

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

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

**Date: 27 May 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 the filing of further submissions on the Registrar's List of participating victims**



**Order 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**

Mr Jean-Pierre Kilenda Kakengi Basila  
Ms Andrea Valdivia

**Legal Representatives of Victims**

Mr Jean-Louis Gilissen  
Mr Fidel Nsita Luvengika

**REGISTRY**

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**Registrar**

Mr Herman von Hebel



The Appeals Chamber of the International Criminal Court,

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

Noting the “Observations and objections of the Defence team for Mathieu Ngudjolo as to the Registry document ‘Transmission of the List of Victims in compliance with the Decision ICC-01/04-02/12-30’” of 15 April 2013 (ICC-01/04-02/12-63-tENG) and the “Demande du Représentant légal des victimes enfant soldats de pouvoir répondre au document de la Défense ICC-01/04-02/12-63” of 26 April 2013 (ICC-01/04-02/12-68),

*Issues* the following

## ORDER

1. The legal representatives of both groups of participating victims may file submissions on the legal and factual issues concerning the participation of anonymous victims and the inclusion of deceased victims on the list of participating victims in the appeal, as raised by Mr Mathieu Ngudjolo Chui in the “Observations and objections of the Defence team for Mathieu Ngudjolo as to the Registry document ‘Transmission of the List of Victims in compliance with the Decision ICC-01/04-02/12-30’” by 3 June 2013.
2. Mr Mathieu Ngudjolo Chui and the Prosecutor may thereafter respond to the victims’ submissions by 10 June 2013.



## REASONS

### I. PROCEDURAL HISTORY

1. On 18 December 2012, Trial Chamber II delivered the “Judgement 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 lodged the “Prosecution’s Appeal against Trial Chamber II’s ‘Judgement rendu en application de l’article 74 du Statut’”.<sup>2</sup>

3. On 6 March 2013, the Appeals Chamber issued the “Decision on the participation of victims in the appeal against Trial Chamber II’s ‘Judgement rendu en application de l’article 74 du Statut’”<sup>3</sup> (hereinafter: “Decision on victim participation”), whereby victims who had participated in the trial proceedings against Mr Ngudjolo and whose victim status was not revoked, could participate in the appeal proceedings for the purpose of presenting their views and concerns in respect of their personal interests in the issues on appeal. The Appeals Chamber also directed the Registrar to file a list identifying the participating victims and permitted objections to be filed, if any, to the inclusion of specific victims and/or the correctness of information in the list, by the parties and participants.

4. On 28 March 2013, the Registrar filed the “Transmission of the List of Victims in compliance with the Decision ICC-01/04-02/12-30”<sup>4</sup> (hereinafter: “Registrar’s List”), together with three confidential, *ex parte* annexes that collate the details of participating victims as applicable.<sup>5</sup>

5. On 12 April 2013, the common legal representative of the principal group of victims (hereinafter: “Victim Group I”) filed the “Observations of the legal representative concerning the list of victims participating in the appeal proceedings transmitted by the Registrar and application for re-classification of document ICC-

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

<sup>2</sup> ICC-01/04-02/12-10 (A).

<sup>3</sup> ICC-01/04-02/12-30 (A).

<sup>4</sup> ICC-01/04-02/12-55 (A).

<sup>5</sup> Corrigenda to the annexes were filed on 3 April 2013 as ICC-01/04-02/12-55-Conf-Exp-Anx1-Corr, ICC-01/04-02/12-55-Conf-Exp-Anx2-Corr and ICC-01/04-02/12-55-Conf-Exp-Anx3-Corr (hereinafter: “Annex 3 to Registrar’s List”).

01/04-02/12-55-Conf-Exp-Anx3-Corr”<sup>6</sup> (hereinafter: “Observations of Victim Group I”). The legal representative, *inter alia*, informed the Appeals Chamber that (i) in relation to victims a/0175/08, a/0117/09, a/0321/09 and a/0373/09, who the Registrar indicated were deceased,<sup>7</sup> he had not yet been able to obtain all the relevant information concerning “resumption of action in relation to these cases” and that he “[would] revert to the Chamber in the near future in order to clarify whether or not action [would] be resumed in respect of these cases [...]”,<sup>8</sup> (ii) in addition four other victims, namely a/0166/09, a/0253/09, a/0354/09 and a/0376/09, have also since passed away. The legal representative indicated that he intended to seek “resumption of action in respect of victim a/0253/09” shortly and [would] revert to the Chamber concerning the remaining three deceased victims.<sup>9</sup>

