

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-02/18  
Date: 7 July 2023

**THE APPEALS CHAMBER**

**Before:** Judge Piotr Hofmański  
Judge Luz del Carmen Ibáñez Carranza  
Judge Marc Pierre Perrin de Brichambaut  
Judge Solomy Balungi Bossa  
Judge Gocha Lordkipanidze

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

**Public Document**

**Request to appear before the Appeals Chamber pursuant to  
regulation 81(4) of the Regulations of the Court**

**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

Ms Helen Brady

**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

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

**States' Representatives**

Competent authorities of the Bolivarian  
Republic of Venezuela

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Osvaldo Zavala Giler

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Mr Philipp Ambach

**Other**

## I. INTRODUCTION

1. Pursuant to regulation 81(4) of the Regulations of the Court (the “Regulations”), the Principal Counsel of the Office of Public Counsel for Victims (the “OPCV” or the “Office”) requests to appear before the Appeals Chamber in order to represent the general interests of the victims in relation to any appeal that may have been brought by the Bolivarian Republic of Venezuela (“Venezuela”) against the decision of Pre-Trial Chamber I authorising the Prosecutor to resume his investigation into the situation in the Bolivarian Republic of Venezuela (the “Venezuela Situation”) pursuant to article 18(2) of the Rome Statute (the “Article 18(2) Decision”).<sup>1</sup>

2. The issue(s) addressed in any eventual appeal against the Article 18(2) Decision will unavoidably affect the victims’ general interests in a fundamental manner. This decision authorises the Prosecutor to resume his investigation in the Venezuela Situation and a reversal of said ruling may in fact result in halting the investigation, thereby jeopardising the victims’ rights to truth, justice and reparations.

3. Victims have already presented their observations on the issue of the resumption of the investigation in the Venezuela Situation and the Office has contributed to the Report filed by the Registry with a Memorandum which has informed several Registry’s submissions (the “VPRS Report”).<sup>2</sup> It is therefore appropriate that victims are also authorised to present their views and concerns on any appeal arising directly from said proceedings. In this regard, the Appeals Chamber has invited the OPCV and victims to submit observations in recent

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<sup>1</sup> See the “Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute” (Pre-Trial Chamber I), No. [ICC-02/18-45](#), 27 June 2023 (the “Article 18(2) Decision”).

<sup>2</sup> 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 (the “VPRS Report”).

appeals proceedings related to article 18(2) decisions concerning the situations in Afghanistan<sup>3</sup> and in the Philippines.<sup>4</sup>

4. In light of the above, the Principal Counsel submits that allowing the Office to appear before the Appeals Chamber will ensure that the rights and interests of victims are protected and duly taken into account at the appellate stage. The Principal Counsel files this submission at this early juncture with a view to provide the Appeals Chamber with a meaningful contribution on any appeal from the victims' perspective, while ensuring that the expeditiousness and efficiency of the proceedings are safeguarded.

## II. PROCEDURAL BACKGROUND

5. On 8 February 2018, the Prosecution opened the preliminary examination of the Venezuela Situation "[t]o analyse crimes allegedly committed in this State Party since at least April 2017, in the context of demonstrations and related political unrest".<sup>5</sup>

6. On 27 September 2018, six States Parties to the Statute (Argentina, Canada, Colombia, Chile, Paraguay and Peru) referred the Venezuela Situation to the Office of the Prosecutor, under article 14(1) of the Rome Statute (the "Statute").<sup>6</sup>

7. On 3 November 2021, the Prosecutor announced his decision to initiate an investigation in the Venezuela Situation.<sup>7</sup>

8. On 21 April 2022, the Prosecutor notified Pre-Trial Chamber I (the "Pre-Trial Chamber") that Venezuela, through correspondence dated 15 April 2022, had

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<sup>3</sup> See the "Order on the conduct of the appeal proceedings" (Appeals Chamber), No. [ICC-02/17-200 OA5](#), 23 November 2022, para. 2. See also, the "Order on the filing of observations on the Prosecutor's notice of discontinuance of the appeal" (Appeals Chamber), No. [ICC-02/17-208 OA5](#), 24 January 2023, para. 2.

