

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

**No. ICC-01/04-02/12 A**

**Date: 6 March 2013**

**THE APPEALS CHAMBER**

**Before:**

**Judge Sanji Mmasenono Monageng, Presiding Judge  
Judge Sang-Hyun Song  
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 CHUI**

**Public document**

**Order on the reclassification of a document and to consult with the authorities of  
the Kingdom of the Netherlands**

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

**The Office of the Prosecutor**

Ms Fatou Bensouda, Prosecutor  
Mr Fabricio Guariglia

**Counsel for the Defence**

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

**Legal Representatives of Victims**

Mr Jean-Louis Gilissen  
Mr Fidel Nsita Luvengika

**States' Representatives**

The Kingdom of the Netherlands

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**Registrar**

Ms Silvana Arbia



The Appeals Chamber of the International Criminal Court,

In the appeal of the Prosecutor against the decision of Trial Chamber II entitled “Jugement rendu en application de l’article 74 du Statut” of 18 December 2012 (ICC-01/04-02/12-3),

Having before it the “Demande de réplique aux « Observations du Greffe en application de la norme 24bis du Règlement de la Cour au sujet du ‘SECOND ADDENDUM’ à la « Requête de la Défense tendant à obtenir de la Chambre d’appel une injonction donnée à l’Unité d’aide aux victimes et aux témoins d’exécuter, et à l’Etat hôte de respecter le jugement d’acquiescement du 18 décembre 2012 rendu par la Chambre de première instance II de la Cour pénale internationale »’ » (Norme 24 du Règlement de la Cour)”, 26 February 2013 (ICC-01/04-02/12-26),

*Issues the following*

## ORDER

1. The Registrar shall reclassify document ICC-01/04-02/12-16-Conf-Exp as confidential.
2. The Registrar is ordered to consult with the authorities of the Kingdom of the Netherlands to ascertain whether documents ICC-01/04-02/12-16-Conf-Exp-Anx1, ICC-01/04-02/12-16-Conf-Exp-Anx2 and ICC-01/04-02/12-16-Conf-Exp-Anx3, or any information therein, can be reclassified as confidential or public and to report to the Appeals Chamber on the results of these consultations by 16h00 on Monday, 18 March 2013.

## REASONS

1. On 18 December 2012, Trial Chamber II delivered the “Jugement rendu en application de l’article 74 du Statut”<sup>1</sup> in which Mathieu Ngudjolo Chui (hereinafter: “Mr Ngudjolo”) was acquitted of all charges against him.

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<sup>1</sup> ICC-01/04-02/12-3.



2. On 20 December 2012, the Prosecutor filed the “Prosecution’s Appeal against Trial Chamber II’s ‘Jugement rendu en application de l’article 74 du Statut’”.<sup>2</sup>

3. On 21 December 2012, Mr Ngudjolo filed the “Urgent Defence Application for the international relocation of Mathieu Ngudjolo outwith the African continent and his presentation to the authorities of one of the States Parties to the International Criminal Court for the purposes of expediting his asylum application”.<sup>3</sup>

4. On 24 December 2012, the Registrar filed the “Report on the developments relating to the release and asylum request made by Mathieu Ngudjolo Chui”<sup>4</sup> (hereinafter: “Report of 24 December 2012”) with three confidential, ex parte annexes. On the same day, the Appeals Chamber rendered its “Decision on the urgent request of Mr Ngudjolo Chui of 21 December 2012”.<sup>5</sup>

5. On 8 February 2013, Mr Ngudjolo filed the “SECOND ADDENDUM à la « Requête de la Défense tendant à obtenir de la Chambre d’appel une injonction donnée à l’Unité d’aide aux victimes et aux témoins d’exécuter, et à l’Etat hôte de respecter le jugement d’acquiescement du 18 décembre 2012 rendu par la Chambre de première instance II de la Cour pénale internationale »”.<sup>6</sup>

6. On 22 February 2013, following an order of the Appeals Chamber,<sup>7</sup> the Registrar filed the “Observations du Greffe en application de la norme 24bis du Règlement de la Cour au sujet du « SECOND ADDENDUM à la « Requête de la Défense tendant à obtenir de la Chambre d’appel une injonction donnée à l’Unité d’aide aux victimes et aux témoins d’exécuter, et à l’Etat hôte de respecter le jugement d’acquiescement du 18 décembre 2012 rendu par la Chambre de première instance II de la Cour pénale internationale »”<sup>8</sup> (hereinafter: “Registrar’s Submissions”).

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<sup>2</sup> ICC-01/04-02/12-10.

<sup>3</sup> ICC-01/04-02/12-15-tENG.

<sup>4</sup> ICC-01/04-02/12-16-Conf-Exp.

<sup>5</sup> ICC-01/04-02/12-17-Conf.

<sup>6</sup> ICC-01/04-02/12-22.

<sup>7</sup> “Order on the filing of submissions by the Registrar on the Defence request of 8 February 2013”, 15 February 2013, ICC-01/04-02/12-24.

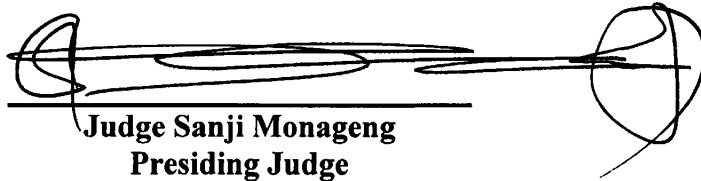
<sup>8</sup> ICC-01/04-02/12-25.

7. On 26 February 2013, Mr Ngudjolo filed the “Demande de réplique aux « Observations du Greffe en application de la norme 24*bis* du Règlement de la Cour au sujet du ‘SECOND ADDENDUM à la « Requête de la Défense tendant à obtenir de la Chambre d’appel une injonction donnée à l’Unité d’aide aux victimes et aux témoins d’exécuter, et à l’Etat hôte de respecter le jugement d’acquittement du 18 décembre 2012 rendu par la Chambre de première instance II de la Cour pénale internationale »’ » (Norme 24 du Règlement de la Cour)”<sup>9</sup>, requesting leave to reply to the Registrar’s Submissions and to be granted access to the Report of 24 December 2012 and the annexes.

8. The Appeals Chamber notes that the Registrar has no objection to the Report of 24 December 2012 being reclassified as confidential thus allowing Mr Ngudjolo to gain access to the document.<sup>10</sup> However, the Registrar submits that the three annexes should remain confidential, *ex parte*, since the correspondence reflected therein is not generally communicated to the parties or participants.

9. Therefore, the Appeals Chamber instructs the Registrar, pursuant to regulation 23 *bis* (3) of the Regulations of the Court, to reclassify the Report of 24 December 2012 (ICC-01/04-02/12-16-Conf-Exp) as confidential. The Appeals Chamber also instructs the Registrar to consult with the relevant authorities of the Kingdom of the Netherlands to ascertain whether documents (ICC-01/04-02/12-16-Conf-Exp-Anx1), (ICC-01/04-02/12-16-Conf-Exp-Anx2) and (ICC-01/04-02/12-16-Conf-Exp-Anx3), or any information therein, can be reclassified as confidential or public and to report to the Appeals Chamber accordingly. After having received this report, the Appeals Chamber will decide whether the documents should be reclassified.

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



**Judge Sanji Monageng**  
**Presiding Judge**

Dated this 6<sup>th</sup> day of March 2013

At The Hague, The Netherlands

<sup>9</sup> ICC-01/04-02/12-26.

<sup>10</sup> Report of 24 December 2012, para. 12.