

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 7 June 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

Decision on Mr Ngudjolo Chui's request for an extension of time



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

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 pursuant to article 74 of the Statute” of 18 December 2012 (ICC-01/04-02/12-3-tENG),

Having before it the “Requête URGENTE de la Défense de Mathieu Ngudjolo sollicitant la prorogation du délai de dépôt de la réponse aux observations des deux écritures déposées par les Représentants légaux en conformité avec l’ordonnance ICC-01/01/02/12-73 de la Chambre d’appel”, dated 4 June 2013 and registered on 5 June 2013 (ICC-01/04-02/12-82),

Renders unanimously the following

DECISION

The time limit for Mr Ngudjolo to file his response to the victims’ submissions contained in documents ICC-01/04-02/12-79 and ICC-01/04-02/12-80 is extended until 16h00 on 20 June 2013.

REASONS

I. PROCEDURAL HISTORY

1. On 18 December 2012, Trial Chamber II delivered the “Judgement pursuant to article 74 of the Statute”,¹ 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’”.² She filed the document in support of her appeal on 19 March 2013.³

¹ ICC-01/04-02/12-3-tENG.

² ICC-01/04-02/12-10 (A).

³ “Prosecution’s Document in Support of Appeal against the ‘Judgement rendu en application de l’article 74 du Statut’”, ICC-01/04-02/12-39-Conf-Exp; confidential redacted and public redacted versions of this document were filed on 22 March 2013 (ICC-01/04-02/12-39-Conf-Red) and 3 April 2013 (ICC-01/04-02/12-39-Red2).

3. On 28 March 2013, pursuant to a decision of the Appeals Chamber on the participation of victims in the appeal proceedings,⁴ the Registrar filed the “Transmission of the List of Victims in compliance with the Decision ICC-01/04-02/12-30”⁵ (hereinafter: “Registrar’s List”), together with three confidential, *ex parte* annexes that collate the details of participating victims, as applicable.⁶

4. 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-01/04-02/12-55-Conf-Exp-Anx3-Corr”⁷ (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,⁸ 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 [...]”,⁹ and (ii) four other victims, namely a/0166/09, a/0253/09, a/0354/09 and a/0376/09, had also since passed away.

5. 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’”¹⁰ (hereinafter: “Mr Ngudjolo’s Observations”). In particular, Mr Ngudjolo made 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”), and suggested that if they wished to maintain their anonymity, they should be removed from the Registrar’s List.¹¹ Furthermore, Mr Ngudjolo

⁴ “Decision on the participation of victims in the appeal against Trial Chamber II’s ‘Judgement rendu en application de l’article 74 du Statut’”, 6 March 2013, ICC-01/04-02/12-30 (A).

⁵ ICC-01/04-02/12-55 (A).

⁶ Corrigenda to the annexes were filed on 3 April 2013 as ICC-01/04-02/12-55-Conf-Exp-Anx1-Corr (A), ICC-01/04-02/12-55-Conf-Exp-Anx2-Corr (A) and ICC-01/04-02/12-55-Conf-Exp-Anx3-Corr (A) (hereinafter: “Annex 3 to Registrar’s List”).

⁷ ICC-01/04-02/12-62-tENG (A).

⁸ See Annex 3 to Registrar’s List.

⁹ Observations of Victim Group I, para. 20.

¹⁰ ICC-01/04-02/12-63-tENG (A).

¹¹ Mr Ngudjolo’s Observations, paras 8-9.

objected to the continued participation of the four deceased victims in Victim Group I.¹²

6. 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 document de la Défense ICC-01/04-02/12-63”¹³ (hereinafter: “Request to Respond”) requesting, *inter alia*, leave to respond to Mr Ngudjolo’s Observations in order to address the legal questions surrounding the status of the two anonymous victims who he represents.¹⁴

7. On 27 May 2013, the Appeals Chamber issued the “Order on the filing of further submissions on the Registrar’s List of participating victims”,¹⁵ requesting the legal representatives of the victims to file, by 3 June 2013, their submissions on the participation of anonymous victims and the inclusion of deceased victims on the list of participating victims. Mr Ngudjolo and the Prosecutor were permitted to respond to the victims’ submissions by 10 June 2013.

