

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-02/05-03/09**

Date: **16 March 2012**

**THE PRESIDENCY**

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

**SITUATION IN DARFUR, SUDAN**

**IN THE CASE OF**  
***THE PROSECUTOR v. ABDALLAH BANDA ABAKAER NOURAIN AND SALEH***  
***MOHAMMED JERBO JAMUS***

**Public**

**Decision replacing a judge in Trial Chamber IV**

**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**  
Mr Karim A.A. Khan  
Mr Nicholas Koumjian

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for Victims**  
Ms Paolina Massidda

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

**States Representatives**

**Amicus Curiae**

## **REGISTRY**

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**Registrar**  
Ms Silvana Arbia

**Deputy Registrar**  
Mr Didier Preira

**Victims and Witnesses Unit**  
Ms Maria Luisa Martinod-Jacome

**Defence Support Section**  
Mr Esteban Peralta Losilla

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

**Other**  
Trial Chamber IV

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

**NOTING** its decision of 16 March 2011 constituting Trial Chamber IV and referring to it the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*; noting further that by that decision Trial Chamber IV was composed of Judge Fatoumata Dembele Diarra, Judge Joyce Aluoch and Judge Silvia Fernández de Gurmendi;<sup>1</sup>

**NOTING** the request of Judge Fatoumata Dembele Diarra of 14 February 2012 to be excused from exercising her functions as a judge of Trial Chamber IV (hereinafter “Request”) 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 her unavailability by reason of the end of her term of office as of 10 March 2012;<sup>2</sup>

**NOTING** also that in the Request, Judge Fatoumata Dembele Diarra, then First Vice-President, additionally requested to be excused from the deliberations of the Presidency on her Request;<sup>3</sup> Noting further the decision of the Presidency on 15 February 2012 granting the latter request to prevent a conflict of interest from arising and treating Judge Fatoumata Dembele Diarra as unavailable for the purposes of deliberations of the Presidency on the Request pursuant to regulation 11(2) of the Regulations of the Court (hereinafter “Regulations”);

**NOTING** the assumption by Judge Elizabeth Odio Benito, on 22 February 2012, of the responsibilities of Judge Fatoumata Dembele Diarra in the Presidency for the purposes of the Request in accordance with regulation 11(2) of the Regulations;

**NOTING** the decision of the Presidency of 6 March 2012, excusing Judge Fatoumata Dembele Diarra from Trial Chamber IV;<sup>4</sup>

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<sup>1</sup> ICC-02/05-03/09-124.

<sup>2</sup> Annex I.

<sup>3</sup> Annex I.

<sup>4</sup> Annex II.

**CONSIDERING** that the functions of the 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;

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

***HEREBY***

**DECIDES** that Trial Chamber IV shall henceforth be composed as follows:

Judge Joyce Aluoch

Judge Silvia Fernández de Gurmendi

Judge Chile Eboe-Osuji

**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

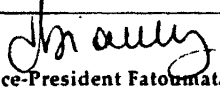
Dated this 16 March 2012

At The Hague, The Netherlands

# **ANNEX I**



**Internal memorandum  
Memorandum interne**

<b>To   À</b>	President Sang-Hyun Song Vice-President Hans-Peter Kaul	<b>From   De</b>	 Vice-President Fatoumata Dembele Diarra
<b>Date</b>	14 February 2012	<b>Through   Via</b>	
<b>Ref.</b>	2012/PRES/76	<b>Copies</b>	
<b>Subject   Objet</b>	Request to be excused from Trial Chamber IV		

It is respectfully requested that Judge Fatoumata Dembele Diarra be excused, pursuant to article 41 of the Rome Statute ("the Statute") and rule 33 of the Rules of Procedure and Evidence ("the Rules"), from her functions in Trial Chamber IV, and be replaced as a member of Trial Chamber IV in accordance with rule 38 of the Rules.

Judge Diarra is currently a member of Trial Chamber II and Trial Chamber IV, as well as the Presidency.

With regard to her functions in Trial Chamber II, which is currently seized of the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, noting that the hearing of this trial has already commenced and that closing statements are due on 12 May 2012, Judge Diarra assumes, in conformity with article 36 (10) of the Statute, the extension of her mandate as her term of office is due to expire on 10 March 2012.

