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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

With Confidential Annexes 1 and 2

**Registry Update Report on Legal Representation of Victims
and Transmission of Group Application Form for Victims**

Source: Registry

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

Office of the Prosecutor

Karim A. A. Khan
Mame Mandiaye Niang
Leonie van Braun

Counsel for Mr Kony

Peter Haynes
Kate Gibson

Legal Representatives of Victims

Legal Representatives of Applicants

Joseph Akwenyu Manoba
Francisco Cox
Paolina Massidda
Sarah Pellet
Paul Bradfield

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

Office of Public Counsel for Victims

Paolina Massidda
Sarah Pellet

**Office of Public Counsel for the
Defence**

Marie O'Leary

States' Representatives

Trust Fund for Victims

REGISTRY

Registrar

Osvaldo Zavala Giler

Counsel Support Section

Juan A. Escudero

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Philipp Ambach

Country Office

I. Introduction

1. Following the Registry submissions on matters related to the participation of victims (“Submissions of 8 May 2024”)¹ in the case of *The Prosecutor v. Joseph Kony* (“Kony case” or “Case”), the Single Judge of Pre-Trial Chamber III (“Single Judge”) authorised the Registry to collect information on victims’ preferences as to their legal representation and update Pre-Trial Chamber III (“Chamber”) of any relevant developments (“Order of 15 May 2024”).² On 28 June 2024, the Registry submitted an initial report on the legal representation of victims (“Initial report”).³ The Registry hereby submits an update on recent information gathered regarding victims’ preferences as to their legal representation in the *Kony* case (“Update report”). Additionally, the Registry transmits, for the Chamber’s approval for use in the Case, a draft group application form, as announced in its Submissions of 8 May 2024.⁴

II. Procedural History

2. On 8 July 2005, Pre-Trial Chamber II, in its previous composition, issued a warrant of arrest against Mr Kony.⁵ The arrest warrant was amended on 27 September 2005 and unsealed in October 2005, with the issuance of a public redacted version (“Arrest Warrant”).⁶

¹ Registry, “Registry submissions on matters related to the participation of victims”, 8 May 2024, ICC-02/04-01/05-500.

² Email from Single Judge of Pre-Trial Chamber III to the Registry (Office of the Director, DJS) on 15 May 2024 at 9:14 h.

³ Registry, “Registry Report on Legal representation of Victims”, 28 June 2024, ICC-02/04-01/05-505.

⁴ Submissions of 8 May 2024, fn. 42.

⁵ Pre-Trial Chamber II, “Warrant of Arrest for Joseph Kony”, 8 July 2005, ICC-02/04-01/05-2-US-Exp.

⁶ Pre-Trial Chamber II, public redacted version of “Warrant of Arrest for Joseph Kony Issued on 8 July 2005 as Amended on 27 September 2005”, dated 27 September 2005 and registered on 13 October 2005, ICC-02/04-01/05-53. A lesser redacted version was notified on 10 March 2023, ICC-02/04-01/05-456.

3. Between 22 August 2006 and 15 February 2013, 128 applications for participation were transmitted in the Case.⁷
4. Between 10 August 2007 and 10 March 2009, Pre-Trial Chamber II issued four decisions on the merits of these applications in the Case.⁸ From these 128

