

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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THE PLENARY OF JUDGES OF THE INTERNATIONAL CRIMINAL COURT

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

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

Public

Reasons for the Decision on the ‘Corrigendum to Request for the Disqualification of Judge Reine Adélaïde Sophie Alapini-Gansou and Judge María del Socorro Flores Liera from Adjudicating on the Issue of Jurisdiction’ filed on 9 May 2025 (ICC-01/21-01/25-130-Corr)

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

☒ **The Office of the Prosecutor**

☒ **Counsel for the Defence**

☐ **Legal Representatives of the Victims**

☐ **Legal Representatives of the Applicants**

☐ **Unrepresented Victims**

☐ **Unrepresented Applicants
(Participation/Reparation)**

☐ **The Office of Public Counsel for
Victims**

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

☐ **States' Representatives**

☐ **Amicus Curiae**

REGISTRY

Registrar
Mr Zavala Giler, Osvaldo

☐ **Counsel Support Section**

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and Reparations
Section**

☒ **Other**
All Judges
Pre-Trial Chamber I

The plenary of judges of the International Criminal Court (the ‘Court’), with the exception of Judge Reine Alapini-Gansou, Judge Socorro Flores Liera and Judge Beti Hohler, has before it an application requesting that Judge Alapini-Gansou and Judge Flores be disqualified from adjudicating the ‘Defence Challenge with Respect to Jurisdiction’¹ filed in the case of *The Prosecutor v. Rodrigo Roa Duterte* (the ‘Application’ and the ‘Case’, respectively).²

I. PROCEDURAL HISTORY

1. On 19 April 2021, the Presidency assigned the situation in the Republic of the Philippines (the ‘Situation in the Philippines’) to Pre-Trial Chamber I composed, at that time, of Judge Péter Kovács, Judge Alapini-Gansou and Judge Flores.³
2. On 15 September 2021, Pre-Trial Chamber I issued a decision authorising the commencement of the investigation into the Situation in the Philippines, in relation to crimes within the jurisdiction of the Court allegedly committed on the territory of the Republic of the Philippines (the ‘Philippines’) in the context of the so-called ‘war on drugs’ campaign (the ‘Authorisation Decision’).⁴ With respect to jurisdiction *ratione temporis*, the Pre-Trial Chamber found that, while the Philippines’ withdrawal from the Rome Statute (the ‘Statute’) took effect on 17 March 2019, the Court retained jurisdiction with respect to alleged crimes that occurred on the territory of the Philippines while it was a State Party, from 1 November 2011 up to and including 16 March 2019.⁵ It further held that the Court’s exercise of jurisdiction is not subject to any time limit, particularly since the preliminary examination commenced prior to the Philippine’s withdrawal.⁶

¹ Defence of Mr Duterte, *The Prosecutor v. Rodrigo Roa Duterte*, [Defence Challenge with Respect to Jurisdiction](#), 1 May 2025, ICC-01/21-01/25-121 (the ‘Defence Challenge to Jurisdiction’).

² Defence of Mr Duterte, *The Prosecutor v. Rodrigo Roa Duterte*, [Corrigendum to Request for the Disqualification of Judge Reine Adélaïde Sophie Alapini-Gansou and Judge María del Socorro Flores Liera from Adjudicating on the Issue of Jurisdiction](#), 12 May 2025, ICC-01/21-01/25-130-Corr, paras 1, 21 (the request was filed on 9 May 2025 and subsequently corrected).

³ Presidency, *Situation in the Republic of the Philippines*, [Decision on the assignment of the situation in the Republic of the Philippines](#), 19 April 2021, ICC-01/21-1.

⁴ Pre-Trial Chamber I, *Situation in the Republic of the Philippines*, [Decision on the Prosecutor’s request for authorisation of an investigation pursuant to Article 15\(3\) of the Statute](#), 15 September 2021, ICC-01/21-12, p. 41.

⁵ [Authorisation Decision](#), ICC-01/21-12, para. 111.

⁶ [Authorisation Decision](#), ICC-01/21-12, para. 111.

