



Original: English

No. ICC-02/04-01/05

Date: 12 April 2023

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 AND VINCENT OTTI

Public

Decision on the Prosecution request for leave to reply to the OPCD Observations

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

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER I (the ‘Chamber’) of the International Criminal Court issues this decision on the ‘Prosecution request for leave to reply to “OPCD Observations on the Prosecution’s Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence” (ICC-02/04-01/05-458)’ (the ‘Leave to Reply Request’).¹

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 8 July 2005, the Chamber (in a previous composition) issued the ‘Warrant of Arrest for Joseph Kony’,² which was amended on 27 September 2005 (the ‘Arrest Warrant’).³
2. On 24 November 2022, the Prosecution requested to hold a confirmation of charges hearing in the absence of Mr Kony (the ‘Prosecution Request’).⁴
3. On 7 February 2023, the Chamber invited 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 Request.⁵
4. On 30 March 2023, the OPCD filed its observations (the ‘OPCD Observations’).⁶ On the same day, the OPCV transmitted to the Chamber the views and concerns of the victims,⁷ and the Registry submitted a report on the measures taken to locate Mr Kony.⁸
5. On 3 April 2023, the Prosecution sought the Chamber’s leave to respond to ‘a specific issue’ raised in the OPCD Observations. The Prosecution submits that it could not have reasonably anticipated that the OPCD would put into question the

¹ [ICC-02/04-01/05-460](#).

² 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](#)).

³ 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](#)).

⁴ 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: [ICC-02/04-01/05-446-Red](#)).

⁵ Order on procedural matters and decision on request for a lesser redacted version of the arrest warrant, [ICC-02/04-01/05-453](#).

⁶ OPCD Observations on the Prosecution’s Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence’, [ICC-02/04-01/05-458](#).

⁷ Victims’ Views and Concerns on the “Prosecution’s Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence”, [ICC-02/04-01/05-457](#).

⁸ ICC-02/04-01/05-459-SECRET-Exp, secret and *ex parte*, only available to the Registry and the Prosecution.

Prosecution's ability to expand the factual basis of the charges beyond that for which a warrant of arrest was issued,⁹ and it wishes to file a reply of no more than five pages.

6. On 5 April 2023, the OPCD responded to the Leave to Reply Request, indicating that it is not clear what the Prosecution seeks to reply to, but deferring to the Chamber's discretion to determine if further submissions are necessary.¹⁰

7. As part of the proceedings following the Prosecution Request, the Chamber instructed the Registry on 6 April 2023, via email, to submit an amended report on the measures taken to find Mr Kony, inform him of the charges and secure his appearance before the Court, by 26 April 2023, at the latest.

II. DETERMINATION BY THE CHAMBER

8. The Chamber emphasises that it does not need to receive submissions, or observations as the case maybe, on the correct interpretation of the law. Moreover, the matter the Prosecution wishes to reply to is neither a new issue raised in the OPCD Observations that the Prosecution could not have reasonably anticipated, nor does the Chamber consider that the proposed reply would assist the Chamber in its determination of the Prosecution's Request.

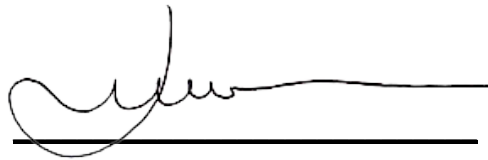
⁹ [ICC-02/04-01/05-460](#), para. 3.

¹⁰ OPCD Response to 'Prosecution request for leave to reply to 'OPCD Observations on the Prosecution's Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence', [ICC-02/04-01/05-461](#).

FOR THESE REASONS, THE CHAMBER HEREBY

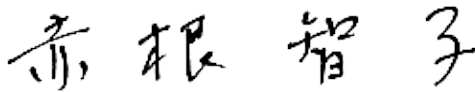
REJECTS the Prosecution Request for Leave to Reply.

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



Judge Rosario Salvatore Aitala

Presiding



Judge Tomoko Akane



Judge Sergio Gerardo Ugalde

Godínez

Dated this Wednesday, 12 April 2023

At The Hague, The Netherlands