Annex

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IN THE APPEALS CHAMBER OF THE INTERNATIONAL CRIMINAL COURT

Situation in the Bolivarian Republic of Venezuela I (ICC-02/18)

Applicant's Response to the Prosecutor's Communication Seeking Excusal in the *Venezuela I Situation* and Renewed Request that the Appeals Chamber Exercise Its Supervisory Authority to Safeguard the Court's Integrity

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I. Introduction

1. The Prosecutor's latest communication **does two things at once**: it formally asks to be excused from the *Venezuela I Situation* and, at the same time, advances a narrative in which his withdrawal is attributed to exogenous "pressures" and alleged "threats," rather than to the objective conflicts that the Court has already identified and that the Applicants first brought to the Court's attention **on 8 September 2024** (later **transmitted by the Registry to the Appeals Chamber on 12 November 2024**). That framing is untenable. What compels non-involvement here is not an external climate; it is an internal, structural conflict grounded in undisputed familial, professional, and hierarchical (subordinate) ties to counsel acting for a party in this Situation. **Rule 34(1)(a)** and **Article 42(7)** exist precisely to address such configurations. To recast a Rule-and-Statute conflict as the by-product of external hostility is to invert the logic of the Appeals Chamber's ruling and to elide the Prosecutor's duties under the Court's legal framework. The point of this filing is therefore narrow and legal: to correct that mischaracterization and to keep the focus where the Chamber has already placed it—on the appearance-of-bias standard and the structural relationships that trigger it. See **Decision on the Request for Recusal**, 10 February 2025, noting the duty to request excusal and inviting "any necessary measures to preserve his impartiality," para. 69. (International Criminal Court)

2. The Chamber has already articulated the operative standard. By majority, it recognized that the Prosecutor is "bound to exercise his or her functions impartially" and has a non-delegable duty to seek excusal where there is reason to believe a ground for disqualification exists; it expressly invited him to take the measures necessary to preserve impartiality and the integrity of these proceedings. That direction flows from the Statute and Rules and it is sufficient, on its own terms, to resolve the necessity of non-involvement, irrespective of later rhetorical efforts to shift the lens from conflict to climate. Decision of 10 February 2025, paras. 69–71. (International Criminal Court)
3. Against that legal backdrop, two features of the Prosecutor's recent submissions warrant brief clarification. First, his 18 August 2025 filing acknowledges the Chamber's authority while simultaneously seeking to minimize the import of the **previous professional and hierarchical relationship** ground as "novel," and to re-present public criticism as "threats"—a characterization he advances to explain the context of his request. Neither move alters the statutory analysis that governs excusal. ICC-02/18-121, 18 August 2025, Introduction and paras. 12–17. Second, his earlier 15 April 2025 submission urged the Chamber to treat our ex officio application as an impermissible attempt to relitigate matters and to invoke "finality," yet that, too, cannot and does not displace the Court's express duties under Article 42(7) and Rule 34(1)(a) once a structural conflict has been brought to light. ICC-02/18-112, 15 April 2025, pp. 3–4. Our filings have consistently focused on that structural conflict and on the integrity-protecting role of the Chamber, including the documented **familial, professional, and subordinate** ties at issue. See Applicant's "Judicial Integrity in Peril" submission (detailing the overlap of familial, professional, and hierarchical relationships as grounds for excusal under Article 42(7) and Rule 34(1)(a)). Our parallel advocacy concerning "positive complementarity" likewise addressed the institutional risks of public messaging in this Situation; it was not, and could not be, a cure for a conflict the legal framework treats as structural. See "*Grave Concerns Regarding Public Remarks on 'Positive Complementarity' in the Venezuela I Situation*," 8 August 2025. (Arcadia Foundation Publication)

II. The Applicable Legal Framework Requires Disqualification Where Familial, Professional or Subordinate Relationships Exist—With No Temporal Limitation

