

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-02/18**
Date: **21 June 2021**

PRE-TRIAL CHAMBER I

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

SITUATION IN IN THE BOLIVARIAN REPUBLIC OF VENEZUELA I

Public Document

**Victims' concerns arising from the public information regarding the conclusion of
the Prosecutor's preliminary examination concerning the Situation in the
Bolivarian Republic of Venezuela I**

Source: Office of Public Counsel for Victims

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

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Mr Karim Asad Ahmad Khan
Mr James Stewart

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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**Victims Participation and Reparations
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I. INTRODUCTION

1. The Principal Counsel of the Office of Public Counsel for Victims (the “Counsel” and the “OPCV”) files this submission having been appointed by a number of victims to represent their interests at the stage of the preliminary examination arising from the referral of the Situation in the Bolivarian Republic of Venezuela I (the “Situation in Venezuela” or the “Situation”). The Office has been also approached by a number of victims seeking advice in relation to the exercise of their rights in the Situation, in the context of the OPCV’s mandate to provide general “*support and assistance*” to victims and their legal representatives.¹

2. The present submission arises from the public statement of the former Prosecutor of 15 June 2021, indicating that her Office had reached a determination on the Situation in Venezuela. Said statement followed a press release by the Attorney General of the Bolivarian Republic of Venezuela, issued on 9 June 2021 and according to which Venezuela had addressed the Pre-Trial Chamber of the Court. The publicly available information indicates that Pre-Trial Chamber I (the “Chamber”) is thus seized with a matter related to the Prosecutor’s determination on whether or not an investigation into the Situation is to be opened. This matter is crucial for victims and clearly affects their interests.

3. As already underlined by Pre-Trial Chamber I in the Situation in Palestine, victims have a right to participate during the preliminary examination stage of a situation. Accordingly, Counsel respectfully informs the Chamber of the victims’ concerns and requests that victims are informed of the current proceedings before the Chamber in order to be able to activate their right to address the Court, if necessary.

¹ 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.

II. PROCEDURAL HISTORY

4. On 8 February 2018, the Prosecutor decided to open a preliminary examination of the Situation in Venezuela “[t]o analyse crimes allegedly committed in this State Party since at least April 2017, in the context of demonstrations and related political unrest”.²

5. On 27 September 2018, the Prosecutor received a referral under article 14(1) of the Statute regarding the Situation in Venezuela from a group of six States Parties to the Rome Statute (the “Statute”) - namely Argentina, Canada, Colombia, Chile, Paraguay and Peru.

6. On 28 September 2018, the Presidency assigned the Situation in Venezuela to the Chamber.³

7. On 9 June 2021, the Attorney General made it public that Venezuela had filed a request before the Chamber pursuant to regulations 30 and 46(2) of the Regulations of the Court in order to schedule a hearing “to discuss on a fair and right procedure and to ease the cooperation between both institutions” (the “Venezuela’s Request”).⁴

8. On 15 June 2021, the Prosecutor stated that “[she] had in fact reached a final determination on the preliminary examination [with respect to Venezuela I], and had been preparing to announce our conclusions in response to the group States Parties referral, but that in due deference to the Pre-Trial Chamber, whose competence had been seized, [she] decided to wait for the Chamber’s determination on Venezuela’s request before making any further announcement. Those proceedings and their outcome currently remain classified as confidential [...]” (the “Prosecutor’s Statement”).⁵

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-Anxl](#), 28 September 2018, p. 2.

³ See the “Decision assigning the situation in the Bolivarian Republic of Venezuela to Pre-Trial Chamber I” (Presidency), [No. ICC-02/18-1](#), 28 September 2018.

⁴ See the [Ministerio Público, Comunicado](#), 9 June 2021 (the “Venezuela’s Request”) (not an official translation).

⁵ See [“Without Fear or Favour”: Reflections on my term as Prosecutor of the International Criminal Court, Farewell end of term statement](#), 15 June 2021, p. 9.

III. CONCERNS OF THE VICTIMS

9. In accordance with the Court's legal framework, the victims' right to appear before the ICC is not limited to their general participation within the context of judicial proceedings pursuant to article 68(3) of the Statute.⁶ In particular, "*victims also have the right to provide information to, receive information from and communicate with the Court, regardless and independently from judicial proceedings, including during the preliminary examination stage*".⁷

10. Counsel posits that such right during a preliminary examination stems from the victims' personal interests in the Prosecutor's decision on the opening of an investigation in a situation of their concern. Accordingly, in the case at hand any litigation related to the Prosecutor's conduct or conclusion of the preliminary examination of the Situation in Venezuela affects the personal interests of the victims.

