

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **28/06/2024**

PRE-TRIAL CHAMBER III

Before: Judge Althea Violet Alexis-Windsor, Single Judge

SITUATION IN THE REPUBLIC OF UGANDA

IN THE CASE OF

THE PROSECUTOR v. JOSEPH KONY

Public

Defence Request for Variation of Deadlines and for a Status Conference

Source: Defence for Mr Joseph Kony

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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States' Representatives**Amicus Curiae****REGISTRY****Registrar**

Mr Osvaldo Zavala Giler

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Victims and Witnesses Unit**Detention Section****Victims Participation and Reparations Section Other**

I. INTRODUCTION

1. On 21 June 2024, Peter Haynes KC was appointed as Counsel to represent the rights and interests of Joseph Kony during the confirmation proceedings.¹ Mr Haynes' appointment became public on 24 June 2024.² This appointment triggered deadlines which had previously been set by the Single Judge of Pre-Trial Chamber III ("the Pre-Trial Chamber") in the 'Decision of the Single Judge on the Procedure for Appointing Counsel' ("the 2 May Decision").³

2. The Single Judge has previously emphasised "the need to ensure that the present proceedings are conducted expeditiously".⁴ The Defence shares this position. To this end, Counsel has taken immediate steps to travel to The Hague, meet with the relevant sections of the Registry, meet with the Prosecution Senior Trial Attorney, and put in place the administrative processes required to gain access to the ICC premises, the ICC systems, the casefile, and to appoint and assemble a Defence team.

3. Despite these steps having been taken without delay, the reality is that the date of appointment of Counsel will not coincide with the date on which a Defence team becomes operational. As such, it is now apparent that the deadlines set in the 2 May 2024 Decision will be impossible to meet. For this reason, the Defence brings this motion to seek a limited variation of these time limits pursuant to Regulation 35(2) of the Regulations of the Court ("Regulations") on the basis that good cause exists for the extensions sought.

4. The Defence also requests that the Pre-Trial Chamber convene a status conference, pursuant to Rule 121(2)(b) of the Rules of Procedure and Evidence ("Rules"), to allow the Single Judge to engage with the parties on issues surrounding disclosure and the efficient conduct of the pre-confirmation proceedings.

II. PROCEDURAL HISTORY

5. On 4 March 2024, Pre-Trial Chamber II decided that the confirmation hearing in the present case will commence on 15 October 2024, and instructed the Registry to commence the process of selecting counsel to represent the rights and interests of Joseph Kony ("the 4 March

¹ Notification of the Appointment of Mr Peter Haynes KC as Counsel for Mr Joseph Kony, ICC-02/04-01/05-503, 24 June 2024, public, with confidential annex II and public annexes I, III and IV.

² Notification of the Appointment of Mr Peter Haynes KC as Counsel for Mr Joseph Kony, ICC-02/04-01/05-503, 24 June 2024, public, with confidential annex II and public annexes I, III and IV.

³ Decision on the Procedure for Appointing Counsel, ICC-02/04-01/05-499, 2 May 2024, public, para. 27.

⁴ 2 May Decision, para. 23.

2024 Decision”).⁵

6. On 25 March 2024, the Registry submitted its report to the Chamber, in which it proposed the process on the selection of counsel for Mr Kony.⁶

7. On 2 May 2024, the Chamber authorised the Registry to implement the selection procedure within, at the most, six weeks from the date of its decision.⁷

8. On 14 June 2024, the Registry submitted a report pursuant to the 2 May Decision, in which it provided the recommendation for counsel for Mr Kony.⁸

9. On 19 June 2024, the Chamber instructed the Registry to finalise immediately the appointment of counsel for Mr Kony and to complete all related formalities, in particular the required rights of access to the materials in the case.⁹

10. On 21 June 2024, following Mr Haynes’s acceptance of the mandate, as required by article 11 of the Code of Professional Conduct for counsel (“the Code”), the Registry formalised his appointment as counsel to represent the rights and interests of Mr Kony during the confirmation proceedings, and Mr Haynes executed the solemn undertakings as required under the Code.¹⁰

III. SUBMISSIONS

i. Request for a variation of timelines

11. Regulation 35(2) of the Regulations provides that a Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard.

12. According to the practice of the Court, the ‘good cause’ criterion is satisfied when there are ‘sound reasons’ which ‘would objectively provide justification for the inability of a party to

⁵ Second decision on the Prosecution’s request to hold a confirmation of charges hearing in the Kony case in the suspect’s absence, ICC-02/04-01/05-481, 4 March 2024, public, paras 12, 15.