3. On 12 March 2024, the Presidency decided that Pre-Trial Chamber I should henceforth be composed of Judge Alapini-Gansou, Judge Flores and Judge Motoc.⁷
4. On 7 March 2025, Pre-Trial Chamber I issued an arrest warrant against Mr Rodrigo Roa Duterte (hereinafter the ‘Applicant’) and, on 12 March 2025, he was surrendered to the Court.⁸ His initial appearance took place on 14 March 2025.⁹
5. On 1 May 2025, the Applicant filed the Defence Challenge to Jurisdiction before Pre-Trial Chamber I, submitting that the preconditions for the exercise of jurisdiction of the Court in the Situation of the Philippines were not met when Pre-Trial Chamber I authorised the opening of an investigation since the Philippines was no longer a State Party to the Statute at that point in time.¹⁰
6. On the same day, the Applicant filed a submission before Pre-Trial Chamber I inviting Judge Alapini-Gansou and Judge Flores to excuse themselves from adjudicating the Defence Challenge to Jurisdiction, arguing that this matter should not be decided by judges who have formulated a firm opinion on the question *sub judice* prior to hearing Defence submissions (the ‘Invitation’).¹¹
7. On 5 May 2025, the Office of the Prosecutor (the ‘Prosecution’) filed a response to the Invitation before Pre-Trial Chamber I, requesting that it dismiss the Applicant’s invitation to Judge Alapini-Gansou and Judge Flores to petition the Presidency for a partial excusal from exercising their functions in relation to the issue of jurisdiction (the ‘Prosecution Response before the Pre-Trial Chamber’).¹² The Prosecution argued that judges’ prior 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.¹³

⁷ Presidency, *Situation in the Republic of the Philippines*, [Decision assigning judges to divisions and recomposing Chambers](#), 12 March 2024, ICC-01/21-78, p. 8.

⁸ Pre-Trial Chamber I, *The Prosecutor v. Rodrigo Roa Duterte*, [Decision convening a hearing for the first appearance of Mr Rodrigo Roa Duterte](#), 13 March 2025, ICC-01/21-01/25-90 (the ‘Decision on First Appearance’), para. 6; Pre-Trial Chamber I, *The Prosecutor v. Rodrigo Roa Duterte*, [Warrant of Arrest for Mr Rodrigo Roa Duterte](#), 7 March 2025, ICC-01/21-83.

⁹ [Decision on First Appearance](#), ICC-01/21-01/25-90, p. 4.

¹⁰ [Defence Challenge to Jurisdiction](#), ICC-01/21-01/25-121, para. 116.

¹¹ Defence of Mr Duterte, *The Prosecutor v. Rodrigo Roa Duterte*, [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](#), 1 May 2025, ICC-01/21-01/25-122, paras 20-21.

¹² Prosecution, *The Prosecutor v. Rodrigo Roa Duterte*, [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” \(ICC-01/21-01/25-122\)](#), 5 May 2025, ICC-01/21-01/25-125, para. 9.

¹³ [Prosecution Response before the Pre-Trial Chamber](#), ICC-01/21-01/25-125, para. 4.

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,¹⁴ and be untenable in view of the functions of the Pre-Trial Chamber.¹⁵

8. On 6 May 2025, Pre-Trial Chamber I issued a decision dismissing the Invitation *in limine*.¹⁶ Pre-Trial Chamber I recalled that article 41 of the Statute provides that a judge may seek excusal directly before the Presidency and that the person being investigated or prosecuted may seek disqualification of a judge but that the possibility to invite or request judges to seek excusal before the Presidency is not contemplated in the statutory texts.¹⁷
9. On 9 May 2025, the Applicant filed the Application pursuant to article 41(2)(b) of the Statute, seeking that Judge Alapini-Gansou and Judge Flores be disqualified from adjudicating the Defence Challenge to Jurisdiction and, on 12 May 2025, a corrigendum was filed.¹⁸
10. On 14 May 2025, the plenary of judges invited Judge Alapini-Gansou and Judge Flores, pursuant to article 41(2)(c) of the Statute and rule 34(2) of the Rules of Procedure and Evidence (the ‘Rules’), to present any written observations on the Application by 22 May 2025 and invited the Prosecution to file any response to the Application by the same date.¹⁹ The Prosecution did not file a response within this time limit.
11. On 15 May 2025, an *ad hoc* Presidency, consisting of Judge Tomoko Akane, Judge Rosario Salvatore Aitala and Judge Luz del Carmen Ibáñez Carranza, granted a request from Judge Beti Hohler to be excused from her functions as a judge of the plenary in respect of the Application, pursuant to article 41(1) of the Rome Statute and rule 33 of

¹⁴ [Prosecution Response before the Pre-Trial Chamber](#), ICC-01/21-01/25-125, para. 5.

