

Annex 2

Public

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(1) Email from Registry (CSS) to OPCV – Ms Massidda on 30 May 2024 at 15:23

Dear Counsel,

On 15 May 2024, the Single Judge of Pre-Trial Chamber III in the case of *The Prosecutor v. Joseph Kony* (“Kony case” or “Case”) instructed the Registry to collect information on victims’ preferences as to their legal representation and to submit a report by no later than Friday 28 June 2024.

Next week, the Registry will hold consultations with victims in the field to discuss their preferences for the legal representation in the *Kony* case. Given the deadline for the Registry to submit its report and the necessary time for analysis, we aim to conduct these consultations during the week of 3 June 2024.

In light of the overlapping charges between the *Kony* case and the case of *The Prosecutor v. Dominic Ongwen* (“Ongwen case”), and as the legal representative of the participating victims in the *Ongwen* case and of applicants in the Situation in the Republic of Uganda, the Registry anticipates that some of the victims coming forward may be participants in the Ongwen proceedings and as such represented by you or your colleagues. We shall ascertain this with the victims and advise them that they can also interact with the Registry through you regarding their preference for representation in the *Kony* proceedings.

To ensure timely preparation, in case you have any comments or guidance for Registry colleagues, we kindly ask for your submission **by tomorrow, Friday 31 May 2024** COB.

Thank you very much in advance for your cooperation.

Kind regards,
CSS

(2) Email from Registry (CSS) to Messrs Cox and Manoba on 30 May 2024 at 15:26

Dear Counsel,

On 15 May 2024, the Single Judge of Pre-Trial Chamber III in the case of *The Prosecutor v. Joseph Kony* (“Kony case” or “Case”) instructed the Registry to collect information on victims’ preferences as to their legal representation and to submit a report by no later than Friday 28 June 2024.

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In light of the overlapping charges between the *Kony* case and the case of *The Prosecutor v. Dominic Ongwen* (“Ongwen case”), and as the legal representative of the participating victims in the *Ongwen* case, the Registry anticipates that some of the victims coming forward may be participants in the *Ongwen* proceedings and as such represented by you or your colleagues. We shall ascertain this with the victims and advise them that they can also interact with the Registry through you regarding their preference for representation in the *Kony* proceedings.

To ensure timely preparation, in case you have any comments or guidance for Registry colleagues, we kindly ask for your submission **by tomorrow, Friday 31 May 2024** COB.

Thank you very much in advance for your cooperation.

Kind regards,

CSS

(3) Email from Registry (CSS) to Messrs Cox and Manoba on 30 May 2024 at 16:20

Dear Counsel,

On 15 May 2024, the Single Judge of Pre-Trial Chamber III in the case of *The Prosecutor v. Joseph Kony* (“Kony case” or “Case”) instructed the Registry to collect information on victims’ preferences as to their legal representation and to submit a report by no later than Friday 28 June 2024.

In light of the general premise of rule 90 of the Rules of Procedure and Evidence, victims have the right to choose their legal representative(s) for the proceedings. If the victims select different counsels and are unable to coordinate the common legal representation, the Chamber may request the Registry to organise such representation. The Registry’s recommendations to the Chamber must consider, among other things, the victims’ interests and avoid conflicts of interest.

As legal representatives of the participating victims in the case of *The Prosecutor v. Dominic Ongwen* (“Ongwen case”) who have expressed their interest to participate in the Kony case, we kindly request your input on the below questions. Your answers will help us in the preparation of our report on the legal representation of the victims in the Kony case.

We would appreciate to receive your input and observations on the below points:

1. Availability:

Given your current involvement in the *Ongwen case*, could you let us know (i) whether you would be willing to represent victims in the Kony case, and, if your answer is in the affirmative, (ii) whether you consider yourselves available to do so effectively and diligently, adhering to the Code of Professional Conduct for counsel?

