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**No. ICC-02/18
Date: 1 August 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 the Appeals Chamber to Conduct an Ex Officio
Review of the Prosecutor’s Conflict of Interest in the Venezuela I Situation”**

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
Mr Robert Carmona-Borjas

The Appeals Chamber of the International Criminal Court,

Having before it the “Request for the Appeals Chamber to Conduct an Ex Officio Review of the Prosecutor’s Conflict of Interest in the Venezuela I Situation” of 8 April 2025 (ICC-02/18-110-Anx),

Renders the following

DECISION

1. The Appeals Chamber finds that there are reasons to believe that a ground for disqualification of the Prosecutor exists and that he is under a duty, pursuant to rule 35 of the Rules of Procedure and Evidence, to request to be excused from the *Venezuela* Situation; and
2. The Appeals Chamber instructs the Prosecutor to comply with such duty within three weeks.

REASONS

I. PROCEDURAL HISTORY

1. On 27 September 2018, the former Prosecutor received a referral under article 14 of the Rome Statute (hereinafter: “Statute”), from a group of States Parties to the Statute, for investigation of alleged crimes against humanity committed in the Bolivarian Republic of Venezuela (hereinafter: “Venezuela”) since 12 February 2014.¹
2. On 4 November 2022, the current Prosecutor, Mr Karim A. A. Khan, following a deferral request by Venezuela pursuant to article 18(2) of the Statute,² filed before Pre-Trial Chamber I (hereinafter: “Pre-Trial Chamber”) a request to authorise the

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 [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.

resumption of his investigation into the *Situation in Venezuela I* (hereinafter: “*Venezuela Situation*”).³

3. On 27 June 2023, the Pre-Trial Chamber rendered its decision authorising the Prosecutor to resume the investigation into the *Venezuela Situation*, pursuant to article 18(2) of the Statute (hereinafter: “Article 18(2) Decision”).⁴

4. On 7 and 8 November 2023, the Appeals Chamber held a hearing in the appeal of Venezuela against the Article 18(2) Decision,⁵ in which Ms Venkateswari Alagendra (hereinafter: “Ms Alagendra”) was present and made oral submissions as one member of the team of lawyers representing Venezuela.⁶

5. On 1 March 2024, the Appeals Chamber issued its judgment in the appeal of Venezuela, confirming the Article 18(2) Decision (hereinafter: “Article 18(2) Judgment”).⁷

6. 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 and Mr Robert Carmona-Borjas (hereinafter: jointly, “Applicants”), alleging the Prosecutor’s conflict of interest in the *Venezuela Situation* arising from the family and professional relationship between him and his sister-in-law, Ms Alagendra (hereinafter: “12 November 2024 Request”).⁸

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 [Transcript of 7 November 2023](#), ICC-02/18-T-001-Red2-ENG (hereinafter: “T-1”); [Transcript of 8 November 2023](#), ICC-02/18-T-002-ENG (hereinafter: “T-2”). See [Scheduling order for a hearing 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”](#), 12 October 2023, ICC-02/18-65; [Directions on the conduct of the hearing](#), 17 October 2023, ICC-02/18-68.

⁶ [T-1](#), p. 2, line 11; [T-2](#), p. 55, line 22 to p. 61, line 13.

⁷ [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.

⁸ [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 Alagendra and ICC Prosecutor Karim Khan”); [Annex II](#) (“Request for Recusal of the Prosecutor of the International Criminal Court in the Case of Venezuela I Due to Conflict of Interest”);

7. On 10 February 2025, the Appeals Chamber, by majority, Judge Luz del Carmen Ibáñez Carranza dissenting, issued a decision dismissing the 12 November 2024 Request (hereinafter: “10 February 2025 Decision”).⁹

8. On 8 April 2025, the Registry transmitted to the Appeals Chamber the “Request for the Appeals Chamber to Conduct an Ex Officio Review of the Prosecutor’s Conflict of Interest in the Venezuela I Situation”, submitted by the Applicants (hereinafter: “Request”).¹⁰

9. On 15 April 2025, pursuant to the Appeals Chamber’s order of 9 April 2025,¹¹ the Prosecutor and the OPCV filed their respective written submissions on the Request (hereinafter: “Response” and “OPCV’s Observations”, respectively).¹²

[Annex III](#) (“Urgent Call for Preventive Action Against Ongoing Crimes Against Humanity in Venezuela”). See also [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”](#), 18 November 2024, 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”); [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”); [Registry Transmission of “Urgent Motion to Address Procedural Irregularities”](#), 7 February 2025, ICC-02/18-108, with public [Annex](#) (“Urgent Motion to Address Procedural Irregularities”); [Registry Transmission of “Request to Address Procedural Failures and Ethical Oversight by the ICC Registry in the Context of the Venezuela I Situation”](#), 7 February 2025, 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*”).

⁹ [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, para. 68.

¹⁰ [Registry transmission of “Judicial Integrity in Peril - Request for the Appeals Chamber to Conduct an Ex Officio Review of the Prosecutor’s Conflict of Interest in the Venezuela I Situation”](#), dated 8 April 2025 and registered on 9 April 2025, ICC-02/18-110, with public [Annex](#) (“Judicial Integrity in Peril - Request for the Appeals Chamber to Conduct an Ex Officio Review of the Prosecutor’s Conflict of Interest in the Venezuela I Situation”), ICC-02/18-110-Anx. The Appeals Chamber notes that by emails of 10 April 2025, sent at 15:53, and 14 April 2025, sent at 14:30, the Registry transmitted to the Chamber emails sent to the Court Management Section by Mr Robert Carmona-Borjas on 9 April 2025, at 19:04, and on 11 April 2025 at 16:59, submitting documents entitled “Urgent Petition to Rectify Erroneous Exclusion of Individual Representation in Document ICC-02/18-110 PT” and “Urgent Request for Reconsideration and Correction of Representation Error in Document ICC-02/18-110 PT, to Safeguard Procedural Integrity and Public Perception of ICC Proceedings”, by which Mr Carmona-Borjas reiterates that its submissions have been made in his individual capacity and on behalf of the Arcadia Foundation and claims that this has not been accurately reflected in the Registry’s filing. Noting that the information about the applicants is sufficiently clear, the Appeals Chamber did not consider it necessary to file the documents on the record.

