

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **French**

No.: ICC-01/04-01/07

Date: 18 May 2011

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 MATHLEU NGUDJOLO CHUI***

PUBLIC REDACTED DOCUMENT

**Public redacted version of "Prosecution request pertaining to the application of
Decision ICC-01/04-01/07-2187-Conf-Exp of 10 June 2010",
ICC-01/04-01/07-2918-Conf-Exp-tENG, 18 May 2011**

Source: Office of the Prosecutor

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

Office of the Prosecutor

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Ngudjolo**
Mr Jean-Pierre Kilenda Kakengi Basila
Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

**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

Ms Maria-Luisa Martinod-Jacome

Detention Section

Mr Anders Backman

**Victims Participation and Reparations
Section** **Other**

1. In its *Decision further to the Appeals Chamber judgment of 9 December 2009 and responding to request 1959-Conf-Exp of the Office of the Prosecutor*¹ of 10 June 2010 (“Decision”), Trial Chamber II² ordered the Registry:
 - **as soon as practicable**³ to transcribe and translate [Mathieu Ngudjolo’s non-privileged] telephone conversations **in Kilendu** [REDACTED] in accordance with those modalities which it considers the most appropriate and to report to the Chamber any difficulties which it encounters; and
 - [...] to analyse the said conversations and report thereon to the Chamber.
2. The Chamber stated at that time that “at this stage in the proceedings, the analysis can no longer be delayed”.⁴
3. On 14 December 2010,⁵ the Prosecution e-mailed the Registry to enquire as to the progress of the measures ordered by the Chamber. On 15 December 2010,⁶ the Registry e-mailed the Prosecution to inform it that the transcripts of the relevant communications had been finalised and that the Registry was in the process of analysing them.
4. On 7 March 2011, the Prosecution e-mailed the Registry again⁷ to enquire whether the analysis to which it referred in its reply of 15 December 2010 had been finalised. Unless the Prosecution is mistaken, no reply was received.
5. The Prosecution is unaware of any difficulties which the Registry might have encountered. And it is almost one year since the Chamber directed the Registry to provide it with a report analysing the conversations at issue.

¹ ICC-01/04-01/07-2187-Conf-Exp-tENG.

² Hereinafter “the Chamber”.

³ Emphasis added.

⁴ ICC-01/04-01/07-2187-Conf-Exp-tENG, para. 63.

⁵ E-mail from the Office of the Prosecutor to the Registry on 14 December 2010 at 12.11.

⁶ E-mail from the Registry to the Office of the Prosecutor on 15 December 2010 at 13.31.

⁷ E-mail from the Office of the Prosecutor to the Registry on 7 March 2011 at 13.56.

6. The Prosecution submits that the filing of said report is all the more urgent given that there has been significant progress in the proceedings and the Defence for Germain Katanga has already commenced its case.
7. The Prosecution submits that it should have access to this report.⁸ The Prosecution received the four previous reports of the Registry: ICC-01/04-01/07-1195-Conf-Exp,⁹ ICC-01/04-01/07-1299-Conf-Exp,¹⁰ ICC-01/04-01/07-1312-Conf-Exp¹¹ and ICC-01/04-01/07-1627-Conf-Exp-Anx1.^{12 13} The conversations at issue in Kilendu or in [REDACTED] form a part of the conversations analysed in the said reports: the analysis of those conversations should have been included, and the Office of the Prosecutor is entitled to receive them now.
8. Furthermore, the Chamber indicated that it could revisit the matter of the disclosure of the recordings of Mathieu Ngudjolo's conversations "once it is in receipt of the analysis" in question.¹⁴
9. In conclusion, the Prosecution requests that the Registry submit by the end of May its analysis of the transcripts and translations of Mathieu Ngudjolo's non-privileged telephone conversations which are in Kilendu [REDACTED]
[REDACTED].

⁸ In redacted form if need be.

⁹ "Registrar's initial report on the monitoring of Mathieu Ngudjolo Chui's non-privileged communications further to the Registrar's decision of 12 February 2009", ICC-01/04-01/07-1195-Conf-Exp-tENG-Corr, 8 June 2009.

¹⁰ "Version expurgée du Deuxième rapport du Greffier sur l'écoute des communications non couvertes par le secret professionnel de Mathieu Ngudjolo Chui suite à la décision du Greffier du 12 février 2009", ICC-01/04-01/07-1299-Conf-Exp, 14 July 2009.

¹¹ "Version expurgée du Troisième rapport du Greffier sur l'écoute des communications non couvertes par le secret professionnel de Mathieu Ngudjolo Chui suite à la décision du Greffier du 12 février 2009", ICC-01/04-01/07-1312-Conf-Exp, 17 July 2009.

¹² Annex 1 to "Transmission aux parties de versions expurgées du 'Quatrième rapport du Greffier sur l'écoute des communications non couvertes par le secret professionnel de M. Mathieu Ngudjolo'", ICC-01/04-01/07-1627-Conf-Exp-Anx1, 11 November 2009.

¹³ The Registry stated in its decision ICC-01/04-01/07-894-Conf-Exp of 12 February 2009 and reaffirmed it in its decision ICC-01/04-01/07-932-Conf-Exp of 27 February 2009 that it would keep the Chamber informed of the outcome of the monitoring.

¹⁴ ICC-01/04-01/07-2187-Conf-Exp-tENG, para. 74.

10. This document is filed as confidential, *ex parte*, only available to the Office of the Prosecutor, the Defence for Mathieu Ngudjolo Chui and the Registry, in view of the nature of decision ICC-01/04-01/07-2187-Conf-Exp.

[signed]

Luis Moreno-Ocampo, Prosecutor

Dated this 18 May 2011

At The Hague, The Netherlands