

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/05-01/08**

Date: **8 March 2018**

**THE PRESIDENCY**

**Before:**

**Judge Silvia Fernández de Gurmendi, President  
Judge Kuniko Ozaki, Second Vice-President  
Judge Sanji Mmasenono Monageng**

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC**

**IN THE CASE OF  
*THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO***

**Confidential  
with confidential Annexes I and II**

**Presidency decision concerning “Mr. Bemba’s request for recusal of Trial Chamber III  
from the reparations proceedings”**

**Notification 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

**Counsel for the Defence**

Mr Peter Haynes

Ms Kate Gibson

**Legal Representative of Victims**

Ms Marie-Edith Douzima-Lawson

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

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

Mr Xavier-Jean Keïta

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Other**

Trial Chamber III

**Victims and Witnesses Unit**

Nigel Verrill

**Trust Fund for Victims**

Pieter de Baan

**Victims Participation and Reparation  
Section**

Philipp Ambach

THE PRESIDENCY of the International Criminal Court notes that on 28 February 2018, the defence for Mr. Jean-Pierre Bemba Gombo filed “Mr. Bemba’s request for recusal of Trial Chamber III from the reparations proceedings”<sup>1</sup> (“Defence Request”) which requested that the Presidency order the recusal of Trial Chamber III in its present composition from any further involvement in the reparations proceedings in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (“case”) on the basis that Trial Chamber III’s “conduct of the reparations proceedings ... discloses a pattern of rulings from which a reasonable perception of a pre-disposition against him necessarily arises”.<sup>2</sup>

The Presidency notes that, pursuant to its decision of 6 July 2016, Trial Chamber III is currently composed of Judges Joyce Aluoch, Judge Geoffrey Henderson and Judge Chang-ho Chung.<sup>3</sup>

On 1 March 2018, Judge Joyce Aluoch filed a request before the Presidency wherein she sought to be excused from any functions of the Presidency with respect to the Defence Request.<sup>4</sup> On 7 March 2018, the remaining members of the Presidency granted this request<sup>5</sup> and Judge Sanji Mmasenono Monageng assumed responsibilities as a member of the Presidency for the purpose of exercising functions with respect to the Defence Request in accordance with regulations 10 and 11(2) of the Regulations of the Court.

The Presidency notes that the Defence Request refers only to the legal standard set out in article 41(2)(a) of the Rome Statute and offers no further elaboration as to the legal basis for its view that it is *the Presidency* which is empowered to “order the recusal of Trial Chamber III”. The Presidency notes that the Court’s legal texts grant no such function to the Presidency. Article 41(1) of the Rome Statute permits the Presidency to excuse a judge “at the request of [the] judge”. No request has been made by any of the judges of Trial Chamber III. Article 41(2)(b) permits a person being prosecuted to request the disqualification of a judge. Article 41(2)(c) provides that “[a]ny question as to the disqualification of a judge shall be decided by an absolute majority of the judges”. The question of the disqualification of a judge is further elaborated in rule 34 of the Rules of Procedure and Evidence. Any matter relating to the disqualification of a judge falls within the decision-making remit of the judges

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<sup>1</sup> ICC-01/05-01/08-3611-Conf.

<sup>2</sup> Defence Request, para. 1.

<sup>3</sup> Presidency, “Decision replacing two judges in Trial Chamber III”, ICC-01/05-01/08-3403.

<sup>4</sup> Annex I.

<sup>5</sup> Annex II.

of the Court, acting in plenary session,<sup>6</sup> and not that of the Presidency. If the Defence Request is intended to be a request made to all judges of the Court pursuant to article 41(2)(b) and (c) of the Rome Statute, the Presidency shall, upon clarification of this, transmit the Defence Request to all judges and put in place the necessary procedural steps to enable the judges to consider it.

The Presidency currently files this request confidentially. The Presidency notes that the Defence Request was filed on a confidential basis but does not state the factual and legal basis for such classification, in accordance with regulation 23 *bis* (1) of the Regulations of the Court. The Presidency requests that the defence for Mr. Jean-Pierre Bemba Gombo provide further information as to the basis for the classification of the Defence Request, so as to enable the Presidency to properly assess the appropriate classification of documents related to the present matter.

The Presidency hereby:

REJECTS the Defence Request

ORDERS the defence for Mr. Jean-Pierre Bemba Gombo to clarify whether the Presidency should transmit the Defence Request to a plenary of judges to be treated as a request for disqualification pursuant to article 41(2)(b) and (c) of the Rome Statute.

ORDERS the defence for Mr. Jean-Pierre Bemba Gombo to state the factual and legal basis for the confidential classification of the Defence Request, in accordance with regulation 23 *bis* (1) of the Regulations of the Court.

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<sup>6</sup> See also rule 4, Rules of Procedure and Evidence.

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



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**Judge Silvia Fernández de Gurmendi**  
**President**

Dated this 8 March 2018

At The Hague, The Netherlands