



Original: **French**

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

Date: **5 June 2009**

TRIAL CHAMBER II

Before: Judge Bruno Cotte, Presiding Judge
Judge Fatoumata Dembele Diarra
Judge Hans-Peter Kaul

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
Ms Caroline Buisman

Counsel for Mathieu Ngudjolo Chui

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

Legal Representatives of the Victims

Ms Carine Bapita Buyangandu
Mr Joseph Keta
Mr Jean-Louis Gilissen
Mr Hervé Diakiese
Mr Jean Chrysostome Mulamba
Nsokoloni
Mr Fidel Nsita Luvengika
Mr Vincent Lurquin
Ms Flora Ambuyu Andjelani

Legal Representatives of the Applicants

The Office of Public Counsel for Victims

Ms Paolina Massida

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 Single Judge’s decision of 27 March 2008 rejecting the application for the release of Mathieu Ngudjolo and deciding that he should remain in detention;¹

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

NOTING the decision of 19 November 2008 whereby the Chamber again reviewed the abovementioned decision of 27 March 2008 pursuant to article 61(11) of the Statute, rejected the application for the release of Mathieu Ngudjolo and decided that he should remain in detention;³

NOTING the decision of 17 March 2009 whereby the Chamber conducted a third review of the decision rejecting the application for the release of Mathieu Ngudjolo, rejected the application for his release and decided that he should remain in detention;⁴

CONSIDERING that, pursuant to article 60(3) of the Statute and rule 118(2) of the Rules, the decision on Mathieu Ngudjolo’s continued detention must be reviewed at

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 Chui (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 Chui (rule 118(2) of the Rules of Procedure and Evidence)*, 17 March 2009, ICC-01/04-01/07-964-Conf-Exp-tENG.

least every 120 days; and that, on 16 July 2009, Mathieu Ngudjolo will have been detained for 120 days since the abovementioned decision of 17 March 2009;

CONSIDERING further that, pursuant to article 60(4) of the Statute, it shall be ensured that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor;⁵

FOR THESE REASONS, THE CHAMBER

DECIDES

- i) that the Prosecutor and the legal representatives of anonymous and non-anonymous victims shall have until 4 p.m. on 12 June 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 June 2009 to submit its own observations and to respond to the observations referred to in point i) above.

[signed]

Judge Bruno Cotte
Presiding Judge

[signed]

Judge Fatoumata Dembele Diarra

[signed 5/6/09]

Judge Hans-Peter Kaul

Dated this 5 June 2009

At The Hague, The Netherlands

⁵ 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.