

# **ANNEX I**



Internal memorandum  
Memorandum interne

To   À	Presidency	From   De	Judge Kuenyehia <i>AKL</i>
Date	4 September 2009	Through   Via	
Ref.	01/04-01/06	Copies	Judge Nsereko, President of the Appeals Division
Subject   Objet	Request for recusal pursuant to article 41 (1) of the Statute and rule 33 of the Rules of Procedure and Evidence		

**CONFIDENTIAL**

1. Yesterday, the Appeals Chamber was notified of Trial Chamber I's "Decision on the prosecution and the defence applications for leave to appeal the 'Decision giving notice to the parties and participants that the legal characterisation of the facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court'"<sup>1</sup> in the case *Prosecutor v. Thomas Lubanga Dyilo*, granting leave to appeal its decision of 14 July 2009.<sup>2</sup> Pursuant to article 41 (1) of the Statute and rule 33 of the Rules of Procedure and Evidence, I hereby request to be excused from sitting on appeals arising from yesterday's decision.
2. The reason for this request is my previous involvement in the case against Mr. Lubanga Dyilo during the pre-trial phase of the proceedings, in the course of which I *inter alia* issued a warrant of arrest<sup>3</sup> and confirmed the charges against the suspects.<sup>4</sup> I therefore have "previously been involved ... in that case before the Court" (second sentence of article 41 (2) (a) of the Statute).
3. Pursuant to rule 33 (2) of the Rules of Procedure and Evidence, I submit this request confidentially. However, I would not object if the Presidency wished to make public this request or the reasons for its eventual decision on this request (second sentence of rule 33 (2) of the Rules of Procedure and Evidence).

<sup>1</sup> ICC-01/04-01/06-2107.

<sup>2</sup> ICC-01/04-01/06-2049.

<sup>3</sup> ICC-01/04-01/06-2.

<sup>4</sup> ICC-01/04-01/06-803.