

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/04-01/05
Date: 6 September 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

Prosecution's observations on the date of the confirmation of charges hearing

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Prosecution, at the invitation of the Single Judge,¹ hereby submits its observations and proposals concerning the date of the confirmation of charges hearing. In light of the changed circumstances in the proceedings, and the Defence's right to adequately prepare for the hearing, the Prosecution proposes to postpone the date of the confirmation hearing, currently set for 15 October 2024, to an appropriate date in the second half of February or the beginning of March 2025, pursuant to rules 121(7) and 126(1) of the Rules.

II. SUBMISSIONS

2. In assessing whether the date of a hearing is to be postponed pursuant to rule 121(7) of the Rules, the Chamber must ensure the overall fairness and expeditiousness of the proceedings bearing in mind the competing interests at stake.² It is a serious step and should not be taken lightly, also in these *in absentia* proceedings.

3. Akin to the Defence,³ the Prosecution is of the view that the 15 October 2024 hearing date is no longer feasible. The Defence must be given adequate time to prepare and can only do so once disclosure of the materials, the Prosecution seeks to rely on for the hearing, has been concluded.⁴ In turn, certain requests of the Prosecution and the Victims' Representatives have not yet been decided.

4. The case against Mr KONY comprises 36 Counts of crimes against humanity and war crimes, spans a broad temporal scope and includes several large scale incidents as well as systemic crimes. Thus, the underlying evidence underpinning these charges is equally expansive. However, the Defence has already been provided with the Document Containing the Charges, and the *Ongwen* trial judgement.⁵ Further, the standard of review of evidence at the confirmation stage is considered to

¹ E-Mail order, 4 September 2024.

² ICC-01/14-01/18-199, para. 30; ICC-02/04-01/15-206, para. 25; ICC-01/14-01/21-196, para. 20.

³ ICC-02/04-01/05-517, paras. 40-43.

⁴ ICC-01/14-01/21-T-002-ENG, p. 11, lns. 7-12; ICC-02/05-01/20-T-001-ENG, p. 22, lns. 23-25, p. 23, lns. 1-3, ICC-02/05-01/20-238, para. 43; ICC-01/14-01/22-151, para. 11.

⁵ ICC-02/04-01/05-513-Conf-Exp-AnxA.

be a “light” review.⁶

5. The projections in terms of timing of disclosure made in the Prosecution’s Observations on 28 March 2024⁷ were based on the estimated procedural timelines at the time and with the 15 October 2024 date as guidance. As the Prosecution recently stated, it has not been idle and has fully prepared its disclosure in thematic packages during the time the proceedings have been ongoing.⁸ The thematic packages would be accompanied by detailed disclosure notifications describing the evidence included. At this junction, disclosure could be initiated from the moment the Chamber authorises, and then finalised within two weeks to allow for the technical uploads.

6. Counsel for Mr KONY has been granted until 11 September 2024 to respond to the Prosecution’s Observations of 28 March 2024 and the Victims’ Observations.⁹ The Prosecution cannot project if or when the Chamber would issue its disclosure order. But should disclosure be authorised by 1 October 2024, the Prosecution could disclose by 15 October, for instance. As the materials have been prepared in line with the established practice before the Court, including the evolving practice before the Pre-Trial Chambers,¹⁰ the Prosecution provides this two week-projection in the assumption that it would not have to make significant changes to the metadata aligned with the disclosable items. This timeline is also without prejudice to the Prosecution’s right *and* obligation to disclose further discrete materials at a later stage.

7. Further, as indicated before, the Prosecution could provide a Pre-Confirmation Brief well in advance of the hearing. This document sets out the material facts and the relevant evidence underpinning these for each charge and serves as a road map for the Prosecution’s case. Further, a list of witnesses and list of evidence can be provided

⁶ ICC-01/14-01/21-196, para. 21 (“The Chamber takes note of the time limits applicable to the confirmation proceedings, such as the 30-day time limit for the provision of a description of the charges and a list of evidence by the Prosecution [...] The statutory time limits are relatively short, which shows that the review of evidence is not meant to be overly detailed.”).

⁷ ICC-02/04-01/05-490.

⁸ ICC-02/04-01/05-T-012-CONF-ENG, p. 6, lns. 6-8.

⁹ ICC-02/04-01/05-499, para. 27. b; ICC-02/04-01/05-508, para. 12.

¹⁰ ICC-02/11-01/11-30, paras. 24-25; ICC-02/05-01/20-169, para. 24; ICC-01/12-01/18-31-tENG-Corr, paras. 24-25; ICC-01/14-01/21-50-Conf, paras. 27-28; ICC-01/09-01/20-67, para. 31; ICC-01/14-01/22-62, para. 30.

well in advance of the hearing. Thus, were the projected disclosures to be completed in the course of the month of October 2024, for example, and the other case documents provided by the Prosecution *well in advance* of the hearing, a new date set for the second half of February or the beginning of March 2025 would give the Defence sufficient time to prepare.

8. In its projections, the Prosecution also factors in that the additional outstanding procedural decisions, including such concerning the Prosecution's requests for certain protocols, an *in situ* hearing, and requests relating to the participation of victims, could all be progressed in a timely fashion after the expiration of the Defence's timelines for response. A completed disclosure, as envisioned, would also not impact the Defence's ability to conduct investigations.

9. In addition, a postponement until the second half of February or the beginning of March 2025 under the above proposed parameters would allow for any further notification efforts by the Registry and other preparatory steps, deemed necessary by the Chamber, and render future postponements unlikely. Further, in its projections the Prosecution is equally mindful of the rights of victims, who have been waiting for the commencement of these proceedings for a significant amount of time, and the expectation on the Court as a whole to conduct these proceedings effectively and efficiently.

III. CONCLUSION

10. For the reasons set out above, the Prosecution respectfully submits that the 15 October 2024 date should be postponed to a new date in the second half of February 2025 or the beginning of March 2025.



Karim A.A. Khan KC, Prosecutor

Dated this 6th day of September 2024
At The Hague, The Netherlands