

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **French**

No.: **ICC-01/04-01/07**
Date: **22 January 2010**

TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Christine Van den Wyngaert

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF

THE PROSECUTOR v. GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI

Confidential

Ex parte, only available to the Registry and the Defence for Mathieu Ngudjolo

Registrar's Decision ordering the monitoring of Mathieu Ngudjolo's non-privileged communications between 25 September 2009 and 28 January 2010

Source: The Registrar

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

Counsel for Mathieu Ngudjolo

Mr Jean-Pierre Kilenda Kakengi Basila

Mr Jean-Pierre Fofé Djofia Malewa

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Mr Didier Preira

Victims and Witnesses Unit

Ms Maria Luisa Martinod-Jacome

Detention Section

Mr Anders Backman

Other

The Presidency

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

NOTING the decisions of Trial Chamber II ("the Chamber") dated 24 July, 25 September and 4 December 2009;¹

NOTING the four reports submitted by the Registrar on the monitoring of Mathieu Ngudjolo's non-privileged communications;²

NOTING the additional reports filed by the Registrar on the implementation of the measures ordered by the Chamber;³

NOTING the Registrar's decisions of 10 June and 6 October 2009 ordering the monitoring of Mathieu Ngudjolo's non-privileged communications;⁴

NOTING the Chamber's decision of 20 January 2010 entitled *Décision sur le rapport du Greffier relative à la mise en œuvre de la décision de la Chambre du 4 décembre 2009 concernant les restrictions imposées à Mathieu Ngudjolo*;⁵

NOTING regulations 23 *bis*, 24 *bis*(2) and 90 of the Regulations of the Court and regulations 174 and 175 of the Regulations of the Registry;

CONSIDERING that, in a decision dated 2 December 2009, the Presidency had occasion to make clear that decisions ordering the retroactive monitoring of non-privileged telephone communications must, *inter alia*, state the reasonable grounds

¹ Respectively, ICC-01/04-01/07-1334-Conf-Exp-tENG, ICC-01/04-01/07-1498-Conf-Exp-tENG and ICC-01/04-01/07-1709-Conf-Exp.

² ICC-01/04-01/07-1195-Conf-Exp-tENG, ICC-01/04-01/07-1291-Conf-Exp, ICC-01/04-01/07-1308-Conf-Exp and ICC-01/04-01/07-1542-Conf-Exp.

³ ICC-01/04-01/07-1253-Conf-Exp, ICC-01/04-01/07-1410-Conf-Exp and ICC-01/04-01/07-1753-Conf-Exp.

⁴ ICC-01/04-01/07-1196-Conf-Exp and ICC-01/04-01/07-1512-Conf-Exp.

⁵ ICC-01/04-01/07-1778-Conf-Exp.

to believe that an individual may be attempting to commit a prohibited act, as well as the reasons justifying the monitoring period;⁶

CONSIDERING that in the report of 8 January 2010, in relation to the restrictions still in force against Mathieu Ngudjolo, the Registrar recommends the monitoring of his telephone communications in order to assess, *inter alia*, whether Mr Ngudjolo has complied with the Chamber's previous decisions, and that such a ground, under the Regulations of the Registry, justifies the monitoring of his communications;

CONSIDERING that the period covered by the present decision to monitor – from 25 September 2009 to 28 January 2010 – is justified as follows: firstly, the Chamber's decision relaxing the restrictions instituted against Mathieu Ngudjolo pursuant to the latest monitoring measures dates back to 25 September 2009;⁷ and secondly, the said restrictions are in force until 29 January 2010,⁸ and the Chamber has requested the Registry to indicate prior to that date whether it intends to monitor communications;

CONSIDERING that the outcome of the analysis of the communications concerned should, *inter alia*, enable the Chamber to rule on whether to maintain or lift restrictions on Mathieu Ngudjolo's contact with other persons;

CONSIDERING that the present decision confirms and gives effect to the Registrar's suggestions to the Chamber;

ACCORDINGLY,

1) SUBMITS the present decision as "confidential, *ex parte*, only available to the Registry and the Defence for Mathieu Ngudjolo";

⁶ ICC-RoR221-03/09-12-Conf

⁷ See ICC-01/04-01/07-1778-Conf-Exp

⁸ *Ibid.*

2) ORDERS the Chief Custody Officer to conduct *non-regular, non-selective and non-systematic* monitoring⁹ of Mathieu Ngudjolo's non-privileged communications taking place between 25 September 2009 and 28 January 2010, and to take the necessary steps to ensure the interpretation and transcription of the said communications by the Court's interpretation unit;

3) ORDERS the Chief Custody Officer to notify the present decision to Mathieu Ngudjolo;

4) INFORMS the Chamber that it will submit as soon as possible, at the earliest on 29 January 2010, a report on the communications concerned.

p.p. [signed]

Marc Dubuisson, Director of the Division of Court Services

for

Silvana Arbia, Registrar

Dated this 22 January 2010,

At The Hague, The Netherlands

⁹ Monitoring shall consist in randomly selecting conversations, which shall then be interpreted.