¹⁵ [Prosecution Response before the Pre-Trial Chamber](#), ICC-01/21-01/25-125, para. 6.

¹⁶ Pre-Trial Chamber I, *The Prosecutor v. Rodrigo Roa Duterte*, [Decision 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’](#), 6 May 2025, ICC-01/21-01/25-126 (the ‘Pre-Trial Chamber Decision on Invitation’), p. 4.

¹⁷ [Pre-Trial Chamber Decision on Invitation](#), ICC-01/21-01/25-126, para. 4.

¹⁸ [Application](#), ICC-01/21-01/25-130-Corr, paras 1, 21.

¹⁹ Plenary of the Judges, *The Prosecutor v. Rodrigo Roa Duterte*, [Order concerning the ‘Request for the Disqualification of Judge Reine Adélaïde Sophie Alapini-Gansou and Judge María del Socorro Flores Liera from Adjudicating on the Issue of Jurisdiction’ filed on 9 May 2025 \(ICC-01/21-01/25-130\)](#), 14 May 2025, ICC-01/21-01/25-134, p. 3.

the Rules, on the basis that she served as a Prosecution Trial Lawyer on the Situation in the Philippines from 2019-2022.²⁰

12. On 22 May 2025, Judge Alapini-Gansou and Judge Flores transmitted their joint written observations on the Application to the plenary of judges (the ‘Observations’).²¹
13. On 9 June 2025, the plenary of judges convened in accordance with article 41(2)(c) of the Statute and rule 4(2) of the Rules to consider the Application. The session was attended by Judges Tomoko Akane, Rosario Salvatore Aitala, Solomy Balungi Bossa, Kimberly Prost, Joanna Korner, Gocha Lordkipanidze, Sergio Gerardo Ugalde Godínez, Miatta Maria Samba, Althea Violet Alexis-Windsor, Keebong Paek, Erdenebalsuren Damdin, Iulia Motoc and Nicolas Guillou. Judges Luz de Carmen Ibáñez Carranza and Haykel Ben Mahfoudh were not present for the plenary session.
14. On the same day, the plenary of judges informed the parties of its decision to reject the Application, with reasons to follow.²²

II. SUBMISSIONS

a. Application

15. The Applicant submits that the impartiality of Judge Alapini-Gansou and Judge Flores might be reasonably doubted given that they have already ruled on exactly the same issue in exactly the same situational context.²³ It avers that the question of jurisdiction should not be decided by judges who have formulated a firm opinion on the question *sub judice*

²⁰ *Ad hoc* Presidency, [Decision on your request of 13 May 2025 for excusal pursuant to article 41\(1\) of the Statute and rule 33 of the Rules of Procedure and Evidence](#), 15 May 2025, ICC-01/21-01/25-142-AnxIII annexed to Plenary of the Judges, *The Prosecutor v. Rodrigo Roa Duterte*, [Notification concerning the ‘Request for the Disqualification of Judge Reine Adélaïde Sophie Alapini-Gansou and Judge María del Socorro Flores Liera from Adjudicating on the Issue of Jurisdiction’ filed on 9 May 2025 \(ICC-01/21-01/25-130\)](#), 23 May 2025, ICC-01/21-01/25-142 (the ‘Notification’).

²¹ Judge Alapini-Gansou and Judge Flores, [Observations on the ‘Request for the Disqualification of Judge Reine Adélaïde Sophie Alapini-Gansou and Judge María del Socorro Flores Liera from Adjudicating on the Issue of Jurisdiction’ dated 9 May 2025 \(ICC-01/21-01/25-130-Corr\)](#), 22 May 2025, ICC-01/21-01/25-142-AnxI annexed to the [Notification](#), ICC-01/21-01/25-142.

