

**Cour
Pénale
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**International
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PRE-TRIAL CHAMBER II

Before:

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

SITUATION IN UGANDA

**IN THE CASE OF
*THE PROSECUTOR v. JOSEPH KONY AND VINCENT OTTI***

Public

Victims' Views and Concerns on the "Prosecution's Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence"

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**

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I. INTRODUCTION

1. Counsel of the Office of Public Counsel for Victims appointed to represent a number of victims in the case (the “Legal Representatives”) hereby jointly submit 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” (the “Prosecution’s Request”),¹ in accordance with Pre-Trial Chamber II’s (the “Chamber”) “Order on procedural matters and decision on request for a lesser redacted version of the arrest warrant” (the “Order”).²

2. Victims support the Prosecution’s Request with a view of advancing the proceedings in the present case in preparation for a potential trial, and hope that it will revive the willingness of States to locate and apprehend Mr Kony. Despite their frustration and feeling of abandonment due to the long wait, the inactivity in the case, and the lack of support from the Court, victims remain hopeful for a positive outcome of their pursuit of justice.

II. PROCEDURAL BACKGROUND

3. On 8 July 2005, Pre-Trial Chamber II in its previous composition (the “former Chamber”) issued the Warrant for the Arrest of Mr Kony.³

4. On 10 August 2007, the Single Judge of the former Chamber granted applicants a/0090/06, a/0098/06, a/0112/06, a/0118/06, a/0119/06 and a/0122/06 the status of victims

¹ 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 Request”).

² 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 (the “Order”).

³ 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 2013: [No. ICC-02/04-01/05-456-Anx](#).

in the Case and applicants a/0101/06 and a/0119/06 the status of victims in the context of the Situation.⁴

5. On 15 February 2008, the Single Judge of the former Chamber appointed Ms Massidda as legal representative of victim a/0119/06 (admitted both in the Situation and in the Case).⁵

6. On 14 March 2008, the Single Judge of the former Chamber granted applicants a/0094/06, a/0095/06, a/0103/06, a/0117/06, a/0120/06, a/0121/06, a/0123/06 and a/0124/06 the status of victims in the Case and applicants a/0065/06, a/0068/06, a/0093/06, a/0096/06, a/0117/06, a/0120/06 and a/0123/06 the status of victims in the context of the Situation.⁶

7. On 21 October 2008, the former Chamber decided to initiate *proprio motu* proceedings under article 19(1) of the Rome Statute.⁷ On 10 March 2009, said Chamber concluded that the case against Mr Kony *et al.* is admissible before the Court.⁸ Said ruling was confirmed by the Appeals Chamber on 16 September 2009.⁹

8. On 21 November 2008, the Single Judge of the former Chamber granted applicants a/0076/07, a/0077/07, a/0078/07, a/0081/07, a/0082/07, a/0084/07, a/0085/07, a/0090/07, a/0091/07, a/0092/07, a/0093/07, a/0094/07, a/0095/07, a/0096/07, a/0097/07,

⁴ 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.

⁵ See 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.

⁶ See 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.

⁷ See the “Decision initiating proceedings under article 19, requesting observations and appointing counsel for the Defence” (Pre-Trial Chamber II), [No. ICC-02/04-01/05-320](#), 21 October 2008.

⁸ See the “Decision on the admissibility of the case under article 19(1) of the Statute” (Pre-Trial Chamber II), [No. ICC-02/04-01/05-377](#), 10 March 2009.

⁹ See the “Judgment on the appeal of the Defence against the ‘Decision on the admissibility of the case under article 19 (1) of the Statute’ of 10 March 2009” (Appeals Chamber), [No. ICC-02/04-01/05-408 OA3](#), 16 September 2009.

a/0098/07, a/0099/07, a/0100/07, a/0101/07, a/0102/07, a/0103/07, a/0105/07, a/0106/07, a/0107/07, a/0108/07, a/0112/07 and a/0123/07 the status of victims in the Case and applicants a/0108/07, a/0115/07, a/0117/07 and a/0118/07 the status of victims in the context of the Situation.¹⁰ The Single Judge thereby found it appropriate for all victims in the Case and in the context of the Situation to be represented by a Counsel from the OPCV.¹¹ With regard to a/0108/07, the Single Judge instructed the Registrar to seek his views as to whether he wishes to be represented by the legal representative appointed for the victims in the Case or by the legal representative appointed for the victims in the context of the Situation.¹²

