

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 15 October 2025

THE APPEALS CHAMBER

Before: Judge Luz del Carmen Ibáñez Carranza, Presiding
Judge Tomoko Akane
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Erdenebalsuren Damdin

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

IN THE CASE OF THE PROSECUTOR v. RODRIGO ROA DUTERTE

Public redacted version of

**“Decision on the Defence Request to Disqualify the Prosecutor”, 2 October 2025,
ICC-01/21-01/25-286-Conf**

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 Osvaldo Zavala Giler

☐ **Counsel Support Section**

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and Reparations
Section**

☐ **Other**
Pre-Trial Chamber I

The Appeals Chamber of the International Criminal Court,

Having before it the “Defence Request to Disqualify Chief Prosecutor Karim Khan” of 6 August 2025 (ICC-01/21-01/25-226-Conf),

Renders unanimously the following

DECISION

1. The “Defence Request to Disqualify Chief Prosecutor Karim Khan” of 6 August 2025 (ICC-01/21-01/25-226-Conf) is granted.
2. The Prosecutor is disqualified from the case of *The Prosecutor v. Rodrigo Roa Duterte*.
3. The Office of the Prosecutor is ordered to file a public redacted version of the response, ICC-01/21-01/25-234-Conf, within five days of notification of this decision.

REASONS

I. PROCEDURAL HISTORY

1. On 8 February 2018, the former Prosecutor, H.E. Fatou Bensouda, announced that she was opening a preliminary investigation into the Situation in the Republic of the Philippines (hereinafter: “*Philippines Situation*”).¹

2. On 29 June 2018, the former Prosecutor received a communication pursuant to article 15 (hereinafter: “Article 15 Communication”) of the Rome Statute (hereinafter: “Statute”) requesting her to apply to the Pre-Trial Chamber to open an investigation into the *Philippines Situation*.² The Article 15 Communication was submitted by a [REDACTED] including the Prosecutor, who represented [REDACTED]. The Prosecutor [REDACTED] of the Article 15 Communication.

¹ [Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on opening Preliminary Examinations into the situations in the Philippines and in Venezuela.](#)

² Article 15 Communication [REDACTED].

3. On 24 May 2021, the former Prosecutor filed before Pre-Trial Chamber I (hereinafter: “Pre-Trial Chamber”) a request to authorise the opening of an investigation into the *Philippines* Situation.³
4. On 16 June 2021, the Prosecutor was formally sworn in.
5. On 15 September 2021, the Pre-Trial Chamber authorised the opening of an investigation into the *Philippines* Situation.⁴
6. On 24 June 2022, the Prosecutor, following a deferral request submitted by the Republic of the Philippines pursuant to article 18(2) of the Statute,⁵ filed before the Pre-Trial Chamber a request to authorise the resumption of the investigation into the *Philippines* Situation.⁶
7. On 26 January 2023, the Pre-Trial Chamber rendered its decision authorising the Prosecutor to resume the investigation into the *Philippines* Situation, pursuant to article 18(2) of the Statute (hereinafter: “Article 18(2) Decision”).⁷
8. On 27 March 2023, the Appeals Chamber dismissed the appeal filed by the Republic of the Philippines against the Article 18(2) Decision.⁸
9. On 10 February 2025, an application for a warrant of arrest against Mr Duterte was filed with the Pre-Trial Chamber, signed by Deputy Prosecutor Mame Mandiaye Niang (hereinafter: “Arrest Warrant Application”).⁹

³ Request for authorisation of an investigation pursuant to article 15(3), ICC-01/21-7-SECRET-Exp; a [public redacted version](#) was registered on 14 June 2021 (ICC-01/21-01/25-7-Red).

⁴ [Decision on the Prosecutor’s request for authorisation of an investigation pursuant to Article 15\(3\) of the Statute](#), ICC-01/21-01/25-12, p. 41.

⁵ [Notification of the Republic of the Philippines’ deferral request under article 18\(2\)](#), 18 November 2021, ICC-01/21-01/25-14, with public [Annex A](#).

⁶ [Prosecution’s request to resume the investigation into the situation in the Philippines pursuant to article 18\(2\)](#), ICC-01/21-01/25-46.

⁷ Authorisation pursuant to article 18(2) of the Statute to resume the investigation, ICC-01/21-01/25-56-Conf; a [public redacted version](#) was registered on the same day, ICC-01/21-01/25-56-Red, p. 42.

⁸ [Decision on request for suspensive effect of Pre-Trial Chamber I’s “Authorisation pursuant to article 18\(2\) of the Statute to resume the investigation” of 26 January 2023 \(ICC-01/21-56\)](#), ICC-01/21-01/25-67, para. 21.

⁹ Prosecution’s urgent application under article 58 for a warrant of arrest against Rodrigo Roa DUTERTE”, ICC-01/21-01/25-80-US-Exp; a [public redacted version](#) was registered on 13 March 2025 (ICC-01/21-01/25-80-Red) and a confidential redacted version was registered on 8 April 2025 (ICC-01/21-01/25-80-Conf-Red).