⁶ Registry’s Report on the implementation of ‘Second decision on the Prosecution’s request to hold a confirmation of charges hearing in the Kony case in the suspect’s absence’ dated 4 March 2024 (ICC-02/04-01/05-481)”, ICC-02/04-01/05-488, 25 March 2024, public.

⁷ 2 May Decision, para. 26.

⁸ Registry’s Report on the implementation of “Decision on the Procedure for Appointing Counsel” dated 2 May 2024 (ICC-02/04-01/05-499), ICC-02/04-01/05-501, 14 June 2024, public.

⁹ Order to Appoint Counsel, ICC-02/04-01/05-502, 19 June 2024, public, para. 5.

¹⁰ Notification of the Appointment of Mr Peter Haynes KC as Counsel for Mr Joseph Kony, ICC-02/04-01/05-503, 24 June 2024, public, with confidential annex II and public annexes I, III and IV.

comply with his/her obligation'.¹¹ As a matter of good practice, requests for extension of time should be filed sufficiently in advance of the deadline.¹²

13. In the 2 May Decision, the Single Judge set three timelines for the newly appointed counsel for Mr Kony:¹³

“a. provide observations, if any, on the: (i) ‘Decision on the Prosecution’s request to hold a confirmation of charges hearing in the Kony case in the suspect’s absence’ (ICC-02/04-01/05-466); (ii) ‘Second decision on the Prosecution’s request to hold a confirmation of charges hearing in the Kony case in the suspect’s absence’ (ICC-02/04-01/05-481); and (iii) ‘Registry’s Report on the implementation of the “Second decision on the Prosecution’s request to hold a confirmation of charges hearing in the Kony case in the suspect’s absence” dated 4 March 2024 (ICC-02/04-01/05-481)’ (ICC-02/04-01/05-491), by no later than ten working days following his or her official appointment;

b. provide a response, if any, to the: (i) ‘Prosecution’s Observations on the conduct of the confirmation proceedings *in absentia* and Requests for the adoption of certain protocols and an *in situ* hearing in Uganda’ (ICC-02/04-01/05-490); and (ii) ‘Victims’ response to Prosecution’s requests for the adoption of certain protocols and an *in situ* hearing in Uganda (No. ICC-02/04-01/05-490)’ (ICC-02/04-01/05-494), by no later than twenty working days following his or her official appointment; and

c. provide a response, if any, to the: (i) ‘Victims’ Concerns on the Document Containing the Charges’ (ICC-02/04-01/05-480); (ii) ‘Prosecution Response to Victims’ Concerns on the Document Containing the Charges’ (ICC-02/04-01/05-482); (iii) ‘Application for recognition of the status of victims in the case of *The Prosecutor v. Joseph Kony* to the victims participating in the case of *The Prosecutor v. Dominic Ongwen* and matters related to the participation of victims in the proceedings’ (ICC-02/04-01/05-483); and (iv) any related submissions that may be filed in the meantime, by no later than thirty working days following his or her official appointment.”

14. As outlined above, Counsel has taken immediate steps to become operational. Basic operability is dependant, at least, on the assignment of a core Defence team including a case

¹¹ *Prosecutor v. Yekatom & Ngaïssona*, Pre-Trial Chamber II: Corrected version of ‘Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona’, [ICC-01/14-01/18-403-Red-Corr](#), 14 May 2020, para. 23 citing “Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Defence Request for Variation of the 30 September Deadline, 10 September 2019, ICC-02/04-01/15-1591; see also Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Reasons for the ‘Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007’ issued on 16 February 2007, 21 February 2007, ICC-01/04-01/06-834, paras 7, 9.”