11. In this regard, the Appeals Chamber has consistently recognised that issues such as whether proceedings in a given case should be stayed⁸ and whether an accused should stand trial,⁹ affect victims' personal interests because – depending on their resolution – victims may be denied the opportunity to uncover the truth, present their views and concerns throughout the proceedings, ensure those responsible for the crimes are held accountable and claim reparation. *A fortiori*, victims' interests are

⁶ See, for example, article 15(1), (2) and (6) of the Statute and rule 49 of the Rules of Procedure and Evidence (the "Rules"); article 53 and rule 104 of the Rules; rule 92(1) and (2) of the Rules.

⁷ See the "Decision on Information and Outreach for the Victims of the Situation" (Pre-Trial Chamber I), [No. ICC-01/18-2](#), 13 July 2018, para. 10.

⁸ See the "Decision on the Participation of Victims in the Appeal" (Appeals Chamber), [No. ICC-01/04-01/06-1453 OA12](#), 6 August 2008, para. 9; and 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.

⁹ See 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; 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; and 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.

impacted by decisions regarding the opening of an investigation. In fact, the opening of an investigation is the first step towards accountability for perpetrators before the Court in respect to the crimes victims suffered from. The interest in seeing that the Court is seized with a situation and that an investigation proceeds has been in fact regarded as “*the most essential of all victims’ interests*”.¹⁰

12. Counsel stresses that also in the context of articles 15 and 53 proceedings, like in other instances, victims may have similar but distinct interests from the Prosecution. Hence the importance of their participation in the proceedings as autonomous actors, with an “*independent voice and role*”.¹¹ The non-recognition of said interests would result in irreparable prejudice to victims’ quest for justice. Not only would victims have awaited for many years the opening of an investigation into the crimes they have suffered from, and possibly the prosecution of the alleged perpetrators, but their reasonable expectation to seek and obtain justice would be buried, with no realistic alternative forum for redress available to them.

13. Counsel has been in contact with many victims of the crimes allegedly committed in Venezuela for the last two years. All of them have repeatedly conveyed to her their unwavering interest in the opening of an investigation in the Situation. Victims have become concerned and anxious by the recent announcement in the media that Venezuela is opposing the opening of an investigation by the Prosecutor and that it has formally approached the Chamber regarding this matter.¹² Indeed, the fact that litigation remains confidential raises speculations. Many victims have reached Counsel in the last few days to know the extent of the ongoing litigation and the potential impact thereof on their rights to truth, justice and reparation. In particular,

¹⁰ 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, [Judgment](#), 15 September 2005, paras. 116 and 119.

¹¹ See the “Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6” (Pre-Trial Chamber I), [No. ICC-01/04-101-tEN-Corr](#), 17 January 2006, para. 51, referring to ECtHR, *Berger v. France*, App. No. 48221/99, [Judgment](#), 3 December 2002, para. 38 and ECtHR, *Perez v. France*, App. No. 47287/99, [Judgment](#), 12 February 2004, para. 68.

¹² Venezuela’s Request, *supra* note 4.

victims have expressed concerns about the legality of the current situation insofar the combined reading of articles 53(1) and 18(1) of the Statute imposes an obligation on the Prosecutor to announce the opening of an investigation when he or she decides that there are reasonable basis to proceed under the Statute. Victims are equally concerned by the Venezuela's request to convene a hearing and particularly by the prospective that victims' views will not be conveyed and form part of the discussions.

14. Victims have been waiting for almost four years for the opening of an investigation into the crimes they suffered. The ICC is the only judicial remedy available to many of them. Therefore, any attempt by Venezuela to prevent or limit the opening of an investigation by the Prosecutor critically affects the victims' personal interests.

15. In light of the above and of the victims' general right to be privy to the procedural developments of a situation of their concern, Counsel respectfully requests that victims are informed of the current litigation before the Chamber in order to activate their right to address the Court, if necessary.

Respectfully submitted.

A handwritten signature in black ink, reading "Paolina Massidda". The signature is written in a cursive style and is underlined with a single horizontal line.

Paolina Massidda
Principal Counsel

Dated this 21st day of June 2021

At The Hague, The Netherlands