

Pursuant to Pre-Trial Chamber I's instruction dated 18.04.2023, this document is reclassified as Public

ANNEX II

CONFIDENTIAL

***EX PARTE*, the Prosecution and the Bolivarian Republic of Venezuela only**

Pursuant to Pre-Trial Chamber I's instruction dated 18.04.2023, this document is reclassified as Public

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No: ICC-02/18
Date: 27 March 2023

PRE-TRIAL CHAMBER I

Before: Judge Peter Kovács, Presiding
Judge Reine Alapini-Gansou
Judge María del Socorro Flores Liera

SITUATION IN THE BOLIVARIAN REPUBLIC OF VENEZUELA I

Confidential EX PARTE

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)

Source: Government of the Bolivarian Republic of Venezuela

Pursuant to Pre-Trial Chamber I's instruction dated 18.04.2023, this document is reclassified as Public

Documents 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 QC
Ms Nazhat Shameem Khan
Ms Alice Zago

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 Defense**

States Representatives
Minister of Foreign Affairs of the
Bolivarian Republic of Venezuela

Amicus curiae

Registry

The Registrar
M. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Other

I. INTRODUCTION

1. On 1 November 2022, the Prosecution requested the Pre-Trial Chamber I ("the Chamber") to resume its investigation into the Venezuela I situation.¹
2. On 18 November, the Chamber issued its "Order inviting observations and views and concerns of victims".²
3. In its decision dated 27 February 2023, the Chamber invites Venezuela to submit any request for leave to reply within the meaning of regulation 24(5) of the Regulations of the Court ("RoC") by Tuesday, 28 March 2023.³
4. On 28 February 2023, the Government of the Bolivarian Republic of Venezuela ("GoV") filed its "Observations of the Government of the Bolivarian Republic of Venezuela to the Prosecution request to resume the investigation (ICC-01/18-18)".⁴
5. On 21 March 2023, the Prosecutor filed its "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)" ("Prosecution's Response").⁵
6. Pursuant to Regulation 24(5) of the RoC, the GoV requests the Chamber leave to reply to the Prosecution Response.

¹ 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.

² ICC-02/18-21

³ Decision on Venezuela's request for an extension of time and other procedural matters, ICC-02/18-29, par. 12

⁴ ICC-02/18-30-Conf-Exp-AnxII

⁵ ICC-02/18-31-Conf-Exp

7. The GoV asserts that leave to reply is warranted because the Prosecution Response raised new issues that the GoV could not reasonably have anticipated.

8. Should the Chamber allow a reply by the GoV, it respectfully asks the Chamber the authorisation to file said reply on 28 April 2023.

II. CONFIDENTIALITY

9. This request is classified as "Confidential ex parte", pursuant to regulation 23bis(2) of the RoC, as it refers to a document with the same classification.

III. SUBMISSIONS

10. The GoV submits that leave to reply should be granted because the Prosecution Response raised a new issue that the State could not reasonably have anticipated.

11. According to Regulation 24(5) of the RoC, *"participants may only reply to a response with the leave of the Chamber[.] [...] Unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated."*⁶

12. The GoV requests the Court's leave to respond to various elements contained in the Prosecution Response. For example, in paragraph 21, on the one hand, the Prosecution asserts that, as noted by the Chamber in another situation, Article 18 proceedings are not an avenue for re-litigating what was resolved under Article 15 proceedings. On the other hand, the Prosecution states *"likewise, for situations*

⁶ See Regulation 24(5) of the RoC.

*triggered by State referrals such as Venezuela I's, article 18 proceedings are not an avenue to litigate the Prosecution's jurisdictional and gravity assessments under article 53(1)''?*⁷ Through this assertion, the Prosecutor argues that his assessment under Article 53(1) equates to the Pre-Trial Chamber's assessment under Article 15. Given its importance, such a statement on a core legal issue needs a response from the GoV. As the Prosecutor puts it in its Response, the issue is brought for the first time before the Court, particularly in the context of an inter-State referral after the initiation of an EP proprio motu, and on this basis would, only justify a reply from the GoV.

13. Another example of the elements that the GoV requests permission to reply, refers to the Prosecutor's Response on the crime of persecution. The Prosecution notes that *"the relevant consideration is whether the persecutory nature of the underlying acts (in this case, conduct against actual or perceived political opponents) is reflected in the conviction or sentence"*.⁸ For the OTP, this could be achieved by considering the persecutory nature of the crimes as aggravating sentencing factors.⁹ In view of the consideration of the Prosecution that the GoV has not explained how the alleged discriminatory intent would be reflected in domestic proceedings,¹⁰ and that the above interpretation of the Prosecution was developed in its Response for the first time, the GoV requests the authorisation to reply on this point.

⁷ Prosecution's Response, par. 21, see also par. 30.

⁸ Prosecution's Response, par. 29.

⁹ Ibidem.

¹⁰ Ibidem.

III. RELIEF

14. The GoV respectfully requests the Chamber to grant it the right to reply to the Prosecution's Response in the conditions set in paragraph 8.

Respectfully submitted,



Yvan Gil Pinto
Minister of Foreign Affairs of the Bolivarian Republic of Venezuela

Date this 27 March 2023