

ANNEX II

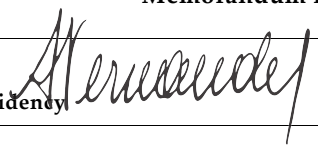


Cour
Pénale
Internationale

International
Criminal
Court

La Présidence
The Presidency

Internal memorandum
Memorandum interne

To À	Judge Chile Eboe-Osuji	From De	The Presidency 
Date	24 August 2015	Through Via	
Ref.	2015/PRES/00243-02	Copies	Judge Olga Herrera Carbuccion 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 Chile Eboe-Osuji ("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 his 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 29 June 2015, by confidential memorandum, Judge Eboe-Osuji requested the Presidency to excuse him from exercising his functions as a judge in *Bemba et al.*² In support of the Request for Excusal, Judge Eboe-Osuji explained

it has become increasingly clear to me ... that the workload in the case, when combined with the workload in the *Ruto & Sang* case, will make it difficult for me to participate effectively in either case without resulting in delay in future in both cases. Please note that this is not merely a matter of my also being the presiding judge in both cases; it is simply a matter of good faith ability to participate at the optimum level at which a judge is expected to participate effectively in the cases in which (s)he sits."³

¹ Request for Excusal, 29 June 2015, 2015/PRES/00243.

² *Id.*

³ *Id.* emphasis in original.

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.”

The Request for Excusal is made on the grounds that Judge Eboe-Osuji’s workload will make it difficult for him to effectively participate in both cases.

The Presidency recalls its previous finding that a judicial workload which includes participation in multiple simultaneous cases at the trial level is not, of itself, necessarily sufficient to warrant the excusal of a judge.⁴

Nonetheless, the Presidency has consistently found that judicial participation in multiple simultaneous cases may, in certain circumstances, become problematic when concurrent trial proceedings are imminent.⁵ In particular, Judge Eboe-Osuji’s continuing participation in both cases could have a potentially detrimental impact on the Court’s capacity to ensure the expeditious conduct of the trial proceedings in these cases because the trial in *Bemba et al* is scheduled to commence on 29 September 2015 and the trial in *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* is currently ongoing. Thus, in order to ensure the proper administration of the Court by minimising scheduling difficulties arising from the need to ensure the physical presence of individual judges in multiple simultaneous trials, the Presidency considers it prudent to replace Judge Eboe-Osuji in TC VII. In reaching this decision, 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 2015.⁶ The eighteenth judge was elected during the 13th session of the ASP in June 2015.⁷

The Presidency shall make public this decision, noting that Judge Eboe-Osuji has expressed his consent in accordance with rule 33(2) of the Rules.

⁴ See ICC-01/09-02/11-890-AnxI.

⁵ See ICC-01/09-02/11-890-AnxI; ICC-01/05-01/13-854-AnxI-Corr; ICC-01/04-02/06-521-AnxI-Corr; ICC-01/09-02/11-739-AnxII; ICC-01/05-01/08-837-Anx2.

⁶ Six new judges sworn in today at the seat of the International Criminal Court, 10 March 2015, ICC-CPI-20150310-PR1095.

⁷ Newly elected Judge Raul Pangalangan sworn in today at the seat of the International Criminal Court, 13 July 2015, ICC-CPI-20150713-PR1132.