

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 14 July 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 Eighth 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 eighth 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. The Prosecution has reviewed all the documents in its possession collected pursuant to Article 54(3)(e) and that are relevant to this case. 137 documents were initially identified as containing potentially exculpatory elements pursuant to Article 67(2).³ The Prosecution has reduced this number to 136 due to a determination that one of these documents was not received pursuant to Article 54(3)(e). Requests for the lifting of confidentiality restrictions were sent to all providers.

Number of lifted identified PEXO documents

2. To date, there have been no additional documents for which the providers lifted the confidentiality restrictions. Therefore the number of lifted identified documents which contain PEXO elements is 8. These documents have been disclosed to both Defence teams.

¹ ICC-01/04-01/07-621.

² ICC-01/04-01/07-621, p. 53.

³ As set out in the Prosecution’s Seventh Report, upon further analysis the Prosecution considers that 65 of these documents should no longer be considered as containing PEXO elements, *see* ICC-01/04-01/07-596, paras. 7-8. However, following the guidance given at the 10 June 2008 Hearing (*see* ICC-01/04-01/07-T-35-ENG, p. 11, lines 10-23) and in the 20 June 2008 Decision at paras. 23-30, the Prosecution addresses in this report the current status of the 137 documents initially identified as containing PEXO elements.

Number of rejected identified PEXO documents

3. Since the last Prosecution's 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 27. Analogous information has been previously disclosed to both Defence teams for 15 of these documents.⁴

Number of identified PEXO documents pending responses from providers

4. The Prosecution is still awaiting a response from the providers for 101 of the 136 documents identified as containing PEXO elements. As submitted in the Prosecution's Seventh Status Report,⁵ analogous information has been previously disclosed to both Defence teams for 37 of these documents.⁶

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, 127 documents have been identified as Rule 77 documents, and have been collected pursuant to Article 54(3)(e). 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 requests for these documents are currently being prepared.

⁴ 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.

⁵ ICC-01/04-01/07-596, para. 6.

⁶ See footnote 4.

⁷ ICC-01/04-01/07-633, para. 5.

Number of lifted identified Rule 77 documents

6. The providers have lifted confidentiality restrictions for 16 documents. Since the Prosecution's Seventh Status Report, confidentiality restrictions have been lifted by the providers for two documents, which will be disclosed to both Defence teams. 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 25 documents. As submitted in the Prosecution's Seventh Status Report,⁸ analogous information has been previously disclosed to both Defence teams for 20 of these documents.⁹

Number of identified Rule 77 documents pending responses from providers

8. The Prosecution is still awaiting a response from the providers for 86 of the 127 documents. As submitted in the Prosecution's Seventh Status Report,¹⁰ out of the 86 documents, 69 documents with analogous information have been previously disclosed to both Defence teams.¹¹
9. The Prosecution continues to engage in consultations with information providers on refused and pending requests for lifting. Furthermore, the Prosecution respectfully refers to the consultations that have taken place between the United Nations and the Office of the Prosecutor in relation to the case of *The Prosecutor v. Thomas LUBANGA DYILO*, which have sought to resolve the issue of those United Nations documents that were provided to the Prosecution in accordance with Article 18(3) of the Relationship Agreement and which the Prosecution has identified as containing information that appears to fall within the scope of

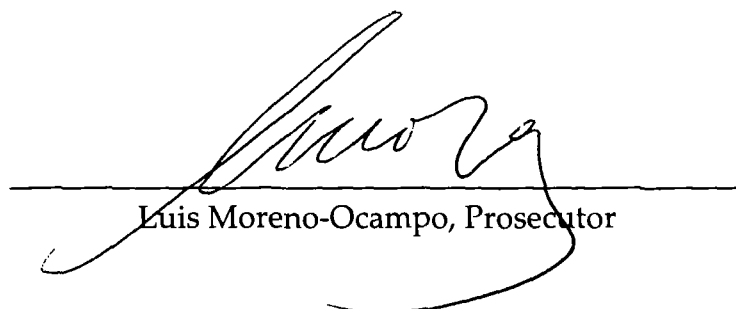
⁸ ICC-01/04-01/07-596, para. 11.

⁹ See footnote 4.

¹⁰ ICC-01/04-01/07-596, para. 12.

¹¹ See footnote 4.

Article 67(2) and/or Rule 77.¹² 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. At the same time, the Prosecution will conduct consultations with the United Nations with a view to providing for a procedure to enable review of the undisclosed items by the judges of the appropriate Chamber in the event that any items remain subject to non-disclosure protections. The Chambers will thereby be able to determine whether or not the non-disclosure of any potentially exculpatory material or Rule 77 information constitutes a breach of the accused's right to a fair trial and determine the appropriateness of any remedies with respect to such items.



Luis Moreno-Ocampo, Prosecutor

Dated this 14th day of July 2008

At The Hague, The Netherlands

¹² ICC-01/04-01/06-1431.