2. Legal representation organisation:

Could you please outline the way that, according to you, the legal representation in the Kony case should be organised for an efficient, effective and meaningful representation of the victims in the present phase of the Case (e.g. structure and composition of the team, role and responsibilities within the team and factors to take into account)?

3. Willingness to work in a team:

Could you please clarify as well whether you would be willing to work collaboratively with OPCV and/or other external counsel, as the Chamber may decide, to ensure the legal representation of victims in the Case?

4. Additional remarks:

Please highlight any specific challenges or unique aspects related to this Case you wish to address. Do you foresee any potential conflicts of interest? Do you have other remarks to bring to the attention of the Registry and Chamber?

In order to analyse the answers and input provided, and considering the deadline set for the Registry to submit its report, we kindly request your timely response by **11 June 2024**.

Thank you very much in advance for your cooperation.

Kind regards,

CSS

(4) Email from Registry (CSS) to OPCV-Mses Massidda and Pellet on 30 May 2024 at 16:22

Dear Counsel,

On 15 May 2024, the Single Judge of Pre-Trial Chamber III in the case of *The Prosecutor v. Joseph Kony* (“Kony case” or “Case”) instructed the Registry to collect information on victims’ preferences as to their legal representation and to submit a report by no later than Friday 28 June 2024.

In light of the general premise of rule 90 of the Rules of Procedure and Evidence, victims have the right to choose their legal representative(s) for the proceedings. If the victims select different counsel and are unable to coordinate the common legal representation, the Chamber may request the Registry to organise such representation. The Registry’s recommendations to the Chamber must consider, among other things, the victims’ interests and avoid conflicts of interest.

As the legal representative of 41 victims accepted to participate in the Case, of the participating victims in the case of *The Prosecutor v. Dominic Ongwen* (“Ongwen case”), and of applicants in the Situation in the Republic of Uganda (“Uganda Situation”), we kindly invite you to provide your input on the below questions. Your answers will help us in the preparation of the Registry report on legal representation of the victims in the *Kony* case.

We would very much appreciate to receive your input and observations on the below points:

1. Availability:

Given your current involvement in the *Kony* case as well as in the *Ongwen* case and in the broader Uganda Situation, could you let us know what would be your (Office’s) availability in the *Kony* case to represent victims effectively and diligently, while adhering to the Code of Professional Conduct for Counsel?

Legal representation – internal organisation:

Could you please outline and motivate the way that, according to you, the legal representation in the *Kony* case should be organised for an efficient, effective and meaningful representation of the victims in the present phase of the Case (e.g. structure and composition of the team, role and responsibilities within the team and factors to take into account)?

3. Availability to work in a team with external counsel:

Could you please clarify as well whether you would be willing and able to work in the same team with external counsel, as the Chamber may decide, to ensure the legal representation of the victims in the Case?

Additional observations:

Please highlight any specific challenges or unique aspects related to this Case you wish to address. Do you foresee any potential conflicts of interest? Do you have other remarks to bring to the attention of the Registry and the Chamber?

In order to analyse the answers and input provided, and considering the deadline set for the Registry to submit its report, we kindly request your timely response **by 11 June 2024**.

Thank you very much in advance for your cooperation.

Kind regards,

CSS

(5) Email from OPCV-Mses Massidda and Pellet to Registry (CSS) on 30 May 2024 at 16:29

Dear All,

Thank you for your e-mail and information therein.

