

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 23 May 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 Fifth 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 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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Counsel for the Defence of Mathieu Ngudjolo Chui

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Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

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Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

In compliance with the “Decision Establishing a Calendar according to the date of the Confirmation Hearing: 27 June 2008”,¹ the Office of the Prosecutor (“Prosecution”) respectfully submits its fifth 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. As requested by the Single Judge, the Prosecution is also submitting a report regarding the status of documents identified as material to the preparation of the Defence pursuant to Rule 77 for which lifting of confidentiality restrictions must be obtained.²

Report on requests related to documents identified as containing potentially exculpatory elements pursuant to Article 67(2) of the Statute and for which confidentiality restrictions must be lifted for disclosure pursuant to Article 54(3)(e), 73 and 93 of the Statute

1. The Prosecution has identified 140 documents (“Identified PEXO 54(3)(e) Documents”) containing potentially exculpatory elements.³
2. Requests to obtain lifting of confidentiality as applied pursuant to Article 54(3)(e) for all these Identified PEXO 54(3)(e) Documents have been sent to the various information providers. Recently, providers have lifted confidentiality restrictions for seven of these documents, which were promptly disclosed to the Defence.
3. To date, lifting has been recently rejected for 28 of the Identified PEXO 54(3)(e) Documents by their providers. The information contained in 16 of these documents is analogous to that of already disclosed material. Furthermore, upon

¹ ICC-01/04-01/07-459.

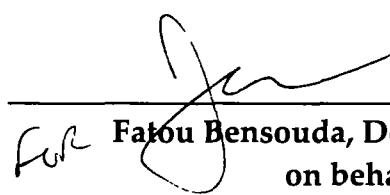
² *Ibid.*

³ ICC-01/04-01/07-T-28-ENG ET, p. 25, lines 14-16.

closer analysis, the Prosecution concludes that the information contained in 7 of these documents for which lifting has been rejected, has no exculpatory value.

Report on requests related to documents identified as being material to the preparation of the Defence pursuant to Rule 77 of the Rules of Procedure and Evidence

4. As requested by the Single Judge to report on the status of documents identified as material to the Defence pursuant to Rule 77, which amount to approximately 94 documents, the Prosecution submits that all requests regarding these documents have been sent to the relevant providers. Similarly to the approach taken to identify documents containing potentially exculpatory material, the Prosecution has broadly interpreted and identified the criteria selected for the category of documents encompassed by Rule 77.
5. Recently, providers have denied lifting of confidentiality restrictions for 23 of these documents. The information contained in 17 of these documents is analogous to that of already disclosed material.



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

Dated this 23rd day of May 2008

At The Hague, The Netherlands