¹¹ [Order on the filing of submissions](#), ICC-02/18-111.

¹² [Prosecutor’s Submissions on the “Request for the Appeals Chamber to Conduct an Ex Officio Review of the Prosecutor’s Conflict of Interest in the Venezuela I Situation”](#), ICC-02/18-112; [OPCV Submissions on the “Request for the Appeals Chamber to Conduct an Ex Officio Review of the Prosecutor’s Conflict of Interest in the Venezuela I Situation”](#) ICC-02/18-110-Anx, ICC-02/18-113.

II. PRELIMINARY ISSUES

10. At the outset, the Appeals Chamber notes that the Applicants, once again,¹³ disregarded regulations 36(3) and 37(1) of the Regulations of the Court (hereinafter: “Regulations”), which unequivocally provide for the Court’s rules regarding the format and page limit for documents to be properly submitted and considered by the Court. The Appeals Chamber emphasises that all parties and participants are expected to comply with the requirements stipulated in the Court’s legal texts and non-compliance with these requirements may entail, *inter alia*, dismissal of documents. The Appeals Chamber further recalls that pursuant to regulation 29(1) of the Regulations, the Chamber may issue an order in the interests of justice in cases of non-compliance with the provisions of any regulations. In the present case, the Appeals Chamber will exceptionally consider the Request but cautions the Applicants to exercise more diligence in this regard when filing documents before the Court.

11. With respect to the Prosecutor’s Response, the Appeals Chamber notes that, while it had requested submissions “particularly [with respect to] the merits of the request”,¹⁴ the Prosecutor makes a mere reference to his arguments developed in another filing submitted in previous proceedings.¹⁵ The Appeals Chamber notes that it has previously found that making mere references to arguments developed in other filings is inappropriate and impermissible.¹⁶ In the present circumstances, however, in order to prevent prejudice to the Prosecutor’s rights, the Appeals Chamber will exceptionally consider the submissions of the Prosecutor on the alleged conflict of interest.

III. SUMMARY OF THE SUBMISSIONS

A. Applicants’ Submissions

12. The Applicants request “an [*ex officio*] review” of the alleged conflict of interest arising from the “familial, professional, and hierarchical relationship” between the

¹³ [10 February 2025 Decision](#), paras 40-45.

¹⁴ [Order on the filing of submissions](#), ICC-02/18-111.

¹⁵ [Response](#), para. 10, referring to [Response to 27 September 2024 Request](#), paras 2-3, 54-55, 59.

¹⁶ See, for example, *The Prosecutor v. Thomas Lubanga Dyilo*, [Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled “Second Decision on the Prosecution Request and Amended Requests for Redactions under Rule 81”](#), 14 December 2006, ICC-01/04-01/06-774 (OA6), para. 29; *The Prosecutor v. Bosco Ntaganda*, [Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled ‘Judgment’](#), 30 March 2021, ICC-01/04-02/06-2666-Red (A A2), para. 354.

Prosecutor and Ms Alagendra which, in their view, compromises judicial impartiality and the legitimacy of the proceedings and requires the Prosecutor's recusal from the *Venezuela* Situation.¹⁷ They submit that the Appeals Chamber must immediately intervene on the basis of its "inherent" authority and responsibility "to uphold judicial integrity",¹⁸ established in the "internal regulatory framework" of the Court, as well as "international legal norms". Among other alleged applicable provisions, the Applicants refer to article 3 of the Court's Code of Judicial Ethics,¹⁹ rule 34(1)(a) of the Rules of Procedure and Evidence (hereinafter: "Rules"),²⁰ articles 21(1)(c) and 42(7) of the Statute,²¹ relevant jurisprudence of the European Court of Human Rights,²² and several provisions of the Venezuelan domestic legal framework.²³

13. According to the Applicants, the Appeals Chamber's procedural dismissal of their previous request in the 10 February 2025 Decision does not eliminate its "independent and affirmative duty" to address the Prosecutor's conflict of interest before it, nor does it alter or diminish "the factual substratum underpinning the existence of a significant conflict of interest".²⁴

14. Regarding the merits, the Applicants submit that it is "an undisputed fact" that the Prosecutor has "familial, professional, and hierarchical ties" with Ms Alagendra, who "actively represents the [g]overnment of Venezuela".²⁵ The Applicants submit that Ms Alagendra is the Prosecutor's sister-in-law,²⁶ and that there exists a "documented professional collaboration and established hierarchical dynamic" between the Prosecutor and Ms Alagendra.²⁷ The Applicants further argue that the documented professional history between the Prosecutor and Ms Alagendra "goes beyond incidental association" and that rather "it was a deliberate and structured working relationship, characterized by a coordinated approach to high-stakes legal defense strategies".²⁸ In

¹⁷ [Request](#), paras 1, 3, 13, 20, 26, 28, 33, 38, 46-48, 61, 57, 63, 70, 74, 82, 87, 89, 95-96, 98-114, 119, 131, 147.

¹⁸ [Request](#), paras 1-2, 5-8, 15, 18-19, 21-25, 29, 31, 57, 64, 70, 74, 76-77, 79, 81, 83, 85-87, 94, 116-117, 145, 148-149, 151-152.

¹⁹ [Request](#), paras 2, 9-15.

²⁰ [Request](#), paras 2, 15-22.

