

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 7 August 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

**Decision on Mr Ngudjolo's second request for translation and suspension of the
time limit**

Decision 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
Mr Jean-Pierre Fofé Djofia Malewa

Legal Representatives of Victims
Mr Jean-Louis Gilissen
Mr Fidel Nsita Luvengika

REGISTRY

Registrar
Mr Herman von Hebel

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 “Requête URGENTE de la Défense de Mathieu Ngudjolo sollicitant la traduction en langue française de la réplique du Procureur au Mémoire en réponse de la Défense et l’extension des délais (Article 67-1-a), b) et f) du Statut de Rome et les normes 35-2 et 59-1 du Règlement de la Cour)” of 31 July 2013 (ICC-01/04-02/12-127),

Renders unanimously the following

DECISION

- (1) The Registry shall provide Mr Mathieu Ngudjolo Chui with a draft translation into French of the “Prosecution’s Reply to the Defence Response to the Prosecution’s Appeal Brief” by 20 August 2013.
- (2) The time limit for the filing of Mr Mathieu Ngudjolo Chui’s response to the Prosecutor’s reply is extended by 7 days to 16h00 on 28 August 2013.

REASONS

I. PROCEDURAL HISTORY

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

¹ ICC-01/04-02/12-3.



2. On 20 December 2012, the Prosecutor filed her appeal against the Decision on Acquittal.²

3. On 19 March 2013, the Prosecutor filed the “Prosecution’s Document in Support of Appeal against the “Jugement rendu en application de l’article 74 du Statut”³ (hereinafter: “Document in Support of the Appeal”).

4. On 11 April 2013, following a request by Mr Ngudjolo for a translation of the Document in Support of the Appeal and an extension of time to respond thereto,⁴ the Appeals Chamber ordered the Registry to provide a draft translation of the Document in Support of the Appeal to Mr Ngudjolo and extended the time for the filing of his response thereto.⁵ On 19 June 2013, Mr Ngudjolo filed his response to the Document in Support of the Appeal.⁶

5. On 12 July 2013, following a request by the Prosecutor⁷ the Appeals Chamber, pursuant to regulation 60 of the Regulations of the Court, ordered the Prosecutor to file a reply to Mr Ngudjolo’s response to the Document in Support of the Appeal. Mr Ngudjolo was also afforded the opportunity to respond to the Prosecutor’s reply by 16h00 on Monday, 12 August 2013.⁸

6. On 29 July 2013, the Prosecutor filed the “Prosecution’s Reply to the Defence Response to the Prosecution’s Appeal Brief”⁹ (hereinafter: “Prosecutor’s Reply”).

7. On 31 July 2013, Mr Ngudjolo filed the “Requête URGENTE de la Défense de Mathieu Ngudjolo sollicitant la traduction en langue française de la réplique du

² “Prosecution’s Appeal against Trial Chamber II’s ‘Jugement rendu en application de l’article 74 du Statut’”, ICC-01/04-02/12-10.

³ ICC-01/04-02/12-39-Conf-Exp.

⁴ See “Requête URGENTE de la Défense de Mathieu Ngudjolo sollicitant la traduction en langue française du mémoire d’appel du Procureur et la suspension des délais (Article 67-1-a), b) et f) du Statut de Rom [sic] et les normes 35-2 et 59-1 du Règlement de la Cour)”, 20 March 2013, ICC-01/04-02/12-41 (A).

⁵ See “Decision on Mr Ngudjolo’s request for translation and suspension of the time limit”, ICC-01/04-02/12-60 (A).

⁶ See “CORRIDENDUM (sic) du mémoire de la défense de Mathieu Ngudjolo en réponse à ‘Prosecution’s Document in Support of Appeal against the “Jugement rendu en application de l’article 74 du Statut”’ (ICC-01/04-02/12-39-Conf-Exp)”, ICC-01/04-02/12-90-Conf-Corr (A).

⁷ See “Prosecution Request for Leave to Reply to the Defence Response to the Prosecution’s Appeal Brief”, 28 June 2013, ICC-01/04-02/12-119-Conf (A).

⁸ See “Order on the filing of a reply under regulation 60 of the Regulations of the Court”, ICC-01/04-02/12-123-Conf (A) (hereinafter: “Order of 12 July 2013”).

⁹ ICC-01/04-02/12-126-Conf (A).

Procureur au Mémoire en réponse de la Défense et l'extension des délais (Article 67-1-a), b) et f) du Statut de Rome et les normes 35-2 et 59-1 du Règlement de la Cour)"¹⁰ (hereinafter: "Request"). Mr Ngudjolo seeks an order from the Appeals Chamber for the Prosecutor's Reply to be translated into French and that the time limit for him to respond to same be extended by a week from the date that he receives the translation.¹¹

