

**Cour
Pénale
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**International
Criminal
Court**

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No.: **ICC-02/18**
Date: **3 November 2022**

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 Document

**OPCV Request to Submit Observations on the
Prosecutor's Request to Resume the Investigation
under Article 18(2) of the Statute**

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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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Competent authorities of the Bolivarian
Republic of Venezuela

Amicus Curiae

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Counsel Support Section

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Detention Section

**Victims Participation and Reparations
Section**

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I. INTRODUCTION

1. The Principal Counsel (the “Counsel”) of the Office of Public Counsel for Victims (the “OPCV” or the “Office”) files this request on behalf of victims who have appointed her to represent their interests and of those who have communicated with the Office in relation to the Prosecutor’s Request to resume the investigation (the “Resumption Request”)¹ in the Situation in the Bolivarian Republic of Venezuela I (the “Situation in Venezuela” or the “Situation”).

2. Under the OPCV regulatory mandate,² Counsel has been providing “*support and assistance*” directly to victims of the Situation and to their legal representatives since 2019. She is also in contact with, and benefits from constant interaction, with all the major NGOs supporting victims of the Situation, in Venezuela and abroad. In addition, she is closely cooperating with four Venezuelan lawyers admitted to the ICC List of Counsel, namely Ms Carmen Alguindigue Morles, Mr Juan Carlos Gutiérrez, Mr Gonzalo Himiob Santomé and Mr Alfredo Romero. These lawyers represent a significant number of victims of the Situation as well as Venezuelan NGOs.

3. Victims of the Situation in Venezuela have been long waiting for the opening of an investigation into the tragic events they suffered. The Court is the only judicial remedy available to the vast majority of them. Victims have thus a personal interest in conveying their views and concerns through their legal representatives in the ongoing proceedings under article 18(2) of the Statute. In light of the long-established relationship of trust with the Victims of the Situation and the relevant NGOs, Counsel requests the Chamber leave to file - together with the four colleagues - a joint

¹ 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”).

² 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.

submission presenting the victims' views and concerns on the Prosecutor Resumption Request.

4. In this regard, Counsel posits that because the Request to defer the ICC investigation presented by the Bolivarian Republic of Venezuela raises a number of complex matters, encompassing both the relevant facts and the applicable law, legal submissions by the victims may assist the Chamber in understanding the contentious issues in light of their local knowledge and socio-cultural background.

5. The joint submission will also ensure the security and well-being of the victims, whilst expediting the proceedings. In fact, it is not only in the interests of the victims but also in the interests of the efficient conduct of the proceedings, that victims are legally represented at this stage. Moreover, Counsel informs the Chamber that the victims' views and concerns have been already collected and that consolidated legal submissions are being prepared accordingly. Thus, Counsel is ready to file a joint submission within any timeframe the Chamber may decide.

II. PROCEDURAL HISTORY

6. On 8 February 2018, the Prosecution opened 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".³

7. On 27 September 2018, six States Parties to the Statute - namely Argentina, Canada, Colombia, Chile, Paraguay and Peru - referred the Situation in Venezuela to the Office of the Prosecutor, under article 14(1) of the Statute.⁴

³ 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.

⁴ *Idem.*

8. On 28 September 2018, the Presidency assigned the Situation in Venezuela to the Chamber.⁵
9. On 3 November 2021, the Prosecutor announced his decision to initiate an investigation in the Situation in Venezuela.⁶
10. On 17 January 2022, the Prosecutor informed the Chamber that it had notified the Bolivarian Republic of Venezuela of his decision to initiate an investigation in the Situation, and had granted the Government until 16 April 2022 to inform the Court of its investigation under article 18(2) of the Statute.⁷
11. On 20 April 2022, the Prosecutor informed the Chamber that the Bolivarian Republic of Venezuela requested a deferral under article 18(2) of the Statute (the “Deferral Request”).⁸ He further indicated that *“given that no new information appears to have been submitted that would warrant revisiting its prior determination, the Prosecution’s prior complementarity assessment under article 53(1)(b) remains unaffected”*⁹ and that, as soon as possible, he would seek the Chamber’s leave to resume the investigation.¹⁰
12. On 1 November 2022, the Prosecutor filed the Resumption Request.¹¹

⁵ 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.

⁶ See the [press release](#) dated 5 November 2021.

⁷ See the “Notification on the status of article 18 notifications in the Situation in the Bolivarian Republic of Venezuela I”, [No. ICC-02/18-16](#), 17 January 2022, paras. 3 and 6.

⁸ See the “Notification of the Bolivarian Republic of Venezuela’s deferral request under article 18(2) of the Rome Statute”, With Confidential Annexes A and B, [No. ICC-02/18-17](#), 21 April 2022.

⁹ *Idem*, para. 7.

¹⁰ *Ibid.*, para. 8.

