



Original: **French**

No.: **ICC-01/04-01/07**
Date: **18 February 2009**

TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Fumiko Saiga

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

Public Document

**Decision Inviting Observations from the Participants concerning the Detention of
Mathieu Ngudjolo Chui (rule 118(2))**

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

The Office of the Prosecutor

Mr Luis Moreno Ocampo, Prosecutor
 Ms Fatou Bensouda, Deputy Prosecutor
 Mr Éric MacDonald, Senior Trial Lawyer

**Counsel for the Defence of Germain
 Katanga**

Mr David Hooper
 Ms Caroline Buisman

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

Mr Jean-Pierre Kilenda Kagengi Basila
 Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of the Victims

Ms Carine Bapita Buyangandu
 Mr Joseph Keta
 Mr Jean-Louis Gilissen
 Mr Hervé Diakiese
 Mr Jean Chrysostome Mulamba
 Nsokoloni
 Mr Fidel Nsita Luvengika
 Mr Vincent Lurquin
 Ms Flora Ambuyu Andjelani

Legal Representatives of the Applicants

**The Office of Public Counsel for
 Victims**

Ms Paolina Massidda

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

Mr Xavier-Jean Keïta

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

TRIAL CHAMBER II of the International Criminal Court (respectively, “the Chamber” and “the Court”),

NOTING articles 58, 60(3), 60(4), 61(11), 64(6)(a) and 67 of the Statute of the Court (“the Statute”), rule 118(2) of the *Rules of Procedure and Evidence* (“the Rules”) and regulation 24 of the *Regulations of the Court*;

NOTING the decision of Pre-Trial Chamber I of 23 July 2008 rejecting the application for the release of Mathieu Ngudjolo Chui and ruling that his detention be maintained;¹

NOTING the decision rendered on 19 November 2008, in which the Trial Chamber reviewed the above decision under article 61(11) of the Statute, rejected Mathieu Ngudjolo Chui’s application for release and ruled that his detention be maintained (“the Decision”);²

CONSIDERING that, under the terms of article 60(3) of the Statute and of rule 118(2) of the Rules, the decision to keep Mathieu Ngudjolo Chui in detention must be reviewed at least every 120 days, and that, as at 19 March 2009, Mathieu Ngudjolo Chui will have spent 120 days in detention since the date of the Decision;

CONSIDERING further that, pursuant to article 60(4) of the Statute, it is appropriate to ensure that pre-trial detention is not extended unreasonably as a result of inexcusable delay by the Prosecutor;³

CONSIDERING that, under rule 118(3) of the Rules, a hearing must be held at least once every year;

¹ Pre-Trial Chamber I, *Review of the ‘Decision on the Application for Interim Release of Mathieu Ngudjolo Chui’*, 23 July 2008, ICC-01/04-01/07-694.

² *Second Review of the ‘Decision on the Application for Interim Release of Mathieu Ngudjolo Chui (rule 118(2) of the Rules of Procedure and Evidence’*), 19 November 2008, ICC-01/04-01/07-750-tENG.

³ Appeals Chamber, *Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled “Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo”*, 13 February 2007, ICC-01/04-01/06-824, para. 120.

FOR THESE REASONS,

DECIDES:

- (i) that the Prosecutor and the Legal Representatives of anonymous and non-anonymous victims shall have until 24 February 2009 at 4.00 p.m. to file their observations on the detention of Mathieu Ngudjolo Chui at the seat of the Court;
- (ii) that the Defence for Mathieu Ngudjolo Chui shall have until 2 March 2009 at 4.00 p.m. to submit its own observations and to respond to the observations referred to in point (i) above; and

CONVENES a hearing for 3 March 2009 at 4.30 p.m., to be attended by all participants in the proceedings, with the exception of Germain Katanga and his Counsel.

Done in both English and French, the French version being authoritative.

[signed]

Judge Bruno Cotte
Presiding Judge

[signed]

Judge Fatoumata Dembele Diarra

[signed]

Judge Fumiko Saiga

Dated this 18 February 2009

At The Hague, The Netherlands