10. On 6 March 2025, the Prosecutor notified the Pre-Trial Chamber (hereinafter: “Prosecutor’s Notification”) that in 2018, he represented [REDACTED]. He stated “that no conflict of interest exists which requires the Prosecutor to request excusal from the Presidency”,¹⁰ and that “unless further direction or order is received from the [Pre-Trial Chamber] [...] he intends to lead the prosecution of any case arising out of the situation in the Republic of the Philippines”.¹¹ The Prosecutor informed the Pre-Trial Chamber that, in light of the Prosecutor’s Notification, he did not participate in the evidence review of the Arrest Warrant Application, he had not seen it nor had he reviewed any underlying evidence referenced therein. That filing was submitted by a Deputy Prosecutor on behalf of the Office of the Prosecutor (hereinafter: “Prosecution”).¹²

11. On 7 March 2025, the Pre-Trial Chamber issued a warrant for the arrest of Mr Duterte.¹³

12. On 12 March 2025, Mr Duterte was surrendered to the Court.¹⁴

13. On 1 April 2025, the Prosecutor informed the Pre-Trial Chamber of certain corrections in relation to factual statements made in the Prosecutor’s Notification (hereinafter: “Prosecutor’s Second Notification”).¹⁵ Notably, the Prosecutor’s Second Notification clarified that none of the victims referred to in the Article 15 Communication overlap with any of the victims referred to in the Arrest Warrant Application.¹⁶ It also corrected a statement made in the Prosecutor’s Notification that the Prosecutor was not directly involved in investigations or interviews with any victim or witness in his capacity as [REDACTED]. In this regard, it confirmed that during the course of his involvement in the Article 15 Communication, the Prosecutor [REDACTED]. Neither of these individuals were victims of the alleged crimes.¹⁷

¹⁰ Prosecutor’s Notification, ICC-01/21-01/25-81-Conf; a [public redacted version](#) was registered on 18 August 2025 (ICC-01/21-01/25-81-Red), para. 1. *See also* paras 3, 17-25.

¹¹ [Prosecutor’s Notification](#), para. 25.

¹² [Prosecutor’s Notification](#), para. 9.

¹³ [Warrant of Arrest for Mr Rodrigo Roa Duterte](#), ICC-01/21-01/25-83.

¹⁴ ICC Press Release, [Situation in the Philippines: Rodrigo Roa Duterte in ICC custody](#).

¹⁵ [Prosecutor’s Second Notification](#), ICC-01/21-01/25-100, para. 1.

¹⁶ [Prosecutor’s Second Notification](#), para. 4.

¹⁷ [Prosecutor’s Second Notification](#), paras 5-7.

14. On 16 May 2025, the Prosecutor voluntarily took a leave of absence from the Court.

15. On 27 June 2025, the Prosecution disclosed the Article 15 Communication to the Defence.¹⁸

16. On 6 August 2025, the Defence filed a request for the disqualification of the current Prosecutor from “any further role” in the case against Mr Duterte (hereinafter: “Request”).¹⁹

17. On 15 August 2025, pursuant to the Appeals Chamber’s instructions,²⁰ the Principal Counsel of the Office of Public Counsel for Victims (hereinafter: “OPCV”) filed a request for the extension of the time limit to submit a response to the Request (hereinafter: “OPCV Request”).²¹

18. On the same day, the Defence informed the Appeals Chamber that it does not oppose the OPCV Request.²²

19. On 18 August 2025, the Prosecution informed the Appeals Chamber that it does not oppose the OPCV Request.²³

20. On the same day, the Prosecutor²⁴ and the OPCV²⁵ filed their responses to the Request (hereinafter: “Prosecutor’s Response” and “OPCV Response”, respectively).

¹⁸ See [Prosecution’s Eleventh Communication of the Disclosure of Evidence](#), 1 July 2025, ICC-01/21-01/25-168, with confidential Annexes A to J; confidential Annex B, ICC-01/21-01/25-168-Conf-AnxB, p. 11.

¹⁹ Defence Request to Disqualify Chief Prosecutor Karim Khan, 6 August 2025, ICC-01/21-01/25-226-Conf; a [lesser public redacted version](#) was registered on 19 August 2025 (ICC-01/21-01/25-226-Red2), para. 1.

²⁰ Email from the OPCV to the Appeals Chamber on 14 August 2025 at 15:28; email from the Appeals Chamber to the OPCV on 15 August 2025 at 12:53.

²¹ [Victims’ Urgent Request for Varying Standard Time Limit to Respond to the “Defence Request to Disqualify Chief Prosecutor Karim Khan”](#), ICC-01/21-01/25-229.

²² Email from the Defence to the Appeals Chamber on 15 August 2025 at 15:40.

²³ Email from the Prosecution to the Appeals Chamber on 18 August 2025 at 09:31.

