

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/04-02/06**
Date: **11 November 2010**

THE PRESIDENCY

Before: **Judge Sang-Hyun Song, President**
 Judge Fatoumata Dembele Diarra, First Vice-President
 Judge Hans-Peter Kaul, Second Vice-President

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
THE PROSECUTOR
v. BOSCO NTAGANDA

Public

Notification of decisions on requests for excusal

Notice to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor
Mr Luis Moreno-Ocampo
Ms Fatou Bensouda

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar
Ms Silvana Arbia

Defence Support Section

Deputy Registrar
Mr Didier Preira

Detention Section

**Victims Participation and Reparations
Section**

Other
Appeals Chamber

The Presidency of the International Criminal Court;

Having before it the request of Judge Anita Ušacka entitled “Request to be Excused” dated 16 February 2010,¹ seeking excusal from participating in a reclassification exercise in the appellate record of the first interlocutory appeal in the situation in the Democratic Republic of the Congo (hereinafter “situation”), which related to the case of the *Prosecutor v. Bosco Ntaganda* (hereinafter “case”);

Having before it the request of Judge Akua Kuenyehia entitled “Request for recusal pursuant to article 41(1) of the Statute and rule 33 of the Rules of Procedure and Evidence” dated 18 February 2010,² seeking excusal from the aforementioned reclassification exercise and from all future appeals in the case;

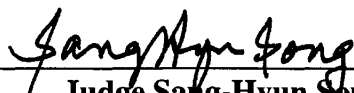
Noting its decisions of 24 September 2010 in which the Presidency denies the aforementioned requests;³

Noting that both Judges Ušacka and Kuenyehia have indicated that they have no objection to the publication of the Presidency’s aforementioned decisions;⁴

Hereby

Orders the Registrar to notify this order and its annexes to the relevant parties and participants in the situation.

Done in both English and French, the English version being authoritative.



Judge Sang-Hyun Song
President

Dated this 11 November 2010

At The Hague, The Netherlands

¹ Annex 1.

² Annex 2.

³ Annexes 3 and 4.

⁴ Annexes 2 and 5.

ANNEX 1

**Cour
Pénale
Internationale**



Les Chambres

**International
Criminal
Court**

The Chambers

		<i>Ušacka</i> Internal memorandum Memorandum interne	
To À	The Presidency	From De	Judge Ušacka
Date	16 February 2010	Through Via	
Ref.	01/04 (DRC) OA	Copies	Judge Nsereko, President of the Appeals Division
Subject Objet	Request to be Excused		

CONFIDENTIAL

BACKGROUND

On 12 January 2006, the Prosecutor filed, under seal, an application with Pre-Trial Chamber I (hereinafter: PTC I), then composed of Judges Jorda, Kuenyehia and Steiner, for a warrant of arrest against Mr. Bosco Ntaganda (ICC-01/04-98). PTC I rejected the application on 10 February 2006 (ICC-01/04-125). The Prosecutor appealed this decision on 14 February 2006 (ICC-01/04-125), and on 13 July 2006 the Appeals Chamber reversed and remanded the matter back to PTC I (ICC-01/04-169), which then issued a warrant of arrest for Mr. Bosco Ntaganda on 22 August 2006. All of these proceedings were initially under seal.

I was temporarily attached to PTC I from 22 June 2007 until 13 March 2009, when I was assigned to the Appeals Division.

On 29 February 2008, eighteen months after PTC I decided on and issued the warrant of arrest, PTC I – then composed of Judge Kuenyehia, Judge Steiner and myself – received the “Prosecution’s Application for Unsealing the Arrest Warrant against Bosco Ntaganda” (ICC-01/04-02/06-15-US-Exp), filed in the record of the *Prosecutor v. Bosco Ntaganda* (hereinafter: *Ntaganda* case). The Prosecutor requested that PTC I unseal the arrest warrant against Mr. Bosco Ntaganda, because in his view, the basis for the initial classification no longer existed.