²² Plenary of the Judges, *The Prosecutor v. Rodrigo Roa Duterte*, [Decision on the ‘Corrigendum to Request for the Disqualification of Judge Reine Adélaïde Sophie Alapini-Gansou and Judge María del Socorro Flores Liera from Adjudicating on the Issue of Jurisdiction’ filed on 9 May 2025 \(ICC-01/21-01/25-130-Corr\)](#), 9 June 2025, ICC-01/21-01/25-148.

²³ [Application](#), ICC-01/21-01/25-130-Corr, para. 6.

prior to hearing Defence submissions.²⁴ The Applicant considers that Pre-Trial Chamber I's finding on jurisdiction was erroneous and submits that he has a right to objectively impartial adjudication.²⁵

16. The Applicant further submits that in determining whether disqualification is warranted, it needs to be assessed whether the case at hand meets the threshold set by the Presidency in a decision on a request for excusal, which is to examine: (i) the 'degree of congruence between legal issues'; (ii) whether 'the factual determinations would be based on the same evidence; and (iii) whether a judge is 'free to depart from previous factual findings which [he or she] made upon consideration of the same issues and evidence'.²⁶

17. As regards the case at hand, the Applicant submits that there is not just congruence between the issue of jurisdiction arising in the Case and the issue of jurisdiction examined in the Authorisation Decision but that these issues are, in fact, identical.²⁷ Further, since the relevant findings in the Authorisation Decision were based on the interpretation of the applicable legal texts, the factual matrix remains the same.²⁸ Finally, it is not reasonable to expect a judge who has recently expressed a highly publicised position on a specific legal issue to depart from that view.²⁹ The Applicant argues that an objective observer's perception of a judge's inability to diverge from previous rulings on the same issues gives rise to a presumption of partiality.³⁰ In the present case, the direct involvement of Judge Alapini-Gansou and Judge Flores in the deliberation and adjudication of the jurisdictional question in the Situation in the Philippines would give rise to legitimate concerns regarding an absence of impartiality on the same issue in the Case.³¹

18. In response to arguments raised in the Prosecution Response before the Pre-Trial Chamber, the Applicant considers that it is a misrepresentation of his arguments to state that granting the Application would lead to a nonsensical situation where a judge may be

²⁴ [Application](#), ICC-01/21-01/25-130-Corr, paras 19-20.

²⁵ [Application](#), ICC-01/21-01/25-130-Corr, paras 17-18.

²⁶ [Application](#), ICC-01/21-01/25-130-Corr, para. 8 *referring to* Presidency, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Decision on the request for excusal from Appeals Chamber in all pending and future appeals in The Prosecutor v. Jean-Pierre Bemba Gombo](#), 20 March 2015, ICC-01/05-01/08-3245-AnxI, p. 3.

²⁷ [Application](#), ICC-01/21-01/25-130-Corr, para. 11.

²⁸ [Application](#), ICC-01/21-01/25-130-Corr, para. 12.

²⁹ [Application](#), ICC-01/21-01/25-130-Corr, para. 13.

³⁰ [Application](#), ICC-01/21-01/25-130-Corr, para. 13.

³¹ [Application](#), ICC-01/21-01/25-130-Corr, para. 13.

barred from issuing decisions on the same legal issue more than once.³² Recognising that it is a quirk of the Statute to permit jurisdiction to be litigated twice before the same pre-trial chamber, the Applicant argues that the statutory right of a suspect to litigate the issue of jurisdiction *de novo* and in first instance after his arrest must not be prejudiced by an earlier judicial finding on exactly the same issue resulting from litigation to which the suspect was not a party.³³

b. Observations of the judges

19. In the Observations, the judges request that the Application be rejected as there are no grounds to doubt their impartiality in the current case and none of the criteria established under article 41(2) of the Statute are met.³⁴ The judges consider that the proposition of the Applicant is incorrect and legally untenable, and has the potential to cause delay.³⁵ They note that, when Pre-Trial Chamber I, in a former composition, addressed the issue of jurisdiction in the Situation in the Philippines, it did so in accordance with its duties and limited mandate under article 15(4) of the Statute, without prejudice to any future determinations on the same issue.³⁶ Thereafter, in its decision under article 18(2) of the Statute, Pre-Trial Chamber I addressed the issue of jurisdiction as part of its assessment of the Philippines' information and arguments.³⁷ The arguments that the Applicant now raises in order to challenge the jurisdiction of the Court were neither before nor considered by the Pre-Trial Chamber at that time.³⁸ The judges recall that this was recognised by the Appeals Chamber in the appeal against the decision of the Pre-Trial Chamber authorising the resumption of the investigation into the Situation in the Philippines, when it held that 'the issue of the impact of the Philippines' withdrawal from the Statute on the Court's jurisdiction was neither properly raised nor adequately ventilated before the Pre-Trial Chamber'.³⁹

³² [Application](#), ICC-01/21-01/25-130-Corr, paras 14-15.

