



**Original: English**

**No. ICC-02/18 OA  
Date: 20 July 2023**

**THE APPEALS CHAMBER**

**Before:** Judge Marc Perrin de Brichambaut, Presiding  
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 document**

**Decision on the Bolivarian Republic of Venezuela's request for suspensive effect of Pre-Trial Chamber I's "Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute"**

**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, Prosecutor

Ms Alice Zago

**States Representatives**

Competent authorities of the Bolivarian

Republic of Venezuela

**REGISTRY**

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**Registrar**

Mr Osvaldo Zavala Giler

The Appeals Chamber of the International Criminal Court,

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" of 27 June 2023 (ICC-02/18-45),

Having before it "The Bolivarian Republic of Venezuela's Notice of Appeal against Pre-Trial Chamber I's 'Decision authorizing the resumption of the investigation pursuant to article 18(2) of the Statute' (ICC-02/18-45) and request for suspensive effect" of 3 July 2023 (ICC-02/18-46-AnxII-Red),

*Renders* the following

## DECISION

The Appeals Chamber rejects the request of the Bolivarian Republic of Venezuela for suspensive effect of the aforementioned decision of Pre-Trial Chamber I.

## REASONS

### I. PROCEDURAL HISTORY

1. 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").<sup>1</sup>

2. On 3 July 2023, Venezuela submitted its notice of appeal against the Article 18(2) Decision (hereinafter: "Notice of Appeal"), in which it, *inter alia*, requested "that the implementation of the [Article 18(2) Decision] be suspended pending the final resolution of this appeal" (hereinafter: "Request for Suspensive Effect").<sup>2</sup>

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<sup>1</sup> [Decision authorising the resumption of the investigation pursuant to article 18\(2\) of the Statute, ICC-02/18-45.](#)

<sup>2</sup> 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), para. 12.

3. On 11 July 2023, the Prosecutor filed his response to Venezuela’s Request for Suspensive Effect (hereinafter: “Prosecutor’s Response”),<sup>3</sup> requesting that the Appeals Chamber dismiss the request.<sup>4</sup>

## II. MERITS

4. Referring to article 82(3) of the Statute and rule 156(5) of the Rules of Procedure and Evidence (hereinafter: “Rules”), Venezuela requests suspensive effect of the Article 18(2) Decision pending the final resolution of its appeal, arguing that “there are several areas in which the resumption of the [Prosecutor]’s investigations would generate difficult to correct or irreversible consequences or otherwise defeat the purpose of the appeal”.<sup>5</sup>

5. In particular, Venezuela submits that (i) resumption of the Prosecutor’s investigation would have irreversible consequences on the Memorandum of Understanding signed between the Government of Venezuela and the Office of the Prosecutor (hereinafter: “MoU”);<sup>6</sup> (ii) the immediate enforcement of the Article 18(2) Decision would defeat the purpose of Venezuela’s appeal, because it will argue, in its appeal brief, that the events investigated by the Prosecutor do not fall within the Court’s jurisdiction, and the Appeals Chamber’s judgment could nullify the Prosecutor’s investigations;<sup>7</sup> and (iii) “concurrent investigations entailing interviews with the same witnesses and alleged victims would generate unnecessary trauma and taint the integrity of the evidence”.<sup>8</sup>

6. In his response, the Prosecutor requests that the Appeals Chamber dismiss Venezuela’s request for suspensive effect of the Article 18(2) Decision, arguing that Venezuela has not shown that implementation of the decision would create an irreversible situation, or one that would be very difficult to correct or that could potentially defeat the purpose of the appeal.<sup>9</sup>

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<sup>3</sup> Prosecution response to the Bolivarian Republic of Venezuela’s request for suspensive effect, 17 July 2023, ICC-02-18-50-Red (confidential *ex parte* version filed on 11 July 2023).

<sup>4</sup> Prosecutor’s Response, para. 1.

<sup>5</sup> Notice of Appeal, paras 12, 16.

<sup>6</sup> Notice of Appeal, paras 16, 18.

<sup>7</sup> Notice of Appeal, paras 16, 19.

<sup>8</sup> Notice of Appeal, paras 16, 20.

<sup>9</sup> Prosecutor’s Response, paras 1, 6.

7. The Prosecutor submits that his office “has on many occasions and publicly stated that it remains committed to cooperation under the MoU I (and its implementation) in the event that the investigation were to resume”.<sup>10</sup> The Prosecutor also argues that, while the Appeals Chamber decides on the merits of the appeal, Venezuela can continue with its domestic investigations and proceedings, irrespective of the Prosecutor’s ongoing investigation.<sup>11</sup> The Prosecutor submits that, even if the Appeals Chamber were eventually to decide that the Court lacks jurisdiction in the present situation, any relevant investigation by the Prosecutor would be discontinued.<sup>12</sup> Finally, the Prosecutor submits that Venezuela has not demonstrated that the Prosecutor’s investigation would re-traumatise victims, or that it would result in contamination of the evidence.<sup>13</sup> In his view, “[s]uch general submissions are speculative”.<sup>14</sup>

8. Article 82(3) of the Statute provides that “an appeal shall not of itself have suspensive effect unless the Appeals Chamber so orders, upon request, in accordance with the Rules”. An application for suspensive effect may be made pursuant to rule 156(5) of the Rules.