In relation to its content and the below reference to us as “*legal representative of applicants in the Situation in the Republic of Uganda*”, we wish to clarify that we are appointed to represent victims already authorised to participate the Kony case (see the “Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06” (Pre-Trial Chamber II), No. ICC-02/04-101 and No. ICC-02/04-01/05-252, 13 August 2007; the “Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06” (Pre-Trial Chamber II), No. ICC-02/04-125, 14 March 2008; the “Decision on legal representation of Victims a/0065/06, a/0066/06, a/0068/06, a/0088/06, a/0090/06 to a/0096/06, a/0098/06, a/0102/06, a/0103/06, a/0112/06, a/0115/06, a/0117/06, a/0118/06, a/0120/06 to a/0126/06, a/0076/07 to a/0078/07, a/0081/07, a/0082/07, a/0084/07, a/0085/07, a/0090/07 to a/0103/07, a/105/07 to a/0108/07, a/0112/07, a/0115/07, a/0117/07, a/0118/07 and a/0123/07”, No. ICC-02/04-176 (Pre-Trial Chamber II), 9 February 2009; the “Decision on legal representation of Victims a/0090/06, a/0098/06, a/0101/06 a/0112/06, a/0118/06, a/0119/06 and a/0122/06” (Pre-Trial Chamber II), No. ICC-02/04-01/05-267, 15 February 2008; and the “Decision on the admissibility of the case under article 19(1) of the Statute” (Pre-Trial Chamber II), No. ICC-02/04-01/05-377, 10 March 2009).

In relation to the consultation process, we would have appreciated to be informed earlier in order to be able to contribute meaningfully to the process. Without any information on how the process will be handled, e.g. by whom and in which locations, we are unable to provide any comments at this stage.

Kind regards,

Paolina Massidda and Sarah Pellet

(6) Email from Messrs Cox and Manoba to Registry (CSS) on 30 May 2024 at 17:13

Dear Counsel Support Section,

Thank you very much for the notification regarding the planned consultations by the Registry with the victims in the Kony Case regarding their preferences for representation.

The LRV team remains available to provide any assistance that may help facilitate the consultation process with the victims they represent, should this be needed.

Without further details regarding the scale of meetings and the planned consultation process, the LRVs submit that they have already provided the VPRS with a list of the intermediaries they work with for purposes of the mapping process, and these intermediaries may be helpful with facilitating the meeting process with the victims represented by the LRVs. The LRVs would be happy to assist the Registry with any aspects surrounding the coordination of the meetings and interactions with the intermediaries in question, should this be needed.

Best regards,

Joseph Manoba and Francisco Cox

Legal Representative for Victims
Prosecutor vs Dominic Ongwen

(7) Email from OPCV-Mses Massidda and Pellet to Registry (CSS) on 10 June 2024 at 16:24

Dear All,

Concerning your queries, please see our position therein.

As you know, we are both appointed legal representatives in the *Kony* case to represent the victims already authorised to participate. Ms Massidda is also the appointed common legal representative in the *Ongwen* case. Having knowledge of both cases and of the situation of the victims - with whom we interact regularly - we are available to continue the legal representation of victims in the case. In this regard, we have a proven record of providing quality legal representation to victims and of abiding to the highest professional and ethics standards.

Concerning the logistical aspects, the team for the case is already composed and includes an Assistant Field Counsel based in Gulu. Counsel have constant contact with the victims who are consulted on a regular basis and have undertaken missions in the field in the locations where the victims reside. During a recent mission in the field, the victims participating in the *Ongwen* case – who will also qualify for the *Kony* case - have indicated their wish to maintain their legal representation expressing their satisfaction for the way in which their lawyer has supported them in the proceedings. Moreover, during the mission we just concluded at the beginning of June 2024, the victims represented in the *Kony* case have expressed their wish to continue being represented by the appointed Counsel. Moreover, in the past months, a number of potential victims have contacted Counsel indicating their willingness to participate in the case and to be represented by them. For some of said potential victims, Counsel – in accordance with the Office’s role of assisting and supporting victims - have facilitated the process of completing application forms which have already been transmitted to the Registry (VPRS) or will be transmitted in the near future.

