



# JUDICIAL INTEGRITY IN PERIL THE APPEALS CHAMBER'S DUTY TO UPHOLD THE ICC'S LEGITIMACY IN THE VENEZUELA I SITUATION

## The Prosecutor's Conflict of Interest Demands Immediate Ex Officio Intervention

Washington, DC March 24, 2025

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

### Submitted By:

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(Reference Number VPRS-A-2023-092)<sup>2</sup>

## I. INTRODUCTION

### The Appeals Chamber's Non-Discretionary Duty to Act Ex Officio

1. The **Appeals Chamber of the International Criminal Court (ICC)** is legally obligated to act **ex officio** when presented with credible evidence of a conflict of interest that compromises judicial impartiality and the legitimacy of its proceedings. This submission is not a request for reconsideration of the Appeals Chamber's Decision of 10 February 2025 (ICC-02/18-109), which dismissed the recusal request based on procedural grounds. Rather, it is a **formal invocation of the Court's inherent responsibility to uphold judicial integrity**, which mandates an independent review of the **Prosecutor's clear and demonstrable conflict of interest** in the *Venezuela I Situation*.

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<sup>1</sup> International Criminal Court, *Victims Participation and Reparations Section (VPRS)*, *Acknowledgment of Victim Status for Robert Carmona-Borjas*, Reference Number r/21840/23, available at: <https://www.icc-cpi.int/sites/default/files/RelatedRecords/0902ebd180a2cb82.pdf>.

<sup>2</sup> International Criminal Court, *Victims Participation and Reparations Section (VPRS)*, *Recognition of Arcadia Foundation as a Representative of Victims in the Venezuela I Situation*, Reference Number VPRS-A-2023-092, available at: <https://www.icc-cpi.int/sites/default/files/RelatedRecords/0902ebd180a2cb82.pdf>.

2. This obligation is explicitly established in the ICC's **internal regulatory framework** and **international legal norms**, including:

- 2.1. **Article 3 of the ICC Code of Judicial Ethics**, which mandates that judges safeguard the independence of the Court and maintain public confidence in its integrity.
- 2.2. **Rule 34(1)(a) of the ICC Rules of Procedure and Evidence**, which requires disqualification in cases where a **close familial, professional, or subordinate relationship exists between the Prosecutor and a party involved in the proceedings.**
- 2.3. **Article 42(7) of the Rome Statute**, which unequivocally prohibits the Prosecutor from participating in cases where his impartiality can be reasonably questioned.
- 2.4. **Article 21(1)(c) of the Rome Statute**, which obligates the ICC to apply general principles of law derived from national legal systems—including Venezuelan law, which mandates the automatic disqualification of judicial officers with familial ties to a party in the case.
- 2.5. **The European Court of Human Rights (ECtHR) ruling in *Piersack v. Belgium* (1982)**, which affirms that even the mere appearance of bias requires judicial intervention to preserve public trust in the justice system.

## **The Prosecutor's Conflict of Interest is an Institutional Crisis**

3. The conflict of interest at issue **is neither hypothetical nor speculative**. It is an **undisputed fact** that **Prosecutor Karim Khan's sister-in-law, Ms. Venkateswari Alagendra, actively represents the Government of Venezuela in the *Venezuela I Situation***. This relationship creates an **irrefutable presumption of bias**, engaging multiple mandatory recusation provisions under the ICC's legal framework. The **Appeals Chamber cannot lawfully ignore this reality**, as doing so would constitute a **failure of judicial oversight with severe consequences for the ICC's credibility and legitimacy**.

4. The **principle of judicial independence**, as enshrined in the **UN Basic Principles on the Independence of the Judiciary (1985)**, dictates that **courts must act proactively to remove any perception of partiality in their decision-making**. Inaction in this case would set a **dangerous precedent**, effectively granting the Prosecutor unchecked discretion to **oversee cases despite a manifest conflict of interest**.

## **Request for Immediate Ex Officio Review**

5. Accordingly, we **formally request** that the Appeals Chamber **exercise its inherent authority to initiate an independent, public review** of the Prosecutor's conflict of interest. The review process should proceed **without the need for oral arguments, as all relevant parties—including the Office of the Prosecutor and the Office of Public Counsel for Victims—have already presented their respective positions.**

6. This submission does not seek an adversarial litigation process but rather demands that the Appeals Chamber fulfill its non-discretionary duty to preserve the Court's legitimacy. As a judicial body tasked with ensuring due process and the rule of law, the Appeals Chamber must not permit technical procedural barriers to override the imperative of judicial impartiality. The Rome Statute, the ICC's internal rules, and binding international legal standards unequivocally require action.

7. For these reasons, we respectfully submit this request for **IMMEDIATE EX OFFICIO REVIEW**, confident that the Appeals Chamber will discharge its judicial obligations in accordance with its mandate.

*The world watches: impartiality today is either courageously affirmed  
or irreparably forsaken...*

## II. THE APPEALS CHAMBER'S NON-DISCRETIONARY DUTY TO ACT EX OFFICIO ON THE PROSECUTOR'S CONFLICT OF INTEREST

### Legal Basis, Binding Normative Framework, and Jurisprudence Mandating Immediate Review

8. The duty of the Appeals Chamber to address, ex officio, the manifest conflict of interest implicating the Prosecutor is neither discretionary nor optional—it is a fundamental imperative arising directly from the core principles governing judicial ethics and international criminal justice. Judicial impartiality and the perception thereof—*impartialitas non modo actu sed etiam specie*—constitute the very bedrock upon which the legitimacy of the International Criminal Court rests. Therefore, when presented with incontrovertible indicia of bias or conflicts that might reasonably compromise the perceived impartiality of its Prosecutor, the Appeals Chamber must act *sua sponte* to safeguard the integrity of these proceedings. This duty is not merely procedural; it is profoundly ethical, reflecting the inviolable trust placed by the global community in the Court's capacity to administer impartial justice. In the sections that follow, we set forth comprehensively and unequivocally the binding normative framework and jurisprudential underpinnings that compel the Appeals Chamber to immediately and publicly address the Prosecutor's conflict of interest.

### 1. The Non-Discretionary Nature of Judicial Integrity

9. At the very heart of the International Criminal Court's mandate lies the principle of judicial independence. This foundational principle is explicitly enshrined in **Article 3 of the ICC Code of Judicial Ethics, imposing a tripartite ethical obligation upon the Court's judges**<sup>3</sup>:

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<sup>3</sup> The principle of judicial independence is unequivocally established in *Article 3 of the ICC Code of Judicial Ethics*, available in full at: <https://www.icc-cpi.int/sites/default/files/Publications/Code-of-Judicial-Ethics.pdf>. This fundamental principle obligates ICC judges to proactively protect their independence, ensuring their judicial duties are discharged without any perception of partiality or compromise.

10. Firstly, **Article 3(1)** mandates that judges "***shall uphold the independence of their office and the authority of the Court and shall conduct themselves accordingly in carrying out their judicial functions.***" This provision constitutes more than mere guidance—it articulates a **solemn and binding ethical obligation**, an imperative duty—an **officium necessarium**—requiring judges to proactively safeguard their judicial autonomy from even the slightest perception of compromise or bias.

11. Secondly, **Article 3(2)** explicitly directs that judges "***shall decide matters before them on the basis of facts and in accordance with the law, without regard to any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.***" This imperative ensures judicial decisions remain strictly grounded in **factual integrity** and **legal objectivity**, unswayed by external pressures or improper influences.

12. Thirdly, and crucially relevant to the instant matter, **Article 3(3)** unequivocally commands that judges "***shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.***" This clause imposes upon the Appeals Chamber a **positive obligation**—an **affirmative ethical mandate**—to vigilantly prevent and swiftly respond to any condition or circumstance, internal or external, capable of undermining public trust in the Court's impartiality.

13. The significance of this ethical imperative cannot be overstated. In the case at hand, **the Appeals Chamber is confronted with a tangible and undeniable conflict of interest implicating the Prosecutor, whose FAMILIAL, PROFESSIONAL, AND HIERARCHICAL TIES with Ms. Venkateswari Alagendra collectively and indivisibly establish, at the very least, an appearance of partiality**—an appearance explicitly prohibited by the ICC's ethical framework and by **Rule 34(1)(a) of the Rules of Procedure and Evidence**<sup>4</sup>. The principles articulated in **Article 3 of the ICC Code of Judicial Ethics** embody a universally recognized legal standard: **justice must not only be done; it must manifestly be seen to be done**. The legitimacy of the Court, especially given its international mandate and the gravity of the crimes under its jurisdiction, **depends fundamentally upon global confidence in its uncompromising neutrality**.

14. To neglect addressing a conflict of such magnitude is not merely an omission—it **constitutes an active breach of judicial ethics. Such omission would risk significantly impairing public confidence—fiducia publica—in the Court's independence and impartiality**. The Appeals Chamber is thus duty-bound to ensure that no action or omission undermines the principle of judicial integrity as codified in **Article 3**. To do otherwise would constitute *culpa in vigilando*, **a fault arising from neglecting an essential duty to preserve judicial independence**.

15. In sum, **Article 3 of the ICC Code of Judicial Ethics** compels the Appeals Chamber to act decisively and immediately. This ethical imperative is neither abstract nor discretionary; **it is a binding and non-negotiable judicial responsibility—an imperium juridicum—to preserve and protect the integrity of the International Criminal Court**. The failure to fulfill this duty would constitute not only a violation of internal ethical standards but also a profound

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<sup>4</sup> The prohibition against conflicts of interest due to familial, professional, or hierarchical relationships is established in Rule 34(1)(a) of the ICC Rules of Procedure and Evidence, available at: <https://www.icc-cpi.int/sites/default/files/Publications/Rules-of-Procedure-and-Evidence.pdf>.

betrayal of the trust placed in the ICC by the international community and, most importantly, by the victims it seeks to serve.

## 2. Mandatory Recusal under Rule 34(1)(a) of the ICC Rules of Procedure and Evidence: The Appeals Chamber's Proactive Obligation to Act Sua Sponte

16. Rule 34(1)(a) of the ICC Rules of Procedure and Evidence explicitly establishes mandatory grounds for the disqualification of a Judge, Prosecutor, or Deputy Prosecutor, specifying circumstances involving personal interests in the case, including close familial, personal, or professional relationships, or hierarchical or subordinate relationships with parties involved in the proceedings<sup>5</sup>. The imperative wording employed in this Rule clearly denotes that its enforcement does not hinge upon formal motions or procedural requests from either THE INVESTIGATED PARTY OR THE ACCUSED. Rather, the Rule inherently carries with it a proactive mandate—an obligation ex officio—for the Court, and particularly the Appeals Chamber, to independently safeguard the impartiality and integrity of its proceedings whenever the enumerated relationships become known or even reasonably suspected.

17. Significantly, Rule 34(3) of the ICC Rules of Procedure and Evidence reinforces this duty by explicitly mandating that "any question relating to the disqualification of the Prosecutor or a Deputy Prosecutor shall be decided by a majority of the judges of the Appeals Chamber".<sup>6</sup> This underscores the Appeals Chamber's direct and exclusive responsibility to determine prosecutorial impartiality issues, independently of procedural motions or external requests.

