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No.: ICC-01/05-01/13

Date: 19 May 2014

**THE PRESIDENCY**

**Before:** Judge Sang-Hyun Song, President  
Judge Sanji Mmasenono Monageng, First Vice-President  
Judge Akua Kuenyehia, Acting Second Vice-President

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC**

*The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba,  
Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*

**Public**

**Decision on “Defence Request for the Automatic Temporary Suspension of the Single  
Judge Pending Decision on Defence Submission ICC-01/05-01/13-372”**

**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  
Mr Kweku Vanderpuye

**Counsel for Aimé Kilolo Musamba**

Mr Ghislain Mabanga

**Counsel for Jean-Pierre Bemba Gombo**

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Mr Jean-Pierre Kilenda Kakengi Basila

**Counsel for Narcisse Arido**

Mr Göran Sluiter

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for Victims**

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

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

The Presidency of the International Criminal Court (“Court”) has before it a request notified on 9 May 2014 (“Request”) submitted by the defence of Mr Aimé Kilolo Musamba (“Kilolo Defence”) pursuant to article 41(2)(a) of the Rome Statute (“Statute”), rule 38 of the Rules of Procedure and Evidence (“Rules”) and regulation 15 of the Regulations of the Court (“Regulations”). The Request seeks the immediate provisional suspension<sup>1</sup> of Judge Cuno Tarfusser (“Single Judge”) from Pre-Trial Chamber II during such time as the Kilolo Defence request notified on 1 May 2014 for the disqualification of the Single Judge from the proceedings in *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido* (“Article 70 Proceedings”) is pending.

The Request is dismissed.

## I. PROCEDURAL HISTORY

1. On 1 May 2014, the Kilolo Defence submitted a request to the Presidency for the disqualification of the Single Judge (“Disqualification Request”) from the Article 70 Proceedings.<sup>2</sup> In the Disqualification Request, the Kilolo Defence requested that the Presidency convene a plenary session, in accordance with article 41(2)(c) of the Statute and rule 4(2) of the Rules, to review and rule upon the disqualification of the Single Judge from the Article 70 Proceedings.<sup>3</sup>
2. On 5 May 2014, the Single Judge requested to be excused from exercising his functions as Second Vice-President of the Court in respect of the Disqualification Request and any other requests for his disqualification pursuant to article 41 of the Statute.<sup>4</sup> On the same date, the Presidency granted the Single Judge’s request for excusal and appointed Judge Akua Kuenyehia to serve in his place as a member of the Presidency pursuant to regulation 11(2) of the Regulations.<sup>5</sup>
3. On 5 May 2014, the Presidency, noting that article 41(2)(c) of the Statute and rule 34(2) of the Rules entitle a judge subject to a request for disqualification to present

<sup>1</sup> The Request makes reference to both the “automatic temporary suspension” and “immediate provisional suspension” of the Single Judge. For purposes of consistency, the Presidency will use the latter formulation throughout its decision.

<sup>2</sup> ICC-01/05-01/13-372. On 29 April 2014 and 7 May 2014, the defence for Mr Jean-Jacques Kabongo Mangenda and for Mr Fidèle Babala Wandu respectively filed separate requests for the disqualification of the Single Judge from the Article 70 Proceedings. ICC-01/05-01/13-367; ICC-01/05-01/13-380.

<sup>3</sup> ICC-01/05-01/13-372, para. 1.

<sup>4</sup> ICC-01/05-01/13-385-Anx1.

<sup>5</sup> ICC-01/05-01/13-385-Anx2; ICC-01/05-01/13-385-Anx3.

written submissions, requested the Single Judge to make any such submissions by 16 May 2014.<sup>6</sup>

4. On 9 May 2014, the Presidency notified the parties and participants to the Article 70 Proceedings that a plenary session of the judges would be convened on 27 May 2014 to address the requests for disqualification, including the Disqualification Request submitted by the Kilolo Defence.<sup>7</sup>
5. On 9 May 2014, the Kilolo Defence submitted the instant Request to the Presidency pursuant to article 41(2)(a) of the Statute, rule 38 of the Rules and regulation 15 of the Regulations for the immediate provisional suspension of the Single Judge from the Article 70 Proceedings during the time the Disqualification Request is pending.<sup>8</sup>
6. On 16 May 2014, the Office of the Prosecutor (“Prosecution”) submitted consolidated Observations on the requests for disqualification and the Kilolo Defence’s “separate but related request” for the immediate provisional suspension of the Single Judge.<sup>9</sup>