⁷ For the transmissions of the original versions of victim applications submitted to the Chamber *see*: Registry, "Application for participation in proceedings number a/0010/06", dated 21 August 2006 and registered on 22 August 2006, ICC-02/04-01/05-98-Conf-Exp; "Application for participation in proceedings number a/0064/06", dated 21 August 2006 and registered on 22 August 2006, ICC-02/04-01/05-99-Conf-Exp; "Application for participation in proceedings number a/0065/06", dated 21 August 2006 and registered on 22 August 2006, ICC-02/04-01/05-100-Conf-Exp; "Application for participation in proceedings number a/0066/06", dated 21 August 2006 and registered on 22 August 2006, ICC-02/04-01/05-101-Conf-Exp; "Application for participation in proceedings number a/0067/06", dated 21 August 2006 and registered on 22 August 2006, ICC-02/04-01/05-102-Conf-Exp; "Application for participation in proceedings number a/0068/06", dated 21 August 2006 and registered on 22 August 2006, ICC-02/04-01/05-103-Conf-Exp; "Application for participation in proceedings number a/0069/06", dated 21 August 2006 and registered on 22 August 2006, ICC-02/04-01/05-104-Conf-Exp; "Application for participation in proceedings number a/0070/06", dated 21 August 2006 and registered on 22 August 2006, ICC-02/04-01/05-105-Conf-Exp; "Report to Pre-Trial Chamber II on applications a/0081/06 to a/0104/06 in accordance with Rule 89 paragraph 1 of the RPE, and Regulation 86 paragraph 5 of the Regulations of the Court", 26 October 2006, ICC-02/04-01/05-123; "Report to Pre-Trial Chamber II on applications a/0111/06 to a/0127/06 in accordance with Rule 89 paragraph 1 of the RPE, and Regulation 86 paragraph 5 of the Regulations of the Court", dated 16 November 2006 and registered on 17 November 2006, ICC-02/04-01/05-128; "Report to Pre-Trial Chamber II on applications a/0014/07 to a/0020/07 in accordance with Rule 89 paragraph 1 of the Rules of Procedure and Evidence, and Regulation 86 paragraph 5 of the Regulations of the Court", dated 11 April 2007 and registered on 13 April 2007, ICC-02/04-01/05-241; "Transmission of consolidated applications including supplementary information", 29 February 2012, ICC-02/04-01/05-411; "Transmission of consolidated applications including supplementary information", 29 June 2012, ICC-02/04-01/05-412; and "Transmission of consolidated applications including supplementary information", 15 February 2013, ICC-02/04-01/05-413. Additionally, 22 applications were transmitted only in the Situation in the Republic of Uganda, although they were also considered by Pre-Trial Chamber II for the purpose of the *Kony* case as if they had been filed as well in the Case (See Registry, "Report to Pre-Trial Chamber II on applications a/0192/07 to a/0239/07 and a/0324/07 to a/0326/07 in accordance with Rule 89 paragraph 1 of the Rules of Procedure and Evidence, and Regulation 86 paragraph 5 of the Regulations of the Court", 30 May 2008, ICC-02/04-138-Conf-Exp; and "Second Report to Pre Trial Chamber II on applications a/0192/07 to a/0239/07 and a/0324/07 to a/0326/07 in accordance with Rule 89 paragraph 1 of the Rules of Procedure and Evidence and Regulation 86 paragraph 5 of the Regulations of the Court", dated 30 September 2008 and registered on 1 October 2008, ICC-02/04-157-Conf-Exp. The transmissions of redacted versions of applications are not listed.

⁸ Pre-Trial Chamber II, "Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06", dated 10 August 2007 and registered on 13 August 2007, ICC-02/04-01/05-252; "Decision on victims' applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06, a/0082/06, a/0084/06 to a/0089/06, a/0091/06 to a/0097/06, a/0099/06, a/0100/06, a/0102/06 to a/0104/06, a/0111/06, a/0113/06 to a/0117/06, a/0120/06, a/0121/06 and a/0123/06 to a/0127/06", dated 14 March 2008 and registered 17 March 2008, ICC-02/04-01/05-282; "Decision on victims' applications for participation a/0014/07 to a/0020/07 and a/0076/07 to a/0125/07", 21 November 2008, ICC-02/04-01/05-356; and "Decision on victims' applications for participation

applications, 41 individuals were accepted to participate at the time and are presently represented by the Office of the Public Counsel for Victims ("OPCV"),⁹ 16 were rejected, 41 were deferred and 30 have not yet been decided upon.

5. On 23 November 2023, following a Prosecution request to hold a hearing on the confirmation of charges against Mr Kony in his absence,¹⁰ Pre-trial Chamber II found that there is cause to hold such a confirmation of charges hearing.¹¹ The hearing, to be held in Mr Kony's absence should he not appear, was initially scheduled for 15 October 2024.¹²
6. On 19 January 2024, the Prosecution filed the "Document Containing the Charges".¹³
7. On 12 March 2024, the Presidency of the Court referred the Case to the Chamber and recomposed the latter.¹⁴
8. On 15 March 2024, the Chamber designated Judge Althea Violet Alexis-Windsor as Single Judge in the Case.¹⁵

a/0192/07 to a/0194/07, a/0196/07, a/0200/07, a/0204/07, a/0206/07, a/0209/07, a/0212/07, a/0216/07, a/0217/07, a/0219/07 to a/0221/07, a/02228/07 to a/0230/07, a/0234/07, a/0235/07, a/0237/07, a/0324/07 and a/0326/07 under rule 89", 10 March 2009, ICC-02/04-01/05-375.