<sup>4</sup> See the "Decision on requests for victims' involvement and access to filings" (Appeals Chamber), No. [ICC-01/21-66 OA](#), 21 March 2023, para. 24.

<sup>5</sup> 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, p. 2.

<sup>6</sup> *Ibid.*

<sup>7</sup> See the [ICC press release](#) dated 5 November 2021.

requested a deferral under article 18(2) of the Statute (the “Deferral Request”),<sup>8</sup> and that he would request the Chamber to authorise the resumption of the investigation under article 18(2) of the Statute.<sup>9</sup>

9. On 1 November 2022, the Prosecutor requested that the Pre-Trial Chamber authorize the resumption of the investigation into the Venezuela Situation, pursuant to article 18(2) of the Statute (the “Resumption Request”).<sup>10</sup>

10. On 3 November 2022, the OPCV requested leave to present, together with four Venezuelan lawyers, the victims’ views and concerns on the Resumption Request.<sup>11</sup>

11. 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 such views and concerns and to transmit them to the Chamber with a report by 21 March 2023.<sup>12</sup>

12. 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,<sup>13</sup> including those transmitted by the OPCV.<sup>14</sup>

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<sup>8</sup> 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 (the “Deferral Request”).

<sup>9</sup> *Idem*, para. 8.

<sup>10</sup> 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”).

<sup>11</sup> See the “OPCV Request to Submit Observations on the Prosecutor’s Request to Resume the Investigation under Article 18(2) of the Statute”, No. [ICC-02/18-19](#), 3 November 2022.

<sup>12</sup> See the “Order inviting observations and views and concerns of victims” (Pre-Trial Chamber I), No. [ICC-02/18collect-21](#), 18 November 2022, paras. 10-11.

<sup>13</sup> See the VPRS Report, *supra* note 2.

<sup>14</sup> *Idem*, para. 2.

13. On 27 June 2023, the Pre-Trial Chamber issued the Article 18(2) Decision,<sup>15</sup> granting the Resumption Request.

### III. SUBMISSIONS

#### 1. The OPCV's mandate to appear and represent victims

14. Pursuant to regulation 81(4) of the Regulations of the Court (the "Regulations"), "[t]he tasks of the Office of Public Counsel for victims shall include: [...] (b) Appearing, on the instruction or with the leave of the Chamber, in respect of specific issues; [...] and (e) Representing a victim or victims throughout the proceedings, on the instruction or with the leave of the Chamber, when this is in the interests of justice".<sup>16</sup> This provision was amended to reflect the relevant practice of the Court and specifies, in its revised version, that the OPCV's appearance can be initiated either upon instructions of the Chamber or upon request of the Office itself.

15. In the past, the Office requested, and was granted, leave to appear on specific issues pertaining to the general interest of the victims.<sup>17</sup> In other instances, the Office appeared at the Chambers' request.<sup>18</sup> Said practice reflects the obligation binding on

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<sup>15</sup> See the Article 18(2) Decision, *supra* note 1.

<sup>16</sup> See regulation 81(4) of the Regulations of the Court, Doc. [ICC-BD/01-05-16](#).

<sup>17</sup> See, *inter alia*, the "Decision on the 'Request for Leave to File Amicus Curiae Submissions on Behalf of Human Rights Organizations in Afghanistan' (ICC-02/17-35) and on the 'Request to appear before the Chamber pursuant to regulation 81(4)(b) of the Regulations of the Court' (ICC-02/17-39)" (Pre-Trial Chamber II), No. [ICC-02/17-43](#), 12 June 2019; the "Decision on the OPCV's request to participate in the reparations proceedings" (Trial Chamber I), No. [ICC-01/04-01/06-2858](#), 5 April 2012; the "Decision on the OPCV's 'Second Request to appear before the Chamber pursuant to Regulation 81(4)(b) of the Regulations of the Court on issues related to the victims' application process'" (Pre-Trial Chamber III), No. [ICC-02/11-01/11-57](#), 13 March 2012; the "Order on Written Submissions on the Interpretation of Regulation 42 of the Regulations of the Court (Regulation 28 of the Regulations of the Court)" (Trial Chamber II), No. [ICC-01/04-01/07-1205](#), 12 June 2009; and the "Order on the Office of Public Counsel for Victims' request filed on 21 November 2007 (Trial Chamber I), No. [ICC-01/04-01/06-1046](#), 27 November 2007, para. 2.

