

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 25 June 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**

**Decision on the 19 June 2008 Prosecution Information and other Matters concerning
Articles 54 (3)(e) and 67 (2) of the Statute and rule 77 of the Rules**

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

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor
Mr Éric MacDonald, Senior Trial Lawyer

**Counsel for the Defence
of Germain Katanga**

Mr David Hooper
Ms Caroline Buisman

**Counsel for the Defence of Mathieu
Ngudjolo Chui**

Mr Jean-Pierre Kilenda Kakengi Basila
Ms Maryse Alié

Legal Representatives of the Victims

Ms Carine Bapita Buyagandu
Mr Joseph Keta
Mr J.L. Gilissen
Mr. Hervé Diakiese
Mr. Jean-Christostome Mulamba
Nsokoloni

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I, Judge Sylvia Steiner, judge at the International Criminal Court (“the Court”);

NOTING the “Prosecution’s Submission of Information Regarding W-12”¹ (“the 19 June 2008 Prosecution Submission”) filed by the Prosecution on 19 June 2008, in which the Prosecution informs the Single Judge that is unable to locate the record of the unsigned draft statements of the second interview with Witness W-12, as well as a document given in electronic format to the Prosecution’s investigator during the course of the said interview;

NOTING the Status Conference held on 19 June 2008,² in which the Single Judge gave the Legal Representatives of the Victims until Friday 20 June 2008 at 16h00, and both Defences until Monday 23 June 2008 at 16h00 to file their observations on the 19 June 2008 Prosecution Submission;

NOTING the “*Observations des victimes a/0327/07, a/0329/07 à 3/0331/07, 3/0010/08, 3/0011/08, 3/0012/08, 3/0013/08, 3/0015/08, 3/0016/08, 3/0038/08, a/0039/08, a/0043/08, 3/044/08, 3/0046/08, a/0049/08 à 3/0051/08, 3/0055/08, 3/0057/08, 3/0060/08, 3/0061/08, a/0066/08, a/0067/08, a/0070/08, a/0071/08, a/0073/08, a/0076/08, a/0078/08 à a/0080/08, a/0083108, a/0085/08, a/0088/08, a/0090/08, a/0092/08, a/0100/08, a/0101/08, a/0103/08 et 3/0104/08 sur les observations de 13 défense des Germain Katanga et Mathieu Ngudjolo relatif à la suspension de la procédure de l’audience de confirmation des charges*”³ (“the Victims’ Legal Representatives Observations”) filed by the Legal Representatives of Victims on 20 June 2008;

NOTING the “Decision on Article 54(3)(e) Documents Identified as Potentially Exculpatory or Otherwise Material to the Defence’s Preparation for the Confirmation

¹ ICC-01/04-01/07-610-Conf

² ICC-01/04-01/07-T-37-Conf-Exp-ENG, p 7, lines 20-23

³ ICC-01/04-01/07-617-Conf.

Hearing" ("the Decision on Article 54 (3)(e) Documents")⁴ issued by the Single Judge on 20 June 2008;

NOTING the "Information regarding the Discovery and Examination of Additional Material in the Possession of the Prosecutor"⁵ ("the 23 June 2008 Prosecution Information") filed by the Prosecution on 20 June 2008 and only notified by the Registry on 23 June 2008, in which the Prosecution informed the Chamber and the Defences that 1172 unregistered items collected during the course of the investigation into the situation in the DRC were found within the Office of the Prosecutor on 4 June 2008;

NOTING the "Decision concerning the Prosecution's Further Information in relation to Article 67(2) of the Statute and Rule 77 of the Rules" (the Decision on the 23 June 2008 Prosecution Information"),⁶ issued by the Single Judge on 23 June 2008, in which the Single Judge:

- (i) gave 24 hours to both Defences, as well as to the legal representatives of anonymous and non-anonymous victims, to present their observations on the 23 June 2008 Prosecution Information; and
- (ii) ordered the Prosecution to disclose to both Defences nine documents identified as containing rule 77 information and which were not subject to any confidentiality restriction;

NOTING the "*Réponse de la Défense de Mathieu Ngudjolo à la requête de l'Accusation intitulée 'Prosecution's Submission of Information Regarding W-12'*"⁷ ("the Observations of the Defence for Mathieu Ngudjolo Chui") filed by the Defence for Mathieu Ngudjolo Chui on 23 June 2008, in which the Defence for Mathieu Ngujolo Chui requests:

⁴ ICC-01/04-01/07-621

⁵ ICC-01/04-01/07-622-Conf

⁶ ICC-01/04-01/07-640.