⁹ Pre-Trial Chamber II, "Decision on legal representation of Victims a/0090/06, a/0098/06, a/0101/06 a/0112/06, a/0118/06, a/0119/06 and a/0122/06", 15 February 2008, ICC-02/04-01/05-267; and "Decision on legal representation of Victims a/0065/06, a/0066/06, a/0068/06, a/0088/06, a/0090/06 to a/0096/06, a/0098/06, a/0102/06, a/0103/06, a/0112/06, a/0115/06, a/0117/06, a/0118/06, a/0120/06 to a/0126/06, a/0076/07 to a/0078/07, a/0081/07, a/0082/07, a/0084/07, a/0085/07, a/0090/07 to a/0103/07, a/105/07 to a/0108/07, a/0112/07, a/0115/07, a/0117/07, a/0118/07 and a/0123/07", 9 February 2009, ICC-02/04-01/05-366. The legal representation of the victims is divided by Ms. Pellet – OPCV and by Ms Massidda – OPCV.

¹⁰ Prosecution, Public Redacted Version of the "Prosecution's Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence", 24 November 2022, ICC-02/04-01/05-446-Red.

¹¹ Pre-trial Chamber II, "Decision on the Prosecution's request to hold a confirmation of charges hearing in the *Kony* case in the suspect's absence", 23 November 2023, ICC-02/04-01/05-466.

¹² 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.

¹³ Prosecution, "Document Containing the Charges", 19 January 2024, ICC-02/04-01/05-474.

¹⁴ Presidency, "Decision assigning judges to divisions and recomposing Chambers", 12 March 2024, ICC-02/04-01/05-485; and "Decision on the designation of a Single Judge", 15 March 2024, ICC-02/04-01/05-487.

¹⁵ Pre-Trial Chamber III, "Decision on the designation of a Single Judge", 15 March 2024, ICC-02/04-01/05-487.

9. On 23 April 2024, the Single Judge allowed the Registry to file submissions on matters related to the participation of victims ("Communication of 23 April 2024").¹⁶
10. On 8 May 2024, the Registry filed its submissions on matters related to the participation of victims.¹⁷
11. On 28 June 2024, the Registry reported on the victims' preferences as to their legal representation in the Case.¹⁸
12. On 12 September 2024, the Chamber postponed the commencement of the confirmation hearing in the Case until further notice.¹⁹

III. Classification

13. Annex 1 is filed confidential as it contains correspondence from counsel to the Registry that was not intended to be made public. Annex 2 is filed confidential as it is a draft form not yet ready for public dissemination and use, pending the Chamber's approval.

IV. Applicable Law

14. The Registry submits the present filing in accordance with the Communication of 23 April 2024, the Order of 15 May 2024, article 68(3) of the Rome Statute, rules 16(1) and 90 of the Rules of Procedure and Evidence ("RPE"), regulations 67 and 79 of the Regulations of the Court, regulations 112 to 113 of the Regulations of the Registry, paragraphs 11 to 13 of the Legal Aid Policy of the International Criminal Court ("LAP") and articles 12 and 16 of the Code of Professional Conduct for counsel ("Code").²⁰

¹⁶ Email from Single Judge of Pre-Trial Chamber III to the Registry on 23 April 2024 at 16:52.

¹⁷ See *supra*, fn. 1.

¹⁸ Registry, "Registry Report on Legal Representation of Victims", 28 June 2024, ICC-02/04-01/05-505.

¹⁹ Pre-Trial Chamber III, "Decision Postponing the Confirmation of Charges Hearing", 12 September 2024, ICC-02/04-01/05-526.

²⁰ Legal aid policy of the International Criminal Court, 22 November 2023, ICC-ASP/22/9 ("LAP").

V. Submissions

15. In the present submissions, the Registry will (A) update the Chamber on relevant developments on victims' preferences as to their legal representation which were expressed after the Initial report, (B) address the matter of the indigence of victims and availability of legal aid, (C) make observations on legal representation of victims in the Case, and (D) transmit a draft victim group application form ("Draft Form") for the Chamber's approval for use in the Case.
16. Additionally, the Registry transmits as annexes:
 - Public Annex 1, the written correspondence with the legal representative of 162 applicants who recently submitted applications for participation in the *Kony* case; and
 - Confidential Annex 2: the Draft Form.

