

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No. **ICC-02/18**

Date: **4 May 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

Decision on Venezuela's request for leave to respond to the VPRS report

Decision 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
 Ms Alice Zago

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

The Office of Public Counsel for the Defence

States Representative

Amicus Curiae

Competent authorities of the Bolivarian
 Republic of Venezuela

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
 Section Other**

Mr Philipp Ambach

PRE-TRIAL CHAMBER I (the ‘Chamber’) of the International Criminal Court (the ‘Court’) issues this decision on the request by the Bolivarian Republic of Venezuela (‘Venezuela’) for leave to respond to the VPRS’s report on victims’ views and concerns (the ‘Request’).¹

I. Procedural history and submissions

1. On 3 November 2021, the Prosecution opened the investigation into the situation in the Bolivarian Republic of Venezuela (the ‘Investigation’; and the ‘Situation’, respectively).²

2. On 1 November 2022, after having received a request from Venezuela to defer the Investigation, and having informed the Chamber accordingly,³ the Prosecution requested the Chamber to authorise the resumption of its investigation into the Situation pursuant to article 18(2) of the Statute (the ‘Request to Resume the Investigation’).⁴

3. On 15 November 2022, the Registry transmitted to the Chamber a communication from Venezuela, dated 10 November 2022, in which said State submitted proposals on the procedure to be set out by the Chamber, pursuant to rule 55(1) of the Rules of Procedure and Evidence (the ‘Rules’), *inter alia*, requesting authorisation to reply to any response to its submissions ‘from any source’ under the conditions set out in regulation 24(5) of the Regulations of the Court (the ‘Regulations’).⁵

¹ Annex to Transmission of ‘Request for authorisation to respond to the report submitted by the VPRS in relation to OTP’s request for resumption of the investigation (ICC-02/18-40-AnxI-Red 20-04-20231/57 PT)’, 26 April 2023, ICC-02/18-42-Anx.

² ICC Press Release, ICC Prosecutor, Mr Karim A.A. Khan QC, opens an investigation into the Situation in Venezuela and concludes Memorandum of Understanding with the Government, 5 November 2021.

³ Notification of the Bolivarian Republic of Venezuela’s deferral request under article 18(2) of the Rome Statute, 20 April 2022, ICC-02/18-17 (with confidential and public redacted versions of annexes A and B), para. 1.

⁴ 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 (with confidential *ex parte* annexes A and B, available to the Prosecution and the Bolivarian Republic of Venezuela only; and public annex C).

⁵ 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 (filed on 14 November 2022) (with confidential annex I and public annex II); 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, para. 39, p. 14.

4. On 18 November 2022, the Chamber issued an order on the conduct of proceedings (the ‘Order on the Conduct of Proceedings’), inviting Venezuela to submit observations on the Request to Resume the Investigation, permitting the Prosecution to respond to these observations, as well as inviting victims and their legal representatives to submit their views and concerns on the Request to Resume the Investigation and for the VPRS to collect such views and concerns and to transmit them to the Chamber, together with a report.⁶ The Chamber further held, with regard to Venezuela’s request to be allowed to provide a reply to any response to its submissions, that, without having received any such submissions, it was, at that stage, unable to assess this request.⁷

5. On 20 April 2023, after having been granted an extension of time,⁸ the Registry submitted its third transmission of the views and concerns of victims,⁹ together with its final consolidated report on victims’ views and concerns received (the ‘VPRS Report’).¹⁰

6. On 26 April 2023, the Registry transmitted the Request, in which Venezuela requests leave to respond to the VPRS Report by ‘at least’ 30 May 2023, submitting *inter alia* that ‘leave to reply is justified because the [VPRS Report] raises new issues that [Venezuela] could not reasonably have foreseen’.¹¹

II. Analysis

7. At the outset, the Chamber notes that Venezuela appears to base its request on regulation 24(5) of the Regulations.¹²

8. Regulation 24(5) of the Regulations provides that ‘a reply must be limited to new issues raised in the response which the replying participant could not reasonably have

⁶ Order inviting observations and views and concerns of victims, ICC-02/18-21, paras 9-11, p. 7.

⁷ Order on the Conduct of Proceedings, para. 12.

⁸ Email from the Chamber, 10 March 2023, at 15:24.

⁹ Third Registry Transmission of Victims’ Views and Concerns in the Article 18(2) Proceedings, ICC-02/18-39 (with 1723 confidential *ex parte* annexes only available to the Registry).

¹⁰ Final Consolidated Registry Report on Article 18(2) Victims’ Views and Concerns Pursuant to Pre-Trial Chamber’s Order ICC-02/18-21, ICC-02/18-40-Conf (with Confidential Annexes I and III and Confidential *ex parte* Annex II only available to the Registry); public redacted version notified on the same date, ICC-02/18-40-Red.

