



Original: **French**

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

Date: **5 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***

**Public Document**

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

**Decision 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**

Mr David Hooper  
Ms Caroline Buisman

**Counsel for Mathieu Ngudjolo Chui**

Mr Jean-Pierre Kilenda Kakengi 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 Massida

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

Mr Xavier-Jean Keïta

**States' Representatives**

*Amicus Curiae*

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

Mr Anders Backman

**Victims Participation and Reparations  
Section**

**Other**

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

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

**NOTING** the Single Judge’s decision of 27 March 2008 rejecting the application for the release of Mathieu Ngudjolo and deciding that he should remain in detention;<sup>1</sup>

**NOTING** Pre-Trial Chamber I’s decision of 23 July 2008 rejecting the application for the release of Mathieu Ngudjolo and deciding that he should continue to be detained;<sup>2</sup>

**NOTING** the decision of 19 November 2008 whereby the Chamber again reviewed the abovementioned decision of 27 March 2008 pursuant to article 61(11) of the Statute, rejected the application for the release of Mathieu Ngudjolo and decided that he should remain in detention;<sup>3</sup>

**NOTING** the decision of 17 March 2009 whereby the Chamber conducted a third review of the decision rejecting the application for the release of Mathieu Ngudjolo, rejected the application for his release and decided that he should remain in detention;<sup>4</sup>

**CONSIDERING** that, pursuant to article 60(3) of the Statute and rule 118(2) of the Rules, the decision on Mathieu Ngudjolo’s continued detention must be reviewed at

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<sup>1</sup> Pre-Trial Chamber I, *Decision on the Application for Interim Release of Mathieu Ngudjolo*, 27 March 2008, ICC-01/04-01/07-345.

<sup>2</sup> 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.

<sup>3</sup> *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.

<sup>4</sup> *Third review of the decision on the application for interim release of Mathieu Ngudjolo Chui (rule 118(2) of the Rules of Procedure and Evidence)*, 17 March 2009, ICC-01/04-01/07-964-Conf-Exp-tENG.

least every 120 days; and that, on 16 July 2009, Mathieu Ngudjolo will have been detained for 120 days since the abovementioned decision of 17 March 2009;

**CONSIDERING** further that, pursuant to article 60(4) of the Statute, it shall be ensured that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor;<sup>5</sup>

**FOR THESE REASONS, THE CHAMBER**

**DECIDES**

i) that the Prosecutor and the legal representatives of anonymous and non-anonymous victims shall have until 4 p.m. on 12 June 2009 to file their observations on the detention of Mathieu Ngudjolo at the seat of the Court;

ii) that the Defence for Mathieu Ngudjolo shall have until 4 p.m. on 19 June 2009 to submit its own observations and to respond to the observations referred to in point i) above.

[signed]

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**Judge Bruno Cotte**  
**Presiding Judge**

[signed]

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**Judge Fatoumata Dembele Diarra**

[signed 5/6/09]

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**Judge Hans-Peter Kaul**

Dated this 5 June 2009

At The Hague, The Netherlands

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<sup>5</sup> 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.