

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original : French

N° : **ICC-01/04-02/12**

Date : **8 April 2014**

**THE APPEALS CHAMBER**

Composed of : **Judge Sanji Mmasenono Monageng, President**  
**Judge Sang-Hyun Song**  
**Judge Cuno Tarfusser**  
**Judge Erkki Kourula**  
**Judge Ekaterina Trendafilova**

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

**Public**

**Application by the Defence for the Appeals Chamber to require the Registry to set out in detail its plan for implementation of the judgment concerning Mathieu Ngudjolo, delivered on 7 March 2014 in the case of the Prosecutor vs. Germain Katanga**

**Submitted by :      Defence for Mathieu Ngudjolo**

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

**The Office of the Prosecutor**

Ms Fatou Bensouda  
Mr Eric MacDonald

**Counsel for the Defence for Mr Ngudjolo**

Ma tre Jean Pierre Kilenda Kakengi Basila  
Professor Jean-Pierre Fofé Djofia Malewa

**Legal representatives of the victims**

Ma tre Jean-Louis Gilissen  
Ma tre Fidel Nsita Luvengika

**Legal representatives of the applicants**

**Victims without representation**

**Applicants without representation  
(participation/reparations)**

**Office of Public Counsel for Victims**

**Office of Public Counsel for the Defence**

**States' Representatives**

**The *amicus curiae***

**REGISTRY**

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**The Registrar and Deputy Registrar**  
Mr Herman von Hebbel

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

## I. Procedural Background

1. On 7 March 2014, Trial Chamber II (hereinafter “the Trial Chamber” or “the Chamber *a quo*”) delivered its judgment in the case of the Prosecutor vs. Germain Katanga.<sup>1</sup>
2. In this judgment, the Chamber *a quo* “[TRANSLATION] ORDERS the Victims and Witnesses Unit to take the necessary steps to ensure that witnesses are protected in accordance with Article 68 of the Statute.”<sup>2</sup>
3. The Defence for Mathieu Ngudjolo (hereinafter “the Defence”) notes that Mathieu Ngudjolo is one of these witnesses whose protection has been ordered by the Trial Chamber.<sup>3</sup>
4. The Defence also observes that even in its judgment of 18 December 2012 acquitting Mathieu Ngudjolo, the Trial Chamber had ordered the same measure, instructing “the Victims and Witnesses Unit to take the measures necessary to ensure the protection of the witnesses pursuant to article 68 of the Statute.”<sup>4</sup>
5. This provision in the operative part of two judgments of the Trial Chamber is highly significant in view of the quality of the reasoning. This is hardly coincidental. It stems from deep reflection on the part of the Trial Chamber and is grounded in law.

## II. The applicable law

6. Under Article 68 of its Statute, the Court has a duty to protect victims and witnesses. Paragraph 1 of this article provides that “The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.”
7. The Trial Chamber correctly identified the ramifications of the case concerning the Bogoro attack. In its Judgment of 7 March 2014 the Chamber recalled that:

<sup>1</sup> ICC-01/04-01/07-3436, « Jugement rendu en application de l’article 74 du Statut », p. 711.

<sup>2</sup> *Ibidem*, p. 711.

<sup>3</sup> *Ibidem*, Anx C of 07-03-2014, p. 3.

<sup>4</sup> ICC-01.04-02/12-3, p. 215.

“[TRANSLATION] In the course of the trial, the Chamber heard 54 witnesses and sat for 265 days. The Chamber itself called two witnesses, the Prosecutor called 24, and two victims were called to appear at the request of the Legal Representative of the main group of victims. The Defence for Germain Katanga called 17 witnesses, and the Defence for Mathieu Ngudjolo called 11. Three of the Defence witnesses were common to both teams. Once all the testimonies were concluded, both Accused took the stand, answering, as did all witnesses, questions put to them by the Chamber.”<sup>5</sup>

8. The Trial Chamber, in order to obtain a better understanding of the facts of the case and to arrive at the truth, decided to make a site visit, and went to the site for that purpose on 18 and 19 January 2012.<sup>6</sup>
9. This placed the Chamber *a quo* in a better position to appraise the facts in the case. It was for this reason that the Trial Chamber deemed it advisable to ensure that all the witnesses, without exception, would be protected.
10. In the particular case of Ngudjolo, in his role as a witness he disclosed to the Trial Chamber the existence of the EMOI,<sup>7</sup> and filed with the Chamber the now notorious Samba letter.<sup>8</sup>
11. In his testimony, Ngudjolo had stressed that the Bogoro attack had its origins in a plan devised in the office of the Congolese Head of State, as evident from the Letter from the assistant head of that office, the late Professor Samba Kaputo. The truth of that statement is now confirmed by the Judgment of 7 March 2014 in the KATANGA case, finding that the EMOI did in fact exist and that the Bogoro attack was planned in the office of the Congolese Head of State, referring to the statement by witness D02-228 that “The EMOI sent human resources, whether trainers or fighters.” The Trial Chamber added that “as

<sup>5</sup> ICC-01/04-01/07-3436 « Jugement rendu en application de l’article 74 du Statut », p. 21 paragraph 21.

<sup>6</sup> Décision relative au déplacement de la Chambre en République démocratique du Congo, 18 November 2011, ICC-01/04-01/07-3203, -Red.

<sup>7</sup> Integrated Operational Headquarters.

<sup>8</sup> EVD-D03-00136.

confirmed in the letter of 23 November 2002 sent by Professor Samba, assistant head of the Office of the President of the DRC, to the “Chief of Staff of the armed forces.”<sup>9</sup>

12. As Germain Katanga was found to be only an accomplice, pursuant to Article 25(3)(d) of the Statute, there were undoubtedly perpetrators and co-perpetrators of the Bogoro attack who devised the plan for attacking that village on 24 February 2003.
13. The Trial Chamber therefore was not acting lightly when it ordered the Victims and Witnesses Unit to ensure the protection of witnesses, including Mathieu Ngudjolo.
14. In the light of the foregoing, Mathieu Ngudjolo, as a witness in his own case, is fully entitled to know, also in respect of the Judgment of 7 March 2014, what steps the Registry intends to take for his protection.

### **III. Application by the Defence**

The Defence requests this Chamber to order the Registry to inform the Defence of the arrangements it has made to give full effect to the Judgment of 7 March 2014 in the matter of protection of witnesses, and in particular of Mathieu Ngudjolo.

[signed]

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**Maître Jean-Pierre Kilenda Kakengi Basila**  
**Lead Counsel for Mr Mathieu Ngudjolo Chui**

Done at Brussels, 8 April 2014

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<sup>9</sup> ICC-01/04-01/07-3436, « Jugement rendu en application de l'article 74 du Statut », p. 230, paragraph 588. See footnote 1295, EVD-D03-00136, Letter from the Office of the President of the DRC to the Chief of Staff of the armed forces.