

Annex 1

Public Redacted

List of communications

- (1) Email from Registry (CSS) to Mr Bradfield on 24 September 2024 at 09:32
- (2) Email from Mr Bradfield to Registry (CSS) on 27 September 2024 at 01:25 and attached declaration
- (3) Email from Registry (CSS) to Mr Bradfield on 2 October 2024 at 11:11
- (4) Email from Mr Bradfield to Registry (CSS) on 3 October 2024 at 22:51
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(1) Email from Registry (CSS) to Mr Bradfield on 24 September 2024 at 09:32

Dear Counsel,

On 15 May 2024, the Single Judge of Pre-Trial Chamber III in the case of *The Prosecutor v. Joseph Kony* (“Kony case” or “Case”) instructed the Registry to collect information on victims’ preferences as to their legal representation and to submit a report by no later than Friday 28 June 2024 and promptly update the Chamber of any relevant developments which might materialise after that date.

In light of the general premise of rule 90 of the Rules of Procedure and Evidence, victims have the right to choose their legal representative(s) for the proceedings. If the victims select various counsel and are unable to coordinate the common legal representation, the Chamber may request the Registry to organise such representation. The Registry’s recommendations to the Chamber must consider, among other things, the victims’ interests and avoid conflicts of interest.

As legal representative of the 162 recently submitted applications of victims who have expressed their interest to participate in the *Kony* case, we kindly request your input on the below questions. Your answers will help us in the preparation of an update report on the legal representation of the victims in the *Kony* case.

We would appreciate to receive your input and observations on the below points:

1. Availability:

Could you let us know (i) whether you would be willing to represent victims in the *Kony* case, and, if your answer is in the affirmative, (ii) whether you consider yourself available to do so effectively and diligently, adhering to the Code of Professional Conduct for counsel?

2. Legal representation organisation:

Could you please outline the way that, according to you, the legal representation in the *Kony* case should be organised for an efficient, effective and meaningful representation of the victims in the present phase of the Case (e.g. structure and composition of the team, role and responsibilities within the team and factors to take into account)?

3. Willingness to work in a team:

Could you please clarify as well whether you would be willing to work collaboratively in a team with OPCV and/or other external counsel, as the Chamber may decide, to ensure the legal representation of victims in the Case?

4. Additional remarks:

Please highlight any specific challenges or unique aspects related to this Case you wish to address. Do you foresee any potential conflicts of interest? Do you have other remarks to bring to the attention of the Registry and Chamber?

Regarding any potential conflict of interest, please find attached the “Declaration of No Conflict of Interest by Counsel” that needs to be submitted to us at your earliest convenience.

Please kindly let us know whether we can use your response in a public update report to the Chamber that the Registry intends to file on the legal representation of victims in the coming weeks. We kindly request your timely response by **27 September 2024 at the latest**.

Thank you very much in advance for your cooperation.

Kind regards,

CSS

(2) Email from Mr Bradfield to Registry (CSS) on 27 September 2024 at 01:25

Dear Colleagues,

Thank you for the message. I'm pleased to respond to your queries as follows.

1. Availability:

I am available and stand ready to represent the victims who have nominated me as their legal representative. I carefully reviewed the Code of Conduct for Counsel in advance of meeting with victims, who are now my clients. At all times, my representation of them will be effective and diligent, to the highest professional and ethical standards, and in line with the Code.

2. Legal representation organisation:

Given the pre-trial stage of the proceedings, the limited nature of the confirmation hearing, and the number of victims that I intend to represent, in my view an appropriate legal team would be composed of: 1 Counsel, 1 Legal Assistant/Case Manager, and 1 Field Assistant.

In terms of division of roles, Counsel would be responsible to lead the team, to give the necessary legal advice to the clients in a clear and understandable manner, and to convey the views and interests of the victims to the Pre-Trial Chamber, both in writing and through oral submissions. The Legal Assistant/Case Manager would assist Counsel with legal research, drafting and organisation of tasks. The Field Assistant would act as a crucial intermediary between Counsel and the clients, to facilitate communication, and be the necessary focal point on the ground.

Moreover, it is also important to note that both the Legal Assistant/Case Manager and Field Assistant will be female Ugandan nationals, from the affected region. Ugandan presence in the team is vital, not only for the best quality representation, but it is also the express wish of my clients.

3. Willingness to work in a team:

Throughout my career, I have worked as part of small and large teams, in different cultural settings, including in northern Uganda, with people from different faiths and backgrounds. Having previously worked on the *Ongwen* case, I personally know, and have a good working relationship with, colleagues in OPCV and existing External Victims Counsel. It would be a priority for me to continue that good working relationship, and to collaborate wherever possible, including for example, making joint submissions in the interests of judicial economy and expeditious proceedings.

