

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/04-01/07
Date: 13 November 2009

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***

PUBLIC REDACTED DOCUMENT

**Public redacted version of "Prosecution's Observations
on the Registry's 4th Report on the Non-Privileged Conversations of
Mathieu Ngudjolo Chui", ICC-01/04-01/07-1639-Conf-Exp, 13 November 2009**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

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

Mr Jean-Pierre Kilenda Kakengi Basila

Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(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

Deputy Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

The Prosecution hereby submits its observations on the Registry's report titled: « *Quatrième rapport du Greffier sur l'écoute des communications non couvertes par le secret professionnel de M. Mathieu Ngudjolo* »¹(« 4th Report »), as requested by Trial Chamber II (the « Chamber »).²

Observations

1. The Prosecution can only submit limited observations, due to the large number of redactions in the Registry's 4th Report, including references to submissions to which the Prosecution does not have access.³
2. The Prosecution makes the following remarks:
 - a. In April 2009, the Accused requested from a person called [REDACTED] that he collect information on witnesses who could potentially cooperate with the Prosecution;⁴
 - b. In March and April 2009, the Accused was keeping himself very much informed on the activities of the military group called the FPJC;⁵
 - c. The Accused did not respect the specific rules in relation to the number of persons he may communicate with in a single telephone conversation;⁶
 - d. Before 19 June 2009, the Accused was often communicating in Kilendu, a language that the staff of the ICC Detention Center or translators of the Registry do not master;⁷
 - e. The Accused instructed *Pasteur Lopa* not to disclose certain information over the phone when discussing the case with the Accused.⁸

¹ 01/04/01-01/07-1627-Conf-Exp-Anx1.

² 01/04/01-01/07-1627-Conf-Exp, p. 4.

³ See 4th Report, footnote 17 for instance. If the same Reports exist under a different CMS number, Registry should provide it to the Parties.

⁴ 01/04/01-01/07-1627-Conf-Exp-Anx1, para. 4.

⁵ 4th Report, paras 8 to 12.

⁶ 4th Report, paras 7, 8, 15 and 16.

⁷ 4th Report, para. 29.

3. More importantly, the Prosecution notes, that the Accused on 19 June 2009, the day after the Chamber had issued its "Ordonnance aux fins de recueillir les observations de Mathieu Ngudjolo sur la requête 1200 du Procureur (norme 101-3 du Règlement de la Cour) et portant interdiction provisoire de tout contact entre cet accusé et toute autre personne à l'exception de son équipe de Défense"⁹ was enquiring about Witness 28.¹⁰
4. In light of the above, the Prosecution submits that the current measures, as modified by the Chamber in its « Troisième décision sur les mesures d'interdiction et de restriction de contacts avec l'extérieur comme au sein de l'établissement pénitentiaire concernant Mathieu Ngudjolo »¹¹ should be complied with strictly.



Luis Moreno-Ocampo, Prosecutor

Dated this 13th day of November 2009

At The Hague, The Netherlands

⁸ 4th Report, footnote 41.

⁹ ICC-01/04-01/07-1215-Conf-Exp.

¹⁰ The hour of this call is not provided in Registry's 4th Report. On 18th June 2009, at 12.15 the Chamber had order that Registry prohibit "any external contact, be it incoming or outgoing mail, telephone calls, visits or contact with his fellow detained persons", see ICC-01/04-01/07-1215-Conf-Exp, para. 10.

¹¹ ICC-01/04-01/07-1498-Conf-Exp, para. 21.