

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-02/18 OA
Date: 26 October 2023**

THE APPEALS CHAMBER

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

SITUATION IN THE BOLIVARIAN REPUBLIC OF VENEZUELA I

Public document

**Decision on requests to appear at the hearing
before the Appeals Chamber**

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, Prosecutor

Ms Helen Brady

The Office of Public Counsel for Victims

Ms Paolina Massidda

Mr Enrique Carnero Rojo

States Representatives

Competent authorities of the Bolivarian Republic
of Venezuela

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Victims Participation and Reparations Section

Mr Philipp Ambach

The Appeals Chamber of the International Criminal Court,

In 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" of 27 June 2023 (ICC-02/18-45),

Having before it the Registry transmission on 26 October 2023 of the "Application Before the Distinguished Appeals Chamber to Participate in the Hearing Scheduled for November 7 and 8, 2023, in Accordance with Article 68(3) of the Rome Statute, as Representatives of Numerous Victims, or Alternatively, to Serve as Amicus Curiae Pursuant to Rule 103(1) of the Rules of Procedure and Evidence" (ICC-02/18-70-Conf-Anx),

Having before it the Registry transmission on 26 October 2023 of a request to participate in the hearing before the Appeals Chamber (ICC-02/18-71-Conf-Exp-Anx),

Having before it the Registry transmission on 26 October 2023 of the "Application to present victims' views and concerns at the hearing 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'" (ICC-02/18-72-Conf-Exp-Anx),

Renders the following

DECISION

Victims represented by the legal representatives who filed requests ICC-02/18-70-Conf-Anx, ICC-02/18-71-Conf-Exp-Anx and ICC-02/18-72-Conf-Exp-Anx may make further written representations on any of the issues identified in the Appeals Chamber's "Directions on the conduct of the hearing" of 17 October 2023 (ICC-02/18-68) and submit them to the Victims Participation and Reparations Section by no later than 12h00 on 6 November 2023.

REASONS

I. PROCEDURAL HISTORY

1. On 27 June 2023, Pre-Trial Chamber I (hereinafter: “Pre-Trial Chamber”) rendered its decision authorising the Prosecutor to resume the investigation into the situation in the Bolivarian Republic of Venezuela (hereinafter: “Venezuela”), pursuant to article 18(2) of the Statute (hereinafter: “Article 18(2) Decision”).¹
2. On 3 July 2023, Venezuela submitted its notice of appeal against the Article 18(2) Decision.²
3. On 14 August 2023, Venezuela filed its appeal brief.³
4. On 24 August 2023, the Appeals Chamber instructed the Victims Participation and Reparations Section (hereinafter: “VPRS”) to collect and transmit to the Appeals Chamber representations from any interested victim and victims group and prepare and submit a report thereon.⁴
5. On 12 October 2023, the Appeals Chamber scheduled a hearing in the present appeal for 7 and 8 November 2023.⁵

¹ [Decision authorising the resumption of the investigation pursuant to article 18\(2\) of the Statute](#), ICC-02/18-45.

² [The Bolivarian Republic of Venezuela’s Notice of Appeal against 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](#), 14 July 2023, ICC-02/18-46-AnxII-Red (confidential *ex parte* version dated 2 July 2023 was registered on 3 July 2023).

³ [The Bolivarian Republic of Venezuela’s Appeals Brief against the Pre-Trial I’s ‘Decision authorizing the resumption of the investigation pursuant to article 18\(2\) of the Statute’ \(ICC-02/18-45\)](#), 22 August 2023, ICC-02/18-59-AnxII-Red, with confidential *ex parte* annexes (confidential *ex parte* version of Annex II filed on 14 August 2023, ICC-02/18-59-Conf-Exp).

⁴ [Decision on requests for victims’ involvement](#), ICC-02/18-60, with confidential *ex parte* annexes (hereinafter: “Decision on Victims’ Involvement”).

⁵ [Scheduling Order for a hearing 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”](#), ICC-02/18-65.

