

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



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

Date: **29 August 2014**

**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 CONGO**

***IN THE CASE OF***

***THE PROSECUTOR***

***v. MATHIEU NGUDJOLO CHUI***

**Public Redacted Version, with Public Annex**

**Public redacted version of “Prosecution’s Request to Schedule the Appeal  
Hearing”, 29 August 2014**

**Source:** Office of the Prosecutor

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

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**Victims Participation and Reparations Other Section**

## Introduction

1. The Prosecution respectfully requests the Appeals Chamber to hold an oral appeal hearing to hear the parties and participants in the *Ngudjolo* appeal, before making its final decision in this case.
2. The Court's statutory framework assumes that an oral hearing will be held for appeals against final judgements of conviction, acquittal, and sentence (Article 81 appeals, also known as final appeals). This is needed to give full effect to parties' rights to appeal a final judgement, to fully respect an accused's rights at all stages of the proceedings, and to ensure the principle of public hearings and to safeguard the transparency of the Court's proceedings. In the present case, an oral hearing for the Prosecution's appeal is also essential to determine key issues relating to Mathieu Ngudjolo Chui's responsibility, and to safeguard his rights on appeal.
3. *Ngudjolo* is only the second final appeal to be heard at this Court. To enable both parties and the participants to prepare for the oral hearing, the Prosecution respectfully asks the Appeals Chamber to notify the parties and the participants of the dates for the hearing sufficiently in advance of the hearing. A decision on the scheduling of the appeal hearing is appropriate at this stage, bearing in mind the judicial calendar for the second half of this year, and to allow the Chamber sufficient time to deliberate before rendering the final judgement in this case. In determining appropriate dates and time for the oral hearing, the Prosecution respectfully requests that it be given one hour to make its initial submissions on its three grounds of appeal, and 30 minutes for its reply to the Defence's submissions. The Defence and the Legal Representatives for the Victims should likewise be given one hour to make their submissions in response. Finally, the parties should also be notified sufficiently in advance of the hearing of any questions the Appeals Chamber may have, subject to the Chamber being able to pose any other questions to the parties and participants during the course of the hearing.

## Level of Confidentiality

4. The Prosecution files this confidentially, pursuant to Regulation 23*bis* of the Regulations of the Court, because it refers to confidential documents. It will file a public redacted version simultaneously.

## Submissions

### *i. An oral hearing is expected for final appeals*

5. The ICC's Statute and Rules assume that the Appeals Chamber will hear the parties through both written and oral submissions before rendering a judgement on a final appeal. While the Chamber has discretion as to whether to hold an oral hearing for interlocutory appeals,<sup>1</sup> no such discretion exists for final appeals. Rule 156(3) governing the procedure for interlocutory appeals under Articles 81(3)(c)(ii) and 82 expressly states that "[t]he appeal proceedings shall be in writing unless the Appeals Chamber decides to convene a hearing." By contrast, the statutory text setting out the procedure for final appeals in Rule 151 is silent on this matter, indicating that the drafters' intention was that an oral hearing would be the norm for final appeals. Had the drafters intended to make the holding of an oral hearing for final appeals discretionary, they would have specifically stated so, as they did for appeals under Rules 154 and 155.

6. This approach accords with the fact that the Chambers of the Court are required to conduct hearings at all significant stages of proceedings. During the pre-trial stage of the confirmation of the charges, the Pre-Trial Chamber must hold a hearing to determine the charges upon which a trial will proceed.<sup>2</sup> The person charged must be heard at this stage so he may object to the charges, challenge the

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<sup>1</sup> This includes appeals that do not require the leave of the Court [Rule 154—appeals against decisions on jurisdiction (Article 82(1)(a)), decisions on admissibility (Article 82(1)(a)), decisions granting or denying release of persons being investigated or prosecuted (Article 82(1)(b)) and decisions maintaining the detention of the person pending appeal (Article 81(3)(c)(ii))], and appeals that require leave of the Court [Rule 155—appeals under Article 82(1)(d), and under Article 82(2) against Pre-Trial Chamber decisions under Article 57(3)(d)].

<sup>2</sup> Article 61(1) and Rule 121. The only limited exception to the general rule of mandatory confirmation hearings is for cases involving the separate regime of Article 70 offences, where the Pre-Trial Chamber may make determinations based on written submissions *in lieu* of oral hearings, unless the interests of justice otherwise require (Rule 165(3)).