18. The Appeals Chamber's prior procedural determination, in which it declined to entertain the merits of the recusal request brought forth by Arcadia Foundation and Robert Carmona-Borjas on grounds of procedural standing, DOES NOT ELIMINATE THE CHAMBER'S INDEPENDENT AND AFFIRMATIVE DUTY TO ADDRESS AND RESOLVE THE SUBSTANTIAL CONFLICT OF INTEREST BEFORE IT. Precisely due to the nature of the Chamber's explicit decision-making authority under Rule 34(3), the Appeals Chamber now bears an even greater imperative to act ex proprio motu. The Chamber's initial procedural dismissal NEITHER ALTERS NOR DIMINISHES THE UNDENIABLE FACTUAL SUBSTRATUM UNDERPINNING THE EXISTENCE OF A SIGNIFICANT CONFLICT OF INTEREST. To persist in procedural inertia now—merely because the party raising the alarm was deemed procedurally illegitimate—would constitute an abdication of judicial responsibility, an act of willful blindness, contra legem et contra iustitiam, to facts already publicly documented and known to the Chamber.

19. This proactive judicial duty finds ample and robust support in the Court's prior jurisprudence and established international norms. It is universally acknowledged that courts entrusted with safeguarding justice—particularly international criminal tribunals whose legitimacy rests heavily upon global perceptions of impartiality and fairness—possess an inherent obligation to rectify situations that might compromise their institutional credibility. The principle *nemo iudex in causa sua* (no one should be a judge in their own

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<sup>5</sup> ICC Rules of Procedure and Evidence, Rule 34(1)(a), available in full at: <https://www.icc-cpi.int/sites/default/files/Publications/Rules-of-Procedure-and-Evidence.pdf>.

<sup>6</sup> *Ibid.* Rule 34(3).

cause) is not merely a rhetorical maxim; rather, it embodies a foundational obligation imposed upon judicial bodies to proactively eliminate even the slightest appearance of partiality or conflict, thereby ensuring public confidence (*fiducia publica*) remains unblemished.

20. Given the documented nature of the Prosecutor's familial, professional, and hierarchical relationships creating at minimum an appearance of partiality, the Appeals Chamber cannot credibly justify its continued procedural passivity. Indeed, to remain inert under the pretext that no party deemed procedurally legitimate has formally requested action is to fundamentally misconceive the nature and purpose of the ICC's ethical framework. Rule 34(1)(a), supported by Rule 34(3)<sup>7</sup>, explicitly imposes upon the Court an affirmative duty—a duty inexorably linked to its *raison d'être*—to proactively address and resolve any conflicts threatening its impartiality.

21. The situation currently before the Chamber thus constitutes, in the language of international criminal procedure, a veritable *notitia criminis*—a legally significant notification of an ethical breach that demands judicial examination *ex proprio motu*. The Appeals Chamber's role here transcends mere adjudication of procedural motions; it assumes instead the character of a guardian *ad integritatem curiae*—a guardian of the Court's integrity—compelled to act not because it has been petitioned by a formally recognized party, BUT BECAUSE THE ESSENTIAL CREDIBILITY AND LEGITIMACY OF THE INSTITUTION IT SERVES ARE MANIFESTLY AT STAKE.

22. In sum, Rule 34(1)(a) and Rule 34(3), interpreted in accordance with fundamental principles of international justice and judicial ethics, do not merely authorize but explicitly obligate the Appeals Chamber to proactively investigate and adjudicate the Prosecutor's conflict of interest. To refuse or neglect this duty, under the misguided assertion that procedural formalities have not been satisfied by recognized parties, would constitute an untenable abdication of judicial responsibility—an act wholly incompatible with both the explicit textual mandate of Rule 34 and the overarching ethical principles that constitute the bedrock of the International Criminal Court.

### 3. Imperative to Uphold Impartiality Under Article 42(7) of the Rome Statute

23. **Article 42(7) of the Rome Statute** sets forth an explicit ethical and legal standard governing prosecutorial conduct, declaring categorically that "***neither the Prosecutor nor a Deputy Prosecutor shall participate in any matter in which their impartiality might reasonably be doubted on any ground.***"<sup>8</sup> This provision enshrines an absolute prohibition—an imperative norm—explicitly designed to safeguard the integrity, impartiality, and credibility of the Office of the Prosecutor. While Article 42(7) explicitly obligates the Prosecutor and Deputy Prosecutors to abstain from participation when impartiality might reasonably be doubted, it also implicitly creates a corresponding ethical obligation upon the Court—and particularly upon the Appeals Chamber—to proactively ensure prosecutorial impartiality is unequivocally preserved and perceived by the international community.

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<sup>7</sup> ICC Rules of Procedure and Evidence, Rule 34(1)(a) and Rule 34(3), p. 25, available at: <https://www.icc-cpi.int/sites/default/files/Publications/Rules-of-Procedure-and-Evidence.pdf>.

<sup>8</sup> Rome Statute of the International Criminal Court, Article 42(7), available at: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.



24. Central to understanding **the scope and purpose of Article 42(7)** is the universally recognized principle that justice must not only be done but must also manifestly and unequivocally be seen to be done. This objective standard finds ample support in established international jurisprudence, notably **the Kosovo Specialist Chambers' recent authoritative ruling that explicitly recognized courts' affirmative duty to independently review and decisively act upon conflicts of interest to preserve due process and judicial impartiality**<sup>9</sup>. The Appeals Chamber cannot lawfully disregard objectively reasonable questions about prosecutorial impartiality under the pretext of procedural technicalities or the absence of formal recusal motions by directly interested parties.

25. Crucially, **Article 42(7)'s application is not contingent upon procedural actions or objections by litigants, accused persons, or states under investigation**. It expressly imposes a proactive, self-executing duty upon the Prosecutor to abstain from any matter raising reasonable doubts about impartiality. **By logical and ethical implication, this creates a corresponding responsibility for the Appeals Chamber to proactively ensure absolute adherence to impartiality standards at every procedural stage.**

26. The instant matter involves **documented familial, professional, and hierarchical ties between Prosecutor Karim Khan and Ms. Venkateswari Alagendra**, who is officially counsel representing the Bolivarian Republic of Venezuela, **A STATE DIRECTLY SUBJECT TO THE PROSECUTOR'S ONGOING INVESTIGATION**. This second-degree familial relationship alone undeniably reaches the threshold for a reasonable doubt regarding prosecutorial impartiality under Article 42(7). The further documented professional collaboration and established hierarchical dynamic between Prosecutor Khan and Ms. Alagendra EXACERBATE THE CONFLICT, creating an undeniable nexus of intertwined interests that compromise the possibility of impartial prosecutorial conduct.

27. Under Article 42(7), circumstances indicative of a prosecutorial conflict of interest—whether revealed by discovery, public disclosure, or judicial recognition—constitute a direct challenge to the ICC's institutional integrity and public credibility. Although Article 42(7) explicitly requires prosecutorial abstention, such circumstances implicitly create immediate issues of ethical and legal importance, **necessitating proactive oversight by the Appeals Chamber based on ethical considerations and established international jurisprudence.**

28. Moreover, the **Prosecutor's own procedural submissions**, specifically his request seeking leave to submit a sur-reply, **underscore implicitly yet unequivocally that the familial, professional, and hierarchical relationships at issue materially influence public and judicial perceptions of his impartiality**. By insisting on the necessity to further clarify or dispute details of these relationships, the **Prosecutor effectively acknowledges their substantial relevance and potential prejudice TO HIS OFFICE'S IMPARTIALITY**. This acknowledgment alone compels an immediate and independent judicial determination of the conflict, obviating the need for further procedural clarifications or inquiries by either the Prosecutor or this Chamber.<sup>10</sup>

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<sup>9</sup> Kosovo Specialist Chambers, Supreme Court Chamber, *Decision on Prosecution Motion Regarding Conflict of Interest of Defence Counsel* - Case No. KSC-SC-2024-02, para. 7, page 2, available at: <https://repository.scp-ks.org/LW/Published/Filing/0b1ec6e98122e52a/Decision%20on%20Prosecution%20Motion%20Regarding%20Conflict%20of%20Interest%20of%20Defence%20Counsel.pdf>

<sup>10</sup> ICC Office of the Prosecutor, *Public redacted version of "Prosecutor's Request for Leave to Sur-reply to the Applicant's 'Safeguarding the ICC's Integrity – A Call for Accountability and Impartiality in the Venezuela I Situation'"*, ICC-02/18-106-Red, 30 December 2024, paras. 4-5, available at: <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180a56ab9.pdf>.

29. The Appeals Chamber must, therefore, recognize that **its ethical duty**, arising implicitly from the principles enshrined in Article 42(7), **is fundamentally proactive rather than reactive; it must, *ex proprio vigore*, assert its authority and responsibility to ensure that no prosecutorial conduct undermines the core principles of neutrality and impartial justice.** To abdicate this responsibility by invoking procedural formalism or reliance on party-driven motions would constitute an impermissible derogation from the Court’s overarching ethical mandates.

30. The urgency and gravity of this duty cannot be overstated. Allowing a manifest conflict of interest, especially one so explicitly proscribed by **Article 42(7), to persist unaddressed would irreparably damage the Court’s moral and legal credibility, casting lasting doubt upon its commitment to impartial justice and ethical rigor.** It would send a profoundly troubling message to victims, states parties, and the international community at large, **SUGGESTING THAT THE ICC TOLERATES—OR WORSE, IS INDIFFERENT TO—ETHICAL LAPSES OF ITS SENIOR OFFICIALS, EVEN WHEN PUBLICLY DOCUMENTED AND JUDICIALLY ACKNOWLEDGED.**

31. For these compelling reasons—grounded explicitly in Article 42(7), supported by robust international jurisprudential precedent, and fundamental ethical imperatives—the Appeals Chamber is ethically and legally compelled, **through implicit and interpretative authority, to proactively initiate and conclude *a sua sponte* examination of Prosecutor Karim Khan’s manifest conflict of interest.**

***Fiat justitia ruat caelum*—let justice be done though the heavens may fall.**

#### **4. Application of General Principles of Law under Article 21(1)(c) of the Rome Statute**

32. **Article 21 of the Rome Statute sets forth a structured hierarchy of legal sources that the International Criminal Court (ICC) must follow when addressing any matter before it. The Court must primarily apply its own Statute, the Elements of Crimes, and the Rules of Procedure and Evidence. If these sources do not sufficiently address the legal question at hand, the Court must then apply relevant international treaties and recognized principles of international law. Only when these sources fail to explicitly regulate a specific legal issue may the Court resort to general principles of law derived from national legal systems.**

33. In the present instance, there exists a crucial and explicit legal gap concerning provisions directly addressing conflicts of interest arising **specifically from second-degree affinity relationships.** Neither the Rome Statute nor the applicable international treaties and customary international law principles expressly regulate or address such specific familial ties as grounds for prosecutorial recusal. Consequently, Article 21(1)(c)<sup>11</sup> explicitly compels—and does not merely authorize—THE ICC APPEALS CHAMBER TO APPLY GENERAL PRINCIPLES OF LAW DERIVED FROM NATIONAL LEGAL SYSTEMS. Such general principles commonly identify second-degree familial affinity as mandatory grounds for judicial and prosecutorial recusal, recognizing the fundamental imperative of ensuring impartiality and institutional integrity.

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<sup>11</sup> *Rome Statute of the International Criminal Court*, Article 21(1)(c), available at: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.  
[www.arcadiafoundation.org](http://www.arcadiafoundation.org)



34. Therefore, the Appeals Chamber must invoke Article 21(1)(c) and rigorously apply general principles derived from national legal systems explicitly addressing second-degree affinity relationships as conflicts of interest. This approach guarantees adherence to universal standards of judicial impartiality, ensuring the ICC's legitimacy, ethical coherence, and continued trust within the international community.

