

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 9 June 2008

PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, 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 Sixth 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:

The Office of the Prosecutor

**Counsel for the Defence of Germain
Katanga**

Mr David Hooper
Mr Göran Sluiter

**Counsel for the Defence of Mathieu
Ngudjolo Chui**

Mr Jean-Pierre Kilenda Kakengi Basila
Ms Maryse Alié

Legal Representatives of Victims

Ms Carine Bapita Buyangandu
Mr Joseph Keta
Mr Jean-Louis Gilissen

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

Registrar

Ms Silvana Arbia

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 sixth 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 of the Rules of Procedure and Evidence (“Rules”) for which lifting of confidentiality restrictions must be obtained.²

Background

1. The Prosecution informed the Single Judge in its last report filed on 23 May 2008,³ in its “Observations” filing of 5 June 2008,⁴ and also during the Status Conference held on 14 May 2008,⁵ that it was reviewing those documents classified as of potentially exculpatory or Rule 77 nature for which the requests for lifting the confidentiality restrictions was pending or rejected, in order to establish whether the information contained therein is analogous to that of already disclosed material. The Prosecution further noted that it was reviewing the documents pre-selected and the number of documents to be disclosed will decrease further.⁶

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 ICC-01/04-01/07-459.

² *Ibid.*

³ ICC-01/04-01/07-502, para. 3.

⁴ ICC-01/04-01/07-555, para. 3.

⁵ ICC-01/04-01/07-T-28-ENG ET, p. 26, lines 14-18.

⁶ ICC-01/04-01/07-555, para. 7, *see also* ICC-01/04-01/07-502, para. 3.

Current number of identified Potentially Exonerating ("PEXO") documents

2. Upon refining its PEXO and Rule 77 criteria and applying these new criteria to the documents and numbers identified in its last report,⁷ the Prosecution reduced the number of PEXO documents to 72. Requests to obtain lifting of confidentiality restrictions for all of these documents have previously been sent to the various information providers.

Number of lifted identified PEXO documents

3. To date, the providers have lifted confidentiality restrictions for 6 of these documents which have been disclosed to both Defence teams.⁸

Number of rejected identified PEXO documents

4. Lifting has been rejected for 20 of these documents by their providers and analogous information has been previously disclosed to both Defence teams for 16 of them. For the remainder, the information contained therein cannot be matched and the Prosecution is exploring with the providers the option of submitting summaries of the PEXO material to the Judges.

Number of identified PEXO documents pending responses from providers

5. The Prosecution is still waiting for a response from the providers for 46 of the 72 documents identified as PEXO. To date, out of these 46 documents, 37 documents with analogous information were disclosed to both Defence teams. For the remainder, the information contained therein cannot be matched. The Prosecution is seeking urgent responses from the providers. In the absence of such response or should the response be negative, the Prosecution will explore the option of providing summaries to the Judges.

⁷ ICC-01/04-01/07-502.

⁸ The Prosecution disclosed 5 as incriminatory material, and 1 as potentially exonerating material.

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

Current number of identified Rule 77 documents

6. Upon reviewing the content of PEXO and Rule 77 documents the number of documents the Prosecution identified as Rule 77 is currently 127.⁹

Number of lifted identified Rule 77 documents

7. To date, the providers have lifted confidentiality restrictions for 16 documents which have all been disclosed to both Defence teams. Requests to obtain lifting of confidentiality restrictions for the remainder of these documents have been sent to the various information providers.¹⁰

Number of rejected identified Rule 77 documents

8. Lifting has been rejected for 24 of the 127 documents by their providers. Analogous information was disclosed to both Defence teams for all of these documents.

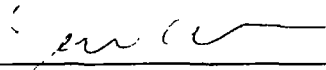
Number of identified Rule 77 documents pending responses from providers

9. The Prosecution is still waiting for a response from the providers for 87 of these 127 documents. To date, out of these 87 documents, 73 documents with analogous information have been previously disclosed to both Defence teams. For the remainder, the information contained therein cannot be matched. The Prosecution is seeking urgent responses from the providers. Should the response be negative

⁹ The Prosecution indicated in its last report dated 23 May (ICC-01/04-01/07-502), that it had identified 94 documents as Rule 77 material, while in fact it had identified, at that time, 121 documents. Lifting requests had been sent to the providers for 118 of these documents at the time of the last report. Lifting requests will be sent to the providers. Additionally, 6 documents previously identified as PEXO were reclassified, following review, as R-77 material and for which lifting requests have been previously sent.

¹⁰ See footnote 10 above. Lifting requests will be sent to the providers.

or should there be no response, the Prosecution will explore the option of providing summaries of the material.



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

Dated this 9th day of June 2008

At The Hague, The Netherlands