



Original: English

**No. ICC-02/18
Date: 12 December 2024**

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 document

**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"**

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

The Office of the Prosecutor

Mr Karim A. A. Khan, Prosecutor

States Representatives

Competent authorities of the Bolivarian
Republic of Venezuela

Other

Arcadia Foundation

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

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),

Having before it the “Request for Leave to Reply to the Prosecutor’s Response in the Matter of Recusal Proceedings in the Venezuela I Situation” of 4 December 2024 (ICC-02/18-101-AnxI),

Renders, pursuant to regulation 24(5) of the Regulations of the Court, the following

DECISION

1. The “Request for Leave to Reply to the Prosecutor’s Response in the Matter of Recusal Proceedings in the Venezuela I Situation” is granted.
2. The Arcadia Foundation may file a reply to the Prosecutor’s submissions by 20 December 2024. The reply shall not exceed 10 pages.

REASONS

I. PROCEDURAL HISTORY

1. 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.¹

¹ [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”) (hereinafter: “Request”); [Annex III](#) (“Urgent Call for Preventive Action Against Ongoing Crimes Against Humanity in Venezuela”).

2. On 15 November 2024, the Appeals Chamber set a deadline for the Prosecutor to file written submissions with respect to the abovementioned request, until 22 November 2024.²
3. On 18 November 2024, the Registry transmitted to the Appeals Chamber two separate documents submitted by the Arcadia Foundation, providing clarifications in relation to the request and related documents submitted on 12 November 2024.³
4. On 20 November 2024, following a request for extension of time limit filed by the Prosecutor,⁴ the Appeals Chamber extended the time limit for the filing of his written submissions with respect to the Request to 29 November 2024.⁵
5. On 22 November 2024, the Office of the Public Counsel for Victims filed “Views and concerns of Victims on the Request for recusal of the Prosecutor”.⁶
6. On 29 November 2024, the Prosecutor filed his written submissions on the Request (hereinafter: “Prosecutor’s Submissions”).⁷
7. On 4 December 2024, the Registry transmitted to the Appeals Chamber a request for leave to reply to the Prosecutor’s Submissions, submitted by the Arcadia Foundation.⁸

² [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.

³ [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”), and [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”).

⁴ [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).

⁵ [Decision on the Prosecutor’s urgent request for extension of time to file submissions](#), ICC-02/18-97.

⁶ [ICC-02/18-98](#).

⁷ [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).

⁸ [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](#).

II. MERITS

8. Regulation 24(5) of the Regulations of the Court provides:

Participants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations. Unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated.

9. The Appeals Chamber may grant a request for leave to reply if the above-mentioned conditions are met, or if it considers that a reply would otherwise be necessary for the adjudication of the appeal.⁹

10. The Request for Leave to Reply is submitted by the Arcadia Foundation as well as the person making submissions on its behalf, who informs the Appeals Chamber that he is a victim in the Situation in the Bolivarian Republic of Venezuela.¹⁰ They submit that the reply is needed to address the “new and substantive issues” raised in the Prosecutor’s Submissions,¹¹ in particular the interpretation of article 42(8) of the Statute and the question of standing; (ii) the interpretation of “case” in article 42(7) of the Statute; (iii) the question of timeliness of the request for recusal; (iv) the interpretation of “close family relationship” in rule 34(1)(a) of the Rules of Procedure and Evidence; and (v) the impact on victims’ rights and judicial integrity.¹²

11. Accordingly, the Appeals Chamber is satisfied that the Arcadia Foundation could not reasonably have anticipated all the issues identified in the request as set out above. The Appeals Chamber considers that a reply to these issues would assist it in its determination of this matter, particularly the preliminary issue of whether the Arcadia Foundation has legal standing to request the recusal of the Prosecutor pursuant to article 42 of the Statute. The reply shall be filed by 20 December 2024 and shall not exceed 10 pages.

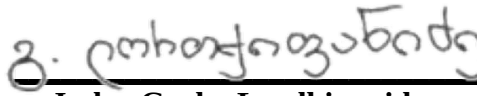
⁹ See, for example, *Situation in the Islamic Republic of Afghanistan*, [Decision on the Prosecutor’s request for leave to reply](#), 23 December 2022, ICC-02/17-206 (OA5), para. 8; *The Prosecutor v. Bosco Ntaganda*, [Decision on Mr Ntaganda’s request for leave to reply](#), 17 July 2017, ICC-01/04-02/06-1994 (OA6), para. 9 (footnote omitted); *The Prosecutor v. Bosco Ntaganda*, [Decision on Mr Ntaganda’s request for leave to reply](#), 3 March 2017, ICC-01/04-02/06-1813 (OA5), para. 8.

¹⁰ [Request for Leave to Reply](#), pp. 1, 7. See also Annexes II and III.

¹¹ [Request for Leave to Reply](#), pp. 6-7.

¹² [Request for Leave to Reply](#), pp. 1-6.

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

A handwritten signature in dark ink, appearing to be in Georgian script, written over a horizontal line.

Judge Gocha Lordkipanidze
Presiding Judge

Dated this 12th day of December 2024

At The Hague, The Netherlands