



Internal memorandum

To À	The Presidency	From De	Judge Monageng
Date	11 June 2013	Through Via	
Ref.	01/11-01/11 (Gaddafi)	Copies	Judge Kuenyehia (President of the Appeals Division); Hiram Abtahi; Volker Nerlich; Natasha Naidoo
Subject Objet	Request for excusal pursuant to article 41 (1) of the Statute and rule 33 of the Rules of Procedure and Evidence and Request to be excused from the Presidency		

CONFIDENTIAL

Request for excusal pursuant to article 41 (1) of the Statute and rule 33 of the Rules of Procedure and Evidence

1. On 31 May 2013, Pre-Trial Chamber I rendered its "Decision on the admissibility of the case against Saif Al-Islam Gaddafi" (ICC-01/011-01/11-344) (hereinafter: "Decision on Admissibility") in which the case against Saif Al-Islam Gaddafi (hereinafter: "Mr Gaddafi") was determined to be admissible before the Court. On 7 June 2013, the Government of Libya lodged its appeal against the Decision on Admissibility (hereinafter: "Appeal").¹ Pursuant to article 41 (1) of the Statute and rule 33 of the Rules of Procedure and Evidence, I hereby request to be excused from exercising my functions as an Appeals Chamber Judge in the Appeal.
2. The reasons for my request, revolve around my involvement in the case during the pre-trial phase of the proceedings and in particular, my participation in the "Decision on the 'Prosecutor's Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar GADDAFI, Saif Al-Islam GADDAFI and

¹ "The Government of Libya's Appeal against Pre-Trial Chamber I's 'Decision on the admissibility of the case against Saif Al-Islam Gaddafi'", 7 June 2013, ICC-01/11-01/11-350 (OA 4).

Abdullah AL SENUSSI” (hereinafter: “Decision on the Warrant of Arrest”),² including the ensuing issuance of the “Warrant of Arrest for Saif Al-Islam Gaddafi” (hereinafter: “Warrant of Arrest”).³ In this regard, I note that the Decision on Admissibility examines whether Libya is investigating the same case as the ICC against Mr Gaddafi. In doing so, the Pre-Trial Chamber compares the conduct allegedly under investigation by Libya with the conduct attributed to Mr Gaddafi in both the Decision on the Warrant of Arrest and the Warrant of Arrest.⁴ In the circumstances, I therefore have “*previously been involved [...] in that case before the Court*” within the meaning of the second sentence of article 41 (2) of the Statute.

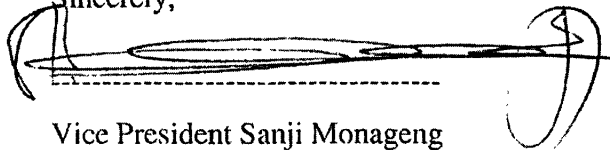
3. Pursuant to rule 33 (2) of the Rules of Procedure and Evidence, I submit this request confidentially. However, I would not object if the Presidency wished to make public this request or the reasons for its eventual decision on this request (second sentence of rule 33 (2) of the Rules of Procedure and Evidence).

Request to be excused from the Presidency

4. In addition, I hereby request to be excused from the deliberations of the Presidency on my request to be excused from being a member of the Appeals Chamber, in the appeal to be brought in the case of *Prosecutor vs. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, pursuant to Pre-Trial Chamber I’s decision of 31 May 2013.

5. My reason for this request is the possible conflict of interest given my position as a member of the Presidency.

Sincerely,



Vice President Sanji Monageng

² ICC-01/11-01/11-1, dated 27 June 2011 and registered in the case file on 30 June 2011.

³ ICC-01/011-01/11-3, dated 27 June 2011 and registered in the case file on 30 June 2011.

⁴ See Decision on Admissibility, para. 78 *et seq.*