

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/07
Date: 27 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 of Mathieu Ngudjolo Chui

**Second Decision of the Registrar on the Monitoring
of Non-privileged Telephone Communications and Visits
of 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

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;

NOTING the "Registrar's Decision on the monitoring of the Non-privileged Telephone Communications and Visits of Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui" dated 12 February 2009, ("First Decision");¹

NOTING the Presidency "Order concerning the "Defence Appeal to the Presidency Challenging the Registrar's Decision on the Monitoring of Non-Privileged Telephone Communications and Visits of Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui"";²

CONSIDERING that the grounds according to which the First Decision was issued are still valid in so far as Mr. Mathieu Ngudjolo Chui is concerned and, that the Registrar intends to provide the Presidency with "the reasons which led her to believe that the conditions set out in subparagraphs (b), (c) and (e) of regulation 175(1) of the Regulations of the Registry were met at the date"³ of the issuance of the First Decision;

CONSIDERING that the ongoing post-factum listening of the non-privileged telephone communications of Mr. Mathieu Ngudjolo provides at this stage information that need to be further analysed;

CONSIDERING therefore that the Registrar will be in position to provide Trial Chamber II with a clear report only after the termination of the post-factum listening

¹ ICC-01/04-01/07-894-Conf-Exp.

² ICC-RoR221-01/09-3-Conf-Exp

³ *Ibid*, p 3

of the non-privileged telephone communications of Mr. Mathieu Ngudjolo Chui,
from 1st October 2008 to 26 February 2009;

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 continuation of the post-factum listening of the non-privileged
telephone communications of Mr. Mathieu Ngudjolo Chui between 1st October 2008
and 26th February 2009;

ORDERS, for the time being, the Chief Custody Officer ("CCO") not to continue the
monitoring of future non-privileged telephone communications and visits as of
26 February 2009;

ORDERS the CCO to notify Mr. Mathieu Ngudjolo of this decision;

REMAINS seized of the situation and shall review the necessity to continue the
monitoring of the non-privileged communications and visits which will occur after
this decision, based on the analysis of the findings of the abovementioned
post-factum listening;



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

Dated this 27 February 2009

At The Hague, the Netherlands