

Internal memorandum
Memorandum interne

To À Date Ref. Subject Objet	Judge Rosario Salvatore Aitala, First Vice-President Judge Reine Alapini-Gansou, Second Vice-President 22 November 2024 2024/PRES/00186 Request for excusal pursuant to article 41(1) of the Statute and rule 33 of the Rules of Procedure and Evidence	From De Through Via Copies	Judge Tomoko Akane, President 
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CONFIDENTIAL

1. On 21 November 2019, the Presidency constituted Trial Chamber X, then comprising Judge Mindua, Judge Prost and myself and referred to it the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* ('Al Hassan case').¹ On 11 March 2024, I was elected as President of the Court. Following my election as President of the Court, I became a member of the Appeals Division in accordance with article 39(1) of the Rome Statute ('Statute').
2. I recall that on 19 June 2024, I made a request to be excused from Trial Chamber X for the remainder of the *Al Hassan* case following the handing down of the article 74 decision, in accordance with article 41(1) of the Statute and rule 33 of the Rules of Procedure and Evidence ('Rules'), in view of excessive workload.² On 26 June 2024, Trial Chamber X filed its Trial Judgment in which Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud was convicted, by majority, under eight counts of crimes against humanity and war crimes.³ On 28 June 2024, an *ad hoc* Presidency granted my request for excusal of 19 June 2024 and replaced me in Trial Chamber X with Judge Korner.⁴

¹ 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.

² [ICC-01/12-01/18-2596-Anx1](#).

³ Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [Trial Judgment](#), 26 June 2024, ICC-01/12-01/18-2594-Red, para. 1785.

⁴ Presidency, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [Decision on your request of 19 June 2024 for excusal pursuant to article 41\(1\) of the Statute and rule 33 of the Rules of Procedure and Evidence](#), 28 June 2024, ICC-01/12-01/18-2596-Anx2; Presidency, *The Prosecutor v. Al*

3. Subsequently, Judge Korner informed the *ad hoc* Presidency of unavoidable prior commitments which would risk causing delays to the sentencing procedure in the *Al Hassan* case. The *ad hoc* Presidency brought this new information to my attention, in view of its relevance to the proper administration of the Court. Accordingly, I sought to withdraw my request for excusal from Trial Chamber X, noting that '[a]lthough my workload remains objectively excessive, my concern at the risk of possible delay to the *Al Hassan* case and the need to consider the best interests of the Court means that I stand ready to return to Trial Chamber X if the *ad hoc* Presidency considers it appropriate'.⁵
4. On 10 July 2024, an *ad hoc* Presidency granted my request to withdraw my excusal request of 19 June 2024 and I returned to Trial Chamber X, replacing Judge Korner, in the *Al Hassan* case.⁶
5. On 20 November 2024, Trial Chamber X sentenced Mr Al Hassan to ten years' imprisonment.⁷ Noting that the article 74 and 76 proceedings before Trial Chamber X have now been completed, I wish to request that I be excused from sitting in Trial Chamber X for the remainder of the *Al Hassan* case, in accordance with article 41(1) of the Statute and rule 33 of the Rules. I make this request on the basis of workload, noting my current and anticipated workload of the Appeals Chamber and my heavy duties and responsibilities as President of the Court. I further note that it has not been uncommon at the Court that the composition of a trial chamber has been changed for the purpose of reparation proceedings under article 75 of the Statute,⁸ which are different in nature from the article 74 and 76 proceedings.
6. In addition, I request to be excused from any functions of the Presidency in respect of this request for excusal to avoid any question of conflict of interest.
7. I note that rule 33(2) of the Rules provides for the confidentiality of this request. Please be advised that I do not object to the *ad hoc* Presidency making my request or the reasons for its eventual decision public.

Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, [Decision Replacing Judges in Trial Chamber X](#), 28 June 2024, ICC-01/12-01/18-2596.

⁵ See [ICC-01/12-01/18-2601-AnxI](#), paras. 4-6.

⁶ Presidency, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [Decision Concerning the Composition of Trial Chamber X](#), 10 July 2024, ICC-01/12-01/18-2601.

⁷ Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [Sentencing Judgment](#), 20 November 2024, ICC-01/12-01/18-2662.

⁸ Presidency, *The Prosecutor v. Germain Katanga*, [Decision replacing two judges in Trial Chamber II](#), 16 April 2014, ICC-01/04-01/07-3468; Presidency, *The Prosecutor v. Dominic Ongwen*, [Decision replacing a judge in Trial Chamber IX](#), 9 June 2021, ICC-02/04-01/15-1851.