Prosecution evidence and present his own evidence.<sup>3</sup> Likewise, during the closing stage of trial, and before the judges deliberate on the guilt of the accused, a Trial Chamber must hear oral closing statements from the parties.<sup>4</sup> If a party requests a hearing on sentencing, the Trial Chamber must hold a separate hearing to allow such oral submissions.<sup>5</sup> In addition, when a revision application is made under Article 84, the Chamber must hold a hearing to determine whether the conviction or sentence should be revised.<sup>6</sup>

7. Logic and common sense establish that the same considerations must apply to proceedings before the Appeals Chamber: for both revision and final appeals, the Appeals Chamber's decision significantly affects the final result of the case, and determines the ultimate outcome for the accused. Moreover, the seriousness and complexity of cases heard at this Court in final appeal proceedings involve conflicts from different parts of the world and span many years, and therefore often raise novel and challenging facts and legal issues. As with revision therefore, for a proper appellate review of complex international criminal final appeals at this Court, an oral hearing is a procedural imperative to enable the Appeals Chamber to fully consider all relevant factual and legal issues.

8. Considering the statutory intention to hear the parties at every stage before making final decisions (which stands in marked contrast to the discretion allowed for interlocutory appeals),<sup>7</sup> the parties' oral submissions on final appeals must be heard as well. Not doing so would be incompatible with the Statute and the Rules.

9. International criminal practice also confirms that the holding of an oral hearing for final appeals is required. Both the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia

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<sup>3</sup> Article 61(6).

<sup>4</sup> Rule 141(2).

<sup>5</sup> Article 76(2), Rule 143.

<sup>6</sup> Article 84; Rules 161(1) and 161(2).

<sup>7</sup> See for example, ICC-01/09-02/11-251 OA, paras.9-11, where the Appeals Chamber held that Rule 156(3) establishes as a norm that proceedings on appeal (for appeals under Rules 154 and 155) will be written, unless it is demonstrated, with cogent reasons, why an oral hearing *in lieu* of, or in addition to, written submissions is necessary.

(ICTY) Rules of Procedure and Evidence require the Appeals Chamber to set the date for the hearing upon expiry of the time limits for filing written submissions.<sup>8</sup> So too must the Appeals Chambers of the Extraordinary Chambers in the Courts in Cambodia (ECCC)<sup>9</sup> and the Special Tribunal for Lebanon (STL).<sup>10</sup> Oral hearings for final appeals have been held in every one of the cases at the Special Court for Sierra Leone (SCSL).<sup>11</sup> In this context, it would be anomalous for the Appeals Chamber of the International Criminal Court, the only permanent international criminal jurisdiction, which is supposed to hear cases from all over the world, not to be governed by the same universal principle.

10. The holding of an oral hearing to adjudicate appeals in relation to the serious crimes which come before the Court is also consistent with internationally recognised human rights.<sup>12</sup> Human rights jurisprudence is also clear that the right to a public hearing necessarily implies the right to an “oral hearing.”<sup>13</sup> On appeal, this right may be curtailed only in special circumstances.<sup>14</sup> Importantly, when an appellate court is asked to assess a person’s guilt or innocence, involving an examination of both facts and law, a public hearing must be held.<sup>15</sup> As a fair trial matter, these questions

<sup>8</sup> Rule 114, ICTY Rules of Procedure and Evidence and ICTR Rules of Procedure and Evidence. The ICTR Rules were amended in 2002 to make the hearings of final appeals compulsory.

<sup>9</sup> Rules 108(3) and 109, ECCC Internal Rules (Rev.8). An appeal hearing for all judgements on the merits must be held. As with the ICC, a Chamber has the discretion only to decide immediate appeals (relating to decisions on detention and bail, protective measures, interference with the administration of justice and termination of proceedings on written submissions (Rule 104(4) and Rule 109(1)).

<sup>10</sup> Rule 185, STL Rules of Procedure and Evidence.

