

WHY IS JOSEPH KONY WANTED BY THE INTERNATIONAL CRIMINAL COURT (ICC) AND WHAT ARE THE CHARGES AGAINST HIM?



According to the ICC Prosecution's submission of the Document Containing the Charges, Joseph Kony is suspected of 36 counts of war crimes and crimes against humanity, allegedly committed between at least 1 July 2002 until 31 December 2005 in northern Uganda.

The allegations against Mr Kony concern having a common plan together with other Lord Resistance Army's members to commit jointly and through others the following conduct, as well as ordering and inducing LRA fighters to: Intentionally directing attacks against the civilian population as such; murdering civilians and attempting to do so; torturing, and/or severely abusing

and mistreating civilians and treating them cruelly; enslaving abducted civilians; pillaging and destroying property; and persecuting civilians on political grounds as well as based on their age and gender (counts 1-14). These alleged crimes were committed in the context of the LRA attacks on the Lwala Girls School on or about 24 June 2003 and the following attacks on internally displaced persons' ('IDP') camps: (i) Pajule IDP camp on or about 10 October 2003; (ii) Abia IDP camp on or about 4 February 2004; (iii) Barlonyo IDP camp on or about 21 February 2004; (iv) Odek IDP camp on or about 29 April 2004; (v) Pagak IDP camp on or about 16 May 2004; (vi) Lukondi IDP camp on or

about 19 May 2004; and (vii) Abok IDP camp on or about 8 June 2004.

The Prosecution also charges Mr Kony with having perpetrated in the same manner crimes against hundreds of women and against hundreds of children allegedly integrated into the LRA, in the period of 1 July 2002 until 31 December 2005 in northern Uganda: enslaving the women and children; sexual slavery of and forcing women and girls into marriage; raping women and girls; forced pregnancy, torturing and/or severely abusing and mistreating and cruelly treating women and children. This conduct is also charged as together amounting to persecution

on the grounds of gender and/or age. In addition, the Prosecution charges the conscription of children into the LRA, and using them to participate actively in hostilities (counts 15-29). Finally, the Prosecution charges Mr Kony with directly, that is himself, perpetrating the crimes of enslavement, forced marriage, torture, and sexual slavery in relation to a young woman in the period from July 2003 until September 2004 in northern Uganda and/or Sudan (counts 30-36).

The Document Containing the Charges against Mr Kony is available in English and Acholi on the website of the International Criminal Court: www.icc-cpi.int. ■

QUESTIONS AND ANSWERS ON THE CHARGES AGAINST JOSEPH KONY AT THE ICC

WHO IS JOSEPH KONY?

Joseph Joseph KONY was born in September 1961 in Uganda. He is of Acholi ethnicity and a national of Uganda. He is the alleged founder and leader of the Lord's Resistance Army ("LRA"), a Ugandan rebel group that originated in 1987 in northern Uganda among ethnic Acholi communities.

IS MR KONY IN THE ICC CUSTODY?

No, the suspect Joseph Kony, is still at large, 19 years after his arrest was ordered.

Since the issuance of the arrest warrant against him in 2005, the ICC has been seeking the cooperation of all relevant national authorities to arrest and surrender him to the Court.

ON WHAT BASIS DID THE ICC PROSECUTOR REQUEST THE ICC JUDGES TO HOLD A CONFIRMATION HEARING IN THE ABSENCE OF MR KONY?

The Rome Statute allows for a hearing on the confirmation of the charges in the absence of a suspect. This is possible when:

- the suspect has fled or cannot be found,
- all reasonable steps have been taken to secure his or her appearance before the Court, and
- all reasonable steps have been taken to inform the suspect of the charges and to notify the suspect that a hearing to confirm those charges will be held.

The ICC Prosecutor has thus made use of the Rome Statute to request such a hearing in the absence of Joseph Kony who has been evading justice for over 18 years.

It is indeed for the Prosecutor an important step to provide communities and victims

of Mr Kony's crimes who have waited patiently for justice for almost two decades an opportunity to engage with the Court more fully. This will also hopefully help galvanize support and initiatives towards the arrest or surrender of Joseph Kony.

IS THE ICC STARTING A TRIAL AGAINST MR KONY?

