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**Cour
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**International
Criminal
Court**



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No.: **ICC-01/21-01/25**

Date: **5 May 2025**

PRE-TRIAL CHAMBER I

Before:

**Judge Iulia Antoanella Motoc, Presiding Judge
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge María del Socorro Flores Liera**

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

IN THE CASE OF *THE PROSECUTOR* v. *RODRIGO ROA DUTERTE*

Confidential

Prosecution's Observations on the "Defence Invitation for the Excusal of Judge Reine Adélaïde Sophie Alapini-Gansou and Judge María del Socorro Flores Liera from Adjudicating on the Issue of Jurisdiction" (ICC-01/21-01/25-122)

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. Pre-Trial Chamber I ("Chamber") should dismiss the Defence's suggestion that Judges Reine Adélaïde Sophie Alapini-Gansou and María del Socorro Flores Liera ("the Judges") petition the Presidency for a partial excusal from exercising their functions in relation to the issue of jurisdiction in this case ("Defence Request").¹ Contrary to the Defence Request, an objective observer would not reasonably perceive bias on the part of the Judges based on their prior involvement in a "ruling on substantially the same issue in the Situation in the Republic of the Philippines ("Situation")".² Not only does the Judges' prior ruling not amount to any perceived bias in this case, but any conclusion to the contrary would result in the untenable situation where a judge may be barred from issuing decisions on the same legal issue more than once.

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this document is filed as "Confidential", as it responds to a filing of the same classification. The Prosecution does not object to the reclassification of this filing as public should the Chamber deem it appropriate.

III. PROSECUTION'S SUBMISSIONS

3. Judges of the Court are professional judges and enjoy a presumption of impartiality. As previously confirmed by the plenary of judges, the disqualification of a judge is not a step to be undertaken lightly and a high threshold must be satisfied in order to rebut the presumption of impartiality which attaches to judicial office.³ Further, "the question of impartiality should be viewed from the objective perspective of whether a fair-minded and informed observer, having considered all the facts and circumstances, would reasonably apprehend bias in the judge. Such fair-minded person is an objective observer, not to be confused with the applicant".⁴

4. The Defence fails to demonstrate that perceived bias would arise on the basis of the Judges' prior rulings touching upon jurisdiction in this Situation. Judges' prior legal

¹ ICC-01/21-01/25-122-Conf ("Defence Request").

² Defence Request, paras. 1-2.

³ ICC-01/12-01/18-458-AnxI-Red, paras. 23, 40.

⁴ ICC-01/12-01/18-458-AnxI-Red, para. 25 (footnotes omitted). *See also* ICC-01/04-01/06-3040-Anx, paras. 34-35.

determinations on legal issues, made in the course of carrying out their ordinary duties, do not amount to bias, nor should they create the appearance of conflict or impropriety.

5. A conclusion to the contrary would lead to a nonsensical situation where a Judge may be barred from issuing decisions on the same legal issue more than once. As such, the Presidency has previously rejected requests for a Judge's excusal based on possible appearance of bias resulting from prior legal determinations, albeit made in unrelated cases, emphasising that:

“[t]here may be many situations in which previous decisions of a judicial officer on issues of fact and law may generate an expectation that he is likely to decide issues in a particular case adversely to one of the parties. But this does not mean either that he will approach the issues in that case other than with an impartial and unprejudiced mind in the sense in which that expression is used in the authorities or that his previous decisions provide an acceptable base for inferring that there is a reasonable apprehension that he will approach the issues in this way”.⁵

6. In the specific context of challenges to jurisdiction and/or admissibility, should the Defence position be accepted, it would further result in an equally untenable situation where the same Pre-Trial Chamber could not authorise an investigation pursuant to article 15 or issue an arrest warrant (which often deal with these issues) *and* adjudicate on any subsequent challenge to jurisdiction and/or admissibility.

7. The Defence's concerns regarding the possible appearance of bias in the present case are further dispelled by the safeguards provided for in article 15(4) of the Statute and the explicit caveat made by the Judges when issuing their preliminary findings on jurisdiction for the limited purpose of issuing the arrest warrant in this case, which state that such findings are based on “materials submitted and *without prejudice to future determinations on the matter*”.⁶ The Defence's position that “[s]uch a policy cannot reasonably be expected to be applied by the Judges in the present instance”⁷ is speculative and contrary to the presumption of judicial impartiality.

⁵ ICC-01/04-01/10-503-AnxII, p. 3, quoting *Prosecutor v Brđanin and Talić* (Decision on Application of Momir Talić for the Disqualification and Withdrawal of a Judge), IT-99-36-PT, 18 May 2000, paras. 18–19.

⁶ ICC-01/21-83, para. 6 (emphasis added); *see also* ICC-01/21-12, paras. 10-12.

⁷ Defence Request, para. 18.

8. Finally, it is important to note that any prior determinations related to jurisdiction made by the Judges in this Situation were done in the absence of any Defence observations on the issue. There is no indication that the Judges would not be in a position to impartially and objectively evaluate the matter in light of the additional arguments presented by the Defence in its "Defence Challenge with respect to Jurisdiction".⁸

IV. CONCLUSION

9. For the above reasons, the Chamber should dismiss Defence's invitation to the Judges to petition the Presidency for a partial excusal from exercising their functions in relation to the issue of jurisdiction in this case.



Karim A. A. Khan KC, Prosecutor

Dated this 5th day of May 2025

At The Hague, the Netherlands

⁸ ICC-01/21-01/25-121.