



Original: English

**No. ICC-02/18
Date: 10 February 2025**

THE APPEALS CHAMBER

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

SITUATION IN THE BOLIVARIAN REPUBLIC OF VENEZUELA I

Public

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”

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

Arcadia Foundation

Un Mundo Sin Mordaza

The Appeals Chamber of the International Criminal Court,

Having before it the “Request for Recusal of the Prosecutor of the International Criminal Court in the Case of Venezuela I Due to Conflict of Interest” of 12 November 2024 (ICC-02/18-92-AnxII),

Pursuant to article 42(8) of the Statute and rule 34(2) of the Rules of Procedure and Evidence,

Renders by majority, Judge Luz del Carmen Ibáñez Carranza dissenting, the following

DECISION

1. The “Request for Recusal of the Prosecutor of the International Criminal Court in the Case of Venezuela I Due to Conflict of Interest” is dismissed.
2. The Prosecutor’s request for leave to file a sur-reply is rejected.
3. The “Urgent Motion to Address Procedural Irregularities” and the “Request to Address Procedural Failures and Ethical Oversight by the ICC Registry in the Context of the *Venezuela I Situation*” are dismissed.
4. The request for leave to submit *amicus curiae* observations, submitted by Un Mundo Sin Mordaza, is dismissed as moot.

REASONS

I. PROCEDURAL HISTORY

1. On 27 September 2018, the Office of the Prosecutor received from a group of States Parties to the Rome Statute (hereinafter: “Statute”) a referral under article 14 of the Statute for investigation of possible crimes against humanity committed in the Bolivarian Republic of Venezuela (hereinafter: “Venezuela”) since 12 February 2014.¹

¹ [Annex I to the Decision assigning the situation in the Bolivarian Republic of Venezuela to Pre-Trial Chamber I](#), dated 27 September 2018 and registered on 28 September 2018, ICC-02/18-1-AnxI.

2. On 4 November 2022, the Prosecutor, following a deferral request by Venezuela pursuant to article 18(2) of the Statute,² filed a request to authorise the resumption of his investigation into the Situation in Venezuela (hereinafter: “Venezuela Situation”).³
3. On 27 June 2023, Pre-Trial Chamber I rendered its decision authorising the Prosecutor to resume the investigation into the Situation in Venezuela, pursuant to article 18(2) of the Statute (hereinafter: “Article 18(2) Decision”).⁴ This decision was confirmed by the Appeals Chamber on 1 March 2024.⁵
4. On 12 November 2024, the Registry transmitted to the Appeals Chamber the “Request for Recusal of the Prosecutor of the International Criminal Court in the Case of Venezuela I Due to Conflict of Interest”, submitted by the Arcadia Foundation (hereinafter: “Request”).⁶
5. On 15 November 2024, the Appeals Chamber, pursuant to article 42(8)(b) of the Statute and rule 34 of the Rules of Procedure and Evidence (hereinafter: “Rules”), set a deadline for the Prosecutor to file written submissions with respect to the Request, until 22 November 2024.⁷

² [Notification of the Bolivarian Republic of Venezuela’s deferral request under article 18\(2\) of the Rome Statute](#), dated 20 April 2022 and registered on 21 April 2022, ICC-02/18-17, with confidential and public redacted versions of [Annex A](#) and [Annex B](#), para. 1; [Annex B to the Notification of the Bolivarian Republic of Venezuela’s deferral request under article 18\(2\) of the Rome Statute](#), dated 15 April 2022 and registered on 21 April 2022, ICC-02/18-17-AnxB-Red.

³ [Prosecution request to resume the investigation into the situation in the Bolivarian Republic of Venezuela I pursuant to article 18\(2\)](#), dated 1 November 2022 and notified on 4 November 2022, ICC-02/18-18, with confidential *ex parte* annexes A and B, only available to the Prosecutor and Venezuela, and public [Annex C](#).

⁴ [Decision authorising the resumption of the investigation pursuant to article 18\(2\) of the Statute](#), ICC-02/18-45.

⁵ [Judgment on the appeal of the Bolivarian Republic of Venezuela against Pre-Trial Chamber I’s “Decision authorising the resumption of the investigation pursuant to article 18\(2\) of the Statute](#), ICC-02-18-89.

⁶ [Registry Transmission of a “Request for Recusal of the Prosecutor of the International Criminal Court in the Case of Venezuela I Due to Conflict of Interest”](#), ICC-02/18-92, with four public annexes, including [Annex I](#) (“Formal Complaint Regarding Conflict of Interest and Ethical Violations Involving Ms. Venkateswari Alagenda and ICC Prosecutor Karim Khan”) (hereinafter: “Arcadia Foundation’s Complaint Addressed to the Office of the Independent Counsel for Ethical Affairs”); [Annex II](#) (“Request for Recusal of the Prosecutor of the International Criminal Court in the Case of Venezuela I Due to Conflict of Interest”); [Annex III](#) (“Urgent Call for Preventive Action Against Ongoing Crimes Against Humanity in Venezuela”) (hereinafter: “Arcadia Foundation’s Request Addressed to the Prosecutor”).

⁷ [Order setting a deadline for the Prosecutor to present written submissions 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-02/18-94.

6. On 18 November 2024, the Registry transmitted to the Appeals Chamber two documents submitted by the Arcadia Foundation, providing clarifications in relation to the Request and related documents submitted on 12 November 2024 (hereinafter: “Arcadia Foundation’s Submissions of 18 November 2024”).⁸

7. On 20 November 2024, following a request for extension of time limit filed by the Prosecutor,⁹ the Appeals Chamber extended the time limit for the filing of his written submissions with respect to the Request to 29 November 2024.¹⁰

8. On 22 November 2024, the Office of the Public Counsel for Victims (hereinafter: “OPCV”) filed its observations on the Request (hereinafter: “OPCV’s Observations”).¹¹

9. On 29 November 2024, the Prosecutor filed his written submissions on the Request (hereinafter: “Prosecutor’s Submissions”).¹²

10. On 4 December 2024, the Registry transmitted to the Appeals Chamber a request for leave to reply to the Prosecutor’s Submissions (hereinafter: “Request for Leave to Reply”), submitted by the Arcadia Foundation and Mr Robert Carmona-Borjas, on behalf of the Arcadia Foundation and “in [his] capacity as a recognized victim” in the Venezuela Situation (hereinafter: jointly, “Applicants”).¹³

11. On 12 December 2024, the Appeals Chamber granted the Request for Leave to Reply (hereinafter: “Decision Granting Leave to File a Reply”), allowing submissions particularly on “the preliminary issue of whether the Arcadia Foundation has legal

⁸ [Registry Transmission of “Additional Clarifications on Document Submission and Procedural Concerns Related to Recusal Request and Ethical Review” and “Clarification of Legal Reference in Arcadia Foundation’s Submission on the Request for the Recusal of Prosecutor Karim A. A. Khan, in the Venezuela I Case”](#), ICC-02/18-95, with two public annexes: [Annex I](#) (“Additional Clarifications on Document Submission and Procedural Concerns Related to Recusal Request and Ethical Review”) (hereinafter: “Additional Clarifications”); [Annex II](#) (“Clarification of Legal Reference in Arcadia Foundation’s Submission on the Request for the Recusal of Prosecutor Karim A. A. Khan, in the Venezuela I Case”) (hereinafter: “Clarification of Legal Reference in the Request”).