³³ [Application](#), ICC-01/21-01/25-130-Corr, para. 15.

³⁴ [Observations](#), ICC-01/21-01/25-142-AnxI, paras 2, 8.

³⁵ [Observations](#), ICC-01/21-01/25-142-AnxI, para. 4.

³⁶ [Observations](#), ICC-01/21-01/25-142-AnxI, para. 5.

³⁷ [Observations](#), ICC-01/21-01/25-142-AnxI, para. 5.

³⁸ [Observations](#), ICC-01/21-01/25-142-AnxI, para. 5.

³⁹ [Observations](#), ICC-01/21-01/25-142-AnxI, para. 5 referring to Appeals Chamber, *Situation in the Republic of the Philippines*, [Judgment on the appeal of the Republic of the Philippines against Pre-Trial Chamber I's "Authorisation pursuant to article 18\(2\) of the Statute to resume the investigation"](#), 18 July 2023, ICC-01/21-01/25-77, para. 55.

20. Furthermore, the judges consider it untenable to suggest that judges cannot adjudicate a matter which is legally within their competence just because they previously issued judicial decisions at different stages of the pre-trial proceedings in the same situation on the basis of different arguments. In this respect, they recall that judges are professionals capable of deciding on issues before them relying solely and exclusively on the evidence and submissions adduced in the particular case. They further recall a recent finding of the plenary of judges that '[t]he ordinary exercise of [...] assigned legal functions does not give rise to any appearance of bias or a lack of impartiality, but is, rather, part of the clear design of the Rome Statute'.⁴⁰ Moreover, a 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'; in particular, when assessing 'the appearance of bias, the fair-minded observer should take into account the entire context of the case'.⁴¹

III. RELEVANT LAW

21. Article 41(2) of the Statute provides:

- (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 for in the Rules of Procedure and Evidence.
- (b) The Prosecutor or the person being investigated or prosecuted may request the disqualification of a judge under this paragraph.
- (c) Any question as to the disqualification of a judge shall be decided by an absolute majority of the judges. The challenged judge shall be entitled to present his or her comments on the matter, but shall not take part in the decision.

⁴⁰ [Observations](#), para. 6 referring to *Situation in Ukraine*, [Reasons for the Decision on the 'Application for the Disqualification of Judges' filed on 31 October 2024 \(ICC-01/22-92-Anx\)](#), 22 November 2024, ICC-01/22-107, para. 25.

⁴¹ [Observations](#), para. 7 referring to *Situation in Ukraine*, [Reasons for the Decision on the 'Application for the Disqualification of Judges' filed on 31 October 2024 \(ICC-01/22-92-Anx\)](#), 22 November 2024, ICC-01/22-107, para. 20 and all related references.

22. Rule 34 of the Rules provides, in relevant parts:

1. In addition to the grounds set out in article 41, paragraph 2, and article 42, paragraph 7, the grounds for disqualification of a judge, the Prosecutor or a Deputy Prosecutor shall include, *inter alia* the following:

[...]

(c) Performance of functions, prior to taking office, during which he or she could be expected to have formed an opinion on the case in question, on the parties or on their legal representatives that, objectively, could adversely affect the required impartiality of the person concerned;

(d) Expression of opinions, through the communications media, in writing or in public actions, that, objectively, could adversely affect the required impartiality of the person concerned.

2. Subject to the provisions set out in article 41, paragraph 2, and article 42, paragraph 8, a request for disqualification shall be made in writing as soon as there is knowledge of the grounds on which it is based. The request shall state the grounds and attach any relevant evidence, and shall be transmitted to the person concerned, who shall be entitled to present written submissions.