Counsel posit that the following factors militate for the continuation of the current appointment: 1) the wish of the victims in terms of legal representation as summarised *supra*; 2) the fact that Counsel are fully acquainted with the case and the ICC proceedings; 3) their knowledge of the country and of the specific situation of the victims they represent, of the applicants and of potential victims as well; 4) the fact that Counsel represent a large majority of dual status individuals and have established a good working relationship with the Prosecution for the handling of the situation of each of them; 5) the fact that Counsel also represent a high number of potential victims who applied already to participate in the proceedings; 6) the existence of a structured team which can grant effective and efficient legal representation and the handling of a potential high number of participating victims; 7) the presence of a Field Assistant based close to where the victims reside and speaking the local languages (Acholi and Lango); 8) the fact that the engagement in the proceedings will be necessarily limited because Mr Kony remains at large; and 9) the fact that the Court will not incur in additional costs since the resources needed for the confirmation of charges phase will be absorbed by the regular OPCV budget.

Concerning the availability to work in a team with external lawyer(s), Counsel are of the opinion that this query is premature in the absence of any indication to this effect by the relevant Chamber. Should this option be considered by the Chamber, Counsel will provide their position in due course.

Best regards,

Paolina Massidda and Sarah Pellet

(8) Email from Messrs Cox and Manoba to Registry (CSS) on 11 June 2024 at 17:45

Dear Counsel Support Section,

Please find attached the LRVs responses (revised) to the questions submitted concerning their proposed representation of victims in the Kony confirmation proceedings.

Thank you very much for your kind consideration of the same.

Best regards,

On behalf of,

Joseph Manoba and Francisco Cox

Legal Representatives for Victims

Prosecutor vs Dominic Ongwen

Attachment

OBSERVATIONS ON CSS QUESTIONNAIRE

1. Availability:

(i) *Whether you would be willing to represent victims in the Kony case?*

In the Ongwen case we are jointly instructed to represent victims. Considering that our clients are potentially eligible to participate in the Kony case, we are both willing to represent them and other victims in the said case. Moreover, the vast majority of the victims already participating through the LRVs in the Ongwen case have expressed interest to continue their participation in the Kony confirmation proceedings.

(ii) *Whether you consider yourselves available to do so effectively and diligently, adhering to the Code of Professional Conduct for counsel?*

We are both available and additionally undertake to effectively and diligently adhere to the said code of professional conduct. The LRVs understand that the process of representation of the victims in the Kony Case would have specific time demands. But given the mirror similarities of the crimes charged in both the Ongwen and Kony cases, the LRVs familiarity with the majority of the

facts of the case and the longstanding relationship between counsel and the victims, the LRVs consider that the time demands can be easily mitigated and they would be more than capable of balancing their obligations in the representation of victim in both cases.

The LRVs, in their engagements with the victims they represent in the Ongwen case, have already engaged the victims in discussions about the publicly available information on the Kony case. These engagements have had little to no impact on the other necessary engagements with the victims in the Ongwen case, precisely because of the aforementioned advantages of a working knowledge of the facts surrounding the cases in question and the ongoing relationship between the LRVs and the victims.

2. Legal representation organisation:

Could you please outline the way that, according to you, the legal representation in the Kony case should be organised for an efficient, effective and meaningful representation of the victims in the present phase of the Case (e.g. structure and composition of the team, role and responsibilities within the team and factors to take into account)?

As we understand from the Document Containing Charges, Joseph Kony, is accused of being responsible for the attacks on Lwala Girls School, Pajule IDP Camp, Abia IDP Camp, Barlonyo IDP Camp, Odek IDP Camp, Pagak IDP Camp, Lukodi IDP Camp, Abok IDP Camp, with an estimated total population of approximately between 80,000 to 150,000 residents and potential victims.

Given the limited scope of the Kony confirmation hearings, the relatively short duration between the commencement and conclusion of the hearings, and the reality that the conclusion of the hearings will not materialize into a criminal trial in the absence of the accused, effective legal representation will require an ability to swiftly consult and engage with the victims on the case as well a capacity to rapidly come to terms with the facts and evidence to be introduced in the proceedings. Considering the aforementioned factors, effective and meaningful representation of victims would be greatly assisted by: -

- i. A pre-existing relationship between the counsel and victims: Continued representation of victims from Ongwen charged locations (which are part of the Kony charged locations) would allow counsel to build on the experiences to engage with other victims from the charged locations. Moreover, such a relationship with victims from these locations and familiarity with their circumstances would go a great way to ensuring that any potential conflicts or

concerns that may arise during the Kony proceedings can be swiftly identified and addressed.

