

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/18
Date: 22 November 2024

THE APPEALS CHAMBER

Before: Judge Gocha Lordkipanidze, Presiding
Judge Tomoko Akane
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Erdenebalsuren Damdin

SITUATION IN THE BOLIVARIAN REPUBLIC OF VENEZUELA I

Public Document

**Views and concerns of Victims
on the Request for recusal of the Prosecutor**

Source: Office of Public Counsel for Victims

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

The Office of the Prosecutor
Mr Karim A. A. Khan

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda
Mr Enrique Carnero Rojo
Ms Ana Peña

**The Office of Public Counsel for the
Defence**

States' Representatives

Competent authorities of the Bolivarian
Republic of Venezuela

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Arcadia Foundation

I. INTRODUCTION

1. The Principal Counsel of the Office of Public Counsel for Victims (the “OPCV” or the “Office”) files the views and concerns of the Victims she represents and of those who have communicated with the Office in the Situation in the Bolivarian Republic of Venezuela I (the “Situation in Venezuela” or the “Situation”) in relation to the request for recusal of the Prosecutor from all proceedings related to the Situation (the “Request”).¹

2. The issues raised in the Request directly and fundamentally affect the Victims’ interests. Victims have been waiting for justice for a long time and have a right to expeditious and fair proceedings. It is, therefore, imperative to ensure that any measure taken, including in response to any finding by the Appeals Chamber regarding the conflict of interest alleged in the Request, do not result in halting or delaying the Prosecution’s investigations into the crimes committed in the Situation in Venezuela. Such outcomes would undermine the Victims’ rights to truth, justice, and reparations.

3. This concern is further compounded by the lack of visible progress in the investigation and the Prosecutor’s continued emphasis on pursuing a “*positive complementarity*” track, despite the Appeals Chamber’s unequivocal determination that Venezuela is currently unwilling to undertake genuine investigations and/or prosecutions.

¹ See the “Registry Transmission of a “Request for Recusal of the Prosecutor of the International Criminal Court in the Case of Venezuela I Due to Conflict of Interest”, No. [ICC-02/18-92](#), 12 November 2024 (the “Request”), with [Annex I](#), [Annex II](#), [Annex III](#) and [Annex IV](#).

II. PROCEDURAL BACKGROUND

4. On 27 September 2018, a group of States Parties to the Rome Statute (the “Statute”) referred the Situation in Venezuela to the Office of the Prosecutor, under article 14(1) of the Rome Statute.²

5. On 16 December 2021, pursuant to article 18(1) of the Statute, the Prosecutor notified all States Parties, including Venezuela, of his decision to initiate an investigation in the Situation.³

6. On 21 April 2022, the Prosecutor notified Pre-Trial Chamber I (the “Pre-Trial Chamber” or the “Chamber”) that Venezuela had requested a deferral of the investigation under article 18(2) of the Statute.⁴

7. On 1 November 2022, the Prosecutor requested that the Pre-Trial Chamber authorise the resumption of the investigation into the Situation in Venezuela, pursuant to article 18(2) of the Statute (the “Resumption Request”).⁵

8. On 18 November 2022, the Pre-Trial Chamber issued a decision inviting, *inter alia*, Victims and their legal representatives to present their views and concerns on the Resumption Request; and instructing the Victims Participation and Reparations Section of the Registry (the “VPRS”) to collect said views and concerns and to transmit them to the Chamber with a report by 21 March 2023.⁶

² See the “Annex I to the Decision assigning the situation in the Bolivarian Republic of Venezuela to Pre-Trial Chamber I”, No. [ICC-02/18-1-AnxI](#), 28 September 2018.

³ See the “Notification on the status of article 18 notifications in the Situation in the Bolivarian Republic of Venezuela I”, No. [ICC-02/18-16](#), 17 January 2022, paras. 1-2.

⁴ See the “Notification of the Bolivarian Republic of Venezuela’s deferral request under article 18(2) of the Rome Statute”, with confidential and public redacted versions of [annex A](#) and [annex B](#), No. [ICC-02/18-17](#), 21 April 2022.

⁵ See the “Prosecution request to resume the investigation into the situation in the Bolivarian Republic of Venezuela I pursuant to article 18(2)”, No. [ICC-02/18-18](#), 1 November 2022 (the “Resumption Request”).

