

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **13/08/2024**

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

Defence Request for Further Variation of Deadlines

Source: Defence for Mr Joseph Kony

Document 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 the Defence Peter Haynes KC
Legal Representatives of the Victims	Legal Representatives of the Applicant
Unrepresented Victims	Unrepresented Applicants for Participation/Reparation
The Office of Public Counsel for Victims Ms Paolina Massidda Ms Sarah Pellet	The Office of Public Counsel for the Defence Ms Marie O’Leary
States’ Representatives	Amicus Curiae

REGISTRY	
Registrar Mr Osvaldo Zavala Giler	Counsel Support Section Mr Juan Escudero
Victims and Witnesses Unit	Detention Section
Victims Participation and Reparations Section	Other

I. INTRODUCTION

1. The Defence is currently required to file observations on Pre-Trial Chamber II's decisions on the Prosecution's request to hold an *in absentia* confirmation hearing, and the Registry's report on the implementation of the second of these decisions,¹ by **26 August 2024**.² Further observations on other filings, are then due 10 and 20 days later.³

2. On **9 July 2024**, the Defence filed a request with the Single Judge for the reclassification of two Registry reports, classified SECRET-Exp, which concern measures to locate Joseph Kony.⁴ The Defence also sought reclassification of any other previous or subsequent reports or material which address the question of measures taken to locate Mr Kony and inform him of the charges and the proposed confirmation hearing.⁵

3. On **12 August 2024**, the Single Judge granted the Defence Request and ordered the Registry to reclassify ICC-02/04-01/05-459-SECRET-Exp and ICC-02/04-01/05-463 SECRET-Exp as confidential and available to the Defence, no later than **16 August 2024**.⁶ The Reclassification Decision also identified other SECRET-Exp or US-Exp filings, deemed by the Single Judge and/or the Prosecution as being relevant and important to the present proceedings,⁷ and ordered the Prosecution and Registry to make redacted versions of these documents available to the Defence by **20 and 30 August 2024**.⁸ In light of the dates on which these documents will be made available to the Defence, good cause accordingly exists for a variation of the 26 August 2024 deadline, to give the Defence an adequate opportunity to review and make comment on these documents in its observations.

¹ Decision on the Procedure for Appointing Counsel, ICC-02/04-01/05-499, 2 May 2024, public ("2 May 2024 decision") para. 27(a): "provide observations, if any, on the: (i) 'Decision on the Prosecution's request to hold a confirmation of charges hearing in the Kony case in the suspect's absence' (ICC-02/04-01/05-466); (ii) '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); and (iii) 'Registry's Report on the implementation of the "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)' (ICC-02/04-01/05-491).

² Decision on the 'Defence Request for Variation of Deadlines and for a Status Conference', ICC-02/04-01/05-508, 5 July 2024 ("5 July 2024 Decision"). See also Email Decision "Decision on the Defence 'Request for variation of the page limit', ICC-02/04-01/05-511", 26 July 2024.

³ 2 May 2024 Decision, para. 27 (b).

⁴ ICC-02/04-01/05-459-SECRET-Exp and ICC-02/04-01/05-463 SECRET-Exp.

⁵ Kony Defence Request for Reclassification of ICC-02/04-01/05-459-SECRET-Exp and ICC-02/04-01/05-2047-SECRET-Exp, ICC-02/04-01/05-509, 9 July 2024 ("Defence Request").

⁶ Decision on the Kony Defence Request for Reclassification of ICC-02/04-01/05-459-SECRET-Exp and ICC-02/04-01/05-463 SECRET-Exp (ICC-02/04-01/05-509) and other reclassification matters, ICC-02/04-01/05-514, 12 August 2024 ("Reclassification Decision").

⁷ Reclassification Decision, paras. 28, 32.

⁸ *Ibid.*

II. PROCEDURAL HISTORY

4. The relevant procedural history is set out by the Single Judge in the 12 August Decision.⁹

III. SUBMISSIONS

5. Regulation 35(2) of the Regulations provides that a Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard.

6. According to the practice of the Court, the ‘good cause’ criterion is satisfied when there are ‘sound reasons’ which ‘would objectively provide justification for the inability of a party to comply with his/her obligation’.¹⁰ As a matter of good practice, requests for extension of time should be filed sufficiently in advance of the deadline.¹¹

7. The Reclassification Decision sets the following timeline:

By **16 August 2024**, the Registry must provide the Defence and LRV with redacted versions of 459-SECRET-Exp and 463-SECRET-Exp;¹²

By **20 August 2024**, the Prosecution and the Registry must liaise and submit consolidated observations as regards Defence access to 473-US-Exp-AnxII and 479-US-Exp-AnxII-IV, indicating any redactions they would propose to apply vis-à-vis the Defence; and

By **30 August 2024**, the Prosecution and the Registry must liaise and submit consolidated observations as regards Defence access, including any redactions they would propose to apply, to ICC-02/04-01/05-436-SECRET-Exp, ICC-02/04-01/05-

⁹ 12 August Decision, paras. 1-11.