¹¹ Transmission of ‘Request for authorisation to respond to the report submitted by the VPRS in relation to OTP’s request for resumption of the investigation (ICC-02/18-40-AnxI-Red 20-04-20231/57 PT)’, 26 April 2023, ICC-02/18-42.

¹² Request, para. 8.

anticipated'. As such, the Chamber recalls that it has, as part of the present proceedings, previously stressed that it can only assess the propriety of granting any leave to reply in relation to issues specifically identified.¹³

9. In this regard, Venezuela merely submits that 'the VPRS report presents facts concerning alleged victims that could be subject to domestic criminal investigations or even perpetrators could have received effective sanctions or could be facts that were never reported in the Venezuelan domestic judicial system, making it necessary for [Venezuela] to be able to respond in detail to each of these allegations before the PTC'.¹⁴ This submission is, in and of itself, not sufficiently precise to enable the Chamber to determine the propriety of granting a leave to reply. Moreover, a reply under the Court's legal framework is not meant for the type of exhaustive submissions (namely, to 'respond in detail to each of these allegations') Venezuela wishes to provide.

10. However, in light of the fact that the Chamber invited potential victims and their legal representatives to submit their views and concerns and instructed the VPRS to collect and transmit them to the Chamber, and that the victims cannot make requests or applications as part of the present Article 18(2) proceedings, the VPRS Report does not constitute a 'response' in the sense of regulation 24(2) of the Regulations. Therefore, the Chamber notes that the more appropriate legal basis to consider the present Request is regulation 24(3) of the Regulations. Under this provision, the ability to file submissions by States participating in the proceedings is subject to orders of the Chamber. Accordingly, while Venezuela is a participating State within the meaning of

¹³ Decision on Venezuela's request for leave to reply, 3 April 2023, ICC-02/18-37, para. 10. *See also* Decision on Venezuela's request for an extension of time and other procedural matters, ICC-02/18-29, para. 12; Observations of the Government of the Bolivarian Republic of Venezuela to the Prosecution request to resume the investigation (ICC-01/18-18), 28 February 2023, ICC-02/18-30-Conf-Exp-AnxII (a public redacted version was filed on 28 March 2023, ICC-02/18-30-AnxII-Red); Prosecution's Response to the 'Observations of the Government of the Bolivarian Republic of Venezuela's to the Prosecution request to resume the investigation' (ICC-02/18-30-Conf-Exp-AnxII), ICC-02/18-31-Conf-Exp (a public redacted version was filed on 30 March 2023, ICC-02/18-31-Red; Transmission of 'Request for leave to reply to the Prosecution's "Observations of the Government of the Bolivarian Republic of Venezuela's to the Prosecution request to resume the investigation' (ICC-02/18-31-Conf-Exp)", ICC-02/18-34-Conf-Exp; Prosecution's Response to the Government of the Bolivarian Republic of Venezuela's Request for Leave to Reply, 31 March 2023, ICC-02/18-36-Conf-Exp; Reply of the Government of the Bolivarian Republic of Venezuela to the 'Prosecution's Response to the "Observations of the Government of the Bolivarian Republic of Venezuela to the Prosecution request to resume the investigation" (ICC-02/18-31-Conf-Ex-AnxII), ICC-02/18-41-Anx.

¹⁴ Request, para. 8.

regulation 24(3) of the Regulations, it is within the discretion of the Chamber to grant or reject authorisation to file additional submissions.

11. For the reasons that follow, the Chamber will not grant Venezuela such authorisation in the present case. The Chamber has now received all relevant submissions it had set out and foreseen in its Order on the Conduct of Proceedings, including the VPRS Report. Venezuela's submissions are broad in nature and do not persuasively identify any specific aspect of the VPRS Report that would require a response by Venezuela. Furthermore, the VPRS Report transmits the views and concerns of *potential* victims. At this stage, no victims have been admitted to participate in the proceedings, and the level of response envisioned by Venezuela is therefore not warranted at the present stage. In these circumstances, the Chamber does not deem it necessary to receive any additional submissions from Venezuela, or any other participant in these proceedings. Having received all the relevant submissions, the Chamber will now proceed with its analysis of, and decision on, the Request to Resume the Investigation.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Request.

Done in English. A French translation will follow. The English version remains authoritative.



Judge Péter Kovács, Presiding Judge



Judge Reine Adélaïde Sophie

Alapini-Gansou



Judge María del Socorro

Flores Liera

Dated this Thursday, 4 May 2023

At The Hague, The Netherlands