<sup>18</sup> See, *inter alia*, the transcripts of the hearings held on 30 October 2007, No. [ICC-01/04-01/06-T-58-ENG-ET WT](#), p. 13, lines 20-23, and on 4 December 2007, No. [ICC-01/04-01/06-T-62-ENG-ET WT](#), pp. 52-54.

the OPCV to provide, where appropriate, assistance to victims, in accordance with its role and mandate before the Court.

16. For instance, Pre-Trial Chamber II relied on regulation 81(4)(e) of the Regulations to appoint the OPCV, noting that the Office is specifically mandated and possesses the expertise and experience to represent victims.<sup>19</sup> In turn, Trial Chamber I confirmed that the OPCV can appear in respect of specific issues pursuant to regulation 81(4)(b) of the Regulations by filing “*an application to address the Chamber on specific issues, notwithstanding the fact that it has not been requested to do so by the representatives of victims or any individual victims (this will usually relate to issues of general importance and applicability)*”.<sup>20</sup>

17. More recently, the Appeals Chamber invited victims to present observations on an appeal brought against a decision concerning the resumption of the Prosecutor’s investigation in the situation in Afghanistan.<sup>21</sup> Likewise, the Appeals Chamber has recently considered it appropriate for the OPCV to submit written observations under regulation 81(4)(e) of the Regulations regarding the general interests of the victims, following the submission of an appeal against an article 18(2) decision in the situation in the Philippines.<sup>22</sup>

18. In this regard, the Principal Counsel recalls that the OPCV was established as an independent permanent body within the Court “*able to provide expert advice and assistance*” on victims’ issues.<sup>23</sup> Since the Office’s inception, the practice of the Court

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<sup>19</sup> See the “Decision on the Legal Representation of Victims” (Pre-Trial Chamber II), No. [ICC-01/14-01/18-205](#), 23 May 2019.

<sup>20</sup> 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.

<sup>21</sup> See the “Order on the conduct of the appeal proceedings” and the “Order on the filing of observations on the Prosecutor’s notice of discontinuance of the appeal”, *supra* note 3.

<sup>22</sup> See the “Decision on requests for victims’ involvement and access to filings”, *supra* note 4.

<sup>23</sup> See FULFORD (A.), “The role of the Office of Public Counsel for Victims in trial proceedings”, in OPCV, [Helping victims make their voice heard: The Office of Public Counsel for Victims 5 years of activities](#), 2010, pp. 4-5.

and the responsibilities entrusted with the OPCV by both the Chambers and the victims have greatly contributed to the development of such expertise.

19. In light of the above, the Principal Counsel posits that the Appeals Chamber will benefit from receiving OPCV legal submissions on behalf of the victims should an appeal be brought against the Article 18(2) Decision. Victims have presented before the Pre-Trial Chamber their observations on the issue of the resumption of the investigation into the Venezuela Situation,<sup>24</sup> including those transmitted by the OPCV,<sup>25</sup> and it is therefore appropriate that they are also authorised to present their views and concerns on any appeal that may arise directly from said proceedings.

**2. The issues that may be raised on appeal will affect the general interests of victims**

20. The Principal Counsel notes that, pursuant to rule 154(1)(a) of the Rules of Procedure and Evidence and regulation 64 of the Regulations, any notice of appeal against the Article 18(2) Decision should have been filed by 3 July 2023. At the time of submitting this request, no such notice has been notified to the OPCV. However, the competent authorities of Venezuela have made public in social media that they have filed an appeal against the Article 18(2) Decision.<sup>26</sup> In these circumstances, the Principal Counsel submits that any appeal against the Article 18(2) Decision will fundamentally affect the general interests of the victims.

21. Indeed, a reversal of the Article 18(2) Decision on appeal may in fact result in halting the Prosecutor's investigation, thereby jeopardising the victims' rights to truth, justice and reparations. In particular, issues addressed in the Article 18(2) Decision regarding, *inter alia*, the material and temporal jurisdiction of the Court over the

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<sup>24</sup> See the VPRS Report, *supra* note 2.

<sup>25</sup> *Idem*, para. 2.