⁷ ICC-01/04-01/07-627-Conf-Corr

- (i) to refuse the investigative steps proposed by the Prosecution in relation to the loss of the unsigned draft statements of W-12 and its related document;
- (ii) in the event the Chamber authorises the aforementioned investigative steps, to deny any Prosecution's request to add new elements on the Prosecution List of Evidence for the purposes of the confirmation hearing;

NOTING the "Defence Observations concerning the Prosecutor's further Information in relation to Article 67 (2) of the Statute and Rule 77" ("the Observations of the Defence for Germain Katanga")⁸ filed by the Defence for Germain Katanga on 24 June 2008, in which it requests "that the Single Judge confirms that the OTP has violated its disclosure obligations for the purpose of the confirmation hearing";

NOTING the "Prosecution's Communication of Pre-Inspection Report for Material Provided to the Defence under Rule 77 on 23 June 2008" ("the Prosecution Pre-Inspection Report")⁹ filed by the Prosecution on 24 June 2008, in which the Prosecution files the pre-inspection report for the 9 documents identified as containing rule 77 material subject to the Decision on the 23 June 2008 Prosecution Information;

NOTING the "Prosecution's Submission pursuant to the "Decision concerning the Prosecution's Further Information in relation to Article 67 (2) of the Statute and Rule 77 of the Rules" ("the Prosecution 24 June 2008 Submission),¹⁰ filed by the Prosecution on 24 June 2008, in which the Prosecution informs the Single Judge of a CD-Room with materials downloaded from a UPC website that has also been disclosed today to both Defences pursuant to rule 77 of the Rules;

⁸ ICC-01/04-01/07-640.

⁹ ICC-01/04-01/07-636, with Confidential Annexes A and B

¹⁰ ICC-01/04-01/07-637

NOTING the “Prosecution’s Communication of Provision of Copies of Publicly Available Material to the Defence on 24 June 2008”¹¹ filed by the Prosecution on 24 June 2008;

NOTING articles 61 and 67 of the *Rome Statute* (“the Statute”) and rules 77 and 121 of the *Rules of Procedure and Evidence* (“the Rules”);

I. Unregistered Documents within the Office of the Prosecutor and Article 67(2) and Rule 77 Prosecution’s Disclosure Obligations

1. The Single Judge recalls that at paragraphs 110 to 113 of the 20 June 2008 Decision on Article 54 (3)(e) Documents, the Single Judge highlighted that, on the basis of the information provided for in the 16 June 2008 Prosecution Report, out of 255 article 54(3)(e) documents identified as containing information potentially exculpatory or otherwise material for the Defence:

- (i) 24 have been disclosed to the Defences after securing the consent of the providers;
- (ii) consent has been rejected by the providers in relation to 52;
- (iii) requests for consent are pending in relation to 179 documents;
- (iv) analogous information has been provided to the Defences for 142 out of the 231 article 54(3)(e) documents which remain undisclosed; and

¹¹ ICC-01/04-01/07-638.

- (v) neither of the Defences have been given access to the information identified by the Prosecution as potentially exculpatory or otherwise material to the Defence in approximately 89 documents.¹²

2. As a result, at paragraphs 123 and 124 of the 20 June 2008 Decision on Article 54 (3)(e) Documents, the Single Judge found that:

The Single Judge has already emphasised the gravity of the current situation relating to article 54(3)(e) documents resulting from the Prosecution's reckless investigative techniques during the first two years of the investigation into the DRC. In the view of the Single Judge, the present case is a borderline one because of the important number of undisclosed documents that have already been identified as containing information potentially exculpatory or otherwise material to the Defence, and for which the Prosecution has been unable to rely on the principle of analogous information.

