

**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.

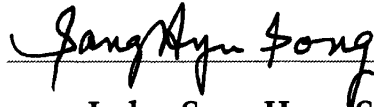
¹ICC-01/09-01/11-406. See also ICC-01/09-02/11-414.

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 unbefitting 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.