⁶ See the “Order inviting observations and views and concerns of victims” (Pre-Trial Chamber I), No. [ICC-02/18-21](#), 18 November 2022, paras. 10-11.

9. On 20 April 2023, after having been granted an extension of time, the VPRS submitted its final consolidated report on the views and concerns of Victims,⁷ including those transmitted by the OPCV.⁸
10. On 27 June 2023, the Pre-Trial Chamber granted the Resumption Request (the “Article 18(2) Decision”).⁹
11. On 2 July 2023, Venezuela filed a notice of appeal against the Article 18(2) Decision.¹⁰
12. On 21 July 2023, the Appeals Chamber authorised the OPCV to submit written observations regarding the general interests of Victims in relation to the appeal of Venezuela against the Article 18(2) Decision.¹¹
13. On 13 September 2023, the OPCV submitted written observations on behalf of Victims, following Venezuela’s submission of its appeal brief.¹²

⁷ See the “Corrigendum of “Public Redacted Version of ‘Final Consolidated Registry Report on Article 18(2) Victims’ Views and Concerns Pursuant to Pre-Trial Chamber’s Order ICC-02/18-21’, 20 April 2023”, 20 April 2023, ICC-02/18-40-Red”, Nos. [ICC-02/18-40-Red-Corr](#) and [ICC-02/18-40-AnxI-Red](#), 20 April 2023.

⁸ *Idem*, para. 2.

⁹ See the “Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute”, No. [ICC-02/18-45](#), 27 June 2023 (the “Article 18(2) Decision”).

¹⁰ See the “The Bolivarian Republic of Venezuela’s Notice of Appeal against the Pre-Trial Chamber I’s Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute’ (ICC-02/18-45) and request for suspensive effect”, No. ICC-02/18-46-Conf-Exp-AnxII, 3 July 2023 (a public redacted version was registered on 12 July 2023, No. [ICC-02/18-46-AnxII-Red OA](#)).

¹¹ See the “Decision on the OPCV’s ‘Request to appear before the Appeals Chamber pursuant to regulation 81(4) of the Regulations of the Court’” (Appeals Chamber), No. [ICC-02/18-54 OA](#), 21 July 2023, para. 7. See also See the “Request to appear before the Appeals Chamber pursuant to regulation 81(4) of the Regulations of the Court”, No. [ICC-02/18-47 OA](#), 7 July 2023.

¹² See the “Observations on behalf of victims on the Venezuela Government Appeal against the Decision authorising the resumption of the investigation”, No. [ICC-02/18-61 OA](#), 13 September 2023.

14. On 1 March 2024, after holding hearings to receive oral submissions from the participants,¹³ the Appeals Chamber rejected the appeal of Venezuela against the Article 18(2) Decision (the “Article 18(2) Judgment”).¹⁴
15. On 24 April 2024, the Prosecutor resumed his investigation in the Situation in Venezuela.¹⁵
16. On 12 November 2024, Arcadia Foundation filed the Request.¹⁶
17. On 15 November 2024, the Appeals Chamber set the deadline of 22 November 2024 for the Prosecutor to file written submissions on the Request.¹⁷
18. On 20 November 2024, upon request by the Prosecutor, the Appeals Chamber extended the time limit for the Prosecutor to file written submission on the Request until 29 November 2024.¹⁸

¹³ See the transcripts of the hearings held on 7 and 8 November 2023, Nos. [ICC-02/18-T-001-CONF-ENG CT](#) and [ICC-02/18-T-002-ENG CT](#).

¹⁴ See the “Judgment on the appeal of the Bolivarian Republic of Venezuela against Pre-Trial Chamber I’s ‘Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute’ (Appeals Chamber), No. [ICC-02/18-89 OA](#), 1 March 2024 (the “Article 18(2) Judgment”).

¹⁵ See the [ICC Prosecutor’s statement](#), 24 April 2024 : “*Simultaneously, and without delay, we will continue to pursue our independent investigations in the Venezuela situation, notably following the confirmation by the Appeals Chamber, on 1 March 2024, of the Pre-Trial Chamber decision authorising the resumption of the OTP investigation*”.

