

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: ICC-02/04-01/15  
Date: 28 November 2022

**PRE-TRIAL CHAMBER II**

**Before:**

**Judge Rosario Salvatore Aitala, Presiding Judge  
Judge Antoine Kesia-Mbe Mindua  
Judge Tomoko Akane**

**SITUATION IN UGANDA**

**IN THE CASE OF  
*THE PROSECUTOR v. JOSEPH KONY AND VINCENT OTTI***

**Public**

**Legal Representatives' Joint Request for an Extension of Time to Respond to the  
"Prosecution's Request to Hold a Hearing on the Confirmation of Charges against  
Joseph Kony in his Absence"**

**Source: Office of Public Counsel for Victims**

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

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Section****Legal Representatives of Victims in the  
Ongwen case**

Mr Joseph Manoba

Mr Francisco Cox

## I. INTRODUCTION

1. Counsel of the Office of Public Counsel for Victims appointed to represent a number of victims in the case (the “Legal Representatives”) jointly request Pre-Trial Chamber II (the “Chamber”) an extension of time until 20 January 2023 to file their response to the “Prosecution’s Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence” (the “Prosecution’s Request”)<sup>1</sup>.

2. The Legal Representatives submit that the regular ten days deadline to submit a response provided for in regulation 34 of the Regulations of the Court is insufficient in light of the nature of the Prosecution’s Request which necessitates extensive consultations with victims. In this regard, the Legal Representatives recall that victims had been admitted in these proceedings many years ago. Meanwhile, because of the impossibility to arrest Mr Kony and the consequent inactivity in the case, the Legal Representatives – having explained the situation to their clients and in order to avoid raising expectations – have progressively diminished their contacts with the victims concerned. However, they should be able to re-establish said contact in a relatively short period of time with the assistance of the field assistant to counsel based in Uganda. Considering the logistic difficulties and the importance of the issue at stake, the Legal Representatives submit that an extension of time until 20 January 2023 is necessary and reasonable in order to conduct meaningful consultation with the victims, assess the relevant facts and, ultimately, file a reasoned response to the Prosecution’s Request.

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<sup>1</sup> See the “Public Redacted Version of the ‘Prosecution’s Request to Hold a Hearing on the Confirmation of Charges against Joseph Kony in his Absence’”, [No. CC-02/04-01/05-446-Red](#), 24 November 2022 (the “Prosecution’s Request”).

## II. PROCEDURAL BACKGROUND

3. On 8 July 2005, the Pre-Trial Chamber in its previous composition (the “former Chamber”) issued the Warrant for the Arrest of Mr Kony.<sup>2</sup>

4. On 10 August 2007, the Single Judge of the former Chamber granted applicants a/0090/06, a/0098/06, a/0112/06, a/0118/06, a/0119/06 and a/0122/06 the status of victims in the Case and applicants a/0101/06 and a/0119/06 the status of victims in the context of the Situation.<sup>3</sup>

5. On 14 March 2008, the Single Judge of the former Chamber granted applicants a/0094/06, a/0095/06, a/0103/06, a/0117/06, a/0120/06, a/0121/06, a/0123/06 and a/0124/06 the status of victims in the Case and applicants a/0065/06, a/0068/06, a/0093/06, a/0096/06, a/0117/06, a/0120/06 and a/0123/06 the status of victims in the context of the Situation.<sup>4</sup>

6. On 9 February 2009, the Single Judge of the former Chamber appointed Ms Massidda, Principal Counsel of the OPCV as legal representative of a/0065/06, a/0066/06, a/0068/06, a/0088/06, a/0091/06, a/0092/06, a/0093/06, a/0096/06, a/0102/06, a/0115/06, a/0125/06, a/0126/06, a/0115/07, a/0117/07 and a/0118/07, granted the status of victims in the context of the Situation; and Ms Pellet, Counsel of the OPCV, as legal representative of a/0090/06, a/0094/06, a/0095/06, a/0098/06, a/0103/06, a/0112/06, a/0118/06, a/0121/06, a/0122/06, a/0124/06, a/0076/07, a/0077/07, a/0078/07, a/0081/07, a/0082/07, a/0084/07, a/0085/07, a/0090/07, a/0091/07, a/0092/07, a/0093/07, a/0094/07, a/0095/07, a/0096/07, a/0097/07, a/0098/07, a/0099/07, a/0100/07, a/0101/07, a/0102/07,

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<sup>2</sup> See the “Warrant of Arrest for Joseph Kony issued on 8 July 2005 as amended on 27 September 2005” (Pre-Trial Chamber II), [No. ICC-02/04-01/05-53](#), 27 September 2005.

