

Annex IV

Public

**Transmission of Documents Received from the Authorities of the Bolivarian
Republic of Venezuela on 9 July 2021**

ICC-02/18

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Public

Response to the Prosecution's omnibus request in relation to its response to the request by the Bolivarian Republic of Venezuela and request for status conference

I. INTRODUCTION

1. The Bolivarian Republic of Venezuela (“Venezuela”) hereby responds to the “Prosecution’s omnibus request in relation to its response to the request by the Bolivarian Republic of Venezuela”, and respectfully requests that Pre-Trial Chamber I convene a status conference, pursuant to Regulation 30 of the Regulations of the Court, to clarify and resolve matters – including technical and organizational questions – that are pertinent to the fair and expeditious settlement of the questions and issues raised by Venezuela in relation to the Prosecutor’s conduct of the preliminary examination of the situation in Venezuela.

II. BACKGROUND

2. On 8 February 2018, the Office of the Prosecutor (“OTP”) opened a preliminary examination of the situation in Venezuela since at least April 2017.

3. On 28 September 2018, the ICC Presidency assigned the situation in Venezuela to Pre-Trial Chamber I.¹ On 19 February 2020, the Presidency reassigned the situation in Venezuela I from Pre-Trial Chamber I to Pre-Trial Chamber III.² 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”).³

4. On 25 May 2021, Venezuela submitted a request for judicial control to the Chamber pursuant to Articles 15 and 21(3) of the Statute as well as Regulation 46(2)

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

² ICC, Presidency, [ICC-02/18-2](#), 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, 19 February 2020.

³ ICC, Presidency, [ICC-02/18-4](#), Decision assigning judges to divisions and recomposing Chambers, 16 March 2021.

of the Regulations of the Court (“the request”), calling for judicial oversight and guidance over several aspects of the OTP’s current management of the preliminary examination of the situation in Venezuela which, in the opinion of Venezuela, are highly problematic, counterproductive, and in breach of the founding instruments and principles of the Court as well as internationally recognized due process standards.

5. On 31 May 2021, the OTP submitted an “omnibus request in relation to its response to the request by the Bolivarian Republic of Venezuela” (“the omnibus request”). In this omnibus request, the OTP most notably requests the Chamber: (a) to permit the Prosecution to respond to the request by 11 June 2021; and (b) to reclassify Venezuela’s request and annexes as public or, in the alternative, to order Venezuela to file a public redacted version thereof.

III. SUBMISSIONS

A.- Regarding Venezuela’s standing to submit the request

6. Although in the operative part of its omnibus request the OTP does not formally invite the Chamber to dismiss Venezuela’s request *in limine*, the Prosecution nonetheless submits, by way of introduction, that Venezuela would lack standing in relation to the submitted request. In the view of the Prosecution, the Court’s legal framework does not provide any procedural mechanism for States to request judicial oversight over the OTP’s preliminary examination activities prior to the Prosecutor’s decision whether to proceed with an investigation.

7. In this respect, Venezuela strongly stresses that its decision to eventually seize the Chamber has only been taken as a measure of very last resort, after Venezuela has undertaken all possible and reasonable efforts to try and enter into constructive

dialogue with the OTP for the purpose of a collaborative and fruitful complementarity assessment. It should be recalled that, since the OTP has, on 2 October 2020, announced entering into phase 3 of the preliminary examination and requested information from Venezuela on national investigations and judicial proceedings, the competent authorities of Venezuela *at all levels* have taken the Prosecution's invitation extremely seriously. From the very beginning, Venezuela has informed the OTP of its unrestricted willingness to cooperate with the work of the OTP, in the framework established by the Rome Statute. Venezuela has kept that engagement, and has, since October 2020, multiplied proactive and transparent efforts, not only to meet the Prosecution's expectations, but also, to try and understand what their precise scope and extent were.

8. By *note verbale* no. 038/2020 dated **30 November 2020**, Venezuela thus provided a first, detailed response to the OTP's request for information, mapping out a comprehensive set of data of national proceedings and providing copies of judicial documents detailing such proceedings. By *note verbale* no. 006/2021 dated **1 February 2021**, Venezuela submitted a second, detailed report to the OTP, reiterating its effective commitment to continue taking the necessary measures at the domestic level, updating the Office on the statistical data submitted on 30 November 2020, and providing further information on ongoing judicial developments at the domestic level. By *note verbale* no. 028/2021 dated **30 April 2021**, Venezuela spontaneously submitted a third report to the OTP, updating the status of a series of ongoing domestic cases, kindly requesting feedback from the Prosecutor in relation to these judicial developments, and inviting the Prosecutor to provide Venezuela with more substantive, relevant information as to the concrete allegations being examined by her Office. By *note verbale* no. 031/2021 dated **6 May 2021**, and yet again by *note verbale* no. 037/2021 dated **18 May 2021**, Venezuela provided the OTP with further detailed information on the significant evolution of relevant investigations and proceedings at the national level, and shared additional data on new cases, **including a Report on**

abuses on social networks in order to create a false and manipulated opinion matrix that builds a trend of accusing the State of committing massive human rights violations. Venezuela has thus continuously undertaken all best efforts to engage with the OTP and has, on many occasions, requested feedback.