Nevertheless, all factors considered - notably the limited geographical and territorial scope of the case; the limitation of the Prosecution's evidence to its core evidence as mandated by the Single Judge; as well as the hundreds of documents containing information potentially exculpatory or otherwise material to the Defence - the Single Judge finds that the Prosecution has satisfied the bulk rule for the purposes of the confirmation hearing scheduled to start on 27 June 2008.

3. Immediately after the issuance of the Decision on Article 54 (3)(e) Documents, the Single Judge was notified of the 23 June 2008 Prosecution Information, in which the Prosecution explained at paragraphs 1 to 5 that:

In the "Prosecution's Seventh 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", the Prosecution notified the Pre-Trial Chamber and the Defence that "The Prosecutor has requested a new general search of material to ensure that no document has been overseen; the inquiry is being completed. Any relevant information will be provided to the Chamber." 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.

The OTP conducted an inventory and assessment of this material and determined that these items were obtained in the course of the investigation into the situation.

In total, 1172 items were registered for the purpose of review. The Prosecution has reviewed all of these items in order to determine whether they contained information that is subject to

¹² ICC-01/04-01/07-621, paras 110-113.

disclosure under Article 67(2) or should be provided for inspection by the Defence pursuant to Rule 77 ("Materials for disclosure or inspection").

Of these items, 19 have been identified as items that should be provided for inspection by the Defence pursuant to Rule 77. No items have been identified as subject to disclosure under Article 67(2).

Of the 19 Rule 77 items, 9 have no restrictions and can be disclosed forthwith.

4. The same day of the notification of the 23 June 2008 Prosecution Information, the Single Judge issued the Decision on the 23 June 2008 Prosecution Information, in which she held that:

[...] according to the Prosecution, the above-mentioned items were found two days after the issuance of the 2 June 2008 Decision; and that no reference to such items was made in the 5 June 2008 Prosecution's Observations, the 9 June 2008 Prosecution's Report, and the 16 June 2008 Prosecution's Report;¹³

[...] 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;¹⁴

[...] the Prosecution must make those 9 rule 77 items immediately available to both Defences; and that both Defences shall be entitled to make use of such documents for the purpose of the confirmation hearing if they so wish; and that therefore the Defences shall have until Thursday 26 June 2008 at 12h00 to file an Additional List of Evidence, in which they can include: (i) any of these 9 items; and (ii) any other item of evidence on which they decide to rely at the confirmation hearing in light of the content of the 9 items disclosed pursuant to the present decision.¹⁵

5. The Single Judge observes that at paragraphs 6 and 7 of the 24 June 2008 Observations of the Defence for Germain Katanga, it is submitted that:

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 the 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.

¹³ ICC-01/04-01/07-630, pp 6 and 7

¹⁴ ICC-01/04-01/07-630, p 7.

¹⁵ ICC-01/04-01/07-630, p 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.¹⁶

6. The Single Judge also observes that, in its 24 June 2008 Prosecution Observations and in its 24 June 2008 Prosecution Pre-inspection Report, the Prosecution underlines the following, in addition to explaining that it has already made available to the Defences the nine documents identified as containing rule 77 information referred to in the 23 June 2008 Prosecution Information:¹⁷

In the 23 June 2008 Decision, the Single Judge ordered the Prosecution to immediately bring to the attention of the Single Judge any additional article 67(2) and/or rule 77 issues that the Single Judge has not yet been informed of in relation to the confirmation hearing in the present case. In this regard, the Prosecution has completed its search and has not uncovered any new material. It wishes however to bring to the attention of the Single Judge that it is in possession of public material from a UPC website, downloaded on a CD-Rom. The Prosecution is not relying on the material and since it is public information, it might be available already to the Defence. However it seems that the website is now defunct. Therefore, in order to fully assist the Defence, the Prosecution will disclose today a copy of this CD-Rom.¹⁸