⁹ [Prosecutor’s Urgent Request for Extension of Time to File Submissions](#), 19 November 2024, ICC-02/18-96-Conf (a public redacted version was filed on the same day, ICC-02/18-96-Red).

¹⁰ [Decision on the Prosecutor’s urgent request for extension of time to file submissions](#), ICC-02/18-97, p. 3, para. 7.

¹¹ [Views and concerns of Victims on the Request for recusal of the Prosecutor](#), ICC-02/18-98.

¹² [Prosecutor’s Submissions on the Request for the Recusal of the Prosecutor](#), ICC-02/18-99-Conf-Exp (a public redacted version was filed on 2 December 2024, ICC-02/18-99-Red).

¹³ [Registry Transmission of a “Request for Leave to Reply to the Prosecutor’s Response in the Matter of Recusal Proceedings in the Venezuela I Situation”](#), ICC-02/18-101, with public [Annex I](#) (“Request for Leave to Reply to the Prosecutor’s Response in the Matter of Recusal Proceedings in the Venezuela I Situation”), confidential Annex II, and public [Annex III](#).

standing to request the recusal of the Prosecutor pursuant to article 42 of the Statute”, and stating that the reply should be filed by 20 December 2024, and that it should not exceed 10 pages.¹⁴

12. On 17 December 2024, the Registry transmitted to the Appeals Chamber a request for leave to submit *amicus curiae* observations, submitted by Un Mundo Sin Mordaza (hereinafter: “Request for Leave to Submit *Amicus Curiae* Observations”).¹⁵

13. On 23 December 2024, the Registry transmitted to the Appeals Chamber a document titled “Safeguarding the ICC’s Integrity – A Call for Accountability and Impartiality in the Venezuela I Situation”, containing submissions on “Restoring Judicial Integrity: A Rebuttal of the Prosecutor’s Arguments on Recusal in Venezuela I by Robert Carmona-Borjas”, submitted by the Applicants (hereinafter: “Reply”).¹⁶

14. On 30 December 2024, the Prosecutor filed a request for leave to file a sur-reply (hereinafter: “Prosecutor’s Request for Leave to File a Sur-Reply”).¹⁷

15. On 3 January 2025, the Registry informed via email that it had received a document from the Applicants in which they sought to respond to the Prosecutor’s Request for Leave to File a Sur-Reply, and alleged “procedural irregularities” arising from the Registry’s failure to notify them of the Prosecutor’s Request for Leave to File a Sur-Reply in a timely manner.¹⁸

16. On the same day, the Presiding Judge of the Appeals Chamber via email instructed the Registry to inform the Applicants that such a “response” is not foreseen in the Court’s procedure and accordingly it will not be filed onto the case record (hereinafter: “Appeals Chamber’s Instruction of 3 January 2025”).¹⁹

¹⁴ [Decision on the Arcadia Foundation’s request for leave to reply to the “Prosecutor’s Submissions on the Request for the Recusal of the Prosecutor”](#), ICC-02/18-102, p. 3, para. 11.

¹⁵ [Registry Transmission of “Request for Leave to Submit Amicus Curiae Observations by Un Mundo Sin Mordaza”](#), ICC-02/18-103, with public [Annex I](#).

¹⁶ [Registry Transmission of “Safeguarding the ICC’s integrity – A call for Accountability and Impartiality in the Venezuela I Situation”](#), ICC-02/18-105, with public [Annex I](#) (“Safeguarding the ICC’s integrity – A call for Accountability and Impartiality in the Venezuela I Situation”).

¹⁷ [Prosecutor’s Request for Leave to Sur-reply to the Applicant’s “Safeguarding the ICC’s integrity – a call for Accountability and Impartiality in the Venezuela I Situation”](#), ICC-02/18-106.

¹⁸ Email from the Registry to the Appeals Chamber at 9:32.

¹⁹ Email from the Legal Officer of the Appeals Chamber to the Registry at 11:19.

17. Later the same day, the Applicants submitted a “revised response”, which the Registry transmitted via email that same day.²⁰

18. On 6 January 2025, the Registry informed via email the Appeals Chamber that it had received another document from the Applicants, titled “Urgent Motion to Address Procedural Irregularities”.²¹

19. On the same day, the Appeals Chamber via email instructed the Registry to inform the Applicants that the “revised response” would not be filed on the record for the same reasons given in the Appeals Chamber’s Instruction of 3 January 2025 with respect to the “response”.²²

20. On 13 January 2025, the Registry transmitted to the Appeals Chamber the “Request to Address Procedural Failures and Ethical Oversight by the ICC Registry in the Context of the *Venezuela I Situation*”.²³

21. On 7 February 2025, upon instruction of the Presiding Judge of the Appeals Chamber,²⁴ the Registry filed on the record the “Urgent Motion to Address Procedural Irregularities” (hereinafter: “Applicants’ Urgent Motion concerning the Registry”) and the “Request to Address Procedural Failures and Ethical Oversight by the ICC Registry in the Context of the *Venezuela I Situation*” (hereinafter: “Applicants’ Request concerning the Registry”).²⁵

²⁰ Email from the Registry to the Appeals Chamber at 15:20.

²¹ Email from the Registry to the Appeals Chamber at 9:23.

²² Email from the Legal Office of the Appeals Chamber to the Registry at 9:38. Due to an oversight of the Registry, this instruction was notified to the Applicants on 4 February 2025 (Email from the Registry to the Appeals Chamber at 16:30).

²³ Email from the Registry to the Appeals Chamber at 8:35.

²⁴ [Registry Transmission of “Urgent Motion to Address Procedural Irregularities”](#), ICC-02/18-108, with public Annex (“Urgent Motion to Address Procedural Irregularities”).

²⁵ [Registry Transmission of “Request to Address Procedural Failures and Ethical Oversight by the ICC Registry in the Context of the *Venezuela I Situation*”](#), ICC-02/18-107, with Annex (“Request to Address Procedural Failures and Ethical Oversight by the ICC Registry in the Context of the *Venezuela I Situation*”). The Annex was filed “confidential” as it contained the names and an email address of staff members of the Court. Pursuant to an instruction of the Presiding Judge of the Appeals Chamber, a public redacted version was filed on 10 February 2025, ICC-02/18-107-Anx-Red.

