



Original: English

No.: ICC-02/18
Date: 30 December 2024

THE APPEALS CHAMBER

Before: Judge Gocha Lordkipanidze, Presiding Judge
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

**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"**

Source: Prosecutor

Document 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 KC

Counsel for Defence

Legal Representatives of the Victims
Ms Paolina Massidda

Other
Arcadia Foundation

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives
Competent authorities of the Bolivarian
Republic of Venezuela

Amicus Curiae

REGISTRY

Registrar
Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. The Prosecutor respectfully requests leave to file a sur-reply addressing three discreet new issues arising from the Applicant's "Safeguarding the ICC's integrity – a call for Accountability and Impartiality in the Venezuela I Situation".¹ The Applicant's Reply makes new and erroneous assertions which the Prosecutor has had no prior opportunity to correct. In the circumstances, a limited sur-reply is justified.
2. On 12 November 2024, the Applicant filed its "Request for Recusal of the Prosecutor of the International Criminal Court in the Case of Venezuela I Due to Conflict of Interest".² On 29 November 2024, the Prosecutor responded.³ On 12 December 2024, the Appeals Chamber permitted the Applicant to reply, particularly on the preliminary issue of whether the Applicant has legal standing to request the recusal of the Prosecutor.⁴
3. On 20 December 2024 at 19h38, the Applicant transmitted the Applicant's Reply to the Registry.⁵
4. In relation to the substantive issues, the Applicant's Reply includes the following new and erroneous assertions, which the Prosecutor seeks leave to correct:
 - a. that, as part of a "pattern of deliberate collaboration", Ms Venkateswari Alagendra served as defence counsel "alongside" Mr Karim Khan in the *Gaddafi* case at the ICC.⁶ If leave is granted, the Prosecutor will show that this allegation is wrong because the Prosecutor had ceased to represent Mr Gaddafi before Ms Venkateswari Alagendra's appointment⁷ and that this error undermines the "pattern" alleged by the Applicant;

¹ [ICC-02/18-105-AnxI](#) ('the Applicant's Reply').

² [ICC-02/18-92-AnxII](#).

³ [ICC-02/18-99-Red](#).

⁴ [ICC-02/18-102](#), para. 11.

⁵ [ICC-02/18-105](#), fn. 1.

⁶ The Applicant's Reply, p. 6.

⁷ [ICC-01/11-01/11-645](#); [ICC-01/11-01/11-661](#).

- b. that an unacceptable appearance of bias arises from the Prosecutor and Ms Venkateswari Alagendra's past involvement in litigated cases.⁸ If leave is granted, the Prosecutor will show that even ongoing collaboration with counsel on unrelated cases does not justify the recusal of a Judge, still less an opposing counsel;⁹
- c. that Ms Venkateswari Alagendra should be regarded as a close family member because as "her only sister", Ms. Venkateswari Alagendra would be invited to a birthday celebration for the Prosecutor's wife.¹⁰ If leave is granted, as well as correcting the factual error that Ms Venkateswari Alagendra is not the "only sister" of the Prosecutor's wife, the Prosecutor would show that this speculation forms no part of the relevant legal test. Social connections, including being from the same Chambers, have been held not to create an appearance of bias in the case of Judges.¹¹

5. The Prosecutor notes that the Regulations of the Court do not specifically permit sur-replies.¹² It is submitted that a sur-reply, limited to the issues identified above, is justified on this occasion. The issues identified above were not pleaded in the Applicant's Request for Recusal.¹³ They are new issues which could not have been reasonably anticipated in the Prosecutor's Response.¹⁴ Considering 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.

6. Further, a limited sur-reply is necessary for the adjudication of the substantive issues¹⁵ because, as set out above, significant aspects of the Applicant's Reply are

⁸ The Applicant's Reply, p. 6-7.

⁹ England and Wales, *Watts v Watts*, [2015] EWCA Civ 1297, para. 28.

¹⁰ The Applicant's Reply, p. 6.

¹¹ See, for instance, England and Wales, *Taylor and Anor v Lawrence and Anor*, [2002] EWCA Civ 90, paras. 61-63.

¹² Regulation 24(5) of the Regulations of the Court.

¹³ [ICC-02/18-92-AnxII](#).

¹⁴ [ICC-02/17-206](#), para. 8.

¹⁵ [ICC-02/17-206](#), para. 8.

plainly founded on factual errors, which ought not to remain on the record or form the basis for any determination.

7. Accordingly, whilst the Prosecutor maintains that the Request should be dismissed *in limine* because the Applicant lacks standing,¹⁶ if the Appeals Chamber intends to address the merits of the Request, the Prosecutor respectfully requests leave to sur-reply on the three issues identified above.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a dot.

Karim A.A. Khan KC, Prosecutor

Dated this 30th day of December 2024
At The Hague, The Netherlands

¹⁶ [ICC-02/18-99-Red](#), paras. 27-38.