



Original: **English**

**No.: ICC-01/04-01/07**

**Date: 12 May 2016**

**THE PRESIDENCY**

**Before:** Judge Silvia Fernández de Gurmendi, President  
Judge Joyce Aluoch, First Vice-President  
Judge Kuniko Ozaki, Second Vice-President

**SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO**

**IN THE CASE OF  
*THE PROSECUTOR v. GERMAIN KATANGA***

**Public**

**Decision replacing a judge in the Appeals Division**

**Document to be notified in accordance with regulation 31 of the *Regulations of the Court***  
**to:**

**Office of the Prosecutor**

Ms Fatou Bensouda  
Mr James Stewart  
Ms Helen Brady

**Defence**

Mr David Hooper  
Ms Caroline Buisman

**Legal Representatives of Victims**

Mr Fidel Nsita Luvengika

**State**

Democratic Republic of the Congo

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Other**

Appeals Division

The Presidency of the International Criminal Court (“Court”), notes the “Defence Notice of Appeal against the Presidency ‘Decision pursuant to article 108(1) of the Rome Statute’”<sup>1</sup> (“Notice”) filed by the defence for Mr. Germain Katanga before the Appeals Chamber of the Court on 9 May 2016, in the case of *The Prosecutor v. Germain Katanga*, by which Mr. Katanga purports to appeal against a decision of the Presidency taken in the exercise of the latter’s enforcement responsibilities under Part 10 of the Rome Statute (“Statute”) and rule 199 of the Rules of Procedure and Evidence (“Rules”), namely, the Presidency’s decision pursuant to article 108 of the Statute approving the prosecution of Mr. Katanga in the Democratic Republic of the Congo (“Decision”).<sup>2</sup>

The Presidency notes the unprecedented nature of the Notice, which raises significant issues related to the competence of different organs of the Court within the structure of the Statute. Regardless of the manner in which the Appeals Division decides to deal with the Notice, a situation arises in which the President, who signed the Decision in the exercise of her statutory functions as a member of the Presidency, is now also seized of the matter in her capacity as a judge of the Appeals Division. The Presidency considers that this creates a conflict not envisaged by article 41 of the Statute, which addresses, *inter alia*, conflicts that may arise from a judge’s previous involvement in any capacity in the case before the Court. In view of this exceptional situation, the Presidency considers that it is in the interest of the proper administration of the Court to replace President Fernandez in the Appeals Division and attach another judge on a temporary basis to deal with this matter.

The Presidency notes rule 38 of the Rules, whereby a judge may be replaced for an objective and justified reason, and regulation 15(1) of the Regulations of the Court (“Regulations”), by which the Presidency shall be responsible for the replacement of a judge pursuant to rule 38. The Presidency further notes regulation 12 of the Regulations, pertaining to the unavailability of a member of the Appeals Chamber.

The Presidency notes also its policy in respect of interlocutory appeals by which replacements in the Appeals Chamber occur by drawing lots from a roster of eligible replacement judges. The Presidency considers it appropriate to follow the same procedure in the present circumstances. Accordingly, lots were drawn at the Presidency, in the presence of

<sup>1</sup> ICC-01/04-01/07-3684; See also “Defence Document in Support of Appeal Against the Presidency Decision pursuant to article 108(1) of the Rome Statute”, 11 May 2016, ICC-01/04-01/07-3685-Red.

<sup>2</sup> Presidency, *The Prosecutor v. Germain Katanga*, “Decision pursuant to article 108(1) of the Rome Statute”, 7 April 2016, ICC-01/04-01/07-3679.

Presidency staff members, by which Judge Raul C. Pangalangan was selected as the replacement for Judge Fernandez for the purpose of the Appeals Division's consideration of matters arising from the Notice. In preparing the roster of eligible replacement judges, due attention was paid to potential conflicts, in order to safeguard the appearance of impartiality, as well as the workload of eligible replacement judges, with presiding judges of active trials excluded from the roster.

The Presidency hereby decides to temporarily attach Judge Raul C. Pangalangan, currently assigned to the Pre-Trial Division, to the Appeals Division for the purpose of consideration of matters arising from the Notice.

The Presidency hereby decides that the Appeals Division shall be composed as follows for the consideration of matters arising from the Notice:

Judge Sanji Mmasenono Monageng

Judge Christine Van den Wyngaert


Judge Howard Morrison

Judge Piotr Hofma ski

Judge Raul C. Pangalangan

The Presidency hereby decides that, in the event that the Appeals Division considers that any matters arising from the Notice must be addressed by the Appeals Chamber, the Appeals Chamber shall have the same composition as specified above.

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


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**Judge Silvia Fernández de Gurmendi**  
**President**

Dated this 12 May 2016

At The Hague, The Netherlands