

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 9 April 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**

**Second Prosecution's Report on the Status of the Procedures Initiated under  
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**

**Source: Office of the Prosecutor**

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

|                                                 |                                                                                                                      |
|-------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|
| <b>The Office of the Prosecutor</b>             | <b>Counsel for the Defence of Germain Katanga</b><br>Mr. David Hooper<br>Mr. Göran Sluiter                           |
|                                                 | <b>Counsel for the Defence of Mathieu Ngudjolo Chui</b><br>Mr. Jean-Pierre Kilenda Kakengi Basila<br>Ms. Maryse Alié |
| <b>Legal Representatives of Victims</b>         | <b>Legal Representatives of Applicants</b>                                                                           |
| <b>Unrepresented Victims</b>                    | <b>Unrepresented Applicants for Participation/Reparation</b>                                                         |
| <b>The Office of Public Counsel for Victims</b> | <b>The Office of Public Counsel for the Defence</b>                                                                  |
| <b>States Representatives</b>                   | <b>Amicus Curiae</b>                                                                                                 |

## **REGISTRY**

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|------------------------------------------------------|--------------------------------|
| <b>Registrar</b><br>Mr. Bruno Cathala                | <b>Defence Support Section</b> |
| <b>Victims and Witnesses Unit</b>                    | <b>Detention Section</b>       |
| <b>Victims Participation and Reparations Section</b> | <b>Other</b>                   |

The Prosecution ("Prosecution" or "OTP"), in compliance with the Single Judge's Decision Establishing a Calendar in the Case against Germain KATANGA and Mathieu NGUDJOLO CHUI of 10 March 2008,<sup>1</sup> respectfully submits its second report in the case of the *Prosecutor v. Germain KATANGA and Mathieu NGUDJOLO CHUI* on the status of the procedures initiated under Articles 54(3)(e), 73 and 93 of the Rome Statute of the International Criminal Court ("Statute") in relation to those items identified as of potentially exculpatory nature under Article 67(2) of the Statute.

### **Update on the Procedures Initiated under Article 54(3)(e), 73 and 93 of the Statute**

1. In its First Status Report in the case of the *Prosecutor v. Germain KATANGA and Mathieu NGUDJOLO CHUI*,<sup>2</sup> the Prosecution informed the Single Judge that, until that date, it reviewed a total of 1628 documents that were collected under the condition of confidentiality as set forth in Article 54(3)(e) of the Statute and that were considered to be relevant for the case of the *Prosecutor v. Germain KATANGA and Mathieu NGUDJOLO CHUI*.<sup>3</sup> To date, the total number of documents covered by Article 54(3)(e) of the Statute, reviewed and considered to be relevant for the case of the *Prosecutor v. Germain KATANGA and Mathieu NGUDJOLO CHUI* adds up to a number of 1631 documents. By the time of this report, 177 documents have been identified as of potentially exculpatory nature or containing potentially exculpatory elements.<sup>4</sup>
2. From the documents identified as of potentially exculpatory nature or as containing potentially exculpatory elements and covered by Article 54(3)(e) of the

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<sup>1</sup> ICC-01/04-01/07-259, p. 12.

<sup>2</sup> ICC-01/04-01/07-338.

<sup>3</sup> *Ibid*, p. 2, para. 1.

<sup>4</sup> The Prosecution submits that this number varies since all the documents reviewed to date are being subjected to a secondary review in light of the joinder of the cases against Germain KATANGA and Mathieu NGUDJOLO CHUI, the ongoing investigations and the continuous evaluation of the Prosecution evidence. Therefore, the number of documents identified as of potentially exculpatory nature or containing potentially exculpatory elements fluctuates.

Statute, the OTP either sent requests for the lifting of confidentiality restrictions to the providers or is currently preparing to request the lifting of the confidentiality restrictions.

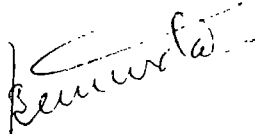
3. As the Prosecution submitted in its First Report,<sup>5</sup> there are four documents for which the confidentiality restrictions have already been lifted. Two documents have been lifted without any conditions imposed by the provider and they have already been disclosed to the Defences of Germain KATANGA and Mathieu NGUDJOLO CHUI.<sup>6</sup> For the other two documents, the confidentiality restriction was lifted but redactions to the documents were applied by the provider. These documents will be disclosed in the following disclosure packages to the Defences for Germain KATANGA and Mathieu NGUDJOLO CHUI. The Prosecution informs the Single Judge that these two documents are not tagged as potentially exculpatory for the purposes of the disclosure classification, since one document is predominantly of incriminating nature and the other of Rule 77 of the Rules of Procedure and Evidence ("Rules") nature, and only contains certain potentially exculpatory elements. The Prosecution, when disclosing documents, diligently informs the Defence that the material disclosed as incriminating or provided for inspection under Rule 77 of the Rules may also contain elements of potentially exculpatory nature. As to date, there have been no additional documents containing potentially exculpatory elements for which the confidentiality restrictions have been lifted.
  
4. The Prosecution respectfully submits that it is reviewing on a continuous basis documents collected pursuant to Article 54(3)(e) of the Statute in order to identify potentially exculpatory elements. The Prosecution will continue to request the lifting of confidentiality as soon as such documents are identified. Disclosure of

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<sup>5</sup> *Ibid*, p. 3, para. 4.

<sup>6</sup> ICC-01/04-01/07-157-Conf-AnxA (disclosure to defence of Germain KATANGA) and ICC-01/04-01/07-337-Conf-AnxD (disclosure to defence of Mathieu NGUDJOLO CHUI).

such documents occurs as soon as the Prosecution is notified of the lifting of the confidentiality restrictions by the providers.



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

Dated this 9th day of April 2008

At The Hague, The Netherlands