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Court

Original: ***English***

No.: ***ICC-01/18***
Date: **10 December 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 Document

OPCV's Submissions on the State of Israel's Request to Disqualify the Prosecutor and for Ancillary Remedies

Source: **Office of Public Counsel for Victims**

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

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☐ **Legal Representatives of the Victims**	☐ **Legal Representatives of the Applicants**
☐ **Unrepresented Victims**	☐ **Unrepresented Applicants (Participation/Reparation)**
☒ **The Office of Public Counsel for Victims**	☐ **The Office of Public Counsel for the Defence**
☒ **States' Representatives** State of Israel	☐ **Amicus Curiae**

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I. INTRODUCTION

1. The Principal Counsel of the Office of Public Counsel for Victims (the "OPCV" or the "Office"), having been granted leave to appear before the Appeals Chamber[1] in relation to the State of Israel's ("Israel") "Request to Disqualify the Prosecutor and for Ancillary Remedies" (the "Request"),[2] herewith files her submissions with respect to the general interests of Victims relating to the Request.

2. The Principal Counsel leaves the issue of the requested disqualification (the "Request for Disqualification") of the Prosecutor to the Chamber's discretion. However, she will address the ancillary relief sought in the Request (the "Request for Ancillary Relief"), as it directly affects the interests of Victims.

3. Victims strongly oppose and disagree with Israel's contention that "[a] *necessary corollary of the Prosecutor's disqualification is the invalidation of the arrest warrants against Mr. Netanyahu and Mr. Gallant*".[3] In their view, the warrants of arrest remain unaffected by *any* ruling, as they constitute independent decisions issued by the Pre-Trial Chamber, a distinct judicial forum.

4. Indeed, even assuming, *arguendo*, that the Appeals Chamber were to grant the Request for Disqualification, it lacks authority to then quash the arrest warrants. In ruling on the Request for Disqualification, the Appeals Chamber will perform its functions, under Part IV of the Rome Statute (the "Statute") which concerns solely the proper administration of the Court. Likewise, Israel misapprehends the consequences of a decision disqualifying the Prosecutor or the Deputy Prosecutor. Decisions on disqualification under article 42(8) of the Statute are decisions *ad personam* and do not extend to the ongoing proceedings as a whole. When acting under Part IV of the

[1] See the "Decision on the 'OPCV request to appear before the Appeals Chamber pursuant to regulation 81(4) of the Regulations of the Court'" (Appeals Chamber), No. ICC-01/18-476, 2 December 2025.
[2] See the "Request to Disqualify the Prosecutor and for Ancillary Remedies", No. ICC-01/18-471-Anx1, 19 November 2025 (the "Request").
[3] *Idem*, para. 45.

Statute, the Appeals Chamber does not have the power to remand a matter, with or without specific instructions, to a lower Chamber. Said power is reserved to the appellate review of judicial decisions taken at a lower instance, as provided in Part VIII of the Statute.

5. Further assuming, *arguendo*, that the Appeals Chamber were to grant the Request for Disqualification and find that it may entertain ancillary relief, it is submitted that the Request is speculative as to the impact any impropriety may have had on the warrants of arrest. Granting the requested relief would be inappropriate and disproportionate. Indeed, the Victims further observe that the Request rests, to a significant extent, on speculation. Much of its argumentation relies on conjecture as to whether the Prosecution had adequate time to review the materials provided, and on presumed implications of such timing for the assessment of the two suspects. These assertions lacks concrete evidentiary foundation and bear no demonstrated relevance to the underlying crimes.

6. Lastly, Victims note with concern that the Request constitutes Israel's fourth attempt to have the warrants of arrest related to two of its citizens suspended, quashed, or declared invalid and question the role of the State in presenting this Request, since article 42(8) of the Statute provides a clear avenue for "*person*[s] *being investigated or prosecuted*" to move for disqualification of the Prosecutor on the basis of the grounds set out in article 42(7) of the Statute "*at any time*".