<sup>26</sup> See the "Comunicado" published on Twitter by the *Canciller* of the Bolivarian Republic of Venezuela on 4 July 2023, available at <https://twitter.com/yvangil/status/1676192207265562629?s=20>.



Venezuela Situation,<sup>27</sup> gravity and the interests of justice,<sup>28</sup> and the complementary assessment conducted by the Pre-Trial Chamber<sup>29</sup> are all at the core of the victims' interests.

22. The Appeals Chamber has consistently recognised that issues such as whether proceedings in a given case should be stayed,<sup>30</sup> and whether an accused should stand trial,<sup>31</sup> affect the personal interests of 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.<sup>32</sup>

23. *A fortiori*, the victims' personal interests are impacted by decisions regarding the opening 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*".<sup>33</sup>

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<sup>27</sup> See the Article 18(2) Decision, *supra* note 1, paras. 23-50.

<sup>28</sup> *Idem*, paras. 51-55.

<sup>29</sup> *Idem*, paras. 97-129.

<sup>30</sup> 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 "Decision on the Participation of Victims in the Appeal" (Appeals Chamber), No. [ICC-01/04-01/06-1453 OA13](#), 6 August 2008, para. 9.

<sup>31</sup> 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, para. 11. See also, the "Decision on the Participation of Victims in the Appeal against the 'Decision on Applications for Provisional Release' of Trial Chamber III" (Appeals Chamber), No. [ICC-01/05-01/08-1597 OA7](#), 14 July 2011, para. 10.

<sup>32</sup> See the "Decision on the victims' request to participate in the appeal proceedings", *supra* note 31. 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.

<sup>33</sup> See HUMAN RIGHTS WATCH, [Commentary to the 2<sup>nd</sup> 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, [Judgment](#), 15 September 2005, paras. 116 and 123.

24. Concerning the participation of victims in proceedings pursuant to article 18 of the Statute, Pre-Trial Chambers in the situations of Afghanistan, the Philippines and Venezuela have further 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.<sup>34</sup> In particular, Pre-Trial Chamber II held that, not only victims' interests may 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*".<sup>35</sup>

25. 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*".<sup>36</sup> In turn, the rights of victims to both participate in the proceedings and to claim reparations are *entirely dependent* on the Prosecutor initiating an investigation,<sup>37</sup> since victims before the Court have no right to trigger the commencement of investigations.<sup>38</sup> As recognised by Judge Mindua in his partly dissenting opinion:

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<sup>34</sup> See the "Order inviting observations and views and concerns of victims" (Pre-Trial Chamber I), *supra* note 12, para. 10. 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.

<sup>35</sup> 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 34, para. 12.

<sup>36</sup> 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.

<sup>37</sup> 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.

<sup>38</sup> 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 (the "Partially Dissenting Opinion of Judge Mindua").

*“[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”.*<sup>39</sup>

26. In the present circumstances, any eventual appeal against the Article 18(2) Decision will thus be of *“general importance and applicability”*,<sup>40</sup> will go to matters of impunity and accountability of interest to the victims,<sup>41</sup> and as such, will justify the intervention of the Office to represent the general interests of victims on such important issues. Victims of the crimes committed in the Venezuela Situation, along with their families, have the right to obtain justice, to know the truth about the events they suffered, and to be redressed.<sup>42</sup>

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<sup>39</sup> *Idem*, para. 37.

<sup>40</sup> See the “Decision on the role of the Office of Public Counsel for Victims and its request for access to documents”, *supra* note 20, para. 35.

<sup>41</sup> 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 Victims at the Pre-Trial Stage of the Case”, *supra* note 36, paras. 31 and 34.

<sup>42</sup> See the Partially Dissenting Opinion of Judge Mindua, *supra* note 38, para. 47.

#### IV. CONCLUSION

27. For the foregoing reasons, the Principal Counsel respectfully requests the Appeals Chamber to be allowed to submit written observations regarding the general interests of victims following the submission of any appeal against the Article 18(2) Decision and within the deadline established by the Appeals Chamber.

A handwritten signature in black ink, reading "Paolina Massidda", with a horizontal line underneath the name.

**Paolina Massidda**  
**Principal Counsel**

Dated this 7<sup>th</sup> day of July 2023

At The Hague, The Netherlands