



Original: **English**

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

Date: **4 April 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

**Prosecution Response to Mr Katanga's request to be provided access to the
Prosecution's Appeal Brief in the Ngudjolo case**

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

Mr Jean-Louis Gilissen
Mr Fidel Nsita Luvengika

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

Ms Silvana Arbia

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 19 March 2013, the Prosecution filed, confidential *ex parte*, available only to the Defence of Mr Ngudjolo, its Document in Support of the Appeal against the "*Jugement rendu en application de l'article 74 du Statut*" ("Appeal Brief").¹ On 22 March 2012, the Prosecution filed a confidential redacted version of the Appeal Brief that is accessible to all parties and participants to the appeal.² A public redacted version was filed by the Prosecution on 3 April 2013.³
2. On 22 March 2013, the Defence for Mr Katanga, the former co-accused of Mr Ngudjolo, filed a request to be provided with the confidential redacted version of the Prosecution's Appeal Brief ("Katanga's Request").⁴ Mr Katanga submits that he is "directly concerned with the factual and/or legal ground of appeal raised by the prosecution against the *Ngudjolo* judgment, since such arguments may directly effect on [his] case and could later be raised by the parties or participants in the *Katanga* case".⁵
3. On 28 March 2013, the Appeals Chamber ordered that the Prosecution may file a response to Katanga's Request by 11 April.⁶
4. As already indicated to counsel for Mr Katanga,⁷ the Prosecution does not object to the Katanga defence team having access to the confidential redacted version of the Appeal Brief. In fact, Mr Katanga is already privy to all the factual information included in that document.
5. The Prosecution notes that the Third Ground of Appeal is currently classified *ex parte*, only available to the Defence of Mr Ngudjolo. Consequently, this ground of appeal is redacted in its entirety in the confidential redacted version of the

¹ ICC-01/04-02/12-39-Conf-Exp; ICC-01/04-02/12-39-Conf-Exp-AnxA.

² ICC-01/04-02/12-45 and ICC-01/04-02/12-39-Conf-Red.

³ ICC-01/04-02/12-39-Red2.

⁴ ICC-01/04-02/12-47.

⁵ Katanga's Request, para.15.

⁶ ICC-01/04-02/12-54.

⁷ See Katanga's Request, para.13.

Appeal Brief as well as in the recently filed public redacted version. As the Prosecution has already informed the Appeals Chamber, it has no objection to the Third Ground of Appeal being re-classified as public, subject to redaction of any reference to those portions of the record that refer to confidential and sensitive information, such as identifying information of protected witnesses and other information that must remain *ex parte*.⁸ In case of re-classification of the Third Ground of Appeal, the Prosecution will publicly file a second redacted version of the Appeal Brief.

6. The Prosecution finally submits that if the Appeals Chamber decides to grant Mr Katanga access to the confidential redacted version of the Prosecution's Appeal Brief, this does not grant him party status in the current appellate proceedings, nor otherwise afford him any of the rights reserved to the parties and participants therein.



Fatou Bensouda
Prosecutor

Dated this 4th day of April 2013
At The Hague, The Netherlands

⁸ ICC-01/04-02/12-45, para.3.