## II. MERITS

### A. Arguments of the Kilolo Defence

7. The Kilolo Defence submits that the immediate provisional suspension of the Single Judge is consistent with the practice of the Court.<sup>10</sup> In support of this position, the Kilolo Defence relies primarily on the decision by the President of the Pre-Trial Division to provisionally separate the Senior Legal Adviser from rendering legal advice in the case of *The Prosecutor v. Thomas Lubanga Dyilo*.<sup>11</sup> The Kilolo Defence notes that the request to separate the Senior Legal Adviser “was considered by the Judges to be *‘tantamount to a request for disqualification of the judges or might, at the very least, raise an issue regarding the disqualification of the judges’*”.<sup>12</sup> The Kilolo Defence characterizes the provisional separation of the Senior Legal Adviser as “essentially *proprio motu*”, noting that “the parties requesting disqualification were not required to meet any additional standards to justify the provisional suspension in

<sup>6</sup> ICC-01/05-01/13-385-Anx3.

<sup>7</sup> ICC-01/05-01/13-385.

<sup>8</sup> ICC-01/05-01/13-388.

<sup>9</sup> ICC-01/05-01/13-404-Red, para. 1.

<sup>10</sup> ICC-01/05-01/13-388, paras. 5-12.

<sup>11</sup> *Ibid.*, para. 6.

<sup>12</sup> *Ibid.* (citing ICC-01/04-01/06-623, page 2) (emphasis in original). The language cited by the Kilolo Defence is taken from Pre-Trial Chamber I’s decision informing the parties in the *Lubanga* case of the separation of the Senior Legal Adviser from rendering legal advice in that matter. Accordingly, the Presidency construes the Kilolo Defence’s reference to “Judges” to be a reference to the judges of then-Pre-Trial Chamber I.

connection with the disqualification request” and that “the decision stemmed from the Judges’ own initiatives and concern as to the public opinion on and perception of judicial impartiality.”<sup>13</sup>

8. The Kilolo Defence further submits that the immediate provisional suspension of the Single Judge is warranted on the grounds that “where there is any doubt or uncertainty [sic] as to possible grounds for excusal or qualification,” the Court “has made clear that a cautious approach should be followed.”<sup>14</sup> In drawing out this argument, the Kilolo Defence discusses again the example of the provisional separation of the Senior Legal Adviser in the *Lubanga* case.<sup>15</sup> Specifically, the Kilolo Defence argues that, in that case, “the Pre-Trial Chambers saw fit to temporarily suspend the Senior Legal Advisor simply on the premise that it *might* invoke a question as to judicial impartiality.”<sup>16</sup> The Kilolo Defence notes that, whereas the *Lubanga* case concerned the potential “lack of judicial impartiality” of someone “connected to the judiciary”, the present case concerns the potential “lack of judicial impartiality” of “the Single Judge himself”.<sup>17</sup>
9. On the basis of the arguments above, the Kilolo Defence concludes that “a disqualification request by either party is in and of itself sufficient to warrant the automatic and concomitant invocation of provisional suspension absent any further requests or showings of proof by either party.”<sup>18</sup> Applying this conclusion to the present case, the Kilolo Defence submits that the Disqualification Request “should *immediately* invoke the *automatic* provisional suspension of the Single Judge’s

<sup>13</sup> Ibid. The Kilolo Defence makes mention of one other example in support of its argument that the immediate provisional suspension of the Single Judge is consistent with the practice of the Court. Ibid., para. 5 n. 4 (citing ICC-01/04-01/07-T-48-ENG pages 1-2). That example was the request by a Legal Officer of the Pre-Trial Division to temporarily excuse himself from rendering legal advice during the confirmation of charges stage in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*. ICC-01/04-01/07-T-48-ENG, page 1. The Legal Officer based his request on the fact that “the observations made by the Defence for Mr. Germain Katanga during the time allocated to discuss the evidence submitted by the Prosecution were, to a very important extent, confined to commenting upon two articles written by” the Legal Officer. Ibid., pages 1-2.

<sup>14</sup> Ibid., para. 5.

<sup>15</sup> Ibid., para. 8.