<sup>3</sup> See the “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”, [No. ICC-02/04-101](#) and [No. ICC-02/04-01/05-252](#), 10 August 2007.

<sup>4</sup> See the “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”, [No. ICC-02/04-125](#), 14 March 2008.

a/0103/07, a/0105/07, a/0106/07, a/0107/07, a/0112/07 and a/0123/07, granted the status of victims of the Case.<sup>5</sup>

7. On 15 February 2008, the Single Judge of the former Chamber appointed Ms Massidda, as legal representative of victim a/0119/06 (admitted both in the Situation and in the Case).<sup>6</sup>

8. On 21 October 2008, the former Chamber decided to initiate *proprio motu* proceedings under article 19(1) of the Rome Statute.<sup>7</sup> On 10 March 2009, said Chamber concluded that the case against Mr Kony *et al.* is admissible before the Court.<sup>8</sup> Said ruling was confirmed by the Appeals Chamber on 16 September 2009.<sup>9</sup>

9. On 9 March 2012, the Single Judge of the former Chamber appointed the OPCV as the legal representative of all victims and victim applicants pending the appointment of a common legal representative in the Situation.<sup>10</sup>

10. On 24 November 2022, the Prosecution filed its Request.<sup>11</sup>

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<sup>5</sup> See the “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”, [No. ICC-02/04-176](#), 9 February 2009.

<sup>6</sup> See the “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”, [No. ICC-02/04-01/05-267](#), 15 February 2008.

<sup>7</sup> See the “Decision initiating proceedings under article 19, requesting observations and appointing counsel for the Defence” (Pre-Trial Chamber II), [No. ICC-02/04-01/05-320](#), 21 October 2008.

<sup>8</sup> See the “Decision on the admissibility of the case under article 19(1) of the Statute” (Pre-Trial Chamber II), [No. ICC-02/04-01/05-377](#), 10 March 2009.

<sup>9</sup> See the “Judgment on the appeal of the Defence against the ‘Decision on the admissibility of the case under article 19 (1) of the Statute’ of 10 March 2009” (Appeals Chamber), [No. ICC-02/04-01/05-408 OA3](#), 16 September 2009.

<sup>10</sup> See the “Decision on Victim’s Participation in Proceedings Related to the Situation in Uganda”, [No. ICC-02/04-191](#), 9 March 2012.

<sup>11</sup> See the Prosecution’s Request, *supra* note 1.

### III. SUBMISSIONS

11. Regulation 35(2) of the Regulations of the Court provides that *“the Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard”*. Accordingly, the Chamber has a discretionary power to determine whether the grounds on which the variation of time limit is sought by an applicant show the existence of good cause for it to be granted.<sup>12</sup> The Appeals Chamber held in this regard that *“good cause in this context imports the existence of valid reasons for non-compliance with the procedural obligations of a party to the litigation. [...] Such reasons as may found a good cause are necessarily associated with a party’s duties and obligations in the judicial process. A cause is good, if founded upon reasons associated with a person’s capacity to conform to the applicable procedural rule or regulation or the directions of the Court. Incapability to do so must be for sound reasons, such as would objectively provide justification for the inability of a party to comply with his/her obligations”*.<sup>13</sup> Thus, Chambers consider various reasons constituting such good causes, covering situations which do not solely depend on the applicant alone,<sup>14</sup> despite its diligent efforts,<sup>15</sup> including but not limited to heavy burden of work confronting counsel in preparing for judicial proceedings,<sup>16</sup> the necessity to conduct counsel’s work in the

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<sup>12</sup> See the “Decision on the ‘Defence Application for Extension of Time to Submit Information on Viva Voce Witnesses to be Called at the Confirmation Hearing’” (Single Judge, Pre-Trial Chamber II), [No. ICC-01/09-01/11-176](#), 11 July 2011, para. 12.

<sup>13</sup> See the “Reasons for the ‘Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007’ issued on 16 February 2007” (Appeals Chamber), [No. ICC-01/04-01/06-834](#) OA8, 21 February 2007, para. 7.