IV. DETERMINATION OF THE PLENARY

a. Applicable legal standards

23. The plenary of judges notes that the disqualification of a judge is not a step to be undertaken lightly and that a high threshold must be satisfied in order to rebut the presumption of impartiality which attaches to judicial office.⁴² The Application pertains

⁴² [Decision of the plenary of the judges on the “Defence Request for the Disqualification of a Judge” of 2 April 2012](#), 5 June 2012, ICC-02/05-03/09-344-Anx, para. 14; [Decision of the plenary of judges on the Defence Application of 20 February 2013 for the disqualification of Judge Sang-Hyun Song from the case of *The Prosecutor v. Thomas Lubanga Dyilo*](#), 11 June 2013, ICC-01/04-01/06-3040-Anx, para. 37 (the ‘*Lubanga* Disqualification Decision 11 June 2013’); [Decision of the Plenary of Judges on the Defence Applications for the Disqualification of Judge Cuno Tarfusser from the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*](#), 20 June 2014, ICC-01/05-01/13-511-Anx, para. 18 (the ‘*Bemba et al* Disqualification Decision 20 June 2014’); [Decision of the Plenary of Judges on the Defence Application for the Disqualification of Judge Silvia Fernández de Gurmendi from the case of *The Prosecutor v. Thomas Lubanga Dyilo*](#), 3 August 2015, ICC-01/04-01/06-3154-AnxI, para. 29; [Decision of the Plenary of Judges on the Defence Request for the Disqualification of Judge Kuniko Ozaki from the case of *The Prosecutor v. Bosco Ntaganda*](#), 20 June 2019, ICC-01/04-02/06-2355-AnxI-Red, para. 31 (the ‘*Ntaganda* Disqualification Decision 20 June 2019’); [Decision of the Plenary of Judges on the Defence Application for the Disqualification of Judge Marc Perrin de Brichambaut from the case *The Prosecutor v. Thomas Lubanga Dyilo*](#), 28 June 2019, ICC-01/04-01/06-3459-Anx, para. 26 (the ‘*Lubanga* Disqualification Decision 28 June 2019’); [Decision of the Plenary of Judges on the Defence Application for the Disqualification of Judge Marc Perrin de Brichambaut from the case *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*](#), 8 July 2019, ICC-01/12-01/18-398-AnxI, para. 19 (the ‘*Al Hassan* Disqualification Decision 8 July 2019’); [Decision of the Plenary of Judges on the Defence Application for the Disqualification of judges of Pre-Trial Chamber I from the case *The Prosecutor*](#)

only to an alleged appearance of bias, rather than any allegations of actual bias. The plenary of judges recalls that justice must not only be done, but must additionally be seen to be done.⁴³ The plenary of judges has consistently considered that 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.⁴⁴ It has regularly been emphasised that such fair-minded person is an objective observer,⁴⁵ whose consideration of facts and circumstances includes an understanding of the nature of a judge's profession.⁴⁶ The plenary of judges specifies that, in forming a view regarding the appearance of bias, the fair-minded observer should take into account the entire context of the case.⁴⁷ The plenary of judges

[v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud](#), 12 September 2019, ICC-01/12-01/18-458-AnxI-Red, para. 23 (the 'Al Hassan Disqualification Decision 12 September 2019'); [Decision of the Plenary of Judges on the Defence Application for the Disqualification of Judge Lordkipanidze from the case *The Prosecutor v. Bosco Ntaganda*](#), 29 September 2021, ICC-01/04-02/06-2711-Anx, para. 19 (the 'Ntaganda Disqualification Decision 29 September 2021'); [Reasons for the Decision on the 'Request for the Disqualification of Judge Miatta Maria Samba' dated 17 September 2021 \(ICC-01/09-01/20-173-Conf\)](#), 1 November 2021, ICC-01/09-01/20-205-Red, para. 21 (the 'Gicheru Disqualification Decision 1 November 2021'); [Reasons for the Decision on the 'Application for the Disqualification of Judges' filed on 31 October 2024 \(ICC-01/22-92-Anx\)](#), 22 November 2024, ICC-01/22-107, para. 20 (the 'Disqualification Decision in the *Situation in Ukraine* of 22 November 2024').