²¹ [Request](#), paras 2, 23-70.

²² [Request](#), paras 2, 71-86.

²³ [Request](#), paras 44-65.

²⁴ [Request](#), para. 18.

²⁵ [Request](#), paras 3, 13.

²⁶ [Request](#), paras 88-89.

²⁷ [Request](#), paras 26, 96-99.

²⁸ [Request](#), paras 100-101.

particular, the Applicants indicate that “[t]he most compelling examples of their professional association” before the Court include, the *Ruto and Sang* case in 2013 and the *Saif al-Islam Gaddafi* case in 2018-2019.²⁹

15. In addition, the Applicants claim that there is clear evidence of subordination between the Prosecutor and Ms Alagendra, particularly in the *Ruto and Sang* case where the Prosecutor was the lead counsel and Ms Alagendra was appointed as associate counsel by the current Prosecutor in his previous capacity.³⁰ In this context, the Applicants argue that the decision of Venezuela to engage the law firm employing Ms Alagendra, cannot reasonably be viewed as coincidental.³¹ Further, the Applicants underscore the “weight of incontrovertible evidence of shared professional and financial alignment in prior ICC cases” between the Prosecutor, his wife, and Ms Alagendra.³²

16. The Applicants allege that the ties described above raise “a tangible and undeniable conflict of interest” in the *Venezuela* Situation.³³ The Applicants further submit that the relationship between the Prosecutor and Ms Alagendra constitutes a “close family, personal or professional relationship, or a subordinate relationship” within the meaning of rule 34(1)(a) of the Rules, which “collectively and indivisibly establish[es], at the very least, an appearance of partiality” and “compromise[s] the possibility of impartial prosecutorial conduct” in the ongoing investigation in the *Venezuela* Situation.³⁴

B. Prosecutor’s Submissions

17. The Prosecutor submits that the Request should be dismissed *in limine*, as the Applicants attempt to relitigate and, in substance, request reconsideration of the 10 February 2025 Decision without identifying any new facts or circumstances regarding their standing or the merits of the alleged conflict of interest.³⁵ He also submits that the Applicants have failed to identify any lacuna in the Court’s legal

²⁹ [Request](#), para. 102.

³⁰ [Request](#), paras 104-106.

³¹ [Request](#), para. 111.

³² [Request](#), para. 112.

³³ [Request](#), para. 21.

³⁴ [Request](#), paras 13, 26.

³⁵ [Response](#), paras 1-4.

framework with respect to the disqualification of the Prosecutor or any compelling reasons that would justify resorting to the inherent powers of the Appeals Chamber.³⁶

18. With respect to the merits of the Request, in his previous submissions,³⁷ the Prosecutor, argues that the Request fails to demonstrate that he should be disqualified from the *Venezuela* Situation.³⁸ The Prosecutor argues that, as a senior member of the Bar of England and Wales, he has, at all times, considered that no conflict of interest exists on the facts, nor that there is an appearance thereof from the perspective of the reasonable observer, properly informed.³⁹ The Prosecutor confirms that he had never discussed any confidential information, adds that he neither can “recall” any conversation about public facts involving the *Venezuela* Situation with Ms Alagendra, and stresses that in the context of a visit to Venezuela in April 2024, he did not participate in any meetings attended by Ms Alagendra.⁴⁰

19. In the Prosecutor’s view, his family relationship with Ms Alagendra falls outside the scope of disqualification under rule 34(1)(a) of the Rules, arguing that the relationship of sister-in-law was considered during the drafting process and was not included in the text of the provision, nor is it included in other similar international instruments, and is not an inherently close family relationship.⁴¹ The Prosecutor further submits that, on the facts of the *Venezuela* Situation, no reasonable observer properly informed would reasonably apprehend bias justifying disqualification of the Prosecutor.⁴²

20. The Prosecutor argues that the following facts, taken together, demonstrate that “no fair minded and informed observer would conclude that there is a real possibility of bias on the particular facts of this case”: (i) the impartiality of the Prosecutor should be presumed, taking into account his oath and his years of experience and training; (ii) the relationship of sister-in-law is not automatically a close or immediate family relationship, interests are remote; (iii) Ms Alagendra does not reside with the Prosecutor or constitute part of his household, their financial interests are entirely distinct, and her

³⁶ [Response](#), para. 6.

³⁷ [Response](#), para. 10, referring to [Response to 27 September 2024 Request](#), paras 2-3, 54-55, 59.

³⁸ [Response](#), paras 10-11.

³⁹ [Response to 27 September 2024 Request](#), para. 17.

⁴⁰ [Response to 27 September 2024 Request](#), paras 18-19.

⁴¹ [Response to 27 September 2024 Request](#), paras 44-53.

⁴² [Response to 27 September 2024 Request](#), para. 54.

financial position cannot be affected by the outcome of the situation; (iv) there has been no direct interaction between them “relevant to the situation”; (v) the *Venezuela* Situation is one of 17 situations under investigation, led by the Head of the unified team under direct supervision of a Deputy Prosecutor, and the Prosecutor “is not micromanaging the Venezuela I Situation”; (vi) “[s]imilarly, Ms Alagendra is only one of the team of lawyers representing” Venezuela, she is “not even the only co-counsel [...] but only one of a larger team of lawyers”; (viii) since there is no litigation pending, no real possibility of bias exists in the context of the present situation; (ix) the Prosecutor has not changed his position in any way since Ms Alagendra’s appointment; (x) the investigations are ongoing with focus and recent events are being monitored; (xi) no objection was made by any party to Ms Alagendra’s representation during or after the Appeals Chamber hearing or delivery of its Article 18(2) Judgment and no concerns were raised with the Prosecutor, which “would strongly suggest to the fair-minded observer that nobody perceived that there was any real possibility of bias”; and (xii) granting the Request could have undesirable consequences for the integrity of the legal system, as accused “could seek to manipulate the process by deliberately instructing a family member of the Prosecutor or Deputy-Prosecutor and then filing for disqualification”.⁴³ Accordingly, the Prosecutor argues that the fair-minded observer would conclude that there is no real possibility of bias on the specific facts of the situation.⁴⁴

