



Original: English

**No. ICC-02/18
Date: 19 September 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 Clarification on the Competence of Deputy Prosecutors to Conduct Investigations in the Situation in the Bolivarian Republic of Venezuela I” and the “Request for Targeted Transparency Measures to Safeguard Judicial Integrity Following the Appeals Chamber’s Decision of 1 August 2025 (ICC-02/18-118)”

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**

Foro Penal

Mr Alfredo Romero Mendoza

Mr Gonzalo Himiob Santomé

Arcadia Foundation

Mr Robert Carmona-Borjas

The Appeals Chamber of the International Criminal Court,

Having before it the “Request for Clarification on the Competence of Deputy Prosecutors to Conduct Investigations in the Situation in the Bolivarian Republic of Venezuela I” of 7 August 2025 (ICC-02/18-119-Anx) and the “Request for Targeted Transparency Measures to Safeguard Judicial Integrity Following the Appeals Chamber’s Decision of 1 August 2025 (ICC-02/18-118)” of 13 August 2025 (ICC-02/18-120-Anx),

Renders the following

DECISION

The “Request for Clarification on the Competence of Deputy Prosecutors to Conduct Investigations in the Situation in the Bolivarian Republic of Venezuela I” and the “Request for Targeted Transparency Measures to Safeguard Judicial Integrity Following the Appeals Chamber’s Decision of 1 August 2025 (ICC-02/18-118)” are dismissed.

REASONS

I. PROCEDURAL HISTORY

1. On 10 February 2025, the Appeals Chamber, by majority, Judge Luz del Carmen Ibáñez Carranza dissenting, issued a decision dismissing a request for recusal of the Prosecutor for conflict of interest submitted by the Arcadia Foundation and Mr Robert Carmona-Borjas (hereinafter: “10 February 2025 Decision”).¹
2. 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 Arcadia Foundation and Mr Robert Carmona-Borjas.²

¹ [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.

² [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

3. On 1 August 2025, the Appeals Chamber issued its “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’” (hereinafter: “1 August 2025 Decision”),³ in which it *inter alia* (i) found 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 (ii) instructed the Prosecutor to comply with such duty within three weeks.⁴
4. On 7 August 2025, the Registry transmitted the “Request for Clarification on the Competence of Deputy Prosecutors to Conduct Investigations in the Situation in the Bolivarian Republic of Venezuela I” (hereinafter: “First Request”) filed by Foro Penal.⁵
5. On 13 August 2025, the Registry transmitted the “Request for Targeted Transparency Measures to Safeguard Judicial Integrity Following the Appeals Chamber’s Decision of 1 August 2025 (ICC-02/18-118)” (hereinafter: “Second Request”) filed by the Arcadia Foundation and Mr Robert Carmona-Borjas.⁶
6. On 18 August 2025, the Prosecutor filed before the Presidency the “Prosecutor’s Request to be Excused from the Venezuela I Situation” (hereinafter: “Request to be Excused”).⁷
7. On 2 September 2025, an *ad hoc* Presidency granted the Request to be Excused.⁸

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.

³ [ICC-02/18-118](#).

⁴ [1 August 2025 Decision](#), paras 1-2.

⁵ [Registry Transmission of “Request for Clarification on the Competence of Deputy Prosecutors to Conduct Investigations in the Situation in the Bolivarian Republic of Venezuela I”](#), ICC-02/18-119, with public [Annex I](#).

⁶ [Registry Transmission of “Request for Targeted Transparency Measures to Safeguard Judicial Integrity Following the Appeals Chamber’s Decision of 1 August 2025 \(ICC-02/18-118\)”](#), ICC-02/18-120, with public [Annex I](#).

⁷ [ICC-02/18-121](#).

⁸ [Decision on the ‘Prosecutor’s Request to be Excused from the Venezuela I Situation’](#), ICC-02/18-125, with public Annexes [I](#) and [II](#).

II. SUMMARY OF THE SUBMISSIONS

A. First Request

8. The applicants submit the First Request pursuant to articles 64(3) and 68(3) of the Statute, “the principles of the ‘interest of justice’ and the due administration of the Rome Statute system”,⁹ and with reference to the 1 August 2025 Decision.¹⁰

9. According to the applicants, the purpose of the First Request is “to seek clarification or, in the alternative, a legal determination [...] on the competence and authority of a Deputy Prosecutor to assume prosecutorial functions under Article 15 of the Rome Statute following the recent disqualification of the Prosecutor from the Venezuela I Situation”.¹¹

10. In the applicants’ submission, article 15 of the Statute vests “exclusive competence” to initiate or continue investigations in “the Prosecutor”, with no provision authorising substitution or delegation of these functions in case of the latter’s “absence, disqualification, or conflict of interest”.¹² They further argue that the Deputy Prosecutors “act as assistants to the Prosecutor (Article 42.2 of the Rome Statute) and are either qualified or disqualified as a consequence of the qualification or disqualification of the Prosecutor”.¹³

11. On this basis, the applicants request the Appeals Chamber to:

(a) Provide clarification as to whether a Deputy Prosecutor may, in accordance with the Rome Statute and Rules of Procedure and Evidence, assume prosecutorial competence in a specific situation (such as Venezuela I) following the excusal or disqualification of the Prosecutor; and

(b) Indicate whether such assumption of competence requires judicial or Assembly of State Parties authorization, public notification, or other procedural safeguards to ensure compliance with the Statute and the protection of the interests of justice.