⁴³ [Lubanga Disqualification Decision 11 June 2013](#), ICC-01/04-01/06-3040-Anx, para. 67, referring to United Kingdom, King's Bench Division, *The King v. Sussex Justices*, Ex parte McCarthy, 9 November 1923 [1924] 1 K.B. 256, p. 259; See also [Lubanga Disqualification Decision 28 June 2019](#), ICC-01/04-01/06-3459-Anx, para. 27; [Al Hassan Disqualification Decision 12 September 2019](#), ICC-01/12-01/18-458-AnxI-Red, para. 24; [Ntaganda Disqualification Decision 29 September 2021](#), ICC-01/04-02/06-2711-Anx, para. 20; [Gicheru Disqualification Decision 1 November 2021](#), ICC-01/09-01/20-205-Red, para. 22; [Disqualification Decision in the *Situation in Ukraine* of 22 November 2024](#), ICC-01/22-107, para. 20.

⁴⁴ [Lubanga Disqualification Decision 11 June 2013](#), ICC-01/04-01/06-3040-Anx, para. 34; [Bemba et al Disqualification Decision 20 June 2014](#), ICC-01/05-01/13-511-Anx, para. 44; [Ntaganda Disqualification Decision 20 June 2019](#), ICC-01/04-02/06-2355-AnxI-Red, para. 32; [Lubanga Disqualification Decision 28 June 2019](#), ICC-01/04-01/06-3459-Anx, para. 27; [Al Hassan Disqualification Decision 8 July 2019](#), ICC-01/12-01/18-398-AnxI, para. 20; [Al Hassan Disqualification Decision 12 September 2019](#), ICC-01/12-01/18-458-AnxI-Red, para. 25; [Ntaganda Disqualification Decision 29 September 2021](#), ICC-01/04-02/06-2711-Anx, para. 21; [Gicheru Disqualification Decision 1 November 2021](#), ICC-01/09-01/20-205-Red, para. 23; [Disqualification Decision in the *Situation in Ukraine* of 22 November 2024](#), ICC-01/22-107, para. 20.

⁴⁵ [Lubanga Disqualification Decision 11 June 2013](#), ICC-01/04-01/06-3040-Anx, para. 35, referring to *Helow v. Secretary of State for the Home Department and another (Scotland)* [2008] UKHL 62, para. 2. See also [Ntaganda Disqualification Decision 20 June 2019](#), ICC-01/04-02/06-2355-AnxI-Red, para. 32; [Lubanga Disqualification Decision 28 June 2019](#), ICC-01/04-01/06-3459-Anx, para. 27; [Al Hassan Disqualification Decision 8 July 2019](#), ICC-01/12-01/18-398-AnxI, para. 20; [Al Hassan Disqualification Decision 12 September 2019](#), ICC-01/12-01/18-458-AnxI-Red, para. 25; [Ntaganda Disqualification Decision 29 September 2021](#), ICC-01/04-02/06-2711-Anx, para. 21; [Gicheru Disqualification Decision 1 November 2021](#), ICC-01/09-01/20-205-Red, para. 23; [Disqualification Decision in the *Situation in Ukraine* of 22 November 2024](#), ICC-01/22-107, para. 20.

⁴⁶ [Lubanga Disqualification Decision 11 June 2013](#), ICC-01/04-01/06-3040-Anx, para. 36; [Ntaganda Disqualification Decision 20 June 2019](#), ICC-01/04-02/06-2355-AnxI-Red, para. 32; [Lubanga Disqualification Decision 28 June 2019](#), ICC-01/04-01/06-3459-Anx, para. 27; [Al Hassan Disqualification Decision 8 July 2019](#), ICC-01/12-01/18-398-AnxI, para. 20; [Al Hassan Disqualification Decision 12 September 2019](#), ICC-01/12-01/18-458-AnxI-Red, para. 25; [Ntaganda Disqualification Decision 29 September 2021](#), ICC-01/04-02/06-2711-Anx, para. 21; [Gicheru Disqualification Decision 1 November 2021](#), ICC-01/09-01/20-205-Red, para. 23; [Disqualification Decision in the *Situation in Ukraine* of 22 November 2024](#), ICC-01/22-107, para. 20.

