



Original: English

**No. ICC-01/18
Date: 20 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 the “Joint Victims’ Request to submit Observations on Israel’s
‘Request to Disqualify the Prosecutor and for Ancillary Remedies’”**

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

The Office of the Prosecutor

Counsel for the Defence

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

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

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 “Joint Victims’ Request to submit Observations on Israel’s ‘Request to Disqualify the Prosecutor and for Ancillary Remedies’” of 11 December 2025 (ICC-01/18-480-Anx),

Renders, by majority, with Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa dissenting, the following

DECISION

The “Joint Victims’ Request to submit Observations on Israel’s ‘Request to Disqualify the Prosecutor and for Ancillary Remedies’” is rejected.

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”).¹
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”).²

¹ [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.

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

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)”.³
4. On 2 December 2025, following a request of the Office of Public Counsel for Victims (hereinafter: “OPCV”),⁴ 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”).⁵
5. On 10 December 2025, the OPCV filed its written submissions in respect of the Request for Disqualification, in accordance with the Decision of 2 December 2025 (hereinafter: “OPCV’s Submissions”).⁶
6. On 11 December 2025, the Prosecutor filed his written submissions with respect to the Request for Disqualification.⁷
7. On the same day, the Registry transmitted to the Appeals Chamber a joint request for leave to file observations on the Request for Disqualification, filed by three teams of legal representatives of victims (hereinafter: “LRVs”).⁸

II. MERITS

A. Determination by the Appeals Chamber

8. The LRVs request that, should the Appeals Chamber determine to consider the merits of the Request for Disqualification, they be authorised to submit the views and concerns of victims they represent whose personal interests are affected by the present

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

⁴ [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.

⁵ [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”).

⁶ [OPCV’s Submissions on the State of Israel’s Request to Disqualify the Prosecutor and for Ancillary Remedies](#), ICC-01/18-478.

⁷ 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.

⁸ [Registry transmission of a “Joint Victims’ Request to submit Observations on Israel’s “Request to Disqualify the Prosecutor and for Ancillary Remedies””](#), ICC-01/18-480, with a public annex (“Joint Victims’ Request to submit Observations on Israel’s ‘Request to Disqualify the Prosecutor and for Ancillary Remedies’”), ICC-01/18-480-Anx (hereinafter: “Request”).

proceedings, pursuant to article 68(3) of the Statute, as well as rules 91 and 93 of the Rules.⁹

9. At the outset, the Appeals Chamber notes that neither the Statute, the Rules nor the Regulations explicitly provide for the participation of victims in the context of proceedings under article 42(8) of the Statute.

10. The Appeals Chamber recalls that victims may seek participation in “any judicial proceedings, including proceedings affecting investigations, provided their personal interests are affected by the issues arising for resolution”.¹⁰ Article 68(3) of the Statute provides that “[w]here the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial”. In this regard, the Appeals Chamber emphasises that the Court retains discretion as to in which manner and at which stage of the proceedings it considers appropriate to allow victims to present their views and concerns.¹¹

11. The Appeals Chamber recalls that the Request for Disqualification is based on article 42(7) of the Statute, and that proceedings in relation to article 42(7) and (8) of the Statute and rule 34(2) and (3) of the Rules are *sui generis* in nature.¹²

12. In the present proceedings, the Appeals Chamber notes that the LRVs seek to submit their observations on two issues in relation to the Request for Disqualification: (i) Israel’s standing to make a request under article 42(8) of the Statute;¹³ and (ii) the legal basis for the “ancillary remedies” sought by Israel.¹⁴

⁹ [Request](#), paras 1, 5, 16.

¹⁰ Appeals Chamber, *Situation in the Democratic Republic of the Congo*, [Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 7 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial Chamber I of 24 December 2007](#), 19 December 2008, ICC-01/04-556 (OA4-OA6), para. 56.

¹¹ Appeals Chamber, *Situation in the State of Palestine*, [Decision on victims’ requests to submit observations in the appeal against the “Decision on Israel’s request for an order to the Prosecution to give an Article 18\(1\) notice”](#), 17 October 2025, ICC-01/18-469 (OA3), para. 16.

¹² [Decision of 2 December 2025](#), para. 5.

¹³ [Request](#), paras 4, 11, 13.

¹⁴ [Request](#), para. 13.

13. In this regard, the Appeals Chamber recalls that it granted leave to the OPCV to submit written submissions on the general interests of victims with respect to the Request for Disqualification, pursuant to regulation 81(4) of the Regulations.¹⁵ The OPCV, in its submissions, has presented the views and concerns of victims in respect of the issues concerning standing of Israel to make a request under article 42(8) of the Statute and the “ancillary remedies” sought by Israel.¹⁶ The OPCV has also presented the concerns of victims relating to the expeditiousness of the proceedings in the instant situation.¹⁷ Therefore, the Appeals Chamber, by majority, Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa dissenting, considers that it has received submissions on the aforementioned issues on which the LRVs seek to provide observations.

