



Executive Summary

This document unveils a profound ethical and procedural crisis within the **International Criminal Court (ICC)**, one that imperils its legitimacy and erodes confidence in its ability to deliver impartial justice. At the center of this issue lies the continued participation of **Prosecutor Karim Khan** in the Venezuela I Situation, despite documented **familial, professional, and subordinate ties** to **Ms. Venkateswari Alagendra**, legal counsel for the Venezuelan regime. These relationships constitute a clear breach of the principles of impartiality and transparency, undermining not only this specific investigation but also the broader trust upon which the ICC's mandate relies.

Key Concerns for the Assembly:

- 1. Undermining Institutional Integrity:**
 - The conflict of interest breaches the ethical obligations of the Prosecutor's office under the Rome Statute and the ICC Code of Conduct, eroding public trust in the Court's impartiality.
- 2. Failure of Accountability:**
 - The omission to disclose this relationship reflects systemic weaknesses in the Court's safeguards against conflicts of interest, jeopardizing the rights of victims and the credibility of ICC investigations.
- 3. Precedent for Ethical Reform:**
 - This situation is not an isolated case. It highlights the need for proactive mechanisms to prevent, detect, and address conflicts of interest among ICC officials to protect the Court's integrity and independence.

Call to Action:

The Assembly of States Parties, as the Court's oversight body, must act to:

- Address this pressing matter as a failure of institutional safeguards.
- Initiate reforms to strengthen transparency and accountability mechanisms within the Office of the Prosecutor.
- Ensure that no conflict, actual or perceived, compromises the ICC's ability to deliver justice for victims of the world's most serious crimes.

The ICC's moral and institutional authority depends on its adherence to the highest ethical standards. This case is not only a test of one individual but of the Assembly's commitment to safeguarding the principles upon which the ICC was founded.

To the Honourable Judges of the Appeals Chamber of the International Criminal Court

Restoring Judicial Integrity: A Rebuttal of the Prosecutor's Arguments on Recusal in Venezuela I by Robert Carmona-Borjas and the Arcadia Foundation

Washington, DC December 19, 2024

Submitted by: Robert Carmona-Borjas and Arcadia Foundation

Introduction: Preserving Integrity and Fairness in These Proceedings

1. This submission is respectfully presented in reply to the Prosecutor's written submissions concerning the Request for Recusal, as permitted by this Honourable Appeals Chamber in its Decision dated 12 December 2024 (ICC-02/18-102). The Chamber's decision to grant leave to reply underscores the importance of addressing the substantive issues raised, which strike at the very core of judicial impartiality and integrity.
2. The matters before this Chamber are of paramount significance, not only for ensuring the fairness of these proceedings but also for safeguarding the trust and rights of victims. As the party who initiated the recusal request, I, **Robert Carmona-Borjas**, on behalf of the **Arcadia Foundation** and in my capacity as a recognized victim under **Reference Number r/21840/23**, take this opportunity to address the Prosecutor's arguments with the seriousness and rigor they warrant.
3. Before addressing the substantive issues permitted by this Chamber, I must respectfully raise a preliminary matter regarding the procedural constraints imposed, which I consider arbitrary and lacking legal foundation under the Rome Statute and the Court's normative framework.

Preliminary Statement Regarding the Procedural Constraints Imposed by the Chamber

4. With the utmost respect to this Honourable Chamber, I am compelled to express my categorical and unwavering rejection of the decision of this Court to restrict my right to express myself through the imposition of a ten-page limit on my reply. Such a measure is not only arbitrary but bereft of any legal foundation within the normative framework governing this Court, and it undermines the principles upon which the International Criminal Court (ICC) was established.

I. Absence of Legal Basis for Restricting Victims' Submissions

5. Neither the **Rome Statute** nor the **Rules of Procedure and Evidence** contain any provision—explicit or implied—that empowers this Chamber to curtail a victim's right to fully present arguments, particularly in matters as grave as violations of human rights and the recusal of a member of this Court for lack of impartiality. To impose such a restriction is to infringe upon the very spirit of the Rome Statute, which was designed to ensure justice for victims of the most heinous crimes under international law: *genocidium, crimina contra humanitatem, and crimina belli*.
6. It is imperative to recognize that the normative silence on this matter is intentional. The drafters of the Rome Statute established no such limitations because the role of victims in this process is not ornamental—it is substantive and integral. Limiting my submission to a mere ten pages renders hollow the principles enshrined in **Article 68(3)**, which explicitly guarantees victims the right to present their views and concerns at all stages of the proceedings where their interests are affected.

II. The Right to Be Heard: A Fundamental Pillar of Justice

7. The decision to restrict my response contravenes the foundational principle of *audi alteram partem*—the right to be heard—which is the bedrock of any fair and impartial judicial process. It is a principle so fundamental that its absence renders justice **nugatory** and illusory. The right to fully articulate one's arguments, particularly when addressing allegations of prosecutorial impartiality, is not a privilege—it **is a right that must be inviolable**.
8. The ICC has a **reinforced duty** to uphold the voices of victims, whose participation breathes legitimacy into this Court's mandate. As a recognized victim and legal representative, I have borne the burden of identifying and denouncing facts that, given their nature as violations of public order, the very officials of this Court failed to address—a task undertaken not for personal interest but in pursuit of justice and truth.
9. The imposition of arbitrary page limits amounts to a procedural gag order that has no place in a Court whose *raison d'être* is to provide redress to victims. It is an affront to the *libertas loquendi*—the freedom to speak—that lies at the heart of victims' participation in this process.

III. A Context of Exceptional Gravity

10. The restriction is particularly egregious given the context in which it has been imposed. I am not addressing a procedural triviality, but rather the **impartiality** of a member of this Tribunal, which strikes at the core of its integrity. The recusal of a Prosecutor for conflict of interest is a matter of grave importance, directly impacting victims' trust in the impartiality of these proceedings. It cannot, and must not, be reduced to a mere procedural formality constrained by arbitrary limits.

11. Furthermore, my status as a victim in this matter is not incidental—it is borne of almost **23 years of exile**, a direct consequence of the crimes I denounce. This prolonged victimization confers upon me a **reinforced right** to be heard, in accordance with the principles of **transitional justice** and firmly established international jurisprudence, which recognize that victims of systemic human rights violations must be afforded an unrestricted and substantive voice in judicial proceedings.

12. It is unconscionable that a victim, compelled to fight for justice against a backdrop of institutional inaction and complicity, should now be further silenced by procedural restrictions imposed by the very Court tasked with addressing these injustices.

IV. Procedural Consistency and the Court's Mandate

13. This Court must remain consistent in upholding its mandate of fairness, transparency, and impartiality. Allowing victims to meaningfully participate is not an act of benevolence—it **is a legal and moral obligation**. To impose artificial limits on submissions undermines this obligation and casts a shadow over the integrity of these proceedings.

14. The imposition of a ten-page limit is arbitrary, disproportionate, and inconsistent with the ICC's duty to safeguard victims' rights. Such a measure risks creating a **dangerous precedent**, where victims' voices are reduced to a procedural afterthought rather than being recognized as central to the pursuit of justice.

V. A Moral and Legal Duty to Rectify

15. Honourable Judges, justice cannot be dispensed with half measures or arbitrary restrictions. To silence victims, even partially, is to erode the very foundation upon which this Court stands.

16. I respectfully but firmly call upon this Chamber to rectify this decision and recognize its inherent error. I am not asking for special treatment; I am demanding the full recognition of my rights under the Rome Statute and the principles of international law.

17. You may deny my request, but you cannot silence my voice. You may seek to curtail my submissions, but you cannot diminish the truth I bring before you. To do so would be to abdicate the very principles this Court was established to uphold: *justitia, aequitas, et veritas*—justice, equity, and truth.

18. It is important to mention, that while this Honourable Chamber imposed a ten-page limit on my submissions, it must be noted that this constraint lacked specific guidelines regarding font size or formatting. As such, I could have technically complied by reducing the font size to an unreadable level, ensuring the entirety of my arguments fit within the prescribed limits. However, I chose not to do so, **out of respect for this Court and its mission of ensuring clarity and accessibility in judicial proceedings**. My decision was guided by the belief that the gravity and complexity of the issues presented herein would compel the Chamber, upon reviewing them

fully, to recognize the inherent need to lift such restrictions in the interest of justice.

19. In light of the foregoing, I reiterate my rejection of the arbitrary limitation imposed upon my submission. I respectfully urge this Honourable Chamber to rescind its decision and allow me to present my arguments in full, as is my right under the Rome Statute and as is demanded by the principles of fairness, justice, and impartiality.

Fiat justitia ruat caelum—Let justice be done though the heavens fall.

20. I respectfully submit this matter for the Chamber's reconsideration, confident that fairness and procedural integrity will guide its decision.

The Five Points Highlighted by the Appeals Chamber

21. This Honourable Chamber has identified five key issues requiring examination in this matter. Each of these points will be addressed in turn, with a rigorous legal analysis grounded in the Rome Statute, relevant jurisprudence, and principles of international law. The issues to be discussed are as follows:

- i. **The interpretation of Article 42(8) of the Statute and the question of standing;**
- ii. **The interpretation of 'case' in Article 42(7) of the Statute;**
- iii. **The question of timeliness of the request for recusal;**
- iv. **The interpretation of 'close family relationship' in Rule 34(1)(a) of the Rules of Procedure and Evidence; and**
- v. **The impact on victims' rights and judicial integrity.**

I proceed to address each point in sequence.

i. The Interpretation of Article 42(8) of the Statute and the Question of Standing

Upholding Accountability and Procedural Equity Through Victims' Inclusive Engagement

22. This analysis seeks to refute the Prosecutor's restrictive interpretation of Article 42(8) of the Rome Statute, which posits that only individuals "being investigated or prosecuted" may request disqualification of the Prosecutor. By examining the interplay between Article 68(3), victims' participatory rights, and the procedural actions of the International Criminal Court (ICC), I will demonstrate that victims possess an undeniable right to raise concerns about ethical breaches and conflicts of interest. This right arises not only from textual interpretation but also from the *spiritus legis* and broader principles of justice underpinning the Rome Statute.

23. The Prosecutor's argument disregards the ICC's established recognition of victims' participation, the procedural steps already taken by the Court in this matter, and the normative principles safeguarding victims' rights to impartial and transparent proceedings. This response addresses the deficiencies in the Prosecutor's reasoning and advances a robust counterargument in favor of the applicants' standing to request the disqualification of the Prosecutor.

I. Victims' Rights Under Article 68(3): A Cornerstone of Procedural Inclusion

1. Textual Framework and Key Elements

24. Article 68(3) of the Rome Statute affirms:

"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"

25. The provision encompasses several critical components:

- **Personal Interests:** Victims' rights hinge on their interests being "affected" by the proceedings.
- **Judicial Discretion:** The Court determines the timing, manner, and scope of victim participation, provided it does not infringe on the rights of the accused.
- **Balancing Rights:** Victims' views must be considered in a manner consistent with fairness and impartiality.

26. This Article reflects a dual commitment: safeguarding the rights of victims while maintaining the integrity of proceedings. The statute explicitly elevates victims' views beyond mere formalities, requiring their substantive consideration.

