

Annex

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Formal Submission to the Appeals Chamber of the International Criminal Court (ICC)

Request to Address Procedural Failures and Ethical Oversight by the ICC Registry in the Context of the *Venezuela I Situation*

Washington, D.C., January 12, 2025

To the Honorable Judges of the Appeals Chamber,
International Criminal Court
The Hague, Netherlands

Submitted By:

Robert Carmona-Borjas, Recognized Victim (Reference Number r/21840/23) in the ICC's *Venezuela I Situation*

Arcadia Foundation, Representing Victims in the *Venezuela I Situation* (Reference Number VPRS-A-2023-092)

I. Introduction

Purpose of Submission

1. This submission respectfully seeks to bring to the attention of the Appeals Chamber of the International Criminal Court (ICC) procedural and ethical lapses committed by the ICC Registry. These lapses include the improper registration of Ms. Venkateswari Alagendra as counsel for the Venezuelan government in the *Venezuela I Situation*, despite her familial, professional, and hierarchical ties to Chief Prosecutor Karim Khan, as well as the Registry's failure to forward the formal complaint submitted on September 10, 2024, to the Office of the Independent Counsel for Ethical Affairs, among other potential infractions that may come to light during a forensic inquiry into the Registry's actions. These omissions represent severe breaches of ICC ethical and procedural standards, undermining the principles of neutrality, transparency, and accountability that are fundamental to the Court's mandate.

2. This submission is distinct yet intrinsically connected to the ongoing recusation proceedings against Chief Prosecutor Khan. The victims' rights in Venezuela demand that the Appeals Chamber addresses the matter of the Prosecutor's impartiality without delay, while also investigating all related ethical violations—particularly those involving the ICC Registry—thoroughly and expeditiously.

3. While Regulation 119 of the Regulations of the Court mandates the submission of complaints concerning senior ICC officials to the Presidency, this submission does not seek to replace or bypass that process. Instead, it aims to address ethical violations that are directly intertwined with the recusation of the Chief Prosecutor, which falls under the Appeals Chamber's jurisdiction. Article 64(2) of the Rome Statute obligates the Court to ensure that all proceedings are conducted fairly, impartially, and

expeditiously. Although this provision primarily guarantees the rights of the accused during trial, its principles of fairness and institutional integrity extend to all stages of proceedings, particularly when ethical lapses risk undermining the credibility of the Court itself. The Appeals Chamber's consideration of these matters as part of the ongoing recusation proceedings ensures an expedited and comprehensive resolution, consistent with such Articles 64(2) and 82(1)(d) of the Rome Statute, which emphasize fairness, impartiality, and expeditiousness in matters that materially affect the credibility of justice.

4. Any subsequent evaluation or decision concerning the Registry's ethical lapses can and should proceed under the framework of Regulation 119, following the Appeals Chamber's review of their immediate impact on the recusation process. This dual approach ensures that the procedural rights of all parties are respected while safeguarding the integrity of the Venezuela I Situation and the broader credibility of the ICC.

Independent Yet Related Context

5. The ethical lapses attributed to the ICC Registrar, Osvaldo Zavala Giler, specifically pertain to the failure to identify and act upon clear conflicts of interest in the appointment of Ms. Venkateswari Alagendra as counsel for the Venezuelan government. The Registrar's omission reflects a serious breach of his professional and ethical obligations under the Rome Statute, the ICC's Code of Conduct, and the Rules of Procedure and Evidence. While this does not imply intentional complicity, his failure to uphold due diligence has materially compromised the credibility and integrity of the Venezuela I investigation.

6. This submission does not allege coordinated misconduct but underscores the Registrar's responsibility to ensure transparency, impartiality, and adherence to ethical standards in ICC proceedings. The Registrar's failure to address apparent conflicts of interest—particularly the familial, professional, and hierarchical ties between Ms. Alagendra and Prosecutor Khan—undermines public trust in the ICC's ability to deliver justice impartially.

Scope of the Submission

Expose Ethical Breaches:

- Illuminate the ICC Registry's procedural and ethical lapses, particularly regarding its failure to vet and disclose Ms. Alagendra's relationships with Prosecutor Khan, including familial, professional, and hierarchical ties.

Demand Accountability:

- Advocate for the initiation of independent proceedings to investigate the Registrar's role in these lapses and impose appropriate corrective actions.

Ensure Victims' Rights:

- Highlight the critical need for timely and fair proceedings to restore victims' trust in the ICC, particularly given the urgent humanitarian and judicial challenges posed by the Venezuela I Situation.

Relevance to the Appeals Chamber

7. This submission aligns with the Chamber's mandate to ensure procedural integrity and safeguard victims' rights under Articles 68(3) and 64(2) of the Rome Statute. Addressing the Registrar's procedural lapses does not interfere with or delay the resolution of the ongoing recusation proceedings but instead strengthens the broader framework of accountability within the ICC.

8. By addressing these issues decisively, the Appeals Chamber has an opportunity to reinforce the ICC's ethical and procedural standards while sending a clear message that failures at any level of the institution will not be tolerated. This dual approach will restore confidence among victims, member states, and the international community at large.

Context and Jurisdiction

9. This submission is presented under Article 82(1)(d) of the Rome Statute, which grants the Appeals Chamber jurisdiction to address procedural irregularities that materially affect the fairness, integrity, and overall credibility of the proceedings.

10. The issues detailed herein pertain to the Venezuela I Situation investigation, a matter of significant public and judicial interest due to documented allegations of crimes against humanity committed under the Maduro regime. The procedural and ethical lapses outlined in this submission exacerbate the already grave concerns surrounding the investigation's impartiality.

11. The Appeals Chamber is uniquely positioned to address these concerns, as they relate to the administration of justice under Article 68(3) of the Rome Statute, which mandates the meaningful participation of victims. Procedural failures, such as the improper vetting of counsel appointments, directly infringe on the rights of victims and undermine the integrity of the judicial process.

12. While this submission does not seek to delay or interfere with the resolution of the recusation proceedings against Prosecutor Karim Khan, it emphasizes the intrinsic connection between these ethical breaches and the broader framework of accountability within the ICC. Both issues demand separate but simultaneous attention to safeguard the impartiality and effectiveness of the institution.