II. PROCEDURAL BACKGROUND

7. On 5 February 2021, following a request from the Prosecution,[4] Pre-Trial Chamber I, acting in a previous composition, issued the "Decision on the 'Prosecution's request pursuant to article 19(3) for a ruling on the Court's jurisdiction in Palestine'" (the "Article 19(3) Jurisdiction Decision").[5]

8. On 20 May 2024, the Prosecutor publicly announced that he had filed several applications for warrants of arrest in the Situation in the State of Palestine. Two of the five announced applications concerned sitting Prime Minister of the State of Israel, Mr Benjamin Netanyahu and former Israeli Defence Minister, Mr Yoav Gallant, respectively. These applications were reportedly sought in connection with war crimes and crimes against humanity allegedly committed on the territory of the State of Palestine (in the Gaza Strip) from at least 8 October 2023.[6]

9. On 23 September 2024, Israel filed a challenge to the jurisdiction of the Court (the "Jurisdictional Challenge").[7]

10. On 21 November 2024, the Pre-Trial Chamber rejected the Jurisdictional Challenge (the "Decision on the Jurisdictional Challenge").[8] On the same day, the Court issued an official press release whereby it announced that it had issued warrants

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[4] See the "Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine", No. ICC-01/18-12, 22 January 2020. See also, the OPCV "Observations on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine' on behalf of unrepresented victims", No. ICC-01/18-105, 16 March 2020.

[5] See the "Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine'" (Pre-Trial Chamber I), No. ICC-01/18-143, 5 February 2021 (the "Article 19(3) Jurisdiction Decision").

[6] See the "Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine", 20 May 2024.

[7] See the "Public Redacted Version of 'Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute'", No. ICC-01/18-354-AnxII-Corr, 23 September 2024 (the "Jurisdictional Challenge"). The Jurisdictional Challenge, initially filed as Secret-Exp, was reclassified public by order of the Pre-Trial Chamber dated 4 October 2024.

[8] See the "Decision on Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute" (Pre-Trial Chamber I), No. ICC-01/18-374, 21 November 2024.

of arrest in the Situation of the State of Palestine for Messrs Netanyahu and Gallant among others.[9]

11. On 27 November 2024, Israel filed its Notice of Appeal against the Decision on the Jurisdictional Challenge, requesting suspensive effect of the warrants of arrest for Messrs Netanyahu and Gallant.[10]

12. On 13 December 2024, Israel filed an appeal against the Decision on the Jurisdictional Challenge, requesting, *inter alia*, that the warrants of arrest previously issued for Messrs Netanyahu and Gallant be declared "*null and void*".[11]

13. On 24 April 2025, the Appeals Chamber reversed the Decision on the Jurisdictional Challenge and remanded the matter to the Pre-Trial Chamber for a ruling on the substance of the challenge.[12] It declared moot Israel's request for suspensive effect regarding the warrants of arrest for Messrs Netanyahu and Gallant.[13]

14. On 9 May 2025, Israel filed a request before the Pre-Trial Chamber in which it, *inter alia*, requested that the Chamber "[w]*ithdraw, vacate, or declare of no force or effect the arrest warrants that it has issued against Mr Netanyahu and Mr Gallant*".[14]

[9] See the ICC Press Release : Situation in the State of Palestine: ICC Pre-Trial Chamber I rejects the State of Israel's challenges to jurisdiction and issues warrants of arrest for Benjamin Netanyahu and Yoav Gallant | International Criminal Court.
[10] See the "Notice of Appeal of 'Decision on Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute' (ICC-01/18-374)", No. ICC-01/18-386, 27 November 2024.
[11] See the "Appeal of 'Decision on Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute (ICC-01/18-374)'" (Appeals Chamber), No. ICC-01/18-402 OA2, 13 December 2024, para. 70iii.
[12] See the "Judgment on the appeal of the State of Israel against Pre-Trial Chamber I's 'Decision on Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute'" (Appeals Chamber), No. ICC-01/18-422 OA2, 24 April 2025, para. 64.
[13] See the "Judgment on the appeal of the State of Israel against Pre-Trial Chamber I's 'Decision on Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute'", (Appeals Chamber), No. ICC-01/18-422 OA2, 24 April 2025.
[14] See the "Request to Have Arrest Warrants Withdrawn or Vacated and Response to Prosecution Observations dated 5 May 2025", No. ICC-01/18-426, 9 May 2025.

