

ANNEX 3

Confidential ex parte available to the Registry only

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

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

Date: 8 June 2009

TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Hans-Peter Kaul

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI***

URGENT

Confidential, *ex parte*, only available to the Registry

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

Source: Registrar

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 Germain
Katanga**

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

Legal Representatives of Victims

Legal Representatives of Applicants

**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

Deputy Registrar

Mr Didier Preira

Victims and Witnesses Unit

Detention Section

Mr Anders Backman

**Victims Participation and Reparations
Section**

Other

The Registrar of the International Criminal Court (“the ICC”):

PURSUANT TO regulations 23 *bis*, 24 *bis* and 90 of the Regulations of the Court and regulations 173 to 185 of the Regulations of the Registry;

NOTING the Order of Trial Chamber II dated 18 December 2008;¹

NOTING the reports registered on 14 January 2009 by the Registrar;²

NOTING the Registrar’s decision of 12 February 2009, “Registrar’s Decision on the Monitoring of the Non-privileged Telephone Communications and Visits of Mr Germain Katanga and Mr Mathieu Ngudjolo Chui”³, resubmitted on 27 February 2009;⁴

NOTING the Order issued by the Presidency on 25 February 2009, “Order concerning the Defence Appeal to the Presidency Challenging the Registrar’s Decision on Monitoring of Non-Privileged Telephone Communications and Visits of Mr Germain Katanga and Mr Mathieu Ngudjolo Chui”;⁵

NOTING the explanation of the Registrar to the Presidency, “Explanation of the Registrar to the Presidency pursuant to the Presidency Order of 25 February 2009 in respect of Mr Mathieu Ngudjolo Chui” of 6 March 2009 (“Explanation of the Registrar”);⁶

CONSIDERING that, pursuant to the afore-mentioned decision of 12 February 2009, the Registry has undertaken the retroactive monitoring of Mathieu Ngudjolo Chui’s telephone communications and that the transcription of said monitoring is ongoing;

¹ ICC-01/04-01/07-800-Conf-tENG

² ICC-01/04-01/07-827-Conf-Exp + Conf-Exp-Anx, ICC-01/04-01/07-828-Conf-Exp + Conf-Exp-Anx, ICC-01/04-01/07-829-Conf-Exp + Conf-Exp-Anx and ICC-01/04-01/07-830-Conf-Exp

³ ICC-01/04-01/07-894-Conf-Exp

⁴ ICC-01/04-01/07-932-Conf-Exp

⁵ ICC-RoR221-01/09-3-Conf-Exp

⁶ ICC-RoR221-03/09-2-Conf-Exp

CONSIDERING that the Registrar may, at this stage in the proceedings, submit her analysis of the communications covering the period from 1 October 2008 to 31 January 2009;

SUBMITS THE FOLLOWING REPORT:

A. Background

1. The Registrar recalls that the simultaneous monitoring of non-privileged communications covers the period from 1 October 2008 to 12 March 2009⁷ but that the observations which follow cover only the period from 1 October 2008 to 31 January 2009 and that, with regard to the period which remains outstanding, a further report shall be submitted once the transcripts of communications between Mr Mathieu Ngudjolo and his contacts have been finalised and analysed;
2. The Registrar recalls also that as of 6 February 2009, she ordered the Chief of the Detention Centre to implement a fresh procedure whereby detailed information about contacts must be supplied and prior approval sought from the Registrar before telephone numbers can be added to a detainee's list of contacts;

B/ Result of the analysis of the telephone communications

B/1 – Communications from October to November 2008

3. The analysis of communications for October 2008 reveals a conversation on 3 October between Mathieu Ngudjolo and a person answering to the name of Jean Ngabu, during which the latter asks Mathieu Ngudjolo what he would need to say (to his defence team during their visit to the field) so that it is consistent with his statements. Following this question, Mathieu Ngudjolo immediately switched

⁷ The Registrar's second decision of 27 February ordering monitoring to continue was to have been implemented for a period of 15 days from the end of the previous monitoring period. As a result, the extension ran until 12 February 2009. The Registrar, however, was of the view that given the result of the analysis of the communications, it was possible to continue monitoring

languages.⁸ This abrupt change of language, [REDACTED]
[REDACTED], may be interpreted as a desire to conceal information, or at the very
least, to avoid his answer and the rest of the conversation [REDACTED].