9. On 9 February 2009, the Single Judge of the former Chamber appointed Ms Massidda, Principal Counsel of the OPCV, as legal representative of a/0065/06, a/0066/06, a/0068/06, a/0088/06, a/0091/06, a/0092/06, a/0093/06, a/0096/06, a/0102/06, a/0115/06, a/0125/06, a/0126/06, a/0115/07, a/0117/07 and a/0118/07, granted the status of victims in the context of the Situation; and Ms Pellet, Counsel of the OPCV, as legal representative of a/0090/06, a/0094/06, a/0095/06, a/0098/06, a/0103/06, a/0112/06, a/0118/06, a/0121/06, a/0122/06, a/0124/06, a/0076/07, a/0077/07, a/0078/07, a/0081/07, a/0082/07, a/0084/07, a/0085/07, a/0090/07, a/0091/07, a/0092/07, a/0093/07, a/0094/07, a/0095/07, a/0096/07, a/0097/07, a/0098/07, a/0099/07, a/0100/07, a/0101/07, a/0102/07, a/0103/07, a/0105/07, a/0106/07, a/0107/07, a/0112/07 and a/0123/07, granted the status of victims of the Case.¹³ The decision on the legal representation of a/0117/06, a/0120/06, a/0123/06 and a/0108/07 was deferred in order to collect their views thereon. No decision was ever issued and they thus remain represented by the OPCV.

¹⁰ See 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.

¹¹ *Idem*, paras. 281-282.

¹² *Idem*, para. 284.

¹³ See the “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” (Pre-Trial Chamber II, Single Judge), [No. ICC-02/04-176](#), 9 February 2009.

10. On 9 March 2012, the Single Judge of the former Chamber appointed the OPCV as the legal representative of all victims and victim applicants pending the appointment of a common legal representative in the Situation.¹⁴
11. On 24 November 2022, the Prosecution filed its Request.¹⁵
12. On 28 November 2022, the Legal Representatives requested an extension of time to file a response to the Prosecution's Request (the "LRV Request") in order to conduct meaningful consultations with the victims.¹⁶
13. On 2 December 2022, the Chamber determined that it was unnecessary to consider the LRV Request at that moment and announced that an order on the conduct of the proceedings would be issued in due course.¹⁷
14. On the same day, the Office of Public Counsel for the Defence, pursuant to regulation 77(4)(d) of the Regulations of the Court, requested leave to appear before the Chamber in relation to the Prosecution's Request (the "OPCD Request").¹⁸
15. On 8 December 2022, the Chamber deferred its consideration of the OPCD Request until the issuance of a procedural order.¹⁹

¹⁴ See 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.

¹⁵ See the Prosecution's Request, *supra* note 1.

¹⁶ See 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'", [No. ICC-02/04-01/05-447](#), 28 November 2022 (the "LRV Request").

¹⁷ See the "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'" (Pre-Trial Chamber II), [No. ICC-02/04-01/05-449](#), 2 December 2022.

¹⁸ See the "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", [No. ICC-02/04-01/05-450](#), 2 December 2022 (the "OPCD Request").

¹⁹ See the "Decision regarding the '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'" (Pre-Trial Chamber II), [No. ICC-02/04-01/05-451](#), 8 December 2022.

16. On 7 February 2023, the Chamber issued its Order inviting, *inter alia*, the Legal Representatives to gather the views and concerns of the victims in the present case about holding *in absentia* confirmation proceedings against Mr Kony and to transmit them to the Chamber by 30 March 2023, at the latest.²⁰

III. VIEWS AND CONCERNS OF THE VICTIMS

17. As a preliminary matter, the Legal Representatives recall that, given the lengthy inactivity in the case, contact needed to be re-established with their clients in order to duly consult them on the feasibility and/or desirability of holding a confirmation hearing of Mr Kony *in absentia*.²¹ The Legal Representatives were able to track back all 41 victims concerned. Unfortunately, victims a/0081/07, a/0082/07, a/0095/06, a/0098/06, a/0122/06, and a/0090/07 passed away. Members of their respective families are willing to resume the action on their behalf. If the Chamber were to grant the Prosecution's Request, the legal representative concerned will take the necessary steps to ensure the resumption of action of said victims. In addition, most of the victims are experiencing emotional distress and anxiety related to the presumed fate of tens of thousands of missing Ugandans; it is largely believed across communities that the missing persons are still being held captive by the LRA. Moreover, the victims' health is deteriorating further as they cannot afford the required medical treatments which are mostly available in private healthcare facilities.

