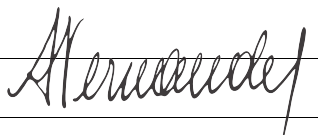




Internal memorandum  
Memorandum interne

To   À	Judge Bertram Schmitt	From   De	The Presidency
Date	21 December 2015	Through   Via	
Ref.	2015/PRES/00412-02	Copies	Judge Geoffrey Henderson Judge Olga Herrera Carbuccion
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 of Judge Bertram Schmitt (“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 I in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé* (“Gbagbo & Blé Goudé case”).<sup>1</sup>

The Request for Excusal is granted.

### Factual Background

On 25 September 2015, by confidential memorandum, Judge Schmitt requested the Presidency to excuse him from exercising his functions as a judge in the *Gbagbo & Blé Goudé* case.<sup>2</sup> In support of the Request for Excusal, Judge Schmitt explained that he is also currently involved as the Presiding Judge and Single Judge, pursuant to rule 132bis of the Rules, in the trial proceedings 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 case”] in Trial Chamber VII.<sup>3</sup> Judge Schmitt explained further

[The trial in the *Bemba et al* case] is supposed to continue as early in January 2016 as possible . . . with . . . hearings on a daily basis. This time-table makes

<sup>1</sup> Request for excusal, 25 September 2015, 2015/PRES/00412.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

it effectively impossible for [him] to participate in the hearings of the [*Gbagbo & Blé Goudé*] case which are scheduled to start with the opening statements on November 10<sup>th</sup> and continue with a constant sequence of hearings in January 2016 running largely parallel with those of [Trial Chamber] VII. Furthermore [his] functions as Presiding Judge and Single Judge in the [*Bemba et al*] case with five Defence teams involved makes it already now – before the commencement of the trial - very difficult for [him] to participate in the [*Gbagbo & Blé Goudé*] case effectively and thoroughly as [he understands] it to be the duty of a judge.

On 28 October 2015, Trial Chamber I issued its “Decision granting the request of the Gbagbo Defence and re-scheduling opening statements”, in which it rescheduled the opening statements in the *Gbagbo & Blé Goudé* case to 28 January 2016 with the Prosecution's presentation of its evidence to begin directly thereafter.<sup>4</sup>

### 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 Schmitt, the Presidency finds the Request for Excusal to be well-founded.

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.<sup>5</sup> 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.<sup>6</sup> In particular, Judge Schmitt’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 the *Bemba et al* case is ongoing and the trial in *Gbagbo & Blé Goudé* is scheduled to commence on 28 January 2016. Thus, in order to ensure the proper

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<sup>4</sup> ICC-02/11-01/15-322, p. 7.

<sup>5</sup> See ICC-01/09-02/11-890-AnxI.

<sup>6</sup> See ICC-01/05-01/13-1173-AnxII; 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.

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 Schmitt in Trial Chamber I.

In coming to this conclusion, the Presidency has also taken into account Judge Schmitt's current and anticipated workload. The Presidency has previously found that *Gbagbo & Blé Goudé* is a case of "considerable complexity and magnitude".<sup>7</sup> The Presidency has also noted that Judge Schmitt, as the Presiding Judge and Single Judge, will carry a heavy workload in the *Bemba et al* case, a case which involves five Defence teams.

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

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<sup>7</sup> ICC-01/04-02/06-521-AnxI-Corr, p. 4.