

ANNEX

Public

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC- ICC-02/18

Date: 5 August 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

Request for Clarification on the Competence of Deputy Prosecutors to Conduct Investigations in the Situation in the Bolivarian Republic of Venezuela I

Source: The present request of clarification is submitted by Foro Penal in representation of victims of crimes against humanity committed in Venezuela, Alfredo Romero Mendoza, President of Foro Penal and a Counsel admitted before the ICC, and Gonzalo Himiob Santomé, Vice President Foro Penal, and a Counsel admitted before the ICC

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

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| ☒ The Office of the Prosecutor | ☐ Counsel for the Defence |
| ☐ Legal Representatives of the Victims | ☐ Legal Representatives of the Applicants |
| ☐ Unrepresented Victims | ☐ Unrepresented Applicants |
| ☒ The Office of Public Counsel for Victims | ☐ The Office of Public Counsel for the Defence |
| ☒ States' Representatives | ☐ Amicus Curiae |

REGISTRY

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- | | |
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| Registrar
Mr Osvaldo Zavala Giler | ☐ Counsel Support Section |
| ☐ Victims and Witnesses Unit | ☐ Detention Section |
| ☐ Victims Participation and Reparations Section | |

I. INTRODUCTION

1. The undersigned, Alfredo Romero Mendoza and Gonzalo Himiob Santomé, Venezuelan attorneys and legal counsels admitted before the International Criminal Court ("the Court"), submit this petition in their capacities as President and Vice President of the human rights organization Foro Penal and as representatives of multiple Venezuelan victims of crimes against humanity in the Situation in the Bolivarian Republic of Venezuela I.
2. This request is submitted in accordance with the principles of the "interest of justice" and the due administration of the Rome Statute system. As counsel admitted to practice before this Court, and given our direct and longstanding involvement in the documentation and representation of victims of human rights violations in Venezuela, we are deeply committed to the well-functioning of the Court, its independence, and the procedural and substantive integrity of its investigations. Our standing is further grounded in our work as representatives of Venezuelan victims, and as Venezuelan citizens with a vested legal and moral interest in the fair and impartial treatment of the Venezuela I Situation.
3. This petition is made pursuant to Article 64(2) of the Rome Statute, which mandates the Court to ensure that the trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses. This provision must be interpreted in line with the fundamental guarantees of both procedural and substantive due process of law, which form the backbone of international criminal justice and which must be scrupulously respected in all stages of the proceedings.
4. This petition is also submitted in accordance with Article 68(3) of the Rome Statute, which provides that: "Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not

prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence”.

5. The purpose of this request is to seek clarification or, in the alternative, a legal determination by this Honourable Appeals Chamber 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.
6. This petition is also made in light of the reasoning adopted by the Appeals Chamber in its decision of 1 August 2025. While the Chamber ultimately found that the petition before it was inadmissible under Article 42(8) of the Statute because it was not brought by a person being investigated or prosecuted in the context of a case, it nevertheless proceeded to examine the matter given its importance to the integrity of proceedings and the Prosecutor’s statutory obligations. The Chamber emphasized that its power to consider questions of disqualification extends beyond formal requests and includes circumstances where the fairness of proceedings may be at stake, particularly when the Prosecutor fails to act under Rule 35. In doing so, the Appeals Chamber underscored its duty to protect judicial integrity, ensure victim participation, and uphold the Rome Statute framework.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

7. On 1 August 2025, the Appeals Chamber rendered a decision in which it found "reason to believe that a ground for the disqualification of the Prosecutor exists" due to a conflict of interest stemming from his close familial and professional relationship with Ms. Alagendra. The Appeals Chamber ordered the Prosecutor to request to be excused from the Venezuela I Situation pursuant to Rule 35 of the Rules of Procedure and Evidence.

8. Following this decision, and prior to any formal appointment of an Acting Prosecutor or judicial authorization, the Office of the Prosecutor ("OTP") reportedly designated a Deputy Prosecutor to assume responsibility for the Venezuela I investigation.
9. This development raises important legal questions regarding the limits of the Deputy Prosecutor's authority under the Rome Statute framework, particularly with regard to the exclusive competence granted to "the Prosecutor" under Article 15.

III. APPLICABLE LAW

10. Article 15 of the Rome Statute does **not mention Deputy Prosecutors** or authorize any substitution or delegation of these functions in cases of absence, disqualification, or conflict of interest of the Prosecutor. This textual exclusivity indicates that **only “the Prosecutor”**, as designated under the Statute, is authorized to carry out these procedural acts, unless otherwise provided by a formal decision of the Court interpreting or extending such powers under exceptional circumstances.
11. **Article 42(2)** of the Rome Statute states: "The Office shall be headed by the Prosecutor. The Prosecutor shall have full authority over the management and administration of the Office, including the staff, facilities and other resources thereof. The 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 this Statute." This article specifically establishes that the Prosecutor heads the Office of the Prosecutor and according to this legal power he/she manages and administrates he or her office.
12. **Article 46(1) of the Rome Statute** establishes the grounds and procedure for the removal of the Prosecutor or a Deputy Prosecutor, but does not provide guidance on interim succession or the reassignment of investigative competence.

13. **Rule 35** of the Rules of Procedure and Evidence provides that the Prosecutor shall request to be excused from exercising a function under the Statute if there is a ground for disqualification.

IV. LEGAL ISSUES FOR CLARIFICATION

14. In the context of the disqualification or recusal of the Prosecutor from a specific situation, the Statute does not clearly provide for the automatic or discretionary transfer of prosecutorial authority to a Deputy Prosecutor.
15. The Rome Statute explicitly vests the power to initiate investigations under Article 15 with "the Prosecutor." No provision explicitly authorizes a Deputy Prosecutor to initiate or continue such an investigation absent a formal and transparent procedure recognizing their authority to act in that capacity. There is no provision that states that Deputy prosecutors could act as substitutes of the Prosecutor by assuming his/her legal authority. They 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.
16. The lack of clear statutory guidance on this issue may have implications for the legal validity and procedural regularity of the ongoing investigation and any future judicial proceedings stemming therefrom.

V. REQUEST FOR CLARIFICATION

17. In light of the foregoing, and in the interest of upholding the rule of law, transparency, and the rights of victims and affected communities, we respectfully request this Honourable 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
- (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.

VI. CONCLUSION

- 18. This request is submitted in good faith and in the interest of ensuring procedural fairness, transparency, and legal certainty in the ongoing investigation of crimes alleged in the Situation in the Bolivarian Republic of Venezuela I.
- 19. We respectfully urge this Honourable Appeals Chamber to consider the present petition and provide guidance on the matters herein raised.

Respectfully submitted on 5 August 2025,



Alfredo Romero Mendoza

President, Foro Penal

Counsel admitted before the ICC



Gonzalo Himiob Santomé

Vice President, Foro Penal

Counsel admitted before the ICC