



Original: English

**No. ICC-02/18 OA
Date: 17 October 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

Directions on the conduct of the hearing

Directions 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 Helen Brady

The Office of Public Counsel for Victims

Ms Paolina Massidda
Mr Enrique Carnero Rojo

States Representatives

Competent authorities of the Bolivarian
Republic of Venezuela

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

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),

Noting the "Scheduling Order for a hearing on 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 12 October 2023 (ICC-02/18-65), wherein the Appeals Chamber scheduled a hearing on this appeal for 7 and 8 November 2023,

Issues the following

DIRECTIONS

1. The Appeals Chamber invites the Representatives of the Bolivarian Republic of Venezuela ("State Representatives"), the Prosecutor and the Office of Public Counsel for Victims ("OPCV") to address the issues identified in these directions at the hearing scheduled for 7 and 8 November 2023.
2. The State Representatives, the Prosecutor and the OPCV will be invited to address the Appeals Chamber as follows:

Tuesday, 7 November 2023

- 9:00 – 9:10: Introduction by the Presiding Judge (10 minutes).
 1. *Submissions on the alleged error in failing to identify cases which are investigated and specific criminal acts which the Prosecutor intends to investigate*

The following issues can be of guidance to the parties and participants:

- a. Whether the Prosecutor's article 18(1) notification must identify specific criminal acts which he or she intends to investigate.¹

¹ Reference is made to [The Bolivarian Republic of Venezuela's Appeals Brief against the Pre-Trial I's 'Decision authorizing the resumption of the investigation pursuant to article 18\(2\) of the Statute' \(ICC-02/18-45\)](#), 22 August 2023, ICC-02/18-59-AnxII-Red, with confidential *ex parte* annexes (confidential *ex parte* version of Annex II filed on 14 August 2023, ICC-02/18-59-Conf-Exp) (hereinafter: "Appeal Brief"), para. 47.

- b. Whether such notification must identify criminal acts and specific defendants in relation to which the domestic investigations of the State concerned are expected to “have reached the point of identifying particular suspects or defendants”.²
 - c. Whether the provision that a State’s request for additional information from the Prosecutor “shall not affect the one-month time limit” for making a request for deferral (rule 52(2) of the Rules of Procedure and Evidence), implies that such additional information does not constitute part of the Prosecutor’s article 18(1) notification.³
- 9:10 – 9:25: Submissions of the State Representatives (15 minutes).
 - 9:25 – 9:40: Submissions of the Prosecutor (15 minutes).
 - 9:40 – 9:50: Submissions of the OPCV (10 minutes).
 - 9:50 – 10:00: Response of the State Representatives to the submissions of the Prosecutor and the OPCV (10 minutes).
 - 10:00 – 10:30: Questions from the bench (30 minutes).
 - 10:30 – 11:00: Break (30 minutes).
2. *Submissions on the alleged error in failing to require the Prosecutor to provide translations of documents and in declining to rely on documents in Spanish*

The following issue can be of guidance to the parties and participants:

- a. Whether rule 54(1) of the Rules and regulation 39(1) of the Regulations of the Court impose a duty on the Prosecutor to provide the Pre-Trial Chamber with translations, into one of the Court’s working languages, of documents received from the State in support of a request for deferral pursuant to article 18 of the Statute.⁴
- 11:00 – 11:15: Submissions of the State Representatives (15 minutes).
 - 11:15 – 11:30: Submissions of the Prosecutor (15 minutes).

² [Appeal Brief](#), para. 107.

³ [Appeal Brief](#), para. 44.

⁴ [Appeal Brief](#), *see* in particular paras 67-68, 71, 74-75.

- 11:30 – 11:40: Submissions of the OPCV (10 minutes).
- 11:40 – 11:50: Response of the State Representatives to the submissions of the Prosecutor and the OPCV (10 minutes).
- 11:50 – 12:30: Questions from the bench (40 minutes).
- 12:30 – 13:30: Break (1 hour).

3. *Submissions on the alleged error in declining to rely on certain documents*

The following issue can be of guidance to the parties and participants:

- a. Whether it was reasonable for the Pre-Trial Chamber to decide not to rely on material which did not contain “original police or court records” as relevant documentation for its article 18 determination.⁵
- 13:30 – 13:45: Submissions of the State Representatives (15 minutes).
 - 13:45 – 14:00: Submissions of the Prosecutor (15 minutes).
 - 14:00 – 14:10: Submissions of the OPCV (10 minutes).
 - 14:10 – 14:20: Response of the State Representatives to the submissions of the Prosecutor and the OPCV (10 minutes).
 - 14:20 – 15:00: Questions from the bench (40 minutes).

Wednesday, 8 November 2023

4. *Submissions on the alleged error in requiring the State to investigate contextual elements of crimes against humanity*

The following issue can be of guidance to the parties and participants:

- a. Whether the requirement that the domestic proceedings cover “the same types of conduct” as the Prosecutor’s investigation extends to contextual elements of crimes against humanity, including in particular: the organisation policy and the widespread or systematic nature of the attack.⁶

⁵ [Appeal Brief](#), paras 83-91.

⁶ [Appeal Brief](#), para. 125.

- 9:00 – 9:15: Submissions of the State Representatives (15 minutes).
- 9:15 – 9:30: Submissions of the Prosecutor (15 minutes).
- 9:30 – 9:40: Submissions of the OPCV (10 minutes).
- 9:40 – 9:50: Response of the State Representatives to the submissions of the Prosecutor and the OPCV (10 minutes).
- 9:50 – 10:30: Questions from the bench (40 minutes).
- 10:30 – 11:00: Break (30 minutes).

5. *Submissions on the alleged error in requiring the State to investigate “international crimes”*

The following issues can be of guidance to the parties and participants:

- a. Whether the domestic investigations and prosecutions of criminal acts pertaining to sexual and gender based crimes must cover the same legal qualifications or elements of the relevant crimes in the Court’s Statute.⁷
 - b. Whether the domestic investigations also need to cover the element of “discriminatory intent” in connection with the underlying acts of the crime of persecution, despite the absence of a domestic legislation that penalises persecutions.⁸
- 11:00 – 11:15: Submissions of the State Representatives (15 minutes).
 - 11:15 – 11:30: Submissions of the Prosecutor (15 minutes).
 - 11:30 – 11:40: Submissions of the OPCV (10 minutes).
 - 11:40 – 11:50: Response of the State Representatives to the submissions of the Prosecutor and the OPCV (10 minutes).
 - 11:50 – 12:30: Questions from the bench (40 minutes).
 - 12:30 – 13:30: Break (1 hour).

⁷ [Appeal Brief](#), paras 136-138.

⁸ [Appeal Brief](#), paras 131-134.

6. *Other issues*

- 13:30 – 13:45: Submissions of the State Representatives on any other issues resulting from the appeal (15 minutes).
- 13:45 – 14:00: Submissions of the Prosecutor on any other issues resulting from the appeal (15 minutes).
- 14:00 – 14:10: Submissions of the OPCV on any other issues resulting from the appeal (10 minutes).
- 14:10 – 14:20: Response of the State Representatives to the submissions of the Prosecutor and the OPCV (10 minutes).
- 14:20 – 14:50: Questions from the bench (30 minutes).
- 14:50 – 15:00: Final remarks by the Presiding Judge (10 minutes).

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



Judge Marc Perrin de Brichambaut
Presiding

Dated this 17th day of October 2023

At The Hague, The Netherlands