II. SUMMARY OF THE SUBMISSIONS

A. Request

22. The Arcadia Foundation submits that the Prosecutor should be recused from “all proceedings related to the Venezuela I case”,²⁶ on the basis of “a clear conflict of interest, arising from the familial relationship between the Prosecutor and Venkateswari Alagendra, a defence attorney representing Nicolás Maduro Moros” in the Venezuela Situation.²⁷

23. Referring to article 42(5) of the Statute, the Arcadia Foundation avers that this situation presents “a direct violation of the independence requirement under the [Statute]”.²⁸ It also argues that “[t]he familial relationship between the Prosecutor and a key member of the defen[c]e team creates an undeniable appearance of impropriety and a reasonable apprehension of bias”, constituting “sufficient grounds for recusal under [a]rticle 41(2) of the Statute”.²⁹ According to the Arcadia Foundation, the alleged familial relationship raises “legitimate doubt” regarding the Prosecutor’s impartiality in the present situation.³⁰ In support, it refers to a finding in *The Prosecutor v. Mathieu Ngudjolo Chui* case that a “mere appearance of a conflict of interest or impropriety is sufficient to require the recusal of a judicial or prosecutorial figure, irrespective of whether actual bias has been demonstrated”.³¹

24. The Arcadia Foundation also submits that the Prosecutor failed to disclose any potential conflicts of interest at the earliest opportunity and to recuse himself, despite “the presence of such an apparent conflict of interest”.³² Referring to article 54(1)(a) of the Statute and the ICC Code of Conduct for Counsel,³³ it contends that this constitutes a breach of “professional ethical standards”,³⁴ as well as of his “moral and ethical responsibility”.³⁵

²⁶ [Request](#), p. 4.

²⁷ [Request](#), p. 1.

²⁸ [Request](#), p. 2.

²⁹ [Request](#), p. 2.

³⁰ [Request](#), p. 2 (emphasis in original omitted).

³¹ [Request](#), pp. 2-3.

³² [Request](#), p. 3.

³³ [Request](#), p. 2.

³⁴ [Request](#), p. 2.

³⁵ [Request](#), p. 3.

25. Together with the Request, the Arcadia Foundation submits the following two documents: the Arcadia Foundation’s Complaint Addressed to the Office of the Independent Counsel for Ethical Affairs;³⁶ and the Arcadia Foundation’s Request Addressed to the Prosecutor.³⁷

26. The Arcadia Foundation also submits the following subsidiary requests: (i) the “immediate recusal of the Prosecutor” from all proceedings related to the Venezuela Situation; (ii) the appointment of “a new, independent [p]rosecutor to handle the [Situation]”; (iii) an investigation to ascertain “whether the Prosecutor’s failure to disclose the conflict of interest constitutes a breach of ethical duties under the ICC Code of Conduct”; and (iv) a “public statement” from the Court, “in order to restore public confidence in its impartiality”.³⁸

B. Arcadia Foundation’s Submissions of 18 November 2024: Additional Clarifications and Clarification of Legal Reference in the Request

27. In its submissions of 18 November 2024, the Arcadia Foundation provides clarifications as to the two documents which were previously submitted as annexes to the Request and makes additional submissions.³⁹ In particular, the Arcadia Foundation argues that it expects formal responses from the Office of the Independent Counsel for Ethical Affairs and the Office of the Prosecutor to the two aforementioned documents.⁴⁰ It submits that the Arcadia Foundation’s Request Addressed to the Prosecutor is “intrinsically linked” to the Request, as the Prosecutor’s “failure to act [*proprio motu*]” in the circumstances of the present situation “raises substantial questions regarding impartiality”.⁴¹ The Arcadia Foundation clarifies that the applicable provision is article 54(3)(f) of the Statute, “which specifically endows the Prosecutor with the authority to take all necessary actions to preserve evidence and to protect persons at

³⁶ [Arcadia Foundation’s Complaint Addressed to the Office of the Independent Counsel for Ethical Affairs](#).

³⁷ [Arcadia Foundation’s Request Addressed to the Prosecutor](#).

³⁸ [Request](#), p. 4.

³⁹ [Arcadia Foundation’s Submissions of 18 November 2024](#), with [Additional Clarifications](#) and [Clarification of Legal Reference in the Request](#).

⁴⁰ [Additional Clarifications](#), p. 1.

⁴¹ [Additional Clarifications](#), p. 1.

risk due to their engagement with the Court”, and submits that “the Prosecutor’s inaction in the face of credible evidence constitutes a severe lapse in his duties”.⁴²

28. The Arcadia Foundation also makes the following two additional requests: (i) that the Appeals Chamber reviews the Prosecutor’s inaction in relation to its request for recusal directed to the Prosecutor “as part of a broader assessment of the ICC’s ethical and procedural standards”;⁴³ and (ii) that the Appeals Chamber reviews the Registry’s failure to forward its formal complaint to the Office of the Independent Counsel for Ethical Affairs, “given its implications for the ICC’s adherence to established ethical standards and procedural protocols”.⁴⁴

C. OPCV’s Observations

29. The OPCV submits that, given its obligation under regulation 81(4) of the Regulations of the Court (hereinafter: “Regulations”) to assist the victims in the Venezuela Situation, its presentation of victims’ views and concerns with respect to the Request at this stage of the proceedings is justified.⁴⁵ In this regard, it states that “[s]ince 2019, the [OPCV] has been providing ‘support and assistance’ directly to Victims of the Situation and to their legal representatives”, and that it is also in contact and cooperation with all the “major NGOs supporting Victims”, including Venezuelan NGOs.⁴⁶

30. The OPCV notes that since the filing of the Request, it has received “a number of communications” from victims expressing their views and “concerns about a potential conflict of interest of the Prosecutor”, which “have become a significant source of anxiety”.⁴⁷ It argues that any decision on the Request is “of ‘general importance and applicability’, goes to matters of impunity and accountability of interest to the Victims”, and as such, the issues raised in the Request “directly and fundamentally” affects the victims’ interests.⁴⁸

⁴² [Clarification of Legal Reference in the Request](#), p. 1.

⁴³ [Additional Clarifications](#), pp. 1-2.

⁴⁴ [Additional Clarifications](#), p. 2.

⁴⁵ [OPCV’s Observations](#), para. 19.

⁴⁶ [OPCV’s Observations](#), para. 19.

⁴⁷ [OPCV’s Observations](#), para. 20.

⁴⁸ [OPCV’s Observations](#), paras 22, 27.

31. The OPCV also submits that the potential conflict of interest may undermine “the integrity of the proceedings” and the victims’ rights to expeditious and fair proceedings.⁴⁹ Noting “the lack of visible progress in the investigation and the Prosecutor’s continued emphasis on pursuing a ‘positive complementarity’ track”,⁵⁰ and the fact that victims have been waiting for justice for a long time, it contends that “any measure taken” in relation to the Request should not result in halting or delaying the Prosecutor’s investigations in the Venezuela Situation.⁵¹

D. Prosecutor’s Submissions

32. The Prosecutor requests that the Request be dismissed *in limine* as inadmissible.⁵² He mainly argues that the Arcadia Foundation lacks standing to request disqualification of the Prosecutor under article 42(8) of the Statute, which expressly confines standing to “the person being investigated or prosecuted”.⁵³ Further, he avers that article 42(7) of the Statute provides for the Prosecutor to be disqualified only “from a case”, and that at this stage of the Venezuela Situation there is no “case” from which the Prosecutor could be disqualified.⁵⁴ In that context, the Prosecutor submits that the Request is “out of time, not having been submitted ‘as soon as there is knowledge of the grounds on which it is based’ in compliance with rule 34(2)” of the Rules.⁵⁵

33. Notwithstanding the inadmissibility of the Request, the Prosecutor provides written submissions on the merits of the Request “in the interests of transparency”.⁵⁶ He focuses on two main sets of arguments: that there is no “personal interest” within the meaning of rule 34(1)(a) of the Rules, as the sibling-in-law relationship falls outside the scope of the disqualification provision listed therein;⁵⁷ and that, in any event, “no fair-minded and informed observer would conclude that there is a real possibility of bias”.⁵⁸

⁴⁹ [OPCV’s Observations](#), paras 2, 22; *see also* paras 19-30, 40.

