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## ICC Appeals Chamber Confirms Ngudjolo Chui Acquittal: a Challenge to the ICC Host State

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### **ICC Appeals Chamber Confirms Ngudjolo Chui Acquittal: a Challenge to the ICC Host State**

Last Friday, 27th February 2015, the Appeals Chamber of the International Criminal Court (ICC) by a 3-2 majority, confirmed Trial Chamber II's decision of 18 December 2012 finding Matthieu Ngudjolo Chui **not** guilty of war crimes and crimes against humanity.



Mathieu Ngudjolo Chui © 2015 Getty Images

Mr Ngudjolo Chui did not have much reason, and certainly not much time to celebrate. Immediately after Presiding Judge Sanji Monageng finished reading the judgment, and upon exiting the Court room, Ngudjolo Chui was apprehended by Dutch authorities in civilian clothes and taken to Schiphol Airport because he allegedly no longer had the right to remain on Dutch soil. They were planning to deport him to his native DRC on a flight that was due to depart at 18 hours. Only

after repeated insistence of his defense team was Ngudjolo Chui allowed a few minutes with his ICC counsels, reportedly with Dutch authorities and ICC Registry officials present. It is further reported that Chui was subsequently denied access to his counsels in his Dutch asylum case, and was interrogated in the absence of his counsels. Minutes after he boarded the flight, expulsion was barred after Ngudjolo Chui's Dutch counsels submitted another application against his expulsion.



Dutch Police Logo 2015 © Getty Images

For Ngudjolo Chui this must have been a *déjà vu* experience, except that this was no anomaly of memory. It had happened before. In December 2012, after his initial acquittal by the Trial Chamber, Chui expressed concerns about his safety, should he return to his native DRC. Chui had been a witness in his own case and given testimony against DRC President Kabila; Ugandan President Museveni; Congolese military leaders; among others. He was provided a one-way ticket, escorted to Schiphol and handed over to Dutch authorities. Chui applied for asylum and was placed in a so-called retention Centre for almost five months. His Dutch lawyers successfully protested in court. Chui was released and awarded damages in the amount of 2,400 Euro.

Since then, and for the duration of the ICC Prosecutor's appeal against his acquittal, Ngudjolo Chui stayed in a Hotel in The Hague at the expense of the ICC. Prospects that Chui will be granted asylum do not look good. Last October the Dutch Council of State (court of last resort) concluded that the competent Netherlands Minister did not err in law by not granting asylum status to Mr Ngudjolo Chui.



The International Criminal Court 2015 © Getty Images

Can responsibility for providing a safe haven be entrusted to the ICC host State? Much can be said for this. By hosting the ICC, The Netherlands may have incurred significant costs (rent, renovation costs, and construction of a new ICC building). But according to reports these are but a fraction of the economic benefits the country gets in return. The ICC is undoubtedly an asset to the Dutch economy. Therefore, it does not seem unreasonable to ask the host State to grant refugee status or residence to persons who have a fear of returning home after ICC proceedings. In the first decade of the Court, only a handful of ICC witnesses applied for asylum in The Netherlands. These cannot possibly be a genuine burden on the Dutch state. Chui's fate now lies in the hands of a Dutch judge.

Regardless of what the Dutch response will be to his renewed application for refugee status, the case of Ngudjolo Chui raises concerns about what to do with individuals who after ICC procedures cannot return home due to concerns of safety and security. Perhaps lessons can be learned from the example of Tanzania and the International Criminal Tribunal for Rwanda (ICTR). At the request of the ICTR, the host country Tanzania accepted to allow acquitted persons who expressed fear for their safety and security in Rwanda to remain in Tanzania (Arusha) under the care of the ICTR until suitable solution was found. The ICC, through its Registry can make a meaningful contribution to justice by initiating such a dialogue with the host state, and indeed with other ICC member states.

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