

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	7 November 2025	Through Via	
Ref.		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		

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- Following my election as President on 11 March 2024, I have become a member of the Appeals Division in accordance with article 39(1) of the Statute. There is currently an appeal pending before the Appeals Chamber in the case *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')* against the trial judgement issued by Trial Chamber I on 6 October 2025 (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. I also request to be excused from all future appeals in this case. 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 11 March 2024, I was, *inter alia*, a member of Pre-Trial Chamber II which confirmed the charges against Mr Abd-Al-Rahman.² I note that 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 my involvement at the pre-trial stage was so substantial that it would be improper to hear any appeals in this case.

¹ Defence for Mr Abd-Al-Rahman, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')*, Defence Notice of Appeal Pursuant to Article 81(1)(b) of the Rome Statute, 6 November 2025, ICC-02/05-01/20-1261; Trial Chamber I, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')*, [Trial Judgment](#), 6 October 2025, ICC-02/05-01/20-1240.

² Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')*, [Decision on the confirmation of charges against Ali Muhammad Ali Abd-Al-Rahman \('Ali Kushayb'\)](#), 9 July 2021, ICC-02/05-01/20-433.

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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.