15. On 2 June 2025, the OPCV requested leave to submit observations on the substance of the Jurisdictional Challenge.[15]

16. On 4 June 2025, having been granted leave by the Pre-Trial Chamber,[16] the OPCV submitted observations on the Jurisdictional Challenge.[17]

17. On 16 July 2025, the Pre-Trial Chamber rejected Israel's request to have the warrants of arrest against Messrs Netanyahu and Gallant withdrawn, vacated, or declared of no force or effect.[18] Israel sought leave to appeal said decision on 22 July 2025.[19]

18. On 1 August 2025, Israel provided a consolidated reply on all observations filed in relation to the merits of its Jurisdictional Challenge.[20]

19. On 17 October 2025, the Pre-Trial Chamber denied Israel's request for leave to appeal the former's decision rejecting the request to have the warrants of arrest against Messrs Netanyahu and Gallant withdrawn, vacated, or declared of no force or effect.[21]

20. On 19 November 2025, Israel seized the Appeals Chamber with the Request.

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[15] See the "OPCV's request to appear before the Chamber pursuant to regulation 81(4) of the Regulations of the Court", No. ICC-01/18-438, 2 June 2025.
[16] See the "Decision on the 'OPCV's request to appear before the Chamber pursuant to regulation 81(4) of the Regulations of the Court'" (Pre-Trial Chamber I), No. ICC-01/18-439, 4 June 2025.
[17] See the "OPCV Observations on the State of Israel's challenge to the jurisdiction of the Court pursuant to article 19(2) of the Rome Statute", No. ICC-01/18-445, 27 June 2025.
[18] See the "Decision on the State of Israel's request to have arrest warrants withdrawn, vacated, or declared of no force or effect and to suspend the Prosecutor's investigation" (Pre-Trial Chamber I), No. ICC-01/18-457, 16 July 2025.
[19] See the "Request for leave to appeal the 'Decision on the State of Israel's request to have arrest warrants withdrawn, vacated or declared of no force or effect and to suspend the Prosecutor's investigation'", No.ICC-01/18-461, 22 July 2025.
[20] See the "Consolidated Reply to Observations on Israel's Article 19(2) Jurisdictional Challenge", No. ICC-01/18-466, 1 August 2025.
[21] See the "Decision on Israel's request for leave to appeal the 'Decision on the State of Israel's request to have arrest warrants withdrawn, vacated or declared of no force or effect and to suspend the Prosecutor's investigation'" (Pre-Trial Chamber I), No. ICC-01/18-468, 17 October 2025.

21. On 21 November 2025, the OPCV sought the Appeal's Chamber's leave to appear in the matter pursuant to regulation 81(4) of the Regulations.[22]

22. On 26 November 2025, the Appeals Chamber instructed the Prosecutor to file submissions in response to the Request no later than 10 December 2025.[23]

23. On 1 December 2025, the Prosecution filed a Response to the Request (the "Prosecution's Response").[24]

24. On 2 December 2025, the Appeals Chamber granted the OPCV's request to appear before it, with the instruction to file written submissions by no later than 10 December 2025.[25]

