

# Annex I



Internal memorandum  
Memorandum interne

To   À	Judge Tomoko Akane	From   De	The <i>ad hoc</i> Presidency
Date	14 March 2024	Through   Via	
Ref.	2024/PRES/00054-02	Copies	Judge Solomy Balungi Bossa, President of the Appeals Division
Subject   Objet	Decision on your request of 12 March 2024 for excusal pursuant to article 41(1) of the Statute and rule 33 of the Rules of Procedure and Evidence		

The *ad hoc* Presidency, composed of First Vice-President Rosario Salvatore Aitala, Second Vice-President Reine Alapini-Gansou and Judge Luz del Carmen Ibáñez Carranza, has before it your request of 13 March 2024, in which you ask to be excused from your functions as a judge of the Appeals Chamber in the appeals against two decisions issued by Trial Chamber V ('Appeals') in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* ('Case'),<sup>1</sup> and all future appeals arising in this Case ('Request'). Noting that the Request also indicates the need for excusal from any Presidency functions in respect of the Request itself, an *ad hoc* Presidency was formed by virtue of the operation of regulation 11(2) of the Regulations of the Court on 13 March 2024.

The Request is based on your previous involvement in the pre-trial phase of the Case, *inter alia*, confirming the charges against Mr Yekatom and Mr Ngaïssona.<sup>2</sup> For this reason, you request to be excused pursuant to article 41(1) of the Statute and rule 33 of the Rules of Procedure and Evidence ('Rules').

The present request for excusal is properly before the *ad hoc* Presidency in accordance with article 41(1) of the Statute and rule 33(1) of the Rules.

<sup>1</sup> ICC-01/14-01/18-2126-Red; ICC-01/14-01/18-2127-Red.

<sup>2</sup> Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Corrected version of 'Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona, ICC-01/14-01/18-403-Corr-Red, 14 May 2020 (date original: 11 December 2019).

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’. Article 41(2)(a) of the Statute further provides that ‘[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 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 [...]’.

Noting the terms of articles 41(1) and 41(2)(a) of the Statute, the *ad hoc* Presidency considers that the impartiality of a judge who rendered the decision confirming the charges in a case might reasonably be doubted for the purpose of sitting on any appeal in the Case.<sup>3</sup> The *ad hoc* Presidency further notes the clear and relevant guidance in this regard provided by regulation 12 of the Regulations of the Court which states that ‘[u]nder no circumstances shall a judge who has participated in the pre-trial or trial phase of a case be eligible to sit on the Appeals Chamber hearing that case’. Given your involvement in issuing the decision confirming the charges against Mr Yekatom and Mr Ngaïssona, the *ad hoc* Presidency finds the Request for excusal to be well founded and hereby grants it.

In light of the above, the *ad hoc* Presidency, pursuant to rule 38 of the Rules and regulations 12 and 15 of the Regulations of the Court, shall treat you as unavailable and proceed with your replacement in the Appeals Chamber, for the purpose of the Appeals and any future appeals in the Case.

The *ad hoc* Presidency shall make this decision public, noting that you have expressed your consent in accordance with rule 33(2) of the Rules.

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<sup>3</sup> Presidency, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [Decision on your request of 18 March 2021 for excusal pursuant to article 41\(1\) of the Statute and rule 33 of the Rules of Procedure and Evidence](#), 25 March 2021, ICC-01/12-01/18-1406-Anx, p. 2; Presidency, *The Prosecutor v. Dominic Ongwen*, [Decision on your request of 18 March 2021 for excusal pursuant to article 41\(1\) of the Statute and rule 33 of the Rules of Procedure and Evidence](#), 25 March 2021, ICC-02/04-01/15-1807-Anx, p. 2; Presidency, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, [Decision on the requests for excusal from the Appeals Chamber in all pending and future appeals in \*The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé\*](#), 18 September 2015, ICC-02/11-01/15-230-AnxI, p. 3; Presidency, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, [Decision on the request of 16 February 2010 to be excused from sitting in the appeal of Mr Germain Katanga against the decision of Trial Chamber II of 20 November 2009 and from sitting in all future appeals arising in the case of \*The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui\*, pursuant to article 41\(1\) of the Statute and rule 33 of the Rules of Procedure and Evidence](#), 8 March 2010, ICC-01/04-01/07-1949-Anx2, p. 3; Presidency, *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, [Decision on the request to be excused from the exercise of judicial functions in the Appeals Chamber pursuant to article 41 of the Rome Statute](#), 28 March 2013, ICC-02/05-03/09-458-Anx2, p. 2.