

## **ANNEX 2**



Internal memorandum  
Memorandum interne

To   À	First Vice-President Fatoumata Dembele Diarra	From   De	The Presidency
Date	6 March 2012	Through   Via	
Ref.	2012/PRES/76-4	Copies	
Subject   Objet	Decision on the request to be excused from the exercise of judicial functions in Trial Chamber IV pursuant to article 41 of the Rome Statute		

*Sang-Hyun Song*  
*Hans-Peter Kaul*  
*Elizabeth Odio Benito*  
7/3/12

The Presidency, composed of the President (Judge Sang-Hyun Song), the Second Vice President (Judge Hans-Peter Kaul) and Judge Elizabeth Odio Benito, hereby decides upon the request of Judge Fatoumata Dembele Diarra ("applicant") of 14 February 2012 to be excused from her functions as a judge of Trial Chamber IV and to be replaced as a judge of Trial Chamber IV ("request for excusal").

The request for excusal is granted.

#### **Factual background**

By memorandum dated 14 February 2012, the applicant requested the Presidency to be excused from her functions as a judge of Trial Chamber IV, pursuant to article 41(1) of the Rome Statute ("the Statute") and rule 33 of the Rules of Procedure and Evidence ("the Rules"), and to be replaced as a judge of Trial Chamber IV pursuant to rule 38 of the Rules before the commencement of any trial hearing in the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain and Salch Mohammed Jerbo Jamus*. The applicant additionally requested the Presidency to excuse her, in her capacity as First Vice-President, from deliberations of the Presidency on the request for excusal.<sup>1</sup> On 15 February 2012, noting article 41(1) of the Statute and rule 33 of the Rules, the remaining members of the Presidency granted the latter request in order to prevent a conflict of interest from arising, bearing in mind the position of the applicant as both a member of the Presidency and a judge of Trial Chamber IV.

<sup>1</sup> 2012/PRES/76.

Pursuant to regulation 11(2) of the Regulations of the Court ("Regulations"), the applicant was treated as unavailable for the purpose of the deliberations of the Presidency on the request for excusal.<sup>2</sup> On 22 February 2012, Judge Odio Benito assumed the responsibilities of the applicant as a member of the Presidency in the request for excusal, in accordance with regulation 11(2) of the Regulations.<sup>3</sup>

The request for excusal is based upon the unavailability of the applicant to remain a member of Trial Chamber IV which is currently seized of the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, by reason of the end of her term of office in the year 2012. Noting the terms of article 36(10), the applicant draws attention to the fact that a trial date has yet to be set, contrary to the trial in the case of *The Prosecutor v. Germain Katanga and Matheiew Ngudjolo Chui*, the hearing of which has already commenced.

### **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, having considered the matter before it, finds the request for excusal to be well founded. In coming to this conclusion, the Presidency took note of the unavailability of the applicant to remain a member of Trial Chamber IV noting that the extension of her judicial mandate, pursuant to article 36(10) of the Statute, relates only to the completion of the trial in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* the hearing of which as already commenced.

In all the particular circumstances, the request for excusal is granted.

Noting that the mandate of the applicant shall ordinarily expire on 10 March 2012, this excusal request shall take effect upon the aforementioned expiration.

The Presidency, pursuant to rule 38 of the Rules and regulation 15 of the Regulations, will thereafter proceed with the replacement of the applicant in Trial Chamber IV.

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<sup>2</sup> 2012/PRES/76-2.

<sup>3</sup> 2012/PRES/76-3.

Noting that the applicant has consented to the request for excusal being made public,<sup>4</sup> pursuant to rule 33(2) of the Rules, it will, in addition to this decision, be annexed to the subsequent decision of the Presidency replacing the applicant in Trial Chamber IV.

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<sup>4</sup> 2012/PRTS/76