

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-02/18**
Date: **27 July 2023**

THE APPEALS CHAMBER

Before: Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Marc Perrin de Brichambaut
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze

SITUATION IN THE BOLIVARIAN REPUBLIC OF VENEZUELA I

Public Redacted Version of the Application to present victims' views and concerns 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"

Source: [REDACTED]

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

The Office of the Prosecutor

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

I. INTRODUCTION

1. In accordance with Article 68(3) of the Rome Statute (“Statute”) and Rule 93, of the Rules of Procedure and Evidence (“RPE”), [REDACTED] is submitting this application on behalf of 609 victims (Annex 1), 80 victims it represents, and 529 represented by [REDACTED] that have authorized [REDACTED] to submit this application (hereinafter the “Applicants”), to present views and concerns of victims in the appeal proceedings before the Appeals Chamber against the Pre-Trial Chamber I’s “Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute” (hereinafter the “Appeal”).
2. In light of the risk of threats to the physical and psychological safety of the Applicants and the submitting entity, this application and its annexes are filed confidentially.
3. A list of 13 out of the 609 Applicants who are represented by [REDACTED], is included as Annex 2. The legal representatives of the victims have acted as swiftly as possible given the 21 July 2023 decision of the Appeals Chamber and the summer 2023 judicial recess of the ICC. A full list of the Applicants with VPRS identification number and/or powers of attorneys will be transmitted to the Registry by September 2023.

II. PROCEDURAL HISTORY

4. On 27 June 2023, Pre-Trial Chamber I 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.

5. On 3 July 2023, Venezuela submitted its notice of appeal against the Article 18(2) Decision.²
6. On 7 July 2023, the Office of Public Counsel for Victims (hereinafter: “OPCV”) filed a request to appear before the Appeals Chamber (hereinafter: “OPCV Request”).³
7. On 12 July 2023, the Appeals Chamber granted Venezuela’s application of 10 July 2023, and extended the time limit for the filing of the appeal brief until 14 August 2023.⁴
8. On 21 July 2023, the Appeals Chamber granted the OPCV’s request to appear before the Appeals Chamber, allowing it to submit written observations on the Bolivarian Republic of Venezuela’s appeal brief in relation to the general interests of victims, within 21 days of notification of Venezuela’s appeal brief.⁵

III. INFORMATION ON THE APPLICANTS

9. The Applicants fall within the temporal, territorial and material scope of the Venezuela I situation currently before the International Criminal Court because they are either victims that suffered harm as a result of crimes committed by the Venezuelan State, in particular direct victims and family members of direct victims of crimes against humanity committed by State security forces, civilian authorities and pro-government individuals (members of pro-governmental groups called *colectivos*) since 12 February 2014.

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). See footnote 2, [Decision on the OPCV’s “Request to appear before the Appeals Chamber pursuant to regulation 81\(4\) of the Regulations of the Court”](#), ICC-02/18 OA.

³ Request to appear before the Appeals Chamber pursuant to regulation 81(4) of the Regulations of the Court, ICC-02/18-47. See footnote 3, [Decision on the OPCV’s “Request to appear before the Appeals Chamber pursuant to regulation 81\(4\) of the Regulations of the Court”](#), ICC-02/18 OA.

⁴ [Decision on the Bolivarian Republic of Venezuela’s application for extension of time to file the appeal brief](#), ICC-02/18-52.

⁵ [Decision on the OPCV’s “Request to appear before the Appeals Chamber pursuant to regulation 81\(4\) of the Regulations of the Court”](#), ICC-02/18-54.

10. As a result of the crimes committed against their family members or themselves, these victims have suffered physical, psychological, and socioeconomic harm, including physical pain, injuries, anxiety, loss of sleep, trauma, feeling of fear, depression, and severe economic hardship. In addition, some victims or their family members have been forced to leave the country due to the continued persecution by the government of Venezuela.

IV. PERSONAL INTEREST OF VICTIMS

11. The personal interests of the Applicants are affected as per Article 68(3) of the Statute and Rule 93 of the Rules, which provide a first legal basis for the victims to address directly the Chamber.

