

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Annex I

Public

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

CALL FOR EXPRESSION OF INTEREST
COUNSEL FOR MR JOSEPH KONY IN THE CASE *THE PROSECUTOR V. JOSEPH KONY*

I. BACKGROUND

On 4 March 2024, Pre-Trial Chamber II issued a decision on the Prosecutor's request¹ to hold a confirmation of charges hearing ("confirmation hearing") in the case against Mr Joseph Kony in the suspect's absence, should he not appear, and set the date for this hearing, to commence on 15 October 2024 ("Decision").²

In the Decision, the Chamber instructed the ICC Registry to make its best efforts to inform Mr Kony that a confirmation hearing *in absentia* will take place on 15 October 2024, and 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 his absence. In setting this date, the Chamber took into consideration that the Defence counsel will require sufficient time for his or her preparation in the suspect's absence, due to the scope of the Prosecution's allegations, and the potential voluminous amount of material that the Prosecution is likely to disclose in this case.

The Registry therefore seeks expressions of interest from counsel interested in seeking appointment as counsel for Mr Kony in the aforementioned case.

II. ROLE OF COUNSEL FOR THE DEFENCE

A lawyer appointed as Defence counsel during pre-trial phase is expected to undertake all work required to represent a defendant in accordance with the ICC's legal texts, as per rule 22(3) of the Rules of Procedure and Evidence ("Rules"). This work includes leading a legal team, composed as per the Legal Aid Policy ([ICC-ASP/22/9](#)), which makes Court appearances and files written submissions.

The confirmation hearing, conducted in accordance with the provisions of article 61 of the Statute, is part of the pre-trial phase of the proceedings. The purpose of the confirmation of charges is to determine if, pursuant to article 61(7) of the Statute, "there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged". The confirmation of charges proceedings aim to ensure that only persons facing sufficiently compelling charges, which extend beyond mere theory or suspicion, are committed for trial. This mechanism protects the suspect from wrongful and unfounded charges and "[ensures] judicial economy by distinguishing those cases that should go to trial from those that should not."³

¹ 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.

² 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 ("Decision").

³ Pre-Trial Chamber I, "Decision on the confirmation of charges", 16 December 2011, ICC-01/04-01/10-465-Red, para. 41; Pre-Trial Chamber I, "Corrigendum of the "Decision on the Confirmation of Charges"", 7 March 2011, ICC-02/05-03/09-121-Corr-Red, para. 31; Pre-Trial Chamber I, "Decision on the Confirmation of Charges", 8

When deciding to hold a hearing in the absence of Mr Kony, the ICC Judges have instructed the Registry to commence the process of selecting a lawyer to represent his rights and interests during the confirmation process and the confirmation of charges hearing, should this take place in his absence.⁴

In the Decision to hold the confirmation hearing against Mr Kony in his absence, the Pre-Trial Chamber set the hearing for 15 October 2024 to ensure that Defence counsel will have sufficient time for his or her preparation in the suspect's absence, due to the scope of the Prosecution's allegations, and the potential voluminous amount of material that the Prosecution is likely to disclose in this case.

During the confirmation hearing, in accordance with article 61(6) of the Statute, the Defence counsel may object to the charges, challenge the evidence as submitted by the Prosecution, and present evidence.

III. DURATION OF APPOINTMENT

The Rome Statute allows for the confirmation of charges proceedings at the Pre-Trial stage in the absence of the suspect. The existence of confirmation proceedings *in absentia* would serve to expedite the case against a suspect that cannot be found. Pursuant to article 61(2) of the Statute, "when the person [charged] cannot be found, [...] the person shall be represented by counsel where the Pre-Trial Chamber determines that it is in the interests of justice." Therefore, and as held previously by the same Chamber, this proceeding is only applicable in exceptional circumstances.

After the confirmation hearing concludes, Pre-Trial Chamber shall deliver its written decision within 60 days. The Judges of Pre-Trial Chamber in accordance with article 61(7) of the Statute, may:

- confirm all or only some of the charges against Mr Kony, but in this case a trial would still require Mr Kony to be present before the ICC as there is no trial *in absentia* according to the Rome Statute;
- decline all the charges and stop the proceedings against Mr Kony (this happens if the Judges decide that the available evidence is not sufficient to proceed to trial); or,
- adjourn the hearing and request the Prosecution to provide more evidence, to conduct additional investigations, or to change any charge for which the evidence establishes a different crime than the one charged.

In accordance with article 61 of the Statute, where the Pre-Trial Chamber declines to confirm a charge, the Prosecution may still request its confirmation if the request is supported by additional evidence.