¹⁶ See the Request, *supra* note 1.

¹⁷ See the “Order setting a deadline for the Prosecutor to present written submissions on the ‘Request for Recusal of the Prosecutor of the International Criminal Court in the Case of Venezuela I Due to Conflict of Interest’” (Appeals Chamber), No. [ICC-02/18-94](#), 15 November 2024, para. 7.

¹⁸ See the “Decision on the Prosecutor’s urgent request for extension of time to file submissions”, No. [ICC-02/18-97](#), 20 November 2024.

III. VIEWS AND CONCERNS OF VICTIMS ON THE REQUEST

1. The issues arising from the Request directly affect the interests of the Victims

19. Since 2019, the Principal Counsel has been providing “*support and assistance*” directly to Victims of the Situation and to their legal representatives.¹⁹ She is also in contact with, and benefits from constant interaction, with all the major NGOs supporting Victims, in Venezuela and abroad. In addition, she closely cooperates with several Venezuelan lawyers representing a substantial number of Victims, as well as Venezuelan NGOs. Given the Office’s binding obligation to assist Victims in accordance with its role and mandate pursuant to regulation 81(4) of the Regulations of the Court (the “Regulations”), the Principal Counsel considers it appropriate to address the Appeals Chamber at this stage.

20. Following the hearings before the Appeals Chamber on the appeal of Venezuela against the Article 18(2) Decision,²⁰ concerns about a potential conflict of interest of the Prosecutor have become a significant source of anxiety for the Victims. These concerns have been fuelled by a number of press articles,²¹ reposted on social media. Since the filing of the Request, the Principal Counsel has received a number of communications from Victims expressing their views on the matter.

¹⁹ In this regard, regulation 81(4)(a) of the Regulations of the Court provides that “[t]he tasks of the Office of Public Counsel for victims shall include: (a) Providing general support and assistance to the legal representative of victims and to victims, including legal research and advice [...]”, with no temporal limitation.

²⁰ See *supra* note 13.

²¹ See, e.g., Washington Post, “[Maduro likely lost Venezuela’s election but refuses to leave. What now?](#)”, 6 September 2024; VOZ, “[ICC prosecutor Karim Khan’s sister-in-law to represent Maduro in court](#)”, 7 September 2024; Voz de América, “[Fiscal Karim Khan y su cuñada en aceras distintas en la CPI: ¿Cómo afecta la investigación sobre Venezuela?](#)”, 16 September 2024

21. The Request, filed under article 42(8) of the Statute,²² is the first-ever application for the disqualification of a Prosecutor of the Court in the context of a *situation*,²³ which has been brought publicly,²⁴ and before any request for an arrest warrant or a summons to appear has been filed under article 58 of the Statute.²⁵ As such, there is no precedent to guide the handling of this matter.

22. Among the issues raised in the Request, several directly and fundamentally impact the interests of the Victims. The Request points to a potential conflict of interest involving the Prosecutor, which could indeed profoundly undermine the integrity of the proceedings and erode the trust of the Victims in the International Criminal Court (the “ICC”) system. Furthermore, the measures sought in the Request, including that *“the Presidency of the ICC should immediately recuse Prosecutor Karim Khan from all proceedings related to the Venezuela I case [sic]”*,²⁶ and that *“a new, independent Prosecutor should be appointed to handle the case [sic]”*,²⁷ risk delaying or even halting the Prosecution’s investigative activities into the Situation in Venezuela. Such outcomes would jeopardise the Victims’ rights to truth, justice and reparations.

23. The Appeals Chamber has consistently recognised that issues such as whether proceedings in a given case should be stayed²⁸ affect the personal interests of the

²² See the “Order setting a deadline for the Prosecutor to present written submissions on the ‘Request for Recusal of the Prosecutor of the International Criminal Court in the Case of Venezuela I Due to Conflict of Interest’”, *supra* note 17, p. 3.

²³ For requests for disqualification of the Prosecutor filed in the context of specific cases, see the “Decision on the Request for Disqualification of the Prosecutor” (Appeals Chamber), No. [ICC-01/11-01/11-175 OA3](#), 12 June 2012; and the “Decision on the requests for the Disqualification of the Prosecutor, the Deputy Prosecutor and the entire OTP staff” (Appeals Chamber), No. [ICC-01/05-01/13-648-Red3 OA](#), 22 August 2014.

