

Annex II

Public

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

Nº: ICC-02/18

Date: 10 November 2022

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

Public

Proposals on the procedure before Pre-Trial Chamber I - Venezuela I

Source: Government of the Bolivarian Republic of Venezuela

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

Unrepresented Victims

The Office of Public Counsel for Victims

States Representatives

Minister of Foreign Affairs of the Bolivarian Republic of Venezuela

Legal Representatives of the Applicants

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for The Defense

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 Bolivarian Republic of Venezuela ("Venezuela") was formally notified of the submission, on the same day, by the Office of the Prosecutor of a "Request for authorisation to resume the investigation under Article 18(2) of the Statute" ("OTP Request"). In view of the lack of specificity in the Statute on the procedure to be followed at this stage, the Bolivarian Republic of Venezuela allows itself to submit to this Pre-Trial Chamber some suggestions on certain procedural aspects of such a request, in the hope of facilitating a fair and expeditious determination of the procedure to be followed in accordance with Rule 55(1) of the Rules of Procedure and Evidence ("RPE").

2. This is without prejudice to the substantive observations that Venezuela will submit in due course, in accordance with Rule 55(2) of the RPE, on the merits of the OTP's request.

II. BACKGROUND

3. On 8 February 2018, the Office of the Prosecutor opened a preliminary examination of the situation in Venezuela since at least April 2017 ("Venezuela I").

4. On 27 September 2018, the International Criminal Court ("the Court") received a referral from a group of States Parties to the Statute (namely, the Republic of Argentina, Canada, the Republic of Colombia, the Republic of Chile, the Republic of Paraguay and the Republic of Peru) regarding the situation in Venezuela since 12

February 2014.¹

5. On 28 September 2018, the Presidency of the Court assigned the situation in Venezuela to Pre-Trial Chamber I.² On 19 February 2020, the Presidency reassigned the situation in Venezuela I from Pre-Trial Chamber I to Pre-Trial Chamber III.³ On 16 March 2021, the Presidency recomposed Chambers and reassigned the situation in Venezuela from Pre-Trial Chamber III to Pre-Trial Chamber I ("the Chamber").⁴

6. On 2 October 2020, the Office of the Prosecutor addressed the Permanent Mission of Venezuela to the Court, by document OTP2020/019873, requesting information in relation to "Venezuela I" and any ongoing investigations or proceedings at the national level.

7. Thereafter, Venezuela showed continued commitment to cooperate with the work of the OTP and multiplied proactive efforts to comply with the OTP's request and expectations. Venezuela submitted no less than 8 substantive reports (on 30 November 2020, 31 January 2021, 30 April 2021, 5 May 2021, 18 May 2021, 3 June 2021, 11 June 2021 and 29 October 2021), setting out in great detail the status and progress of 756 cases being prosecuted by national judicial authorities, and providing copies of supporting judicial documentation. Venezuela also systematically reported on the unprecedented institutional reforms being carried out in the country in order to strengthen the national judicial and institutional apparatus. Venezuela also continuously requested the Office of the Prosecutor to provide information on these reports and progress.

8. On 16 December 2021, in accordance with Article 18(1) of the Statute, the

¹ Notification. Referral from a group of six States Parties pursuant to article 14(1) of the Rome Statute regarding the situation in Venezuela. [ICC-02/18-1-AnxI](#), 27 September 2018.

² Decision assigning the situation in the Bolivarian Republic of Venezuela to Pre-Trial Chamber I, (Presidency) [ICC-02/18-1](#), 28 September 2018.

³ Decision assigning the situation in the Bolivarian Republic of Venezuela II and reassigning the situation in the Bolivarian Republic of Venezuela I to Pre-Trial Chamber III (Presidency), [ICC-02/18-2](#), 19 February 2020.

⁴ Decision assigning judges to divisions and recomposing Chambers, (Presidency) [ICC-02/18-4](#), 16 March 2021.

Office of the Prosecutor formally notified Venezuela and all States Parties to the Statute of its decision to open an investigation into the situation in Venezuela.

9. On 3 January 2022, pursuant to Rule 52(2) of the Rules of Procedure and Evidence, Venezuela requested additional information from the Office of the Prosecutor in relation to the facts that would be the subject of the Office's investigation. The OTP responded with additional information on 13 January 2022.

10. On 17 January 2022, the Office of the Prosecutor informed the Chamber that it had granted Venezuela an extension of three months to file a request for a deferral pursuant to Article 18(2) of the Statute.⁵

11. On 15 April 2022, Venezuela, acting under Article 18(2) of the Statute, confirmed that it is investigating or has investigated its nationals or others within its jurisdiction with respect to alleged punishable acts against human rights, and accordingly requested the Office of the Prosecutor to defer to those domestic proceedings.

