

## ANNEX I



Cour  
Pénale  
Internationale  
International  
Criminal  
Court

La Présidence  
The Presidency

Internal memorandum  
Memorandum interne

To   À	Judge Robert Fremr	From   De	The Presidency <i>M. Mwanza</i>
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.*”).<sup>1</sup>

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.<sup>2</sup>

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.<sup>3</sup> In the memorandum, Judge Fremr explained that he is currently involved in three other cases.<sup>4</sup> Judge Fremr emphasized in particular that his involvement in

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

<sup>2</sup> 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.

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

<sup>4</sup> *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.”<sup>5</sup>

## 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.”<sup>6</sup>

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.<sup>7</sup>

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

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<sup>5</sup> *Id.*

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

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