7. On the basis of the above-mentioned, the Single Judge first finds that the ten documents identified as containing rule 77 information among those 1172 unregistered documents suddenly found by the Prosecution on 4 June 2008 - after having been within the Office of the Prosecutor for years, - and which have not yet been disclosed to the Defences due to confidentiality restrictions, are not significant enough to alter the conclusion reached by the Single Judge in the 20 June 2008 Decision on Article 54(3)(e) Documents, in which it was found that the Prosecution has satisfied in the present case the "bulk rule" for the purposes of the confirmation hearing scheduled to start on 27 June 2008.

8. Furthermore, in relation to the nine documents identified as containing rule 77 information disclosed yesterday to both Defences pursuant to the Decision on the 23 June 2008 Prosecution Information, the Single Judge agrees with the Defence for Germain Katanga that there is no reason justifying why the Prosecution did not

¹⁶ ICC-01/04-01/07-640, para 6

¹⁷ ICC-01/04-01/07-637, para.

¹⁸ ICC-01/04-01/07-637, para. 3

disclose them to both Defences before the expiration of the 16 June 2008 deadline for effective disclosure of article 67(2) and rule 77 materials.

9. Nevertheless, in the view of the Single Judge, any prejudice that the Prosecution's late disclosure of the said nine documents might have caused to the Defences has been remedied by the Decision on the 23 June 2008 Prosecution Information, which gave the Defences sufficient time to review the nine documents, and to decide whether to rely for the purposes of the confirmation hearing (i) on any of the nine documents, or (ii) on any other item of evidence on which the Defences might wish to rely in light of the content of the said materials.

10. The Single Judge also observes that the Prosecution does not provide any justification for its late disclosure of a CD-Rom containing an unknown number of materials downloaded from a UPC website, apart from alleging that such materials are in the public domain.

11. Regardless of whether such materials are indeed in the public domain - which is questionable in light of the Prosecution's further submission that the UPC website from where the information was downloaded is now "defunct" - the Single Judge highlights that the Prosecution is obliged to disclose to both Defences article 67(2) and rule 77 materials in the Prosecution's "possession or control", whether or not they are also in the public domain. As the Prosecution recalls in its application for leave to appeal the 13 June 2008 Trial Chamber Decision in the Lubanga Case filed two days ago,¹⁹ this has been upheld by the ICTY Appeals Chamber in the *Blaskic* case (at the very least in relation to materials not easily accessible to the Defence).²⁰

12. In order to minimise any prejudice that the Prosecution's late disclosure of the CD-Rom might have caused to both Defences, the Single Judge shall give the

¹⁹ Prosecution's Application for Leave to Appeal "Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008, filed by the Prosecution on 23 June 2008, ICC-01/04-01/06-1407, para 14, footnote 49

²⁰ Prosecutor v. Blaskic, IT-95-14-A, Judgement, 29 July 2004, para 294)

Defences for Germain Katanga and Mathieu Ngudjolo Chui until Monday 30 June 2008 at 16h00 to:

- (i) review the unknown number of materials included on the CD-Rom;
- (ii) decide whether to rely for the purposes of the confirmation hearing (a) on any of the materials found on the CD-Rom, or (b) on any other item of evidence on which the Defences might wish to rely in light of the content of such materials; and
- (iii) accordingly to file an Additional List of Evidence including any of the materials referred to under (ii);

13. Moreover, at the session on procedural matters of the confirmation hearing scheduled for 2 July 2008, the Prosecution, the Defences and the Legal Representatives for non-anonymous victims may address the issue of whether the measures adopted in the present decision adequately remedy any prejudice that the Defences for Germain Katanga and Mathieu Ngudjolo Chui may have suffered as a result of the Prosecution's late disclosure of the materials contained in the above-mentioned CD-Rom;

14. As a result, on the basis of the information available to the Single Judge today, and subject to the 2 July 2008 oral submissions on the matter referred in previous paragraph, the Single Judge considers that, as declared in the 20 June 2008 Decision on Article 54 (3) (e) documents, the Prosecution has satisfied the bulk rule in the present case for the purposes of the confirmation hearing scheduled to start on 27 June 2008.