Thereafter, on 23 April 2008, PTC I held a closed-session hearing with the Prosecutor to “solicit further information from the Prosecution concerning the application for unsealing the arrest warrant against Bosco Ntaganda.” (ICC-01/04-02/06-T-1, lines 7-8) The transcript of the hearing remains under seal.

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On the basis of the information provided by the Prosecutor in the application and in the hearing, on 28 April 2008, I signed one decision in the *Ntaganda* case which:

DECIDES to unseal and to reclassify as public the documents ICC-01/04-02/06-2-US and ICC-01/04-02/06-2-US-Anx.

REQUEST

On 22 September 2008, the Appeals Chamber reclassified as public the Judgment of 13 July 2006 (DRC OA), and two other documents in the record. Today, the Appeals Division decided that the Appeals Chamber should undertake a review of the entire record in the DRC OA appeal in order to determine whether a decision should be rendered by the Appeals Chamber to reclassify any other documents in the record. While these documents would have been filed in the record of the DRC Situation¹, they concern and would be directly related to the case of the *Prosecutor v. Bosco Ntaganda*.

I would therefore like to bring to the attention of the Presidency two of the procedural proceedings mentioned above, firstly, the closed session, *ex parte* hearing held by Pre-Trial Chamber I (hereinafter: PTC I) on 23 April 2008 (ICC-01/04-02/06-T-1-US-ENG); and secondly, the decision taken by PTC I on 28 April 2008 (ICC-01/04-02/06-18) in the *Ntaganda* case.

Under rule 35 of the Rules, a Judge has an affirmative duty to request the Presidency to be excused when the Judge has reason to believe that a ground for disqualification exists. Under this rule, the Judge "shall not wait for a request for disqualification to be made in accordance with article 41." Pursuant to article 41 (2) (a):

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 or in a related criminal case at the national level involving the person being investigated or prosecuted. A judge shall also be disqualified on such other grounds as may be provided in the Rules of Procedure and Evidence.

I recognise that article 41 (2) (a) of the Statute, second sentence, is phrased broadly. By itself, it appears to indicate that a judge shall be disqualified if that judge has previously been involved in any capacity in that case before the Court. The Presidency has indicated that it "considers the overriding purpose of article 41 (2) (a) to be the safeguarding of the

¹ Pursuant to Regulations of the Registry, regulation 20 (2).

CONFIDENTIAL

integrity of proceedings of the Court by ensuring that no judge participates in a case in which his or her impartiality might reasonably be doubted on any ground" (ICC-01/04-01/06-2138-AnxIII).

On 28 April 2008, I signed one decision in the *Ntaganda* case and took part in the related hearing on 23 April 2008. The decision rendered was of a procedural nature: it did not require a legal assessment of the factual allegations; it did not require a review of the Prosecutor's evidence in the case against Mr. Bosco Ntaganda; nor did it require a determination of guilt or innocence. The Pre-Trial Chamber was tasked only with determining whether the basis for the initial classification of the warrant of arrest continued to exist. Thus, I do not believe that if I participate in appellate proceedings in the DRC Situation, but which are related to the *Ntaganda* case, my impartiality could reasonably be doubted. For these reasons, I am ready, willing and able to commence my judicial duties as they arise in this case.

Nevertheless, I firmly believe that in all matters pertaining to judicial ethics, a cautious approach should be followed, especially in situations such as this one in which the wording of article 41 (2) (a) of the Statute and rule 34 of the Rules is phrased broadly enough to create the potential for ambiguity. For these reasons, and because there is no formal mechanism provided in the Statute, Rules, Regulations or Code of Judicial Ethics in which a Judge may ask for advice when faced with such an issue, I feel that it is my ethical duty to request to be excused, so that the Presidency may decide on this matter pursuant to article 41 (1) of the Statute.

Pursuant to rule 33 (2) of the Rules of Procedure and Evidence, I request that this memorandum is filed with Presidency and kept confidential.

