

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **15 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**

**Confidential**

**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"**

**Source:** The State of Israel

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

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| <input checked="" type="checkbox"/> <b>The Office of the Prosecutor</b>  | <input type="checkbox"/> <b>Counsel for the Defence</b>                             |
| <input 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> |
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| <input checked="" type="checkbox"/> <b>States' Representatives</b><br>Office of the Attorney General of Israel | <input type="checkbox"/> <b>Amicus Curiae</b>                                       |

## REGISTRY

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| <b>Registrar</b><br>M. Zavala Giler, Osvaldo                                  | <input type="checkbox"/> <b>Counsel Support Section</b> |
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## I. INTRODUCTION

1. Israel respectfully requests leave to file a consolidated reply<sup>1</sup> to the Prosecutor's Response ("Prosecutor's Response")<sup>2</sup> and to the Office of the Public Counsel for Victims' Response ("OPCV Response")<sup>3</sup> to Israel's Request to Disqualify the Prosecutor and for Ancillary Remedies ("Disqualification Request").<sup>4</sup> Leave is sought in respect of four discrete issues, that could not have been reasonably anticipated in the Disqualification Request and in relation to which a consolidated reply<sup>5</sup> is otherwise necessary for the adjudication of the matter. These are:
  - 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;
  - 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.
2. Pursuant to Regulation 23bis(2) of the Regulations of the Court, this Request for leave to reply is filed on a '*Confidential*' basis because it refers to the contents of the Prosecutor's Response which was re-classified as '*Confidential*' on 12 December 2025 following its initial '*Public and Redacted, with ex parte annexes*' classification of 11 December 2025.<sup>6</sup> The State of Israel does not oppose the reclassification of this Request for leave to reply as '*Public*'.

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<sup>1</sup> This filing is without prejudice to Israel's status as a State not party to the Rome Statute, and to Israel's position that the Court has no jurisdiction in respect of the situation captioned by the Court as "The Situation in the State of Palestine".

<sup>2</sup> Prosecutor's Submissions on the Request to Disqualify the Prosecutor and for Ancillary Remedies, ICC-01/18-479-Conf, 12 December 2025 ("Prosecutor's Response").

<sup>3</sup> OPCV's Submissions on the State of Israel's Request to Disqualify the Prosecutor and for Ancillary Remedies, [ICC-01/18-478](#), 10 December 2025 ("OPCV Response").

<sup>4</sup> 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").

<sup>5</sup> Should the Appeals Chamber grant this Request and also grant Israel's Request for leave to reply to the OTP Response to Israel's Disqualification Request ([ICC-01/18-477-Anx](#), filed on 5 December 2025), Israel intends to file one consolidated reply to the OTP, OPCV and Prosecutor's Submissions.

<sup>6</sup> This re-classification was undertaken despite the fact that significant elements of the Prosecutor's Response featured in a news article in The Guardian entitled '[Britain threatened to defund ICC over Netanyahu arrest warrant, claims prosecutor](#)' which was published on 11 December 2025. That article specifically noted that the Prosecutor "*insisted on sending a full and pugnacious 22-page response to the Israeli request for dismissal of the warrants after he read what he regarded as a relatively tame response that was initially drafted*".

## II. APPLICABLE LAW

3. Regulation 24(5) of the Regulations of 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.

4. The Appeals Chamber may also grant leave if it considers that a reply would otherwise be necessary for the adjudication of the appeal.<sup>7</sup>

## III. SUBMISSIONS

*i. First issue: The Prosecutor's misstatements and misleading factual assertions, which are material to the Disqualification Request, and necessitate correction*