9. *Not once* did the OTP respond to any of Venezuela's initiatives, reports and requests for information or guidance. Even more, the OTP has not responded yet to the formal request of cooperation introduced on May, 25, 2021 (see annex 1), on the basis of article 93.10 of the Statute. **In an interview aired on June 4, 2021, in relation with the present request, the OTP declared: "I have stated, I have engaged, my office has engaged extensively with Venezuela, even with the highest authorities who engaged with us. And we've been doing that. And this is a matter, of course, that we will also make known to the to the chamber"** (see annex 2). With all due respect, Venezuela is expecting this information with a lot of interest.

10. In the past months, Venezuela has pursued unprecedented institutional reforms to strengthen the domestic judicial apparatus. **Considering the (extremely limited) information initially provided by the OTP as to the scope of the preliminary examination, Venezuela has continued proceeding efficiently with the investigation of the individual cases, many of those as recollected in the public reports that are cited by the OTP in its documentation (which is from its part not accessible). It has been shown clearly in which phase of the criminal procedure those individual cases are, the next and new steps that have been undertaken, and the judicialization of the allegations of relevant, serious crimes, thereby demonstrating its genuine willingness and capacity to fight against impunity.** Venezuela has systematically reported on these significant developments to the OTP. With a view to establishing a constructive and fruitful dialogue, Venezuela has continuously requested the OTP to provide feedback and to engage with the competent domestic authorities. No guidance, feedback, directions, or indeed

answer, has ever been received – which eventually prompted Venezuela, as a measure of last resort, to seize the Chamber.

11. The wording of the Prosecution’s omnibus request⁴ today makes it plain that the information successively submitted by Venezuela – however detailed and significant – has no influence, and indeed cannot have any influence, on the Prosecution’s decision whether to open an investigation: the Prosecutor now admits that her preliminary examination is in fact concluded, and her decision made – that is, regardless of any developments at the domestic level as carefully and thoroughly reported by Venezuela. It is therefore more apparent than ever that seizing the Chamber was the only option for Venezuela to constructively engage with the Court and seek guidance and answers in relation to the important legal and methodological issues that are at stake.

12. The absolute silence of the Prosecutor is not only counterproductive and inconsistent with Venezuela’s internationally recognized due process rights, but it is also contrary to the very spirit of complementarity as one of the cornerstones of the effective functioning of the Court and of its relationships to States Parties. Complementarity and the relationship between the Court and national jurisdictions has been identified as a matter of priority in the context of the reviewing and strengthening process the Court and the Rome Statute system.⁵ The priority objective to “strengthen the interaction between the Court and national jurisdictions in implementing the complementarity principle” and to facilitate “operational cooperation between the Court/OTP and national authorities in investigation and prosecuting at the national level” has been clearly recalled by all stakeholders at the 19th session of the Assembly of States Parties last December 2020.⁶ This includes the

⁴ ICC, OTP, ICC-01/18, Prosecution’s omnibus request in relation to its response to the request by the Bolivarian Republic of Venezuela, 31 May 2021, esp. para. 4 and para. 17.

⁵ [ICC-ASP/18/Res.7](#), para. 18.

⁶ [ICC-ASP/19/22](#), para. 10.

OTP itself, which unequivocally recalled on this occasion that complementarity rests on a “system of cooperation and dialogue between the OTP and national authorities”.⁷ The Court, as a whole, was reported to “engage in activities which may contribute to enhancing the effectiveness of national jurisdictions’ capacity to prosecute serious crimes”.⁸ It is certainly difficult to reconcile these statements and commitments with the complete silence of the OTP *vis-à-vis* Venezuela’s numerous requests, reports and efforts to engage with the Prosecution in the course of the preliminary examination.

13. Venezuela considers that its request for judicial control is without doubt grounded, in the specific and exceptional circumstances of the case, on Article 15 and 21(3) of the Statute as well as Regulation 46(2) of the Regulations of the Court. Given the critical importance of the issues at stake, and especially the overall operation of complementarity as one of the cornerstones of the functioning of the Court, it is of paramount importance for the Chamber to provide judicial oversight over the Prosecution’s activity, as well as guidance and responses on the issues raised by Venezuela.

