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No.: ICC-02/18

Date: 19 January 2023

**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**

**With Confidential *EX PARTE* Annex I only available to the Registry and  
Confidential Annex II**

**Public Redacted Version of "First Registry Report on Article 18(2) Victims'  
Views and Concerns Pursuant to Pre-Trial Chamber's Order ICC-02/18-21",  
19 January 2023, ICC-02/18-23-Conf**

**Source: Registry**

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

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## I. Introduction

1. Pursuant to Pre-Trial Chamber I's "Order inviting observations and views and concerns of victims", issued on 18 November 2022 ("Chamber" and "Order", respectively),<sup>1</sup> the Registry submits its first report on victims' views and concerns received until 12 January 2023 in the present Article 18(2) proceedings, together with its assessment of these forms ("Annex I") and a detailed explanation of the assessment criteria applied ("Annex II").
2. Mindful of the Chamber's Order to report on the victims' views and concerns in a comprehensive report at the end of the consultation phase by 21 March 2023, the Registry respectfully submits the present interim report on victims' views received until 12 January 2023. The Chamber may find it helpful to receive, in addition to the final Registry report, previous monthly transmissions and reports of victims' consultation forms on a rolling basis (the next interim report to follow by the end of February 2023). This is done in order to keep the Chamber informed of all developments in the most immediate fashion and allow more time for the Judges to analyse and consider victims' views and concerns.

## II. Procedural History

3. On 20 April 2022, the Prosecutor of the International Criminal Court ("ICC" or "Court") informed the Chamber: *i*) that the Bolivarian Republic of Venezuela ("Venezuela") requested under article 18(2) of the Rome Statute ("Statute"), the deferral of the investigation in the Situation in the Bolivarian Republic of Venezuela I ("Situation") and *ii*) that the Office of the Prosecutor

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<sup>1</sup> Pre-Trial Chamber I, "Order inviting observations and views and concerns of victims", 18 November 2022, ICC-02/18-21. The Registry notes that the Chamber instructed it to transmit the victims' views and concerns to the Chamber by 21 March 2023 at the latest (see Order, para. 11 and page 7).

("OTP") intends to seek authorization to resume the investigation as soon as possible.<sup>2</sup>

4. On 1 November 2022, the OTP submitted a request for authorization to resume the investigation in the Situation ("OTP Request").<sup>3</sup>
5. On 3 November 2022, the Office of Public Counsel for Victims ("OPCV") requested leave to submit, together with four Venezuelan lawyers, joint submissions presenting the views and concerns of victims on the OTP Request.<sup>4</sup>
6. On 18 November 2022, the Chamber issued the Order by which it, *inter alia*:
  - i) invited victims and their legal representatives to submit their views and concerns on the OTP Request; and
  - ii) instructed the Victims Participation and Reparations Section ("VPRS") of the Registry to collect victims' views or concerns on the OTP Request, and to transmit them to the Chamber, together with a report thereon, by 21 March 2023 at the latest.<sup>5</sup>
7. On 19 January 2023, alongside the present report, the Registry transmitted to the Chamber 16 victim consultation forms containing their views and concerns in the context of the present Article 18(2) proceedings.<sup>6</sup>

### III. Classification

8. Pursuant to regulation 23*bis*(1) of the Regulations of the Court ("RoC"), the present report and its Annex II are classified as "confidential", [Redacted].

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<sup>2</sup> Office of the Prosecutor, "Notification of the Bolivarian Republic of Venezuela's deferral request under article 18(2) of the Rome Statute", dated 20 April 2022 and notified on 21 April 2022, ICC-02/18-17, para. 8.

<sup>3</sup> Office of the Prosecutor, "Prosecution request to resume the investigation into the situation in the Bolivarian Republic of Venezuela I pursuant to article 18(2)", dated 1 November 2022 and notified on 4 November 2022, ICC-02/18-18.

<sup>4</sup> OPCV, "OPCV Request to Submit Observations on the Prosecutor's Request to Resume the Investigation under Article 18(2) of the Statute," 3 November 2022, ICC-02/18-19.

<sup>5</sup> See *supra*, fn 1.

<sup>6</sup> Registry, "First Registry Transmission of Article 18(2) Victims' Views and Concerns Forms", 19 January 2023, ICC-02/18-22.

A public redacted version of the present report will be filed shortly. Furthermore, Annex I to the present document is classified as “confidential *ex parte*, only available to the Registry”, because it contains confidential information [Redacted].

#### **IV. Applicable Law**

9. The Registry submits the present document in the context of the present proceedings under Article 18(2) of the Statute and in accordance with article 68(3) of the Statute, rules 16(1) and 85 of the Rules of procedure and evidence (“Rules”), regulation 23*bis*(1) of the RoC, regulation 102 of the Regulations of the Registry and the Order.