<sup>16</sup> Ibid. (citing ICC-01/04-01/06-623, page 9, para. 20) (emphasis in original).

<sup>17</sup> Ibid. The Kilolo Defence briefly cites two other examples in support of this part of its legal reasoning. First, the Kilolo Defence cites to a request for excusal by Judge Anita Ušacka in the appeals arising from Trial Chamber’s I decision of 14 July 2009 in the *Lubanga* case. Ibid., para. 5 n.5 (citing ICC-01/04-01/06-2138-AnxIII). The Presidency notes that it dismissed Judge Ušacka’s request for excusal. ICC-01/04-01/06-2138-AnxIII. Second, the Kilolo Defence cites to the Appeals Chamber’s decision on Mr Saif Al-Islam Gaddafi’s request to disqualify the Prosecutor and temporarily suspend him pending a decision on the request in the case of *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*. Ibid., para. 8 (citing ICC-01/11-01/11-175, para. 5). In particular, the Kilolo Defence cites the Appeals Chamber’s reasoning that “[t]o the extent that it might have been necessary to take any measures to preserve the impartiality of proceedings in the interim, . . . the Pre-Trial Chamber dealing with the case could adopt any appropriate and necessary measures.” ICC-01/11-01/11-175, para. 5. The Presidency notes that the Appeals Chamber rejected both the request to temporarily suspend the Prosecutor as well as the request to disqualify him. Ibid.

<sup>18</sup> ICC-01/05-01/13-388, para. 9 (emphasis in original).

exercise of judicial functions, insofar as decision on the disqualification requests are [sic] pending.”<sup>19</sup>

10. The Kilolo Defence adds that the immediate provisional suspension of the Single Judge should act “as a temporary blanket ban on further exercise of *any* judicial functions in these proceedings, whether singly *or* collectively as part of the Pre-Trial Chamber.”<sup>20</sup> Accordingly, the Kilolo Defence submits that “the Single Judge should be excused from his judicial functions in these proceedings in his capacities as *either* the Single Judge or a member of the Pre-Trial Chamber II.”<sup>21</sup>
11. Finally, the Kilolo Defence submits that, pursuant to rule 38 of the Rules and regulation 15 of the Regulations, “it is the duty of the Presidency to appoint a Judge to replace the single [sic] Judge during such time as the Disqualification Request is pending” and requests that the Presidency carry out such an appointment.<sup>22</sup>

## B. Arguments of the Prosecution

12. The Prosecution begins by observing that the position taken by the Kilolo Defence in the Request is “diametrically opposite to that which it advanced before the Pre-Trial Chamber” on 7 May 2014.<sup>23</sup> On that day, the Kilolo Defence requested that “the Pre-Trial Chamber convene in full immediately and for the remainder of the proceedings” on the ground that this would “rectif[y] . . . the fair trial deficiencies already suffered” and restore “the Defence’s and the public’s confidence in the present proceedings.”<sup>24</sup> The Prosecution notes that this “requested remedy d[id] not exclude the Single Judge’s continued participation in the case in an adjudicative capacity.”<sup>25</sup> The Prosecution submits therefore that the Kilolo Defence’s prior request before the Pre-Trial Chamber “belie[s] the basis of the [instant] Request, namely that it is ‘wholly problematic that the Single Judge would, in light of the current contentions as to his impartiality, be allowed to continue to adjudicate.’”<sup>26</sup>
13. The Prosecution further submits that “the decisional authority identified by the Kilolo Defence in support of” the Request consists of “a single instance in a single case – *Lubanga* – which did not involve a sitting judge, but rather a former OTP member

<sup>19</sup> Ibid., para. 10 (emphasis in original).

<sup>20</sup> Ibid., para. 11 (emphasis in original).

<sup>21</sup> Ibid., para. 12 (emphasis in original).

<sup>22</sup> Ibid., para. 13.

<sup>23</sup> ICC-01/05-01/13-404-Red, para. 58 (citing ICC-01/05-01/13-381).

<sup>24</sup> Ibid., para. 59 (quoting ICC-01/05-01/13-381, para. 17).

<sup>25</sup> Ibid., para. 60.