¹² *Prosecutor v. Yekatom & Ngaïssona*, Pre-Trial Chamber II: Decision on the Prosecutor’s Request for an Extension of Time to Apply for the Non-Disclosure of Witness Identities, [ICC-01/14-01/18-168](#), 10 April 2019, para. 18.

¹³ 2 May 2024 Decision, para. 27.

manager, access to ICC systems including an ICC EPN email address, and access to the casefile, for which relevant confidentiality undertakings must be made and lodged. Despite Counsel's efforts, and despite the goodwill and efficiency of all personnel at the Court with whom Counsel has interacted, these tasks are administrative, and not instantaneous. They depend on the actions of many and varied personnel within the Court.

15. The process of appointing and assembling a Defence team, which can be done objectively quickly, is also dependent on the constraints of the legal aid budget, and the designation of the complexity of the case, which are details which must be agreed with the Counsel Support Section. Case managers and legal assistants must be available, travel to the ICC premises, and then must also gain the relevant access to the ICC systems. Without a core team, ICC EPN email address, and access to the ICC systems, Counsel is not able to start reviewing the material relevant to the submissions for which the deadlines are already running.

16. Defence access to some of the underlying material will also require the filing and adjudication of requests for reclassification. For example, the publicly available 'Decision on the Prosecution's request to hold a confirmation of charges hearing in the Kony case in the suspect's absence' of 23 November 2023, refers to a 'Registry Report on the measures to locate Joseph Kony' of 30 March 2023, which is classified as 'SECRET-Exp'.¹⁴ Reclassification of this report is an obvious starting point for the formulation of any Defence observations on this question.

17. Putting these administrative steps to one side, the 2 May Decision requires the Defence team, once assembled, to provide substantive observations on issues which are central to the confirmation process in this case, and which address issues which are novel before the ICC. As well as the core question of *in absentia* hearing, submissions are to be made on issues such as the victims' concerns on the Document Containing the Charges, and *in situ* hearings in Uganda, which will require research, careful thought, and likely engagement with third parties and other stakeholders. There is also the question of appearance, in proceedings which are novel and likely to receive significant scrutiny in terms of procedural fairness. The publicly available filings demonstrate that the process for appointment of Counsel took nearly four months. In this context, a limited extension of a 10-day deadline for newly-appointed Counsel to make submissions on the critical issue in the case is objectively reasonable.

¹⁴ Decision on the Prosecution's request to hold a confirmation of charges hearing in the Kony case in the suspect's absence, ICC-02/04-01/05-466, 23 November 2023, public, para. 8, citing Registry's Report on the measures to locate Joseph Kony, ICC-02/04-01/05-459- SECRET-Exp, 30 March 2023.

18. Considered together, these factors put the Defence in the position of being unable to comply with its obligations under the 2 May Decision. There are sound reasons which objectively justify the inability of the Defence to meet these deadlines, despite the Defence's shared desire for expeditious proceedings and the good faith efforts of all parties involved. On this basis, the Defence submits that good cause exists for a limited variation of the deadlines set in the 2 May Decision, and proposes that the deadlines start to run from 30 days of the Defence team becoming operational, or 15 August 2024, whichever date is the earliest. Counsel undertakes to inform the Single Judge immediately once the Defence team becomes operational, and able to prepare the submissions required.

ii. Request for a status conference

19. As part of the efficient conduct of the pre-confirmation proceedings, Counsel has had a productive meeting with the Prosecution Senior Trial Attorney, and is grateful for the opportunity to continue to engage *inter partes* and seek to resolve questions regarding disclosure, timetabling, and other administrative issues where possible. In addition, Counsel is of the view that these issues would further benefit from a status conference under Rule 121(2)(b) of the Rules, to allow the parties to provide the Single Judge with an overview of the current disclosure landscape and make proposals for the effective conduct of the pre-confirmation phase.

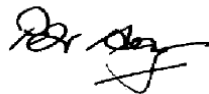
IV. RELIEF REQUESTED

20. For the reasons set out above, the Defence respectfully requests that the Single Judge:

GRANT the variation of time sought; and

CONVENE a status conference.

The whole respectfully submitted.



Peter Haynes KC
Counsel for Joseph Kony

The Hague, The Netherlands,

Friday, June 28, 2024