

Annex II



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

La Présidence
The Presidency

Internal memorandum
Memorandum interne

To À	Judge Kuniko Ozaki	From De	The Presidency
Date	21 May 2013	Through Via	
Ref.	2013/PRES/000174 - 4	Copies	Judge Robert Fremr, Judge Chile Eboe-Osuji
Subject Objet	Decision on the request to be excused from the exercise of judicial functions in the case of <i>The Prosecutor v. William Samoei Ruto and Joshua Arap Sang</i> , pursuant to article 41 of the Rome Statute		

The Presidency, composed of the President (Judge Sang-Hyun Song), the First Vice-President (Judge Sanji Mmasenono Monageng) and the Second Vice-President (Judge Cuno Tarfusser), hereby decides upon the request of Judge Kuniko Ozaki (hereinafter "Judge") of 2 May 2013 to be excused from her functions as a judge of Trial Chamber V in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, 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 in that case pursuant to rule 38 of the Rules (hereinafter "request for excusal")

The request for excusal is granted.

Factual background

The request is made on the ground of workload. As a member of Trial Chambers III and V the Judge sits in the following cases: *The Prosecutor v. Bemba*, *The Prosecutor v. Ruto and Sang* ("Kenya I") and *The Prosecutor v. Kenyatta* ("Kenya II"). The Judge submits that whereas this was workable until recently, as only the *Bemba* case was actually in trial and

the two Kenya cases were still in the early stages of trial preparation, according to the current schedule, it is expected that trial in *Kenya I* will commence on 28 May 2013 and that trial in *Kenya II* will commence “several months” thereafter; implying that the Judge would have to attend trial hearings in three cases. Further, the Judge submits that the case files in *Kenya I* and *Kenya II* are of such volume that it is no longer possible to review and decide on all of the issues raised therein.¹ It is argued that it is unrealistic “...to expect anyone to prepare for hearings, process all procedural issues that arise, as well as assimilate all the evidence that is being presented, in three different cases”.² In this regard, the Judge refers to the decision of the Presidency excusing Judges Fulford and Odio Benito from the *Bemba* trial on the basis of their workload in the *Lubanga* case.³ The Judge argues that the same factors which led to the excusal of those judges from the *Bemba* case – sitting in two substantial concurrent trials and the availability of other judges – are applicable to the instant case, with the additional consideration that the Judge is sitting in three cases rather than two.⁴

The Judge submits that “[t]he task of adjudication is a serious one, which requires adequate time to reflect upon complex legal and factual questions. I fear that if I am required to continue sitting in three active trials, I will no longer be able to carry out my functions as a judge in the conscientious manner that is required of me in accordance with the solemn undertaking I made on 20 January 2010”, adding that her concerns are shared by the parties in the two Kenya cases.⁵

The Judge requests to be excused from *Kenya I* without delay so that the Chamber which eventually tries the case has the same composition as the Chamber that will decide on the pending “crucial – and controversial issues” in the advance trial preparation stage, which will have a significant impact on the conduct of the trial proceedings.⁶

¹ Request for excusal, page 1.

² Request for excusal, page 2.

³ Citing Presidency Decision replacing judges in Trial Chamber III, 20 July 2010, ICC-01/05-01/08-837-Anx2.

⁴ Request for excusal, page 2.

⁵ Request for excusal, page 2.

⁶ Request for excusal, page 2.

On 10 May the Judge submitted an addendum to the request for excusal. Whilst giving notice of the fact that the trial date in *Kenya I* had been vacated, the Judge reiterated her request for excusal, maintaining that it had not been altered by that procedural development and still stood on the basis of significant workload.⁷

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 its previous decision in the *Bemba* case, as cited above,⁸ and the current and anticipated workload of the Judge as also described above; i.e. the fact that the three trials will overlap when they commence, the substantial size of those three cases and the availability of other judges.⁹

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 *Kenya I*.

Nothing that the Judge has consented to the request for excusal and its addendum being made public, pursuant to rule 33(2) of the Rules, those documents will, in addition to this decision, be annexed to the subsequent decision of the Presidency replacing the Judge in *Kenya I*.

⁷ Addendum, page 1.

⁸ Decision replacing judges in Trial Chamber III, 20 July 2010, ICC-01/05-01/08-837.

⁹ See also Decision replacing a judge in Trial Chamber II, 30 September 2009, ICC-01/04-01/07-1503.