13. Addressing these procedural and ethical failures through decisive action will reinforce the ICC's commitment to upholding its mandate as a neutral arbiter of justice and restoring public trust in its operations.

Scope of Relief Sought

14. This submission respectfully seeks the Appeals Chamber's intervention to address and rectify procedural and ethical failures committed by the ICC Registry in the context of the Venezuela I Situation. These failures not only compromise the integrity of the proceedings but also jeopardize victims' trust in the ICC's mandate. The relief sought encompasses the following key points:

1. Judicial Review of the Registry's Conduct

15. We request a judicial review of the ICC Registry's failure to identify and act upon

the conflict of interest involving Ms. Venkateswari Alagendra. Her familial, professional, and hierarchical ties with Prosecutor Karim Khan were improperly vetted during her appointment as counsel for the Venezuelan government. This oversight violates procedural safeguards established under Rule 20 of the Rules of Procedure and Evidence, the Rome Statute, and the ICC's ethical guidelines.

2. Issuance of Directives to Prevent Future Lapses

16. The Appeals Chamber is urged to issue clear directives to strengthen administrative oversight and ensure that no future appointments bypass adequate vetting mechanisms. Such directives should focus on:

- Mandating stricter due diligence processes within the Registry.
- Establishing independent oversight mechanisms to review appointments for potential conflicts of interest.

3. Clarification of Standing for Complaints

17. This submission seeks explicit recognition of the standing of victims and human rights organizations to submit formal complaints concerning ethical and procedural violations within ICC processes. Such recognition would provide a vital avenue for transparency and accountability, ensuring that ethical misconduct is swiftly addressed.

4. Remedial Actions for the *Venezuela I Situation*

18. Given the significant procedural irregularities documented, specific remedial measures are necessary to ensure the impartiality and fairness of the *Venezuela I Situation* investigation. These measures include:

- Conducting an independent audit of the Registry's vetting procedures to identify systemic weaknesses.
- Reassessing the role of Ms. Alagendra in the *Venezuela I Situation* to determine whether her participation has compromised the investigation.
- Providing victims and their representatives with an opportunity to be heard regarding the implications of these ethical breaches on their rights and the credibility of the proceedings.

5. Reinforcement of Victim-Centered Justice

19. The Appeals Chamber is reminded of its obligation under Article 68(3) of the Rome Statute to ensure meaningful victim participation. Addressing the procedural and ethical failures outlined in this submission will serve to uphold this critical mandate and restore the trust of victims in the ICC's ability to deliver impartial justice.

20. The relief sought herein is both necessary and proportionate to uphold the ICC's integrity and ensure that its mission to provide justice for victims of crimes against humanity is not undermined by procedural and ethical lapses.

II. Factual Background

1. Conflict of Interest of Ms. Venkateswari Alagendra

21. Ms. Venkateswari Alagendra, serving as counsel for the Bolivarian Republic of Venezuela in the *Venezuela I Situation*, is the sister-in-law of ICC Chief Prosecutor Karim Khan. This familial connection, coupled with her professional and hierarchical ties to Prosecutor Khan, unequivocally constitutes a conflict of interest under Rule 34(1)(a) of the ICC Rules of Procedure and Evidence, which explicitly identifies familial, professional, and subordinate relationships as grounds for disqualification.

22. The familial bond between Ms. Alagendra and Prosecutor Khan constitutes a second-degree affinity, a category of close familial ties recognized under both international and national legal frameworks, including jurisprudence in the United Kingdom, the home jurisdiction of Prosecutor Khan. Under English legal principles, the perception of bias alone—when assessed from the standpoint of a fair-minded and informed observer—constitutes sufficient grounds for disqualification, as this undermines public confidence in the impartiality of legal proceedings. This principle aligns with the ICC's own ethical standards, which demand avoidance of actual conflicts of interest and any appearance of impropriety under Article 42(7) of the Rome Statute. When combined with the professional collaboration and hierarchical subordination between Ms. Alagendra and Prosecutor Khan in prior cases, the existence of this conflict exacerbates the perception of bias, contravening the Rome Statute's mandate to uphold fairness and impartiality in the administration of justice.

23. Ms. Alagendra's professional history with Prosecutor Khan includes significant roles in high-profile ICC cases, such as the *Ruto and Sang* case (Kenya) and the *Saif al-Islam Gaddafi* case (Libya). In both instances, Ms. Alagendra served under Prosecutor Khan's direct authority as Lead Counsel. This combination of familial, professional, and hierarchical ties exacerbates the perception of bias and raises serious questions regarding procedural integrity in the *Venezuela I Situation*. Furthermore, while these two instances are documented, a review of ICC records may reveal additional cases where such a professional dynamic existed, underscoring the potential systemic nature of this issue and the need for heightened scrutiny to safeguard the Court's impartiality.

24. The ICC Registry's failure to identify and disclose this multi-faceted conflict of interest before formalizing Ms. Alagendra's appointment as counsel for the Venezuelan government is a grave procedural lapse. Regulation 122 of the ICC Registry and Rule 20 of the Rules of Procedure and Evidence mandate comprehensive vetting processes for counsel appointments. The omission of these safeguards not only violates these requirements but also undermines public confidence in the neutrality of ICC proceedings.

25. Furthermore, the ICC Code of Conduct for the Office of the Prosecutor obliges all members to disclose potential conflicts of interest, as delineated under Section 9. This obligation is heightened in cases involving familial, professional, and hierarchical ties, which directly impinge on impartiality. Prosecutor Khan's failure to voluntarily disclose these connections constitutes a breach of this duty and compromises the integrity of the *Venezuela I Situation*.

26. By permitting the involvement of counsel with direct familial, professional, and hierarchical ties to the Chief Prosecutor, the ICC has jeopardized its credibility and the victims' right to impartial justice under Article 68(3) of the Rome Statute. The Appeals

Chamber is therefore urged to address this conflict of interest comprehensively, ensuring that the judicial process in the *Venezuela I Situation* remains fair, transparent, and free from improper influence.