²⁴ For *ex parte* requests for disqualification of the Prosecutor filed during the investigation of a case, see the “Public Redacted Version of the Decision on the Request for Disqualification of the Prosecutor in the Investigation against Mr David Nyekorach-Matsanga” (Appeals Chamber), No. [ICC-01/09-96-Red OA2](#), 6 September 2012.

²⁵ For requests for disqualification of the Prosecutor filed after an application for summonses to appear has been filed, see the “Decision on Application for Leave to Participate under Articles 58, 42(5), (7)-(8)(a) of the Rome Statute and Rule 34(1)(d) and (2) of the Rules of Procedure and Evidence” (Pre-Trial Chamber II), No. [ICC-01/09-47](#), 21 February 2011.

²⁶ See the Request, *supra* note 1, [Annex II](#), p. 4, section V.1. See also *idem*, [Annex IV](#), p. 2, point 5.1.

²⁷ See the Request, *supra* note 1, [Annex II](#), p. 4, section V.2. See also *idem*, [Annex IV](#), p. 2, point 5.2.

²⁸ See the “Decision on Victim Participation in the Appeal on the Stay of Proceedings due to an Abuse of Process” (Appeals Chamber), No. [ICC-01/04-01/06-2556 OA18](#), 18 August 2010, para. 9. See also the

Victims. In fact, depending on the resolution of said issues, Victims may be denied the opportunity to uncover the truth, present their views and concerns throughout the proceedings, and eventually ensure that those responsible for the crimes they suffered are held accountable, and claim reparations.²⁹

24. *A fortiori*, the Victims' personal interests are impacted by decisions regarding the start or continuation of an investigation. In fact, said rulings concern the first step towards the perpetrators' accountability before the Court in respect of the crimes suffered by the Victims. The Victims' personal interest in seeing that the Court is seized with a situation, and that an investigation proceeds, has been regarded as "*the most essential of all victims' interests*".³⁰

25. In this regard, Pre-Trial Chambers in the situations in Afghanistan, the Philippines and Venezuela have observed that the Victims' personal interests under article 68(3) of the Statute may in fact be affected by the outcome of the decisions on the Prosecutor's requests to resume an investigation.³¹ In particular, Pre-Trial Chamber II held in the Situation in Afghanistan that not only Victims' interests may

"Decision on the Participation of Victims in the Appeal" (Appeals Chamber), No. [ICC-01/04-01/06-1453 OA13](#), 6 August 2008, para. 9.

²⁹ See the "Decision on the victims' request to participate in the appeal proceedings" (Appeals Chamber), No. [ICC-01/09-02/11-1015 OA5](#), 24 April 2015. See also the "Decision on the Participation of Victims in the Appeal against the 'Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence' of Trial Chamber III" (Appeals Chamber), No. [ICC-01/05-01/08-857 OA4](#), 18 August 2010, para. 10.

³⁰ See HUMAN RIGHTS WATCH, [Commentary to the 2nd Preparatory Commission Meeting on the International Criminal Court](#), July 1999, p. 33. See also ECtHR, *Kaya v Turkey*, App. No. 22535/93, [Judgment](#), 28 March 2000, paras. 121-126; and IACtHR, *Mapiripán Massacre v Colombia*, [Merits, Reparations and Costs](#), 15 September 2005, paras. 116 and 123.

³¹ See the "Order inviting observations and views and concerns of victims" (Pre-Trial Chamber I), *supra* note 6, para. 10 and decisions referred to therein. See also the "Order inviting observations and victims' views and concerns" (Pre-Trial Chamber I), No. [ICC-01/21-47](#), 14 July 2022, para. 14 and footnote 14; the "Decision on submissions received and order to the Registry regarding the filing of documents in the proceedings pursuant to articles 18(2) and 68(3) of the Statute" (Pre-Trial Chamber II), No. [ICC-02/17-171](#), 8 November 2021, para. 12 and footnote 15; the "Order on Information and Outreach for the Victims of the Situation" (Pre-Trial Chamber III), No. [ICC-01/19-28](#), 20 January 2020, para. 7; and the "Decision on Victims' Participation in Proceedings Related to the Situation in the Republic of Kenya" (Pre-Trial Chamber II), No. [ICC-01/09-24](#), 4 November 2021, paras. 11-12.

