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Date: 25 August 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

Urgent

Prosecution's Tenth 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 tenth 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. As stated in the Prosecution’s last report, the total number of documents collected pursuant to Article 54(3)(e) and originally identified as containing potentially exculpatory elements pursuant to Article 67(2) is 136.³ Requests for the lifting of confidentiality restrictions were sent to all providers.

Number of lifted identified PEXO documents

2. Since the Prosecution’s last report, the providers lifted confidentiality restrictions for 13 PEXO documents. Therefore, the number of lifted identified documents containing PEXO elements is currently 27⁴. They have been disclosed to both Defence teams.

Number of rejected identified PEXO documents

3. Since the Prosecution’s last report, the providers authorised lifting of 13 of the previously rejected documents.⁵ The number of rejected identified documents containing PEXO elements has therefore decreased and currently stands at 9.

¹ ICC-01/04-01/07-621.

² ICC-01/04-01/07-621, p. 53.

³ ICC-01/04-01/07-679, p. 3, para. 1.

⁴ By letters from UN/OLA, dated 1 August 2008 and 7 August 2008, respectively, UN-OLA granted lifting for 10 and later for 3 additional documents containing PEXO elements but subject to some redactions.

⁵ *Ibid.*

Analogous information has been previously disclosed to both Defence teams for 7 of these documents.

Number of identified PEXO documents pending responses from providers

4. The Prosecution is still awaiting a response from the providers for 100 of the 136 documents identified as containing PEXO elements. Upon further analysis analogous information has been previously disclosed to both Defence teams for 98 of these documents.

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, 116 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 have all been sent to the providers.

Number of lifted identified Rule 77 documents

6. The providers have lifted confidentiality restrictions for 39 documents.⁶ 3 of the 4 documents for which confidentiality restrictions were lifted by providers after the Prosecution's Ninth Report have been disclosed to both Defence teams. The remaining documents are being disclosed to the Defence.

⁶ By letters from from UN/OLA, dated 1 August 2008 and 7 August 2008, respectively, UN-OLA granted lifting for 2 and then for a further 2 Rule 77 documents. Three of these documents contain redactions.

Number of identified Rule 77 documents undergoing further review

7. The providers are currently reviewing 16 documents for which consent to the lifting of confidentiality restrictions is under consideration.⁷

Number of identified Rule 77 documents pending responses from providers

8. The Prosecution is still awaiting a response from the providers for 61 of the 116 documents. As indicated in the Prosecution's previous report, analogous information has already been disclosed to both Defence teams for 43 of these documents.
9. The Prosecution continues to engage in consultations with information providers on refused and pending requests for lifting of confidentiality restrictions. 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.



Luis Moreno-Ocampo, Prosecutor

Dated this 25th day of August 2008

At The Hague, The Netherlands

⁷ Analogous information has already been disclosed to both Defence teams for 14 of these documents.