



Original: **English**

No.: **ICC-01/09-02/11**

Date: **26 March 2015**

THE PRESIDENCY

Before: Judge Silvia Fernández de Gurmendi, President
Judge Joyce Aluoch, First Vice-President
Judge Sanji Mmasenono Monageng

SITUATION IN THE REPUBLIC OF KENYA

**IN THE CASE OF
*THE PROSECUTOR v. UHURU MUIGAI KENYATTA***

Public with Public Annex I

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**

Ms Fatou Bensouda
 Mr James Stewart
 Ms Helen Brady

Counsel for Uhuru Muigai Kenyatta

Mr Steven Kay
 Ms Gillian Higgins

Legal Representatives of the Victims

Mr Fergal Gaynor

Legal Representative of Applicants**Unrepresented Victims****Unrepresented Applicants for Participation/Reparation****The Office of Public Counsel for the Victims**

Ms Paolina Massidda

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

Government of the Republic of Kenya

*Amicus Curiae***REGISTRY**

Registrar

Mr Herman von Hebel

Counsel Support Section**Victims and Witnesses Unit**

Mr Nigel Verrill

Detention Section**Victims Participation and Reparations Section****Other**

THE PRESIDENCY of the International Criminal Court notes that on 20 March 2015, the Prosecutor filed the “Prosecution appeal against the ‘Decision on Prosecution’s application for a finding of non-compliance under Article 87(7) of the Statute’” (“appeal”) in the case of *The Prosecutor v. Uhuru Muigai Kenyatta* (“*Kenyatta*”).

On 24 March 2015, Judge Christine Van den Wyngaert filed a request before the Presidency pursuant to article 41(1) of the Rome Statute of the International Criminal Court (“Statute”) and rule 33(1) of the Rules of Procedure and Evidence (“Rules”), wherein Judge Van den Wyngaert requested to be excused from her function as a judge of the Appeals Chamber for the purposes of the appeal in *Kenyatta*.

On 26 March 2015, Second Vice-President Kuniko Ozaki filed a request before the remaining members of the Presidency, wherein she asked to be excused from the deliberations of the Presidency on Judge Van den Wyngaert's request for excusal from the Appeals Chamber on the appeal. On 26 March 2015, the remaining members of the Presidency granted this request. On the same date, Judge Sanji Mmasenono Monageng assumed responsibilities as a member of the Presidency for the purpose of deliberating on Judge Van den Wyngaert's request for excusal from sitting on the appeal in accordance with regulations 10 and 11(2) of the Regulations of the Court.

On 26 March 2015, the Presidency granted Judge Van den Wyngaert’s request for excusal from the Appeals Chamber for purposes of the appeal in *Kenyatta* (Annex I).

The Presidency recalls article 39(1) and (2)(b)(i) of the Statute, rule 38 of the Rules and regulations 12 and 15(1) of the Regulations of the Court.

The Presidency hereby decides, for the purpose of hearing the appeal, to temporarily attach Judge Bertram Schmitt, currently assigned to the Trial Division, to the Appeals Chamber. The Presidency selected Judge Schmitt by lot from a roster of eligible replacement judges. This roster will be made public and will henceforth be updated every six months. In preparing the roster, the Presidency paid due attention to case-related conflicts as well as the workload of eligible replacement judges. With respect to workload, the Presidency has excluded from the roster presiding judges of active trials and single judges of confirmation of charges proceedings, unless such judges have indicated a desire to be included in the roster.

Accordingly, the Appeals Chamber shall be composed as follows for purposes of the appeal:

Judge Silvia Fernández de Gurmendi

Judge Sanji Mmasenono Monageng

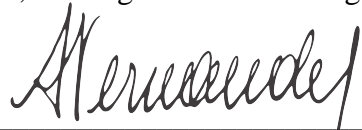
Judge Howard Morrison

Judge Piotr Hofma ski

Judge Bertram Schmitt

The Presidency orders the Registrar to file and notify this decision to the relevant parties and participants in *Kenyatta*.

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



Judge Silvia Fernández de Gurmendi
President

Dated this 26 March 2015

At The Hague, The Netherlands