

ANNEX II



**Internal memorandum
Memorandum interne**

To / À	Judge Elizabeth Odio Benito Judge Adrian Fulford	From / De	The Presidency <i>shs</i>
Date	15 July 2010	Through / Via	
Ref.	2010/PRES/380-2	Copies	Judge Joyce Aluoch
Subject / Objet	Decision on the request to be excused from the exercise of judicial functions in Trial Chamber III, pursuant to article 41 of the Rome Statute		

The Presidency, composed of the President (Judge Sang-Hyun Song), the First Vice-President (Fatoumata Dembele Diarra) and the Second Vice-President (Judge Hans-Peter Kaul), hereby decides the request of Judge Elizabeth Odio Benito and Judge Adrian Fulford (hereinafter "applicants") of 28 June 2010 to be excused from their functions as judges of Trial Chamber III and to be replaced as judges of Trial Chamber III.

The request for excusal is granted.

Factual background

By memorandum dated 28 June 2010, the applicants requested the Presidency to be excused from their functions as judges of Trial Chamber III, 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 judges of Trial Chamber III pursuant to rule 38 of the Rules (hereinafter "request for excusal") before the start of the trial in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*.

The request for excusal is based upon the workload of the applicants as judges of Trial Chamber I in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, which is approximately half way through the defence case. The applicants draw the attention of the Presidency to its potential overlap with the *Bemba* trial and are of the view that "it would be inimical to the interests of justice in both cases" if either of them "attempted to preside over two

substantial, concurrent trials". The applicants consider that "there are other judges at the Court who are better placed in terms of their commitments to undertake the Bemba trial".

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 for excusal to be well founded. In coming to this conclusion, the Presidency took particular note of the possible lengthy overlap between the two trials as explained above and the availability of other judges to sit in the *Bemba* case.

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

Noting that the applicants have consented to the request being made public, pursuant to rule 33(2) of the Rules, it will, in addition to this decision, be annexed to the subsequent decision of the Presidency replacing the applicants in Trial Chamber III.