A. Update on the legal representation of victims

New counsel appointed by victim applicants

17. Between 26 and 30 August 2024, the Registry received 162 victim application forms for the *Kony* proceedings ("162 Victim Application Forms"). Among these, 72 were also registered for the purpose of the *Ongwen* reparations proceedings upon the victims' request. All applicants have indicated that they are presently represented by Mr Paul Bradfield.
18. The Registry notes that, between 2006 and 2010, three of the aforementioned 162 applicants indicating Mr Bradfield as their representative had already filled in an application form for participation in proceedings at the Situation stage²¹ without specifying any counsel preference at the time. By Decision of 9 March 2012, the

²¹ The Registry notes that the form filled in by these victims is a previous standard two-page form that was recommended by the Registry for use at the time at the stage of a situation (i.e. when there is no active case yet).

OPCV was appointed to represent all victims and victim applicants in the Uganda Situation, pending the appointment of a common legal representative.²²

19. Among the 162 Victim Application Forms and following a preliminary legal assessment, (i) 73 were submitted by victims of the attack on Lwala Girls School; (ii) 75 are from victims of age and gender-based crimes²³ only; and (iii) 14 were submitted by victims of the attack on Abia IDP camps as well as from age and gender-based crimes. Of note, none of these applicants participated previously in the *Ongwen* case; in addition, the attack on the Lwala Girls School (indicated presently by 73 victim applicants) represents an incident only charged in the *Kony* case.²⁴

20. On 27 September and 3 October 2024, Mr Bradfield communicated to the Registry his availability to represent victims in the Case.²⁵ He provided additional information concerning notably his willingness to work in a team, the potential team composition and organisation, as well as a formal declaration of no conflict of interest.²⁶

Result of preliminary desk review on victim counsel by theme

21. Concurrently, as outlined in the Initial report,²⁷ the Registry continued its efforts to identify potential additional counsel on specific themes and types of victimisation that had been put forward by consulted victims. This was done with

²² Pre-trial Chamber II, “Decision on Victim’s Participation in Proceedings Related to the Situation in Uganda”, 9 March 2012, ICC-02/04-191, p.20, *lit. d.*

²³ Document Containing the Charges, ICC-02/04-01/05-474, 19 January 2024, Counts 15 to 29, pp. 29 f.

²⁴ The Registry notes that this is the result of a preliminary legal assessment that has not yet been quality checked.

²⁵ See Annex 1, emails from Mr. Bradfield to the Registry (CSS) on 27 September 2024 at 01:25 and on 3 October 2024 at 22:51. In his email of 27 September 2024, Mr. Bradfield indicated his availability to represent the “victims who have nominated [him] as legal representative”; in his email of 3 October 2024 he added that he would be also available to represent “other victims”.

²⁶ See Annex 1, emails from Mr. Bradfield to the Registry (CSS) on 27 September 2024 at 01:25, on 3 October 2024 at 22:51 and on 4 October 2024 at 10:47 and 11:36, and Declaration of No Conflict of Interest by Counsel dated 27 September 2024.

²⁷ Initial report, para. 80.

a view to a potential incorporation into a future legal representation team to provide the broadest possible representation of victims' harms and interests.

22. The Registry assessed the profiles of various counsel registered on the Court's list of counsel ("List of counsel"), focusing on the characteristics and qualities that victims had indicated as essential for their legal representation.²⁸
23. After conducting a desk-review of counsels' profiles, the Registry has identified one lawyer who indicates in her CV to have key qualities that victims had indicated.

Registry observations on potential victim counsel in the Case

24. The Registry recalls that the external team of counsel in the case of *The Prosecutor v. Dominic Ongwen* ("Ongwen case") has indicated their willingness "to collaborate with OPCV and any other external team for effective and meaningful participation of victims in the [Case]".²⁹
25. Concerning the availability to work in a team with external lawyer(s), OPCV Counsel submit that the office has in the past worked alongside or in mixed teams with external lawyers and, therefore, has a proven record of availability and cooperation with external counsel in effectively representing victims. For the present proceedings, OPCV Counsel have indicated that should the option of a single team of different counsel be considered by the Chamber, Counsel will provide their position in due course.³⁰
26. In his communications with the Registry, Mr Bradfield indicated his prior role as a lawyer in the *Ongwen* Prosecution team from 2015 to 2018, and expressed "[his] careful and considered view that [his] potential representation of victims in the *Kony* proceedings does not give rise to a conflict of interest within the meaning of Article 16 of the Code of Professional Conduct for Counsel, or as understood in the

²⁸ Initial report, paras. 12-51.

²⁹ Initial report, Annex 2, email 8, part 3.

³⁰ Initial Report, Annex 2, email 7, last para.