II. Prosecution's Loss of the Unsigned Draft Statement and a Related Document

15. In the 19 June 2008 Prosecution Submission, the Prosecution states that it cannot locate in the Prosecution's network computer drive the record of an unsigned draft statement taken by a former Prosecution investigator on April 2006 from one of the witnesses (W-12) on whose evidence the Prosecution intends to rely at the confirmation hearing.²¹ According to the Prosecution, there is "no record that the information was properly registered".²²

16. Moreover, in the 19 June 2008 Prosecution Submission, the Prosecution also submits that during the said interview, W-12 provided to the former Prosecution investigator a document in an electronic form on either a floppy disk or a pen drive entitled "The political situation in Congo".²³ Nevertheless, no record of such document can now be located by the Prosecution in the Prosecution's network computer drive.²⁴

17. As a result, in its 19 June 2008 Prosecution Submission, the Prosecution informed the Single Judge that it is planning to take the following two actions:

- (i) to conduct an interview with the relevant former Prosecution investigator to discuss the content of the draft statement and any corrections made to the First Statement. A Request for Assistance was sent to the French authorities, his current employer, to this effect on 11 June 2008;
- (ii) to request that W-12 provide the document he authored.²⁵

²¹ ICC-01/04-01/07-610, paras 2 to 4, and 7.

²² ICC-01/04-01/07-610, para 1

²³ ICC-01/04-01/07-610, paras 5 and 6

²⁴ ICC-01/04-01/07-610, para 7.

²⁵ ICC-01/04-01/07-610, para. 8

18. After carefully reading the 19 June 2008 Prosecution Submission, the Single Judge is of the view that, contrary to the submissions of the Defence for Mathieu Ngudjolo Chui, the Prosecution does not intend to rely for the purposes of the confirmation hearing on the above-mentioned (i) "unsigned draft statement" of witness W-12; or (ii) document entitled "The political situation in Congo." Hence, the Single Judge finds the concerns put forward by the Defence for Mathieu Ngudjolo Chui in relation to an eventual amendment of the Prosecution Amended List of Evidence filed on 12 June 2008 to be unfounded.

19. Furthermore, as said above, the 16 June 2008 deadline for the Prosecution's effective disclosure of article 67(2) and rule 77 materials has expired more than a week ago. Therefore, although the Single Judge agrees with the Prosecution on the need to undertake the two actions referred to in the 19 June 2008 Prosecution Submission, the Single Judge considers that, in light of the concerns put forward by the Defence for Mathieu Ngudjolo Chui, such actions must only be taken after the finalisation of the confirmation hearing.

III. Final Remarks

20. As indicated above, the Single Judge has found that, as the situation stands today, and subject to the 2 July 2008 oral submissions on the matter referred to in paragraph 13 of the present decision, the Prosecution has satisfied in the present case the bulk rule for the purposes of the confirmation hearing scheduled to start on 27 June 2008.

21. Nevertheless, the Single Judge highlights that she is highly disturbed by the fact that a number of incidents have taken place as a result of Prosecution's way of proceeding, including *inter alia* (and leaving aside the various problems relating to witness protection):

