

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/04-01/07
Date: 30 September 2009

THE PRESIDENCY

Before: Judge Sang-Hyun Song, President
Judge Fatoumata Dembele Diarra, First Vice-President
Judge Elizabeth Odio Benito, Acting 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 a judge in Trial Chamber II

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 Andrea 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 Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims
Ms Paolina Massida

The Office of Public Counsel for the Defence
Mr Xavier-Jean Keita

States' Representatives

Amicus Curiae

REGISTRY

Registrar
Ms Silvana Arbia

Defence Support Section
Mr Esteban Peralta Losilla

Deputy Registrar
Mr Didier Preira

Victims and Witnesses Unit
Ms Maria Luisa Martinod-Jacome

Detention Section
Mr Anders Backman

**Victims Participation and Reparations
Section**
Ms Fiona McKay

Other
Trial Chamber II

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

NOTING the decision of the Presidency of 29 April 2009, temporarily attaching Judge Hans-Peter Kaul to Trial Chamber II;¹

NOTING the request of Judge Hans-Peter Kaul of 5 August 2009 to be excused from exercising his functions as a judge of Trial Chamber II pursuant to article 41 of the Rome Statute (hereinafter “Statute”) and rule 33 of the Rules of Procedure and Evidence (hereinafter “Rules”) on the basis of his workload as Second Vice-President of the Court and as a judge of Pre-Trial Chamber II (hereinafter “Request”);²

NOTING the request of Judge Hans-Peter Kaul of 18 August 2009, in his capacity as Second Vice President, to be excused from the deliberations of the Presidency on the Request;³ Noting further the decision of the Presidency of 18 August 2009 granting that request to prevent a conflict of interest from arising and treating Judge Hans-Peter Kaul as unavailable for the purposes of the Request pursuant to regulation 11(2) of the Regulations of the Court (hereinafter “Regulations”);⁴

NOTING the assumption by Judge Elizabeth Odio Benito, on 25 August 2009, of the responsibilities of Judge Hans-Peter Kaul as Second Vice President for the purposes of the Request in accordance with regulation 11(2) of the Regulations;⁵

NOTING the decision of the Presidency of 30 September 2009, excusing Judge Hans-Peter Kaul from Trial Chamber II;⁶

CONSIDERING that the functions of a Trial Chamber shall normally be carried out by three judges of the Trial Division in accordance with article 39(2)(b)(ii) of the Statute;

¹ Decision replacing a judge in Trial Chamber II, ICC-01/04-01/07-1086.

² Annex I.

³ 2009/PRES/00310-06.

⁴ 2009/PRES/00310-07.

⁵ 2009/PRES/00310-08.

⁶ Annex II.

CONSIDERING rule 38 of the Rules and regulation 15 of the Regulations providing for the replacement of judges;

HEREBY DECIDES that Judge Christine Van den Wyngaert, assigned to the Trial Division,⁷ shall replace Judge Hans-Peter Kaul in Trial Chamber II with effect as of 30 September 2009 and, as such, Trial Chamber II shall be composed from that date on as follows:

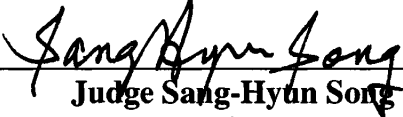
Judge Fatoumata Dembele Diarra;

Judge Bruno Cotte; and

Judge Christine Van den Wyngaert.

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

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



Judge Sang-Hyun Song
President

Dated this 30 September 2009

At The Hague, The Netherlands

⁷ See Press Release of 19 March 2009 entitled “New composition of ICC judicial divisions”, ICC-CPI-20091911-PR399, available on the website of the Court.

ANNEX I

**Cour
Pénale
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Les Chambres

**International
Criminal
Court**

The Chambers

Internal memorandum
Memorandum interne

To À	Presidency	From De	Judge Hans-Peter Kaul <i>Jauls/9/09</i>
Date	5 August 2009	Through Via	
Ref.	HPK/06-2009	Copies	Judge Bruno Cotte Judge Fatoumata Diarra
Subject Objet	Request to be excused from functions in Trial Chamber II		

The purpose of this memorandum is to respectfully request that Judge Hans-Peter Kaul be excused, pursuant to article 41(1) of the Rome Statute ("the Statute") and rule 33 of the Rules of Procedure and Evidence ("the Rules"), from his functions in Trial Chamber II, and be replaced as a member of Trial Chamber II in accordance with rule 38 of the Rules.