25. On 8 December 2025, Israel requested the Appeals Chamber's leave to reply to the Prosecution's Response.[26]

III. SUBMISSIONS

A. The role of the Appeals Chamber envisaged in article 42 of the Statute is administrative in nature

26. The role of the Appeals Chamber as a guardian of the fairness of the proceedings *vis-à-vis* the official conduct of the Prosecutor is administrative in nature. Similar to the Assembly of States Parties (a non-judicial body) acting under article 46 of the Statute, the Appeals Chamber's role in relation to questions of

[22] See the "OPCV request to appear before the Appeals Chamber pursuant to regulation 81(4) of the Regulations of the Court", No. ICC-01/18-473, 21 November 2025.
[23] See the "Order on the filing of submissions" (Appeals Chamber), No. ICC-01/18-474, 26 November 2025.
[24] See the "Prosecution's Response to Israel's 'Request to Disqualify the Prosecutor and for Ancillary Remedies' (ICC-01/18-471-Anx1)", No. ICC-01/18-475, 1 December 2025 (the "Prosecution's Response").
[25] See the "Decision on the 'OPCV request to appear before the Appeals Chamber pursuant to regulation 81(4) of the Regulations of the Court'" (Appeals Chamber), No. ICC-01/18-476, 2 December 2025.
[26] See 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)'", No. ICC-01/18-477-Anx1, 8 December 2025.

disqualification of the Prosecutor or Deputy Prosecutor, as applicable, is an administrative function of oversight.

27. Article 42 is included within Part IV of Statute which deals with the "[c]*omposition and* [a]*dministration of the Court*". More specifically, the provision deals with the proper, impartial, and independent functioning of the Office of the Prosecutor, headed by the Prosecutor, who is responsible for the organisation and administration of his/her Office pursuant to article 42(2).[27] As such, it is a self-contained provision, the purpose of which does not extend beyond its literal function. If the impartiality of the Prosecutor or a Deputy Prosecutor might be reasonably doubted on any ground, that "*shall lead to disqualification*".[28] Rule 34 of the Rules of Procedure and Evidence (the "Rules") contained in Chapter II of the Rules – titled "*Composition and Administration of the Court*" –, Section VI "*Situation that may affect the functioning of the Court*", Subsection II "*Excusal, disqualification, death and resignation*" sets out additional grounds to those listed in articles 41(2) and article 42(7) of the Statute,[29] which relate to both the Judges and the Prosecutor/Deputy Prosecutor(s) alike. The provision reiterates that "[a]*ny question relating to the disqualification of the Prosecutor or a Deputy Prosecutor shall be decided by a majority of the judges of the Appeals Chamber*".[30]

28. The plain text and ordinary meaning of the above-cited provisions is unequivocal. It is, moreover, trite law that the context, object and purpose of specific provisions of a treaty should be considered in case of ambiguity. In this regard, the Appeals Chamber has previously emphasised that:

[27] See AMBOS (K.) (Eds.), *Rome Statute of the International Criminal Court : Article-by-Article Commentary*, 4th edition, Verlag C.H. Beck / Nomos, Munich / Hart Publishing, Oxford, 2021, p. 3249.
[28] *Ibid*.
[29] See Rule 34(1) of the Rules of Procedure and Evidence.
[30] See Rules 34(3) of the Rules of Procedure and Evidence.

> "[t]*he rule governing the interpretation of a section of the law is its wording read in context and in light of its object and purpose. The context of a given legislative provision is defined by the particular sub-section of the law read as a whole in conjunction with the section of an enactment in its entirety. Its objects may be gathered from the chapter of the law in which the particular section is included and its purposes from the wider aims of the law as may be gathered from its preamble and general tenor of the treaty*".[31]

29. In the matter at hand, the object and purpose of article 42 of the Statute is to regulate the composition and administration of the Office of the Prosecutor. The object and purpose of article 42(7) and (8) is to ensure that the Prosecutor/Deputy Prosecutor carries out his or her functions independently and impartially as set out in article 41(1), (5) and (7) of the Statute, in addition to personal attributes provided for in article 42(3) and (6). In any organisation, administration or institution, independent oversight of functions is entrusted to a designated body. In the case of the requirement of impartiality set out in article 42(7) of the Statute, the designated body is the Appeals Chamber.