²⁴ Prosecutor’s Response to Defence Request to Disqualify Chief Prosecutor Karim Khan, ICC-01/21-01/25-234-Conf.

²⁵ Victims’ Response to the “Defence Request to Disqualify Chief Prosecutor Karim Khan”, ICC-01/21-01/25-233-Conf; a [public redacted version](#) was registered on 26 August 2025 (ICC-01/21-01/25-233-Red).

21. Also on the same day, an *ad hoc* Presidency denied, by majority, the request of Judge Tomoko Akane to be excused from her functions as a judge of the Appeals Chamber in respect of the case of *The Prosecutor v. Rodrigo Roa Duterte*.²⁶

II. SUMMARY OF THE SUBMISSIONS

A. Defence's submissions

22. The Defence requests the disqualification of the Prosecutor from “any further role” in the case.²⁷ It submits that the Request stems from an “irreconcilable conflict of interest”, arising out of the Prosecutor’s former representation of [REDACTED] and victims of an alleged policy of extra-judicial drug-related killings in the Philippines and his subsequent role as Prosecutor at the Court, “charged with overseeing a fair and **impartial** investigation of that very same policy of killing”.²⁸ Notably, the Defence submits that the Prosecutor’s statutory obligation to actively seek exculpatory evidence could “cast doubt on the testimony provided by the same people whose interests he had been charged to protect”.²⁹ It further notes that there is “nothing to suggest” that he has sought a waiver from “his former instructing client”, including the victims he formerly represented.³⁰ The Defence argues that in his current role, the Prosecutor “abused the criminal process to push forward an investigation in which he had an undeclared personal interest or, at the very least, an undeclared personal obligation from which he had not sought to release himself”.³¹

23. In particular, the Defence highlights that in the course of his representation [REDACTED], the Prosecutor submitted the Article 15 Communication in which [REDACTED].³² It further notes that during the course of his involvement in the Article 15 Communication, the Prosecutor interviewed [REDACTED].³³ The Defence also

²⁶ Presidency, Notification of a decision on a request for excusal of a Judge, ICC-01/21-01/25-232-Conf, with confidential Annexes I and II (ICC-01/21-01/25-232-Conf-AnxI; ICC-01/21-01/25-232-Conf-AnxII).

²⁷ [Request](#), para. 1.

²⁸ Request, para. 2 (emphasis in original).

²⁹ [Request](#), para. 3.

³⁰ [Request](#), para. 3.

³¹ [Request](#), para. 4.

³² Request, para. 7.

³³ Request, paras 8-9, 21, 30, 35.

notes that [REDACTED] after receiving the Article 15 Communication, the former Prosecutor sought the Pre-Trial Chamber’s exceptional approval to [REDACTED].³⁴

24. According to the Defence, when the Prosecutor assumed oversight of the Prosecution’s investigation into Mr Duterte, he “had thoroughly convinced himself that Mr Duterte must be prosecuted”.³⁵ It argues that the Prosecutor conflated his prior role as a victims’ representative with his current role at the Court, by “seemingly exploit[ing] the information that he had acquired so as to conduct an investigation that ultimately led to Mr Duterte’s arrest”.³⁶ Notably, it highlights that when the Prosecutor requested that the Pre-Trial Chamber authorise the resumption of the investigation into the *Philippines* Situation, he relied on findings made by [REDACTED].³⁷ In this regard, the Defence states that through his involvement in the Article 15 Communication, the Prosecutor has “acquired unknown information which he could, conceivably, have used to sway those answerable to him to pursue the prosecution of Mr Duterte”.³⁸ It also points to certain factors that, in its submission, rebut the presumption that the Prosecutor is of high moral character.³⁹

25. Finally, the Defence argues that the Prosecutor’s bias could reasonably be perceived by a fair and informed observer, given that (i) he did not disclose his conflict of interest to the Pre-Trial Chamber until 6 March 2025⁴⁰ and only disclosed the Article 15 Communication to the Defence on 27 June 2025;⁴¹ and (ii) in his notifications to the Court “hid the fact that he had placed Mr Duterte as the top of a list of persons worthy of prosecution”.⁴²

B. Prosecutor’s submissions

26. The Prosecutor opposes the Requests arguing that it should be dismissed.⁴³ He submits that there is no conflict of interest arising from his representation of

³⁴ Request, para. 8.

³⁵ [Request](#), para. 30.

³⁶ [Request](#), para. 35. *See also* paras 33-34.

³⁷ Request, para. 14.

³⁸ [Request](#), para. 30.

³⁹ [Request](#), para. 36.

⁴⁰ [Request](#), paras 18, 21, 38.

⁴¹ [Request](#), para. 38.

⁴² [Request](#), para. 38.

⁴³ Prosecutor’s Response, paras 47.

