

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

**No. ICC-01/04-02/12 A  
Date: 20 October 2014**

**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**

**URGENT**

**Public**

**Decision on the Prosecutor's request for 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 “Prosecution’s Urgent Request for Reclassification” of 20 October 2014 (ICC-01/04-02/12-219-Conf-Exp),

*Renders* the following

## DECISION

The aforementioned request is rejected.

### REASONS

#### I. PROCEDURAL HISTORY

1. On 18 December 2012, Trial Chamber II (hereinafter: “Trial Chamber”) delivered the “Judgment pursuant to article 74 of the Statute”<sup>1</sup> (hereinafter: “Decision on Acquittal”), 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 Statute.<sup>2</sup>
3. On 18 September 2014, the Appeals Chamber issued the “Scheduling order for a hearing before the Appeals Chamber” (hereinafter: “Scheduling Order of 18 September 2014”) convening a hearing in this case for Tuesday, 21 October 2014.<sup>3</sup>
4. On 8 October 2014, the Appeals Chamber issued the “Order in relation to the conduct of the hearing before the Appeals Chamber”.<sup>4</sup>

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

<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 (A).

<sup>3</sup> ICC-01/04-02/12-199 (A).

<sup>4</sup> ICC-01/04-02/12-210 (A).

5. On 17 October 2014, the Appeals Chamber rendered the “Decision on the Prosecutor’s request to establish parameters for Mr Ngudjolo’s personal address at the appeal hearing”.<sup>5</sup>

6. On 20 October 2014, the Prosecutor filed, confidential, *ex parte*, Prosecutor and Victims and Witnesses Unit only, the “Prosecution’s Urgent Request for Reclassification”<sup>6</sup> (hereinafter: “Request for Reclassification”), requesting that the Appeals Chamber “reclassify limited portions (T.66 p. 31 lines 3-15) of the transcript of 9 June 2009 and the totality of [the Prosecutor’s document ICC-01/04-01/07-831-Conf-Exp], with limited redactions, as confidential *inter partes* (available to the Prosecution, the Victims and Witnesses Unit, the Defence and the Legal Representatives of Victims), in advance of the appeal hearing”.<sup>7</sup> [Footnotes omitted.]

## II. DETERMINATION OF THE APPEALS CHAMBER

7. The Appeals Chamber recalls its Scheduling Order of 18 September 2014, in which it convened a hearing in this case for Tuesday, 21 October 2014. The Appeals Chamber notes that the Prosecutor does not provide any explanation as to why her Request for Reclassification was filed at this late stage, i.e. on the eve of the hearing. Furthermore, the Appeals Chamber observes that if the Request for Reclassification, which was filed *ex parte* to the exclusion of Mr Ngudjolo, were granted, this would allow Mr Ngudjolo only limited time, if any, to familiarize himself with the content of the documents for which the Prosecutor seeks reclassification and to prepare for tomorrow’s hearing. In these circumstances, the Appeals Chamber considers that any value from granting the Request is clearly outweighed by the prejudice that it would cause to Mr Ngudjolo.

8. Accordingly, the Request for Reclassification is rejected.

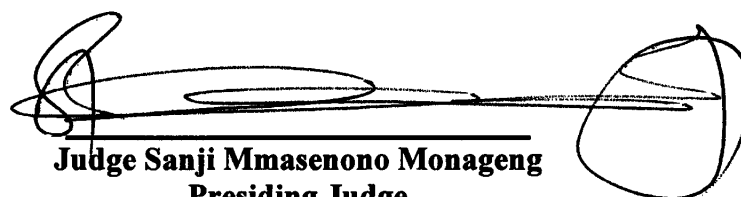
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<sup>5</sup> ICC-01/04-02/12-217 (A).

<sup>6</sup> ICC-01/04-02/12-219-Conf-Exp (A).

<sup>7</sup> Request for Reclassification, para. 1.

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



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

Dated this 20<sup>th</sup> day of October 2014

At The Hague, The Netherlands