

ANNEX 2

PUBLIC

From: Pre-Trial Chamber III Communications
Sent: 28 October 2024 09:29
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: ICC-02/04-01/05 – Second Decision on the Prosecution request to reclassify and transfer the amended application for Warrants of arrest under Article 58 - public

[ICC] CONFIDENTIAL

Dear Counsel,

The Single Judge, having taken note of the Prosecution's request below, grants it and, accordingly:

- (i) instructs the Registry:
 - a. to transfer filing ICC-02/04-8-US-Exp and all its annexes to the record of the Kony case (ICC-02/04-01/05) and to reclassify them as confidential;
 - b. to reclassify Annexes D, E, F, G, I, J, K (visible cover sheet), L, M, N, O, P, R, S, U, X to filing ICC-02/04-8-US-Exp as public;
 - c. to make sure that all of the annexes are visible and accessible in JWP as annexes to the amended application for all those having access to them;
- (ii) orders the Prosecution to submit proposals for public redacted versions of filing ICC-02/04-8-US-Exp and its Annex H, by no later than 8 November 2024;
- (iii) orders the Defence and the LRV to submit observations on the Prosecution's proposals for redactions, if any, by no later than 15 November 2024;
- (iv) orders the Prosecution to liaise with the relevant State authorities, with a view to determining whether the documents contained in Annexes A, B and C to the amended application (ICC-02/04-8-US-Exp) can be reclassified as public, and to report to the Chamber as soon as feasible;
- (v) instructs the Prosecution to continue liaising with the Registry, with a view to retrieving the contents of Annex K and filing them on the record.

Thank you and kind regards.

On behalf of Judge Alexis-Windsor, Single Judge

From: [REDACTED]
Sent: Wednesday, October 23, 2024 12:07 PM
To: Pre-Trial Chamber III Communications [REDACTED]; OTP Kony Communications [REDACTED]
Cc: D35 Kony Defence team [REDACTED]; Kony LRV Team OPCV [REDACTED]; Court Management-Court Records [REDACTED]; Chamber Decisions Communication [REDACTED]

Subject: RE: Kony - Decision on the Prosecution request to reclassify and transfer the amended application for Warrants of arrest under Article 58 - public

[ICC] CONFIDENTIAL

Dear Single Judge, dear all,

Following the order of 14 October 2024 the Prosecution liaised with the Registry with a view to addressing and resolving any technical issue which might result in an obstacle to all annexes to the Amended Application (ICC-02/04-8-US-Exp) being visible and accessible.

The Prosecution confirms that the Amended Application (ICC-02/04-8-US-Exp) and all Annexes, except for Annex K, are visible in JWP. Annex K is described as an interactive map, which has not been uploaded into JWP. The Prosecution is in the process of tracking the original file, which was submitted on a data carrier to Chambers in May 2005. It does not seem to have been transferred either to RM or JWP. Thus far, the Prosecution has identified, the documents which seem to have been used to create the interactive map but not the file itself. The Prosecution is liaising with CMS on the issue and will report back as soon as it has more information on where the file is and how it can be made accessible. This may only be possible by way of disclosure on a data carrier once the file is located.

On 15 October 2024, the Registry informed the Prosecution that the Prosecution's Amended Application and its corresponding Annexes would need to be transferred to the case ICC-02/04-01/05 before they can provide the Kony Defence and the Legal Representatives of Victims (LRV) access to such documents. Further, the Amended Application and its Annexes would be re-stamped and would bear the next consecutive numbers in the case record. Under the current classification *Confidential Ex-Parte OTP and Defence*, CMS could not provide the Kony Defence with access since the classification is based on the context of providing the Ad Hoc Defence with access and not the current Kony Defence.

Therefore, pursuant to regulation 22 of the Regulations of the Registry, the Prosecution requests the transfer of the Amended Application and the respective Annexes with the consecutive numbering of A to X to the record of the KONY case, ICC-02/04-01/05. Transferring these filings to the Kony case record is necessary to complete the case record.

Furthermore, upon completion of the transfer, the Prosecution requests that the Amended Application and all Annexes be reclassified as confidential to enable access to the Kony Defence team and the LRV.

Finally, concerning whether the Amended Application and its Annexes can be made public at this time in the proceedings, the Prosecution submits as follows:

The Prosecution reviewed the extensive Amended Application and its Annexes for the purposes of determining whether they can be made public already.

First, the Prosecution finds that the following annexes could be made available to the public as soon as the Registry has completed transfer of them to the Kony case record, ICC-02/04-01/05. Annexes registered under the following suffixes of ICC-02/04-8-US-Exp: D, F, F, G, I, J, K (visible cover sheet), L, M, N, O, P, R, S, U, X.

Second, Annexes A, B, C, Q, T, V, W should remain confidential as they concern confidential evidentiary materials, which if made public would risk identifying witnesses as well as confidential sources. Annex H would require a redaction of an innocent third party on one of the photographs before it could be made public.

Third, concerning the public's access to the Amended Application, the Prosecution submits that discrete and targeted redactions are necessary and would be proportionate to safeguard the identity of witnesses as well as evidentiary materials of a confidential nature. The Prosecution reviewed the Amended Application and identified names of witnesses, their family members, places and circumstances of living, and other identifying information, which would expose them as witnesses in the *Kony* case and put them at risk of either stigmatisation or other forms of interference. Furthermore, the Amended Application references evidentiary materials, such as reports from the Ugandan police investigations, hospitals and the Ugandan military, which are still confidential in the proceedings.

While the Prosecution has prepared the request for proposed redactions, it respectfully requests that transfer of the filings to the case record and reclassification as confidential, are completed before these proposed redactions are submitted. The Prosecution could then submit the proposed redactions to the Amended Application on a *confidential* basis with the process benefitting from the views of the Defence and the LRV. Furthermore, completing the transfer before other related requests would avoid any potential confusion with the filing numbering.

Kind regards, [REDACTED]

From: Pre-Trial Chamber III Communications [REDACTED]
Sent: Monday, October 14, 2024 9:51 AM
To: OTP Kony Communications [REDACTED]
Cc: D35 Kony Defence team [REDACTED]; Kony LRV Team OPCV [REDACTED]
 [REDACTED]; Court Management-Court Records [REDACTED]; Chamber Decisions Communication
 [REDACTED]; 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,

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On behalf of the Prosecution