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THE PRESIDENCY

Before: Judge Sang-Hyun Song, President
Judge Fatoumata Dembele Diarra, First Vice-President
Judge Hans-Peter Kaul, Second Vice-President

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
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Notice to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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REGISTRY

Registrar
Ms Silvana Arbia

Defence Support Section

Deputy Registrar
Mr Didier Preira

Detention Section

**Victims Participation and Reparations
Section**

Other
Appeals Chamber

The Presidency of the International Criminal Court;

Having before it the request of Judge Anita Ušacka entitled “Request to be Excused” dated 16 February 2010,¹ seeking excusal from participating in a reclassification exercise in the appellate record of the first interlocutory appeal in the situation in the Democratic Republic of the Congo (hereinafter “situation”), which related to the case of the *Prosecutor v. Bosco Ntaganda* (hereinafter “case”);

Having before it the request of Judge Akua Kuenyehia entitled “Request for recusal pursuant to article 41(1) of the Statute and rule 33 of the Rules of Procedure and Evidence” dated 18 February 2010,² seeking excusal from the aforementioned reclassification exercise and from all future appeals in the case;

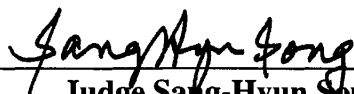
Noting its decisions of 24 September 2010 in which the Presidency denies the aforementioned requests;³

Noting that both Judges Ušacka and Kuenyehia have indicated that they have no objection to the publication of the Presidency’s aforementioned decisions;⁴

Hereby

Orders the Registrar to notify this order and its annexes to the relevant parties and participants in the situation.

Done in both English and French, the English version being authoritative.



Judge Sang-Hyun Song
President

Dated this 11 November 2010

At The Hague, The Netherlands

¹ Annex 1.

² Annex 2.

³ Annexes 3 and 4.

⁴ Annexes 2 and 5.

ANNEX 3

**Cour
Pénale
Internationale**



La Présidence

**International
Criminal
Court**

The Presidency

Internal memorandum
Memorandum interne

To À	Judge Anita Ušacka	From De	The Presidency <i>shs</i>
Date	24 September 2010	Through Via	
Ref.	2010/PRES/122-2	Copies	Judge Akua Kuenyehia, President of the Appeals Division
Subject Objet	Decision on the request of Judge Anita Ušacka of 16 February 2010 to be excused from participating in the exercise to reclassify documents in the appeals proceedings related the case of <i>The Prosecutor v. Bosco Ntaganda</i> , pursuant to article 41(1) of the Rome Statute and rule 35 of the Rules of Procedure and Evidence		

The Presidency of the International Criminal Court (hereinafter "Court"), 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 on the request of Judge Anita Ušacka of the Appeals Chamber (hereinafter "applicant") dated 16 February 2010 wherein she requested to be excused from sitting in proceedings to reclassify documents in the appellate record related to the case of *The Prosecutor v. Bosco Ntaganda* (hereinafter "case").

The request for excusal is denied.

Factual Background

Following the decision of the Appeals Chamber of 16 February 2010 to review the classification of documents in the record of the appellate proceedings related to the case, the applicant, by memorandum of that same date classified as confidential, requested the Presidency to excuse her from participating in the reclassification exercise (hereinafter "request"), pursuant to article 41(1) of the Rome Statute (hereinafter "Statute") and rule 33 of the Rules of Procedure and Evidence (hereinafter "Rules").¹

¹ 2010/PRES/122.

The request is based on the applicant's previous involvement in the pre-trial phase of the case, in the course of which she participated in a decision unsealing and reclassifying the warrant of arrest for Mr Bosco Ntaganda (hereinafter "Decision")² and in a related *ex parte* hearing, before being assigned to the Appeals Division on 13 March 2009.

The applicant states that she does not believe that her impartiality might reasonably be doubted were she to participate in the reclassification exercise.³ Nonetheless, in light of article 41(2)(a) of the Statute and rule 35 of the Rules, the applicant "feel[s] that it is [her] ethical duty to request to be excused".⁴

Decision

The request is properly before the Presidency in accordance with article 41 of the Statute and rule 33 of the Rules.

The Presidency, having thoroughly examined the matter before it, finds the request to be without merit.

