

Status Conference

(Open Session)

ICC-02/04-01/05

1 International Criminal Court
 2 Pre-Trial Chamber III
 3 Situation: Republic of Uganda
 4 In the case of The Prosecutor v. Joseph Kony - ICC-02/04-01/05
 5 Single Judge Althea Violet Alexis-Windsor
 6 Status Conference - Courtroom 1
 7 Tuesday, 23 July 2024
 8 (The hearing starts in open session at 10.00 a.m.)
 9 THE COURT USHER: [10:00:05] All rise.
 10 The International Criminal Court is now in session.
 11 Please be seated.
 12 SINGLE JUDGE ALEXIS-WINDSOR: [10:00:28] Court officer, please call the case.
 13 THE COURT OFFICER: [10:00:40] Good morning, Madam President.
 14 Situation in the Republic of Uganda, in the case of the Prosecutor versus Joseph Kony,
 15 case reference ICC-02/04-01/05.
 16 And for the record, we are in open session.
 17 SINGLE JUDGE ALEXIS-WINDSOR: [10:00:55] Very well. Thank you.
 18 Could the parties and participants please introduce themselves, starting with
 19 the Prosecution, followed by the Office of Public Counsel for Victims and, finally,
 20 ending with the Defence.
 21 May we begin.
 22 MS VON BRAUN: [10:01:17] Good morning, your Honour. The Prosecution is
 23 represented today by Ms Melissa Simms, trial lawyer; Grace Goh, case manager; and
 24 myself, Leonie von Braun, senior trial lawyer.
 25 SINGLE JUDGE ALEXIS-WINDSOR: [10:01:34] Thank you.

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1 MS PELLET: [10:01:37](Interpretation) Thank you, Madam President.

2 *The victims admitted to participate in this case, as well as some of the applicants, are
3 represented by Ana Peña, Tars Van Litsenborgh and myself, Sarah Pellet, of -- counsel
4 at the Office of Public Counsel for Victims.

5 SINGLE JUDGE ALEXIS-WINDSOR: [10:01:58] Thank you.

6 And, finally, the Defence.

7 MR HAYNES: [10:02:07] Yes, there we go. Good morning.

8 My name is Peter Haynes and I represent the interests of Mr Joseph Kony. And I'm
9 assisted in court today by my case manager, Ms Eva Daniel.

10 SINGLE JUDGE ALEXIS-WINDSOR: [10:02:18] Thank you.

11 All right. One moment, let me find my reading glasses.

12 All right. Yes.

13 As this is the first status conference before this Pre-Trial Chamber, let me introduce
14 myself. I am Judge Althea Violet Alexis-Windsor, I am the Presiding Judge in this
15 matter. My colleagues/fellow judges who are not here in person today are
16 Judge Iulia Motoc and Judge Haykel Ben Mahfoudh. Today, I will be sitting as
17 Single Judge in accordance with the Chamber's decision of 15 March 2024.

18 The present status conference was convened pursuant to a request by the Defence for
19 Mr Kony and concerns a number of procedural matters. Let me mention that,
20 unfortunately, we will not have Acholi interpretation today, because of logistical
21 issues.

22 I will begin this status conference by recalling the most relevant steps in the present
23 case for the benefit of the audience outside the courtroom.

24 On 8 July 2005, Pre-Trial Chamber II issued a warrant of arrest against Mr Kony,
25 which was amended on 27 September 2005.

1 The Prosecution submitted a request to conduct a confirmation of charges procedure
2 in the absence of Mr Kony on 24 November 2022.

3 Subsequently, on 23 November 2023 and 4 March 2024, Pre-Trial Chamber II, in
4 a different composition than the Chamber issuing the warrant of arrest, issued two
5 decisions determining that several criteria for conducting a confirmation of charges
6 procedure in the absence of Mr Kony had been fulfilled.

7 Specifically, Pre-Trial Chamber II found that Mr Kony is a person who cannot be
8 found within the meaning of Article 6 -- sorry, 61(2)(b) of the Statute, that there is
9 cause to hold a confirmation of charges hearing in the absence of Mr Kony, and that
10 all reasonable steps have been taken to inform Mr Kony of the charges against him as
11 formulated by the Prosecution in the Document Containing the Charges.

