

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 28 March 2013

THE PRESIDENCY

Before: Judge Sang-Hyun Song, President
Judge Cuno Tarfusser, Second Vice-President
Judge Akua Kuenyehia

SITUATION IN DARFUR, SUDAN

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

**Public Document
with 2 Annexes**

Decision replacing a judge in the Appeals Chamber

Decision/Order/Judgment 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 Karim A.A. Khan QC
Mr Nicholas Koumjian

Legal Representatives of the Victims
Ms Hélène Cissé
Mr Jens Dieckmann

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar
Ms Silvana Arbia

Counsel Support Section

Deputy Registrar
Mr Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

THE PRESIDENCY of the International Criminal Court ("Court");

NOTING that the "Decision on the Defence Application for Leave to Appeal the 'Decision on the Defence's Request for Disclosure of Documents in the Possession of the Office of the Prosecutor'"¹ in the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus* ("Case") has given rise to an appeal before the Appeals Chamber ("Appeal");

NOTING the composition of the Appeals Chamber as set out in article 39(2)(b)(i) of the Rome Statute of the Court Statute ("Statute"), pursuant to which the Appeals Chamber shall be composed of all the judges of the Appeals Division, which in turn is composed of the President of the Court and four other judges by virtue of article 39(1) of the Statute;

NOTING that, as of 13 March 2012, the Appeals Chamber is composed of Judges Sang-Hyun Song, Sanji Mmasenono Monageng, Akua Kuenyehia, Erkki Kourula and Anita Ušacka;

NOTING the request of Judge Monageng of 27 March 2013 ("Request")² to be excused from exercising her functions as a judge of the Appeals Chamber in the Appeal and in all future appeals in the Case pursuant to article 41 of the Statute and rule 33 of the Rules of Procedure and Evidence ("Rules") on the basis of her previous involvement in the pre-trial phase of the Case, in the course of which she sat on the bench that: a) issued summonses to appear³ and b) rendered the "Decision on the confirmation of charges";⁴

¹ ICC-02/05-03/09-457.

² Annex I.

³ ICC-02/05-03-09-1.

⁴ ICC-02/05-03/09-121-Corr.

NOTING also that within the same Request, Judge Monageng asked to be excused from the deliberation of the Presidency regarding the Request;

NOTING further the decision of the Presidency on 28 March 2013 granting this latter request and treating Judge Monageng as unavailable for the purposes of deliberations of the Presidency on the Request pursuant to regulation 11(2) of the Regulations of the Court ("Regulations") in order to prevent a conflict of interest from arising;⁵

NOTING the assumption by Judge Kuenyehia on 28 March 2013, of the responsibilities of Judge Monageng in the Presidency for the purposes of the Request in accordance with regulation 11(2) of the Regulations;⁶

NOTING the decision of the Presidency of 28 March 2013, granting the Request of Judge Monageng for excusal from the Appeals Chambers for the purposes of this Appeal and all future appeals in the Case;⁷

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

⁵ 2013/PRES/00147-2.

⁶ 2013/PRES/00147-3.

⁷ Annex 2.

HEREBY DECIDES:

For the purpose of this Appeal, to temporarily attach Judge Ekaterina Trendafilova, currently assigned to the Pre-Trial Division, to the Appeals Division, which shall be composed as follows:

Judge Sang-Hyun Song;
Judge Akua Kuenyehia;
Judge Erkki Kourula;
Judge Anita Ušacka; and
Judge Ekaterina Trendafilova.

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 28 March 2013

At The Hague, Netherlands