2. Registry's Oversight in Screening Appointments

27. The ICC Registry is responsible for ensuring transparency and impartiality in counsel appointments as part of its mandate to uphold procedural integrity in ICC investigations. However, its oversight in the *Venezuela I Situation* has revealed significant procedural deficiencies, particularly in its failure to properly vet Ms. Venkateswari Alagendra's appointment as counsel for the Bolivarian Republic of Venezuela.

28. Regulation 122 of the ICC Registry and Rule 20 of the Rules of Procedure and Evidence obligate the Registry to conduct a thorough vetting process before formalizing any counsel's appointment. This includes assessing potential conflicts of interest to safeguard the impartiality and credibility of ICC proceedings.

29. The Registry failed to identify or disclose Ms. Alagendra's familial, professional, and hierarchical ties to Chief Prosecutor Karim Khan. These relationships are well-documented and should have been evident during the Registry's vetting process. The omission of such critical information undermines the integrity of the *Venezuela I Situation* and contravenes the Registry's duties under the Rome Statute.

30. Furthermore, this lapse violates the ICC Code of Conduct, which mandates rigorous standards of transparency and accountability for all participants in the Court's processes. By allowing a counsel with such clear conflicts of interest to represent a party in a high-stakes investigation, the Registry has jeopardized the perception of fairness and neutrality essential to the Court's mission.

31. The consequences of this oversight are profound. Victims in the *Venezuela I Situation*, who rely on the ICC for impartial justice, are now left questioning the credibility of the proceedings. The Registry's failure to uphold its administrative obligations not only damages the ICC's reputation but also risks perpetuating a sense of abandonment among victims, contrary to the principles enshrined in Article 68(3) of the Rome Statute.

32. To prevent future lapses, this submission urges the Appeals Chamber to mandate an independent review of the Registry's vetting and oversight processes. Such a review should assess systemic weaknesses and recommend reforms to restore trust in the ICC's administrative functions.

3. Patterns of Professional Engagements

33. Ms. Venkateswari Alagendra's repeated professional collaborations with Prosecutor Karim Khan further reinforce the perception of bias and procedural impropriety in the *Venezuela I Situation*. These patterns are evident in her participation under Khan's leadership in at least two high-profile ICC cases: the *Ruto and Sang* case (Kenya, 2013) and the *Saif al-Islam Gaddafi* case (Libya, 2018–2019).

34. In both cases, Ms. Alagendra operated as an associate counsel subordinate to Khan, who served as Lead Counsel. This established dynamic of professional hierarchy between the two raises significant concerns regarding impartiality, as it creates a reasonable apprehension of favoritism or undue influence in their subsequent roles in ICC proceedings.

35. Beyond these two documented cases, it is plausible that further instances of professional collaboration exist within ICC records. An independent review of the Court's archives may uncover additional examples, underscoring the systemic nature of their professional relationship and its implications for the impartial administration of justice.

36. The recurrence of these collaborations amplifies the appearance of bias, particularly when combined with their familial, professional, and hierarchical ties. Rule 34(1)(a) of the ICC Rules of Procedure and Evidence explicitly identifies such relationships as grounds for disqualification to ensure procedural fairness and public confidence in ICC operations.

37. The ICC's foundational principle of impartiality necessitates that all actors in the judicial process maintain both actual independence and the appearance thereof. Failure to address such entrenched patterns of professional affiliations risks undermining the trust of victims and member states in the Court's commitment to equitable justice.

38. These patterns, when viewed in conjunction with the Registry's failure to disclose or act on the known familial, professional, and hierarchical ties between Ms. Alagendra and Prosecutor Khan, reveal systemic weaknesses in administrative oversight. The Appeals Chamber must assess these recurring professional engagements to determine their impact on the integrity of the *Venezuela I Situation*.

39. The Appeals Chamber's intervention is critical to ensuring that professional affiliations between Court officials do not compromise the fairness of ICC proceedings. A transparent and independent review of these affiliations, including potential conflicts of interest, is essential to restoring the credibility of the *Venezuela I Situation* and the ICC's broader mandate.

4. Registry's Procedural Violations

I. Failure to Process Complaints

40. On September 10, 2024, at 3:56 PM (GMT+2), I, Robert Carmona-Borjas, acting on behalf of the Arcadia Foundation, sent an Email via the official Arcadia Foundation Email platform (rcb@arcadiafoundation.org) to Registry@icc-cpi.int with the subject line: "*Submission of Formal Complaint Regarding Ethical Violations Involving Ms. Venkateswari Alagendra and Prosecutor Karim Khan.*" The Email included a formal complaint under Article 34 of the ICC Code of Professional Conduct for Counsel, raising allegations of ethical violations and conflicts of interest involving Ms. Alagendra and Prosecutor Khan. The communication explicitly requested acknowledgment of receipt and prompt processing.

41. Despite the explicit legal basis of the complaint and its critical relevance to the ethical integrity of ICC proceedings, the Registry failed to acknowledge or respond. This constitutes a direct violation of its administrative duties under Rule 20 of the ICC Rules of Procedure and Evidence, which obliges the Registry to ensure efficient administration and procedural fairness.

II. The Registry's Obligation to Process Complaints

42. The Code of Conduct for Counsel under Article 34(1) provides that any individual or group affected by a counsel's misconduct has the right to submit a formal complaint to the Registry, which is responsible for forwarding such complaints to the Commissioner of the Disciplinary Organs. This creates a dual-layered responsibility: first, the Registry must ensure timely administrative action; second, it must ensure the complaint reaches the competent authority.

43. Karim Khan's dual status as ICC Prosecutor and registered counsel obligates the Registry to assess his conduct under both the Code of Conduct for the Office of the Prosecutor and the Code of Professional Conduct for Counsel. This duality places additional ethical responsibilities on the Registry to act promptly, ensuring impartiality and procedural fairness in processing complaints.

44. The failure to act on the complaint not only violated Rule 20 but also undermined Article 68(3) of the Rome Statute, which guarantees victims meaningful participation in ICC processes. Administrative neglect in such a high-profile case erodes confidence in the Registry's ability to ensure justice.