12 In relation to the possibility of conducting a confirmation of charges procedure in
13 the absence of Mr Kony, I emphasise that this Chamber, that is Pre-Trial Chamber III
14 to which the case against Mr Kony has been reassigned, will determine in due course
15 whether the final criterion has been fulfilled. This criterion concerns the question
16 whether Mr Kony has been sufficiently informed of the date on which the hearing has
17 been scheduled. If it would be determined that this criterion has been met, then
18 the confirmation of charges procedure in the absence of Mr Kony may proceed.

19 In this regard, I further recall that, under the ICC Statute, the purpose of
20 a confirmation of charges procedure is to determine whether there are substantial
21 grounds to believe that a person is individually criminally responsible for any of
22 the charges formulated by the Prosecution in the Document Containing the Charges.
23 Since that is the case, this person will be committed to a full-fledged trial to determine
24 whether or not he or she is guilty beyond reasonable doubt for any charge confirmed
25 by a Pre-Trial Chamber, should that indeed be necessary.

On 21 June 2024, following a selection procedure organised by the Registry,

Mr Haynes was appointed as counsel for Mr Kony.

On 5 July 2024, I, in my capacity in this matter as Single Judge, pursuant to a request submitted by the Defence, extended the time limits for the Defence to submit certain written submissions on different aspects related to the present proceedings, and scheduled a status conference for today.

On 19 July 2024, having received indications by email from the parties and participants, I informed them of the agenda for this status conference and provided a rationale which is of course known to the parties and participants and which have to do with the fact that submissions will be received and decisions made concerning many of the proposed issues.

On 22 July 2024, the OPCV requested to omit a proposed matter from the agenda for the present status conference.

So these are the most important procedural developments in the present proceedings.

Now, I have a few preliminary matters to tell you now that I have completed stating the procedural developments in the case.

In any event, I now turn to the agenda for today. The following topics shall be addressed at today's status conference:

(i) an update by the Prosecution on disclosure and the use of the relevant electronic systems;

(ii) the right to audience of members of the Defence team; and (iii) the scope of legal representation in *in absentia* proceedings.

I wish to emphasise that, in relation to any issues raised today that require a judicial determination by the full Chamber, a decision will be issued in due course following deliberations with the full Chamber.

I also underline that anything discussed today is without prejudice to the determination that the Chamber will make regarding any other matters, including in relation to the question whether Mr Kony has been sufficiently informed of the date of the scheduled confirmation of charges hearing, or any other question arising in connection with these proceedings.

Lastly, I do have an enquiry of the OPCV on whether they have access to filings classified as confidential in the present case.

All right, so I will now give the floor to the parties and participants. And before doing so, I wish to draw to everyone's attention some technical matters to ensure the proper conduct of this status conference and, indeed, all court proceedings.

The parties and participants must ensure that their microphone is turned on when speaking and that it is switched off when not speaking. I myself am a miscreant in this matter.

That they shall speak slowly.

That they shall pause for approximately five seconds before answering any questions and after each sentence so as to allow for the best possible live interpretation and transcription of the hearing.

In addition, the parties and participants shall not interrupt each other and shall, where necessary, request to be heard.

Lastly, the parties and participants shall clearly indicate whether their submissions can be presented in public session or whether it is necessary to move into private session. They shall also clearly indicate when it is no longer necessary to remain in private session.

All right. So I now turn to the first issue as raised by the Prosecution, namely an update on disclosure and the use of the relevant electronic system.

1 I give the floor to counsel for the Prosecution.

2 MS VON BRAUN: [10:13:08] Thank you, your Honour.

3 I'm happy to update you today on our disclosure planning and the technical
4 modalities, technical issues involved.

5 I'll start with the update on disclosure preparation.

6 The Prosecution has reviewed and organised its evidence for disclosure in accordance
7 with the plan it submitted on 28 March 2024. So I can report today that that work,
8 internally, the preparation is complete.

9 Without moving into areas that are yet to be deliberated and for us to receive
10 instructions on, we also have finalised a list of evidence and outlined a road map for
11 the parties and participants and the Chamber, in case the proceedings move forward,
12 related to the evidence.