2. Victims as Equal Stakeholders

27. The language "not prejudicial to or inconsistent with the rights of the accused" signifies legislative intent to achieve **equilibrium between victims' interests and those of the accused**. **While the accused enjoys significant procedural safeguards, the statute equally mandates that victims' participation be meaningful. This principle applies to all stages of proceedings, reinforcing the idea that victims' interests are integral, not ancillary, to the administration of justice.**

II. Procedural Standing: Tacit Recognition by the Court

1. The Court's Engagement with the Applicant's Submission

28. The ICC's actions in receiving, processing, and requesting substantiation of the applicant's submission are dispositive of procedural standing. If the Court had deemed the applicant's role inadmissible *ab initio*, the request would have been summarily dismissed. Instead:

- The Court explicitly required the applicant to substantiate claims, signaling recognition of a legitimate procedural voice.
- The matter was not addressed *sua sponte* (by the Court's own initiative), **but rather allowed to proceed through victim-initiated channels.**

2. Implicit Procedural Legitimacy

29. The Court's procedural posture amounts to a *tacita recongnitio* (tacit acknowledgment) of the applicant's standing. By permitting engagement, the Court demonstrated its adherence to the Rome Statute's overarching principle: ensuring that victims' voices are heard when their personal interests are affected. This procedural acknowledgment negates the Prosecutor's assertion that victims are categorically excluded from invoking Article 42(8).

III. Refuting the Prosecutor's Interpretation of Article 42(8)

1. Prosecutorial Integrity: A Matter of Victims' Personal Interest

30. Article 42(8) provides that:

"Any question as to the disqualification of the Prosecutor or a Deputy Prosecutor shall be decided by the Appeals Chamber."

31. Further, subsection (a) allows the person being investigated or prosecuted to request disqualification. While the provision mentions accused persons, **it does not explicitly preclude victims from raising concerns**. This silence invites a broader interpretation consistent with the Rome Statute's guiding principles.

32. Under Article 68(3), victims have a direct interest in the impartiality of proceedings. A Prosecutor compromised by a conflict of interest fundamentally undermines the fairness and transparency of those proceedings. To deny victims the ability to address such conflicts would contravene the statute's purpose, reducing their rights to a procedural façade.

2. Procedural Rights and Standing: Equality with the Accused

33. Article 68(3) mandates that victims' rights **must not be inconsistent with those of the accused**. If an accused person can invoke Article 42(8) to challenge prosecutorial impartiality, victims—whose interests are equally affected—must possess the same procedural mechanism. To argue otherwise would result in a discriminatory application of justice, undermining the *aequitas* (equity) the ICC seeks to uphold.

3. Broad Scope of Proceedings Under Article 68(3)

34. The Prosecutor's argument that Article 42(8) applies only to "cases" and not "situations" is unconvincing. Article 68(3) applies to all stages where victims' personal interests are affected. In the present matter, the alleged conflict of interest directly impacts victims' right to impartial justice during the *situation phase* (Venezuela I). Excluding victims from this stage would eviscerate the substantive guarantees provided by the Rome Statute.

IV. Normative and Ethical Foundations for Victim Participation

1. Ethical Imperatives and Article 42(7)

35. Article 42(7) of the Rome Statute and the Code of Conduct for the Office of the Prosecutor underscore the importance of impartiality. Victims, as the primary stakeholders in justice, have a legitimate interest in ensuring these standards are upheld. A Prosecutor tainted by conflict undermines not only individual cases but the ICC's institutional legitimacy.

2. OPCV's Position on Victim Participation

36. The submission by Dr. Paolina Massidda, Principal Counsel of the Office of Public Counsel for Victims (OPCV), unequivocally affirms that:

"In the present circumstances, the Principal Counsel submits that any subsequent decision on the Request, the first of this nature ever brought before the Court, is of "general importance and applicability", goes to matters of impunity and accountability of interest to the Victims, and as such, justifies the presentation of their views and concerns at this juncture. Victims of the crimes committed in the Situation in Venezuela, along with their families, have the right to obtain justice, to know the truth about the events they suffered from, and to be redressed without undue delay." [sic] (emphasis and underlining added)

37. This acknowledgment aligns with the applicant's position, affirming the procedural necessity of victim participation in matters of prosecutorial ethics.

V. Final Considerations on Article 42(8) and Victim Participation

38. The Prosecutor's restrictive interpretation of Article 42(8) is irreconcilable with the Rome Statute's broader principles of fairness, transparency, and victim participation. Victims, whose personal interests are at stake, cannot be excluded from addressing conflicts of interest that jeopardize the integrity of proceedings. The ICC's actions and ethical mandates reinforce the applicant's procedural standing.

39. In sum:

1. Article 68(3) provides victims the right to present views and concerns whenever their interests are affected.
 2. The Court's procedural engagement constitutes tacit recognition of the applicant's standing.
 3. Denying victims access to mechanisms ensuring prosecutorial impartiality undermines the Rome Statute's purpose and the *bona fide* administration of justice.
40. The applicant's ability to invoke Article 42(8) is not only legally valid but indispensable for safeguarding the ICC's integrity and the trust of victims as central stakeholders. *Fiat justitia ruat caelum*—Let justice be done though the heavens fall.

ii. The Meaning of 'Case' Under Article 42(7) of the Statute

Beyond Semantics to Serve Justice

41. The Prosecutor's restrictive interpretation of the term 'case' under Article 42(7) of the Rome Statute lacks both textual and contextual foundation. By narrowly confining the provision to formal "cases," the Prosecutor excludes broader *situations*—like *Venezuela I*—thereby undermining the Rome Statute's overarching principles of impartiality and transparency. Such a reading not only defies the intent and purpose of the Statute but risks rendering critical accountability mechanisms ineffective.

42. A proper interpretation of Article 42(7) demands a comprehensive examination of the linguistic and legal nuances embedded in its multilingual framework. The Rome Statute uses "matter" and "case" in English, "asunto" and "causa" in Spanish, and "affaire" in French. Notably, the term "affaire," in its singularity and broad legal context, encompasses both formal cases and broader situations. By disregarding these nuances, the Prosecutor's position overlooks the systemic unity of the Statute and weakens its ability **TO ADDRESS CONFLICTS OF INTEREST IN ALL STAGES OF PROCEEDINGS**. A linguistic, systemic, and purposive analysis reveals that situations are, and must be, included within the scope of the disqualification provision to ensure fairness and justice.

1. Multilingual Interpretation and the Vienna Convention

Under Article 33 of the Vienna Convention on the Law of Treaties, all official languages of a treaty hold equal authority. Discrepancies between terms must be resolved to align with the treaty's object and purpose. Article 42(7) employs terms with distinct semantic breadth in its official languages:

- 1.1 English:
 - "Matter" indicates a broad category, encompassing situations, disputes, or cases.
 - The additional term "case" narrows application only when explicitly specified.
- 1.2 Spanish:
 - "Asunto" refers to matters or situations of general or specific nature.
 - "Causa" is broader than a procedural case and encompasses any judicial or investigatory concern.
- 1.3 French:
 - "Affaire" encompasses cases, disputes, and situations, often used to denote broader issues beyond formal judicial proceedings.

This linguistic diversity reflects the drafters' intent to ensure comprehensive safeguards against conflicts of interest, extending to situations like *Venezuela I*.

2. Linguistic and Semantic Analysis

The Spanish and French terms, "asunto," "causa," and "affaire," unambiguously include broader investigatory and preliminary contexts. Unlike "case," which might suggest a formal procedural instance, these terms align with the generality intended by "matter."

- 2.1 Spanish: "Asunto" and "Causa":
 - The dual inclusion of "asunto" (matter/situation) and "causa" (cause/legal matter) explicitly widens the scope to cover broader contexts, including situations like *Venezuela I* before they evolve into formal cases.
- 2.2 French: "Affaire":
 - The term "affaire" is widely recognized as encompassing broader matters, similar to "asunto." French legal and common usage treats "affaire" as inclusive of disputes, controversies, and situations.
- 2.3 English: "Matter" and "Case":
 - The explicit use of "matter" in Article 42(7) denotes a broader category, emphasizing situations beyond narrowly defined procedural cases.

3. Systemic Context of the Rome Statute

- 3.1 Article 42(7) in Light of the Statute's Objectives:
 - The Rome Statute seeks to ensure impartiality and credibility at all stages of proceedings. A narrow reading of Article 42(7) violates this mandate by excluding crucial investigatory phases, **WHERE BIAS MAY CRITICALLY INFLUENCE OUTCOMES**.
- 3.2 Article 15 and Situations:
 - The term "situations" is pivotal in the ICC's procedural framework. Preliminary examinations and *proprio motu* actions under Article 15 address situations, not formal cases, **UNDERSCORING THE NEED FOR IMPARTIALITY AT THIS STAGE**.
- 3.3 Victims' Rights and Broader Applicability:
 - Articles 15(3) and 68 enable victims to participate and raise concerns during preliminary stages. Restricting recusals to "cases" undermines these rights by **EXCLUDING SITUATIONS WHERE PROSECUTORIAL BIAS MAY AFFECT VICTIMS' ABILITY TO OBTAIN JUSTICE**.

4. Practical and Jurisprudential Consequences

- 4.1 Unchecked Prosecutorial Discretion:
 - If "matter" or "affaire" excludes situations, the **Prosecutor holds unchecked power during critical preliminary stages. Such a loophole undermines judicial oversight and public confidence**.
- 4.2 Conflict of Interest and Bias in Preliminary Stages:
 - *Situations like Venezuela I* involve extensive investigatory and diplomatic interactions. **Potential bias at these stages compromises the integrity of any subsequent proceedings.**
- 4.3 Comparative Legal Principles:
 - Other international tribunals interpret similar terms broadly to **ensure fairness**. For example, the European Court of Human Rights recognizes that **perceived bias during investigatory stages can taint entire proceedings**.

5. The Prosecutor's Interpretation: A Critique

- 5.1 Selective Reliance on "Case":
 - By focusing narrowly on the term "case," the Prosecutor disregards the inclusive intent of "matter," "asunto," and "affaire." This approach ignores the Rome Statute's multilingual framework and systemic objectives.
- 5.2 Logical Inconsistency and Ethical Absurdity:
 - The Prosecutor's argument suggests an untenable premise: **that conflicts of interest, and even partiality, are somehow permissible—or inconsequential—until a formal "case" is opened**. This position raises a troubling question: **Does the Prosecutor contend that impartiality and ethical integrity are optional during the preliminary stages of proceedings?**
 - Such an interpretation not only defies common sense but directly undermines the Rome Statute's overarching principles of impartiality, transparency, and due process. The ethical obligation to avoid conflicts of interest exists at **all stages of proceedings**—from situations under investigation to formal cases. **To argue otherwise is to sanction a system where bias is tolerated at critical phases**, thereby jeopardizing the trust of victims, the fairness of proceedings, and the credibility of this Court.
- 5.3 Precedent for Broader Interpretation:
 - The Appeals Chamber has previously emphasized the importance of impartiality at all stages, including preliminary examinations. This supports a broader reading of Article 42(7).

6. Recommendations and Requested Relief

43. To safeguard the integrity of the ICC and ensure adherence to the Rome Statute's principles, the Appeals Chamber should:

- 6.1 Clarify that "matter," "asunto," "causa," and "affaire" encompass *situations* as well as *cases*.
- 6.2 Confirm that Article 42(7) applies to all contexts where prosecutorial impartiality may reasonably be doubted, including preliminary examinations.
- 6.3 Require full disclosure of potential conflicts of interest during situations like *Venezuela I*.

7. The Imperative of a Broad Interpretation

44. The multilingual and systemic interpretation of Article 42(7) unmistakably demonstrates its application to both *cases* and *situations*. Any attempt to restrict its scope exclusively to formal cases not only defies the Statute's purpose but also exposes the system to unacceptable risks of unchecked prosecutorial bias. **Such a narrow view threatens the very integrity of proceedings at their most formative stages**.

