

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 6 October 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 Twelfth 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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Other

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, the Office of the Prosecutor (“Prosecution”) submits its twelfth 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, the Prosecution 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 and rejected identified PEXO documents

2. Since the Prosecution’s last report, the providers lifted confidentiality restrictions for two documents containing PEXO elements, for which lifting was previously rejected. Therefore, the total number of lifted identified documents containing PEXO elements increased to a total of 53. Accordingly, the number of identified documents containing PEXO elements for which lifting of confidentiality

¹ ICC-01/04-01/07-621.

² ICC-01/04-01/07-621, p. 53.

restrictions has been rejected currently stands as 7. Analogous information has been previously disclosed to both Defence teams for 5 of these documents. The two recently lifted documents will be disclosed to both Defence teams.

Number of identified PEXO documents pending responses from providers

3. 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

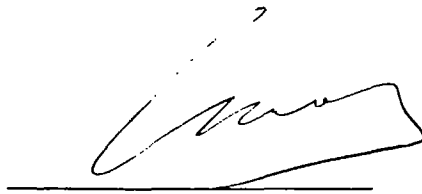
4. As stated in the Prosecution's last report, the total number of Rule 77 documents collected under Article 54(3)(e) is 113. Requests for the lifting of confidentiality restrictions of these documents were sent to all providers.

Number of lifted identified Rule 77 documents and those undergoing further review

5. Since the last report, the providers lifted confidentiality restrictions for five documents, for which lifting was previously rejected. Therefore, to date, the number of lifted Rule 77 documents totals 59. The recently lifted documents will be disclosed to both Defence teams. There are 9 previously rejected documents outstanding, for which consent to the lifting of confidentiality restrictions is under further consideration. Analogous information has already been disclosed to the Defence teams for 8 of these documents.

Number of identified Rule 77 documents pending responses from providers

6. 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.
7. 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 black ink, appearing to read 'Luis Moreno-Ocampo', written over a horizontal line.

Luis Moreno-Ocampo, Prosecutor

Dated this 6th day of October 2008

At The Hague, The Netherlands