C. OPCV’s Submissions

21. The OPCV submits that, “irrespective of whether the Appeals Chamber is [...] seized of a formal request for disqualification of the Prosecutor”, it retains “the inherent power to act *proprio motu*” where “there are credible and reasonable grounds to believe that the fulfilment of a particular statutory obligation or duty of an elected official of the Court may be lacking, and the existence of such grounds has been brought to [its] attention”, because “justice requires that they [are] not to be ignored until acted upon at a later stage by a request presented by a party to specific proceedings”.⁴⁵ In this respect, the OPCV submits that the statutory framework and jurisprudence of the Court

⁴³ [Response to 27 September 2024 Request](#), para. 54.

⁴⁴ [Response to 27 September 2024 Request](#), para. 55.

⁴⁵ [OPCV’s Observations](#), paras 8, 14, 16, 18.

“indicate that any independent power vested in the Prosecutor ultimately remains subject to judicial review by the Appeals Chamber”.⁴⁶ The OPCV further argues that the Appeals Chamber, “as the ultimate arbiter of the proceedings”, has the “responsibility to ensure that any proceedings before this Court remain fair vis-à-vis all interested parties, including the [v]ictims”,⁴⁷ which “cannot be delegated [...] or removed” as “it exists regardless of the conduct of the parties and participants”.⁴⁸

IV. ADMISSIBILITY OF THE REQUEST

22. The Appeals Chamber recalls that in the 10 February 2025 Decision, it ruled upon the Applicants’ request for disqualification of the Prosecutor pursuant to article 42(8) of the Statute.⁴⁹ In that decision, the Appeals Chamber found by majority, Judge Luz del Carmen Ibáñez Carranza dissenting, 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”.⁵⁰ The Appeals Chamber, by majority, Judge Luz del Carmen Ibáñez Carranza dissenting, further underlined that “since disqualification is an extraordinary remedy, the explicit wording of article 42 of the Statute should be interpreted strictly”.⁵¹ Accordingly, the Appeals Chamber, by majority, Judge Luz del Carmen Ibáñez Carranza dissenting, found that the 12 November 2024 Request was inadmissible, considering that (i) the Applicants

⁴⁶ [OPCV’s Observations](#), paras 9-11, referring to Appeals Chamber, *Situation on Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia*, [Judgment on the appeal of the Prosecutor against Pre-Trial Chamber I’s ‘Decision on the “Application for Judicial Review by the Government of the Union of the Comoros”](#)’, 2 September 2019, ICC-01/13-98 (OA2); Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, [Judgment on the appeals of the Prosecutor, Mr Jean-Pierre Bemba Gombo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled “Decision on Sentence pursuant to Article 76 of the Statute”](#), 8 March 2018, ICC-01/05-01/13-2276-Conf (A6-A9) (public redacted version registered on the same date (ICC-01/05-01/13-2276-Red)).

⁴⁷ [OPCV’s Observations](#), paras 8, 18.

⁴⁸ [OPCV’s Observations](#), para. 11 (footnote omitted), referring to, *inter alia*, Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, [Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I of 8 July 2010 entitled “Decision on the Prosecution’s Urgent Request for Variation of the Time-Limit to Disclose the Identity of Intermediary 143 or Alternatively to Stay Proceedings Pending Further Consultations with the VWU”](#), 8 October 2010, ICC-01/04-01/06-2582 (OA18), para. 47; Appeals Chamber, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, [Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 20 November 2009 Entitled “Decision on the Motion of the Defence for Germain Katanga for a Declaration on Unlawful Detention and Stay of Proceedings”](#), 12 July 2010, ICC-01/04-01/07-2259 (OA10), para. 53.

⁴⁹ [10 February 2025 Decision](#).

⁵⁰ [10 February 2025 Decision](#), para. 60 (emphasis added).

⁵¹ [10 February 2025 Decision](#), para. 64.

lacked standing under article 42(8) of the Statute to request the disqualification of the Prosecutor, and that (ii) such an extraordinary remedy was not available at the present stage of the proceedings.⁵²

23. The Appeals Chamber further notes that the Request concerns the same issue regarding the Prosecutor's alleged conflict of interest in the *Venezuela* Situation, as raised by the Applicants in the proceedings concerning the 12 November 2024 Request. No new facts in relation to the matter at hand are alleged to have emerged since the issuance of the 10 February 2025 Decision.

24. In light of the above and noting the clear text of article 42(8) of the Statute, which pursuant to article 21(1)(a) of the Statute should be applied in the first place, the Appeals Chamber dismisses the Request.

25. Notwithstanding the above, the Appeals Chamber recalls that in its 10 February 2025 Decision, while dismissing the 12 November 2024 Request as inadmissible, it noted the Prosecutor's submissions regarding the alleged conflict of interest and – while specifically recalling the Prosecutor's duties under article 45 of the Statute and rule 35 of the Rules – invited him 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”.⁵³

26. The Appeals Chamber notes that, despite this invitation, no action seems to have been taken by the Prosecutor in the subsequent months following the 10 February 2025 Decision. At this point in time, the Appeals Chamber considers that the Prosecutor's apparent inaction on a matter of critical importance to the integrity of the Court's proceedings constitutes a new circumstance requiring renewed consideration of whether the alleged conflict of interest amounts to a ground for disqualification of Prosecutor in relation to the *Venezuela* Situation.

