

Annex 8

Public

From: Trial Chamber III Communications
Sent: 08 November 2021 10:01
To: Associate Legal Officer-Court Officer
Cc: OTP KEN art70 [REDACTED]; D32 Gicheru Defence team; Trial Chamber III Communications
Subject: RE: request for additional information with regard to filing ICC-01/09-01/20-207-Conf and shortening of response deadline

Follow Up Flag: Follow up
Flag Status: Flagged

Dear colleagues in the Registry,

In light of the request by the Prosecution below, and pursuant to Regulation 23 *bis*(3) of the Regulations of the Court, please reclassify filing ICC-01/09-01/20-207-Conf-Exp-AnxA as 'confidential'.

Kind regards,

Trial Chamber III

From: [REDACTED]
Sent: 05 November 2021 16:35
To: Trial Chamber III Communications <TrialChamberIIICommunications@[REDACTED]>; OTP KEN art70 [REDACTED]; D32 Gicheru Defence team <D32GicheruDefenceteam@[REDACTED]>
Cc: Associate Legal Officer-Court Officer <AssociateLegalOfficer-CourtOfficer@[REDACTED]>
Subject: RE: request for additional information with regard to filing ICC-01/09-01/20-207-Conf and shortening of response deadline

Dear Trial Chamber III,

With regards to the confidentiality level of Annex A (ICC-01/09-01/20-207-Conf-Exp-AnxA), the Prosecution took a conservative approach, consistent with Regulation 23bis(2) RoC, because some of the items contained therein described the content of confidential filings submitted by the Defence in another case. The Prosecutor considered that the main body of the Request itself (#207) contained sufficient information for the Defence in this case to provide its observations, if any, on the Request itself. However, the Prosecution has no objection to the reclassification of Annex A as "confidential" and requests the reclassification of Annex A accordingly. In the meantime, as directed, the Prosecution will provide a courtesy copy to the Defence today.

With regards to filing ICC-01/09-01/11-588-Conf-AnxA, the Prosecution deemed the content of ICC-01/09-01/11-588-Conf-AnxA as irrelevant to this case. As such, the level of confidentiality requested for this Annex is "Confidential, EX PARTE, Prosecution only", as per ICC-01/09-01/20-207-Conf + Conf-Exp-AnxA, para. 18.

Best regards,

On behalf of the Prosecution

From: Trial Chamber III Communications <TrialChamberIIICommunications>
Sent: 05 November 2021 12:36
To: OTP KEN art70; D32 Gicheru Defence team
<D32GicheruDefenceteam>
Cc: Trial Chamber III Communications <TrialChamberIIICommunications>; Associate Legal Officer-Court Officer <AssociateLegalOfficer-CourtOfficer>
Subject: request for additional information with regard to filing ICC-01/09-01/20-207-Conf and shortening of response deadline

Dear parties,

Yesterday, the Prosecution filed Request ICC-01/09-01/20-207-Conf (Prosecution fifth request for the urgent transfer of part of the record of the case into another case record).

First, the Chamber notes that the annex of the request (ICC-01/09-01/20-207-Conf-Exp-AnxA) is classified confidential *ex parte* - not available to the Defence.

After having reviewed the content of the annex, the Chamber requests the Prosecution to explain why the filing cannot be made available to the Defence by the end of today (5 November 2021).

Also, should the Prosecution – after having reviewed the filing – decide to request reclassification as ‘confidential’ it is to provide the Defence with a courtesy copy of the document by the end of today (5 November 2021), in order to enable the Defence to fully respond to the request.

Second, in ICC-01/09-01/20-207-Conf-Exp-AnxA, on page 5, with regard to filing ICC-01/09-01/11-588-Conf-AnxA, the Prosecution submits contradiction information as to the requested level of classification (‘Confidential, Prosecution only’). The Prosecution is ordered to explain which level of classification it requests.

The Chamber hereby shortens the response deadline, pursuant to Regulation 34 of the Regulations of the Court, for filing ICC-01/09-01/20-207-Conf to Tuesday, 9 November 2021.

Should the Defence not oppose the request or should it intend to not file a response, this can be communicated via email.

Kind regards,
Trial Chamber III