12. On 20 April 2022, the Office of the Prosecutor informed the Pre-Trial Chamber of the submission of the said request by the Bolivarian Republic of Venezuela. Paragraph 8 of the application expressly stated that it would request, at the time the Chamber decided on the proceedings, that the victims or their legal representatives, as well as other interested participants, be invited to present their observations.

13. Since then, Venezuela has continued its best efforts to cooperate with the work of the Court and its Prosecutor. This includes sending up to 6 letters dated 21 April, 13 June, 4 July, 26 July, 16 September and 14 October 2022, by which Venezuela kept the Office of the Prosecutor further abreast of the most recent judicial developments in relation to a number of cases being investigated by the competent Venezuelan authorities.

⁵ Notification on the status of article 18 notifications in the Situation in the Bolivarian Republic of Venezuela I, ICC-02/18-16, 17 January 2022.

14. On 1 November 2022, Venezuela was formally notified of the submission, on the same day, by the Office of the Prosecutor, of a request to authorize the resumption of the investigation under article 18(2) of the Statute.⁶

15. On 3 November 2022, the OPCV has submitted its *"OPCV Request to Submit Observations on the Prosecutor's Request to Resume the Investigation under Article 18(2) of the Statute"*.⁷

III. GENERAL COMMENTS

16. The present case has particular characteristics that distinguish it from others previously heard by the Pre-Trial Chamber under the procedure of Article 18(2) of the Statute.

17. On 16 December 2021, the Prosecutor decided to move beyond the Preliminary Examination phase and to proceed to the investigation phase, without the control of the Pre-Trial Chamber, in application of the provisions of Articles 13(a) and 14 of the Rome Statute. This circumstance marks a difference with other previous cases where the Chamber, at the time of deciding on Article 18(2), already had a prior judicial assessment of the initiation of an investigation, the jurisdiction of the Court, and compliance with the admissibility requirements.

18. Venezuela considers that the Pre-Trial Chamber, in deciding on the OTP's Request in this matter, will be called upon to make an assessment of the Court's jurisdiction and compliance with the admissibility requirements set out in Article 17 of the Statute, in accordance with the provisions of Article 55(2) of the RPP.

19. Even the Pre-trial Chamber itself, in its decision of 14 June 2021, noted that Article 18 of the Statute *"provides the procedural opportunity to submit the type of challenges that are being introduced by Venezuela"*, that is, the opportunity to raise and rule on the State's allegations in relation to the jurisdiction of the Court, the admissibility of the case and the conduct of the Preliminary Examination.

⁶ ICC-02/18-18

⁷ (ICC-02/18-19).

20. In Venezuela's view, this element should be taken into consideration by the Chamber when deciding on the applicable procedure, including the time limits granted to the State for its observations.

IV. PRESENTATIONS

21. In its request, the Office of the Prosecutor makes a number of submissions in relation to the practical modalities of the proceedings under Article 18(2) of the Statute and Rule 55(2) of the Rules of Procedure and Evidence, which it is now for the Chamber to determine under Rule 55(1) of the Rules. Venezuela wishes to make the following considerations in response to these procedural submissions.

A. Preliminary remark

22. The Bolivarian Republic of Venezuela wishes to note the recurring references to the cooperation of the Venezuelan authorities with the Office of the Prosecutor. This was noted by the Pre-Trial Chamber in its decision of 2 March 2022 as follows:

"It is undisputed in the present litigation that Venezuela has shown a willingness to cooperate fruitfully with the Court, a record that was in fact "deeply appreciated" by the Office of the Prosecutor".⁸

It concluded that it "considers it appropriate for the Office of the Prosecutor to maintain a meaningful dialogue with Venezuela, in line with the principle of complementarity, during the preliminary examination and beyond, as appropriate".⁹

23. RBV therefore submits this brief in the spirit of cooperation mentioned below and expects that the procedure to be established by the Chamber will take into

⁸ ICC-02/18-9-Conf, § 19

⁹ *Ibidem*, § 20

account, in particular, the qualitative and quantitative importance of the documents communicated by the State within the time limits set for its observations (*see below*).

