



Original: **French**

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

Date: **5 October 2009**

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 Document

**Decision Inviting Observations from the Participants concerning the Detention of
Mathieu Ngudjolo (Rule 118(2))**

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

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor
Mr Éric MacDonald, Senior Trial Lawyer

Counsel for the Defence

Mr David Hooper
Mr Andreas O'Shea

Counsel for Mathieu Ngudjolo Chui

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

Legal Representatives of the Victims

Mr Jean-Louis Gilissen
Mr Fidel Nsita Luvengika

Legal Representatives of the Applicants

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

Mr Xavier-Jean Keïta

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

Mr Anders Backman

Victims Participation and Reparations Section

Other

TRIAL CHAMBER II of the International Criminal Court (“the Chamber” and “the Court” respectively);

NOTING articles 58, 60(3), 60(4), 61(11), 64(6)(a) and 67 of the Statute of the Court (“the Statute”), rule 118 of the Rules of Procedure and Evidence (“the Rules”) and regulation 24 of the Regulations of the Court;

NOTING the decision of the Single Judge of 27 March 2008 rejecting the application for the release of Mathieu Ngudjolo and ruling that he continue to be detained;¹

NOTING the decision of Pre-Trial Chamber I of 23 July 2008 rejecting the application for the release of Mathieu Ngudjolo and ruling that he continue to be detained;²

NOTING the decision of 19 November 2008, in which the Chamber carried out the second review of the aforementioned decision of 27 March 2008 under article 61(11) of the Statute, rejected the application for the release of Mathieu Ngudjolo and ruled that he continue to be detained;³

NOTING the decisions of 17 March 2009⁴ and 10 July 2009,⁵ in which the Chamber carried out the third and fourth reviews of the decision rejecting the application for the release of Mathieu Ngudjolo, rejected the applications for release and ruled that he continue to be detained;

CONSIDERING that, under article 60(3) of the Statute and rule 118(2) of the Rules, the decision to keep Mathieu Ngudjolo in detention must be reviewed at least every

¹ Pre-Trial Chamber I, *Decision on the Application for Interim Release of Mathieu Ngudjolo*, 27 March 2008, ICC-01/04-01/07-345.

² Pre-Trial Chamber I, *Review of the “Decision on the Application for Interim Release of Mathieu Ngudjolo Chui”*, 23 July 2008, ICC-01/04-01/07-694.

³ *Second Review of the Decision on the Application for Interim Release of Mathieu Ngudjolo (rule 118(2) of the Rules of Procedure and Evidence)*, 19 November 2008, ICC-01/04-01/07-750-tENG.

⁴ *Third review of the decision on the application for interim release of Mathieu Ngudjolo (rule 118(2) of the Rules of Procedure and Evidence)*, 17 March 2009, ICC-01/04-01/07-964-Conf-Exp-tENG.

⁵ *Fourth Review of the Decision on the Application for Interim Release of Mathieu Ngudjolo (rule 118(2) of the Rules of Procedure and Evidence)*, 10 July 2009, ICC-01/04-01/07-1287-Conf Exp-tENG.

120 days; that, as of 10 November 2009, Mathieu Ngudjolo will have spent 120 days in detention since the aforementioned decision of 10 July 2009;

CONSIDERING furthermore that, under article 60(4) of the Statute, it is appropriate to ensure that Mathieu Ngudjolo is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor;⁶

⁶ Appeals Chamber, *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"*, 13 February 2007, ICC-01/04-01/06-824, para. 120.

FOR THESE REASONS,

DECIDES,

- i) that the Prosecutor and the Legal Representatives of anonymous and non-anonymous Victims shall have until 4 p.m. on 12 October 2009 to file their observations on the detention of Mathieu Ngudjolo at the seat of the Court;
- ii) that the Defence for Mathieu Ngudjolo shall have until 4 p.m. on 19 October 2009 to submit its own observations and respond to the observations mentioned in point i) above.

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

[signed]
Judge Bruno Cotte
Presiding Judge

[signed]
Judge Fatoumata Dembele Diarra

[signed]
Judge Christine Van den Wyngaert

Dated this 5 October 2009

At The Hague, The Netherlands