

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No. **ICC-02/18**

Date: **3 April 2023**

**PRE-TRIAL CHAMBER I**

**Before:** Judge Péter Kovács, Presiding Judge  
Judge Reine Adélaïde Sophie Alapini-Gansou  
Judge María del Socorro Flores Liera

**SITUATION IN THE BOLIVARIAN REPUBLIC OF VENEZUELA I**

**Public**

**Decision on Venezuela's request for leave to reply**

Decision 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

Ms Nazhat Shameem Khan

Ms Alice Zago

**Counsel for the Defence**

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for Victims**

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

**States Representative**

**Amicus Curiae**

Competent authorities of the Bolivarian  
Republic of Venezuela

**REGISTRY**

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**Registrar**

**Counsel Support Section**

Mr Peter Lewis

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section Other**

**PRE-TRIAL CHAMBER I** (the ‘Chamber’) of the International Criminal Court (the ‘Court’) issues this decision on the request of the Bolivarian Republic of Venezuela (‘Venezuela’) for leave to reply (the ‘Request’),<sup>1</sup> transmitted by the Registry on 28 March 2023.<sup>2</sup>

## I. Procedural history and submissions

1. On 3 November 2021, the Prosecution opened the investigation into the situation in the Bolivarian Republic of Venezuela (the ‘Investigation’).<sup>3</sup>
2. On 1 November 2022, after having received a request from Venezuela to defer the Investigation, and having informed the Chamber accordingly,<sup>4</sup> the Prosecution requested the Chamber to authorise the resumption of its investigation into the Situation pursuant to article 18(2) of the Statute (the ‘Request to Resume Investigation’).<sup>5</sup>
3. On 18 November 2022, the Chamber issued an order on the conduct of proceedings, *inter alia*, inviting Venezuela to submit observations on the Request to Resume Investigation, and permitting the Prosecution to respond to these observations.<sup>6</sup>
4. On 27 February 2023, the Chamber issued a further decision, *inter alia*, inviting Venezuela to submit any request for leave to reply by 28 March 2023.<sup>7</sup>

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<sup>1</sup> Annex II to Transmission of ‘Request for leave to reply to the Prosecution’s “Observations of the Government of the Bolivarian Republic of Venezuela’s to the Prosecution request to resume the investigation’ (ICC-02/18-31-Conf-Exp)”, 28 March 2023, ICC-02/18-34-Conf-Exp-AnxII.

<sup>2</sup> Transmission of ‘Request for leave to reply to the Prosecution’s “Observations of the Government of the Bolivarian Republic of Venezuela’s to the Prosecution request to resume the investigation’ (ICC-02/18-31-Conf-Exp)”, ICC-02/18-34-Conf-Exp.

<sup>3</sup> ICC Press Release, ICC Prosecutor, Mr Karim A.A. Khan QC, opens an investigation into the Situation in Venezuela and concludes Memorandum of Understanding with the Government, 5 November 2021.

<sup>4</sup> Notification of the Bolivarian Republic of Venezuela’s deferral request under article 18(2) of the Rome Statute, 20 April 2022, ICC-02/18-17 (with confidential and public redacted versions of annexes A and B), para. 1.

<sup>5</sup> Prosecution request to resume the investigation into the situation in the Bolivarian Republic of Venezuela I pursuant to article 18(2), ICC-02/18-18 (with confidential *ex parte* annexes A and B, available to the Prosecution and the Bolivarian Republic of Venezuela only; and public annex C).

<sup>6</sup> Order inviting observations and views and concerns of victims, ICC-02/18-21.

<sup>7</sup> Decision on Venezuela’s request for an extension of time and other procedural matters, ICC-02/18-29, para. 12.

5. On 1 March 2023, the Registry transmitted the observations submitted by Venezuela ('Venezuela's Observations'),<sup>8</sup> to which the Prosecution responded on 21 March 2023 (the 'Response').<sup>9</sup>
6. On 28 March 2023, the Registry transmitted the request for leave to reply to the Response submitted by Venezuela (the 'Request').<sup>10</sup>
7. Venezuela submits that the Prosecution's response 'raised a new issue that the State could not reasonably have anticipated'.<sup>11</sup> It seeks 'leave to respond to various elements' in the Prosecution's response and Venezuela refers as 'examples' to: (i) the Prosecution's submission that '[the Prosecution's] assessment under Article 53(1) [of the Statute] equates to the Pre-Trial Chamber's assessment under Article 15' of the Statute; and (ii) the Prosecution's submissions concerning the way in which 'the alleged discriminatory intent would be reflected in domestic proceedings'.<sup>12</sup> Venezuela requests authorisation to file its reply by 28 April 2023.<sup>13</sup>
8. On 31 March 2023, the Prosecution filed its response to the Request, submitting that the issues identified by Venezuela 'are not new' and 'could have been reasonably anticipated' but 'defer[ing] to the Chamber's exercise of discretion to grant the Request [...] in the manner the Chamber deems most appropriate so that all relevant and necessary issues are properly canvassed before it decides upon the [Request to Resume Investigation]'.<sup>14</sup>

