

QUESTIONS AND ANSWERS ON THE ICC CASE AGAINST JOSEPH KONY AND THE 15 OCTOBER 2024 HEARING



1. WHO IS JOSEPH KONY?

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.

2. 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.

3. WHAT IS THE LATEST DEVELOPMENT AT THE ICC IN RELATION TO THE KONY CASE?

On 4 March 2024, Pre-Trial Chamber II of the International Criminal Court ("ICC" or "Court") issued a decision on the Prosecutor's request to hold a confirmation of charges hearing in the case against Joseph Kony in the suspect's absence, should he not appear, and set the date for this hearing, to commence on 15 October 2024.

4. ON WHAT BASIS DID THE ICC JUDGES DECIDE TO HOLD A CONFIRMATION OF CHARGES HEARING IN THE ABSENCE OF MR KONY?

The Rome Statute (the treaty establishing the ICC) 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.

If the charges are confirmed, the case can only proceed to trial if the accused is present before the Trial Chamber. The existence of confirmation proceedings in absentia would serve to expedite the case against a suspect that cannot be found, however, as held previously by the same Chamber, this proceeding is only applicable in exceptional circumstances.

5. WHAT IS A CONFIRMATION OF CHARGES HEARING?

The confirmation of charges hearing is NOT A TRIAL and is still under the pre-trial phase of the proceedings. The purpose of the confirmation of charges is to determine if there is sufficient proof to start a trial. It is a public preliminary hearing where 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.

The Chamber will hear oral submissions usually starting from the Prosecution, followed by the Legal Representatives of the Victims and the Defence. The hearing is scheduled from 15 October 2024 at the seat of the Court in The Hague, The Netherlands, and it usually lasts a few days. Closer to the date of the hearing, the Judges will issue an order with more information about how it will be conducted and how many days it will last, and whether or not witnesses will appear in person or via video link.

6. WHAT KIND OF DECISIONS CAN THE ICC CHAMBER MAKE AT THE END OF CONFIRMATION OF CHARGES HEARING?

After the Confirmation of Charges hearing concludes, the Pre-Trial Chamber shall deliver its written decision within 60 days. The Judges of Pre-Trial Chamber may:

- confirm all or only some of the charges against Mr Kony but in this case a trial would still require Mr Kony to be present before the ICC as there is no trial in absentia according to the ICC Rome Statute;
- decline all the charges and stop the proceedings against Mr Kony (this happens if the Judges decide that the available evidence is not sufficient or strong enough to go to trial); or,
- adjourn the hearing and request the Prosecutor to provide more evidence, to conduct additional investigations or to change any charge for which the evidence establishes a different crime than the one charged.

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

All ICC suspects, including Mr. Kony, 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 deciding to hold a hearing in the absence of Mr Kony, the ICC Judges have instructed the Registry to commence the process of selecting a lawyer to represent his rights and interests during the confirmation process and the confirmation of charges hearing, should this take place in his absence.

In the Decision to hold the confirmation of charges hearing against Mr Kony in his absence, the Pre-Trial Chamber set the hearing for 15 October 2024 to ensure that Defence counsel will have sufficient time for his or her preparation in the suspect's

absence, due to the scope of the Prosecution's allegations, and the potential voluminous amount of material that the Prosecution is likely to disclose in this case.

In case Mr Kony is declared indigent, the Court will bear the cost of the suspect's defence in accordance with the legal aid scheme.

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

Victims can participate in the proceedings before the ICC, presenting their views and concerns. Victims are authorised to participate in the proceedings by the Judges of the Pre-Trial Chamber in charge of the Kony case.

The judges already authorised in the past 41 victims 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.

The Judges will soon decide on the process for other victims to apply to participate at the confirmation of charges hearing which is due to start on 15 October 2024. The victims will then be informed on how to apply to participate in the proceedings.

9. WHO ARE THE VICTIMS WHO CAN APPLY TO PARTICIPATE IN THE CONFIRMATION OF CHARGES HEARING AGAINST MR KONY? AND HOW CAN THEY DO SO?

Direct victims and survivors who have not previously applied for participation as well as any indirect victims, including close family members of direct victims, can apply for participation in the case, if they suffered harm as a result of the crimes committed against the direct victims.

The scope of the Kony case contained in the Document containing the Charges communicated by the Prosecutor on 19 January 2024 includes:

- Different crimes committed in the Attack on Lwala Girls School - 24 June 2003 and IDP camps (Pajule – 10 October 2003, Abia – 4 February 2004, Barlonyo – 21 February 2004, Odek – 29 April 2004, Pagak – 16 May 2004, Lukodi - 19 May 2004 and Abok – 8 June 2004);
- Crimes against children under the age of 15 and women abducted and integrated in the LRA from at least 1 July 2002 until 31 December 2005;
- Crimes directly perpetrated by Kony, including enslavement, forced marriage, rape, torture and sexual slavery.

The ICC Judges have not yet decided on the system and modalities of victims'

participation. Therefore, further details on how to apply will be communicated once this is clarified. Victims who want to obtain more information about victims' rights before the ICC and the Kony case can contact the VPRS: i) by email at VPRS.Information@icc-cpi.int; or ii) by phone (or WhatsApp) at +256772532830 (staff member working for the Victims' Participation and Reparations Section in the Uganda country office).

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

Victims have the right to reparations (and the right to participate in proceedings) in relation to any case within the jurisdiction of the ICC, including the Kony case, if an accused is declared guilty. Victims should be aware that, before the ICC, reparations can be awarded only if an accused person has been convicted following a trial – and therefore only much after the confirmation of charges proceedings.

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. Therefore, unless Mr Kony is arrested and found guilty of the charges against him after a criminal trial before the ICC judges, no reparations may be awarded to the victims who suffered harm as a result of the crimes he allegedly committed.

Distinct from reparations, victims who suffered harm as a result of crimes within jurisdiction of the ICC in the scope of the Uganda situation may benefit from rehabilitative programmes addressing their harm. The ICC Trust Fund for Victims may provide assistance to victims through medical treatment, counselling rehabilitation, and livelihood support for the benefit of victims, their families, and affected communities who have suffered harm from crimes under the jurisdiction of the Court. The assistance programme is being implemented in the conflict affected region of greater northern Uganda.

11. 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. ■