4. During the month of October 2008, it should be noted that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] by Mathieu Ngudjolo and his contacts.
This observation also applies to the following months.

5. The analysis of communications in November 2008 reveals that on numerous
occasions Mathieu Ngudjolo used the telephone number of one contact to talk to
other people. This practice is one of the reasons why a procedure for adding
contacts has been implemented, which makes it possible to obtain information
about the number of persons or the names of the persons permitted to use the
same telephone. Nevertheless, [REDACTED]
[REDACTED]
[REDACTED]

B/2 – Communications from December 2008 to January 2009

6. With regard to the analysis of the communications in December 2008, although
there is no clear information to suggest that Mathieu Ngudjolo is issuing
instructions to intimidate witnesses, one conversation between him and a contact
answering to the name of Mateso Lodya (a nurse) shows that reference is made
to a [REDACTED] " [REDACTED] who reportedly mentioned the names of certain persons. As
Mathieu Ngudjolo's defence team was probably due to visit Bunia in January
2009, those persons mentioned by said witness seem to have been "coached" by

⁸ **Conversation No 146 of 3 October 2008:** [TRANSLATION] JN: "Yes, I did get the message. I would
like to ask the following in fact: what should we say so that our statement is not dissimilar to yours
and for it to tie in with yours?" MN:[*answers in an unidentified language*]

Mateso Lodya at Mathieu Ngudjolo's request so that they knew what answers to give.⁹

7. The conversation of 18 December between Mathieu Ngudjolo and Martin Lopa (a priest) reveals that during the family visit in December 2008, Mathieu Ngudjolo's wife was given instructions by her husband to pass on certain information to Martin Lopa.¹⁰ In this regard, the two contacts and other persons who made use of the communication appear to be cautious on the telephone.¹¹ The telephone number given by Manu was recorded by Mathieu Ngudjolo under the name of Manu Shachu – known as Chef Manu or Emmanuel Ngabu – probably his own number given that he was using Martin Lopa's telephone. The same conversation, like the others¹², reveals that for the purposes of the visit to the field by the defence team, Mathieu Ngudjolo's supporters were "briefed" or "coached" on what to tell his team.¹³

⁹ **Conversation No 171 of 7 December 2008:** [TRANSLATION] MN: "Did you see (inaudible) again?" Mateso: "Yes, we meet with them and all the information which we shared last time, they know everything. I took the time to explain everything to them. When these people come they will know what to say. There will be lots of questions and as the [REDACTED] "witness" had given their names they will know what to reply to all these questions. The truth remains a truth, you cannot make up the truth."

¹⁰ **Conversation No 109 of 18 December 2008:** [TRANSLATION] MN: "I was in contact with Jean but the call was cut off. I wanted to call Manu, but I chose you first of all. We are together. Otherwise there is information which my wife will pass on to you as soon as she arrives. But my lawyers leave on 12 January to travel to Congo. (...)"

¹¹ **Conversation No 109, op cit** [TRANSLATION] Manu: "I just wanted to let you know that people here are accusing one another. Some say that Germain trapped Bogoro, others say that no it wasn't him. Before your wife left for Europe I went to see her and gave her instructions about what to say to [MN interrupts Manu and speaks [REDACTED] Manu gives him a telephone number (...) the conversation continues in the unknown language]."

¹² **Conversation No 171 and 197**, coaching of potential defence witnesses.