13 With regard to these products, we'll seek your further instruction when the time
14 comes.

15 I would like to point out one type of evidence, which is the only area where our
16 additional review has led to a rise in INCRIM classification of certain items vis-à-vis
17 the plan that we submitted in the beginning of the year, and this is audio recordings
18 of intercepted communications. And I want to explain that to you briefly.

19 The Prosecution, if the proceedings go forward, will intend to rely on intercepted
20 radio communications from the Ugandan authorities. The main items of evidence in
21 this area are shorthand summaries of conversations of the LRA leadership in
22 logbooks. And these logbooks have been created by those who intercepted
23 the communication.

24 When the time comes, if the time comes, the Prosecution could provide an overview
25 chart with its disclosure notification that would help the Chamber and Defence

1 navigate this more complicated area of evidence.

2 However, we also hold original audio recordings of intercepted evidence. Due to
3 a migration from a previous system called Ringtail into Relativity within the OTP in
4 the year 2023, audio tracks of the registered intercepted radio communication have
5 been split into their original format and now we have a situation that we have
6 a parent document ID and for each parent document ID several sub audio tracks per
7 recording.

8 I point this out only because it gives rise to the number of items, but it does not
9 increase the length of audio recordings overall.

10 I would now provide a brief update in relation to technical issues.

11 In its observations on disclosure, the Prosecution had indicated that it had agreed
12 with the Registry to use the Judicial Working Platform for these proceedings and we
13 also indicated that, in that case, a new eCourt protocol for upload of evidentiary
14 materials into the Judicial Working Platform would be necessary if and once that
15 would be promulgated.

16 However, in preparing for the technical upload of disclosure, the Prosecution has
17 discovered several issues that it was not aware of before that have led it to reconsider
18 the use of JWP for these proceedings and that we would rather turn to Nuix JEM to
19 ensure a safe, reliable disclosure should the time come for disclosure.

20 To give you the explanations for this, I would request a brief private session,
21 your Honour, because these contents are confidential between the OTP and Registry.

22 SINGLE JUDGE ALEXIS-WINDSOR: [10:18:28] Yes. Certainly.

23 Let us go into private session now, please.

24 And for members gathered in the public gallery, that means that you will not hear
25 what is happening over the next couple of minutes.

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(Private Session)

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1 (Private session at 10.18 a.m.)

2 THE COURT OFFICER: [10:18:59] We are in private session, Madam President.

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(Private Session)

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22 (Open session at 10.28 a.m.)

23 THE COURT OFFICER: [10:28:40] We are back in open session, Madam President.

24 SINGLE JUDGE ALEXIS-WINDSOR: [10:28:45] Very well. Thank you.

25 Counsel, I must say I was not perfectly sure that we needed the private session, but

1 I didn't wish to interrupt you.

2 All right. Go on.

3 MS VON BRAUN: [10:28:59] Thank you, your Honour. I take note of that. And
4 the reason I thought it would be prudent to go into private session on these issues at
5 the moment is because there are ongoing consultations between the different organs
6 of the Court on these matters, so I was just trying to be careful, but I do take note that
7 it was borderline.

8 SINGLE JUDGE ALEXIS-WINDSOR: [10:29:22] Indeed, go on.

9 MS VON BRAUN: [10:29:24] But, unless there are any additional questions on your
10 part, that would conclude my update on disclosure and the technical issues. But I'm
11 happy to answer further questions.

12 SINGLE JUDGE ALEXIS-WINDSOR: [10:29:37] Thank you very much, Counsel.

13 You have managed to explain yourself very well so that even I understand, technical
14 issues not being a strong point of mine.

15 Right. Thank you, then.

16 The OPCV, do you wish to add anything?

17 MS PELLET: [10:29:56](Interpretation) Thank you, Madam President. We have
18 nothing further to add.

19 SINGLE JUDGE ALEXIS-WINDSOR: [10:30:04] Thank you.

20 I will now give the floor to the Defence to respond, if any.

21 MR HAYNES: [10:30:12] As your Honour is aware, since my introduction to the case,
22 the atmosphere between the parties has been collegiate and this is a matter that has
23 been under discussion between those who represent the interests of Mr Kony and
24 the Prosecution.