14. Such judicial control at an early stage of ICC proceedings would not be unprecedented either and has been previously recognized as stemming from the Statute. In a 15 November 2018 decision in another situation, in particular, this Chamber acknowledged that “[t]he Pre-Trial Chamber has been created to, *inter alia*, exercise judicial oversight over the Prosecutor’s responsibilities during the early stages of the proceedings”,⁹ and that, while the Statute entrusts the Prosecutor with a number of discretionary powers during the early phases of the proceedings before the Court, such discretionary powers “are limited and informed by the decisions of

⁷ [ICC-ASP/19/22](#), para. 26.

⁸ [ICC-ASP/19/22](#), p. 11 at para. 10.

⁹ ICC, Pre-Trial Chamber I, [ICC-01/13-68](#), Decision on the “Application for Judicial Review by the Government of the Union of the Comoros”, 15 November 2018, para. 93.

the Pre-Trial Chamber”.¹⁰ Furthermore, according to the Chamber, “the phase of the proceedings does not affect the distribution of authority under the Statute. There is no indication in the Statute that the oversight role of the Pre-Trial Chamber over the parties to the proceedings, including the Prosecutor, is in any way reduced at the early stages of the proceedings. In sum, the Prosecutor must exercise her discretionary powers in keeping with the decisions issued by the Pre-Trial Chamber in the exercise of its statutorily assigned oversight role.”¹¹

15. For all these reasons, the crucial issues and questions raised by Venezuela should not be dismissed *in limine*. Rather, this request offers an unprecedented opportunity for the Prosecution to clarify important legal and methodological matters related to the conduct of its preliminary examinations, and then, for the Chamber to provide essential judicial guidance and oversight thereon.

B.- Regarding the Prosecution’s request for an expedited decision

16. The OTP requests the Chamber to adopt an expedited ruling on the conduct and schedule to adjudicate the issues raised by Venezuela. More specifically, the OTP requests to be permitted to file a response to the request by 11 June 2021, if the Chamber deems that it would be assisted by such response.

17. **Venezuela most certainly wishes the judicial determination, with no undue urgency, of the matters and questions that it has raised in relation to the Prosecution’s conduct of the preliminary examination.** However, as the Prosecutor herself admits, the request raises “novel and complex issues”.¹² This is even more so

¹⁰ ICC, Pre-Trial Chamber I, [ICC-01/13-68](#), Decision on the “Application for Judicial Review by the Government of the Union of the Comoros”, 15 November 2018, para. 99.

¹¹ *Ibid.*

¹² ICC, OTP, ICC-01/18, Prosecution’s omnibus request in relation to its response to the request by the Bolivarian Republic of Venezuela, 31 May 2021, para. 11.

for Venezuela, which, beyond the crucial substantive questions that are raised in the request, is also unfamiliar with the procedural conduct of proceedings before the Court.

18. Therefore, Venezuela respectfully requests the Chamber to convene a status conference, pursuant to Regulation 30 of the Regulations of the Court, at whatever date – however close – the Court deems appropriate, and with a view to clarifying and resolving matters – including technical and organizational questions – that are pertinent to the fair and expeditious settlement of the ongoing dispute.

19. **In any circumstances, should the respected Chamber consider such status conference unnecessary, Venezuela respectfully demands the Chamber to invite the OTP to proceed and submit its written response on the crucial issues and questions raised in the request.**

C.- Regarding the Prosecution's request for publicity

20. The Prosecutor finally requests the Chamber to reclassify Venezuela's request and annexes as public, or, in the alternative, to order Venezuela to file a public redacted version thereof.

21. Venezuela welcomes the Prosecution's wish for transparency in these proceedings, and, in light of the Prosecution's submissions, it already took the liberty to submit to the Registry a redacted version of its request, as well as all annexes that can reasonably – in whole or in part – be disclosed to the public.

22. Venezuela, however, is of the strong view that the unredacted version of its request and annexes should remain strictly confidential as they contain countless and evident, highly sensitive information, especially on the sovereign diplomatic relations of Venezuela and on specific criminal cases being investigated or prosecuted at the domestic level, including identification information of victims, witnesses and suspects or accused persons.

IV. CONCLUSION AND RELIEF SOUGHT

23. In light of these considerations, the Bolivarian Republic of Venezuela respectfully requests that Pre-Trial Chamber I:

- a) convene a status conference with a view to discussing a **fair and proper process** to determine the issues raised in Venezuela's request; or, should the Chamber consider such status conference unnecessary, request the written submissions of the Prosecution on the specific issues and questions raised by the Bolivarian Republic of Venezuela in relation to the Prosecution's conduct of the preliminary examination of the situation in Venezuela;
- b) take note of the filing of the public redacted version of Venezuela's request and annexes, and maintain the confidential status of all unredacted documents submitted by Venezuela.



A handwritten signature in black ink, appearing to read 'Tarek', written over a horizontal line.

Tarek William Saab

Attorney General of the Bolivarian Republic of Venezuela

Caracas, Venezuela
7 June 2021