¹³ **Conversation No 109, op cit**, [TRANSLATION] MN: "The truth is always a truth. Because Bogoro and Zombe are close by (inaudible) and he, Germain, came from a long way away to Beni to come to attack Bogoro and everybody already knows this, we can't make it up, it's the truth. Even here, part of the truth is already known. When my wife is back in the country she will inform you of other truths." Martin: "Thanks, I therefore ask that as soon as your wife is back here, she invites all us leaders round and gives us the information at the same time. If she says nothing we won't know what the situation is and if we need to defend this matter we won't know what to say." MN: "No, I've given my wife a recommendation and an instruction. Because our life depends on it." Martin: "It's good that your wife was able to visit you. She has to bring back information which goes beyond the message we get across on the phone. If she comes and says nothing, on the day of the investigations we'll keep quiet too." MN: "Father, keep calm and sit tight. Don't say much because everything is planned. As soon as my wife arrives you will have other options and you'll know what to do."

8. Another telephone conversation between Father Martin (Lopa?), also known as Cobra, and Mathieu Ngudjolo, reveals divisions within the Lendu community, pitting Germain Katanga's supporters or sympathisers against Mathieu Ngudjolo's, regarding the principal responsibility of one compared with the other in the attack on Bogoro.¹⁴
9. However, the content of some conversations between Mathieu Ngudjolo and his contacts does not seem to encourage the soldiers to rebel or opt for a violent or hostile approach against other persons or armed groups.¹⁵
10. They refer many times to secret meetings,¹⁶ which are allegedly linked to witnesses. The Registrar is not in a position to say, at the present time, what the purpose of these meetings is or was, other than that this was a specific situation which required the use of [REDACTED]

¹⁴ *Ibid.*, [TRANSLATION] Manu: "Brother, LOBO. Hello first of all. LOBO came to see me at home and told me that he was Germain's lawyer and that you have the same case file, we need to go to Zumbe together, I told him that I was available any time. The unfortunate thing is that the community here has split into two, there is LENDU SOUTH and LENDU NORTH."

¹⁵ **Conversation No 109 of 18 December 2008:** [TRANSLATION] LOPA: "People from the north, Directors, the wise men and others came to see me and tell me that "father we are banning our young people from entering or joining this war and making them aware."

Conversation No 121 of 16 December 2008: [TRANSLATION] MN: "Are all the little ones OK? [*"little ones" means soldiers*] Oh yes, for the time being they are quiet. Even Kitona's I was in touch with them, they are very well.

Conversation No 139 of 11 December 2008: [TRANSLATION] Colonel "Many child soldiers call me up and tell me that they want to rejoin the army because life at war is becoming difficult. I am handing their files to the authorities and seeing how I can help them." [REDACTED] "Up until now we have been calm with our superiors here. Everything they give us we accept, you know we are an army. Patience is our duty".

¹⁶ **Conversation No 18 of 29 December 2008:** [TRANSLATION] MN "Don't let this sort of mistake happen again. Only those persons whose names I mentioned should be with them. Those who aren't important shouldn't be let in. Those are things which have to be done **discreetly**."

Conversation No 26 of 28 December 2008: [TRANSLATION] MN: "Because I told him [REDACTED] that only those who need to know should be there". EP: "Nobody else." MN: "These are secret matters which we cannot tell other people about... And the director from Djumbe, I said that he really has to be there."

Conversation No 31 of 28 December 2008: [TRANSLATION] MN: "Only those who know one another should be there. That's it, I don't want anybody else. And everything you discuss has to remain secret."