25 As it happens, on a personal level, I'm familiar with Judicial Workflow, or JWP, as it's

1 called here at the ICC, because I've used it in a different jurisdiction. But, in fact, my
2 familiarity with the system for disclosure is probably secondary to those who are
3 going to have to manage it on behalf of my team. And they are uniformly fans of
4 Nuix.

5 And, so, to cut a long story short, we are supportive of the Prosecution's position that
6 that is the preferable platform for disclosure, both from their point of view and from
7 ours, to assimilate and organise disclosure in what is an enormous case.

8 SINGLE JUDGE ALEXIS-WINDSOR: [10:31:26] I rather thought you would agree,
9 Counsel.

10 All right. So, may we move on now to the second issue. Yes.

11 And this issue, I believe, was raised by the Defence, namely the right to audience of
12 members of the Defence team.

13 I have to say, it is included because I am not quite sure what was meant.

14 So, please, you have the floor, Counsel.

15 MR HAYNES: [10:32:04] Thank you.

16 I'm going to go a little bit off-piste, because I think I have to take the blame for the fact
17 that we're having a status conference today, although it emerged --

18 SINGLE JUDGE ALEXIS-WINDSOR: [10:32:23] The blame or the credit.

19 MR HAYNES: [10:32:25] Thank you. One thing was clear, we all thought it was
20 a good idea, not least because it would happen in an ordinary case where there was
21 an accused here, there would be a first appearance and certain housekeeping matters
22 would be aired from the get-go.

23 I want to start by dealing with perhaps what would be the central matter in a normal
24 status conference, which is the status of the notional accused, and in this case I mean
25 the status of his legal team. And I start by saying how very grateful I was that you

1 granted the extension of time you did on 5 July and I just wanted to update you with
2 where we've got to.

3 I have succeeded, having pretty much applied immediately, to assign a case manager,
4 an assistant to counsel and one legal assistant. The remainder of the team, as
5 envisaged by the Legal Aid Policy, is awaiting assignment and I hope that will be
6 completed by the end of this week, if not the beginning of next week.

7 But so that you are clear, that is no reason to disturb the deadline for the first of
8 the filings you are expecting, namely August 15.

9 SINGLE JUDGE ALEXIS-WINDSOR: [10:33:58] Right. So, Counsel, if I understand
10 you, right now at this moment as we speak, the persons before me now, that is
11 the entirety of your legal team. So you have yourself, of course, and a case manager,
12 now?

13 MR HAYNES: [10:34:12] No, I have an assistant to counsel and a legal assistant as
14 well.

15 SINGLE JUDGE ALEXIS-WINDSOR: [10:34:15] I see. So when you say that by
16 the end of the week you hope that the full team would be on board, what did you
17 mean exactly?

18 MR HAYNES: [10:34:28] I mean one more legal assistant and one more case
19 manager.

20 SINGLE JUDGE ALEXIS-WINDSOR: [10:34:31] Oh, I see.

21 MR HAYNES: [10:34:32] I'm sorry, that wasn't on the agenda, but it just occurred to
22 me that this is information that was probably useful to you.

23 That kind of dovetails into the next item, the item which is on the agenda, which is
24 raised really out of an abundance of caution against the backdrop of some
25 inconsistency of practice between chambers here at the ICC, at least in the experience

1 of the lawyers currently assigned to Mr Kony's team. And the question on which we
2 would appreciate some clarity from the Chamber is, put simply, who you are content
3 to hear from on the Defence side of the courtroom.

4 Of course, I do not actually anticipate not being here when required or, for that matter,
5 not being sufficiently briefed to be able to deal with any item for discussion. But
6 there are circumstances in which it would be either beneficial if the Chamber would
7 be prepared to hear from somebody other than me, or perhaps even necessary.

8 The Defence team, which is permitted under the Legal Aid Policy, only envisages one
9 person being assigned as counsel, that's me. The other team members are
10 designated either as legal assistants or assistants to counsel or case managers. And
11 in our collective experience, there has been experience, there has been practice, it's not
12 uniform, I accept, where certain presiding judges have preferred only to hear from
13 counsel.