4. Additional remarks:

I should note that all of my clients did not participate in *Ongwen* case, with the majority of my clients being victims of the attack on the Lwala girls school, an incident that was also not charged in that case. The next largest group of my clients are thematic victims (i.e. former child soldiers and SGBC victims who are not the focus of a specifically charged location), a cohort of victims who were under-represented in the *Ongwen* case. As such, my potential inclusion as an LRV would fill a concerning gap in victim representation that currently exists, especially given the expanded charges in the *Kony*

case. Thus, it is arguably in the interests of justice - and the victims - that an additional LRV be included. This would not unduly impact the overall efficiency of proceedings.

Having lived and worked in northern Uganda for two years, I also possess an important competence in the cultural and local context of this case, something that not every LRV might ordinarily possess in proceedings before the Court. My PhD assessed the use of amnesty in northern Uganda, a study which involved extensive fieldwork and consultation with victim communities in the region. My interaction and relationship with these communities is now over a decade long.

Finally, I must also make reference to my prior role in the *Ongwen* case. When sending the first batch of applications to VPRS on 26 August 2024, I stated the following:

'While you may already be aware of my prior role in the Ongwen prosecution team, I must convey this to you formally, at this first procedural opportunity, when transmitting this first group of applications to your office.'

From 2015-2018, I worked for the Office of the Prosecutor as one of the lawyers on the Ongwen trial team, and left my role in April 2018 to return to Ireland. It is my careful and considered view that my 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 Court's jurisprudence. Nonetheless, I informed all of my potential clients during our first meeting that I previously worked for the OTP on the Ongwen case, and they did not have any concerns about my prior role. Furthermore, I do not believe there is any impediment to representation within the meaning of Article 12 of the Code.

While I do not consider this situation to be one where written consent for my continued representation is required, per Article 16(3)(b) of the Code, for completeness I will proceed to obtain written consent for my continued representation - as this may also serve as the necessary power of attorney - and transmit this to your office in early course.

Being mindful of the Court's jurisprudence emphasising timely notice of any potential issues regarding representation, I would be grateful if this correspondence could be brought to the attention of Pre-Trial Chamber III for their information.'

On the same day, on an informal basis, I informed the Prosecution that I was submitting a group of victims applications so that they would also be aware.

I remain of the view that there is no impediment to my representation of victims in the *Kony* case. My signed declaration is therefore attached. Should the Registry take a different view, or wish to subsequently convey such a different view to the Chamber, I would respectfully request that any such concerns be first raised with me to seek any response that might be useful, so that the Registry's report can be as fully informed as possible.

I have no objection to my potential role as an LRV being contained in any public filing update. My prior role in the Prosecution team is also a matter of public record, given my regular courtroom presence in that case.

With kind regards,

Paul Bradfield.



Declaration of No Conflict of Interest by Counsel

considering articles 12 and 16 of the Code of Professional Conduct for counsel

Name of counsel: Paul Bradfield

Hereby conform to the provisions of Articles 12 and 16 of the Code of Professional Conduct for counsel ("Code"), and undertake as follows:

- I have not been involved or made privy of information related to the case, the client or any former client that might be against their interest, or might arise any conflict of interest during the intervention as Counsel;
- I shall exercise all care to ensure that no conflict of interest arises and shall put the client's representation first;
- I will not act in proceedings that might imply the probability to be called or appear as a witness in accordance with article 12(3) of the Code

I acknowledge that in case there is a breach of this undertaking, and pursuant to the obligations imposed on me as Counsel by article 16 of the Code, I shall:

- Inform immediately all potentially affected clients of the existence of the conflict and either:
 - (a) Withdraw from the representation with the prior consent of the Chamber; or
 - (b) Seek the full and informed consent in writing of all potentially affected clients to continue representation

I have read and fully understand this Declaration of No Conflict of Interest by Counsel and articles 12 and 16 of the Code (reproduced overleaf), and I am fully aware of the conditions stipulated therein, including the consequences for breach of said provisions.

Situation: Uganda

Case: Prosecutor v. Joseph Kony

I am aware and fully understand that this Declaration of No Conflict of Interest by Counsel as well as any communication of this nature are Confidential.

Done at Cork, Ireland

Date: 26 September 2024

Signature of counsel

For the Registrar

Article 12 Impediments to representation

1. Counsel shall not represent a client in a case:

(a) If the case is the same as or substantially related to another case in which counsel or his or her associates represents or formerly represented another client and the interests of the client are incompatible with the interests of the former client, unless the client and the former client consent after consultation; or

(b) In which counsel was involved or was privy to confidential information as a staff member of the Court relating to the case in which counsel seeks to appear. The lifting of this impediment may, however, at counsel's request, be ordered by the Court if deemed justified in the interests of justice. Counsel shall still be bound by the duties of confidentiality stemming from his or her former position as a staff member of the Court.