⁴⁷ [Lubanga Disqualification Decision 11 June 2013](#), ICC-01/04-01/06-3040-Anx, para. 38; [Lubanga Disqualification Decision 28 June 2019](#), ICC-01/04-01/06-3459-Anx, para. 27; [Al Hassan Disqualification Decision](#)

recalls that it is for the party requesting the disqualification to demonstrate the appearance of bias.⁴⁸

b. Merits

24. The plenary of judges, acting unanimously, considers that no actual nor reasonable apprehension of bias arises in respect of Judges Alapini-Gansou and Flores. The plenary of judges considers that the judges acted, at all times, in accordance with the judicial duties assigned to them under the Statute. As judges of Pre-Trial Chamber I, they issued the Authorisation Decision pursuant to article 15(4) of the Statute, which provides for the power of a pre-trial chamber to authorise an investigation *proprio motu*, if it considers that there is a reasonable basis to proceed with an investigation and that the case appears to fall within the jurisdiction of the Court. If those criteria are fulfilled, article 15(4) of the Statute provides that the Pre-Trial Chamber shall authorize the commencement of the investigation ‘without prejudice to subsequent determinations by the Court with regard to the jurisdiction and admissibility’.
25. As reflected in the language of article 15 of the Statute, the supervisory role of a pre-trial chamber over the *proprio motu* initiative of the Prosecutor to proceed with an investigation does not preclude a pre-trial chamber from subsequently determining a challenge to the jurisdiction of the Court brought under article 19(2) of the Statute. To the contrary, the Statute requires that decisions under articles 15 and 19 be taken in the same phase of the proceedings, by the pre-trial chamber to which the situation is assigned. The plenary of judges considers that article 41(2) of the Statute cannot be interpreted in a way that would require a pre-trial chamber which took a decision under article 15(4) of the Statute to be recomposed for the purpose of making a determination under article 19. To find otherwise would impinge on the pre-trial judges’ ability to carry out the judicial

[8 July 2019](#), ICC-01/12-01/18-398-AnxI, para. 20; [Al Hassan Disqualification Decision 12 September 2019](#), ICC-01/12-01/18-458-AnxI-Red, para. 25; [Ntaganda Disqualification Decision 29 September 2021](#), ICC-01/04-02/06-2711-Anx, para. 21; [Gicheru Disqualification Decision 1 November 2021](#), ICC-01/09-01/20-205-Red, para. 23; [Disqualification Decision in the Situation in Ukraine of 22 November 2024](#), ICC-01/22-107, para. 20.

⁴⁸ [Ntaganda Disqualification 20 June 2019](#), ICC-01/04-02/06-2355-AnxI-Red, para. 33; [Lubanga Disqualification Decision 28 June 2019](#), ICC-01/04-01/06-3459-Anx, para. 27; [Al Hassan Disqualification Decision 8 July 2019](#), ICC-01/12-01/18-398-AnxI, para. 20; [Al Hassan Disqualification Decision 12 September 2019](#), ICC-01/12-01/18-458-AnxI-Red, para. 25; [Ntaganda Disqualification Decision 29 September 2021](#), ICC-01/04-02/06-2711-Anx, para. 21; [Gicheru Disqualification Decision 1 November 2021](#), ICC-01/09-01/20-205-Red, para. 23; [Disqualification Decision in the Situation in Ukraine of 22 November 2024](#), ICC-01/22-107, para. 20.

functions assigned to them under the Statute in respect of two separate legal decisions. More generally, this approach is consistent with the reality that the judges sitting in a Pre-Trial Chamber at any given time must be able to exercise the range of judicial functions assigned to them under the Rome Statute, including those set out in article 57.

26. Accordingly, the plenary of judges, acting unanimously, considers that the Rome Statute recognises that Judges Alapini-Gansou and Flores may exercise the functions assigned to them under both article 15 and article 19 of the Statute and finds that no appearance of bias or lack of impartiality arise from the ordinary exercise by the judges of legal functions assigned to them under the Statute in respect of two separate legal decisions.⁴⁹

V. DISPOSITION

27. The plenary of judges, acting unanimously, rejects the Application.

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



Judge Tomoko Akane
President

Dated this 3 July 2025

At The Hague, The Netherlands

⁴⁹ [Disqualification Decision in the Situation in Ukraine of 22 November 2024](#), ICC-01/22-107, para. 25.