- ii. A familiarity with the Legal, Procedural, Administrative processes and Victims' Realities: Considering relatively short timelines around the commencement and conclusion of the confirmation process, any legal team would need to quickly come to terms with the legal, practical and administrative processes that would be essential for the effective implementation of their mandate at the Court. Previous experience at the Court or in similar international criminal tribunals would be a great asset as it would reduce the need to engage in time sensitive orientation to the internal workings of the institution from a legal and logistical perspective.

Similarly, familiarity with victims' realities and established contacts with intermediaries in the communities would ensure that confidentiality of court processes and victims' identities are well preserved. The LRVs are confident that the contacts in the Ongwen case could also potentially be helpful for establishing reliable contacts from the other locations charged in the Kony case given that within the victims' communities, there have previously been some *ad hoc* victims leadership structures.

a) Structure of the Team:

The LRVs see no need to change the composition of the team as it is currently constituted in the Ongwen case. However, the LRVs note that they will re-strategize to ensure full commitment in the Kony case at the crucial phases of the case.

b) Composition and Team Roles:

In this regard, the team composition would be as follows: -

- Counsel - 2
- Legal Assistants - 1
- Case Manager - 1
- Field Assistants - 2

The roles and responsibilities from an administrative position would require complementary teamwork as each role feeds into the other. Counsel however will retain overall oversight of the victims' representation.

- i. Given that Counsel will often appear in the Court room for the hearings, it is instructive that they must provide directions at all levels including in the drafting of submissions; making oral representations to the Chamber; conduct of field engagements with victims and other engagements with parties and other participants.
- ii. The Legal Assistant will be responsible for supporting and assisting counsel in all aspects of conceptualisation, drafting, court room advocacy and where necessary in field activities.
- iii. The Case Manager is at the heart of the proper functioning of the LRV team and therefore will perform all Court based functions including coordinating team activities. As necessary, the Case Manager may compliment Counsel activities in the field.
- iv. Field Assistants like the Case Manager are responsible for the proper functioning of field-based activities. Their legal training informs the simplicity with which victims will be able to actively engage with the LRVs given their additional knowledge and experiences of working with and in communities.

3. Willingness to work in a team:

Could you please clarify as well whether you would be willing to work collaboratively with OPCV and/or other external counsel, as the Chamber may decide, to ensure the legal representation of victims in the Case?

The LRV team has during the proceedings in the Dominic Ongwen case collaborated well with the OPCV severally including having joint meetings and filings when it was critical for such collaboration.

The LRVs therefore are willing to collaborate with the OPCV and any other appointed external team for the effective and meaningful participation of victims in the Kony case.

4. Additional remarks:

- i. Please highlight any specific challenges or unique aspects related to this Case you wish to address.***

The LRVs would like to impress on all parties in the Kony proceedings to be clear in all their public communications and engagements with victims and/or

witnesses, on of the prospects of the outcome of these proceedings, given that fact that Kony is still at large and it may be a while before he brought before the court to answerer to any charges confirmed. And while the charges parallel those in the Ongwen case in most respects, the proceedings in question do not portent the same outcomes as in the Ongwen case without a full trial, and with the accused in attendance.

The LRVs underscore the potential overwhelming numbers of victims in the Kony case and given that a number of victims in the charged locations will be encountering the ICC activities for the first time and perhaps sharing experiences of victimisation for the first time, it is instructive that LRVs be supported to work with psychologists to mitigate any likely issues related to PTSD and other forms of mental health diseases which have been rampant lately in the Ongwen participating victims.

We have previously notified the VPRS that owing to the special Victims / Counsel relationship in the Ongwen case on the one hand and the absence of any conflict of interest on our part in the Kony case, the Office of the Prosecutor has as part of its preparations for the Kony confirmation hearing, already made contact with us regarding some of the dual status individuals under our representation in the Ongwen case and we have assisted the office to make contact with the individuals in issue.

