




Internal memorandum
Memorandum interne

To À	Judge Silvia Fernández de Gurmendi Judge Christine Van den Wyngaert	From De	The Presidency 
Date	18 September 2015	Through Via	
Ref.	2015/PRES/00330-02	Copies	Judge Sanji Mmasenono Monageng Judge Howard Morrison Judge Piotr Hofmański
Subject Objet	Decision on the requests for excusal from the Appeals Chamber in all pending and future appeals in <i>The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé</i>		

The Presidency, composed of the First Vice-President (Judge Joyce Aluoch), the Second Vice-President (Judge Kuniko Ozaki) and Judge Sanji Mmasenono Monageng, hereby decides upon the requests for excusal submitted by Judge Christine Van den Wyngaert on 15 September 2015 and Judge Silvia Fernández de Gurmendi on 16 September 2015. In the requests, Judge Fernández de Gurmendi and Judge Van den Wyngaert request 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 exercising their functions as judges in the Appeals Chamber with respect to all pending and future appeals in *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé* (“*Gbagbo and Blé Goudé*”).

The requests for excusal are granted.

Factual Background

On 15 September 2015, by confidential memorandum, Judge Van den Wyngaert filed a request for excusal in which she submitted that she has “‘previously been involved’ in the *Gbagbo and Blé Goudé* case within the meaning of the second sentence in article 41(2)(a) of the Statute”.¹ Judge Van den Wyngaert’s request for excusal is based on her previous involvement in *Gbagbo and Blé Goudé* as a member of Pre-Trial Chamber I in the course of which she participated in the confirmation of charges proceedings and issued a dissenting and a partially dissenting opinion to the

¹ Request for excusal from Appeals Chamber in all pending and future appeals in *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, 2015/PRES/00330, at para. 2.

confirmation of charges decisions concerning Mr Gbagbo and Mr Blé Goudé respectively.² She therefore requested that the Presidency excuse her from the Appeals Chamber in all pending and future appeals in *Gbagbo and Blé Goudé*, pursuant to article 41(1) of the Statute and rule 33(1) of the Rules.³

On 16 September 2015, by confidential memorandum, Judge Fernández de Gurmendi filed a request for excusal in which she submitted that she has “‘previously been involved’ in the *Gbagbo and Blé Goudé* case within the meaning of the second sentence of article 41(2)(a) of the Statute”.⁴ Judge Fernández de Gurmendi’s request for excusal is based on her previous involvement in *Gbagbo and Blé Goudé* as a member of Pre-Trial Chamber I in the course of which she participated in the confirmation of charges proceedings culminating in the issuance of the decisions confirming the charges against the suspects.⁵ She therefore requested that the Presidency excuse her from the Appeals Chamber in all pending and future appeals in *Gbagbo and Blé Goudé*, pursuant to article 41(1) of the Statute and rule 33(1) of the Rules.⁶

In the same memorandum, Judge Fernández de Gurmendi requested to be excused from the deliberations of the Presidency on her request for excusal from sitting on all pending and future appeals, as her position as a member of the Presidency “may give rise to a possible conflict of interest”.⁷ On 17 September 2015, the remaining members of the Presidency granted Judge Fernández de Gurmendi’s request for excusal from the deliberations of the Presidency. On the same date, Judge Monageng assumed responsibilities as a member of the Presidency for the purpose of deliberating on Judge Fernández de Gurmendi and Judge Van den Wyngaert’s requests for excusal from sitting on all pending and future appeals, in accordance with regulation 11(2) of the Regulations of the Court.

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.

² *Id.*

³ *Id.* at para. 1.

⁴ Request for excusal, 2015/PRES/00336, at para. 3.

⁵ *Id.* at para. 2.

⁶ *Id.* at para. 1.

⁷ *Id.* at para. 4.

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.”⁸ The Presidency elaborated that this interpretation is “most consistent 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.”⁹

The Presidency finds the request to be well founded. The request for excusal is based on Judge Fernández de Gurmendi and Judge Van den Wyngaert’s previous involvement in the pre-trial phase in *Gbagbo and Blé Goudé*, 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.¹⁰ Noting the terms of articles 41(1) and 41(2)(a) of the Statute, the Presidency accordingly finds that Judge Fernández de Gurmendi and Judge Van den Wyngaert’s involvement in the pre-trial phase could give rise to a reasonable ground to doubt their impartiality with respect to any pending or 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

⁸ 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.

⁹ *Id.*

¹⁰ *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.

proceed with the replacement of Judge Fernández de Gurmendi and Judge Van den Wyngaert in a timely fashion in accordance with this decision.

The Presidency shall make public this decision, noting that Judge Fernández de Gurmendi and Judge Van den Wyngaert have expressed their consent in accordance with rule 33(2) of the Rules.