

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/04-02/12

Date: 9 January 2013

THE APPEALS CHAMBER

Before: Judge Sang-Hyun Song, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Cuno Tarfusser
Judge Erkki Kourula
Judge Ekaterina Trendafilova

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
*v. MATHIEU NGUDJOLO***

Public

**Prosecution's Notice to the Registrar of its Discontinuance of its
Appeal against Trial Chamber II's oral decision to release Mathieu Ngudjolo**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

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REGISTRY

Registrar

Ms Silvana Arbia

The Victims and Witnesses Unit

Ms Maria Luisa Martinod-Jacome

Detention Section

M. Patrick Craig

1. The Prosecution hereby notifies the Registrar that it is discontinuing its pending appeal against Trial Chamber II's Decision to Release Mathieu Ngudjolo in *Prosecutor v. Mathieu Ngudjolo*.
2. On 18 December 2012, Trial Chamber II delivered its "Jugement rendu en application de l'article 74 du Statut" ("Article 74 Judgment"). The Chamber acquitted Mathieu Ngudjolo of all charges and ordered the Registrar to take all necessary measures to effect the immediate release of Mr Ngudjolo.¹
3. In a hearing held at 13:30h on the same day, the Prosecution requested that the Trial Chamber maintain the detention of Mr Ngudjolo pursuant to article 81(3)(c)(i) due to the existence of exceptional circumstances.²
4. At 17:30h on the same day, the Trial Chamber orally ruled that there were no exceptional circumstances and ordered the immediate release of Mr Ngudjolo ("Decision to Release").³
5. On 19 December 2012, the Prosecution filed its appeal against the oral Decision to Release. Simultaneously, it requested suspension of the implementation of the release pending the resolution of the Prosecution's appeal against the Decision to Release.⁴ The Prosecution argued that suspensive effect was necessary to avoid pre-empting the subject of the appeal (the release of Mr Ngudjolo) and rendering its outcome moot.⁵
6. On 20 December 2012, the Appeals Chamber rejected the Prosecution's request for suspensive effect.⁶ Mr Ngudjolo was subsequently released.
7. The Prosecution is separately appealing the Article 74 Judgment.⁷ That appeal is unaffected by this notice of discontinuance.

¹ ICC-01/04-02/12-3.

² ICC-01/04-02/12-T-2-ENG ET, pp.2-7; pp.8-9.

³ ICC-01/04-02/12-T-3-ENG ET, p.5, lns. 20-24.

⁴ ICC-01/04-02/12-5 OA.

⁵ Ibid., para.11.

⁶ ICC-01/04-02/12-12 OA.

⁷ The Prosecution filed its notice of appeal on 20 December 2012: ICC-01/04-02/12-10 OA.

8. Rule 157 of the Rules of Procedure and Evidence allows a party to discontinue an appeal “at any time before judgment has been delivered.” The Prosecution files this Notice of Discontinuance of Appeal in light of Mr Ngudjolo’s release. While the Prosecution does not submit that the appeal would be moot as a matter of law, it is of the view that Mr Ngudjolo’s release has voided this appeal of its urgency. Accordingly, for judicial efficiency, the Prosecution withdraws its appeal from the Decision to Release. The Prosecution will, however, continue to monitor the security situation of witnesses. Should relevant new information arise indicating that this situation has been compromised as a result of Mr Ngudjolo’s release, the Prosecution will immediately bring it to the Court’s attention and request that adequate measures be adopted.



Fatou Bensouda
Prosecutor

Dated this 9th day of January 2013
At The Hague, The Netherlands