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No.: ICC-02/18
Date: 20 April 2022

PRE-TRIAL CHAMBER I

Before: Judge Péter Kovács, Presiding Judge
Judge Reine Alapini-Gansou
Judge Socorro Flores Liera

SITUATION IN THE BOLIVARIAN REPUBLIC OF VENEZUELA I

Public

With Confidential Annexes A and B

**Notification of the Bolivarian Republic of Venezuela's
deferral request under article 18(2) of the Rome Statute**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

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NOTIFICATION

1. The Office of the Prosecutor¹ hereby notifies Pre-Trial Chamber I² that on 16 April 2022 it received a response by the Bolivarian Republic of Venezuela³ to the Prosecution's notification under article 18(1) of the Rome Statute⁴ whereby Venezuela "confirms that [it] is investigating or have investigated its nationals or others within its jurisdiction with respect to alleged punishable acts against human rights, in concordance with the information provided in the notification received from the Office of the Prosecutor on December 16, 2021", and "requests the Office of the Prosecutor to formally refrain from the investigation in favour of the actions carried out by the appropriate national authorities of Venezuela" ("Deferral Request").⁵
2. Venezuela further requested that "the Office of the Prosecutor continue to providing its support in order to facilitate the processing and effective conclusion of these proceedings carried out by the appropriate domestic authorities of Venezuela, including the transmission of any information available to the Office of the Prosecutor in relation to the relevant alleged crimes".⁶
3. In support of the Deferral Request, Venezuela attaches no supporting material. Instead, it refers to the nine reports that it had previously submitted to the OTP since 2020 during the preliminary examination of the situation and thereafter.⁷ Venezuela further provides a statistical overview of domestic proceedings that have reportedly been initiated,⁸ including with respect to the information provided by the OTP on 13 January 2022, in response to Venezuela's request of 3 January 2022 for additional information pursuant to rule 52(2) of the Rules.⁹ Venezuela further refers to a set of

¹"OTP" or "Prosecution".

²"Chamber".

³"Venezuela".

⁴"Statute".

⁵ Annex B (English version), pp. 2-3; Annex A (Spanish version), pp. 3-4. For clarity purposes, the Prosecution notes that the correspondence from Venezuela contained in Annexes A and B is dated 15 April 2022 and was received electronically on 16 April 2022.

⁶ Annex B, p. 13 (disposition iii); Annex A, p. 15 (disposition iii).

⁷ Annex B, p. 3; Annex A, p. 4.

⁸ Annex B, pp. 6-9; Annex A, pp. 8-11.

⁹ ICC-02/18-16, para. 5 (referring to Annex D).

regulatory and institutional reforms that it says have been adopted to strengthen national capacity.¹⁰

4. As directed by the Chamber, the Prosecution has sought to “maintain a meaningful dialogue with Venezuela, in line with the complementary principle, during the preliminary examination and beyond”.¹¹ Beyond regular correspondence and operational level communication, the Prosecutor has also twice travelled to Caracas, Venezuela, to discuss ways and means to promote both cooperation and complementarity efforts with all the relevant competent authorities.

5. To this end, as previously made public and as referred to in the Deferral Request, on 3 November 2021, Venezuela and the OTP concluded a Memorandum of Understanding (“MoU”)¹² whereby the Venezuelan authorities undertook, *inter alia*, to adopt all necessary measures to ensure the effective administration of justice, in accordance with international standards, with the support and active engagement of the OTP pursuant to the principle of complementarity, while also cooperating with the Office’s discharge of its own independent mandate.¹³ Additionally, in the context of a Prosecutor’s visit to Caracas on 29-31 March 2022, Venezuela and the OTP agreed on the establishment of an office in Caracas in support of cooperation between the Venezuelan authorities and the Office and for facilitating implementation of the MoU.

6. At the same time, the Prosecutor has conveyed to the Venezuelan authorities his understanding that, according to the consistent jurisprudence of this Court, a complementarity assessment must be made on the basis of the facts as they presently exist.¹⁴ In this context, whereas the Prosecutor has committed to supporting and actively engaging in any domestic efforts to enable the competent Venezuelan

¹⁰ Annex B, pp. 9-11; Annex A, p. 11-12.

¹¹ ICC-02/18-9-Red, para. 20. *See also* [IER report](#), R264 (“Positive complementarity activities should not delay the opening of an investigation or closure of a PE. The OTP should consider positive complementarity in the context of the strategy for the situations at all stages of proceedings, and not restricted to PEs. The OTP should consider whether positive complementarity activities would be more appropriate after an investigation is authorised”).

¹² [Memorandum of Understanding \(“MoU”\)](#), 3 November 2021.

¹³ ICC-02/18-16, paras. 3-6.

¹⁴ ICC-01/04-01/07-1497 (“[Katanga Admissibility AD](#)”), para. 56; *see also* ICC-02/04-01/05-377 (“[Kony Admissibility Decision](#)”), paras. 49-52 (noting that admissibility assessments cannot be undertaken on the basis of hypothetical national proceedings that may or may not take place in the future: it must be based on the concrete facts as they exist at the time).

authorities to undertake relevant and genuine proceedings in relation to the crimes which are alleged to have occurred, the Prosecution's complementarity assessment cannot be prospective and speculative, on the basis of facts that may occur in the future.

7. Given that Venezuela has not provided additional materials in support of its Deferral Request, but refers primarily to materials and information previously submitted to the OTP, the Prosecution notes that it has reviewed and assessed this information during the course of its preliminary examination in reaching its complementarity assessment. Since opening the investigation in the Venezuela Situation on 3 November 2021, the OTP has also continued to review and remain abreast of relevant developments, including those referred to in the Deferral Request. Given that no new information appears to have been submitted that would warrant revisiting its prior determination, the Prosecution's prior complementarity assessment under article 53(1)(b) remains unaffected by the Deferral Request.

8. Accordingly and as soon as possible, the Prosecution will request the Chamber to authorise resumption of its investigation under article 18(2) of the Statute. In addition, the Prosecution will request the Chamber that, in deciding on the procedure under rule 55(1) of the Rules, invite observations from victims or their legal representatives as well as other interested participants.¹⁵

9. Pending a ruling from the Chamber on its request, the Prosecution may also seek such measures as may be necessary pursuant to article 18(6). The Office will also seek to continue working with Venezuela in order to continue to advance implementation of all aspects of the MoU.

CONFIDENTIALITY

10. This filing is submitted as public with confidential Annexes A-B only available to the Prosecution, Registry and the Government of Venezuela, pursuant to regulation

¹⁵ The Prosecution recalls that unlike rule 59 (regarding questions or challenges of jurisdiction or admissibility) rule 55 does not allow expressly require that observations be sought from the victims or referring entities.

23bis(1), as Annexes A-B refer to information of confidential nature. A public version with public redacted version of Annexes A-B will be filed simultaneously.



Karim A.A. Khan QC, Prosecutor

Dated this 20th day of April 2022
At The Hague, The Netherlands