¹⁰ *Prosecutor v. Yekatom & Ngaïssona*, Pre-Trial Chamber II: Corrected version of ‘Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona’, [ICC-01/14-01/18-403-Red-Corr](#), 14 May 2020, para. 23 citing “Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Defence Request for Variation of the 30 September Deadline, 10 September 2019, ICC-02/04-01/15-1591; see also Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Reasons for the ‘Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007’ issued on 16 February 2007, 21 February 2007, ICC-01/04-01/06-834, paras 7, 9.”

¹¹ *Prosecutor v. Yekatom & Ngaïssona*, Pre-Trial Chamber II: Decision on the Prosecutor’s Request for an Extension of Time to Apply for the Non-Disclosure of Witness Identities, [ICC-01/14-01/18-168](#), 10 April 2019, para. 18.

¹² Reclassification Decision, para. 30.

437-SECRET-Exp, ICC-02/04-01/05-438-SECRET-Exp,¹³ ICC-02/04-01/05-439-SECRET-Exp and ICC-02/04-01/05-440-SECRET-Exp (together, the “Reclassified Documents”).¹⁴

8. The Reclassified Documents are numerically proximate to the filings and decisions upon which the Defence has been invited to present observations. Some have been filed shortly before, or in between, the two Pre-Trial Chamber decisions addressing the Prosecution request to hold an *in absentia* hearing.¹⁵ As such, the Reclassified Documents appear to be part of the litigation upon which the Defence has been ordered to file observations, and the Prosecution and/or the Single Judge consider them to be relevant and/or important to the proceedings.¹⁶ Indeed, the Single Judge, in relation to ICC-02/04-01/05-436-SECRET-Exp, ICC-02/04-01/05-437-SECRET-Exp, ICC-02/04-01/05-439-SECRET-Exp and ICC-02/04-01/05-440-SECRET, referred to the “relevance and importance of the documents for these proceedings” when granting Prosecution access to these documents, and instructing the Prosecution and Registry to liaise on redactions with a view to also giving the Defence access to these documents.¹⁷

9. Under the current deadline, the Defence is required to file its first observations on **26 August 2024**, by which time it is likely that only the documents originally sought, being 459-SECRET-Exp and 463-SECRET-Exp, will have been disclosed. However, the other documents referred to above – described by the Single Judge as “relevan[t] and importan[t]” to the current proceedings – will be available to the Defence only by **20 and 30 August 2024**.

10. On this basis, good cause exists for the variation of the 26 August 2024 deadline. There are ample indications that the Defence should have the opportunity to review and incorporate any relevant aspects of the Reclassified Documents into its observations. There are sound reasons to believe that without access to these relevant and important documents, the Defence would be unable to comply with its obligation to provide adequately-informed observations on

¹³ See, Reclassification Decision, fn. 30.

¹⁴ Reclassification Decision, para. 32.

¹⁵ para. 27: “a. provide observations, if any, on the: (i) ‘Decision on the Prosecution’s request to hold a confirmation of charges hearing in the Kony case in the suspect’s absence’ (ICC-02/04-01/05-466); (ii) ‘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); and (iii) ‘Registry’s Report on the implementation of the “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)’ (ICC-02/04-01/05-491).

¹⁶ Reclassification Decision, paras. 28, 32.

¹⁷ Reclassification Decision, para. 32.

matters deemed “crucial for the initiation of the confirmation proceedings *in absentia*.”¹⁸

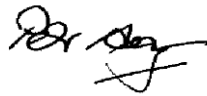
11. The Defence accordingly requests a variation of the deadline until 10 days after the service of redacted versions of the Reclassified Documents, or 20 September 2024, whichever is the latest.

IV. RELIEF REQUESTED

12. For the reasons set out above, the Defence respectfully requests that the Single Judge:

GRANT the variation of time sought.

The whole respectfully submitted.



Peter Haynes KC
Counsel for Joseph Kony

The Hague, The Netherlands,
Tuesday, August 13, 2024

¹⁸ 5 July 2024 Decision, para. 12.