



Original: **French**

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

Date: **5 October 2009**

**TRIAL CHAMBER II**

**Before:** Judge Bruno Cotte, Presiding Judge  
Judge Fatoumata Dembele Diarra  
Judge Christine Van den Wyngaert

**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  
 Mr Andreas O'Shea

**Counsel for Mathieu Ngudjolo Chui**

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

**Legal Representatives of the Victims**

Mr Jean-Louis Gilissen  
 Mr Fidel Nsita Luvengika

**Legal Representatives of the Applicants**

**The Office of Public Counsel for  
 Victims**

**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 decision of the Single Judge of 27 March 2008 rejecting the application for the release of Mathieu Ngudjolo and ruling that he continue to be detained;<sup>1</sup>

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

**NOTING** the decision of 19 November 2008, in which the Chamber carried out the second review of the aforementioned decision of 27 March 2008 under article 61(11) of the Statute, rejected the application for the release of Mathieu Ngudjolo and ruled that he continue to be detained;<sup>3</sup>

**NOTING** the decisions of 17 March 2009<sup>4</sup> and 10 July 2009,<sup>5</sup> in which the Chamber carried out the third and fourth reviews of the decision rejecting the application for the release of Mathieu Ngudjolo, rejected the applications for release and ruled that he continue to be detained;

**CONSIDERING** that, under article 60(3) of the Statute and rule 118(2) of the Rules, the decision to keep Mathieu Ngudjolo in detention must be reviewed at least every

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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 (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 (rule 118(2) of the Rules of Procedure and Evidence)*, 17 March 2009, ICC-01/04-01/07-964-Conf-Exp-tENG.

<sup>5</sup> *Fourth Review of the Decision on the Application for Interim Release of Mathieu Ngudjolo (rule 118(2) of the Rules of Procedure and Evidence)*, 10 July 2009, ICC-01/04-01/07-1287-Conf Exp-tENG.

120 days; that, as of 10 November 2009, Mathieu Ngudjolo will have spent 120 days in detention since the aforementioned decision of 10 July 2009;

**CONSIDERING** furthermore that, under article 60(4) of the Statute, it is appropriate to ensure that Mathieu Ngudjolo is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor;<sup>6</sup>

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<sup>6</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.

**FOR THESE REASONS,**

**DECIDES,**

- i) that the Prosecutor and the Legal Representatives of anonymous and non-anonymous Victims shall have until 4 p.m. on 12 October 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 October 2009 to submit its own observations and respond to the observations mentioned in point i) above.

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

**[signed]**  
**Judge Bruno Cotte**  
**Presiding Judge**

**[signed]**  
**Judge Fatoumata Dembele Diarra**

**[signed]**  
**Judge Christine Van den Wyngaert**

Dated this 5 October 2009

At The Hague, The Netherlands