14. In light of the foregoing and in the circumstances of the present proceedings, the Appeals Chamber, by majority, Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa dissenting, does not consider it appropriate to grant the LRVs’ request to submit observations in the proceedings at hand. Accordingly, the Appeals Chamber, by majority, Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa dissenting, rejects the Request.

B. Joint dissenting opinion of Judge Luz Del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa

15. At the outset, Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa emphasise that the Statute, the Rules and the Regulations require a holistic approach to interpretation.¹⁸ In this regard, they recall that the application and interpretation of the Court’s legal framework must be consistent with internationally recognised human rights under article 21(3) of the Statute.¹⁹ Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa also recall that, pursuant to article 68(3) of the Statute, a chamber of the Court “shall permit [the victims’] views

¹⁵ [Decision of 2 December 2025](#), para. 8, p. 3.

¹⁶ [OPCV’s Submissions](#), paras 3-6, 26-46.

¹⁷ [OPCV’s Submissions](#), paras 6, 46.

¹⁸ *See Situation in the State of Palestine, Joint Dissenting Opinion of Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa*, 17 October 2025, ICC-01/18-469-OPI (hereinafter: “*Palestine OA3 Joint Dissenting Opinion*”), para. 3, referring to *The Prosecutor v. Thomas Lubanga Dyilo, Separate Opinion of Judge Luz del Carmen Ibáñez Carranza*, 16 September 2019, ICC-01/04-01/06-3466-AnxII (hereinafter: “*Lubanga A7-A8 Separate Opinion*”), pp. 7-8.

¹⁹ *See Palestine OA3 Joint Dissenting Opinion*, para. 2, referring to [Lubanga A7-A8 Separate Opinion](#), pp. 5, 129.

and concerns to be presented and considered *at stages of the proceedings* determined to be appropriate by the Court” where their personal interests are affected.²⁰

16. In view of the foregoing, Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa consider that victims have substantive and procedural rights under the Rome Statute to participate at all stages of the proceedings, including the appellate stage, which emerge from the internationally recognised human rights of access to justice and an effective remedy.²¹ They also note that these principles have been consistently affirmed by numerous human rights bodies, including the Inter-American Court of Human Rights.²²

17. Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa note that the determination of whether victims should be allowed to participate must be based on an assessment of whether their personal interests would be affected by the outcome of the decision. In the present proceedings which include the validity of the Arrest Warrants, Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa consider that the personal interests of identified and concrete victims who are represented by the LRVs may be affected by the Appeals Chamber’s determination on the Request for Disqualification.

18. While the majority of the Judges refer to the submissions of the OPCV in this regard, Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa note that the OPCV functions as a residual mechanism within the statutory framework of the Court, providing “general support and assistance to the legal representative of victims and to victims”.²³ Therefore, Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa consider that the personal interests of each specific victim, and

²⁰ Emphasis added.

²¹ See [Palestine OA3 Joint Dissenting Opinion](#), para. 4, referring to *Situation in the Islamic Republic of Afghanistan*, [Dissenting Opinion of Judge Luz del Carmen Ibáñez Carranza to the Majority’s decision dismissing as inadmissible the victims’ appeals against the decision rejecting the authorisation of an investigation into the situation in Afghanistan](#), 10 March 2020, ICC-02/17-137-Anx-Corr (OA-OA4) (hereinafter: “*Afghanistan OA-OA4 Dissenting Opinion*”), paras 32-50; *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, [Annex 4: Dissenting Opinion of Judge Luz del Carmen Ibáñez Carranza to the Judgment on the appeal of the Prosecutor against the oral verdict of Trial Chamber 1 of 15 January 2019 with written reasons issued on 16 July 2019](#), 31 March 2021, ICC-02/11-01/15-1400-Anx4-Red (A), para. 120.

²² See [Palestine OA3 Joint Dissenting Opinion](#), para. 4, referring to [Afghanistan OA-OA4 Dissenting Opinion](#), paras 44-48.

²³ See, for example, regulation 81(4)(a) of the Regulations of the Court.

consequently their views and concerns, are different from the general and diffused views presented by the OPCV. As such, the submissions of the OPCV cannot replace the personal interests nor the views and concerns of the identified victims who are entitled to present their views and concerns pursuant to clear text of article 68(3) of the Statute. Moreover, they emphasise that rejecting the LRVs' request would, in effect, lead to an unequal treatment of the victims represented by the OPCV and the victims represented by the LRVs in their ability to present their views and concerns relating to the Request for Disqualification.

19. Accordingly, Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa are of the view that the identified victims represented by the LRVs are entitled, pursuant to article 68(3) of the Statute, to present their views and concerns with respect to the Request for Disqualification. Judge Luz del Carmen Ibáñez Carranza and Judge Solomy Balungi Bossa would thus have granted the Request.

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



Judge Tomoko Akane
Presiding

Dated this 20th day of February 2026

At The Hague, The Netherlands