



Original: **English**

No.: **ICC-02/05-01/09**

Date: **3 July 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 DARFUR, SUDAN
IN THE CASE OF
*THE PROSECUTOR v. OMAR HASSAN AHMAD AL-BASHIR***

Public

Decision replacing judges 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, Prosecutor
Ms Fatou Bensouda, Deputy-Prosecutor

Counsel for the Defence

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 Massida

**The Office of Public Counsel for the
Defence**
Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

REGISTRY

Registrar
Ms Silvana Arbia

Defence Support Section
Mr Esteban Peralta Losilla

Deputy Registrar
Mr Didier Daniel Preira

Detention Section
Mr Anders Backman

Victims and Witnesses Unit
Mr Simo Vaatainen

**Victims Participation and Reparations
Section**
Ms Fiona Mckay

Other

THE PRESIDENCY of the International Criminal Court;

NOTING the intention of the Prosecutor to appeal¹ the “Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir” issued by Pre-Trial Chamber I on 4 March 2009;²

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 and four other judges by virtue of article 39(1) of the Statute;

NOTING that, following the fourteenth plenary session of the judges held on 13 March 2009, the Appeals Division is composed of Judges Sang-Hyun Song, Akua Kuenyehia, Erkki Kourula, Anita Ušacka and Daniel David Ntanda Nsereko;³

NOTING the requests for excusal filed before the Presidency on 2 July 2009 by Judges Akua Kuenyehia and Anita Ušacka (“judges”) pursuant to article 41(1) of the Statute and rule 33 of the Rules of Procedure and Evidence (“Rules”),⁴ wherein the judges requested to be excused from sitting on the impending appeal in its entirety on the basis of their previous involvement in the pre-trial phase of the case against Mr Omar Hassan Ahmad Al-Bashir (hereinafter “case”), in the course of which the judges issued a warrant of arrest for Mr Omar Hassan Ahmad Al-Bashir;

¹ Decision on the Prosecutor’s Application for Leave to Appeal the ‘Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir’, ICC-02/05-01/09-21; Prosecution Request for an Extension of the Page Limit for its Document in Support of Appeal against the ‘Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir’, ICC-02/05-01/09-22.

² ICC-02/05-01/09-3.

³ 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.

⁴ Annex I.

NOTING the decision of the Presidency of 3 July 2009, granting the requests for excusal of the judges on the grounds of their previous involvement in the case in accordance with article 41 and treating them as unavailable for the purpose of the impending appeal;⁵

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;

HEREBY DECIDES:

- i. to temporarily attach Judge Ekaterina Trendafilova, currently assigned to the Pre-Trial Division, and Judge Joyce Aluoch, currently assigned to the Trial Division, to the Appeals Chamber for the purpose of the impending appeal;
- ii. that the Appeals Chamber shall, for the purpose of the impending appeal, be composed as follows:

Judge Sang-Hyun Song

Judge Erkki Kourula

Judge Ekaterina Trendafilova

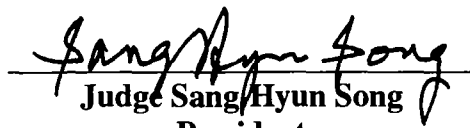
Judge Daniel David Ntanda Nsereko

Judge Joyce Aluoch

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

⁵ Annex II.

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


Judge Sang-Hyun Song
President

Dated this 3 July 2009

At The Hague, The Netherlands