<sup>11</sup> See *Prosecutor v. Brima et al.*, Case No. SCSL-2004-16-A, Judgment, 22 February 2008, Annex A, para.9; *Prosecutor v. Fofana et al.*, Case No.SCSL-04-14-A, Judgment, 28 May 2008, Annex A, para.10; *Prosecutor v. Sesay et al.*, Case No. SCSL-04-15-A, Judgment, 26 October 2009, Annex I, para.12; *Prosecutor v. Taylor*, Case No.SCSL-03-01-A, Judgment, 26 September 2013, Annex A, para.735. While the Pre-Hearing Judge may recommend that no oral hearing is necessary (Rule 109(B)(ii)(b) and Rule 114 of the SCSL Rules of Procedure and Evidence), the Appeals Chamber has held oral hearings in all the cases.

<sup>12</sup> See Article 21(3).

<sup>13</sup> ECtHR, *Oganova v. Georgia*, Appl. No. 25717/03, “Judgment”, 13 November 2007 (*Oganova v. Georgia*), para.27 (finding in the limited circumstances of the case that special circumstances did not require an oral hearing. These special circumstances included the failure of the applicant to specify procedural irregularities and the nature of the issue (civil action for repayment of loan to a private person) which did not raise any questions of law and fact that could not be adequately resolved on the basis of the case file. In deciding, the Court attached special significance to the fact that in the case, the absence of the oral hearing did not undermine the applicant’s right to adversarial proceedings. (paras.5-13, 27-36).

<sup>14</sup> *Oganova v. Georgia*, paras.27-28; ECtHR, *Ekbatani v. Sweden*, Appl. No. 10563/83, “Judgment”, 26 May 1988 (*Ekbatani v. Sweden*), paras.27-28, 31-33.

<sup>15</sup> *Ekbatani v. Sweden*, paras.31-33.

cannot be decided without a full and direct assessment of both parties' evidence,<sup>16</sup> and submissions on the salient issues of law and fact.

11. The International Covenant on Civil and Political Rights (ICCPR) recognises the right to "a fair and public hearing" "in the determination of any criminal charge."<sup>17</sup> Furthermore, everyone convicted of a crime is entitled to a higher review of his conviction or sentence according to the law.<sup>18</sup> Interpreting the ICCPR provisions, the Human Rights Committee has found that oral proceedings are essential on appeal to re-evaluate the parties' evidence and to determine if the trial verdict is affected.<sup>19</sup> In the same vein, the Committee, through its General Comment No.32, found that all trials in criminal matters must in principle be conducted orally and publicly.<sup>20</sup> Similarly, the ICC Statute ensures that trials should be conducted publicly: this same principle should apply to final appeals.<sup>21</sup>

<sup>16</sup> *Ekbatani v. Sweden*, paras.31-33.

<sup>17</sup> Article 14(1), ICCPR. Similarly, Article 6(1), ECoHR makes explicit the right to a fair and public hearing in the "determination" "of any criminal charge."

<sup>18</sup> Article 14(5), ICCPR. See HRC, General Comment 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32(2007), Section VII. See also HRC, *Vásquez v. Spain*, Comm.No.701/1996, CCPR/C/69/D/701/1996, 16 August 2000, para.11.1, stating that "the lack of any possibility of fully reviewing the author's conviction and sentence, [...], the review having been limited to the formal or legal aspects of the conviction, means that the guarantees provided for in article 14, paragraph 5, of the Covenant have not been met." Similarly, Protocol No.7 to the ECoHR safeguards the right to a higher review if convicted or sentenced of a criminal offence. Article 2(2) provides that this right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

<sup>19</sup> HRC, *Karttunen v. Finland*, Comm. No. 387/1989, "Views", 5 November 1992, paras.3.3 and 7.3, where the author claimed a violation of Article 14(1) because the Court of Appeal refused to examine the appeal in a public hearing, despite his formal requests. The Committee found that "[i]t is possible for appellate instances to correct the irregularities of proceedings before lower court instances. [...] the author was entitled to oral proceedings before the Court of Appeal. As the State Party itself concedes, only this procedure would have enabled the Court to proceed with the re-evaluation of all the evidence submitted by the parties, and to determine whether the procedural flaw had indeed affected the verdict of the District Court. In light of the above, the Committee concludes that there has been a violation of article 14, paragraph 1." While Committee Member Mr. Bertil Wennergren appended an individual opinion stating that "there can be no *a priori* assumption in favour of public oral hearings in review procedures," he also found that an oral hearing was required in this case for "fair trial (Article 14(3)(d))" as the author had explicitly asked for an oral hearing that could not *a priori* be considered meaningless.