The Chamber will hear oral submissions usually starting from the Prosecution, followed by the Legal Representatives of victims and the Defence. The hearing is currently scheduled from 15 October 2024 at the seat of the Court in The Hague, The Netherlands, and it usually lasts a few days. Closer to the date of the hearing, the Judges will issue an order with more information about how it

February 2010, ICC-02/05-02/09-243-Red, para. 39; Pre-Trial Chamber II, "Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo", 15 June 2009, ICC-01/05-01/08-424, para. 28; Pre-Trial Chamber I, "Decision on the confirmation of charges", 30 September 2008, ICC-01/04-01/07-717, para. 63; Pre-Trial Chamber I, "Decision on the confirmation of charges", 29 January 2007, ICC-01/04-01/06-803-tEN, para. 37.

⁴ Decision, para. 15.

will be conducted and how many days it will last, and whether or not witnesses will appear in person or via video link.

If the Defence counsel of Mr Kony and the Prosecution wish to appeal the decision, pursuant to article 82 of the Statute, they need to ask the permission of the Chamber. If the appeal is authorised, the case will be decided by another Chamber – the Appeals Chamber, which consists of five other Judges.

The appointment of a Defence counsel resulting from the present process would be expected to last for the duration of confirmation proceedings as outlined above and in accordance with the Decision. Therefore, the appointment will continue until the judgment on any potential appeal of the Chamber's decision on the confirmation of charges.

IV. REMUNERATION

Legal aid is available for persons entitled to legal representation and who have insufficient means to pay for it. In specific circumstances of the present case, where the unavailability of Mr Kony poses serious challenges as to his indigence determination, given the exceptional nature of the confirmation proceedings *in absentia*, the Court will bear the cost of the suspect's defence in accordance with the Legal Aid Policy ([ICC-ASP/22/9](#)).

As indicated in the Registry's report on the implementation of the Decision⁵ (ICC-02/04-01/05-488, dated 25 March 2024), "the Registry has made a provisional assessment of the complexity level taking into account all applicable parameters as stipulated in the (Reformed) Legal Aid Policy" and "assessed the defence team at a complexity level 1 at the pre-trial stage". Therefore, the defence team at this stage would be provided with the resources for the following composition: Counsel, Assistant to Counsel, Legal Assistant, two Case-Manager positions and 50% of Language Assistant.

In addition, the Registry notes that in accordance with regulation 77(4)(b) of the Regulations of the Court ("RoC"), the Office of Public Counsel for the defence ("OPCD") could play a supporting role and provide assistance to this team, as appropriate.

V. MINIMUM REQUIREMENTS

In order to practice before the Court, including as a Defence counsel, a lawyer must first be admitted to the List of Counsel maintained by the Registrar under rule 21(2) of the Rules. For the purposes of the present Call, the Registry will therefore only consider applications from persons who are either already admitted to the List of Counsel, or who appear to meet the minimum requirements for admission to this List. The latter requirements include:

- Fluency in at least one of the working languages of the Court (English and French);
- Established competence in international or criminal law and procedure and at least 10 years of relevant experience in criminal proceedings;⁶
- Counsel must be free of serious criminal or disciplinary convictions and be prepared to comply fully with the [ICC's Code of Professional Conduct for counsel](#) ("Code").⁷

⁵ 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.

⁶ Rule 22 of the Rules of Procedure and Evidence; regulation 67 of the Regulations of the Court.

⁷ Resolution ICC-ASP/4/Res.1.

More information on admission to the List of Counsel is available on the ICC website at <https://www.icc-cpi.int/get-involved/legal-professionals>. Further details on the application process are also available in the “[Guide for applicants to the ICC List of counsel and Assistants to counsel](#)”.

VI. SELECTION CRITERIA

The Registry will assess candidates expressing interest in appointment as counsel for Mr Kony by reference to established criteria. In addition to the requirements set out in rule 22 of the Rules, Regulation 67 of the RoC, these criteria include:

- (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.

As English language is one of the official languages in Uganda, considering article 50 of the Rome Statute on the working languages of the Court in conjunction with rule 22(1) of the Rules, excellent knowledge of and fluency in English would be required. Considering that Mr Kony is likely to speak local Ugandan languages, knowledge of other languages spoken in Uganda will be considered an asset. Familiarity with the region where the crimes in connection to this case have allegedly been committed will be considered an asset.

VII. PROCEDURE FOR APPLICATION AND SELECTION

Lawyers interested in being appointed as counsel for Mr Kony during the confirmation of charges proceedings should submit an expression of interest which includes the following:

- An up to date *curriculum vitae*;
- A statement against the selection criteria demonstrating how the candidate meets the identified criteria;
- Any other relevant information which the candidate believes should be made known to the Registry.

Expressions of interest should be submitted to the Counsel Support Section in the ICC Registry by **17.30 Central European Time, on 16 May 2024**, using the following email address: css@icc-cpi.int

Questions on this process can likewise be sent to css@icc-cpi.int