4. **Rule 34(1)(a) of the Rules of Procedure and Evidence** is determinative. It provides that the grounds for disqualification of "*a judge, the Prosecutor or a Deputy Prosecutor shall include, inter alia*" a ***"[p]ersonal interest in the case, including a spousal, parental or other close family, personal or professional relationship, or a subordinate relationship, with any of the parties."*** (International Criminal Court, Human Rights Library)
5. Three features of Rule 34(1)(a) are critical and dispositive in this record.

   a. First, ***"subordinate relationship"*** is expressly listed alongside familial and professional ties. The Rule *does not qualify* subordination by duration, recency, or form. The drafters knew how to impose temporal qualifiers elsewhere in the Court's framework; they did not do so here. The necessary implication is that **any** subordinate relationship—past or present—between the Prosecutor and a representative of "*any of the parties*" engages the Rule's protection. This is precisely the reading the Appeals Chamber itself has now adopted in *Venezuela I* when assessing the Prosecutor's ***"previous professional and hierarchical relationship"*** with Ms. Alagendra. (International Criminal Court)

b. Second, the Rule's focus on relationships "*with any of the parties"* captures counsel for a State Party in a situation before the Court. Venezuela is the referring or concerned State in the Situation; its outside counsel litigating before the ICC are "*parties*" for Rule 34 purposes.

c. Third, **nothing in Rule 34(1)(a)** **IMPOSES A TIME LIMIT**. The Prosecutor's suggestion that the passage of time **somehow washes away subordination** conflates legal irrelevance with factual recency. The Rule's object is to protect *appearance-based* impartiality; **APPEARANCE CONCERNS DO NOT EXPIRE ON AN ARBITRARY CALENDAR**, particularly where— as here— the past subordinate tie operates in tandem with a **current** close family relationship.

6. The **Rome Statute, Article 42(7)**, likewise imposes a bright-line duty: ***"Neither the Prosecutor nor a Deputy Prosecutor shall participate in any matter in which their impartiality might reasonably be doubted on any ground."*** This is not merely hortatory; it is a statutory disqualification command keyed to the **reasonable doubt** standard. (International Criminal Court)
7. The Prosecutor's **own Code of Conduct** underscores and operationalizes these duties. Paragraph 31 provides: ***"Members of the Office shall not participate in any matter in which their impartiality might reasonably be doubted on any ground, and shall request to be excused from any matter as soon as grounds for disqualification arise, especially those indicated in article 42(7) and rule 34(1)."*** (uklfi.com, International Criminal Court) The Code is not external policy—it is an internal, binding standard promulgated for the precise scenario here.
8. The **Code of Judicial Ethics** supplies the complementary duty on the judges' side to ensure institutional independence and to maintain public confidence in the Court's impartiality. See **Article 3** (judicial independence duties), as recognized in the Court's own materials and institutional responses. (asp.icc-cpi.int) The Appeals Chamber's 1 August 2025 decision expressly relied on **Article 3** and **Rule 34(1)(a)** when directing the Prosecutor to request excusal. (International Criminal Court)
9. The European Court of Human Rights has long captured the essence of the **appearance** standard: "***justice must not only be done, it must be seen to be done***." In ***Piersack v. Belgium***, the Court held that even absent subjective bias, **objective** circumstances capable of casting doubt suffice to require withdrawal in order to preserve public confidence. The Appeals Chamber echoed this standard when it adopted the **fair-minded and reasonable observer** test in the instant Situation. (International Criminal Court)

III. Application to the Facts: The Familial Tie, the Prior Professional Collaboration, and the Prior Hierarchical Subordination Are Undisputed and Independently Trigger Rule 34(1)(a)

