

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: *English*

No.: ICC-02/18

Date: 15 April 2025

THE APPEALS CHAMBER

Before: Judge Gocha Lordkipanize, 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 Document

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

Source: Office of Public Counsel for Victims

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

I. PROCEDURAL BACKGROUND

1. On 12 November 2024, the Registry transmitted to the Appeals Chamber a Request for recusal of the Prosecutor in the Venezuela I Situation due to an alleged conflict of interest (the “Request for Recusal”).¹
2. On 15 November 2024, the Appeals Chamber instructed the Prosecutor to file written submissions on the Request for Recusal by 22 November 2024.² Upon request by the Prosecutor, the Appeals Chamber extended the time limit until 29 November 2024.³
3. On 22 November 2024, the OPCV filed the views and concerns of the Victims on the Request for Recusal.⁴
4. On 10 February 2025, the Appeals Chamber rendered the “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’”,⁵ dismissing it by majority (the “Decision on the Request for Recusal”).

¹ See the “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”, No. [ICC-02/18-92](#), 12 November 2024, with [Annex I](#), [Annex II](#), [Annex III](#) and [Annex IV](#) (the “Request for Recusal”).

² See the “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’” (Appeals Chamber), No. [ICC-02/18-94](#), 15 November 2024, para. 7.

³ See the “Decision on the Prosecutor’s urgent request for extension of time to file submissions” (Appeals Chamber), No. [ICC-02/18-97](#), 20 November 2024.

⁴ See the “Views and Concerns of the Victims on the Request for recusal of the Prosecutor”, No. [ICC-02/18-98](#), 22 November 2024.

⁵ See the “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” (Appeals Chamber), No. [ICC-02/18-109](#), 10 February 2025 (the “Decision on the Request for Recusal”).

5. On 8 April 2025, the Registry transmitted to the Appeals Chamber a Request titled “Judicial Integrity in Peril – The Appeals Chamber’s Duty to Uphold the ICC’s Legitimacy in the Venezuela I Situation” (the “Request”).⁶

6. On 9 April 2025, the Appeals Chamber issued an Order inviting the Prosecutor and the OPCV to file written submissions by 15 April 2025 (the “Order”).⁷

II. SUBMISSIONS

7. The Appeals Chamber invited the Prosecutor and the Office to present submissions “*with respect to*” the Request, and “*particularly the merits*”.⁸ The Principal Counsel understands that the merits of the Request relate to the legal question of whether the Appeals Chamber has an inherent discretion to consider and adjudicate a matter of conflict of interest on the part of the Prosecutor in the absence of a request for disqualification in the context of a specific case brought by a suspect or an accused.

8. The Principal Counsel posits that, as the ultimate arbiter of the proceedings, the Appeals Chamber retains an inherent power to act at any stage of the proceedings to safeguard the integrity of the process, where a factual situation has been brought to its attention which, if substantiated, could adversely affect the fairness or expeditiousness of the proceedings before the Court.

9. In this regard, the Rome Statute’s system and precedents before this Court indicate that any independent power vested in the Prosecutor ultimately remains subject to judicial review by the Appeals Chamber. In the Situation on Registered Vessels of the Union of Comoros, the Hellenic Republic and the Kingdom of Cambodia, the Appeals Chamber held that chambers retain judicial oversight over the exercise of the Prosecutor’s duties, obligations and even prerogative powers deriving

⁶ See the “Request for the Appeals Chamber to Conduct an Ex Officio Review of the Prosecutor’s Conflict of Interest in the Venezuela I Situation”, No. [ICC-02/18-110](#), with [Annex](#), 8 April 2025 (the “Request”).

⁷ See the “Order on the filing of submissions” (Appeals Chamber), No. [ICC-02/18-111](#), 9 April 2025 (the “Order”).

⁸ *Idem*, para. 3.

from their own statutory review powers.⁹ Said judicial oversight function concerns both the interpretation of the law and the propriety of the process by which the independent functions of the Prosecutor are exercised.¹⁰

10. While the Appeals Chamber has already ruled by majority that the relevant statutory provisions do not confer standing upon individuals other than the suspect or accused to file a request for disqualification,¹¹ said norms can nevertheless be read and interpreted as conferring an inherent power of oversight on the Appeals Chamber. Rule 34(3) of the Rules of Procedure and Evidence (the “Rules”) designates the Appeals Chamber as the ultimate arbiter of “*any question relating to the disqualification*”,¹² which underlines the existence of its inherent power to deal with any such matter brought to its attention from any source.

