

ANNEX II

**Cour
Pénale
Internationale**



La Présidence

The Presidency

**International
Criminal
Court**

**Internal memorandum
Memorandum interne**

To À	Judge Akua Kuenyehia Judge Anita Ušacka	From De	The Presidency <i>SHS</i>
Date	4 August 2009	Through Via	
Ref.	2009/PRES/00310-4	Copies	Judge Daniel David Ntanda Nsereko
Subject Objet	Decision on the request to be excused from sitting on the appeal against the decision of Trial Chamber II in the case of <i>The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui</i> pursuant to article 41 of the Rome Statute		

The Presidency, composed of the President (Judge Sang-Hyun Song), the First Vice-President (Judge Fatoumata Dembele Diarra) and the Second Vice-President (Judge Hans-Peter Kaul), hereby decides the request of Judge Akua Kuenyehia and Judge Anita Ušacka of the Appeals Chamber (hereinafter “applicants”) of 28 July 2009 to be excused from sitting on the appeal of the Prosecutor of 28 July 2009 against the decision rendered by Trial Chamber II on 24 June 2009 in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* (hereinafter “appeal”)¹.

The request for excusal is granted.

Factual Background

On 28 July 2009, by memoranda classified as confidential, the applicants requested the Presidency to excuse them from sitting on the appeal, pursuant to article 41 of the Rome Statute (hereinafter “Statute”) and rule 33 of the Rules of Procedure and Evidence (hereinafter “Rules”). The request for excusal is based upon the previous involvement of the applicants in the pre-trial phase of the case against Mr Germain Katanga and Mr Mathieu Ngudjolo Chui, in the course of which the applicants, *inter alia*, issued warrants of arrest and confirmed the charges against the aforementioned persons. The applicants therefore consider themselves to have “previously been involved ... in that case before the Court” within the meaning of article 41(2)(a) of the Statute.

¹ ICC-01/04-01/07-1340-Conf-Exp.

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 finds the request for excusal to be well founded. Article 41(1) of the Statute, in relevant part, provides that “[t]he Presidency may, at the request of a judge, excuse that judge from the exercise of a function under this Statute...”. Article 41(2)(a) of the Statute further provides that “[a] judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground. A judge shall be disqualified from a case in accordance with this paragraph if, *inter alia*, that judge has previously been involved in any capacity in that case before the Court...”.

The applicants have requested to be excused from sitting on the appeal. Considering the terms of articles 41(1) and 41(2)(a) of the Statute and the previous involvement of the applicants in the pre-trial phase of the case against Mr Germain Katanga and Mr Mathieu Ngudjolo Chui, the request for excusal is granted. The Presidency, pursuant to rule 38 of the Rules and regulations 12 and 15 of the Regulations of the Court, shall, for the purpose of the appeal, treat the applicants as unavailable and proceed with their replacement in the Appeals Chamber.

The Presidency notes that the applicants have consented to the Presidency making public the request for excusal and the reasons for its decision on the request for excusal in accordance with rule 33(2) of the Rules. A copy of this decision and the request for excusal will be annexed to the decision of the Presidency replacing the applicants in the Appeals Chamber for the purpose of the appeal.