5. The Prosecutor's submissions purport to set out "the established verifiable facts regarding his Office's work in the months leading up to the applications for Warrants of Arrest".<sup>8</sup> Given this self-described aim, Israel was dismayed to note misstatements and misleading descriptors in the self-serving factual narrative posited by the Prosecutor which – taken collectively – amount to a misrepresentation of the established verifiable facts. These are evidential matters on which Israel possesses first-hand knowledge, relating as they do to the Prosecutor's engagement with it in the immediate period leading up to 20 May 2024. The Prosecutor's submissions were unforeseeable, and a reply is essential so as to enable a proper adjudication of the Disqualification Request.
6. Israel's Reply would offer submissions correcting the narrative presented by the Prosecutor and would provide pertinent information demonstrating the highly selective and, in some instances, actively misleading, nature of the Prosecutor's account.
7. If granted leave, Israel would, *inter alia*, show that in contrast to the Prosecutor's assertions,<sup>9</sup> the mission scheduled for the week of 27 May 2024 did not materialize because of the Prosecutor's inexplicable and abrupt decision to cancel the mission, rather

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<sup>7</sup> *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; *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; *Situation in the Islamic Republic of Afghanistan*, Decision on the Prosecutor's request for leave to reply, [ICC-02/17-206](#), 23 December 2022, paras. 8-10. See also: *Prosecutor v. Ntaganda*, Decision on Mr. Ntaganda's request for leave to reply, [ICC-01/04-02/06-1994](#), 17 July 2017, paras. 13-14.

<sup>8</sup> Prosecutor's Response, para. 21.

<sup>9</sup> See for example: Prosecutor's Response, para. 59: "*the Applicant has never permitted the Office to conduct any investigative missions to Israel or Gaza*"; and para. 66: "*the Office has met with consistent attempts by the Applicant to delay and prevent investigative missions to Gaza*".

than because of any alleged lack of cooperation or approval by Israel, and that the Prosecutor's attempt to portray Israel as obstructing that mission is demonstrably unfounded. Furthermore, Israel would show that the Prosecutor had represented at that time that the information which was proposed to be gathered in the context of the requested mission, would be crucial for his decision-making regarding any next steps.

8. If permitted leave to reply, Israel would, *inter alia*, also show that it did provide responses to the substance of the RFAs in April and May 2024 which the Prosecutor now seeks to minimize<sup>10</sup> and that this information sharing following the 8 April 2024 meeting was substantial and expressly understood to be part of an ongoing process, which would have continued if not for the Prosecutor's change of course during May 2024. Israel's Reply would also note that it is unclear how decision-making as to the arrest warrants could have been properly assessed as being "fair, rigorous and independent" given that the March 2024 in-person evidence review took place without reference to materials which had been provided by Israel in April and May 2024, following an RFA transmitted to Israel in the latter part of March 2024.<sup>11</sup>
9. Additionally, if granted leave, Israel would reply to the Prosecutor's wrongful characterization of the evidence underpinning the Disqualification Request as based on "unsubstantiated media speculation derived from hearsay and anonymous sources, reported in a limited number of outlets".<sup>12</sup> Israel would show that in actuality, the factual allegations underpinning the Disqualification Request have derived from a variety of reliable sources, including documents and correspondence in the context of Israel's engagement with the Prosecutor and his staff, as well as with additional interlocutors in contact with the OTP during the relevant period; official communications by ICC officials; and abundant media reporting, often relying upon numerous identified sources, much of which has been substantially corroborated.<sup>13</sup>

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<sup>10</sup> See for example: para. 61: "As with the 26 February 2024 RFA, the Applicant has never formally responded to this request"; para. 68: "actual cooperation had (and has) not meaningfully materialized"; and para. 37: "On 8 April 2024, an Israeli inter-ministerial delegation did not meet with the Prosecutor as alleged, but met with members of the Prosecution team".

<sup>11</sup> Prosecutor's Response, para. 34.

<sup>12</sup> Prosecutor's Response, para. 72.

<sup>13</sup> [Disqualification Request](#), para. 10.