45. To safeguard the Court's credibility and ensure the fairness it was designed to uphold, this Honourable Appeals Chamber must embrace a broad and purposive interpretation of Article 42(7)—one that preserves impartiality as an unwavering standard from the outset of all proceedings.

iii. The Question of Timeliness of the Request for Recusal

The Untimeliness Argument: A Defense Born of Concealment, **Not Substance**

46. The Prosecutor's argument concerning the alleged untimeliness of the recusal request rests upon a foundation of procedural distortion and deliberate concealment. By invoking the passage of time as a defense, the Prosecutor seeks to obscure his ethical and legal obligation to disclose material conflicts of interest—a duty that exists *ab initio* under the Rome Statute and the ICC's Code of Conduct. This argument must fail for three interdependent reasons: **first**, because the Prosecutor's concealment of his familial, professional, and subordinate ties deprived the parties of timely knowledge; **second**, because the obligation to disclose conflicts of interest lies squarely on the Prosecutor, not the victims or their representatives; and **third**, because the principle of *audi alteram partem* ensures that such breaches, once uncovered, must be addressed without undue restriction.

1. A Conflict Concealed: The Prosecutor's Breach of Disclosure

47. Article 42(7) of the Rome Statute and Rule 34(1)(a) of the ICC Rules of Procedure and Evidence require the disclosure of any "close family relationship" or conflict of interest that may jeopardize impartiality. The *onus* of this duty rests upon the Prosecutor, not the victims or other parties. Prosecutor Karim Khan failed to disclose that Ms. Venkateswari Alagendra—counsel for the Bolivarian Republic of Venezuela—was not only his sister-in-law, through his wife **Ms. Dató Shyamala Alagendra**, but also a long-standing professional colleague and subordinate, having served under his leadership in prior proceedings such as the ***Ruto and Sang case***, among others.

48. This omission constitutes a breach of the ICC Code of Conduct for the Office of the Prosecutor, which mandates that conflicts of interest, whether actual or *perceived*, must be promptly disclosed to avoid undermining the appearance of impartiality (Section 9, Conflict of Interest). The principle *nemo iudex in causa sua*—that no one should be a judge in their own cause—stands at the heart of these ethical obligations. Prosecutor Khan's silence is particularly egregious as it was not inadvertent but calculated; by refraining from disclosure, he effectively insulated himself from scrutiny until external reporting revealed the familial connection.

2. Impossibility of Timely Objection Without Knowledge

49. The Prosecutor asserts that no objections were raised following Ms. Alagendra's appointment on November 7, 2023, implying waiver or acquiescence by silence. This argument collapses under scrutiny, as it presupposes knowledge of facts that the victims and their representatives could not have reasonably possessed.

50. The name "Venkateswari Alagendra" carries no inherent signal of her familial connection to Mr. Khan. To equate mere knowledge of a name with knowledge of a conflict of interest is to stretch logic beyond reason. As in any analogous legal system, the *moment of discovery* governs the timeliness of actions addressing concealed conflicts. The Arcadia Foundation's diligent response timeline illustrates this principle:

- On **6 September 2024**, *The Washington Post* published the familial connection between Ms. Alagendra and Prosecutor Khan.
- On **8 September 2024**, the Arcadia Foundation filed its recusal request, reflecting immediate action upon discovery.

51. This timeline is consistent with **Rule 34(2)** of the ICC Rules of Procedure and Evidence, which requires a recusal request to be made "as soon as there is knowledge of the grounds on which it is based." Here, **timeliness is contingent upon knowledge, not the occurrence** of events deliberately concealed from scrutiny.

3. Strategic Absence and Procedural Maneuvering

52. Further complicating matters is the Prosecutor's deliberate absence from the Appeal Hearing. While his legal team appeared, the absence of Prosecutor Khan himself ensured that the familial conflict was not raised or addressed through appropriate channels. His defense—that he does not "micromanage" proceedings—does not absolve him of the duty to inform the Registry and his team of potential conflicts. Instead, this calculated absence creates a troubling inference: **rather than confront the appearance of bias transparently, the Prosecutor avoided direct accountability.**

53. The Appeals Chamber cannot allow procedural gamesmanship to shield ethical breaches. To do so would erode the ICC's credibility and undermine its core principles of fairness, impartiality, and transparency. Timeliness cannot be invoked as a sword against those deliberately kept in the dark.

Call for Judicial Integrity

54. To preserve the ICC's legitimacy, the Appeals Chamber must recognize that the timing of the recusal request is not a reflection of delay but of concealment. The victim, along with their representatives, **acted promptly and in good faith** upon learning of the conflict, fulfilling their ethical and procedural obligations. Conversely, the Prosecutor's failure to disclose—combined with his reliance on a timeline distorted by his own omission—constitutes a profound breach of his duties under the Rome Statute and the ICC Code of Conduct.

55. Justice demands that the Appeals Chamber reject the Prosecutor's untimeliness argument and affirm that conflicts of interest, once revealed, must be addressed irrespective of procedural stratagems. Anything less would embolden breaches of ethical duty and diminish the ICC's standing as a pillar of impartial international justice.

iv. The Interpretation of "Close Family Relationship" in Rule 34(1)(a) of the Rules of Procedure and Evidence

Second-Degree Affinity: A Relationship That Cannot Be Ignored Under Rule 34(1)(a)

56. The Prosecutor's familial ties constitute a clear breach of ethical duty and legal standards, as they undermine the principles of impartiality and transparency central to the ICC's mandate.

57. The defense advanced by the Prosecutor seeks to diminish the significance of his familial relationship with Ms. Venkateswari Alagendra, counsel for the Bolivarian Republic of Venezuela. However, **this relationship—clearly falling within the ambit of "close family relationship" under Rule 34(1)(a) of the Rules of Procedure and Evidence—cannot be dismissed nor diluted through rhetorical maneuvering.** Both international legal standards and Venezuelan domestic law, which provides persuasive authority, recognize such ties as grounds for disqualification to ensure impartiality. The Prosecutor's failure to disclose this relationship constitutes not merely an ethical breach but a **manifest violation of procedural and legal principles** enshrined in the Rome Statute.

1. Rule 34(1)(a): Familial Ties and the Integrity of Proceedings

58. Rule 34(1)(a) of the Rules of Procedure and Evidence explicitly identifies "close family relationships" as grounds for disqualification:

"**Personal 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.**"

59. The framers of the rule embedded this provision to safeguard the ICC's impartiality. A reasonable perception of bias—arising from **familial ties by affinity**—is sufficient to demand disqualification. This provision aligns with **Article 42(7)** of the Rome Statute, which demands recusal or disqualification "on any ground" where impartiality might reasonably be doubted. **To overlook such ties is to risk rendering this safeguard meaningless and undermining public confidence in the ICC.**

60. The relationship between Prosecutor Karim Khan and Ms. Alagendra is unambiguous: she is his sister-in-law. In all legal, cultural, and societal contexts, such a familial tie constitutes **second-degree affinity**, inherently within the definition of "close family relationship." To suggest otherwise, as the Prosecutor implicitly does, **defies not only law and ethics but also common sense.**

2. Venezuelan Law: A Parallel Framework of Recusal

61. The Prosecutor's arguments dismiss the binding standards enshrined in Venezuelan domestic law, which provide a clear and unequivocal framework for recusal based on familial ties, including those arising through affinity—relationships formalized by marriage. Second-degree affinity, in particular, is explicitly recognized as a direct and irrefutable ground for recusal.

62. This principle is neither anomalous nor aspirational; it is deeply rooted in Venezuelan jurisprudence and codified with precision in the **Código Orgánico Procesal Penal** (Organic Code of Criminal Procedure), the **Código de Procedimiento Civil** (Code of Civil Procedure), and the **Código Civil** (Civil Code). These legal instruments impose a strict obligation to safeguard judicial impartiality, transforming recusal from a procedural option into an imperative duty whenever familial relationships compromise the appearance of neutrality.

63. The relevance of these provisions extends beyond Venezuela's domestic framework. Under **Article 21(1)(c) of the Rome Statute**, general principles of law derived from national legal systems must be applied where applicable. Venezuelan recusal standards, with their clarity and rigor, thus provide both **substantive and persuasive** authority for this Chamber.

3. Consistency Between Venezuelan Law and ICC Ethical Standards

64. The alignment between Venezuelan legal principles and the ICC's ethical framework further reinforces the case for recusal. The ICC, in its mandate, has consistently recognized and respected Venezuelan legal standards when they align with international norms—for example, Venezuela's explicit exclusion of the **death penalty** as a maximum punishment. The Court's acknowledgment of this standard underscores its obligation to apply Venezuelan recusal norms with equal respect, particularly when they designate **second-degree affinity** as a non-negotiable conflict of interest.

65. To disregard this alignment would create a troubling dissonance between the ICC's stated commitment to fairness and its practical application of ethical safeguards. Such inconsistency risks undermining the legitimacy of these proceedings and eroding victims' confidence in the Court's impartiality—an outcome wholly incompatible with the ICC's *raison d'être*.

66. The articles in these legal instruments articulate this principle with *claritas* and *auctoritas*, reflecting a legal tradition that treats recusal as essential to the integrity of any judicial process. These norms are not mere formalities but manifestations of a universal principle: impartiality must not only exist but also be **manifestly perceived to exist.**

67. In what follows, I will present the relevant provisions of the **Código Orgánico Procesal Penal**, the **Código de Procedimiento Civil**, and the **Código Civil**, which collectively and unequivocally establish second-degree affinity as a ground for recusal—provisions that this Chamber cannot, and must not, disregard.

Relevant Articles from the Venezuelan Code of Criminal Procedure

Chapter VI Recusal and Inhibition

Legitimación Activa
Artículo 88 (Spanish Original): "Pueden recusar las partes y la víctima aunque no se haya querrelado."
Active Legitimacy
Article 88 (English Translation): "The parties and the victim may challenge even if no complaint has been filed."

Legal and Ethical Analysis

68. Should any doubts remain regarding section "i. *The Interpretation of Article 42(8) of the Statute and the Question of Standing*" of this submission, I must respectfully clarify that the Venezuelan **Código Orgánico Procesal Penal** (Organic Code of Criminal Procedure) unequivocally establishes the standing (*legitimación activa*) of victims to challenge judicial and prosecutorial impartiality, even in the absence of a formal complaint.

69. This provision unequivocally affirms the right of victims—regardless of their procedural role or the stage of the proceedings—to raise recusal claims when their interests are directly impacted. It recognizes that victims, as central stakeholders in the administration of justice, possess an inherent procedural right to demand impartiality. This right aligns seamlessly with the principles of fairness and meaningful

participation enshrined in **Article 68(3) of the Rome Statute**.

Causales de Inhibición y Recusación
Artículo 89 (Spanish Original): "Los jueces y juezas, los o las fiscales del Ministerio Público, secretarios o secretarias, expertos o expertas e intérpretes, y cualesquiera otros funcionarios o funcionarias del Poder Judicial, pueden ser recusados o recusadas por las causales siguientes:"
Grounds for Inhibition and Recusal
Article 89 (English Translation): "Judges, prosecutors of the Public Ministry, clerks, experts, interpreters, and any other officials of the judiciary may be challenged on the following grounds:"

Relación de Afinidad o Consanguinidad
Artículo 89(1) (Spanish Original): "Por el parentesco de consanguinidad o de afinidad dentro del cuarto y segundo grado respectivamente, con cualquiera de las partes o con el o la representante de alguna de ellas."
Relationship of Affinity or Consanguinity
Article 89(1) (English Translation): "For a relationship by consanguinity within the fourth degree or by affinity within the second degree, with any of the parties or with the representative of any of them."

