

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/04-01/05
Date: 10 November 2008

THE PRESIDENCY

Before: Judge Philippe Kirsch, President
Judge Akua Kuenyehia, First Vice-President
Judge René Blattmann, Second Vice-President

**SITUATION IN UGANDA
IN THE CASE OF
THE PROSECUTOR
*v. JOSEPH KONY, VINCENT OTTI, OKOT ODHIAMBO AND DOMINIC
ONGWEN***

**Confidential
Ex parte only available to the Registry**

Observations of the Registrar in accordance with the Presidency's "Order concerning the Application of Mr. Jens Dieckmann of 28 October 2008 for judicial review of the decision of the Pre-Trial Chamber II of 21 October 2008 and the conditional stay/suspension of the proceedings" dated 7 November 2008

Source: Registrar

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

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Mr Esteban Peralta Losilla

Deputy Registrar

Mr Didier D. Preira

THE REGISTRAR of the International Criminal Court (the "Court"), in conformity with the order of the Presidency dated 7 November 2008,¹ is pleased to provide the following observations.

I. BACKGROUND OF RELEVANT PROCEEDINGS

1. On 21 October 2008, Pre-Trial Chamber II, seized of the case of the *Prosecutor v. Joseph Kony et al.*,² delivered a decision initiating proceedings on its own motion under Article 19.1 of the Statute on the admissibility of the case, and pursuant to Regulation 76(1) of the *Regulations of the Court* ordered the Registrar to appoint Mr. Jens Dieckmann (the "Applicant"), a member of the Court's List of Counsel, as 'counsel for the Defence' "within the context and for the purposes of the present proceedings" ("Chamber's Appointment");
2. On the same date, by a letter referenced DSS/2008/271, annexed to the present observations, the Registrar executed the order included in the aforementioned decision confirming the Applicant's appointment as "counsel for the defence within the context and for the purposes of the proceedings on the admissibility of the case, pursuant to Article 19 (1) of the Rome Statute", and informed him of a series of administrative matters arising from the appointment;
3. On 28 October 2008, the Applicant filed his "[r]equest for review of Counsel's appointment by the Registrar in accordance with Pre Trial Chamber's Decision of 21 October 2008 and request for conditional stay/suspension of the proceedings" before the Presidency;
4. On 7 November 2008, the Presidency ordered the Registrar to "describe the consultative role played by [her] in the instant appointment, in accordance with

¹ *Prosecutor v. Kony et al.*, Case No. ICC-02/04-01/05-337, "Order concerning the Application of Mr. Jens Dieckmann of 28 October 2008 for judicial review of the decision of Pre-Trial Chamber II of 21 October 2008 and the conditional stay/suspension of the proceedings" dated 7 November 2008.

² *Prosecutor v. Kony et al.*, Case No. ICC-02/04-01/05-320, "Decision initiating proceedings under article 19, requesting observations and appointing counsel for the Defence" dated 21 October 2008.

regulation 76(1) of the Regulations of the Court, by 4 pm, on 10 November 2008.”³

II. THE “CONSULTATION” ENVISAGED IN REG. 76(1) OF THE REGULATIONS OF THE COURT APPLIED IN THE PRESENT CASE

5. The Registrar submits that on or about late summer 2008, the Chief of the Defence Support Section of the Registry was called to a meeting in the office of the President of Pre-Trial Chamber II in order to instruct the former regarding the eventual appointment of a “counsel for the defence, entrusted with representing and protecting the interests of the Defence within the context and for the purposes of the proceedings on the Applications for participation in the Situation and in the case, pursuant to rule 89 of the Rules”;⁴
6. In this context, the President of Pre-Trial Chamber II requested the Chief of the Defence Support Section to furnish a list of counsel qualified to intervene before the Court, who meet the following criteria:
 - a. English speaking,
 - b. Trained and licensed in the civil law tradition, and
 - c. Experienced in international criminal proceedings.
7. In compliance with the Chamber’s direction and attending to the criterion of seniority on the list, the Registry generated a short-list of suitable candidates from the Court’s List of Counsel, fulfilling the criteria stipulated, and communicated this short-list along with the full dossiers of the selected candidates to the Chamber.⁵

³ *Ibid.*

⁴ On 17 September 2008, the Pre-Trial Chamber II appointed Mr. Michiel Pestman as counsel for the defence for this purpose: see *Prosecutor v. Kony et al.*, Case No. ICC-02/04-01/05-312, “Decision on legal representation, appointment of counsel for the defence, criteria for redactions of applications for participation, and submission of observations on applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07” 17 September 2008.

⁵ Based on this short-list and dossiers provided that the Pre-Trial Chamber appointed Mr. Michiel Pestman on 17 September 2008. See *Ibid.*

Due to the size of the relevant files, the communication of all dossiers was made through the use of a USB disk;

8. The Registrar underlines that the name and dossier of the Applicant was amongst the eligible counsel who had met the requirements set by the Pre-Trial Chamber II and whose dossiers were communicated to the Pre-Trial Chamber;
9. The Registrar submits that apart from the consultation outlined above, no other consultations of substance took place between the Registry and the Pre-Trial Chamber II thereafter in the Uganda Situation or associated cases, including as it concerns the specific appointment of the Applicant prior to the issuance of the Chamber's Appointment;
10. The Registrar notes, however, that a series of phone calls were made by the Associate Legal Officer assisting the President of Pre-Trial Chamber II to the Chief of the Defence Support Section on 20 October 2008, giving the latter instructions to check the availability of counsel who will be in a position to accept an appointment in the framework of the Situation; the first counsel contacted expressed scheduling difficulties, instructions were then provided by the Chamber to check the Applicant's availability, the latter confirmed his availability. All pertinent communications took place *viva voce* over the phone;
11. The Registrar respectfully submits that the Registry's role in the appointment of counsel by Chamber carried out pursuant to Regulation 76 of the Regulations of the Court, beyond the consultative capacity, is one of facilitator and administrator. The power to appoint counsel under Regulation 76 of the Regulations of the Court belongs solely to the Chamber with the Registry simply administratively providing the Chamber with a short-list of counsel meeting the requirements identified by the Chamber and executing the order issued, or the appointment performed, by the latter;
12. The Registrar remains at the disposal of the Presidency should further elaborations be required.

Pursuant to Pre-Trial Chamber III Single Judge's order dated 01 November 2024, this document has been reclassified as "Public"

Done in both English and French, the English version being authoritative.



For the Registrar

Didier Preira

Deputy Registrar

Dated this 10 November 2008

At The Hague, The Netherlands