

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08

Date: 20 July 2010

THE PRESIDENCY

Before: Judge Sang-Hyun Song, President
Judge Fatoumata Dembele Diarra, First Vice-President
Judge Hans-Peter Kaul, Second Vice-President

SITUATION IN THE CENTRAL AFRICAN REPUBLIC

**IN THE CASE OF
*THE PROSECUTOR v. JEAN-PIERRE BEMBA GOMBO***

Public

Decision replacing judges in Trial Chamber III

Decision to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor
Mr Luis Moreno Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy-Prosecutor

Counsel for the Defence
Mr Nkwebe Liriss
Mr Aimé Kilolo-Musamba

Legal Representatives of the Victims
Ms Marie-Edith Douzima-Lawson

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims
Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**
Mr Xavier-Jean Keïta

States' Representatives

Amicus Curiae

REGISTRY

Registrar
Ms Silvana Arbia

Defence Support Section
Mr Esteban Peralta Losilla

Deputy Registrar
Mr Didier Preira

Victims and Witnesses Unit
Ms Maria Luisa Martinod-Jacome

Detention Section
Mr Anders Backman

**Victims Participation and Reparations
Section**
Ms Fiona Mckay

Other

THE PRESIDENCY of the International Criminal Court;

NOTING its decision of 18 September 2009 constituting Trial Chamber III and referring to it the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*; noting further that by that decision Trial Chamber III was composed of Judge Elizabeth Odio Benito, Judge Adrian Fulford and Judge Joyce Aluoch;¹

NOTING the request of Judge Elizabeth Odio Benito and Judge Adrian Fulford of 28 June 2010 to be excused from exercising their functions as judges of Trial Chamber III pursuant to article 41 of the Rome Statute (hereinafter “Statute”) and rule 33 of the Rules of Procedure and Evidence (hereinafter “Rules”) on the basis of their workload as judges of Trial Chamber I;²

NOTING the decision of the Presidency of 15 July 2010, excusing Judge Elizabeth Odio Benito and Judge Adrian Fulford from Trial Chamber III;³

CONSIDERING that the functions of the Trial Chamber shall normally be carried out by three judges of the Trial Division in accordance with article 39(2)(b)(ii) of the Statute;

CONSIDERING also article 39(4) of the Statute, pursuant to which the Presidency may temporarily attach a judge from the Trial Division to the Pre-Trial Division or vice-versa if it considers that the efficient management of the workload of the Court so requires;

CONSIDERING rule 38 of the Rules and regulation 15 of the Regulations of the Court providing for the replacement of judges;

HEREBY DECIDES to temporarily attach Judge Sylvia Steiner, currently assigned to the Pre-Trial Division, to the Trial Division;

¹ ICC-01/05-01/08-534.

² Annex I.

³ Annex II.

HEREBY DECIDES that Judge Sylvia Steiner and Judge Kuniko Ozaki, assigned to the Trial Division,⁴ shall replace Judge Elizabeth Odio Benito and Judge Adrian Fulford in Trial Chamber III and that Trial Chamber III shall from henceforth be composed as follows:

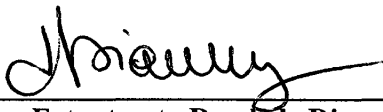
Judge Sylvia Steiner

Judge Joyce Aluoch

Judge Kuniko Ozaki.

ORDERS the Registrar to file and notify this decision to the relevant parties and participants in the case.

Done in both English and French, the English version being authoritative.



Judge Fatoutmata Dembele Diarra
First Vice-President

Dated this 20 July 2010.

At The Hague, The Netherlands

⁴ See press release of 22 January 2010 entitled “New ICC judges assigned to judicial divisions”, ICC-CPI-20100122-PR489, available on the website of the Court.