27. As clarified before, disqualification of the Prosecutor by the Appeals Chamber is an extraordinary remedy not available to the participants at the current stage of the proceedings. However, following the 10 February 2025 Decision, as explained further

⁵² [10 February 2025 Decision](#), para. 68. *See also* para. 67.

⁵³ [10 February 2025 Decision](#), para. 69 and footnote 122.

below, it is within the remit of the Appeals Chamber to entertain the merits of the Request, in light and to the extent of the response given by the Prosecutor, in order to determine whether a remedy for the factual substance of the concerns reported is provided by the Court's legal framework.

28. At the outset, the Appeals Chamber recalls once again its finding, by majority, Judge Luz del Carmen Ibáñez Carranza dissenting, that, pursuant to article 42(8) of the Statute, *a request* for the disqualification of the Prosecutor can only be submitted by a person being investigated or prosecuted and entertained in the context of a case.⁵⁴ Notwithstanding the above, outside the scope of a request, the Appeals Chamber retains the power to deal with questions regarding the disqualification of the Prosecutor, when the existence of a ground for disqualification that could affect the fairness of the proceedings has been brought to its attention, and in the absence of a request for excusal by the Prosecutor. Such power is based on article 42(8) of the Statute, which reads: “[a]ny question as to the disqualification of the Prosecutor [...] shall be decided by the Appeals Chamber”, wording which is similarly reflected in rule 34(3) of the Rules, read together with articles 64(2), 64(6)(f) and 68(3) of the Statute which entrust chambers of the Court, including the Appeals Chamber, with the duty to ensure fairness throughout the entirety of the proceedings, hear and consider the views and concerns of the victims, and rule accordingly.⁵⁵

29. To interpret otherwise would effectively render the Appeals Chamber's power to decide on “any question as to the disqualification of the Prosecutor” meaningless, as the exercise of its power would be entirely dependent on the person being investigated or prosecuted exercising their discretion to request disqualification of the Prosecutor.

⁵⁴ [10 February 2025 Decision](#), paras 58-68.

⁵⁵ Article 64(2) of the Statute provides that “[t]he Trial Chamber shall ensure that a trial is fair [...]”. Article 68(3) of the Statute provides that “[w]here the personal interests of 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 [...]”. Rule 149 of the Rules provides that “[p]arts 5 and 6 and rules governing proceedings and the submission of evidence in the Pre-Trial and Trial Chambers shall apply *mutatis mutandis* to proceedings in the Appeals Chamber”. *See also*, Appeals Chamber, *The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, [Judgment on the appeal of Maxime Jeoffroy Eli Mokom 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”](#), 19 December 2022, ICC-01/14-01/22-124-Red (OA3) (hereinafter: “*Mokom* OA3 Judgment”), paras 44-45; Appeals Chamber, *The Prosecutor v. Muthaura et al.*, [Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber II dated 20 July 2011 entitled “Decision with Respect to the Question of Invalidating the Appointment of Counsel to the Defence”](#), 10 November 2011, ICC-01/09-02/11-365 (OA3) (hereinafter: “*Muthaura et al.* OA3 Judgment”), para. 51.

The Appeals Chamber considers that such exercise of discretion would be highly unlikely, for example, when the disqualification of the Prosecutor whose impartiality might be doubted is not in the interests of that person.

30. The Appeals Chamber further notes that its power to determine questions related to the disqualification of the Prosecutor is not diminished by and does not affect the independence of the Prosecutor pursuant to article 42(1) of the Statute. In effect, the system of international criminal justice created by the Statute did not conceive of a Prosecutor invested with unfettered discretionary powers. To the contrary, while the framework of the Statute preserves the Prosecutor's independence in the exercise of his powers to investigate and prosecute crimes and act as a party to the judicial proceedings, it also conceives of several instances of judicial control of the Prosecutor's actions.⁵⁶

31. In relation to the latter, although rule 35 of the Rules entrusts the Prosecutor with requesting to be excused as opposed to waiting for a request for disqualification to be made, his determination as to whether there are reasons to believe that a ground for disqualification exists, may, if circumstances so require, be subject to judicial control. In the case at hand, the Prosecutor, although invited to act upon his duties pursuant to rule 35 of the Rules, failed to do so, thereby triggering the need for the Appeals Chamber to intervene.

32. Accordingly, in light of the powers vested in the Appeals Chamber by the Court's legal framework, as detailed above, and considering the Prosecutor's inaction following the Appeals Chamber's invitation to uphold his duty under rule 35 of the Rules, the Appeals Chamber now finds it necessary to assess whether the facts, as presented by the Applicants and the Prosecutor, provide "reason[s] to believe that a ground for disqualification exists in relation to [the Prosecutor]."

⁵⁶ Silvia A. Fernández de Gurmendi, 'The Role of the International Prosecutor' in Roy S. Lee (ed), *The International Criminal Court The making of the Rome Statute Issues, Negotiations, Results* (Kluwer Law International 1999), pp. 175-188.

V. MERITS

A. Are there reasons to believe that a ground for disqualification of the Prosecutor exists?

33. The Appeals Chamber first recalls that the Prosecutor, like the judges, is (i) elected, *inter alia*, because of his/her “high moral character”, pursuant to article 42(3) of the Statute; and (ii) bound under article 45 of the Statute to exercise his/her functions “impartially and conscientiously”, and that, despite the obvious difference in the respective roles of the judges and the Prosecutor in the proceedings, a presumption of impartiality is equally applicable to the Prosecutor.⁵⁷ Accordingly, for a ground of disqualification to exist, such presumption must be rebutted by demonstrating, at the required threshold, that the Prosecutor failed to comply with his duty to exercise his functions “impartially and conscientiously” at all times.

