



Original: English

**No. ICC-01/18**  
**Date: 3 February 2026**

**THE APPEALS CHAMBER**

**Before:**

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

**SITUATION IN THE STATE OF PALESTINE**

**Public document**  
**Decision on requests for leave to reply**

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

<input checked="" type="checkbox"/> <b>The Office of the Prosecutor</b>	<input type="checkbox"/> <b>Counsel for the Defence</b>
<input checked="" type="checkbox"/> <b>Legal Representatives of the Victims</b>	<input type="checkbox"/> <b>Legal Representatives of the Applicants</b>
<input type="checkbox"/> <b>Unrepresented Victims</b>	<input type="checkbox"/> <b>Unrepresented Applicants (Participation/Reparation)</b>
<input checked="" type="checkbox"/> <b>The Office of Public Counsel for Victims</b>	<input type="checkbox"/> <b>The Office of Public Counsel for the Defence</b>
<input checked="" type="checkbox"/> <b>States' Representatives</b>	<input type="checkbox"/> <b>Amicus Curiae</b>

## **REGISTRY**

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<b>Registrar</b>	<input type="checkbox"/> <b>Counsel Support Section</b>
Mr Osvaldo Zavala Giler	

<input type="checkbox"/> <b>Victims and Witnesses Unit</b>	<input type="checkbox"/> <b>Detention Section</b>
<input type="checkbox"/> <b>Victims Participation and Reparations Section</b>	<input type="checkbox"/> <b>Other</b>

The Appeals Chamber of the International Criminal Court,

Having before it the “Request to Disqualify the Prosecutor and for Ancillary Remedies” of 19 November 2025 (ICC-01/18-471-Anx1),

Having before it the “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)” of 8 December 2025 (ICC-01/18-477-Anx),

Having before it the “Request for leave to file consolidated reply to OPCV’s and Prosecutor’s Submissions on Israel’s ‘Request to Disqualify the Prosecutor and for Ancillary Remedies’” of 15 December 2025 (ICC-01/18-482-Conf),

Pursuant to regulations 24(5) and 34(c) of the Regulations of the Court,

*Renders unanimously the following*

## DECISION

1. The State of Israel may file a consolidated reply to the “Prosecutor’s Submissions on the Request to Disqualify the Prosecutor and for Ancillary Remedies, 17 November 2025, ICC-01/18” and the “Prosecution’s Response to Israel’s ‘Request to Disqualify the Prosecutor and for Ancillary Remedies’ (ICC-01/18-471-Anx1)”, by Friday, 13 February 2026. The reply shall not exceed 10 pages, and its content must comply with paragraphs 14, 16 and 17 below.
2. The Registrar is directed reclassify as public filing ICC-01/18-482-Conf.

## REASONS

### I. PROCEDURAL HISTORY

1. On 19 November 2025, the Registry transmitted to the Appeals Chamber the “Request to Disqualify the Prosecutor and for Ancillary Remedies” filed by the State of Israel (hereinafter: “Israel”).<sup>1</sup>
2. On 26 November 2025, the Appeals Chamber issued an order, inviting the Prosecutor to file written submissions with respect to the Request for Disqualification, pursuant to article 42(8) of the Statute and rule 34(2) of the Rules of Procedure and Evidence (hereinafter: “Rules”).<sup>2</sup>
3. On 1 December 2025, the Office of the Prosecutor (hereinafter: “Prosecution”) filed the “Prosecution’s Response to Israel’s ‘Request to Disqualify the Prosecutor and for Ancillary Remedies’ (ICC-01/18-471-Anx1)” (hereinafter: “Prosecution’s Submissions”).<sup>3</sup>
4. On 2 December 2025, following a request of the Office of Public Counsel for Victims (hereinafter: “OPCV”),<sup>4</sup> the Appeals Chamber directed the OPCV to file written submissions representing the general interests of victims in relation to the Request for Disqualification, pursuant to regulation 81(4) of the Regulations of the Court (hereinafter: “Regulations”).<sup>5</sup>
5. On 8 December 2025, the Registry transmitted to the Appeals Chamber a request of Israel for leave to file a reply to the Prosecution’s Submissions (hereinafter: “First Request”).<sup>6</sup>

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<sup>1</sup> [Registry transmission of “Request to Disqualify the Prosecutor and for Ancillary Remedies”,](#) ICC-01/18-471, with public [Annex 1](#) (“Request to Disqualify the Prosecutor and for Ancillary Remedies”), ICC-01/18-471-Anx1 (hereinafter: “Request for Disqualification”), public [Annex A](#), ICC-01/18-471-AnxA, and confidential Annex B, ICC-01/18-471-AnxB.

