. ICC-02/04-01/05-532](#), 29 October 2024 (the “Third Decision”).

submissions by a relevant Chamber in accordance with rule 103 of the Rules of Procedure and Evidence (the “Rules”) and that the Defence cannot circumvent the proper procedure in this regard.

4. Most importantly, the Legal Representatives submit that the opinions expressed by said leaders do not represent the sentiment and the wish of thousands of victims with whom they have been in contact since their appointment – who overwhelmingly support the holding of the confirmation of charges hearing *in absentia* of Mr Kony. Victims, indeed, expressed the view that this procedural step is important since it represents the first opportunity in years to acknowledge what happened to them together with the extent of their victimisation.

II. PROCEDURAL BACKGROUND

5. On 8 July 2005, then Pre-Trial Chamber II issued the Arrest Warrant for Mr Kony.⁴

6. On 24 November 2022, the Prosecution filed a Request to hold a confirmation of charges hearing in the absence of Mr Kony (the “Prosecution’s Initial Request”).⁵ On 7 February 2023, Pre-Trial Chamber II in its previous composition (the “Former Chamber”) invited, *inter alia*, the Legal Representatives to gather the views and concerns of the Victims authorised to participate in the present case about holding *in absentia* confirmation proceedings against the suspect.⁶ The observations were submitted on 30 March 2023.⁷

⁴ See the “Warrant of Arrest for Joseph Kony issued on 8 July 2005 as amended on 27 September 2005” (Pre-Trial Chamber II), [No. ICC-02/04-01/05-53](#), 27 September 2005. A lesser redacted version was notified on 13 March 2023. See [No. ICC-02/04-01/05-456-Anx](#).

⁵ See the “Public Redacted Version of the ‘Prosecution’s Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence’”, [No. ICC-02/04-01/05-446-Red](#), 24 November 2022 (the “Prosecution’s Initial Request”).

⁶ See the “Order on procedural matters and decision on request for a lesser redacted version of the arrest warrant” (Pre-Trial Chamber II), [No. ICC-02/04-01/05-453](#), 7 February 2023.

⁷ See the “Victims’ Views and Concerns on the ‘Prosecution’s Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence’”, [No. ICC-02/04-01/05-457](#), 30 March 2023.

7. On 23 November 2023, the Former Chamber issued the Decision on the Prosecution's Initial Request finding, *inter alia*, that there would be cause to hold a confirmation of charges hearing *in absentia* (the "First Decision").⁸ On 4 March 2024, the Former Chamber decided to hold the confirmation hearing on 15 October 2024 (the "Second Decision").⁹

8. On 12 March 2024, the Presidency reassigned the situation in Uganda to Pre-Trial Chamber III.¹⁰

9. On 21 June 2024, Counsel for Mr Kony was appointed.¹¹

10. On 28 August 2024, the Defence submitted its observations on the First and Second Decisions.¹² On 5 September 2024, having been authorised by the Chamber,¹³ the Prosecution filed its reply.¹⁴ On 9 September 2024, the Defence submitted additional observations on the same matter.¹⁵

⁸ See the "Decision on the Prosecution's request to hold a confirmation of charges hearing in the Kony case in the suspect's absence" (Pre-Trial Chamber II), [No. ICC-02/04-01/05-466](#), 23 November 2023 (the "First Decision").

⁹ See the "Second decision on the Prosecution's request to hold a confirmation of charges hearing in the Kony case in the suspect's absence" (Pre-Trial Chamber II), [No. ICC-02/04-01/05-481](#), 4 March 2024 (the "Second Decision").

¹⁰ See the "Decision assigning judges to divisions and recomposing Chambers" (Presidency), [No. ICC-02/04-01/05-485](#), 13 March 2024.

¹¹ See the "Decision on the Procedure for Appointing Counsel" (Pre-Trial Chamber III), [No. ICC-02/04-01/05-499](#), 2 May 2024; and the "Order to Appoint Counsel" (Pre-Trial Chamber III), [No. ICC-02/04-01/05-502](#), 19 June 2024.

