

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02-18
Date: 15 April 2025

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 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"

Source: The Prosecutor

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Submission

1. The Prosecutor respectfully requests that the “Request for the Appeals Chamber to Conduct an Ex Officio Review of the Prosecutor’s Conflict of Interest in the Venezuela I Situation”¹, filed by the Arcadia Foundation (“Applicant”), be dismissed *in limine*. The Appeals Chamber has already determined that the Applicant lacks standing to seek the disqualification of the Prosecutor.² The Request for Review is a thinly disguised attempt to relitigate the Appeals Chamber Decision. It is inadmissible.

2. *First*, the Applicant does not identify any new facts or circumstances that have arisen since the Appeals Chamber dismissed, in its Decision, the Applicant’s “Request for Recusal of the Prosecutor of the International Criminal Court in the Case of Venezuela I Due to Conflict of Interest”³, submitted two months ago. The Applicant was afforded every opportunity to plead its case, submitting not only the Recusal Request, but also further submissions by way of a clarification⁴ and a lengthy Reply.⁵ Having carefully considered the Applicant’s submissions, the Appeals Chamber found that the Applicant did not have standing.⁶

3. The Applicant’s status has not changed. The Applicant still lacks standing for the reasons previously identified by the Appeals Chamber, including that article 42(8) explicitly grants standing to request the disqualification of the Prosecutor only to “the person being investigated or prosecuted.”⁷ Accordingly, the Applicant does not have standing to make the Request for Review.

4. *Second*, the Request for Review is, in substance, a request for reconsideration of the Appeals Chamber Decision. The Applicant has not presented any new facts regarding the merits of the alleged conflict of interest.⁸ The Request for Review instead

¹ ICC-02/18-110-Anx (“Request for Review”).

² ICC-02/18-109 (“Appeals Chamber Decision”), paras. 61, 64-68.

³ ICC-02/18-92-AnxII (“Recusal Request”).

⁴ ICC-02/18-95-AnxI and II.

⁵ ICC-02/18-105-AnxI (“Reply”).

⁶ Appeals Chamber Decision, paras. 61, 64-68.

⁷ ICC-02/18-109, paras. 61, 65-68.

⁸ ICC-02/18-110-Anx, paras. 87-108.

seeks to relitigate the Applicant's prior arguments, *inter alia*, about Rule 34(1)(a),⁹ Article 42(7),¹⁰ and the Venezuelan Code of Criminal Procedure.¹¹ Contrary to the Applicant's submissions,¹² the overlap between the Request for Review and the Applicant's prior submissions makes it clear that the Request for Review is, in substance, a request for reconsideration of the Appeals Chamber Decision. There is a strong public interest in finality. The Applicant should have presented all relevant submissions before the Appeals Chamber in previous filings and cannot seek to use the Request for Review to make additional submissions that should have been raised at the time.¹³

5. *Third*, the Request for Review fails to establish that the Appeals Chamber's inherent powers are relevant to the disqualification of the Prosecutor, which is regulated in detail in the Court's legal framework. The Appeals Chamber has held that certain inherent powers are integral to its functions and can be exercised on its own initiative at any time—albeit “in a very restrictive manner and, in principle, with respect to matters of procedure”.¹⁴ However, when a matter is regulated by the Court's legal framework, chambers cannot use “inherent powers” to address what are, in effect, non-existent lacunae.¹⁵ To determine if a lacuna or gap exists, the Appeals Chamber considers whether an objective is unfulfilled by the provisions of the legal instruments of law. The nature of the power in question and the matter it relates to are crucial in deciding if gaps justify recourse to the use of “inherent powers”.¹⁶

6. The Request for Review does not identify any lacuna in the Court's legal framework. As the Appeals Chamber already held, by majority, disqualification of the Prosecutor or Deputy Prosecutor is regulated by the explicit wording of article 42 of

⁹ Request for Review, paras. 16-22, 88-90, 98-117; Reply, section iv.

