

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

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

Date: 27 February 2014

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

**Request for the rectification of a clerical error and the reclassification of
*“Order on the implementation of the cooperation agreement between the Court
and the Democratic Republic of the Congo concluded pursuant to article 93 (7) of
the Statute” (ICC-01/04-02/12-158)***

Source: Duty Counsel for witnesses DRC-D02-P0236, DRC-D02-P0228 and
DRC-D02-P0350

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

Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor
Mr Fabricio Guariglia

**Counsel for the Defence of Mathieu
Ngudjolo Chui**

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

Legal Representatives of Victims

Mr Jean-Louis Gilissen
Mr Fidel Nsita Luvengika

**Duty Counsel for witnesses DRC-D02-
P0236, DRC-D02-P0228 and DRC-D02-
P0350**

Mr Ghislain M. Mabanga

States' Representatives

Democratic Republic of the Congo
Kingdom of the Netherlands

REGISTRY

Registrar

Mr Herman von Hebel

1. *Purpose.* – This request is submitted to the Appeals Chamber of the International Criminal Court (“the Appeals Chamber” and “the Court”, respectively) for and on behalf of Witnesses DRC-D02-P-0236, DRC-D02-P-0228 and DRC-D02-P-0350 (hereinafter “the Detained Witnesses”) seeking the:
 - a) Rectification of a clerical error in the Chamber’s Order of 20 January 2014 (hereinafter “the Order”) wherein it *inter alia*, instructed the Registrar to take all the necessary steps to return forthwith the Detained Witnesses to the Democratic Republic of the Congo (hereinafter “the DRC”).¹
 - b) Reclassification of document ICC-01/04-01/06-2732-Conf-Exp-Anx1, which is the subject of this rectification, as a confidential filing to be notified to the Detained Witnesses.
2. *Legal ground.* – It is a general principle of law that every court is competent to rectify a clerical error in a decision it rendered. It is in this context that by an oral decision on 5 July 2010, Pre-Trial Chamber II rectified a clerical error in its Order No. 2236 of 2 July 2010.² With respect to reclassification, regulations 23bis (1) and 23bis (3) of the Regulations of the Court provide that any Chamber of the Court may order, where appropriate, the reclassification of any document either *proprio motu* or upon request by any other participant. In this case, the Detained Witnesses were participants in the appellate proceedings because they were notified of the Order pursuant to regulation 31(1) of the Regulations of the Court which, in its pertinent

¹Order on the implementation of the cooperation agreement between the Court and the Democratic Republic of the Congo concluded pursuant article 93(7) of the Statute, 20 January 2014, ICC-01/04-02/12-158, p. 2.

²*The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/04-01/07-T-164-Red-FRA WT, 5 July 2010, p. 1, lines 14 to 23.

part, provides that “*all participants in the relevant proceedings shall be notified of any decision or order*”.

3. *First request: Rectification of the clerical error.* – Paragraph 2 of the Order states, *inter alia*:

In March 2011, three individuals ("Detained Witnesses") were transferred to the Court for the purpose of testifying as witnesses in the joint case pursuant to an agreement between the Court and the Democratic Republic of the Congo ("DRC") concluded under article 93 (7) of the Statute (Standard Operating Procedure Agreement").

This sentence is followed by a reference to footnote 2 which identifies the agreement as: See: [TRANSLATION: Transfer of Detained Witnesses, Standard Operating Procedure] “*Transfèrement des Témoins Détenus, Procédure de Fonctionnement Standard*”, 9 May 2011, ICC-01/04-01/06-2732-Conf-Exp-Anx1.³

Unless the agreement under which the Detained Witnesses were supposed to be transferred was entered into after the transfer, the date 9 May 2011 indicated in the Order is probably a clerical error because the Detained Witnesses were transferred to the Court’s Detention Centre on 27 March 2011. The Appeals Chamber is therefore requested to order the rectification of the error.

4. *Second request: Reclassification.* – At this stage of the proceedings where the purpose of the transfer has been achieved and the return of the Detained Witnesses ordered, nothing any longer prevents the “Confidential, *ex parte*” level of confidentiality of the agreement, which primarily concerns the Detained Witnesses, from being protected. Accordingly, in application of regulations 23bis (1) and 23bis (2) of the Regulations of the Court, the

³ Emphasis added.

Appeals Chamber is requested to re-classify this document as a confidential filing, to be notified to the Detained Witnesses.

5. **Accordingly**, the Detained Witnesses respectfully request that the Appeals Chamber:
- o **Rectify** the clerical error in the Order as to the date of the judicial cooperation agreement entered into between the Court and the DRC for the transfer of the Detained Witnesses;
 - o **State** that this rectification shall apply both to the original document (ICC-01/04-02/12-158) and to the official Court translation (ICC-01/04-02/12-158-tFRA);
 - o **Order** the reclassification of document ICC-01/04-01/06-2732-Conf-Exp-Anx1 as a confidential document, to be notified to the Detained Witnesses.

[signed]

Ghislain M Mabanga
Duty Counsel

Dated this 27 February 2014

At The Hague, The Netherlands