⁵⁰ [OPCV’s Observations](#), para. 3; *see also* paras 31-34.

⁵¹ [OPCV’s Observations](#), para. 2; *see also* paras 22, 27-28, 30, 40.

⁵² [Prosecutor’s Submissions](#), paras 1, 27, 38.

⁵³ [Prosecutor’s Submissions](#), paras 1, 27-35, 38.

⁵⁴ [Prosecutor’s Submissions](#), paras 1, 36, 38.

⁵⁵ [Prosecutor’s Submissions](#), paras 1, 37-38.

⁵⁶ [Prosecutor’s Submissions](#), para. 2; *see also* paras 39-55.

⁵⁷ [Prosecutor’s Submissions](#), paras 2, 44-53.

⁵⁸ [Prosecutor’s Submissions](#), paras 2, 54-55.

34. As regards the alleged bias, the Prosecutor argues, *inter alia*, that: (i) there is a presumption of impartiality;⁵⁹ (ii) Ms Venkateswari Alagendra (hereinafter: “Ms Alagendra”) does not reside with the Prosecutor, is not part of his household, and ordinarily resides in a different country, nor do they share a common financial interest;⁶⁰ (iii) there has been no direct interaction between the Prosecutor and Ms Alagendra relevant to the situation;⁶¹ (iv) the Venezuela Situation is one of 17 situations currently under investigation, and is “led by the Head of the unified team under the direct supervision of a Deputy Prosecutor”;⁶² (v) Ms Alagendra is only one among a team of lawyers representing the State;⁶³ (vi) “the nature, degree and intensity of the involvement of a legal representative of a State in a situation is wholly different and less intense than that of a legal representative of a suspect or [a]ccused in a case”;⁶⁴ (vii) the Prosecutor “has not changed its position in any way since Ms Alagendra’s appointment” – on the contrary, he opposed in full Venezuela’s appeal in the article 18 proceedings;⁶⁵ (viii) investigations in the Venezuela Situation are ongoing, as described in confidential information contained in the submission,⁶⁶ refuting any allegations that the Prosecutor has changed his position or delayed investigations;⁶⁷ (ix) no party or participant raised any concerns either during the hearings or thereafter;⁶⁸ and that (x) “granting the Request could have undesirable consequences for the integrity of the legal system”.⁶⁹

35. In particular, the Prosecutor avers that he continues to investigate the Venezuela Situation “independently, impartially - and actively”.⁷⁰ In this regard, addressing the concerns raised by the OPCV concerning the prioritisation of “positive complementarity” in the Venezuela Situation,⁷¹ the Prosecutor emphasises that “complementarity efforts and active investigations in the Venezuela [S]ituation have

⁵⁹ [Prosecutor’s Submissions](#), para. 54(a).

⁶⁰ [Prosecutor’s Submissions](#), para. 54(c).

⁶¹ [Prosecutor’s Submissions](#), para. 54(d).

⁶² [Prosecutor’s Submissions](#), para. 54(e).

⁶³ [Prosecutor’s Submissions](#), para. 54(f).

⁶⁴ [Prosecutor’s Submissions](#), para. 54(g).

⁶⁵ [Prosecutor’s Submissions](#), para. 54(h).

⁶⁶ [Prosecutor’s Submissions](#), para. 54(i), referring to paras 23-26; see in particular para. 25.

⁶⁷ [Prosecutor’s Submissions](#), para. 54(h), (i).

⁶⁸ [Prosecutor’s Submissions](#), para. 54(j).

⁶⁹ [Prosecutor’s Submissions](#), para. 54(k).

⁷⁰ [Prosecutor’s Submissions](#), para. 2.

⁷¹ See [OPCV’s Observations](#), para. 3; see also paras 31-34.

never been planned as consecutive actions, but are concurrent activities”, and that “[i]nvestigations have been maturing and progressing since authorisation was granted by the judges of the [Court]”.⁷² The Prosecutor provided confidential information concerning the progress in the ongoing investigation into the Venezuela Situation.⁷³

E. Reply

36. In the Reply, the Applicants⁷⁴ provide their submissions on, *inter alia*, the following issues: (i) the “interpretation of article 42(8) of the Statute and the question of standing”, in light of article 68(3) of the Statute, the “Statute’s broader principles of fairness, transparency, and victim participation” and the “Court’s procedural engagement” of Mr Robert Carmona-Borja;⁷⁵ (ii) the “imperative of [b]road interpretation” of “case” within the meaning of article 42(7) of the Statute, on the basis of “multilingual and systematic interpretation” of the provision;⁷⁶ (iii) the “timeliness” of the Request, providing that “the moment of discovery” for the Applicants was 6 September 2024 by a media article concerning the familial connection between the Prosecutor and Ms Alagendra;⁷⁷ (iv) the interpretation of “close family relationship” within the meaning of rule 34(1)(a) of the Rules;⁷⁸ and (v) the impact on victims’ rights and judicial integrity.⁷⁹ In addition, the Applicants raise the issue of the past professional relationship between the Prosecutor and Ms Alagendra in previous cases before the Court.⁸⁰

37. The Applicants also submit the following additional requests before the Appeals Chamber. They request the Appeals Chamber to, *inter alia*: (i) “recommend the Presidency the immediate appointment of an [*ad hoc*] Deputy Prosecutor pursuant to [r]ule 11 and [a]rticle 42(2) of the [Statute]”; (ii) “declare as revoked the participation of [...] [Ms Alagendra] in any capacity as counsel or legal representative in the [Venezuela Situation]”; (iii) “recommend the establishment of interim mechanisms

⁷² [Prosecutor’s Submissions](#), para. 24.

⁷³ [Prosecutor’s Submissions](#), para. 25.

⁷⁴ In the Reply, Mr Robert Carmona-Borja explicitly requests to be considered a joint applicant together with the Arcadia Foundation in the Request. *See* [Reply](#), p. 10, para. 145(12).

⁷⁵ [Reply](#), paras 22-40.

⁷⁶ [Reply](#), paras 41-45.

⁷⁷ [Reply](#), paras 46-55.

⁷⁸ [Reply](#), paras 56-123.

⁷⁹ [Reply](#), paras 124-142.