34. Within this context, the Appeals Chamber notes that article 42(7) of the Statute prohibits the Prosecutor from participating “in any matter in which [his] impartiality might reasonably be doubted on any ground”. In this regard, pursuant to the same provision, a ground for disqualification exists when the Prosecutor has “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”. Furthermore, rule 34(1) of the Rules provides additional grounds for disqualification of the Prosecutor. Regarding article 42(7) of the Statute, the Appeals Chamber has previously found that “it is not necessary to establish an actual lack of impartiality on the part of the Prosecutor. Rather, the question [...] is whether it reasonably appears that the Prosecutor lacks impartiality. In determining whether there is such an appearance of partiality, [...] this determination should be based on the perspective of a reasonable

⁵⁷ 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”), 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 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. 20.

observer, properly informed”.⁵⁸ As consistently noted by the Plenary of Judges in decisions on the disqualification of Judges, which the Appeals Chamber finds equally applicable to questions of the disqualification of the Prosecutor, “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 reasonably apprehend bias”.⁵⁹ Accordingly, the test is concerned not only with whether a reasonable observer could apprehend bias, but whether any such apprehension was objectively reasonable.⁶⁰

35. Among the additional grounds for disqualification listed in rule 34(1) of the Rules, the Appeals Chamber notes that rule 34(1)(a) provides for a “personal interest in the case, including spousal, parental or other close family, personal or professional relationship, or subordinate relationship with any of the parties”. The Appeals Chamber considers that the concept of “close family [...] relationship” within the meaning of rule 34(1)(a) of the Rules is something to be assessed on a case-by-case basis. Similarly, in the view of the Appeals Chamber, how close or distant a family relationship is cannot be defined in the abstract and needs to be determined in light of the facts and circumstances of the case. In this regard, and with respect to the Prosecutor’s submissions regarding the drafting history of the provision,⁶¹ the Appeals Chamber

⁵⁸ Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo et al.*, [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 (OA) (public redacted version registered on 21 October 2014 (ICC-01/05-01/13-648-Red3)) (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) (hereinafter: “*Gaddafi and Al-Senussi* Disqualification Decision”), para. 20.

⁵⁹ See, *inter alia*, 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, para. 20.

⁶⁰ 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.

⁶¹ [Response to 27 September 2024 Request](#), paras 45-46, referring to Preparatory Commission for the International Criminal Court, Working Group on the Rules of Procedure and Evidence, *Proposal by Spain and Venezuela concerning the Rules of Procedure and Evidence*, 19 July 1999, [PCNICC/1999/WGRPE/DP.11](#). In this section the Prosecutor argues that the drafting history of rule 34 of the Rules “makes it clear that subsection 1(a) was not intended to apply to a sibling-in-law relationship”. In the Prosecutor’s argument the drafters of the Rules “rejected” the original proposal, which included as grounds of disqualification being “a sibling, by consanguinity or affinity with any of the persons referred to in the previous article or their legal counsel”, thereby deciding to “place the relationship of sibling-in-law to a legal representative outside the scope of the situations requiring disqualification in rule 34(1)(a)” and that that, “[i]n addition to deliberately excluding siblings by affinity from the disqualification provisions in rule 34(1)(a)” the drafters decided to include the word “close” before “family” in order to “establish an appropriate threshold for such relationships”.

notes that the change of wording in the final text of the provision simply reflects the intention of the drafters to contain the original proposal “in a more concise manner”.⁶² Furthermore, the Appeals Chamber considers that the use of the term “including” at the beginning of the list in rule 34(1) of the Rules, and the term “*other* close family, personal or professional relationship” in rule 34(1)(a) of the Rules, make it clear that the scenarios included in those provisions are not exhaustive.⁶³ Similarly, the Appeals Chamber is not persuaded by the Prosecutor’s reliance, without further explanation, on other international legal instruments for the purposes of the interpreting rule 34(1)(a) of the Rules.⁶⁴

36. The Appeals Chamber however reiterates that, at this stage of the proceedings, it will only assess whether there is a “reason to believe that a ground for disqualification exists in relation to [the Prosecutor]”. Regarding the standard of “reasons to believe” the Appeals Chamber notes that no interpretation of this particular threshold has been provided by the Court’s jurisprudence to date.

37. The Appeals Chamber notes, however, that the Court has so far defined other evidentiary thresholds provided in the Statute, which require a “progressively higher” or “increasingly demanding” evidentiary basis.⁶⁵ Of relevance to the present assessment

⁶² 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, 2001), p. 304 (hereinafter: “Lee”).

⁶³ Lee, p. 304, fn. 123: “Note that, reflecting the tendency that developed generally during the discussions on this part of the rules, the examples articulated in this sub-rule are illustrative only”. See also *The Prosecutor v. Dominic Ongwen*, [Judgment on the appeal of Mr Dominic Ongwen against the decision of Trial Chamber IX of 28 February 2024 entitled “Reparations Order”](#), 7 April 2025, ICC-02/04-01/15-2108, paras 1, 142.

⁶⁴ [Response to 27 September 2024 Request](#), paras 47-50.