Court's jurisprudence. Nonetheless, [he] informed all of [his] potential clients during [their] first meeting that [he] previously worked for the OTP on the *Ongwen* case, and they did not have any concerns about [his] prior role.”³¹ He also posits that he does “not believe there is any impediment to representation within the meaning of Article 12 of the Code.”³²

27. The Registry observes that in light of a potential applicability of article 12(1)(a) and/or article 16(3) of the Code, Mr Bradfield has declared to be in the process of obtaining relevant “written consent for [his] continued representation”.³³

28. The Registry takes note of the readiness and willingness of Mr Bradfield to represent applicants and victims in the Case in collaboration with other counsel.³⁴ Information presently available to the Registry suggests that Mr Bradfield meets a number of the qualities that victims consider essential.³⁵

29. Finally, the Registry informs that on 27 September 2024, after assessment of application materials, Mr. Bradfield was admitted to the List of counsel.

B. Indigence of victims and availability of legal aid

30. The 162 Victim Application Forms specify that the applicants are unable to pay for their legal representation. The Registry thus expects that these victims will rely exclusively on the financial assistance that may be provided by the Court under its legal aid budget.³⁶

³¹ Emails to the Registry of 26 August 2024 and 27 September 2024, incorporated in Annex I.

³² *Ibid.*

³³ *Ibid.*

³⁴ See Annex 1, email from Mr. Bradfield to Registry (CSS), on 3 October 2024 at 22:51. To the question “If requested to join a team with other counsel, including OPCV counsel, would you be willing to collaborate in such a setup?”, counsel replied: “I would [...] be happy to work collaboratively with other Victims counsel and OPCV”.

³⁵ The qualities outlined in paragraphs 29 to 51 of the Initial report that Mr. Bradfield would appear to meet include: (1) a new victim counsel, with a fresh and open mind (his prior involvement in the *Ongwen* proceedings need, however, to be recalled); (2) an expert who possesses extensive international criminal and human rights law experience; (3) a lawyer who can take care of a specific sub-group of victims which was not (or only marginally) represented in the *Ongwen* case; (4) someone who knows the conditions of the women who were abducted.

³⁶ Initial report, para. 60.

31. The Registry notes that the details on the scope of the legal assistance in the Case, as outlined in the Initial report, are still applicable.³⁷ In this regard, the Registry reiterates that in the case of several LRVs being appointed in the Case as a single group, the total monthly remuneration of one position of “Legal Representative”, as foreseen under the LAP, would be shared among them.³⁸

C. Transmission of draft victim group application form

32. In the past months, the Registry has been developing a victim group application form that mirrors the standard individual application form for participation in the proceedings/reparations. The form focuses on a ‘household’ group setting as this is considered the most prevalent and suitable group specification in the present context.³⁹ The draft form includes initial feedback received from various stakeholders, and intermediaries on the ground.⁴⁰ It aims at facilitating the standardised gathering of information from all individuals within a group with similar harm from the same event(s) while optimising the use of Registry resources, particularly in light of the time constraints and limited human resources on the ground.

33. The proposed group form is submitted as Annex 2 for the Chamber’s approval for use in the Case. The form will be further tested and consulted, and user feedback

³⁷ Initial report, paras. 61-65.

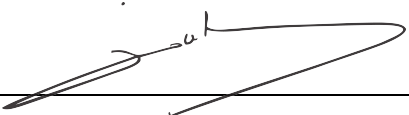
³⁸ Initial report, paras. 66.

³⁹ This consideration has been verified in discussions with stakeholders on the ground during the latest mission earlier this month (see in the following footnote). The ‘household’ approach (with a default focus on family structures) will best allow the Registry to ensure the integrity of the process in terms of identification of group members.

⁴⁰ The proposed draft ‘household’ group form was presented on 4 and 5 October 2024 for feedback and testing in both Kampala and Gulu. Consultations with stakeholders internal and external to the Court are ongoing.

As an aside, the Registry informs the Chamber that another – individual – form for the purpose of the *Ongwen* reparations proceedings is being put to use; the form will also encompass the option to apply for participation/reparations in the *Kony* proceedings. The Registry will share this form with the Chamber in due course.

will be collected; this may lead to further improvements in the form design. Any substantial amendment suggestions will be brought to the Chamber's attention for approval.

A handwritten signature in black ink, appearing to read 'M. Dubuisson', is written over a solid horizontal line.

Marc Dubuisson, Director, Division of Judicial Services

on behalf of Osvaldo Zavala Giler, Registrar

Dated this 14 October 2024

At The Hague, the Netherlands