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No.: ICC-01/18
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THE APPEALS CHAMBER

Before:

**Judge Tomoko Akane, Presiding
Judge Luz del Carmen Ibañez Carranza
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Erdenebalsuren Damdin**

SITUATION IN THE STATE OF PALESTINE

Public

Prosecution's Response to Israel's "Request to Disqualify the Prosecutor and for Ancillary Remedies" (ICC-01/18-471-Anx1)

Source: **Office of the Prosecutor**

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I. INTRODUCTION

1. The Office of the Prosecutor (“Office” or “Prosecution”) requests the Appeals Chamber to dismiss the State of Israel’s¹ “Request to Disqualify the Prosecutor and for Ancillary Remedies”² *in limine*.
2. Israel has no standing under the Statute to request the disqualification of the Prosecutor from the cases against Israeli Prime Minister Benjamin NETANYAHU (“NETANYAHU”) and former Israeli Defence Minister Yoav GALLANT (“GALLANT”).³ Nor is there any basis for the Appeals Chamber to exercise its power to deal with questions regarding the disqualification of the Prosecutor *proprio motu*.⁴
3. Israel’s ancillary requests seeking the withdrawal of the Warrants of Arrest for NETANYAHU and GALLANT issued by Pre-Trial Chamber I (“PTCI”)⁵ should also be dismissed.
4. The Office of the Prosecutor notes the Appeals Chamber’s Order of 26 November 2025⁶ stating that the Prosecutor may file written submissions with respect to Israel’s Request, by 10 December 2025. Pursuant to regulation 24(1) of the Regulations of the Court, the Office makes the below observations. Should the Appeals Chamber consider this provision inapplicable to these proceedings, the Prosecution respectfully seeks leave to provide these observations which it hereby does in the interest of time. Israel’s request raises issues relating to the conduct of the Office’s investigations, and seeks the withdrawal of Warrants of Arrest. As such, the Office’s interests are apparent.

II. SUBMISSIONS

(i) Israel has no standing to request disqualification under article 42(8) nor ancillary remedies

5. The State of Israel has no standing to request the disqualification of the Prosecutor from the cases against NETANYAHU and GALLANT nor to request ancillary remedies.⁷

¹ Alternatively referred to as “Israel”.

² ICC-01/18-471-Anx1 (“[Israel’s Request](#)”).

³ See Article 42(8)(a); ICC-02/18-109 (“[Venezuela AD of February 2025](#)”), paras. 65-66.

⁴ ICC-02/18-118 (“[Venezuela AD of August 2025](#)”), paras. 28-31.

⁵ Israel’s Request, para. 53.

⁶ [ICC-01/18-474](#).

⁷ [Contra Israel’s Request](#), para. 50.

6. As the Appeals Chamber confirmed in its decision of 10 February 2025 in the *Venezuela I* situation, a request for disqualification of the Prosecutor or a Deputy Prosecutor can only be made by “[t]he person being investigated or prosecuted”.⁸ In the present case, such persons are the individual suspects, NETANYAHU and GALLANT, and not the State of Israel. The Appeals Chamber has recently confirmed that, while article 42(8) of the Statute and rule 34(3) of the Rules of Procedure and Evidence (“Rules”) afford to it the power to decide on “[a]ny question as to the disqualification of the Prosecutor”, this “does not confer standing on any person or organisation to raise questions relating to the disqualification of the Prosecutor, as it needs to be read together with paragraph (a), which expressly limits those who can raise requests for disqualification of the Prosecutor or a Deputy Prosecutor to “the person being investigated or prosecuted”.”⁹ The State of Israel is not and cannot be seen in any way as a “person being investigated or prosecuted” within the meaning of article 42(8)(a).

7. The present situation is also distinguishable from the *Ukraine* situation in which the plenary of judges recognised the State of Mongolia’s standing to request the disqualification of judges from the proceedings under article 87(7) of the Statute.¹⁰ In the article 87(7) proceedings, Mongolia, as a State Party with cooperation obligations with the Court, was directly a party to litigation which could result in a finding of non-cooperation against it.¹¹ It was based on the unique nature of the article 87(7) proceedings that the State of Mongolia was deemed to have standing, notwithstanding article 41(2)(b) of the Statute which only gives “the Prosecutor or the person being investigated or prosecuted” the possibility to request the disqualification of a judge.¹²

8. Accordingly, Israel has no standing to request the disqualification of the Prosecutor from the cases against NETANYAHU or GALLANT or other proceedings related to the investigation into the Situation in the State of Palestine opened in March 2021.

⁸ [Venezuela AD of February 2025](#), para. 65.

⁹ [Venezuela AD of February 2025](#), para. 66.

¹⁰ [Venezuela AD of February 2025](#), para. 63, referring to ICC-01/22-107 (“[Ukraine Disqualification Decision](#)”), para. 23.

¹¹ [Venezuela AD of February 2025](#), para. 66.

¹² [Ukraine Disqualification Decision](#), para. 23.