<sup>20</sup> HRC, General Comment 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32(2007), Section III. While the Committee cited to *R.M. v. Finland* to claim that the public hearing requirement *does not necessarily apply* to all appellate proceedings which may take place on the basis of written presentations, it found in the case that the complaint was inadmissible as no violations of the Convention were made out. (*R.M. v. Finland*, Comm no. 301/1988, CCPR/C/35/D/301/1988, 23 March 1989, paras.6.4, 7). The Committee's statement in this context is therefore marginal to the central issue and of very limited assistance here.

<sup>21</sup> By specific statutory reference, the principle of public hearings applies to both trials and appeals at this Court (Articles 64(7), 67(1) and 68(2) read with Rule 149).

ii. *Oral hearings are essential to guarantee the fairness and expedition of the Court's proceedings*

12. At this Court, oral hearings of final appeals provide an opportunity for the Appeals Chamber, the parties and the participants to discuss the merits of the appeals, thereby protecting the parties' rights to appeal and guaranteeing the fairness of appellate proceedings. In this sense, both the Prosecution and the accused must be able to properly address the merits of a final appeal in an oral hearing. In addition, hearings are also indispensable because they safeguard the accused's statutory right to a public hearing "in the determination of any charge."<sup>22</sup> As the Appeals Chamber itself has emphasised, the accused is "the subject of the criminal proceedings" and "an active participant" in "criminal proceedings."<sup>23</sup> Without such a safeguard, appeal proceedings would be confined to counsel's written submissions and the accused may not be considered to have been "fully heard" in the appeal phase. Further, without an oral hearing in the appellate phase, the accused would not have the opportunity to even be in the physical presence of the final Chamber adjudicating his case. Nor would the accused have the chance to hear the Prosecution's and the victims' submissions in court and to instruct his counsel to respond accordingly.

13. In turn, for the Prosecution, the opportunity to fully press its arguments on appeal in an oral hearing is critical to the proper discharge of its mandate to establish the truth and end impunity for the most serious international crimes. An oral hearing is especially important for the Prosecution where the Prosecutor is the appellant, as she is here. The oral hearing also allows the victims to state their views in court. Finally, as happened at the first appeal hearing in the *Lubanga* case, an oral hearing enables an accused to make a personal address at the end of the hearing.<sup>24</sup>

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<sup>22</sup> Article 67(1).

<sup>23</sup> ICC-01/09-01/11-1066 OA5, para.49.

<sup>24</sup> ICC-01/04-01/06-3083, para.3; ICC-01/04-01/06-T-363-Red-ENG, p.65 line 13-p.72 line 8. If an accused chooses to make a personal address at the appeal hearing, his address should not raise any "significant consequential matters," and should not stray into areas that would ordinarily fall within the role of his Defence Counsel during the hearing, namely submissions on conviction, sentence and issues on appeal. See ICC-01/04-01/06-3084, para.4.

14. Further, because the final appeals judgement in complex international criminal cases is usually rendered some significant time after written submissions have been filed, a hearing allows parties to update their submissions and to hone their appeals to the critical factual and legal issues, so as to better assist the Appeals Chamber. Parties are expected to bring to the Chamber's attention all relevant changes and developments in the law since their written filings. Indeed, a final appeal is never stagnant. The factual and legal context of an appeal may evolve over time, including in the time between the filing of the briefs and an appeals judgement being rendered. In this context, the fairness of the proceedings is preserved only if the Chamber hears the parties in court before making its final decision.

15. Holding an oral hearing for final appeals in this Court is also essential as the cases often involve complicated issues. Each case on appeal involves an understanding of intricate factual issues which occurred in a particular regional context which will vary considerably from situation to situation. An oral appeal hearing allows the judges "to ask questions of counsel which may have been overlooked by parties and to explore with counsel the consequences of potential holdings in a particular case for future cases in general."<sup>25</sup> While Regulation 28 allows the Appeals Chamber further scope to clarify issues through written submissions, this procedure may not adequately capture the breadth and scope of issues on final appeals.<sup>26</sup> In the *ad hoc* courts and tribunals, Appeals Chambers have used the appeal hearings as an opportunity to ask probing questions of the parties to clarify issues on appeal. In several instances, the judges have invited the parties to address specific issues not covered by the written submissions.<sup>27</sup> In a similar vein, in

<sup>25</sup> Hawley, Jonathan E. et al., *Handbook for Criminal Appeals in the Seventh Circuit*, 2<sup>nd</sup> Ed., (Federal Public Defender, Central District of Illinois), para.6.01.