No, no trial proceedings have formally started nor any confirmation hearing for Mr Kony.

On 23 November 2023, ICC judges issued a preliminary decision on the Prosecutor's request to hold confirmation of charges hearing in Mr Kony's absence. Noting all the efforts made, by the Court and the international community, to locate him, the Chamber considered Mr Kony as a "person who cannot be found". The Chamber will subsequently decide whether a confirmation of charges hearing shall be held in his absence, which is an exceptional proceeding.

A confirmation of charges hearing is NOT A TRIAL. It is a public preliminary hearing during which judges assess and decide whether or not to confirm all or any of the charges brought by the Prosecutor against a suspect – Joseph Kony, in this case. If any of the charges are confirmed, the case can be submitted for trial before other ICC judges but only in the presence of the accused.

In the event that a confirmation hearing is held in the future and that one or more charges are confirmed, a trial would still require Mr Kony to be present before the ICC. There is no trial in absentia according to the ICC Rome Statute.

HOW WILL MR KONY BE DEFENDED BEFORE THE ICC AND WHO WILL PAY FOR HIS DEFENCE?

All ICC suspects are presumed innocent until proven guilty, and they are entitled

to legal representation when appearing before the Court. In case the suspect does not appear before the Court, the judges can appoint a lawyer to act on Mr Kony's behalf. When suspects cannot themselves pay for their legal representation, the defence costs are paid by the Court.

WHAT IS THE ROLE OF VICTIMS AT THE CONFIRMATION STAGE? WOULD THEY BE ABLE TO PARTICIPATE IN SUCH A HEARING?

In general, victims can participate in the preliminary phase of a case represented by a lawyer, according to the scope and modalities of participation decided by the judges. The judges had in the past granted 41 persons victims' status authorised to participate in the Kony case, and has appointed as their legal representatives Ms Paolina Massidda, Principal Counsel of the independent Office of Public Counsel for the Victims (OPCV), and Ms Sarah Pellet, Counsel at the OPCV. In the Preliminary Decision issued on 23 November 2023, the Judges also noted that if a confirmation of charges hearing in the absence of Mr Kony is scheduled in this case, it would be an opportunity for victims to express their views and concerns.

CAN THE JUDGES DECIDE NOT TO HOLD A CONFIRMATION OF CHARGES HEARING IN THE ABSENCE OF MR. KONY?

Yes. However, at this stage, the Judges have not yet decided whether the confirmation of charges hearing of Mr. Kony in absentia will be held, or not.

ARE VICTIMS OF ALLEGED CRIMES COMMITTED BY MR KONY ENTITLED TO ASK FOR REPARATIONS AT THE ICC?

No reparations can be ordered before a trial is conducted and reparations are granted only if an accused is found guilty. At this

stage, the Kony case is at pre-trial phase, and, even if charges are confirmed, no trial can start before Mr Kony is surrendered to the ICC.

Distinct from reparations, victims who suffered harm as a result of crimes falling within the scope of the Uganda situation may benefit from programmes addressing their harm through the Trust Fund for Victims' assistance mandate. This programme is implemented in the conflict affected region of greater northern Uganda, and provides victims with medical treatment, trauma counselling and livelihood support.

IS THE CASE OF JOSEPH KONY RELATED TO THAT OF DOMINIC ONGWEN?

On 6 February 2015, the ICC Judges severed the proceedings against Dominic Ongwen from the case of The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen. As the Judges by then had confirmed the deaths of two of the suspects and terminated proceedings against them, and the others remained at large, the Judges deemed it necessary to separate the case so as not to delay the proceedings against Mr Ongwen who was already in the custody of the Court. With the separation of these cases, they are now handled as different cases, separate proceedings and handled by different ICC judges.

The trial in the case of Mr Ongwen opened on 6 December 2016 and concluded in March 2020 after the submission of closing statements by the parties and participants. On 4 February 2021, Trial Chamber IX found Dominic Ongwen guilty for a total of 61 crimes comprising crimes against humanity and war crimes, committed in Northern Uganda between 1 July 2002 and 31 December 2005. On 6 May 2021, Trial Chamber IX sentenced Dominic Ongwen to 25 years of imprisonment, and he has been transferred to Norway to serve his sentence.