ANNEX I

**Cour
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Internationale**



**International
Criminal
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PRESIDENCY	
Ref. 2010/PRES/1380	Les Chambres
28.06.10	The Chambers
AD. III	
CC. HA OD	Internal memorandum Memorandum interne
AD. III	

To / À	Presidency	From / De	Judge Adrian Fulford
Date	28 June 2010	Through / Via	Judge Elizabeth Odio Benito Judge Joyce Aluoch
Ref.		Copies	
Subject / Objet	Request to be excused from Trial Chamber III		

I am writing on behalf of myself and Judge Odio Benito, pursuant to article 41 of the Rome Statute of the International Criminal Court and rules 33 and rule 38 of the Rules of Procedure and Evidence ("Rules"). Currently we are trial judges in the Lubanga and Bemba cases. The former trial has taken considerably longer than any of the parties or the judges expected, and in the event the potential overlap with the Bemba trial is very considerable. In Lubanga we are only approximately half way through the defence case, and we are soon to embark on a possibly lengthy abuse of process application.

My unequivocal view is that it would be inimical to the interests of justice in both cases if I and Judge Odio Benito attempted to preside over two substantial, concurrent trials.

There are other judges at the Court who are better placed in terms of their commitments to undertake the Bemba trial, and accordingly we ask that we are relieved of our continuing obligations in the Bemba case, now that the trial is about to start. Along with Judge Aluoch, we have managed to deal with all of the substantive pre-trial issues.

We have no objection to making this request public, pursuant to rule 33 of the Rules, should the Presidency decide to do so.

Adrian Fulford

ANNEX II



**Internal memorandum
Memorandum interne**

To / À	Judge Elizabeth Odio Benito Judge Adrian Fulford	From / De	The Presidency <i>shs</i>
Date	15 July 2010	Through / Via	
Ref.	2010/PRES/380-2	Copies	Judge Joyce Aluoch
Subject / Objet	Decision on the request to be excused from the exercise of judicial functions in Trial Chamber III, pursuant to article 41 of the Rome Statute		

The Presidency, composed of the President (Judge Sang-Hyun Song), the First Vice-President (Fatoumata Dembele Diarra) and the Second Vice-President (Judge Hans-Peter Kaul), hereby decides the request of Judge Elizabeth Odio Benito and Judge Adrian Fulford (hereinafter "applicants") of 28 June 2010 to be excused from their functions as judges of Trial Chamber III and to be replaced as judges of Trial Chamber III.

The request for excusal is granted.

Factual background

By memorandum dated 28 June 2010, the applicants requested the Presidency to be excused from their functions as judges of Trial Chamber III, pursuant to article 41(1) of the Rome Statute (hereinafter "Statute") and rule 33 of the Rules of Procedure and Evidence (hereinafter "Rules"), and to be replaced as judges of Trial Chamber III pursuant to rule 38 of the Rules (hereinafter "request for excusal") before the start of the trial in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*.

The request for excusal is based upon the workload of the applicants as judges of Trial Chamber I in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, which is approximately half way through the defence case. The applicants draw the attention of the Presidency to its potential overlap with the *Bemba* trial and are of the view that "it would be inimical to the interests of justice in both cases" if either of them "attempted to preside over two

substantial, concurrent trials". The applicants consider that "there are other judges at the Court who are better placed in terms of their commitments to undertake the Bemba trial".

Decision

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

The Presidency, having considered the matter before it, finds the request for excusal to be well founded. In coming to this conclusion, the Presidency took particular note of the possible lengthy overlap between the two trials as explained above and the availability of other judges to sit in the *Bemba* case.

In all the particular circumstances, the request for excusal is granted. The Presidency, pursuant to rule 38 of the Rules and regulation 15 Regulations of the Court, will proceed with the replacement of the applicants in Trial Chamber III.

Noting that the applicants have consented to the request being made public, pursuant to rule 33(2) of the Rules, it will, in addition to this decision, be annexed to the subsequent decision of the Presidency replacing the applicants in Trial Chamber III.