



La Présidence
The Presidency

Internal memorandum
Memorandum interne

To À	Judge Tomoko Akane	From De	The <i>ad hoc</i> Presidency
Date	4 December 2024	Through Via	
Ref.	2024/PRES/00186-02	Copies	
Subject Objet	Decision on your request of 22 November 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 Judge Rosario Salvatore Aitala, Judge Reine Alapini-Gansou and Judge Luz del Carmen Ibáñez Carranza, has before it a request from Judge Tomoko Akane (the ‘Request’) dated 22 November 2024, seeking excusal from her functions as a judge of Trial Chamber X, pursuant to article 41(1) of the Statute and rule 33 of the Rules of Procedure and Evidence (the ‘Rules’).¹ The Request is made on the basis of excessive workload.

The Request is granted.

Factual Background

On 26 June 2024, Trial Chamber X, comprised of Judges Akane, Mindua and Prost, 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.² On 20 November 2024, Trial Chamber X, comprised of Judges Akane, Prost and Paek, sentenced Mr Al Hassan to ten years’ imprisonment.³

¹ Memorandum with Presidency internal reference 2024/PRES/00186.
² 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.
³ 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, para. 134, p. 68.

By confidential memorandum dated 22 November 2024, Judge Akane sought excusal from her functions as a judge of Trial Chamber X, making this request on the basis of workload, noting her current and anticipated workload as a judge of the Appeals Chamber, as well as her heavy duties and responsibilities as President of the Court. Judge Akane also noted that it has not been uncommon at the Court that the composition of a trial chamber to change for the purpose of reparation proceedings under article 75 of the Statute,⁴ which are different in nature from the article 74 and 76 proceedings.

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 (the 'Regulations').

Decision

The Request 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'. Rule 33(1) of the Rules provides, in relevant part, that a judge 'seeking to be excused from his or her functions shall make a request in writing to the Presidency, setting out the grounds upon which he or she should be excused.'

Noting the terms of those provisions, the *ad hoc* Presidency first grants Judge Akane's request for excusal from the consideration by the Presidency of her Request, as a conflict of interest may arise should she not be so excused. Pursuant to regulation 11(2) of the Regulations, Judge Akane is treated as being unavailable for present purpose.

Further, the *ad hoc* Presidency, having considered the matter before it, grants the Request to be excused from Trial Chamber X.

The *ad hoc* Presidency notes the anticipated workload of Trial Chamber X during the reparations phase of proceedings and of the Appeals Chamber, and considers that the simultaneous management of this workload, together with the ongoing responsibilities as the President of the Court, collectively constitute a very heavy workload which would warrant excusal on this basis. The *ad hoc* Presidency also notes the

⁴ 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.

availability of other judges, including those with particular experience and expertise in reparations matters at the Court, to assume duties in the Trial Chamber X. In this regard, the Presidency notes that it has previously been determined by a Presidency of the Court, in consultation with the judges, that the Court's legal texts do not prevent a newly or differently constituted trial chamber from conducting reparations proceedings.⁵

In light of the above, the *ad hoc* Presidency, pursuant to rule 38 of the Rules and regulation 15 of the Regulations, shall treat Judge Akane as unavailable and proceed with her replacement in Trial Chamber X.

The *ad hoc* Presidency shall make both this decision public and the Request public, noting that Judge Akane has expressed her consent in accordance with rule 33(2) of the Rules.

⁵ The Presidency, [Decision on conclusion of term of office of Judges Bruno Cotte and Fatoumata Dembele Diarra](#), 16 April 2014, ICC-01/04-01/07-3468-AnxI.