III. Registry's Duty to Remit Complaints

45. The ICC Registry's failure to forward the complaint to the appropriate disciplinary authority constitutes an ethical and administrative lapse. Even if the complaint were misdirected, the Registry was bound by its duty of due diligence and good faith to remit the document to the appropriate body, as established under Article 34(2) of the Code of Conduct for Counsel.

46. On October 30, 2024, at 10:29 AM (GMT+1), following multiple attempts to secure acknowledgment and action on the submitted complaint, the Secretariat of the Assembly of States Parties (ASP) kindly confirmed receipt of a follow-up communication. The ASP revealed that, after "checking" its records, the Registry claimed not to have received the Email sent on September 10, 2024. This disclosure raises serious concerns regarding:

- Whether the Registry actually received the complaint and ignored it.
- The integrity of the Registry's internal record-keeping and follow-up processes.

47. The timeline of events clearly highlights the lack of diligence by the Registrar: the initial complaint was submitted on 10 September 2024; the issue was formally acknowledged by the ASP on 30 October 2024; and as of today, 12 January 2025, the Registrar has yet to take any substantive action to forward the complaint to the appropriate disciplinary authority. This persistent inaction over four months underscores a serious disregard for procedural responsibilities and administrative

efficiency, in violation of Rule 20 of the ICC Rules of Procedure and Evidence. Such delays significantly undermine trust in the Registry's capacity to uphold transparency and fairness.

IV. Request for Forensic Investigation of Registry Records

48. Given the Registry's assertion that it "checked" its records and found no evidence of the Email, it is imperative that a comprehensive forensic investigation be conducted on the ICC's email servers and backup systems. This investigation should aim to establish the following:

1. Verification of Receipt: Whether the email sent at 3:56 PM (GMT+2) on September 10, 2024, to Registry@icc-cpi.int was successfully received by the server, including confirmation of delivery logs and timestamps.
2. Internal Handling: Identification of any internal communications or actions taken regarding the complaint, including email forwarding, access logs, or system actions that might explain the alleged non-receipt.
3. Good Faith Assessment: Whether the Registry's claim of non-receipt was made in good faith or, alternatively, involved intentional negligence, willful misconduct, or misrepresentation of the facts.

49. The forensic investigation should involve a robust technical review of the ICC's information systems, covering:

1. Server Log Analysis: Examination of incoming email server logs for communications directed to Registry@icc-cpi.int on September 10, 2024, particularly around 3:56 PM (GMT+2). This should include metadata, delivery confirmations, and associated error messages, if any.
2. Backup and Mirrored Data Retrieval: Retrieval and analysis of backup or mirrored server data to ascertain whether the communication was received and subsequently deleted, altered, or misrouted. This step should verify the integrity of the Registry's handling of electronic communications.
3. Procedural and Access Logs: Review of internal procedural logs within the Registry to detect any signs of system tampering, unauthorized access, or deviations from standard email handling protocols. This review should also examine whether proper escalation protocols were followed upon receipt of complaints.

50. A forensic investigation of this nature is essential to uphold transparency and accountability within the ICC's administrative processes. It ensures that any technical or procedural lapses are accurately identified and remedied while addressing any potential misconduct. Furthermore, the findings will be instrumental in restoring public confidence in the ICC's capacity to process and respond to communications with the required diligence and impartiality.

V. Legal and Ethical Implications of the Registry's Inaction

51. If the forensic investigation reveals that the Email was received but not acted upon, the Registry's inaction constitutes a violation of both the Rome Statute and its own ethical framework. Specifically:

- Rule 20 of the ICC Rules of Procedure and Evidence mandates administrative efficiency, which was clearly absent.
- Article 9 of the Code of Conduct for the Prosecutor requires members of the Office of the Prosecutor, including the Registry, to avoid conflicts of interest and act impartially in all professional matters.

52. Even in the absence of clear procedural rules for complaints implicating dual-status individuals like Prosecutor Khan, the Registry had an ethical obligation to forward the complaint to the Office of the Independent Counsel for Ethical Affairs. Its failure to do so highlights deficiencies in administrative oversight that demand immediate corrective action.

Extracts from Key Correspondence

Email, September 10, 2024:

From: Robert Carmona-Borjas (rcb@arcadiafoundation.org)

To: Registry@icc-cpi.int

Time: 3:56 PM (GMT+2)

Subject: Submission of Formal Complaint Regarding Ethical Violations Involving Ms. Venkateswari Alagendra and Prosecutor Karim Khan

Excerpt:

"This submission is made in accordance with Article 34 of the ICC Code of Professional Conduct for Counsel. We respectfully request that the attached document be processed through the appropriate channels and referred to the Office of the Independent Counsel for Ethical Affairs for investigation."

ASP Email, October 30, 2024:

From: Secretariat of the Assembly of States Parties (asp@icc-cpi.int)

Time: 10:29 AM (GMT+1)

Excerpt:

"After checking, the Registry has informed us that it did not receive your September 10 email. To ensure the matter proceeds appropriately, we suggest resending it directly to secretariatofdisciplinaryorgans@icc-cpi.int."

53. These correspondences underscore the need for transparency and accountability within the Registry's administrative processes. The Appeals Chamber must investigate whether the Registry's actions (or inactions) were in compliance with its mandate to uphold the Rome Statute and relevant ICC codes of conduct.

Additional Attempts to Secure Registry Response

54. In light of the Registry's continued failure to acknowledge the formal complaint submitted on September 10, 2024, I, Robert Carmona-Borjas, representing the Arcadia Foundation, escalated the matter to alternative ICC oversight mechanisms. On October 25, 2024, at 3:17 PM (GMT+2), a detailed communication was sent to the Independent Oversight Mechanism (IOM) of the ICC via Email to ensure that the ethical violations involving Ms. Venkateswari Alagendra and Prosecutor Karim Khan would be appropriately addressed.