¹¹ See the Resumption Request, *supra* note 1 **Error! Bookmark not defined.**

III. SUBMISSIONS

1. The victims of the Situation in Venezuela have a personal interest in the proceedings arising from the Deferral Request

13. In accordance with the Court's legal framework, the victims' right to appear before the Court is not limited to their participation in the context of a case.¹² The Appeals Chamber has acknowledged that victims can be allowed to participate in judicial proceedings taking place at the stage of a situation.¹³ In turn, this and other Pre-Trial Chambers have already found that "*article 68(3) of the Statute vests in a chamber a certain margin of discretion in determining whether, and in what modalities, victims may appropriately be allowed to play a role at certain stages of the proceedings, including before or during the investigation stage*".¹⁴

14. The Appeals Chamber has also consistently recognised that issues such as whether proceedings in a given case should be stayed¹⁵ and whether an accused should stand trial¹⁶ affect the victims' personal interests. Indeed, depending on the resolution of said issues, victims may be denied the opportunity to uncover the truth,

¹² See articles 15(1), (2) and (6), 53 and 68(3) of the Statute and rules 49, 53, 92(1) and (2) and 104 of the Rules of Procedure and Evidence (the "Rules").

¹³ See the "Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 7 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial Chamber I of 24 December 2007" (Appeals Chamber), [No. ICC-01/04-556](#), 19 December 2008, para. 56.

¹⁴ 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" (Pre-Trial Chamber II), [No. ICC-02/17-171](#), 8 November 2021, para. 12. See also the "Decision on the 'Victims' request for review of Prosecution's decision to cease active investigation" (Pre-Trial Chamber II), [No. ICC-01/09-159](#), 5 November 2015, para. 7; and 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.

¹⁵ 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.

¹⁶ See 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.

present their views and concerns throughout the proceedings, and eventually ensure that those responsible for the crimes are held accountable and claim reparation.¹⁷

15. *A fortiori*, the victims' personal interests are impacted by decisions regarding the opening of an investigation. In fact, this is the first step towards accountability for perpetrators before the Court in respect to 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*".¹⁸

16. Regarding the participation of victims in proceedings pursuant to article 18(2) of the Statute, Pre-Trial Chambers have further observed that the personal interests of the victims under article 68(3) of the Statute may in fact be affected by the outcome of their decisions on Prosecutor's requests to resume an investigation.¹⁹ In particular, Pre-Trial Chamber III 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*".²⁰

¹⁷ 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; and 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.

¹⁸ 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 123.

¹⁹ See 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; and 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. See also 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.

²⁰ 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" (Pre-Trial Chamber III), [No. ICC-02/17-171](#), 8 November 2021, paras. 10 and 12.

17. Victims of the Situation in Venezuela have been long waiting for the opening of an investigation into the tragic events they suffered. As highlighted in the Resumption Request,²¹ there is no evidence that genuine investigative and procedural steps have been taken to bring justice in Venezuela. The Court is the only judicial remedy available to the vast majority of victims. They have thus a personal interest in conveying their views and concerns in the ongoing proceedings under article 18(2) of the Statute as autonomous actors, with an “*independent voice and role*”.²²

2. Victims have an interest in conveying their views and concerns through their legal representatives

18. Counsel recalls that, pursuant to rule 55 of the Rules of Procedure and Evidence (the “Rules”), the Pre-Trial Chamber has the discretion to decide on the procedure to be followed and may take appropriate measures for the proper conduct of the proceedings concerning article 18(2) of the Statute. Counsel further notes that, in previous similar instances, Chambers have instructed the Registry, through the VPRS, to liaise with victims and legal representatives, to collect their views and concerns and to summarise those in a short report.²³

19. Notwithstanding, Counsel requests to address directly the Chamber and to convey the views and concerns of the victims that she and her four colleagues represent. For the reasons addressed *infra*, Counsel posits that this course of action will allow the views and concerns of victims to reach the Chamber, whilst at the same time preserving the orderly conduct of the proceedings.²⁴

²¹ See the Resumption Request, *supra* note 1 **Error! Bookmark not defined.**, in particular paras. 118-119.

²² 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.

²³ See the “Order inviting observations and victims’ views and concerns”, (Pre-Trial Chamber I), [No. ICC-01/21-47](#), 14 July 2022, para. 14. See also, 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 III), [No. ICC-02/17-171](#), 8 November 2021, para. 14.

²⁴ Cf. the “Order inviting observations and victims’ views and concerns”, (Pre-Trial Chamber I), [No. ICC-01/21-47](#), 14 July 2022, para. 14.

20. *Firstly*, under the OPCV regulatory mandate,²⁵ Counsel has been providing “*support and assistance*” directly to victims of the Situation and to their legal representatives since 2019. She has been in contact with the vast majority of the victims of the crimes allegedly committed in Venezuela in the relevant time frame, and has constant and extensive exchanges with all the major NGOs supporting victims in Venezuela and abroad. Throughout the years, Counsel has also developed an excellent working relationship with Ms Carmen Alguindigue Morles, Mr Juan Carlos Gutiérrez, Mr Gonzalo Himiob Santomé and Mr Alfredo Romero, all admitted to the ICC List of Counsel and with whom she continues to work closely. Said Venezuelan lawyers represent an important number of victims of the Situation and are themselves providing legal advice to NGOs supporting victims of the Situation.