6. On 15 April 2013, Mr Ngudjolo filed the “Observations and objections of the Defence team for Mathieu Ngudjolo as to the Registry document ‘Transmission of the List of Victims in compliance with the Decision ICC-01/04-02/12-30’”<sup>10</sup> (hereinafter: “Mr Ngudjolo’s Observations”). In particular, Mr Ngudjolo makes observations concerning the continued participation of victims a/0390/09 and a/0452/09 as anonymous victims amongst the group of former child soldier victims (hereinafter: “Victim Group II”), suggesting that if they wish to maintain their anonymity, they should be removed from the Registrar’s List as their “wholly anonymous participation is prejudicial to the Defence and incompatible with the rights of the Accused and the fairness of the trial”.<sup>11</sup> In addition, Mr Ngudjolo objects to the continued participation of the four deceased victims in Victim Group I. Citing to the “excessive amount of time” that has elapsed since the legal representative was ordered by Trial Chamber II to contact the families of the respective victims, Mr Ngudjolo requests the Appeals Chamber to remove these victims from the Registrar’s List.<sup>12</sup>

7. On 26 April 2013, the legal representative of Victim Group II filed the “Demande du Représentant légal des victimes enfant soldats de pouvoir répondre au

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<sup>6</sup> ICC-01/04-02/12-62-tENG (A).

<sup>7</sup> See Annex 3 to Registrar’s List.

<sup>8</sup> Observations of Victim Group I, para. 20.

<sup>9</sup> Observations of Victim Group I, para. 21.

<sup>10</sup> ICC-01/04-02/12-63-tENG (A).

<sup>11</sup> Mr Ngudjolo’s Observations, paras 8-9.

<sup>12</sup> Mr Ngudjolo’s Observations, paras 16-17.

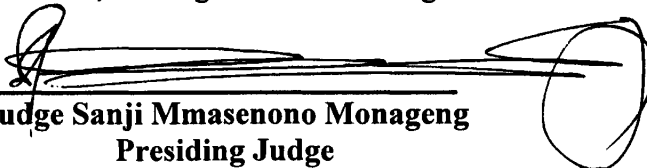
document de la Défense ICC-01/04-02/12-63”<sup>13</sup> (hereinafter: “Request to Respond”). The legal representative requests leave to respond to Mr Ngudjolo’s Observations in order to address the legal questions surrounding the status of the two anonymous victims whom he represents<sup>14</sup> and to update the Appeals Chamber on steps taken to obtain the victims’ instructions regarding their request for anonymity *vis-à-vis* the parties.<sup>15</sup> The legal representative submits further that if the Appeals Chamber were to decide on the objection raised by Mr Ngudjolo then the victims should be heard on this issue beforehand as it affects their personal interests.<sup>16</sup>

## II. DETERMINATION OF THE APPEALS CHAMBER

8. The Appeals Chamber notes that the objections raised by Mr Ngudjolo, in relation to the continued participation of anonymous victims and to the inclusion of deceased victims on the list of participating victims in the proceedings on appeal, have a direct impact on the personal interests of these victims. As the Appeals Chamber will be considering these issues for the first time, it is appropriate to afford the legal representatives of Victim Groups I and II an opportunity to make submissions on the legal and factual issues arising from Mr Ngudjolo’s objections.

9. The Appeals Chamber also considers it expedient to permit Mr Ngudjolo and the Prosecutor to reply to the submissions of the victims given the significance of the issues at stake. Accordingly, and pursuant to regulation 28 of the Regulations of the Court, the victims may make submissions to Mr Ngudjolo’s Observations by 3 June 2013 and thereafter Mr Ngudjolo and the Prosecutor may respond to the victims’ submissions by 10 June 2013.

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

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

Dated this 27<sup>th</sup> day of May 2013

At The Hague, The Netherlands

<sup>13</sup> ICC-01/04-02/12-68 (A).

<sup>14</sup> Request to Reply, para. 13.

<sup>15</sup> Request to Reply, first para. 14.

<sup>16</sup> Request to Reply, para. 16.