<sup>14</sup> See the “Order on the Prosecutor’s Application for an Extension of Time (Regulation 35 of the Regulations of the Court)” (Trial Chamber II), [No. ICC-01/04-01/07-978-tENG](#), 7 September 2009, para. 5. See also the “Decision on the disclosure of evidentiary material relating to Witness 219” (Trial Chamber II) [No. ICC-01/04-01/07-1364](#), 13 August 2009, para. 12.

<sup>15</sup> See the “Decision on the joint defence request for extension of time” (Trial Chamber V), [No. ICC-01/09-01/11-650](#), 14 March 2013, para. 5.

<sup>16</sup> See the “Reasons for the ‘Decision on the ‘Application for Extension of Time Limits Pursuant to Regulation 35 of the Regulations of the Court to Allow the Defence to Submit its Observations on the Prosecutor’s Appeal regarding the Decision on Evidentiary Scope of the Confirmation Hearing and Preventative Relocation’” (Appeals Chamber), [No. ICC-01/04-01/07-653](#) OA7, 27 June 2008, para. 5. See also, the “Decision on Mr Ngudjolo Chui’s request for an extension of time” (Appeals Chamber), [No. ICC-01/04-02/12-84](#), 7 June 2013, para. 9; and the “Order on the Request by the Registry for the

field,<sup>17</sup> and the need to receive as elaborate, clear and relevant submissions as possible<sup>18</sup> on the important and complex issues at stake<sup>19</sup> which, by their nature, will impact the interest of the applicant.<sup>20</sup>

12. As for the length of the extension of the time limit, Chambers consider the reasonableness of the request under the relevant circumstances;<sup>21</sup> in particular, whether the newly proposed time limit appears to be not excessive,<sup>22</sup> in other words, the proposed new deadline is not significantly later than the initial time limit.<sup>23</sup>

13. On the merits, the Legal Representatives submit that, because of the importance of the issue raised by the Prosecution's Request, it is essential that victims are duly consulted and, in the circumstances of the present proceedings, they are unable to file a reasoned response within the normal ten-day time limit provided for in regulation 34 of the Regulations of the Court. Firstly, the Legal Representatives wish to highlight

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Extension of a Time Limit (regulation 35 of the Regulations of the Court)" (Trial Chamber II), [No. ICC-01/04-01/07-826-tENG](#), 6 August 2009, para. 3.

<sup>17</sup> See the "Decision on the application by Counsel for Mr. Thomas Lubanga Dyilo to extend the time limit for the filing of the response to the Prosecutor's document in support of the appeal" (Appeals Chamber), [No. ICC-01/04-01/06-190](#) OA3, 11 July 2006, para. 4.

<sup>18</sup> See the "Decision on the Prosecutor's application for an extension of time to file submissions on the legal re-characterisation pursuant to article 25(3)(d) of the Statute" (Trial Chamber II), [No. ICC-01/04-01/07-3340-tENG](#), 23 January 2013, para. 8.

<sup>19</sup> See the "Decision on the application by Counsel for Mr. Thomas Lubanga Dyilo to extend the time limit for the filing of the response to the Prosecutor's document in support of the appeal", *supra* note 17, para. 5.

<sup>20</sup> See the "Decision on Mr Ngudjolo's request for translation and suspension of the time" (Appeals Chamber), [No. ICC-01/04-02/12-60](#) A, 11 April 2013, para. 12. See also, the "Decision on the Request of the Defence for Germain Katanga for an Extension of Time for its Observations on the Summary of Charges (Regulation 35 of the Regulations of the Court)" (Trial Chamber II), [No. ICC-01/04-01/07-1619-tENG](#), 24 August 2010, para. 7.

<sup>21</sup> See the "Decision on the 'Prosecution's Motion to File Partial Table of Incriminating Evidence and Related Material', Confidential - Ex Parte, available to the Prosecution Only, on 4 May 2009 - Regulation 35" (Trial Chamber II), [No. ICC-01/04-01/07-1095](#), 4 May 2009, para. 3.

<sup>22</sup> See the "Decision on the application by Counsel for Mr. Thomas Lubanga Dyilo to extend the time limit for the filing of the response to the Prosecutor's document in support of the appeal", *supra* note 17, para. 5. See also the "Decision on joint defence request for extension of time" (Trial Chamber V), [No. ICC-01/09-01/11-497](#), 6 December 2012, para. 2 and the "Decision on requests to extend the time limit for observations on the victims' applications transmitted on 18 and 19 November 2015" (Single Judge, Pre-Trial Chamber II), [No. ICC-02/04-01/15-347](#), 25 November 2015, para. 4.

