

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/04-01/06**  
Date: **23 September 2009**

**THE PRESIDENCY**

**Before:** Judge Sang-Hyun Song, President  
Judge Fatoumata Dembele Diarra, First Vice-President  
Judge Hans-Peter Kaul, Second Vice-President

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO  
IN THE CASE OF  
*THE PROSECUTOR v. THOMAS LUBANGA DYILO***

**Public**

**Decision replacing a judge 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**

Mr Luis Moreno Ocampo  
Ms Fatou Bensouda

**Counsel for the Defence**

Ms Catherine Mabilie  
Mr Jean-Marie Biju Duval

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for Victims**

Ms Paolina Massidda

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

Mr Xavier-Jean Keita

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms Silvana Arbia

**Defence Support Section**

Mr Esteban Peralta Losilla

**Deputy Registrar**

Mr Didier Preira

**Detention Section**

Mr Anders Backman

**Victims and Witnesses Unit**

Ms Maria Luisa Martinod-Jacome

**Other**

Appeals Chamber  
Trial Chamber I

**Victims Participation and Reparations  
Section**

Ms Fiona McKay

**THE PRESIDENCY** of the International Criminal Court (“Court”);

**NOTING** Trial Chamber I’s “Decision on the prosecution and the defence applications for leave to appeal the ‘Decision giving notice to the parties and participants that the legal characterisation of the facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court’” of 3 September 2009<sup>1</sup> in the case of *The Prosecutor v. Thomas Lubanga Dyilo* (“case”) granting leave to appeal against a decision of Trial Chamber I of 14 July 2009 (“appeals”);<sup>2</sup>

**NOTING** the composition of the Appeals Chamber as set out in article 39(2)(b)(i) of the Rome Statute of the International Criminal Court (“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, following the fourteenth<sup>3</sup> and fifteenth plenary sessions of the judges held on 13 March 2009 and 8 June 2009 respectively, the Appeals Division is composed of Judges Sang-Hyun Song, Akua Kuenyehia, Erkki Kourula, Anita Ušacka and Daniel David Ntanda Nsereko;

**NOTING** the request for excusal filed before the Presidency on 4 September 2009 by Judge Akua Kuenyehia (“judge”) pursuant to article 41(1) of the Statute and rule 33 of the Rules of Procedure and Evidence (“Rules”),<sup>4</sup> wherein the judge requested to be excused from sitting on the appeals on the basis of her previous involvement in the pre-trial phase of the case, in the course of which the judge issued a warrant of arrest and confirmed the charges against the aforementioned person;

**NOTING** the decision of the Presidency of 15 September 2009 pursuant to article 41,<sup>5</sup> granting the request for excusal on the ground of the judge’s previous involvement in the case and treating her as unavailable for the purpose of the appeals;

**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.

<sup>1</sup> ICC-01/04-01/06-2107.

<sup>2</sup> ICC-01/04-01/06-2049.

<sup>3</sup> See Press Release of 19 March 2009 entitled “New composition of ICC judicial divisions”, ICC-CPI-20091911-PR399, available on the website of the Court.

<sup>4</sup> Annex I.

<sup>5</sup> Annex II.

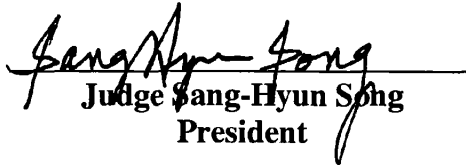
**HEREBY DECIDES:**

- i. to temporarily attach Judge Christine Van den Wyngaert, currently assigned to the Trial Division, to the Appeals Chamber for the purpose of the appeals;
- ii. that the Appeals Chamber shall, for the purpose of the appeals, be composed as follows:

Judge Sang-Hyun Song;  
Judge Erkki Kourula;  
Judge Anita Ušacka;  
Judge Daniel David Ntanda Nsereko; and  
Judge Christine Van den Wyngaert.

**ORDERS** the Registrar to file and notify this decision to the relevant parties and participants in the case.

Done in both English and French, the English version being authoritative.

  
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Judge Sang-Hyun Song  
President

Dated this 23 September 2009

At The Hague, The Netherlands