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

Date: 24 June 2008

**PRE-TRIAL CHAMBER I**

**Before: Judge Sylvia Steiner, Single Judge**

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

**Public Document**

**Defence Observations concerning the Prosecutor's further Information in relation  
to Article 67 (2) of the Statute and Rule 77**

**Source: Defence for Mr Germain Katanga**

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

**The Office of the Prosecutor**

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Mr Eric Macdonald, Senior Trial Lawyer

**Counsel for the Defence for Germain Katanga**

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Ms Caroline Buisman

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**Legal Representatives of Applicants**  
[1 name per team maximum]

**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparation**

**The Office of Public Counsel for Victims**

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**The Office of Public Counsel for the Defence**

Mr Xavier Jean Keïta  
Ms Melinda Taylor

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Section**

**Other**

## Background

1. On 20 June 2008 the Prosecutor submitted the following information to the Pre-Trial Chamber regarding disclosure:

“The Prosecution advises the Pre-Trial Chamber and the Defence that on 4 June 2008, a member of the OTP, while conducting a search for material relating to W-12, located several unregistered CD-ROMs and items relating to the DRC situation, mostly generated by the UN. A binder with unregistered hard-copy items and an item that appeared to be a map drawn by a witness was also discovered.<sup>1</sup>

2. It appears that 1172 items, all new, were re-discovered and registered for review. The Prosecutor concluded that 19 items should be regarded as material to the Defence and require disclosure pursuant to Rule 77. However, only 9 items are disclosed immediately. As to the remaining 10 items, 7 come from the United Nations and the OTP is seeking lifting confidentiality for them. 3 items come from other providers and can be provided to the Judges on an ex parte basis and disclosed to the Defence in a redacted or summary-form.<sup>2</sup>
3. Following this information, on 23rd June 2008 the Single Judge issued a decision, in which she gave parties leave to make observations on the Prosecution's Information by Tuesday 24 June 2008 at 16h00.’<sup>3</sup> The Defence respectfully submits the following observations.
4. Firstly, the Defence is very concerned about the management of evidence by the Office of the Prosecutor. The effective and fair administration of justice is dependant on adequate management of evidence by the party which is best equipped to conduct investigations and has been endowed with fundamental rights and obligations to that end under the Statute. In relation to disclosure, the question further raised by this incident is whether the OTP is capable of the effective overview and management of its duties. The Defence enters the confirmation hearing far from being assured in this respect.

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<sup>1</sup> ICC-01/04-01/07-633, para. 1.

<sup>2</sup> Id.

<sup>3</sup> ICC-01/04-01/07-630, p. 9.

5. Second, the Defence notes, as did the Single Judge, that:

‘from 4 June 2008 to 16 June 2008 the Prosecution had sufficient time to (i) identify those article 67(2) and rule 77 materials contained in the items referred to in the Prosecution's Information; and (ii) disclose them to the Defence within the 16 June 2008 deadline for effective disclosure of article 67(2) and rule 77 materials for the purpose of the confirmation hearing in the present case’;<sup>4</sup>

6. The Defence does not know of any reason, and cannot think of any legitimate reason, as to why the OTP did not disclose the material before 16 June, or at least inform the Chamber and Defence of any difficulties it may have encountered in the process. This remains the Defence view, despite the further submissions contained in the Prosecutions public filing of today's date.<sup>5</sup>
7. We submit that an inexcusable violation of disclosure duty has occurred and that the Defence has been or may have been prejudiced by this violation. Such late disclosure makes proper preparation by the Defence for the confirmation hearing impossible.
8. The Defence therefore respectfully requests that the Single Judge confirms that the OTP has violated its disclosure obligations for the purpose of confirmation hearing. We submit that in the course of the confirmation hearing the adoption of appropriate remedies can be discussed.

Respectfully submitted,




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<sup>4</sup> ICC-01/04-01/07-630, p. 7.

<sup>5</sup> ICC-01/04-01/07-637

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David HOOPER

Dated this 24 June 2008

At London/Amsterdam