<sup>26</sup> *Contra* ICC-01/09-02/11-251 OA, para.12; ICC-01/11-01/11-565 OA6, para.65.

<sup>27</sup> *Bagosora et al. v. The Prosecutor*, Case No. ICTR-98-41-A, Order for the Preparation of the Appeal Hearing, 7 March 2011, pp.1-2; *Renzaho v. The Prosecutor*, Case No. ICTR-97-31-A, Order for Preparation of Appeal Hearing, 7 June 2010, pp.2-3; *Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Order for Preparation of Appeal Hearing, 20 August 2008, pp.2-3; *Prosecutor v. Popović et al*, IT-05-88-A, Order for the Preparation of the Appeal Hearing, 6 November 2013, pp.1-3; *Prosecutor v. Đorđević*, IT-05-87/1-A, Addendum to the Scheduling Order for Appeal Hearing, 12 April 2013, pp.2-3; *Prosecutor v. Šainović et al*, IT-05-87-A, Order for the Preparation of the Appeal Hearing, 20 February 2013, pp.1-4; *Prosecutor v. Perišić*, IT-04-81-A, Addendum

the *Lubanga* case, the Appeals Chamber asked the parties in the appeal hearing to answer specific questions arising from their submissions.<sup>28</sup> Indeed, an oral hearing allows the judges to test the merits and strength of the parties' arguments. This Court's experience shows that hearing complex legal and factual issues in open court, with the judges playing an active role in scrutinising the parties' arguments has greatly benefited the resolution of issues.<sup>29</sup> Given the obvious utility of an oral hearing, it would not be fair for a Chamber to reject submissions without a hearing, on the basis that "no reason was immediately apparent" or that it was "not immediately obvious".<sup>30</sup>

16. Holding an oral hearing for final appeals may also enhance the expedition of the proceedings.<sup>31</sup> Once the parties focus their arguments on the crucial issues arising from their written filings, the final resolution of the case can proceed more efficiently. The day spent hearing a final appeal may even cut short the deliberations phase of the case. Indeed, "[o]ral argument gives the lawyer an opportunity to furnish the court with a magnifying power to the lens, to focus on how the relevant segments of the grand mosaic fit together."<sup>32</sup> Oral argument is therefore "the

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to the Scheduling Order for Appeal Hearing, 15 October 2012, pp.1-2; *Prosecutor v. Gotovina et al.*, IT-06-90-A, Addendum to the Scheduling Order for Appeal Hearing, 24 April 2012, pp.1-2; *Prosecutor v. Lukić et al.*, IT-98-32/1-A, Order for the Preparation of the Appeal Hearing, 6 September 2011, p.1.

<sup>28</sup> ICC-01/04-01/06-T-363-Red-ENG, p.57 line 20-p.65 line 12.

<sup>29</sup> See for example ICC-01/09-01/11-T-86-Red-ENG, p.3 line 17-p.119 line 24 (where the Chamber required the parties to present the "high points" and "updates" to their written submissions during oral arguments on the legality of summonses, and actively intervened to clarify and test the parties' arguments); ICC-01/09-02/11-T-28-ENG, p.5 line 20-p.113 line 21, where the Chamber outlined the contentious issues for oral submissions, reminded the parties not to repeat their written filings, and asked questions of the parties). *Contra* ICC-01/09-02/11-421 OA4, para.13.

<sup>30</sup> See for example ICC-01/11-01/11-565 OA6, para.176; ICC-02/11-01/11-572 OA5, para.46. The former UK Supreme Court Justice and now Master of Rolls, Lord Dyson, stated "Quite often [...] I spend a lot of time reading the written Cases beforehand, and reach a provisional view, and quite often in the course of argument my view changes[...] it can swing backwards and forwards and at the end will have been influenced by oral argument." Paterson, A., *Final Judgement: the Last Law Lords and the Supreme Court* (Oxford: Hart, 2013), pp.48-51.

<sup>31</sup> See ICC-01/05-01/08-T-22-ENG, p.69 lines 3-10, where Trial Chamber III found that the "extremely focussed and well-argued submissions" at the hearing enabled it "to address what is a relatively complicated issue extremely expeditiously and helpfully."; *Contra* ICC-01/09-02/11-421 OA4, para.12.