B. Victim participation

24. In a decision dated 8 October 2021, Pre-Trial Chamber II noted, in the context of another situation, that only the Office of the Prosecutor and the State requesting the deferral are interested parties for the purposes of the proceedings, pursuant to Article 18(2) of the Statute and Rule 55(2) of the Rules of Procedure and Evidence: *“the Chamber notes that, pursuant to Article 18(2) of the Statute, the sole parties to the proceedings triggered by the Prosecutor’s request to be authorised to resume an investigation notwithstanding a State’s request for deferral are the Prosecutor, on the one hand, and the relevant State, on the other. The statutory framework does not provide an opportunity for potential victims to intervene at this stage, nor for the participation of other persons or entities without the authorization of the Chamber”*.¹⁰

25. In a subsequent decision of 8 November 2021, while reproducing this principled position,¹¹ however, Pre-Trial Chamber II noted that *“the interests of potential victims may indeed be affected as a result of developments in this proceedings and that, accordingly, those potential victims may legitimately have and develop concerns worth being brought to the Chamber’s attention”*.¹² Bearing in mind the latter, but also the need to maintain an *efficient and orderly conduct of the proceedings*,¹³ Pre-Trial Chamber II decided to instruct the Victims Participation and Reparations Section (*hereinafter* “VPRS”) to begin collecting the views and concerns of victims and to prepare a comprehensive report of the views and concerns of victims arising from the

¹⁰ Decision setting the procedure pursuant to rule 55(1) of the Rules of Procedure and Evidence following the Prosecutor’s ‘Request to authorise resumption of investigation under article 18(2) of the Statute’, ICC-02/17-165, 8 October 2021, para. 22.

¹¹ Decision on submissions received and order to the Registry regarding the filing of documents in the proceedings pursuant to articles 18(2) and 68(3) of the Statute, ICC-02/17-171, 8 November 2021, para. 10.

¹² *Id.* para. 12.

¹³ *Id.* para. 13.

Prosecutor's application.¹⁴

26. This process was similarly adopted by the Chamber inviting victims to submit comments and to express their views and observations in the Situation of the Republic of the Philippines.¹⁵

27. Venezuela has taken note of the observations of the Office of Public Counsel for Victims ("the Office") entitled "*OPCV Request to Submit Observations on the Prosecutor's Request to Resume the Investigation under Article 18(2) of the Statute*".¹⁶

28. The Office does not justify why it would be appropriate to deviate from a procedure for communicating victims' observations through the VPRS. Nor does it justify why it would be appropriate to depart from the procedure adopted by the Chamber in the Philippines. In this regard, the mere mention of the specificity of the situation and the complex issues raised in the referral does not constitute sufficient justification.

29. Consequently, Venezuela considers that any intervention by the alleged victims or their legal representatives must be subject to the procedure established by the Decision of 14 July 2022.¹⁷ Moreover, such alleged victims must be closely related to the present case.

30. In addition, should the Chamber allow victims to submit their own observations through this mechanism, Venezuela should be allowed to submit a response to the report. As the Respondent in the Article 18 proceeding, it should be permitted to file such a response on the basis of Rule 24(1) of the Rules of Court. If allowed to respond, Venezuela is prepared to proceed expeditiously and diligently within a time limit to be set by the Chamber.

¹⁴ Id. para. 14.

¹⁵ ICC-01/21-47, 14 July 2022

¹⁶ (ICC-02/18-19).

¹⁷ *Ibidem*.

C. The participation of sending States

31. In relation to the mention made by the Office of the Prosecutor in its brief dated 20 April 2022 informing the Pre-Trial Chamber of the possible participation in the proceedings of the referring States, Venezuela believes that the States Parties that have referred the situation of Venezuela to the Court lack standing to be associated in any way with the present proceedings under Article 18(2) of the Statute and Rule 55(2) of the Rules of Procedure and Evidence.

32. As Pre-Trial Chamber II rightly observed, the only parties to the proceedings triggered by the Prosecutor's request for leave to resume an investigation despite a State's request for a postponement are the Prosecutor, on the one hand, and the relevant State, on the other.¹⁸ The referring States, on the other hand, have no interest of their own in the outcome of this procedure.¹⁹

D. Timetable for submission of Venezuela's observations and right of reply to the OTP's response

1) Deadline for comments from Venezuela

33. The OTP requests the Chamber to adopt an expedited order on the conduct and timing of these proceedings pursuant to Article 18(2) of the Statute. While Venezuela does not oppose the expeditious judicial determination of the crucial issues and questions raised in the Prosecution's Request, Venezuela notes that the Prosecution's Request raises key and novel issues that are of the utmost legal and practical importance, including in relation to Venezuela's sovereignty, and including

¹⁸ *Decision setting the procedure pursuant to rule 55(1) of the Rules of Procedure and Evidence following the Prosecutor's 'Request to authorise resumption of investigation under article 18(2) of the Statute', ICC-02/17-165, 8 October 2021, para. 22.*

¹⁹ The participatory rights of referring States are explicitly provided for in article 53(3)(a) of the Statute and rule 107(4) of the Rules of Procedure and Evidence outside the procedure of article 18(2) of the Rome Statute.

for the judicial fate of several hundred cases currently under investigation or prosecution by Venezuela's competent domestic authorities.