██¹⁷ However, the analysis of information contained in conversation No 19 of 29 December possibly indicates that the purpose of the meetings was to read to the group statements reportedly made by somebody known as ██████████ statements about which Mathieu Ngudjolo was to provide clarification by telephone. It should be noted that the presence of a close friend of ██████████ led to the meeting being interrupted;¹⁸ Mathieu Ngudjolo was annoyed with his wife and Maitre Jean as he believed that they were wrong to meet with persons other than those he had hand-picked himself.¹⁹

11. For information, the Explanation of the Registrar to the Presidency mentions Mathieu Ngudjolo's attempts to make contact with ██████████ father.²⁰
12. From the foregoing, it may indeed be deduced that the names of witnesses are disclosed to third parties, specifically during secret meetings. It is possible to state, in light of the information emerging from the communications, that the following persons attended these meetings: *Mathieu Ngudjolo's wife, Father Lopa, Chef Manu, ██████████ the director from Djumbe, the doctor from Djumbe, Colonel ██████████*²¹ *Papa ██████████ Papa ██████████ Dr Mateso*. The other possible conclusion is that these discussions form part of the detainee's defence strategy. However, a conversation between Mathieu Ngudjolo and his wife following these meetings

¹⁷ **Conversation No 8 of 31 December 2008:** The interpreters were able to identify [TRANSLATION] "secret meeting", "restricted gathering", "We'll follow your orders, your wife will be there".

¹⁸ **Conversation No 19 of 29 December 2008,** [TRANSLATION] EP: "There was **somebody from ██████████ family there**. When they became aware of this they decided to call an end to the meeting." "When we began the meeting, immediately you called. When I began to explain, **to read out ██████████ statements somebody called from outside to say that I should not go into detail because he was there. We broke off.**"

¹⁹ **Conversation No 18 of 29 December, op cit Infra Conversation No 10.**

²⁰ ICC-RoR221-03/09-2-Conf-Exp, pp. 4-5, paras 3-5.

²¹ For information, Colonel ██████████ ██████████ ██████████
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reveals that Mathieu Ngudjolo asked that steps be taken to find those relatives of the child [REDACTED] in other words, or possibly [REDACTED].²²

13. Another conversation with Jean Ngabu indicates that Mathieu Ngudjolo was attempting to identify a prosecution witness whom he considers "suspect".²³
14. It is possible, as pointed out above, that there are indeed disagreements between supporters of Germain Katanga and Mathieu Ngudjolo, and even between the two of them, which is demonstrated by the latter's caution. One of the conversations between Mathieu Ngudjolo and his wife seems to indicate that Germain Katanga is in direct contact with groups to whom he is issuing instructions from the Detention Centre and that Mathieu Ngudjolo, for his part, is reportedly being kept informed of the movements of these groups with the help of a contact in Kinshasa.²⁴ It should be noted that [REDACTED] is a colonel and currently [REDACTED] Previously he was [REDACTED]
 [REDACTED]

²² **Conversation No 10 of 30 December 2008:** [TRANSLATION] MN: "I called Maitre Jean yesterday, I spoke to him, I explained to him what happened yesterday, he understood. And I told him **not to make that sort of mistake again. This sort of person should not be allowed to join the circle** any more because these are **very sensitive matters**. We don't know what these people want." MN: "Otherwise **they'll do all they can to try to meet this child's father. His father and his mother. They're all there.** [REDACTED]."

²³ **Conversation No 9 of 30 December 2008:** [TRANSLATION] JN: "I am **looking for this young man** but I cannot find him. It's as though he's gone travelling somewhere, he's not here in Bunia." JN: "I learnt that he had been travelling, near Bagitti I believe, he's not back yet. I've also contacted him by phone but he is believed to be somewhere with no network coverage. MN: "Ah ha. But I doubt with" (...) [MN switches languages. The [REDACTED] [REDACTED]. "**The prosecutor wants to use [REDACTED] as a [REDACTED] against**", MN: "**He is suspect.**" Unknown: "**Is he suspect then?**" MN: "Oh yes."

²⁴ **Conversation No 52 of 26 December 2008:** [TRANSLATION] MN: "Even up until now I am checking out those who are in the mountains and I know where they are, I cannot talk to him yet". "**Sherif and [REDACTED] groups.** They are near the mountains and are getting ready to come to start the troubles again. MN "Wait for me to speak to or to get explanations from my contact in Kinshasa. Because he is often in contact with them". MN "And my friend here [Germain] **is often in contact with them.**" EP "He knows everything which is going on here, **I believe he has also given a few orders.**" MN: "Yes".