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<sup>8</sup> Observations of the Government of the Bolivarian Republic of Venezuela to the Prosecution request to resume the investigation (ICC-01/18-18), 28 February 2023, ICC-02/18-30-Conf-Exp-AnxII (a public redacted version was filed on 28 March 2023, ICC-02/18-30-AnxII-Red). While Venezuela submitted its observations to the Registry on 28 February 2023, due to technical issues with the filing of the documents, the Chamber authorised the Registry to transmit the observations on 1 March 2023 (email from the Chamber, 1 March 2023, at 10:02). *See also* Transmission of the observations communicated by the Authorities of the Bolivarian Republic of Venezuela, pursuant to Pre-Trial Chamber I's Order ICC-02/18-21 of 18 November 2022, ICC-02/18-30 (with confidential *ex parte* annexes I to III, only available to the Office of the Prosecutor and the Authorities of the Bolivarian Republic of Venezuela).

<sup>9</sup> Prosecution's Response to the 'Observations of the Government of the Bolivarian Republic of Venezuela's to the Prosecution request to resume the investigation' (ICC-02/18-30-Conf-Exp-AnxII), ICC-02/18-31-Conf-Exp (a public redacted version was filed on 30 March 2023, ICC-02/18-31-Red).

<sup>10</sup> Transmission of 'Request for leave to reply to the Prosecution's "Observations of the Government of the Bolivarian Republic of Venezuela's to the Prosecution request to resume the investigation' (ICC-02/18-31-Conf-Exp)", ICC-02/18-34-Conf-Exp.

<sup>11</sup> Request, para. 10.

<sup>12</sup> Request, paras 12-13.

<sup>13</sup> Request, para. 8.

<sup>14</sup> Prosecution's Response to the Government of the Bolivarian Republic of Venezuela's Request for Leave to Reply, ICC-02/18-36-Conf-Exp, paras 4-5.

## II. Analysis

9. Regulation 24(5) of the Regulations of the Court (the ‘Regulations’) provides that a participant ‘may only reply to a response with the leave of the Chamber’ and that ‘a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated’.

10. Venezuela only refers to the two issues set out above as ‘examples’ of the ‘various elements’ in relation to which it seeks leave to reply. Given the requirements set out in regulation 24(5) of the Regulations, the Chamber can only assess the propriety of granting leave to reply in relation to the two issues specifically identified in the Request.

11. The first issue identified by Venezuela warrants a reply. Indeed, the Prosecution’s argument regarding the comparison between the assessment by the Prosecution under article 53(1) of the Statute and the assessment by a pre-trial chamber under article 15 of the Statute could not have been anticipated by Venezuela.

12. However, the second issue identified by Venezuela concerning the Prosecution’s submissions as to the possible ways in which ‘the alleged discriminatory intent would be reflected in domestic proceedings’ could have been reasonably anticipated in light of the arguments raised in the Request to Resume Investigation<sup>15</sup> and therefore does not warrant a reply.

13. Accordingly, the Chamber partially grants the Request, namely with respect to the discrete issue identified at paragraph 11 above. Considering the limited scope of the reply, and in order to ensure the expeditious conduct of the proceedings, the Chamber invites Venezuela to file a reply, not exceeding 10 pages, by 20 April 2023.

14. Finally, the Chamber hereby instructs Venezuela and the Prosecution to file public redacted versions of the Request (ICC-02/18-34-Conf-Exp-AnxII) and the response to the Request (ICC-02/18-36-Conf-Exp) by 17 April 2023.

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<sup>15</sup> Request to Resume Investigation, paras 110-111.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**PARTIALLY GRANTS** Venezuela's request for leave to reply to the Response within the parameters set out in this decision;

**INVITES** Venezuela to file its reply not exceeding 10 pages by 20 April 2023; and

**INSTRUCTS** Venezuela and the Prosecution to file public redacted versions of the Request (ICC-02/18-34-Conf-Exp-AnxII) and the response to the Request (ICC-02/18-36-Conf-Exp) by 17 April 2023.

Done in English. A French translation will follow. The English version remains authoritative.



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**Judge Péter Kovács, Presiding Judge**



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**Judge Reine Adélaïde Sophie**

**Alapini-Gansou**



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**Judge María del Socorro**

**Flores Liera**

Dated this Monday, 3 April 2023

At The Hague, The Netherlands