We think that it is crucial that for the sake of the victims already under our representation, any arrangements on legal representation should therefore take this into consideration. The reasoning behind this is that some of these individuals are nursing mental health issues and find it easy to consult with the LRV team for support; or some have moved to other locations where only the LRV team members know how to access them; or some are suffering chronic ailments and the LRVs have developed mechanisms for ensuring they are notified on developments in the proceedings.

The LRVs believe that engagements with victims from the charged locations in the Kony case need to be engaged as early possible given that no contact may have been made with them about their participation in proceedings. These engagements would inform advance planning for field missions ahead of the confirmation of charges hearing.

Moreover, the LRVs note that there may have been victims' applications that were submitted at the commencement of the proceedings in the Ongwen case which may have failed to meet the threshold of the temporal or geographic scope of those proceedings for the victims to be permitted to participate. However, some of those applications may now fall within the threshold of the scope of the case for the Kony confirmation proceedings. The LRVs would

kindly request that the VPRS review those past applications to ascertain the eligibility of the victims in question for participation in the Kony confirmation proceedings.

ii. Do you foresee any potential conflicts of interest?

The LRVs do not anticipate any potential conflicts of interest in the Kony case, given the LRVs will be looking to represent the same victims and other victims as the Chamber may determine but principally the interests of victims based on the charges preferred by the Office of the Prosecutor.

iii. Do you have other remarks to bring to the attention of the Registry and Chamber?

The LRVs note that the in absentia confirmation hearings may provide a critical and much needed avenue for victims to share with the Court and the international community their views on the suspect, the crimes in question and the effect and impact that they have had not just on their individual lives, but on the fabric that had held together the affected communities and the prospects of the Teso/Kumam, Lango and Acholi people as a whole.

And in spite the limited nature of the proceedings, the victims the LRVs represent eagerly desire the opportunity to participate in the proceedings against Kony, who they perceive as the person most responsible for the crimes committed in northern Uganda in his capacity as the leader of the LRA. Furthermore, the victims are aware that this may be their only opportunity to do so before the Court or any other criminal tribunal.

(9) Email from Registry (CSS) to OPCV – Ms Massidda on 19 June 2024 at 13:10

Dear Paolina and Sarah,

In relation to your email below, we note that “the [OPCV] team for the case is already composed”.

As you are aware, the Registry needs to provide observations on the matter of legal representation of victims in the *Kony* case to the Chamber. As part of the recommendations from external auditors, the Registry “as a standard item in its reports on legal representation of LRV to Chambers, [is recommended to] provide relevant options alongside their financial implications for the Court’s budget as far as these can be calculated.”

For this purpose, we would appreciate if it would be possible for you to kindly provide further details on the internal organisation of the legal representation, including the composition of the team and resources that are planned to be allocated, in terms of the number of persons, and whether they would work on the case full-time or part-time.

We would appreciate if you could provide this information, if possible, by COB tomorrow, 20 June.

Thank you for your cooperation in this matter.

Best,

[CSS]

(10) Email from OPCV-Mses Massidda and Pellet to Registry (CSS) on 20 June 2024 at 10:32

Dear [CSS]

We are aware of the external auditors recommendations and this is the reason why we indicated in our previous correspondence below that *“the Court will not incur in additional costs since the resources needed for the confirmation of charges phase will be absorbed by the regular OPCV budget”*.

As you now, staff of the Office is assigned simultaneously to more than one case/situation at the same time. Therefore, providing details of the internal organisation of the legal representation will not offer reliable and correct data for an eventual calculation by the Registry.

Consequently, our approach was to indicate clearly that no additional resources are needed for the Office to continue to carry out its legal representation in the *Kony* case. Accordingly, we are of the opinion that the Registry can simply indicate that there will be no budgetary impact if the Office remains appointed.

Kind regards,

Paolina and Sarah