15. During a telephone conversation with a colonel called [REDACTED] Mathieu Ngudjolo appears convinced that two other persons are about to be arrested and transferred to The Hague and he intends to warn them: Peter Karim and Cobra Matata.²⁵
16. The analysis of communications in January 2009 shows that Mathieu Ngudjolo is actively involved in preparing his case. One interesting point is that in addition to his team, Mathieu Ngudjolo uses third parties or contacts to identify witnesses – probably on the basis of information disclosed by the Prosecutor.
17. A conversation²⁶ between Mathieu Ngudjolo and his wife also reveals that he reportedly successfully identified two witnesses called [REDACTED] (also known by the code name [REDACTED] and listed as [REDACTED] on the list of Mathieu Ngudjolo's²⁷ telephone contacts) [REDACTED]²⁸

²⁵ **Conversation No 102 of 19 December 2009:** [TRANSLATION] MN: They will also be sent here to the Court. With everything you say, if they are intelligent and normal, allow them" *to flee or escape*" ... "They will have to deal with their fate too, they're definitely going to be sent to The Hague. It's a strong signal. I will do all I can to call PIETER or COBRA personally. These guys shouldn't mess around because it's no laughing matter here."

²⁶ **Conversation No 201 of 02 January 2009:** [TRANSLATION] MN: "I was also looking for [REDACTED] and as I got hold of him that's good. Otherwise the people from here picked him up and went with him to [REDACTED]. So they went with him to [REDACTED] for him to testify against my colleague "Germain". This is already common knowledge." "Another question: do you often see [REDACTED] EP: "He's at Yambi. He is also **testifying against my colleague**. He has been to [REDACTED] and back two or three times and **he is already recognised**. He is really ashamed. You know the woman who gave you the number, that's his wife. She said that **if he goes to testify again she will also go and testify against him**. It frightens him a lot."

Conversation No 182 of 04 January 2009: [TRANSLATION] MN: "And near Bunia I spoke to a man who had been invited by the investigators. They went with them to the other side of the river bank. To question them about Germain's case. This man is already back in Bunia, he was just starting to give me all the details when the line was cut off."

²⁷ **Conversation No 207 of 02 January 2009:** [TRANSLATION] [REDACTED] "You have to call me by a different name. If you are asked who this person is, say that it's [REDACTED] "Somewhere you'll know his real name, [REDACTED] who was [REDACTED] [REDACTED] [REDACTED]." [REDACTED] "Tell General Germain to call me as well and to use the name [REDACTED]"

²⁸ [REDACTED] may be the witness identified under [REDACTED] who is not a protected witness. It also be [REDACTED] ec [REDACTED] to the Office of the Prosecutor on 15 November 2008 under the name of [REDACTED]

18. Furthermore, in a conversation on 2 January 2009,²⁹ with the person known as [REDACTED] he informed Mathieu Ngudjolo that he had been questioned in [REDACTED] about Germain Katanga's case by the ICC (Prosecutor) whilst another person was questioned about Mathieu Ngudjolo's case. It should be pointed out here that some of Mathieu Ngudjolo's contacts are aware of the approach adopted by the Office of the Prosecutor, which appears to involve questioning potential witnesses in a specific location. With regard to the person known as [REDACTED] or [REDACTED] it is difficult to say what his true identity is. He may have been a member of the FRPI or FNI and present when certain decisions were taken. Nonetheless, there are certain possibilities about his identity:

