

ANNEX 2

**Cour
Pénale
Internationale**



Les Chambres

**International
Criminal
Court**

The Chambers

Internal memorandum
Memorandum interne

To À	Presidency	From De	Judge Kuenyehia 
Date	18 February 2010	Through Via	
Ref.	01/04 OA	Copies	Judge Nsereko, President of the Appeals Division
Subject Objet	Request for recusal pursuant to article 41 (1) of the Statute and rule 33 of the Rules of Procedure and Evidence		

CONFIDENTIAL

1. At a meeting held on 16 February 2010, the Appeals Division decided that certain confidential documents relating to appeals in the case of the *Prosecutor v. Bosco Ntaganda* (ICC-01/04 OA) should be unsealed since there was no longer a basis for them remaining confidential.¹ Pursuant to article 41 (1) of the Statute and rule 33 of the Rules of Procedure and Evidence, I hereby request to be excused from participating in the decision unsealing the documents in question and all future appeals in this case.

2. The reason for this request is my previous involvement in the case against Mr. Ntaganda during the pre-trial phase of the proceedings, in the course of which I issued the warrant of arrest against the suspect.² I, therefore, have "previously been involved ... in that case before the Court" (second sentence of article 41 (2) (a) of the Statute).

3. Pursuant to rule 33 (2) of the Rules of Procedure and Evidence, I submit this request confidentially. However, I would not object if the Presidency wished to make public this request or the reasons for its eventual decision on this request (second sentence of rule 33 (2) of the Rules of Procedure and Evidence).

¹ See, ICC-01/04/538-PUB-Exp, 22 September, 2008.

² See ICC-01/04-02/06, 22 August 2006.