¹² See the "Kony Defence Observations on the Decisions and Registry Report concerning the request to hold a confirmation of charges hearing in the Kony case in the suspect's absence", [No. ICC-02/04-01/05-517-Conf](#) and [No. ICC-02/04-01/05-517-Red](#), 28 August 2024.

¹³ See email from the Chamber to the Prosecution sent on 3 September 2024 at 15:12 in the Report on decisions and orders issued by way of email for the period November 2022 – September 2024, [No. ICC-02/04-01/05-530-Anx26](#), 25 October 2024.

¹⁴ See the "Prosecution's Reply to Defence Observations", [No. ICC-02/04-01/05-520-Conf](#) and [No. ICC-02/04-01/05-520-Red](#), 5 September 2024.

¹⁵ See the "Kony Defence Reply to Prosecution's Submissions in Response to Defence Observations", [No. ICC-02/04-01/05-524-Conf](#) and [No. ICC-02/04-01/05-524-Red](#), 9 September 2024.

11. On 12 September 2024, after having received further submissions from the parties and participants,¹⁶ the Chamber postponed the confirmation of charges hearing and vacated the 15 October 2024 date.¹⁷

12. On 29 October 2024, the Chamber issued the Third Decision and found that all the requirements set forth in article 61(2)(b) of the Rome Statute (the “Statute”) are met.¹⁸ On 12 December 2024, the Chamber further decided that the confirmation of charges hearing shall commence on 9 September 2025.¹⁹

13. On 3 April 2025, the Defence filed the Reconsideration Request.²⁰

III. SUBMISSIONS

14. The Legal Representatives recall that the Chambers have consistently ruled that *“reconsideration is exceptional and should only be done if a clear error of reasoning has been demonstrated or if it is necessary to do so to prevent an injustice”*.²¹ Additionally, *“new facts and arguments arising since the decision was rendered may be relevant to this assessment”*.²²

¹⁶ See the “Victims Observations on the date of the confirmation of charges hearing”, [No. ICC-02/04-01/05-521](#), 6 September 2024; the “Defence Observations on the Date of the Confirmation of Charges Hearing”, [No. ICC-02/04-01/05-522](#), 6 September 2024; and the “Prosecution’s observations on the date of the confirmation of charges hearing”, [No. ICC-02/04-01/05-523](#), 6 September 2024.

¹⁷ See the “Decision Postponing the Confirmation of Charges Hearing” (Pre-Trial Chamber III), [No. ICC-02/04-01/05-526](#), 12 September 2024.

¹⁸ See the Third Decision, *supra* note 3, p. 46.

¹⁹ See the “Decision Setting the Date of the Confirmation of Charges Hearing and Related Time Limits” (Pre-Trial Chamber III), [No. ICC-02/04-01/05-539](#), 12 December 2024, p. 10.

²⁰ See the Reconsideration Request, *supra* note 2.

²¹ See for example, the “Decision on Request for Reconsideration of the Order to Disclose Requests for Assistance” (Trial Chamber IX), [No. ICC-02/04-01/15-468](#), 15 June 2016, para. 4. See also the “Decision on the Defence Request for Partial Reconsideration of the Decision under Rule 68(2)(b) of the Rules of Procedure and Evidence” (Trial Chamber IX), [No. ICC-02/04-01/15-711](#), 23 February 2017, para. 4; the “Decision on Defence Request for Reconsideration of Decision ICC-02/04-01/15-1147 and Objections to Victim Participation” (Trial Chamber IX), [No. ICC-02/04-01/15-1152](#), 26 January 2018, para. 6; and the “Decision on the Legal Representative Request for Reconsideration of the Decision on Witnesses to be Called by the Victims Representatives” (Trial Chamber IX), [No. ICC-02/04-01/15-1210](#), 26 March 2018, para. 6.

