

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/04-01/07

Date: 2 July 2008

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Single Judge

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

***IN THE CASE OF
THE PROSECUTOR***

v. Germain KATANGA and Mathieu NGUDJOLO CHUI

Public Document

**Prosecution's Observations on the Review of the Pre-Trial Detention of Mathieu
NGUDJOLO CHUI**

Source: Office of the Prosecutor

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

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On 17 June 2008, the Single Judge requested the Prosecution to submit observations on the Pre-Trial Detention of Mathieu NGUDJOLO CHUI.¹ The Prosecution herewith makes its observations on the matter.

Background

1. On 6 July 2007, a warrant of arrest was issued against Mathieu NGUDJOLO CHUI ("Arrest Warrant"),² in which Pre-Trial Chamber I ("PTC I") found reasonable grounds to believe that Mathieu NGUDJOLO CHUI ("NGUDJOLO") had committed crimes within the jurisdiction of the International Criminal Court ("ICC" or "Court").³
2. The first appearance of NGUDJOLO before the Court took place on 11 February 2008, during which Defence Duty Counsel orally requested NGUDJOLO's interim release and indicated that he would subsequently file a written request.⁴
3. On 13 February 2008, the Defence submitted a written application for interim release ("Application for Interim Release").⁵
4. On 22 February 2008, the Prosecution filed its "Observations on the Defence Application for Interim Release".⁶

¹ ICC-01/04-01/07-602.

² ICC-01/04-02/07-1-US; reclassified as public, see ICC-01/04-02/07-1; reclassified as ICC-01/04-01/07-260.

³ PTC I found that there are reasonable grounds to believe that Mathieu NGUDJOLO is criminally responsible under Article 25(3)(a) and/or (b) of the Rome Statute of the Court ("Statute") for three counts of crimes against humanity: of murder (punishable under Article 7(1)(a) of the Statute), of inhumane acts (punishable under Article 7(1)(k) of the Statute), of sexual slavery (punishable under Article 7(1)(g) of the Statute); and six counts of war crimes: of murder (punishable under Article 8(2)(a)(i) or 8(2)(c)(i) of the Statute), of inhuman treatment (punishable under Article 8(2)(a)(ii) of the Statute) or cruel treatment (punishable under Article 8(2)(c)(i) of the Statute), of conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities (punishable under Article 8(2)(b)(xxvi) or 8(2)(e)(vii) of the Statute), of sexual slavery (punishable under Article 8(2)(b)(xxii) or 8(2)(e)(vi) of the Statute), of intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities (punishable under Article 8(2)(b)(i) or 8(2)(e)(i) of the Statute), of pillaging of a town or place, even when taken by assault (punishable under Article 8(2)(b)(xvi) or 8(2)(e)(v) of the Statute).

⁴ ICC-01/04-02/07-T-3-ENG ET, p. 12, line 25-p. 13, lines 1-2; p. 17, lines 3-16; p. 22, lines 13-25; p. 23, lines 1-25; p. 24, lines 1-18.

⁵ ICC-01/04-02/07-21; reclassified as ICC-01/04-01/07-280.

5. On 27 March 2008, the Single Judge issued the "Decision on the Application for Interim Release of Mathieu Ngudjolo Chui"⁷ ("Decision") whereby the Single Judge found that NGUDJOLO shall "remain in pre-trial detention because the alternative conditions set forth in article 58(l)(b)(i) and (ii) of the Statute continue to be fulfilled insofar as the detention of Mathieu Ngudjolo Chui remains necessary to ensure (i) his appearance at trial; and (ii) that he will not obstruct or endanger the investigation or the court proceedings".⁸
6. On 9 June 2008, the Appeals Chamber rendered its "Judgment In the Appeal by Mathieu Ngudjolo Chui of 27 March 2008 against the Decision of Pre-Trial Chamber I on the Application of the Appellant for Interim Release" in which the Appeals Chamber upheld the Decision.⁹

Prosecution's Observations

7. Pursuant to Article 58(1) of the Statute, a warrant of arrest shall be issued and detention ensue i) to ensure a person's appearance at trial; ii) to prevent the obstruction of court proceedings; or iii) to prevent continuing criminal conduct by the same person.
8. The Prosecution respectfully submits that there has been no substantial change of these conditions or any related factors since the Decision to warrant a variation or the interruption of the current detention regime. Accordingly, the statutory grounds for considering interim release, pursuant to Article 60(3) of the Statute, are not satisfied.

⁶ ICC-01/04-02/07-38-Conf + Conf-Anx1; reclassified as ICC-01/04-01/07-297-Conf + Conf-Anx1; reclassified as public *see* ICC-01/04-02/07-40 + Anxs; reclassified as ICC-01/04-01/07-299 + Anxs.

⁷ ICC-01/04-01/07-344-Conf.

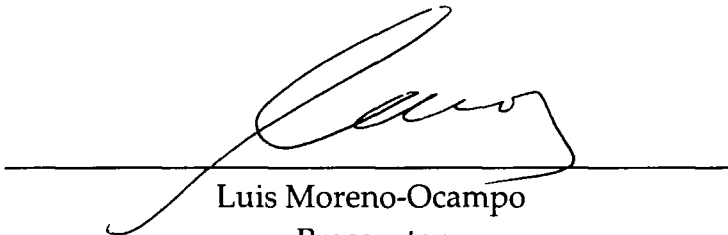
⁸ ICC-01/04-01/07-602, p. 3.

⁹ ICC-01/04-01/07-572 OA 4.

9. The charges levelled against NGUDJOLO are of such nature that there is a substantial risk that he may abscond from the jurisdiction of the Court. Further, the Prosecution submits that because of the suspect's former position in the FNI, MRC and FARDC he benefits from the support and has numerous and powerful contacts within the Democratic Republic of the Congo which could facilitate his flight from the Court's jurisdiction.
10. Furthermore, pursuant to its disclosure obligations, the Prosecution has disclosed the identities of Prosecution witnesses to NGUDJOLO. If NGUDJOLO were to be released, he would be in a position to exert pressure on these witnesses and thereby obstruct the Court's proceedings.
11. It is not disputed that any person detained or arrested is entitled to a trial within a reasonable time. The Prosecution submits that NGUDJOLO's detention at the seat of the Court has not been unreasonable. The period of NGUDJOLO's detention from his arrest and transfer to the commencement of the confirmation hearing proceedings is less than five months.

Conclusion

In light of the foregoing reasons and taking into account the need to ensure the appearance of the suspect at trial and the security of victims and witnesses, the Prosecution submits that there are no grounds justifying NGDUJOLO's interim release.



Luis Moreno-Ocampo
Prosecutor

Dated this 2nd day of July 2008

At The Hague, The Netherlands