⁶⁵ See, *inter alia*, Pre-Trial Chamber I, *The Prosecutor v. Omar Ahmad Al Bashir*, [Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir](#), 4 March 2009, ICC-02/05-01/09-3, paras 8-9. The evidentiary thresholds so far defined in the Court’s case law include: (i) “reasonable basis to believe”, for the initiation of investigations under article 53 and 15 of the Statute (see Pre-Trial Chamber II, *Situation in the Republic of Kenya*, [Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya](#), 31 March 2010, ICC-01/09-19-Corr, paras 27, 32-34. Pre-Trial Chamber II stated that the ‘reasonable basis to believe’ standard is “the lowest evidentiary standard provided in the Statute” as “the information available to the Prosecutor [at this early stage of the proceedings] is neither expected to be ‘comprehensive’ nor ‘conclusive’”. See also, Pre-Trial Chamber I, *The Situation on the Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia*, [Decision on the ‘Application for Judicial Review by the Government of the Comoros’](#), 16 September 2020, ICC-01/13-111, para. 16, where the Pre-Trial Chamber explained that, “to satisfy this standard, [the fact] must be ‘sensible’ or ‘reasonable’, but it need not be the *only* conclusion supported by the available information”); (ii) “reasonable grounds to believe”, for the issuance of warrants of arrest under article 58 of the Statute (see Appeals Chamber, *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, [Judgment on](#)

is the standard of “reasonable basis to believe” provided for in articles 15 and 53 of the Statute, which has been interpreted as “the lower evidentiary standard provided in the Statute”, requiring the “exist[ence of] a sensible or reasonable justification for a belief”,⁶⁶ or a “reasonable factual basis”.⁶⁷

38. The Appeals Chamber further notes that the “reason to believe” standard was incorporated in the legal framework of the Extraordinary Chambers in the Courts of Cambodia (ECCC) in the context of proceedings regarding interference with the administration of justice.⁶⁸ In interpreting the standard, the ECCC Pre-Trial Chamber determined that “[t]he reason to believe standard is an extremely low threshold [...] [which] does not require or involve a determination as to the merits of an allegation or suspicion [...]. [It] does, however, require [...] to have concluded that there exists a

[the Appeal of the Prosecutor against the “Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir”](#), 3 February 2010, ICC-02/05-01/09-73, paras 30, 33, in which the Appeals Chamber stated that meeting the ‘reasonable grounds to believe’ standard did not require that the conclusion reached was the only possible or reasonable one nor did it require the Prosecutor to disprove other conclusion and eliminate reasonable doubt. It was noted that the evidentiary threshold of ‘reasonable grounds to believe’ was lower to the higher standards of proof, which are ‘substantial grounds to believe’ and ‘beyond reasonable doubt’.); (iii) “substantial grounds to believe”, for the confirmation of charges under article 61 of the Statute (*see* Pre-Trial Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, [Decision on the Confirmation of Charges](#), 29 January 2007, ICC-01/04-01/06-803-tEN, paras 38-39, in which the Pre-Trial Chamber relied on internationally recognised human rights jurisprudence and stated that for the Prosecutor to meet its evidentiary burden, it must offer “concrete and tangible proof demonstrating a clear line of reasoning underpinning its specific allegations”.); and (iv) “beyond reasonable doubt”, for conviction under article 66 of the Statute (*see The Prosecutor v. Omar Hassan Ahmad Al Bashir*, [Judgment on the Appeal of the Prosecutor](#), ICC-02/05-01/09-73, para. 33. The Chamber noted that if there was only one reasonable conclusion based on evidence, then such a finding established the standard of ‘beyond reasonable doubt’, which was the highest threshold for conviction.

⁶⁶ Pre-Trial Chamber II, *Situation in the Republic of Kenya*, [Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya](#), 31 March 2010, ICC-01/09-19-Corr, paras 26-35.

⁶⁷ Appeals Chamber, *Situation in the Islamic Republic of Afghanistan*, [Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan](#), 5 March 2020, ICC-02/17-138, paras 1, 34, 39, 45, 46.

⁶⁸ Rule 35(2) of the ECCC internal rules provided that: “(2) When the Co-Investigating Judges or the Chambers have **reason to believe** that a person may have committed any of the acts set out in sub-rule 1 above, they may: a) deal with the matter summarily; b) conduct further investigations to ascertain whether there are sufficient grounds for instigating proceedings; or c) refer the matter to the appropriate authorities of the Kingdom of Cambodia or the United Nations”. Rule 77(C) of the SCSL Rules of Procedure and Evidence provided that: “(C) When a Judge or Trial Chamber has **reason to believe** that a person may be in contempt of the Special Court, it may: I. deal with the matter summarily itself; II. refer the matter to the appropriate authorities of Sierra Leone; or III. direct the Registrar to appoint an experienced independent counsel to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating contempt proceedings. If the Chamber considers that there are sufficient grounds to proceed against a person for contempt, the Chamber may issue an order in lieu of an indictment and direct the independent counsel to prosecute the matter”.

material basis or reason that is the foundation of their belief”.⁶⁹ Similarly, also in proceedings regarding interference with the administration of justice, the Appeals Chamber of the Special Court for Sierra Leone adopted the same standard.⁷⁰

39. The Appeals Chamber finds these interpretations illustrative and considers that, for the purposes of a determination under rule 35 of the Rules, the standard of “reason to believe”, while not requiring or involving a determination as to the merits of an allegation or suspicion, shall however be understood to require a conclusion on the existence of a material factual basis or reason that is the foundation of the belief.

40. In the case at hand, the Applicants submit that (i) the Prosecutor is married to the sister of Ms Alagendra, who is an associate counsel in the team of lawyers representing the government of Venezuela before the Court;⁷¹ and that (ii) the Prosecutor has a previous professional and hierarchical relationship with Ms Alagendra, including in the *Ruto and Sang* case, in which the Prosecutor, as lead counsel for Mr William Samoei Ruto, appointed Ms Alagendra as associate counsel and supervised her thereafter.⁷² In their submission, collectively, the relationships between the Prosecutor and Ms Alagendra “render the Prosecutor’s impartiality untenable, both in appearance and in fact, thereby demanding immediate judicial rectification”.⁷³

41. The Prosecutor, while not denying the facts stated above, argues that his family link with Ms Alagendra is not close enough to amount to a ground for disqualification within the terms of rule 34(1)(a) of the Rules.⁷⁴ The Appeals Chamber however notes that the Prosecutor did not sufficiently address the key matter at stake, namely whether his familial, and prior professional and hierarchical relationship with Ms Alagendra, taken together, could provide grounds for his impartiality to be reasonably doubted

⁶⁹ ECCC, *Prosecutor v. Nuon Chea and Ieng Sary*, [Second decision on Nuon Chea's and Ieng Sary's appeal against OCIJ order on request to summons witnesses](#), 9 September 2020, 002/19-09-2007-ECCC/OCIJ, para. 37.

