



Original: English

No. ICC-02/04-01/05

Date: 5 July 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

Decision on the ‘Defence Request for Variation of Deadlines and for a Status Conference’

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

The Office of the Prosecutor

Mr Karim Khan
Mr Mame Mandiaye Niang
Ms Leonie von Braun

Counsel for Mr Kony

Mr Peter Haynes

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

**The Office of Public Counsel
for Victims**

Ms Paolina Massidda
Ms Sarah Pellet

**The Office of Public Counsel
for the Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Other

JUDGE ALTHEA VIOLET ALEXIS-WINDSOR, acting as Single Judge on behalf of Pre-Trial Chamber III of the International Criminal Court (the ‘ICC’ or ‘Court’),¹ issues this ‘Decision on the “Defence Request for Variation of Deadlines and for a Status Conference”’, pursuant to rule 121(2)(b) of the Rules of Procedure and Evidence (the ‘Rules’) and regulation 35(2) of the Regulations of the Court (the ‘Regulations’).

I. PROCEDURAL HISTORY

1. On 4 March 2024, Pre-Trial Chamber II, *inter alia*, instructed the Registry to commence the process of selecting counsel for Joseph Kony (‘Mr Kony’).²
2. On 2 May 2024, the Single Judge, *inter alia*, authorised the Registry to implement its proposed procedure for selecting counsel, and ordered counsel for Mr Kony, once appointed, to make observations on three different sets of issues in a staggered manner every 10 working days upon his/her appointment (the ‘2 May 2024 Decision’).³
3. On 19 June 2024, following a report from the Registry providing a recommendation for counsel for Mr Kony,⁴ the Chamber instructed the Registry to immediately finalise 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.⁵
4. On 21 June 2024, Mr Peter Haynes was appointed as counsel for Mr Kony (the ‘Defence’).⁶
5. On 28 June 2024, the Defence submitted the ‘Defence Request for Variation of Deadlines and for a Status Conference’ (the ‘Request’).⁷

¹ [Decision on the designation of a Single Judge](#), 15 March 2024, ICC-02/04-01/05-487, public.

² [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, public, paras 12, 15.

³ [Decision on the Procedure for Appointing Counsel](#), ICC-02/04-01/05-499, public, para. 27.

⁴ [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, public, together with Annex I, public, and Annex II, confidential and ex parte, only available to the Registry.

⁵ [Order to Appoint Counsel](#), ICC-02/04-01/05-502, public.

⁶ [Notification of the Appointment of Mr Peter Haynes KC as Counsel for Mr Joseph Kony](#), 24 June 2024, ICC-02/04-01/05-503, public, with confidential annex II and public annexes I, III and IV.

⁷ [ICC-02/04-01/05-504](#), public.

6. On 3 July 2024, following an order of the Single Judge,⁸ the Prosecution⁹ and the Office of the Public Counsel for Victims (the ‘OPCV’)¹⁰ responded to the Request.

II. SUBMISSIONS

7. The Defence submits that there exists good cause pursuant to regulation 35(2) of the Regulations for a limited variation of the deadlines set in the 2 May 2024 Decision. The Defence further submits that it is unable to comply with the deadlines because: (i) its capacity to start reviewing material relevant to the submissions for which the deadlines are already running is dependent on the administrative steps of assigning a core Defence team, accessing ICC systems and the casefile, which are not instantaneous and reliant on the actions of varied personnel within the Court; (ii) its access to some of the underlying material will require the filing and adjudication of requests for reclassification; and (iii) the 2 May 2024 Decision requires the Defence to provide substantive observations on issues that are central to the confirmation process and novel before the ICC, and which will, therefore, require research, careful thought, and likely engagement with third parties and other stakeholders. Moreover, the Defence argues that a limited extension of the deadline is objectively reasonable considering that the appointment of counsel took nearly four months and that these novel proceedings are likely to receive significant scrutiny in terms of procedural fairness. Consequently, the Defence 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.

