

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 17 October 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 THE CONGO
IN THE CASE OF THE PROSECUTOR v. MATHIEU NGUDJOLO CHUI**

URGENT

Public Document

**Order on the re-filing of a public redacted version of the Prosecutor's document
in support of the appeal**

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 “Second Public Redacted Version of ‘Prosecution’s Document in Support of the Appeal against the “Jugement rendu en application de l’article 74 du Statut””, 19 March 2013, ICC-01/04-02/12-39-Conf” of 15 October 2014 (ICC-01/04-02/12-39-Red3),

Issues the following

ORDER

1. The Prosecutor is instructed to re-file by 12h00 on Monday, 20 October 2014 document ICC-01/04-02/12-39-Red3 with the following additional redactions to:
 - a. Paragraphs 145-187 in full
 - b. Footnotes 298, 302, 304, 307, 311, 313, 324, 327, 340, 350, 355-357, 365, 374, 383, 385, 388, 392 and 395 in full.
2. The Registrar is directed to reclassify document ICC-01/04-02/12-39-Red3 as confidential.

REASONS

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

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).



2. On 8 October 2014, the Appeals Chamber issued its “Decision and order in relation to the Prosecutor’s request for reclassification and for lesser redacted versions of the Registry’s monitoring reports”³ by which the third ground of the Prosecutor’s appeal was reclassified as public subject to the maintenance of the confidentiality of the documents founding the third ground of appeal.⁴

3. On 15 October 2014, the Prosecutor filed her “Second Public Redacted Version of ‘Prosecution’s Document in Support of the Appeal against the “Jugement rendu en application de l’article 74 du Statut”’, 19 March 2013, ICC-01/04-02/12-39-Conf”⁵ (hereinafter: “Second Public Redacted Version”).

4. The Appeals Chamber notes that the Second Public Redacted Version does not comply with its instructions concerning the maintenance of the confidentiality of the documents founding the third ground of the appeal. In particular, the Prosecutor reproduces substantive portions of the Registry monitoring reports which are classified as confidential.

5. 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 documents in compliance with protective measures and the confidentiality of information, as ordered by the relevant Chamber, lies with the party or participant making the filing.⁶

6. The Appeals Chamber notes with concern the Prosecutor’s disregard for its clear instructions and accordingly orders the reclassification of document ICC-01/04-02/12-39-Red3 as confidential and directs the Prosecutor to re-file her public redacted version as stipulated.

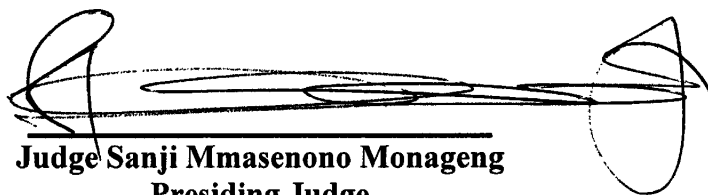
³ ICC-01/04-02/12-209 (A) (hereinafter: “Decision of 8 October 2014”).

⁴ Decision of 8 October 2014, para.16.

⁵ ICC-01/04-02/12-39-Red3 (A).

⁶ See “Order on the filing of public redacted versions of submissions by the parties and participants”, 4 October 2013, ICC-01/04-02/12-143 (A), para. 8.

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



Judge Sanji Mmasenono Monageng
Presiding Judge

Dated this 17th day of October 2014

At The Hague, The Netherlands