10. The **familial relationship** is not in dispute. It is common ground on this record that Ms. Venkateswari Alagendra is the **Prosecutor's sister-in-law** and that she has acted as counsel to the Bolivarian Republic of Venezuela in the *Venezuela I Situation*. The Appeals Chamber's 10 February 2025 decision itself records the existence of the "*relationship between the Prosecutor and Ms Alagendra*," squarely situating the issue within Rule 34(1)(a)'s "close family … relationship" limb. See also the text of Rule 34(1)(a), which expressly lists "other close family" among the grounds of disqualification. (International Criminal Court)
11. The **professional relationship** is likewise documented. Before joining the Court as Prosecutor, Mr. Karim Khan led defence teams in which Ms. Venkateswari Alagendra served as counsel. The ICC Registry's filing of **16 May 2013** in **Ruto & Sang (ICC-01/09-01/11)** formally **registers Ms. Venkateswari Alagendra as Associate Counsel** on a defence team **led by Mr. Karim Khan** (then Lead Counsel). That court record confirms a direct professional association in ICC proceedings between the two. This prior professional link independently engages Rule 34(1)(a)'s "*personal or professional relationship*" limb. (International Criminal Court) (International Criminal Court)
12. The **hierarchical subordination** between the Prosecutor and Ms. Alagendra is equally plain on the face of ICC records. In the same **Ruto & Sang** filing, Ms. Alagendra's role is **Associate Counsel** on a team **headed by Mr. Khan as Lead Counsel**, which reflects a clear chain of command in which the Associate works under the Lead's direction. That is **exactly** the paradigm Rule 34(1)(a) captures by the words "*a subordinate relationship*." **The Rule's text treats subordination as an autonomous ground for disqualification, distinct from (and cumulative with) familial or professional ties**. (International Criminal Court) (International Criminal Court)
13. The Prosecutor's references to other situations or past practices do not alter the governing law. **PRIOR MISSTEPS DO NOT RIPEN INTO PRESENT LEGALITY**: Rule 34(1)(a) speaks in categorical terms and contains **NO SUNSET CLAUSE**—it does not require contemporaneity, only the **EXISTENCE** of the relevant familial, professional, or subordinate relationship with a party. Applied here, the combination of a close family tie, a documented **professional** collaboration at the ICC, and a documented **hierarchical** subordination would lead a **reasonable, properly informed observer** to apprehend bias—this is the controlling standard the Appeals Chamber itself has reiterated for Rule 34 assessments. (International Criminal Court)
14. Finally, **Article 42(7) of the Rome Statute** reinforces the point: "*neither the Prosecutor nor a Deputy Prosecutor shall participate in any matter in which their impartiality might reasonably be doubted on any ground*." The familial, professional, and subordinate relationships identified above are each a qualifying ground under the objective "***reasonable doubt***" test, and in combination they make recusal inescapable to preserve the appearance and reality of impartiality. (International Criminal Court) (International Criminal Court)

IV. The Appeals Chamber's Supervisory Authority and Inherent Powers Support Action Independent of Party Standing

15. The Prosecutor previously urged the Chamber to dismiss our recusal request on standing grounds under **Article 42(8)**. The Chamber indeed dismissed *that* application **without reaching the merits**, while simultaneously reminding the Prosecutor to "*vigilantly and continuously uphold his statutory obligations*" to preserve impartiality and the integrity of proceedings. That bifurcated approach underscores a simple point: **even where the Chamber declines to adjudicate a private party's application, it does not forfeit its own responsibility to protect the Court's integrity.**
16. The Court's framework reserves to the **Appeals Chamber** the authority to decide any question of disqualification of the Prosecutor. **Rule 34(3)**. The Chamber has now exercised that authority, applied the **reasonable apprehension** standard, and directed the Prosecutor to request excusal. (International Criminal Court) That exercise of power is consistent with the Court's general jurisprudence on inherent powers to regulate its own proceedings and protect their fairness, and with the Chamber's refusal to allow technicalities to eclipse **institutional integrity**. See also the Prosecutor's own acknowledgement that inherent powers exist (even as he argued they were inapplicable here).

