

ANNEX II

**Cour
Pénale
Internationale**



La Présidence

**International
Criminal
Court**

The Presidency

**Internal memorandum
Memorandum interne**

To À	Judge Akua Kuenyehia Judge Anita Ušacka	From De	The Presidency <i>Shb</i>
Date	3 July 2009	Through Via	
Ref.	2009/PRES/00312-3	Copies	Judge Daniel David Ntanda Nsereko
Subject Objet	Decision on the request to be excused from sitting on the appeal against the decision of Pre-Trial Chamber I on the Prosecutor's application for an arrest warrant in the case of <i>The Prosecutor v. Omar Hassan Ahmad Al-Bashir</i> , pursuant to article 41 of the Rome Statute		

The Presidency, composed of the President (Judge Sang-Hyun Song), the First Vice-President (Judge Fatoumata Dembele Diarra) and the Second Vice-President (Judge Hans-Peter Kaul), hereby decides the requests of Judge Akua Kuenyehia and Judge Anita Ušacka of the Appeals Chamber (hereinafter "applicants") of 2 July 2009 to be excused from sitting on the impending appeal against the decision of Pre-Trial Chamber I of 4 March 2009 on the application of the Prosecutor for a warrant of arrest in respect of Mr Omar Hassan Ahmad Al-Bashir (hereinafter "impending appeal"), including in respect of the request of the Prosecutor for an extension of the page limit for filing the document in support of the impending appeal.¹

The request for excusal is granted.

Factual Background

On 2 July 2009, by memoranda classified as confidential, the applicants requested the Presidency to excuse them from sitting on the impending appeal, pursuant to article 41 of the Rome Statute (hereinafter "Statute") and rule 33 of the Rules of Procedure and Evidence (hereinafter "Rules"). The requests for excusal are based upon the previous involvement of the applicants in the pre-trial phase of the case against Mr Omar Hassan Ahmad Al-Bashir (hereinafter "case"). Given that the applicants were members of the Pre-Trial Chamber that rendered the decision of 4 March 2009, they consider that they

¹ ICC-02/05-01/09-22.

have “previously been involved ... in that case before the Court” within the meaning of article 41(2)(a) of the Statute.²

Decision

The requests for excusal are properly before the Presidency in accordance with article 41 of the Statute and rule 33 of the Rules.

The Presidency finds the requests for excusal to be well founded. Article 41(1) of the Statute provides: “[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 provides: “[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...”

The requests for excusal were triggered by the request of the Prosecutor for an extension of the page limit for filing his document in support of the impending appeal. The applicants have requested to be excused from the impending appeal in its entirety. Considering the terms of articles 41(1) and 41(2)(a) of the Statute and the previous involvement of the applicants in the pre-trial phase of the case, the request for excusal from the impending appeal in its entirety is granted. This necessarily includes involvement in the decision upon the request of the Prosecutor for an extension of the page limit for filing his document in support of the impending appeal.

The Presidency, pursuant to rule 38 of the Rules and regulations 12 and 15 of the Regulations of the Court, will, for the purpose of the impending appeal, treat the applicants as unavailable and proceed with their replacement in the Appeals Chamber.

The Presidency notes that the applicants have consented to the Presidency making public the request for excusal and the reasons for its decision on the request for excusal, pursuant to rule 33(2) of the Rules. A copy of this decision and the requests for excusal will be annexed to the decision of the Presidency replacing the applicants in the Appeals Chamber for the purpose of the impending appeal.

² Judge Akua Kuenyehia’s request for excusal, paragraph 2; Judge Anita Ušacka’s request for excusal, paragraph 2.