*ii. Second issue: The Prosecutor's provision of selective and self-serving confidential investigative materials to the Appeals Chamber on an ex parte basis*

10. The Prosecutor has provided on an *ex parte* basis, without prior authorisation from the Appeals Chamber, and in the absence of an express statutory or jurisprudential basis for doing so, a batch of confidential materials to support his self-serving factual account of the events leading up to the applications for arrest warrants.<sup>14</sup> This was unforeseeable and a reply would assist the Appeals Chamber.
11. It is notable that only one<sup>15</sup> of these *ex parte* exhibits relates to the critical time period from 2 May 2024 to 20 May 2024. However, that document does not shed light on the Prosecutor's state of mind or indicate whether his impartiality "might reasonably be doubted" regarding his decision to hurriedly submit arrest warrant applications, based on his awareness of and reaction to allegations of serious misconduct.
12. If granted leave to reply, Israel would provide submissions on the propriety of the Prosecutor having free reign to 'cherry pick' the confidential investigative materials provided to the Appeals Chamber on an *ex parte* basis. The Prosecutor's selection of *ex parte* materials is troubling in circumstances where press reports state that members of the Prosecutor's own staff appear to have harboured concerns as to his apparent partiality based on his awareness of and reaction to the allegations during the critical time period.<sup>16</sup>

*iii. Third issue: The Prosecutor's misapplication of the jurisprudence regarding article 42(8) of the Statute in relation to standing and delay*

13. The Prosecutor's Response mischaracterises the law on standing and delay,<sup>17</sup> in an apparent effort to prevent the Appeals Chamber from adjudicating on the important issues raised by the Disqualification Request. The Prosecutor's misconceived approach to these legal issues was unforeseeable and a reply would assist the Appeals Chamber.
14. The Prosecutor purports to distinguish the plenary of judges' recognition of Mongolia's standing to request the disqualification of judges, notwithstanding article 41(2)(b) which applies only to "*the Prosecutor or the person being investigated or prosecuted*", due to

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<sup>14</sup> Prosecutor's Response, paras. 36, 38, 41, 42, 60-62, 68 (referring to Exhibits 001-013).

<sup>15</sup> Prosecutor's Response, para. 68 referring to Exhibit 013 (an email from the Principal Trial Attorney relating to the materials provided to date by Israel).

<sup>16</sup> [Disqualification Request](#), para. 35.

<sup>17</sup> Prosecutor's Response, paras. 9, 16.

the fact that Mongolia, “as a State Party with cooperation obligations with the Court, faced the possibility of a finding of non-cooperation”.<sup>18</sup> Israel’s Reply would offer submissions as to the correct application of the guidance from the plenary of judges,<sup>19</sup> the Appeals Chamber,<sup>20</sup> and a judge of the Pre-Trial Chamber,<sup>21</sup> as to a State’s standing to file disqualification requests where its interests are directly affected by the infringement of its sovereignty and rights under the Statute occasioned by the issuance of arrest warrants against its Prime Minister and former Minister of Defence which were applied for by a Prosecutor afflicted by apparent bias.

15. Further, Israel’s Reply would provide submissions<sup>22</sup> as to the correct legal test for delay explaining that Israel has acted appropriately and diligently, by initially submitting a disclosure request to the OTP relating to these matters on 30 May 2025,<sup>23</sup> which was denied wholesale. Thereafter, Israel filed its Disqualification Request promptly once sufficiently corroborated evidence for a responsible application of this nature had emerged from the succession of media disclosures (continuing up to 8 October 2025), which substantiated the underlying allegations relating to the Prosecutor’s misconduct.

*iv. Fourth issue: The OPCV’s attempt to unduly limit the Appeals Chamber’s powers to determine questions related to the disqualification of the Prosecutor such as to prevent the granting of the ancillary remedies sought*

16. The OPCV Response attempts to unduly limit the Appeals Chamber’s powers to determine questions related to the disqualification of the Prosecutor by suggesting that this power is “administrative in nature”<sup>24</sup> and that it “would have no authority to remand the warrants of arrest with specific instructions, or otherwise issue instructions, to the

<sup>18</sup> Prosecutor’s Response, para. 9.

