

**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**

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**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”);<sup>1</sup>

**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;<sup>2</sup>

**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;<sup>3</sup>

**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;<sup>4</sup>

**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*;<sup>5</sup>

**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

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<sup>1</sup> ICC-01/04-02/12-10.

<sup>2</sup> ICC-01/04-01/07-1949, Annex I.

<sup>3</sup> ICC-01/04-01/07-1949, Annex II.

<sup>4</sup> ICC-01/04-01/07-3319.

<sup>5</sup> 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;<sup>6</sup>

**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.

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<sup>6</sup> 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.



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**Judge Cuno Tarfusser**  
**Second Vice-President**

Dated this 20 December 2012

At The Hague, The Netherlands