21. *Secondly*, as a matter of general principle, the participation of victims through their legal representatives has as its main aim the ascertainment of the truth.²⁶ Their direct participation in the current proceedings may assist the Chamber in better understanding the contentious issues in light of the victims’ local knowledge and socio-cultural background. Many of the victims have first-hand knowledge of the actual state of the domestic judiciary. They have been involved in some of the scarce and partial proceedings mentioned in the Resumption Request²⁷ and are able to provide relevant insights and further details. Counsel have already informed the victims they represent of the legal implications of article 18(2) proceedings, have collected their views and concerns and joint draft submissions are being prepared.

²⁵ 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.

²⁶ See *mutatis mutandis* the “Corrigendum Directions for the Conduct of the Proceedings and Testimony in Accordance with Rule 140” (Trial Chamber II), [No. ICC-01/04-01/07-1665-Corr](#), 1 December 2009, para. 82. See also more generally on the victims’ right to the truth, 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, paras. 31-36.

²⁷ See the Resumption Request, *supra* note 1, in particular paras. 130-139.

Because of the long-term relationship of trust with the concerned victims, Counsel are able to provide the Chamber with their *verbatim* views and concerns.

22. *Thirdly*, because of their legal expertise, Counsel have also been able to translate those concerns in judicial submissions on the merits of the Resumption Request, encompassing both the relevant facts and the applicable law. The request to resume the investigation raises a number of complex factual and legal issues which also require to be addressed and litigated before the Chamber in the interests of the victims. The neutral role of the Registry, through the VPRS, remains of the utmost importance to reach out victims, inform the affected communities and organise victims participation. However, Counsel submits that is equally important to ensure that the victims can rely on a legal representative to advocate for their rights and to represent their interests in these proceedings. Given their different mandates, it is in fact essential that the OPCV and the VPRS work together to achieve a meaningful participation of all victims concerned.

23. This would ensure that the participation of victims in article 18(2) proceedings is also substantive and effective. In fact, it is not only in the interests of victims but also in the interest of the efficient conduct of the proceedings that victims' views and concerns are voiced and advocated through the expertise of their legal representatives.²⁸ In addition, article 68(3) of the Statute makes it clear that the victims' guaranteed right of access to justice entails a positive obligation for the Court to enable the effective exercise of that right concretely.²⁹

24. *Fourthly*, the demonstrated legal knowledge and relevant background of Counsel would be "*shielding the Chamber from the risk that such [victim] participation [at this stage] might result in excessively disruptive effects on the overall conduct of the*

²⁸ See *mutatis mutandis* the "Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled "Order for Reparations pursuant to Article 75 of the Statute" (Appeals Chamber), [No. ICC-01/04-01/07-3778-Red A3 A4 A5](#), 8 March 2018, para. 216.

²⁹ Assembly of States Parties, Report of the Court on the Review of the System for Victims to Apply to Participate in Proceedings, 013, No. ICC-ASP/11/22, 5 November 2012, para. 39.

proceedings".³⁰ As the Appeals Chamber noted, "*legal representation of victims is a means to make their participation substantive and effective and to ensure that they have adequate support*".³¹ The added value deriving from the synergies of the collaboration between Counsel from the OPCV and Venezuelan lawyers is substantial to strengthening the efficiency and the sustainability of the participation of victims in the present proceedings, while addressing the needs of victims in an effective manner.

25. *Lastly*, Counsel informs the Chamber that a significant number of victims presently face security issues as they - and/or their relatives - continue to reside in Venezuela. Thus, limiting contacts through Counsel would also contribute to reducing the risk of exposure to additional security threats.

³⁰ See the "Decision on legal representation, appointment of counsel for the defence, protective measures and time-limit for submission of observations on applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06" (Pre-Trial Chamber II, Single Judge), [No. ICC-02/04-01/05-134](#), 1 February 2007, para. 7.

³¹ See the "Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled "Order for Reparations pursuant to Article 75 of the Statute" (Appeals Chamber), [No. ICC-01/04-01/07-3778-Red A3 A4 A5](#), 8 March 2018, para. 216.

IV. CONCLUSION

26. In light of the specific circumstances of this Situation, of the complex factual and legal issues raised in the Deferral Request and of the relationship of trust established with victims and relevant NGOs, Counsel requests leave to file - together with Ms Carmen Alguindigue Morles, Mr Juan Carlos Gutiérrez, Mr Gonzalo Himiob Santomé and Mr Alfredo Romero - a joint submission presenting the views and concerns of the victims in relation to the article 18(2) proceedings.

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

Paolina Massidda
Principal Counsel

Dated this 3rd day of November 2022

At The Hague, The Netherlands