

Annex 1

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Criminal
Court

La Présidence
The Presidency

Internal memorandum
Memorandum interne

To À	Judge Tomoko Akane	From De	The <i>ad hoc</i> Presidency
Date	11 July 2024	Through Via	
Ref.	2024/PRES/000127-02	Copies	Judge Gocha Lordkipanidze, President of the Appeals Division
Subject Objet	Decision on your request of 5 July 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 5 July 2024, in which you ask to be excused from your functions as a judge of the Appeals Chamber in respect of the 'Request for Extension of Time to File the Notice of Appeal' in respect of the judgment pursuant to article 74 of the Statute ('Trial Judgment') in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* ('Case'),¹ and any other future appeal 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 5 July 2024.

¹ Defence for Mr Al Hassan, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [Request for Extension of Time to File the Notice of Appeal](#), 4 July 2024, ICC-01/12-01/18-2597.

The Request is based on your previous involvement as a judge of Trial Chamber X which rendered the Trial Judgment in the Case.² 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.

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 [...]'. In addition, regulation 12 of the Regulations of the Court 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'.

Noting the terms of those provisions, the *ad hoc* Presidency considers that the impartiality of a judge who was a member of the trial chamber which rendered the Trial Judgment, might be reasonably be doubted for the purpose of sitting on any appeal in that case. Given your involvement in rendering the Trial Judgment, 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 Request 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.

² Presidency, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [Decision constituting Trial Chamber X and referring to it the case of The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud](#), 21 November 2019, ICC-01/12-01/18-501, p. 4.