

ANNEX 1

PUBLIC

From: Pre-Trial Chamber III Communications
Sent: 14 October 2024 09:51
To: OTP Kony Communications
Cc: D35 Kony Defence team; Kony LRV Team OPCV; Court Management-Court Records; Chamber Decisions Communication; Pre-Trial Chamber III Communications
Subject: Kony - Decision on the Prosecution request to reclassify and transfer the amended application for Warrants of arrest under Article 58 - public

Dear Prosecution,

The Single Judge, having considered the request below, notes that:

1. the list of the documents marked for reclassification and transfer includes annexes to both the application as amended (ICC-02/04-8-US-Exp), and to the application originally submitted (ICC-02/04-4-US-Exp), while only the application as amended and its annexes are relevant to these proceedings;
2. the request omits to recall that both the amended application and the annexes to the latter had already been reclassified as (either US or confidential) *ex parte* OTP and Defence in the context of the 2008 admissibility proceedings in the situation, to the benefit of counsel representing the interests of the Defence in that context, and to clarify that, accordingly, by requesting reclassification of the documents as 'confidential', the Prosecution now intends to make them available to the Defence for Mr Kony in these proceedings ;
3. the request omits to clarify whether, by requesting reclassification of the documents as confidential, the Prosecution also intends that they should be made available to the Legal Representatives of Victims;
4. to the extent that reference to annexes to both the original application and the amended application is due to existing technical issues linked to the storage of the documents, and to the modifications of the IT structure of the Court over the years since their original filing, the Prosecution should have exercised due diligence prior to submitting the request, and liaised with the Registry to ensure that any and all obstacles of a technical nature were removed.

Accordingly, the Single Judge instructs the Prosecution, by no later than 23 October 2024:

1. to liaise with the Registry with a view to addressing and resolving any technical issue which might result in an obstacle to all annexes to the application as amended being visible and accessible;
2. to amend and resubmit the request, by
 - a. only making reference to the amended application and all of its annexes;
 - b. clarifying whether the reclassification as confidential is meant to also enable the LRV to have access to these documents;
 - c. indicating that both the amended application and its annexes can also be made available to the public, or to request redactions necessary to this effect.

Finally, the Single Judge notes that the Request was submitted *ex parte*, with no justification or other reference provided for the adopted classification. The Single Judge reminds the Prosecutor of the orders issued at the status conference held on 23 July 2024, according to which (i) all parties, participants, and the Registry shall be included as recipients of requests submitted by email and, (ii) should a level of classification other than public be warranted, the submitting party shall specify the reasons for the applicable classification in the first line of the email communication (ICC-02/04-01/05-T-012, page 25, lines 17-18 and page 26, lines 2-4).

Thank you and kind regards.

On behalf of Judge Alexis-Windsor, Single Judge

From: OTP Kony Communications [REDACTED]
Sent: Friday, September 20, 2024 2:57 PM
To: Pre-Trial Chamber III Communications [REDACTED]
Cc: OTP Kony Communications [REDACTED]
Subject: UGA - Prosecutor's amended application for Warrants of arrest under Article 58

Dear Pre-Trial Chamber III,

On 6 February 2015, Pre-trial Chamber II in its previous composition severed the case against Dominic Ongwen from the Kony *et al* case and ordered the Registrar to open a new case record with a new case number and to copy and transfer documents and decisions to the new case record. Accordingly, the “Prosecutor's Amended Application for Warrants of Arrest Under Article 58” (ICC-02/04-8-US-Exp) and its corresponding annexes A – M, Q - X as well as “Prosecutor's Application for Warrants of Arrest Under Article 58” (ICC-02/04-4-US-Exp) annexes N to S were transferred from the situation to the Ongwen case record.

However, a similar order was **not** made for the Kony *et al* case. ICC-02/04-8-US-Exp (and the corresponding annexes) as well as ICC-02/04-4-US-Exp annexes N – S were not transferred to the Kony *et al* case. The Prosecution therefore requests the transfer of the “Prosecutor's Amended Application for Warrants of Arrest Under Article 58” (ICC-02/04-8-US-Exp) and the corresponding annexes A – M, Q - X as well as “Prosecutor's Application for Warrants of Arrest Under Article 58” (ICC-02/04-4-US-Exp) annexes N to S into the Kony case record (ICC-02/04-01/05).