be affected by said proceedings, but also that in such context, *“potential victims may legitimately have and develop concerns worth being brought to the Chamber’s attention”*.³²

26. Moreover, pursuant to its legal framework, the Court has a duty to exercise its jurisdiction over those responsible for international crimes when the complementary test is met. Said duty includes respecting the internationally recognised human rights of Victims during criminal proceedings, where the *“outcome of such proceedings lead to the identification, prosecution and punishment of those who have victimised them”*.³³ In turn, the rights of Victims to both participate in the proceedings and to claim reparations are *entirely dependent* on the Prosecutor initiating and concluding an investigation,³⁴ since they have no right to trigger the commencement of investigations before the Court.³⁵ As recognised by Judge Mindua in his partly dissenting opinion:

“[t]he investigation is a very important phase whereby the Prosecutor aims to establish truth and justice through the selection of charges and perpetrators for trial. Victims’ participation is, here, a procedural right attaching to fundamental rights, such as the right to life. But also, victims have a right to substantive justice, which encompasses the outcomes of judicial processes. For victims, substantive justice involves redressing the harm they have suffered and the causes of victimisation, and it corresponds with an effective remedy in human rights law, which has developed three rights for victims of gross violations: truth, justice, and reparations”.³⁶

27. In the present circumstances, the Principal Counsel submits that any subsequent decision on the Request, the first of this nature ever brought before the Court, is of *“general importance and applicability”*,³⁷ goes to matters of impunity and

³² See the “Decision on submissions received and order to the Registry regarding the filing of documents in the proceedings pursuant to articles 18(2) and 68(3) of the Statute”, *supra* note 31, para. 12.

³³ See the “Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case” (Pre-Trial Chamber I), No. [ICC-01/04-01/07-474](#), 13 May 2008, para. 41.

³⁴ See the “Decision on the ‘Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute’” (Pre-Trial Chamber I), No. [ICC-RoC46\(3\)-01/18-37](#), 6 September 2018, para. 88.

³⁵ See the “Partially Dissenting Opinion of Judge Antione Kesia-Mbe Mindua” (Pre-Trial Chamber II), No. [ICC-02/17-62-Anx](#), 17 September 2019, para. 32.

³⁶ *Idem*, para. 37.

³⁷ See the “Decision on the role of the Office of Public Counsel for Victims and its request for access to documents”, (Trial Chamber I), No. [ICC-01/04-01/06-1211](#), 6 March 2008, para. 35.

accountability of interest to the Victims,³⁸ and as such, justifies the presentation of their views and concerns at this juncture. Victims of the crimes committed in the Situation in Venezuela, along with their families, have the right to obtain justice, to know the truth about the events they suffered from, and to be redressed without undue delay.³⁹

2. Views and concerns of Victims on the Request

28. Concerning the merits of the Request, while the Victims rightfully consider that any potential or perceived conflict of interest may undermine the integrity of the investigation, they are equally concerned that any measure taken to address such issues must not result in further delays or disruptions of the investigative process. In light of the apparent inactivity in the Situation in Venezuela, Victims fear that resolving the alleged conflict of interest could be used to justify a lack of urgency in advancing the investigation. Accordingly, should the involvement of a Deputy Prosecutor become necessary, it is critical to ensure that the Victims' right to expeditious and effective justice is respected and that a meaningful progress in the investigation is maintained without undue delay.

29. In this regard, the Principal Counsel recalls that the Prosecutor has recused himself pursuant to article 42(6) and (7) of the Statute from any case or investigation where there may be an appearance of lack of impartiality due to his prior participation