35. Article 21(1)(c) of the Rome Statute explicitly compels—and does not merely authorize—THE INTERNATIONAL CRIMINAL COURT APPEALS CHAMBER TO APPLY GENERAL PRINCIPLES OF LAW DERIVED FROM NATIONAL LEGAL SYSTEMS EXPLICITLY ADDRESSING SECOND-DEGREE AFFINITY RELATIONSHIPS AS CONFLICTS OF INTEREST, GIVEN THE EXPLICIT GAP WITHIN THE ROME STATUTE AND APPLICABLE INTERNATIONAL LAW ON THIS ISSUE. This provision constitutes a binding mandate upon this Appeals Chamber to rigorously uphold universally recognized standards of judicial impartiality and integrity, thereby reinforcing the ethical foundations and legitimacy of international justice itself.

36. Consequently, in addressing the Prosecutor's manifest conflict of interest in the *Venezuela I investigation*, this Appeals Chamber bears a solemn obligation to rigorously apply relevant domestic legal standards governing recusal, impartiality, and judicial ethics, as explicitly enshrined in Venezuelan law. To ignore these national legal norms—especially given their recognized applicability under Article 21(1)(c)—would not only profoundly disrespect Venezuelan jurisdictional sovereignty and its citizens but would also violate the fundamental international principle of legality (*principium legalitatis*), compelling strict adherence to national legal frameworks in judicial proceedings directly involving the concerned jurisdiction.

37. Indeed, the ICC has consistently acknowledged Venezuelan legal standards when these align with recognized international norms—for instance, explicitly respecting Venezuela's prohibition against the **death penalty** as a maximum punishment<sup>12</sup>. Such acknowledgment underscores an equivalent obligation to respect Venezuela's established norms of recusal and impartiality, particularly when Venezuelan legislation explicitly identifies second-degree affinity as an absolute and non-negotiable cause for judicial recusal.

38. In this context, it is an established fact—and one explicitly acknowledged by **Prosecutor Karim Khan himself**<sup>13</sup>—that **Ms. Venkateswari Alagendra**, officially registered as counsel for the Bolivarian Republic of Venezuela (a state actively subject to the Prosecutor's ongoing investigation), **is the sister of Mr. Khan's wife, Ms. Dató Shyamala Alagendra**<sup>14</sup>. Ms. Venkateswari Alagendra is therefore the Prosecutor's sister-in-law, creating a familial relationship of second-degree affinity. Such a relationship unequivocally triggers a presumption of bias under universally recognized legal standards, **AND ESPECIALLY UNDER THE NATIONAL LAWS OF VENEZUELA, THE VERY STATE SUBJECT TO THE PRESENT INVESTIGATION.** Under Venezuelan legal standards, the existence of a second-degree affinity relationship alone suffices *prima facie* to establish reasonable doubt regarding prosecutorial impartiality, necessitating immediate and mandatory recusal without requiring further demonstration of subjective bias or undue influence.

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<sup>12</sup> *Constitución de la República Bolivariana de Venezuela* (Constitution of the Bolivarian Republic of Venezuela), Article 43, Official Gazette, available at: [https://www.oas.org/dil/esp/constitucion\\_venezuela.pdf](https://www.oas.org/dil/esp/constitucion_venezuela.pdf).

<sup>13</sup> ICC Prosecutor, Public redacted version of "Prosecutor's Submissions on the Request for the Recusal of the Prosecutor", ICC-02/18-99-Red, 29 November 2024, paras. 2, 10-13, available at: <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180a22764.pdf>.

<sup>14</sup> ICC, Office of the Prosecutor, "Prosecution's Response to the Request for Disqualification," ICC-02/18, 29 November 2024, para. 8-10, available at: <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180a22764.pdf>.

39. The Venezuelan legal framework provides clear, categorical, and imperative standards regarding judicial recusal, which are widely reflected across diverse international legal systems. These standards, codified explicitly and rigorously in three specific statutory instruments—namely, 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)**—establish second-degree affinity as a direct and irrefutable ground for recusal<sup>15</sup>. These statutes represent not mere procedural formalities, but imperative obligations that transform recusal from an optional procedural mechanism into an ethical and judicial imperative whenever familial relationships could compromise the manifest neutrality and impartiality required of any judicial officer.

40. These Venezuelan statutes embody the legal principles of *claritas* (clarity) and *auctoritas* (authority), reflecting a robust legal tradition that unequivocally recognizes recusal as indispensable to judicial integrity. Impartiality is a fundamental legal and ethical principle: it must exist not merely in substance but must also be manifestly perceived by the public and the international community at large (*justitia non solum facienda, sed etiam videnda est*—justice must not only be done, it must also be seen to be done)<sup>16</sup>.

41. To disregard or diminish the applicability of these clearly established **Venezuelan statutory organic norms** would create an untenable and damaging dissonance between the ICC's publicly stated commitments to fairness, impartiality, and judicial integrity, and the Court's practical adherence to its ethical safeguards. Such inconsistency would profoundly undermine the legitimacy of these proceedings and erode victims' and the broader international community's confidence in the Court's impartiality—an outcome fundamentally incompatible with the ICC's essential purpose (*raison d'être*).

### **Additional Recognition of Venezuelan Legal Norms by OTP: Selective Invocation of Positive Complementarity**

42. The principle of complementarity, as defined in **Article 17 of the Rome Statute**, explicitly conditions ICC jurisdiction on the unwillingness or inability of national jurisdictions to genuinely prosecute crimes under international law<sup>17</sup>. In the *Venezuela I Situation*, however, the Office of the Prosecutor under Karim Khan has continuously invoked "positive complementarity" to justify extensive procedural delays, explicitly and repeatedly recognizing Venezuelan national legal frameworks as relevant for assessing admissibility. While ostensibly cooperative, this selective and prolonged invocation has paradoxically perpetuated the Maduro regime's manipulation of domestic legal processes to evade genuine accountability. **Thus, the OTP's reliance on Venezuelan judicial standards to justify its extended inaction explicitly acknowledges their relevance and applicability**<sup>18</sup>. Given this established recognition, it would be legally, ethically, and procedurally inconsistent—and manifestly unjust—for the Appeals Chamber now to dismiss the very same Venezuelan legal framework when addressing an issue as critical and clearly established as mandatory recusal

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<sup>15</sup> **Código Orgánico Procesal Penal** (Organic Code of Criminal Procedure), Article 89, Organization of American States (OAS), available at: [https://www.oas.org/juridico/PDFs/mesicic4\\_ven\\_cod\\_org\\_proc\\_penal.pdf](https://www.oas.org/juridico/PDFs/mesicic4_ven_cod_org_proc_penal.pdf); **Código de Procedimiento Civil** (Code of Civil Procedure), Article 82, OAS, available at: [https://www.oas.org/juridico/PDFs/mesicic4\\_ven\\_cod\\_proc\\_civil.pdf](https://www.oas.org/juridico/PDFs/mesicic4_ven_cod_proc_civil.pdf); **Código Civil** (Civil Code), Article 40, OAS, available at: [https://www.oas.org/dil/esp/codigo\\_civil\\_venezuela.pdf](https://www.oas.org/dil/esp/codigo_civil_venezuela.pdf).

<sup>16</sup> European Court of Human Rights, *Piersack v. Belgium*, Application No. 8692/79, Judgment, 1 October 1982, para. 30, available at: <https://hudoc.echr.coe.int/#/%22itemid%22:%22001-57557%22>.

<sup>17</sup> **Rome Statute** of the International Criminal Court, Article 17(1)(a)-(b), available at: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

<sup>18</sup> ICC, Pre-Trial Chamber I, "Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute," ICC-02/18-45, 27 June 2023, paras. 4-6, available at: <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1804e8166.pdf>.

due to second-degree affinity. Such selective disregard of national laws would profoundly undermine the ICC's credibility, judicial coherence, and stated commitments to impartiality and integrity.

43. Below, I present in detail the relevant statutory provisions from 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 collectively and unequivocally affirm second-degree affinity as a mandatory and non-negotiable ground for judicial and prosecutorial recusal—provisions this Appeals Chamber neither can, nor ethically may, ignore or evade.

#### **4.1. Mandatory Grounds for Recusal of Judicial Officers, Prosecutors, and other Court Personnel under the Venezuelan Organic Code of Criminal Procedure**

44. The following provisions from the *Venezuelan Organic Code of Criminal Procedure* (*Código Orgánico Procesal Penal de Venezuela*) explicitly codify mandatory grounds for recusal, affirming unequivocally the ethical and legal duty to ensure impartiality by judicial officers, prosecutors, and court personnel. **These statutory mandates reinforce the imperative to uphold impartiality, categorically prohibiting involvement when specific familial ties, such as second-degree affinity, pose an undeniable risk of bias or conflict of interest.**

### **Chapter VI Recusal and Inhibition**

#### **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:"*<sup>19</sup>.

#### **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."*<sup>20</sup>.

#### **Relationship of Affinity or Consanguinity**

<sup>19</sup> Venezuelan *Código Orgánico Procesal Penal*, Article 89, Organization of American States (OAS), available at: [https://www.oas.org/juridico/PDFs/mesicic4\\_ven\\_cod\\_org\\_proc\\_penal.pdf](https://www.oas.org/juridico/PDFs/mesicic4_ven_cod_org_proc_penal.pdf).

<sup>20</sup> Venezuelan *Código Orgánico Procesal Penal*, Article 89(1), Organization of American States (OAS), available at: [https://www.oas.org/juridico/PDFs/mesicic4\\_ven\\_cod\\_org\\_proc\\_penal.pdf](https://www.oas.org/juridico/PDFs/mesicic4_ven_cod_org_proc_penal.pdf).

**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."*<sup>21</sup>.

### **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."*<sup>22</sup>

### **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**

45. 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):**

46. 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):**

47. The article further strengthens the principle by extending recusation 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**.

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<sup>21</sup> *Ibid.* Article 89(5)

<sup>22</sup> *Ibid.* Article 90.

## Article 90: Mandatory Recusal

48. 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.

## Additional Recognition of Venezuelan Legal Norms on Victim Standing and Recusal

49. Moreover, it is pertinent to highlight, without implying a request for reconsideration of the Appeals Chamber’s prior procedural decision, that **Venezuelan domestic law explicitly acknowledges the inherent procedural right (procedural standing, *legitimación activa*) of victims to challenge judicial and prosecutorial impartiality—even in the absence of a formal criminal complaint.**

## Chapter VI Recusal and Inhibition

### Legitimación Activa

**Artículo 88 (Spanish Original):** “*Pueden recusar las partes y la víctima aunque no se haya querellado.*”<sup>23</sup>.

### Active Legitimacy

**Article 88 (English Translation):** “*The parties and the victim may challenge even if no complaint has been filed.*”

50. Specifically, this **Article 88** of the *Código Orgánico Procesal Penal* categorically provides that “*the parties and the victim may challenge even if no complaint has been filed.*” **This provision unequivocally affirms a universally recognized general legal principle—that victims, especially those explicitly recognized by the ICC itself as legitimate participants in proceedings, possess a procedural entitlement to demand impartiality from judicial and prosecutorial authorities whenever their interests are directly implicated.** The Appeals Chamber, therefore, must consider such universally acknowledged national legal standards not as an isolated procedural request, but as an additional compelling justification reinforcing its ethical and legal duty to act **ex proprio motu** in addressing the Prosecutor’s manifest conflict of interest.

51. This provision unequivocally affirms my right—as a victim explicitly recognized by the ICC in the Venezuela I Situation—**to raise recusation claims whenever my procedural interests are directly impacted, irrespective of the procedural stage or formal role. Venezuelan organic criminal procedural norms expressly recognize that victims, as central stakeholders in the administration of justice, inherently possess the procedural right to demand impartiality from judicial and prosecutorial authorities.** This inherent right aligns

<sup>23</sup> Venezuelan *Código Orgánico Procesal Penal*, Article 88, Organization of American States (OAS), available at: [https://www.oas.org/juridico/PDFs/mesicic4\\_ven\\_cod\\_org\\_proc\\_penal.pdf](https://www.oas.org/juridico/PDFs/mesicic4_ven_cod_org_proc_penal.pdf).

seamlessly and substantively with the principles of fairness and meaningful victim participation explicitly enshrined in **Article 68(3) of the Rome Statute**.