[REDACTED] a group of victims in relation to the Article 15 Communication.⁴⁴ At the outset, he argues that numerous Defence allegations in the Request are “speculative” and “wholly untrue”.⁴⁵ Notably, he states, *inter alia*, that (i) he did not have any involvement with [REDACTED]; (ii) it is untrue that he had convinced himself that the evidence sufficed to charge Mr Duterte in 2018; and (iii) it is untrue that he discussed [REDACTED] or any witness with the Head of the Unified Team of the Philippines case and Deputy Prosecutor Niang, nor did he try to sway them in any manner in relation to the case.⁴⁶

27. Second, he submits that disqualification is not warranted. According to the Prosecutor, “there is nothing unusual or inherently problematic about a prosecutor having previous involvement in factual investigations regarding a crime or situation” and the “mere fact of the Prosecutor’s involvement in a prior factual investigation cannot suffice for disqualification”.⁴⁷ He further notes that the facts do not support the Request, notably because he did not represent either of the two individuals that he met in 2018, referred to in the Prosecutor’s Second Notification, and he therefore does not owe any obligations to them which subsisted after his withdrawal from that instruction.⁴⁸ He also notes that the material available to him at the time of the Article 15 Communication was a “small fraction of the deeper evidential matrix available to the OTP now”.⁴⁹

28. Third, the Prosecutor submits that article 42(7) of the Statute does not automatically require his disqualification as (i) his prior involvement in the Article 15 Communication was not “in that case [against Mr Duterte]” because in 2018, the investigation had not yet been opened; (ii) there is no congruence between the legal issues concerning the opening of an investigation and those applicable at the confirmation stage of proceedings; and (iii) the factual matrix is now different and the Prosecutor is able to comply with his obligation to apply the legal standard applicable

⁴⁴ Prosecutor’s Response, para. 1.

⁴⁵ Prosecutor’s Response, para. 2. *See also* paras 18-27.

⁴⁶ Prosecutor’s Response, paras 18-27.

⁴⁷ Prosecutor’s Response, paras 36-38.

⁴⁸ Prosecutor’s Response, para. 38.

⁴⁹ Prosecutor’s Response, para. 39.

at this stage of proceedings to the evidence currently available and to disregard any other factors.⁵⁰

29. Fourth, the Prosecutor submits that the Request also fails to meet the test under rule 34(1)(b) of the Rules of Evidence and Procedure (hereinafter: “Rules”) because he did not submit the Article 15 Communication in his private capacity, nor can it be considered legal proceedings.⁵¹ Similarly, the Prosecutor submits that the test under rule 34(1)(c) of the Rules is also not met – he could not have formed an opinion on “the case in question”, as there was no “case” at the time of the Article 15 Communication on which he could have formed an opinion.⁵² Further, the Prosecutor argues that rule 34(1)(c) of the Rules “expressly requires an objective approach” and the reasonable observer, properly informed, would take into account certain factors which would lead them to conclude that his “required impartiality is not adversely affected”.⁵³

C. OPCV’s submissions

30. The OPCV submits that the Request is inadmissible for two reasons. First, it notes that the Prosecutor is on a leave of absence and it is “highly uncertain *when* and *if* he will come back to re-assume his role and authority”.⁵⁴ It argues that the Statute and Rules require that the Prosecutor be in office and effectively exercising his or her statutory authority at the time any request for disqualification is filed with the Appeals Chamber.⁵⁵ According to the OPCV, the specific circumstances of the Prosecutor’s leave mean that his disqualification from the case “will serve no practical purpose whatsoever” and accordingly the Request should be dismissed as moot.⁵⁶ Second, the OPCV submits that the Request is untimely and does not comply with rule 34(2) of the Rules, given that the Defence filed the Request four months after gaining knowledge of the potential grounds of disqualification of the Prosecutor.⁵⁷

⁵⁰ Prosecutor’s Response, para. 40. *See also* para. 33.

⁵¹ Prosecutor’s Response, paras 41-42.

⁵² Prosecutor’s Response, para. 43.

⁵³ Prosecutor’s Response, para. 44.

⁵⁴ [OPCV Response](#), para. 17. *See also* paras 15-16.

⁵⁵ [OPCV Response](#), para. 18.

⁵⁶ [OPCV Response](#), para. 19.

⁵⁷ [OPCV Response](#), paras 20-26.

