

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09-01/11

ICC-01/09-02/11

Date: 26 April 2013

THE PRESIDENCY

Before: Judge Sang-Hyun Song, President
Judge Sanji Mmasenono Monageng, First Vice-President
Judge Cuno Tarfusser, Second Vice-President

**SITUATION IN THE REPUBLIC OF KENYA
IN THE CASES OF**

**THE PROSECUTOR
V. WILLIAM SAMOEI RUTO AND JOSHUA ARAP SANG and**

**THE PROSECUTOR
V. UHURU MUIGAI KENYATTA**

**Public
With two public annexes**

Decision replacing a judge in Trial Chamber V

Decision 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

Legal Representatives of the Victims

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

Mr Herman von Hebel

Counsel Support Section

Deputy Registrar

Mr Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

**Other
Trial Chamber V**

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

NOTING the Decision on the Presidency of 29 March 2012 attaching Judge Christine Van den Wyngaert to Trial Chamber V;¹

NOTING the request of Judge Christine Van den Wyngaert of 8 April 2013 to be excused from exercising her functions as a judge of Trial Chamber V pursuant article 41 of the Rome Statute (hereinafter “Statute”) and rule 33 of the Rules of Procedure and Evidence (hereinafter “Rules”);²

NOTING the decision of the Presidency of 26 April 2013, excusing Judge Christine Van den Wyngaert from Trial Chamber V;³

CONSIDERING that the functions of the Trial Chamber shall normally be carried out by three judges of the Trial Division in accordance with article 39(2)(b)(ii) of the Statute;

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

HEREBY DECIDES that Judge Robert Fremr, assigned to the Trial Division,⁴ shall replace Judge Christine Van den Wyngaert in Trial Chamber V with immediate effect and, as such, Trial Chamber V shall be composed as follows:

Judge Kuniko Ozaki,

Judge Fremr and

Judge Chile Eboe-Osuji.

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

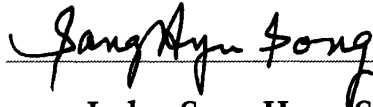
¹ICC-01/09-01/11-406. See also ICC-01/09-02/11-414.

² Annex I.

³ Annex II.

⁴ ICC-CPI-20120315-PR778.

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



Judge Sang-Hyun Song
President

Dated this 26 April 2013

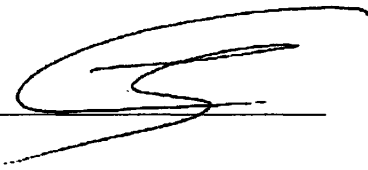
At The Hague, Netherlands

ANNEX I



REDACTED

Internal Memorandum

From:	Christine Van den Wyngaert	
To:	Presidency	
CC	Judge Kuniko Ozaki, Judge Chile Eboe-Osuji	
Date:	8 April 2013	
Subject:	Request to be excused from functions in Trial Chamber V	

1. In March 2012, I was assigned to the Pre-Trial Division [Press Release ICC-CPI-20120315-PR778 of 14 March 2012]. I am currently serving in Pre-Trial Chamber I [Presidency, "Decision on the constitution of Pre-Trial Chambers and on the assignment of the Democratic Republic of the Congo, Darfur, Sudan and Côte d'Ivoire situations", 15 March 2012, ICC-02/11-37]. The workload arising from the Ivory Coast and Libya situations in Pre-Trial Chamber I is very high. Meanwhile, I continue to serve in the Trial Division as a member of Trial Chamber II (Katanga case). As a result of the Judgment of the Appeals Chamber of 27 March 2013 (ICC-01/04-01/07 OA 13), proceedings in that case have resumed and it may take many months before the article 74 decision is rendered.

2. On 30 March 2012, I was requested to accept temporary assignment to Trial Chamber V, in view of the limited capacity of judges in the Trial Division, as the newly elected judges assigned to that Division had not yet been called to The Hague. I accepted this assignment on the clear understanding that it would be limited in time and only for the purposes of the *preparation* of the two Kenya trials.

3. As a result, I have been, since almost a year, seized of 5 different cases: Katanga & Ngudjolo, Ivory Coast, Lybia and the two Kenya cases. This is, by all standards, an

unprecedented and unusually high workload for a judge. With the upcoming trials in the two Kenya cases, a significant further duty would be added to my already extended workload. Under those circumstances, and despite all best efforts, I would simply not have the time to devote the necessary attention to all of the cases I am currently assigned to. I would therefore be forced to carry out my duties in a manner unbecoming the importance of the task.

4. [REDACTED WITH ANNEX]

5. For these reasons, I ask the Presidency, in order to guarantee the good administration of justice, to excuse me from my functions in Trial Chamber V (article 41(1) of the Rome Statute ("Statute") and rule 33 of the Rules of Procedure and Evidence ("Rules")) and to replace me as a member of this chamber (rule 38 of the Rules) as soon as possible before the start of the trial proceedings, which are now imminent.

ANNEX II



**Cour
Pénale
Internationale**
**International
Criminal
Court**

La Présidence
The Presidency

REDACTED

**Internal memorandum
Memorandum interne**

To À	Judge Christine Van den Wyngaert	From De	The Presidency <i>Shs</i>
Date	26 April 2013	Through Via	
Ref.	2013/PRES/00063-04	Copies	Judge Kuniko Ozaki, Judge Chile Eboe-Osuji
Subject Objet	Decision on the request to be excused from the exercise of judicial functions in Trial Chamber V, pursuant to article 41 of the Rome Statute		

The Presidency, composed of the President (Judge Sang-Huyn Song), the First Vice-President (Judge Sanji Mmasenono Monageng) and the Second Vice-President (Judge Cuno Tarfusser), hereby decides upon the request of Judge Christine Van den Wyngaert (hereinafter "Judge") of 8 April 2013 to be excused from her functions as a judge of Trial Chamber V and to be replaced as a judge of Trial Chamber V.

The request for excusal is granted.

Factual background

By memorandum dated 8 April 2013, the Judge requested the Presidency to excuse her from her functions as a judge of Trial Chamber V, pursuant to article 41(1) of the Rome Statute (hereinafter "Statute") and rule 33 of the Rules of Procedure and Evidence (hereinafter "Rules"), and to be replaced as a judge of Trial Chamber V pursuant to rule 38 of the Rules (hereinafter "request") before the start of the trials in the cases of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* and *The Prosecutor v. Uhuru Muigai Kenyatta* (hereinafter "Kenya cases"), scheduled to commence imminently.

The request for excusal is based upon the current and anticipated workload of the Judge, who as a member of Pre-Trial Chamber I, Trial Chamber II and Trial Chamber V, is currently seized of the situations in Libya and Côte d'Ivoire, the case of *The Prosecutor v. Germain Katanga* and the two Kenya cases.

The Judge indicated that the commencement of the trials in the Kenya cases will lead to an intensification of the work of Trial Chamber V, thereby significantly adding to the Judge's already "unprecedented" heavy workload. The Judge submits that her assignment to that Chamber was temporary, only for the purpose of the preparation of the two Kenya cases for trial. REDACTED

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 to be well founded. In coming to this conclusion the Presidency took particular note of the workload and REDACTED of the Judge as described above.

In all the particular circumstances, the request for excusal is granted. The Presidency, pursuant to rule 38 of the Rules and regulation 15 of the Regulations, will proceed with the replacement of the Judge in Trial Chamber V.

Noting that the Judge has consented to a redacted version of the request for excusal being made public, pursuant to rule 33(2) of the Rules, a redacted version of that document will, in addition to a redacted version of this decision, be annexed to the subsequent decision of the Presidency replacing the Judge in Trial Chamber V.