18. On 9 March 2023, the Legal Representatives held a meeting via video-conference with the victims concerned. After comprehensively setting out the context and nuances of the Prosecution's Request, victims were given the opportunity to express their views and concerns both collectively and individually.

²⁰ See the Order, *supra* note 2.

²¹ See the LRV Request, *supra* note 16, paras. 2, and 13-14.

19. All victims welcomed the opportunity and expressed their satisfaction with the renewed contact, emphasising the significance of their involvement in the present proceedings. Through these consultations, victims feel like they matter and like they are a part of the process, for which they are grateful. In that regard, they reaffirmed their unwavering support for the Court and unanimously agreed that it would be desirable to hold a confirmation hearing in the absence of Mr Kony. Indeed, they believe that it would permit to revive the case and prepare in advance for a potential trial. Victims perceive such a hearing as a meaningful step in the right direction and are eager to genuinely contribute to the pursuit of justice, not only by conveying their views and concerns on all relevant issues, but also by testifying against Mr Kony.

20. Notwithstanding this eagerness, victims also voiced their frustration and a general sense of abandonment due to their long wait for justice and the lack of activity in the case. Specifically, they feel like the Government of Uganda failed to protect them during the events, and is now failing them again – as well as other States for that matter – by not undertaking any genuine efforts in the search for Mr Kony, and as a result they feel betrayed. Victims are fully aware that their fate is intrinsically linked to the arrest of Mr Kony, and holding a confirmation hearing in his absence clearly raises their expectations as to a positive outcome of their pursuit for justice. They understand the painful reality that, without an arrest of Mr Kony, their commitment will be in vain. Therefore, they hope that a confirmation hearing might encourage States to genuinely act in that regard.

21. Victims also expressed some concern in relation to the fact that, at the moment, the charges against Mr Kony do not seem to take into account the full extent of their victimisation. Therefore, they hope that the process leading to a confirmation of charges hearing will allow the Prosecution to extend the charges in order to allow for the meaningful participation of all victims concerned by the crimes allegedly committed by Mr Kony.

22. The victims concerned also feel let down by the Court, which in their eyes has concentrated its efforts on another region of the country, namely the Acholi region, as a result of the proceedings held against Mr Ongwen. They also expressed their frustration about the assistance programmes of the Trust Fund for Victims (the “TFV” or the “Trust Fund”). Indeed, in their view, said programmes mainly run in the northern part of Uganda while victims are in urgent need across the four regions affected by the LRA, *i.e.* Lango, Acholi, Teso and West Nile. They claim that, although the TFV originally devised programmes to be implemented in their region, it ended up focussing its efforts mostly on the Acholi region, thereby marginalising the three other regions. Accordingly, thus far none of the victims have benefitted from any assistance. They clearly voiced the importance of such support, all the more given that six of them are already deceased and that they all are in urgent need for assistance. As such, victims hope that the renewed interest in the present case will also result in assistance measures from the TFV, even more so since, at the moment, there exists no prospect of arresting Mr Kony in the near future.

23. To inform these submissions, the Legal Representatives also contacted civil society organisations which have supported victims throughout the years and which are still in contact with them. In particular, they consulted with African Youth Initiative Network (AYINET) – the main organisation which helped victims to complete application forms in the present case. The organisation echoed the concerns expressed by the victims during the meeting, indicating that there is a general hope amongst victims that holding the confirmation of charges hearing will renew States’ engagement in finding Mr Kony for him to be surrendered to the Court. Despite the fact that victims are waiting for justice since over 15 years, the majority of them is still willing to engage with the Court but they also need support and assistance.

24. The Legal Representatives further submit that, given the past failures to execute the warrant of arrest against Mr Kony, this could potentially be the victims’ only opportunity to appear before the Court and tell their stories.

25. Therefore, the Legal Representatives posit that the Chamber should take all possible measures to facilitate a meaningful participation of the victims in these proceedings. In particular, in the event that the Chamber decides to hold the confirmation of charges hearing in question, the victims should be provided with wide latitude of opportunities to freely and comprehensively express their views and concerns pursuant to article 68(3) of the Statute – as apparently also supported by the Prosecution²² – since their personal interests are significantly affected by these proceedings.

Respectfully submitted,



Paolina Massidda



Sarah Pellet

Dated this 30th day of March 2023

At The Hague (The Netherlands)

²² *Idem*, para. 7.