



20 July 2012

Secretary-General's bulletin

International Criminal Tribunals: information sensitivity, classification, handling and access

The Secretary-General, pursuant to paragraph 3.1 of his bulletin ST/SGB/2009/4 and to paragraph 14 of Security Council resolution 1966 (2010), for the purposes of ensuring the classification, secure handling and provision of authorized access to the records and information entrusted to or originating from the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia and the International Residual Mechanism for Criminal Tribunals, herein referred to as “the Criminal Tribunals”, in recognition of their statutory power to grant, refuse or restrict access to their records and information, hereby promulgates the following:

Section 1 General provisions

1.1 The records and information of the Criminal Tribunals shall be managed, classified and handled in accordance with the Secretary-General's bulletins on record-keeping and the management of United Nations archives (ST/SGB/2007/5) and on information sensitivity, classification and handling (ST/SGB/2007/6), except insofar as the present bulletin or the applicable Rules of Procedure and Evidence of the respective Criminal Tribunal may otherwise provide.

1.2 In accordance with article 27 of the statute of the Mechanism set out in annex I to Security Council resolution 1966 (2010), the Mechanism shall be responsible for the management, including preservation and access, of the archives of the Criminal Tribunals from 1 July 2012.¹

Section 2 Scope and transitional arrangements

2.1 The present bulletin shall apply to all records and information, regardless of the content or medium, in the possession of the Criminal Tribunals or generated by them. However, records and information generated for and from the deliberation process in Chambers, including, but not limited to, summaries of deliberations

¹ The Mechanism was established by the Security Council in its resolution 1966 (2010), with a commencement date of 1 July 2012. Its statute is set out in annex I to the resolution.



conducted pursuant to the applicable Rules of Procedure and Evidence of the respective Criminal Tribunal, will not be retained and are therefore not governed by the present bulletin.

2.2 During the transitional period of the coexistence of the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia and the Mechanism, the transitional arrangements set out in annex II to Security Council resolution 1966 (2010), determine whether it is the International Criminal Tribunal for Rwanda, the International Tribunal for the Former Yugoslavia or the Mechanism that has competence over the matter in question, and therefore which of them is the relevant classification, reclassification and access authority.

2.3 References in the present bulletin to “the applicable Rules of Procedure and Evidence” mean the Rules of Procedure and Evidence that are applicable in the Criminal Tribunal that has competence over the matter in question in accordance with the transitional arrangements.

Section 3

Classification authority

3.1 Each of the Criminal Tribunals is vested with the classification authority to determine the security level of all records and information within its competence.

3.2 The authority to determine the security classification levels of the judicial records lies with the Chambers or the President of the Criminal Tribunal that has competence.

3.3 The authority to determine the security classification levels of non-judicial records and information lies with the head of the organ that initially created or received them or, where applicable, the successor of that original organ.

3.4 Where non-judicial records and information held by the Criminal Tribunals contain information that has been determined to be sensitive by the Chambers or the President, the classification authority shall assign or amend their security classification level accordingly. Such records and information may include, but are not limited to, sensitive records and information related to investigations, prosecutions and judicial and legal support activities, such as those relating to the witnesses who appear before the Criminal Tribunals, the assignment of defence counsel, the operation of the legal aid systems of the Criminal Tribunals, and the detention of suspects, accused and convicted persons by the Criminal Tribunals.

Section 4

Classification principles

4.1 The overall approach to classifying records and information within the scope of the present bulletin shall be consistent with the classification principles defined in section 1 of ST/SGB/2007/6. The work of the Criminal Tribunals shall be open and transparent, except insofar as the nature of the records and information concerned is deemed sensitive in accordance with paragraph 1.2 of ST/SGB/2007/6, the present bulletin and/or the applicable Rules of Procedure and Evidence.

4.2 In addition to records and information identified as sensitive in ST/SGB/2007/6, sensitive records and information shall include the following:

(a) Judicial records classified by the submitting party or by order or decision of Chambers as “confidential”, or “strictly confidential”, as well as the records and information of the Office of the Prosecutor which, if disclosed without appropriate authorization, could jeopardize investigations or prosecutions. Judicial records are records which form part of the official case records of the Criminal Tribunals, including, but not limited to, filings made in the cases, transcripts, audio and video recordings of hearings and exhibits admitted in the cases;

(b) Records and information related to the protection of witnesses, victims and other vulnerable individuals referred to in the evidence presented before the Criminal Tribunals or otherwise related to the judicial process, including records which contain information which, if disclosed without appropriate authorization, could reveal the identity and location of protected witnesses, victims and other vulnerable individuals;

(c) Personal information related to persons, or families of such persons, who have been or are currently detained by the Criminal Tribunals;

(d) Information provided to the Criminal Tribunals by third parties on a confidential basis or with the expectation of confidentiality.

Section 5

Classification levels

5.1 Records and information deemed sensitive shall be classified by the Criminal Tribunals as “confidential” or “strictly confidential”. Records and information not deemed sensitive shall be classified as “unclassified”.

