

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

**No. ICC-01/04-02/12 A  
Date: 17 September 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 reclassification of documents**



**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 Mr Mathieu Ngudjolo Chui**  
Mr Jean Pierre Kilenda Kakengi Basila  
Mr Jean Pierre Fofé Djofia Malewa

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

Having before it the “Demande de reclassification de l’annexe 1 au Corrigendum des ‘Observations sur le Document du Procureur déposé à l’appui de son appel et sur la Réponse de la Défense à ce Document’ comme document public” of 22 August 2013 (ICC-01/04-02/12-132-Conf),

Pursuant to regulation 23 *bis* (3) of the Regulations of the Court,

*Issues* the following

## ORDER

The Registrar shall reclassify as public Annex 1 to the “Corrigendum to the ‘*Observations sur le Document du Procureur déposé à l’appui de son appel et sur la Réponse de la Défense à ce Document*’” (ICC-01/04-02/12-124-Conf-Anx1) and the “Demande de Reclassification de l’annexe 1 au Corrigendum des ‘Observations sur le Document du Procureur déposé à l’appui de son appel et sur la Réponse de la Défense à ce Document’ comme document public” (ICC-01/04-02/12-132-Conf).

## REASONS

1. On 18 July 2013, the principal group of victims (hereinafter: “Victim Group I”) filed the “Corrigendum to the ‘*Observations sur le Document du Procureur déposé à l’appui de son appel et sur la Réponse de la Défense à ce Document*’”<sup>1</sup> together with two confidential annexes.<sup>2</sup>

2. On 22 August 2013, Victim Group I filed the “Demande de Reclassification de l’annexe 1 au Corrigendum des ‘Observations sur le Document du Procureur

<sup>1</sup> ICC-01/04-02/12-124-Conf-Corr.

<sup>2</sup> ICC-01/04-02/12-124-Conf-Anx1; ICC-01/04-02/12-Conf-Anx2.

déposé à l'appui de son appel et sur la Réponse de la Défense à ce Document' comme document public"<sup>3</sup> (hereinafter : "Request") requesting that confidential Annex I to the document mentioned in the preceding paragraph (hereinafter: "Annex I") and the Request be reclassified as public.<sup>4</sup>

3. Following an order by the Appeals Chamber,<sup>5</sup> Mr Ngudjolo indicated that he had no objections to Annex 1 being reclassified.<sup>6</sup>

4. Regulation 23 *bis* (3) of the Regulations of the Court provides, in relevant part, that where the basis for the classification no longer exists, "[a] Chamber may ... re-classify a document upon request by any other participant or on its own motion". In this regard, the Appeals Chamber notes that Annex 1 consists of a sketch of Zumbe drawn by witness P-280<sup>7</sup>, a sketch of Aveba drawn by witness D02-258<sup>8</sup> and a topographical survey provided by the Registrar for Trial Chamber II's site visit to Ituri.<sup>9</sup> The Appeals Chamber notes further that both sketches were produced and discussed in public sessions during the trial before Trial Chamber II. The topographical survey is also already public. In addition, the Appeals Chamber notes that Annex 1 is not related to the third ground of appeal which is currently classified as confidential. Accordingly, the Appeals Chamber finds that no reason exists for Annex 1 and the Request to remain confidential and directs that these documents be reclassified as public.

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<sup>3</sup> ICC-01/04-02/12-132-Conf.

<sup>4</sup> Request, p. 4.

<sup>5</sup> Order on the filing of responses to victims' request for reclassification of documents, 27 August 2013, ICC-01/04-02/12-133 (A).


<sup>6</sup> "Observations de la Défense de Mathieu Ngudjolo à 'Order on the filing of response to victims' request for reclassification of documents", 28 August 2013, ICC-01/04-02/12-135 (A).

<sup>7</sup> Transcript of 29 June 2010, ICC-01/04-01/07-T-162-ENG, p. 40, lines 18-20. *See also*, Decision on Acquittal, para. 208.

<sup>8</sup> Transcript of 6 July 2011, ICC-01/04-01/07-T-286-CONF-ENG, p. 51, lines 1-14. *See also* Decision on Acquittal, para. 212.

<sup>9</sup> *See* "Enregistrement au dossier du procès-verbal du transport judiciaire en République démocratique du Congo", dated 6 February 2012, ICC-01/04-01/07-3234-Anx-Red, p. 31.

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



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

Dated this 17th day of September 2013

At The Hague, The Netherlands