Interés Directo en el Resultado del Proceso
Artículo 89(5) (Spanish Original): "Por tener el recusado, su cónyuge o alguno de sus afines o parientes consanguíneos, dentro de los grados requeridos, interés directo en los resultados del proceso."
Direct Interest in the Outcome of the Process
Article 89(5) (English Translation): "For the recusant, their spouse, or any of their relatives by affinity or consanguinity, within the required degrees, having a direct interest in the outcome of the proceedings."

Inhibición Obligatoria
Artículo 90 (Spanish Original): "Los funcionarios o funcionarias a quienes sean aplicables cualesquiera de las causales señaladas en el artículo anterior deberán inhibirse del conocimiento del asunto sin esperar a que se les recuse."
Mandatory Inhibition
Article 90 (English Translation): "Officials to whom any of the grounds set out in the preceding article apply must refrain from hearing the matter without waiting to be recused."

Legal and Ethical Analysis

70. The Venezuelan Code of Criminal Procedure establishes an **unequivocal obligation** to prevent conflicts of interest. The relevant articles leave no room for ambiguity regarding familial ties and their impact on judicial and prosecutorial impartiality:

Article 89(1):

71. Second-degree affinity—such as the relationship between Prosecutor Karim Khan and Ms. Venkateswari Alagendra—constitutes a direct and indisputable ground for recusal. This provision reflects the well-settled legal principle that familial relationships create a *prima facie* perception of partiality. In this case, **the Prosecutor's familial tie to Ms. Alagendra, as his sister-in-law, meets this threshold unequivocally.**

Article 89(5):

72. The article further strengthens the principle by extending recusal to instances where the recusant or their spouse, or relatives within the required degrees, have a **direct interest in the outcome of the process**. Given Ms. Alagendra's role as counsel for the Bolivarian Republic of Venezuela—a party whose interests the Prosecutor is duty-bound to investigate—this relationship creates a profound and **undeniable conflict of interest**.

Article 90: Mandatory Recusal

73. The obligation to recuse oneself is not discretionary. Article 90 explicitly mandates that officials must "**inhibirse del conocimiento del asunto sin esperar a que se les recuse**"—to withdraw voluntarily upon recognition of a qualifying conflict of interest. Prosecutor Khan's failure to do so constitutes a **blatant breach** of this standard. His silence and subsequent attempt to deflect responsibility not only violate Venezuelan domestic law but also the broader ethical obligations embedded in the ICC framework.

Relevant Articles from the Venezuelan Code of Civil Procedure

74. Section VIII

On the recusal and inhibition of judicial officials

Artículo 82 (Spanish Original): "Los funcionarios judiciales, sean ordinarios, accidentales o especiales, incluso en asuntos de jurisdicción voluntaria, pueden ser recusados por alguna de las causas siguientes:

1º Por parentesco de consanguinidad con alguna de las partes, en cualquier grado en la línea recta, y en la colateral hasta cuarto grado inclusive; o de afinidad hasta el segundo, también inclusive. Procede también la recusación por ser cónyuge del recusado el apoderado o asistente de una de las partes.

[...]

4º Por tener el recusado, su cónyuge o alguno de sus consanguíneos o afines, dentro de los grados indicados, interés directo en el pleito."

Article 82 (English Translation): "Judicial officials, whether ordinary, temporary, or special, including those acting in matters of voluntary jurisdiction, may be recused for any of the following reasons:

1º For consanguineous kinship with any of the parties, in any degree of the direct line, and in the collateral line up to the fourth degree inclusive; or for kinship by affinity up to the second degree inclusive. Recusation also applies when the recusant's spouse acts as the attorney or assistant of one of the parties.

[...]

4º For having, the recusant, their spouse, or any of their consanguineous or affinity relatives within the indicated degrees, a direct interest in the litigation."

Artículo 84 (Spanish Original): "El funcionario judicial que conozca que en su persona existe alguna causa de recusación, está obligado a declararla, sin aguardar a que se le recuse, a fin de que las partes, dentro de los dos días siguientes, manifiesten su allanamiento o contradicción a que siga actuando el impedido.[...]"

Article 84 (English Translation): "A judicial official who becomes aware that a cause for recusal exists in their person is obligated to declare it, without waiting to be recused, so that the parties, within the following two days, may express their acquiescence or objection to the inhibited official continuing to act.[...]"

Legal and Ethical Analysis

75. The Code of Civil Procedure of Venezuela enshrines principles that safeguard the integrity and impartiality of judicial proceedings, codifying recusal as a necessary mechanism to prevent conflicts of interest. This legal obligation, detailed in **Article 82** and **Article 84**, not only upholds procedural fairness but also mirrors the ethical standards central to the International Criminal Court (ICC), particularly under **Rule 34(1)(a)** and **Article 42(7)** of the Rome Statute.

Article 82: Familial Ties and Direct Interest as Grounds for Recusal

76. **Article 82** identifies two critical grounds for recusal relevant to this matter:

- **Familial Relationships (Affinity and Consanguinity):**

The provision explicitly states that judicial officials may be recused for consanguineous kinship up to the fourth degree and for affinity kinship up to the second degree. Second-degree affinity—such as the relationship between **Prosecutor Karim Khan** and **Ms. Venkateswari Alagendra**, his sister-in-law—falls squarely within this definition. The inclusion of such relationships reflects the universal legal principle that even **the appearance of partiality must be avoided to preserve public confidence in judicial impartiality**.

This standard is not merely an abstract ideal, but a codified imperative rooted in the doctrine of *nemo iudex in causa sua*—no one shall judge a matter in which they have a vested interest. To disregard such familial ties would undermine the foundational tenet that justice must not only be done but must also be *seen to be done*.

- **Direct Interest in the Litigation:**

The provision further extends recusal to cases where the recusant, their spouse, or any relative within the prescribed degrees has a *direct interest* in the proceedings. This standard is strikingly applicable here: Ms. Alagendra's role as counsel for the **Bolivarian Republic of Venezuela**—a party whose interests the Prosecutor is charged with investigating—creates an incontrovertible conflict of interest. Such an interest, whether real or perceived, compromises the integrity of the proceedings. The Prosecutor's silence on this matter amounts to a *violatio legis*—a breach of law that cannot be excused or ignored.

Article 84: Mandatory Self-Disclosure of Recusal Grounds

77. **Article 84** establishes a non-discretionary duty upon judicial officials to disclose any grounds for recusal *suo sponte*—on their own initiative—without waiting for a formal challenge. This provision transforms recusal from a reactive measure into a proactive obligation, ensuring that conflicts of interest are addressed at the earliest opportunity.

78. The article's mandate is unequivocal:

"A judicial official who becomes aware that a cause for recusal exists in their person is obligated to declare it, without waiting to be recused."

79. In this case, Prosecutor Karim Khan's failure to disclose his familial tie to Ms. Alagendra constitutes a blatant violation of this standard. His silence reflects not oversight but a *delictum omissionis*—a deliberate omission that undermines the principles of transparency and ethical responsibility enshrined in both Venezuelan law and the ICC's ethical framework.

80. The Prosecutor, as one of the most senior officers of this Court, bears a heightened ethical duty to uphold impartiality. By failing to disclose his relationship, he has eroded the trust that victims—and the broader international community—place in the Court's ability to deliver fair and impartial justice.

Alignment with ICC Ethical Standards

81. The principles articulated in **Articles 82** and **84** of the Venezuelan Code of Civil Procedure resonate with the ethical obligations enshrined in the ICC's framework. Under **Rule 34(1)(a)** of the Rules of Procedure and Evidence and **Article 42(7)** of the Rome Statute, the Court mandates recusal where "*impartiality might reasonably be doubted on any ground*." Familial relationships, especially second-degree affinity, fall squarely within this standard.

82. Moreover, the ICC's **Code of Conduct for the Office of the Prosecutor** reinforces this duty:

83. **The Code of Conduct for the Office of the Prosecutor** explicitly addresses impartiality and conflicts of interest under **Section 6 (Impartiality)** and **Section 9 (Conflict of Interest and Other Impediments)**.

84. **Section 6: Impartiality**

- Paragraph 29 defines impartiality as “the fair-minded and objective treatment of persons and issues, free from any bias or influence.” This principle prohibits any conduct that could give rise to reasonable doubt as to the impartiality of the Office.
- More specifically, **paragraph 31** states:

“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).”

85. This provision directly aligns with the recusal standards under Venezuelan law, where second-degree affinity is treated as a *per se* conflict of interest. The Prosecutor’s failure to excuse himself in light of his familial relationship constitutes a breach of this core ethical obligation.

86. Section 9: Conflict of Interest and Other Impediments

- Paragraph 42 establishes the duty of members of the Office to avoid conflicts of interest arising from “*personal interest in the case, including a spousal, parental or other close family, personal or professional relationship.*”
- It further mandates immediate disclosure and abstention from participation in matters where such conflicts arise:

Paragraph 43: “In the event of any conflict of interest, whether financial or otherwise, Staff members shall immediately disclose the nature of that interest to the head of the Division or Section, or to the Prosecutor, who shall decide whether the conflict is of such a nature as to require that the Staff member concerned participate no further in the matter concerned.”

87. In this instance, the Prosecutor’s familial relationship with Ms. **Venkateswari Alagendra**—counsel for the Bolivarian Republic of Venezuela—meets the threshold of a conflict of interest as defined by this section. The failure to disclose and address this conflict constitutes a clear violation of the Code and undermines the integrity of the proceedings.

Relevant Articles from the Venezuelan Civil Code

88. The **Código Civil Venezolano** (Venezuelan Civil Code) provides a definitive statement on the enduring nature of *vinculos de afinidad* (relationships by affinity), further reinforcing their weight as grounds for recusal.

Artículo 40 (Spanish Original): “La afinidad no se extingue por la disolución del matrimonio, aunque no existan hijos.”
Article 40 (English Translation): “Affinity does not end with the dissolution of the marriage, even if no children exist.”

Legal and Ethical Analysis

89. This provision underscores a fundamental principle of Venezuelan law: the legal bond of affinity, once established through marriage, persists indefinitely, regardless of the subsequent dissolution of that marriage. The enduring nature of this relationship reflects the law’s recognition of *afinidad* (affinity) as a matter of substantive legal significance rather than a mere formality tied solely to the existence of an active marital union.

90. In practical terms, this means that even if Prosecutor **Karim Khan** were to dissolve his marriage with the sister of Ms. **Venkateswari Alagendra**, counsel for the Bolivarian Republic of Venezuela, the *second-degree affinity* relationship between the Prosecutor and Ms. Alagendra **would remain legally INTACT**. As such, the causal grounds for recusal under Venezuelan law would persist, unaffected by changes in the marital status that initially created the relationship.

91. This principle reinforces the unyielding obligation to prevent even the appearance of partiality within judicial or prosecutorial functions. It reflects a broader legal and ethical doctrine that familial ties—by consanguinity or affinity—carry enduring implications for impartiality, extending beyond personal or temporal considerations. To dismiss this enduring bond would contradict not only Venezuelan law but also the *ratio legis* of recusal frameworks worldwide: to safeguard the integrity of proceedings **from any reasonable perception of bias**.

