



**Original: English**

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

**Date: 7 February 2023**

**PRE-TRIAL CHAMBER II**

**Before:**

**Judge Rosario Salvatore Aitala, Presiding  
Judge Antoine Kesia-Mbe Mindua  
Judge Tomoko Akane**

**SITUATION IN UGANDA**

**IN THE CASE OF**

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

**Public**

Order on procedural matters and decision on request for a lesser redacted version of  
the arrest warrant

**Decision 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  
Mr Mame Mandiaye Niang

**Counsel for the Defence**

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**The Office of Public Counsel  
for Victims**

Ms Paolina Massidda

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

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**

**Victims Participation and Reparations  
Section**

**Other**

**PRE-TRIAL CHAMBER II** (the ‘Chamber’) of the International Criminal Court issues this procedural order, inviting observations from the Registry and the Office of Public Counsel for the Defence (the ‘OPCD’), as well as views and concerns of victims in relation to the ‘Prosecution’s Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence’ (the ‘Prosecution’s Request’);<sup>1</sup> and including a decision on the Prosecution’s ‘Request for lifting of certain redactions in the Arrest Warrant against Joseph Kony’ (the ‘Prosecution’s Request to Lift Redactions’).<sup>2</sup>

## I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 8 July 2005, the Chamber (in a previous composition) issued the ‘Warrant of Arrest for Joseph Kony’,<sup>3</sup> which was amended on 27 September 2005 (the ‘Arrest Warrant’).<sup>4</sup>
2. On 23 November 2022, the Prosecution asked the Chamber to issue a lesser redacted version of the Arrest Warrant.<sup>5</sup> According to the Prosecution, the majority of the redactions are no longer necessary. It submits that only some redactions have to remain to protect the integrity of the proceedings and the safety, privacy and well-being of victims and witnesses.
3. On 24 November 2022, the Prosecution filed the Prosecution’s Request, asking the Chamber to hold a hearing on the confirmation of charges against Joseph Kony in his absence, pursuant to article 61(2)(b) of the Rome Statute (the ‘Statute’).
4. On 28 November 2022, the Office of Public Counsel for Victims (the ‘OPCV’), of which members had been appointed to represent a number of victims in the present

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<sup>1</sup> Prosecution’s Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence, ICC-02/04-01/05-446-Conf-Exp, confidential and *ex parte*, only available to the Prosecution (a public redacted version was issued on the same day, see [ICC-02/04-01/05-446-Red](#)).

<sup>2</sup> Request for lifting of certain redactions in the Arrest Warrant against Joseph Kony, 23 November 2022, ICC-02/04-01/05-445-Conf-Exp, confidential and *ex parte*, only available to the Prosecution.

<sup>3</sup> ICC-02/04-01/05-2-US-Exp, under seal and *ex parte*, only available to the Prosecution (the warrant was unsealed on 13 October 2005, see [ICC-02/04-01/05-52](#)).

<sup>4</sup> Warrant of Arrest for Joseph Kony Issued on 8 July 2005 as Amended on 27 September 2005, ICC-02/04-01/05-28-US-Exp, under seal and *ex parte*, only available to the Prosecution (a public redacted version was issued on 13 October 2005, see [ICC-02/04-01/05-53](#)).

<sup>5</sup> Prosecution’s Request to Lift Redactions.

case and Situation,<sup>6</sup> requested an extension of time to file a response to the Prosecution’s Request (the ‘OPCV Request’).<sup>7</sup> The OPCV submitted that, due to the inactivity of the case, the contacts with the victims concerned have progressively diminished and time would therefore be needed to re-establish them and conduct the necessary consultations to respond to the Prosecution’s Request.<sup>8</sup> Besides consulting the victims in the case, the OPCV submits that the victims authorised to participate in the *Uganda* Situation and in *The Prosecutor v. Dominic Ongwen* (the ‘Ongwen case’) have an interest in presenting their views to the Chamber as they may qualify as victims in the present case.<sup>9</sup>

5. On 2 December 2022, the Chamber determined that it was unnecessary to consider the OPCV Request at that moment and announced that an order on the conduct of the proceedings would be issued in due course.<sup>10</sup>

6. Later that day, the OPCD, pursuant to regulation 77(4)(d) of the Regulations of the Court (the ‘Regulations’), requested leave to appear before the Chamber in relation to the Prosecution’s Request (the ‘OPCD Request’).<sup>11</sup> In particular, the OPCD submits that the Prosecution’s Request has the potential to affect the fair trial rights of all suspects and accused before the Court and seeks leave to file a response ‘after the OPCV and any LRV have filed their submissions’.<sup>12</sup>

7. On 8 December 2022 the Chamber deferred its consideration of the OPCD Request until the issuance of a procedural order.<sup>13</sup>