Judge Hans-Peter Kaul is currently a member of Pre-Trial Chamber II and Trial Chamber II. Judge Hans-Peter Kaul is also, as Second Vice-President, a member of the Presidency, with a term of office from 11 March 2009 to 10 March 2012.

With regard to his functions of Pre-Trial Chamber II, it is recalled that Pre-Trial Chamber II is competent in the Central African Republic and Uganda situations and any cases emanating thereof. As to the situation in the Central African Republic, Pre-Trial Chamber II continues to be seized with the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* and related proceedings after the Chamber's "Decision pursuant to article 61(7)(a) and (b) of the Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo"¹ of 15 June 2009.

In addition, Judge Hans-Peter Kaul continues to be Single Judge of Pre-Trial Chamber II responsible for all victims' issues in relation to the proceedings of the situation in the Central African Republic and the case of *The Prosecutor v. Jean-*

¹ Pre-Trial Chamber II, ICC-01/05-01/08-424.

Pierre Bemba Gombo.² Likewise, Judge Hans-Peter Kaul continues to be Single Judge of Pre-Trial Chamber II responsible for all victims' issues in relation to the proceedings of the situation in Uganda and the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen*.³

With regard to his functions in Trial-Chamber II, it is recalled that Judge Hans-Peter Kaul, currently assigned to the Pre-Trial Division, was temporarily attached by decision of the Presidency dated 29 April 2009 to the Trial Division in order to replace Judge Fumiko Saiga in Trial Chamber II, after the passing of Judge Fumiko Saiga on 24 April 2009.⁴ It is also recalled that the purpose of this temporary attachment of Judge Hans-Peter Kaul to the Trial Division and to Trial Chamber II was to ensure the proper functioning of this Chamber in all judicial proceedings and preparations for the commencement of the trial in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* scheduled for 24 September 2009.

Concerning his functions in the Presidency, Judge Hans-Peter Kaul, as Second Vice-President, continues to be involved in the daily work of the Presidency. Furthermore, he continues to be seized with a multitude of administrative issues pertaining to the responsibilities of the Presidency to ensure the proper administration of the Court, with the exception of the Office of the Prosecutor, in conformity with article 38(3)(a) of the Statute. Also, Judge Hans-Peter Kaul continues to be the representative of the Presidency in the Permanent Premises Committee and continues to follow the work and all activities pertaining to the project of the future permanent premises of the Court.

As a result, Judge Hans-Peter Kaul, as member of Pre-Trial Chamber II and Trial Chamber II is currently assigned to perform his functions in three out of the four situations in which the Prosecutor has decided to conduct investigations. It is foreseeable that the start of the trial proceedings in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, scheduled for 24 September 2009, will lead to a further and demanding intensification of all related work of Trial Chamber II. In addition, as Second Vice-President responsible for administrative issues within the Presidency, he continues to be faced with the workload arising out of this responsibility.

² Pre-Trial Chamber II, ICC-01/05-24 and Pre-Trial Chamber II, ICC-01/05-01/08-393.

³ Pre-Trial Chamber II, ICC-02/04-184 and Pre-Trial Chamber II, ICC-02/04-01/05-385.

⁴ Presidency, ICC-01/04-01/07-1086.

Given the current workload of Judge Hans-Peter Kaul as outlined above, he respectfully requests the Presidency, in order to guarantee the good administration of justice, to be excused from his functions in Trial Chamber II and to be replaced as a member of Trial Chamber II as soon as possible before the start of the trial proceedings of this chamber, scheduled for 24 September 2009.

Judge Hans-Peter Kaul has no objection to making this request public, pursuant to rule 33 of the Rules, should the Presidency decide to do so.

ANNEX II



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.