

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: **9 April 2015**

TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding Judge
Judge Olga Herrera Carbuca
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 instructions from the Chamber for the purposes of submitting
its application for compensation on the basis of article 85**

Source: Defence for Mr Ngudjolo

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 on the basis of 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 Presidency that he was preparing to file the request for compensation in accordance with the abovementioned provisions by 14 August 2015 at the latest.⁵
4. On 18 March 2015, the Presidency constituted Trial Chamber II (“the Chamber”) to conduct the compensation proceedings concerning Mr Ngudjolo.⁶

II. SUBMISSION

A. Calculation of time limits

5. Rule 173(2) of the Rules of Procedure and Evidence specifies a deadline of six (6) months for submitting a request for compensation. However, regulation 33 of the Regulations of the Court, which deals with the calculation of time limits, refers only to time limits expressed in numbers of days.

¹ ICC-01/04-02/12-271.

² ICC-01/04-02/12-3-tENG.

³ ICC-01/04-02/12-273-Anx.

⁴ ICC-01/04-02/12-273 and Annex.

⁵ 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).

⁶ ICC-01/04-02/12-277-Conf-Exp.

6. The deadline specified in rule 173(2) suggests two possibilities: if one month is calculated as four weeks, i.e. 28 days, this would mean that the deadline is **14 August 2015**. Alternatively, if the time limit is taken to mean six months, the deadline would then be **27 August 2015**.
7. Owing to the absence of any provisions on how to calculate time limits expressed in numbers of months, the Defence requests clarification from the Chamber regarding the deadline for filing its request.
8. In any case, the Defence will, of course, do its utmost to file the request for compensation in good time to avoid being time-barred.

B. Terms of reference

9. The decision on the request for compensation must conclude, on the basis of established facts, that there has been a grave and manifest miscarriage of justice (article 85 of the Rome Statute).
10. Considering the large number of items on the *Ngudjolo* case record and the different levels of proceedings, the Defence wishes to enable the Chamber to make its ruling with full knowledge of the facts.
11. The Defence notes that the Decision of the Presidency referring the request to Trial Chamber II does not specify that the entire case record must be transmitted to the Chamber.⁷
12. For this reason, the Defence proposes to attach to its request all of the items which it considers useful for the purposes of enlightening the Chamber, starting with the letter from the Head of State of the DRC, referring the situation in his

⁷ ICC-01/04-02/12-277-Conf-Exp.

country to the ICC, and finishing with the final appeal judgment of 27 February 2015.

13. The Defence assumes that it bears the burden of proving that the harm suffered by Mr Ngudjolo now justifies the application of article 85 of the Statute. In order to do so, the Defence will need to provide the Chamber with the necessary documentary evidence which may assist it in reaching its decision on this first request for compensation at the International Criminal Court. The fact that the documents that the Defence wishes to submit are already available on the Court's website does not, in its opinion, prevent them from being attached to the intended request.
14. The Defence, therefore, respectfully requests the Chamber to indicate whether the corpus of documents referred to must be attached to its request or if simple references to these documents, which are already listed in the case record, will suffice.
15. In this way, the Defence wishes to avoid the possibility, in due course, of the Registry refusing to take these documents into account and, therefore, refusing to notify them to the parties with an interest in the request for compensation.

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 9 April 2015