- (i) the Prosecution's underestimation, as shown by the several Prosecution's reports filed from November 2007 to the end of May 2008, of the serious problems posed by its reckless practice of extensively gathering documents pursuant to article 54(3)(e) of the Statute during the first two years of the investigation into the DRC;
- (ii) the Prosecution's last minute piece-meal proposals to address the said problems;
- (iii) the Prosecution's sudden discovery of 1172 documents relating to the investigation into the DRC situation that have been unregistered within the Office of the Prosecutor for years;
- (iv) the fact that the Prosecution did not inform the Single Judge or the Defences about this problem for weeks, and it only informed them about it after the expiration of the 16 June 2008 deadline for effective disclosure of article 67(2) and rule 77 materials;
- (v) the Prosecution's lack of regard for the 16 June 2008 deadline for effective disclosure of article 67 (2) and rule 77 materials as shown by (a) the several alternative measures to actual disclosure proposed after the expiration of such deadline; and (b) the Prosecution's late disclosure of several rule 77 documents;
- (vi) the Prosecution's disclosure three days prior to the start of the confirmation hearing of a CD-Rom with an unknown number of rule 77 materials;
- (vii) the Prosecution's loss of an unsigned draft statement of one of the witness on whose evidence the Prosecution intends to rely at the confirmation hearing; and

- (viii) the Prosecution's loss of a document entitled "The Political Situation in Congo" transmitted by that witness during his second interview.

22. As a result, the Single Judge can only fully repeat the following remarks made in the 24 June 2008 Observations by the Defence for Germain Katanga:

[...] the Defence is very concerned about the management of evidence by the Office of the Prosecutor. The effective 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."²⁶

23. In light of the above-circumstances, the Single Judge can only stress that the Prosecution must immediately put in place the necessary measures to stop the continuous re-occurrence of these types of incidents.

FOR THESE REASONS

DECIDE that any prejudice that the Prosecution's late disclosure of the above-mentioned nine documents identified as containing rule 77 information might have caused to both Defences has been remedied by the Decision on the 23 June 2008 Prosecution Information, which gave both Defences sufficient time to review the nine documents, and to decide whether to rely for the purposes of the confirmation hearing (i) on any of the nine documents, or (ii) on any other item of evidence on which the Defences might wish to rely in light of the content of the said materials.

²⁶ ICC-01/04-01/07-640, para. 4

DECIDE that, in order to minimise any prejudice that the Prosecution's late disclosure of a CD-Rom containing an unknown number of UPC materials may have caused to both Defences, they shall have until Monday 30 June 2008 at 16h00 to:

- a. review the unknown number of materials included on the CD-Rom;
- b. decide whether to rely for the purposes of the confirmation hearing (a) on any of the materials found on the CD-Rom, or (b) on any other item of evidence on which the Defences might wish to rely in light of the content of such materials; and
- c. accordingly to file an Additional List of Evidence including any of the materials referred to under (ii);

DECIDE that at the session on procedural matters of the confirmation hearing scheduled for 2 July 2008, the Prosecution, the Defences and the Legal Representatives for non-anonymous victims may address the issue of whether the measures adopted in the present decision adequately remedy any prejudice that the Defences for Germain Katanga and Mathieu Ngudjolo Chui may have suffered as a result of the Prosecution's late disclosure of the above-mentioned CD-Rom

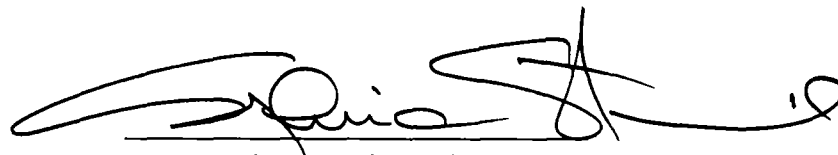
DECLARE that on the basis of the information available to the Single Judge today, and subject to the 2 July 2008 oral submissions on the matter referred to in the

previous paragraph, the Single Judge considers that, as declared in the 20 June 2008 Decision on Article 54(3)(e) documents, the Prosecution has satisfied in the present case the bulk rule for the purposes of the confirmation hearing scheduled to start on 27 June 2008.

DECIDE that the two actions referred to in the 19 June 2008 Prosecution's Submission shall only be taken after the finalisation of the confirmation hearing.

STRONGLY RECOMMEND that the Prosecution puts in place the necessary measures to stop immediately the continuous re-occurrence of the types of incidents that have taken place in the present case.

Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner
Single Judge

Dated this Wednesday 25 June 2008

At The Hague, The Netherlands