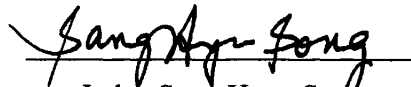


### Dissenting Opinion of Judge Sang-Hyun Song

1. With today's "Decision on the admissibility of the appeal against the 'Decision on the application for the interim release of detained Witnesses DRC-D02-P0236, DRC-D02-P0228 and DRC-D02-P0350'",<sup>1</sup> the majority of the Appeals Chamber decided to reject as inadmissible the Detained Witnesses' appeal against the "Decision on the application for the interim release of detained Witnesses DRC-D02-P0236, DRC-D02-P0228 and DRC-D02-P0350". I disagree with that decision for the reasons set out in my dissenting opinion attached to it.<sup>2</sup> I would have reversed the Trial Chamber's decision and remanded the matter to it, with the specific instruction to the Trial Chamber to decide on the lawfulness of the detention of the Detained Witnesses.

2. For that reason, I am unable to join my colleagues' decision to consider the question of the detention of the Detained Witnesses, *proprio motu*, in the context of the case *Prosecutor v. Mathieu Ngudjolo Chui*.

  
Judge Sang-Hyun Song

Dated this 20th day of January 2014

At The Hague, The Netherlands

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<sup>1</sup> *Prosecutor v. Katanga*, ICC-01/04-01/07-3424 (OA 14).

<sup>2</sup> ICC-01/04-01/07-3424-Anx1 (OA 14).