

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **3 July 2024**

**PRE-TRIAL CHAMBER III**

**Before: Judge Althea Violet Alexis-Windsor, Single Judge**

**SITUATION IN UGANDA**

***THE PROSECUTOR v. JOSEPH KONY***

**Public**

**Prosecution's response to "Defence Request for Variation of Deadlines and for a Status Conference"**

**Source: Office of the Prosecutor**

**Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**

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## I. INTRODUCTION

1. The Prosecution respectfully requests the Single Judge to partially grant the “Defence Request for Variation of Deadlines and for a Status Conference”<sup>1</sup> (“Request”), in so far as it concerns the Request for a Status Conference, which the Prosecution supports.

2. However, as a matter of law, the Request does not establish “good cause” for the extensions set by the Single Judge in its Decision on the Procedure for Appointing Counsel (“2 May 2024 Decision”),<sup>2</sup> as required by regulation 35(2) of the Regulations of the Court (“Regulations”). Granting the Request to vary the time limits *in full* would negatively impact on the fairness and expeditiousness of the proceedings. Much of the required responses can be carried out within the set time limits, especially concerning the responses to the mainly procedural filings. Nevertheless, the Prosecution does not oppose a limited extension of the time limits of an additional five working days, from the appointment of counsel.<sup>3</sup>

## II. SUBMISSIONS

### a. Request for a status conference

3. The Prosecution supports the Request for a status conference pursuant to rule 121(2)(b) of the Rules. The Prosecution would welcome the opportunity to engage with the Chamber, as well as the Parties and Participants in relation to its disclosure planning and to settle proposals for the effective conduct of the pre-confirmation hearing.<sup>4</sup> The Prosecution encourages this Status conference to be convened no later than 26 July 2024, prior to the summer recess.

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<sup>1</sup> ICC-02/04-01/05-504.

<sup>2</sup> ICC-02/04-01/05-499, para. 27.

<sup>3</sup> ICC-02/04-01/05-504, para. 13.

<sup>4</sup> See ICC-02/04-01/05-490, ICC-02/04-01/05-490-AnxA, where the Prosecution outlined its disclosure plan, requested protocols and an *in situ* hearing.

**b. Variation of the time limits**

4. Overall, the timelines set by the Single Judge, which are triggered from appointment of counsel on 21 June 2024, enable Defence Counsel for Mr Kony sufficient time to respond provided the orders to the Registry on making the materials listed in the 2 May 2024 Decision, as well as in the Order to Appoint Counsel<sup>5</sup> available immediately have been complied with. The variation proposed by Counsel to “30 days of the Defence team becoming *operational*, or 15 August 2024, whichever date is *earliest*,”<sup>6</sup> is by contrast tied to an unclear starting point, too extensive and not proportionate in the circumstances. Granting these would significantly delay the proceedings. It can be expected that appointed Defence counsel are operational within a short time frame after their appointment and that they receive the required support from the Registry. Counsel himself is referencing the goodwill and efficiency of all involved. Should information not be available to make appropriate submissions, Counsel should alert to this and submit the appropriate urgent requests, if necessary.

5. On the other hand, given that there seem administrative challenges on part of Counsel with achieving full operationality, the Prosecution finds that a limited extension of the deadlines set in paragraphs 27 a. and c. of the 2 May 2024 Decision, would be fair in the circumstances. However, the time limit for response as set out in paragraph 27 b. requires no extension.

6. The majority of the filings to which responses are required as set out in paragraph 27 b. of the 2 May 2024 Decision, are procedural and administrative.<sup>7</sup> To these a response is feasible and can be expected within the set deadline of 20 days after appointment of counsel. A response delivered in the near future is also paramount to the continuation of the proceedings in an efficient, fair and expeditious manner. The disclosure of evidence to counsel is crucial under article 61 of the Statute. Further,

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<sup>5</sup> ICC-02/04-01/05-502.

<sup>6</sup> ICC-02/04-01/05-504, para. 18.

<sup>7</sup> ICC-02/04-01/05-499, para. 27 (b).

without an order on disclosure by the Chamber, the Prosecution is unable to formally disclose to Counsel. Counsel will also have to receive adequate time to process the evidence. The Prosecution has made clear that it is preparing its disclosure in adherence with the legal framework of the Court, as well as recent practices before Pre-Trial Chamber II, including by referencing potentially exonerating information in its disclosure notes.<sup>8</sup> Furthermore, the protocols requested are all standard. They have been applied in the recent cases and form part of the Chamber's Practice Manual.<sup>9</sup>

7. With regard to the Prosecution's request for an *in situ* hearing, any fundamental concerns the Defence may have at this time can be raised in time for the deadline and be duly considered by the Chamber. Should the Chamber be minded to grant the Prosecution's request, this would in any event first trigger an assessment by the Registry,<sup>10</sup> which would then be made available to Parties and Participants for their response in any case, before a decision would be taken.

8. In relation to the deadlines set out in paragraph 27 a. and c. of the 2 May 2024 Decision, the Prosecution opposes the proposed extensive variation of the time limit. However, it concurs with the Defence in so far as a limited extension, of five additional working days, is warranted in the circumstances to factor in the significance of the decisions on the *in absentia* proceedings. The response to the decisions to hold the *in absentia* proceedings require full legal analysis on part of the Defence. However, the legal framework – while novel in application – is also limited to the requirements of article 61(2) of the Statute. The decisions are public and Counsel has gone through a recruitment process tailored to the *Kony* case. Office of Public Counsel for the Defence has also been granted standing to make submissions on the crucial aspects of these proceedings.<sup>11</sup> While a response to the concerns on the Document Containing the

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<sup>8</sup> ICC-02/04-01/05-490, paras. 12-13.

<sup>9</sup> ICC-02/04-01/05-490, paras. 26-29.

<sup>10</sup> ICC-02/04-01/05-490, para. 30.

<sup>11</sup> ICC-02/04-01/05-453.

Charges should also engage thorough legal analysis, this concerns a discrete charging issue.

9. Finally, the response time needed for the other filings encapsulated in paragraph 27 c. is mitigated by their mostly procedural nature, as they relate to the participation of victims, where the law and procedure are settled.<sup>12</sup> Thus, granting the Defence's request should be limited to an additional five working days, from the appointment of counsel and in addition to the original timeline for response.

### III. RELIEF SOUGHT

10. For the reasons set out above, the Prosecution respectfully requests the Chamber to:

- a. grant the request for a first status conference, to be convened no later than 26 July 2024;
- b. reject the request to vary the time limit of 20 days for response to the filings in paragraph 27 b. of the 2 May 2024 Decision; and
- c. partially grant the Request to vary the time limits to respond to the filings in paragraph 27 a. and c., limited to no more than an additional five working days, thus to 15 and 35 days respectively, from the date of appointment of counsel.



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**Karim A. A. Khan KC, Deputy Prosecutor**

Dated this 3<sup>rd</sup> day of July 2024  
At The Hague, The Netherlands

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<sup>12</sup> [Chamber Practice Manual](#), 7<sup>th</sup> edition, para. 96.