The applicant brings the request on the ground that she signed a decision related to unsealing and reclassifying the warrant of arrest and took part in a related procedural hearing.

The Presidency recalls that, pursuant to rule 35 of the Rules, there is a duty upon a judge to request to be excused in the absence of a request for disqualification, should he or she believe that a ground for disqualification exists. The Presidency further recalls that article 41(2)(a) of the Statute provides, in relevant part, 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 ...

The Presidency has previously found that the capacities with which the second sentence of article 41(2)(a) is concerned are those by virtue of which the impartiality of

² Decision to unseal the warrant of arrest against Bosco Ntaganda, ICC-01/04-02/06-18, 28 April 2008.

³ Request, page 3.

⁴ Request, page 3.

a judge might reasonably be doubted.⁵ The Presidency found this interpretation most consistent with the objective of ensuring that the impartiality of judges cannot reasonably be reproached, at the same time as ensuring the efficient conduct of proceedings.⁶

Accordingly, the Presidency turns now to assess whether the applicant's previous involvement in the case may give rise to a reasonable ground to doubt her impartiality.

In the Decision, the Pre-Trial Chamber considered a discrete procedural application by the Prosecutor for the unsealing of the warrant of arrest for Mr Bosco Ntaganda, concluding that "it is no longer necessary for the warrant of arrest against Bosco Ntaganda to remain under seal".⁷ The Decision does not address any further matters. The applicant submits that "[t]he decision rendered was of a procedural nature: it did not require a legal assessment of the factual allegations; it did not require a review of the Prosecutor's evidence in the case against Mr. Bosco Ntaganda; nor did it require a determination of guilt or innocence".⁸ Further, the applicant submits that "[t]he Pre-Trial Chamber was tasked only with determining whether the basis for the initial classification of the warrant of arrest continued to exist".⁹ The Presidency notes also the submission of the applicant that she only participated in that single decision in the case.¹⁰

The Presidency finds that such limited prior involvement does not constitute a ground on which the impartiality of the applicant, in respect of the current reclassification exercise, might reasonably be doubted.¹¹

For the aforementioned reasons, the request for excusal is denied.

⁵ 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, as contained in ICC-01/04-01/06-2138-AnxIII, 13 November 2009, page 6 (hereinafter "Decision of 23 September 2009").

⁶ Decision of 23 September 2009, page 6; See also Decision on the request of Judge Sanji Mmasenono Monageng of 25 February 2010 to be excused from reconsidering whether a warrant of arrest for the crime of genocide should be issued in the case of *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, pursuant to article 41(1) of the Statute and rules 33 and 35 of the Rules of Procedure and Evidence, 19 March 2010, as contained in ICC-02/05-01/09-76-Anx2, 19 March 2010.

⁷ Decision, page 5.

⁸ Request, page 3.

⁹ Request, page 3.

¹⁰ Request, page 3.

¹¹ See also Decision of 23 September 2009, page 8.

The Presidency notes that the applicant desires her request to remain confidential. Considering, however, that this decision elucidates the Presidency's understanding of article 41(2) of the Statute and noting the applicant's observation that this is a matter "pertaining to judicial ethics" and therefore is of relevance to all judges, the Presidency sees no reason for this decision to remain confidential and request the applicant to provide her views on this matter by 11 October 2010.

ANNEX 4

**Cour
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Internationale**



La Présidence

**International
Criminal
Court**

The Presidency

**Internal memorandum
Memorandum interne**

To À	Judge Akua Kuenyehia	From De	The Presidency <i>shs</i>
Date	24 September 2010	Through Via	
Ref.	2010/PRES/261-2	Copies	

Subject | Objet 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

The Presidency of the International Criminal Court (hereinafter "Court"), 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 on the request of Judge Akua Kuenyehia of the Appeals Chamber (hereinafter "applicant") dated 18 February 2010 wherein she requested to be excused from sitting in proceedings to reclassify documents in the appellate record related to the case of *The Prosecutor v. Bosco Ntaganda* (hereinafter "case") and from all appeals in the case.