V. On the Prosecutor's Critiques of Our Prior Submissions and Page Limits

17. The Prosecutor has repeatedly invoked **Regulation 37(1) of the Regulations of the Court** to fault our page lengths and to suggest that our **ex officio review** request is a disguised reconsideration motion. **We disagree. Regulation 37(1) empowers Chambers to set lengths; it does** not **license the Court to blind itself to a manifest conflict merely because victims' submissions are lengthy**. The Appeals Chamber's 10 February 2025 decision itself set and enforced a page limit; we complied while preserving the legal essence of our concerns. The later, focused request for ***ex officio*** intervention invoked the Chamber's **own duties**, not private rights—precisely the path the Appeals Chamber ultimately followed when it required the Prosecutor to seek excusal.
18. The Prosecutor's April 15 submissions emphasized "finality," accused us of re-litigating, and insisted that inherent powers were inapposite to disqualification questions. The Chamber's 1 August decision has overtaken those arguments: the Chamber did not need us, or any party with standing, to say what the **Statute, Rules, Codes and jurisprudence** already compelled. It assessed the conflict itself and required the Prosecutor's excusal. (International Criminal Court)

VI. On the Prosecutor's Characterization of a Public Statement

19. The Prosecutor invites the Chamber to read a public statement—posted on 12 February 2025, though his filing misdates it as 13 February—as a set of "threats" directed at ICC judges and their families. That portrayal is both inaccurate on the record and immaterial to the legal questions of conflict and excusal now before the Chamber. The post, made two days after the Appeals Chamber's 10 February 2025 decision, expressed robust criticism of that ruling, urged an end to what it

described as "***positive complementarity***" in *Venezuela I*, and announced an intention to petition United States authorities to consider measures under their domestic law. However one evaluates the tone of that advocacy, none of it bears upon the structural-conflict analysis under Rule 34(1)(a) and Article 42(7). The Prosecutor's own request confirms that his objection is to the content and tone of public commentary, not to any act that is legally relevant to disqualification or excusal. See **Prosecutor's Request to be Excused from the *Venezuela I Situation***, 18 August 2025, para. 5 ("*On 13 February 2025… directly and unequivocally threatened the Judges of the Appeals Chamber and their families*"), reproducing the X-link he relies upon.

20. The Statute defines, with precision, the offences against the administration of justice. Article 70(1)(d) criminalizes *"impeding, intimidating or corruptly influencing an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform improperly, his or her duties"*; Article 70(1)(e) criminalizes *"retaliating against an official of the Court on account of duties performed"*. Rome Statute, **art. 70(1)(d)–(e)**, pp. 40–41. These provisions require, as an essential element, a purpose to affect an ICC official's performance of official duties (or to retaliate for those duties). Mere criticism—even sharp criticism—of a decision, or a plan to petition third-state authorities to consider <u>lawful, external policy measures</u>, does not satisfy those elements. The Prosecutor's characterization elides that dispositive requirement of purpose.
21. The 12 February post does not meet Article 70's *actus reus* or *mens rea*. It was not addressed to any ICC official with a view to "*forcing or persuading*" that official "*not to perform, or to perform improperly*" a duty; it did not threaten an unlawful act; and it announced only an intention to request that a third State's executive consider measures under its own legal framework in response to a completed judicial decision. There is no allegation of direct contact with ICC officials, <u>**no demand that any judge alter a ruling, and *no quid pro quo***</u>. On the face of Article 70(1)(d)–(e), these are indispensable components; they are absent here. Rome Statute, **art. 70(1)(d)–(e)**, pp. 40–41.
22. The Prosecutor's filing selectively paraphrases the post to suggest "threats" against judges and their families. Read in context, the reference to potential visa and financial restrictions was part of a policy-oriented petition to a foreign executive to evaluate sanctions that may be available under that State's domestic law. That is not "intimidation" as Article 70 uses the term—i.e., conduct aimed at obstructing, coercing, or corruptly influencing an ICC official's performance of duties. To equate a call for third-state policy responses with criminal intimidation would stretch Article 70 beyond its text and purpose. The Assembly of States Parties has rightly condemned attempts to intimidate or retaliate against Court officials and noted that such threats *may* constitute Article 70 offences; but that general stance does not convert protected public advocacy into a crime, nor does it alter the legal elements the Statute requires. See **ASP, Official Records, 23rd session**, para. 3 (expressing grave concern at attempts "*to impede, intimidate or corruptly influence*" Court officials and recalling that such threats *may* constitute an Article 70 offence). (asp.icc-cpi.int)
23. In any event, the Prosecutor's effort to litigate the propriety of public commentary diverts from the dispositive legal issue here: <u>**whether undisputed structural relationships—close familial tie and prior professional and hierarchical**</u>