92. Thus, the enduring nature of affinity under Venezuelan law further solidifies its relevance as a ground for recusal. This Chamber cannot overlook the persistence of this legal relationship, as doing so would risk undermining the universally recognized principles of impartiality and transparency that are foundational to both domestic and international justice systems.

93. This alignment between Venezuelan domestic law and the ICC’s ethical framework underscores a universal principle: impartiality is the cornerstone of justice and must remain untainted by conflicts of interest, whether real or perceived. The Prosecutor’s failure to excuse himself or disclose his familial relationship constitutes not merely a procedural lapse but a violation of core ethical obligations that this Chamber cannot overlook. Impartiality is not a matter of discretion—it is a mandatory obligation, the breach of which jeopardizes the fairness and legitimacy of the proceedings. Upholding these standards is imperative to safeguard the integrity of the process, preserve public trust, and ensure that the administration of justice reflects the highest ideals of fairness and transparency.

The Practical Reality: The Close Family Circle

94. In any cultural, societal, or legal context, the concept of “*close family*” unequivocally includes siblings-in-law—relationships that arise through second-degree affinity. To suggest otherwise is not only an affront to logic but an insult to universally understood family dynamics.

95. Let us pose a simple question: if the Prosecutor were to host a private family gathering—a birthday celebration for his wife, inviting only the closest members of their family—who would naturally find themselves on the guest list? The answer is self-evident: his spouse, their children, parents, and his wife’s siblings, including her only sister—Ms. **Venkateswari Alagendra**. To argue that this familial bond does not constitute “*close family*” under Rule 34(1)(a) is as absurd as pretending the sister-in-law would not have a seat at his family table.

96. Such a denial strains the bounds of reason and decency. The Prosecutor’s attempt to exclude his sister-in-law from the equation demonstrates a selective and self-serving interpretation of the rule, one that offends not only Venezuelan law but also common sense and cultural norms universally respected across societies. The ethical purpose of Rule 34(1)(a) is clear: to prevent conflicts of interest by recognizing the very relationships that could compromise impartiality. To ignore the reality of these relationships is to undermine the integrity of justice itself.

97. The Prosecutor’s argument collapses under the weight of its own contradiction: if his sister-in-law is not part of his “*close family*,” then who, pray tell, would he claim as closer?

A Failure of Oversight: When Conflict of Interest is Evident and Ignored

98. If the familial bond between Prosecutor **Karim Khan** and Ms. **Venkateswari Alagendra** has not already raised insurmountable doubts regarding his impartiality, the following revelations leave no room for ambiguity. Beyond kinship, their documented **professional, financial, and subordinate relationships**—all drawn from the very records of this Court—expose a pattern of interconnected interests that cannot be dismissed as incidental. These facts, embedded within the International Criminal Court’s own proceedings, **have been inexplicably overlooked by those entrusted with upholding its integrity**.

99. This silence is not merely an oversight; it is an institutional failure that **demands accountability**. When conflicts of interest are so glaring, yet remain unchallenged within the very body tasked with ensuring justice, it forces a sobering reflection: **how could such evidence exist in plain sight and no action be taken? How could no one, among those entrusted with safeguarding the principles of transparency and fairness, demand scrutiny?**

100. The following analysis exposes the professional entanglement, hierarchical subordination, and financial alignment between Mr. Khan, Ms. **Venkateswari Alagendra**, and Ms. **Datō Shyamala Alagendra**—a triad of conflicts that violate Rule 34(1)(a) of the ICC’s Rules of Procedure and Evidence. These revelations are not conjecture; they are drawn directly from the Court’s own archives. To continue ignoring them would not merely compromise these proceedings but would erode the very foundation upon which the legitimacy of this institution rests.

1. The Professional Nexus Between Prosecutor Karim Khan and Ms. Venkateswari Alagendra

101. The documented professional history between Prosecutor Karim Khan and Ms. Venkateswari Alagendra reveals a deliberate and sustained collaboration that goes beyond incidental association. This professional nexus alone constitutes a ground for recusal under Rule 34(1)(a) of the ICC’s Rules of Procedure and Evidence, which explicitly identifies “*professional relationships*” as sufficient cause for disqualification when impartiality might reasonably be doubted.

A Pattern of Deliberate Collaboration

102. The professional alignment between Mr. Khan and Ms. Alagendra is irrefutably demonstrated in prior high-profile ICC cases, where both individuals acted as co-counsel under Mr. Khan’s strategic leadership. These cases include:

- **Ruto and Sang (Kenya, 2013):**

Mr. Karim Khan, as Lead Counsel for William Samoei Ruto, appointed Ms. Venkateswari Alagendra as Associate Counsel alongside his wife, Ms. Datō Shyamala Alagendra. This formal inclusion reflects an intentional team composition under Mr. Khan’s supervision.

The ICC’s Registry filing dated 16 May 2013 explicitly documents this appointment:

“The Registry hereby informs the Honourable Judges of the Chamber of the recent appointments by Mr. Karim Khan, Q.C., Lead Counsel for Mr. William Samoei Ruto, of the following two additions to the defence team: Ms. Shyamala Alagendra, as Associate Counsel, and Ms. Venkateswari Alagendra, as Associate Counsel.”

- **Saif al-Islam Gaddafi Case (Libya, 2018-2019):**

In this matter, both Ms. Shyamala Alagendra and Ms. Venkateswari Alagendra served as defense counsel alongside Mr. Karim Khan. Their repeated association across geographically and temporally distinct proceedings signifies an enduring professional bond.

The Pre-Trial Chamber I decision dated 5 April 2019 acknowledges the participation of Ms. Venkateswari Alagendra in this defense team, further reinforcing the professional nexus.

Shared Objectives and Mutual Professional Interests

103. The participation of Mr. Khan and Ms. Alagendra in these cases demonstrates a clear alignment of professional objectives. Their roles in representing high-profile clients reflect joint efforts to advance shared legal strategies, which inherently produce overlapping professional interests. While Mr. Khan seeks to diminish this connection as irrelevant to the Venezuela investigation, such sustained collaboration cannot be dismissed as incidental or inconsequential. It creates a *prima facie* perception of bias that compromises the impartiality of the Prosecutor’s role.

2. The Subordination Relationship: A Hierarchical Dynamic in the Ruto and Sang Case

104. In addition to the professional relationship, the evidence of **subordination between Prosecutor Karim Khan and Ms. Venkateswari Alagendra constitutes a distinct and independent ground for recusal under Rule 34(1)(a)**. The hierarchical nature of their roles during the **Ruto and Sang case** unequivocally demonstrates a subordinate relationship, where Ms. Alagendra operated under Mr. Khan’s direct authority and supervision.

Documented Evidence of Subordination

- As **Lead Counsel** for William Ruto, Mr. Khan held the highest level of responsibility for the defense team’s strategy, performance, and overall representation.
- The appointment of Ms. **Venkateswari Alagendra** as Associate Counsel formally positioned her in a subordinate role, subject to Mr. Khan’s directives, oversight, and control.

- Under ICC procedural norms, Associate Counsel are obligated to defer to the decisions and instructions of the Lead Counsel, who retains ultimate responsibility for legal strategy and courtroom advocacy.

The **Registry notification of 16 May 2013** confirms the formal nature of this hierarchical dynamic, establishing that Mr. Khan exercised his authority to appoint and supervise Ms. Alagendra. This is not a matter of informal association; **it is a documented relationship of legal subordination that cannot be ignored.**

Contradictions in the Prosecutor's Defense

105. The Prosecutor's claim of "negligible interaction" and geographic separation does not withstand scrutiny when juxtaposed with the formal structure of the *Ruto and Sang* defense team. The hierarchical nature of their relationship creates an inherent dynamic of influence and authority, which persists as a relevant factor in assessing impartiality.

- **Supervisory Authority:** As Lead Counsel, Mr. Khan held decision-making power over Ms. Alagendra's assignments, responsibilities, and contributions to the case.
- **Residual Influence:** The subordination relationship established during the *Ruto and Sang* proceedings creates a lasting perception of professional influence, which undermines the Prosecutor's assertion of independence from Ms. Alagendra.

Relevance to Rule 34(1)(a)

106. Rule 34(1)(a) explicitly includes "subordinate relationships" as a valid ground for disqualification. The failure to disclose or address this relationship constitutes a significant ethical omission that exacerbates the appearance of bias in the Venezuela I investigation. A Prosecutor who previously supervised a key legal representative of a party under investigation cannot credibly claim neutrality, as a fair-minded observer would reasonably doubt his impartiality.

The "Coincidence" of Venezuela's Choice of Counsel: Undermining Impartiality

107. The decision of the Bolivarian Republic of Venezuela (BRV) to engage the law firm employing Ms. Venkateswari Alagendra, sister-in-law of Prosecutor Karim Khan, cannot reasonably be viewed as coincidental. In light of the Prosecutor's investigation into the Venezuelan regime for alleged crimes against humanity, this selection raises serious concerns about impartiality and the appearance of bias. Such a situation demands rigorous scrutiny, as it undermines the fundamental principles of fairness, transparency, and impartiality enshrined in the Rome Statute.

108. Extraordinary Circumstances of Representation

1. **The Choice of Counsel:**
Among numerous law firms globally with expertise in international criminal law, the BRV's engagement of a firm directly connected to the Prosecutor creates an inherent appearance of bias. This alignment suggests a deliberate attempt to secure an implicit advantage in the investigation, whether intentional or **perceived**.
2. **Professional Nexus and Familial Alignment:**
The professional overlap between Mr. Khan, Ms. Venkateswari Alagendra, and her sister, Ms. Shyamala Alagendra, reflects a pattern of interconnected relationships spanning high-profile ICC cases, such as *Ruto and Sang* (Kenya) and *Gaddafi* (Libya). These overlaps extend to the legal representation of a party under investigation, exacerbating the perception of bias.
3. **Impact on Judicial Integrity:**
The ICC's legitimacy depends on public trust in its impartiality. The BRV's choice of legal representation directly undermines this trust, creating a public perception that impartiality is compromised—a perception as damaging as actual bias, per ICC jurisprudence.

109. Legal Implications

1. **Rule 34(1)(a) on Close Relationships:**
The rule prohibits participation where familial or professional relationships may compromise impartiality. The indirect but undeniable connection between the Prosecutor and the BRV through his sister-in-law's firm satisfies this criterion, warranting scrutiny and potential disqualification.
2. **Ethical and Procedural Breach:**
Prosecutor Khan's failure to disclose this connection constitutes a violation of ethical standards under the Rome Statute and the ICC Code of Conduct. The principle of *nemo iudex in causa sua* (no one should be a judge in their own cause) is unequivocal and directly applicable here.
The decision by the BRV to retain the law firm of the Prosecutor's sister-in-law creates a significant appearance of bias that undermines the credibility of the Venezuela I investigation. This alignment of interests, whether intentional or incidental, is incompatible with the impartiality required of ICC proceedings. To uphold the integrity of the Court, decisive action is necessary to address these concerns and restore public trust in its mandate.

110. Unveiling the Undisclosed: Evidence of Subordination and Alignment Demanding Transparency

It is both remarkable and concerning that these documents, which I obtained independently, reveal clear evidence of professional subordination and recurring collaboration between **Prosecutor Karim Khan and Ms. Venkateswari Alagendra**. While it would have been the Court's duty to request, under oath, a full disclosure from the Prosecutor of all cases in which he and Ms. Alagendra acted together, the documents before this Chamber already speak for themselves. These are not incidental overlaps but irrefutable evidence—*res ipsa loquitur*—of a pattern that undermines the appearance of impartiality. The existence of additional records, **many still marked confidential**, only deepens the need for an immediate resolution to this recusal request without unnecessary delay.

