

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/04-02/12**
Date: **20 December 2012**

THE PRESIDENCY

Before: Judge Sang-Hyun Song, President
Judge Sanji Mmasenono Monageng, First Vice-President
Judge Cuno Tarfusser, Second Vice-President

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

IN THE CASE OF
THE PROSECUTOR v. MATTHIEU 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
Ms Fatou Bensouda

Counsel for the Defence
Mr Jean-Pierre Kilenda Kakengi Basila
Mr Jean-Marie 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

Amicus Curiae

REGISTRY

Registrar
Ms Silvana Arbia

Counsel Support Section

Deputy Registrar
Mr Didier Preira

Detention Section
Mr Patrick Craig

Victims and Witnesses Unit
Ms Maria Luisa Martinod-Jacome

Other

**Victims Participation and Reparations
Section**

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

NOTING the “Prosecution’s Appeal against Trial Chamber II’s ‘Jugement rendu en application de l’article 74 du Statut’” (“appeal”);¹

RECALLING the request for excusal filed before the Presidency on 16 February 2010 by Judge Akua Kuenyehia and Anita Ušacka (“judges”) pursuant to article 41(1) of the Rome Statute of the International Criminal Court (“Statute”) and rule 33 of the Rules of Procedure and Evidence (“Rules”), wherein the judges requested to be excused, *inter alia*, from sitting in all future appeals in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* (“case”) on the basis of their previous involvement in the pre-trial phase of the case, in the course of which they issued a warrant of arrest for, and confirmed the charges against, Mr Germain Katanga and Mr Mathieu Ngudjolo Chui;²

RECALLING the decisions of the Presidency of 8 March 2010 pursuant to article 41 of the Statute, granting the judges request for excusal in all future appeals in the case on the ground of their previous involvement in the case and treating them as unavailable for the purposes of all appeals in the case;³

NOTING the “Décision relative à la mise en oeuvre de la norme 55 du Règlement de la Cour et prononçant la disjonction des charges portées contre les accusés” issued by the Chamber on 21 November 2012, ordering the severance in respect of the charges against the accused Mr. Mathieu Ngudjolo Chui;⁴

NOTING the “Registry Report on the implementation of Decision ICC-01/04-01/07-3319” of 26 November 2012, creating a separate case record ICC-01/04-02/12 for the case *The Prosecutor v. Mathieu Ngudjolo Chui*;⁵

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

¹ ICC-01/04-02/12-10.

² ICC-01/04-01/07-1949, Annex I.

³ ICC-01/04-01/07-1949, Annex II.

⁴ ICC-01/04-01/07-3319.

⁵ ICC-01/04-02/12-1.

Appeals Division, which in turn is composed of the President and four other judges by virtue of article 39(1) of the Statute;⁶

CONSIDERING rule 38 of the Rules, providing for the replacement of judges;

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

HEREBY DECIDES:

For the purpose of the appeal, to temporarily attach Judge Cuno Tarfusser and Judge Ekaterina Trendafilova, currently assigned to the Pre-Trial Division, to the Appeals Chamber which shall be composed as follows:

Judge Sang-Hyun Song;
 Judge Sanji Mmasenono Monageng;
 Judge Cuno Tarfusser;
 Judge Erkki Kourula; and
 Judge Ekaterina Trendafilova.

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

⁶ Following the decision of the Presidency dated 13 March 2012, the Appeals Division is composed of Judges Sang-Hyun Song, Sanji Mmasenono Monageng, Akua Kuenyehia, Erkki Kourula and Anita Ušacka.

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



Judge Cuno Tarfusser
Second Vice-President

Dated this 20 December 2012

At The Hague, The Netherlands