<u>subordination—trigger disqualification/excusal under the Court's texts</u>. Rule 34(1)(a) expressly lists, as grounds for disqualification, a *"spousal, parental or other close family, personal or professional relationship, or a subordinate relationship, with any of the parties"*; and Article 42(7) bars the Prosecutor or a Deputy Prosecutor from participating in any matter in which their impartiality *"might reasonably be doubted on any ground."* **Rules of Procedure and Evidence**, **rule 34(1)(a)**, p. 23; **Rome Statute**, **art. 42(7)**, p. 27. The Chamber's task is to apply those texts to the facts it has already recognized; debates about advocacy tone are legally orthogonal.

24. It bears emphasis that victims and civil society actors are not prohibited by the Statute from criticizing judicial outcomes or from petitioning governments <u>for lawful policy responses</u>. Such speech may be unwelcome; **<u>it is not unlawful</u>**. The Prosecutor's attempt to recast protected public advocacy as an Article 70 offence should be rejected as inconsistent with the Statute's text and structure. **Rome Statute**, **art. 70(1)(d)–(e)**, pp. 40–41.
25. The content of the 12 February statement also reflected matters already visible on the institutional record, including this Court's own determinations about the lack of genuine, comprehensive domestic proceedings in Venezuela—findings that guided the authorization to resume the investigation and, later, the Appeals Chamber's unwillingness analysis. Whether one agrees with the Applicant's critique or not, repeating such record-based concerns is not "intimidation of the Court"; nor could any such speech "cure" a structural conflict under Rule 34(1)(a) and Article 42(7). **Rules of Procedure and Evidence**, **rule 34(1)(a)**, p. 23; **Rome Statute**, **art. 42(7)**, p. 27.
26. For these reasons, the Chamber should decline the invitation to treat a post-decision public statement as legally salient to excusal. The merits turn on the structural conflict already certified on this record—familial, professional, and hierarchical within the meaning of Rule 34(1)(a)—and on the objective *appearance* standard codified in Article 42(7). Where a structural conflict is present, the appropriate judicial response is disqualification/excusal and, as needed, prophylactic directions to safeguard the integrity of proceedings—not a collateral debate over the tone of public advocacy. **Rules of Procedure and Evidence**, **rule 34(1)(a)**, p. 23; **Rome Statute**, **art. 42(7)**, p. 27; **Prosecutor's Request to be Excused**, 18 August 2025, para. 5 (demonstrating the misdated post and the strained "threats" characterization).

VII. Comparative Complementarity Is Legally Relevant and Non-Partisan: The Venezuela I–Israel Contrast Illuminates Appearance of Bias, It Does Not Create It

27. The Appeals Chamber is not being asked to second-guess the Prosecutor's merits assessments in other situations. It is, however, entirely proper to consider whether sharply divergent complementarity postures—taken by the same Office in closely contemporaneous contexts—can objectively amplify a reasonable, fair-minded observer's apprehension of partiality in this record. That is the narrow and legitimate purpose for which the *Venezuela I–Israel* comparator is invoked here.