8. With respect to his request for a translation, Mr Ngudjolo submits, *inter alia*, that given that he has been acquitted, he has the right to be fully informed of the content of the present appeal in a language which he speaks and understands, in this case French.¹² In support of his Request, Mr Ngudjolo refers to article 67 (1) (a) and (f) of the Statute, to the jurisprudence of the Court and that of other international courts, based on which he submits he is entitled to translations of documents which are essential to the adequate preparation of his defence.¹³ Furthermore, Mr Ngudjolo notes that lead counsel for the Defence and all the other members of the team are French speakers and/or have French as their mother tongue, and that French is the only language used by his Defence.¹⁴ He avers that his Defence has always expressed itself in French in its written and oral communications with Trial Chamber II and that the proceedings before Trial Chamber II were conducted in French.¹⁵ Mr Ngudjolo further submits that according to rule 22 (1) of the Rules of Procedure and Evidence, his Defence Counsel is required to have an excellent knowledge of at least one of the working languages of the Court.¹⁶

9. In relation to his request for suspension of the time limit, Mr Ngudjolo submits that, since the Prosecutor's Reply is written in English, the time limit for the filing of his response thereto should be extended by a week from notification of the French translation or a draft French translation of the Prosecutor's Reply.¹⁷

¹⁰ ICC-01/04-02/12-127 (A).

¹¹ Request, paras 13 and 21.

¹² Request, para. 15.

¹³ Request, paras 16-17.

¹⁴ Request, para. 18.

¹⁵ Request, para 18.

¹⁶ Request, para. 20.

¹⁷ Request, para. 21.

10. On 6 August 2013, following an order by the Appeals Chamber,¹⁸ the Prosecutor filed her response to the Request indicating that she had no objection.¹⁹

II. MERITS

11. The Appeals Chamber notes that Mr Ngudjolo seeks an order for the translation into French of the Prosecutor's Reply. However, the principal objective of the Request is to seek an extension of the time limit to allow Mr Ngudjolo to file his response to the French translation of the Prosecutor's Reply. The Appeals Chamber therefore considers the Request under regulation 35 (2) of the Regulations of the Court, which bestows upon the Appeals Chamber the discretion to "extend or reduce a time limit if good cause is shown". Accordingly, the question before the Appeals Chamber is whether Mr Ngudjolo has established "good cause" justifying an extension of the time limit previously set by the Appeals Chamber in its Order of 12 July 2013 for the filing of his response to the Prosecutor's Reply.

12. The Appeals Chamber has previously acknowledged the nature and impact of an appeal against a decision on acquittal on the acquitted person and the fact that the trial proceedings giving rise to the appeal were primarily conducted in French.²⁰ Furthermore, the Appeals Chamber considers any response that Mr Ngudjolo may have to the Prosecutor's Reply to be of importance for the resolution of the appeal. In light of this, the Appeals Chamber considers that "good cause" has been established for an extension of the time limit stipulated for Mr Ngudjolo's response.

13. As to the period of extension of the time limit, the Appeals Chamber considers that work on Mr Ngudjolo's response may commence based on the English version of the Prosecutor's Reply. In this regard, the Appeals Chamber recalls that Mr Ngudjolo has previously responded to filings in English.²¹ Furthermore, in an effort to assist Mr

¹⁸ "Order on the filing of a response to Mr Ngudjolo's request for translation and extension of time limit", 1 August 2013, ICC-01/04-02/12-128 (A).

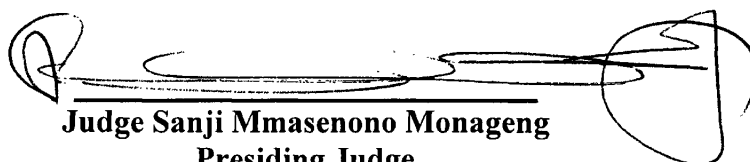
¹⁹ See "Prosecution Response to the Requête URGENTE de la Défense de Mathieu Ngudjolo sollicitant la traduction en langue française de la réplique du Procureur au Mémoire en réponse de la Défense et l'extension des délais" submitted on 31 July 2013", ICC-01/04-02/12-129 (A).

²⁰ See "Decision on Mr Ngudjolo's request for translation and suspension of the time limit", ICC-01/04-02/12-60 (A), para. 12.

²¹ See "Requête de la Défense tendant à obtenir de la Chambre d'appel une autorisation de répliquer à la « Prosecution Response to « Requête URGENTE de la Défense de Mathieu Ngudjolo sollicitant la traduction en langue française du mémoire d'appel du Procureur et la suspension des délais (Article 67-1-a) b) et f) du Statut de Rome et les normes 35-2 et 59-1 du Règlement de la Cour » du 27 mars 2013", ICC-01/04-02/12-51 (A).

Ngudjolo, the Appeals Chamber directs the Registry to make available to Mr Ngudjolo a draft translation of the Prosecutor's Reply by 20 August 2013. In light of the foregoing, the Appeals Chamber considers that an extension of a week from 20 August 2013 is sufficient time for Mr Ngudjolo and his counsel to adequately respond to the Prosecutor's Reply. Accordingly, the Appeals Chamber extends the time limit for Mr Ngudjolo's response to the Prosecutor's Reply by seven days to 16h00 on 28 August 2013.

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



Judge Sanji Mmasenono Monageng
Presiding Judge

Dated this 7th day of August 2013

At The Hague, The Netherlands