



**Cour
Pénale
Internationale**
**International
Criminal
Court**

La Présidence
The Presidency

**Internal memorandum
Memorandum interne**

To À	Judge Sylvia Steiner	From De	The Presidency <i>[Signature]</i>
Date	13 May 2016	Through Via	
Ref.	2016/PRES/00125-02	Copies	
Subject Objet	Decision on conclusion of term of office of Judge Sylvia Steiner		

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 Sylvia Steiner to leave the Court prior to the reparations proceedings in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* ("case"). The mandate of Judge Steiner was extended on 11 March 2012 in accordance with article 36(10) of the Rome Statute of the International Criminal Court ("Statute").

The request is granted.

Factual background

1. On 3 May 2016, by memorandum to the Presidency, Presiding Judge Steiner made a request to leave the Court before the reparations stage of the case ("request").
2. In this memorandum, Judge Steiner made her request in the following terms:

I hereby address the Presidency in order to request that my mandate extension, pursuant to article 36(10) of the Statute, come to an end following the imposition of the sentence, pursuant to article 76, which is due to take place in mid-June 2016. I have now served the Court for more than 4 years beyond my foreseen term of nine years. Accordingly, for personal reasons and bearing in mind the best interests of Court, I now make this request to conclude my services prior to completion of the reparations stage in the case.

I note that, pursuant to paragraph 10 of the Presidency's "Decision on conclusion of term of office of Judges Bruno Cotte and Fatoumata Dembele Diarra" dated 16 April 2014, a request of this nature is properly addressed

to the Presidency. I also note that, as set out in the aforementioned Presidency Decision, the Presidency has considered that “reparations need not be addressed by the Trial Chamber that issued the conviction and sentence. Consequently, article 36(10) does not apply to reparations proceedings”. In the abovementioned Presidency decision, a similar request from two judges continuing in office on extended mandates who wished to leave the Court prior to the reparations stage of the relevant proceedings was granted by the Presidency.

I would finally emphasize that, in making this request, I remain fully cognisant of the importance of reparations to victims, pursuant to article 75 of the Statute, and acknowledge that reparations make an essential contribution to the effectiveness of international criminal justice. However, I have no doubt that, as has occurred in other cases before the Court, this important stage of the proceedings will be fully and thoroughly conducted even if this present request is granted.

Decision

3. The Presidency notes that there are two relevant precedents to the request currently before the Presidency from Judge Steiner which shed light on the timing of the conclusion of the mandate of a judge performing his or her functions on an extended mandate. As indicated by her, in its “Decision on conclusion of terms of office of Judges Bruno Cotte and Fatoumata Dembele Diarra” dated 16 April 2014 (“Decision of 16 April 2014”)¹ the Presidency granted a request by two former judges of the Court, Judge Bruno Cotte and Judge Fatoumata Dembele Diarra, to leave the Court prior to the reparations phase of the case of *The Prosecutor v. Germain Katanga*. Judges Cotte and Diarra were thus replaced in Trial Chamber II. In the case of *The Prosecutor v. Thomas Lubanga Dyilo*, all three judges involved in the trial were authorised to leave the Court immediately after the issuance of the reparation order and matters relating to its implementation were subsequently assigned to the newly constituted Trial Chamber II.²
4. The Presidency confirmed in the Decision of 16 April 2014 that requests made in relation to article 36(10) of the Statute are properly addressed to the

¹ ICC-01/04-01/07-3468-AnxI (“Decision of 16 April 2014”).

² Presidency, *The Prosecutor v. Thomas Lubanga Dyilo*, “Decision referring the case of *The Prosecutor v. Thomas Lubanga Dyilo* to Trial Chamber II” 17 March 2015, ICC-01/04-01/06-3131; See also Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, “Judgment on the appeals against the ‘Decision establishing the principles and procedures to be applied to reparations’ of 7 August 2012 with AMENDED order for reparations (Annex A) and public annexes 1 and 2”, 3 March 2015, ICC-01/04-01/06-3129; See also Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, “Decision establishing the principles and procedures to be applied to reparations”, 7 August 2012, ICC-01/04-01/06-2904, para. 286.

Presidency.³ Accordingly, it considers that the current request of Judge Steiner is properly before it.

5. The Presidency took its Decision of 16 April 2014 after consultations with all judges of the Court as the related request raised some legal issues for the first time. In the course of such consultations, the judges expressed views in relation to the requirements of the Statute and the future conduct of reparations proceedings and concurred that the requests could be granted. The Presidency considers that such consultations are not currently necessary as the request made by Judge Steiner is factually and legally very similar to the one that arose in that Decision.
6. In the Decision of 16 April 2014, the Presidency considered that in view of:
the governing texts, jurisprudence, Court practice and the difference in kind between criminal proceedings and reparations, there is no requirement for reparations proceedings to constitute a stage of the “trial” *stricto sensu*. As such, reparations need not be addressed by the Trial Chamber that issued the conviction and sentence. Consequently, article 36(10) does not apply to reparations proceedings.⁴
7. Therefore, the Decision of 16 April 2014 clearly established that it is consistent with the Statute if a judge currently serving in a case on an extended mandate does not participate in the reparations proceedings. As already noted, this was supported by the subsequent practice in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, whereby, the implementation of the reparation order was assigned to another Chamber. Accordingly, the Presidency considers that a judge serving on an extended mandate completes his or her service following the rendering of the decision on sentencing under article 76 of the Statute and may be authorized to leave the Court immediately thereafter, before the issuance of the reparations order or before the completion of its implementation.
8. The Presidency recalls that the extension of mandate of Judge Steiner, pursuant to article 36(10) of the Statute, which commenced on 11 March 2012, has now continued for more than four years. In these circumstances, in view of the principles and practices discussed above and bearing in mind the best interests of the Court, the Presidency considers that it is appropriate to grant the request made by Judge Steiner to end her mandate following the sentencing decision under article 76 of the Statute.
9. The Presidency notes that Judge Steiner has indicated that the request may be made public. However, her request includes an estimated date for the issuing of the sentencing decision which is not yet publicly available.

³ Decision of 16 April 2014, para. 10.

⁴ Decision of 16 April 2014, para. 8, see also paras. 6-7 thereof.

Accordingly, the Presidency considers it is appropriate to make this decision publicly available at a later date.