



Cour
Pénale
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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	21 August 2025	Through Via	
Ref.	2025/PRES/0130-02	Copies	Appeals Chamber
Subject Objet	Decision on your request of 20 August 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 Kimberly Prost, has before it your memorandum of 20 August 2025 (the ‘Request’), in which you request, pursuant to article 41 of the Statute and rule 33 of the Rules of Procedure and Evidence (the ‘Rules’), to be excused from your Presidency functions in respect of the ‘Prosecutor’s Request to be Excused from the Venezuela Situation’ filed by the Prosecutor on 18 August 2025 in the *situation in the Bolivarian Republic of Venezuela I* (the ‘Prosecutor’s Excusal Request’ and ‘Venezuela I situation’, respectively).¹

The *ad hoc* Presidency grants the Request.

Factual Background

On 1 August 2025, the Appeals Chamber issued a decision instructing the Prosecutor to request his excusal from the Venezuela I situation, finding that he was under a duty to seek excusal with the Appeals Chamber ‘[h]aving established that there is “reason to believe that a ground for the disqualification of the Prosecutor exists” (the ‘Appeals Chamber Decision’).² The Appeals Chamber held that ‘in light of the Prosecutor’s close family relationship with Ms Alagendra, combined with their

¹ Memorandum with Presidency internal reference 2025/PRES/0130.

² Appeals Chamber, *Situation in the Bolivarian Republic of Venezuela I*, [Decision on the “Request for the Appeals Chamber to Conduct an Ex Officio Review of the Prosecutor’s Conflict of Interest in the Venezuela I Situation”](#), 1 August 2025, ICC-02/18-118 (the ‘Appeals Chamber Decision’), para. 45.

previous professional and hierarchical relationship, a fair-minded and reasonable observer, properly informed and having considered all facts and circumstances, would reasonably apprehend bias.’³

On 18 August 2025, the Prosecutor filed before the Presidency a request to be excused from the Venezuela I situation in compliance with the Appeals Chamber’s instruction.⁴

On 20 August 2025, Judge Akane requested to be excused from her Presidency functions in respect of the Prosecutor’s Excusal Request on the basis that a reasonable observer may consider that she has a predetermined opinion on the merits of the Prosecutor’s Excusal Request, given that she is one of the judges who rendered the Appeals Chamber Decision and noting that the Appeals Chamber has provided its views as to whether it is appropriate for the Prosecutor to seek excusal and whether there may be a reasonable apprehension of bias on his behalf.⁵ Judge Akane also notes that there is an obvious overlap between the issues which she considered as a judge of the Appeals Chamber and those which form part of the Prosecutor’s Excusal Request before the Presidency.⁶

The *ad hoc* Presidency was formed to consider the Request by virtue of the operation of regulation 11(2) of the Regulations of the Court on 20 August 2025. Judge Kimberly Prost was considered to be the next available judge having precedence who is not a member of the Appeals Chamber.

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, in relevant part, that ‘[a] judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground’, with this reflecting the broader duty of judicial impartiality. In this regard, article 4 of the Code of Judicial Ethics provides that:

³ Appeals Chamber Decision, para. 44.

⁴ Prosecutor, *Situation in the Bolivarian Republic of Venezuela I*, [Prosecutor’s Request to be Excused from the Venezuela I Situation](#), ICC-02/18-121, 18 August 2025.

⁵ Request, paras 2-4.

⁶ Request, para. 4.

1. Judges shall be impartial and ensure the appearance of impartiality in the discharge of their judicial functions.
2. Judges shall avoid any conflict of interest, or being placed in a situation which might reasonably be perceived as giving rise to a conflict of interest.

The *ad hoc* Presidency notes that the legal and factual issues to be considered by the Presidency when adjudicating the Prosecutor's Excusal Request bear a close legal and factual congruence to issues considered in the Appeals Chamber Decision. Most significantly, the Appeals Chamber Decision addressed the merits or appropriateness of a potential disqualification or excusal of the Prosecutor and reached the conclusion that 'a fair-minded and reasonable observer, properly informed and having considered all facts and circumstances, would reasonably apprehend bias' on behalf of the Prosecutor in the Venezuela I situation. This creates a clear risk that Judge Akane may have already decided or formed her opinion on the merits of the Prosecutor's Excusal Request, thus creating a risk of lack of impartiality were she to participate in the Presidency's consideration of the Prosecutor's Excusal Request. Accordingly, the *ad hoc* Presidency finds the Request for excusal to be well founded and hereby grants it.

The *ad hoc* Presidency notes that Judge Akane has expressed her consent to make her request and the decision thereon public, in accordance with rule 33(2) of the Rules.