## 4.2. Mandatory Grounds for Recusal Under the Venezuelan Code of Civil Procedure

52. The **Venezuelan Code of Civil Procedure** (*Código de Procedimiento Civil de Venezuela*) further reinforces mandatory standards governing recusal and inhibition for all judicial personnel. It explicitly establishes second-degree affinity, among other clearly delineated familial ties, as automatic and imperative grounds for recusal, unequivocally requiring judicial officials to proactively declare any cause for recusal upon becoming aware of its existence. These provisions complement the criminal procedural norms and further affirm the universal principle that justice demands both actual impartiality and its manifest perception.

### 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.”*<sup>24</sup>

**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*

<sup>24</sup> Venezuelan *Código de Procedimiento Civil*, Article 82, Organization of American States (OAS), available at: [https://www.oas.org/juridico/PDFs/mesicic4\\_ven\\_cod\\_proc\\_civil.pdf](https://www.oas.org/juridico/PDFs/mesicic4_ven_cod_proc_civil.pdf).



*siguientes, manifiesten su allanamiento o contradicción a que siga actuando el impedido.[...]”<sup>25</sup>*

**Article 84 (English Translation):** “A judicial official who becomes aware that a cause for recusation 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

53. The Code of Civil Procedure of Venezuela enshrines principles that safeguard the integrity and impartiality of judicial proceedings, codifying recusation **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

**Article 82** identifies two critical grounds for recusation relevant to this matter:

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

54. 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:**

55. The provision further extends recusation 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 Appeals Chamber’ silence on this matter amounts to a *violatio legis*—a breach of law that cannot be excused or ignored.

### Article 84: Mandatory Disclosure and Proactive Judicial Oversight of Recusal Grounds

56. Article 84 of the Venezuelan Code of Civil Procedure unequivocally mandates that judicial officials who become aware of any grounds for recusation in their person must declare it proactively—*sua sponte*—without awaiting formal motions from parties or

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<sup>25</sup> Venezuelan *Código de Procedimiento Civil*, Article 84, Organization of American States (OAS), available at: [https://www.oas.org/juridico/PDFs/mesicic4\\_ven\\_cod\\_proc\\_civil.pdf](https://www.oas.org/juridico/PDFs/mesicic4_ven_cod_proc_civil.pdf).

external actors. This mandatory duty transforms the concept of recusation from a mere reactive procedural mechanism into a proactive ethical obligation, ensuring the earliest possible resolution of potential conflicts of interest. Specifically, Article 84 states:

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

57. In the present case, while Prosecutor Karim Khan’s omission in disclosing his **familial, professional, and hierarchical ties** already constitutes a clear ***delictum omissionis***, **the Appeals Chamber now bears its own independent ethical and procedural responsibility to proactively rectify this breach**. Given that the Appeals Chamber is fully aware of the Prosecutor’s manifest conflict of interest—officially documented and publicly acknowledged as involving all three elements of familial relationship, professional collaboration, and hierarchical subordination—it cannot ethically or legally remain passive or await further procedural prompts. Rather, **the Chamber must now actively fulfill its institutional duty to uphold judicial integrity and impartiality, thereby safeguarding victims’ trust and preserving the credibility and legitimacy of the Court in the eyes of the broader international community**.

## Alignment with ICC Ethical Standards

58. The principles articulated in **Articles 82 and 84 of the Venezuelan Code of Civil Procedure**<sup>26</sup> resonate unequivocally with the ethical obligations explicitly enshrined in the ICC’s normative framework. Under **Rule 34(1)(a) of the ICC Rules of Procedure and Evidence** and **Article 42(7) of the Rome Statute**, the Court is mandated to ensure recusal where *“impartiality might reasonably be doubted on any ground.”*<sup>27</sup> Familial relationships, particularly those of **second-degree affinity**, fall indisputably within this ethical and procedural standard, imposing upon the Appeals Chamber an inescapable obligation to proactively safeguard the integrity of the proceedings.

59. Moreover, the **ICC Code of Conduct for the Office of the Prosecutor**<sup>28</sup> further reinforces this imperative duty, specifically in **Sections 6 (Impartiality) and 9 (Conflict of Interest and Other Impediments)**.

60. **Section 6 (Impartiality)** explicitly defines impartiality as *“the fair-minded and objective treatment of persons and issues, free from any bias or influence.”* This principle unequivocally prohibits any prosecutorial conduct that could reasonably give rise to doubt regarding the impartiality of the Office. Specifically, paragraph 31 categorically 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).”***

<sup>26</sup> *Código de Procedimiento Civil de Venezuela* (Venezuelan Code of Civil Procedure), Articles 82 and 84, Organization of American States (OAS), available at: [https://www.oas.org/juridico/PDFs/mesicic4\\_ven\\_cod\\_proc\\_civil.pdf](https://www.oas.org/juridico/PDFs/mesicic4_ven_cod_proc_civil.pdf).

<sup>27</sup> ICC, *Rules of Procedure and Evidence*, Rule 34(1)(a), and Rome Statute, Article 42(7), available at: <https://www.icc-cpi.int/sites/default/files/Publications/Rules-of-Procedure-and-Evidence.pdf> and <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

<sup>28</sup> ICC, *Code of Conduct for the Office of the Prosecutor*, Sections 6 and 9, available at: <https://www.icc-cpi.int/sites/default/files/Publications/Code-of-Conduct-for-the-Office-of-the-Prosecutor.pdf>.

61. This ICC ethical standard aligns directly and explicitly with the recusal norms under Venezuelan law, where **second-degree affinity** constitutes a *per se* conflict of interest requiring mandatory recusal. The Prosecutor’s undisclosed familial, professional, and hierarchical ties thus amount not merely to procedural oversight but to a manifest violation of core ethical obligations incumbent upon the Office of the Prosecutor. Crucially, given the Appeals Chamber’s knowledge of this situation, this violation imposes upon the Chamber itself an immediate obligation to rectify the breach to uphold the Court’s legitimacy.

62. **Section 9 (Conflict of Interest and Other Impediments)** reinforces this by imposing an immediate and continuous duty upon members of the Office of the Prosecutor to avoid and promptly disclose conflicts of interest arising from “*personal interest in the case, including a spousal, parental or other close family, personal or professional relationship.*” Specifically, paragraph 43 mandates:

*“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.”*

63. In this case, the **familial, professional, and hierarchical relationship between Prosecutor Karim Khan and Ms. Venkateswari Alagendra, counsel for the Bolivarian Republic of Venezuela—a State actively subject to his investigation—indisputably meets the threshold of a conflict of interest as defined by these ICC provisions.** The Prosecutor’s failure to disclose and appropriately address this manifest conflict constitutes a clear breach of the Code and fundamentally undermines the integrity of the current investigation.

64. The Appeals Chamber is therefore ethically, procedurally, and institutionally compelled to act immediately and decisively to uphold the ICC’s ethical framework, preserve judicial impartiality, and safeguard the Court’s credibility before the international community.

### **4.3. Permanence of Affinity Bonds Under Venezuelan Civil Law: Enduring Grounds for Mandatory Recusal**

65. The **Venezuelan Civil Code (Código Civil Venezolano)** unequivocally asserts the enduring nature of familial affinity arising from marriage. This affinity bond retains legal force irrespective of subsequent marital dissolution, underscoring its perpetual significance as irrefutable grounds for mandatory recusal. This enduring quality reinforces the imperative of judicial impartiality by recognizing that familial relationships—once formally established—retain their inherent potential to compromise the appearance of neutrality, thus necessitating continuous ethical vigilance and strict adherence to recusation standards.

**Artículo 40 (Spanish Original):** “*La afinidad no se extingue por la disolución del matrimonio, aunque no existan hijos.*”<sup>29</sup>

**Article 40 (English Translation):** “*Affinity does not end with the dissolution of the marriage, even if no children exist.*”

<sup>29</sup> Venezuelan *Código Civil*, Article 40, Organization of American States (OAS), available at: [https://www.oas.org/dil/esp/codigo\\_civil\\_venezuela.pdf](https://www.oas.org/dil/esp/codigo_civil_venezuela.pdf).

## Legal and Ethical Analysis

66. 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 affinity as a matter of substantive legal significance **rather than a mere formality tied solely to the existence of an active marital union**.

67. 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 recusation under Venezuelan law would persist, unaffected by changes in the marital status that initially created the relationship.

68. 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 recusation frameworks worldwide: to safeguard the integrity of proceedings **from any reasonable perception of bias**.

69. Thus, the enduring nature of affinity under Venezuelan law further solidifies its relevance as a ground for recusation. 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.

70. 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. While the Prosecutor's failure **to excuse himself or disclose his familial, professional, and hierarchical relationship constitutes a grave breach of core ethical obligations, it would be an even greater dereliction for the Appeals Chamber to remain passive or indifferent**. Given the gravity of the situation, this Chamber now has an independent, inescapable obligation—***ex proprio motu***—to proactively address the Prosecutor's conflict of interest. The duty to ensure impartiality is neither discretionary nor dependent on procedural formalities; it is an absolute imperative whose neglect directly compromises the fairness, legitimacy, and credibility of these proceedings. Upholding this standard is critical not merely for the procedural integrity of the case but to preserve the trust of victims, the international community, and to affirm that the administration of justice unequivocally reflects the highest ideals of fairness, transparency, and accountability.

***In the face of undeniable ethical imperatives and explicit legal obligations, judicial silence is not mere neutrality—it is complicity...***

## 5. Jurisprudence of the European Court of Human Rights Reinforcing Ex Officio Review

71. The International Criminal Court, as a guardian of global justice and human rights, bears an unequivocal ethical and judicial obligation to maintain absolute impartiality. **This obligation must not only exist in substantive terms but must also be unmistakably perceived by the international community and by those directly affected by the Court's judgments.** To this end, the jurisprudence of the **European Court of Human Rights (ECtHR)**, as a respected authority on judicial impartiality under international law, provides a critical and persuasive foundation reinforcing the ICC's duty to proactively address conflicts of interest **ex officio**, regardless of procedural formality or party initiative.

72. In the landmark case of *Piersack v. Belgium (1982)*, the ECtHR explicitly articulated the paramount importance of the "**objective approach**" to impartiality. According to the Court, impartiality must be assessed not merely by considering the subjective convictions or intentions of the judge or judicial official, but rather from the perspective of whether sufficient guarantees exist to preclude any legitimate doubt as to their impartiality. The ECtHR emphasized in **paragraph 30** that:

*"Whilst impartiality normally denotes absence of prejudice or bias, its existence or otherwise can, notably under Article 6 § 1 of the Convention, be tested in various ways. A distinction can be drawn in this context between a subjective approach, that is endeavouring to ascertain the personal conviction of a given judge in a given case, and an objective approach, that is determining whether he offered guarantees sufficient to exclude any legitimate doubt in this respect."*<sup>30</sup>

73. Crucially, the ECtHR underscored the profound importance of public confidence in judicial impartiality, declaring emphatically:

*"What is at stake is the confidence which the courts must inspire in the public in a democratic society."*<sup>31</sup>

74. Applied to the instant case before this Appeals Chamber, the ECtHR's reasoning in *Piersack* compels immediate and independent action to address the Prosecutor's manifest conflict of interest. **Objective impartiality**, which demands no direct proof of subjective bias or deliberate misconduct, obligates this Chamber to respond **ex proprio motu** and without further procedural delay. By allowing the Prosecutor, Karim Khan, to continue involvement in the *Venezuela I* investigation—despite **documented familial, professional, and hierarchical ties**—this Court would risk irreparably undermining its judicial credibility and impartiality as perceived by the international community, and **specifically by Venezuelan victims whose trust in justice depends upon unwavering institutional integrity.**

75. Moreover, the recent judgment by the ECtHR in *Suren Antonyan v. Armenia (2025)* reinforces and expands upon the principles set forth in *Piersack*. In *Antonyan*, the Court resolutely reaffirmed the judiciary's positive obligation to scrutinize judicial impartiality even

<sup>30</sup> European Court of Human Rights (ECtHR), *Piersack v. Belgium*, Application No. 8692/79, Judgment of 1 October 1982, para. 30, available at: [https://hudoc.echr.coe.int/#{%22itemid%22:\[%22001-57557%22\]}](https://hudoc.echr.coe.int/#{%22itemid%22:[%22001-57557%22]}).