The message was structured as follows:

From: Robert Carmona-Borjas (rcb@arcadiafoundation.org)
 To: Independent Oversight Mechanism (iom@icc-cpi.int)
 Subject: Follow-Up on Ethical Violations Complaints – Urgent Action Requested
 Date: October 25, 2024, 3:17 PM (GMT+2)
 Communication Content:

- Introduction: The communication outlined the lack of acknowledgment from the Registry for submissions made on September 8 and 10, 2024, highlighting their critical relevance to the ethical integrity of ICC proceedings.
- Request for Action: It urged the IOM to investigate the procedural failures and ensure the ICC's adherence to its ethical standards under the Rome Statute.
- Attachments: Relevant documents were appended, including the original formal complaints, evidencing the Arcadia Foundation's continuous efforts to secure due process.

55. On October 28, 2024, at 6:32 AM (GMT+2), a response was received from [REDACTED]. The reply confirmed receipt of the correspondence and committed to reviewing the matter per IOM's standard procedures. The response stated:

From: [REDACTED]
 Date: October 28, 2024, 6:32 AM (GMT+2)
 Subject: Acknowledgment of Receipt – Complaint Review
"Dear Mr. Carmona-Borjas,
The IOM acknowledges receipt of your email. The matter will be reviewed per IOM's standard practice, and we will get back to you should we require further information or whenever the review is complete.
Best regards,
IOM."

56. While this acknowledgment demonstrated diligence on the part of the IOM, it also underscored the lack of coordination within ICC mechanisms. Specifically, the Independent Oversight Mechanism provided no additional guidance on the original complaint submitted to the Registry, which remained unresolved. The absence of further substantive communication from the IOM following their acknowledgment further compounds concerns regarding institutional transparency.

Continued Escalation to the President of the Assembly of States Parties (ASP) and Outcome

57. After repeated attempts to prompt action from the Registry and still receiving no acknowledgment of previous submissions, we sent an urgent communication to the President of the Assembly of States Parties (ASP) on October 25, 2024, at 3:54 PM (GMT+2). This correspondence sought immediate intervention to address the handling of the complaints submitted on September 8 and 10, 2024, concerning the request for the recusal of Prosecutor Karim Khan and allegations of ethical violations involving both Prosecutor Khan and Ms. Venkateswari Alagendra.

From: Robert Carmona-Borjas (rcb@arcadiafoundation.org)
 To: Assembly of States Parties (asp@icc-cpi.int)
 Subject: Formal Complaint and Lack of Response from the ICC Regarding Ethical Breach Involving Prosecutor Karim Khan
 Date: October 25, 2024, 3:54 PM (GMT+2)

The letter outlined:

1. The absence of acknowledgment from the ICC Registry despite multiple formal submissions, including the complaint under Article 34 of the ICC Code of Professional Conduct for Counsel.
2. The potential conflict of interest between Prosecutor Karim Khan and Ms. Alagendra in the context of Venezuela I Situation.
3. The urgent need for transparency and accountability in ICC processes to uphold public trust in its mandate.

This communication explicitly requested:

- Immediate action to acknowledge the complaints and confirm steps for addressing the alleged violations.
- Assurance that the Registry would process the complaint under the Rome Statute and applicable ICC guidelines.

Outcome:

58. On October 31, 2024, at 5:23 AM (GMT+2), a response was received from the Secretariat of the Disciplinary Organs for Counsel, confirming receipt of the complaint and attachments. The Email, sent by [REDACTED], an Administrative Assistant for the Secretariat, stated:

From: Secretariat of the Disciplinary Organs (SecretariatofDisciplinaryOrgans@icc-cpi.int)
 Date: October 31, 2024, 5:23 AM (GMT+2)
 Subject: Confirmation of Receipt of Submission
"The Secretariat of the Disciplinary Organs for Counsel (The Secretariat) by way of this e-mail confirms good receipt of your message and the attachments. Please be informed that the Secretariat will transmit your submission to the Commissioner of the Disciplinary Organs for Counsel in charge of the investigation of the disciplinary complaints as soon as practicable for consideration. Kindly note that you will not be in copy in that communication nor will the Assembly of States Parties. The Secretariat shall revert to you if there are any questions regarding your submission and remains at your disposal for any queries you might have in this regard."

59. This acknowledgment marked a critical turning point. It was the first instance of formal recognition of the Arcadia Foundation's submissions since their filing on September 8, 2024, regarding the recusal request for Prosecutor Karim Khan, and September 10, 2024, concerning the formal complaint on ethical violations under the

ICC Code of Professional Conduct for Counsel. The direct involvement of the ASP President appeared instrumental in breaking the procedural impasse, prompting the Secretariat to take concrete steps to channel the complaint to the appropriate investigative authority.

Additional Communication Received on October 30, 2024, from the Assembly of States Parties (ASP)

60. On October 30, 2024, at 10:29 AM (GMT+2), I received another Email from the Secretariat of the Assembly of States Parties (ASP). The communication stated:

From: Secretariat of the Assembly of States Parties (asp@icc-cpi.int)
 Date: October 30, 2024, 10:29 AM (GMT+2)
 Subject: Re: Follow-Up on Ethical Violations Complaints
"As per reference to your email, specifically to Article 34 of the Code of Professional Conduct for Counsel, it seems to imply that the intention was to submit the complaint to the Commissioner. The Registry understands after checking that this has not been received. Might you please indicate which email address was used initially, and could you please re-send the communication directly to: secretariatofdisciplinaryorgans@icc-cpi.int."

61. This communication, while procedural in nature, revealed several critical points. Firstly, it confirmed that the Registry had failed to either record or forward the initial complaint submitted on September 10, 2024, which addressed violations of the ICC Code of Professional Conduct for Counsel. Secondly, it highlighted the systemic neglect within the Registry, which had hindered the proper channeling of formal submissions. This procedural oversight not only delayed action but also raised questions about the adequacy of the Registry's internal communication and record-keeping mechanisms.

62. Furthermore, this response reflected the ASP's understanding that its role was limited to providing procedural guidance, rather than addressing the substantive legal aspects of the complaint. Specifically, it was not within the ASP's remit to evaluate the allegations directed toward the Office of the Independent Counsel for Ethical Affairs. This clarification underscored the procedural inefficiencies that had persisted despite the gravity of the allegations.

63. Importantly, the suggestion to redirect the complaint to the Email address secretariatofdisciplinaryorgans@icc-cpi.int marked a critical procedural turning point. It illuminated a gap in the Registry's processes, wherein misdirected or mishandled complaints failed to reach the appropriate investigative authority in a timely manner. This failure compounded the delays in addressing the issues of conflict of interest and ethical violations.