111. The Illusion of Separation: Financial and Professional Nexus Exposed

The defense advanced by Prosecutor **Karim Khan** to dismiss the recusal grounds rests precariously on claims of geographical separation and distinct financial interests. However, these assertions disintegrate under the weight of incontrovertible evidence of shared professional and financial alignment in prior ICC cases. The documented collaboration between Mr. Khan, **Ms. Venkateswari Alagendra** (his sister-in-law), and **Ms. Dató Shyamala Alagendra** (his wife) reveals a unified pursuit of legal, professional, and economic goals that defies the Prosecutor's carefully curated portrayal of separation.

Shared Financial and Professional Objectives in High-Profile Cases

112. The Prosecutor's position—that Ms. Alagendra's financial standing is distinct and unaffected by prior professional ties—ignores the intrinsic reality of collaborative legal representation:

1. **Joint Representation in the Ruto and Sang and Gaddafi Cases**
In the *Ruto and Sang* (2013) and *Saif al-Islam Gaddafi* (2018-2019) cases, Mr. Khan appointed both Ms. Shyamala Alagendra and Ms. Venkateswari Alagendra to serve alongside him as co-counsel. Their legal collaboration was not incidental but a deliberate and strategic alignment aimed at achieving shared professional objectives: **the successful defense of their clients**.
In such cases, financial compensation—whether from clients, pooled legal funds, or other sources—flows to the legal team collectively, binding their financial success to a common enterprise. **It strains credibility to argue that Mr. Khan's financial interests were "entirely distinct" from those of Ms. Alagendra when they pursued the same legal strategy under unified representation.**
2. **The Shared Economic Benefits of Legal Success**
While contingency fee arrangements may be prohibited under the ICC's Code of Conduct, this prohibition does not eliminate **the shared professional and reputational benefits derived from success in high-stakes cases. A FAVORABLE OUTCOME ENHANCES THE MARKETABILITY, CREDIBILITY, AND FINANCIAL PROSPECTS OF THE ENTIRE LEGAL TEAM.**
In cases of such magnitude, Mr. Khan and Ms. Alagendra's joint representation—executed over years and across multiple jurisdictions—**created an economic synergy that directly contradicts claims of financial independence.**

113. The Prosecutor's Contradictions: Geographical Separation vs. Professional Reality

The Prosecutor asserts that physical distance negates any substantive interaction with Ms. Alagendra. However, this argument collapses when viewed against the professional alignment that transcended geographical boundaries:

- **Legal Representation Is Not Constrained by Geography:**
The *Ruto and Sang* and *Gaddafi* cases required extensive collaboration among co-counsel across continents. Legal strategy, pleadings, and client advocacy demanded close professional alignment irrespective of location. To claim that geography alone dissolves professional or financial ties is an argument devoid of merit.
- **Documented Appointments and Shared Goals:**
Mr. Khan's formal appointments of Ms. Alagendra as Associate Counsel under his leadership evidence a professional bond rooted in shared legal objectives and aligned financial interests.

114. A Systemic Failure to Demand Accountability and Transparency

The prior professional and financial nexus between **Prosecutor Karim Khan and Ms. Venkateswari Alagendra**, compounded by their familial ties, raises irrefutable concerns regarding the integrity of the Venezuela I investigation. These relationships, meticulously documented in the ICC's own records, demonstrate a cumulative conflict of interest that directly contravenes **Rule 34(1)(a)**. Yet, the response to this glaring issue has been nothing short of a profound institutional failure.

The Appearance of Bias and the Silence of the Appeals Chamber

115. The ICC's mandate demands not only actual impartiality but the perception of impartiality—justice *must be done and seen to be done*. A fair-minded observer, upon reviewing the repeated professional and subordinate alignment, shared financial interests, and familial ties between Mr. Khan and Ms. Alagendra, could reach only one conclusion: **THERE EXISTS A REASONABLE AND UNAVOIDABLE DOUBT AS TO THE PROSECUTOR'S NEUTRALITY.**

116. It is all the more troubling, then, that this matter was met with silence by those entrusted to safeguard the Court's credibility. Instead of confronting the facts and acting decisively to protect the integrity of these proceedings, the Appeals Chamber sought to silence the very party raising these concerns, **limiting the rebuttal to a mere 10 PAGES**. This arbitrary restriction not only undermines the principle of *audi alteram partem*—the right to be fully heard—but also signals an unwillingness to hold the Prosecutor accountable for conflicts of interest that are as evident as they are serious.

117. This failure of judicial oversight erodes public trust, as it reveals a troubling reluctance to address transparency and accountability within the Court itself. **If the Chamber will not demand integrity when presented with overwhelming evidence from its own archives, what confidence can victims and the international community have in the impartiality of its proceedings?**

The Cumulative Conflict of Interest

118. The Prosecutor's attempts to compartmentalize familial, professional, and financial ties unravel under scrutiny. The **hierarchical relationship** of subordination in the *Ruto and Sang* case, the shared pursuit of legal and financial goals in the *Saif al-Islam Gaddafi* case, and the familial nexus—each of these elements individually creates grounds for reasonable apprehension of bias. Viewed collectively, they form a pattern of conflict that no fair-minded observer could dismiss.

119. Yet, despite these facts being irrefutably documented and readily accessible within the Court's own proceedings, the Appeals Chamber's failure to demand full transparency—and its actions to stifle

legitimate concerns—constitute a dereliction of duty. The ICC must hold itself to the same standard of accountability that it seeks to impose upon others.

Lessons from the Mustafa Case: Safeguarding Impartiality in Venezuela I

120. The Appeals Chamber is urged to consider the jurisprudence of the Kosovo Specialist Chambers (KSC) in the **Salih Mustafa case**, which underscores the imperative of addressing perceived conflicts of interest to maintain the integrity of international justice.

1. Relevant Precedent from the Mustafa Case

In the Mustafa case, the KSC addressed allegations of conflict of interest involving Ms. Venkateswari Alagendra, who represented two parties with overlapping interests in related matters. Despite the absence of demonstrated prejudice, the Court held that the perception of potential conflict undermined the integrity of the proceedings and declared her appointment void *ab initio*.

This principle—in *dubio pro integritate* (when in doubt, act to preserve integrity)—established that international tribunals must prioritize public perception and institutional transparency over technical arguments.

2. Application to the Venezuela I Investigation

2.1. Familial Connections and Public Perception

Similar to the Mustafa case, the relationship between Prosecutor Khan and Ms. Alagendra raises reasonable apprehensions of bias in the eyes of victims, the international community, and all stakeholders in the ICC's mandate. The ICC must act proactively to address these concerns, as its legitimacy depends on maintaining public trust.

2.2. Failure to Disclose

The Prosecutor's omission in disclosing his familial connection to Ms. Alagendra constitutes an *omissio juris* (failure of duty). As in Mustafa, the failure to notify the Court of potential conflicts renders the prosecutorial process procedurally flawed and undermines the perception of impartiality.

3. Implications for Procedural Integrity

The Mustafa decision emphasized the *officium iudicis* (the duty of the judiciary) to protect the fairness and transparency of proceedings. By failing to recuse himself, Prosecutor Khan risks compromising the integrity of prosecutorial actions, creating avenues for procedural challenges that could undermine future judicial outcomes.

4. Strategic and Jurisprudential Implications

The Mustafa case serves as a guiding precedent for the ICC, reinforcing the principle that perceived conflicts of interest must be addressed decisively to prevent eroding public trust. Applying this principle to *Venezuela I* would safeguard the legitimacy of ICC proceedings and set a clear precedent for handling similar cases in the future.

The Imperative to Restore Integrity

121. The refusal to confront this conflict of interest, coupled with the unjust limitation placed upon this rebuttal, reflects a systemic reluctance to acknowledge uncomfortable truths. However, the principles of impartiality and transparency are not aspirational ideals—they are non-negotiable foundations of justice.

122. To preserve its credibility and fulfill its mandate, this Chamber must act decisively. The cumulative evidence demands no less. To ignore it would render hollow the ICC's role as the guardian of international justice and cast a shadow of doubt over its commitment to fairness.

123. *Fiat justitia ruat caelum*—let justice be done, though the heavens may fall. For if justice falters within this very Court, its legitimacy in the eyes of victims and the world will falter alongside it.

v. The Impact on Victims' Rights and Judicial Integrity

A Plea for Transparency and Accountability

124. In this final section, we turn to an issue that strikes at the **very core** of the Court's mandate: the impact of prosecutorial conduct on the **rights of victims** and the **integrity of these proceedings**. This matter, identified explicitly by the Appeals Chamber under point (v) of its decision granting us leave to reply, demands rigorous examination, as it speaks directly to the fundamental principles of **transparency, fairness, and impartiality** that underpin the International Criminal Court (ICC).

125. As a **recognized victim in Situation Venezuela I** (Ref: VPRS-A-2023-092) and in my capacity as representative of the **Arcadia Foundation**, I, **Robert Carmona-Borjas**, find myself compelled to highlight the serious harm inflicted upon the victims and the credibility of this Court due to the Prosecutor's lack of transparency and apparent breaches of ethical standards. These concerns are further amplified by the **perceived partiality** arising from **familial and professional ties** between the Prosecutor and an individual representing the Venezuelan regime—an appearance of conflict that cannot be ignored and which strikes at the very integrity of these proceedings.

126. The absence of impartiality, or even the **perception thereof**, erodes the foundations of international justice. As codified in **Rule 34(1)(a)** of the Rules of Procedure and Evidence, any doubt—particularly one rooted in relationships or prior professional associations—constitutes sufficient grounds to question the **Prosecutor's ability to uphold the principles of fairness and independence to which he has sworn**. This principle is not only procedural; it is ethical, ensuring that the ICC maintains the trust of victims and the global community as the ultimate arbiter of justice.

127. It is therefore necessary to underscore the following:

1. The Ethical Framework and Perception of Conflict

The Prosecutor's defense arguments rest on the assertion that a "*fair-minded and informed observer*" would presume his impartiality based on his oath and professional experience. However, such a defense fails to address a critical reality: **impartiality is not a perpetual presumption**. Ethical conduct is judged not by past merits, but by actions in the present. Much like an athlete whose record of excellence cannot absolve a subsequent act of misconduct, **A PROSECUTOR'S PRIOR REPUTATION DOES NOT SHIELD HIM FROM SCRUTINY WHEN HIS CURRENT CONDUCT RAISES DOUBTS ABOUT HIS IMPARTIALITY**.

2. The Voices of Concern: Victims and Experts Alike

These concerns are echoed by the **Office of Public Counsel for Victims (OPCV)**. In its submission dated November 22, 2024, the OPCV explicitly stated:

28. [...] "*Victims rightfully consider that any potential or perceived conflict of interest may undermine the integrity of the investigation.*" [sic]

Dr. Paolina Massidda, Principal Counsel of the OPCV, further noted the frustrations of many victims:

33. "*Victims have expressed a deep sense of frustration, feeling that their plight has not been given the same priority by the Prosecutor as in other situations where investigations have advanced more swiftly and led to the issuance of several arrest warrants.*" [sic] (emphasis and underlining added)

Dr. Massidda's statements reflect the fundamental truth that victims rely upon the Court's transparency and impartiality as the foundation of their right to justice. Any breach of this trust—whether real or perceived—undermines the victims' faith in the proceedings and exacerbates their sense of abandonment.