31. As to the merits of the Request, the OPCV submits that the Defence have failed to demonstrate that the Prosecutor lacks impartiality under article 42(7) of the Statute and rule 34(1)(b) and (c) of the Rules.⁵⁸

32. It submits that for the Prosecutor to be disqualified under article 42(7) of the Statute and rule 34(1)(b) of the Rules, he or she “must have been in his or her private capacity involved in *the case*” and at the time of the Article 15 Communication, “the *Duterte case* was not opened”.⁵⁹ It also notes that “in submitting the Article 15 Communication”, the victims represented by the Prosecutor “were not actually participating in a legal or judicial proceeding *per se*” as required by rule 34(1)(b) of the Rules.⁶⁰ Finally it argues that the Prosecutor’s previous role as a victims’ counsel “cannot be qualified as a party to the proceedings, let alone [an] opposing party to Mr Duterte”.⁶¹

33. In relation to disqualification under rule 34(1)(c) of the Rules, the OPCV submits, *inter alia*, that the circumstances in question “do not raise a question of partiality of [the Prosecutor] or show that he previously made determinations about Mr Duterte’s criminal responsibility, from which, he is not free to depart”.⁶² According to the OPCV, the Request fails to show that the Prosecutor “is still and strictly bound by the content of the Article 15 Communication”.⁶³

34. Finally, the OPCV avers that, based on the entire context of the case against Mr Duterte, the facts show that the Prosecutor “has acted in compliance with the Court’s legal framework and pursuant to the duties it imposes on him” and nothing in the Request demonstrates that he conducted himself in “an unlawful or unethical or inappropriate manner in his previous role as a victims’ counsel in the past and as the Prosecutor at present”.⁶⁴

⁵⁸ [OPCV Response](#), para. 46.

⁵⁹ [OPCV Response](#), para. 29. *See also* para. 28.

⁶⁰ [OPCV Response](#), para. 32. *See also* paras 30-31.

⁶¹ [OPCV Response](#), para. 35. *See also* paras 33-34.

⁶² [OPCV Response](#), para. 39.

⁶³ [OPCV Response](#), para. 40. *See also* paras 43-44.

⁶⁴ [OPCV Response](#), para. 45.

III. MERITS

A. Relevant legal framework

35. Articles 64(2) and 64(6)(f) of the Statute entrust chambers of the Court, including the Appeals Chamber, with the duty to ensure fairness throughout the entirety of the proceedings.⁶⁵ It is also recalled that any accused before the Court has a right to fair proceedings pursuant to article 67 of the Statute.

36. Article 42(7) of the Statute prohibits the Prosecutor from participating “in any matter in which [his] impartiality might reasonably be doubted on any ground”. Pursuant to the same provision, a ground for disqualification exists, *inter alia*, when the Prosecutor 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”.⁶⁶

37. Furthermore, rule 34(1) of the Rules provides a non-exhaustive list of grounds for disqualification of the Prosecutor. Rule 34(1)(b) of the Rules provides for an “involvement, in his or her private capacity, in any legal proceedings initiated prior to his or her involvement in the case, or initiated by him or her subsequently, in which the person being investigated or prosecuted was or is an opposing party”. Additionally, rule 34(1)(c) of the Rules provides for “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”.

⁶⁵ Article 64(2) of the Statute provides that “[t]he Trial Chamber shall ensure that a trial is fair [...]”. Article 64(6)(f) provides that the Trial Chamber may, as necessary, “[r]ule on any other relevant matters”. Rule 149 of the Rules provides that “[p]arts 5 and 6 and rules governing proceedings and the submission of evidence in the Pre-Trial and Trial Chambers shall apply *mutatis mutandis* to proceedings in the Appeals Chamber”. See also *Situation in the Bolivarian Republic of Venezuela I*, Decision on the “Request for the Appeals Chamber to Conduct an Ex Officio Review of the Prosecutor’s Conflict of Interest in the Venezuela I Situation”, 1 August 2025, ICC-02/18-118 (hereinafter: “[Venezuela 1 August 2025 Decision](#)”), para. 28 referring to Appeals Chamber, *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, [Judgment on the appeal of Maxime Jeoffroy Eli Mokom Gawaka against the decision of Pre-Trial Chamber II of 19 August 2022](#) entitled “Decision on legal representation further to the Appeals Chamber’s judgment of 19 July 2022”, 19 December 2022, ICC-01/14-01/22-124-Red (OA3), paras 44-45; Appeals Chamber, *The Prosecutor v. Muthaura et al.*, [Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber II dated 20 July 2011](#) entitled “Decision with Respect to the Question of Invalidating the Appointment of Counsel to the Defence”, 10 November 2011, ICC-01/09-02/11-365 (OA3), para. 51.

⁶⁶ See also [Venezuela 1 August 2025 Decision](#), para. 34.

38. Regarding the interpretation of article 42(7) of the Statute, the Appeals Chamber has previously found that “it is not necessary to establish an actual lack of impartiality on the part of the Prosecutor. Rather, the question [...] is whether it reasonably appears that the Prosecutor lacks impartiality. In determining whether there is such an appearance of partiality, [...] this determination should be based on the perspective of a reasonable observer, properly informed”.⁶⁷

39. The Appeals Chamber recalls that:

as consistently noted by the Plenary of Judges in decisions on the disqualification of Judges, which the Appeals Chamber finds equally applicable to questions of the disqualification of the Prosecutor, “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”.⁶⁸

40. The Appeals Chamber previously emphasised that “the test is concerned not only with whether a reasonable observer could apprehend bias, but whether any such apprehension was objectively reasonable”.⁶⁹ There is indeed an obvious difference in the respective roles and functions of the judges and the Prosecutor in the proceedings, and a properly informed reasonable observer is expected to be aware of these differences.⁷⁰