<sup>2</sup> [Order on the filing of submissions](#), ICC-01/18-474.

<sup>3</sup> [Prosecution’s Response to Israel’s “Request to Disqualify the Prosecutor and for Ancillary Remedies” \(ICC-01/18-471-Anx1\)](#), ICC-01/18-475.

<sup>4</sup> [OPCV request to appear before the Appeals Chamber pursuant to regulation 81\(4\) of the Regulations of the Court](#), 21 November 2025, ICC-01/18-473.

<sup>5</sup> [Decision on the “OPCV request to appear before the Appeals Chamber pursuant to regulation 81\(4\) of the Regulations of the Court”,](#) ICC-01/18-476 (hereinafter: “Decision of 2 December 2025”).

<sup>6</sup> [Registry transmission of “Request for leave to reply to Prosecution Response to Israel’s ‘Request to Disqualify the Prosecutor and for Ancillary Remedies \(ICC-01/18-471-Anx1\)’”,](#) ICC-01/18-477, with a

6. On 10 December 2025, the OPCV filed its written submissions on the Request for Disqualification, in accordance with the Decision of 2 December 2025 (hereinafter: “OPCV’s Submissions”).<sup>7</sup>

7. On 11 December 2025, the Prosecutor filed his written submissions with respect to the Request for Disqualification (hereinafter: “Prosecutor’s Response”).<sup>8</sup>

8. On 15 December 2025, Israel filed a request for leave to file a consolidated reply to the OPCV’s Submissions and the Prosecutor’s Response, pursuant to regulation 24(5) of the Regulations (hereinafter: “Second Request”).<sup>9</sup>

## II. MERITS

### A. Summary of the submissions

9. In the First Request, Israel seeks leave to file a reply to two issues with respect to the Prosecution’s Submissions:

- a. the [Prosecution’s] attempt to unduly limit the exercise of the Appeals Chamber’s *[proprio] motu* powers; and
- b. the [Prosecution’s] proposal to provide additional information to the Appeals Chamber on an *ex parte* basis.<sup>10</sup>

10. In the Second Request, Isarel seeks leave to file a consolidated reply to three issues in relation to the Prosecutor’s Response and one issue in respect of the OPCV’s Submissions:

- a. The Prosecutor’s misstatements and misleading factual assertions, which are material to the Disqualification Request, and necessitate correction;
- b. The Prosecutor’s provision of selective and self-serving confidential investigative materials to the Appeals Chamber on an *ex parte* basis;

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public [annex](#) (“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)’”), dated 5 December 2025 and registered on 8 December 2025, ICC-01/18-477-Anx (hereinafter: “First Request”).

<sup>7</sup> [OPCV’s Submissions on the State of Israel’s Request to Disqualify the Prosecutor and for Ancillary Remedies](#), ICC-01/18-478.

<sup>8</sup> Prosecutor’s Submissions on the Request to Disqualify the Prosecutor and for Ancillary Remedies, 17 November 2025, ICC-01/18, dated 10 December 2025 and registered on 11 December 2025, ICC-01/18-4791-SECRET-Exp, with a secret *ex parte* annex, ICC-01/18-479-SECRET-Exp-Anx.

<sup>9</sup> Request for leave to file consolidated reply to OPCV’s and Prosecutor’s Submissions on Israel’s “Request to Disqualify the Prosecutor and for Ancillary Remedies”, ICC-01/18-482-Conf.

<sup>10</sup> [First Request](#), paras 6, 11-13, 14-17.

- c. The Prosecutor's misapplication of the jurisprudence regarding article 42(8) of the Statute in relation to standing and delay; and
- d. The OPCV's attempt to unduly limit the Appeals Chamber's powers to determine questions related to the disqualification of the Prosecutor in order to prevent the granting of the ancillary remedies sought.<sup>11</sup>

11. Israel argues that the aforementioned issues are new and could not have been reasonably anticipated, and that a reply on these issues are necessary for the Appeals Chamber's adjudication of the Request for Disqualification.<sup>12</sup>

## B. Merits

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

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.

