

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 18 April 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

**Order on the reclassification of documents ICC-01/04-02/12-55-Conf-Anx3-Corr
and ICC-01/04-02/12-55-Conf-Red-Corr**



Order 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 Andrea Valdivia
Mr Godefroid Bokolombe

Legal Representatives of Victims

Mr Jean-Louis Gilissen
Mr Fidel Nsita Luvengika

Registrar

Mr Herman von Hebel

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 “Observations du représentant légal sur la liste des victimes participant à la procédure d’appel transmise par le Greffe et demande de re-classification du document ICC-01/04-02/12-55-Conf-Anx3-Corr” of 12 April 2013 (ICC-01/04-02/12-62) and “Demande de re-classification de la liste des victims depose par le Greffe sous la reference ICC-01/04-02/12-55-Conf-Anx2-Red-Corr” of 16 April 2013 (ICC-01/04-02/12-65),

Issues the following

ORDER

1. The Registrar shall reclassify document ICC-01/04-02/12-55-Conf-Anx3- Corr as confidential *ex parte*, only available to the Prosecutor, Mr Ngudjolo and Mr Luvengika.
2. The Registrar shall reclassify document ICC-01/04-02/12-55-Conf-Anx2-Red-Corr as confidential *ex parte*, only available to the Prosecutor, Mr Ngudjolo and Mr Gilissen.

REASONS

1. On 18 December 2012, Trial Chamber II delivered the “Jugement rendu en application de l’article 74 du Statut”¹ in which Mathieu Ngudjolo Chui (hereinafter: “Mr Ngudjolo”) was acquitted of all charges against him.
2. On 20 December 2012, the Prosecutor filed the “Prosecution’s Appeal against Trial Chamber II’s ‘Jugement rendu en application de l’article 74 du Statut’”.²
3. On 6 March 2013, the Appeals Chamber issued its “Decision on the participation of victims in the appeal against Trial Chamber II’s ‘Jugement rendu en

¹ ICC-01/04-02/12-3.

² ICC-01/04-02/12-10.

application de l'article 74 du Statut".³ The Appeals Chamber permitted the participation of victims who had participated in the trial proceedings, and whose victim status was not revoked, in the appeal proceedings. In addition, the Appeals Chamber directed the Registrar to file a list of the participating victims 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. In the event of any objection to the inclusion of victims and/or the correctness of the information on the list, the Appeals Chamber directed that this should be raised by 16 April 2013.⁴

4. On 12 April 2013, the legal representative of the principal group of victims, Mr Luvengika, filed the "Observations du représentant légal sur la liste des victimes participant à la procédure d'appel transmise par le Greffe et demande de re-classification du document ICC-01/04-02/12-55-Conf-Anx3-Corr" (hereinafter : "Observations of Victim Group 1").⁵ Mr Luvengika submits, *inter alia*, that the lists of participating victims filed as confidential by the Registrar should have been filed as confidential *ex parte* in compliance with the protective measure ordered by Trial Chamber II.⁶ By reference to decisions of Trial Chamber II, Mr Luvengika avers that the protection measure in place allows for the communication of the identities of the victims to the Prosecutor and Mr Ngudjolo to the exclusion of other participants in the case and the public.⁷ Mr Luvengika therefore requests that document (ICC-01/04-02/12-55-Conf-Anx3-Corr) be re-classified as confidential *ex parte*,⁸ thereby restricting access to the document to the Prosecutor, Mr Ngudjolo and himself and giving effect to the protective measures ordered by Trial Chamber II.

³ ICC-01/04-02/12-30.

⁴ Ibid.

⁵ ICC-01/04-02/12-62.

⁶ Observations of Victim Group 1, paras 13-14.

⁷ Trial Chamber II, *Prosecutor v. Katanga and Ngudjolo Chui*, "Corrigendum de la « Décision relative à la divulgation de l'identité des victimes aux parties » (ICC-01/04-01/07-1607) ", 12 November 2009, ICC-01/04-01/07-1607-Corr, paras. 12-13; Trial Chamber II, *Prosecutor v. Katanga and Ngudjolo Chui*, "Deuxième décision relative à la divulgation de l'identité des victimes aux parties", 18 November 2009, ICC-01/04-01/07-1650, para.15; Trial Chamber II, *Prosecutor v. Katanga and Ngudjolo Chui*, "Troisième décision relative à la divulgation de l'identité des victimes aux parties", 17 December 2009, ICC-01/04-01/07-1731, para.15.

⁸ Observations of Victim Group 1, para. 7.

5. On 16 April 2013, the legal representative of the victim group of former child soldiers Mr Gilissen, filed the “Demande de re-classification de la liste des victims depose par le Greffe sous la reference ICC-01/04-02/12-55-Conf-Anx2-Red-Corr” (hereinafter: “Request of Victim Group 2”).⁹ In similar vein, Mr Gilissen submits *inter alia*, that the confidential redacted list of victims (ICC-01/04-02/12-55-Conf-Anx2-Red-Corr) filed by the Registrar in respect of the victims he represents makes known the identity of 9 of the victims to the other participant in the case which contravenes the protective measure ordered by Trial Chamber II.¹⁰ He therefore requests that document ICC-01/04-02/12-55-Conf-Anx2-Red-Corr be re-classified as confidential *ex parte* thereby restricting access to the document to only the Prosecutor, Mr Ngudjolo and himself.¹¹

6. The Appeals Chamber notes that the protective measure ordered by Trial Chamber II, whereby the identity of the victims were to be disclosed only to the Prosecutor and Mr Ngudjolo to the exclusion of the other participants and the public, was necessary due to the security situation in the Democratic Republic of the Congo (hereinafter: “DRC”) at that time.¹²

7. The Appeals Chamber notes further that regulation 42 (1) of the Regulations of the Court provides, in relevant part, that “[p]rotective measures once ordered in any proceedings in respect of a victim or witness shall continue to have full force and effect in relation to any other proceedings before the Court [...]”. To date the Appeals Chamber has not been requested to vary the protective measure ordered by Trial Chamber II. As such, the protective measure ordered by Trial Chamber II remains in force and the Registrar is ordered to reclassify documents ICC-01/04-02/12-55-Conf-Anx3-Corr and ICC-01/04-02/12-55-Conf-Anx2-Red-Corr as confidential *ex parte*, available only to the Prosecutor, Mr Ngudjolo and the respective legal representative.


⁹ ICC01/04-02/12-65.

¹⁰ Request of Victim Group 2, para.5.

¹¹ Request of Victim Group 2, para. 5.

¹² Trial Chamber II, *Prosecutor v. Katanga and Ngudjolo Chui*, “Deuxième décision relative à la divulgation de l’identité des victimes aux parties”, 18 November 2009, ICC-01/04-01/07-1650, para.15.

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


Judge Sang-Hyun Song
For the Presiding Judge

Dated this 18th day of April 2013

At The Hague, The Netherlands