41. In this regard, the Appeals Chamber recalls that, despite the mentioned difference in the respective roles, a presumption of impartiality equally applies to the Prosecutor.⁷¹

⁶⁷ Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Decision on the requests for the Disqualification of the Prosecutor, the Deputy Prosecutor and the entire OTP staff, 22 August 2014, ICC-01/05-01/13-648-Conf (OA); public redacted version registered on 21 October 2014 (ICC-01/05-01/13-648-Red3) (hereinafter: “[Bemba et al. Disqualification Decision](#)”), para. 24, referring to Appeals Chamber, *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Decision on the Request for Disqualification of the Prosecutor, 12 June 2012, ICC-01/11-01/11-175 (OA3) (hereinafter: “[Gaddafi and Al-Senussi Disqualification Decision](#)”), para. 20. See also [Venezuela 1 August 2025 Decision](#), para. 34.

⁶⁸ [Venezuela 1 August 2025 Decision](#), para. 34, referring to, *inter alia*, Plenary of Judges, *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 (hereinafter: “[Ukraine Disqualification Decision](#)”), para. 20.

⁶⁹ [Venezuela 1 August 2025 Decision](#), para. 34 referring to Plenary of Judges, *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, [Decision of the plenary of the judges on the “Defence Request for the Disqualification of a Judge”](#), 5 June 2012, ICC-02/05-03/09-344-Anx, para. 13.

⁷⁰ [Gaddafi and Al-Senussi Disqualification Decision](#), para. 34.

⁷¹ See [Bemba et al. Disqualification Decision](#), paras 25-26, referring to, *inter alia*, Plenary of Judges, *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda*

Notably, the Prosecutor is (i) elected, *inter alia*, because of his/her “high moral character”, pursuant to article 42(3) of the Statute; and (ii) bound under article 45 of the Statute to exercise his/her functions “impartially and conscientiously”.⁷²

42. The Appeals Chamber further notes that the Plenary of Judges has consistently held that the disqualification of a judge is not to be undertaken lightly, a high threshold must be satisfied in order to rebut the presumption of impartiality which attaches to judicial office.⁷³ Unless rebutted, it is presumed that the judges of the Court are professional judges capable of deciding on issues before them while relying solely and exclusively on the evidence submitted in a case,⁷⁴ whilst excluding any information that was available to them in other capacity.⁷⁵ The Appeals Chamber is of the view that the same considerations apply when dealing with a request for the disqualification of a Prosecutor.⁷⁶

B. Determination by the Appeals Chamber

43. The Appeals Chamber notes that the Request has been presented with reference mainly to rule 34(1)(b) of the Rules.⁷⁷ The Appeals Chamber further notes that the Prosecutor and the OPCV both address arguments under rule 34(1)(b) and (c) of the Rules.⁷⁸ For the reasons outlined below, the Appeals Chamber considers it most appropriate to assess the matter under rule 34(1)(c) of the Rules. At the same time, the Appeals Chamber does not consider it necessary to examine the matter under rule 34(1)(b) of the Rules. In this regard, the Appeals Chamber recalls article 21 of the

Kabongo, Fidèle Babala Wandu and Narcisse Arido, [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*](#), 23 June 2014, ICC-01/05-01/13-511-Anx, para. 18. See also [Ukraine Disqualification Decision](#), para. 20; [Venezuela 1 August 2025 Decision](#), para. 33.

⁷² See [Ukraine Disqualification Decision](#), para. 20; [Venezuela 1 August 2025 Decision](#), para. 33.

⁷³ See for example [Ukraine Disqualification Decision](#), para. 20 and the references therein.

⁷⁴ See for example Plenary of Judges, *The Prosecutor v. Paul Gicheru*, 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-Conf; a [public redacted version](#) was registered on the same day, para. 21 and the references therein.

⁷⁵ See Presidency, *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, Annex 2 to the Notification of the decision on the request for excusal of a Judge, 19 March 2010, ICC-02/05-01/09-76-Anx2 (hereinafter: “[Al Bashir Presidency Decision](#)”), p. 6 and the references therein.

⁷⁶ See [Venezuela 1 August 2025 Decision](#), para. 34 noting that certain considerations regarding the disqualification of Judges by the Plenary of Judges are “equally applicable to questions of the disqualification of the Prosecutor”.

⁷⁷ See [Request](#), para. 32. It is noted that in the ‘applicable law’-section of the Request, the entire text of rule 34 of the Rules is cited, with sub-rules (b) and (c) emphasised in bold (see [Request](#), para. 27).

⁷⁸ See Prosecutor’s Response, paras 41-44; [OPCV Response](#), paras 28-46.

