

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

**No. ICC-01/04-02/12 A**

**Date: 12 April 2013**

**THE APPEALS CHAMBER**

**Before:** Judge Sanji Mmasenono Monageng, Presiding Judge  
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 document**

**Order on Mr Katanga's request to be provided with the Prosecution's appeal  
brief**



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

**The Office of the Prosecutor**  
Ms Fatou Bensouda, Prosecutor  
Mr Fabricio Guariglia

**Counsel for the Defence for Mathieu Ngudjolo Chui**  
Mr Jean Pierre Kilenda  
Mr Jean-Pierre Fofé Djofia Malewa

**Counsel for the Defence for Germain Katanga**  
Mr David Hooper  
Mr Andreas O'Shea

**Legal Representatives of Victims**  
Mr Jean-Louis Gilissen  
Mr Fidel Nsita Luvengika

**REGISTRY**

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**Registrar**  
Ms Silvana Arbia



The Appeals Chamber of the International Criminal Court,

In the appeal of the Prosecutor against the decision of Trial Chamber II entitled “Jugement rendu en application de l’article 74 du Statut” of 18 December 2012 (ICC-01/04-02/12-3),

Having before it Mr Katanga’s “Defence Request to Be Provided with the Prosecution Appeal Brief” of 22 March 2013 (ICC-01/04-02/12-47),

*Issues* the following

## ORDER

The Registrar shall notify the “Prosecution’s Document in Support of Appeal against the ‘Jugement rendu en application de l’article 74 du Statut’” (ICC-01/04-02/12-39-Conf-Red) to Mr Katanga.

## REASONS

1. On 18 December 2012, Trial Chamber II delivered the “Jugement rendu en application de l’article 74 du Statut”<sup>1</sup> (hereinafter: “Decision on Acquittal”) in which Mr Mathieu Ngudjolo Chui (hereinafter: “Mr Ngudjolo”) was acquitted of all charges against him.
2. On 20 December 2012, the Prosecutor filed her appeal against the Decision on Acquittal.<sup>2</sup>
3. On 19 March 2013, the Prosecutor filed the “Prosecution’s Document in Support of Appeal against the “Jugement rendu en application de l’article 74 du Statut”<sup>3</sup> (hereinafter: “Document in Support of the Appeal”) on a confidential, *ex parte* basis, available only to the Prosecutor and Mr Ngudjolo. On 22 March 2013, the Prosecutor filed a confidential, redacted version of the Document in Support of the Appeal (hereinafter: “Confidential Redacted Document in Support of the Appeal), in

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<sup>1</sup> ICC-01/04-02/12-3.

<sup>2</sup> “Prosecution’s Appeal against Trial Chamber II’s ‘Jugement rendu en application de l’article 74 du Statut’”, ICC-01/04-02/12-10.

<sup>3</sup> ICC-01/04-02/12-39-Conf-Exp.

which the entire third ground of the appeal is redacted due to the *ex parte* classification of the information therein (hereinafter: “Document in Support of the Appeal”).<sup>4</sup> On 3 April 2013, the Prosecutor also filed a public redacted version.<sup>5</sup>

4. On 25 March 2013, Mr Katanga filed the “Defence Request to Be Provided with the Prosecution Appeal Brief”<sup>6</sup> (hereinafter: “Mr Katanga’s Request”). Mr Katanga requests access to the Confidential Redacted Document in Support of the Appeal given that his case and the case against Mr Ngudjolo were closely linked up until severance and that the factual and legal grounds being raised on appeal against the Decision on Acquittal may have a direct impact on Mr Katanga’s case and could be raised later by the parties or participants in his case.<sup>7</sup>

5. Following an order of the Appeals Chamber,<sup>8</sup> the Prosecutor<sup>9</sup> and Mr Ngudjolo<sup>10</sup> responded to Mr Katanga’s Request.

6. The Appeals Chamber notes that if the Prosecutor had not filed her document in support of the appeal confidentially, Mr Katanga would have had access to it, due to the principle of publicity of the proceedings before the Court. In addition, the Prosecutor and Mr Ngudjolo expressed no objection to Mr Katanga receiving access to the Confidential Redacted Document in Support of the Appeal.<sup>11</sup> Accordingly, the Appeals Chamber directs the Registry to notify the Confidential Redacted Document in Support of the Appeal to Mr Katanga.

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<sup>4</sup> “Prosecution’s Document in Support of Appeal against the ‘Jugement rendu en application de l’article 74 du Statut’”, ICC-01/04-02/12-39-Conf-Red.

<sup>5</sup> “Prosecution’s Document in Support of Appeal against the ‘Jugement rendu en application de l’article 74 du Statut’”, ICC-01/04-02/12-39-Red2.

<sup>6</sup> ICC-01/04-02/12-47.

<sup>7</sup> Mr Katanga’s Request, para. 15.

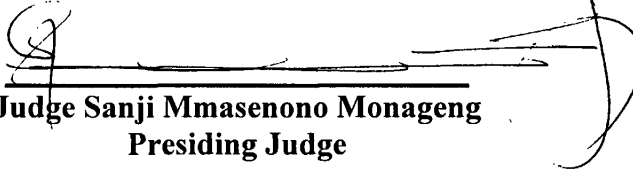
<sup>8</sup> “Order on the filing of submissions on Mr Katanga’s request of 25 March 2013 for access to Prosecution’s Appeal Brief”, 28 March 2013, ICC-01/04-02/12-54.

<sup>9</sup> “Prosecution Response to Mr Katanga’s request to be provided access to the Prosecution’s Appeal Brief in the Ngudjolo case” (hereinafter: “Prosecutor’s Response”) 4 April 2013, ICC-01/04-02/12-57.

<sup>10</sup> “Réponse de la Défense de Mathieu Ngudjolo Chui à la « Defence Request to Be Provided with the Prosecution Appeal Brief » (ICC-01/04-02/12-47)” (hereinafter: “Mr Ngudjolo’s Response”), 10 April 2013, ICC-01/04-02/12-59.

<sup>11</sup> Prosecutor’s Response, para. 4 and Mr Ngudjolo’s Response, paras 11-12.

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

  
**Judge Sanji Mmasenono Monageng**  
**Presiding Judge**

Dated this 12<sup>th</sup> day of April 2013

At The Hague, The Netherlands