⁸⁰ [Reply](#), paras 98-108.

under the supervision of the *ad hoc* Deputy Prosecutor to oversee ongoing investigative actions”; (iv) “pre-emptively declare inadmissible any future attempt by the Venezuelan regime or its representatives to exploit the recusation proceedings as a means to reverse, delay or undermine the progress of the [Venezuela Situation]”; and (v) impose disciplinary sanctions on the Prosecutor.⁸¹

F. Prosecutor’s Request to File a Sur-Reply

38. While maintaining that the Request should be dismissed *in limine* because of the Applicants’ lack of standing, the Prosecutor requests leave to file a sur-reply addressing three specific issues, “if the Appeals Chamber intends to address the merits of the Request”.⁸²

39. The Prosecutor submits that, although “the [Regulations] do not specifically permit ‘sur-replies’”, a “sur-reply”, limited to the specific issues identified, is justified on this occasion, because the issues identified, which were not pleaded in the Request, are “new issues” that could not have been reasonably anticipated in his written submissions on the Request.⁸³ He contends in this regard that “[c]onsidering the nature of the relief sought, it is highly prejudicial for new allegations to be adduced in a Reply, if the Prosecutor is not able to respond to them”.⁸⁴ Further, the Prosecutor submits that “a limited sur-reply is necessary for the adjudication of the substantive issues”, as “significant aspects of the [...] Reply are plainly founded on factual errors, which ought not to remain on the record or form the basis for any determination”.⁸⁵

III. PRELIMINARY ISSUES

A. Admissibility of the Reply

40. Regulation 36 of the Regulations sets out the requirements related to the format of documents and calculation of page limits of documents filed with the Registry. In particular, regulation 36(3) of the Regulations sets forth the requirements concerning the line spacing and the average word limit per page. Furthermore, the Appeals Chamber recalls regulation 37(1) of the Regulations which provides that “[a] document

⁸¹ [Reply](#), para. 145.

⁸² [Prosecutor’s Request for Leave to File a Sur-Reply](#), paras 4, 7.

⁸³ [Prosecutor’s Request for Leave to File a Sur-Reply](#), para. 5.

⁸⁴ [Prosecutor’s Request for Leave to File a Sur-Reply](#), para. 5.

⁸⁵ [Prosecutor’s Request for Leave to File a Sur-Reply](#), para. 6.

filed with the Registry shall not exceed 20 pages, unless otherwise [...] ordered by the Chamber”. Regulation 37(2) of the Regulations states that the “Chamber may, at the request of a participant, extend the page limit in exceptional circumstances”. In previous cases, chambers of the Court, including the Appeals Chamber, have disregarded, and/or ordered the re-filing of submissions when the relevant documents were not in compliance with the above requirements, including when they exceeded the page limit.⁸⁶

41. In the present proceedings, the Appeals Chamber recalls that in the Decision Granting Leave to File a Reply, it instructed the Applicants that the reply “shall be filed by 20 December 2024 and shall not exceed 10 pages”.⁸⁷ However, on 19 December 2024, the Applicants submitted a document containing 38 pages. The Appeals Chamber, instead of dismissing the Reply *in limine* already at that stage for the Applicants’ failure to adhere to the aforesaid instructions, provided the Applicants with an opportunity to amend and re-submit their Reply in compliance with the 10-page limit by 20 December 2024.⁸⁸

42. On 20 December 2024, the Applicants submitted a 10-page document. However, the Appeals Chamber observes that this document appears to be identical in substance, except for a few amendments, to the previous 38-page long document, and that only the font size was significantly reduced, resulting in a document that is barely legible.

43. The Appeals Chamber also notes that the Applicants did not request for an extension of page limit pursuant to regulation 37(2) of the Regulations. Rather, the Applicants disregarded the instructions of the Appeals Chamber set out in the Decision

⁸⁶ See, for example, Appeals Chamber, *Situation in the Republic of Kenya*, [Decision on the Request for Disqualification of the Prosecutor in the Investigation against Mr David Nyekorach-Matsanga](#), 11 July 2012, ICC-01/09-96-Conf-Exp (OA2) (a public redacted version was filed on 6 September 2012, ICC-01/09-96-Red (OA2)); Appeals Chamber, *The Prosecutor v. Laurent Gbagbo*, [Decision on Observations submitted by OPCV on behalf of victims](#), 5 October 2012, ICC-02/11-01/11-256 (OA2); Appeals Chamber, *The Prosecutor v. Laurent Koudou Gbagbo*, [Decision on requests related to page limits and reclassification of documents](#), 16 October 2012, ICC-02/11-01/11-266 (OA2). See also Pre-Trial Chamber I, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, [Decision on the Three Defences’ Requests Regarding the Prosecution’s Amended Charging Document](#), 25 August 2008, ICC-01/04-01/07-648, paras 1-2.

⁸⁷ [Decision Granting Leave to File a Reply](#), p. 3, para. 11.

⁸⁸ Email from Legal Officer of the Appeals Division to the Registry at 10:25.

Granting Leave to File a Reply and instead stated the following in their submissions of 19 and 20 December:

[W]hile [the Appeals Chamber] imposed a ten-page limit on my submissions, [...] this constraint lacked specific guidelines regarding font size or formatting. As such, I could have technically complied by reducing the font size to an unreadable level, ensuring the entirety of my arguments fit within the prescribed limits. However, I chose not to do so, out of respect for this Court and its mission of ensuring clarity and accessibility in judicial proceedings. My decision was guided by the belief that the gravity and complexity of the issues presented herein would compel the Chamber, upon reviewing them fully, to recognize the inherent need to lift such restrictions in the interest of justice.⁸⁹

44. In light of the above, the Appeals Chamber considers that the Reply, as submitted on 20 December 2024, amounts to an attempt to circumvent the page limit requirement set out by the Appeals Chamber. The Applicants should have complied with the page limit when given an opportunity to re-file their submission or requested an extension of page limit pursuant to regulation 37(2) of the Regulations.

45. Nonetheless, in the circumstances of the instant proceedings, the Appeals Chamber will exceptionally consider the submissions contained therein.

B. Prosecutor's Request to File a Sur-Reply and the Applicants' Urgent Motion concerning the Registry

46. The Appeals Chamber notes the Prosecutor's submission that he seeks to file a sur-reply only "if the Appeals Chamber intends to address the merits of the Request".⁹⁰

47. In light of the Appeals Chamber's determination on the admissibility of the Request,⁹¹ the Prosecutor's Request for Leave to File a Sur-Reply is rejected.

48. As a result, the Applicants' Urgent Motion concerning the Registry, alleging the Registry's failure to notify the Prosecutor's Request to File a Sur-Reply in a timely manner,⁹² has been rendered moot.

⁸⁹ [Reply](#), para. 18 (emphasis in original omitted); *see also* paras 4-20.

⁹⁰ [Prosecutor's Request for Leave to File a Sur-Reply](#), paras 4, 7.

⁹¹ *See* paragraphs 57-71 below.

⁹² *See* [Urgent Motion concerning the Registry](#), paras 1-5.

C. Admissibility of the OPCV's Observations

49. The Appeals Chamber notes that the OPCV filed its observations on the Request without seeking the Appeals Chamber's leave to do so. In this context, the Appeals Chamber notes that the Request triggered proceedings in relation to article 42(7) and (8) of the Statute and rule 34(2) and (3) of the Rules, which are *sui generis* in nature.⁹³ Accordingly, any party or participant that wishes to make filings not requested by the Appeals Chamber in disqualification proceedings should seek leave of the Appeals Chamber in this regard.⁹⁴

50. In the present circumstances, however, noting in particular the OPCV's argument that several issues arising from the Request directly affect the interest of victims,⁹⁵ the Appeals Chamber has decided to exceptionally consider the OPCV's Observations.