³⁸ See the "Separate opinion of Judge Sang-Hyun Song" appended to the "Decision of the Appeals Chamber on the Joint Application of Victims a/0001/06 to a/0003/06 and a/0105/06 concerning the 'Directions and Decision of the Appeals Chamber' of 2 February 2007" (Appeals Chamber), No. [ICC-01/04-01/06-925 OA8](#), 13 June 2007, para. 16: "*victims of serious crimes have a special interest that perpetrators responsible for their suffering be brought to justice, and this interest is protected by human rights norms*". See also the "Decision on victims' representation and participation" (Trial Chamber V), No. [ICC-01/09-01/11-460](#), 3 October 2012, para. 10; the "Decision on victims' representation and participation" (Trial Chamber V), No. [ICC-01/09-02/11-498](#), 3 October 2012, para. 9; the "Decision on common legal representation of victims for the purpose of trial" (Trial Chamber III), No. [ICC-01/05-01/08-1005](#), 10 November 2010, para. 9(a); the "Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008" (Appeals Chamber), No. [ICC-01/04-01/06-1432 OA9 OA10](#), 11 July 2008, para. 97; and the "Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case", *supra* note 33, paras. 31 and 34.

³⁹ See the Partially Dissenting Opinion of Judge Mindua, *supra* note 35, para. 47.

in the same proceedings as counsel.⁴⁰ As a result, responsibility for the oversight of investigations and cases in the Situation in Libya was subsequently assumed by one of his Deputy Prosecutors.⁴¹

30. The primary concern expressed by the Victims relates to the fact that, if granted, the Request could result in a halt imposed to the investigation of the crimes committed in the Situation until a new prosecutor is appointed.

31. This concern is further exacerbated by the lack of visible progress in the investigation, which creates a profound sense of discomfort for the Victims and reinforces their feeling of abandonment, with no tangible recourse to justice.

32. The Situation in Venezuela was referred to the Court on 27 September 2018.⁴² Despite the Prosecutor's decision to proceed with the investigation in December 2021,⁴³ the Pre-Trial Chamber's authorisation to resume the investigation in June 2023,⁴⁴ and the Appeals Chamber's subsequent judgment upholding said decision,⁴⁵ no formal case has yet been opened. This protracted period without concrete action and the opening of a case is troubling since "*an investigation should in general be initiated without delay and be conducted efficiently in order for it to be effective, since '[w]ith the lapse of time, memories of witnesses fade, witnesses may die or become untraceable, evidence deteriorates or*

⁴⁰ See the "[Statement of the ICC Prosecutor, Fatou Bensouda, on the transition process and related discussions with the Prosecutor Elect](#)", 19 March 2021: "Mr Khan has informed me that he will recuse himself from any case, where a conflict of interest may be perceived to arise from his former representation of suspects or accused persons".

⁴¹ See the "[Statement of ICC Prosecutor, Karim A.A. Khan QC, to the United Nations Security Council on the Situation in Libya, pursuant to UNSCR 1970 \(2011\)](#)", 24 November 2021, para. 12; and the "[Twenty-Second Report of the Prosecutor of the International Criminal Court to the United Nations Security Council Pursuant to Resolution 1970 \(2011\)](#)", 23 November 2021, para. 11.

⁴² See the "Annex I to the Decision assigning the situation in the Bolivarian Republic of Venezuela to Pre-Trial Chamber I", *supra* note 2.

⁴³ See the "Notification on the status of article 18 notifications in the Situation in the Bolivarian Republic of Venezuela I", *supra* note 3.

⁴⁴ See the Article 18(2) Decision, *supra* note 9.

⁴⁵ See the Article 18(2) Judgment, *supra* note 14.

ceases to exist, and thus the prospects that any effective investigation can be undertaken will increasingly diminish”.⁴⁶

33. 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.

34. Furthermore, the Victims have voiced serious concerns regarding the Prosecutor’s continued emphasis on pursuing a “*positive complementarity*” track,⁴⁷ despite the Appeals Chamber’s unequivocal determination that Venezuela is currently not undertaking genuine investigations or prosecutions.⁴⁸ While national proceedings are an important aspect of international justice, efforts to encourage such actions should not come at the expense of delaying concrete and decisive investigative steps at the ICC level. The Victims fear that prolonged reliance on complementarity in this context may defer justice and thus prolong their sense of abandonment.

35. The Victims’ sense of injustice is further aggravated by the current situation in Venezuela. In this regard, the Principal Counsel recalls that, after the elections of 28 July 2024, the Government of Venezuela has escalated its use of the most severe and violent methods of repression. Following the announcement of the election results, protests erupted in the country, prompting the authorities to initiate an unprecedented campaign of mass and indiscriminate detentions. According to figures reported by the

⁴⁶ See the “Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute”, *supra* note 34, para. 86 (footnote omitted).