64. Despite the ASP's procedural guidance, the absence of acknowledgment or action from the Office of the Independent Counsel for Ethical Affairs, where the ethical complaint was originally directed, remained a significant concern. Under the ICC's legal framework, it is within this Office's jurisdiction to assess allegations when the subject of the complaint involves dual roles, such as Prosecutor Karim Khan's position as both ICC Prosecutor and legal counsel under the ICC's professional guidelines.

65. The procedural lapses identified through this correspondence demonstrated the necessity of consistent oversight and adherence to established protocols. The Registry's continued failure to forward the ethical complaint to the Office of the Independent Counsel for Ethical Affairs, as of the date of this submission, compounded the delay and contravened Rule 20 of the ICC Rules of Procedure and Evidence, which mandates efficient administrative handling of complaints. This ongoing inaction reflects a profound disregard for procedural obligations and raises questions about potential intentional negligence.

Additional Correspondence and Registry's Continued Failures

66. Email from the Assembly of States Parties: On November 4, 2024, at 4:26 AM (GMT+2), we received an Email from the Assembly of States Parties (ASP) Secretariat. This communication provided yet another procedural clarification:

From: Assembly of States Parties (asp@icc-cpi.int)
 Date: November 4, 2024, 4:26 AM (GMT+2)
 Subject: RE: Submission of Formal Complaint Regarding Ethical Violations Involving Ms. Venkateswari Alagendra and Prosecutor Karim Khan
"Further to our exchange, the Secretariat of the Assembly has been informed that regarding the request for the Prosecutor's recusal, the Arcadia Foundation should send the submission to the following e-mail address: judoc@icc-cpi.int."

67. This response, while procedural, failed to address the broader ethical and procedural lapses highlighted in previous communications. Instead, it redirected the complaint once again, underscoring the Registry's chronic neglect in addressing formal submissions efficiently and transparently.

68. On November 4, 2024, at 3:24 PM (GMT+2), we acted immediately upon the ASP's guidance, sending a comprehensive Email to the newly designated address, judoc@icc-cpi.int, reiterating the urgency of addressing the recusal request originally submitted on September 8, 2024. Despite our diligent efforts to submit a formal accusation regarding ethical violations committed by the Prosecutor of the ICC—violations that should have been identified and addressed by ICC officials themselves, particularly the Registrar, whose role includes verifying the credentials and registration details of legal professionals—the ICC later erroneously claimed in its records that the recusal request was submitted on November 12, 2024. This erroneous assertion disregarded the documented submission made on September 8, 2024, as evidenced by the system-generated acknowledgment and our repeated efforts to ensure compliance, reflecting a regrettable lack of accuracy and procedural diligence within the Registry.

VI. Legal Basis for the Claim

1. Violation of the Rome Statute

69. Article 67(1)(d): This article enshrines the fundamental right of participants in ICC proceedings to receive adequate notice and procedural fairness. The Registry's omission to process formal complaints and failure to notify the affected parties

constitutes a direct breach of this provision. This failure undermines the procedural safeguards designed to ensure fairness and transparency in judicial processes, particularly in situations involving allegations of conflicts of interest.

70. Article 43(6): The Rome Statute mandates the Registry to perform its duties with administrative neutrality and due diligence. In this case, the Registry's oversight in vetting counsel appointments and its inaction in addressing submitted complaints reflect a lack of adherence to these principles. The failure to uphold administrative neutrality erodes confidence in the ICC's processes and compromises the integrity of the judicial proceedings under the *Venezuela I Situation*.

2. Breach of the ICC Code of Conduct

71. Article 5 (Duty of Diligence): The ICC Code of Conduct obligates officials to execute their responsibilities with the highest standards of diligence and competence. The Registry's inaction and procedural lapses in handling the ethical complaints fall far short of these standards, particularly in a matter of significant public interest involving alleged crimes against humanity.

72. Article 7(4) (Avoidance of Conflicts of Interest): This provision imposes an obligation on ICC officials to avoid not only actual conflicts of interest but also the appearance of conflicts of interest. The familial, professional, and hierarchical ties between Ms. Venkateswari Alagendra and Prosecutor Karim Khan flagrantly violate this standard. By failing to address these ties appropriately, the Registry has allowed a situation that undermines public trust in the impartiality of ICC proceedings.

3. Precedents and Jurisprudence

73. The Prosecutor v. Ngudjolo Chui: In this case, the Court underscored that even the appearance of bias necessitates recusal and procedural correction. This principle directly applies to the present circumstances, where the perception of impropriety has been amplified by the Registry's lack of action.

74. International Tribunal Standards: Judicial precedents from international tribunals emphasize the paramount importance of avoiding conflicts of interest to maintain public confidence in the judiciary's impartiality. The established standards call for rigorous scrutiny and prompt corrective measures to address any perceived or actual conflicts, a duty the ICC Registry failed to fulfill in this case.

VII. Impact of the Registry's Failures

1. Erosion of Victims' Trust

75. The Registry's procedural and ethical lapses have severely compromised victims' confidence in the ICC's capacity to deliver impartial justice. Article 68(3) of the Rome Statute emphasizes the right of victims to meaningful participation in proceedings, which is predicated on the fairness and transparency of the judicial process. By failing to address and resolve conflicts of interest and ethical breaches, the Registry has violated this fundamental principle, leaving victims feeling marginalized and distrustful of the ICC's ability to protect their rights.

76. The trust erosion is particularly grave in the context of the Venezuela I Situation, where victims already face systemic challenges in seeking justice for crimes against humanity. The Registry's inaction exacerbates the perception that the ICC is incapable of functioning as an impartial arbiter, undermining its legitimacy as a venue for victims to obtain redress and accountability.

2. Undermining the Integrity of Proceedings

77. The perception of bias and procedural irregularities within the Registry has far-reaching implications for the credibility of the Venezuela I investigation. The ICC's mandate as a neutral and independent judicial body is contingent upon strict adherence to procedural fairness and ethical guidelines. The apparent conflicts of interest between Ms. Venkateswari Alagendra and Chief Prosecutor Karim Khan, compounded by the Registry's failure to act, directly undermine these principles.

