

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 赤根 智子
Date	25 September 2025	Through Via	
Ref.	2025/PRES/00147	Copies	Judge Erdenebalsuren Damdin, 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 19 September 2025, the Defence in the case against Mr Edmond Beina (the 'Case') filed before the Appeals Chamber a notice of appeal against the decision of Pre-Trial Chamber II entitled 'Decision on the Central African Republic's challenge to the admissibility of the case against Mr Edmond Beina' dated 12 September 2025 (the 'Appeal').¹ In the decision under appeal, Pre-Trial Chamber II found that the case against Mr Beina before the Court is inadmissible under article 17(1)(a) of the Statute.²
- 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 which issued the arrest warrant against Mr Beina.³ My prior involvement in the Case is, therefore, very limited in nature. In addition, in the arrest warrant against Mr Beina, Pre-Trial Chamber II specifically declined to determine the admissibility of the case pursuant to the second sentence of article 19(1) of the Statute, which allows the chamber to determine the admissibility of a case in accordance with

¹ Defence for Mr Edmond Beina, *Situation in the Central African Republic II*, [Public Redacted Version of "Defence Notice of Appeal against the 'Decision on the Central African Republic's challenge to the admissibility of the case against Edmond Beina'"](#), 19 September 2025, ICC-01/14-219-Red.

² Pre-Trial Chamber II, *Situation in the Central African Republic II*, [Decision on the Central African Republic's challenge to the admissibility of the case against Edmond Beina](#), 12 September 2025, ICC-01/14-217-Red, para. 79.

³ Pre-Trial Chamber II, *Situation in the Central African Republic II*, [Warrant of Arrest for Edmond Beina](#), 7 December 2018, ICC-01/14-32.

article 17 of the Statute. Accordingly, there is no congruence between the issues addressed by Pre-Trial Chamber II in the arrest warrant and the matter currently before the Appeals Chamber. I also note that none of the grounds for disqualification established in rule 34 of the Rules are enlivened in the present circumstances. Nonetheless, I note that the first sentence of article 41(2)(a) of the Statute refers broadly to a situation in which the impartiality of a judge might reasonably be doubted on any ground. Noting the importance of judicial impartiality, I prefer to request excusal from the Appeals Chamber in the case if there is any possibility that an issue could arise under article 41(2)(a) of the Statute. Accordingly, out of prudence, I hereby request that an *ad hoc* Presidency excuse me from the Appeal.

4. 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, at its own discretion.