5.2 The designations of “strictly confidential”, “confidential” and “unclassified” shall be applied to records and information held by the Criminal Tribunals in accordance with the following definitions, as contained in section 2 of ST/SGB/2007/6:

(a) The designation “confidential” shall apply to records and information whose unauthorized disclosure could reasonably be expected to cause damage to the work of the United Nations;

(b) The designation “strictly confidential” shall apply to records and information whose unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to or impede the conduct of the work of the United Nations;

(c) The designation “unclassified” shall apply to records and information whose unauthorized disclosure could reasonably be expected not to cause damage to the work of the United Nations.

5.3 The designation of “confidential and ex parte” or “strictly confidential and ex parte” shall apply to those confidential or strictly confidential judicial records for which access has been restricted to exclude certain parties to the judicial process.

Section 6
Changes in classification

Judicial records

6.1 Changes to the classification levels of judicial records, as defined in paragraph 4.2 (a), shall be effected only after judicial authorization or as otherwise provided for by the applicable Rules of Procedure and Evidence of the respective Criminal Tribunal, and in accordance with the procedures described therein.

Non-judicial records reviewable after 50 years

6.2 The following types of classified non-judicial records and information may be reviewed for possible declassification 50 years after the date of creation or acquisition:

(a) Records prepared by a party to judicial proceedings for the internal use of that party, in connection with the investigation or preparation of the case;

(b) Records provided to the Prosecutor in confidence for the purpose of conducting investigations or tracing and tracking fugitives;

(c) Records and information which are not subject to protective measures in judicial proceedings, but the disclosure of which would likely endanger the life, health or safety of any individual.

6.3 Records and information not declassified at that time may be further reviewed, every 10 years thereafter, for possible declassification. Changes to classification levels of such records and information shall be effected with the authorization of the head of the organ that originally classified the information or record, or where applicable, the successor of that original organ.

Non-judicial records reviewable after 20 years

6.4 Non-judicial records and information which contain information classified by judicial authority, as referred to in paragraph 3.4, but which do not fall under the provisions of paragraph 6.2, may be reviewed for possible declassification 20 years after the disposition of the relevant case. Records and information not declassified at that time may be further reviewed, every five years thereafter, for possible declassification. Declassification of such records and information may be effected with the authorization of the head of the organ that originally classified the information or record or, where applicable, the successor of that original organ, but only after judicial authorization or as otherwise provided for by the applicable Rules of Procedure and Evidence of the respective Criminal Tribunal.

Other non-judicial records

6.5 Non-judicial records and information which do not contain information classified by judicial authority shall be declassified as follows:

(a) Records and information initially classified as “strictly confidential” may be reviewed on an item-by-item basis by the head of the organ that originally classified the record or information or, where applicable, the successor of that original organ, for possible declassification 20 years after the date of creation or

acquisition. Records and information not declassified at that time shall be further reviewed, every five years thereafter, by the designated declassification authority;

(b) Records that are classified as “confidential” shall be declassified automatically 20 years after the date of creation or acquisition.

6.6 In the event that the Criminal Tribunals are in receipt of a request for access to non-judicial records which do not contain information classified by judicial authority prior to 20 years from the date of creation or acquisition, the head of the organ that originally classified the record or, where applicable, the successor of that original organ may authorize advance changes to the classification of the records.

Third party confidential information

6.7 Notwithstanding the requirements set out in the present section, records and information provided to the Criminal Tribunals by a third party on a confidential basis or with the expectation of confidentiality shall not be declassified or disclosed without the consent of the third party.

Section 7

Handling of classified information and records

The Criminal Tribunals shall ensure that sufficient measures are taken to protect the confidentiality and integrity of sensitive records and information, and that their management and handling in all formats is appropriate to their security classification.

Section 8

Access regime for the archives of the Criminal Tribunals

The Criminal Tribunals are committed to the principle that the work of the United Nations should be open and transparent, except insofar as the nature of the records and information concerned are deemed confidential in accordance with the guidelines set out in the present bulletin and in ST/SGB/2007/6. In this regard, access shall be afforded to the records and information entrusted to or originating from the Criminal Tribunals as follows:

(a) The Criminal Tribunals shall provide public access to unclassified judicial records;

(b) The Criminal Tribunals shall facilitate access to other unclassified records and respond to requests for such information;

(c) The Criminal Tribunals may grant access to classified records that contain information classified by judicial authority only after judicial authorization has been obtained, as provided for by the applicable Rules of Procedure and Evidence of the Criminal Tribunals, and in accordance with the procedures described therein;

(d) The Criminal Tribunals may grant access to classified records that do not contain information classified by judicial authority, at the discretion of the head of the organ that originally classified the information or record or, where applicable, the successor of that original organ;

(e) The Criminal Tribunals shall not grant access to information that was provided by a third party on a confidential basis or with the expectation of confidentiality, without the consent of the third party;

(f) The Criminal Tribunals shall ensure that access to and usage of sensitive information and records is monitored and audited as required.

Section 9

Final provision

The present bulletin shall enter into force on the date of its issuance.

(Signed) **BAN** Ki-moon
Secretary-General
