



Original: **English**

No.: **ICC-Pres-02-15**
Date: **16 March 2015**

THE PRESIDENCY

Before: Judge Silvia Fernández de Gurmendi, President
Judge Joyce Aluoch, First Vice-President
Judge Kuniko Ozaki, Second Vice-President

Public

**Decision on the constitution of Pre-Trial Chambers
and on the assignment of the Mali situation**

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

Fatou Bensouda

James Stewart

Counsel for the Defence**Legal Representative of the Victims****Legal Representative of the Applicants****Unrepresented Victims****Unrepresented Applicants for
Participation/Reparation****The Office of Public Counsel for
Victims**

Paolina Massidda

**The Office of Public Counsel for
the Defence**

Xavier-Jean Keïta

States' Representatives**Amicus Curiae****REGISTRY****Registrar**

Herman von Hebel

Counsel Support Section

Esteban Peralta Losilla

Victims and Witnesses Unit

Nigel Verrill

Detention Section

Paddy Craig

**Victims Participation and Reparations
Section**

Fiona McKay

Other

Pre-Trial Chamber I

Pre-Trial Chamber II

THE PRESIDENCY of the International Criminal Court (“Court”);

NOTING the decision of the Presidency dated 3 July 2014 constituting the Pre-Trial Chambers whereby, *inter alia*, Pre-Trial Chamber I was composed of Judges Ekaterina Trendafilova, Christine Van den Wyngaert and Silvia Fernández de Gurmendi and Pre-Trial Chamber II was composed of Judges Ekaterina Trendafilova, Christine Van den Wyngaert and Cuno Tarfusser;¹

NOTING that the term of office of Judge Ekaterina Trendafilova ended on 10 March 2015;

NOTING the assignment of Judge Silvia Fernández de Gurmendi to the Appeals Division in accordance with article 39(1) of the Rome Statute of the International Criminal Court (“Statute”) pursuant to her election as President of the Court;²

NOTING the decision of the Presidency of 13 March 2015 assigning judges to divisions whereby, *inter alia*, Judge Christine Van den Wyngaert was assigned to the Appeals Division, Judge Joyce Alouch was assigned to the Trial Division and Judges Cuno Tarfusser, Marc Perrin de Brichambaut, Antoine Kesia-Mbe Mindua, Péter Kovács and Chang-ho Chung were assigned to the Pre-Trial Division in accordance with article 39(1) of the Statute and rule 4*bis*(2) of the Rules of Procedure and Evidence (“Rules”);³

CONSIDERING that judges assigned to the Appeals Division shall serve only in that division pursuant to article 39(4) of the Statute;

NOTING article 39(1) and (4) of the Statute concerning the assignment of judges;

NOTING regulation 46(1) of the Regulations of the Court, which provides that “[t]he Presidency shall constitute permanent Pre-Trial Chambers with fixed compositions”;

NOTING rule 38 of the Rules and regulation 15(1) of the Regulations of the Court concerning the replacement of judges;

¹ Decision on the constitution of Pre-Trial Chambers, 3 July 2014, ICC-02/05-01/12-26.

² Press Release, Judge Fernández de Gurmendi elected ICC President for 2015-2018; Judges Alouch and Ozaki elected First and Second Vice-President respectively, 11 March 2015, ICC-CPI-20150311-PR1096.

³ See Presidency, Decision assigning judges to divisions, 13 March 2015, ICC-02/05-01/12-28.

HEREBY DECIDES to temporarily attach Judge Joyce Aluoch, currently assigned to the Trial Division, to the Pre-Trial Division;

HEREBY DECIDES that henceforth:

- (i) The situation in Mali shall be assigned to Pre-Trial Chamber I; and
- (ii) The Pre-Trial Chambers shall be constituted as follows:

Pre-Trial Chamber I - CIV; Libya; Mali; Registered Vessels

Judge Joyce Aluoch

Judge Cuno Tarfusser

Judge Péter Kovács

Pre-Trial Chamber II - CAR I; CAR II; Darfur; DRC; Kenya; Uganda

Judge Cuno Tarfusser

Judge Marc Perrin de Brichambaut

Judge Chang-ho Chung

ORDERS the Registrar to file and notify this decision to the relevant parties and participants in the CAR I, CAR II, CIV, Darfur, DRC, Kenya, Libya, Mali, Registered Vessels and Uganda situations and cases therein.

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



Judge Silvia Fernández de Gurmendi
President

Dated this 16 March 2015

At The Hague, The Netherlands

ANNEX I



Internal memorandum
Memorandum interne

To À	Judge Robert Fremr	From De	The Presidency
Date	17 March 2015	Through Via	
Ref.	2015/PRES/00081-02	Copies	Judge Chile Eboe-Osuji 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 Robert Fremr, 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 and Fidèle Babala Wandu and Narcisse Arido* (“*Bemba et al.*”).¹

The request for excusal is granted.

Factual Background

On 30 January 2015, the Presidency constituted Trial Chamber VII, composed of Judge Olga Herrera Carbuccion, Judge Robert Fremr and Judge Chile Eboe-Osuji and referred to it the *Bemba et al.* case.²

On 13 March 2015, by confidential memorandum, Judge Fremr requested the Presidency to excuse him from exercising his functions as a judge in the *Bemba et al.* case.³ In the memorandum, Judge Fremr explained that he is currently involved in three other cases.⁴ Judge Fremr emphasized in particular that his involvement in

¹ Request for Excusal, 13 Mar. 2015, 2015/PRES/00081.

² Decision constituting Trial Chamber VII and referring to it the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, 30 Jan. 2015, ICC-01/05-01/13-805.

³ Request for Excusal, 2015/PRES/00081, *supra* note 1.

⁴ *Id.*

The Prosecutor v. William Samoei Ruto and Joshua Arap Sang (“*Ruto & Sang*”), in which trial proceedings are currently pending, and in *The Prosecutor v. Bosco Ntaganda* (“*Ntaganda*”), which will commence trial in June, “require[s] [his] full capacity.”⁵

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.

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 ground of workload. As a member of Trial Chambers V(a), V(b), and VI, Judge Fremr respectively sits in *Ruto & Sang*, *The Prosecutor v. Uhuru Muigai Kenyatta*, and *Ntaganda*. Judge Fremr submits in particular that his involvement in *Ruto & Sang*, in which trial proceedings are currently pending, and *Ntaganda*, which will commence trial in June, “require[s] [his] full capacity.”⁶

The Presidency finds the request to be well founded. In coming to this conclusion, the Presidency takes particular note of Judge Fremr’s current and anticipated workload, including the fact that the hearing of the *Ruto & Sang* and *Ntaganda* trials will overlap, once the latter commences in June. The Presidency also 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 in December 2014. These six judges took their respective oaths of office on 10 March 2015.⁷

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

⁵ *Id.*

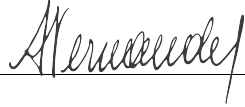
⁶ Request for Excusal, 2015/PRES/00081, *supra* note 1.

⁷ Six new judges sworn in today at the seat of the International Criminal Court, 10 Mar. 2015, ICC-CPI-20150310-PR1095.

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