<sup>19</sup> *Situation in Ukraine*, Reasons for the Decision on the ‘Application for the Disqualification of Judges’ filed on 31 October 2024 (ICC-01/22-92-Anx), [ICC-01/22-107](#), 22 November 2024, para. 23; *Prosecutor v. Lubanga*, Annex I: Notification of the Decision of the Plenary of Judges on the Defence Application for the Disqualification of Judge Silvia Fernández de Gurmendi from the case of The Prosecutor v. Thomas Lubanga Dyilo, [ICC-01/04-01/06-3154-AnxI](#), 3 August 2015, para. 34.

<sup>20</sup> *Situation in the Bolivarian Republic of Venezuela I*, 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”, [ICC-02/18-109](#), 10 February 2025, para. 63.

<sup>21</sup> Notification of Judge Hohler’s provision of information, [ICC-01/18-373-Anx](#), 20 November 2024, para. 6.

<sup>22</sup> See e.g. *Prosecutor v. Ntaganda*, Decision on the “Request for Reconsideration of the Decision of the Judges Concerning Judge Ozaki Pursuant to Article 40 of the Rome Statute”, [ICC-01/04-02/06-2346](#), 14 May 2019, para. 22; *Prosecutor v. Duterte*, “Decision on the Defence Request to Disqualify the Prosecutor”, [ICC-01/21-01/25-286-Red](#), 15 October 2025, paras. 30, 55 (“*Duterte* Decision on Request to Disqualify the Prosecutor”).

<sup>23</sup> Annex A to the Registry transmission of “Request to Disqualify the Prosecutor and for Ancillary Remedies”, [ICC-01/18-471-AnxA](#), 19 November 2025.

<sup>24</sup> [OPCV Response](#), paras. 26-27, 32-33.


Pre-Trial Chamber to infirm them”.<sup>25</sup> This misinterpretation of the Appeals Chamber’s powers was unforeseeable and a reply would assist the Appeals Chamber.

17. If granted leave, Israel would explain in its Reply that the disqualification of the Prosecutor *in a specific case* is a judicial determination.<sup>26</sup> Israel’s Reply would also show that the OPCV’s attempt to artificially isolate disqualification proceedings from the rest of the Statute is contradicted by the Court’s case law.<sup>27</sup> Finally, it would set out the rationale for and breadth of the Appeals Chamber’s powers to ensure fairness throughout the entirety of the proceedings including in relation to “any other relevant matter” arising from an application for the disqualification of the Prosecutor.<sup>28</sup>

#### IV. RELIEF SOUGHT

18. Israel therefore respectfully requests leave to file a consolidated reply to the four issues identified above arising out of the Prosecutor’s Response and the OPCV’s Response pursuant to Regulation 24(5) of the Regulations of Court. Such leave is necessary for the adjudication of the Disqualification Request and concerns issues that could not reasonably have been anticipated. Granting Israel leave to reply is in the interests of justice, would uphold procedural fairness and would not adversely impact the expeditiousness of the proceedings.

Respectfully submitted:

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

Dated this 15 December 2025

At Jerusalem, Israel

<sup>25</sup> [OPCV Response](#), paras. 37-39.

<sup>26</sup> By analogy: *Prosecutor v. Ntaganda*, Decision on the “Request for Reconsideration of the Decision of the Judges Concerning Judge Ozaki Pursuant to Article 40 of the Rome Statute”, [ICC-01/04-02/06-2346](#), 14 May 2019.

<sup>27</sup> [Duterte Decision on Request to Disqualify the Prosecutor](#), para. 35 (where the Appeals Chamber considered that article 64(6)(f) applies to disqualification proceedings).

<sup>28</sup> *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. 27-32; [Duterte Decision on Request to Disqualify the Prosecutor](#), paras. 35, 55; *Prosecutor v. Mokon*, Judgment on the appeal of Maxime Jeoffroy Eli Mokon Gawaka against the decision of Pre-Trial Chamber II of 19 August 2022 entitled “Decision on legal representation further to the Appeals Chamber’s judgment of 19 July 2022”, [ICC-01/14-01/22-124-Red](#), 19 December 2022, para. 44.