- a. *He could be* [REDACTED] In the statements filed by the Office of the Prosecutor on 15 November 2008, DRC-OTP-WWW-314 stated that he had briefly been in contact with another Congolese on a bus heading towards Uganda. He described the person as having a [REDACTED] (was it [REDACTED] and therefore [REDACTED]). Mathieu Ngudjolo mentioned that [REDACTED] had been questioned in Uganda³⁰ and referred to him in another conversation as being [REDACTED] [REDACTED]³¹ In addition, despite the fact that [REDACTED] says that he had not met DRC-OTP-WWW-314, it would appear that he in fact did inform Mathieu Ngudjolo that the potential witness was called [REDACTED], that his father was called [REDACTED] that he was a [REDACTED] [REDACTED] then promised to find out the witness's telephone number.³²

²⁹ **Conversation No 200 of 02 January 2009** [TRANSLATION] [REDACTED]

was not able to meet this man who testified about your camp."

³⁰ **Conversation No 201, op cit.**

³¹ **Conversation No 169 of 7 January 2009** [TRANSLATION] EP: "No, I was with father Lopa, Martin, Jean also arrived yesterday. MN "OK, but try to arrange to meet him because soon the investigators will leave here to go to the DRC." EP: "OK". MN: "You do this, I spoke to the [REDACTED] there."

³² **Conversation No 200 of 02 January 2009, [TRANSLATION]** [REDACTED] "For your testimony they took another man to Zumbe. That man **he is here in** [REDACTED]." MN: "What's his name?", [REDACTED] " [REDACTED], **his father is called** [REDACTED] he is from [REDACTED] MN: " [REDACTED] "The child of father [REDACTED] ho [REDACTED], it's like a project and that man is [REDACTED] there. I believe **he's called** [REDACTED] MN: [REDACTED] "I will do my best to get his number and as soon as I have it I'll give it to you." MN: "That's great."

b. It is also possible that [REDACTED] is the person referred to in the conversation between Mathieu Ngudjolo and his wife, a person who was supposed to testify against Germain Katanga and Mathieu Ngudjolo and who is believed to have told Mathieu Ngudjolo everything because he is terrified.³³

c. The third possibility is the result of numerous similarities between [REDACTED] and [REDACTED]. A first clue lies in the name: as already stated, a telephone number was recorded by Mathieu Ngudjolo at the Detention Centre under the name of [REDACTED]. [REDACTED] is called [REDACTED]. It is therefore possible that Mathieu Ngudjolo made a mistake when writing the name on his list of contacts. Likewise, [REDACTED] profession seems to confirm the similarity in terms of identity. This is what emerges from a conversation on 31 December between Mathieu Ngudjolo and his wife.³⁴ [REDACTED] works [REDACTED] and was close to a member of the FNI known as Njabu. Floribert Njabu was a leader of the FNI – the surname *NJABU* is close to *Djambo*: probably a pronunciation or spelling error.

19. It should be noted, as stated in the foregoing, that Mathieu Ngudjolo reveals names to third parties and asks some of his contacts to identify witnesses or potential witnesses. Thus, talking to a colonel by telephone on a number recorded under the name of [REDACTED], Mathieu Ngudjolo asked him to help his team to identify a witness called [REDACTED] believed to be a former bodyguard. Mathieu Ngudjolo emphasised that he posed a problem in the case of another detainee and that his statement was likely to implicate him (Mathieu

³³ **Conversation No 20 of 28 January 2009** [TRANSLATION] MN: “You know, I won’t say the name. One of the witnesses who is testifying against us. I spoke to him. He was afraid. He told me that he had nothing against me. He even gave me his telephone number and told me to call him anytime. He promised to tell me everything.”

³⁴ **Conversation No 7 of 31 December 2008**: [TRANSLATION] MN: “I was in fact on the phone yesterday with Maitre Jean, I asked about the guy who was [REDACTED] the Germans, apparently **he’s not there anymore**. The Maitres Jean are **looking for** him but can’t find him. EP: “Who?”, MN: [REDACTED] ou don’t know him, he is related to DP. He’s the one who had our documents. I asked Jean to obtain the date of when I joined the FNI. *That boy, I also learnt that this person wants to testify against Germain. That boy is allegedly in Kampala or elsewhere, nobody seems to know. But he left for Kampala.*

Ngudjolo) in the attack on Bogoro.³⁵ It is possible that the person known as [REDACTED] is in fact witness DRC-OTP-WWWW-0028, who is covered by protective measures.

