

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

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

**Date: 6 March 2013**

**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**

**Public document**

**Decision on the participation of victims in the appeal against Trial Chamber II's  
"Jugement rendu en application de l'article 74 du Statut"**

**Decision 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 the Defence**  
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**

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**Registrar**  
Ms Silvana Arbia



The Appeals Chamber of the International Criminal Court,

In the appeal of the Prosecutor against the decision of Trial Chamber II entitled “Jugement rendu en application de l’article 74 du Statut” of 18 December 2012 (ICC-01/04-02/12-3),

Having before it the “Requête conjointe des représentants légaux relative à l’accès aux documents confidentiels”, of 8 February 2013, ICC-01/04-02/12-23,

*Renders* the following

## DECISION

- (1) The victims who participated in the trial proceedings in the case of *Prosecutor v. Mathieu Ngudjolo Chui* and whose victim status was not revoked, may, through their legal representatives, participate in the present appeal proceedings for the purpose of presenting their views and concerns in respect of their personal interests in the issues on appeal.
- (2) The Registrar shall file a list of the victims referred to in the preceding paragraph, indicating in respect of each of those victims:
  - a. The number assigned and any identifying information, subject to any protective measures ordered by Pre-Trial Chamber I or Trial Chamber II, as well as the date on which the victim was granted the right to participate in the proceedings; and
  - b. The legal representative representing the victim.The list shall be filed by 16h00 on 28 March 2013 and be notified to Mr Mathieu Ngudjolo Chui, the Prosecutor and the legal representatives of victims, Mr Jean-Louis Gilissen and Mr Fidel Nsita Luvengika.
- (3) Objections, if any, to the inclusion of specific victims and/or the correctness of information in the list provided by the Registrar may be raised by 16h00 on 16 April 2013.
- (4) The legal representatives of victims may each file observations on the Prosecutor’s document in support of the appeal and Mr Mathieu Ngudjolo Chui’s response to the document in support of the appeal. These

observations must be filed by 16h00 on 20 June 2013 and may be no longer than 60 pages.

- (5) Mr Mathieu Ngudjolo Chui and the Prosecutor may each file a consolidated response to the victims' observations. These responses must be filed by 16h00 on 19 July 2013 and may be no longer than 60 pages each.
- (6) The legal representatives of victims shall have access to all confidential documents in the appeal proceedings, with the exclusion of all those documents classified as *ex parte*.

## REASONS

1. The purpose of the present decision is to regulate the participation of victims in the appeal lodged by the Prosecutor<sup>1</sup> against Trial Chamber II's "Jugement rendu en application de l'article 74 du Statut"<sup>2</sup> of 18 December 2012 (hereinafter: "Acquittal Decision").
2. Under article 68 (3) of the Statute, the Court shall permit victims to present their views and concerns where their personal interests are affected, "at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial". The Appeals Chamber notes that 366 individuals participated in the trial proceedings in the case of *Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui* as victims,<sup>3</sup> and that in the course of the trial, Trial Chamber II revoked the victims' status in respect of two of those individuals.<sup>4</sup> The remaining 364 victims are part of two different groups (a smaller group consisting of 11 former child soldiers

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<sup>1</sup> "Prosecution's Appeal against Trial Chamber II's 'Jugement rendu en application de l'article 74 du Statut', 20 December 2012, ICC-01/04-02/12-10 (A). The document in support of this appeal and the response thereto are to be filed in accordance with regulations 58 and 59 of the Regulations of the Court.

<sup>2</sup> ICC-01/04-02/12-3.

<sup>3</sup> Acquittal Decision, para. 32.

<sup>4</sup> "Décision relative au maintien du statut de victime participant à la procédure des victimes a/0381/09 et a/0363/09 et à la demande de Me Nsita Luvengika en vue d'être autorisé à mettre fin à son mandat de Représentant légal desdites victimes", 7 July 2011, ICC-01/04-01/07-3064.

and a larger group making up the rest of the victims) who participated in the proceedings up to and after the severance of the cases.<sup>5</sup>

3. The Appeals Chamber notes that under regulation 86 (8) of the Regulations of the Court, “[a] decision taken by a Chamber under rule 89 shall apply throughout the proceedings in the same case, subject to the powers of the relevant Chamber in accordance with rule 91, sub-rule 1”. The Appeals Chamber notes that Mr Mathieu Ngudjolo Chui was acquitted of all the charges brought against him<sup>6</sup> and that the appeal proceedings against the Acquittal Decision affect victims’ personal interests in the same way as during the trial. Therefore, the Appeals Chamber finds that the victims who participated in the trial and whose victim status was not revoked, may participate in the present appeal, which concerns the merits of the case and is brought under article 81 (1) (a) of the Statute

4. For the sake of clarity, the Appeals Chamber orders the Registrar to file a list of those victims who participated at trial and whose victim status was not revoked. This list shall indicate the number of each individual victim and such identifying information as may be divulged to Mr Ngudjolo and the Prosecutor in accordance with the protective measures ordered by Pre-Trial Chamber I and Trial Chamber II, the legal representative of each victim, as well as the date on which the victim was granted the right to participate in the proceedings.

5. Pursuant to rule 91 (1) of the Rules of Procedure and Evidence, and having regard to rules 91 (2), 92 (5) and (6) of the Rules of Procedure and Evidence, the Appeals Chamber determines that the victims may participate in the present appeals in the following manner: the legal representatives of victims may present the victims’ views and concerns with respect to their personal interests in the issues on appeal by each filing observations on the document in support of the appeal and the response to the document in support of the appeal. Mr Ngudjolo and the Prosecutor may each file a consolidated response to the victims’ observations. Should the need arise to specify the modalities of victims’ participation in the pending appeals further, the Appeals

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<sup>5</sup> “Decision on the implementation of regulation 55 of the Regulations of the Court and severing the charges against the accused persons”, 21 November 2012, ICC-01/04-01/07-3319-tENG/FRA, para.64.

<sup>6</sup> Acquittal Decision, p. 215.

Chamber will give supplementary directions, either upon its own motion or upon application by the legal representatives of victims.

6. The Appeals Chamber notes the joint application filed by the legal representatives of the victims entitled “Requête conjointe des représentants légaux relative à l’accès aux documents confidentiels”,<sup>7</sup> requesting that the victims continue to have access to the confidential record of the case including the four documents appended to Mr Ngudjolo’s pending application before the Appeals Chamber, ICC-01/04-02/12-20.

7. The Appeals Chamber recalls the oral decision of Trial Chamber II, which expressly granted access to the legal representatives to “all confidential documents in the case, with the exclusion of all those documents classified *ex parte*”.<sup>8</sup> The Appeals Chamber finds no reason to modify this ruling at this time and orders that the legal representatives shall have access to all confidential documents in the appeal proceedings, with the exclusion of all those documents classified as *ex parte*. Consequently, the legal representatives shall also be given access to the aforementioned four documents.

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

  
**Judge Sanji Mmasenono Monageng**  
**Presiding Judge**

Dated this 6<sup>th</sup> day of March 2013

At The Hague, The Netherlands

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<sup>7</sup> ICC-01/04-02/12-23, 8 February 2013.

<sup>8</sup> Trial Chamber II, Status Conference, 1 October 2009, ICC-01/04-01/07-T-71-CONF-ENG, p. 4, line 22, to p. 5, line 7.