With regard to her functions in Trial Chamber IV, which is currently seized of the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, a trial date has yet to be set. In this respect, the hearing of the trial has not yet commenced and it is foreseeable that the start of the trial will commence later in 2012. Noting the unavailability of Judge Diarra, by reason of the end of her term of office, she would be unable to engage in the trial before Trial Chamber IV.

Given the unavailability of Judge Diarra as outlined above, she respectfully requests the Presidency, in order to guarantee the good administration of justice, to be excused from her functions in Trial Chamber IV and be replaced as a member of Trial Chamber IV.

Judge Diarra further requests to be excused from the deliberations of the Presidency on the issue of her excusal, as the impression could be given of a possible conflict of interest given her position as a member of the Presidency.

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

## **ANNEX 2**





Internal memorandum  
Memorandum interne

To   À	First Vice-President Fatoumata Dembele Diarra	From   De	The Presidency
Date	6 March 2012	Through   Via	
Ref.	2012/PRES/76-4	Copies	
Subject   Objet	Decision on the request to be excused from the exercise of judicial functions in Trial Chamber IV pursuant to article 41 of the Rome Statute		

*6.03.12 Sang  
Kaul*

The Presidency, composed of the President (Judge Sang-Hyun Song), the Second Vice President (Judge Hans-Peter Kaul) and Judge Elizabeth Odio Benito, hereby decides upon the request of Judge Fatoumata Dembele Diarra ("applicant") of 14 February 2012 to be excused from her functions as a judge of Trial Chamber IV and to be replaced as a judge of Trial Chamber IV ("request for excusal").

The request for excusal is granted.

#### Factual background

By memorandum dated 14 February 2012, the applicant requested the Presidency to be excused from her functions as a judge of Trial Chamber IV, pursuant to article 41(1) of the Rome Statute ("the Statute") and rule 33 of the Rules of Procedure and Evidence ("the Rules"), and to be replaced as a judge of Trial Chamber IV pursuant to rule 38 of the Rules before the commencement of any trial hearing in the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain and Salch Mohammed Jerbo Jamus*. The applicant additionally requested the Presidency to excuse her, in her capacity as First Vice-President, from deliberations of the Presidency on the request for excusal.<sup>1</sup> On 15 February 2012, noting article 41(1) of the Statute and rule 33 of the Rules, the remaining members of the Presidency granted the latter request in order to prevent a conflict of interest from arising, bearing in mind the position of the applicant as both a member of the Presidency and a judge of Trial Chamber IV.

<sup>1</sup> 2012/PRES/76.

Pursuant to regulation 11(2) of the Regulations of the Court ("Regulations"), the applicant was treated as unavailable for the purpose of the deliberations of the Presidency on the request for excusal.<sup>2</sup> On 22 February 2012, 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.<sup>3</sup>

The request for excusal is based upon the unavailability of the applicant to remain a member of Trial Chamber IV which is currently seized of the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, by reason of the end of her term of office in the year 2012. Noting the terms of article 36(10), the applicant draws attention to the fact that a trial date has yet to be set, contrary to the trial in the case of *The Prosecutor v. Germain Katanga and Matheiew Ngudjolo Chui*, the hearing of which has already commenced.

### **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 note of the unavailability of the applicant to remain a member of Trial Chamber IV noting that the extension of her judicial mandate, pursuant to article 36(10) of the Statute, relates only to the completion of the trial in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* the hearing of which as already commenced.

In all the particular circumstances, the request for excusal is granted.

Noting that the mandate of the applicant shall ordinarily expire on 10 March 2012, this excusal request shall take effect upon the aforementioned expiration.

The Presidency, pursuant to rule 38 of the Rules and regulation 15 of the Regulations, will thereafter proceed with the replacement of the applicant in Trial Chamber IV.

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<sup>2</sup> 2012/PRES/76-2.

<sup>3</sup> 2012/PRES/76-3.

Noting that the applicant has consented to the request for excusal being made public,<sup>4</sup> 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 IV.

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<sup>4</sup> 2012/PRT/5/76