

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



Original: **English**

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

Date: **14 June 2024**

**PRE-TRIAL CHAMBER III**

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

**SITUATION IN UGANDA**

**IN THE CASE OF  
*THE PROSECUTOR v. JOSEPH KONY***

**Public**

**With Public Annex I and Confidential *EX PARTE* Annex II, only available to the  
Registry**

**Registry's Report on the implementation of "Decision on the Procedure for  
Appointing Counsel" dated 2 May 2024 (ICC-02/04-01/05-499)**

**Source: The Registry**

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

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**Legal Representatives of the Applicants**

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**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Osvaldo Zavala Giler

**Counsel Support Section**

Mr Juan A. Escudero

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. Introduction

1. Pursuant to Pre-Trial Chamber III's "Decision on the Procedure for Appointing Counsel" ("Decision on the Procedure"),<sup>1</sup> the Registry hereby submits its report on the implementation of the procedure to select counsel who will represent the interests of Mr Joseph Kony ("Mr Kony") in *in absentia* confirmation proceedings.

## II. Procedural history

2. On 4 March 2024, Pre-Trial Chamber II instructed the Registry "to commence the process of selection of counsel to represent the rights and interests of Mr Kony during the confirmation process and the confirmation hearing, should this take place in Mr Kony's absence".<sup>2</sup>

3. On 25 March 2024, the Registry submitted its report to Pre-Trial Chamber III ("Chamber"), in which it proposed the process on the selection of counsel for Mr Kony for approval ("Registry Report").<sup>3</sup> In particular, the Registry proposed that the panel conducting the selection process "reaches the agreement regarding recommendations on the most qualified candidates, taking into account gender and geographical representation, and prepares a confidential report which sets out these recommendations"<sup>4</sup> for the Chamber to appoint counsel for Mr Kony.

4. On 2 May 2024, the Chamber "[authorised] the Registry to implement the procedure as described in the Registry Report within, at the most, six weeks from the date of the present decision."<sup>5</sup>

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<sup>1</sup> Pre-Trial Chamber III, "Decision on the Procedure for Appointing Counsel", 2 May 2024, ICC-02/04-01/05-499 ("Decision on the Procedure"), para. 26.

<sup>2</sup> Pre-Trial Chamber II, "Second decision on the Prosecution's request to hold a confirmation of charges hearing in the *Kony* case in the suspect's absence", 4 March 2024, ICC-02/04-01/05-481, para. 15.

<sup>3</sup> Registry, "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)", 25 March 2024, ICC-02/04-01/05-488 ("Registry Report"), paras. 19-20.

<sup>4</sup> Registry Report, para. 19.

<sup>5</sup> Decision on the Procedure, para. 26.

### III. Classification

5. In accordance with regulation 23 *bis*(2) of the Regulations of the Court (“RoC”), Annex II to the present submissions is classified as confidential *ex parte*, only available to the Registry, in order to preserve the anonymity of the candidates for the position of counsel for Mr Kony as well as the details of the Panel’s assessment results.

### IV. Applicable Law

6. The following provisions are of particular relevance to the present submissions: articles 61(1), 67(1)(d) of the Rome Statute (“Statute”), rules 20 and 22 of the Rules of Procedure and Evidence (“Rules”), regulations 73, 74 and 76 of the RoC, regulation 119 of the Regulations of the Registry (“RoR”) and paragraph 105 and Annex III of the Legal aid policy of the International Criminal Court (“Legal Aid Policy”).<sup>6</sup>

### V. Submissions

7. On 6 May 2024, following the Decision on the Procedure, the Registry published a call for expression of interest (“EOI”) for counsel for Mr Kony,<sup>7</sup> specifying the selection criteria,<sup>8</sup> on the Court’s various platforms, including the website and other social media platforms.<sup>9</sup> The EOI was also published on the website of the ICC Bar Association (“ICCBA”), and circulated to the membership of the International Bar Association and shared on their social media platform. The EOI was also

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<sup>6</sup> Legal aid policy of the International Criminal Court, ICC-ASP/22/9, 22 November 2023 (“Legal Aid Policy”).

<sup>7</sup> Annex I, “Call for Expression of Interest – Counsel for Mr Joseph Kony in the case *The Prosecutor v. Joseph Kony*”.

