

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-01/04-02/12 A
Date: 11 November 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 further submissions regarding the anonymous victims in the appeal

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

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

Having before it the “Observations du représentant légal faisant suite à la Décision ICC-01/04-02/12-140 de la Chambre d’appel” of 23 October 2013 (ICC-01/04-02/12-145),

Renders unanimously the following

DECISION

Subject to any further decision by the Appeals Chamber, no further submissions by the legal representative of the group of former child soldier victims on the willingness of victims a/0390/09 and a/0452/09 to have their anonymity lifted *vis-à-vis* the parties are required.

REASONS

I. PROCEDURAL HISTORY

1. On 18 December 2012, Trial Chamber II delivered the “Judgment pursuant to article 74 of the Statute”,¹ in which Mr Mathieu Ngudjolo Chui (hereinafter: “Mr Ngudjolo”) was acquitted of all charges against him and ordered to be immediately released.

2. On 20 December 2012, the Prosecutor filed her appeal against the Decision on Acquittal pursuant to article 81 (1) of the Statute² (hereinafter: “Appeal against Acquittal”).

¹ ICC-01/04-02/12-3-tENG.

² “Prosecution’s Appeal against Trial Chamber II’s ‘Jugement rendu en application de l’article 74 du Statut’”, ICC-01/04-02/12-10 (A). 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’”, ICC-01/04-02/12-39-Conf (A) (hereinafter: “Document in Support of the Appeal”). On 22 March 2013 the Prosecutor filed a

3. On 6 March 2013, the Appeals Chamber issued the “Decision on the participation of victims in the appeal against Trial Chamber II’s ‘Jugement rendu en application de l’article 74 du Statut’”,³ holding that the 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.

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”⁴ (hereinafter: “List”), together with three confidential, *ex parte* annexes that collated the details of participating victims.⁵

5. Between 12 April 2013 and 20 June 2013, a number of observations were filed by the parties and participants in relation to the List, including regarding the participation of anonymous victims.⁶ Particular observations were made concerning the continued participation of victims a/0390/09 and a/0452/09 referred to on the List, amongst the

confidential redacted version of the Document in Support of the Appeal, ICC-01/04-02/12-39-Conf-Red (A) and on 3 April 2013 a public redacted version of the Document in Support of the Appeal was filed, ICC-01/04-02/12-39-Red2 (A).

³ ICC-01/04-02/12-30 (A).

⁴ ICC-01/04-02/12-55 (A).

⁵ Corrigenda to the annexes were filed as ICC-01/04-02/12-55-Conf-Exp-Anx1-Corr2-tENG, ICC-01/04-02/12-55-Conf-Exp-Anx2-Corr and ICC-01/04-02/12-55-Conf-Exp-Anx3-Corr.

⁶ See “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’”, 15 April 2013, ICC-01/04-02/12-63-tENG (A) (hereinafter: “Mr Ngudjolo’s Observations”), paras 7-11; “Observations on the participation of anonymous victims and on maintaining victims who died in the course of proceedings on the list of victims participating at appeal”, 3 June 2013, ICC-01/04-02/12-79-tENG, paras 7-8; “Observations on the participation of anonymous victims in the appellate proceedings and on maintaining deceased victims on the list of victims authorised to participate”, 3 June 2013, ICC-01/04-02/12-80-tENG (hereinafter: “Observations of Victim Group II”), paras 13-36; “Prosecution’s Submissions Pursuant to the Appeals Chamber’s ‘Order on the filing of further submissions on the Registrar’s List of participating Victims’ dated 27 May 2013”, 10 June 2013, ICC-01/04-02/12-87 (A) (hereinafter: “Prosecutor’s Observations”), paras 2, 12-17; “Response of the Defence of Mathieu Ngudjolo to the observations of the Legal Representatives regarding the participation of anonymous victims and the maintenance of deceased victims on the list of victims participating in the appellate proceedings (ICC-01/04-02/12-79 and ICC-01/04-02/12-80)”, 20 June 2013, ICC-01/04-02/12-91-tENG (A) (hereinafter: “Mr Ngudjolo’s Further Observations”), paras 15-31.