30. Specifically, article 42(8) of the Statute provides that "[a]*ny question as to the disqualification of the Prosecutor or a Deputy Prosecutor shall be decided by the Appeals Chamber*".[32] Its subsections deal with the *locus standi* of the petitioners and the Prosecutor's and Deputy Prosecutor's right to be heard on the matter. In a recent decision, the Appeals Chamber recalled, by majority, that the "*explicit wording of article 42 of the Statute should be interpreted strictly*";[33] a ruling it confirmed in a

[31] See the "Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal" (Appeals Chamber), No. ICC-01/04-168 AO 3, 13 July 2006, para. 33 (footnotes omitted).
[32] See article 42(8) of the Statute.
[33] See the "Decision on the 'Request for Recusal of the Prosecutor of the International Criminal Court in the Case of Venezuela I Due to Conflict of Interest'" (Appeals Chamber), No. ICC-01/18-109, 10 February 2025, para. 64 ("the *Venezuela I* Decision").

subsequent decision in the *Venezuela I* Situation.[34] While the Appeals Chamber, in that decision, acted *ex officio*, triggered by a constatation of "*the Prosecutor's inaction following the Appeals Chamber's invitation to uphold his duty under rule 35 of the Rules*",[35] and noting its inherent "*power to determine questions related to the disqualification of the Prosecutor*",[36] it needs to be noted in this context that no suspects or "*persons being investigated*" had yet been named in the *Venezuela I* Situation. Case-specific facts of this matter were further particularly pertinent in this regard. Indeed, in that decision, the Appeals Chamber considered that:

> "*its power to determine questions related to the disqualification of the Prosecutor is not diminished by and does not affect the independence of the Prosecutor pursuant to article 42(1) of the Statute. In effect, the system of international criminal justice created by the Statute did not conceive of a Prosecutor invested with unfettered discretionary powers. To the contrary, while the framework of the Statute preserves the Prosecutor's independence in the exercise of his powers to investigate and prosecute crimes and act as a party to the judicial proceedings, it also conceives of several instances of judicial control of the Prosecutor's actions*".[37]

31. Beyond the Appeals Chamber's function of exercising *judicial control* of the Prosecutor's actions, article 42 confers no additional powers going beyond that specific mandate. The Appeals Chamber's powers are limited to *deciding any question as to the disqualification*, the parameters of which are set out in article 42(7) of the Statute, supplemented by the text of rule 34 of the Rules. In essence, the Appeals Chamber may find that it reasonably appears that the Prosecutor lacks impartiality, or it may dismiss a request to this effect if it determines no such appearance exists.

32. Therefore, it can be argued that, under article 42 of the Statute, the role of the Appeals Chamber is a singular, administrative role – reiterated in rule 34(3) of the

[34] See the "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'" (Appeals Chamber), No. ICC-01/18-118, 1 August 2025 (the "Venezuela I Decision"), para. 22.
[35] *Idem*, para. 32.
[36] *Idem*, para. 30.
[37] *Ibid*.

Rules. The oversight function ends with a decision on the *question as to the disqualification*. Potential consequences flowing from a positive determination with respect to disqualification are neither contemplated nor spelled out in the text of article 42 of the Statute.

