



Original: English

No.: ICC-02/18

Date: 31 October 2023

**THE APPEALS CHAMBER**

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

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

Public redacted version of "Prosecution Response to the Bolivarian Republic of Venezuela's Request for Leave to Reply to the Prosecution's Response Brief (ICC-02/18-63-Conf-Exp)", 26 September 2023, ICC-02/18-64-Conf-Exp

**Source:** Office of the Prosecutor

**Document 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 KC

Ms Nazhat Shameem Khan

Ms Helen Brady

**Counsel for Defence****Legal Representatives of the Victims****Legal Representatives of the Applicants****Unrepresented Victims****Unrepresented Applicants for  
Participation/Reparation****The Office of Public Counsel for  
Victims****The Office of Public Counsel for the  
Defence****States' Representatives**Competent authorities of the Bolivarian  
Republic of Venezuela**Amicus Curiae****REGISTRY****Registrar**

Mr Osvaldo Zavala Giler

**Counsel Support Section****Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations  
Section****Other**

## Submissions

1. On 14 August 2023, the Government of the Bolivarian Republic of Venezuela (“GoV”) appealed Pre-Trial Chamber I’s decision pursuant to article 18(2) of the Statute authorising the resumption of the Prosecution’s investigation in the *Venezuela I* situation,<sup>1</sup> to which the Prosecution responded on 13 September 2023.<sup>2</sup>
2. On 18 September 2023, pursuant to regulation 24(5) of the Regulations of the Court, the GoV sought leave to file a “discrete reply” to the Prosecution Response “in order to address the issue as to if and how the notion of ‘representative samples’ should be employed in connection with Articles 18(1) and (2) of the Statute” before 17 October 2023 (“Request to Reply”).<sup>3</sup>
3. The Prosecution respectfully notes that the Request to Reply in part does not accurately reflect the Prosecution Response.<sup>4</sup> The Prosecution submitted that Pre-Trial Chamber I acted reasonably when it relied on court records and records of investigative steps translated into English by the GoV, which the GoV had presented as a “[REDACTED]” which were “[REDACTED]” to its Deferral Request.<sup>5</sup> The Request to Reply seeks to expand the scope of the reply beyond this issue.<sup>6</sup>
4. The Prosecution observes that leave to reply has generally been granted to only address new issues that could not reasonably have been anticipated, or that the Chamber considers necessary for the adjudication of the matter before it.<sup>7</sup> A reply should not be used to strengthen arguments previously advanced.<sup>8</sup>

---

<sup>1</sup> ICC-02/18-59-Conf-Exp-AnxII (public redacted version: ICC-02/18-59-AnxII-Red) (“[Appeal](#)”).

<sup>2</sup> ICC-02/18-62-Conf-Exp (“Response” or “Prosecution Response”).

<sup>3</sup> ICC-02/18-63-Conf-Exp (“Request to Reply”), paras. 14, 15. The Prosecution was notified on 21 September 2023.

<sup>4</sup> *See e.g.* Request to Reply, paras. 3, 7, 12.

<sup>5</sup> Prosecution Response, paras. 67-68 (citing ICC-02/18-32-Conf-Exp-Anx1 (“[Translated Material letter](#)”) at p. 4) and more generally paras. 67-80.

<sup>6</sup> Request to Reply, paras. 8-9.

<sup>7</sup> *See e.g.* [ICC-01/05-01/08-3165-Red](#), para. 5; [ICC-02/18-37](#), paras. 11-12; [ICC-02/11-01/15-284](#), para. 11; *see also* [ICC-01/05-01/13-893](#), para. 10; ICC-02/04-01/05-462, para. 8; ICC-01/21-72, para. 7.

<sup>8</sup> [ICC-01/04-02/12-296-tENG](#), para. 7.

5. Notwithstanding the above, the Prosecution defers to the Appeals Chamber's discretion as to whether it would be assisted by further submissions in reply in determining the GoV's Appeal. If the Request to Reply is granted, the Prosecution respectfully requests that the reply be focused on the issue authorised by the Appeals Chamber and confined to a submission of a maximum of three pages.
6. Pursuant to regulation 23bis (2) of the Regulations of the Court, the Prosecution files this response as confidential *ex parte* because it responds to a document that bears this classification. The Prosecution will file a public redacted version as soon as practicable.



---

**Karim A.A. Khan KC, Prosecutor**

Dated this 31<sup>st</sup> day of October, 2023  
At The Hague, The Netherlands