#### **V. Submissions**

10. In line with its established practice, when designing its approach for the present Article 18(2) exercise, the VPRS conducted [Redacted] consultations with [Redacted] relevant sections of the Registry,<sup>7</sup> as well as the OPCV [Redacted].<sup>8</sup> In particular, the VPRS carefully analysed and took into account the following aspects: *i*) the security situation in Venezuela; *ii*) the scale of the Situation and the large number of victims affected by the alleged crimes; *iii*) the logistical challenges (i.e. victims’ lack of access to resources, inexistent or poor internet connection, power shortages, etc.); *iv*) the limited time available for the present Article 18(2) exercise; *v*) [Redacted]; *vi*) the overarching objective of reaching out to as many victims linked to the Situation as possible within the timeframe of the Order without endangering anybody related to the process; *vii*) the

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<sup>7</sup> Redacted.

<sup>8</sup> This entails consultations as per para. 11 of the Order. The VPRS extends its gratitude to the OPCV for its excellent continuing cooperation and coordination on this matter.

considerable size of the Venezuelan diaspora worldwide;<sup>9</sup> and *vii*) [Redacted].

#### **A. Security situation**

11. [Redacted].
12. [Redacted].
13. [Redacted].
14. [Redacted].<sup>10</sup>

#### **B. Approach implemented**

15. Taking into account all factors listed in paragraph 10 above and as previously done in other situations in which Articles 15(3) and 18(2) processes were conducted,<sup>11</sup> the Registry is implementing simultaneously an open approach [Redacted] in the present Article 18(2) process in order to facilitate the rights of Venezuelan victims to bring their views and concerns forward to the ICC Judges.
16. The open approach consists in making available on the ICC website information materials and relevant tools (i.e. forms alongside relevant guidelines) in the most relevant languages. On 25 November 2022, key messages about the Article 18(2) process were published on the Venezuela-specific page of the ICC website.<sup>12</sup> In November 2022, the Article 18(2) victims' consultation form was made available on the website in English and

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<sup>9</sup> UNHCR reported in January 2023 that, according to government figures, there are over 7.13 million refugees and migrants from Venezuela worldwide and people continue to leave Venezuela to escape violence, insecurity and threats as well as lack of food, medicine and essential services. See, <https://www.unhcr.org/venezuela-emergency.html>.

<sup>10</sup> [Redacted].

<sup>11</sup> Most recently, the *Situation in Afghanistan, Bangladesh/Myanmar and The Philippines*.

<sup>12</sup> [www.icc-cpi.int/victims/situation-bolivarian-republic-venezuela-i](http://www.icc-cpi.int/victims/situation-bolivarian-republic-venezuela-i).

Spanish,<sup>13</sup> in three formats: *i*) a flat PDF that can be downloaded, printed, filled in by hand and sent to VPRS by email or post; *ii*) a fillable PDF that can be downloaded, filled in electronically and sent to VPRS by email; and, [Redacted], *iii*) an online form that can be filled in directly on the ICC website, without being downloaded [Redacted].<sup>14</sup> Guidelines on how to fill in the form, in English and Spanish, were also posted on the website.

17. [Redacted] is considered key in order to conduct the consultation process in a way which would ensure that a meaningful sample of views and concerns is collected and that a significant number of victims are able to present their views and concerns to the Court within the timelines given by the Chamber.
18. Since November 2022, the VPRS organized or attended remotely more than 30 informative sessions [Redacted].
19. The main objectives of the informative sessions are to: *(i)* provide general information about the ICC and the Article 18(2) process; *(ii)* solicit views on best ways to conduct the Article 18(2) exercise; *(iii)* identify a group of reliable and trusted interlocutors who can assist and support victims throughout the Article 18(2) process; *(iv)* offer guidance on how to fill in the Article 18(2) form; *(v)* address rumours, doubts, difficulties and challenges arising from the consultation process; and *(vi)* [Redacted].

### C. Challenges

20. Victims and representatives of civil society organizations supporting them<sup>15</sup> strongly welcomed the invitation to exercise their right to express views and concerns on the OTP Request. [Redacted]. All VPRS interlocutors that were met to date confirmed the victims' strong hope that the ICC investigation in

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<sup>13</sup> Spanish translations of the relevant forms and documents were added on the webpage on a rolling basis as they were finalised.

<sup>14</sup> [Redacted].

<sup>15</sup> See *supra*, para. 18.

the Situation will be resumed and justice will finally be rendered.  
[Redacted].

