

Internal memorandum
Memorandum interne

To À	Judge Rosario Salvatore Aitala, First Vice-President Judge Reine Alapini-Gansou, Second Vice-President	From De	 Judge Tomoko Akane, President
Date	28 March 2025	Through Via	
Ref.	2025/PRES/00060	Copies	Judge Gocha Lordkipanidze, President of the Appeals Division
Subject Objet	Request for excusal pursuant to article 41(1) of the Statute and rule 33 of the Rules of Procedure and Evidence		

CONFIDENTIAL

- 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').¹
- Pursuant to article 41(1) of the Statute and rule 33 of the Rules of Procedure and Evidence (the 'Rules'), I hereby request to be excused from sitting on the Appeal. 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.
- The reason for this request is that prior to my election as President of the Court on 11 March 2024, at which time I joined the Appeals Division, I was, *inter alia*, a member of Pre-Trial Chamber II, to which the case was then assigned. In this capacity, I was involved in the pre-trial phase of the case and, in particular, participated in a decision pursuant to rule 185 of the Rules of Procedure and Evidence, issued after the proceedings against Mr Mokom were terminated.² This decision may appear to be connected to the subject-matter of the Appeal.

¹ 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. See also 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.

² 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.

4. Regulation 12 of the Regulations provides 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'. I consider that given my involvement in the case at the pre-trial stage, including on legal issues which I considered in the case as a judge of Pre-Trial Chamber II and which appear to overlap with those which form part of the Appeal, it would be improper for me to hear the Appeal.
5. 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.