²² *Ibid.*

15. In the Request, the Defence asks the Chamber to reconsider the Third Decision on the basis of new facts or information that were previously unavailable.²³ The Legal Representatives submit that the Defence fails to introduce any *new* facts or information that were not available at the time of the issuance of the Third Decision to the attention of the Chamber. The Defence also fails to demonstrate a clear error of reasoning that has been made in the Third Decision or the need to reconsider it in order to prevent an injustice.

A. The confirmation process will not renew or sustain efforts to bring Mr Kony before the Court and the confirmation process risks destabilising the affected community in Northern Uganda and jeopardising a sustainable peace

16. Sections A and C of the Reconsideration Request are addressed jointly since they raise issues related to peace and reconciliation which are interrelated in the context of the present case. The Defence firstly argues that one of the causes to hold the confirmation hearing *in absentia* was the Prosecution's assertion that proceeding in the absence of Mr Kony will would lead States and other stakeholders to further galvanise and accelerate their efforts to apprehend and surrender him to the Court.²⁴ The Defence further argues that religious, political and cultural leaders in Northern Uganda believe that the confirmation of charges process will have the opposite effect by risking repatriation programs and disrupting the reconciliation efforts and now "*Joseph Kony will never emerge*".²⁵ The Defence annexes to its filing several documents purportedly written by said leaders as Annexes A to I (the "Annexes").²⁶

17. The Legal Representatives contend that religious, political and/or cultural leaders do not have *locus standi* before the Court, unless expressly authorised to file submissions by a relevant Chamber in accordance with rule 103 of the Rules and that the Defence cannot circumvent the proper procedure in this regard. According to said

²³ See the Reconsideration Request, *supra* note 2, para. 1.

²⁴ *Idem*, para. 12.

²⁵ *Idem*, para. 13.

²⁶ *Idem*, [Annexes A to I](#).

rule, it is only within the Chamber's discretion whether to allow such *amicus* submissions "if it considers it desirable for the proper determination of the case" on any issue that "the Chamber deems appropriate". Moreover, the parties and participants must have the opportunity to respond to the observations submitted by the *amici*.

18. However, the content of the Annexes appears to address concrete legal and factual issues already adjudicated by the Chamber in its determination on whether to hold the confirmation hearing *in absentia* and thus *de facto* qualify as *amicus curiae* submissions.

19. In introducing the Annexes, the Defence attempts to circumvent the proper procedure. In this regard, the Appeals Chamber held that "the submission of substantive observations is only permissible after a Chamber has decided to invite or grant leave to do so" pursuant to rule 103 of the Rules and thus a chamber should disregard substantive *amicus* submissions that had been submitted without leave.²⁷ Therefore, the Annexes to the Reconsideration Request and relevant arguments must be rejected *in limine* on this ground alone.

20. Moreover, in its Decision on the Procedure for Appointing Counsel dated 21 June 2025, the Chamber specifically instructed the Defence counsel to provide observations on the very issues raised by the Reconsideration Request, *inter alia*, in relation to: (a) the First, Second Decision and the Registry's Report on the implementation of the Second Decision (ICC-02/04-01/05-491) by no later than ten working days following his official appointment; and (b) the Prosecution's Observations on the conduct of the confirmation proceedings *in absentia* and Requests for the adoption of certain protocols and an *in situ* hearing in Uganda (ICC-02/04-01/05-

²⁷ See the "Decision on the application of 14 September 2009 for participation as an *amicus curiae* (Appeals Chamber)", [No. ICC-01/05-01/08-602 OA2](#), 09 November 2009, para. 9.

490) and the Victims' response to the Prosecution's requests (ICC-02/04-01/05-494) by no later than twenty working days following his official appointment.²⁸

21. Yet, the Defence now makes substantive arguments to the effect that the confirmation of charges hearing in the absence of Mr Kony must not take place in order not to disrupt the peace and reconciliation efforts underway in Northern Uganda.

