

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

**PRE-TRIAL CHAMBER I**

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

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

**Public**

**Order inviting observations and views and concerns of victims**

Order 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 Nazhat Shameem Khan

**Counsel for the Defence**

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for Victims**

Ms Paolina Massidda

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

**States Representative**

Competent authorities of the Bolivarian  
Republic of Venezuela

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Mr Philipp Ambach

**Other**

**PRE-TRIAL CHAMBER I** (the ‘Chamber’) of the International Criminal Court (the ‘Court’) issues this order inviting observations and views and concerns of victims.

## **I. PROCEDURAL HISTORY AND SUBMISSIONS**

1. On 24 September 2018, the Office of the Prosecutor (the ‘Prosecution’) received from a group of States Parties to the Rome Statute (the ‘Statute’) a referral under article 14 of the Statute regarding the situation in the Bolivarian Republic of Venezuela (the ‘Situation’).<sup>1</sup>
2. On 16 March 2021, the Presidency of the Court assigned the Situation to this Chamber.<sup>2</sup>
3. On 17 January 2022, the Prosecution informed the Chamber that on 16 December 2021 it had notified all States Parties, including the Bolivarian Republic of Venezuela (‘Venezuela’), of its decision of 3 November 2021 to initiate an investigation into the Situation, annexing a summary of findings, and inviting them to inform the Court within one month whether they were investigating, or had investigated, their nationals or others within their jurisdictions with respect to crimes allegedly committed in the Situation.<sup>3</sup> The Prosecution also informed that, on 13 January 2022, it had granted Venezuela until 16 April 2022 to inform the Court of its investigations.<sup>4</sup>
4. On 20 April 2022, the Prosecution notified the Chamber that Venezuela, through correspondence dated 15 April 2022, stated that it is ‘investigating or [has] investigated its nationals or others within its jurisdiction with respect to alleged punishable acts against human rights [...] in accordance with the notification of the Prosecutor dated December 16, 2021’. Venezuela requested the Prosecution to ‘refrain from investigating in favour of the proceedings being carried out by the appropriate judicial authorities of Venezuela and provide them with

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<sup>1</sup> Annex I to the Decision assigning the situation in the Bolivarian Republic of Venezuela to Pre-Trial Chamber I, 28 September 2018, ICC-02/18-1-AnxI.

<sup>2</sup> Presidency, Decision assigning judges to divisions and recomposing Chambers, ICC-02/18-4, pages 6-7. Initially, on 28 September 2018, the Presidency assigned the Situation to this Chamber (see Decision assigning the situation in the Bolivarian Republic of Venezuela to Pre-Trial Chamber I, 28 September 2018, ICC-02/18-1, page 3), and on 19 February 2020, to Pre-Trial Chamber III (see Decision assigning the Situation in the Bolivarian Republic of Venezuela II and reassigning the Situation in the Bolivarian Republic of Venezuela I to Pre-Trial Chamber III, 19 February 2020, ICC-02/18-2, page 4).

<sup>3</sup> See Notification on the status of article 18 notifications in the Situation in the Bolivarian Republic of Venezuela I, 17 January 2022, ICC-02/18-16, para. 2 (the ‘17 January 2022 Notification’); with Annex A containing a copy of the notification sent to all States (ICC-02/18-16-Conf-Exp-AnxA).

<sup>4</sup> See 17 January 2022 Notification, para. 6; and Annex D (ICC-02/18-16-Conf-Exp-AnxD).

assistance and general support’ (the ‘Deferral Request’).<sup>5</sup> The Prosecution also informed the Chamber of its intention to seek the Chamber’s authorisation to resume its investigation under article 18(2) of the Statute as soon as possible.<sup>6</sup>

5. On 1 November 2022, the Prosecution requested the Chamber to resume its investigation into the Venezuela situation (the ‘Prosecution’s Request’).<sup>7</sup>

6. On 3 November 2022, the Office of Public Counsel for Victims (the ‘OPCV’) requested leave to submit, together with four Venezuelan lawyers, joint submissions presenting the views and concerns of victims on the Prosecution’s Request (the ‘OPCV’s Request’).<sup>8</sup> The OPCV submits that the victims of the Situation have a personal interest in the proceedings arising from the Deferral Request, and requests leave to convey, together with four Venezuelan lawyers, their views and concerns directly to the Chamber, without going through the Victims Participation and Reparations Section (the ‘VPRS’).

7. On 15 November 2022, the Registry transmitted to the Chamber a communication from Venezuela, dated 10 November 2022,<sup>9</sup> in which Venezuela submits proposals on the procedure in relation to the Prosecution’s Request to be set out by the Chamber pursuant to rule 55(1) of the Rules.<sup>10</sup> Venezuela requests the Chamber to (i) allow victims’ views and concerns to be made through the VPRS solely, and Venezuela to respond to any such views and concerns; (ii) decide that States which have referred the situation to the Court shall not be allowed to participate in the proceedings since they lack standing; and (iii) set the time limit for Venezuela to provide its observations on the Prosecution’s Request to three months, and allow it to reply to any subsequent submissions by the Prosecution.

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<sup>5</sup> See Notification of the Bolivarian Republic of Venezuela’s deferral request under article 18(2) of the Rome Statute, ICC-02/18-17 (the ‘20 April 2022 Notification’); and Annex B (ICC-02/18-17-AnxB-Red).

<sup>6</sup> See 20 April 2022 Notification, para. 8.

<sup>7</sup> Prosecution request to resume the investigation into the situation in the Bolivarian Republic of Venezuela I pursuant to article 18(2), ICC-02/18-18.