D. Request for Leave to Submit *Amicus Curiae* Observations

51. Un Mundo Sin Mordaza submits that it is “[c]oncerned about the repercussions that [the Request] may have on the process and, ultimately, on the rights of the victims”, and requests the Appeals Chamber's authorisation to submit, “as *amicus curiae*”, “unique and relevant information” relating to the Request which may assist the Appeals Chamber.⁹⁶

52. In addition, Un Mundo Sin Mordaza requests to be allowed to have access to the Request.⁹⁷ In this regard, the Appeals Chamber notes that the Request is public and therefore accessible.

53. In light of the Appeals Chamber's determination on the admissibility of the Request,⁹⁸ this request is dismissed as moot.

⁹³ See, in this sense, Plenary of Judges, *Situation in Ukraine*, [Reasons for the Decision on the 'Application for the Disqualification of Judges' filed on 31 October 2024 \(ICC-01/22-92-Anx\)](#), 22 November 2024, ICC-01/22-107 (hereinafter: “*Ukraine Disqualification Decision*”), para. 22.

⁹⁴ See also, in this sense, [Request to appear before the Appeals Chamber pursuant to regulation 81\(4\) of the Regulations of the Court](#), 7 July 2023, ICC-02/18-47; Appeals Chamber, [Decision on the OPCV's 'Request to appear before the Appeals Chamber pursuant to regulation 81\(4\) of the Regulations of the Court'](#), 21 July 2023, ICC-02/18-54 (OA), para. 7.

⁹⁵ [OPCV's Observations](#), paras 22, 27; see also paras 19-21, 23-26.

⁹⁶ [Request for Leave to Submit Amicus Curiae Observations](#), paras 3, 11.

⁹⁷ [Request for Leave to Submit Amicus Curiae Observations](#), para. 12.

⁹⁸ See paragraphs 57-71 below.

E. Additional Clarifications and the Applicants' Request concerning the Registry

54. The Appeals Chamber notes that, in the Additional Clarifications, the Arcadia Foundation requests the Appeals Chamber to review: the Prosecutor's inaction in relation to the Arcadia Foundation's Request Addressed to the Prosecutor ;⁹⁹ and the Registry's failure to forward the Arcadia Foundation's Complaint Addressed to the Office of the Independent Counsel for Ethical Affairs.¹⁰⁰

55. The Appeals Chamber also notes that, in the Applicants' Request concerning the Registry, the Applicants allege the failure of the Registry in relation to "vetting appointments and processing complaints",¹⁰¹ and request that the Appeals Chamber "undertake an expedited judicial review of the ICC Registry's conduct concerning its obligations" under the Statute, Rules and the Regulations of the Registry.¹⁰² They further request that the Appeals Chamber order, *inter alia*, (i) the "immediate suspension" of Ms Alagendra as counsel "from representing any person under investigation or accused in cases where Chief Prosecutor Karim Khan serves as the ICC Prosecutor"; and (ii) Ms Alagendra to "be permanently disqualified from serving as counsel in the respective case and immediately referred to the Office of the Independent Counsel for Ethical Affairs of the ICC for disciplinary proceedings".¹⁰³

56. The Appeals Chamber considers that the aforementioned requests fall outside of the scope of the Appeals Chamber's review in the present proceedings. Accordingly, the Appeals Chamber dismisses these requests.

IV. ADMISSIBILITY OF THE REQUEST

A. Determination by the majority of the Appeals Chamber

57. The Request seeks the Prosecutor's "recusal" under article 41(2) of the Statute.¹⁰⁴ However, the Appeals Chamber notes that, as the Applicants appear to acknowledge in their Reply,¹⁰⁵ this provision relates to the disqualification of judges and is thus

⁹⁹ [Additional Clarifications](#), pp. 1-2.

¹⁰⁰ [Additional Clarifications](#), p. 2.

¹⁰¹ Applicants' Request concerning the Registry, para. 101.

¹⁰² Applicants' Request concerning the Registry, para. 88.

¹⁰³ Applicants' Request concerning the Registry, paras 102-103.

¹⁰⁴ [Request](#), p. 2.

¹⁰⁵ See [Reply](#), paras 138-142.

inapplicable in the present proceedings. The Appeals Chamber notes that the Statute and the Rules provide a specific procedure for raising and addressing requests for disqualification of the Prosecutor or a Deputy Prosecutor.

58. Article 42(7) of the Statute explicitly prohibits the Prosecutor or a Deputy Prosecutor from participating “in any matter in which their impartiality might reasonably be doubted on any ground”. Pursuant to this provision, the Prosecutor or a Deputy Prosecutor “shall be disqualified from a *case* [...] if, *inter alia*, they have previously been involved in any capacity in that *case* before the Court or in a related criminal *case* at the national level involving the person being investigated or prosecuted”.¹⁰⁶ Rule 34 of the Rules further provides grounds that may give rise to disqualification of the Prosecutor or a Deputy Prosecutor, in addition to the grounds set out in article 42(7) of the Statute, which includes the “[p]ersonal interest in the case, including a spousal, parental or *other close family, personal or professional relationship* [...] with any of the parties”.¹⁰⁷

59. The Appeals Chamber notes that article 42(8) of the Statute provides that only “the person being investigated or prosecuted” may request the disqualification of the Prosecutor or a Deputy Prosecutor on any of the grounds set out in article 42(7) of the Statute, complemented by rule 34 of the Rules. The Appeals Chamber also notes that pursuant to article 42(7) of the Statute and rule 34(1)(a), (b) and (c) of the Rules, a request for disqualification can only be made in relation to a “case”. Any question as to the disqualification of the Prosecutor or a Deputy Prosecutor is decided by a majority of the Appeals Chamber, pursuant to article 42(8) of the Statute and rule 34(3) of the Rules.

60. From a plain reading of the above provisions, the Appeals Chamber considers that a request for disqualification of the Prosecutor is admissible if it fulfils the following two cumulative requirements: (i) it is submitted by “a person being investigated or prosecuted”; and (ii) it is submitted at a stage of the proceedings when there is a “case” before the Court.

¹⁰⁶ Emphasis added.

¹⁰⁷ Emphasis added.

61. In the present proceedings, the Appeals Chamber, by majority, Judge Luz del Carmen Ibáñez Carranza dissenting, considers that the Applicants lack standing to bring a request under article 42(8) of the Statute. This provision is unambiguous: a request for disqualification of the Prosecutor may only be made by the “person being investigated or prosecuted”.