22. The Legal Representatives note that the Annexes contain documents purportedly produced by various individuals in the month of March 2025. Importantly, there is no indication that the Defence was unable to present these arguments and/or that these documents were not available at the time when the Defence made its initial submissions in August and September 2024. Indeed, even if, by extraordinary, accepted as mere annexes, these documents should have been filed along with the Defence's initial observations, within the time limits set out by the Chamber in its Decision on the Procedure for Appointing Counsel. In the event that the Defence did not have sufficient time to make these arguments and obtain the annexed documents in order to supplement its observations, it should have requested an extension of time limit pursuant to regulation 35 of the Regulations of the Court. However, the Defence failed to do so. Requests for reconsideration cannot be used as a mean of supplementing prior submissions and/or relitigating already ruled upon legal issues. Therefore, these arguments and relevant annexes should also be rejected *in limine* as untimely.²⁹

23. In the extraordinary event that the Chamber finds that the Annexes were properly introduced, the Legal Representatives further address the merits of Sections A and C of the Reconsideration Request *infra*.

²⁸ See the "Decision on the Procedure for Appointing Counsel", *supra* note 11, para. 27.

²⁹ See the "Decision on Defence Request for Findings on Fair Trial Violations Related to the Acholi Translation of the Confirmation Decision (Trial Chamber IX)", [No. ICC-02/04-01/15-1147](#), 24 January 2018, para. 18.

24. In these sections, the Defence argues that religious, political and cultural leaders in Northern Uganda believe that the confirmation of charges process would disrupt the reconciliation efforts and cause fractures and divisions within a society undermining peace in the country, and then advocate for, *inter alia*, traditional justice mechanisms instead.³⁰ The Defence also contends that this information was not previously before the Chamber.³¹

25. The Legal Representatives posit that the information contained in the Annexes is not new information at all. The questions of peace *versus* justice and the use of Acholi traditional justice mechanisms had already been debated before this Court in the *Ongwen* case, and the organisation Ker Kwaro Acholi (the “KKA”) had also made extensive submissions on the matter before Trial Chamber IX. This information is amply public since the question was debated in oral and written submissions in that case.

26. For sake of comparison, the KKA Report filed as Annex C to the Reconsideration Request states, *inter alia*, that:

“IN ABSENTIA CONFIRMATION HEARINGS AND TRADITIONAL ACHOLI JUSTICE PRACTISES

*The objective of traditional justice system in Acholi like the practice of Mato Oput seek assistance from the community leaders to facilitate, acknowledge (account), and resolve (reconcile) conflicts arising from violations or abuses or in support of healing. The process creates a socio-cultural context that allows individuals and communities to refrain from violence and re-establish broken relationships. The five fundamental principles of material compensation, reconciliation, forgiveness and truth telling, cleansing and welcoming, and punishment (retributive aspects) appear to be at the center of traditional justice whereas the ICC processes are not deigned to promote critical values of reconciliation, restoration, and healing, which are indispensable in the traditional justice mechanisms”.*³²

³⁰ See the Reconsideration Request, *supra* note 2, paras. 13-26 and 30-37.

³¹ *Idem*, para. 37.

³² *Idem*, Annex C, p. 9.

27. Previously, in the *the Ongwen case*, KKA also made similar submissions by stating, *inter alia*, that:

“Basic understanding of traditional justice in Acholi

*The principles of restorative justice, the foundation of Acholi traditional justice mechanism, are deeply embedded in the way of life of the Acholi people as is the case in most African societies. Traditional justice pursues justice and accountability at three levels; the physical/material level, the psychological level and the spiritual/ divine level. Across the three levels it is almost unheard off for one to evade justice and accountability because where physically and psychologically justice and accountability fails, the ultimate power, spiritual or divine intervention is evoked. The almighty overseer (jok jok mamalo) through the ancestors (Kwaro) pursue the cause for justice and accountability mainly through spiritual inferences. There is no room for manipulation as the divine beings are omnipotent and all present and aware. Consequences are dire and go out to affect the whole network of relations around who is considered a wrong doer. Traditional justice hinges on the principles of collective responsibility, collective guilt, collective punishment. It is the consequences that the Acholi live to fear most. In relation to Dominic Ongwen, by the fact that he could be responsible for certain crimes as prescribed, in Acholi his network of relations are as guilty as him and is suffering the inability to perform reconciliatory rites and rituals to restore normal relations. Upholding truth at all moments is the guiding principle in the pursuit for justice and accountability in Acholi. It is considered that once truth is void, then justice and accountability is equally void. One is expected to stand by the truth even if threatened by death. Arguments without the foundation of truth is meaningless. It is considered that regardless of the breaches to society one commits, such an individual is given a second chance to become a useful member of the community once again. The experience with ex-LRA fighters says a lot about this point. A number of them, including those that held senior positions, were successfully re-integrated and perform various useful roles in society. Some are leaders, others are farmers, others are pastor, etc”.*³³