20. Similarly, in a conversation with one of his contacts called [REDACTED] on Mathieu Ngudjolo's list of telephone contacts -, a Colonel [REDACTED] is mentioned (also known as [REDACTED] s Germain Katanga's [REDACTED] and he is mentioned in the case file of Mathieu Ngudjolo, who wants to know [REDACTED] state of mind.³⁶

21. Another conversation reveals the opinion which Mathieu Ngudjolo and his wife have of the witnesses, especially after a witness in the Lubanga case retracted his testimony, underscoring the fact that they were manipulated.³⁷ In addition, it is possible to confirm that Mathieu Ngudjolo's wife plays an important role in

³⁵ **Conversation No 91 of 13 January 2009** [TRANSLATION] MN: "And then there's a boy called, yes it's [REDACTED] That boy, he's the one who caused problems with regard to the case of our other brother here. This boy said that I planned, that I sent people, that we planned, that I was in Bogoro. He mentioned our names, yours, Cobra, Matata everybody he mentioned their names. But I don't know that boy. He comes from the south too. It would seem that he was (inaudible) bodyguard but I don't know him." MN: "[REDACTED] you'll know him. He studied in Songoro. **You're going to help my guys to identify him.**" Col "OK".

³⁶ **Conversation No 79 of 14 January 2009** [TRANSLATION] MN: "He's called [REDACTED] The name he gave me was [REDACTED] He told me that he was Germain (Katanga)'s [REDACTED]" MN: "That's right", [REDACTED] I often meet him. I often go to see him. He [omission] here at the Demiap." MN: "But what is being said, why was he arrested?" [REDACTED] "There's talk of complicity. He's accused of being behind the fall of Goma?" MN: "**Try to find [REDACTED] e from him, as you're with him, because his name is often mentioned in our case file. Try to find out more.**", [REDACTED] His name is mentioned in your case file?" MN: "Yes, his name is mentioned. Because he's the one who was directing the operations for which we are being tried now." [REDACTED] Maybe. You know, in politics you can restrain him until..." MN: "**Find out all you can from him to find out his position**", [REDACTED] I will. You know how good I am at **infiltration**. I'd already infiltrated him in fact."

³⁷ **Conversation No 20 of 28 January 2009**, [TRANSLATION] MN: We were taken, **we were instructed in how to testify for three years**. Every day we just rehearsed that." So they took him, they brought him somewhere, **they grilled him** for almost two hours". MN "And you know **that child came with his father** who is testifying against Thomas tomorrow."

MN: "All these witnesses who are here, **they have been bribed.**" "My family is suffering, my wife has been humiliated, insulted because of these **animals who have been bribed**. Now you'll see, **people will be scared.**" "For public opinion to realise the **lies of the NGO**, how the **NGO is manipulating people.**"

MN: "Because even in our case, **the Prosecutor was already saying that people were afraid to testify**, they have problems."

EP: "With witness statements, **the others who are taken care of in Kinshasa will be put off. They will be scared.**"

preparing his defence³⁸ and that he passed on information or instructions to her during the family visit in early December 2008 in The Hague.

22. In a conversation on 28 January 2009, reference is made to the statement made by two men known as [REDACTED] and [REDACTED]. These may be pseudonyms for witnesses DRC-OTP-WWWW-0298 and 299 but this is difficult to confirm at this stage.³⁹

³⁸ **Conversation No 88 of 22 December 2008:** [TRANSLATION] MN: *"The people I am telling you about, make sure they are informed about all the things I have told you about"*. Especially Jean, DP, Manu, [REDACTED]; EP: "Yes, I know all these people". MN: "Arrange to meet them and tell them."

