

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: **1 April 2015**

TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Péter Kovács

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. MATHIEU NGUDJOLO CHUI***

Public

**Defence request for a hearing and an order to ensure that Mathieu Ngudjolo
attends pursuant, in particular, to rule 174(2) of the Rules of Procedure and
Evidence**

Source: Mr Jean-Pierre Kilenda Kakengi Basila

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

Office of the Prosecutor

Ms Fatou Bensouda

Counsel for the Defence

Mr Jean Pierre Kilenda Kakengi Basila

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

Office of Public Counsel for Victims

**Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. BRIEF PROCEDURAL HISTORY

1. On 27 February 2015, the Appeals Chamber issued the final judgment in the case of *The Prosecutor v. Mathieu Ngudjolo Chui*,¹ upholding the acquittal by Trial Chamber II dated 18 December 2012.²
2. On 2 March 2015, Mr Ngudjolo Chui instructed Mr Jean-Pierre Kilenda Kakengi Basila (“Mr Jean-Pierre Kilenda”) to initiate compensation proceedings pursuant to article 85 of the Rome Statute and chapter 10 of the Rules of Procedure and Evidence.³
3. In his notice of information of 4 March 2015, initially filed *ex parte* Presidency and Defence, but subsequently reclassified,⁴ Mr Jean-Pierre Kilenda informed the Presidency⁵ that he was preparing to file the request for compensation in accordance with the abovementioned provisions by 14 August 2015 at the latest.⁶
4. On 18 March 2015, the Presidency constituted Trial Chamber II (“the Chamber”) to conduct the compensation proceedings concerning Mr Ngudjolo⁷ (“the Applicant”).
5. The Defence Team for Mathieu Ngudjolo (“the Defence”) hereby requests the Chamber to hold hearings as part of these proceedings and to authorise the Applicant’s attendance at the hearing or hearings, in accordance with rule 174(2) of the Rules of Procedure and Evidence (“RPE”). As oral expression

¹ ICC-01/04-02/12-271.

² ICC-01/04-02/12-3-tENG.

³ ICC-01/04-02/12-273-Conf-Exp-Anx.

⁴ ICC-01/04-02/12-273 and Annex.

⁵ ICC-01/04-02/12-273-Conf-Exp.

⁶ See rule 173(2) of the Rules of Procedure and Evidence. The six months have been calculated as 168 calendar days (regulation 33 of the Regulations of the Court).

⁷ ICC-01/04-02/12-277-Conf-Exp.

always adds a human element, the Applicant's personal appearance will allow Mathieu Ngudjolo to explain to the Chamber, loudly and clearly, in his own words and expressing his own feelings, the psychological harm that he has suffered as a result of his arrest and detention as well as throughout the subsequent proceedings. As a result of the latter, even though he has now been finally acquitted, Mathieu Ngudjolo is incomprehensibly stigmatised by the general public and even by certain international organisations despite their remit for protecting and defending human rights.

II. THE APPLICABLE LEGAL PROVISIONS

6. Rule 174(2) of the RPE prescribes:

The Chamber designated under rule 173, sub-rule 1, may either hold a hearing or determine the matter on the basis of the request and any written observations by the Prosecutor and the person filing the request. A hearing shall be held if the Prosecutor or the person seeking compensation so requests.

7. The terms of article 67(1)(d) and (h) of the Statute are also applicable in that they establish the minimum rights of the defence.

III. SUBMISSION

8. Pursuant to rule 174(2) of the RPE, the Defence respectfully requests the Chamber to hold a hearing or hearings once written submissions have been exchanged between the parties involved in these proceedings (more specifically, the Prosecution and the Defence).

9. The Defence therefore requests the Chamber to issue a formal order to the Registry to ensure Mathieu Ngudjolo's presence at the hearing or hearings to be held so as to enable him to describe publicly, in his own words and expressing his own feelings, the psychological harm he has suffered as a result of his arrest and detention, as well as throughout the subsequent proceedings.

10. The Defence stresses in this respect that all of the stages in criminal proceedings are of equivalent importance: from the pre-trial stage to the compensation stage. Considering that the Prosecutor requested a warrant of arrest at the pre-trial stage to ensure Mathieu Ngudjolo's presence at the confirmation of charges proceedings before the Pre-Trial Chamber, that the Trial Chamber held Mathieu Ngudjolo in pre-trial detention for the same reasons during the trial stage, and that the Appeals Chamber recognised the need for Mathieu Ngudjolo to be present during the appeal proceedings, there is no plausible legal reason why Mathieu Ngudjolo should not be present at the compensation stage. Furthermore, since these are the first proceedings of their kind before the International Criminal Court, this is a matter of undeniable historical importance.
11. For this reason, the Defence submits that these proceedings will enable the parties to debate the legal concepts established under article 85, and their scope, and will provide the Chamber with a fine opportunity to issue a ruling on the different questions of fact and law that will be submitted to it by the parties. This will undoubtedly constitute jurisprudence since the Chamber's decision will be the first decision in the Court's history on a request for compensation pursuant to article 85.
12. Finally, Mr Ngudjolo's attendance at the various hearings will give the Chamber an opportunity to question him directly in order to make a fair and reasonable assessment of the various types of harm he has suffered as a result of the proceedings against him before the Court since 2008.

FOR THESE REASONS

MAY IT PLEASE THE CHAMBER TO

DECLARE this request admissible,

GRANT the Defence's request in its entirety,

ORDER that public hearings be held pursuant to rule 174(2) of the RPE,

ORDER that Mr Mathieu Ngudjolo attend his compensation proceedings in accordance with the provisions of article 67(1)(d) and (h) of the Statute.

RESPECTFULLY SUBMITTED

FOR THE DEFENCE OF MATHIEU NGUDJOLO

[signed]

Mr Jean-Pierre Kilenda Kakengi Basila

Counsel for Mr Mathieu Ngudjolo Chui

Done at Denderleeuw, East Flanders, Belgium, this 1 April 2015