




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

La Présidence
The Presidency

Internal memorandum
Memorandum interne

To À	Judge Marc Perrin de Brichambaut	From De	Presidency
Date	25 March 2021	Through Via	
Ref.	2021/PRES/00059-02	Copies	Judge Luz del Carmen Ibáñez Carranza, President of the Appeals Division
Subject Objet	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		

The Presidency, composed of President Piotr Hofmański, First Vice-President Luz del Carmen Ibáñez Carranza and Second Vice-President Antoine Kesia-Mbe Mindua has before it your request of 18 March 2021, in which you request to be excused from your functions as a judge of the Appeals Chamber in the appeal against the Trial Judgement ('Appeal') in the case of *The Prosecutor v. Dominic Ongwen* ('Case'),¹ and all future appeals arising in this Case, to the extent that these appeals relate to the criminal proceedings against Mr Ongwen ('Request').

The Request is based on your previous involvement in the pre-trial phase of the Case, *inter alia*, confirming the charges against Mr Ongwen.² You conclude that you have been previously involved in the Case as provided for in article 42(2)(a) of the Statute. 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 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'. 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

¹ See Appeals Chamber, *The Prosecutor v. Dominic Ongwen*, Decision on Mr Ongwen's request for time extension for the notice of appeal and on translation, ICC-02/04-01/15-1781, 24 February 2021, p. 3.

² Pre-Trial Chamber II, *The Prosecutor v. Dominic Ongwen*, Decision on the confirmation of charges against Dominic Ongwen, ICC-02/04-01/15-422-Red, 23 March 2016.

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 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, to the extent that these appeals relate to the criminal proceedings in that Case. The 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 Ongwen, the Presidency finds the Request for excusal to be well founded.

In light of the above, the 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 Appeal and any future appeals in the Case, to the extent that these appeals relate to the criminal proceedings against Mr Ongwen.

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