28. These arguments were rejected by Trial Chamber IX on the basis of the following considerations: (a) the traditional rituals are reserved to the members of the Acholi community only. In fact, separate similar customs exist among other ethnic

³³ See Ker Kwaro Acholi, *Where does conviction and sentencing Dominic Ongwen Leave the Acholi Society?*, No. UGA-D26-0015-1812, pp. 8-9. See also Ker Kwaro Acholi, *Ker Kwaro Acholi (KKA) submission to the ICC following the judgement on the Dominic Ongwen case on Feb/4/2021*, No. UGA-D26-0015-1901. For ease of reference, these documents are annexed to the present submission as Annexes 1 and 2, respectively.

groups in Northern Uganda, such as the Lango. Thus, the use of Acholi traditional justice would indeed mean that some victims would be excluded; (b) according to an expert on Uganda, who testified at trial, the notion that Acholi people have different ideas about terrible events to other people and then have mechanisms for dealing with them that make them less significant or important is misplaced. Moreover, according to an expert of Acholi culture, who also testified at trial called by the participating victims, the use of traditional reconciliatory mechanisms is a mere idealistic wish of the elders as keepers of the custom and of the society in which they live; (c) Acholi traditional justice mechanisms are not in widespread use in Acholi areas of Northern Uganda to the extent that they would stand in lieu of formal justice. According to a judgment of the High Court of Uganda, the performance of the ceremony of *mato oput* is relatively rare in contemporary Acholi, especially in the reintegration of former LRA combatants and *mato oput* has no effective system of regulation and review in place, is shrouded in legal ambiguity and, as a result, its interface with formal criminal justice is opaque. The High Court also held that traditional justice should play a complementary role to the formal justice system, but not serve to displace, undermine or delay it; (d) the use of traditional justice mechanisms cannot be accepted in light of the views and concerns of the victims participating at trial. In fact, the Trial Chamber's, in its determination of the sentence, indicated that the views and concerns of the participating victims, as presented by their legal representatives, are the most important factor to be considered since the question of reconciliation, whatever its form, is a process in which victim participation is essential; and (e) the participating victims oppose the use of *mato oput* categorically since such process is not suitable because of the nature of Mr Ongwen's crimes. In this regard, a participating victim – who sat at the time on the Ker Kwaro Acholi council – was also of the view that the KKA and other organisations and leaders should not intervene in this matter.³⁴

³⁴ See the Sentence (Trial Chamber IX), [No. ICC-02/04-01/15-1819-Red](#), 6 May 2021, paras. 27-38, confirmed on appeal. See the "Judgment on the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX of 6 May 2021 entitled 'Sentence'" (Appeals Chamber), [No. ICC-02/04-01/15-2023 A2](#), 15 December 2022, paras. 111-126.

29. The Legal Representatives echo the findings of the Trial Chamber in the *Ongwen* case. While said findings were made in a different case, at a different stage of the proceedings, the substance of the issues remains the same, as many of the victims of Mr Ongwen are also victims of Mr Kony, have applied for participation in the case and have not changed their position in this regard.³⁵

30. While the views and concerns of the victims contained in the previous submissions on holding the confirmation of charges *in absentia* were based on the consultation of the 35 victims at the time authorised to participate in the case as ordered by the Chamber,³⁶ the Legal Representatives have since met and engaged, during missions conducted in Northern Uganda, with thousands of victims who have made it clear that they equally, and overwhelmingly, support the holding of the confirmation hearing in the absence of Mr Kony.