¹⁰ Request for Review, paras. 23-31; Reply, section ii.

¹¹ Request for Review, paras. 44-57; Reply, paras. 61-80.

¹² Request for Review, para. 1.

¹³ ICC-02/05-01/20-1015, para. 14; ICC-02/05-01/20-938-Conf, para. 12.

¹⁴ ICC-01/05-01/13-2276-Red, paras. 2, 75-76.

¹⁵ ICC-01/05-01/13-2276-Red, paras. 75-76, 79 (“[...] The Appeals Chamber also emphasises that contrary to other international courts and tribunals, this Court's functions are regulated by a comprehensive legal framework in which its powers have been deliberately spelt out by the drafters to a great degree of detail, thus leaving little room to the invocation of “inherent powers” in the proceedings before it”).

¹⁶ ICC-01/05-01/13-2276-Red, para. 76.

the Statute—and rule 34 of the Rules—and, given their extraordinary remedial nature, they should be interpreted strictly.¹⁷ There is no lacuna in these provisions which justifies resorting to the Chambers' inherent powers. Indeed, if the Applicant's position were accepted, namely that it may invoke the Appeals' Chamber inherent powers to disqualify the Prosecutor, this would entirely circumvent the provisions on standing in Article 42(7), Article 42(8), and Rule 34 of the Rules, on which the Appeals Chamber Decision relied.

7. *Fourth*, if, *arguendo*, the Appeals Chamber may exercise inherent powers in the manner suggested in the Request for Review, then the same inherent powers were available to the Appeals Chamber at the time when it rendered the Appeals Chamber Decision. The Appeals Chamber elected not to resort to them and instead dismissed the Recusal Request.¹⁸ Since the Request for Review does not present any new facts or circumstances beyond those raised in the Recusal Request that would warrant a fresh examination of the merits of the alleged conflict of interest, there are no other compelling reasons for the Appeals Chamber to exercise its inherent powers at this time. The Appeals Chamber, by majority, has already invited the Prosecutor to consider his ongoing obligations under the Statute and take any necessary measures to protect the integrity of the proceedings.¹⁹

8. *Fifth*, the Prosecutor notes that, contrary to Regulation 37(1) of the Regulations, the Request for Review is 38 pages long. This is becoming a pattern; the Appeals Chamber Decision drew attention to this provision and highlighted a previous attempt by the same Applicant to circumvent a page limit set by the Appeals Chamber.²⁰ The Appeals Chamber may therefore consider this disregard for the Court's Regulations as a further reason to dismiss the Request for Review.²¹

¹⁷ ICC-02/18-109, paras. 64-67.

¹⁸ ICC-02/18-109, paras. 61, 65-68. *See also* para. 69.

¹⁹ ICC-02/18-109, para. 69.

²⁰ Appeals Chamber Decision, paras. 40, 44.

²¹ Appeals Chamber Decision, para. 40.

9. In light of the above reasons, the Prosecutor respectfully submits that the Appeals Chamber should dismiss the Request for Review *in limine*.

10. In the event that the Chamber considers the merits despite the Applicant's lack of standing, the Prosecutor relies on his previous submissions regarding the merits of the Recusal Request,²² which were accepted by the minority of the Appeals Chamber in the Appeals Chamber Decision.²³

11. In conclusion, the Prosecutor respectfully requests that:

- The Request for Review be dismissed outright due to the Applicant's ongoing lack of standing;
- The Appeals Chamber refrain from invoking any inherent powers to consider the merits of the Request for Review; and, if it does,
- The Prosecutor respectfully submits that the Request fails to demonstrate that the Prosecutor should be disqualified from the Venezuela I situation.



Karim A.A. Khan KC, **Prosecutor**

Dated this 15th day of April 2025

At The Hague, Netherlands

²² ICC-02/18-99-Red, paras. 2-3, 54-55, 59; and ICC-02/18-99-Conf-Exp, paras. 23-26.

²³ Appeals Chamber Decision, paras. 74-75.