

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/04-01/07**

Date: **2 August 2011**

**THE PRESIDENCY**

**Before:** Judge Sang-Hyun Song, President  
Judge Fatoumata Dembele Diarra, First Vice-President  
Judge Hans-Peter Kaul, Second Vice-President

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO  
IN THE CASE OF  
THE PROSECUTOR  
v. GERMAIN KATANGA and MATHIEU NGUDJOLO CHUI**

**Public**

**Decision replacing judges in the Appeals Chamber**

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

**The Office of the Prosecutor**

Mr Luis Moreno Ocampo

Ms Fatou Bensouda

**Counsel for the Defence of Mr Katanga**

Mr David Hooper

Mr Andreas O'Shea

**Counsel for the Defence of Mr Ngudjolo Chui**

Mr Jean-Pierre Kilenda Kakengi Basila

Mr Jean-Pierre Fofé Djofia Malewa

**Legal Representatives of the Victims**

Mr Jean-Louis Gilissen

Mr Fidel Nsita Luvengika

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparation**

**The Office of Public Counsel for Victims**

**The Office of Public Counsel for the Defence**

**States Representatives**

Ms Liesbeth Lijnzaad, the Government of the Kingdom of the Netherlands

The Democratic Republic of the Congo

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Counsel Support Section**

**Deputy Registrar**

Mr Didier Preira

**Victims and Witnesses Unit**

Ms Maria Luisa Martinod-Jacome

**Detention Section**

**Victims Participation and Reparations Section**

**Other**

**THE PRESIDENCY** of the International Criminal Court (“Court”);

**NOTING** the “Urgent Request for Directions” (“Urgent Request”) dated 15 July 2011<sup>1</sup> and the Prosecutor’s response thereto, filed before the Appeals Chamber;<sup>2</sup>

**NOTING** the request for excusal filed before the Presidency on 16 February 2010 by Judges Akua Kuenyehia and Anita Ušacka (“judges”) pursuant to article 41(1) of the Statute and rule 33 of the Rules of Procedure and Evidence (“Rules”), wherein the judges requested to be excused from sitting in all appeals in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* (hereinafter “case”) on the basis of their previous involvement in the pre-trial phase of the case, in the course of which they issued warrants of arrest for, and confirmed the charges against, Mr Germain Katanga and Mr Mathieu Ngudjolo Chui;<sup>3</sup>

**RECALLING** the decision of the Presidency of 8 March 2010 pursuant to article 41 of the Rome Statute of the International Criminal Court (“Statute”), granting the request for excusal on the ground of the previous involvement of the judges in the case and treating them as unavailable for the purpose of all appeals in the case;<sup>4</sup>

**NOTING** the composition of the Appeals Chamber as set out in article 39(2)(b)(i) of the Statute, pursuant to which the Appeals Chamber shall be composed of all the judges of the Appeals Division, which in turn is composed of the President and four other judges by virtue of article 39(1) of the Statute;<sup>5</sup>

**NOTING** rule 38 of the Rules, providing for the replacement of judges;

**NOTING** regulation 15 of the Regulations of the Court, pursuant to which the Presidency is responsible for the replacement of judges in accordance with article 39 of the Statute, and regulation 12 of the Regulations of the Court, further to which the Presidency shall, in the event that a member of the Appeals Chamber is disqualified, or unavailable for a substantial

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<sup>1</sup> ICC-01/04-01/07-3077.

<sup>2</sup> Prosecution’s Response to the Government of the Kingdom of the Netherlands “Urgent Request for Directions” (ICC-01/04-01/07-3077), ICC-01/04-01/07-3080, 20 July 2011.

<sup>3</sup> ICC-01/04-01/07-1949, Annex I.

<sup>4</sup> ICC-01/04-01/07-1949, Annex II.

<sup>5</sup> Following the fourteenth and fifteenth plenary sessions of the judges held on 13 March 2009 and 8 June 2009 respectively, the Appeals Division and Chamber is composed of Judges Sang-Hyun Song, Akua Kuenyehia, Erkki Kourula, Anita Ušacka and Daniel David Ntanda Nsereko.

reason, attach to the Appeals Chamber, on a temporary basis, a judge from either the Trial or Pre-Trial Division;

**HEREBY DECIDES:**

In respect of the Urgent Request, to temporarily attach Judge Sanji Mmasenono Monageng, currently assigned to the Pre-Trial Division, and Judge Kuniko Ozaki, currently assigned to the Trial Division, to the Appeals Chamber, which shall be composed as follows:

Judge Sang-Hyun Song;

Judge Erkki Kourula;

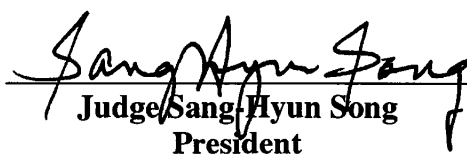
Judge Daniel David Ntanda Nsereko;

Judge Sanji Mmasenono Monageng; and

Judge Kuniko Ozaki.

**ORDERS** the Registrar to file and notify this decision to the relevant parties and participants in the case.

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

  
Judge Sang-Hyun Song  
President

Dated this 2 August 2011

At The Hague, The Netherlands