The request for excusal is denied.

Factual Background

Following the decision of the Appeals Chamber of 16 February 2010 to review the classification of documents in the record of the appellate proceedings related to the case, on 18 February 2010 by memorandum classified as confidential, the applicant requested the Presidency to excuse her from participating in the reclassification exercise (hereinafter "request"), pursuant to article 41(1) of the Rome Statute (hereinafter "Statute") and rule 33 of the Rules of Procedure and Evidence (hereinafter "Rules").¹ Furthermore, the applicant requested to be excused from all appeals in the case.

The request for excusal is based upon the previous involvement of the applicant in the pre-trial phase of the case, in the course of which she, *inter alia*, issued a warrant of arrest

¹ 2010/PRES/261.

against Mr Bosco Ntaganda. The applicant therefore considers herself to have “previously been involved ... in that case before the Court” within the meaning of article 41(2)(a) of the Statute.

Decision

The request is properly before the Presidency in accordance with article 41 of the Statute and rule 33 of the Rules.

The Presidency, having thoroughly examined the matter before it, finds the request to be without merit.

The applicant requests to be excused from all appeals arising in the case, as well as to be excused from sitting in the current reclassification exercise, on the grounds that she has been previously involved the pre-trial phase of proceedings in the course of which she issued the warrant of arrest.

The Presidency recalls that, pursuant to rule 35 of the Rules, there is a duty upon a judge to request to be excused in the absence of a request for disqualification, should he or she believe that a ground for disqualification exists. The Presidency further recalls that article 41(2)(a) of the Statute provides, in relevant part, 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...

The Presidency has previously found that the capacities with which the second sentence of article 41(2)(a) is concerned are those by virtue of which the impartiality of a judge might reasonably be doubted.² The Presidency found this interpretation most consistent with the objective of ensuring that the impartiality of judges cannot reasonably be reproached, at the same time as ensuring the efficient conduct of proceedings.³

² 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, as contained in ICC-01/04-01/06-2138-AnxIII, 13 November 2009, page 6 (hereinafter “Decision of 23 September 2009”).

³ Decision of 23 September 2009, page 6; See also Decision on the request of Judge Sanji Mmasenono Monageng of 25 February 2010 to be excused from reconsidering whether a warrant of arrest for the crime of genocide should be issued in the case of *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, pursuant to

The applicant has been involved in the pre-trial phase of the case, including the issuing of a warrant of arrest, thus the Presidency must consider whether such involvement necessarily gives rise to reasonable grounds to doubt her impartiality.

The Presidency has previously found that a judge who has been involved in issuing both a warrant of arrest and a decision on the confirmation of charges may not sit in later appeals in the case.⁴ This does not determine whether a judge who has sat only in the warrant of arrest is similarly necessarily excused.

Pursuant to article 58(1)(a) of the Statute, the legal standard to be applied by a pre-trial chamber when issuing a warrant of arrest is whether there are "reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court". This differs from the standards applied at later stages. The standard applicable to the confirmation of charges hearing is that there must be "sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged",⁵ whereas at the trial stage, "the Court must be convinced of the guilt of the accused beyond reasonable doubt".⁶ The Appeals Chamber has found that "when disposing of an application for a warrant of arrest under article 58(1) of the Statute, a Pre-Trial Chamber should not require a level of proof that would be required for the confirmation of charges or for conviction".⁷ The level of proof required at the warrant of arrest stage is less rigorous than at later stages, demanding an assessment more *prima facie* in nature.

The Presidency notes that the practice of the *ad hoc* tribunals is that a judge who has been involved in proceedings using a standard of proof similar to the issuance of a warrant of arrest before the Court is not prevented from involvement in appellate proceedings. Pursuant to article 19 of the Statute of the International Criminal Tribunal for the former

article 41(1) of the Statute and rules 33 and 35 of the Rules of Procedure and Evidence, ICC-02/05-01/09-76-Anx2, 19 March 2010.

