



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

La Présidence
The Presidency

**Internal memorandum
Memorandum interne**

To À	Judge Christine Van den Wyngaert	From De	The Presidency
Date	20 March 2015	Through Via	
Ref.	2015/PRES/00096-02	Copies	Judge Silvia Fernández de Gurmendi Judge Sanji Mmasenono Monageng Judge Howard Morrison Judge Piotr Hofmański
Subject Objet	Decision on the request for excusal		

The Presidency, composed of the President (Judge Silvia Fernández de Gurmendi), the First Vice-President (Judge Joyce Aluoch), and the Second Vice-President (Judge Kuniko Ozaki), hereby decides upon the request for excusal submitted by Judge Christine Van den Wyngaert on 18 March 2015. In the request, Judge Van den Wyngaert requests to be excused, 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"), from sitting in six interlocutory appeals filed against decisions rendered by Pre-Trial Chamber II in *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido* ("*Bemba et al.*") as well as all future appeals in the case.

The request for excusal is granted.

Factual Background

Between 9 July 2014 and 26 January 2015, six interlocutory appeals were filed against decisions rendered by Pre-Trial Chamber II denying or granting interim release to the suspects in *Bemba et al.*¹

¹ Prosecution's Notice of Appeal of the "Decision on 'Mr Bemba's Request for provisional release'", 26 Jan. 2015, ICC-01/05-01/13-802; Prosecution's Notice of Appeal of the "Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido" of 21 October 2014 and Urgent Request for Suspensive Effect of the Decision pending Appeal, dated 21 Oct. 2014 and registered on 22 Oct. 2014, ICC-01/05-01/13-706; Notice of Appeal against the decision of the Single Judge ICC-01/05-01/13-611 entitled "Decision on the first review of Aimé Kilolo Musamba's detention pursuant to article 60(3) of the Statute", 8 Aug. 2014, ICC-01/05-01/13-623; Requête d'appel de la décision ICC-01/05-01/13-612 05-08-2014 du Juge unique de la Chambre préliminaire II quant à la première révision de la détention préventive

On 13 March 2015, the Presidency assigned Judge Van den Wyngaert to the Appeals Division in accordance with article 39(1) of the Statute and rule 4*bis*(2) of the Rules.²

On 18 March 2015, by confidential memorandum, Judge Van den Wyngaert requested the Presidency to excuse her from sitting in the six interlocutory appeals filed against decisions rendered by Pre-Trial Chamber II in *Bemba et al.* as well as all future appeals in the case pursuant to article 41(1) of the Statute and rule 33 of the Rules.³ The request for excusal is based on Judge Van den Wyngaert's "previous involvement in the case . . . during the pre-trial proceedings, in the course of which [she] *inter alia* confirmed the charges against the suspects."⁴ She concluded that she has therefore "been 'previously involved . . . in that case before the Court' within the meaning of the second sentence of article 41(2)(a) of the Statute."⁵

Decision

The present request for excusal is properly before the Presidency in accordance with article 41(1) of the Statute and rule 33(1) of the Rules.

Article 41(1) of the Statute provides, in relevant part, that "[t]he Presidency may, at the request of a judge, excuse that judge from the exercise of a function under this Statute". Article 41(2)(a) of the Statute further provides

A judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground. A judge shall be disqualified from a case in accordance with this paragraph if, *inter alia*, that judge has previously been involved in any capacity in that case before the Court

The Presidency has previously clarified that the second sentence of article 41(2)(a) is "concerned with disqualification where a judge has previously been involved in any capacity which gives rise to a reasonable ground to doubt his or her impartiality."⁶ The Presidency elaborated that this interpretation is "most consistent

de Monsieur Jean-Jacques KABONGO MANGENDA, 8 Aug. 2014, ICC-01/05-01/13-622; Narcisse Arido's Notice of Appeal of the Single Judge's Decision on "Narcisse Arido's Request for Interim Release" (ICC-01/05-01/13-588), 29 July 2014, ICC-01/05-01/13-592; Appel de la Défense de monsieur Fidèle Babala Wandu contre la «Decision on the first review of Fidèle Babala Wandu's detention pursuant to article 60(3) of the Statute » (ICC-01/05-01/13-538), 9 July 2014, ICC-01/05-01/13-547.

² Decision assigning judges to divisions, ICC-02/11-01/12/67.

³ Request for excusal, 2015/PRES/00096.

⁴ *Id.* at para. 4.

⁵ *Id.*

⁶ Decision on the request of 16 September 2009 to be excused from sitting in the appeals against the decision of Trial Chamber I of 14 July 2009 in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, pursuant to article 41(1) of the Statute and rule 33 of the Rules of Procedure and Evidence, 23 Sept. 2009, ICC-01/04-01/06-2138-AnxIII, p. 5.

with the objective of ensuring that the impartiality of judges cannot reasonably be reproached” while “at the same time . . . ensuring the efficient conduct of proceedings.”⁷

The Presidency finds the request to be well founded. The request for excusal is based on Judge Van den Wyngaert’s previous involvement in the pre-trial phase in *Bemba et al.*, including, *inter alia*, in the confirmation of charges against the suspects. The Presidency recalls prior decisions where it has granted requests for excusal on the same grounds, namely where the judge had participated in the pre-trial phase of a case (and in the confirmation of charges against the suspects, in particular) and requested excusal from all pending and future appeals.⁸ Noting the terms of articles 41(1) and 41(2)(a) of the Statute, the Presidency accordingly finds that Judge Van den Wyngaert’s involvement in the pre-trial phase could give rise to a reasonable ground to doubt her impartiality both with respect to the pending interlocutory appeals as well as any future appeals in the case.

Henceforth, the President of the Appeals Division shall promptly inform the Presidency of the filing of any appeal in the case, in order for the Presidency to proceed with the replacement of Judge Van den Wyngaert in a timely fashion in accordance with this decision.

The Presidency shall make public this decision, noting that Judge Van den Wyngaert has expressed her consent in accordance with rule 33(2) of the Rules.

⁷ *Id.*

⁸ *See, e.g.*, Decision on the request to be excused from the exercise of judicial functions in the Appeals Chamber pursuant to article 41 of the Rome Statute, 9 Oct. 2013, ICC-01/04-01/07-1949-Anex2; Decision on the request to be excused from the exercise of judicial functions in the Appeals Chamber pursuant to article 41 of the Rome Statute, 2 Apr. 2013, ICC-02/05-03/09-458-Anx2.