12. Article 68(3) of the Rome Statute states that “[w]here the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.”

13. Rule 93 states that a “Chamber may seek the views of victims or their legal representatives participating pursuant to rules 89 to 91 on any issue, inter alia, in relation to issues referred to in rules 107, 109, 125, 128, 136, 139 and 191. In addition, a Chamber may seek the views of other victims, as appropriate”. Rule 107(5) refers to issues of “jurisdiction or admissibility of the case”.⁶

14. It is to be underlined that a second, and alternative, legal basis exists in order for the victims to submit their observations directly to the Chamber in accordance

⁶ For the application of Article 68(3) and Rule 93 in the context of a situation, see ICC-RoC46(3)-01/18-37, Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute”, Pre-Trial Chamber I, 6 September 2018, para. 21; see also ICC-02/17-200, Situation in the Islamic Republic of Afghanistan, Order on the conduct of the appeals proceedings, Appeals Chamber, 23 November 2022. In both instances, victims were allowed to directly submit their observations to the Chamber and not through the Victims Participation and Reparations Section, as is the case in the context of Article 15 proceedings.

with Article 19(3) of the Statute and Rule 59 of the Rules, as the current proceedings are related to admissibility and Article 19(3) of the Statute clearly gives a right to victims in proceedings with respect to admissibility to submit observations to the Court. The fact that the current proceedings are conducted in the context of a situation rather than in the context of a case should not be an impediment to the application of Article 19(3) of the Statute and Rule 59 of the Rules: in this regard, it is noted that Rule 107(5) of the Rules provides for the application of Rule 59 of the Rules in the context of a situation, in accordance with Article 53(3) of the Statute, even when an investigation has not been opened. Given the very broad language used in Article 19(3) of the Statute ('in proceedings with respect to admissibility'), there is no reason why Article 19(3) of the Statute and Rule 59 of the Rules should not be applied in the context of proceedings regarding admissibility under Article 18(2) of the Statute.

15. The Appeal will decide whether the Prosecutor's investigation in the situation of Venezuela I, will take place or be deferred. This question has an immediate and direct effect on the personal interests of the Applicants as they have not been able to obtain justice and remedies for the crimes committed against them or their family members. A reversal of the authorisation to resume the Prosecutor's investigation would have an immediate and direct effect on the "personal interests" of the victims, in terms of their right to a remedy, including truth and access to justice⁷,

⁷ The ICC's jurisprudence has recognized that the right to reparations "is a well-established and basic human right, that is enshrined in universal and regional human rights treaties, and in other international instruments". [See Decision establishing the principles and procedures to be applied to reparations](#), para. 185, ICC-01/04-01/06. Indeed, the right of victims to a remedy is widely recognized by international law. See e.g. UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 15 December 2005, A/RES/60/147. The right to a remedy includes a right to truth and access to justice, which requires an effective investigation and, where appropriate prosecution of potential perpetrators. The right to truth has been repeatedly recognised by UN mechanisms and the European Court of Human Rights. See International Commission of Jurists, "The Right to a Remedy and Reparation for Gross Human Rights Violations", pp. 121-130. The obligation to investigate and, where adequate, prosecute has been recognized by the case law of the Inter-American Court of Human Rights, the European Court of Human Rights and the African Commission on Human and

as the investigation could shed light on the alleged crimes committed, including the identification and, eventually, prosecution of potential perpetrators.

16. In the view of the Applicants, it is appropriate to authorise victims to present directly their views and concerns on the situation in Venezuela I, as per article 68(3) of the Statute or, alternatively, as per Article 19(3) of the Statute.

V. REQUEST

17. For the aforementioned reasons, the Applicants respectfully request that, the Appeal Chamber in addition to considering the views and concerns submitted by victims before the Pre Trial-Chamber, permits the Applicants to present directly their additional views and concerns to the Appeals Chamber regarding the Appeal. The Applicants would be providing views and concerns on whether the Prosecutor's investigation in the situation of Venezuela I, should take place or be deferred. Depending on the content of the appeal brief, they would present additional views and concerns.
18. Finally, Applicants request that the Appeals Chamber take into account the submissions of views and concerns that have already been submitted to VPRS during the Article 18(2) victim consultation process, which concluded on 20 April 2023.

Respectfully submitted on behalf of the Applicants by Counsel,

[REDACTED]

Peoples' Rights. See IACtHR, *Case of Velásquez Rodríguez v. Honduras*, Merits, Judgment of 29 July 1988, paras. 174-77; IACtHR, *Case of the Pueblo Bello Massacre v. Colombia*, Merits, Reparations and Costs, Judgment of 31 January 2006, Series C No. 140, para. 143; *McCann v. the United Kingdom*, ECtHR, Judgment of 27 September 1995, Series A No. 324, para. 161; *Opuz v. Turkey*, ECtHR, Judgment of 9 June 2009, para. 150; *Kalender v. Turkey*, ECtHR, Judgment of 15 December 2009, para. 53; *Malawi African Association et al. v. Mauritania*, AfrComHPR Communications 54/91 et al. (2000), recommendations, lit. 1; *Mouvement Burkinabé des Droits de l'Homme et des Peuples v. Burkina Faso*, AfrComHPR Communication 204/97 (2001), recommendations, lit 1.

Dated this 27 July 2023

At [REDACTED]