<sup>31</sup> *Ibid.*, para. 30(a).

in the absence of a formal motion for recusal. The ECtHR clearly articulated that judicial impartiality, being an indispensable element of a fair trial under **Article 6 § 1** of the European Convention on Human Rights, represents a matter of public policy (*ordre public*), which courts must uphold actively and independently:

*"The existence of circumstances raising legitimate doubt regarding impartiality, irrespective of whether formal recusation was raised by the parties, compels the judicial organ to proactively ensure that no objective doubts remain concerning its impartiality."*<sup>32</sup>

76. The *Antonyan* judgment emphatically confirms that the absence of formal procedural motions, or the lack of procedural standing by specific litigants, does not excuse judicial passivity in the face of objectively established concerns about impartiality. Applying this jurisprudential reasoning to the ICC context, **the Appeals Chamber cannot lawfully or ethically rely on procedural technicalities—such as the alleged absence of formal standing by particular applicants—to evade an objective and proactive examination of the Prosecutor’s conflict of interest.**

77. The European jurisprudential framework thus aligns seamlessly with the ICC’s own obligations under the Rome Statute, especially Article 42(7), which explicitly prohibits prosecutorial participation in any matter where impartiality "*might reasonably be doubted on any ground.*" Consistent with the ECtHR’s precedent, the ICC’s duty to uphold public confidence and institutional integrity must therefore be exercised **ex officio**, ensuring that no lingering perception of bias tarnishes its international judicial mandate.

78. To summarize, the jurisprudence developed by the **European Court of Human Rights** in *Piersack v. Belgium* and *Suren Antonyan v. Armenia* constitutes persuasive and authoritative guidance compelling this Appeals Chamber to act immediately and decisively regarding Prosecutor Karim Khan’s manifest conflict of interest. **As articulated by the ECtHR, what remains decisively at stake is the Court’s public legitimacy, a legitimacy that can survive only if its impartiality remains not merely an internal conviction but a public reality beyond any reasonable doubt.**

79. To uphold the fundamental judicial principle—*nemo iudex in causa sua*—(no one should be a judge in their own cause), **the Appeals Chamber is therefore compelled, without further deliberation or procedural delay, to independently and proactively evaluate and resolve the Prosecutor’s conflict of interest. The very credibility of the Court, as well as the global confidence placed in its capacity to administer impartial justice, unequivocally depends upon this action.**

***Impartiality is not negotiable—its absence destroys not only judgments but the very foundations of justice itself...***

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<sup>32</sup> European Court of Human Rights (ECtHR), *Suren Antonyan v. Armenia*, Application No. 76348/13, Judgment of 22 May 2025, paras. 67-69, available at: <https://hudoc.echr.coe.int/eng?i=001-240206>.



## 6. United Nations Basic Principles on Judicial Independence (1985): Reinforcing the ICC's Ex Officio Obligation to Uphold Prosecutorial Impartiality

### Paragraph 2: An Explicit International Standard of Judicial Integrity

80. The **United Nations Basic Principles on the Independence of the Judiciary**, adopted by the General Assembly in 1985, constitute an authoritative benchmark in international law regarding the imperative of judicial impartiality and independence. Specifically, **Paragraph 2** of these principles provides unequivocally that judicial bodies "*shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats, or interferences, direct or indirect, from any quarter or for any reason.*"<sup>33</sup>

81. This foundational standard unequivocally imposes upon all judicial authorities—**explicitly including international judicial bodies such as the International Criminal Court**—an imperative *erga omnes* obligation to actively and proactively secure impartiality in their proceedings. This proactive duty requires judicial bodies to not merely react to formally raised allegations of bias or impartiality concerns but to **affirmatively address and resolve such concerns sua sponte (on their own initiative) whenever credible and substantial grounds arise that could compromise judicial or prosecutorial impartiality.**

### Application to the ICC's Current Obligations in *Venezuela I*

82. In the instant situation of *Venezuela I*, the documented conflict of interest implicating Prosecutor Karim Khan presents precisely such credible and substantial grounds. The **familial, professional, and hierarchical ties** between Prosecutor Khan and Ms. Venkateswari Alagendra, **counsel formally representing the Bolivarian Republic of Venezuela, create a scenario that undeniably affects the objective perception of prosecutorial neutrality. THIS CONFLICT IS NEITHER HYPOTHETICAL NOR SPECULATIVE; RATHER, IT IS DEMONSTRABLY DOCUMENTED, FORMALLY ACKNOWLEDGED, AND UNEQUIVOCALLY ALIGNS WITH SITUATIONS UNIVERSALLY RECOGNIZED AS COMPROMISING IMPARTIALITY.**

83. The Appeals Chamber's prior procedural dismissal of the recusal request, **based solely on formalistic standing arguments rather than substantive analysis**, runs counter to the active and affirmative obligations explicitly enshrined by Paragraph 2 of the UN Basic Principles. International law imposes upon the ICC—through established global judicial standards—a **mandatory duty to preserve not only actual impartiality but also the appearance thereof (justice must not only be done but manifestly be seen to be done).** **Thus, it is not merely an option but a legally binding international obligation for this Appeals Chamber to address, with urgency and independently of procedural formalities, the Prosecutor's manifest conflict of interest.**

84. The **United Nations Principles** expressly prohibit judicial inaction or passive acquiescence in circumstances involving objectively justifiable concerns of undue influence

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<sup>33</sup> United Nations General Assembly, *Basic Principles on the Independence of the Judiciary*, endorsed by General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, Paragraph 2, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>.

or conflicts. The ICC, as the pinnacle of international criminal justice and guardian of global judicial standards, must be guided by these principles in a manner that unequivocally demonstrates its unwavering commitment to judicial impartiality. Therefore, allowing a manifest conflict of interest involving the Prosecutor to remain unaddressed contravenes international standards, damages the integrity of the judicial process, and seriously undermines the public's trust in the Court's independence and fairness.

85. In line with these internationally recognized principles, the ICC Appeals Chamber has a non-discretionary, affirmative, and independent duty to proactively assess and decisively resolve Prosecutor Karim Khan's conflict of interest. To defer action or deny responsibility under the pretext of formalistic procedural grounds would constitute a grave breach of international judicial standards enshrined within **Paragraph 2 of the UN Basic Principles on the Independence of the Judiciary**, undermining the moral and legal legitimacy of the Court.

86. *Actus curiae neminem gravabit*—the act of the court shall prejudice no one; hence, the ICC must act decisively to uphold its integrity and impartiality, ensuring public confidence in the administration of international criminal justice.

*Justice unseen is justice undone; silence in the face of bias betrays every victim ever promised impartiality...*

### III. DETAILED EXPOSITION OF THE PROSECUTOR'S CONFLICT OF INTEREST: FACTUAL EVIDENCE AND ETHICAL ANALYSIS

87. The cornerstone of the International Criminal Court's legitimacy and credibility is its unwavering commitment to judicial impartiality, rigorously safeguarded through the precise ethical and procedural mandates outlined in its foundational norms. Central to this commitment is **Rule 34(1)(a) of the ICC Rules of Procedure and Evidence**<sup>34</sup>, which explicitly delineates mandatory grounds for disqualification, encompassing various relationships—including close familial, professional, and hierarchical ties—that inherently threaten impartial judicial conduct. While this Rule enumerates multiple explicit scenarios, it is unequivocally clear that the mere existence of one of these elements suffices to mandate immediate judicial action. In the present case, the documented presence of not merely one, but several such relationships involving Prosecutor Karim Khan, compels this Chamber to act with decisive urgency. This Chamber cannot ethically, legally, or institutionally overlook the profound implications that such proven relationships pose to the legitimacy and public confidence of the Court.

#### 3.1. "Or Other Close Family": Familial Ties and Mandatory Recusal

88. **Rule 34(1)(a) of the ICC Rules of Procedure and Evidence** explicitly establishes mandatory grounds for the disqualification of judicial officers, including the Prosecutor,

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<sup>34</sup> ICC, *Rules of Procedure and Evidence*, Rule 34(1)(a), available at: <https://www.icc-cpi.int/sites/default/files/Publications/Rules-of-Procedure-and-Evidence.pdf>

based on "personal interest in the case," specifically encompassing "a spousal, parental or **other close family**, personal or **professional relationship**, **or a subordinate relationship**, with any of the parties." Crucially, the wording employed by the drafters—particularly the inclusive phrase "**or other close family**"—is deliberately broad and non-exhaustive, clearly intended to capture familial relationships that, while not expressly enumerated, undeniably raise legitimate concerns of impartiality and bias.

89. In his submission dated 29 November 2024, **Prosecutor Karim Khan explicitly confirms the existence of a second-degree familial affinity relationship with Ms. Venkateswari Alagendra, counsel formally representing the Bolivarian Republic of Venezuela**<sup>35</sup>. Specifically, the Prosecutor openly acknowledges that Ms. Alagendra is his sister-in-law, being the sister of his spouse, Ms. Dató Shyamala Alagendra. Despite this explicit acknowledgment, Prosecutor Khan attempts to minimize this relationship's significance by arguing that **the bond of sibling-in-law does not constitute "close family"** under Rule 34(1)(a).

90. This narrow and restrictive interpretation, however, is fundamentally inconsistent with the universally accepted understanding and intent of familial ties within judicial ethics. The familial connection between siblings-in-law—second-degree affinity—is universally and unequivocally recognized as constituting "**close family**." This recognition reflects widely held legal and cultural understandings that such relationships inherently carry emotional, personal, and potential practical influence, all of which legitimately compromise both the appearance and reality of impartiality required by international judicial norms. **Any attempt to exclude siblings-in-law from the scope of "close family" relationships contradicts common sense, universal legal norms, and established ethical standards.**

91. Furthermore, the Prosecutor's interpretation fundamentally misconstrues the objective nature of the impartiality requirement. International judicial standards unequivocally mandate that impartiality must not only exist substantively **but must also be manifestly perceived by informed observers**. This imperative objective standard, widely endorsed in international jurisprudence, renders subjective assertions about the practical implications of specific familial ties entirely irrelevant. What matters legally and ethically is the mere existence of a relationship that, viewed objectively, raises reasonable doubts about impartiality.

92. Nonetheless, it is accurate to acknowledge that the Rome Statute itself, along with relevant international treaties and customary international law principles, **does not explicitly define or enumerate second-degree affinity, such as siblings-in-law, as mandatory grounds for prosecutorial recusal. This absence constitutes a specific legislative gap that directly triggers the hierarchical application of Article 21(1)(c) of the Rome Statute.** According to this provision, **when the Rome Statute and international law do not explicitly address a particular legal question, the Court is compelled to apply general principles derived from national legal systems, provided they align with recognized international standards.**

93. In this precise context, **VENEZUELAN NATIONAL LAW EXPLICITLY AND UNEQUIVOCALLY IDENTIFIES SECOND-DEGREE FAMILIAL AFFINITY—INCLUDING RELATIONSHIPS BETWEEN SIBLINGS-IN-LAW—AS ABSOLUTE AND NON-NEGOTIABLE GROUNDS FOR MANDATORY**

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<sup>35</sup> ICC Prosecutor, Public redacted version of "Prosecutor's Submissions on the Request for the Recusal of the Prosecutor", ICC-02/18-99-Red, 29 November 2024, para. 2, p. 3, para. 44, p. 14, available at: <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180a22764.pdf>.