Equally significant are the ethical concerns articulated by **Professor Claudio Grossman**, former Special Adviser to the Prosecutor. As reported in reputable media outlets, Professor Grossman, a globally recognized authority in international human rights, stated in his resignation correspondence:

"*I can no longer justify the choice not to take serious corresponding measures against the perpetrators of grave violations. My ethical standards no longer permit me to remain silent while the Maduro regime continues to commit abuses, expel foreign diplomats, and obstruct the work of United Nations human rights observers.*" [sic]

This publicly available statement, cited from credible reporting, highlights a glaring ethical crisis. The fact that such a denunciation comes from a distinguished figure who once held a role of trust within the Office of the Prosecutor is, in itself, profoundly troubling. It exposes not just individual inaction but a systemic failure to address clear conflicts of interest and to uphold the ethical standards the Court claims to embody.

That such evidence exists within the public domain, while those entrusted with safeguarding transparency remain silent, calls for immediate reflection and accountability. Ignoring these concerns risks eroding the credibility of this institution and betraying the very victims it is mandated to protect.

Source: AP News - [Claudio Grossman Resignation](#).

3. The Appearance of Partiality and Judicial Integrity

The perception that familial, professional, and subordinate connections between the Prosecutor and representatives of the Venezuelan regime may have influenced his inaction is **not merely speculative—it is grounded in well-documented facts**. The failure of the Prosecutor to publicly disclose these relationships, as required under ethical principles, has created a **calculated omission** that erodes confidence in the judicial process.

The ICC's legitimacy depends on its ability to be seen as a neutral arbiter of justice. When doubts arise—particularly in cases of such gravity as *Situation Venezuela I*—they must be addressed promptly and transparently. As victims, we cannot overstate the impact of this perception on our right to truth, justice, and reparations.

Case Studies Demonstrating Perceived Bias

128. The following will present **concrete facts** that establish a **reasonable presumption of partiality on the part of the Prosecutor**. These facts will further substantiate the concerns already raised by victims, the OPCV, and Professor Claudio Grossman—concerns that demand urgent and decisive action to preserve the integrity of these proceedings. The principles of justice, impartiality, and transparency are not abstract ideals; they are the cornerstones upon which this Court was built. We, as victims, seek not privilege but the fulfillment of the ICC's sacred duty: to act as a bastion of justice for those who have been silenced, oppressed, and forgotten.

129. The following cases illustrate the disparity in prosecutorial action that reinforces the perception of partiality:

1. The Walter Márquez Denunciation

Submitted to the ICC in 2018, this report meticulously documented systematic crimes of extermination under Article 7 of the Rome Statute. Márquez provided incontrovertible evidence of state-imposed deprivation, including:

- **Intentional Policies of Deprivation:** Policies that systematically restricted access to food, medicines, and humanitarian aid, leading to catastrophic levels of malnutrition and disease.
- **Widespread Suffering:** Documented spikes in preventable mortality, particularly among vulnerable populations, including children and the elderly.
- **Systematic Nature of the Crimes:** Márquez demonstrated that these were not isolated failures but deliberate strategies orchestrated at the highest levels of Nicolás Maduro's regime.
- **Public Health Collapse:** Venezuela's healthcare facilities were described as "fields of extermination," where preventable deaths occurred as a direct result of state-imposed deprivation.

130. Despite the overwhelming weight of the evidence, the Prosecutor's Office has failed to take any meaningful or **even preventative action**, as provided for under **Article 54(3)(f) of the Rome Statute**, leaving this submission unaddressed for years. The Márquez case now stands as a glaring testament to prosecutorial neglect, underscoring a profound failure to fulfill the ICC's mandate to combat impunity for crimes against humanity. In stark contrast, Prosecutor Khan issued expeditious orders against the Military Junta of Myanmar for forced deportations to Bangladesh in 2016 and 2017, exposing a clear disparity and discriminatory treatment towards Venezuela.

2. The Siege of the Argentine Embassy

131. The ongoing siege at the **Argentine Embassy in Caracas** offers a contemporary parallel to the systematic deprivation described by Márquez. Since March 20, 2024, prominent political dissidents—**Magalli Meda, Claudia Macero, Pedro Urruchurtu Noselli, Omar González, Fernando Martínez Mottola, and Humberto Villalobos**—have sought refuge at the Embassy, where they remain trapped under **inhumane siege tactics** imposed by Maduro's forces. The regime's actions constitute:

- **Siege Tactics and Deprivation:** The suspension of water, electricity, and access to food, in violation of diplomatic protections and international treaties.
- **Humanitarian Harm:** The deprivation mirrors the broader policies previously documented, weaponizing essential resources as tools of control and punishment.
- **Diplomatic Violations:** This affront to Argentine sovereignty and international norms underscores the regime's systematic disregard for the rule of law. The parallels between the siege and the Márquez denunciation are both striking and irrefutable. They demonstrate a deliberate and ongoing strategy of state-imposed deprivation—an act of extermination under Article 7—that remains unanswered by Prosecutor Khan, despite the urgency and clarity of the violations.

3. Disparity in Prioritization: Netanyahu vs. Maduro

132. The Prosecutor's swift decision to pursue allegations against **Prime Minister Benjamin Netanyahu** under Article 8 of the Rome Statute—despite his role as the **leader of a democratic nation operating within a robust judicial system and grappling with existential security threats**—highlights a stark contrast in the treatment of other situations, notably *Venezuela I*. Netanyahu governs in a context of **continuous armed threats from state and non-state actors**, including entities with sophisticated missile capabilities, advanced weaponry, and extensive military infrastructure. These conditions significantly complicate Israel's security calculus, making **the Prosecutor's focus on these allegations particularly contentious**.

133. **In comparison, the Venezuelan opposition faces an entirely different reality: they are a defenseless, unarmed civilian population, repeatedly subjected to state-sponsored persecution.** Unlike the complex armed conflict environment of Israel, the **Venezuelan regime systematically deploys its security apparatus, judicial system, and armed pro-government paramilitary groups, known as "colectivos," to silence dissent and perpetuate human rights abuses with total impunity.** The Venezuelan opposition is not merely outmatched but **completely vulnerable, enduring brutal repression documented extensively by international bodies. Reports confirm arbitrary detentions, torture, and extrajudicial killings perpetrated against political dissidents, alongside systemic deprivation of food and medicine.**

134. **Compounding these abuses is a judicial system fully co-opted by the regime, leaving no domestic recourse for victims.** The Venezuelan Prosecutor General's Office functions not as an instrument of justice but as an extension of the state's repression, ensuring that any notion of "positive complementarity" remains illusory. This absence of a functioning legal system underscores the **urgency of preventive measures and arrest warrants to halt ongoing victimization and restore hope for accountability.**

135. **The disparity in prosecutorial priorities is even more troubling given the catastrophic scale of the humanitarian crisis in Venezuela. Nearly 8 million Venezuelans have fled their homeland, hundreds of thousands have died as a direct result of state policies, and the nation remains in humanitarian collapse. The crimes under investigation in Venezuela—ranging from extermination to systematic torture—target unarmed civilians with no mitigating conditions of armed conflict or external aggression.** This makes the inaction of the ICC even more indefensible.

136. The Prosecutor's decision to pursue the Netanyahu case with **unprecedented urgency**, while allowing the *Venezuela I* situation to languish, reveals a **troubling inconsistency** that undermines the principle of **equality before the law** and casts a shadow over the ICC's **credibility**. **Israel, a nation with one of the most robust and independent judicial systems in the world, possesses the institutional capacity to address allegations of war crimes through its domestic mechanisms.** Yet, the Prosecutor failed to engage meaningfully with Israeli judicial authorities, bypassing an opportunity for **dialogue and mutual accountability**. In stark contrast, **Venezuela—a state ruled by an oppressive regime that has systematically dismantled its judiciary, weaponized its courts, and used terror as a tool of governance—has been granted the benefit of "positive complementarity" FOR YEARS, despite overwhelming evidence of impunity.**

137. This disparity is not merely a **procedural oversight** but a **profound moral failing**. **How can the Prosecutor justify advancing charges against the leader of a democracy committed to the rule of law, while simultaneously hesitating to act decisively against a regime that murders, tortures, and starves its own defenseless people?** The victims of Venezuela's atrocities—trapped in a **system devoid of justice**—have waited long enough. **Every day of delay amplifies their suffering and diminishes the ICC's role as the court of last resort for those who cannot seek justice elsewhere. It is not enough to pursue justice selectively; impartiality demands consistency.** To restore faith in the ICC's mandate, the Prosecutor must confront the inherent **contradictions in his approach** and act with the **moral courage** required to ensure that **no victim is left unheard, and no crime is left unpunished.**

Final Reflection: On Errors and Responsibilities

138. From the extensive defense submitted by Prosecutor Karim Khan, two elements stand out as undisputedly accurate. The first is his correct spelling of his own name and the names of the Honourable Judges presiding over this matter. While I suspect this may be the result of a preformatted template, it is nonetheless correct. The second is his identification of an error on my part regarding the article cited in my initial request for recusal.

139. On this latter point, **I must humbly concede**. As someone who has only been navigating the complexities of the Rome Statute, ICC jurisprudence, and procedural rules **for less than five months**, such an error is possible. Unlike the Prosecutor, I have not spent a lifetime litigating within international tribunals. However, **I would rather err in the precise numbering of articles while striving to uphold their principles than memorize them flawlessly only to violate their essence—particularly the professional ethics codified in the ICC's Code of Conduct.**

140. It is deeply regrettable that the Prosecutor, despite his vast experience and accolades in international law, has failed to uphold the ethical standards that should define his role. The familial and professional relationships he has neglected to disclose, and the resulting perception of partiality, represent a far graver lapse than any clerical error in the citation of an article. The Rome Statute and its accompanying Code demand not only adherence to the law but also a commitment to transparency and impartiality, principles that the Prosecutor's conduct has called into question.

141. If, as he suggests, my inexperience is a flaw, then **I wear it as a badge of honour**. It is the same inexperience that drives me to seek justice rather than familiarity with its technicalities, and it is the same inexperience that leads me to demand accountability from those who should exemplify the highest standards of integrity.

142. I respectfully remind this Chamber that justice is not measured by rhetorical precision or familiarity with procedure but by adherence to the moral and ethical principles that sustain its legitimacy. As the Latin maxim warns: **"Corruptissima re publica plurimae leges"**—the more corrupt the state, the more it proliferates laws. It is this principle that guides my efforts: to ensure that the laws and ethical codes governing this Court are upheld through action, not just recitation.

Conclusions

143. In the hallowed chambers of the International Criminal Court, where justice is dispensed with impartiality as its sacred standard, we submit that the arguments herein strike at the core of judicial integrity and institutional trust.

