



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

**La Présidence
The Presidency**

**Internal memorandum
Memorandum interne**

To À	Judge Sanji Monageng	From De	The Presidency <i>Shs</i>
Date	18 June 2013	Through Via	
Ref.	2013/PRES/00215-4	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 Judge Sang-Hyun Song, Judge Cuno Tarfusser and Judge Akua Kuenyehia, hereby decides upon the request¹ of Judge Sanji Monageng (“judge”) of 11 June 2013 to be excused from her functions as a judge of the Appeals Chamber in the appeal of the Government of Libya against Pre-Trial Chamber I’s “Decision on the admissibility of the case against Saif Al-Islam Gaddafi”² (“appeal”) in the case of *The Prosecutor v. Saif Aif-Islam Gaddafi and Abdullah Al-Senussi* (“case”).

The Request for excusal is rejected, for the following reasons.

Factual background

By memorandum dated 11 June 2013, the judge requested to be excused from the appeal (“Request”), pursuant to article 41(1) of the Rome Statute (“Statute”) and rule 33 of the rules of Procedure and Evidence (“Rules”). In the same memorandum, the judge also requested the Presidency to excuse her, in her capacity as the First Vice-President, from the deliberations of the Presidency on the Request (“Second

¹ 2013/PRES/00147.

² ICC-01/11-01/11-344-Red.

Request”). On 28 March 2013, noting article 41(1) of the Statute and rule 33 of the Rules, the remaining members of the Presidency granted the Second Request.³ Pursuant to regulation 11(2) of the Regulations of the Court (“Regulations”), the judge was treated as being unavailable for the purpose of the deliberations of the Presidency on the Request. On the same date, Judge Akua Kuenyehia assumed the responsibilities of the judge as a member of the Presidency for the purposes of the deliberations on the Request, in accordance with regulation 11(2) of the Regulations.⁴

The Request is based upon the previous involvement of the judge in the pre-trial phase of the case, during which she sat on the bench of the Pre-Trial Chamber that: a) issued the Decision on the Prosecutor’s Application for a warrant of arrest against Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al Senussi⁵ (“Decision on the Warrant of Arrest”) and b) issued the Warrant of Arrest for Saif Al-Islam Gaddafi⁶ (“Warrant of Arrest”).

In considering the admissibility of the case before the Court, the Impugned Decision of Pre-Trial Chamber I examined whether Libya was investigating the same case against Mr Gaddafi as that being investigated by the Court against Mr Gaddafi. In coming to that decision, Pre-Trial Chamber I compared the conduct allegedly under investigation in Libya with the conduct attributed to Mr Gaddafi in both the Decision on the Warrant of Arrest and in the Warrant of Arrest itself.

As a result, the judge argues that she has “previously been involved [...] in that case before the Court” within the meaning of the second sentence of article 41(2) of the Statute.

Decision

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

³ 2013/PRES/00147-2.

⁴ 2013/PRES/00147-3.

⁵ ICC-01/11-01/11-1, 30 June 2011.

⁶ ICC-01/11-01/11-3, 30 June 2011.

The Application is dismissed. The Presidency notes that the notice of appeal is not directly contesting the Decision on the Warrant of Arrest or the Warrant of Arrest which the judge issued as a former member of the pre-trial bench. Rather it is challenging the decision of the Pre-Trial Chamber, as currently composed, on the admissibility of the case before the Court, which, in considering whether Libya was investigating the same case as the Court, *inter alia*, compared the alleged crimes in the Decision on the Warrant of Arrest and the Warrant of Arrest with conduct allegedly under investigation by the Libyan authorities. As such, the excusal is not warranted at present. However, should the situation change, directly or indirectly, and in this vein the Presidency notes that the Document in Support of the Appeal setting out the grounds for the appeal has yet to be filed and the Appeals Chamber has yet to determine the scope of the appeal, the judge may decide to seek a request for excusal.

The Presidency notes that the judge has consented to the Presidency making public the Request and the reasons for its decision thereupon, pursuant to rule 33(2) of the Rules. A copy of this decision and the Request shall be annexed to the decision of the Presidency notifying the parties and participants of the request in the case.