**RECUSAL.** Specifically, Venezuelan procedural and substantive laws, consistently applied and explicitly detailed previously, recognize second-degree affinity as sufficient prima facie evidence of impartiality being compromised. **Venezuelan legislation leaves no discretion to judicial officials facing such familial relationships; recusal is unequivocally mandatory and must occur immediately upon discovery or acknowledgment of the relationship.**

94. Consequently, **the Appeals Chamber is legally, ethically, and institutionally obligated under Article 21(1)(c) to apply Venezuelan national legal standards explicitly addressing second-degree affinity relationships.** Any failure to do so would represent a grave violation of the fundamental international principle of legality (*principium legalitatis*), undermining both the explicit terms of Rule 34(1)(a) and the Rome Statute's broader ethical mandates.

95. In conclusion, **Prosecutor Karim Khan's familial relationship with Ms. Venkateswari Alagendra unequivocally constitutes "close family" under Rule 34(1)(a), and thus mandates immediate and non-discretionary recusal.** To rule otherwise, or to accept the Prosecutor's narrow interpretation, would not only disregard universally recognized principles of judicial ethics but also fundamentally undermine the ICC's credibility and institutional integrity before the international community.

***Impartiality admits no degrees—ignoring familial ties is not judicial discretion, it is judicial deception...***

### **3.2. Professional Relationships and Mandatory Recusal: Conflicts of Interest Undeniably Documented**

96. **If the familial bond between Prosecutor Karim Khan and Ms. Venkateswari Alagendra has not already raised insurmountable doubts regarding his impartiality, the professional entanglements documented within the records of this Court leave no room for ambiguity.** The familial, professional, and hierarchical connections between Prosecutor Khan, Ms. Venkateswari Alagendra, and Ms. Dató Shyamala Alagendra form a triad of interrelated conflicts explicitly encompassed by **Rule 34(1)(a) of the ICC's Rules of Procedure and Evidence.** These documented relationships, meticulously drawn from the Court's own archives, expose an undeniable pattern of interconnected interests that cannot credibly be dismissed as mere coincidence or incidental overlap.

97. This institutional silence and inaction regarding clearly evident professional conflicts represent a fundamental breach of the Court's commitment to impartiality, transparency, and accountability. The failure to confront and resolve such manifest conflicts of interest—readily identifiable within official Court proceedings—represents not merely oversight, but an unacceptable abdication of judicial responsibility. Continued inaction in the face of this evidence risks permanently undermining the integrity and legitimacy of the International Criminal Court.

98. Although financial ties are not explicitly enumerated within Rule 34(1)(a) of the ICC Rules of Procedure and Evidence, **Prosecutor Karim Khan himself has raised this matter proactively in his submissions, implicitly acknowledging its ethical relevance and potential impact on perceived impartiality.**<sup>36</sup> Thus, the explicit recognition by Prosecutor Khan

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<sup>36</sup> *Ibid.*, paras. 44-46, pp. 14-15

underscores the gravity and complexity of the documented professional relationship and substantiates further the necessity of judicial examination and recusal in the interest of preserving both the substance and appearance of impartial justice.

99. The following analysis exposes the professional entanglement and also financial alignment between Mr. Khan, **Ms. Venkateswari Alagendra**, and **Ms. Dató 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.

### **3.2.1. The Professional Nexus Between Prosecutor Karim Khan and Ms. Venkateswari Alagendra**

100. The documented professional history between Prosecutor Karim Khan and Ms. Venkateswari Alagendra, including before the **International Criminal Court (ICC)**, 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.

101. Their **legal partnership was not incidental**, nor was it a brief or informal association. Rather, it was a **deliberate and structured working relationship**, characterized by a **coordinated approach to high-stakes legal defense strategies**.

102. The **most compelling examples of their professional association include**:

#### **1. The Ruto and Sang Case (Kenya, 2013)<sup>37</sup>**

- **Karim Khan served as Lead Counsel for William Samoei Ruto**, who was charged with crimes against humanity.
- **Ms. Venkateswari Alagendra was appointed as Associate Counsel**, working directly under **Khan’s leadership**.<sup>38</sup>
- The ICC’s Registry filing dated **May 16, 2013**, confirms **Khan personally selected Alagendra** for his legal team, underscoring their **coordinated professional engagement**.<sup>39</sup>

#### **2. The Saif al-Islam Gaddafi Case (Libya, 2018–2019)<sup>40</sup>**

- In this matter, both Mr. Khan’s wife, **Ms. Dató Shyamala Alagendra**, and his sister-in-law (his wife’s sister), **Ms. Venkateswari Alagendra**, served as defense counsel alongside him. Their repeated association across

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<sup>37</sup> See ICC, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Case No. ICC-01/09-01/11, Registry Notification, May 16, 2013, para. 1, confirming the appointment of Ms. Venkateswari Alagendra as Associate Counsel under the leadership of Karim Khan. Source: [https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2013\\_03755.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2013_03755.PDF)

<sup>38</sup> See ICC, *Ruto and Sang*, Case No. ICC-01/09-01/11, Registry Notification, May 16, 2013, confirming the professional association between Khan and Alagendra. Source: [https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2013\\_03755.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2013_03755.PDF)

<sup>39</sup> See ICC, *Ruto and Sang*, Case No. ICC-01/09-01/11, Registry Notification, May 16, 2013, para. 2. Source: [https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2013\\_03755.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2013_03755.PDF)

<sup>40</sup> See ICC, *The Prosecutor v. Saif al-Islam Gaddafi*, Case No. ICC-01/11-01/11, Pre-Trial Chamber I, *Decision on Admissibility Challenge*, April 5, 2019, confirming the participation of Ms. Venkateswari Alagendra as Defense Counsel. Source: [https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2019\\_01904.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2019_01904.PDF)

geographically and temporally distinct proceedings underscores 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.

103. **Significance to Current Proceedings:** This documented professional history unequivocally contradicts Prosecutor Khan's attempts to dismiss its relevance to the *Venezuela I* proceedings. The sustained professional association inherently generates an objective perception of bias, especially given Ms. Alagendra's current representation of the Venezuelan government—a direct party in proceedings prosecuted by Mr. Khan. The explicit standards of Rule 34(1)(a) thus mandate immediate recusal to uphold judicial impartiality and maintain public confidence in the ICC's prosecutorial integrity.

**A Prosecutor's bias unanswered is a justice system's surrender...**

### **3.3. Subordination Relationship as Grounds for Mandatory Recusal**

104. In addition to the familial and 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.

#### **3.3.1. Documented Hierarchical Structure**

105. In the *Ruto and Sang case*<sup>41</sup>, the professional roles of Mr. Khan and Ms. Alagendra were explicitly hierarchical, establishing clear 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, a hierarchical structure exists within defense teams, wherein the **Lead Counsel retains the ultimate authority and decision-making responsibilities for legal strategy and courtroom advocacy, with Associate Counsel occupying subordinate roles in assisting the Lead Counsel.** The withdrawal of a Lead Counsel specifically necessitates explicit judicial approval before an Associate Counsel with lesser experience may assume the lead role.<sup>42</sup>

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<sup>41</sup> See ICC, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang, Case No. ICC-01/09-01/11*, Registry Notification, May 16, 2013, para. 1, confirming the appointment of Ms. Venkateswari Alagendra as Associate Counsel under the leadership of Karim Khan. Source: [https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2013\\_03755.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2013_03755.PDF)

<sup>42</sup> Regulation 78(2) of the *Regulations of the Court* explicitly recognizes a hierarchical distinction between Lead Counsel and Associate Counsel, whereby the Lead Counsel holds primary responsibility for case strategy and representation, and judicial approval is required for Associate Counsel to assume the lead role upon withdrawal of the original Lead Counsel. See ICC, *Regulations of the Court*, Regulation 78(2), page 36. Available at: [https://www.icc-cpi.int/sites/default/files/RegulationsCourt\\_2018Eng.pdf](https://www.icc-cpi.int/sites/default/files/RegulationsCourt_2018Eng.pdf).



106. The **Registry notification of 16 May 2013**<sup>43</sup> 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.

107. **Relevance to the Venezuela I Investigation:** The enduring nature of a hierarchical supervisory relationship inherently influences subsequent interactions and perceptions of impartiality. The fact that Ms. Alagendra now represents a party directly opposed to Prosecutor Khan's current prosecutorial duties underscores the significant ethical and procedural implications of their prior hierarchical dynamic. Such subordination undeniably raises legitimate concerns about the Prosecutor's independence and impartiality in ongoing proceedings.

108. **Mandatory Recusal Under Rule 34(1)(a):** Rule 34(1)(a) explicitly identifies subordinate relationships as mandatory grounds for disqualification, thus making recusal legally and ethically imperative in this case. The established supervisory dynamic, in which Mr. Khan previously exercised direct authority over Ms. Alagendra, constitutes an objective and substantial conflict of interest that **cannot reasonably be dismissed as trivial or irrelevant**. By failing to disclose or address this relationship, Prosecutor Khan has incurred a significant ethical omission, further exacerbating the perceived bias in the *Venezuela I* investigation. To uphold the ICC's procedural integrity and ensure compliance with international impartiality standards, immediate recusal is therefore not only recommended—it is unequivocally required. Indeed, no Prosecutor who previously supervised a key legal representative of an actively investigated party can credibly assert impartiality, as any fair-minded observer would inevitably harbor reasonable doubts regarding neutrality.

***A Court that fears confronting its Prosecutor's bias has sentenced justice itself to exile...***

### **3.3.2. Shared Objectives and Mutual Professional Interests**

109. 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 I* 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.

### **3.3.3. Contradictions in the Prosecutor's Defense**

110. 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.

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<sup>43</sup> See ICC, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Case No. ICC-01/09-01/11, Registry Notification, May 16, 2013, para. 1, confirming the appointment of Ms. Venkateswari Alagendra as Associate Counsel under the leadership of Karim Khan. Source: [https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2013\\_03755.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2013_03755.PDF)

- **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.

### 3.3.4. The “Coincidence” of Venezuela’s Choice of Counsel: Undermining Impartiality

111. 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.

#### 3.3.4.1. Extraordinary Circumstances of Representation

##### a) 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**.

##### b) 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.

##### c) 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.

#### 3.3.4.2. The Illusion of Separation: Financial and Professional Nexus Exposed

112. 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.<sup>44</sup>

<sup>44</sup> *Prosecutor’s Submissions on the Request for the Recusal of the Prosecutor*, 29 November 2024, ICC-02/18-99-Red, paras. 41, 53, 54(c), available at: <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180a22764.pdf>.

### 3.3.4.2.1. Shared Financial and Professional Objectives in High-Profile Cases

113. 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:

#### a) 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.

#### b) The Shared Economic Benefits of Legal Success

Although **direct contingency fee** arrangements are expressly prohibited under the ICC’s Code of Conduct, this restriction **DOES NOT PRECLUDE SUBSTANTIAL INDIRECT FINANCIAL ADVANTAGES**, such as enhanced professional recognition, increased marketability, credibility, and future professional opportunities derived from favorable outcomes in high-profile international cases. Such **INDIRECT BENEFITS** inevitably accrue collectively to counsel working in close collaboration, significantly reinforcing *the perception of interconnected interests* and thereby further compromising the essential **impartiality** required from the Prosecutor.

