

ANNEX 4

Confidential ex parte available to the Registry only

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original English

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

Date 24 August 2008

TRIAL CHAMBER II

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

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

Confidential

Ex parte only available to the Registry

**Report on the Analysis of the Non-Privileged Communications of Mathieu
Ngudjolo Chui pursuant to Trial Chamber II Decision of 24 July 2009**

Source: The 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

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Defence Support Section

Deputy Registrar

Didier Preira

Victims and Witnesses Unit

Maria Luisa Martinod-Jacome

Detention Section

Anders Backman

**Victims Participation and Reparations
Section**

Other

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

NOTING the "*Décision sur la requête 1200 du Procureur aux fins de mesures d'interdiction et de restriction de contacts avec l'extérieur comme au sein de l'établissement pénitentiaire contre Mathieu Ngudjolo*" issued by Trial Chamber II on 24 June 2009,¹

NOTING the "*Deuxième décision sur les mesures d'interdiction et de restriction des contacts avec l'extérieur comme au sein de l'établissement pénitentiaire concernant Mathieu Ngudjolo*" issued by Trial Chamber II on 24 July 2009 (the "Second Decision"),²

NOTING the Registry's reports of 10 and 16 July 2009,³

NOTING Articles 43(6) and 68 of the Rome Statute, Regulation 23bis of the Regulations of the Court and Regulations 92 and 93 of the Regulations of the Registry,

CONSIDERING that in the Second Decision, after referring to its previous instructions⁴ namely the conduct of "*une analyse approfondie du contenu de l'ensemble des conversations enregistrées*", the Chamber indicated that "*les considérations alors développées conservent toute leur valeur* [redacted] *l'aura rendre compte à la Chambre des initiatives qu'il aura paru nécessaire de prendre*",⁵

CONSIDERING that [redacted] has proceeded to such analysis and where necessary, has liaised with the Office of The Prosecutor

¹ ICC-01/04-01/07-1243-Conf-Exp

² ICC-01/04-01/07-1334-Conf-Exp

³ Respectively ICC-01/04-01/07-1291-Conf-Exp et ICC-01/04-01/07-1308-Conf-Exp

⁴ ICC-01/04-01/07-1243-Conf-Exp, para 41-44

⁵ ICC-01/04-01/07-1334-Conf-Exp, para 38

(the “OTP”) in order to identify necessary measures for the protection of witnesses,

THEREFORE, SUBMITS the following report

I- PRELIMINARY REMARKS

- 1- The [REDACTED] has analyzed Mathieu Ngudjolo’s non privileged telephone conversations based on the material provided by the Court Interpretation and Translation Section between the [REDACTED]
[REDACTED] The telephone conversations have been reviewed with the focus on any piece of information that could have [REDACTED] The analysis of the phone conversations brought to light the following
- 2- Based on [REDACTED] assessment, there is no information to suggest that Mathieu Ngudjolo is passing on specific instructions to harm witnesses, however there are indications that he is engaged in a strategy to identify, locate and to possibly manipulate (“*apprivoiser*” or “*preparer*”) witnesses and witnesses’ families There are also indications that one of Mathieu Ngudjolo’s contacts has been gathering information (names and numbers) about victims who are reportedly buried in Bogoro area
- 3- It also appears from the conversations that Mathieu Ngudjolo was getting more and more involved in the investigations related to his case He set up contact points in the DRC and tasked them to investigate in the field, to gather intelligence, to identify witnesses (including OTP witnesses)

- 4- Other conversations as previously highlighted in the Registry's reports⁶ indicate that Mathieu Ngudjolo requested from some of his contacts in the field to manipulate witnesses and to prepare their statements (*"qu'il veillera à ce que les témoins convainquent les avocats"*). Some of the conversations imply that witnesses' names and statements were given to third parties and discussed between various participants during secret meetings. To support his strategy, Mathieu Ngudjolo was using his wife to convey information from the detention centre to his supporters in the field.
- 5- Furthermore, the recordings indicate that Mathieu Ngudjolo's contacts extend to FARDC high ranking Officers or former FNI, FRPI or MRC militia members who could represent a potential useful network to identify, locate or intimidate witnesses. The analysis of the conversations also brings to light the existence of contacts between Mathieu Ngudjolo's supporters and Thomas Lubanga's resource staff members.
- 6- The [REDACTED] wishes to stress that the analysis of the conversations was to some extent limited by Mathieu Ngudjolo's strategy of communication. He used several times the phone number of one contact to speak to other individuals that could not be identified. In addition, to potentially protect the content of his conversations and the messages he wanted to convey, Mathieu Ngudjolo used code names and switched regularly to languages, such as Kilendu, which [REDACTED]

II- SPECIFIC ISSUES REGARDING WITNESSES

- 7- Through the analysis of the [REDACTED] and that also of the OTP, a number of witnesses have been specifically identified as being discussed during

⁶ *Op cit*

the monitored conversations These include DRC336 ([REDACTED] , DRC314 [REDACTED] , DRC028 [REDACTED] DRC250 [REDACTED] The analysis further revealed that discussions may have surrounded the following witnesses DRC015 [REDACTED] , DRC298 [REDACTED] DRC299 [REDACTED] , DRC387 [REDACTED] , and DRC219 [REDACTED]

8- In relation to witnesses [REDACTED]

9- In relation to the witnesses [REDACTED] the following action has been taken

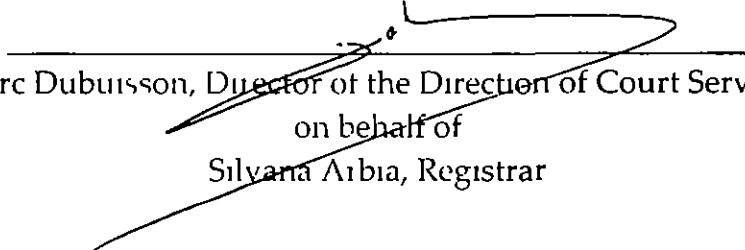
i [REDACTED]

[redacted] no specific action was taken as result of this analysis This
witness had [redacted] and his situation is
continually monitored

d [redacted] no specific action was taken as result of this analysis This
witness [redacted] and his situation is
continually monitored

e [redacted] no specific action was taken as result of this analysis This
witness [redacted] and his situation is
continually monitored

RESPECTFULLY SUBMITTED,



Marc Dubuisson, Director of the Direction of Court Services
on behalf of
Sylvana Aribia, Registrar

Dated this 24 August 2009
At The Hague, Netherlands