33. Accordingly, the Appeals Chamber would act *ultra vires*, if it were to address any *ancillary relief* requested by a petitioner after finding that a Prosecutor appears to lack impartiality. The Appeals Chamber's decision in the *Venezuela I* Situation seems to further militate in favour of this argument, given that the Appeals Chamber did not 'disqualify' the Prosecutor as such, but rather "[found] *that the Prosecutor is under a duty pursuant to rule 35 of the Rules to request to be excused from the Venezuela Situation*", instructing him to "*comply with such duty*".[38]

B. The warrants of arrest are unaffected by any outcome of the Appeals Chamber's determination of the Request for Disqualification

34. Articles 42 and 46 of the Statute dealing with disqualification from a matter, case, or situation, and removal from office respectively, relate to the *personal conduct* or performance of functions of officials and, thus, constitute remedies or consequences *ad personam*. The official's disqualification or even removal from office has, *stricto sensu*, no legal effect on the work of Court's specific organ to which the official in question belongs, or at least none that falls within the competence of the Appeals Chamber acting under article 42 of the Statute, or that of the Assembly of States Parties acting under article 46.

35. It has been argued that "[i]*t is not apparent what excusal or disqualification would actually mean, given that the Prosecutor and Deputy Prosecutors cannot simply withdraw from the Office during the prosecution of a case*".[39] However, recent decisions

[38] *Idem*, para. 45.
[39] See SCHABAS (W.), *The International Criminal Court: a commentary on the Rome Statute* (2nd edition), Oxford University Press, Oxford, 2016, p. 747.

disqualifying the Prosecutor in the *Venezuela I* Situation[40] and in the *Duterte* case[41] illustrate that disqualification has no consequences beyond its *ad personam* impact on the official concerned. In these instances, the reasons were linked to the Prosecutor's personal associations or prior professional involvement. Ultimately, they resulted in the takeover of the Prosecutor's responsibilities in relation to the concerned situation and case by the Deputy Prosecutor, without any impact or interruption to the proceedings. The Deputy Prosecutor's role is precisely to perform the functions of the Prosecutor in the latter's absence, whatever the reason. In this regard, the Appeals Chamber did not venture beyond its prescribed role: it neither directed, instruct, nor otherwise interfered with the internal affairs of the Office of the Prosecutor or with ongoing proceedings before another chamber of this Court.

36. Without prejudice to the outcome of the Appeals Chamber's determination of the Request for Disqualification, even if, *arguendo*, the Appeals Chamber were to grant the request and disqualify the Prosecutor in the Situation in the State of Palestine, there would be no 'automatic consequence'. Just as in the *Duterte* decision, the Appeals Chamber's role would be limited to deciding whether to grant the Request for Disqualification. No additional or *ancillary* relief would be within its purview to grant. Any further consequence of such a ruling would fall outside its mandate contemplated under article 42 of the Statute. Said mandate would therefore end with the decision on *the question as to the disqualification*.

C. The Appeals Chamber does not have the authority to remand matters and instruct the Pre-Trial Chamber when acting under article 42 of the Statute

37. Being seized with a request for the disqualification of the Prosecutor – which, as such is only contemplated under article 42 of the Statute – the Appeals Chamber can only act within the limits of the powers conferred by that provision. As discussed

[40] See the *Venezuela I* Decision, *supra* note 33.
[41] See the "Decision on the Defence Request to Disqualify the Prosecutor" (Appeals Chamber) , No. ICC-02/18-286-Red, 15 October 2025 (the "*Duterte* Disqualification Decision").

supra, the Appeals Chamber does not have the power to extend its functions in this specific instance beyond deciding a *question as to the disqualification*.

38. Differently from its role as an appellate judicial body under Part VIII of the Statute, when acting under Part IV, the Appeals Chamber lacks authority to alter or quash rulings or to remand matters to the chamber *a quo*. Not least because – unlike with respect to decisions and judgments under Part VIII – the subject matter of its ruling under article 42 of the Statute is not judicial in nature, but rather simply concern the performance of an administrative procedure triggered by a petitioner – such as an accused or person being investigated – which may, in exceptional circumstances, require the exercise of its inherent powers, as was the case in the *Venezuela I* Situation.

39. Accordingly, the Principal Counsel submits that Israel misapprehends the scope of the Appeals Chamber's administrative powers. Even if, *arguendo*, the Appeals Chamber were to grant the Request for Disqualification, it would have no authority to remand the warrants of arrest with specific instructions, or otherwise issue instructions, to the Pre-Trial Chamber to infirm them.

