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No.: ICC-01/04-01/07
Date: 15 September 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 Eleventh 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 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 eleventh 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 Since the last report,³ the Prosecution has continued its consultations with information providers and in particular with the United Nations. With these consultations, as well as from the finalisation of similar consultations in relation to the case “The Prosecutor v. Thomas Lubanga Dyilo”, there are serious prospects that the situation with regards to the pending material will be adequately solved.

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 is 136. 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 24 PEXO documents, increasing the total number of lifted identified documents containing PEXO elements to 51. The recently lifted documents will be disclosed to both Defence teams.

¹ ICC-01/04-01/07-621.

² ICC-01/04-01/07-621, p. 53.

³ ICC-01/04-01/07-706.

Number of rejected identified PEXO documents

3. Since the Prosecution's last report, there are no additional documents for which lifting has been rejected by the providers. Therefore, the number of rejected identified documents containing PEXO elements remains at 9. 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 76 of the 136 documents identified as containing PEXO elements. Analogous information has been previously disclosed to both Defence teams for 74 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. In the last status report, 116 documents had been identified as Rule 77 documents, and have been collected pursuant to Article 54(3)(e). Since the last status report, it has appeared upon review that the conditions of receipt for 2 documents were not 54(3)(e) but 54(3)(f). For one additional document, the Prosecution managed to obtain a non-54(3)(e) version from a different source. To date, requests for the lifting of confidentiality restrictions of the remaining 113 documents have been sent to the providers.

Number of lifted identified Rule 77 documents

6. Since the last report, providers lifted the confidentiality restrictions for 15 documents. Therefore, to date, the number of documents for which providers have lifted confidentiality restrictions totals 54 documents. The recently lifted documents will be disclosed to both Defence teams.

Number of identified Rule 77 documents undergoing further review

7. The providers are currently reviewing 14 documents for which consent to the lifting of confidentiality restrictions is under further consideration.⁴

Number of identified Rule 77 documents pending responses from providers

8. The Prosecution is still awaiting a response from the providers for 45 of the 113 documents. Analogous information has already been disclosed to both Defence teams for 35 of these documents.

⁴ Analogous information has already been disclosed to both Defence teams for 12 of these documents.

9. The Prosecution continues to engage in consultations with information providers on refused and pending requests for lifting of confidentiality restrictions. Similar consultations in the “Prosecutor v. Thomas Lubanga Dyilo” case including with the United Nations are progressing and will apply to all the information collected in the context of the DRC investigation. 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.

A handwritten signature in blue ink, appearing to read 'Luis Moreno-Ocampo', is positioned above a horizontal line.

Luis Moreno-Ocampo, Prosecutor

Dated this 15th day of September 2008

At The Hague, The Netherlands