(c) Determine whether, in the event of a disqualification of the Prosecutor, as has occurred in the Venezuela I Situation, an Acting Prosecutor must be formally designated to oversee the matter; and

⁹ [First Request](#), paras 2-4.

¹⁰ [First Request](#), para. 6.

¹¹ [First Request](#), paras 5, 8-9.

¹² [First Request](#), paras 9-10, 14-15.

¹³ [First Request](#), paras 11, 15.

(d) If such a designation is required, clarify whether the authority to appoint an Acting Prosecutor for the Situation in the Bolivarian Republic of Venezuela I rests with the Appeals Chamber or with the Assembly of States Parties.¹⁴

B. Second Request

12. The applicants submit the Second Request under articles 42(7), (8), 64(2) and 68(3) of the Statute, together with rules 34(2), (3) and 35 of the Rules of Procedure and Evidence.¹⁵

13. On this basis, they request the Appeals Chamber “to issue measured, narrowly tailored directions that secure transparency”,¹⁶ including a “discrete administrative clarification” whether Ms Alagendra is or has been involved in any other situation or case before the Court.¹⁷ Should such clarification identify any matter in which Ms Alagendra acts as counsel and the Prosecutor exercises functions at the same time, the applicants further request “immediate prophylactic non-participation by the Prosecutor pending an expedited determination on disqualification in each identified matter”.¹⁸

14. Concretely, the applicants request the Appeals Chamber to:

(a) direct the Registrar to conduct a targeted records certification and to file the result forthwith on the public record with only narrowly tailored redactions; (b) where the certification identifies such a matter, order the Prosecutor’s immediate non-participation in that matter pending resolution of disqualification; and (c) set an expedited timetable (not exceeding 72 hours for written observations) for a swift decision on disqualification in each identified matter, consistently with Rules 34 and 35 and Article 42(7).¹⁹

III. DETERMINATION BY THE APPEALS CHAMBER

15. The First and Second Requests contain follow-up requests on the Appeals Chamber’s 1 August 2025 Decision. For the reasons outlined below, the Appeals Chamber dismisses both requests.

¹⁴ [First Request](#), para. 17.

¹⁵ [Second Request](#), pp. 2-3.

¹⁶ [Second Request](#), p. 1.

¹⁷ [Second Request](#), pp. 2-3.

¹⁸ [Second Request](#), pp. 2-3 (footnote omitted).

¹⁹ [Second Request](#), p. 1 (footnote omitted).

16. Irrespective of the question of standing, the Appeals Chamber considers that neither of the requests provides any concrete basis on which the Appeals Chamber would issue the clarifications or orders requested.

17. More importantly, the Appeals Chamber unequivocally settled the matter of a potential conflict of interest in the situation at hand by virtue of its 1 August 2025 Decision. In this regard, the Appeals Chamber notes that the Prosecutor presented his Request to be Excused to the Presidency, which granted this request. No matter remains open for the Appeals Chamber to decide in this regard. General concerns about alleged legal uncertainty such as presented in the First Request²⁰ do not provide any grounds for the Appeals Chamber to revisit, or provide any clarification on, its earlier decision. In any event, the wording of article 42(2) of the Statute is unambiguous in providing that “[t]he Prosecutor shall have full authority over the management and administration of the Office [...]” and that “[t]he Prosecutor shall be assisted by one or more Deputy Prosecutors, who shall be entitled to carry out any of the acts required of the Prosecutor” under the Statute.

18. Similar considerations apply to the demands presented in the Second Request, which appear to be based on an alleged “risk”²¹ that, in the view of the Appeals Chamber, is both exceedingly broad and entirely speculative. The Second Request does not provide any grounds for the Appeals Chamber to issue broad orders concerning situations or matters it is not seised of.

19. For the reasons stated above, the First Request and the Second Request are dismissed.

20. The Appeals Chamber reiterates that, following the 1 August 2025 Decision, the Presidency granted the Prosecutor’s Request to be Excused. The Appeals Chamber is no longer seised of this matter which it has conclusively decided on.

²⁰ See [First Request](#), para. 16.

²¹ See [Second Request](#), p. 1.

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 19th day of September 2025

At The Hague, The Netherlands