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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. GERMAIN KATANGA and MATHIEU NGUDJOLO CHUI

PUBLIC REDACTED VERSION

**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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**Victims Participation and Reparations
Section Other**

The Office of the Prosecutor hereby submits its Observations on the review of the Pre-Trial detention of Mathieu Ngudjolo Chui.

Confidentiality

The Prosecution submits its Observations as confidential, *ex parte*, only available to the Office of the Prosecutor and the Defence of Mathieu Ngudjolo Chui. A confidential redacted version available to the Defence of Germain Katanga and a public redacted version are also submitted.

Background

1. For the full procedural history regarding the issue of Mathieu Ngudjolo's pre-trial detention, the Prosecution respectfully refers the Chamber to its previous filings.¹
2. On 10 July 2009², the Chamber reviewed the pre-trial detention of Mathieu Ngudjolo and stated that the conditions that warranted his pre-trial detention had not changed substantially, and that his continued detention would guarantee his appearance before the court for trial.³
3. On 5 October 2009, the Chamber requested the Prosecution to submit its observations on the pre-trial detention of Mathieu Ngudjolo.⁴

¹ "Prosecution's Observations on the Pre-Trial Detention of Mathieu NGUDJOLO CHUI", ICC-01/04-01/07-927, 24 February 2009; "Observations de l'Accusation relatives au réexamen de la détention préventive de Mathieu NGUDJOLO CHUI", ICC-01/04-01/07-1204, 12 June 2009.

² "Quatrième examen de la décision sur la demande de liberté provisoire de Mathieu Ngudjolo (règle 118-2 du Règlement de procédure et de preuve)", ICC-01/04-01/07-1287-Conf-Exp, 10 July 2009 ("the Review"). The public redacted version of this decision is ICC-01/04-01/07-1288.

³ « *La Chambre estime que les circonstances ayant motivé le placement puis le maintien en détention de Mathieu Ngudjolo non seulement n'ont pas connu d'évolution notable mais conduisent au contraire à s'assurer plus encore qu'il comparaitra devant la Cour lors de l'ouverture, le 24 septembre 2009, de débats sur le fond de l'affaire* », the Review, para. 10.

⁴ "Décision aux fins de recueillir les observations des participants sur la détention de Mathieu Ngudjolo (Règle 118-2)", ICC-01/04-01/07-1507, 5 October 2009.

Prosecution's Observations

Article 58 (1)

4. The Appeals Chamber has held that when the conditions pursuant to Article 58(1) of the Statute continue to be met, Article 60(2) requires that the person must continue to be detained.⁵ 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.

5. The Prosecution submits that there has been no substantial change in the circumstances listed pursuant to Article 58(1) of the Statute since the last Review of the pre-trial detention of Mathieu Ngudjolo. In this respect the Prosecution respectfully refers the Chamber to the arguments already developed in its previous submissions on the matter, notably on 24 February 2009⁶ and 12 June 2009.⁷

6. [REDACTED]⁸[REDACTED].⁹ [REDACTED]¹⁰ [REDACTED].¹¹

7. [REDACTED],¹² and the need for the protection of witnesses is still existent and compelling in light of (1) the fact that the identities of most of the witnesses are known to the accused and (2) the information invoked in

⁵ "Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled "Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo", ICC-01/04-01/06-824, 13 February 2007, para. 134.

⁶ "Prosecution's Observations on the Pre-Trial Detention of Mathieu NGUDJOLO CHUI", ICC-01/04-01/07-927, 24 February 2009, esp. paras 18-23.

⁷ "Observations de l'Accusation relatives au réexamen de la détention préventive de Mathieu NGUDJOLO CHUI", ICC-01/04-01/07-1204, 12 June 2009, esp. paras 22-26.

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

paragraph 6 *supra*.¹³ Consequently, pursuant to Article 58(1)(b)(ii), it is necessary for the Chamber to maintain the detention of Mathieu Ngudjolo in order to ensure the protection of the witnesses and to prevent the accused from obstructing the ongoing court proceedings.

8. The Prosecution contends that Mathieu Ngudjolo's detention is further justified pursuant to 58(1)(b)(i). Given the serious nature of the charges for which the accused has been committed to trial and the impending commencement of the trial, there is a more pressing need to keep the accused detained in order to secure his appearance in Court.¹⁴

Article 60 (4)

9. The Prosecution submits that Mathieu Ngudjolo's detention is not unreasonable in the context of Article 60(4). Since the last decision of the Chamber¹⁵, the commencement of the trial has been postponed by two months to 24 November 2009. The Prosecution maintains that the limited extent of this delay should not have an incidence on the reasonableness of Mathieu Ngudjolo's pre-trial detention.

¹³ The Chamber has recognized these factors as relevant in its last decision on the pre-trial detention. It indicated: « *La Chambre rappelle qu'elle doit veiller à la sécurité des victimes et des témoins dont, sauf pour deux témoins à charge, l'identité a été révélée à la défense, comme elle doit s'assurer qu'il ne sera pas fait obstacle au bon déroulement de la procédure, ces deux objectifs pouvant être contrariés par la remise en liberté de Mathieu Ngudjolo.* [REDACTED], the Review, para. 11.

¹⁴ "Troisième examen de la décision sur la demande de liberté provisoire de Mathieu Ngudjolo (règle 118-2 du Règlement de procédure et de preuve) ", ICC-01/04-01/07-965, 17 March 2009, para. 8.

¹⁵ See the Review, para. 15.

Conclusion

10. For the foregoing reasons, the Prosecution respectfully submits that Mathieu Ngudjolo must remain detained pending trial.



Luis Moreno-Ocampo, Prosecutor

Dated this 12th day of October 2009

At The Hague, The Netherlands