1. **Fiat Justitia Ruat Caelum** — *Let justice be done though the heavens may fall.* The conflict of interest alleged against the Prosecutor is not a matter of mere technicality; it is an affront to the principles of *nemo iudex in causa sua* — no one shall be a judge in their own cause. The integrity of these proceedings, as well as the trust vested in this Court by victims and the international community, demands unequivocal rectification.
2. **Victims' Central Role** — Article 68(3) of the Rome Statute is not ornamental but foundational. The voices of victims, *vox victimarum*, must not be silenced or curtailed. Justice, to be fair and impartial, must account for the victims' right to participate meaningfully, especially where the impartiality of the proceedings is placed into question.
3. **The Universality of Recusal** — Rule 34(1)(a) and Article 42(7) of the Statute compel the disqualification of any member whose impartiality might "reasonably be doubted." Familial ties—both *affinitas* and professional subordination—constitute conflicts *ipso iure*. The threshold of impartiality is not merely a subjective standard but must be objectively perceived by any fair-minded observer. The failure to disclose these relationships represents a dereliction of ethical duty and a violation of procedural integrity.
4. **The Indivisibility of Justice** — The arc of international law bends toward *justitia*, but it cannot do so if those tasked with upholding justice are themselves subject to doubt. Procedural limitations, such as arbitrary page restrictions, undermine the principle of *audi alteram partem*, rendering victims' voices mere echoes in the pursuit of truth. Justice must be seen to be done, not truncated in formality.
5. **A Historical Reckoning** — The allegations raised in *Venezuela I* cannot proceed under the shadow of partiality. To allow prosecutorial conflicts to persist would irreparably harm the Court's legitimacy, marking a stain upon its jurisprudential legacy. In this defining moment, the Court is called to reaffirm its commitment to fairness, transparency, and the rule of law. The world is watching; history will take note.

144. **Fiat Lux**—let the light of impartial justice illuminate these proceedings, casting aside all doubts that threaten to obscure its course.

145. Petition

In light of the compelling arguments presented, the undersigned respectfully request this Honourable Appeals Chamber to adopt the following measures in the interest of justice, judicial integrity, and the rights of victims:

1. **Immediate Appointment of an Ad Hoc Deputy Prosecutor**
That the Appeals Chamber, recognizing the urgency of the Venezuela I Situation, recommend to the Presidency the immediate appointment of an ad hoc Deputy Prosecutor pursuant to Rule 11 and Article 42(2) of the Rome Statute. Such appointment would ensure the uninterrupted execution of the Prosecutorial mandate and the immediate implementation of preventive measures, particularly against the chain of command of the Venezuelan regime, pending the resolution of the recusal proceedings against the current Prosecutor.
2. **Preservation of Procedural Integrity and Victims' Rights**
That the Chamber safeguard the victims' inalienable rights to truth, justice, and reparations by affirming the continued progress of investigative actions under Article 54 of the Rome Statute, despite the ongoing recusal proceedings. This includes the timely consideration of requests for arrest warrants or summonses under Article 58, ensuring accountability is neither delayed nor compromised.
3. **Revocation of Conflicted Representation**
That the Chamber declare as revoked the participation of the Prosecutor's sister-in-law, **Ms. Venkateswari Alagendra**, in any capacity as counsel or legal representative in the *Venezuela I Situation*. This revocation is required under Article 42(7) and Rule 34(1)(a) of the Rules of Procedure and Evidence, given the clear conflict of interest and the risk it poses to the impartiality and credibility of these proceedings.
Furthermore, while this request is specific to the Venezuela I Situation, I respectfully urge the Chamber to exercise its authority to review and assess any additional cases, investigations, or proceedings before the ICC in which Ms. Alagendra or her law firm may act as counsel or representative while Prosecutor Karim Khan serves as principal Prosecutor or holds a supervisory role. Such a review is critical to ensuring the integrity of the Court's operations and the impartiality required under the Rome Statute.
4. **Preservation of Procedural Integrity**
That the Chamber reaffirm the validity of all procedural actions and determinations made to date, ensuring that proceedings are not unduly delayed or reversed. Any revocation shall apply solely to conflicted representation and must not prejudice the procedural progress achieved in the Venezuela I Situation thus far.
5. **Interim Prosecutorial Safeguards**
That the Chamber recommend the establishment of interim mechanisms under the supervision of the *ad hoc* Deputy Prosecutor to oversee ongoing investigative actions. These measures shall prevent delays while ensuring compliance with Article 68(3) of the Rome Statute, which mandates expeditious proceedings that prioritize victims' rights to truth, justice, and reparations.

6. **Urgent Interim Prosecutorial Mechanisms**
That the Appeals Chamber recommend the establishment of clear interim prosecutorial mechanisms to oversee ongoing investigative and procedural actions until an independent Prosecutor, free of conflict of interest, is appointed. These mechanisms must reflect the principles of judicial fairness and impartiality while maintaining the expeditious nature of proceedings as required under Article 68(3) of the Rome Statute.
7. **Accountability and Judicial Efficiency**
That the Chamber reaffirm its inherent procedural powers under Article 64 to direct and expedite proceedings where necessary, acknowledging the unique and unprecedented nature of this matter. Such actions are imperative to prevent further erosion of judicial integrity and ensure that victims' expectations of justice are met without undue delay.
8. **Affirmation of Victims' Procedural Standing and Jurisprudential Scope of Recusations**
That the Chamber affirm the procedural standing of victims, including the Arcadia Foundation, under Article 68(3) of the Rome Statute, recognizing their inherent right to address matters of prosecutorial impartiality as central to their interests. In doing so, we respectfully request this Honourable Chamber to establish jurisprudence that recusations are not limited solely to Cases but extend to the entirety of the proceedings, including investigations and preliminary stages. This broader interpretation, consistent with the principles of fairness and impartiality enshrined in the Rome Statute and the ICC's Code of Ethics, ensures that victims retain the right to challenge any violation of ethical or procedural norms throughout all phases of the process. Furthermore, the Chamber is urged to unequivocally recognize that victims, as principal stakeholders in international criminal justice, possess the standing and legal capacity to raise issues of ethical violations, including breaches of prosecutorial impartiality, thereby reaffirming their central role in safeguarding the integrity of the proceedings and upholding the credibility of this Court.
9. **Sua Sponte Rectification of Procedural Constraints to Ensure Substantive Justice**
That this Honourable Chamber, recognizing its inherent authority to rectify procedural decisions *sua sponte*, rescind the ten-page restriction previously imposed upon the reply submissions. Such constraints, though procedural in nature, risk undermining the broader pursuit of justice by silencing substantive concerns and curtailing the right to be fully heard. Justice must not be limited by arbitrary formalities but must instead reflect the Court's commitment to fairness, transparency, and the integrity of its proceedings.
10. **Nullification of Attempts to Exploit the Recusal**
That this Honourable Chamber preemptively declare inadmissible any future attempt by the Venezuelan regime or its representatives to exploit the recusal proceedings as a means to reverse, delay, or undermine the progress of the Venezuela I Situation. By failing to timely challenge the conflict of interest, the regime has tacitly acquiesced to its existence and thereby forfeited any legitimate basis to invoke it. Such a declaration is necessary to preclude procedural abuse, prevent bad faith litigation, and protect the victims' right to expeditious and uninterrupted justice under Article 68(3) of the Rome Statute.
11. **Sanctions for Ethical Non-Disclosure**
That this Honourable Chamber impose appropriate sanctions on the Prosecutor for his failure to disclose the conflict of interest immediately, as required under the ICC's Code of Ethics. Such failure constitutes a breach of the ethical duties of transparency and impartiality under Article 42(7) of the Rome Statute and undermines the integrity of these proceedings. The Chamber's intervention in this matter is essential to reaffirm the ethical standards binding upon all officials of the Court and to safeguard public confidence in the administration of international justice.
12. **Recognition of Robert Carmona-Borjas as Joint Applicant in the Recusal Proceedings**
That this Honourable Chamber, in light of Article 68(3) of the Rome Statute and in recognition of Professor Robert Carmona-Borjas' status as a formally acknowledged victim in the *Venezuela I Situation*, declare Prof. Carmona-Borjas a joint applicant alongside the Arcadia Foundation in the request for the recusal of the Prosecutor. This recognition stems from Prof. Carmona-Borjas's direct and personal interest in the matter, as the impartiality of the Prosecutor is intrinsically linked to the victims' right to justice, fairness, and transparency in the proceedings. By acknowledging his role, the Chamber affirms the fundamental principle that victims, as central stakeholders, possess not only the right but the standing to raise matters affecting the integrity of the Court and the ethical conduct of its officials.
13. **Referral for Disciplinary Investigation**
That this Honourable Chamber, upon rendering its decision in this matter, order the referral of this case and the accompanying evidence to the **Office of the Independent Counsel for Ethical Affairs** for a formal disciplinary investigation into the conduct of Prosecutor Karim Khan and Ms. Venkateswari Alagendra. This referral seeks to address potential violations of the ICC's **Code of Conduct for Prosecutors and Code of Professional Conduct for Counsel**, specifically regarding their undisclosed familial, professional, and subordinate ties that have created an appearance of bias and compromised the perception of impartiality in these proceedings. Such action is necessary to uphold the ethical standards binding upon all ICC officials, safeguard the Court's integrity, and restore public confidence in its mandate to deliver impartial justice.
14. **Sanction for Procedural Omission by the Prosecutor**
That this Honourable Appeals Chamber, in the exercise of its procedural oversight authority, impose a disciplinary sanction on Prosecutor Karim Khan for his failure to promptly process the formal request for his recusal submitted via the Office of the Prosecutor's official portal on 8 September 2024. This omission constitutes a breach of the Prosecutor's duty of diligence and transparency under Rule 34(3) of the Rules of Procedure and Evidence and the ethical obligations set forth in the **Code of Conduct for the Office of the Prosecutor**. The Prosecutor's justification, citing a high volume of submissions, is manifestly insufficient given the nature of a recusal request—an issue of public order that demands immediate attention and proper escalation. By failing to act on the request in a timely manner, the Prosecutor delayed the formal adjudication of a matter of grave ethical and procedural significance. This conduct undermines the confidence of victims and the international community in the impartiality and integrity of the Court and warrants appropriate corrective measures to uphold the standards of professional accountability.
15. **Clarification of Scope and Application of Article 42(7)**
That this Honourable Chamber clarify that the terms "matter," asunto, causa, and affaire, as referenced in the Rome Statute and Rules of Procedure and Evidence, encompass both situations and cases. This clarification is essential to ensure that the principles of prosecutorial impartiality extend to all phases of proceedings, including preliminary examinations and investigations, where conflicts of interest may arise. Furthermore, the Chamber is respectfully urged to confirm that Article 42(7) of the Rome Statute applies to any context in which the impartiality of the Prosecutor may reasonably be doubted, not limited to active trial proceedings. To strengthen procedural transparency and accountability, the Chamber should mandate the full disclosure of any familial, professional, or subordinate relationships that may give rise to conflicts of interest during all stages of proceedings, including the current Venezuela I Situation.

Conclusio Finalis

146. In conclusion, we echo the solemn words of Cicero: *Salus populi suprema lex esto* — the welfare of the people is the supreme law. In this case, the welfare of victims, the credibility of international justice, and the very integrity of this Court are at stake. We place our trust in this Chamber's unwavering commitment to the principles of justice, equity, and truth.
147. Let this decision resound as a clarion call for integrity, not only within these proceedings but for future generations who look to this Court as the beacon of justice in a fractured world.
148. Submitted with reverence for the rule of law and confidence in this Honourable Chamber's wisdom.

Robert Carmona-Borjas
On behalf of Arcadia Foundation
and in my capacity as a recognized victim
(Victim Reference: 21340/23, VPRS-A-2024-09)
rb@arcadiafoundation.org

Attachments:

- [Patterns of Subordination: Demonstrating the Prosecutor's Familial Connection in Previous ICC Representations](#)
- [Undeniable Links: Repeated Professional Engagements Highlighting Familial Conflict of Interest](#)
- [Evidence of Professional Ties: Appointment of Prosecutor's Sister-in-Law in Cases Demonstrating Conflict and Structural Alignment](#)