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.

#### c) 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.

#### **d) The Cumulative Conflict of Interest**

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.

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.

### **3.4. Sequential Professional Representation and the Enhanced Appearance of Impropriety**

114. *The Prosecutor's argument emphasizing that he had ceased representing Mr. Saif al-Islam Gaddafi prior to Ms. Venkateswari Alagendra's appointment does not negate the perception of impropriety inherent in such a transition*<sup>45</sup>. It strains credulity to assume that, out of numerous qualified international counsels available, Mr. Gaddafi independently chose the Prosecutor's sister-in-law **without any connection or suggestion stemming from their familial and prior professional relationship. THIS TRANSITION FURTHER SOLIDIFIES THE PERCEPTION OF DELIBERATE PROFESSIONAL OVERLAP AND COORDINATED STRATEGIC INTEREST**, contravening the explicit ethical and impartiality standards set forth in **Articles 41(2) and 42(7) of the Rome Statute**, which mandate proactive avoidance of even *the mere appearance of bias*<sup>46</sup>.

115. International jurisprudence underscores that impartiality must be objectively and manifestly preserved, explicitly emphasizing that any legitimate doubt about impartiality—regardless of the existence of actual bias—must be decisively addressed. As explicitly articulated by the **European Court of Human Rights** in the seminal case of *Piersack v. Belgium*:

*"Whilst impartiality normally denotes absence of prejudice or bias, its existence or otherwise can, notably under Article 6 § 1 of the Convention, be tested in various ways. A distinction can be drawn in this context between a subjective approach, that is endeavouring to ascertain the personal conviction*

<sup>45</sup> *Prosecutor's Request for Leave to Sur-reply to the Applicant's "Safeguarding the ICC's integrity – a call for Accountability and Impartiality in the Venezuela I Situation"*, ICC-02/18-106, 30 December 2024, para. 4(a), p. 3. Available at: <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180a56ab9.pdf>.

<sup>46</sup> *Rome Statute of the International Criminal Court*, Article 41(2): "The Presidency may, at the request of the Prosecutor or on its own motion, excuse a judge from the exercise of a function under this Statute in accordance with the Rules of Procedure and Evidence."; and Article 42(7): "Neither the Prosecutor nor a Deputy Prosecutor shall participate in any matter in which their impartiality might reasonably be doubted on any ground. Available at: <https://www.icc-cpi.int/sites/default/files/Publications/Rome-Statute.pdf>

*of a given judge in a given case, and an objective approach, that is determining whether he offered guarantees sufficient to exclude any legitimate doubt in this respect.”<sup>47</sup>*

116. Thus, contrary to dispelling concerns of bias, the Prosecutor’s argument inadvertently highlights the very ethical violation at issue, making immediate judicial intervention mandatory to preserve the integrity and legitimacy of these proceedings.

117. ICC jurisprudence consistently emphasizes that impartiality is not only a substantive judicial requirement but must also be clearly apparent to the public and informed observers. This principle is fundamental to maintaining the legitimacy and credibility of judicial processes, requiring proactive measures to prevent any objectively reasonable doubts about impartiality, as established repeatedly in international judicial standards and practices.

***Silence before manifest injustice is not judicial prudence;  
it is institutional suicide...***

## IV. SELECTIVE ENFORCEMENT AND DOUBLE STANDARDS IN THE ICC’S INVESTIGATIONS

118. The conduct of Prosecutor Karim Khan in the *Venezuela I Situation*, when compared to his handling of other investigations, highlights a striking inconsistency in the application of justice.

- In *Venezuela I*, the Prosecutor invoked the principle of “positive complementarity” to justify years of inaction, despite overwhelming evidence that Venezuela’s judicial system for more than 20 years lacks independence and functions as an instrument of political repression.
- The Prosecutor personally traveled to Venezuela four (4) times, met directly with Nicolás Maduro—who is under his investigation—along with senior officials implicated in the case, under the pretext of fostering cooperation. These prolonged diplomatic engagements with the investigated regime contrast starkly with the approach taken in other cases.
- In the case of Israel, the Prosecutor bypassed complementarity entirely, issuing arrest warrants against Prime Minister Benjamin Netanyahu and Defense Minister Yoav Gallant without first engaging with Israel’s well-established and independent judiciary. Unlike Venezuela, Israel was not given the opportunity to demonstrate its ability to investigate the alleged crimes domestically.

119. The only difference between these cases is that in *Venezuela I*, the Prosecutor’s sister-in-law is part of the defense team of the investigated government, whereas no such connection exists in the Israel case. This stark discrepancy exacerbates the appearance of bias, raising concerns that the conflict of interest has directly influenced the selective and inconsistent prosecutorial strategy applied by Karim Khan.

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<sup>47</sup> European Court of Human Rights, *Piersack v. Belgium*, Application no. 8692/79, Judgment of 1 October 1982, para. 30, available at: [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-57557%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-57557%22]})

## 4.1. Comparative Analysis: *Venezuela I* vs. Israel and Other ICC Investigations

120. An examination of the Prosecutor's conduct in the *Venezuela I Situation*, juxtaposed against his approach in other ICC investigations, **reveals striking discrepancies that challenge the very notion of impartial justice**. The comparative analysis that follows sheds light on how differing applications of key legal principles have resulted in troubling inconsistencies, casting a shadow over the integrity of prosecutorial discretion and the legitimacy of the Court itself.

### 4.1.1. The Principle of Complementarity in *Venezuela I* and Its Use to Justify Inaction

121. The **principle of complementarity**, as enshrined in **Article 17 of the Rome Statute**, establishes that **the ICC only intervenes when a national judicial system is unwilling or unable to conduct genuine investigations or prosecutions**. However, in the *Venezuela I Situation*, the **Office of the Prosecutor (OTP) under Karim Khan** **has captiously misapplied this principle**, selectively invoking positive complementarity to justify prolonged inaction, despite **overwhelming evidence that the Venezuelan judiciary is neither independent nor functional but rather serves as a mechanism of political repression**.

122. Positive complementarity, as understood in ICC legal doctrine, refers to a **cooperative approach** in which the ICC works with national authorities to **strengthen their capacity to investigate and prosecute crimes** under the Rome Statute, rather than immediately asserting jurisdiction. In Venezuela, however, this approach has resulted in **unjustified delays rather than meaningful progress**, effectively allowing the Maduro regime to manipulate judicial cooperation as a means of **avoiding international accountability**.

#### **This approach raises fundamental concerns:**

123. The Venezuelan judiciary has been internationally recognized as an **extension of the regime**. Reports from the **UN Independent Fact-Finding Mission**<sup>48</sup>, the **Inter-American Commission on Human Rights (IACHR)**<sup>49</sup>, and other human rights organizations have extensively documented that **Venezuela's judicial system lacks independence** and is systematically used to **persecute political opponents** and **shield state actors from accountability**. Despite this, the ICC continues to engage with Venezuelan authorities as if they were legitimate actors in an impartial justice system.

124. In addition to the findings of the UN Independent Fact-Finding Mission and the Inter-American Commission on Human Rights (IACHR), **Human Rights Watch** has also **extensively documented for years how Venezuela's judiciary has been systematically co-opted by the regime, functioning as a mechanism of political repression rather than an impartial judicial body**. According to **HRW's 2025 World Report**<sup>50</sup>, Venezuela's judiciary ceased to function independently in 2004 when then-President Hugo Chávez passed a

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<sup>48</sup> United Nations Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela, OHCHR, available at: <https://www.ohchr.org/en/hr-bodies/hrc/ffmv/index>.

<sup>49</sup> Inter-American Commission on Human Rights (IACHR), Reports on Venezuela, Organization of American States (OAS), available at: <https://www.oas.org/en/iachr/reports/pdfs/2025/Report-Venezuela-seriousHRR-violations-connections-elections.pdf>.

<sup>50</sup> World Report 2025: Venezuela, Human Rights Watch (HRW), available at: <https://www.hrw.org/world-report/2025/country-chapters/venezuela>.



judicial reform that allowed him to pack the Supreme Court with political allies, consolidating executive control over the judiciary. Despite this well-documented reality, Prosecutor Karim Khan has continued to invoke complementarity as a justification for delaying further action in Venezuela I, effectively delegating responsibility for justice to the very institutions accused of facilitating crimes against humanity.

125. The very same **Office of Public Counsel for Victims (OPCV)** of the ICC has strongly criticized this approach, highlighting that **victims feel abandoned due to the lack of prosecutorial action**. In her **November 22, 2024, submission to the Appeals Chamber, Dr. Paolina Massidda**<sup>51</sup>, Principal Counsel for the OPCV, underscored the profound frustration of Venezuelan victims, stating:

*"Many 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. They question why the crimes and suffering they have endured appear to be treated with less urgency compared to those affecting victims in other contexts." (sic)*

126. This statement **directly supports the argument that Prosecutor Khan has engaged in selective enforcement**, prioritizing certain cases while delaying justice for Venezuelan victims.

127. Prosecutor Khan has **personally met with high-ranking officials of the Maduro regime on multiple occasions**, reinforcing the perception of **complicity rather than oversight**. His **four (4) official visits to Venezuela**, conducted under the pretext of fostering cooperation, starkly contrast with his approach to other cases like Israel where he has swiftly sought **arrest warrants without engaging national authorities**.

#### **4.1.2. Omission of the Principle of Complementarity in the Investigation of Israel: An Inconsistent Strategy**

128. While the OTP has used **positive complementarity** to justify inaction in *Venezuela I*, it has taken a radically different approach in the **Israel Situation, completely bypassing complementarity** and proceeding directly to request **arrest warrants for Prime Minister Benjamin Netanyahu and Defense Minister Yoav Gallant**.

129. Unlike Venezuela, **Israel maintains a well-established, independent, and internationally recognized judicial system**. The Israeli judiciary has historically prosecuted **military and government officials for alleged misconduct**, demonstrating **its ability and willingness** to conduct genuine investigations. In accordance with **Article 17 of the Rome Statute**, Israel should have been given the opportunity to **address alleged crimes through its own judicial mechanisms** before ICC intervention.

130. However, Prosecutor Khan **never conducted an official visit to Israel**, nor did he engage with Israeli authorities to assess the country's willingness or ability to investigate the alleged crimes. In stark contrast to his handling of Venezuela I—where he **traveled**

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<sup>51</sup> OPCV Submission to the Appeals Chamber, Judgment on the Appeal of the Bolivarian Republic of Venezuela, ICC Appeals Chamber, 22 November 2024, ICC-02/18-XXX, available at: <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180a112e9.pdf>.

four times and met directly with the very officials under investigation—he bypassed any diplomatic or judicial engagement with Israel, refusing even to meet with its **Supreme Court justices or Attorney General, who are not under investigation**. Instead of following a uniform approach, he **proceeded directly with arrest warrants, reinforcing the perception** of selective enforcement and a blatant inconsistency in the application of ICC jurisdiction.

This selective enforcement raises fundamental concerns about **prosecutorial bias and conflicts of interest**:

131. The **only material difference between the Venezuela I and Israel situations is that, in Venezuela, the Prosecutor’s sister-in-law, Venkateswari Alagendra, is part of the defense team of the investigated government, whereas no such personal connection exists in the Israel case**. This stark discrepancy underscores the **appearance of bias** and suggests that **the conflict of interest may have directly influenced the Prosecutor’s handling of the Venezuela investigation**.