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<sup>6</sup> Decision on legal representation of Victims a/0065/06, a/0066/06, a/0068/06, a/0088/06, a/0090/06 to a/0096/06, a/0098/06, a/0102/06, a/0103/06, a/0112/06, a/0115/06, a/0117/06, a/0118/06, a/0120/06 to a/0126/06, a/0076/07 to a/0078/07, a/0081/07, a/0082/07, a/0084/07, a/0085/07, a/0090/07 to a/0103/07, a/105/07 to a/0108/07, a/0112/07, a/0115/07, a/0117/07, a/0118/07 and a/0123/07, 9 February 2009, [ICC-02/04-176](#); 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”, 15 February 2008, [ICC-02/04-01/05-267](#); “Decision on Victim’s Participation in Proceedings Related to the Situation in Uganda, 9 March 2012, ICC-02/04-191. See also [ICC-02/04-01/05-447](#), paras 6-7 and 9.

<sup>7</sup> [ICC-02/04-01/05-447](#).

<sup>8</sup> [ICC-02/04-01/05-447](#), paras 13-14.

<sup>9</sup> [ICC-02/04-01/05-447](#), paras 18-19.

<sup>10</sup> Decision regarding the ‘Legal Representatives’ Joint Request for an Extension of Time to Respond to the “Prosecution’s Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence”, [ICC-02/04-01/05-449](#).

<sup>11</sup> OPCD Request for Leave to Appear on Prosecution’s Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence, [ICC-02/04-01/05-450](#).

<sup>12</sup> [ICC-02/04-01/05-450](#), para. 24.

<sup>13</sup> [ICC-02/04-01/05-451](#).

8. On 15 December 2022, the Victims and Witnesses Unit (the ‘VWU’), following an instruction by the Chamber,<sup>14</sup> filed its observations to the Prosecution’s Request to Lift Redactions,<sup>15</sup> indicating that it agrees with the Prosecution’s proposal to lift all redactions in the Arrest Warrant other than some ones relating to sexual and gender based crimes.

## II. DETERMINATION BY THE CHAMBER

### *Measures to locate and notify the suspect*

9. Article 61(2)(b) of the Statute mandates, in its relevant part, that for a confirmation of charges to be held in the absence of the person concerned, the Chamber must determine that the person ‘cannot be found and all reasonable steps have been taken to secure his or her appearance before the Court and to inform the person of the charges’. In addition, according to rule 123(3) of the Rules of Procedure and Evidence (the ‘Rules’), the Chamber shall ‘ensure that a warrant of arrest for the person concerned has been issued and, if the warrant of arrest has not been executed within a reasonable period of time after the issuance of the warrant, that all reasonable measures have been taken to locate and arrest the person.’

10. The Prosecution makes statements about the efforts undertaken to locate Mr Kony and his purported knowledge of the Arrest Warrant, or content thereof. However, the Registry is the organ of the Court tasked with the execution of warrants of arrests and cooperation with States. Without prejudice to further orders for the Registry and/or the Prosecution, the Chamber therefore considers it necessary to instruct the Registry to provide all information concerning the efforts to locate Mr Kony, notify him of the allegations contained in the Arrest Warrant, and secure his arrest or otherwise secure his appearance before the Court.

11. The Chamber expects the Registry to provide a complete and detailed account of all relevant efforts to locate and/or arrest Mr Kony or efforts to otherwise ensure his appearance before the Court, as well as any information that may suggest that he is aware of the existence of the Arrest Warrant and the allegations contained therein. The

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<sup>14</sup> Email from Pre-Trial Chamber II to the Registry, 23 November 2022 at 18:20.

<sup>15</sup> Victims and Witnesses Unit’s Observations on the Prosecution’s “Request for lifting of certain redactions in the Arrest Warrant against Joseph Kony” (ICC-02/04-01/05-445-Conf-Exp)”, 15 December 2022, ICC-02/04-01/05-452-Conf-Exp, confidential and *ex parte*, only available to the Prosecution and the VWU.

report on these measures may be filed *ex parte* and/or under seal, should the information so require.

### ***OPCV Request***

12. A Chamber may seek the views and concerns of victims on matters arising in the course of the proceedings before it when it considers it appropriate to do so, including issues related to a decision to hold a confirmation of charges hearing in absentia.<sup>16</sup> The system of admission of persons as victims in proceedings before the Court has evolved since the early years of the Court; and the system currently in place differs from the one followed at the beginning of this ‘case’.<sup>17</sup> The Chamber notes that, under the former system, some persons have been authorised to participate as victims in the case and one member of the OPCV has been assigned to represent them.<sup>18</sup>

13. The outcome of the Chamber’s decision on the Prosecution’s Request may have an impact on the personal interests of victims. The Chamber therefore deems it appropriate to invite the OPCV to convey the views and concerns of the victims of this case on the subject matter. The Chamber only wishes to receive the views and concerns of the victims and does not wish to receive any submissions or observations on the legal aspects of the Prosecution’s Request.