28. In *Venezuela I*, the Appeals Chamber has already endorsed a record that bears directly on **complementarity**: Venezuelan authorities are **not** undertaking genuine proceedings that mirror the scope of the Prosecutor's inquiry. Victims have accurately described the Chamber's determination as "unequivocal" on unwillingness, citing the 1 March 2024 Article 18(2) judgment and its analysis of the absence of genuine national proceedings and structural obstacles in the judiciary. The specific passages relied on include, inter alia, paragraphs 248, 255, 258, 292, 309, and 329. That is the judicial baseline from which a reasonable observer must start.
29. Against that baseline, the OTP's April 2024 **Policy on Complementarity and Cooperation** adopts a "two-track approach," coupling ICC action with cooperation/complementarity initiatives "*at all stages*" "*whenever possible*," including "*the development of a cooperation and complementarity plan with the Government of Venezuela."* That policy may be salutary in the abstract, but once "unwillingness" has been judicially identified, the Statute's admissibility framework is plain: complementarity cannot operate to defer or dilute ICC action in favor of institutions that a Chamber has found unwilling. In such circumstances, prolonged reliance on a "**positive complementarity**" track with those same authorities risks eroding the appearance of impartiality in this Situation.
30. By contrast, in the State of Palestine situation, the Prosecutor publicly proceeded by filing applications for arrest warrants—an unmistakably decisive procedural posture that did not depend on any extended "**positive complementarity**" engagement with national authorities. Whatever one's view of that course on the merits, the point here is methodological: the Office will, when it deems appropriate, act swiftly without a protracted complementarity pathway. The Prosecutor's own August 18, 2025 filing acknowledges the Palestine warrant applications in the course of addressing the Applicant's public commentary.
31. The Prosecutor's 18 August 2025 filing also seeks to recast the Applicant's Israel reference as partisan. That is misplaced. The comparator's function here is strictly objective: once unwillingness is judicially established in *Venezuela I*, a continued emphasis on "**positive complementarity**" with those same authorities—set against the rapid warrant-application posture in Palestine—can reasonably augment an apprehension of bias in this record. The filing itself addresses the Applicant's X post and Israel references; whether the Prosecutor visited Israel is immaterial to the narrow inference drawn here.
32. The comparator is also squarely consistent with Article 17's focus on willingness and ability and with the OTP's policy texts themselves. **Where a Chamber has already found unwillingness, "positive complementarity" cannot be read as licensing deference to institutions adjudged unwilling—particularly where victims' counsel have warned of the corrosive effect of such messaging on victims' confidence and noted the lack of any complementarity track record in Venezuela**.
33. Nor does invoking the comparator transform legitimate legal criticism into intimidation. The issue before the Chamber is structural conflict and the reasonable apprehension it generates; public, policy-focused criticism by a recognized victim and an NGO of complementarity choices in light of established unwillingness is not legally germane to disqualification only insofar as it underscores why appearance matters. The Prosecutor's attempt to re-characterize such criticism as if it were

dispositive of excusal should be rejected as orthogonal to Rule 34(1)(a) and Article 42(7).

34. Finally, concern over the use of "**positive complementarity**" in Venezuela I is not idiosyncratic to the Applicant. It has been echoed in victims' filings and in independent reporting that documents a strategic misuse of "engagement" narratives as a diplomatic shield while repression deepens. That external, credible context goes to institutional confidence, not political preference.
35. In sum, the *Venezuela I–Israel* comparator is properly before the Court for the limited purpose of assessing reasonable apprehension in light of an already-established structural conflict (familial, professional, and hierarchical) within the meaning of Rule 34(1)(a) and Article 42(7). It neither invites the Chamber to adjudicate another situation nor signals hostility to the Court; it shows that the OTP's own range of procedural choices, when juxtaposed with the Appeals Chamber's unwillingness findings in *Venezuela I*, reasonably magnify the appearance of partiality that this Chamber has already recognized.
36. For these reasons, the Chamber should decline the Prosecutor's invitation to treat the Applicant's Israel comparator as partisan and should give it modest but real weight in calibrating the objective test it has already applied: the fair-minded and properly informed observer, surveying the established conflict and the institutional choices taken in its shadow, would apprehend bias. That is sufficient to sustain the Chamber's direction on excusal and any further prophylactic measures necessary to protect the integrity of these proceedings.