The Prosecution also requests the re-classification of the application and annexes listed below, from Under Seal, Confidential *Ex parte*, only available to the Prosecution and Confidential *Ex parte*, only available to the Prosecution **to** Confidential, to enable the Defence’s access to the document and annexes.

The list of documents for transfer and re-classification is listed below:

- ICC-02/04-8-US-Exp
- ICC-02/04-8-Conf-Exp-AnxA
- ICC-02/04-8-Conf-Exp-AnxB
- ICC-02/04-8-Conf-Exp-AnxC
- ICC-02/04-8-Conf-Exp-AnxD
- ICC-02/04-8-Conf-Exp-AnxE
- ICC-02/04-8-Conf-Exp-AnxF
- ICC-02/04-8-Conf-Exp-AnxG
- ICC-02/04-8-US-Exp-AnxH
- ICC-02/04-8-Conf-Exp-AnxI
- ICC-02/04-8-Conf-Exp-AnxJ
- ICC-02/04-8-US-Exp-AnxK
- ICC-02/04-8-Conf-Exp-AnxL
- ICC-02/04-8-Conf-Exp-AnxM
- ICC-02/04-4-US-Exp-AnxN
- ICC-02/04-4-US-Exp-AnxO
- ICC-02/04-4-US-Exp-AnxP

- ICC-02/04-4-US-Exp-AnxQ1
- ICC-02/04-4-US-Exp-AnxQ10
- ICC-02/04-4-US-Exp-AnxQ11
- ICC-02/04-4-US-Exp-AnxQ12
- ICC-02/04-4-US-Exp-AnxQ13
- ICC-02/04-4-US-Exp-AnxQ14
- ICC-02/04-4-US-Exp-AnxQ15
- ICC-02/04-4-US-Exp-AnxQ2
- ICC-02/04-4-US-Exp-AnxQ3
- ICC-02/04-4-US-Exp-AnxQ4
- ICC-02/04-4-US-Exp-AnxQ5
- ICC-02/04-4-US-Exp-AnxQ6
- ICC-02/04-4-US-Exp-AnxQ7
- ICC-02/04-4-US-Exp-AnxQ8
- ICC-02/04-4-US-Exp-AnxQ9
- ICC-02/04-8-US-Exp-AnxQ16
- ICC-02/04-8-US-Exp-AnxQ17
- ICC-02/04-8-US-Exp-AnxQ18
- ICC-02/04-8-US-Exp-AnxQ19
- ICC-02/04-8-US-Exp-AnxQ20
- ICC-02/04-8-US-Exp-AnxQ21
- ICC-02/04-8-US-Exp-AnxQ22
- ICC-02/04-8-US-Exp-AnxQ23
- ICC-02/04-8-US-Exp-AnxQ24
- ICC-02/04-8-US-Exp-AnxQ25
- ICC-02/04-8-US-Exp-AnxQ26
- ICC-02/04-8-US-Exp-AnxQ27
- ICC-02/04-8-US-Exp-AnxQ28
- ICC-02/04-8-US-Exp-AnxQ29
- ICC-02/04-8-US-Exp-AnxQ30
- ICC-02/04-8-US-Exp-AnxQ31
- ICC-02/04-8-US-Exp-AnxQ32
- ICC-02/04-4-US-Exp-AnxR
- ICC-02/04-8-US-Exp-AnxR1
- ICC-02/04-8-US-Exp-AnxR2
- ICC-02/04-8-US-Exp-AnxR3
- ICC-02/04-8-US-Exp-AnxR4
- ICC-02/04-4-US-Exp-AnxS
- ICC-02/04-8-US-Exp-AnxT1
- ICC-02/04-8-US-Exp-AnxT2
- ICC-02/04-8-US-Exp-AnxT3
- ICC-02/04-8-US-Exp-AnxT4
- ICC-02/04-8-Conf-Exp-AnxU
- ICC-02/04-8-US-Exp-AnxV
- ICC-02/04-8-US-Exp-AnxW
- ICC-02/04-8-US-Exp-AnxW1
- ICC-02/04-8-US-Exp-AnxW2
- ICC-02/04-8-US-Exp-AnxW3
- ICC-02/04-8-US-Exp-AnxW4
- ICC-02/04-8-US-Exp-AnxW5
- ICC-02/04-8-Conf-Exp-AnxX

Best regards,

[REDACTED]

On behalf of the Prosecution