8. On 5 June 2013, following notification of the victims’ submissions on 3 June 2013¹⁶ (hereinafter: “Victims’ Submissions”), Mr Ngudjolo filed the “Requête URGENTE de la Défense de Mathieu Ngudjolo sollicitant la prorogation du délai de dépôt de la réponse aux observations des deux écritures déposées par les Représentants légaux en conformité avec l’ordonnance ICC-01/01/02/12-73 de la Chambre d’appel”¹⁷ (hereinafter: “Request for extension of time”). Mr Ngudjolo seeks an extension of time until 26 June 2013 to file his response to the Victims’ Submissions on the basis that he is required to respond to the Document in Support of the Appeal by 18 June 2013 and other procedural matters in the appeal whilst also attending to his parallel asylum proceedings before the Dutch authorities.¹⁸ In addition, Mr

¹² Mr Ngudjolo’s Observations, paras 16-17.

¹³ ICC-01/04-02/12-68 (A).

¹⁴ Request to Reply, para. 13.

¹⁵ ICC-01/04-02/12-73 (A).

¹⁶ See “Observations sur la participation de victimes anonymes et sur le maintien de victimes décédées, depuis l’introduction de la procédure, sur la liste des victimes participant à la procédure d’appel”, ICC-01/04-02/12-79 and “Observations sur la participation de victimes anonymes à la procédure en appel et sur le maintien de victimes décédées sur la liste des victimes admises dans cette procédure”, ICC-01/04-02/12-80 (A).

¹⁷ ICC-01/04-02/12-82 (A).

¹⁸ Request for extension of time, paras 17-18.

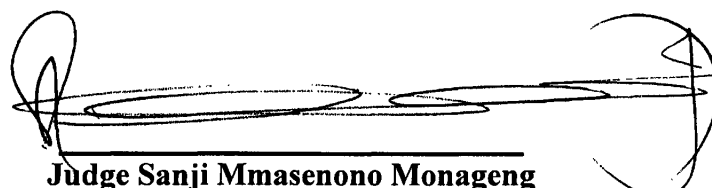
Ngudjolo points out that since the beginning of the appellate proceedings his defence team has been reduced to just three persons.¹⁹

II. DETERMINATION OF THE APPEALS CHAMBER

9. The Appeals Chamber notes that the mainstay of Mr Ngudjolo's arguments in support of his request for an extension of time relates to the defence's workload with respect to the appellate proceedings before the Court and his asylum proceedings before the Dutch authorities. The Appeals Chamber considers that in the circumstances, "good cause", within the meaning of regulation 35 (2) of the Regulations of the Court, for an extension of the time limit has been established.

10. As to the period of extension of the time limit, the Appeals Chamber notes that Mr Ngudjolo requests a sixteen day extension, so as to allow him to file his response to the Victims' Submissions a week after he files his response to the Document in Support of the Appeal. The Appeals Chamber considers the amount of time requested to be unreasonable in the circumstances, especially since Mr Ngudjolo has already been granted a thirty day extension of time to file his response to the Document in Support of the Appeal.²⁰ The Appeals Chamber therefore grants Mr Ngudjolo an extension of time until 16h00 on 20 June 2013 for the filing of his response to the Victims' Submissions.

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



Judge Sanji Mmasenono Monageng
Presiding Judge

Dated this 7th day of June 2013

At The Hague, The Netherlands

¹⁹ Request for extension of time, para. 19.

²⁰ See "Decision on Mr Ngudjolo's request for translation and suspension of the time limit", 11 April 2013, ICC-01/04-02/12-60 (A).