14 There are three situations which might arise. The first and most likely is that I
15 would wish any submissions I make orally to be supplemented by legal assistants or
16 assistants to counsel. Firstly, because it would lighten my workload. Secondly --

17 SINGLE JUDGE ALEXIS-WINDSOR: [10:36:47] Sorry, Counsel, repeat that, please.
18 Repeat, please. You would like?

19 MR HAYNES: [10:36:53] My oral submissions at any hearing to be supplemented by
20 somebody who holds the capacity of legal assistant or assistant to counsel.

21 SINGLE JUDGE ALEXIS-WINDSOR: [10:37:05] Why?

22 MR HAYNES: [10:37:07] Well, as I said, because it makes my job a little easier if
23 somebody else can stand up and speak for a certain period of time. It means I'm not
24 talking all the time, which has the second benefit that you're relieved of the boredom
25 of constantly listening to me.

1 And the third benefit is, of course, because there will inevitably be members of
2 the Defence team who can speak more authoritatively on certain matters.

3 SINGLE JUDGE ALEXIS-WINDSOR: [10:37:40] All right. I misunderstood you. I
4 thought you meant that every time you addressed the Court, that automatically
5 someone else will, which did not make any sense, so I appreciate your clearing up
6 the issue. Right, go on.

7 MR HAYNES: [10:37:56] I think you've probably seen the situation where one
8 member of the Prosecution team will deal with a mode of liability and a second
9 member of the Prosecution team will deal with a different mode of liability, and
10 maybe a third will deal with a third.

11 I'm really inviting you to allow the Defence to take a similar sort of approach, perhaps
12 most likely in the event that we do eventually reach a fully contested confirmation
13 hearing and there are arguments about crime scenes, different crime scenes, different
14 modes of liability, et cetera, et cetera, that the burden can be shared between those
15 who may be called counsel and those who may not be called counsel, but who may
16 technically be qualified as counsel.

17 The second situation may be a little more difficult, unless I'm moving on too quickly.

18 SINGLE JUDGE ALEXIS-WINDSOR: [10:38:54](Microphone not activated)

19 MR HAYNES: [10:38:55] The second situation I envisage is in the event that I'm sick
20 or indisposed, or otherwise unavailable, perhaps during the occasion of some future
21 status conference or similar case management hearing. And in those circumstances
22 it would be useful to know that only one of two other members of my team could
23 deputise for me in my absence.

24 I emphasise, firstly, that I do not actually anticipate this occurrence ever occurring.

25 And, secondly, that the only potential deputies are persons who are list counsel at the

1 ICC with considerable experience --

2 SINGLE JUDGE ALEXIS-WINDSOR: [10:39:40] Yes, you've anticipated my next
3 question.

4 MR HAYNES: [10:39:43] -- but who are unlikely to have that title in these
5 proceedings.

6 SINGLE JUDGE ALEXIS-WINDSOR: [10:39:46] Sorry, I've broken my rule already, I
7 spoke when you were speaking. Yes, you anticipated my question. Right.

8 MR HAYNES: [10:39:53] Okay. And the third one may be a scenario we've already
9 seen today, which is in the event that there's a highly technical issue for discussion,
10 perhaps involving information technology or translation, in which a certain team
11 member, most likely a case manager, has greater expertise or the ability to articulate
12 or demonstrate the problem.

13 And I hadn't fully appreciated the excellent presentation that the Prosecution were
14 going to make today through their senior trial counsel, but I raise the possibility
15 because it did actually happen to me recently in a case in London where the judge
16 simply said, "Sit down, Mr Haynes, I'll listen to the person who's giving you your
17 instructions".

18 So, in those very limited circumstances, I would invite you to say that you might hear
19 from a junior member of the team on a technical issue.

20 But those are the only three scenarios I envisage and it would be helpful, going
21 forward, to know that the Chamber had a flexible approach to who you would
22 actually hear from in the courtroom.

23 SINGLE JUDGE ALEXIS-WINDSOR: [10:41:09] All right.

24 Anything else, Counsel?

25 MR HAYNES: [10:41:11] No, thank you.

1 SINGLE JUDGE ALEXIS-WINDSOR: [10:41:12] All right. Thank you.

2 All right. On this issue, I would give the floor to the Prosecution to respond, if any
3 response is forthcoming.

4 MS VON BRAUN: [10:41:25] Thank you, your Honour. The Prosecution has no
5 objections to the suggestions made by counsel. They all seem very practical and,
6 indeed, relevant to the proceedings. Thanks.

