



Original: English

No.: ICC-01/04-02/12  
Date: 21 December 2012

**TRIAL CHAMBER II**

**Before:** Judge Bruno Cotte, Presiding Judge  
Judge Fatoumata Dembele Diarra  
Judge Christine Van den Wyngaert

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO**

***IN THE CASE OF  
THE PROSECUTOR v. MATHIEU NGUDJOLO CHUI***

**Public Document**

**URGENT**

**Decision on the "Requête urgente de la Défense en vue de solliciter la relocalisation internationale de Mathieu Ngudjolo hors du continent africain et sa présentation devant les autorités d'un des Etats parties au Statut de la Cour pénale internationale aux fins de diligenter sa procédure d'asile"**

Decision to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

**The Office of the Prosecutor**

Ms Fatou Bensouda

Mr Eric MacDonald

**Counsel for Mathieu Ngudjolo Chui**

M<sup>e</sup> Jean-Pierre Kilenda Kakengi Basila

M<sup>e</sup> Jean-Pierre Fofé Djofia Malewa

**Legal Representatives of the Victims**

Mr Fidel Nsita Luvengika

Mr Jean-Louis Gilissen

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

Trial Chamber II (“Chamber”) of the International Criminal Court (“Court”), in the case of *The Prosecutor v. Mathieu Ngudjolo Chui*, having regard to articles 64 and 81 of the Rome Statute of the International Criminal Court (“Statute”) and Rule 151 of the Rules of Procedure and Evidence (“Rules”), issues the following decision:

### I. Background and Submissions

1. On 18 December 2012, the Chamber rendered its judgment pursuant to Article 74 of the Statute in case *the Prosecutor v. Mathieu Ngudjolo* (“Judgment”).<sup>1</sup> As the accused was acquitted of all charges, the Chamber ordered the Registry to take all necessary measures to allow the immediate release from detention of Mathieu Ngudjolo.
2. On the same day, the Office of the Prosecutor (“prosecution”) seized the Chamber with an oral request to exceptionally maintain Mathieu Ngudjolo in detention pending appeal in accordance with Article 81(3)(c).<sup>2</sup> The Victims Legal Representatives and the Defence also made oral submissions. The Chamber rejected the prosecution’s request by oral decision of 18 December 2012.<sup>3</sup>
3. On 19 December 2012, the prosecution appealed the Chamber’s oral decision of 18 December 2012 and asked the Appeals Chamber to grant suspensive effect to this appeal.<sup>4</sup>
4. On 20 December 2012, the Appeals Chamber rejected the request for suspensive effect.<sup>5</sup>
5. Also on 20 December 2012, the prosecution filed its appeal against the Chamber’s Judgment.<sup>6</sup>

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<sup>1</sup> “Jugement rendu en application de l’article 74 du Statut”, 18 December 2012, ICC-01/04-02/12-3

<sup>2</sup> ICC-01/04-02/12-T-2-ENG ET

<sup>3</sup> ICC-01/04-02/12-T-3-ENG ET

<sup>4</sup> “Prosecution’s Appeal against Trial Chamber II’s oral decision to release Mathieu Ngudjolo and Urgent Application for Suspensive Effect”, 19 December 2012, ICC-01/04-02/12-5

<sup>5</sup> “Decision on the request of the Prosecutor of 19 December 2012 for suspensive effect”, 20 December 2012, ICC-01/04-02/12-12

<sup>6</sup> “Prosecution’s Appeal against Trial Chamber II’s ‘Jugement rendu en application de l’article 74 du Statut’”, 20 December 2012, ICC-01/04-02/12-10

6. On 21 December 2012, Mathieu Ngudjolo was released from the Court's custody and handed over to the authorities of the Host State for transfer to the Democratic Republic of Congo, pending the lifting of a travel ban imposed upon Mr Ngudjolo by the Security Council of the United Nations.

7. On the same day, Counsel for Mr Ngudjolo seized the Chamber with a request for protective measures under Article 68 of the Statute, asking the Chamber to order Mr Ngudjolo's relocation to the Kingdom of Belgium in order to allow him to ask for asylum there. ("Defence Request")<sup>7</sup>

## II. Analysis and Conclusion

8. Considering that the Chamber has rendered its judgment pursuant to Article 74 of the Statute and seeing that the prosecution has appealed this Judgment pursuant to Article 81 of the Statute, the trial record has now been transferred to the Appeals Chamber in accordance with Rule 151(1) of the Rules. Accordingly, the Chamber is no longer seized of the case against Mr Ngudjolo.

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<sup>7</sup> "Requête urgente de la Défense en vue de solliciter la relocalisation internationale de Mathieu Ngudjolo hors du continent africain et sa présentation devant les autorités d'un des Etats parties au Statut de la Cour pénale internationale aux fins de diligenter sa procédure d'asile", 21 December 2012, ICC-01/04-02/12-13

**FOR THESE REASONS,**

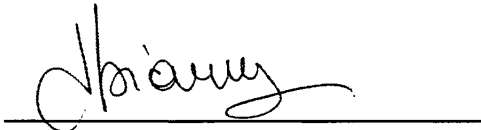
**THE CHAMBER,**

**DECLARES** that it has no jurisdiction over the Defence Request.

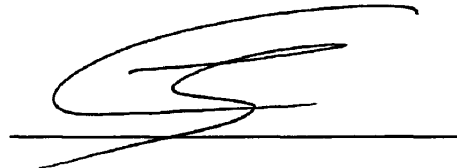
Done in both English and French, the English version being authoritative.



**Judge Bruno Cotte  
Presiding Judge**



**Judge Fatoumata Dembele Diarra**



**Judge Christine Van den Wyngaert**

Dated this 21 December 2012

At The Hague, The Netherlands