11. In the *Bemba et al.* case, the Appeals Chamber further clarified that “[i]n the legal framework of this Court, ‘inherent powers’ should be invoked in a very restrictive manner and, in principle, only with respect to matters of procedure. When a matter is regulated in the primary sources of law of the Court, there is also no room for chambers to rely on purported ‘inherent powers’ to fill in non-existing gaps”.¹³ However, should the Appeals Chamber consider that a gap exists in the wording of rule 34 of the Rules – because of its reference to a “case” only –, it may exercise its inherent powers to fill said gap. Indeed, a chamber’s ultimate duty to ensure the fairness of the proceedings cannot be

⁹ See e.g., the “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’”, No. [ICC-01/13-98 OA2](#), 2 September 2019, paras. 1-2. See also, by analogy, para. 75: “Thus, article 53(3)(b) of the Statute, read with rule 110(2) of the Rules, **empowers the pre-trial chamber to effectively override** the Prosecutor’s decision not to initiate an investigation, if that decision was **based solely on the interests of justice**” (emphasis added).

¹⁰ See, by analogy, the “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’”, *idem*, para. 78.

¹¹ See the Decision on the Request for Recusal, *supra* note 5, paras. 61 and 65.

¹² Emphasis added.

¹³ See the “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’” (Appeals Chamber), No. [ICC-01/05-01/13-2276-Red A6 A7 A8 A9](#), 8 March 2018, para. 2.

delegated by or removed from it;¹⁴ it exists regardless of the conduct of the parties and participants.¹⁵

12. In this regard, the Principal Counsel respectfully suggests that the Appeals Chamber has itself recognised its inherent duty not to simply disregard the information before it, when it invited the Prosecutor *“in light of the Request and the views and concerns of the victims with respect to the matter at hand, [...] 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.”*¹⁶

13. In the Principal Counsel’s view, this language reflects the fact that the Appeals Chamber considered the ‘question relating to disqualification’ – despite denying the applicant standing – and considered it in light of its inherent power to oversee the fair conduct of the proceedings at the present juncture.

14. 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 the attention of the relevant Chamber, justice requires that they not to be ignored until acted upon at a later stage by a request presented by a party to specific proceedings.

15. In this regard, Judge Hohler recently acted upon the indications of a potential reasonable apprehension of a lack of impartiality pursuant to her inherent duty under article 3 of the Statute, in order to have the matter expeditiously disposed of, with a

¹⁴ See the “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’” (Appeals Chamber), No. [ICC-01/04-01/06-2582 OA18](#), 8 October 2010, para. 47.

¹⁵ See the “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’” (Appeals Chamber), No. [ICC-01/04-01/07-2259 OA10](#), 12 July 2010, para. 53.

¹⁶ See the Decision on the Request for Recusal, *supra* note 5, para. 69 (emphasis added).

view to safeguarding the proceedings from the outset and for all interested parties involved. In that instance, she responded to a request of the State of Israel – neither a State Party, nor a suspect/accused or “participant”, but rather an interested State in a Situation under investigation - for “*additional information [...] to dispel the indications of a potential reasonable apprehension of a lack of impartiality*”.¹⁷ The State filed said request prior to the issuance of the warrants of arrest and public announcement thereof.¹⁸ Judge Hohler recognised the need to provide clarifying information sought, as she considered it to be “*proper and necessary to expeditiously answer the questions*”, underscoring the importance of the independence of judges as a “*cornerstone of fair proceedings*”.¹⁹

16. The matter which gives rise to the present proceedings is, at its core, of no less concern, since the impartiality which constitutes the cornerstone of fair proceedings extends to the Prosecutor, as an elected official.

17. In fact, the fairness of the proceedings extends beyond the suspect or accused and includes the Victims as well,²⁰ whose interests may not necessarily coincide with those of the defendant and who have the right to a real perspective of justice.

18. In conclusion, the Principal Counsel posits that, irrespective of whether the Appeals Chamber is properly seized of a formal request for disqualification of the Prosecutor, it nevertheless has the inherent power to act *proprio motu* where it has been brought to its attention that the fairness of the proceedings before the Court could potentially be affected. As the ultimate arbiter, it is the Appeals Chamber’s

¹⁷ See the “Request for Information from Judge Beti Hohler Concerning Prior Activities with the Office of the Prosecutor”, No. [ICC-01/18-371](#), 11 November 2024, para. 34.

¹⁸ [Situation in the State of Palestine: ICC Pre-Trial Chamber I rejects the State of Israel’s challenges to jurisdiction and issues warrants of arrest for Benjamin Netanyahu and Yoav Gallant | International Criminal Court](#), 21 November 2024.

¹⁹ See the “Provision of Information Concerning Previous Employment with the Office of the Prosecutor”, No. [ICC-01/18-373-Anx1](#), 20 November 2024, para. 6.

²⁰ See the “Public redacted version of Decision on Defence Applications for Judgments of Acquittal” (Trial Chamber V(a)), No. [ICC-01/09-01/11-2027-Red-Corr](#), 16 June 2016, Reasons of Judge Ebbo-Osuji, para. 190.

responsibility to ensure that any proceedings before this Court remain fair vis-à-vis all interested parties, including the Victims.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 15th day of April 2025

Done at The Hague, The Netherlands