9. The Appeals Chamber notes that article 82(3) of the Statute applies with respect to the request at hand as article 18(4) of the Statute explicitly provides that the State may appeal against a ruling of the Pre-Trial Chamber “in accordance with article 82” of the Statute.

10. As regards the suspensive effect of an appeal under article 82(3) of the Statute, the Appeals Chamber has consistently held that “the decision to order that an appeal has suspensive effect is discretionary”,<sup>15</sup> and that when examining a request for suspensive effect, “it will consider the specific circumstances of the case and the factors

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<sup>10</sup> Prosecutor’s Response, para. 8.

<sup>11</sup> Prosecutor’s Response, para. 10.

<sup>12</sup> Prosecutor’s Response, para. 10.

<sup>13</sup> Prosecutor’s Response, para. 11.

<sup>14</sup> Prosecutor’s Response, para. 11.

<sup>15</sup> See, for example, *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, [Decision on Mr William Samoei Ruto’s request for suspensive effect](#), 17 June 2014, ICC-01/09-01/11-1370 (OA7 OA8) (hereinafter: “*Ruto and Sang* OA7 OA8 Decision”), para. 6; *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Decision on the Request of Mr Bemba to Give Suspensive Effect to the Appeal Against the “Decision on the Admissibility and Abuse of Process Challenges”](#), 9 July 2010, ICC-01/05-01/08-817 (OA3) (hereinafter: “*Bemba* OA3 Decision”), para. 6; *Situation in the Republic of the Philippines*, [Decision on request for suspensive effect of Pre-Trial Chamber I’s “Authorisation pursuant to article 18\(2\) of the Statute to resume the investigation” of 26 January 2023 \(ICC-01/21-56\)](#), 27 March 2023, ICC-01/21-67 (OA) (hereinafter: “*Philippines* OA Decision”), para. 15.

it considers relevant for the exercise of its discretion under these circumstances”.<sup>16</sup> In this regard, the Appeals Chamber, in past decisions, has considered whether the implementation of the decision under appeal (i) would create an irreversible situation that could not be corrected, even if the Appeals Chamber were to eventually find in favour of the appellant, (ii) would lead to consequences that “would be very difficult to correct and may be irreversible”, or (iii) could potentially defeat the purpose of the appeal.<sup>17</sup>

11. Turning to the merits of the Request for Suspensive Effect, the Appeals Chamber firstly notes Venezuela’s arguments regarding the MoU. However, Venezuela fails to demonstrate that there is a risk of any irreversible consequences for the MoU, especially in light of the Prosecutor’s public undertaking to remain committed to cooperation under the MoU in the event that the investigation were to resume.<sup>18</sup>

12. Secondly, the Appeals Chamber notes that Venezuela fails to explain how the resumption of the Prosecutor’s investigation would defeat the purpose of the present appeal in the event that the Appeals Chamber finds that the Court lacks jurisdiction. In particular, Venezuela does not specify which investigative activities would lead to irreversible consequences in case the investigation were to be nullified on appeal.

13. Lastly, with respect to Venezuela’s argument of potential re-traumatisation of victims, the Appeals Chamber observes that apart from speculating about the implications of the Prosecutor’s activities on witnesses and victims,<sup>19</sup> Venezuela fails to demonstrate that the resumption of the Prosecutor’s investigation would lead to consequences that “would be very difficult to correct and may be irreversible”.

14. For the foregoing reasons, the Appeals Chamber is not persuaded that the implementation of the Article 18(2) Decision would cause consequences that “would

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<sup>16</sup> *The Prosecutor v. Omar Hassan Ahmad Al-Bashir*, [Decision on Jordan’s request for suspensive effect of its appeal against the decision on the non-compliance by Jordan with the request for the arrest and surrender of Mr Omar Al-Bashir](#), 6 April 2018, ICC-02/05-01/09-333 (OA2), para. 8, referring to *Situation on registered vessels of the Union of the Comoros, The Hellenic Republic and the Kingdom of Cambodia*, [Decision on suspensive effect](#), 6 August 2015, ICC-01/13-43 (OA), para. 7; [Philippines OA Decision](#), para. 15.

<sup>17</sup> See, for example, [Ruto and Sang OA7 OA8 Decision](#), para. 6; [Bemba OA3 Decision](#), para. 11; [Philippines OA Decision](#), para. 15.

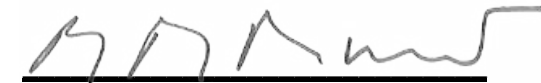
<sup>18</sup> Prosecutor’s Response, para. 8.

<sup>19</sup> Notice of Appeal, paras 20-21.

be very difficult to correct” or that “may be irreversible”, or “could potentially defeat the purpose of the appeal”.

15. In the absence of persuasive reasons in support of ordering suspensive effect, the Appeals Chamber rejects the request. This is without prejudice to its eventual decision on the merits of Venezuela’s appeal against the Article 18(2) Decision.

Done in both English and French, the English version being authoritative.



**Judge Marc Perrin de Brichambaut**  
**Presiding**

Dated this 20th day of July 2023

At The Hague, The Netherlands