

ANNEX I



Cour
Pénale
Internationale

International
Criminal
Court

La Présidence
The Presidency

Internal memorandum
Memorandum interne

To À	Judge Olga Herrera Carbuccion	From De	The Presidency
Date	24 August 2015	Through Via	
Ref.	2015/PRES/00175-02	Copies	Judge Chile Eboe-Osuji Judge Bertram Schmitt
Subject Objet	Decision on the Request for excusal pursuant to Rule 33 of the Rules of Procedure and Evidence		

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 of Judge Olga Herrera Carbuccion ("Request for Excusal"), pursuant to article 41(1) of the Rome Statute ("Statute") and rule 33(1) of the Rules of Procedure and Evidence ("Rules"), to be excused from her function as a judge of Trial Chamber VII in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido* ("Bemba et al").¹

The Request for Excusal is granted.

Factual Background

On 27 May 2015, by confidential memorandum, Judge Herrera Carbuccion requested the Presidency to excuse her from exercising her functions as a judge in *Bemba et al.*² In support of the Request for Excusal, Judge Herrera Carbuccion explained

The Presidency appointed [her] as judge in the following four cases before the Trial Division: (i) the case of *the Prosecutor v. William Samoei Ruto and Joshua Arap Sang* [Ruto & Sang] (21 May 2015); (ii) the case of *the Prosecutor v. Germain Katanga* (16 April 2014); (iii) the case of *the Prosecutor v. Laurent Gbagbo* (17 September 2014), and the case of *the Prosecutor v. Charles Blé Goudé* (20 December 2014), now joined as the case of *the Prosecutor v. Laurent Gbagbo*

¹ Request for excusal pursuant to Rule 33 of the Rules of Procedure and Evidence, 27 May 2015, 2015/PRES/00175.

² *Id.*

and Charles Blé Goudé [*Gbagbo & Blé Goudé*]; and (iv) [*Bemba et al*] (30 January 2015).³

Judge Herrera Carbuccion submitted that

in order to enable the good administration of justice and for the efficient management of court hearings, and particularly because [she] do[es] not want to be an obstacle for the expeditiousness of proceeding in these cases, pursuant to Rule 33 of the Rules of Procedure and Evidence, [she] hereby request[s] to be excused [from *Bemba et al*].⁴

Decision

The 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”. Rule 33(1) of the Rules provides, in relevant part, that a judge “seeking to be excused from his or her functions shall make a request in writing to the Presidency, setting out the grounds upon which he or she should be excused.”

In light of the reasons given by Judge Herrera Carbuccion, the Presidency finds the Request for Excusal to be well founded. In coming to this conclusion, the Presidency takes particular note of Judge Herrera Carbuccion’s current and anticipated workload. The Presidency has previously found that the *Gbagbo & Blé Goudé* is a case of “considerable complexity and magnitude”⁵ and that *Ruto & Sang* “involves two cases of considerable complexity”.⁶ The Presidency also acknowledges the future reality that *Gbagbo & Blé Goudé*, *Ruto & Sang* and *Bemba et al* will likely involve concurrent trial proceedings for a period of time. Thus, the Presidency considers it prudent to replace Judge Herrera Carbuccion in TC VII. Finally, the Presidency notes the availability of other judges, particularly in light of the election of six new judges during the 13th session of the Assembly of States Parties to the Rome Statute (“ASP”) in December 2014. These six judges took their respective oaths of office on 10 March 2015. The eighteenth judge was elected during the 13th session of the ASP in June 2015.

³ *Id.* at para. 1.

⁴ *Id.* at para. 5.

⁵ ICC-01/04-02/06-521-AnxI-Corr, p. 4.

⁶ ICC-01/09-02/11-890-AnxI, p. 6.

The Presidency shall make public this decision, noting that Judge Herrera Carbuccia has expressed her consent in accordance with rule 33(2) of the Rules.⁷

⁷ 2015/PRES/00175, *supra* note 1, at para. 6.