<sup>32</sup> Aldisert, Ruggero J., *Winning on Appeal: Better Briefs and Oral Argument*, 2<sup>nd</sup> Ed., (NITA: 2003), p.30.

absolutely indispensable ingredient of appellate advocacy”, as U.S. Supreme Court Justice William Brennan noted.<sup>33</sup>

17. Finally, the Court’s statutory framework highlights the importance of public proceedings.<sup>34</sup> An oral hearing of a final appeal ensures just that. It enhances public understanding of the Court’s processes, which may not be so easily apparent from written filings, for victims, legal professionals, civil society groups, lay persons and other stakeholders.<sup>35</sup> Indeed, as the Appeals Chamber has recently recognised, the presence of the accused at every stage of the proceedings promotes “public confidence in the administration of justice.”<sup>36</sup>

*iii. The oral hearing of the appeal in this case will address critical and novel issues of law, fact and procedure which will assist the Appeals Chamber*

18. The Prosecution’s appeal in *Ngudjolo* raises matters fundamental to the conduct of criminal trials at this Court. Because these issues go to the heart of proceedings before the Court, the parties and participants must be allowed to be heard before the Appeals Chamber in open court (save for those portions which may need to be heard in closed session). Further, the parties’ oral submissions are essential to provide the necessary factual and legal context relating to the appellate proceedings, and to sift through the evidentiary record of this complex international criminal trial that lasted over three years.

19. All three grounds of appeal raise important issues of law, fact and procedure. These are not only critical for this case, but also more generally for the conduct of future criminal trials before the Court. The Appeals Chamber has not ruled on these issues before. In the first and second grounds of appeal,<sup>37</sup> the Appeals Chamber is asked to determine—for the first time—the correct application of the criminal

<sup>33</sup> See Harvard Law School Occasional Pamphlet No.9, pp.22-23 (1967), quoted in Robert L. Stern et al., *Supreme Court Practice: for Practice in the Supreme Court of the United States*, 671(2002).

<sup>34</sup> Article 64(7), stating “[t]he trial shall be held in public”; Article 67(1), stating “[...]the accused shall be entitled to a public hearing”; Article 68(2) recognising “the principle of public hearings provided for in article 67[...]”. These rules apply on appeal as well through Rule 149.

<sup>35</sup> *Contra* ICC-01/11-01/11-547-Red OA4, para.23; ICC-01/09-02/11-421 OA4, para.11.

<sup>36</sup> ICC-01/09-01/11-1066 OA5, para.49

<sup>37</sup> ICC-01/04-02/12-39-Red2, paras.2, 3

standard of “proof beyond reasonable doubt” under Article 66, and to determine how a Trial Chamber should assess evidence at trial and make its factual findings.

20. [REDACTED]<sup>38</sup>

21. All three grounds of appeal require the Appeals Chamber to settle important legal issues and review factual determinations made at trial. As such, these complex issues of law, fact and procedure should be fully ventilated on appeal.

22. Finally, if the Prosecution’s appeal were to succeed, Ngudjolo would be significantly affected. For example, if the Appeals Chamber were to overturn the trial verdict and/or remand the case and/or order a re-trial, the accused may risk further detention. Fairness demands that before this were to happen, he should—through counsel—be entitled to participate in an oral hearing on appeal in his case. And even if the Appeals Chamber were to affirm Ngudjolo’s acquittal, to do so without an oral hearing would seriously prejudice the Prosecution, who represents the international community to prosecute the most serious crimes.

### **Relief**

23. Considering that written submissions have been filed in this case, and given the necessity for an oral hearing, the Prosecution respectfully requests the Appeals Chamber to schedule an oral hearing which will allow sufficient time for the parties and participants to present their oral submissions, and to provide notice of such a hearing sufficiently in advance of the hearing to enable them to prepare.

Word Count: 4,539<sup>39</sup>

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<sup>38</sup> [REDACTED].

<sup>39</sup> It is certified that this document contains the number of words specified and complies in all respects with the requirements of Regulation 36 of the RoC. This statement (52 words), not itself included in the word count, follows the Appeals Chamber’s recent direction to “all parties” appearing before it: ICC-01/11-01/11-565 OA6, para.32.



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Fatou Bensouda, Prosecutor

Dated this 29<sup>th</sup> day of August 2014

At The Hague, The Netherlands