<sup>26</sup> Ibid. (quoting ICC-01/05-01/13-388, para. 12).

serving as a Legal Advisor to the Pre-Trial Division.”<sup>27</sup> Moreover, the Prosecution contends that the Kilolo Defence’s “suggestion that the *Lubanga* Pre-Trial Chamber’s consideration of the situation as ‘tantamount to a request for disqualification of judges’ . . . is misleading.”<sup>28</sup> The Prosecution notes that the Pre-Trial Chamber “likened the situation to that which might concern a judge for the purposes of convening the special plenary of judges in order to resolve the complaint, quite apart from the necessity of the Legal [Adviser]’s temporary suspension from his activities in the case.”<sup>29</sup> The Prosecution also notes that the Legal Adviser’s separation “was done in the Presidency of the Pre-Trial Division’s exercise of discretion, particularly informed by the agreement” between “the Prosecution and the Defence.”<sup>30</sup> The Prosecution submits that the instant Request can be distinguished on three grounds:

(1) there is no such agreement among the parties – even the respective Defences in the Article 70 case are not in unison concerning the Single Judge’s disqualification; (2) the conflict issue in *Lubanga* was clear as it concerned a former OTP staff member acting as a Legal Adviser to the Pre-Trial Division in a case in which he had been previously involved; and (3) the [disqualification] Requests respectively fail to advance any genuine ‘question’ as to [the Single Judge’s] impartiality.<sup>31</sup>

The Prosecution concludes that the Kilolo Defence “thus fails to establish any plausible legal or factual basis for the [instant] Request.”<sup>32</sup>

### C. Determination of the Presidency

14. The Presidency notes, at the outset, that the Kilolo Defence brings the Request for immediate provisional suspension of the Single Judge pursuant to article 41(2)(a) of the Statute.<sup>33</sup> Article 41(2) of the Statute addresses the disqualification of judges and provides:

2. (a) A judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground. A judge shall be disqualified

<sup>27</sup> Ibid., para. 61.

<sup>28</sup> Ibid., para. 62.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid., para. 63 (emphasis in original).

<sup>31</sup> Ibid.

<sup>32</sup> Ibid., para. 64.

<sup>33</sup> The Kilolo Defence cites rule 38 of the Rules and regulation 15 of the Regulations in support of that part of the Request seeking the appointment of a judge to replace the Single Judge during the period that the Disqualification Request is pending.

from a case in accordance with this paragraph if, *inter alia*, that judge has previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted. A judge shall also be disqualified on such other grounds as may be provided for in the Rules of Procedure and Evidence.

(b) The Prosecutor or the person being investigated or prosecuted may request the disqualification of a judge under this paragraph.

(c) Any question as to the disqualification of a judge shall be decided by an absolute majority of the judges. The challenged judge shall be entitled to present his or her comments on the matter, but shall not take part in the decision.

15. Sub-paragraph (a) of paragraph 2, which is the provision pursuant to which the Kilolo Defence brings the Request, “sets out certain circumstances in which a judge will be disqualified from sitting in a case” but uses the words “*inter alia*” to “make clear that the listed grounds for disqualification are examples only.”<sup>34</sup> The paragraph also provides that further grounds for disqualification may be provided for in the Rules.<sup>35</sup>
16. Sub-paragraphs (b) and (c) address the general procedure governing the disqualification of a judge. Sub-paragraph (b) explicitly grants the Prosecutor or the accused the right to “request the disqualification of a judge”.<sup>36</sup> Sub-paragraph (c) articulates the process by which the request is to be reviewed, providing that “[a]ny question as to the disqualification of a judge shall be decided by an absolute majority of the judges.” Sub-paragraph (c) further provides that “[t]he challenged judge shall be entitled to present his or her comments on the matter, but shall not take part in the decision.”<sup>37</sup>
17. The Presidency observes that the Request is brought pursuant to article 41(2)(a), but seeks the immediate provisional suspension of the Single Judge rather than his disqualification, a request to that effect having already been made.<sup>38</sup> The Presidency notes, however, in this respect, that the legal texts of the Court are silent on the

<sup>34</sup> Jules Deschênes & Christopher Staker, “Article 41 Excusing and disqualification of judges”, in *Commentary on the Rome Statute of the International Criminal Court* 968 (Otto Triffterer ed. 2d ed. 2008).

<sup>35</sup> Rule 34(1) articulates additional grounds for the disqualification of a judge but also uses the words “*inter alia*” to indicate that these additional grounds are non-exhaustive.