2. In the case of paragraph 1 (a) of this article, where consent has been obtained after consultation, counsel shall inform the Chamber of the Court seized with the situation or case of the conflict and the consent obtained. Such notice shall be provided in a manner consistent with counsel's duties of confidentiality pursuant to article 8 of this Code and rule 73, sub-rule 1 of the Rules of Procedure and Evidence.

3. Counsel shall not act in proceedings in which there is a substantial probability that counsel or an associate of counsel will be called to appear as a witness unless: (a) The testimony relates to an uncontested issue; or (b) The testimony relates to the nature and value of legal services rendered in the case.

4. This article is without prejudice to article 16 of this Code

Article 16 Conflict of interest

1. Counsel shall exercise all care to ensure that no conflict of interest arises. Counsel shall put the client's interests before counsel's own interests or those of any other person, organization or State, having due regard to the provisions of the Statute, the Rules of Procedure and Evidence, and this Code.

2. Where counsel has been retained or appointed as a common legal representative for victims or particular groups of victims, he or she shall advise his or her clients at the outset of the nature of the representation and the potential conflicting interests within the group. Counsel shall exercise all care to ensure a fair representation of the different yet consistent positions of his or her clients.

3. Where a conflict of interest arises, counsel shall at once inform all potentially affected clients of the existence of the conflict and either:

(a) Withdraw from the representation of one or more clients with the prior consent of the Chamber; or

(b) Seek the full and informed consent in writing of all potentially affected clients to continue representation.

(3) Email from Registry (CSS) to Mr Bradfield on 2 October 2024 at 11:11

Dear Mr. Bradfield,

Thank you very much again for your response. We would like to follow up on your availability as well as the legal representation organisation.

You mentioned your availability and readiness to represent the victims who have nominated you as their legal representative. Would you also be open to representing other victims who have not nominated you as their legal representative?

Regarding the composition of the legal team, you have outlined your preferred structure. If requested to join a team with other counsel, including OPCV counsel, would you be willing to collaborate in such a setup?

Can you please also clarify if we can use your additional answer in our public filing to the Chamber.

Thank you for responding as soon as possible.

Kind regards,

CSS

(4) Email from Mr Bradfield to Registry (CSS) on 3 October 2024 at 22:51

Dear Colleagues,

I would be happy to represent other victims. I would also be happy to work collaboratively with other Victims counsel and OPCV. Both of these answers can be incorporated into your public filing.

Kind regards,

Paul

(5) Email from Registry (CSS) to Mr Bradfield on 4 October 2024 at 10:12

Dear Mr. Bradfield,

Thank you for your email. We take good note of your response.

In relation to the matter of conflict of interest, noting that the Declaration document is confidential, please let us know if you consent for it being disclosed in the public filing.

Thank you in advance for your confirmation.

Kind regards,

CSS

(6) Email from Mr Bradfield to Registry (CSS) on 4 October 2024 at 10:47

Dear Colleagues.

I have no objection to the declaration being referenced in the filing, but do you want to attach it as a public annex?

Regards

Paul

(7) Email from Registry (CSS) to Mr Bradfield on 4 October 2024 at 11:32

Dear Counsel,

Thank you for your prompt response.

Yes, we intend to attach the Declaration as a public annex. Kindly confirm if you agree.

Thank you in advance.

Kind regards,

CSS

(8) Email from Mr Bradfield to Registry (CSS) on 4 October 2024 at 11:36

If it has been the practice to annex such documents publicly, then please proceed.

Regards

Paul

(9) Email from Registry (VPRS) to Mr Bradfield on 10 October 2024 at 14:43

Dear Mr Bradfield,

Thanks for our conversation earlier today and the clarifications. As discussed, please find the current version of the Annex which would contain the correspondence between you and the Registry on the issue of legal representation of victims in the *Kony* proceedings. You indicated that the correspondence should be filed as CONFIDENTIAL, while you agree that the public Registry filing may mention your name as well as your submission on the absence of a conflict of interest.

In relation to this (and as addressed in Annex I), am I to understand that we still should file your Declaration on no conflict of interest (attached) publicly or do you rather wish for it to be filed CONFIDENTIAL as well? I just want to be sure in light of previous correspondence.

Many thanks for confirming/clarifying!

All the best,

Philipp Ambach

(VPRS)

(10) Email from Mr Bradfield to Registry (VPRS) on 10 October 2024 at 22:46

Dear Philipp,

Thank you for the call today and for providing me the opportunity to review the draft Annex.

For consistency of rationale, I think it would be best for **both** the correspondence and the declaration to be annexed together with a **confidential** status.

I'm grateful for your assistance.

Kind regards,

Paul