6. On 17 October 2023, the VPRS transmitted to the Appeals Chamber 172 forms and other written documents containing victims' views and concerns,⁶ as well as a report containing an overview and detail of those views and concerns.⁷

7. On the same day, the Appeals Chamber issued directions on the conduct of the hearing, and it identified a number of specific issues on which the parties and participants are invited to make submissions at the hearing.⁸

8. On 26 October 2023, the Registry transmitted to the Appeals Chamber three requests for participation in the hearing (hereinafter: "First Request for Participation", "Second Request for Participation" and "Third Request for Participation", respectively) by legal representatives of victims of three groups of victims (hereinafter: "Legal Representatives of Group 1", "Legal Representatives of Group 2" and "Legal Representatives of Group 3", respectively).⁹

II. MERITS

9. The Legal Representatives of Group 1 request to appear at the hearing before the Appeals Chamber as legal representatives of victims or as *amici curiae* and make observations on the following issues:

- a) Whether the requirement that the domestic proceedings cover "the same types of conduct" as the Prosecutor's investigation extends to contextual elements of crimes against humanity, including in particular: the organization policy and the widespread or systematic nature of the attack.
- b) Whether the domestic investigations also need to cover the element of "discriminatory intent" in connection with the underlying acts of the crime

⁶ Registry Transmission of Victims' Views and Concerns Pursuant to Appeals Chamber Decision ICC-02/18-60, ICC-02/18-67, with confidential *ex parte* annexes.

⁷ Registry Report on Victims' Views and Concerns Pursuant to Appeals Chamber Decision ICC-02/18-60, ICC-02/18-69, with confidential *ex parte* and public redacted Annex I (ICC-02/18-69-AnxI-Red) and two confidential *ex parte* annexes.

⁸ [Directions on the conduct of the hearing](#), 17 October 2023, ICC-02/18-68.

⁹ Registry Transmission of the "Application Before the Distinguished Appeals Chamber to Participate in the Hearing Scheduled for November 7 and 8, 2023, in Accordance with Article 68(3) of the Rome Statute, as Representatives of Numerous Victims, or Alternatively, to Serve as Amicus Curiae Pursuant to Rule 103(1) of the Rules of Procedure and Evidence", ICC-02/18-70-Conf-Anx; Registry Transmission of a request for participation, ICC-02/18-71-Conf-Exp-Anx; Registry Transmission of the "Application to present victims' views and concerns at the hearing 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'", ICC-02/18-72-Conf-Exp-Anx.

of persecution, despite the absence of a domestic legislation that penalizes persecutions.¹⁰

Relying on article 68(3) of the Statute, rules 89, 91(2) and 103 of the Rules of Procedure and Evidence, they argue that both their request for participation as legal representatives of victims and request to make observations as *amici curiae* are admissible.¹¹ They submit that they represent victims who previously made representations before the Pre-Trial Chamber and the Appeals Chamber.¹²

10. The Legal Representatives of Group 2 request, on behalf of a number of victims, to participate in the hearing before the Appeals Chamber.¹³ The Legal Representatives of Group 2 submit that they seek to present “the main observations made by [this] group of victims, which include new observations”.¹⁴

11. The Legal Representatives of Group 3 request that the Appeals Chamber allow it to present victims’ views and concerns at the hearing.¹⁵ In particular, the Legal Representatives of Group 3 seek to make submissions on why the Article 18(2) Decision should be confirmed on appeal, “focusing in particular on some of the legal issues identified by this Chamber in its Directions on the conduct of the hearing”.¹⁶

12. The Appeals Chamber recalls its finding that “the appropriate way for victims to be involved in the proceedings in the context of article 18(2) proceedings is by means of making ‘representations’”.¹⁷ It notes that victims were already given an opportunity to make representations in the present proceedings and that victims represented by the Legal Representatives of Group 1, the Legal Representatives of Group 2 and Legal Representatives of Group 3 availed themselves of that opportunity. The Appeals Chamber recalls, however, that on 17 October 2023, it invited the parties and participants to make submissions at the hearing on a number of specific issues.¹⁸ The Appeals Chamber finds it appropriate to enable the legal representatives of the three

¹⁰ First Request for Participation, paras 1, 13, 18.

¹¹ First Request for Participation, paras 7-12.

¹² First Request for Participation, para. 2.

¹³ Second Request for Participation.

¹⁴ Second Request for Participation.

¹⁵ Third Request for Participation, para. 2.

¹⁶ Third Request for Participation, para. 15.

¹⁷ [Decision on Victims’ Involvement](#), para. 14.

¹⁸ [Directions on the conduct of the hearing](#), 17 October 2023, ICC-02/18-68.

groups to make additional written representations on the issues identified in its directions, to be submitted to the VPRS by no later than 12:00 on 6 November 2023. In light of this resolution of the First Request for Participation, the Appeals Chamber does not find it necessary to consider the Legal Representatives of Group 1's alternative request for leave to make observations as *amici curiae*.

Done in both English and French, the English version being authoritative.



Judge Marc Perrin de Brichambaut
Presiding

Dated this 26th day of October 2023

At The Hague, The Netherlands