

## SUPPLEMENTARY SUBMISSION TO THE APPEALS CHAMBER

### Regarding the Prosecutor's Temporary Withdrawal and the Continuing Imperative to Adjudicate the Conflict of Interest in the *Venezuela I Situation*

**“Neither a leave of absence, however strategic, nor a definitive  
resignation suffices to erase the consummated act of having  
violated the impartiality upon which justice rests...”**

— *Robert Carmona-Borjas*

Washington, DC May 17, 2025

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

#### Submitted by:

**Robert Carmona-Borjas**, in his capacity as a **Recognized Victim in the *Venezuela I Situation* at the International Criminal Court (ICC)** (Reference Number r/21840/23)<sup>1</sup>, and as a **Representative of Arcadia Foundation**, on behalf of **Victims in the *Venezuela I Situation* at the ICC** (Reference Number VPRS-A-2023-092)<sup>2</sup>

### I. INTRODUCTION: THE WITHDRAWAL AS AN ATTEMPT TO EVADE JUDICIAL SCRUTINY

1. The undersigned respectfully submit this **supplementary communication** in the matter of the *"Request for the Appeals Chamber to Conduct an Ex Officio Review of the Prosecutor's Conflict of Interest in the Venezuela I Situation"* (ICC-02/18-110-Anx), in light of the recent announcement that the Prosecutor, Mr. **Karim A.A. Khan KC**, has temporarily withdrawn from his official duties at the Court. This development occurs at a critical juncture in these proceedings, **as it directly coincides with the Appeals**

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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>.

Chamber's pending determination on the formal request for an ex officio review of his conflict of interest in the *Venezuela I Situation*.<sup>3</sup>

2. While this development is publicly “presented as a voluntary decision to safeguard the integrity of the institution”, it bears direct and urgent relevance to the pending judicial duty of this Chamber to resolve the serious and previously substantiated question of conflict of interest raised in the aforementioned submission.
3. This timing cannot be dismissed as incidental. Rather, **it risks being perceived as a calculated maneuver aimed at rendering the judicial question “abstract” or “without object,”** thus precluding the Chamber from issuing a binding pronouncement on the existence of a conflict that has already tainted prior proceedings.
4. **THE APPEALS CHAMBER MUST RESIST THIS PROCEDURAL TRAP.** It is legally, ethically, and institutionally bound to adjudicate the matter on its merits, for the reasons that follow.

## II. THE CORRUPTION OF JUDICIAL ETHICS IS A COMPLETED ACT, NOT A FUTURE RISK

5. The factual circumstances forming the basis of the conflict of interest **are already consummated**. The Prosecutor engaged in the *Venezuela I Situation* over a prolonged period while his sister-in-law served as legal counsel for the Government of Venezuela — the very subject of his investigation.
6. This relationship, **based on the concurrence of multiple grounds as provided under Rule 34(1)(c) of the Rules of Procedure and Evidence of the International Criminal Court** — namely, **familial**, **professional**, and **hierarchical** ties, **each of which independently constitutes sufficient cause for disqualification and whose coexistence reinforces the legitimacy and urgency of our request** — was active and publicly known while the Prosecutor conducted sensitive and high-level procedural acts, including decisions regarding admissibility, prosecutorial discretion, investigative direction, public pronouncements, and **strategic delays framed under the guise of complementarity**. All of these actions were adopted under the shadow of a conflict that meets the objective standard of compromised impartiality.<sup>4</sup>
7. The ethical breach is not contingent on whether he continues in his role. It occurred while he *was* acting. Any effort to evade judicial scrutiny by vacating the position amounts to a form of ***ethical corruption***: the exploitation of procedural gaps to obstruct institutional accountability.