(ii) ***There is no basis for the Appeals Chamber to exercise its proprio motu power to deal with questions regarding the disqualification of the Prosecutor in the present circumstances***

9. Similarly, there is no basis for the Appeals Chamber to exercise its *proprio motu* power to deal with questions regarding the disqualification of the Prosecutor in the circumstances of this case.¹³ Israel's reliance on the Appeals Chamber's decision in the *Venezuela I* situation is inapposite.

10. In its decision of 1 August 2025 in the *Venezuela I* situation, the Appeals Chamber stated that outside the scope of a request, it "retains the power to deal with questions regarding the disqualification of the Prosecutor, when the existence of a ground for disqualification that could affect the fairness of the proceedings has been brought to its attention, and in the absence of a request for excusal by the Prosecutor".¹⁴ It also noted that "although rule 35 of the Rules entrusts the Prosecutor with requesting to be excused as opposed to waiting for a request for disqualification to be made, his determination as to whether there are reasons to believe that a ground for disqualification exists, may, *if circumstances so require*, be subject to judicial control".¹⁵

11. In that situation, in August 2025, the Appeals Chamber decided to exercise this exceptional power to intervene because in its February 2025 decision,¹⁶ it had invited the Prosecutor to "vigilantly and continuously uphold his aforementioned statutory obligations, and take any necessary measures to preserve his impartiality and ultimately the integrity of the proceedings in order to remain in compliance with his duties" in light of the alleged conflict of interest, but no action appeared to have been taken subsequently.¹⁷ In its August 2025 decision, the Appeals Chamber proceeded to find that in light of the Prosecutor's close family relationship with a member of the team of lawyers representing Venezuela, combined with their previous professional and hierarchical relationship, a "fair-minded and reasonable observer [...] would reasonably apprehend bias", and that there was accordingly "reason to believe that a ground for disqualification" of the Prosecutor existed.¹⁸

¹³ [Venezuela AD of August 2025](#), paras. 28-31.

¹⁴ [Venezuela AD of August 2025](#), para. 28.

¹⁵ [Venezuela AD of August 2025](#), para. 31 (emphasis added).

¹⁶ [Venezuela AD of February 2025](#), para. 69.

¹⁷ [Venezuela AD of August 2025](#), paras. 25-26, 31-32.

¹⁸ [Venezuela AD of August 2025](#), para. 44.

12. The situation at hand is distinguishable from the *Venezuela I* situation. The circumstances of the two cases are incomparable. In the present case, there are no circumstances requiring the Appeals Chamber to exercise the power to deal with questions regarding the disqualification of the Prosecutor from the cases against NETANYAHU and GALLANT on a *proprio motu* basis.

(iii) Israel's ancillary request regarding the Warrants should be dismissed

13. The Chamber should also dismiss Israel's ancillary requests that the Appeals Chamber declare that the Warrants of Arrest are of no force or effect, or in the alternative, remand the question of remedy to the PTC, with instructions that the Warrants be declared of no force or effect.¹⁹

14. Even if, *arguendo*, the Appeals Chamber were to assess firstly that Israel has standing, or that there is a basis for a *proprio motu* assessment, and if - again *arguendo*, without taking any position on the merits of the request, - it were to assess subsequently that a reasonable observer, properly informed, could form the view that the Prosecutor was not impartial, this would not affect the validity of the Warrants of Arrest.

15. The Office's decision to submit Applications for Warrants of Arrest against senior Israeli and Hamas leaders followed a robust review process and analysis of the evidence, and was strictly guided by the Court's legal framework, in particular, the Prosecution's obligations under articles 54 and 58 of the Statute. The Prosecution determined that: (i) there was sufficient evidence collected to meet the article 58(1)(a) standards in relation to specific allegations and crimes; (ii) the suspects' arrest was necessary within the meaning of article 58(1)(b); and (iii) the cases would be admissible under article 17, both in terms of complementarity and gravity.

16. PTCI assessed the applications and the supporting evidence independently. On the basis of this independent assessment, PTCI's three judges, unanimously, issued three Warrants of Arrest, namely for NETANYAHU, GALLANT, and Mohammed Diab Ibrahim Al-Masri known as "DEIF".²⁰ This independent assessment and decision to issue Warrants of Arrest is not affected by any of the submissions made by the State of Israel.

¹⁹ [Israel's Request](#), para. 53.

²⁰ The Prosecution had initially filed applications for warrants of arrest for two other senior leaders of Hamas, Ismail Haniyeh and Yahya Sinwar. Following confirmation of their deaths, the Chamber granted the withdrawal of the applications on 9 August 2024 and 25 October 2024, respectively, and only issued the Warrant for Deif.

III. CONCLUSION

17. For the foregoing reasons, Israel's Request for the disqualification of the Prosecutor and its ancillary requests should be dismissed *in limine*.
18. The Prosecution stands ready to provide further submissions and additional factual information *ex parte*, if this would assist the Appeals Chamber.



Nazhat Shameem Khan, Deputy Prosecutor, Officer-in-Charge

Dated this 1st day of December 2025
At The Hague, The Netherlands