Statute, which outlines that the Court shall apply, in the first place, the Statute, Elements of Crimes and Rules of Procedure and Evidence, and notes that in so doing may determine the provisions relevant to the proceedings (*jura novit curia*) “even when the parties do not expressly invoke them”.⁷⁹

44. Rule 34(1)(c) of the Rules provides for the disqualification of the Prosecutor in circumstances where “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”.

45. In first instance, the Appeals Chamber notes that, contrary to the submissions of the Prosecutor and the OPCV, it is not decisive that there was no “case” before the Court at the time of the Article 15 Communication on which the Prosecutor could have formed an opinion,⁸⁰ or that “the *Duterte case* was not opened”.⁸¹ The wording of article 42(7) and (8) of the Statute, taken together with rule 34(1)(c) of the Rules, should not be read to mean that the relevant facts on which a reasonable observer might apprehend bias must themselves have arisen at the “case” stage of the proceedings.⁸²

46. As set out above, the Appeals Chamber considers that the presumption of prosecutorial impartiality is not readily rebutted.⁸³ Importantly, in the present circumstances, the Appeals Chamber does not consider that actual bias on the part of the Prosecutor has been demonstrated in the Request.

47. However, the Appeals Chamber considers that, in the specific circumstances of the present case and on the basis of the information before it, a number of factors may give rise to an objectively reasonable appearance of bias in the eyes of a reasonable observer, such that they would conclude that the Prosecutor could be expected to have

⁷⁹ See Inter-American Court of Human Rights, *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, ‘[Judgment on merits, reparations and costs](#)’, 21 June 2002, para. 107.

⁸⁰ Prosecutor’s Response, para. 43.

⁸¹ [OPCV Response](#), para. 29. See also para. 28.

⁸² Moreover, this is irrespective of the Appeals Chamber’s ex officio power to deal with questions regarding the disqualification of the Prosecutor, outside the scope of a request, and before the “case” stage of the proceedings (see [Venezuela 1 August 2025 Decision](#), paras 28, 46).

⁸³ See paragraph 42 above.

formed an opinion on the case against Mr Duterte during his involvement in the Article 15 Communication that, objectively, could adversely affect his required impartiality.

48. First, the Appeals Chamber underlines that not any performance of functions prior to taking office in relation to a case may require disqualification; a high threshold applies. In this connection, the Appeals Chamber notes that the Prosecutor's involvement in the Article 15 Communication was significantly intense and multifaceted.

49. Notably, the Article 15 Communication is based on investigations conducted in the Philippines by the Prosecutor [REDACTED]⁸⁴ – and [REDACTED] open source information [REDACTED].⁸⁵ The Article 15 Communication includes information from [REDACTED]⁸⁶ as well as details [REDACTED].⁸⁷ [REDACTED].⁸⁸ Whilst the Prosecutor's participation was "*pro bono*", he acknowledges that he "participated [...]" in reviewing and presenting the submission to the then Prosecutor Bensouda",⁸⁹ and he also personally conducted activities of an investigatory nature during the course of his involvement in the Article 15 Communication involving [REDACTED] whom are now Prosecution witnesses in the case against Mr Duterte.⁹⁰ The Appeals Chamber also notes in this regard [REDACTED],⁹¹ and the fact that [REDACTED].⁹² [REDACTED]⁹³ is also cited in this regard.⁹⁴

50. Second, the Appeals Chamber considers the content of the Article 15 Communication. It is clear that, notwithstanding the lack of congruence between the legal issues concerning the opening of an investigation and those applicable at the confirmation stage of proceedings and the availability of a larger factual matrix,⁹⁵ the Article 15 Communication contains primarily information addressing the individual

⁸⁴ Article 15 Communication, [REDACTED].

⁸⁵ Article 15 Communication, [REDACTED].

⁸⁶ Article 15 Communication, [REDACTED].

⁸⁷ Article 15 Communication, [REDACTED].

⁸⁸ [REDACTED].

⁸⁹ [Prosecutor's Notification](#), para. 3.

⁹⁰ Prosecutor's Response, paras 13, 19, 38-39; [Prosecutor's Second Notification](#), paras 5, 7. *See also* Request, paras 8-9, 21, 30, 35; [REDACTED].

⁹¹ [REDACTED].

⁹² *See for example, inter alia*, [REDACTED].

⁹³ [REDACTED].

⁹⁴ *See for example*, [REDACTED].

⁹⁵ Prosecutor's Response, para. 40. *See also* para. 33.

criminal responsibility of Mr Duterte. The Article 15 Communication explicitly stated that [REDACTED].⁹⁶ The [REDACTED] Article 15 Communication are dedicated to substantiating this recommendation and include sub-sections entitled (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED]; (iv) [REDACTED]; and (v) [REDACTED].⁹⁷ Mr Duterte is also the first person to be named as a potential target for investigation in [REDACTED].⁹⁸

51. The Appeals Chamber considers that a reasonable observer would conclude that in light of the nature and the extent to the Prosecutor's involvement in the Article 15 Communication, he could be expected to have formed an opinion on the individual criminal responsibility of Mr Duterte, that could adversely affect the required impartiality in his current role.