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<sup>3</sup> See ICC-02/18-110-Anx, “*Judicial Integrity in Peril – Request for the Appeals Chamber to Conduct an Ex Officio Review of the Prosecutor’s Conflict of Interest in the Venezuela I Situation*,” submitted by Robert Carmona-Borjas and Arcadia Foundation on 8 April 2025. This filing formally requested the Appeals Chamber to initiate an ex officio review in response to the Prosecutor’s documented conflict of interest in the Venezuela I Situation. Available at: <https://www.icc-cpi.int/sites/default/files/RelatedRecords/0902ebd180b3805a.pdf>

<sup>4</sup> See **Rule 34(1)(c) of the Rules of Procedure and Evidence of the International Criminal Court**, which provides that “[t]he Prosecutor or a Deputy Prosecutor shall be disqualified from a case if... he or she has a personal interest in the case, including a spousal, parental or other close family, personal or professional relationship, or a subordinate relationship, with any of the parties.” The invocation of familial, professional, and hierarchical ties in the present matter thus corresponds directly to the disqualification grounds set out under this provision. Available at: <https://www.icc-cpi.int/sites/default/files/Publications/Rules-of-Procedure-and-Evidence.pdf>

8. The Chamber is therefore not reviewing potential misconduct — it is called to determine whether the ICC has already been used, **or unwittingly manipulated by the Prosecutor, to shield an active conflict of interest behind the cloak of formal legality.**

### III. THE DANGERS OF INSTITUTIONAL COMPLICITY BY OMISSION

9. If the Chamber declines to rule on the basis that the Prosecutor has temporarily stepped aside or if, in a possible new strategic maneuver, he decides to permanently resign from office, **it will abdicate its central role as guarantor of the Court's moral and institutional integrity** — a duty rendered even more imperative by the Chamber's own decision of 10 February 2025. In that ruling, the Chamber concluded that victims lack standing to raise a disqualification request under Article 42(8) of the Statute until a "case" has been formally initiated<sup>5</sup>. This interpretation, though binding, effectively closes all procedural avenues available to the victims to challenge a conflict of interest at the investigation stage — even when the conflict affects the very actor responsible for triggering a case. If a conflict arises before a case is opened, and the only person authorized to move the proceedings forward is the Prosecutor himself, and if that Prosecutor is compromised, then the system is left defenseless **unless this Chamber exercises its own authority.** Put plainly, **the system becomes captured by the very official who has violated its ethical foundations, with no internal mechanism of correction available** — **UNLESS THE APPEALS CHAMBER ACTS EX OFFICIO**. That is precisely why the Chamber cannot, under any circumstances, renounce the responsibility it alone is now in a position to discharge.
10. Such silence would signal to the world that judicial ethics at the ICC are optional and may be circumvented by self-removal. This would amount to the normalization of evasion — a precedent whereby **A HIGH OFFICIAL MAY ENGINEER HIS OWN IMPUNITY BY TAKING A LEAVE OF ABSENCE, RESIGNING, OR RECUSING HIMSELF AFTER COMPROMISING THE IMPARTIALITY OF PROCEEDINGS.**
11. The risk is not theoretical. It is real, grave, and institutional. The failure to address this breach would represent not only a dereliction of duty but a *structural breach of the Rome Statute itself*, notably Article 21(3), which obliges the Court to apply and interpret all law in a manner consistent with internationally recognized human rights, including the right to a fair and impartial process.<sup>6</sup>

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<sup>5</sup> See Appeals Chamber, *Decision on the "Request for Recusal of the Prosecutor of the International Criminal Court in the Case of Venezuela I Due to Conflict of Interest"*, 10 February 2025, ICC-02/18-109, paras. 60–68. In that decision, the Chamber held that pursuant to **Article 42(8) of the Rome Statute**, only "the person being investigated or prosecuted" may request the disqualification of the Prosecutor, and that such a request may only be made in the context of a formally initiated "case". This restrictive interpretation, while binding, results in a legal vacuum at the investigation stage, leaving the system structurally incapable of addressing conflicts of interest unless the Chamber intervenes ex officio under its inherent powers.