<sup>8</sup> OPCV Request to Submit Observations on the Prosecutor’s Request to Resume the Investigation under Article 18(2) of the Statute, ICC-02/18-19.

<sup>9</sup> Transmission of a communication from the Bolivarian Republic of Venezuela on the “Prosecution’s request to resume the investigation into the situation in the Bolivarian Republic of Venezuela I pursuant to article 18(2)” (ICC-02/18-18), ICC-02/18-20.

<sup>10</sup> Annex II to the Transmission of a communication from the Bolivarian Republic of Venezuela on the “Prosecution’s request to resume the investigation into the situation in the Bolivarian Republic of Venezuela I pursuant to article 18(2)” (ICC-02/18-18), ICC-02/18-20-AnxII.

## II. DETERMINATION BY THE CHAMBER

8. According to rule 55 of the Rules, the Chamber ‘shall decide on the procedure to be followed and may take appropriate measures for the proper conduct of the proceedings. It may hold a hearing.’ The Chamber hereby sets out the procedure in relation to the Prosecution’s Request.

9. The Chamber considers it appropriate to invite Venezuela to submit any additional observations arising from the Prosecutor’s Request, if it so wishes, by no later than 28 February 2023. The Prosecution may respond to any such additional observations, to the extent that they relate to factual arguments as to whether Venezuela ‘is investigating or has investigated its nationals or others within its jurisdiction with respect to criminal acts which may constitute crimes referred to in article 5 and which relate to the information provided in the notification to States’. The Chamber does not require further submissions to any observations by Venezuela on the applicable legal framework under article 18(2) of the Statute. Any response should be submitted within three weeks after the notification of the observations, or by no later than 21 March 2023.

10. Moreover, the Chamber considers that, the personal interests of victims, within the meaning of article 68(3) of the Statute,<sup>11</sup> might be affected by the outcome of its decision on the Prosecution’s Request, and therefore their views and concerns should be collected. With regard to the modalities of collection, the Chamber notes the OPCV’s submissions in support of its request to be granted leave to directly address the Chamber to convey the views and concerns of victims, together with four Venezuelan lawyers. The Chamber recalls in this regard that it has previously noted that the system as set forth by the Statute and the Rules in respect of proceedings pursuant to article 15 of the Statute provides a suitable model for collecting victims views and concerns in the context of article 18(2) proceedings.<sup>12</sup> Under this system,

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<sup>11</sup> According to the jurisprudence of the Court, article 68(3) of the Statute vests in a chamber a 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. See for instance Pre-Trial Chamber II, *Situation in the Islamic Republic of Afghanistan*, 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, 8 November 2021, ICC-02/17-171, para. 12 and note 15; Pre-Trial Chamber I, *Situation in the State of Palestine*, Decision on Information and Outreach for the Victims of the Situation, 13 July 2018, ICC-01/18-2, paras 8-11; Pre-Trial Chamber III, *Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar*, Order on Information and Outreach for the Victims of the Situation, 20 January 2020, ICC-01/19-28, para. 7.

<sup>12</sup> *Situation in the Republic of Philippines*, Order inviting observations and victims’ views and concerns, 14 July 2022, ICC-01/21-47, para. 14; See similarly Pre-Trial Chamber II, *Situation in the Islamic Republic of*

the VPRS liaises with victims and their legal representatives, if any, to collect any views or concerns, and prepares a short report summarising those views and concerns.

11. There is no reason to depart from this system of collection in the present case. This system will ensure that the views and concerns of any victims whose interests are not currently represented by the OPCV and/or the four named Venezuelan lawyers may also be collected and transmitted to the Chamber, and thus preserve the efficient and orderly conduct of the proceedings. Therefore, the Chamber instructs the VPRS to liaise with victims and any legal representatives, including the OPCV and the four Venezuelan lawyers identified in the OPCV's Request, to collect their views or concerns related to the Prosecution's Request, and to prepare a short report summarising those views and concerns. Such a report shall be submitted to the Chamber by no later than 21 March 2023.

12. As to Venezuela's request to be allowed to provide a reply to the Prosecution's submissions or the report summarising victims' views and concerns, the Chamber considers that, without having received any such submissions, it is currently unable to assess whether further submissions from Venezuela are necessary. In relation to Venezuela's request concerning the participation of referring States, the Chamber notes that, although the Prosecution previously informed that it will request the Chamber to invite, *inter alia*, 'other interested participants',<sup>13</sup> it is not presently seized on any such request.

13. Lastly, the Chamber does not presently deem it necessary to hold a hearing in addition to receiving the above mentioned written observations from Venezuela, the Prosecution, and the views and concerns of the victims.

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*Afghanistan*, 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, 8 November 2021, ICC-02/17-171, para. 14.

<sup>13</sup> See 20 April 2022 Notification, para. 8 and footnote 15 mentioning 'referring entities'.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**INVITES** Venezuela to provide observations on the Prosecution's Request by 28 February 2023 at the latest;

**INSTRUCTS** the Prosecutor to submit a response, if any, to the observations of Venezuela, as set forth in paragraph 9 of the present order, within three weeks after the notification of the observations, or by 21 March 2023 at the latest;

**INVITES** victims and their legal representatives to submit their views and concerns on the Prosecutor's Request; and VPRS to collect such views and concerns as set forth in paragraph 11 of this order, and to transmit them to the Chamber, together with the report, by 21 March 2023 at the latest.

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



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**Judge Péter Kovács**  
**Presiding**



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**Judge Reine Adélaïde Sophie**  
**Alapini-Gansou**



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**Judge María del Socorro**  
**Flores Liera**

Dated this Friday, 18 November 2022

At The Hague, The Netherlands