D. Victims' concerns about the involvement of the State in a matter concerning two of its citizens in their personal capacity

40. The Principal Counsel recalls that one of the fundamental aspects of international criminal law – and of the Statute in particular – is the individual criminal responsibility of natural persons. The Statute is not an instrument, nor is the Court a judicial *forum*, that attributes State responsibility. In the same vein, article 42(8)(a) of the Statute identifies the 'interested persons' with respect to questions concerning the disqualification of the Prosecutor/Deputy Prosecutor where his or her impartiality may reasonably be doubted: suspects, and persons being investigated. Rule 34 of the Rules provides a non-exhaustive number of reasons that are personal and specific in nature and serve as examples of such grounds.

41. While previously arguing in the *Venezuela I* Situation that the "*Appeals Chamber as the ultimate arbiter of '**any question** relating to the disqualification', which underlines the existence of its inherent power to deal with any such matter brought to its attention from any source*",[42] the Principal Counsel emphasises that the present instance is markedly different. In the *Venezuela I* Situation, no suspects or investigated persons are yet known – at least not to the Victims – and the Victims' interests were significantly affected by specific circumstances brought to the Appeals Chamber's attention, not least because they could potentially have affected the identification of suspects or persons to be investigated.

42. In the present situation, Victims are concerned by the involvement of the State in a matter that fore and foremost concerns individuals already subject to warrants of arrest. They are further concerned by the State's repeated attempts to seek the withdrawal or quashing of the warrants on various grounds, some going beyond and being unrelated to the Jurisdictional Challenge and none falling within the legitimate scope of an admissibility challenge. Victims consider that the Appeals Chamber must not yield to such attempts to circumvent the proper statutory avenues of legal recourse by the persons and actors concerned.

E. Victims have a right to legal certainty

43. If, *arguendo*, the Appeals Chamber were to find that it has the power to entertain the Request for Ancillary Relief, the Principal Counsel submits that it may nevertheless not interfere with the warrants of arrest. Indeed, the circumstances invoked by Israel do not rise beyond mere assumptions as to the impact any alleged improper conduct of the Prosecutor may have had on the proceedings leading to the Pre-Trial Chamber's issuance of said warrants.

[42] See the "OPCV Submissions 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-02/18-110-Anx", No. ICC-02/18-113, 15 April 2025, para. 10 (emphasis in the original).

44. In fact, Israel's Request rests, to a significant extent, on speculation. Its argumentation relies on conjecture regarding whether the Prosecution had sufficient time to review the materials provided, and on assumed implications of such timing for the assessment of the position of the two Suspects. These claims are unsupported by concrete evidence and bear no relevance to the underlying crimes for which the warrants of arrest were issued.

45. The Statute foresees judicial oversight mechanisms regarding the conduct of the Prosecutor precisely to safeguard the integrity of the proceedings *as a whole*. Should a Prosecutor be found to have engaged in improper behaviour, or failed to exercise his/her functions independently and impartially, it cannot have been the intention of the drafters of the Statute to invalidate entire proceedings as a result.

46. Victims have a right to legal certainty with respect to warrants of arrest already issued by the Pre-Trial Chamber. Seeing the legitimacy of said warrants undermined by serious and public allegations of improper conduct by the Prosecutor – with all the ensuing delays such unrelated procedures cause – constitutes a significant setback to them and to their legitimate interests in bringing to justice individuals suspected of having committed war crimes and crimes against humanity that egregiously impacted them. For Victims, the prospect of invalidating warrants of arrest on grounds wholly unrelated to the underlying crimes is outrageously unjust, unfair and painful.

Respectfully submitted,

Paolina Massidda
Principal Counsel

Dated this 10th day of December 2025

At The Hague, The Netherlands