

ANNEX II

**Cour
Pénale
Internationale**



La Présidence

**International
Criminal
Court**

The Presidency

Internal memorandum
Memorandum interne

To / À	Judge Hans-Peter Kaul	From / De	The Presidency <i>SHS</i>
Date	30 September 2009	Through / Via	
Ref.	2009/PRES/00310-09	Copies	Judge Bruno Cotte
Subject / Objet	Decision on the request to be excused from the exercise of judicial functions in Trial Chamber II, pursuant to article 41 of the Rome Statute		

The Presidency, composed of the President (Judge Sang-Hyun Song), the First Vice-President (Judge Fatoumata Dembele Diarra) and Acting Second Vice President, Judge Elizabeth Odio Benito, hereby decides the request of Judge Hans-Peter Kaul (hereinafter "applicant") of 5 August 2009 to be excused from his functions as a judge of Trial Chamber II and to be replaced as a judge of Trial Chamber II.

The request for excusal is granted.

Factual background

By memorandum dated 5 August 2009, the applicant requested the Presidency to be excused from his functions as a judge of Trial Chamber II, pursuant to article 41(1) of the Rome Statute (hereinafter "Statute") and rule 33 of the Rules of Procedure and Evidence (hereinafter "Rules"), and to be replaced as a judge of Trial Chamber II pursuant to rule 38 of the Rules (hereinafter "request for excusal") before the start of trial in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, currently scheduled to commence on 24 September 2009.¹

¹ 2009/PRES/00310-05; The Presidency has had regard to developments subsequent to the date of the request for excusal and thus notes that this trial is currently scheduled to commence on 24 November 2009 pursuant to the "Décision reportant la date d'ouverture des débats au fond (règle 132-1 du Règlement de procédure et de preuve)", ICC-01/04-01/07-1442.

On 18 August 2009, the applicant further requested the Presidency to excuse him, in his capacity as Second Vice President, from the deliberations of the Presidency on the request for excusal.² The same day, noting article 41(1) of the Statute and rule 33 of the Rules, the remaining members of the Presidency granted that request to prevent a conflict of interest from arising, bearing in mind the position of the applicant both as a member of the Presidency and a judge of Trial Chamber II. Pursuant to regulation 11(2) of the Regulations of the Court (hereinafter "Regulations"), the applicant was treated as being unavailable for the purpose of the deliberations of the Presidency on the request for excusal.³ On 25 August 2009, Judge Odio Benito assumed the responsibilities of the applicant as a member of the Presidency in the request for excusal, in accordance with regulation 11(2) of the Regulations.⁴

The request for excusal is based upon the current and anticipated workload of the applicant, who as a member of Pre-Trial Chamber II and Trial Chamber II is currently seized of three of the four situations before the Court.⁵ Pre-Trial Chamber II is seized of the situations in the Central African Republic and Uganda, as well as the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen*. The applicant has also drawn the attention of the Presidency to his role as the Single Judge of Pre-Trial Chamber II responsible for all victims' issues in relation to the proceedings in the situation in the Central African Republic and in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*.⁶ The applicant is additionally the Single Judge of Pre-Trial Chamber II responsible for all victims' issues in proceedings in the situation in Uganda and in the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen*.⁷ Trial Chamber II, seized of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, is currently scheduled to commence trial proceedings on 24 November 2009 which will lead to an intensification of the work of that Chamber.⁸

² 2009/PRES/00310-06.

³ 2009/PRES/00310-07.

⁴ 2009/PRES/00310-08.

⁵ Request for excusal, page 1.

⁶ Request for excusal, page 1; The Presidency notes that subsequent to its receipt of the request for excusal the full record of the proceedings before Pre-Trial Chamber II in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* has been transmitted to Trial Chamber II pursuant to ICC-01/05-01/08-534.

⁷ Request for excusal, page 2.

⁸ Request for excusal, pages 2 and 3.

Further, the applicant cites the workload resulting from his position as Second Vice President of the Court.⁹ As a member of the Presidency, the applicant is seized of administrative issues falling under the Presidency's responsibility to ensure the proper administration of the Court, with the exception of the Office of the Prosecutor, pursuant to article 38 of the Statute.

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, having considered the matter before it, finds the request for excusal to be well founded. In coming to this conclusion, the Presidency took particular note of the specific responsibilities of the applicant as described above.

In all the particular circumstances, the request for excusal is granted. The Presidency, pursuant to rule 38 of the Rules and regulation 15 of the Regulations, will proceed with the replacement of the applicant in Trial Chamber II.

Noting that the applicant has consented to the request for excusal being made public,¹⁰ pursuant to rule 33(2) of the Rules, it will, in addition to this decision, be annexed to the subsequent decision of the Presidency replacing the applicant in Trial Chamber II.

⁹ Request for excusal, page 1.

¹⁰ Request for excusal, page 3.