<sup>36</sup> Pursuant to rule 34(2) of the Rules, that request “shall be made in writing as soon as there is knowledge of the grounds on which it is based” and “shall state the grounds and attach any relevant evidence, and shall be transmitted to the person concerned”.

<sup>37</sup> Rule 34(2) similarly provides that the challenged judge “shall be entitled to present written submissions.”

<sup>38</sup> ICC-01/05-01/13-372. The Kilolo Defence cites to no other provision of the legal texts of the Court in support of that part of the Request seeking the immediate provisional suspension of the Single Judge.



particular question of the immediate provisional suspension of a judge during the pendency of a disqualification request.<sup>39</sup>

18. The Presidency further observes that the Kilolo Defence makes only fleeting reference to article 41(2)(a) and engages in no substantive analysis of its language or application by the Court. Rather, the Kilolo Defence's legal basis for the Request rests almost entirely on the decision by the President of the Pre-Trial Division to provisionally separate the Senior Legal Adviser from rendering legal advice in the *Lubanga* case.<sup>40</sup> The Presidency observes that the separation – whether it be temporary or permanent – of a staff member of the Court from a case presents wholly different circumstances from the disqualification of a judge (including whether he or she should be suspended in the interim). As such, the Presidency fails to see the relevance of this example to the circumstances of the present Request and declines to examine it on the merits.
19. The Presidency determines that although the Request addresses the immediate provisional suspension of a judge, this Request is inextricably linked to the prior Disqualification Request. The Kilolo Defence predicates the Request for immediate provisional suspension on the prior Disqualification Request, and in fact, submits that its Disqualification Request should automatically trigger immediate temporary suspension of the Single Judge.<sup>41</sup> Moreover, the Kilolo Defence partially bases the Request on the same legal grounds as those of the Disqualification Request.<sup>42</sup>

<sup>39</sup> The commentaries on the Rome Statute are also silent as to whether article 41(2) was intended to encompass the question of immediate provisional suspension. See Jules Deschênes & Christopher Staker, "Article 41 Excusing and disqualification of judges", in *Commentary on the Rome Statute of the International Criminal Court* 967-70 (Otto Triffterer ed. 2d ed. 2008); William A. Schabas, *The International Criminal Court: A Commentary on the Rome Statute* 568-73 (2010).

<sup>40</sup> ICC-01/05-01/13-388, paras. 6-7. This decision was requested by Pre-Trial Chambers I and II in response to several requests by the Prosecutor, later joined by the defence in the *Lubanga* case, via various procedural avenues, to separate the Senior Legal Adviser. ICC-01/04-01/06-623, pages 5-8, paras. 1-18. The Kilolo Defence refers to this separation as occurring in the context of the *Lubanga* case, but the Presidency clarifies that the Prosecutor's request actually sought the separation of the Senior Legal Adviser from pending cases concerning the situations in Uganda and the Democratic Republic of Congo. See *ibid.*, pages 5-7, paras. 2-13. The Prosecutor's requests were based on the grounds that the Senior Legal Adviser had previously worked on these cases while a Legal Adviser in the Office of the Prosecutor. *Ibid.* The decision by the President of the Pre-Trial Division provisionally separated the Senior Legal Adviser from these cases pending the final determination of the requests for separation. *Ibid.*, page 8, para. 18.

<sup>41</sup> ICC-01/05-01/13-388, para. 9 ("[A] disqualification request by either party is in and of itself sufficient to warrant the automatic and concomitant invocation of provisional suspension absent any further requests or showings of proof by either party.") (emphasis in original); *ibid.*, para. 10 ("[T]he disqualification requests . . . should immediately invoke the automatic provisional suspension of the Single Judge's exercise of judicial functions, insofar as decision on the disqualification requests are pending.") (emphasis in original).

<sup>42</sup> Compare *ibid.* para. 5 ("Such suspension . . . is also *necessary* . . . to protect the both the [sic] *appearance* as well as the *actual* integrity of the present proceedings.") (emphasis in original) with ICC-01/05-01/13-372, para. 41 ("The Defence takes this opportunity to recall here that it is not required to show *actual bias* on the part of the Single Judge, but simply demonstrate that a *reasonable observer could apprehend apparent bias on any ground in this case*, which is all that is needed to warrant the disqualification of the Single Judge.").

Accordingly, the Presidency considers the Request pursuant to the legal framework set forth in article 41(2).

