

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **16 February 2015**

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
with Confidential *ex parte* Prosecutor, Defence for Mr Ngudjolo and Registry only
annex A**

**Prosecution's Notice on the Reclassification of its Document in Support of Appeal
(ICC-01/04-02/12-39-Red3-Conf) and Request for Public Redacted Versions of the
Appeal Hearing Transcript of 21 October 2014 and Certain Prosecution Filings
relating to the Third Ground of Appeal**

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 and Witnesses Unit

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**Victims Participation and Reparations Other
Section**

Introduction

1. The Appeals Chamber (“Chamber”), by way of its 4 February 2015 Order, authorised the reclassification and the filing of public redacted versions of documents (Registry’s filings and Chambers’ decisions) founding the Office of the Prosecutor’s (“Prosecution”) third ground of appeal.¹ As a result, significant portions of the substance and the Prosecution’s arguments underlying the third ground of appeal are now in the public domain. This is also consistent with the Appeals Chamber’s earlier Order of 8 October 2014, granting the Prosecution’s request to reclassify its third ground of appeal as public.²

2. To give full effect to the Appeals Chamber’s 4 February 2015 Order, the Prosecution requests:

- i. the reclassification of its document in support of appeal (ICC-01/04-02/12-39-Red3-Conf) as public;
- ii. the reclassification of the appeal hearing transcript of 21 October 2014 on the third ground of appeal as public redacted; and
- iii. the filing of public redacted versions of certain Prosecution filings relating to the third ground of appeal.

¹ ICC-01/04-02/12-252 (“4 February 2015 Order”), pp.3-6.

² ICC-01/04-02/12-209 (“8 October 2014 Order”), paras.2, 15-16.

Submissions

i. Prosecution's document in support of appeal

3. The Prosecution's document in support of appeal (ICC-01/04-02/12-39-Red3-Conf)—currently bearing substantial redactions to its third ground of appeal in its latest version³—should be reclassified as public. The redactions ordered and the confidential nature of the filing⁴ are now obsolete and no longer accurately reflect the Chamber's position expressed in the 4 February 2015 Order. The Prosecution has carefully reviewed the filing—guided by the 4 February 2015 Order—and is of the view that the current level of redaction in the original version as filed on 15 October 2014 is now sufficient.

4. There are, however, certain minor discrepancies between the earlier applied Prosecution redactions and the later authorised Registry redactions. The Prosecution has considered them in its most recent review of the document in support of appeal and has determined that its existing level of redaction is sufficient to protect its witnesses and other confidential concerns. The circumstances do not warrant the filing of a new redacted version of the filing. Nevertheless, out of an abundance of caution, the Prosecution draws the Chamber's attention to these minor discrepancies that exist between the Registry's redactions and its own filing. These are contained in the confidential annex attached.

ii. Appeal hearing transcripts of 21 October 2014

5. Following the reclassification of the third ground of appeal prior to the appeal hearing, the Prosecution was permitted in most part to advance its substantive

³ See ICC-01/04-02/12-39-Red4.

⁴ See ICC-01/04-02/12-218 ("17 October 2014 Order"), pp.3-4, where the Appeals Chamber ordered additional redactions to paragraphs 145-187 in full, and footnotes 298, 302, 304, 307, 311, 313, 324, 327, 340, 350, 355-357, 365, 374, 383, 385, 388, 392 and 395 in full. The Chamber also directed the Registrar to reclassify document ICC-01/04-02/12-39-Red3 as confidential.

arguments on the third ground in open session.⁵ However, during the hearing, all arguments on the third ground were heard entirely in private session.⁶ Once again, to fully comply with the Appeals Chamber's recent 4 February 2015 Order, the appeal hearing transcripts on the third ground of appeal should be made public to the extent possible. The Prosecution had advanced critical arguments at the hearing complementing its document in support of the appeal on the third ground of appeal. Allowing the transcripts to remain entirely private at this stage renders these arguments unavailable to the public. It would be inconsistent with the Appeals Chamber's 4 February 2015 Order, the authorised Registry redactions and the Prosecution's own document in support of appeal. It would also perpetuate an incomplete view of the third ground of appeal for the public. To assist the Chamber, the Prosecution is willing to propose redactions to the appeal hearing transcript guided by the 4 February 2015 Order, at the earliest (by Friday 20 February 2015 if the Chamber deems necessary). Likewise, the Prosecution requests corresponding changes to be made to the audio and video recordings of the hearing.

iii. Other filings

6. At this stage, several Prosecution filings relating to the third ground of appeal remain confidential. To assist the Appeals Chamber, the following is a list of certain essential filings. The Prosecution stands ready to file public redacted versions of these filings, and others from the complete confidential record, if the Appeals Chamber should so order.

- ICC-01/04-02/12-95-Conf-Anx2-tENG
- ICC-01/04-02/12-100-Conf
- ICC-01/04-01/07-1639-Conf-Exp

⁵ See 8 October 2014 Order, paras.15-16.

⁶ ICC-01/04-02/12-T-4-Red-ENG, p.4 ln. 4-p.6 ln. 22. See p.4 lns.10-11, where the Presiding Judge ordered as follows: "[t]o this end, the parties and participants are hereby informed that the entirety of the submissions that relate to the third ground of appeal will be heard in private session."

- ICC-01/04-02/12-113-Conf (ICC-01/04-01/07-2918-Conf-Exp-tENG)

Relief

7. To give full effect to the Appeals Chamber's 4 February 2015 Order, the Prosecution requests the reclassification of its document in support of appeal (ICC-01/04-02/12-39-Red3-Conf) as public. It also requests the reclassification and filing of public redacted versions of the appeal hearing transcript and certain Prosecution filings relating to the third ground of appeal.



Fatou Bensouda, Prosecutor

Dated this 16th February 2015

At The Hague, The Netherlands

Word Count: 1062⁷

⁷ 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.