8. Furthermore, the Defence requests that the Chamber convene a status conference under rule 121(2)(b) of the Rules to allow the parties to provide an overview of the current disclosure landscape and make proposals for the effective conduct of the pre-confirmation phase.

9. Regarding the request to extend the time limits, the Prosecution, in its response, submits that the Request does not establish good cause for the extension of the time

⁸ Email from Single Judge to the Prosecution and the Office of the Public Counsel for Victims, 2 July 2024, at 10:46.

⁹ [Prosecution’s response to “Defence Request for Variation of Deadlines and for a Status Conference”](#), ICC-02/04-01/05-506, public.

¹⁰ [Victims’ Response to “Defence request for variation of the Deadlines and for Status Conference” \(ICC-02/04-01/05-504\)](#), ICC-02/04-01/05-507, public.

limits set in the 2 May 2024 Decision. However, the Prosecution asserts, that given the administrative challenges that the Defence seems to face, a limited extension of five days of the time limits set with regards to paragraphs 27 a. and c. of the 2 May 2024 Decision would be fair in the circumstances while the time limit in paragraph 27 b. need not be extended. Furthermore, the Prosecution supports the request for a status conference and encourages it to be convened no later than 26 July 2024, prior to the summer recess.

10. The OPCV, in its response, does not oppose a limited extension of 8 days to the relevant deadlines set in paragraph 27 a. and b. of the 2 May 2024 Decision as responses to certain submissions are central to the confirmation process and shall be filed to enable the Chamber to rule expeditiously. The OPCV, however, opposes the extension of the time limits set in paragraph 27 c. of the of the 2 May 2024 Decision for observations on victim-related matters so that the Chamber can rule on the process for victims' participation as soon as possible. In addition, the OPCV does not oppose the request to convene a status conference and leaves the matter to the discretion of the Chamber.

III. DETERMINATION

11. The Single Judge recalls her duty pursuant to rule 101 of the Rules to facilitate fair and expeditious proceedings, bearing in mind in particular the rights of the defence and the victims. Pursuant to regulation 35(2) of the Regulations, the Single Judge may extend a time limit if good cause is shown. In this regard, the Single Judge notes the Defence's assertions in relation to its inability to comply with the time limits set in the 2 May 2024 Decision.

12. Considering that the submissions ordered in the 2 May 2024 Decision constitute the first opportunity for the Defence to be heard on an array of matters, including on issues crucial for the initiation of the confirmation proceedings *in absentia*, the Single Judge is of the view that the Defence should be given sufficient time to make submissions that are relevant and meaningful. Therefore, in light of all the relevant circumstances, the Single Judge rules that the Defence has shown good cause for the Single Judge to extend the time limits set in the 2 May 2024 Decision. Accordingly, the starting date of the deadlines is postponed to 15 August 2024.

13. Regarding the Defence's request to hold a status conference, the Single Judge, in light of the recent developments in the present case, finds it appropriate to convene a status conference on 23 July 2024, at 10:00. For this purpose, the Prosecution, the Defence and the OPCV shall provide by email a list of issues they wish to address during the status conference by no later than 16 July 2024.

14. Finally, noting the Defence's reference to 'underlying material [that] will also require the filing and adjudication of requests for reclassification',¹¹ the Single Judge directs the Defence to file the necessary reclassification requests as soon as possible to avoid any additional delay.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Request;

ORDERS that the time limits set in the 2 May 2024 Decision shall start running on 15 August 2024;

CONVENES a status conference on 23 July 2024, at 10:00; and

INSTRUCTS the Prosecution, the Defence and the OPCV to provide by email a list of issues they wish to address during the status conference by no later than 16 July 2024.

Done in English. A French translation will follow. The English version remains authoritative.



Judge Althea Violet Alexis-Windsor

Single Judge

Dated this Friday, 5 July 2024.

At The Hague, The Netherlands.

¹¹ [Request](#), para. 16.