group of former child soldier victims (hereinafter: “Victim Group II”) whose identity is unknown to the Defence and Prosecutor.⁷

6. On 23 September 2013, the Appeals Chamber issued its “Decision on the participation of anonymous victims in the appeal and on the maintenance of deceased victims on the list of participating victims”⁸ (hereinafter: “Decision of 23 September 2013”), holding, *inter alia*, that anonymous victims a/0390/09 and a/0452/09 could continue to participate without revealing their identities to the parties, given that their participation at this stage of proceedings is limited.⁹ Notwithstanding, in the interests of expediency, the Appeals Chamber ordered the legal representative of Victim Group II to make contact with victims a/0390/09 and a/0452/09 and to enquire into their willingness to have their anonymity lifted *vis-à-vis* the parties and to inform the Appeals Chamber thereon by Wednesday, 23 October 2013.¹⁰

7. On 23 October 2013, the legal representative of Victim Group II filed his “Observations du représentant légal faisant suite à la Décision ICC-01/04-02/12-140 de la Chambre d’appel”¹¹ (hereinafter: “Observations of the legal representative”), noting that attempts to contact victims a/0390/09 and a/0452/09 through the relevant intermediaries have taken some time,¹² and that a site visit would be required in order to enable the victims to make an informed decision regarding relinquishing their anonymity *vis-à-vis* the parties.¹³ The legal representative of Victim Group II states that he has lodged an application with the Registry in relation to undertaking such a visit, which, in his view, could not be achieved before mid-December.¹⁴

⁷ See, for example, Mr Ngudjolo’s Observations, paras 8-9; Observations of Victim Group II, paras 30-36.

⁸ ICC-01/04-02/12-140.

⁹ Decision of 23 September 2013, paras 18-19.

¹⁰ Decision of 23 September 2013, para. 20.

¹¹ ICC-01/04-02/12-145.

¹² Observations of the legal representative, para. 8.

¹³ Observations of the legal representative, para. 9.

¹⁴ Observations of the legal representative, para. 10.

II. MERITS

8. The Appeals Chamber recalls that, as noted in its Decision of 23 September 2013, the modalities of victim participation in the Appeal against Acquittal are currently limited to the filing of observations on the Document in Support of the Appeal and the response to the Document in Support of the Appeal.¹⁵ In light of “this limited form of participation and the legal representative’s submissions on the vulnerability of victims a/0390/09 and a/0452/09”, the Appeals Chamber held that “the protective measure of anonymity does not violate Mr Ngudjolo’s right to a fair trial”.¹⁶ However, the Appeals Chamber indicated that, should the anonymous victims wish to participate as individuals at a hearing or to make individual observations, they would then be required to disclose their identities to the parties.¹⁷ The legal representative was ordered to provide information on the willingness of victims a/0390/09 and a/0452/09 to have their anonymity lifted *vis-à-vis* the parties in the interests of expediency,¹⁸ should the Appeals Chamber subsequently decide to modify the mode of victim participation in the present appeal.

9. However, given the difficulties described by the legal representative of Victim Group II in respect of ascertaining the views of victims a/0390/09 and a/0452/09,¹⁹ and given the advanced stage of the appeals proceedings, the Appeals Chamber considers that it would be inappropriate to require the legal representative to make further inquiries into the willingness of the two victims to have their identities disclosed to the parties, in particular as victims a/0390/09 and a/0452/09 have not requested the Appeals Chamber to “participate as individuals at a hearing or to make individual observations”.²⁰ Therefore, acting under article 64 (2) and 64 (6) (f) of the Statute, read together with rule 149 of the Rules of Procedure and Evidence, the Appeals Chamber determines that no further submissions on the issue are required.

¹⁵ Decision of 23 September 2013, para. 18.

¹⁶ Decision of 23 September 2013, para. 19.


¹⁷ Decision of 23 September 2013, para. 19.

¹⁸ Decision of 23 September 2013, para. 20.

¹⁹ Observations of the legal representative, paras 8-11.

²⁰ Decision of 23 September 2013, para. 19.

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



Judge Sanji Mmasenono Monageng
Presiding Judge

Dated this 11th day of November 2013

At The Hague, The Netherlands