20. Article 41(2)(a), relied upon by the Kilolo Defence, articulates the grounds for disqualifying a judge, but does not address the procedure for such disqualification. As noted above, article 41(2)(c) mandates that “[a]ny question as to the disqualification of a judge shall be decided by *an absolute majority of the judges*.” Rule 4 of the Rules addresses plenary sessions of the judges, which gather together all the judges of the Court.<sup>43</sup> Accordingly, it is a plenary session of judges that must decide “[a]ny question as to the disqualification of a judge” pursuant to article 41(2)(c).<sup>44</sup>
21. A plain reading of article 41(2)(c) and rule 4(2) makes it clear therefore that the Presidency lacks jurisdiction to decide upon questions of disqualification brought pursuant to article 41(2).<sup>45</sup> In accordance with article 41(2), the Presidency’s role is limited to purely administrative functions, such as convening the plenary session of judges pursuant to rule 4(2), recording the views of the judges at the plenary session and issuing the decision of the plenary of judges. As such, the Presidency lacks jurisdiction to address the Request.
22. The Presidency does note, however, that the Kilolo Defence’s assertion that “[p]ursuant to the established practice of this Court, then, *a disqualification request by either party is in and of itself sufficient to warrant the automatic and concomitant invocation of provisional suspension absent any further requests or showings of proof by either party*” runs against the precedent of the only two requests for disqualification previously addressed by the Court.<sup>46</sup> In neither case was the argument that “*a disqualification request by either party is in and of itself sufficient to warrant the automatic and concomitant invocation of provisional suspension*” raised by the parties or addressed by the plenary session of judges. Accordingly, the Presidency finds this assertion to be unfounded and lacking in legal basis.

<sup>43</sup> In accordance with rule 4(2), the judges meet in plenary session, *inter alia*, at least once a year and in special plenary sessions convened by the President on his motion.

<sup>44</sup> Rule 4(2) requires that decisions of the plenary sessions be taken by a majority of the judges present “[u]nless otherwise provided in the Statute or the Rules”. The Presidency notes that article 41(2)(c) requires that decisions on requests for disqualification be taken by “an absolute majority of the judges”, which is a more stringent standard than that set out in rule 4(2).

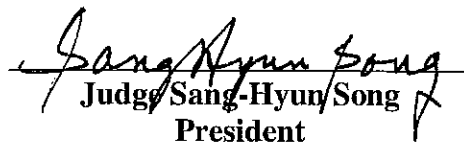
<sup>45</sup> By contrast, article 41(1)(a) grants the Presidency jurisdiction to decide upon questions of excusal, by providing that “[t]he Presidency may, at the request of a judge, excuse that judge from the exercise of a function under this Statute.”

<sup>46</sup> The first instance involved a request from the defence in *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus* to disqualify a judge from the Trial Chamber. ICC-02/05-03/09-344. The second instance involved a request from the defence in the *Lubanga* case to disqualify a judge from the Appeals Chamber. ICC-01/04-01/06-3040.

23. Finally, the Presidency notes that the Request repeatedly and erroneously refers to the Presidency as the body of the Court that will determine the Disqualification Request.<sup>47</sup> As discussed above, it is a plenary session of judges, and not the Presidency, that has the competence to make this determination. The Presidency takes this opportunity to remind the Kilolo Defence that, in accordance with the procedure provided for in article 41(2)(c) and rule 4(2) and as notified to the parties and participants, a plenary session of the judges will be convened on 27 May 2014 to address the requests for disqualification, including the Disqualification Request submitted by the Kilolo Defence.<sup>48</sup>

For the above reasons, the Presidency dismisses the Request.

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

  
**Judge Sang-Hyun Song**  
**President**

Dated this 19 May 2014

At The Hague, The Netherlands

<sup>47</sup> ICC-01/05-01/13-388, para. 1 (“This Request is submitted by the Defence . . . respectfully requesting that the Single Judge be automatically and temporarily suspended . . . during such time as the Presidency’s decision on Defence submission ICC-01/05-01/13-372 on the disqualification of the Single Judge is pending.”) (emphasis added); *ibid.* para. 4 (“Pending the Presidency’s decision on the Disqualification Request, the Defence submits that the practice and jurisprudence of this Court necessitate the automatic and immediate provisional suspension of the Single Judge . . .”) (emphasis added).

<sup>48</sup> ICC-01/05-01/13-385.