⁴ Decision on the request of the 16 February 2010 to be excused from sitting in the appeal of Mr Germain Katanga against the decision of Trial Chamber II of 20 November 2009 and from sitting in all future appeals arising in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, pursuant to article 41(1) of the Statute and rule 33 of the Rules of Procedure and Evidence, ICC-01/04-01/07-1949-Anx2, 8 March 2010; Decision on the request of 15 July 2010 to be excused from sitting in the appeal of the Prosecutor against the decision of Trial Chamber I of 8 July 2010 and from sitting in all future appeals arising 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, 16 July 2010, as contained in ICC-01/04-01/06-2524-Anx2, 20 July 2010.

⁵ Rome Statute, article 61(7).

⁶ Rome Statute, article 66(3).

⁷ Judgment on the appeal of the Prosecutor against the "Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir", ICC-02/05-01/09-73, 3 February 2010, paragraph 30.

Yugoslavia, a judge of the Trial Chamber must review an indictment in order to be satisfied that a *prima facie* case has been established by the Prosecutor.⁸ The Rules of Procedure and Evidence of that tribunal provide that the judge who has reviewed an indictment shall not be disqualified from sitting as a member of the Appeals Chamber.⁹ The Presidency considers this to reflect a belief that the impartiality of a member of the Appeals Chamber is not ordinarily to be doubted by reason of that judge's prior involvement in making a preliminary assessment as to whether there are initial grounds to bring a matter within the Court's jurisdiction.

This view is consistent with the practice of the European Court of Human Rights whereby a judge who has taken a pre-trial decision involving a level of proof such as whether there are *prima facie* grounds informing the charge, is not ordinarily prohibited from later involvement at trial level.¹⁰ The jurisprudence of the European Court of Human Rights indicates that it is only when the level of proof applied by a judge at the pre-trial level is higher than a *prima facie* assessment of the charge, that that judge's impartiality could objectively be questioned by later participation in the trial. For example, in *Hauschildt v. Denmark*, the applicable standard of law which the judge applied at pre-trial level was whether there was a "particularly confirmed suspicion" that the accused had committed the crime with which he had been charged.¹¹ Such a level of proof at the pre-trial stage required that the judge had a very high degree of clarity as to the guilt of the applicant and was therefore considered to give rise to reasonable grounds to doubt the impartiality of that judge in the trial. The assessment made by a judge of the Court in issuing a warrant of arrest pursuant to article 58 of the Statute requires no such particularly confirmed suspicion of guilt.

Based on the above assessment, it 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, including the reclassification exercise, on the ground that she issued the warrant of arrest is hereby denied. Should, however, the Appeals 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.

⁸ See also Statute of the International Criminal Tribunal for Rwanda, article 18.

⁹ Rules of Procedure and Evidence of the ICTY, rule 15(C).

¹⁰ *Hauschildt v. Denmark*, no. 10486/83, Judgment of 24 May 1989, paragraph 50; See also *Jasiński v. Poland*, no. 30865/96, Judgment of 20 December 2005, paragraph 55.

¹¹ *Hauschildt v. Denmark*, no. 10486/83, Judgment of 24 May 1989, paragraph 52.

The Presidency shall make public the request for excusal and this decision, noting that the applicant has expressed her consent in accordance with rule 33(2) of the Rules.

ANNEX 5


**Cour
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Internationale**



Les Chambres

**International
Criminal
Court**

The Chambers

			Internal memorandum Memorandum interne
To À	The Presidency	From De	 Judge Ušacka
Date	24 September 2010	Through Via	
Ref.	2010/PRES/122-2	Copies	
Subject Objet	Response to the decision on the request of 24 September 2010 to be excused		

On 24 September 2010, the Presidency issued a decision on my request of 16 February 2010 to be excused from sitting in proceedings to reclassify documents in the appellate record related to the case of *The Prosecutor v. Bosco Ntaganda*. In the decision of the Presidency, the Presidency notes that my request was made on a confidential basis, but indicates that it sees no reason that the decision on the request cannot be made public. I agree with this assessment, and therefore indicate that I have no objections to the decision of 24 September 2010 being made public.