31. The victims with whom the Legal Representatives initiated new contact have truly appreciated the significance of their involvement in the present proceedings, have reaffirmed their unwavering support for the Court, and have shown their eagerness to contribute to the pursuit of justice. In particular, they have also expressed their opinion on the question of peace and reconciliation in Northern Uganda, and have clearly stated that the Court must put an end to impunity and justice must be done in the *Kony* case in order to achieve lasting peace and reconciliation in their native land. They have strongly emphasised the fact that peace means justice for the victims of Mr Kony and that there can be no lasting peace and reconciliation without holding the LRA responsible for the atrocities committed against them. Furthermore, they all agree that true and meaningful reconciliation would only be possible after those

³⁵ The Chamber already found that, out of 4096 victims admitted to participate at trial in the *Ongwen* case, 2038 have expressed their interest to participate in the present proceedings and the charges in the *Ongwen* case largely overlap with the allegations brought against Mr Kony in the Document Containing the Charges. See the “Decision on victim participation, legal representation, and on the OPCV’s Application for recognition of the status of victims in the Kony case to the victims participating in the *Ongwen* case” (Pre-Trial Chamber III), [No. ICC-02/04-01/05-540](#), 13 December 2024, para. 61.

³⁶ See the “Victims’ Views and Concerns on the ‘Prosecution’s Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence’”, *supra* note 7, para. 17.

responsible, including Mr Kony, have been convicted and punished, and after they have received fair and adequate reparations for the harm they have suffered.

32. The information contained in the Annexes, purportedly written by “*religious, political and cultural leaders*” in Northern Uganda advocating the termination of the confirmation proceedings against Mr Kony, is at best mere personal opinion. Their views do not represent those of the victims of the present case. In fact, these individuals never personally consulted the participating victims since the commencement of these proceedings. Therefore, they must not either replace or supplant the voices and preoccupations of the victims. Indeed, these purported “*religious, political and cultural leaders*” do not speak on behalf of the thousands of Ugandan victims nor do they have the right to represent – formally or informally – the best interests of the victims participating in these proceedings.

33. Consequently, the Defence’s arguments concerning the peace and reconciliation efforts and the relevant Annexes fail to bring any *new* facts or information (that were not available at the time of the issuance of the Third Decision) to the attention of the Chamber. Moreover, the Defence fails to show that a clear error of reasoning has been made in this regard in the Third Decision or it is necessary to reconsider it in order to prevent an injustice.

B. The Ugandan Government intends for Joseph Kony to face justice in Uganda

34. The Defence submits that it met with the Ugandan President in December 2024, who allegedly affirmed that should Mr Kony be arrested in or returned to, he will be tried before Ugandan courts and, therefore, he would face justice in Uganda, not before this Court.³⁷ The Defence adds that this information was not previously before the

³⁷ See the Reconsideration Request, *supra* note 2, para. 28.

Chamber and warrants reconsideration of the Third Decision in order to avoid injustice.³⁸

35. The Legal Representatives submit that the Chamber should disregard these arguments, as the Defence attempts to challenge issues that had already been extensively litigated by the parties and participants and ultimately resolved by the Chamber. In particular, the Chamber exhaustively addressed this very issue – the admissibility of the *Kony* case – in the Third Decision, finding that:

*“The warrant of arrest issued by the Ugandan authorities does not specify the conduct alleged against Mr Kony. As such, it cannot be assessed whether that warrant of arrest concerns ‘substantially the same conduct’ in comparison with the allegations levelled against Mr Kony by the Prosecution. In addition, in view of the fact that the Ugandan authorities appear to have discontinued the proceedings against Mr Kony pending re-arrest, the status of the warrant of arrest in Uganda is unsettled. [...] Furthermore, the Chamber is not persuaded that the fact that the Ugandan authorities have tried another person signals their intention to proceed against Mr Kony on the basis of the domestic warrant of arrest. The situation of Mr Kony is specific and must be assessed separately. [...] Accordingly, the Chamber considers that, in these circumstances, the right of Mr Kony to raise any challenge under article 19(2) of the Statute at an appropriate stage of the proceedings is best preserved by the Chamber declining to exercise its discretion under article 19(1) of the Statute at present”.*³⁹

36. Consequently, the Defence’s claim to the effect that the President of Uganda has indicated that Mr Kony will be tried in Uganda does not constitute *new* facts or information. Indeed, this allegation remains overly general and wholly lacks all of the necessary information (demonstrating substantially the same conduct being charged at the national level as compared to the charges before this Court) that is eventually required to challenge the admissibility of a case. In any case, to date, there is no communication in the record of the case of the official position of the Ugandan Government, raising an admissibility challenge pursuant to article 19(1) of the Statute.

³⁸ *Idem*, para. 29.

³⁹ See the Third Decision, *supra* note 3, paras. 83-85.

Consequently, this argument is at best speculative and does not introduce any *new* facts or information that were not available at the time of the issuance of the Third Decision to the attention of the Chamber. Moreover, again, the Defence fails to show that a clear error of reasoning has been made in this regard in the Third Decision or it is necessary to reconsider it in order to prevent an injustice.

C. Joseph Kony is not someone who “cannot be found”

37. The Defence argues that “[t]he approximate whereabouts of Mr Kony are known and have been publicly reported in recent months. Moreover, it can be safely presumed that the many former LRA fighters and Kony family members who have been repatriated in February and March 2025 and are now living in Gulu, know Mr Kony’s approximate whereabouts”.⁴⁰ However, the news articles cited by the Defence in support of this allegation merely suggest, in an overly vague manner, that Mr Kony is allegedly *somewhere* in the vast territories of the Central African Republic or Sudan.⁴¹ Similarly, the assertion that many former LRA fighters and Mr Kony’s family members allegedly know his whereabouts is simply unverifiable, highly irrelevant and not at all determinative of the issue at hand. Indeed, the Chamber held in the Third Decision that the “the phrase ‘cannot be found’ does not cover a situation in which the approximate whereabouts of the person are known but the Court is unable to have an arrest warrant executed due to reasons unrelated to the identification of the suspect’s location [...], citing the First Decision.⁴² In other words, what is required, according to the successive decisions of the Former Chamber and the Chamber, is that the whereabouts of the person must be actually and officially “known” to the Court itself, and not to third parties that are extraneous to the present proceedings. Therefore, the Defence’s arguments in this regard fall short of meeting the threshold required to show that Mr Kony’s whereabouts are actually “known” to the Court.

⁴⁰ See the Reconsideration Request, *supra* note 2, para. 39.

⁴¹ *Idem*, footnote 89.

⁴² See the Third Decision, *supra* note 3, para. 96.

38. The Defence further alleges that Mr Kony's approximate location also appear to be known to the Registry and the Prosecution, reflecting the broad public knowledge of Mr Kony's whereabouts.⁴³ This allegation is unsupported by any evidence and purely speculative. Therefore, it cannot constitute *new* facts or information that were not available to the Chamber at the time of the issuance of the Third Decision. Nor do they demonstrate that a clear error of reasoning has been made in the Third Decision or that it requires reconsideration to prevent an injustice.

39. In conclusion, the Legal Representatives submit that none of the issues raised by the Defence meets the specific requirements for reconsideration of a judicial decision, which is itself an exceptional remedy.

FOR THE FOREGOING REASONS, the Legal Representatives respectfully request the Chamber to reject the Reconsideration Request.



Paolina Massidda



Sarah Pellet

Dated this 14th day of April 2025

At The Hague (The Netherlands)

⁴³ See Reconsideration Request, *supra* note 2, paras. 40-41.