

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04-01/07

Date: 4 August 2008

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA and MATHIEU NGUDJOLO CHUI***

Public Document

Prosecution's Ninth Report on the Status of the Procedures Initiated Pursuant to Articles 54(3)(e), 73 and 93 in Relation to Those Items Identified as of a Potentially Exculpatory Nature under Article 67(2) of the Statute or as Material to the Defence under Rule 77 of the Rules

Source: Office of the Prosecutor

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

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In compliance with the “Decision on Article 54(3)(e) Documents Identified as Potentially Exculpatory or Otherwise Material to the Defence’s Preparation for the Confirmation Hearing”¹ (“20 June 2008 Decision”), the Office of the Prosecutor (“Prosecution”) submits its ninth report in the case of the *Prosecutor v. Germain KATANGA and Mathieu NGUDJOLO CHUI* on “the status of the requests for consent to lifting the confidentiality restrictions made to the United Nations, pursuant to the procedure provided for in article 10, paragraphs (8) to (11) [of the Memorandum of Understanding], as well as to other providers.”²

Report on requests related to documents identified as containing potentially exonerating information (“PEXO”)

1. As stated in the Prosecution’s last report, the total number of documents collected pursuant to Article 54(3)(e) and originally identified as containing potentially exculpatory elements pursuant to Article 67(2) is 136.³ Requests for the lifting of confidentiality restrictions were sent to all providers.

Number of lifted identified PEXO documents

2. Since the Prosecution’s last report, the providers lifted confidentiality restrictions for 6 PEXO documents.⁴ Therefore the number of lifted identified documents which contain PEXO elements is 14. The recently lifted documents will be disclosed to both Defence teams as soon as practicable.

¹ ICC-01/04-01/07-621.

² ICC-01/04-01/07-621, p. 53.

³ ICC-01/04-01/07-679, p. 3, para. 1.

⁴ By letters dated 18 and 28 July 2008, respectively, UN-OLA authorized the lifting of restrictions for 2 and then 3 documents. On 31 July 2008, the UN further granted lifting of confidentiality restrictions for 1 PEXO document.

Number of rejected identified PEXO documents

3. Since the Prosecution's last report, there have been no additional documents for which lifting has been rejected by the providers. The number of rejected identified documents containing PEXO elements is currently 22. Analogous information has been previously disclosed to both Defence teams for 15 of these documents.⁵

Number of identified PEXO documents pending responses from providers

4. The Prosecution is still awaiting a response from the providers for 100 of the 136 documents identified as containing PEXO elements. Upon further analysis analogous information has been previously disclosed to both Defence teams for 91 of these documents.

*Report on requests related to documents identified as being material to the preparation of the Defence pursuant to Rule 77**Identified Rule 77 documents*

5. To date, 116 documents have been identified as Rule 77 documents, and have been collected pursuant to Article 54(3)(e).⁶ Requests for the lifting of confidentiality restrictions were sent to the providers, except for a few of the documents as described in the Prosecution's filing on 23 June 2008.⁷ The processing of the requests for these documents is being finalized.

⁵ The Prosecution refers to the 20 June 2008 Decision, where the Single Judge found that "[...] the principle of analogous information is, for the purposes of the confirmation hearing, an adequate alternative measure to actual disclosure, pursuant to article 67(2) or rule 77 of article 54(3)(e) documents when requests for consent have been rejected or are still pending." See ICC-01/04-01/07-621, p. 52.

⁶ Since the last status report, 12 documents are no longer considered to be 54(3)(e), but 54(3)(f).

⁷ ICC-01/04-01/07-633, para. 5.

Number of lifted identified Rule 77 documents

6. The providers have lifted confidentiality restrictions for 36 documents.⁸ Since the Prosecution's last report, confidentiality restrictions have been lifted by the providers for 19 documents, which will be disclosed to both Defence teams as soon as practicable. The remaining documents have all been disclosed to both Defence teams.

Number of rejected identified Rule 77 documents

7. To date, the providers have rejected the lifting of confidentiality restrictions for 19 documents.⁹ Analogous information has been previously disclosed to both Defence teams for 17 of these documents.¹⁰

Number of identified Rule 77 documents pending responses from providers

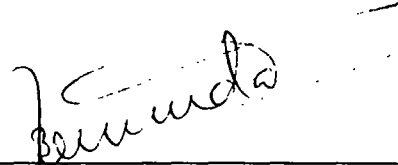
8. The Prosecution is still awaiting a response from the providers for 61 of the 116 documents. For 43 out of the 61 documents pending response from providers, analogous information has previously been disclosed to both Defence teams.

⁸ On 31 July 2008, the UN has granted lifting of confidentiality restrictions for 15 Rule 77 documents. Three out of the group of 15 documents contain redactions.

⁹ In the Prosecution's Eighth Report, this number was 25. The number dropped to 24 because one of the documents has been reclassified as 54(3)(f) as indicated supra.

¹⁰ In the Prosecution's Eighth Report, this number was 20. The number declined to 19 because one of the documents has been reclassified as 54(3)(f).

The Prosecution continues to engage in consultations with information providers on refused and pending requests for lifting. In the instant case, the Prosecution is continuing its ongoing consultations with the United Nations with a view to enabling disclosure of the undisclosed documents directly to the Defence, and will inform the Single Judge of any further developments in this regard.



Fatou Bensouda, Deputy Prosecutor
on behalf of
Luis Moreno-Ocampo, Prosecutor

Dated this 4th day of August 2008

At The Hague, The Netherlands