



Original: English

**No. ICC-02/18 OA
Date: 3 November 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 the Organization of American States Panel of Independent
International Experts' request for leave to submit *amicus curiae* observations
pursuant to rule 103 of the Rules of Procedure and Evidence**

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

Amicus curiae

The Organization of American States Panel
of Independent International Experts

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 of a "Request for Leave to Submit *Amicus Curiae* Observations by the OAS Panel of Independent International Experts" of 8 August 2023 (ICC-02/18-58-Anx1),

Renders, pursuant to rule 103 of the Rules of Procedure and Evidence, the following

DECISION

1. The Organization of American States Panel of Independent International Experts may submit written observations on issues arising from "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)" (ICC-02/18-59-AnxII-Red) by 24 November 2023.
2. The Bolivarian Republic of Venezuela and the Prosecutor may respond to the aforementioned observations within 14 days of notification of the observations.

REASONS

I. PROCEDURAL HISTORY

1. On 27 June 2023, the 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

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

2. On 3 July 2023, Venezuela submitted its notice of appeal against the Article 18(2) Decision.²
3. On 8 August 2023, the Registry transmitted to the Appeals Chamber a request from the Organization of American States Panel of Independent International Experts on the Possible Commission of Crimes Against Humanity in Venezuela (hereinafter: “OAS Panel”) for leave to submit *amicus curiae* observations, pursuant to rule 103 of the Rules of Procedure and Evidence (hereinafter: “Rules”).³
4. On 14 August 2023, Venezuela filed its appeal brief (hereinafter: “Appeal Brief”).⁴

II. MERITS

5. Rule 103 of the Rules provides as follows:
 1. At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.
 2. The Prosecutor and the defence shall have the opportunity to respond to the observations submitted under sub-rule 1.
 3. A written observation submitted under sub-rule 1 shall be filed with the Registrar, who shall provide copies to the Prosecutor and the defence. The Chamber shall determine what time limits shall apply to the filing of such observations.
6. The Appeals Chamber recalls that its decision under rule 103(1) of the Rules is discretionary and premised on whether it considers it “desirable for the proper

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 Registry transmission of a “Request for Leave to Submit *Amicus Curiae* Observations by the OAS Panel of Independent International Experts”, ICC-02/18-58-Anx1.

⁴ [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).

determination of the case” to grant leave to the applicants to submit observations on the merits of the legal questions presented in the appeal.⁵

7. The OAS Panel submits that it was involved in the gathering of information on whether crimes against humanity were committed in Venezuela.⁶ More recently, the OAS Panel “collected and analysed data relating to a representative sample of investigations or prosecutions that have been or are being carried out at the domestic level against alleged perpetrators to provide an objective assessment of the domestic proceedings”.⁷ In its request, the OAS Panel seeks leave to “provide unique and relevant information to assist the Appeal Chambers in reaching the appropriate findings relating to the willingness and ability of [Venezuela] to conduct genuine investigations and prosecutions of alleged perpetrators domestically and to discharge its obligations as a primary state”.⁸

8. The Appeals Chamber recalls that pursuant to rule 103(1) of the Rules, observations must be “desirable for the proper determination of the case”. In a previous appeal, the Appeals Chamber emphasised that the issues on which it sought observations were the legal issues arising from that appeal.⁹ It rejected a request for leave to submit observations on issues that were not related to an appeal before it.¹⁰ The Appeals Chamber notes in this respect that the issue on which the OAS Panel wishes to make observations does not arise from the Appeal Brief. The Panel indicates that it wishes to provide information to assist the Appeals Chamber in reaching its findings relating to “the willingness and ability of [Venezuela] to conduct genuine investigations and prosecutions”.¹¹ However, the Pre-Trial Chamber did not examine Venezuela’s

⁵ See for example *The Prosecutor v. Omar Hassan Ahmad Al-Bashir*, [Decision on the requests for leave to file observations pursuant to rule 103 of the Rules of Procedure and Evidence, the request for leave to reply and further processes in the appeal](#), 21 May 2018, ICC-02/05-01/09-351 (OA2), para. 9; *The Prosecutor v. Laurent Koudou Gbagbo*, [Decision on the “Request for Leave to Submit Amicus Curiae Observations pursuant to Rule 103 of the Rules of Procedure and Evidence”](#), 1 October 2013, ICC-02/11-01/11-517 (OA5), para. 9.

⁶ [OAS Panel Request](#), para. 32.

⁷ [OAS Panel Request](#), para. 32.

⁸ [OAS Panel Request](#), para. 34.

⁹ Appeals Chamber, *The Prosecutor v. Omar Hassan Ahmad Al-Bashir*, [Order inviting expressions of interest as amicus curiae in judicial proceedings](#), 29 March 2018, ICC-02/05-01/09-330, para. 1; see also p. 3 (“Professors of International Law may [...] request leave to submit observations on the merits of the legal questions presented in the appeal” (emphasis added)).

¹⁰ Appeals Chamber, *The Prosecutor v. Laurent Koudou Gbagbo*, [Decision on the “Request for Leave to Submit Amicus Curiae Observations pursuant to Rule 103 of the Rules of Procedure and Evidence”](#), 1 October 2013, ICC-02/11-01/11-517, para. 10.

¹¹ [OAS Panel Request](#), para. 34.

willingness or ability to conduct investigations. It stated that “there is no need to consider whether Venezuela is unwilling or unable to genuinely carry out any such investigation or prosecution”.¹²

9. The Appeals Chamber notes that, while the issue identified by the OAS Panel does not arise from the Appeal Brief, its experience and knowledge appear to be relevant to the determination of the issues on appeal. The Appeals Chamber therefore finds it desirable for the proper determination of the appeal to grant leave to the OAS Panel to make observations on issues arising from the Appeal Brief.

10. The Appeals Chamber also notes that the Panel seeks to provide material concerning domestic investigations and prosecutions in Venezuela. The Appeals Chamber recalls that, in the context of a participant’s request to submit additional material on appeal, it has rejected such a request, noting that “this [additional] information ha[d] not been considered by the Pre-Trial Chamber. [I]t would not be appropriate for the Appeals Chamber to consider this material when the Pre-Trial Chamber ha[d] not done so”.¹³ Therefore, while mindful of a different context, the Appeals Chamber invites the OAS Panel to focus its observations on the issues arising from the appeal and to avoid the submission of material that was not considered by the Pre-Trial Chamber.

11. For the foregoing reasons, the Appeals Chamber grants leave to the OAS Panel to submit written observations on issues arising from the Appeal Brief by 24 November 2023. Venezuela and the Prosecutor may respond to the observations within 14 days of notification of the observations.

¹² [Impugned Decision](#), para. 132.

¹³ *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, [Judgment on the appeal of Libya against the decision of Pre-Trial Chamber I of 31 May 2013 entitled “Decision on the admissibility of the case against Saif Al-Islam Gaddafi”](#), 21 May 2014, ICC-01/11-01/11-547-Red (OA4), para. 43. See also *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, [Judgment on the appeal of Mr Abdullah Al-Senussi against the decision of Pre-Trial Chamber I of 11 October 2013 entitled “Decision on the admissibility of the case against Abdullah Al-Senussi”](#), 24 July 2014, ICC-01/11-01/11-565 (OA6), paras 57-58.

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



Judge Marc Perrin de Brichambaut

Presiding

Dated this 3rd day of November 2023

At The Hague, The Netherlands