7 SINGLE JUDGE ALEXIS-WINDSOR: [10:41:39] Thank you.

8 And counsel for the OPCV, any comment?

9 MS PELLET: [10:41:44](Interpretation) Thank you, Madam President. No, we do
10 not have any comments, particularly because this seems to be the practice in matters
11 before the ICC. Thank you.

12 SINGLE JUDGE ALEXIS-WINDSOR: [10:42:04] Very well.

13 Right. Counsel for the Defence, I can say now that I am provisionally minded to --
14 Counsel, yes, stand, please.

15 MR HAYNES: [10:42:22] I'm so sorry.

16 SINGLE JUDGE ALEXIS-WINDSOR: [10:42:23] That's all right.

17 MR HAYNES: [10:42:24] No disrespect was meant.

18 SINGLE JUDGE ALEXIS-WINDSOR: [10:42:26] None was taken, trust me. Right.
19 So that -- take off your microphone, please, Counsel. Thank you. Right.

20 So I am minded provisionally to say that I have no difficulties, but it may be that there
21 is some aspect I have not considered, so that I'd like to have a word with my fellow
22 colleague judges.

23 But provisionally, I see no difficulties. I know you don't plan on being sick, but I can
24 think of no circumstance in which anyone plans on being sick. Yes. So that we will
25 get back to you shortly, but provisionally.

1 MR HAYNES: [10:43:05] Thank you very much, indeed.

2 SINGLE JUDGE ALEXIS-WINDSOR: [10:43:06] Yes. All right, very well. Right.

3 So now we have the third issue, which I believe was also raised by the Defence,

4 namely the scope of legal representation in *in absentia* proceedings.

5 I give the floor to the Defence.

6 MR HAYNES: [10:43:28] I'm not sure that I did raise this. This is a matter that's

7 concerned I think both of us going forward and has been the subject of a great deal of

8 discussion. And not -- not to abbreviate the agenda even further, but I think we

9 collectively think we've arrived at an agreeable way forward that requires no further

10 guidance or decision from you today.

11 SINGLE JUDGE ALEXIS-WINDSOR: [10:44:12] Very well, Counsel.

12 Right, Prosecution? Is this so?

13 MS VON BRAUN: [10:44:19] That is indeed true. So I have nothing further to add

14 on the issue today either.

15 SINGLE JUDGE ALEXIS-WINDSOR: [10:44:25] Very well.

16 MS VON BRAUN: [10:44:26] Thank you.

17 SINGLE JUDGE ALEXIS-WINDSOR: [10:44:26] Very well.

18 OPCV, any comments?

19 MS PELLET: [10:44:34](Interpretation) Thank you, Madam President.

20 I once again don't have any further comment, particularly because I was not part of

21 the discussions on this topic. *And so I believe that, if there is agreement between my

22 colleagues, I have no choice but to agree with them. Thank you.

23 SINGLE JUDGE ALEXIS-WINDSOR: [10:44:53] Thank you, Counsel.

24 May this spirit that has started of collaboration be maintained throughout these

25 proceedings.

1 All right. Very well, then. Which leads me very swiftly to -- there was one
2 question.

3 Counsel for the OPCV, I asked you to address me on an issue. Are you prepared to
4 do so now?

5 MS PELLET: [10:45:28](Interpretation) Yes, I am, Madam President.

6 *You were wondering whether we have access to the confidential documents in this
7 case. Well, we've only had time to have a brief look, but it seems that we do. You see,
8 for example, the Defence request of 5 July to which there was a confidential annex,
9 yes, we have access to that, and during the hearing we were able to determine that we
10 also have access to other confidential filings.

11 Madam President, I'm sorry, I just want to add the following: It would -- it would
12 seem that most of the material in the case file is public, there are very few confidential
13 documents, except those which are *ex parte* and, therefore, if we are not concerned by
14 such documents we would not have access thereto, that is the *ex parte* confidential
15 decisions. *For example, we have access to confidential *ex parte* decisions that
16 concern us directly, as they relate to the admission of certain victims to participate in
17 this case. That's what I can tell you now.

18 So, if you want any further detailed submissions, I could make them after this hearing,
19 Madam President. Thank you.