21. The VPRS notes that the level of knowledge and understanding of the Court's mandate and processes is, however, low among victim groups [Redacted].<sup>16</sup> VPRS interlocutors reported that there is confusion between the mandates and roles of the OTP and the Registry, between the OTP investigation and the Article 18(2) process, between filling in an Article 18(2) form and providing evidence to the OTP. Some of the misconceptions regarding the present Article 18(2) exercise are: *i*) that it is an evidence collecting exercise conducted by the OTP; *ii*) that once a victim sends information about their 'case' to the OTP, all the crimes reported will be timely investigated and prosecuted; *iii*) that victims can only apply to participate in ICC proceedings before 21 March 2023 and if they fail to do so within this deadline, they will never be allowed to participate in potential future ICC proceedings; *iv*) that victims cannot present their views and concerns in the present Article 18(2) consultation unless they are represented by a lawyer; and *v*) that the Article 18(2) forms need to be submitted in English and that translations need to be certified (legalized with an *apostille*) by the Venezuelan authorities.
22. The VPRS will continue organizing informative sessions throughout the entire duration of the Article 18(2) exercise in order to ensure that clear and complete information is circulated and that victims who submit views and concerns do so based on an informed decision and a thorough understanding of this process. This way, victims' expectations are kept realistic as to what the possible outcomes of the present exercise are.
23. To date, the main concerns raised by VPRS interlocutors are:
  - (i) [Redacted].
  - (ii) [Redacted]

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<sup>16</sup> [Redacted].



- (iii) *Short time period allowed for the present Article 18(2) process.* Interlocutors pointed out that, considering the scale of the Situation, the security context and all the other challenges listed throughout this report, a large number of victims supporting the ICC investigation might not get the chance to bring their views and concerns forward in time. Interlocutors also highlighted that the low number of forms submitted to date is not the result of a lack of interest or eagerness from victims to engage with the Court, but the consequence of all the challenges and obstacles listed, as well as the fact that during the festive period (i.e. late December 2022 to early January 2023), many organizations [Redacted] interrupted their activity.
- (iv) [Redacted] .
- (v) *The complexity of the Situation and the different patterns of violence.* Interlocutors pointed out that the OTP Request does not reflect all the nuances of the violence which affected many Venezuelans and they insisted that it is crucial for the OTP investigation to focus on all the dimensions of the alleged crimes committed.
- (vi) *The OTP Request does not explicitly mention all the crimes committed in the Situation.* Concerns were raised about the fact that the crime against humanity of ‘murder’ was not specifically mentioned in the OTP Request. [Redacted].
- (vii) [Redacted].<sup>17</sup>
- (viii) *Coordination efforts between the different organizations supporting the Article 18(2) process in order to avoid duplication of the victims represented.* Discussions between the VPRS and interlocutors addressed the best ways to group victims for the purpose of the present consultation process (i.e. by families, by type of harm suffered, etc.), while

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<sup>17</sup> [Redacted].

ensuring as well the duty of care and the respect of best practices during victims' interviews to avoid re-traumatisation.

#### **D. Article 18(2) victims' forms**

24. Between 4 December and 12 January 2023, the VPRS received 21 consultation forms from victims.
25. The VPRS conducted a preliminary assessment of each form in order to assess whether the individual or group submitting views and concerns on the OTP Request falls within the definition of victims under rule 85 of the Rules. Considering the purposes of the Article 18(2) exercise and given the concrete scope of these proceedings, the conditions set out in rule 85 of the Rules were assessed on the basis of the intrinsic coherence of the information given by the victim(s). A detailed explanation of the assessment criteria applied by the Registry is provided in Annex II.
26. The VPRS assessed 5 of the 21 forms received as falling outside the temporal, territorial and/or material scope of the Situation.<sup>18</sup> Therefore, these forms were not transmitted to the Chamber and are not included in Annex I to the present report.
27. 16 forms assessed as falling inside the scope of the Situation, which were transmitted to the Chamber and are covered by the present report ("Transmitted Applications"), were submitted on behalf of a total of 19 individuals and 8 families. 12 of the 16 forms were assessed as collective/group forms (i.e. submitted on behalf of more than one individual). 4 forms were submitted in English, 10 in Spanish,<sup>19</sup> 1 in Spanish

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<sup>18</sup> [Redacted].

<sup>19</sup> The VPRS submitted all the forms received in Spanish, which did not also include an English or French version, to the Language Support Section of the Registry ("LSS") for official translation into English. Due to the LSS' limited capacity, not all translations were received in time for the present report. The VPRS has limited Spanish-speaking capacity which was used to conduct the preliminary legal assessment of the Spanish forms received, therefore all forms received between 4 December and 12

submitted together with an English translation and 1 in French.

28. All but one of the transmitted forms support the OTP Request.<sup>20</sup> One form, introduced on behalf of three victims, states that the victims do not want the ICC investigation to be resumed because they fear for the [Redacted].

29. The VPRS will carry on assessing all Article 18(2) forms received and transmit them on a rolling basis, in monthly transmissions and reports.



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Marc Dubuisson, Director, Division of Judicial Services  
on behalf of Peter Lewis, Registrar

Dated this 19 January 2023

At The Hague, The Netherlands

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January 2023 have been analysed and, those assessed as falling within the scope of the Situation, have been included in the present report and transmitted to the Chamber. The official translations will be transmitted to the Chamber once they become available.

<sup>20</sup> This information is outlined in more detail in Annex I.