⁷⁰ SCSL, *Prosecutor v. Alex Tamba Brima et al.*, [Decision on defence appeal motion pursuant to rule 77 \(J\) on both the imposition of interim measures and an order pursuant to rule 77\(C\) \(iii\)](#), 23 June 2005, SCSL-04-16-AR77, para. 17. In a separate and concurring opinion, Judge Ayoola noted that the threshold was similar to the prerequisite of “reasonable suspicion”, whereby the Judge or the Chamber is expected to act on facts that may not be admissible in evidence but sufficient to give him the reason to believe that a person may have committed an act. *Alex Tamba Brima*, SCSL-04-16-AR77, p. 10, para. 27.

⁷¹ [Request](#), paras 88-95.

⁷² [Request](#), paras 102, 105-106, 108, 110. See also Registry, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, [The appointments of Shyamala and Venkateswari Alagendra as Associate Counsel for the Defence team of William Samoei Ruto](#), 16 May 2013, ICC-01/09-01/11-742, p. 3.

⁷³ [Request](#), para. 147 (emphasis omitted).

⁷⁴ [Response to 27 September 2024 Request](#), paras 44-53.

within the terms of article 42(7) of the Statute or any other grounds, including rule 34(1)(a) of the Rules. In assessing whether there was a “reason to believe” that any ground for disqualification existed, within the meaning of rule 35 of the Rules, the Prosecutor should have carefully considered whether there was a sensible or reasonable justification, or a material factual basis for his impartiality to be doubted. In other words, whether a fair-minded and informed observer having considered all the facts and circumstances, could reasonably apprehend bias warranting his excusal.⁷⁵

42. The Prosecutor instead argues that all parties and participants knew about his family relationship with Ms Alagendra and that the “only possible inference” to the lack of complaints was that nobody “considered that there was a conflict of interest or appearance of bias on account of Ms Alagendra’s presence”.⁷⁶ In this regard, the Appeals Chamber notes that, prior to filing his response to the 27 September 2024 Request,⁷⁷ the Prosecutor had not notified the Appeals Chamber of his family or prior professional and hierarchical relationship with Ms Alagendra. It was only in the Response to the 27 September 2024 Request that the Prosecutor explicitly indicated to the Appeals Chamber that Ms Alagendra was his sister-in-law,⁷⁸ and that his Office had received, on 16 February 2024, a formal notification from the government of Venezuela indicating that the composition of its legal team included Ms Alagendra.⁷⁹

43. The Appeals Chamber further notes that, in this particular case, the professional, hierarchical, and family relationships are so interlinked that the bond between the Prosecutor and Ms Alagendra cannot be refuted by merely stating that she is not a “close or immediate family” member or that she is not “part of his household”.⁸⁰ The Appeals Chamber further notes that when the question is whether there could be a perception of bias, the issue demands transparency as a matter of paramount importance. In this context, the Prosecutor’s submissions that there has been no direct interaction between them “relevant to the situation”⁸¹ or that he could not “recall”⁸² any conversation about

⁷⁵ [Response to 27 September 2024 Request](#), para. 12-17, referring *inter alia* to See [R. v Bow Street Metropolitan Stipendiary Magistrate Ex p. Pinochet Ugarte \(No.2\)](#), [Opinions of the Lords of Appeal for Judgment in the Cause](#), 15 January 1999 [UK House of Lords]: [2000] 1 AC 119, pp. 127H, 132H-133A.

⁷⁶ [Response to 27 September 2024 Request](#), paras 12-17.

⁷⁷ [Response to 27 September 2024 Request](#).

⁷⁸ [Response to 27 September 2024 Request](#), paras 2, 44, 52.

⁷⁹ [Response to 27 September 2024 Request](#), para. 13.

⁸⁰ [Response to 27 September 2024 Request](#), para. 54(b)-(c).

⁸¹ [Response to 27 September 2024 Request](#), para. 54(d).

⁸² [Response to 27 September 2024 Request](#), para. 18.

public facts involving the *Venezuela* Situation, or his argument that he “is not micromanaging the Venezuela I Situation”, are not sufficient.⁸³ On this last point, the Appeals Chamber underlines that, pursuant to article 42(2) of the Statute, the Prosecutor has the “full authority over the management and administration” of the Office of the Prosecutor.

44. Given the specific circumstances of this case, the Appeals Chamber considers that, in light of the Prosecutor’s close family relationship with Ms Alagendra, combined with their previous professional and hierarchical relationship, a fair-minded and reasonable observer, properly informed and having considered all facts and circumstances, would reasonably apprehend bias. Accordingly, the Appeals Chamber finds that there is “reason to believe that a ground for disqualification” of the Prosecutor exists.

B. Conclusion

45. Having established that there is “reason to believe that a ground for the disqualification of the Prosecutor exists”, the Appeals Chamber finds that the Prosecutor is under a duty pursuant to rule 35 of the Rules to request to be excused from the *Venezuela* Situation. The Appeals Chamber instructs the Prosecutor to comply with such duty within three weeks.

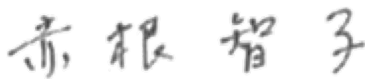
46. The Appeals Chamber, while remaining seized of the matter, hereby reserves the right to resort to other legal avenues, including proceeding to disqualify the Prosecutor from the situation at hand, if the circumstances so require.

⁸³ [Response to 27 September 2024 Request](#), para. 54(e).

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 1st day of August 2025

At The Hague, The Netherlands