



Original: **English**

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

Date: **8 March 2012**

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

Prosecution's Urgent Request for an Extension of the Page Limit

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

Counsel for the Defence

Mr Jean Pierre Kilenda Kakengi Basila

Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. On 18 December 2012, Trial Chamber II (the “Trial Chamber”) issued its “*Judgment rendu en application de l’article 74 du Statut*” in the case of *The Prosecutor v. Mathieu Ngudjolo* (the “Judgment”).¹ The Trial Chamber found Mathieu Ngudjolo not guilty for the crimes charged by the Prosecution, primarily because it was not satisfied beyond reasonable doubt that Mathieu Ngudjolo was the leader of the Lendu combatants who participated in the attack on Bogoro on 24 February 2003.²
2. On 20 December 2012, the Prosecution lodged its Appeal against the Judgment.³
3. Pursuant to Regulation 37(2), the Prosecution hereby seeks an extension of the page limit for its document in support of the appeal.

Arguments

4. Under Regulation 37(2), a Chamber may grant an extension of the page limit in exceptional circumstances. The Prosecution submits that exceptional circumstances exist in the present case, and requests that the Appeals Chamber grant an extension of additional 50 pages for its document in support of the appeal against the Judgment.
5. In the context of the Defence appeal against the judgment under Article 74 in the case against *Thomas Lubanga Dylo*, the Appeals Chamber found that “in the specific circumstances of the case, namely in light of the fact that this is the first appeal directed against a decision under article 74 of the Statute, which might raise complex and novel issues, and the length of the

¹ ICC-01/04-02/12-3.

² Judgment, para.503.

³ ICC-01/04-02/12-10.

Conviction Decision, there are 'exceptional circumstances' in terms of regulation 37(2) of the Regulations of the Court that justify the extension of the page limite for Mr Lubangas document in support of the appeal."⁴

6. Similar circumstances apply also in this case. This is the first time that the Prosecution has appealed against a judgment under Article 74, in the instant case, an acquittal. In its document in support of the appeal, the Prosecution will argue that the judgment involves legal, factual and/or procedural errors and raises complex and novel issues.
7. Further, in order to meet its burden as an appellant, and to meaningfully assist the Chamber, the Prosecution must conduct a thorough analysis of the factual and legal findings of the Trial Chamber, its assessment of the credibility and reliability of evidence, as well as the relevant evidence itself. In so doing, the Prosecution must refer not only the the evidence that was discussed by the Trial Chamber in the Judgment, but also to other relevant evidence that is on the record of the case. In support of the legal and/or procedural errors that will be raised in the document in support of the appeal, the Prosecution must conduct, among others, a comprehensive analysis of the law and the jurisprudence of other international or domestic court and explain how they are relevant to the adjudication of the matters raised by the Prosecution. After carefully assessing all these factors, the Prosecution's conclusion is that this cannot be done within the existing page-limit.

⁴ ICC-01/04-01/06-2946 A5, para.5.

Relief sought

8. For the reasons set out above, the Prosecution requests that the Appeals Chamber grant the Prosecution on an expedited basis an extension of the page limit by 50 additional pages to present its document in support of the appeal against the Judgment. Should the Chamber grant the request, the Prosecution will continue to strive to present its arguments as efficiently as possible and in fewer than the maximum allowed pages.



Fatou Bensouda
Prosecutor

Dated this 8th day of March 2013

At The Hague, The Netherlands