20 SINGLE JUDGE ALEXIS-WINDSOR: [10:47:06] All right. But so far, Counsel,
21 you are able to access documents and do your work so that you can properly
22 represent the victims?

23 MS PELLET: [10:47:17](Interpretation) For now, yes. Except when it comes to
24 confidential documents of which we have not been notified and, therefore, we cannot
25 make any statements thereupon in relation to our clients' interests because we are

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1 unaware of their existence, so to speak.

2 SINGLE JUDGE ALEXIS-WINDSOR: [10:47:44] All right. Very well.

3 Any comment from the parties? No. All right, then.

4 So, counsel for the victims, I will look into this matter as well. All right. Very well.

5 One moment, please.

6 All right. Oh, one issue before I went on to something else.

7 Counsel for the Defence, you mentioned that the deadline for the first of the filings

8 I'm expecting would continue so that you have no anticipation that there should be

9 any changes and that the first filing should be expected on 15 August; is that what

10 you said?

11 MR HAYNES: [10:49:05] I did, yes.

12 SINGLE JUDGE ALEXIS-WINDSOR: [10:49:13] All right. If that is what was

13 expected, I have no difficulties, but I actually thought that the filing was expected

14 10 days after the 15th.

15 MR HAYNES: [10:49:33] I'm sorry, you're right. My case manager has just

16 reminded me of that.

17 SINGLE JUDGE ALEXIS-WINDSOR: [10:49:38] All right. You are welcome to file

18 on the 15th. All right.

19 MR HAYNES: [10:49:43] I think the point I was trying to make was we're not going

20 to be coming back to you saying, because the assignment of certain members is still

21 stuck in the pipeline we're going to -- we're not going to be asking for my more time.

22 SINGLE JUDGE ALEXIS-WINDSOR: [10:49:59] Very well. I understand. All

23 right. Thank you, Counsel.

24 All right. So, I'm checking and I think we have finished the items for the agenda.

25 But now, having exhausted the issues raised by the parties and participants, I will

1 issue an order supplementing a previous decision, as well as orders regarding
2 the conduct of the present proceedings, even as we have not finally confirmed
3 the future of the proceedings in matters that are not necessarily in dispute, but which
4 would assist as we go along.

5 All right. So my first order is this:

6 The first order supplements the Decision on the Procedure for Appointing Counsel,
7 which is filing 499 in the record of the case. In that decision, the Single Judge,
8 namely me, ordered counsel for Mr Kony to, *inter alia*, provide a response, if any, to
9 the Prosecution's Observations on the conduct of the confirmation proceedings
10 in absentia and Requests for the adoption of certain protocols and an in situ hearing
11 in Uganda, which is filing 490 in the record of the case.

12 In this regard, the Defence shall, in accordance with the timeline set in the Decision on
13 the Defence Request for Variation of Deadlines and for a Status Conference, which is
14 filing 508 in the record of the case, also address the following matters in that response,
15 namely:

16 Whether the Defence anticipates invoking any ground for excluding criminal
17 responsibility and/or an alibi;

18 Whether the Defence anticipates conducting investigations before the confirmation of
19 charges hearing, if any. If so, the Defence shall, specify its intended investigative
20 steps, including a timeline;

21 Thirdly, whether the Defence anticipates presenting evidence at the confirmation of
22 charges hearing and, if so, it shall specify the types of evidence it intends to present,
23 the volume or anticipated length of each of such type of evidence, whether any
24 redactions are required, and the language in which the evidence will be made
25 available;

Fourth, should the Defence intend to call witnesses, it shall indicate whether it intends to request protective measures for any of them; and

Lastly, whether the Defence possesses or controls any books, documents, photographs or other tangible objects that the Prosecution shall be permitted to inspect as material intended for use as evidence under Rule 78 of the Rules.

All right, so that is my first order.

The second oral order concerns the time limit for submitting responses.

Under Regulation 34(b) of the Regulations of the Court, a response to a document filed by a party or participant shall be submitted within 10 days.

With a view to ensuring the expeditiousness of the present proceedings, any response to any motion shall be submitted at the latest by 1600 hours on the fifth working day following notification of a document filed by a party or participant. And, of course, should there be any difficulty, applications should be made as early as possible.