VIII. Positive Complementarity in *Venezuela I*: the Record Forecloses Any Genuine Domestic Avenue

37. The public record confirms that Venezuela's justice system is not merely dysfunctional but instrumentalized as part of a consolidated architecture of repression—what independent experts have described as a **fully matured authoritarian infrastructure** in which courts function as conduits of state policy rather than fora of law. That is the antithesis of a setting in which "**positive complementarity**" can credibly function.
38. That assessment is concrete, not abstract. The same record documents that diplomatic "engagement" has operated as a shield while repression deepened; the language of cooperation has been strategically misused to delay accountability and manipulate international perception. Those are, by definition, conditions that foreclose the very premise on which positive complementarity rests.
39. The Court's own dossier aligns with this reality. Pre-Trial Chamber I authorized resumption of the investigation precisely because Venezuelan proceedings do not mirror the scope of the Prosecution's inquiry, focus on low-level perpetrators, and fail to address the contextual elements of crimes against humanity—among other deficits. Independent analysis further records that **52.5%** of reviewed domestic cases had not even reached initiation of judicial process. Against that evidentiary backdrop, continued reliance on "**positive complementarity**" is not prudential; **IT IS INAPPOSITE**.
40. The Office of Public Counsel for Victims has already conveyed that an emphasis on a "**positive complementarity**" track persists despite the Appeals Chamber's

determination on unwillingness, and it has warned that effective investigations must proceed without delay because evidence and witnesses degrade with time. That institutional victim perspective undercuts any suggestion that a complementarity-first posture remains tenable in this Situation.

41. Irrevocably, the public record underscores that concerns about "**positive complementarity**" in Venezuela I are **not idiosyncratic** to the Applicant. They have been echoed in victims' filings and, more broadly, in credible reporting—such as the resignation of Special Adviser **Claudio Grossman**, publicly reported as motivated by dissatisfaction with the OTP's handling and perceived delay in Venezuelan accountability. This context reinforces why the comparator speaks to **appearance** and institutional confidence, not political preference. See Associated Press report, 12 Dec. 2024. (AP News)
42. The OAS Panel goes further, urging this Court to expedite the Venezuela investigation and to **urgently issue warrants of arrest** against high-level perpetrators to halt the ongoing commission of crimes—underscoring the structural futility of awaiting domestic rectification and supporting the Chamber's vigilant stance in safeguarding institutional integrity.
43. In sum, what the Chamber may judicially notice is unequivocal: Venezuela's judicial apparatus is not a partner in accountability but an instrument of persecution. The appearance and reality of impartial justice cannot be preserved by outsourcing to a system so described. Positive complementarity, on this record, is not a bridge to justice; **it is a cul-de-sac**. The only lawful and credible course is to maintain the investigation's momentum and to insulate it from any structural conflict that could further erode confidence in these proceedings.

IX. General Principles from Domestic Law (Rome Statute, Article 21(1)(c))

44. Article 21(1)(c) directs the Court to apply "*general principles of law derived by the Court from national laws of legal systems of the world*" where appropriate. Venezuelan law is exemplary—**not exceptional**—in treating familial ties, professional and hierarchical ties as grounds of **recusal or inhibition**. See, e.g., **Código Orgánico Procesal Penal** (COPP) provisions on inhibition/recusation and the formalization of inhibitions; **Código Civil** Article 40 defining ***afinidad*** (affinity) and clarifying that **affinity does not end with dissolution of marriage**, demonstrating the law's sensitivity to **ongoing** perception risks flowing from family bonds. (Organization of American States) These sources confirm the universal logic embedded in Rule 34(1)(a): **family, professional and hierarchy** create lasting appearance concerns that the law treats as disqualification triggers without arbitrary time limits.

X. Requested Relief

45. In light of the Appeals Chamber's 1 August 2025 determination that a reasonable and properly informed observer would **apprehend bias** given the Prosecutor's close family relationship combined with the prior professional and hierarchical subordination, and given **Rule 34(1)(a), Article 42(7)**, the **OTP Code of Conduct**,

and the **Code of Judicial Ethics**, the Applicants respectfully request that the Appeals Chamber:

