



Internal memorandum
Memorandum interne

To À	Presidency	From De	Judge Akua Kuenyehia <i>AKC</i>
Date	26 November 2013	Through Via	
Ref.	ICC-01/04-02/06 (Ntaganda) OA	Copies	
Subject Objet	Request for recusal		

CONFIDENTIAL

1. Yesterday, Mr Bosco Ntaganda filed the "Acte d'appel de la Défense de M. Bosco Ntaganda à l'encontre de la « Decision on the Defence's Application for Interim Release », rendue par la Chambre préliminaire II le 18 novembre 2013".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 sitting on this appeal.

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

3. I recall that, on 24 September 2010, the Presidency rejected³ my previous request⁴ to be recused from sitting on all appeals arising from the case of Mr Ntaganda. In its decision, the Presidency noted that:

[I]t is not immediately apparent that the applicant having issued a warrant of arrest in the case necessarily gives rise to reasonable grounds to doubt her impartiality in appellate proceedings generally. For that reason, the applicant's request to be generally excused from participating in all appeals in the case [...] on the ground that she issued the warrant of arrest is hereby denied. Should, however, the Appeals

¹ ICC-01/04-02/06-155 (OA).

² ICC-01/04-02/06-1-US-Exp.

³ See ICC-01/04-02/06-30-Anx4.

⁴ See ICC-01/04-02/06-30-Anx2.

Chamber be seised with an appeal in which the abovementioned ground gives rise to a specific reason to doubt the applicant's impartiality, she may seise the Presidency.⁵

4. The present appeal concerns a decision denying a request for interim release and is therefore likely to be directly related to issues addressed in the decision on the warrant of arrest. As a result, I consider it my duty to request to be excused from the appeal.

5. Pursuant to the 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 and the reasons for its eventual decision on the request.

⁵ ICC-01/04-02/06-30-Anx4, p. 4.