Right, third order.

The third order concerns requests to vary a time limit.

A request to vary a time limit within the meaning of Regulation 35 of the Regulations of the Court shall be submitted, at a minimum, five calendar days prior to the expiry of the time limit for which variation is requested, so as to allow for sufficient time to adjudicate the request.

Following the submission of a request to vary a time limit, the other party and, where relevant, participants shall, by way of email communication, indicate whether a response will be submitted, without discussing the merits, within one working day.

If so, a response on the merits shall be submitted by 1600 hours on the second working day from the day that the request has been notified.

This is without prejudice to the Chamber's prerogative to decide on a request to vary

a time limit without offering an opportunity to respond under Regulation 35(2) of the Regulations of the Court.

Fourth order.

The fourth order concerns the classification of filings.

The parties shall make all filings available to the parties and participants, taking into account that the OPCV and/or the prospective Legal Representative of Victims have been or will eventually be granted access to confidential filings. Where necessary, a confidential redacted version of a filing, available to all parties and participants, shall be submitted together with the original filing.

Furthermore, in view of the importance attached or attaching to the principle guaranteeing the publicity of the proceedings, the parties, participants, and the Registry shall endeavour to formulate their requests and submissions in such a manner so as to allow their filings, including annexes, to be classified as public.

In the event that certain information cannot be revealed publicly, the party, participant, or the Registry shall provide a public redacted version of its filing within three working days of submitting the original filing.

The parties and participants shall also apply redactions to public or confidential redacted versions of filings that are absolutely necessary, and shall provide the justification for such redactions to the Chamber and, where possible, and knowing that it is not always possible, the parties, participants and/or Registry, by means of a separate email communication when submitting the public or confidential redacted version of a filing.

Should a party, participant, or the Registry be of the view that it is absolutely prevented from providing a public or confidential redacted version of a filing, it shall, when submitting a filing, submit a reasoned request to maintain the classification of

1 that filing by email communication to the Chamber, copying the parties, participants
2 and/or the Registry, unless the level of classification of the filing in question does not
3 permit doing so.

4 And my fifth and final order concerns email communications with the Chamber.

5 The parties, participants, and the Registry shall submit any requests or submissions to
6 the Chamber by way of formal filing. However, requests or submissions may be
7 made by way of email:

8 One, in urgent circumstances, that is when the process of preparing and submitting
9 a formal filing would significantly affect the proper adjudication of the matter or
10 render it impossible; or

11 Two, in respect of routine matters, such as requests for variation of the time limit;

12 Three, it is underlined that email communications for any other purposes shall not be
13 entertained, especially when a party or participant seeks to supplement or amend
14 submissions.

15 Furthermore, when submitting requests or submissions by way of email, the parties,
16 participants, and the Registry shall adhere to the following instructions:

17 First, all parties, participants, and the Registry shall be included as recipients, unless,
18 of course, the level of classification does not permit doing so;

19 Second, the parties, participants, and the Registry shall use generic email accounts to
20 communicate with the Chamber and avoid sending emails from personal email
21 accounts so as to minimise the need for redactions;

22 Third, the email subject line shall contain the following elements: The case number,
23 the title, and the level of classification;

24 Fourth, email requests or submissions shall, in principle, be classified as public, and
25 the parties, participants, and the Registry shall frame their requests or submissions in

1 a way to make this possible, that is to make them public; and

2 Fifth, should a level of classification other than public be warranted, the parties,

3 participants, and the Registry shall specify the reasons for the applicable classification

4 in the first line of the email communication;

5 Lastly, the parties, participants and the Registry shall communicate, as soon as

6 possible, by way of email, the generic email addresses to be used for their

7 communications with the Chamber. All email communications with the Chamber

8 are to be sent to the Chamber's email address.

9 So, very well, unless there is something that a party or participant wishes to add, this

10 is your moment. Speak now or forever hold your peace today. Everyone is holding

11 their peace. Very well.

12 So this concludes today's hearing.

13 I thank the parties and participants, as well as everyone involved in the organisation

14 of this status conference.

15 This hearing is adjourned. Thank you very much.

16 THE COURT USHER: [11:02:47] All rise.

17 (The hearing ends in open session at 11.02 a.m.)