62. In this respect, the Appeals Chamber, by majority, considers that previous decisions in the context of disqualification of judges provide assistance to its interpretation of the relevant provisions. In particular, in the *Katanga* case, the Panel of Judges addressed a request for disqualification of a judge filed by the legal representative of victims at the beginning of the reparations proceedings. The Panel of Judges found that the language of article 41(2)(b) of the Statute is “neither ambiguous nor unreasonable”,¹⁰⁸ and, as a result, the right to bring an application for the disqualification of a judge is “limited to” those indicated in the provision, namely “the Prosecutor and the person being investigated or prosecuted”, leaving no *lacuna* in the law which could call for further judicial interpretation.¹⁰⁹ The Appeals Chamber, by majority, also notes the Panel of Judges’ conclusion that “considering disqualification as an extraordinary remedy, [...] the explicit wording of the Statute should be interpreted strictly, particularly in the absence of any apparent mistake in drafting”.¹¹⁰

63. While it may appear that the Plenary of Judges adopted a broader reading of article 41(2) of the Statute in the *Lubanga* case and the *Situation in Ukraine*, the Appeals Chamber, by majority, notes that these two decisions concerned applicants who were a party to the relevant proceedings and circumstances that are distinct from the present proceedings. The Plenary of Judges, in the *Lubanga* case, permitted the “convicted and sentenced person” to bring a request for disqualification of a judge from

¹⁰⁸ Plenary of Judges, *The Prosecutor v. Germain Katanga*, [Decision of the Plenary of Judges on the Application of the Legal Representative for Victims for the disqualification of Judge Christine Van den Wyngaert from the case of *The Prosecutor v Germain Katanga*](#), 22 July 2014, ICC-01/04-01/07-3504-Anx (hereinafter: “*Katanga* Disqualification Decision”), para. 44.

¹⁰⁹ [Katanga Disqualification Decision](#), para. 44.

¹¹⁰ [Katanga Disqualification Decision](#), para. 45. See also C. Steains, “Situations that May Affect the Functioning of the Court”, in R.S. Lee (Ed.), *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence* (Transnational Publishers, Inc., 2001), p. 303 (“Also uncontroversial was the decision not to include the concept of the victim being able to make a request for disqualification (which had been originally contained in the Spain/Venezuela proposal) on the grounds that this notion was inconsistent with the Statute”).

a panel of judges for review of his sentence pursuant to article 110(3) of the Statute,¹¹¹ noting, *inter alia*, that “read as a whole, article 41(2) establishes this principle of impartiality, which should apply to *all phases of a case* before the Court”.¹¹² The Plenary of Judges, in the *Situation in Ukraine*, found that a State had standing to request the disqualification of judges in relation to article 87(7) proceedings.¹¹³ The Appeals Chamber notes that in that proceedings, Mongolia, as a State Party with cooperation obligations with the Court, was directly a party to litigation which could result in a finding of non-cooperation against it. Moreover, the challenged judges did not question the State’s standing.¹¹⁴ Therefore, the Appeals Chamber, by majority, considers that the aforementioned decisions of the Plenary of Judges do not affect its interpretation of article 42 of the Statute in the instant proceedings.

64. In light of the foregoing, the Appeals Chamber, by majority, Judge Luz del Carmen Ibáñez Carranza dissenting, considers that, since disqualification is an extraordinary remedy, the explicit wording of article 42 of the Statute should be interpreted strictly.¹¹⁵

65. Accordingly, the Appeals Chamber considers that a request for disqualification of the Prosecutor or a Deputy Prosecutor can only be made by “the person being investigated or prosecuted”. In the present proceedings, the Appeals Chamber notes that the Arcadia Foundation is not the “person being investigated or prosecuted”. Furthermore, as noted by the Prosecutor,¹¹⁶ the Arcadia Foundation does not claim to represent individuals being investigated in the Venezuela Situation, nor to have any link to the parties in the article 18 proceedings. The same applies to the person making submissions together and on behalf of the Arcadia Foundation, Mr Robert Carmona-Borjas. In addition, the Appeals Chamber notes that the victim application of

¹¹¹ Plenary of Judges, *The Prosecutor v. Thomas Lubanga Dyilo*, [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](#), dated 3 August 2015 and registered on 4 August 2015, ICC-01/04-01/06-3154-AnxI (hereinafter: “*Lubanga Disqualification Decision*”), para. 34.

¹¹² [Lubanga Disqualification Decision](#), para. 34 (emphasis added).

¹¹³ Plenary of Judges, *Situation in Ukraine*, [Reasons for the Decision on the ‘Application for the Disqualification of Judges’ filed on 31 October 2024 \(ICC-01/22-92-Anx\)](#), 22 November 2024, ICC-01/22-107 (hereinafter: “*Ukraine Disqualification Decision*”), para. 23.

¹¹⁴ [Ukraine Disqualification Decision](#), para. 23.

¹¹⁵ See in this sense [Katanga Disqualification Decision](#), paras 44-45.

¹¹⁶ [Prosecutor’s Submissions](#), para. 29.

Mr Robert Carmona-Borjas was processed by the Victims Participation and Reparations Section of the Registry in the context of a “situation” and not of a “case”.

66. In the view of the majority of the Appeals Chamber, contrary to the Applicants’ suggestion,¹¹⁷ the fact that article 42(8) of the Statute states that “[a]ny question as to the disqualification of the Prosecutor [...] shall be decided by the Appeals Chamber” - a wording that is also reflected in rule 34(3) of the Rules¹¹⁸ - does not affect the question of standing under article 42(8)(a) of the Statute. The wording “any question” in this provision does not confer standing on any person or organisation to raise questions relating to disqualification of the Prosecutor, as it needs to be read together with paragraph (a), which expressly limits those who can raise requests for disqualification of the Prosecutor or a Deputy Prosecutor to “the person being investigated or prosecuted”. The Applicants’ interpretation that they have standing would render article 42(8)(a) of the Statute futile. Such reading may broaden the scope of the provision to permit any observer of the proceedings to request the disqualification of the Prosecutor, and consequently, the provision that “[t]he person being investigated or prosecuted may at any time request the disqualification of the Prosecutor” would have no effective meaning.

67. The Appeals Chamber therefore finds that, pursuant to the terms of article 42(8)(a) of the Statute, the earliest point a disqualification request can be made is once an individual becomes aware that he or she is the subject of the Prosecutor’s investigations. Moreover, it is clear that from the wording of article 42(7) of the Statute and rule 34(1)(a), (b) and (c) of the Rules, a request for disqualification of the Prosecutor may be raised in the context of a “case”.¹¹⁹ At this stage of the proceedings, there is no “case” from which the Prosecutor could be disqualified. While the Request refers to “the case of *The Prosecutor v. Nicolás Maduro Moros*” and indicates that Ms Alagendra is a defence counsel representing Nicolás Maduro Moros, no such case exists before the Court.¹²⁰

¹¹⁷ See in particular [Reply](#), paras 30-32.

¹¹⁸ Rule 34(3) of the Rules provides that “any question relating to the disqualification of the Prosecutor [...] shall be decided by a majority of the judges of the Appeals Chamber”.

¹¹⁹ See also, for example, [Lubanga Disqualification Decision](#), para. 34.

¹²⁰ See also [Prosecutor’s Submissions](#), para. 36.

68. For the foregoing reasons, the Appeals Chamber, by majority, Judge Luz del Carmen Ibáñez Carranza dissenting, finds that the Request is inadmissible, because the Applicants lack standing and the relevant provision is inapplicable at this stage of the proceedings. The Request is therefore dismissed.