34. The right of a State that has requested deferral under Article 18(2) to submit observations is explicitly provided for in Rule 55(2) of the RPE, and its importance in the overall framework of the Court's activity has been rightly underlined by Pre-Trial Chamber II in the context of another situation: *"Article 18 of the Statute as a whole is at the heart of the complementarity regime which underpins the Statute and governs the relationship and the sharing of responsibilities between the Court and the States in the investigation and prosecution of the most serious crimes. More specifically, Article 18(2) of the Statute, on which the request is premised, encapsulates the idea of a process of dialogue between the Court and the Prosecutor on the one hand, and the relevant State, from whom observations can and should be sought pursuant to with Rule 55(2) of the Rules, on the other"*.²⁰

35. Throughout the preliminary examination and the initial phase of the OTP's investigation into the situation in Venezuela, Venezuela submitted a very extensive series of documents, reports and judicial documents to the OTP, detailing the status and progress of hundreds of relevant cases being prosecuted by the national judicial authorities, and reporting on numerous institutional reforms being undertaken to strengthen the national judicial and institutional apparatus. These elements are essential for the Chamber to fully understand the situation and to determine the basis for the Prosecution's request. Their detailed update and summary, including in light of the new submissions and allegations made in the Prosecution's request, requires considerable time and effort.

36. In the context of the situation in Afghanistan, Afghanistan did not oppose or comment on the OTP's request for Pre-Trial Chamber II to establish an accelerated

²⁰ Decision setting the procedure pursuant to rule 55(1) of the Rules of Procedure and Evidence following the Prosecutor's 'Request to authorise resumption of investigation under article 18(2) of the Statute', ICC-02/17-165, 8 October 2021, para. 16.

timetable for the determination of the OTP's request under article 18(2) of the Statute.²¹ Pre-Trial Chamber II finally decided to invite Afghanistan to submit its observations one month after Pre-Trial Chamber II adopted the above-mentioned scheduling order²² (still some 6 months after the OTP's initial request for permission to resume the investigation).

37. In the context of the situation in the Philippines, the Chamber invited the State to file any written submission within 7 weeks.²³

38. In the instant case and for the reasons mentioned above, Venezuela submits that a period of 3 months from the next order of the Chamber is necessary to enable it to exercise fairly and effectively its right to submit observations in accordance with Rule 55(2) of the RPE.

2) Right of reply

39. Venezuela requests that the Chamber authorize it to reply to any response to its submissions, from any source, under the conditions set out by Rule 24(5) of the Regulations of the Court and, therefore, on the condition that it be limited to *"new issues raised in the response which the replying participant could not reasonably have anticipated"*.

40. As a Respondent in the "Article 18 proceeding", Venezuela must be accorded the right to have the last word if the OTP's response raises issues that would require comments from Venezuela for the manifestation of truth and the proper administration of justice.

E. Holding a hearing

²¹ Request to authorise resumption of investigation under article 18(2) of the Statute, 27 September 2021, [ICC-02/17-161](#), esp. para. 11.

²² Order setting the schedule for the filing of submissions in the proceedings pursuant to article 18(2) of the Rome Statute and rule 55(2) of the Rules of Procedure and Evidence, 24 February 2022, [ICC-02/17-182](#).

²³ Order inviting observations and victims' views and concerns, [ICC-01/21-47](#), 14 July 2022

41. Pursuant to Rule 55(1) of the Rules of Procedure and Evidence, for the purposes of the procedure under Article 18(2) of the Statute, the Chamber may convene a hearing.

42. In its request, the Prosecution does not indicate whether, in its opinion, such a hearing is necessary. In the present circumstances, the Bolivarian Republic of Venezuela considers that a hearing would not be necessary. However, reserves the right to request such a hearing if, in the course of the proceedings, an issue arises that could be better resolved by hearing the parties.

FOR ALL THE FOREGOING REASONS, the Bolivarian Republic of Venezuela respectfully requests Pre-Trial Chamber I to issue the following orders pursuant to Rule 55(1) of the RPE:

- a) Authorize the participation of the duly identified alleged victims only through the submission by the VPRS of a brief report summarizing their views and concerns, specific to the cases contained in the documentation provided by the Office of the Prosecutor; and authorize Venezuela to respond to this report within the time limit to be set by the Chamber;
- b) Determine that the States Parties that have referred the situation of Venezuela to the Court lack standing to participate in any way in the present proceedings under Article 18(2) of the Statute and Rule 55(2) of the RPE;
- c) Set a time limit of three months from the adoption of the next order of the Chamber for the submission of Venezuela's observations pursuant to Rule 55(2) of the RPE;

- d) Authorize Venezuela to reply to the Prosecutor's response under the conditions set out in paragraph 39 and following of this brief.



Carlos Faria Tortosa

Minister of Foreign Affairs of the Bolivarian Republic of Venezuela.

10 November 2022, Caracas, Venezuela.