78. Procedural failures of this nature cast doubt on the ICC's ability to uphold its commitment to justice. This compromises not only the Venezuela I investigation but also the broader integrity of the ICC as an institution dedicated to combatting impunity for crimes against humanity. Without decisive corrective measures, the ICC risks eroding the confidence of victims, states, and the international community in its impartiality and effectiveness.

3. Broader Implications for Oversight

79. The Registry's lapses reveal deeper, systemic deficiencies in the ICC's administrative oversight mechanisms. These failures highlight the need for structural reforms to ensure rigorous vetting processes and the proper handling of complaints, particularly in cases involving potential conflicts of interest. The absence of robust safeguards undermines the credibility of the ICC's internal governance and weakens its ability to function as a transparent and accountable institution.

Failure to Refer the Complaint to the Independent Counsel for Ethical Affairs

80. The Registry's failure to refer the formal complaint to the Office of the Independent Counsel for Ethical Affairs constitutes a clear violation of the applicable ethical and procedural rules of the ICC. This omission reflects systemic issues in the Registry's handling of ethical concerns and its failure to adhere to its obligations under the Rome Statute, the Code of Professional Conduct for Counsel, the Code of Conduct for the Office of the Prosecutor, and the Regulations of the Court.

81. Article 34(2) of the ICC Code of Professional Conduct for Counsel requires the Registry to forward any formal complaint concerning the conduct of counsel to the Independent Counsel for Ethical Affairs. Similarly, Regulation 122 of the ICC Regulations obligates the Registry to act neutrally and diligently in processing complaints. In this case, the Registry failed to fulfill its duty by retaining the complaint instead of forwarding it to the appropriate authority for further examination. In this case, the Registry failed to fulfill its duty by retaining the complaint instead of forwarding it to the appropriate authority for further examination.

82. The Independent Counsel for Ethical Affairs, as the body responsible for assessing

potential violations of ethical standards, has a proactive duty to open an investigation if there is knowledge of conduct that may undermine the Court's credibility. This principle is consistent with international jurisprudence, including cases such as *The Prosecutor v. Ngudjolo Chui*, where the appearance of procedural impropriety was deemed sufficient to warrant corrective measures to preserve the Court's impartiality and public trust.

83. EVEN IF THE FORMAL COMPLAINT HAD CONTAINED ERRORS OR CITED INCORRECT NORMS, the substance of the allegations—namely, potential unethical conduct involving the Chief Prosecutor and Ms. Venkateswari Alagendra—required careful evaluation. The Registry's decision to withhold the complaint instead of forwarding it to the Independent Counsel constitutes a serious breach of its duties under Regulation 122 of the Regulations of the Court, which obligates the Registry to act neutrally and diligently when handling complaints.

84. The Office of the Prosecutor is also subject to heightened ethical standards, as outlined in Article 42(7) of the Rome Statute, which emphasizes the necessity of impartiality in all actions taken by the Prosecutor and their staff. Failure to ensure that allegations of ethical breaches are referred to the appropriate body undermines the legitimacy of the ICC and its ability to effectively address violations of international justice.

85. Furthermore, international standards underscore the obligation of independent ethics offices to act when credible allegations arise. For example, in the jurisprudence of the International Criminal Tribunal for the former Yugoslavia (ICTY), ethical oversight mechanisms were activated proactively to address concerns about conflicts of interest or improper conduct. The same principle applies here, where the failure to act has compromised public confidence in the impartiality of the ICC.

86. In this context, the Registry's inaction not only violates procedural and ethical norms but also creates a dangerous precedent that could undermine the Court's integrity. The Independent Counsel for Ethical Affairs must be empowered to assess such allegations without interference or delay, ensuring that the ICC remains a credible institution capable of delivering impartial justice.

87. Left unaddressed, these deficiencies could have a chilling effect on victims, civil society actors, and states engaging with the ICC, deterring their willingness to report misconduct or participate in proceedings. To restore institutional integrity, the Appeals Chamber must mandate independent audits and enforce measures to rectify the systemic shortcomings exposed by the Registry's actions. Only through such efforts can the ICC rebuild trust and reaffirm its role as a credible enforcer of international justice.

VIII. Relief Sought

1. Judicial Review of the Registry's Conduct

88. The Appeals Chamber is respectfully requested to undertake an expedited judicial review of the ICC Registry's conduct concerning its obligations under the Rome Statute, the Rules of Procedure and Evidence, and the Registry Regulations. This

review must prioritize assessing whether the Registry's failure to adequately vet Ms. Venkateswari Alagendra's appointment and to process formal complaints constitutes violations of its duties of neutrality, transparency, and diligence.

89. Should the judicial review confirm breaches of these obligations, it is imperative that the Appeals Chamber impose disciplinary measures against those responsible. Such measures would not only establish accountability but also serve as a precedent to safeguard the ICC's institutional credibility and reinforce its commitment to impartial justice.

2. Remedial Action in the *Venezuela I Situation*

90. To protect the credibility of the ICC as a whole, the Appeals Chamber should order an immediate and independent review of all appointments, filings, and procedural decisions involving Ms. Venkateswari Alagendra. This review must assess whether her prior involvement has compromised the impartiality of proceedings or violated victims' rights under Article 68(3) of the Rome Statute.

91. Recognizing the gravity of the issues raised, the Appeals Chamber should emphasize that these matters transcend the *Venezuela I Situation* and concern institutional violations of ethical norms that imperil the Court's integrity. Consequently, the Chamber is urged to declare itself in permanent session until these issues are resolved. This extraordinary measure is justified under the Rome Statute and the Regulations of the Court, which mandate procedural fairness, transparency, and the expedient resolution of matters affecting the Court's credibility. While Article 64(2) of the Rome Statute explicitly refers to the rights of the accused during trial proceedings, its underlying principles of fairness, impartiality, and expedition are applicable in this context. The absence of accused individuals in the *Venezuela I Situation* does not negate the Court's obligation to address ethical violations that undermine institutional integrity and the rights of victims under Article 68(3).

