

## **ANNEX II**

**Cour  
Pénale  
Internationale**



La Présidence

**International  
Criminal  
Court**

The Presidency

**Internal memorandum  
Memorandum interne**

To   À	Judge Akua Kuenyehia	From   De	The Presidency <i>shs</i>
Date	15 September 2009	Through   Via	
Ref.	2009/PRES/439-2	Copies	Judge Daniel David Ntanda Nsereko
Subject   Objet	Decision on the request of 14 September 2009 to be excused from sitting in the appeals against the decision of Trial Chamber I of 14 July 2009 in the case of <i>The Prosecutor v. Thomas Lubanga Dyilo</i> , pursuant to article 41(1) of the Statute and rule 33 of the Rules of Procedure and Evidence		

The Presidency, composed of the President (Judge Sang-Hyun Song), the First Vice-President (Judge Fatoumata Dembele Diarra) and the Second Vice-President (Judge Hans-Peter Kaul), hereby decides on the request of Judge Akua Kuenyehia of the Appeals Chamber (hereinafter "applicant") of 4 September 2009 to be excused from sitting on the appeals against the decision of Trial Chamber I of 14 July 2009 in the case of *The Prosecutor v. Thomas Lubanga Dyilo*.<sup>1</sup>

The request for excusal is granted.

**Factual Background**

On 4 September 2009, by memorandum classified as confidential,<sup>2</sup> the applicant requested the Presidency to excuse her from sitting on the appeals, pursuant to article 41(1) of the Rome Statute (hereinafter "Statute") and rule 33 of the Rules of Procedure and Evidence (hereinafter "Rules"). The request for excusal is based upon the previous involvement of the applicant in the pre-trial phase of the case in the course of which the applicant *inter alia* issued a warrant of arrest and confirmed the charges against Mr Lubanga Dyilo. The

<sup>1</sup> 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, ICC-01/04-01/06-2049.

<sup>2</sup> 2009/PRES/439.

applicant therefore considers herself to have "previously been involved...in that case before the Court" within the meaning of article 41(2)(a) of the Statute.

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### **Decision**

The request for excusal is properly before the Presidency in accordance with article 41 of the Statute and rule 33 of the Rules.

The Presidency finds the request for excusal to be well founded. Article 41(1) of the Statute, in relevant part, provides that "[t]he Presidency may, at the request of a judge, excuse that judge from the exercise of a function under this Statute...". Article 41(2)(a) of the Statute further provides that "[a] judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground. A judge shall be disqualified from a case in accordance with this paragraph if, *inter alia*, that judge has previously been involved in any capacity in that case before the Court...".

Considering the terms of article 41 of the Statute and the previous involvement of the applicant in the pre-trial phase of the case, the request for excusal is granted. The Presidency, pursuant to rule 38 of the Rules and regulations 12 and 15 of the Regulations of the Court, will, for the purpose of the appeals, treat the applicant as unavailable and proceed with her replacement in the Appeals Chamber.

The Presidency notes that the applicant has consented to the Presidency making public the request for excusal and the reasons for its decision upon that request pursuant to rule 33(2) of the Rules. A copy of this decision and the request for excusal will be annexed to the decision of the Presidency replacing the applicant in the Appeals Chamber for the purpose of the appeals.