⁴⁷ See, e.g., “[ICC Prosecutor Karim A.A. Khan KC concludes visit to Venezuela, opens in-country office in Caracas](#)”, 24 April 2024: “*inaugurate a new in-country office of the ICC Office of the Prosecutor (OTP) in Caracas, focused on complementarity activities and engagement with the national authorities*”. See also “[The Office of the Prosecutor Policy on Complementarity and Cooperation](#)”, April 2024, para. 55: “*the development of a cooperation and complementarity plan with the Government of Venezuela*”.

⁴⁸ See the Article 18(2) Judgment, *supra* note 14, paras. 248, 255, 258, 292, 309, and 329.

authorities themselves, these detentions numbered in the thousands, reaching levels comparable only to those seen during the protests of 2014, 2017 and 2019.⁴⁹

36. Many of the detentions in the post-election period were carried out within the framework of the *Operation Tun Tun*, a campaign designed to intimidate and instil fear among the population. Security forces were deployed to the homes of persons who had participated in the protests or who had expressed critical views against the Government, in order to detain them. The houses of persons perceived as opponents were marked with an 'X', and a mobile app (VenApp) was encouraged for supporters of the Government to report and denounce alleged opponents.⁵⁰ During the first days of post-election protests, there were at least 25 deaths, including of two children, all but one of whom were killed by gunfire.⁵¹

37. The majority of those detained are not politicians or persons with a known public profile; rather, they are ordinary citizens who had expressed dissatisfaction with, or opposition to, the Government and the announced election results.⁵² Many come from working-class neighbourhoods, with a significant proportion being young men. The persons currently detained include (i) members of the opposition and political groups; (ii) human rights defenders and activists; (iii) journalists and media workers; (iv) civil servants; (v) indigenous persons; and (vi) members of the academic community and students. The high number of detentions of children and adolescents (including with disabilities), which represents 10 per cent of the total number of detentions documented by several NGOs, is an alarming figure, given their vulnerability.⁵³

38. At the time of the submission of these views and concerns, according to *Foro Penal*, the number of individuals detained is 1,976 (including 69 adolescents, 163

⁴⁹ See the "Detailed findings of the independent international factfinding mission on the Bolivarian Republic of Venezuela", [UN Doc. A/HRC/57/CRP.5](#), 14 October 2024, para. 576.

⁵⁰ *Idem*, pp. 1-2, and para. 662.

⁵¹ *Idem*, p. 2, and paras. 519-575.

⁵² *Idem*, para. 591.

⁵³ See *Justicia, Encuentro y Perdón* (JEP), "[Aumenta la angustia por menores de edad bajo arresto después de 28J](#)", 31 October 2024.

military and 246 women).⁵⁴ All of them are exposed to torture, inhumane treatment and sexual and gender-based crimes.⁵⁵

39. The Prosecutor has not taken a public stance on the recent crimes committed in the aftermath of the 2024 elections in Venezuela.⁵⁶ This lack of public comment, coupled with his apparent inaction, raises concerns among the Victims and their families with regard to the Prosecutor's commitment to address the ongoing serious crimes and to ensure that the investigation remains responsive to new developments.

40. In these circumstances, it is imperative that the investigation of the Situation in Venezuela proceeds as expeditiously as possible. Therefore, the Victims consider that, should the Appeals Chamber grant the Request, adequate measures must be implemented without undue delay to ensure that the outcome does not cause any prejudice to their personal interests.

Respectfully submitted,



Paolina Massidda
Principal Counsel

Dated this 22nd day of November 2024

At The Hague, The Netherlands

⁵⁴ Data available on the [Foro Penal website](#), updated regularly.

⁵⁵ For an overview of the current situation, see *Foro Penal*, "[Reporte Especial sobre la represión política en Venezuela: Julio, Agosto y Septiembre 2024. Situación pre y postelectoral](#)", 5 November 2024.

⁵⁶ See, e.g., *Voz de América*, "[Fiscal de la CPI 'monitorea' las tensiones en Venezuela](#)", 12 August 2024.