92. Additionally, Regulation 64(6) of the Regulations of the Court provides the Appeals Chamber with the discretion to organize its proceedings to ensure efficiency. Declaring a permanent session aligns with this mandate, guaranteeing that the resolution of these issues is not subject to undue delays. Precedents such as *The Prosecutor v. Ngudjolo Chui* affirm that even the appearance of procedural impropriety necessitates immediate corrective measures to preserve the legitimacy of the Court. By acting decisively, the Appeals Chamber can restore trust in the ICC's impartiality and reaffirm its role as a credible enforcer of international justice.

93. The Chamber should also direct the Registry to acknowledge and immediately act on all pending complaints, including the formal disciplinary request submitted by Robert Carmona-Borjas and the Arcadia Foundation on September 10, 2024. A failure to promptly address these complaints would constitute not only a breach of procedural fairness but also a dereliction of the Court's duty to uphold transparency and justice.

94. These actions are critical for preserving the ICC's credibility and ensuring the impartial administration of justice. As an institution charged with combating impunity for the gravest international crimes, the ICC cannot afford to allow administrative failures or ethical violations to tarnish its reputation or hinder its mandate.

Legal Basis and Procedural Urgency

95. The Appeals Chamber must acknowledge that this matter extends beyond a procedural dispute within the *Venezuela I Situation*; it involves systemic violations of the ICC's ethical framework that jeopardize the institution's integrity. Article 43(1) of the Rome Statute delineates the Registry's responsibility for overseeing the non-judicial aspects of the Court's administration, ensuring procedural neutrality and diligence in matters such as the handling of complaints and allegations of ethical misconduct.

96. The failure of the Registry to forward the formal complaint to the appropriate disciplinary authority contravenes Regulation 119(1) of the Regulations of the Court, which mandates the direct submission of complaints against court officials to the Presidency, ensuring independent and impartial review. Furthermore, Article 42(7) of the Rome Statute requires the Prosecutor and their office to maintain impartiality, underscoring the seriousness of the allegations raised.

97. The Court's precedents, such as *The Prosecutor v. Ngudjolo Chui*, emphasize that even the appearance of procedural impropriety necessitates immediate corrective actions to preserve public confidence in the Court's impartiality. Rule 16 of the Rules of Procedure and Evidence highlights the Registrar's duty to protect the dignity and security of participants, ensuring that administrative functions are carried out transparently and without bias.

98. The systemic failures highlighted in this case underscore the critical need for the Registry to adhere to its obligations of neutrality, transparency, and due diligence. The failure to forward the formal complaint to the appropriate disciplinary authority contravenes the principles outlined in Article 34 of the ICC Code of Professional Conduct for Counsel, which mandates impartial and professional handling of all ethical concerns. Furthermore, Regulation 119 of the Regulations of the Court requires that disciplinary matters involving high-ranking Court officials be referred directly to the Presidency, ensuring independent and impartial oversight.

99. To safeguard the Court's credibility, the Appeals Chamber is urged to adopt expedited measures to address these concerns. Immediate action is required under Article 64(2) of the Rome Statute, which obligates the Trial Chamber to ensure fair, impartial, and expeditious proceedings. While traditionally applied in contexts involving the accused, the principle of procedural integrity can be extended by analogy to administrative and ethical matters critical to the Court's reputation.

IX. Conclusion and Closing Remarks

100. The International Criminal Court (ICC) stands as a beacon of hope for victims of crimes against humanity, particularly in nations where domestic judicial systems have been systematically dismantled, such as Venezuela. This submission respectfully urges this Honorable Appeals Chamber to take immediate and decisive measures to address the procedural and ethical failures detailed herein, ensuring the preservation of the Court's integrity and credibility as the guardian of international justice.

101. The procedural shortcomings and ethical lapses identified—particularly the failure of the Registry to uphold due diligence in vetting appointments and processing formal complaints—risk undermining the impartiality of proceedings and eroding public trust in the ICC. Such failures not only jeopardize the credibility of the *Venezuela I Situation* but also set a dangerous precedent for the institution's future.

102. This Honorable Chamber has a unique and critical opportunity to reaffirm the ICC's foundational principles of impartiality, transparency, and accountability. By addressing these issues with resolve, the Court will send an unequivocal message to victims, States Parties, and the international community that no failure, at any level, will be tolerated when justice is at stake.

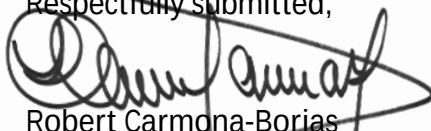
103. Order the immediate suspension of Ms. Venkateswari Alagendra from representing any person under investigation or accused in cases where Chief Prosecutor Karim Khan serves as the ICC Prosecutor. In the event that the recusation of Mr. Khan is granted, Ms. Alagendra should be permanently disqualified from serving as counsel in the respective case and immediately referred to the Office of the Independent Counsel for Ethical Affairs of the ICC for disciplinary proceedings. This measure ensures:

- The elimination of any appearance of bias arising from their familial, professional, and hierarchical ties, as explicitly prohibited under Rule 34(1)(a) of the ICC Rules of Procedure and Evidence.
- The reinforcement of the ethical standards and procedural integrity of the ICC, in compliance with Article 42(7) of the Rome Statute.
- A clear demonstration of the ICC's commitment to addressing ethical breaches decisively, thereby restoring public trust in its impartiality and effectiveness.

104. This immediate and decisive action is both necessary and proportionate to uphold the ICC's credibility and ensure that all proceedings are conducted with transparency and fairness, in line with the Court's mandate.

105. This submission is not merely a call for corrective action but a testament to our unwavering faith in the principles that underpin this Court. The ICC remains the last recourse for countless victims worldwide, and its credibility must be preserved at all costs. We urge this Chamber to act decisively and with urgency to reinforce the institution's role as a fair, transparent, and impartial arbiter of justice, thereby renewing the hope of those who have been denied it for far too long.

Respectfully submitted,



Robert Carmona-Borjas

On behalf of Arcadia Foundation

and in my capacity as a recognized victim

(Victim Reference: r/21840/23, VPRS-A-2023-092)

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