#### **4.1.3. Other Case Studies Demonstrating Perceived Bias**

132. Beyond Venezuela I and Israel, additional case studies reinforce the perception of selective enforcement and prosecutorial bias in the ICC’s approach under Prosecutor Karim Khan. **The Office of the Prosecutor (OTP) has systematically failed to act on well-documented cases of state-orchestrated repression in Venezuela, despite the existence of clear legal mechanisms under the Rome Statute that could have warranted intervention.**

133. One of the most glaring examples of this prosecutorial neglect is the **Congressman (r) Walter Márquez Denunciation**, submitted to the ICC in 2018<sup>52</sup>. This report meticulously documented deliberate state policies of extermination under **Article 7 of the Rome Statute**, outlining the Venezuelan government’s intentional deprivation of food, medicine, and humanitarian aid, which resulted in widespread malnutrition, disease, and preventable deaths. The report presented incontrovertible evidence that these were not isolated failures but rather systematic state policies designed to control and punish the population.

134. Despite the overwhelming weight of the evidence, the OTP has failed to take any preventive or investigative action, even though **Article 54(3)(f) of the Rome Statute** grants the Prosecutor authority to intervene in ongoing crimes. **This omission stands in stark contrast to the ICC’s swift action against Myanmar’s military junta in 2016 and 2017 for similar crimes involving forced deportations and systemic human rights abuses.** The Márquez case now stands as a glaring testament to prosecutorial neglect, reinforcing a pattern of inaction that enables state-sponsored impunity.

135. A particularly egregious case of **state-perpetrated war crimes ignored by the ICC** is the **La Victoria Massacre in the Alto Apure region**, which occurred in March and April 2021. During this military operation, the **Venezuelan Armed Forces (FANB)** engaged in

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<sup>52</sup> *The findings in this report align with the systematic repression, extrajudicial executions, and humanitarian crisis as outlined in the complaint submitted to the ICC by Congressman (r) Walter Márquez. See: Organization of American States, Report of the General Secretariat and the Panel of Independent International Experts on the Possible Commission of Crimes Against Humanity in Venezuela, March 2021. Available at: <http://www.oas.org/documents/eng/press/Informe-Panel-Independiente-Venezuela-EN.pdf>*

**indiscriminate bombings against civilian areas**, conducted **mass arbitrary detentions**, and executed **false positives**—extrajudicial killings of civilians later presented as combatants. Reports indicate that the **bombardments destroyed homes, schools, and livestock**, terrorizing the local population and **forcing nearly 6,000 people to flee to Colombia**, yet no action has been taken by the ICC despite its clear jurisdiction over such crimes under **Article 8 of the Rome Statute**.<sup>53</sup>

136. Additional investigations, including reports from the human rights organization **Fundación El Amparo**, led by **Congressman (r) Walter Márquez**, as well as independent media outlets, have further confirmed violations of international humanitarian law:

- **Indiscriminate airstrikes and forced displacement (Article 8(2)(e)(i) and (viii))** – The FANB’s military campaign resulted in **mass displacement**, with civilians fleeing for their lives as bombs leveled entire neighborhoods.
- **Systematic use of torture and enforced disappearances (Article 8(2)(c)(i))** – Civilians were detained without cause, tortured in military facilities, and transferred to high-security prisons under anti-terrorism laws.
- **Extrajudicial executions and staged combat encounters (Article 8(2)(c)(i))** – At least **five civilians were abducted, executed, and falsely presented as guerrilla combatants**, mirroring past state-sponsored **false positive** operations.<sup>54</sup>

137. Despite the **clear application of these legal provisions**, the OTP has chosen to ignore this case, further strengthening the argument that **political considerations** have tainted the prosecutorial discretion of the ICC under Karim Khan.

138. Another case demonstrating the ICC’s failure to act is the **2015 forced deportation of over 24,500 Colombian nationals from Venezuela**, executed under direct orders from Nicolás Maduro<sup>55</sup>. This operation, which was accompanied by **widespread property destruction, home demolitions, and acts of persecution**, aligns with multiple provisions under **Article 8 of the Rome Statute** regarding war crimes committed in the context of an internal conflict.

139. These cases illustrate a disturbing pattern in the ICC’s prosecutorial strategy, where **egregious crimes in Venezuela are systematically overlooked**, while other situations receive immediate attention and decisive action. This inconsistency in prosecutorial decision-making further undermines the Court’s credibility and impartiality, highlighting the need for external scrutiny and accountability mechanisms to ensure that justice is applied **uniformly and without bias**.

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<sup>53</sup> El Estímulo, “Walter Márquez: En el Alto Apure se están cometiendo crímenes de guerra”, April 5, 2021. Available at: <https://elestimulo.com/venezuela/2021-04-05/walter-marquez-en-el-alto-apure-se-estan-cometiando-crimenes-de-guerra/>

<sup>54</sup> Correo del Caroní, “A un año del conflicto, no se han esclarecido crímenes de guerra en La Victoria de Apure”, March 25, 2022. Available at: <https://correodelcaroni.com/pais-politico/a-un-ano-del-conflicto-no-se-han-esclarecido-crimenes-de-guerra-en-la-victoria-de-apure/>

<sup>55</sup> Walter Márquez, Denuncia delitos de lesa humanidad en el Táchira (Denunciation of Crimes Against Humanity in Táchira), submitted before the International Criminal Court, January 2016. Full document available at: <https://www.corteidh.or.cr/tablas/r37185.pdf>

#### 4.1.4. Implications of the Selective Application of Justice

140. The **contradictory application of complementarity in *Venezuela I* and Israel exposes a pattern of selective enforcement that undermines the ICC's credibility**. The consequences of this inconsistency include:

141. The establishment of a **dangerous precedent, where prosecutorial discretion is dictated not by legal principles but by external influences, including personal connections**. The erosion of trust in the ICC as an impartial judicial body, reinforcing perceptions that cases are handled based on **political considerations rather than legal merit**.

142. The signal to authoritarian regimes that **superficial cooperation with the ICC can be exploited as a shield against real accountability**, while democratic nations with independent judiciaries may face **direct ICC intervention without proper adherence to the principle of complementarity**.

143. This **double standard fundamentally undermines the integrity of international justice**, demonstrating that the **same Prosecutor who shields his own conflicts of interest is also selectively applying legal principles to cases under his jurisdiction**.

144. The **United Nations Special Rapporteur must urgently examine** how these prosecutorial inconsistencies violate **the principles of impartiality, due process, and judicial integrity**, which the ICC is mandated to uphold.

145. **The credibility of the ICC hinges fundamentally upon the consistent application of its core legal principles**. By tolerating or permitting selective prosecutorial strategies driven by personal conflicts of interest, **the Court risks irreparable harm to its legitimacy, potentially diminishing its capacity to effectively administer international criminal justice in future proceedings**. Immediate action by the Appeals Chamber, therefore, is essential not merely to address the present conflict but to safeguard the integrity and impartiality upon which the global judicial mandate of the ICC is predicated.

*If the scales of justice tip in secrecy, then truth is the first casualty—and victims, the eternal mourners...*

## V. Conclusion

146. The International Criminal Court stands as a guardian of justice, its authority derived not merely from the formal prescriptions of international law but, **more fundamentally, from the trust placed in it by the global community it serves**. Such trust is contingent upon the unequivocal impartiality of its prosecutorial and judicial functions—**impartiality that must not only be maintained but must also manifestly appear to be maintained, beyond the slightest shadow of doubt**.

147. In the *Venezuela I Situation*, the Appeals Chamber is confronted with incontrovertible and publicly **documented evidence of a profound and multifaceted conflict of interest implicating Prosecutor Karim Khan**. This conflict arises not only from his familial affinity but is compounded by established professional and hierarchical relationships with counsel

representing the very state that is the subject of his prosecutorial mandate. Collectively, these relationships render the Prosecutor's impartiality untenable, both **IN APPEARANCE AND IN FACT**, thereby demanding immediate judicial rectification.

148. This submission has carefully articulated, through rigorous and detailed legal analysis, the binding ethical and normative obligations that compel the Appeals Chamber to exercise its inherent authority *ex proprio motu*. Specifically, Article 42(7) of the Rome Statute, Rule 34(1)(a) and Rule 34(3) of the ICC Rules of Procedure and Evidence, and Article 3 of the ICC Code of Judicial Ethics collectively establish an unequivocal imperative for immediate action. These foundational norms, complemented by the robust application of general principles of law recognized explicitly under Venezuelan domestic statutes, and reinforced by authoritative comparative jurisprudence from international human rights tribunals, crystallize a non-negotiable judicial obligation: **THE APPEALS CHAMBER MUST INTERVENE WITHOUT DELAY.**

149. To abstain from action, citing procedural formalities or technicalities, would amount not merely to passive oversight but to active abdication of the Chamber's essential responsibility to uphold judicial integrity. Such abstention **would signal tacit institutional acceptance of compromised impartiality, thereby irreparably undermining victims' trust and profoundly damaging the Court's legitimacy.** Indeed, the gravity of crimes within the ICC's jurisdiction demands uncompromised prosecutorial impartiality—an impartiality that must be zealously guarded by the Appeals Chamber, acting proactively and decisively.

150. As recognized victims in the Venezuela I Situation, we do not pursue adversarial litigation. Rather, our submission emerges from a deeper commitment to justice itself—a commitment that transcends individual grievances and is rooted in the foundational principles upon which the ICC was established. The ethical and legal imperatives articulated herein are not abstract notions but rather concrete obligations that define the very integrity and purpose of the Court.

151. Finally, it bears explicit emphasis that the Prosecutor himself, Mr. Karim Khan, **has already fully addressed and articulated his defense and arguments** regarding his alleged conflict of interest **in two detailed submissions formally filed before this Appeals Chamber**<sup>56</sup>. Given that **the Prosecutor's detailed arguments are already on record**, the Appeals Chamber now finds itself **in an optimal procedural position to immediately address and publicly resolve the substantive issue at stake—namely, the existence and implications of the Prosecutor's manifest conflict of interest**, since this Appeals Chamber **unequivocally possesses the legitimacy and duty to do so, despite not itself being a person investigated or accused.** **No further procedural or substantive barriers** remain that would justify any delay or evasion of **this Chamber's ethical, legal, and institutional obligation to act *ex proprio motu*.** **Immediate judicial determination on the merits of this conflict is therefore not merely appropriate; it is indispensable to preserve the very legitimacy and integrity of the Court itself.**

152. We therefore reiterate our respectful demand for an immediate ex officio review. It is neither discretionary nor optional; it is a moral and legal duty—a duty upon which the very

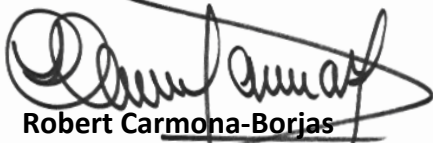
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<sup>56</sup> See, respectively, Prosecutor Karim A.A. Khan KC, "Prosecutor's Submissions on the Request for the Recusal of the Prosecutor", 29 November 2024, ICC-02/18-99-Red, available at: <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180a22764.pdf>; and "Prosecutor's Request for Leave to Sur-reply to the Applicant's 'Safeguarding the ICC's integrity – a call for Accountability and Impartiality in the Venezuela I Situation'", 30 December 2024, ICC-02/18-106, available at: <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180a56ab9.pdf>. In these submissions, the Prosecutor extensively presents his arguments opposing the existence of any conflict of interest affecting his impartiality.

essence of international justice depends. Let it not be said that the International Criminal Court, faced with such unequivocal evidence of compromised impartiality, chose procedural convenience over ethical rigor, or inertia over decisive justice.

***Inaction in the face of clear bias  
is the gravest crime against justice itself...***

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robert Carmona-Borjas', with a large, sweeping flourish extending from the end of the name.

**Robert Carmona-Borjas**

On behalf of **Arcadia Foundation**

and in my capacity as a recognized victim

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

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