

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/04-02/06**
Date: **18 March 2015**

THE PRESIDENCY

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

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public with Public Annex I

Corrigendum to the “Decision replacing a judge in Trial Chamber VI”

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

Ms Fatou Bensouda
 Mr James Stewart
 Ms Nicole Samson

Counsel for Mr Laurent Gbagbo

Mr Stéphane Bourgon
 Mr Luc Boutin

Legal Representatives of the Victims

Ms Sarah Pellet
 Mr Dmytro Suprun

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

Ms Paolina Massidda

The Office of Public Counsel for the Defence**States Representatives****Amicus Curiae****REGISTRY**

Registrar

Mr Herman von Hebel

Counsel Support Section**Victims and Witnesses Unit**

Mr Nigel Verrill

Detention Section

Mr Paddy Craig

Victims Participation and Reparations Section**Other**

THE PRESIDENCY of the International Criminal Court notes that on 17 March 2015, Judge Geoffrey Henderson filed a request before the Presidency 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”), wherein Judge Henderson requested to be excused from his function as a judge of Trial Chamber VI in the case of *The Prosecutor v. Bosco Ntaganda*.

On 18 March 2015, the Presidency granted Judge Henderson’s request for excusal from Trial Chamber VI (Annex I).

The Presidency recalls article 39(2)(b)(ii) of the Statute, rule 38 of the Rules and regulation 15(1) of the Regulations of the Court.

The Presidency hereby decides to recompose Trial Chamber VI as follows effective 18 March 2015:

Judge Kuniko Ozaki

Judge Robert Fremr

Judge Chang-ho Chung

The Presidency 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 Silvia Fernández de Gurmendi
President

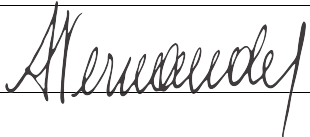
Dated this 18 March 2015

At The Hague, The Netherlands

ANNEX I



Internal memorandum
Memorandum interne

To À	Judge Geoffrey Henderson	From De	The Presidency 
Date	18 March 2015	Through Via	
Ref.	2015/PRES/00092-02	Copies	Judge Robert Fremr Judge Kuniko Ozaki
Subject Objet	Decision on the Request to be excused from the Prosecutor v Bosco Ntaganda		

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 Geoffrey Henderson, 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 VI in the case of *The Prosecutor v. Bosco Ntaganda* (“Ntaganda”).¹

The request for excusal is granted.

Factual Background

On 17 March 2015, by confidential memorandum, Judge Henderson requested the Presidency to excuse him from exercising his functions as a judge in *Ntaganda*.² In the memorandum, Judge Henderson explained

The **Ntaganda** case is one of some complexity and size. The Accused faces charges consisting of 18 counts of war crimes and crimes against humanity as confirmed by the Pre-Trial Chamber. The prosecution is expected to call 75 witnesses in accordance with their list of witnesses that was filed on 2 March 2015 and the trial itself is scheduled to commence on 2 June 2015.³

Judge Henderson further noted

¹ Request to be excused from the Prosecutor v Bosco Ntaganda, 17 Mar. 2015, 2015/PRES/00092.

² *Id.*

³ *Id.* at para. 2

Since my assignment to the **Ntaganda** case, the Presidency has assigned me to Trial Chamber I. On 17 September 2014, [the] Presidency constituted Trial Chamber I and referred the case of **The Prosecutor v Laurent Gbagbo** to it. Subsequent to this, on 20 December 2014 the Presidency referred **The Prosecutor v Blé Goudé** to Trial Chamber I. Both cases are complex and large. In both cases, 4 counts have been confirmed by the Pre-Trial Chamber: murder, rape, other inhuman acts or attempted murder and persecution, all as crimes against humanity. Following a request for joinder and after receiving submissions from the parties the Trial Chamber joined the proceedings on 11 March 2015. The prosecution has indicated that they intend to call 101 witnesses, and while this may very well be reduced by robust case management, given its temporal and contextual scope, the case still remains one of complexity and volume. Noteworthy in the joined proceedings is my role as Presiding Judge, and single judge.⁴

Judge Henderson submitted that

[h]aving given careful consideration to my duties and responsibilities and in particular how I can effectively discharge these given the reality that there will come a point in time when both trials will be proceeding in parallel, I have come to the reluctant conclusion that I cannot properly sit in both cases. In coming to this conclusion I have given due weight to my role as presiding judge and the fact that an efficient and timely conduct of proceedings may require concurrent hearings.⁵

Judge Henderson accordingly requested to be excused from his functions in *Ntaganda*.⁶

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 both Trial Chambers I and VI, Judge Henderson sits respectively in both *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé* (“*Gbagbo & Blé Goudé*”) as well as *Ntaganda*. Judge Henderson notes that *Gbagbo & Blé Goudé*, which consists of two cases that

⁴ *Id.* at para. 3.

⁵ *Id.* at para. 4.

⁶ *Id.* at para. 5.

were recently joined, is both “complex and large”.⁷ In particular, he notes that “the prosecution has indicated that they intend to call 101 witnesses”.⁸ Judge Henderson further notes that he sits as both presiding judge and single judge in this case. Finally, Judge Henderson observes that “there will come a point in time when both trials [*Gbagbo & Blé Goudé* and *Ntaganda*] will be proceeding in parallel”.⁹ In light of all these factors, Judge Henderson concludes that he “cannot properly sit in both cases”.¹⁰

The Presidency finds the request to be well founded. In coming to this conclusion, the Presidency takes particular note of Judge Henderson’s current and anticipated workload, including the considerable complexity and magnitude of *Gbagbo & Blé Goudé* as well as Judge Henderson’s role as both presiding and single judge in that case. The Presidency also acknowledges the future reality that *Gbagbo & Blé Goudé* and *Ntaganda* may involve concurrent trial proceedings. Finally, 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 in December 2014. These six judges took their respective oaths of office on 10 March 2015.¹¹

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

⁷ *Id.* at para. 3.

⁸ *Id.*

⁹ *Id.* at para. 4.

¹⁰ *Id.*

¹¹ Six new judges sworn in today at the seat of the International Criminal Court, 10 Mar. 2015, ICC-CPI-20150310-PR1095.