<sup>8</sup> See Section VI of the EIO: 1) possession of relevant expertise and experience in criminal trials and experience managing complex criminal cases; 2) active registration with the relevant controlling administrative authority (e.g. Bar association) confirming the right to practice; 3) experience before international tribunals, or in complex and large criminal cases or cases involving international crimes; 4) immediate and full-time availability as well as readiness to commit a significant amount of time to follow developments in the Court’s proceedings, to take any appropriate steps in the proceedings, and to maintain adequate contact with the Court; 5) a minimum level of knowledge in information technology; and 6) absence of impediments to representation and conflict of interests as required under articles 12 and 16 of the Code.

<sup>9</sup> Court’s X/Twitter, Facebook, and LinkedIn accounts.

communicated to the Uganda Law Society for further circulation among its members. The deadline for applications was set to 16 May 2024.

8. On 8 May 2024, a selection panel, which was composed of the Director of the Division of Judicial Services, the Head of the New York Liaison Office of the Court, the Chief of the Counsel Support Section and the President of the ICCBA (“Panel”), held its first meeting to agree on practicalities of the selection procedure and establish the timeline to ensure that the process was completed within, at the most, six weeks from the date of the Decision on the Procedure. It was agreed that a Staff Member from the Counsel Support Section would assist the Panel in its work. The Panel members confirmed that they had no conflict of interest preventing them from participating in this process, that they had taken the ICC Human Resources Section training on unconscious bias, as well as understood and agreed to be bound by strict confidentiality regarding the work of the Panel. Furthermore, in terms of procedure, to ensure the expeditiousness of the selection process, the Panel members agreed to shortlist a maximum of ten candidates from the list of applicants, taking into account geographic representation and gender balance, who would be requested to provide written answers to a set of questions (“Questionnaire”). The Panel also agreed that, upon assessment of the completed questionnaires, it would shortlist up to 6 candidates for the interviews. Finally, the Panel agreed that for the recommendation to the Chamber the weight to be given to the questionnaires and interviews would be 30% and 70% respectively.

9. By the deadline on 16 May 2024, the Registry had received 72 applications. One application was received after the deadline and was not considered by the Panel. An initial review of these applications was carried out by the Counsel Support Section to preliminarily assess whether the candidates met the selection criteria as specified in the EOI.<sup>10</sup> This preliminary review was then provided to the Panel for its final assessment and selection of the ten shortlisted candidates.

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<sup>10</sup> See footnote 7.

10. On 27 May 2024, the Panel met to decide on the list of ten candidates who would be invited to complete the questionnaire. During this meeting, the Panel members exchanged views regarding ongoing discussions among States Parties regarding recruitment of staff from non-States Parties given the fact that legal aid resources would be provided for the purpose of the present proceedings, as well as the potential impact of future sanctions on the work of the appointed Counsel (e.g., potential delays in judicial proceedings and associated costs for the Court). However, the Panel agreed not to exclude any potential qualified candidate at that stage based only on those considerations. The Panel agreed on a shortlist reflecting a selection of the most qualified applicants on the basis of the selection criteria as specified in the EOI, taking also into account gender balance and geographical representation considerations. The Panel members also confirmed that they did not have a conflict of interest with any of the identified candidates.

11. On the same day, the shortlisted candidates were informed and invited to complete a questionnaire including five questions. The Panel requested the candidates to provide answers without including any information that would allow to identify them and submit their responses to the support staff member of the Panel by 23:59 (The Hague time) on 29 May 2024.

12. Upon receipt of the questionnaires, the support staff member of the Panel anonymised the questionnaires so that the candidates could not be identified and circulated them to the Panel for assessment. After completing their assessment, each Panel member sent the results to the support staff assisting the Panel, who then compiled the final results.

13. On 3 June 2024, the Panel met to discuss the results of the assessment of the questionnaires and decided as well on the questions for the interviews, which were scheduled on 4, 6 and 7 June 2024. Following this meeting, six candidates that had the highest score on the questionnaire assessment were invited to participate in the interviews.

14. During the interviews, one candidate withdrew from the process for personal reasons. After concluding the interviews, on 7 June 2024, the Panel members agreed to submit the results to the support staff member of the Panel for the final compilation.

15. On 11 June 2024, the Panel discussed the results of the interviews and reached an agreement regarding the three suitable candidates and recommended that the candidate having obtained the highest scores be appointed by the Chamber to represent Mr Kony at the confirmation of charges proceedings.<sup>11</sup>

## VI. Recommendation

16. As a result of the selection process as outlined above, the Registry submits its recommendation for Counsel for Mr Kony contained in Annex II.

  

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Marc Dubuisson, Director, Division of Judicial Services  
on behalf of Osvaldo Zavala Giler, Registrar

Dated this 14 June 2024

At The Hague, The Netherlands

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<sup>11</sup> Annex II.