

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 October 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 filing of public redacted versions of submissions by the parties and participants

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 Mr Mathieu Ngudjolo Chui
Mr Jean Pierre Kilenda Kakengi Basila
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 “Judgment pursuant to article 74 of the Statute” of 18 December 2012 (ICC-01/04-02/12-3-tENG),

Having before it the “Observations de la Défense relatives à la publication des versions publiques expurgées des Mémoires des parties et participants en instance d’appel” of 20 September 2013 (ICC-01/04-02/12-139-Conf),

Issues the following

ORDER

1. Mr Ngudjolo shall file by 16h00 on Monday, 28 October 2013 public redacted versions of the following documents:
 - a. ICC-01/04-02/12-90-Conf-Corr together with its annexes,
 - b. ICC-01/04-02/12-131-Conf,
 - c. ICC-01/04-02/12-134-Conf,
 - d. ICC-01/04-02/12-139-Conf.
2. The Prosecutor shall file by 16h00 on Monday, 28 October 2013 a public redacted version of document ICC-01/04-02/12-126-Conf.
3. The legal representative of the group of former child soldiers shall file by 16h00 on Monday, 28 October 2013 a public redacted version of document ICC-01/04-02/12-125-Conf-Corr.

REASONS

I. BACKGROUND

1. On 19 March 2013, the Prosecutor filed, confidential *ex parte*, available only to Mr Ngudjolo, the “Prosecution’s Document in Support of Appeal against the

‘Jugement rendu en application de l’article 74 du Statut’’.¹ A public redacted version of the document was filed on 3 April 2013.²

2. On 19 June 2013, Mr Ngudjolo filed the “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)”³ (hereinafter: “Response to the Document in Support of the Appeal”).

3. On 22 July 2013, the legal representative of the victim group of former child soldiers filed the “Corrigendum aux Observations relatives au document déposé par le Procureur à l’appui de son appel et au mémoire en réponse de la Défense”⁴ (hereinafter: “Observations of Victim Group II”).

4. On 29 July 2013, having been granted an opportunity to reply to the Response to the Document in Support of the Appeal,⁵ the Prosecutor filed the “Prosecution Reply to the Defence Response to the Prosecution’s Appeal Brief”⁶ (hereinafter: “Reply to the Response to the Document in Support of the Appeal”).

5. On 19 August 2013, Mr Ngudjolo filed the “Réponse de la Défense de Mathieu Ngudjolo aux Observations du Représentant légal commun du groupe principal des victimes (ICC-01/04-02/12-124-Conf-Corr) et du Représentant légal des victimes enfants soldats (ICC-01/04-02/12-125-Conf-Corr) sur le Mémoire d’appel du Procureur et le Mémoire en réponse de la Défense”⁷ (hereinafter: “Response to the Victims Observations”).

6. On 28 August 2013, Mr Ngudjolo filed the “Réponse de la Défense de Mathieu Ngudjolo à ‘Prosecution Reply to the Defence Response to the Prosecution’s Appeal

¹ ICC-01/04-02/12-39-Conf-Exp (A).

² See “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-Red2 (A).

³ ICC-01/02-02/12-90-Conf-Corr (A).

⁴ ICC-01/04-02/12-125-Conf-Corr (A).

⁵ See “Order on the filing of a reply under regulation 60 of the Regulations of the Court”, 12 July 2013, ICC-01/04-02/12-123-Conf (A).

⁶ ICC-01/04-02/12-126-Conf (A).

⁷ ICC-01/04-02/12-131-Conf (A).

Brief (ICC-01/04-02/12-126-Conf)”⁸ (hereinafter: “Rejoinder to the Reply to the Response to the Document in Support of the Appeal”).

7. On 20 September 2013, Mr Ngudjolo filed the “Observations de la Défense relatives à la publication des versions publiques expurgées des Mémoires des parties et participants en instance d’appel”⁹ (hereinafter: “Submissions on the filing of Public Redacted Versions”). Mr Ngudjolo recalls that in terms of the procedure laid out by Trial Chamber II for the filing of public redacted versions of submissions, he would have to (i) make the redactions (ii) submit the proposed redactions to the parties and participants (iii) on receipt of comments from the parties and participants, submit the desired redactions to the Chamber for examination and (iv) with the approval of the Chamber, file the public redacted version of the submissions.¹⁰ Noting that on appeal the Prosecutor and the legal representative of the main group of victims have already filed public versions of some of their submissions, without following Trial Chamber II’s procedure or obtaining the prior consent of the Appeals Chamber, Mr Ngudjolo requests instructions on how to proceed with the filing of the public redacted versions of his documents in the appeal.¹¹

II. MERITS

8. The Appeals Chamber considers that the principle of publicity, as enshrined in articles 64 (7) and 67 (1) of the Statute, imposes a duty on the parties and participants to the proceedings to ensure, to the extent possible, that public redacted versions of their confidential filings are filed timeously. The Appeals Chamber recalls that in principle its practice has been to permit the filing of public redacted versions of submissions by the parties and participants without any prior scrutiny or authorisation of the Appeals Chamber. This approach is premised on the understanding that the primary responsibility for the filing of public redacted versions of submissions that are compliant with protective measures and the confidentiality of information, as ordered by the relevant Chamber, lies first and foremost with the party or participant making the filing.

⁸ ICC-01/04-02/12-134-Conf (A).

⁹ ICC-01/04-02/12-139-Conf (A).

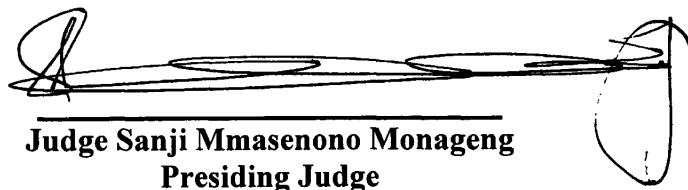
¹⁰ Submissions on the filing of Public Redacted Versions, para. 2.

¹¹ Submissions on the filing of Public Redacted Versions, paras 16-19.

9. Consequently, the Appeals Chamber rejects Mr Ngudjolo's proposed procedure for the filing of public redacted versions of his submissions on the appeal. Mr Ngudjolo is enjoined to file public redacted versions of his (a) Response to the Document in Support of the Appeal, together with its annexes (ICC-01/04-02/12-90-Conf-Corr), (b) Response to the Victims Observations (ICC-01/04-02/12-131-Conf), (c) Rejoinder to the Reply to the Response to the Document in Support of the Appeal (ICC-01/04-02/12-134-Conf) and (d) Submissions on the filing of Public Redacted Versions (ICC-01/04-02/12-139-Conf) being careful to redact the name of the concerned staff member mentioned in this filing by 16h00 on Monday, 28 October 2013.

10. In addition, the Appeals Chamber notes that a public redacted version of the Observations of Victim Group II (ICC-01/04-02/12-125-Conf-Corr) has yet to be filed by the legal representative of the victim group of former child soldiers. In the same vein, the Appeals Chamber further notes, that a public redacted version of the Prosecutor's Reply to the Response to the Document in Support of the Appeal (ICC-01/04-02/12-126-Conf) has also yet to be filed. The Appeals Chamber considers these submissions to be significant for the publicity of the proceedings before the Appeals Chamber and therefore orders the legal representative of the victim group of former child soldiers as well as the Prosecutor to file by 16h00 on Monday 28 October 2013 public redacted versions of their respective submissions.

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



Judge Sanji Mmasenono Monageng
Presiding Judge

Dated this 4th day of October 2013

At The Hague, The Netherlands