Available at: <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180ab003d.pdf>

<sup>6</sup> See **Article 21(3) of the Rome Statute of the International Criminal Court**, which provides: "The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights [...]". This provision mandates that all legal interpretations by the Court must conform to fundamental principles of fairness, including the right to an impartial tribunal as affirmed in international human rights law. Available at: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

## IV. THE TEMPORARY WITHDRAWAL DOES NOT EXTINGUISH THE DUTY TO ADJUDICATE THE CONFLICT

12. The Prosecutor's withdrawal does not and cannot retroactively erase the judicial and ethical question pending before the Chamber. The conduct has occurred; the conflict was operative; and the institutional damage to the Court's impartiality, if unaddressed, persists.
13. The integrity of international justice requires that judicial bodies not avoid adjudication by way of procedural avoidance. If the Chamber declines to rule on the merits due to the Prosecutor's temporary withdrawal, it sets a dangerous precedent: **that resignation or recusal can shield acts already committed from institutional review.**
14. Such an approach contradicts established international standards, including the jurisprudence of the **European Court of Human Rights** (*Piersack v. Belgium* and *Antonyan v. Armenia*), which underscore the proactive and *ex officio* duties of judicial bodies to protect the perception of impartiality even when the party in question is no longer functionally active.<sup>7</sup>
15. The Chamber's role is not to anticipate the future but to adjudicate past conduct and institutional harm. Even if the Prosecutor were never to return, the questions already raised would remain unanswered. And unanswered, they would fester, weakening the Court from within.
16. There is a difference between procedural closure and ethical closure. The latter cannot be achieved unless the Chamber renders a public and reasoned decision on whether the Prosecutor's conduct constituted a breach of the Rome Statute's impartiality guarantees.

## V. THE APPEALS CHAMBER MUST ACT TO PRESERVE THE RULE OF LAW WITHIN THE COURT ITSELF

17. The Appeals Chamber is not merely the final interpreter of the Statute — **it is the custodian of the Court's legitimacy.** It must act when the integrity of the Court is under threat not only from external attacks, but from internal corrosion.
18. The matter before the Chamber transcends the rights of any one official. It touches the foundational principle that no one may administer justice while simultaneously entangled with a party to the case.

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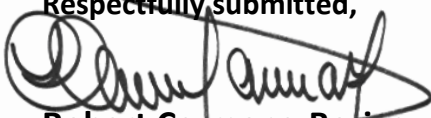
<sup>7</sup> See *European Court of Human Rights, Piersack v. Belgium*, Judgment of 1 October 1982, Series A no. 53, paras. 29–30, and *Suren Antonyan v. Armenia*, Judgment of 22 May 2025, Application no. 76348/13, paras. 67–69. In both decisions, the Court held that impartiality must be preserved not only in fact but in appearance, and that judicial bodies bear an *ex officio* obligation to protect the perception of impartiality — even in the absence of a formal request and even when the official in question is no longer functionally active. Available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-57557%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57557%22]}) (*Piersack v. Belgium*) and [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-240206%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-240206%22]}) (*Suren Antonyan v. Armenia*)

19. Let it not be said that the ICC, when confronted with incontrovertible evidence of ethical misconduct at the highest level, remained silent in the name of procedural convenience.

## **VI. CONCLUSION AND PRAYER FOR RELIEF**

20. In light of the foregoing, the undersigned respectfully request that the Appeals Chamber proceed with its deliberation and render a reasoned ruling on the merits of the request for ex officio review, irrespective of the Prosecutor's current administrative status or any subsequent procedural developments.
21. The Chamber must clarify, for the record and for the future of international criminal justice, that the existence of a conflict of interest — once documented and substantiated — requires a judicial determination, regardless of procedural maneuvers or self-initiated withdrawals by the affected official.
22. The legitimacy of the Court cannot be protected by silence. The ethical corruption of judicial independence already occurred. The duty to preserve institutional integrity requires public, reasoned, and principled adjudication.

Respectfully submitted,



**Robert Carmona-Borjas**

On behalf of **Arcadia Foundation**

and in my capacity as a recognized victim

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

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