1. **Record its acceptance** of the Prosecutor's request to be excused from any role in ***Venezuela I*** **with immediate effect**, and confirm that the excusal extends to all direct or indirect oversight, briefings, approvals, or communications touching this Situation. (International Criminal Court)
2. **Direct the Office of the Prosecutor** to implement effective and auditable **ethical screens**— including a written "no-contact/no-information" wall—so that the excused Prosecutor has no participation in, or informational access to, *Venezuela I*.
3. Direct that no person who (a) has a close family tie to the Prosecutor or (b) previously stood in a professional or hierarchical subordinate relationship to him and appears for the Bolivarian Republic of Venezuela, may engage in any contact with the Prosecutor on matters of this Situation.
4. **Invite the Deputy Prosecutor** assigned to *Venezuela I* to report, within a short timeframe set by the Chamber, on compliance measures adopted to guarantee independence; and to confirm that, pending the appointment of a permanent successor, the conduct and public communication of the Situation will not be premised on—nor framed as—any "**positive complementarity**" track inconsistent with Article 17 and the Appeals Chamber's unwillingness findings.
5. **State on the public record** that the Chamber's action is grounded in **Rule 34(1)(a) of the Rules of Procedure and Evidence** (including its express reference to a "**subordinate relationship**"), **Article 42(7)** of the **Rome Statute**, **Article 3 of the Code of Judicial Ethics**, and **paragraph 31 of the OTP Code of Conduct**, thereby articulating a clear precedent that past hierarchical subordination coupled with a close family tie suffices to require excusal, without temporal limitation. (International Criminal Court)

XI. Concluding Observations

46. The question before the Chamber is not whether public debate has grown heated, but whether the law—applied to undisputed facts—requires the Prosecutor's non-involvement and clear safeguards going forward. The answer follows directly from the Court's own instruments and from this Chamber's record. **Rule 34(1)(a)** enumerates, *in terms*, the very configuration present here: a "spousal, parental or **other close family**, personal or **professional relationship**, **or a subordinate relationship**, with any of the parties." **Article 42(7)** bars the Prosecutor or a Deputy Prosecutor from participating "*in any matter in which their impartiality might reasonably be doubted*." Those provisions are objective, prophylactic and time-neutral; they do not yield to atmospherics or to exogenous pressure narratives. They speak to structure, not to tone. (International Criminal Court)
47. This Chamber has already applied that standard to this record, recognizing that the **close family tie** combined with the **prior professional and hierarchical subordination** triggers the appearance-of-bias test and obliges the Prosecutor to request excusal. It is that structural assessment—not any public criticism—that compels non-involvement. The Chamber's 1 August 2025 determination is the

natural consequence of the Statute and Rules; nothing in the Prosecutor's latest filing alters that legal conclusion. (International Criminal Court)

48. Finally, with respect to **positive complementarity** in **Venezuela I**, the Court's own record and victims' submissions have long underscored the absence of genuine domestic proceedings and the corresponding need to proceed without delay. That institutional context—reaffirmed by the Office of Public Counsel for Victims and echoed by independent assessments—confirms that extended deference to national authorities found *unwilling* is untenable. In appearance and in practice, it risks eroding confidence in the Court's independence in this Situation. The Chamber's earlier findings on unwillingness, and the jurisprudence and policy that flow from **Article 17**, already provide the baseline against which any further reliance on "positive complementarity" must be measured. (International Criminal Court)
49. For all of these reasons, the requested relief is not punitive; it is preservative. By accepting the excusal, making the ethical screens real and auditable, and clarifying that **close family** plus **prior professional collaboration**, and **prior professional hierarchical subordination** suffices to require non-involvement—with no sunset—the Chamber will vindicate the Statute's language, the Rules' design, and the Court's promise to victims of impartial adjudication. That course protects the Prosecutor as much as the institution, and it provides the only stable ground on which the investigation in ***Venezuela I*** can continue to advance, credibly and without distraction.

XII. Confidentiality Designation

50. To the fullest extent permitted by the Rome Statute, the Rules of Procedure and Evidence, and the Regulations of the Court, the Applicants waive confidentiality over this filing (including annexes submitted by them) and over the Registrar's certification and any submissions or orders flowing from it, and respectfully request that the Registry classify and place the same on the public record. This waiver does not extend to information subject to protective measures for victims and witnesses or other confidential material protected under the Court's legal texts; should any limited redactions be required, the Applicants request that they be narrowly tailored and that a public redacted version be issued without delay.

"A court proves its independence not by resisting criticism, but by refusing to excuse a conflict once the law names it..."

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**)
rcb@arcadiafoundation.org