



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

La Présidence
The Presidency

Internal memorandum
Memorandum interne

To À	Judge Tomoko Akane	From De	The <i>ad hoc</i> Presidency
Date	4 April 2025	Through Via	
Ref.	2025/PRES/00060-02	Copies	
Subject Objet	Decision on your request of 28 March 2025 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 your memorandum of 28 March 2025, in which you ask to be excused from your functions as a judge of the Appeals Chamber in respect of an appeal, pursuant to article 41(1) of the Statute and rule 33 of the Rules of Procedure and Evidence (the 'Rules').¹

The Request is granted.

Factual Background

On 14 March 2025, the Article 85 Chamber in the case *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka* (the 'Case'), granted leave to appeal on the issue of 'whether the [Article 85 Chamber] erred in law in finding that Mr Mokom could choose to leave the hotel designated as the premises of the Court despite the Court's obligations enshrined in rule 185 of the Rules regarding the transfer of persons released from the custody of the Court' (the 'Appeal').² On 28 March 2025, the Defence for Mr Mokom

¹ Memorandum with Presidency internal reference 2025/PRES/00060.

² Article 85 Chamber, *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, [Decision on Mr Mokom's Request for Leave to Appeal the 'Decision on Mr Mokom's request for compensation'](#), 14 March 2025, ICC-01/14-01/22-357, para. 29.

filed its appeal brief against the decision for which leave to appeal was granted by the Article 85 Chamber on 14 March 2025.³

By memorandum dated 28 March 2025, Judge Akane sought excusal from her functions in the Appeals Chamber in connection with the Appeal, on the basis that, as a former member of Pre-Trial Chamber II, she had participated in the pre-trial phase of the proceedings in the Case and, in particular, in a decision pursuant to rule 185 of the Rules issued after the proceedings against Mr Mokom were terminated.⁴ Judge Akane considered that given her involvement in the Case at the pre-trial stage, including on legal issues which appear to overlap with those forming part of the Appeal, it would be improper for her to hear the Appeal.

Noting that the Request also indicates the need for Judge Akane's 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 1 April 2025.

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'. Article 41(2)(a) 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'.

The *ad hoc* Presidency, having considered the matter before it, grants the Request to be excused from the Appeal. The *ad hoc* Presidency takes notes of Judge Akane's involvement in the pre-trial stage of the Case and in particular, of the high degree of congruence between the legal issues relating to rule 185 of the Rules in the Appeal

³ Defence for Mr Maxime Jeoffroy Eli Mokom Gawaka, *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, Public Redacted Version of "Appeal brief against the 'Decision on Mr Mokom's request for compensation'", ICC-01/14-01/22-358-Conf, 27 March 2025, 28 March 2025, ICC-01/14-01/22-358-Red.

⁴ Pre-Trial Chamber II, *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, [Public Redacted Version of 'Decision pursuant to Rule 185 of the Rules of Procedure and Evidence'](#), 18 January 2024, ICC-01/14-01/22-309-Red.

and those already decided by her as a judge in Pre-Trial Chamber II. Accordingly, 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 regulation 15 of the Regulations, shall treat Judge Akane as unavailable and proceed with her replacement in the Appeals Chamber for the Appeal.

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.