

**Cour  
Pénale  
Internationale**  

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**International  
Criminal  
Court**



Original: **English**

No.: **ICC-01/18**  
Date: **22 April 2024**

**THE PRESIDENCY**

**Before:**                    **Judge Tomoko Akane, President**  
                                  **Judge Rosario Salvatore Aitala, First Vice-President**  
                                  **Judge Reine Alapini-Gansou, Second Vice-President**

**SITUATION IN THE STATE OF PALESTINE**

**Secret**

**Decision replacing a judge in Pre-Trial Chamber I**

Pursuant to Presidency's instruction dated 20.05.2024, this document is reclassified as Public.

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

**The Office of the Prosecutor**  
Mr Karim A.A. Khan

**Counsel for 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**

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**Registrar**  
Mr Osvaldo Zavala Giler

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**  
Pre-Trial Chamber I

Pursuant to Presidency's instruction dated 20.05.2024, this document is reclassified as Public.

THE PRESIDENCY of the International Criminal Court ('Court') notes that on 16 April 2024, Judge María del Socorro Flores Liera sent a letter to the Presidency in which she requested to be excused from her functions as a judge of Pre-Trial Chamber I in the situation in the State of Palestine (the 'Request'), pursuant to article 41(2)(a) of the Rome Statute (the 'Statute') and rule 33(1) of the Rules of Procedure and Evidence (the 'Rules'). On 22 April 2024, upon request from the Presidency, Judge Flores provided further information on specific matters in relation to the Request.

On 22 April 2024, the Presidency granted the Request for excusal from Pre-Trial Chamber I in the situation in the State of Palestine.

The Presidency notes article 41(1) of the Statute whereby '[t]he Presidency may, at the request of a judge, excuse that judge from the exercise of a function under this Statute'. The Presidency also notes that rule 33(2) of the Rules provides that it 'shall treat the request as confidential and shall not make public the reasons for its decision without the consent of the person concerned'. The Presidency notes that Judge Flores has consented to making public a summary of the reasons for its decision granting her Request.

The Presidency recalls that the situation in the State of Palestine was assigned to Pre-Trial Chamber I on 24 May 2018,<sup>1</sup> and that Judge Flores has served in Pre-Trial Chamber I since 16 March 2021.<sup>2</sup> The Presidency further recalls that on 18 January 2024, the Republic of Chile and the United Mexican State submitted a referral to the Prosecutor ('Referral'), in addition to a previous referral submitted on 17 November 2023 by different States, with respect to the situation in the State of Palestine.<sup>3</sup> The Request submits that the existence of the Referral could affect the appearance of impartiality of Judge Flores when considered against the context that, *inter alia*, the spouse of Judge Flores is the Deputy Minister for Multilateral Affairs and Human Rights of the Ministry of Foreign Affairs of Mexico and that he held this role at the time of the Referral.

In considering the Request, the Presidency considered article 41(2)(a) of the Statute and rule 34(1)(a) of the Rules. The Presidency considered that the applicable standard of assessment

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<sup>1</sup> Presidency, *Situation in the State of Palestine*, [Decision assigning the situation in the State of Palestine to Pre-Trial Chamber I](#), 24 May 2018, ICC-01/18-1, p. 3.

<sup>2</sup> Presidency, [Decision assigning judges to divisions and recomposing Chambers](#), ICC-01/18-145, 16 March 2021, p. 9.

<sup>3</sup> Accessed at [https://www.icc-cpi.int/sites/default/files/2024-01/2024-01-18-Referral\\_Chile\\_Mexico.pdf](https://www.icc-cpi.int/sites/default/files/2024-01/2024-01-18-Referral_Chile_Mexico.pdf).

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by which to consider the Request was whether the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias. While expressly noting that no issues arose in respect of any actual lack of impartiality on the part of Judge Flores, the Presidency considered that the existence of a spousal relationship with a high-level government official of the Ministry of Foreign Affairs of a States Party involved in the Referral of a situation to the Office of the Prosecutor was sufficient to create the potential appearance of a lack of impartiality. For this reason, the Presidency granted the Request for excusal.

The Presidency notes that rule 38 of the Rules provides for the replacement of judges for objective and justified reasons and that, pursuant to regulation 15 of the Regulations of the Court, the Presidency is responsible for the replacement of judges.

Recalling article 39(1) and (2)(b)(iii) and considering the need to assign a judge in Pre-Trial Chamber I in the situation in the State of Palestine, as well as the availability and the current and anticipated workload of the judges of the Court, the Presidency hereby decides to recompose Pre-Trial Chamber I in the situation in the State of Palestine as follows:

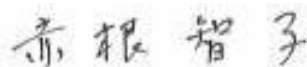
Judge Reine Alapini-Gansou

Judge Iulia Motoc

Judge Nicolas Guillou

The Presidency files this decision on a secret basis due to significant media speculation concerning the activity of the Court in the situation in the State of Palestine and the desire to avoid any risk that the Request may be seen as confirming such speculation. The Presidency will provide an instruction to reclassify the present decision as public in due course.

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



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**Judge Tomoko Akane**  
**President**

Dated this 22 April 2024

At The Hague, The Netherlands