Conversation No 71 of 24 December 2008: [TRANSLATION] MN: "And regarding progress with the case, I told him that on the telephone I can't say anything except to say that my wife will go to his home to explain how things have progressed with the case."

Conversation No 7 of 31 December 2008, [TRANSLATION] EP: "Yes, he is very brave. When I read what you had written he paid close attention. He was writing everything down."

Conversation No 201 of 02 January 2009, [TRANSLATION] EP: With regard to this meeting I had plenty of time to explain everything to them and they were taking notes in fact. The thing which we had yet to address was how to channel our ideas and to decide that if we were asked such and such a question, how to answer. Everyone has to know what to say."

³⁹ **Conversation No 20 of 28 January 2009** [TRANSLATION] EP : "[REDACTED] and [REDACTED] statements were sensational. Some people are hiding terrible secrets."

C/ Final observations

23. Lastly, the Registrar wishes to make it clear that this report must be assessed in light of the information which the Office of the Prosecutor may have disclosed or divulged to the Defence. This assessment must take into account the fact that third parties other than the defence team are actively involved in the initiatives taken by Mathieu Ngudjolo, either to identify or approach witnesses or people close to them or to obtain information about statements obtained by the Office of the Prosecutor.
24. It is important to note that although none of the communications transcribed [REDACTED] indicates that Mathieu Ngudjolo explicitly ordered a witness to be intimidated, the fact remains that he does disclose information about witnesses or potential witnesses to third parties and that nobody can guess what use these third parties will make of this information or the initiatives they might take, which might potentially hinder the administration of justice, intimidate witnesses, infringe the rights or liberties of a person or infringe an Order of non-disclosure rendered by the Chamber – if this has not happened already.
25. The Registrar nonetheless wishes to emphasise that a large number of telephone contacts recorded by Mathieu Ngudjolo – and also Germain Katanga – are probably former members of the FRPI or FNI, current members of the FARDC, members of their respective communities and that some of these contacts are in positions of responsibility or have either moral⁴⁰, political⁴¹ or military⁴² authority over the communities. Some were militia leaders or leaders of the political wings thereof, others are most certainly former fighters or militiamen who have been reintegrated in the FARDC following the brassage of the armed forces. These

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⁴¹

[REDACTED] He is a contact common to Mathieu Ngudjolo and Germain Katanga who has not yet been approved by the Registrar.

⁴² Various colonels and generals in the FARDC.

persons may have ways or contacts to identify and locate potential witnesses easily.

26. In order for the Chamber to assess better the identity of the contacts, an Annex is appended to this document for information. The Registrar wishes to emphasise that this is an internal document for Detention Centre use only and that she does not intend to disclose it to the parties, participants or unauthorised third parties.
27. In view of the information revealed by the monitoring of communications, it would appear that Mathieu Ngudjolo has sought to have testimonies changed, which might affect the veracity thereof and lead to questions about the attitude of Mathieu Ngudjolo regarding the orders of the Chamber and which might possibly constitute contempt of the Court. But it is not for the Registrar to determine whether or not there has been contempt of the Court and it is for the Chamber to assess and take the measures it deems necessary.
28. The Registrar calls upon the Chamber to advise her whether to resume the retroactive or simultaneous monitoring of Mathieu Ngudjolo's non-privileged communications.
29. Having filed this document at a level of confidentiality which prohibits disclosure thereof to the parties or the participants, the Registrar requests the Chamber to advise her whether it is necessary to reclassify this document if appropriate.
30. The Registrar will provide the Chamber with a second report on those communications which have not yet been transcribed, together with any additional information on Mathieu Ngudjolo Chui's contacts as soon as possible.

[signed]

Marc Dubuisson
Director, Division of Court Services
On behalf of Ms Silvana Arbia
Registrar

Dated this 8 June 2009

At The Hague, The Netherlands