



**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	21 October 2025	Through Via	
Ref.	2025/PRES/147-02	Copies	Judge Erdenebalsuren Damdin, President of the Appeals Division
Subject Objet	Decision on your request of 25 September 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 First Vice-President Rosario Salvatore Aitala, Second Vice-President Reine Alapini-Gansou and Judge Luz del Carmen Ibáñez Carranza, has before it your request of 25 September 2025 (the 'Request'),¹ in which you ask to be excused from your functions as a judge of the Appeals Chamber in respect of the appeal against a decision issued by Pre-Trial Chamber II in the case against Mr Edmond Beina (the 'Case'),² in which Pre-Trial Chamber II found that the case against Mr Beina before the Court is inadmissible under article 17(1)(a) of the Statute (the 'Appeal').³ 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 on 26 September 2025.

The Request is based on your previous involvement in the pre-trial phase of the Case as a member of Pre-Trial Chamber II, which issued the warrant of arrest against Mr Edmond Beina.⁴ For this reason, you request to be excused pursuant to article 41(1) of the Statute and rule 33 of the Rules of Procedure and Evidence ('Rules').

¹ Memorandum with Presidency internal reference 2025/PRES/00147.

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 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.

⁴ Pre-Trial Chamber II, *Situation in the Central African Republic II*, [Warrant of Arrest for Edmond Beina](#), 7 December 2018, ICC-01/14-32.

The present request for excusal 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) of the Statute 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 [...]'. This article provides the overriding context for the interpretation of all related rules and regulations.

The *ad hoc* Presidency, acting by majority consisting of Judges Aitala and Alapini-Gansou, notes that Judge Akane, in her prior capacity as a judge of Pre-Trial Chamber II, issued the warrant of arrest in the Case. The majority of the *ad hoc* Presidency recalls that it has been previously established that the involvement of a judge in the issuance of an arrest warrant does not necessarily give rise to reasonable grounds to doubt his or her impartiality in appellate proceedings generally.⁵ The Presidency has also determined that while the second sentence of article 41(2)(a) of the Statute provides, relevantly, that 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', this sentence must be read in conjunction with the first sentence of article 41(2)(a), which provides that '[a] judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground'. Therefore, issues of impartiality only arise where the nature of the prior involvement of a judge is in a capacity which gives rise to a reasonable ground to doubt his or her impartiality.⁶

In the present case, the majority of the *ad hoc* Presidency observes that the Appeal before the Appeals Chamber impugns a decision in which Pre-Trial Chamber II made a determination as to the admissibility of the Case under article 19(2)(b) of the Statute, and based on the ground of inadmissibility under article 17(1)(a) of the

⁵ Presidency, [Decision on the request of Judge Akua Kuenyehia of 18 February 2010 to be excused from participating in the exercise to reclassify documents in the appeals proceedings related to the case of *The Prosecutor v. Bosco Ntaganda* and in all appeals in the case](#), 24 September 2010, ICC-01/04-584-Anx4, p. 5, annexed to Presidency, *Situation in the Democratic Republic of the Congo*, [Notification of decisions on requests for excusal](#), 11 November 2010, ICC-01/04-584.

⁶ Presidency, [Decision on the request of 16 September 2009 to be excused from sitting in the appeals against the decision of Trial Chamber I of 14 July 2009 in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, pursuant to article 41\(1\) of the Statute and rule 33 of the Rules of Procedure and Evidence](#), 23 September 2009, ICC-01/04-01/06-2138-AnxIII, p. 6 (footnotes omitted), annexed to Appeals Chamber, [The Prosecutor v. Thomas Lubanga Dyilo, Decision replacing a judge in the Appeals Chamber](#), 23 September 2009, ICC-01/04-01/06-2138.

Statute.⁷ It further observes that in the warrant of arrest, 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 provides that the Court may, on its own motion, determine the admissibility of a case in accordance with article 17 of the Statute.⁸ There is, thus, no overlap between the legal issues in the Appeal and those decided by Judge Akane in the context of the arrest warrant in the Case.

Therefore, the *ad hoc* Presidency, acting by majority consisting of Judges Aitala and Alapini-Gansou, considers that Judge Akane's limited involvement at the pre-trial stage, which bears no legal or factual congruence with the matter currently before the Appeals Chamber, does not give rise to any reasonable ground to doubt her impartiality. Accordingly, the Request is denied.

Judge Luz del Carmen Ibáñez Carranza does not concur with the above view of the majority and considers that the Request should be granted. At the outset, Judge Ibáñez notes that the duty of the judges to ensure the fairness and integrity of the proceedings includes the need for judges to avoid any appearance of partiality. Judge Ibáñez recalls the language of article 41(2)(a) of the Statute, which provides that '[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', and considers, contrary to the majority, that this provision precludes a judge having had *any* type of prior involvement in a case from sitting in that case, regardless of the extent of this involvement. In her view, a distinction cannot be made which does not exist in law, as reflected in the general principle of *law ubi lex non distinguit, nec nos distinguere debemus*. As regards the present circumstances, Judge Ibáñez notes that a judge who was involved in the issuance of a warrant of arrest could have had access to the evidence and formed an opinion on the case, which could adversely affect the required impartiality. Accordingly, Judge Ibáñez determines that the impartiality of a judge involved in the issuance of a warrant of arrest in a case might reasonably be doubted for the purpose of sitting on any appeal in that case, based on this prior involvement. Given the involvement of Judge Akane in the issuance of the warrant of arrest against Mr Beina, Judge Ibáñez considers that the Request should have been granted.

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

⁷ 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. 40.

⁸ Pre-Trial Chamber II, *Situation in the Central African Republic II*, [Warrant of Arrest for Edmond Beina](#), 7 December 2018, ICC-01/14-32, para. 4.