52. The Appeals Chamber has assessed the content and nature of the Article 15 Communication in light of the considerations set out in prior disqualification decisions, namely whether the investigation sought to establish individual criminal liability and whether the statements made were general in nature.⁹⁹ In this regard, the Appeals Chamber considers that the Presidency decision referred to in the Prosecution's submissions regarding the rejection of Judge Sanji Mmasenono Monageng's request to be excused, in the case of *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, should be distinguished from the present circumstances. In that case, the Judge Monageng's request for excusal was based upon her involvement as a commissioner to the African Commission on Human and People's Rights (hereinafter: "Commission") in the preparation of the report of the fact-finding mission to the Darfur region of the Sudan, undertaken in 2004. Although not part of the fact-finding mission, Judge Monageng was one of the commissioners who considered and adopted the draft report. In its decision, the Presidency highlighted that the Commission did not reach any conclusions with regard to whether the crime of genocide was committed in Darfur; it recommended further investigations be conducted. It therefore concluded that these circumstances did

⁹⁶ Article 15 Communication, [REDACTED]. See also [REDACTED].

⁹⁷ Article 15 Communication, [REDACTED].

⁹⁸ [REDACTED]. See also [Request](#), paras 7, 38.

⁹⁹ See for example Plenary of Judges, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, [Annex I to the Notification of the Decision of the Plenary of Judges on the 'Urgent Request for Disqualification of Pre-Trial Chamber I' dated 11 July 2019](#), 12 September 2019, ICC-01/12-01/18-458-AnxI-Red, paras 35, 37.

not raise a question of partiality on the part of Judge Monageng.¹⁰⁰ Crucially, in the Appeals Chamber's view, the Commission, unlike the Article 15 Communication, did not aim to establish or assess the individual criminal responsibility of Mr Al Bashir or any other individual.

53. Even considering the marked difference in the respective roles and functions of the judges and the Prosecutor in the proceedings,¹⁰¹ the Appeals Chamber considers that a fair-minded and reasonable observer could conclude that there is a reasonable appearance of bias in the specific circumstances of the present case.

54. The Appeals Chamber emphasises in this context that decisions on requests for disqualification are necessarily determined by the specific circumstances at issue and have to be decided on a case-by-case basis, on the basis of the concrete information before the Appeals Chamber, with due regard to the specifics of the situation raised. While guidance may be drawn from earlier decisions on requests for disqualification or excusal, this does not mean that the reasoning concerning one factual scenario may, as such, be directly transferable to another factual scenario. Indeed, and contrary to what the Prosecutor seems to imply,¹⁰² there can be no question of "automatic" disqualification under article 42(7) of the Statute in conjunction with rule 34 of the Rules simply on the basis of someone's prior involvement in a matter. Rather, the relevant statutory framework needs to be applied to the facts in any given scenario. It is against this background that the Appeals Chamber has considered the specific information before it in the current circumstances.

55. Bearing the above in mind, and noting the Appeals Chamber's duty to ensure fairness throughout the entirety of the proceedings,¹⁰³ thereby preserving their integrity, the Appeals Chamber is of the view that in the specific circumstances at hand, a reasonable observer could expect the Prosecutor to have formed an opinion that, objectively, could adversely affect his required impartiality in the case at hand, within the meaning of rule 34(1)(c) of the Rules. Therefore, the Appeals Chamber grants the Request and disqualifies the Prosecutor from the case of *The Prosecutor v. Rodrigo*

¹⁰⁰ See [Al Bashir Presidency Decision](#), p. 5.

¹⁰¹ [Gaddafi and Al-Senussi Disqualification Decision](#), para. 34.

¹⁰² See Prosecutor's Response, para. 40. See also para. 33.

¹⁰³ See paragraph 35 above.

Roa Duterte. The Appeals Chamber finally recalls the unambiguous wording of article 42(2) of the Statute.¹⁰⁴

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



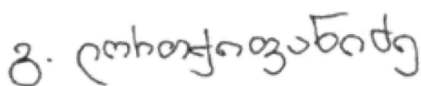
Judge Luz del Carmen Ibáñez Carranza
Presiding



Judge Tomoko Akane



Judge Solomy Balungi Bossa



Judge Gocha Lordkipanidze



Judge Erdenebalsuren Damdin

Dated this 15th of October 2025

At The Hague, The Netherlands

¹⁰⁴ See also *Situation in the Bolivarian Republic of Venezuela I*, [Decision on the “Request for Clarification on the Competence of Deputy Prosecutors to Conduct Investigations in the Situation in the Bolivarian Republic of Venezuela I” and the “Request for Targeted Transparency Measures to Safeguard Judicial Integrity Following the Appeals Chamber’s Decision of 1 August 2025 \(ICC-02/18-118\)”](#), 19 September 2025, ICC-02/18-127, para. 17.