69. This notwithstanding, the Appeals Chamber, by majority, notes the submissions of the Prosecutor concerning the merits of the Request.¹²¹ In this context, the Appeals Chamber recalls that the Prosecutor is bound to exercise his or her functions impartially in accordance with article 45 of the Statute at any stage of the proceedings, and that he or she has a duty to request to be excused, under rule 35 of the Rules, if he or she has reason to believe that a ground for disqualification exists.¹²² In the present situation, in light of the Request and the views and concerns of the victims with respect to the matter at hand, the Appeals Chamber invites the Prosecutor to vigilantly and continuously uphold his aforementioned statutory obligations, and take any necessary measures to preserve his impartiality and ultimately the integrity of the proceedings in order to remain in compliance with his duties.

70. In the same vein, the Appeals Chamber, by majority, notes that should a warrant of arrest or a summon be issued against a person in the present situation, the person being investigated or prosecuted may, at any time, request the disqualification of the Prosecutor from the case against him or her as soon as there is knowledge of the grounds, including those raised in the Request or any other grounds specified in article 42 of the Statute and rule 34 of the Rules.

71. With respect to the Applicants' subsidiary requests sought in the Request and the additional requests submitted in the Reply,¹²³ the Appeals Chamber finds that the requests that related to the merits of the Request have become moot as a result of the dismissal of the Request, and that the remaining requests fall outside the scope of the

¹²¹ [Prosecutor's Submissions](#), paras 54-55.

¹²² The Appeals Chamber notes that article 42(6) of the Statute requires that "[t]he Presidency may excuse the Prosecutor or a Deputy Prosecutor, at his or her request, from acting in a particular case", and that rule 35 of the Rules instructs that the Prosecutor, when he or she has reason to believe that a ground for disqualification exists in relation to him or her, "*shall* make a request to be excused and shall not wait for a request for disqualification to be made [...]" (emphasis added).

¹²³ See [Request](#), p. 4; [Reply](#), para. 145.

Appeals Chamber's review in the present proceedings. Accordingly, they are dismissed.

B. Dissenting opinion of Judge Luz del Carmen Ibáñez Carranza

72. Judge Luz del Carmen Ibáñez Carranza is of the view that the Request is admissible. She would have considered the merits of the Request and, for the reasons below, rejected it.

73. As to the question of standing, Judge Luz del Carmen Ibáñez Carranza recalls that, pursuant to article 68(3) of the Statute, the Appeals Chamber “shall permit [the victims’] views and concerns to be presented and considered” where their personal interests are affected. In line with this provision and the Statute’s victim-centred approach, she considers that victims have the right to express views and concerns at any stage of the proceedings when their interests are affected. This is so, particularly in the situation at hand, given that the proceedings are at the investigations stage and as such there is no “person being investigated or prosecuted” who could raise the matter. Considering the “fundamental importance of impartiality to proceedings before the Court”,¹²⁴ victims have an interest in and must have an opportunity to submit a request under article 42 of the Statute in order to present their views and concerns with respect to the impartiality of the Prosecutor. Accordingly, Judge Luz del Carmen Ibáñez Carranza considers that the Applicants are entitled to bring the Request before the Appeals Chamber. Noting that the *chapeau* of article 42(8) of the Statute and rule 34(3) of the Rules state that “[a]ny question as to the disqualification of the Prosecutor or a Deputy Prosecutor” shall be decided by the Appeals Chamber, and considering further the nature and possible impact on the proceedings of the potential conflict of interest alleged, Judge Luz del Carmen Ibáñez would have found it appropriate for the Appeals Chamber to address the merits of the Request.

74. With regard to the standard to assess whether disqualification of the Prosecutor is warranted, Judge Luz del Carmen Ibáñez Carranza recalls that the question of impartiality should be viewed from the objective perspective of whether a fair-minded and informed observer, having considered all the facts and circumstances, would

¹²⁴ [Ukraine Disqualification Decision](#), para. 23.

reasonably apprehend bias in the Prosecutor.¹²⁵ In forming a view regarding the appearance of bias, a fair-minded observer should take into account the entire context of the case.¹²⁶ The test is concerned not only with whether a reasonable observer could apprehend bias, but whether any such apprehension was objectively reasonable.¹²⁷ Although some of the aforementioned findings were made in the context of the Plenary of Judges' decisions on requests for disqualification of judges, Judge Luz del Carmen Ibáñez Carranza considers that the above considerations are also applicable when assessing a request for disqualification of the Prosecutor. She further recalls that the presumption of impartiality that applies to judges in relation to a request for disqualification of a judge is equally applicable to the Prosecutor.¹²⁸

75. Judge Luz del Carmen Ibáñez Carranza notes the Applicants' submission that the relationship between the Prosecutor and Ms Alagendra falls within the meaning of "close family, personal or professional relationship" and as such is a ground for disqualification.¹²⁹ However, in accordance with the aforementioned test, and having considered the Prosecutor's submissions - including those relating to his contacts with Ms Alagendra, and to the conduct of the investigations and proceedings in the Venezuela Situation, in particular in relation to the ongoing progress of the investigations - Judge Luz del Carmen Ibáñez Carranza would have found that the Applicants have provided no indication which would lead a reasonable observer to conclude, pursuant to rule 34(1)(a) of the Rules, that the Prosecutor has in some way a "personal interest" in the investigation in the Venezuela Situation due to his family

¹²⁵ Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, [Decision on the requests for the Disqualification of the Prosecutor, the Deputy Prosecutor and the entire OTP staff](#), 22 August 2014, ICC-01/05-01/13-648-Conf-Exp (OA) (a public redacted version was filed on 21 October 2014, ICC-01/05-01/13-648-Red3 (OA)) (hereinafter: "*Bemba et al.* Disqualification Decision"), para. 24, referring to Appeals Chamber, *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, [Decision on the Request for Disqualification of the Prosecutor](#), 12 June 2012, ICC-01/11-01/11-175 (OA3), para. 20. See also [Ukraine Disqualification Decision](#), para. 20.

¹²⁶ See [Ukraine Disqualification Decision](#), para. 20.

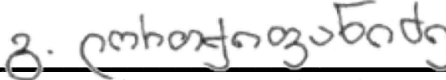
¹²⁷ See Plenary of Judges, *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, [Decision of the plenary of the judges on the "Defence Request for the Disqualification of a Judge"](#), 5 June 2012, ICC-02/05-03/09-344-Anx, para. 13.


¹²⁸ [Bemba et al. Disqualification Decision](#), paras 25-26, referring to, *inter alia*, Plenary of Judges, *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, [Decision of the Plenary of Judges on the Defence Applications for the Disqualification of Judge Cuno Tarfusser from the case of The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido](#), 23 June 2014, ICC-01/05-01/13-511-Anx, para. 18. See also [Ukraine Disqualification Decision](#), para. 20.

¹²⁹ [Request](#), p. 2.

relationship with Ms Alagendra or would otherwise not carry out his duties with the required impartiality. She would have therefore concluded that, on the basis of the facts and circumstances of the Venezuela Situation, no reasonable observer properly informed would apprehend bias in the present case warranting the disqualification of the Prosecutor. In light of the above, Judge Luz del Carmen Ibáñez Carranza would have rejected the Request.


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


Judge Gocha Lordkipanidze
Presiding Judge


Judge Tomoko Akane


Judge Luz del Carmen Ibáñez
Carranza


Judge Solomy Balungi Bossa


Judge Erdenebalsuren Damdin

Dated this 10th day of February 2025

At The Hague, The Netherlands