13. The Appeals Chamber may grant a request for leave to reply if the above-mentioned conditions are met, or if it considers that a reply would otherwise be necessary for the adjudication of the appeal.<sup>13</sup>

14. In the present proceedings, the Appeals Chamber, having examined both the First Request and the Second Request, notes that Israel seeks to reply in respect of the following three issues in relation to the Prosecution's Submissions, the Prosecutor's Response and the OPCV's Submissions: (i) interpretation of the relevant jurisprudence concerning article 42(8) of the Statute, including the issues relating to standing and timing, as well as the Appeals Chamber's *proprio motu* powers to determine questions related to the disqualification of the Prosecutor when any grounds for disqualification that may affect the fairness of the proceedings have been brought to its attention (hereinafter: "First Issue");<sup>14</sup> (ii) provision of *ex parte* information by the Prosecutor

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<sup>11</sup> Second Request, paras 1, 5-9, 10-12, 13-15, 16-17.

<sup>12</sup> [First Request](#), paras 6, 18; Second Request, paras 1, 18.

<sup>13</sup> *The Prosecutor v. Joseph Kony*, [Decision on the Defence's request for leave to reply](#), 26 March 2025, ICC-02/04-01/05-578 (OA4), para. 12; *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, [Decision on the Defence's request for reconsideration of the Judgment on the appeal of Mr Abd-Al-Rahman against Pre-Trial Chamber II's "Decision on the Defence 'Exception d'incompétence' \(ICC-02/05-01/20-302\)"](#), 17 July 2023, ICC-02/05-01/20-993 (OA8), para. 29; *The Prosecutor v. Bosco Ntaganda*, [Decision on Mr Ntaganda's request for leave to reply](#), 3 March 2017, ICC-01/04-02/06-1813 (OA5), para. 8.

<sup>14</sup> [First Request](#), paras 11-13; Second Request, paras 13-17.

and proposal to do so by the Prosecution (hereinafter: “Second Issue”);<sup>15</sup> and (iii) the factual assertions made by the Prosecutor regarding his “engagement with [Israel] in the immediate period leading up to 20 May 2024” (hereinafter: “Third Issue”).<sup>16</sup>

15. As regards the First Issue, the Appeals Chamber finds that this issue is not new and Israel has already addressed it in its submissions before the Appeals Chamber.<sup>17</sup> Furthermore, the Appeals Chamber considers to be in a position to determine whether the Prosecutor, the OPCV or the Prosecution misinterpreted or misapplied the relevant jurisprudence of the Court, without any further submissions.

16. With respect to the Second Issue, the Appeals Chamber takes note of Israel’s submissions that: (i) the Prosecution has not provided any 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”;<sup>18</sup> and that (ii) the Prosecutor “cherry pick[ed]” the materials provided to the Appeals Chamber on an *ex parte* basis to support his factual account of the relevant events.<sup>19</sup> In light of the foregoing, the Appeals Chamber considers that Israel could not reasonably have anticipated the Second Issue and a reply in respect of this issue would assist its determination of the Request for Disqualification.

17. Lastly, with regard to the Third Issue, the Appeals Chamber notes Israel’s arguments that it “possesses first-hand knowledge, relating [...] to the Prosecutor’s engagement with it in the immediate period leading up to 20 May 2024”, and that its reply would provide pertinent information demonstrating the selective and misleading nature of the “factual narrative posited by the Prosecutor” in this regard.<sup>20</sup> The Appeals Chamber considers that a reply with respect to this issue would assist in its determination of the Request for Disqualification.

18. For the reasons provided above, the Appeals Chamber grants leave to file a consolidated reply in respect of the Second Issue and the Third Issue as specified in

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<sup>15</sup> [First Request](#), paras 14-17; Second Request, paras 10-12.

<sup>16</sup> Second Request, paras 5-9.

<sup>17</sup> See [Request for Disqualification](#), paras 3, 50; [First Request](#), paras 11-12; Second Request, paras 13-17.

<sup>18</sup> [First Request](#), paras 14, 16.

<sup>19</sup> Second Request, paras 10-12.

<sup>20</sup> Second Request, paras 5-6.

paragraphs 14, 16 and 17. The reply shall be filed not later than 13 February 2026 and it shall not exceed 10 pages.

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

赤根智子  
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Judge Tomoko Akane  
Presiding

Dated this 3<sup>rd</sup> day of February 2026

At The Hague, The Netherlands