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No.: **ICC-01/18**

Date: **05/12/2025**

THE APPEALS CHAMBER

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

SITUATION IN THE STATE OF PALESTINE

Public

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

Source: **The State of Israel**

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Legal Representatives of the Victims

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I. INTRODUCTION

1. Israel respectfully requests leave to reply to the Office of the Prosecutor's Response ("Response")¹ to Israel's Request to Disqualify the Prosecutor and for Ancillary Remedies ("Disqualification Request").²
2. The Office of the Prosecutor's ("OTP") Response is irregular and unprecedented. Israel is unaware of any previous litigation in which the OTP, as an organ of the Court, has sought to intervene in proceedings relating to a request for the Prosecutor's disqualification, or where the OTP and the Prosecutor have been permitted to present distinct legal positions in relation to a disqualification request of the Prosecutor.
3. The Response arises from an institutional and procedural context where the Prosecutor remained personally responsible under the Statute for the OTP at all material times relevant to the Disqualification Request. In this context, it is concerning that the OTP purports to create distance between the Prosecutor as an individual and the series of key decisions made in the critical period leading up to the applications for arrest warrants – which lie at the very heart of the Disqualification Request. The OTP does this by emphasizing that the decision to submit applications for arrest warrants were made by the "Prosecution" (as an organ) as opposed to the "Prosecutor" (as an individual office-holder bearing personal responsibility for them).³ The Request therefore poses a number of questions concerning the OTP's role and interests when the Appeals Chamber is seized with such a request. Although the OTP relies on regulation 24(1) and its own institutional interests in seeking to intervene,⁴ the Appeals Chamber will recall that a request for the Prosecutor's disqualification is regulated by article 42(8) of the Rome Statute and rule 34(2) of the Rules of Procedure and Evidence.
4. In objecting to Israel's standing to file a disqualification request, the OTP both misapplies the case law on article 42(8) and seeks to intervene on issues that are not directly relevant to the question of the disqualification of the Prosecutor. Rather than assisting the Appeals Chamber by providing information concerning the circumstances which lie at the heart of the Disqualification Request, and on which there is a reasonable basis to believe that it possesses relevant information, the Response purports to:

¹ Prosecution's Response to Israel's "Request to Disqualify the Prosecutor and for Ancillary Remedies" (ICC-0118-471-Anx1), [ICC-01/18-475](#), 1 December 2025 ("Response").

² Annex 1 to the Registry transmission of "Request to Disqualify the Prosecutor and for Ancillary Remedies", [ICC-01/18-471-Anx1](#), 17 November 2025 ("Disqualification Request").

³ [Response](#), para. 15.

⁴ [Response](#), para. 4.

improperly deny Israel's standing to make the Disqualification Request;⁵ unduly curtail the Appeals Chamber's *proprio motu* authority under article 42(8) of the Rome Statute; and invite the provision of further *ex parte* factual submissions in the absence of a lawful basis or other justification.

5. Ultimately, the OTP misplaces the scope of its possible intervention in the current disqualification process, which should be limited, if allowed, to providing objective and useful information to the Appeals Chamber in assessing the substance of the Disqualification Request. Such information should be communicated in a comprehensive, impartial and fully transparent manner in furtherance of the interests of the Court and the interests of justice, rather than in defence of the the Prosecutor, or the perceived interests of the OTP as an organ.
6. Leave to reply is sought in respect of two issues,⁶ that could not have been reasonably anticipated in the Disqualification Request, and in relation to which a reply is otherwise necessary for the adjudication of the matter. These are:
 - a. the OTP's attempt to unduly limit the exercise of the Appeals Chamber's *proprio motu* powers; and
 - b. the OTP's proposal to provide additional information to the Appeals Chamber on an *ex parte* basis.

II. APPLICABLE LAW

7. Regulation 24(5) of the Regulations of the Court provides that:

Participants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations. Unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated.

8. The Appeals Chamber may also grant leave "if it considers that a reply would otherwise be necessary for the adjudication of the appeal".⁷

⁵ In order to avoid subverting the proper briefing schedule in relation to the Disqualification Request, Israel respectfully reserves its position in relation to the OTP's submissions on standing until receipt of the Prosecutor's submissions on this issue.

⁶ *Ibid.*

⁷ *Situation in the Bolivarian Republic of Venezuela I*, Decision on the Arcadia Foundation's request for leave to reply to the "Prosecutor's Submissions on the Request for Recusal of the Prosecutor", [ICC-02/18-102](#), 12 December 2024, para. 9. See further *Situation in the Republic of the Philippines*, Decision on the Republic of the Philippines' request for leave to reply to the "Prosecution's response to the Philippine Government's Appeal Brief against 'Authorisation pursuant to article 18(2) of the Statute to resume the investigation' (ICC-01/21-65 OA)", [ICC-01/21-72](#), 2 May 2023, para. 9 (granting leave to reply in respect of issues where it "would assist in its determination of the appeal"); *Situation in the Islamic Republic of Afghanistan*, Decision on the Prosecutor's

9. The Appeals Chamber has held that a party seeking leave to reply must do more than “point [...] to issues” to which it wishes to reply, but must rather “demonstrat[e] why they are new and could not reasonably have been anticipated”⁸ or “explain why a reply to the aforementioned issues is otherwise warranted” because it is “necessary for the adjudication of the appeal”.⁹

