

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/07
Date: 12 February 2009

TRIAL CHAMBER II

Before: Judge Bruno Cotte , Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Fumiko Saiga

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA and MATHIEU NGUDJOLO CHUI***

Confidential

Ex parte, available only to the Registry, the Office of the Prosecutor and
the Defence

**Registrar's Decision on the Monitoring
of Non-privileged Telephone Communications and Visits
of Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui**

Source: The Registrar

Document 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
Ms Fatou Bensouda, Deputy Prosecutor
Mr. Eric MacDonald, Senior Trial Lawyer

Counsel for Germain Katanga

Mr. David Hooper
Ms Caroline Buisman

Counsel for Mathieu Ngudjolo Chui

Mr. Jean-Pierre Kilenda Kagengi Basila
Mr. Jean-Pierre Fofé Djofia Malewa

Legal Representatives of Victims

Legal Representatives of 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

Mr. Anders Backman

**Victims Participation and Reparations
Section**

Other

Presidency

The Registrar of the International Criminal Court ("the Court");

NOTING regulations 23 *bis* and 90 of the Regulations of the Court and regulations 173 to 185 of the Regulations of the Registry;

CONSIDERING that within the Registry, not all information is shared between the sections on account of their respective mandates and especially when such information is confidential;

CONSIDERING however that the Registrar, by virtue of her position, is able to have a better overview of all information conveyed to her by the sections operating within the Registry and, that such position allows her to follow-up the development of all issues dealt with by the sections, to assess the overall situation and, ultimately, to make an informed decision on such issues;

CONSIDERING that following the recent reports of the Registry to Trial Chamber II¹, the information gathered by different sections of the Registry and conveyed to the Registrar provides, in her view, reasonable grounds according to regulation 175(1) c) and e) to believe that Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui might or might have tried to affect the normal execution of the mandate of the Legal Representatives of victims and to intimidate the said Legal Representatives;

CONSIDERING furthermore as per regulation 175(1) b) of the Regulations of the Court that the information in the possession of the Registrar gives reasonable grounds to believe that Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui might or might have attempted to "interfere or intimidate" persons from the detention centre by using telephone communications and/or visits;

¹ ICC-01/04-01/07-827-Conf-Exp + Annex; ICC-01/04-01/07-828-Conf-Exp + Annex

CONSIDERING the recent practice of both Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui which is supported by increase of the registration of new telephone numbers in addition to their respective existing lists of telephone numbers;

CONSIDERING that some of the telephone numbers refer to names that call for a careful examination by the Registrar as to their credibility, in particular because the names seem strange and/or appear to be aliases;

CONSIDERING that, pursuant to regulation 174(2) of the Regulations of the Registry, a post-factum listening of recorded non-privileged communications can be decided by the Registrar where there are reasonable grounds to do so and, that regulation 184 of the same Regulations empowers the Registrar under the same grounds to order an active monitoring of non-privileged visits;

CONSIDERING that private visits, which are by their very nature conducted out of the sight and the hearing of the custody officers, could assist Mr. Germain Katanga and Mr. Mathieu Ngudjolo by providing them with means which could serve, inter alia, to "interfere with or intimidate witnesses", "interfere with the administration of justice", jeopardise the interests of public safety or the rights or freedom of any person", or "breach an order for non-disclosure made by a Chamber";

CONSIDERING that Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui are alleged to have been both involved in the attack of Bogoro and that the information in the possession of the Registrar provides reasonable grounds to believe that they might communicate or cooperate as to, inter alia, "interfere with or intimidate witnesses" by making arrangements from the detention centre to have certain witnesses contacted;

CONSIDERING that should this decision be challenged, its review process of will be dealt with by the Presidency which has authority to rule on appeals of decisions made by the Registrar in respect of detention matters;

THEREFORE,

SUBMITS this document as confidential, *ex parte* available only to the Registry, the Office of the Prosecutor and the Defence, in view of the confidential nature of the information provided to and in the possession of the Registrar;

ORDERS the Chief Custody Officer ("CCO"), upon notification of this decision, to conduct

a post-factum listening to:

- a) all non-privileged communications of both Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui recorded as of the 1st October 2008;
- b) all non-privileged telephone communications made by Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui as of the date of notification of this decision, for a period of 14 calendar days and to provide a regular report on this monitoring;

ORDERS the CCO, upon notification of the present decision, to implement the monitoring of all non-privileged visits to Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui for a period of 14 calendar days;

DECIDES not to grant private visits to both Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui for the period of the implementation of this decision;

DECIDES, for the time being, not to order the segregation of Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui;

INFORMS that the Registry will keep Trial Chamber II informed of the outcome of the monitoring and any relevant information or proceedings related to this decision;

ORDERS the CCO to notify this decision to Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui;

ORDERS the CCO to take the measures he deems necessary for the implementation of this decision including but not limited to the reduction of the number of telephone communications and non-privileged visits of each of the abovementioned detained persons and, to take all necessary steps to provide the Court Interpretation and Translation Section with the relevant recordings in order to ensure that the listening and the transcript of the communications are dealt with in a timely manner;

REMAINS seized of the situation and shall review, after the period of 14 calendar days, the necessity to continue the monitoring of the non-privileged communications and visits as well as the non-permission of private visits;



Marc Dubuisson
Director of Court Services
on behalf of
Silvana Arbia
Registrar

Dated this 12 February 2009

At The Hague, the Netherlands