



Original: **French**

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

Date: **2 April 2015**

TRIAL CHAMBER II

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

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

Public document

Decision on the "Requête de la Défense sollicitant la tenue d'une audience et d'un ordre assurant la présence physique de Mathieu Ngudjolo en application notamment de la règle 174(2) du Règlement de procédure et de preuve"

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

Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Éric MacDonald

Counsel for Mathieu Ngudjolo

Mr Jean-Pierre Kilenda Kakengi Basila

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

States' Representatives

**Office of Public Counsel for the
Defence**

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

TRIAL CHAMBER II of the International Criminal Court (“the Court”), in the case of *The Prosecutor v. Mathieu Ngudjolo Chui*, pursuant to article 64(6)(f) of the Rome Statute and rule 174 of the Rules of Procedure and Evidence (“the Rules”), issues the following decision.

1. On 4 March 2015, the Presidency of the Court was notified of the “*Note d’information à la Présidence*”,¹ in which counsel for Mr Ngudjolo informed the Presidency that a request for compensation would be filed under article 85 of the Rome Statute by 14 August 2015.²
2. On 17 March 2015, the Presidency replaced two judges in Trial Chamber II (“the Chamber”)³ and referred the instant case to the Chamber pursuant to rule 173(1) of the Rules.⁴
3. On 1 April 2015, counsel for Mr Ngudjolo moved the Chamber to hold one or more hearings in relation to the compensation procedure and to authorise the Registry to ensure that Mr Ngudjolo attends the hearing or hearings pursuant to rule 174(2) of the Rules (“the Request”).⁵
4. In the Request, counsel for Mr Ngudjolo seeks, in particular, for the scheduling of a hearing or hearings, “[TRANSLATION] after the exchange of written submissions between the parties involved”.⁶ Counsel further submits that Mr Ngudjolo must attend the hearing or hearings “[TRANSLATION] to enable him to describe publicly in his own words and express his sentiments about the

¹ “*Note d’information à la Présidence*”, 4 March 2015, ICC-01/04-02/12-273-Conf-Exp (“Information note to the Presidency”), available only to the Defence, and its confidential *ex parte* annex, available only to the Defence. Pursuant to the Chamber’s decision ICC-01/04-02/12-280-Conf, dated 25 March 2015, this document was reclassified as “Public” (ICC-01/04-02/12-280-tENG).

² *Ibidem*.

³ “Decision replacing two judges in Trial Chamber II”, 17 March 2015 (decision notified on 18 March 2015), ICC-01/04-01/07-3530.

⁴ “Decision referring the case of *The Prosecutor v. Mathieu Ngudjolo Chui* to Trial Chamber II”, 17 March 2015 (decision notified on 18 March 2015), ICC-01/04-02/12-277-Conf-Exp, available only to the Defence.

⁵ “*Requête de la Défense sollicitant la tenue d’une audience et d’un ordre assurant la présence physique de Mathieu Ngudjolo en application notamment de la règle 174(2) du Règlement de procédure et de preuve*”, 1 April 2015, ICC-01/04-02/12-282 (“the Request”).

⁶ *Ibid.*, para. 8.

mental anguish suffered as a result of his arrest and detention; and throughout the subsequent proceedings”.⁷

5. The Chamber notes that the relevant parts of rule 174 of the Rules read as follows:
 1. A request for compensation and any other written observation by the person filing the request shall be transmitted to the Prosecutor, who shall have an opportunity to respond in writing. Any observations by the Prosecutor shall be notified to the person filing the request.
 2. 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.
6. The Chamber observes that it has not yet been seized with a request for compensation within the meaning of article 85 of the Statute and rule 173 of the Rules. The Chamber has merely been notified of Mr Ngudjolo’s intention to submit such a request by 14 August 2015.⁸
7. The Chamber is therefore of the opinion that the Request is premature and unfounded. It will consider such a request in due course, when the request for compensation is filed or at a later date.

⁷ *Ibid.*, para. 9.

⁸ *Ibid.*, para. 3. See also Information note to the Presidency, para. 3.

FOR THESE REASONS, THE CHAMBER

DISMISSES the Request.

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

[signed]

**Judge Marc Perrin de Brichambaut
Presiding Judge**

[signed]

Judge Olga Herrera Carbuccia

[signed]

Judge Péter Kovács

Dated this 2 April 2015

At The Hague, The Netherlands