III. SUBMISSIONS

10. Granting Israel leave to reply pursuant to Regulation 24(5) in respect of the following two discrete issues is in the interests of justice, will uphold procedural fairness, and will not adversely impact the expeditiousness of the proceedings.

i. *First Issue: the OTP’s attempt to unduly limit the exercise of the Appeals Chamber’s proprio motu powers*

11. The Response attempts to unduly limit the exercise of the Appeals Chamber’s *proprio motu* power to address questions regarding the disqualification of the Prosecutor. The OTP wrongfully purports to confine the Appeals Chamber’s guidance, contained in its August 2025 decision in the *Venezuela I* Situation, to the rare instance where the Appeals Chamber has previously issued an invitation to the Prosecutor to uphold his statutory obligations but where no action appeared to have been taken subsequently.¹⁰

12. Israel’s Reply would show that the Response misinterprets the Appeals Chamber’s guidance, which provided one example of what could constitute a “circumstance” requiring *proprio motu* consideration by the Appeals Chamber of whether the existence of a ground for disqualification that could affect the fairness of the proceedings has been brought to its attention.¹¹ Israel would also outline in its Reply the rationale for and breadth of the exercise of the Appeals Chamber’s *proprio motu* powers in relation to “any question as to the disqualification of the Prosecutor,”¹² per article 42(8) of the Rome Statute. Indeed, by claiming that “there are no circumstances requiring the Appeals Chamber to exercise the power to deal with questions regarding the disqualification of the Prosecutor”,¹³ without any further explanation, the OTP is seeking

request for leave to reply, [ICC-02/17-206](#), 23 December 2022, paras 8-10 (granting the Prosecution leave to reply in respect of new issues raised by victims).

⁸ *Prosecutor v. Ntaganda*, Decision on Mr. Ntaganda’s request for leave to reply, [ICC-01/04-02/06-1994](#), 17 July 2017, para. 13.

⁹ *Id.*, para. 14.

¹⁰ [Response](#), paras 11-12.

¹¹ *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”, [ICC-02/18-118](#), 1 August 2025, paras 26, 28.

¹² *Id.*, paras 27-32.

¹³ [Response](#), para. 12.

to deprive the Appeals Chamber of its discretion to assess the substance of the Disqualification Request and determine, *in concreto*, whether such circumstances exist.

13. The OTP's unduly limiting misinterpretation of the Appeals Chamber's powers of *proprio motu* consideration of matters of disqualification was unforeseeable, and a reply would therefore assist the Appeals Chamber.

ii. Second Issue: the OTP's proposal to provide additional information to the Appeals Chamber on an ex parte basis

14. Consistently with the otherwise irregular nature of the OTP's Response, the OTP invites the Appeals Chamber to request from it "further submissions and additional factual information *ex parte*, if this would assist".¹⁴ The OTP has not provided any justification, statutory basis, or jurisprudential authority in support of this proposal,¹⁵ let alone particulars as to the kind of information proposed to be communicated, the means by which it will ensure compliance with its duty of candour given the range of views held by OTP staff at the relevant time,¹⁶ or the reasons for withholding such information from Israel.
15. Israel would explain in its Reply how and why the OTP's proposal – as it currently stands – runs counter to established principles of fairness and open justice, and deprives Israel of the ability to provide responsive submissions on whether such information, as viewed from the perspective of the fair minded and reasonably informed observer, would lead to a reasonable apprehension of bias. As a consequence, the provision of further *ex parte* submissions potentially deprives the Appeals Chamber from receiving all relevant information concerning the factual background to the Disqualification Request prior to making factual findings.
16. This is all the more so given that the OTP provides no explanation as to what kind of information it is proposing to communicate on an *ex parte* basis, or the reasons why it should not be communicated to Israel. Israel is also aware of media reports indicating that OTP staff possess information on questions that are directly relevant to the Disqualification Request that appear not to align with those of the Prosecutor.¹⁷ Indeed,

¹⁴ [Response](#), para. 18.

¹⁵ Contra. *Prosecutor v. Lubanga*, Decision on the Procedures to be Adopted for ex parte Proceedings, [ICC-01/04-01/06-1058](#), 6 December 2007, para. 12. See also *Prosecutor v. Bemba*, Decision on the Defence's Request for Access to Filings in Case ICC-01/05-01/08, [ICC-01/05-01/08-3630](#), 7 May 2018, para. 12; *Prosecutor v. Ntaganda*, Decision on expedited Defence request for reclassification of *ex parte* documents, [ICC-01/04-02/06-2230](#), 15 February 2018, para. 8.

¹⁶ See, e.g. [Disqualification Request](#), paras. 35, 39.

¹⁷ *Ibid.*

the OTP should act in the best interest of the Court in an objective and impartial manner, and not to block the Appeals Chamber's review of important questions as to the disqualification of the Prosecutor.

17. The OTP's proposal to provide further *ex parte* factual submissions, in the absence of a statutory or jurisprudential basis for doing so, was unforeseeable, and a reply would therefore assist the Appeals Chamber.

IV. RELIEF SOUGHT

18. In light of the foregoing submissions, Israel respectfully requests leave to reply to the two issues identified above pursuant to regulation 24(5) of the Regulations of the Court. Such leave is necessary for the adjudication of the Disqualification Request and/or concerns issues that could not reasonably have been anticipated.

Respectfully submitted:



Dr Gilad Noam, Office of the Attorney-General of Israel

Dated this 5 December 2025

At Jerusalem, Israel