

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: **14 January 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***

Public Redacted Document

**Public redacted version of translation of "Prosecution's urgent application to
hold an *ex parte* hearing on the protection of witnesses and victims", 29
November 2012, ICC-01/04-01/07-831-Conf-Exp-tENG**

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by the name of [REDACTED] According to Witness W-314, Ngudjolo is said to have told [REDACTED] that [REDACTED] was in Kinshasa and had betrayed him by confessing to having been in the militia and being present at the Bogoro attack. This information was discussed openly within the Zumbe community in June or July 2008.

6. Again according to Witness W-314, Ngudjolo is said to have tasked [REDACTED] with verifying with [REDACTED] father that [REDACTED] was indeed in Kinshasa. Ngudjolo is also said to have tasked [REDACTED] with asking why [REDACTED] had allegedly told lies about him. From what Witness W-314 says, Ngudjolo's aim was that people "[TRANSLATION] should not make statements about him which were unfounded".

7. Consequently, and again according to Witness W-314, [REDACTED] allegedly had a meeting with [REDACTED] father. The father allegedly denied any involvement by [REDACTED]. He is said to have stated that there are many people called [REDACTED], both amongst the Lendus and amongst the Hemas. He is said to have added that [REDACTED] had not participated in the Bogoro attack and that he did not know his whereabouts.²

8. The Prosecution immediately suspected that the [REDACTED] in question was Witness W-250, a minor at the time of the events covered by the *Decision on the confirmation of charges*, whose name was provided to Ngudjolo's Defence in the warrant of arrest as disclosed on 14 February 2008.³

9. The day after the interview with Witness W-314, that is, 17 November 2008, the Victims and Witnesses Unit ("VWU") was informed of the situation by telephone. There followed an e-mail dated 19 November 2008 and a meeting on 9 December 2008. Exchanges with VWU thereafter became regular.

² Cf. Annex A: Draft transcript of recorded statement DRC-OTP-1026-0024 of 16 November 2008, pp. 1-4.

³ ICC-01/04-02/07-24-Conf-AnxA, reclassified as ICC-01/04-01/07-283-Conf-AnxA.

10. At this stage, the Office of the Prosecutor would like to indicate that the father [REDACTED] is deceased. However, Witness W-250 does have an [REDACTED]⁴ who lives in [REDACTED] and whose name is [REDACTED]. It was this [REDACTED] whom the Prosecution was finally able to contact by telephone yesterday, after various searches and in coordination with VWU.

11. Even though the quality of the telephone call with [REDACTED] was not very good, the interview was recorded and a transcript will be provided *ex parte* to the Chamber forthwith. In substance, [REDACTED] confirmed that he was [REDACTED] of W-250 and that he had been approached by strangers enquiring about W-250's situation. He explained that:

- in July 2008, a man called "[REDACTED]" had visited him in Bunia and had asked him questions about W-250;
- he knew "[REDACTED]" because he is a [REDACTED];
- "[REDACTED]" was particularly aggressive ("[TRANSLATION] too rough"), and really threatening; and
- "[REDACTED]" had stated that W-250 was the person who had made accusations against the person in The Hague. [REDACTED] clarified that "[REDACTED]" was referring to Ngudjolo at the time.

12. Moreover, [REDACTED] explained that:

- after that first visit, he was visited by another person whom he knew to be a teacher (that was still in July 2008);
- that teacher had a mobile phone and told him that a man called "[REDACTED]"⁵ wanted to speak to him;
- the man called "[REDACTED]" told him that he knew that [REDACTED] was the person who had made accusations against Ngudjolo, since Ngudjolo had called them

⁴ Witness W-250 speaks of him as [REDACTED]. [REDACTED].

⁵ At this stage, to the Prosecution's knowledge, it does not appear to be [REDACTED].

from The Hague, saying that [REDACTED] was a traitor (“[TRANSLATION] he had betrayed him”).⁶

13. All of this information is consistent. What Witness W-314 says about the date of the events, Ngudjolo’s involvement, the occupation of one of the intermediaries and the nature of the pressure exerted is corroborated by the [REDACTED] of Witness W-250.

14. Admittedly, [REDACTED] was not “disturbed” subsequently. And, as indicated *supra*, Witness W-250 does not seem to have been affected by this pressure.

15. The fact remains that these events are of a public nature. [REDACTED] stated that the man named “[REDACTED]” and the man named “[REDACTED]” were spreading the rumour that [REDACTED] was a traitor. This explains why W-314 knew about it. W-314 added that [REDACTED] name was frequently brought up in the community. Hence, there is a real risk that W-250 may one day be affected by these threats.

16. Above all, contamination may already have occurred due to the public nature of the acts ascribable, in this case, to Ngudjolo. Witness W-314 thus seems to have learned lessons from these events and has stated that were he to cooperate with the Prosecution, “Ngudjolo’s brothers ‘[TRANSLATION] would be sure to threaten [him]’”.⁷ He has therefore refused to give a written statement.

17. Furthermore, there are indications that the pressure put on Witness W-250 is not an isolated incident. Witness W-28 told the Office of the Prosecutor in August 2008 that he had heard that his name had been mentioned at a meeting in [REDACTED].⁸

⁶ Cf. Annex C, “OTP’s notes on phone call to relative of DRC-OTP-WWWW-0250, Re. Threats by MN’s supporters in July 2008”, The Hague, 13 January 2009.

⁷ Cf. Annex B: Draft transcript of recorded statement DRC-OTP-1026-0005 of 16 November 2008, DRC-OTP-1026-0005, p. 12, lines 481-506; and Annex A: Draft transcript of recorded statement DRC-OTP-1026-0024 of 16 November 2008, p. 3, lines 92-109.

⁸ Cf. Annex D, OTP2008/000031396. It should be stated that Ngudjolo is not implicated by Witness W-28.

18. In conclusion, the Prosecution is dealing with serious threats which can be linked to one of the Accused. These threats may seriously interfere with the tendering of incriminating evidence. The threats also testify to a breach in confidentiality of the evidence disclosed. The Prosecution would like to discuss the matter with the Chamber, in order to provide it with additional information and to discuss the measures which are required, in particular, protective measures and measures to monitor Ngudjolo's contacts with the outside.

_____[signed]_____

Luis Moreno-Ocampo, Prosecutor

Dated this 14 January 2009

At The Hague, The Netherlands