<sup>23</sup> See the "Decision on the Prosecution's Application for Extension of Time Limit to Submit a Table of Incriminating Evidence and Related Material" (Trial Chamber II), [No. ICC-01/04-01/07-1017](#), 2 April 2009, para. 6.

the unexpected timing and/or the sudden nature of the Prosecution's Request. Indeed, the victims represented by the Legal Representatives had not been notified, in advance, of the Prosecution's intention to request to hold a confirmation hearing of Mr Kony *in absentia*. Needless to say, it has been many years since the victims had heard of any new development in this case. It was only in 2009 or already thirteen long years ago that they had actively participated in the proceedings for the last time (during the litigation leading to the Appeals Chamber's determination of the admissibility of the case).

14. Since then, while still endeavouring to maintain contact with their clients from time to time, because of the impossibility of arresting Mr Kony and the consequent inactivity in the case, the Legal Representatives – having explained the situation to their clients and in order to avoid raising expectations – have progressively diminished their contacts with the victims concerned. Moreover, a number of victims might have moved from their known places of residence and thus might not be reachable at their physical addresses and/or phone numbers provided previously in the proceedings. Therefore, it is almost impossible (despite their best efforts) to re-locate and conduct in-person consultations with all (or at least the majority of) the victims within the ten-day deadline provided for in the Regulations of the Court.

15. The legal and factual issues at hand concerning the feasibility and/or desirability of holding a confirmation hearing of Mr Kony *in absentia* have a significant impact on the interests of the victims participating in these proceedings. The importance that the victims give to such pre-trial proceedings – which may potentially lead to the trial of Mr Kony – cannot be overemphasised. Indeed, they have been waiting for many years for these proceedings to finally take place at the Court.

16. Therefore, the Legal Representatives must conduct a meaningful consultation with the victims in order to appropriately express their views and concerns on the important issues at stake. Only through in-person consultations, the Legal Representatives will be able to receive clear and elaborate instructions from their



clients which would make a genuine contribution to these proceedings. It should also be stressed that the Legal Representatives will have to carefully and comprehensively explain nuances of the procedural step in question initiated by the Prosecution to the victims in order to unnecessarily raise their expectations about its potential outcome since Mr Kony is still at large and there is, apparently, no prospect of arresting him in the future.

17. Consequently, an extension of time limit until 20 January 2023 to conduct said consultation with the victims, assess the relevant facts in question against the statutory requirements, and, ultimately, file a reasoned response to the Prosecution's Request appears necessary. The Legal Representatives further posit that such an extension is reasonable under the circumstances, not at all excessive or significantly later than the initial time limit and thus does not negatively impact the fair and expeditious conduct of the proceedings.

18. Finally, the Legal Representatives wish to draw the attention of the Chamber on two other categories of victims who have an interest in presenting their views and concerns on the Prosecution's Request because it affects their personal interests. Indeed, victims who are authorised to participate in the Situation may qualify as victims in the present case (particularly the ones for whom a decision on their applications was deferred in light of the incompleteness of said applications). In this regard, should the Chamber consider it appropriate, the Legal Representatives, are available to convey said views and concerns by virtue of the fact that the OPCV is already appointed.<sup>24</sup>

19. Moreover, victims participating in the *Ongwen* case may also qualify as victims in the present case. In said case, Ms Massidda is the appointed Common Legal Representative and another team of Legal Representatives represent the interest of a distinct group of victims. In light of the very peculiar and unprecedented nature of the

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<sup>24</sup> See para. 9 and footnote 10.

Prosecution's Request, the Legal Representatives posit that the views and concerns of said victims should also be presented within a deadline set by the Chamber.

#### IV. CONCLUSION

20. For the foregoing reasons, the Legal Representatives respectfully request the Chamber to grant an extension of time until 20 January 2023 to file their response to the Prosecution's Request.

21. The Legal Representatives also respectfully request the Chamber to recognise the fact that the interests of the victims authorised to participate in the Situation and of the victims participating in the *Ongwen* case are affected by the Prosecution's Request and allow them to present their views and concerns within a deadline established by the Chamber.



Paolina Massidda



Sarah Pellet

Dated this 28<sup>th</sup> day of November 2022

At The Hague (The Netherlands)