

ANNEX 2

**Cour
Pénale
Internationale**



La Présidence

**International
Criminal
Court**

The Presidency

**Internal memorandum
Memorandum interne**

To À	Judge Sanji Monageng	From De	The Presidency <i>sh</i>
Date	15 March 2012	Through Via	
Ref.	2012/PRES/133-5	Copies	
Subject Objet	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		

The Presidency, composed of the President (Judge Sang-Hyun Song), the Second Vice President (Judge Cuno Tarfusser) and Judge Akua Kuenyehia, hereby decides upon the request of Judge Sanji Monageng ("applicant") of 14 March 2012 to be excused from her functions as a judge of the Appeals Chamber in the "OA 4" appeal in the case of *The Prosecutor v. Callixte Mbarushimana* ("request for excusal").

The request for excusal is granted.

Factual background

By memorandum dated 14 March 2012, the applicant requested the Presidency to be excused from her functions as a judge of the Appeals Chamber in the Prosecutor's appeal "OA 4" in the case of *The Prosecutor v. Callixte Mbarushimana* against the "Decision on the Confirmation of charges",¹ pursuant to article 41(1) of the Rome Statute ("the Statute") and rule 33 of the Rules of Procedure and Evidence ("the Rules").² By memorandum of 15 March 2012, the applicant also requested the Presidency to excuse her, in her capacity as First Vice-President, from the deliberations of the Presidency on the request for excusal.³ That same date, noting article 41(1) of the Statute and rule 33 of the Rules, the remaining members of the Presidency granted the latter request in order to prevent a conflict of interest from

¹ ICC-01/04-01/10-499.

² 2012/PRES/133.

³ 2012/PRES/133-2.

arising, bearing in mind the position of the applicant as both a member of the Presidency and a judge of the Appeals Chamber. Pursuant to regulation 11(2) of the Regulations of the Court ("Regulations"), the applicant was treated as unavailable for the purpose of the deliberations of the Presidency on the request for excusal.⁴ On 15 March 2012, Judge Akua Kuenyehia assumed the responsibilities of the applicant as a member of the Presidency in the request for excusal, in accordance with regulation 11(2) of the Regulations.⁵

The request for excusal is based upon the previous involvement of the applicant in the pre-trial phase of the case, during which she sat on the bench that: a) rendered the "Decision on the confirmation of charges" that is impugned before the Appeals Chamber in the "OA 4" appeal and b) granted leave to appeal that decision.

Decision

The request for excusal is properly before the Presidency, in accordance with article 41 of the Statute and rule 33 of the Rules.

The Presidency finds the request for excusal to be well founded. Article 41(1) of the Statute, in relevant part, provides 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...".

The Presidency, having considered the matter before it, finds the request for excusal to be well founded. Noting the terms of article 41(1) and 41(2)(a) of the Statute, the Presidency finds that the impartiality of the applicant might reasonably be doubted considering her previous involvement in the pre-trial phase of the case and, as such, the request for excusal in the present appeal is granted. The Presidency, pursuant to rule 38 of the Rules and regulations 12 and 15 of the Regulations of the Court, shall, for the purpose of the present appeal, treat the applicant as unavailable and proceed with her replacement in the Appeals Chamber

⁴ 2012/PRES/133-3.

⁵ 2012/PRES/133-4.

The Presidency notes that the applicant has consented to the Presidency making public the request for excusal and the reasons for its decision upon that request pursuant to rule 33(2) of the Rules. A copy of this decision and the requests for excusal from the Appeals Chamber and Presidency shall be annexed to the decision of the Presidency replacing the applicant in the Appeals Chamber for the purpose of the appeal.