



Internal memorandum
Mémoire interne

To À	Plenary of Judges	From De	Judge Reine Adélaïde Sophie Alapini-Gansou Judge María del Socorro Flores Liera
Date	22 May 2025	Through Via	
Subject Objet	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)		

1. In response to the order of the Plenary of Judges 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’,¹ filed on 9 May 2025 in the case of *The Prosecutor v. Rodrigo Roa Duterte*, we, the undersigned judges, submit the following written observations pursuant to article 41(2)(c) of the Rome Statute and rule 34(2) of the Rules of Procedure and Evidence. The Plenary of Judges may disseminate these observations publicly, as it deems fit.
2. At the outset, we stress that, fully mindful of the provisions of the Rome Statute and the Code of Judicial Ethics, we take very seriously our solemn undertaking to exercise our judicial functions impartially and conscientiously and always abide by them. We see no grounds in the current case that would have required us to seek to be excused or that could lead to our disqualification.
3. As consistently stated by the Plenary of Judges of this Court,² ‘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’. Unless rebutted, this presumption recognises that the judges of the Court are professionals capable of deciding on issues before them while relying solely and exclusively on the submissions and evidence

¹ ICC-01/21-01/25-130-Corr (the ‘Disqualification Request’).

² See e.g. 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.

presented in a given situation or case. It is therefore presumed that judges can disabuse themselves of any irrelevant personal beliefs or predispositions.

4. In the current case, the Disqualification Request is only partial, as the Defence for Mr Duterte limits it to the adjudication of a pending ‘challenge to the jurisdiction of the Court and the exercise thereof’,³ based on the fact that the challenged judges have formulated a ‘firm opinion on the question *sub judice* prior to hearing Defence submissions’.⁴ According to the Defence for Mr Duterte, ‘it is simply not fair [...] to expect that the [judges] may diverge from their former reasoning and ultimate holding’.⁵ The proposition of the Defence for Mr Duterte is incorrect and legally untenable, and has the potential to cause delay.

5. When Pre-Trial Chamber I, in a former composition, addressed the issue of jurisdiction in the *Situation in the Republic of The Philippines*, it did so in accordance with its duties under the Rome Statute, within the limits of the relevant stage of the proceedings and without prejudice to any future determinations on the same issue. Indeed, at the time of its decision pursuant to article 15 of the Rome Statute,⁶ the Chamber only considered the matter of jurisdiction as part of its ‘determination in relation to the question whether there is a reasonable basis for the Prosecutor to proceed with an investigation’ consistently with its limited mandate under article 15(4) of the Rome Statute. In its decision under article 18(2) of the Rome Statute,⁷ the Chamber then addressed the issue of jurisdiction as part of its assessment of the Philippines’ information and arguments, including as to the principles of non-intervention and sovereign equality, ‘[i]n considering whether to authorise the resumption of an investigation’. However, the arguments that the Defence for Mr Duterte raises now to challenge the jurisdiction of the Court, which are related to the specific effects of the withdrawal of the Philippines from the Rome Statute on the jurisdiction of the Court, were neither before nor considered by the Chamber at that time. As stated by the Appeals Chamber in the appeal against the Article 18 Decision, ‘the issue of the impact of the Philippines’ withdrawal from the Statute on the Court’s

³ See Defence Challenge with Respect to Jurisdiction, 1 May 2025, ICC-01/21-01/25-121.

⁴ Disqualification Request, paras 20-21.

⁵ Disqualification Request, para. 17.

⁶ Decision on the Prosecutor’s request for authorisation of an investigation pursuant to Article 15(3) of the Statute, 15 September 2021, ICC-01/21-01/25-12 (the ‘Article 15 Decision’).

⁷ Authorisation pursuant to article 18(2) of the Statute to resume the investigation, 26 January 2023, ICC-01/21-01/25-56-Conf (public redacted version notified on the same day, ICC-01/21-01/25-56-Red) (the ‘Article 18 Decision’).

jurisdiction was neither properly raised nor adequately ventilated before the Pre-Trial Chamber'.⁸

6. Thus, it is 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 proceedings in the same Situation on the basis of different arguments. As mentioned earlier, judges are professionals capable of deciding on issues before them relying solely and exclusively on the evidence and submissions adduced in the particular case. As recently stated by the Plenary of Judges, '[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'.⁹

7. It is also important to recall that 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'.¹⁰

8. In conclusion, there are no grounds to doubt our impartiality in the current case and none of the criteria established under article 41(2) of the Rome Statute are met. We, as judges, act at all times in accordance with our judicial duties under the Rome Statute and kindly request the Plenary of Judges to reject the Disqualification Request.



Judge Reine Adélaïde Sophie Alapini-Gansou



Judge María del Socorro Flores Liera

Dated this Thursday, 22 May 2025

At The Hague, The Netherlands

⁸ 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.

⁹ See 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.

¹⁰ See e.g. 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.