14. Collecting the views and concerns of the victims authorised to participate in the *Uganda* Situation as well as the victims participating in the *Ongwen* case,<sup>19</sup> as proposed by the OPCV, is not warranted at this stage. At present, the participation of potential victims in any confirmation of charges hearing, should the Chamber determine that such a hearing may take place in the absence of Mr Kony, would be limited to the allegations contained in the Arrest Warrant. Although some of those persons admitted as victims in the *Uganda* Situation may become eligible to participate in the case, they are not yet authorised to do so. Gathering their views and concerns would thus be premature. The same applies to the victims participating in the *Ongwen* case. Moreover,

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<sup>16</sup> See Rule 93 of the Rules.

<sup>17</sup> See, e.g., Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision Establishing the Principles Applicable to Victims’ Applications for Participation, 5 March 2019, ICC-01/14-01/18-141.

<sup>18</sup> See for instance [ICC-02/04-176](#).

<sup>19</sup> [ICC-02/04-01/05-447](#), para. 19.

the scope of the charges in that case is significantly broader than the allegations in the Arrest Warrant.

15. The Chamber does not consider useful or appropriate at this stage to engage in active consultations with potential victims, besides the interactions with those whose views and concerns are explicitly sought pursuant to the present order.

### ***OPCD Request***

16. According to Regulation 77(4)(d) of the Regulations, the Chamber may grant the OPCD leave to make submissions ‘on behalf of the person entitled to legal assistance when defence counsel has not been secured (...).’ Mr Kony has not designated legal representation and the Court has neither appointed counsel to represent him. Yet, the Chamber’s decision on the Prosecution’s Request will have an impact on Mr Kony’s rights under the Statute, in particular, but not limited to, his right to participate and be present at the confirmation of charges hearing pursuant to article 61(1) of the Statute.

17. In addition, as correctly noted by the OPCD, the outcome of these novel proceedings may affect the rights of future defendants at the Court. Noting the OPCD’s mandate under regulation 77(4)(d), as well as its position to represent the interest of the Defence, the Chamber concludes that receiving the OPCD proposed observation will assist the Chamber in its determination of the Prosecution’s Request.

18. As to the OPCD’s request to be allowed to file its observations after the OPCV and any legal representative of victims have filed theirs,<sup>20</sup> the Chamber considers that the OPCD is not entitled to respond to the views and concerns of the victims. Accordingly, the OPCD shall file its observations on the Prosecution’s Request at the same date as the Registry and OPCV.

### ***Lifting of redactions in the Arrest Warrant***

19. The Prosecution submits that 17 years after the issuance of the Arrest Warrant, the reasons underpinning most of the redactions in the public version no longer exist and that the risk to witnesses of being subjected to intimidation or physical harm as a result of the issuance of a lesser redacted arrest warrant is assessed to be low.

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<sup>20</sup> [ICC-02/04-01/05-450](#), para. 25.

20. Noting the passing of time and that the VWU indicates that it agrees with the Prosecution's proposal, the Chamber considers it appropriate to issue a lesser redacted version of the Arrest Warrant. This will be done in due course.

21. The Chamber notes that no public-redacted versions of the Prosecution's Request to Lift Redactions and the VWU's Observations have been filed. The Prosecution and the VWU therefore must either request reclassification of these filings as 'public' or file a public-redacted version.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**INSTRUCTS** the Registry to submit a report informing the Chamber of all measures taken to locate Mr Kony, notify him of the allegations against him and secure his arrest or appearance since the issuance of the arrest warrant and/or the amended version thereof by 30 March 2023, at the latest;

**INVITES** the OPCV to gather the views and concerns of the victims in this case about holding in absentia confirmation proceedings against Mr Kony and to transmit them to the Chamber by 30 March 2023, at the latest;


**INVITES** the OPCD to file observations on the Prosecution's Request by 30 March 2023, at the latest;

**GRANTS** the Prosecution's Request to Lift Redactions;

**ORDERS** the Prosecution and VWU to file public-redacted versions of the Prosecution's Request to Lift Redactions and the VWU's Observations, respectively, or request reclassification of these filings to 'public'.



Done in English. A French translation will follow. The English version remains authoritative.



**Judge Rosario Salvatore Aitala**

**Presiding**



**Judge Antoine Kesia-Mbe Mindua**



**Judge Tomoko Akane**

Dated this Tuesday, 7 February 2023

At The Hague, The Netherlands