

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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PRE-TRIAL CHAMBER I

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

SITUATION IN THE BOLIVARIAN REPUBLIC OF VENEZUELA I

Confidential

**Prosecution's request to set a timetable for public redacted versions of the recent
litigation**

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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Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Competent authorities of the Bolivarian
Republic of Venezuela

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Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

REQUEST

1. In the Pre-Trial Chamber's decision of 14 June 2021 dismissing *in limine* Venezuela's request for it to exercise judicial control over the preliminary examination in the *Situation in the Bolivarian Republic of Venezuela I*, the Chamber made orders regarding, *inter alia*, the publicity of the litigation relating to Venezuela's request.¹ The Chamber invited Venezuela to file, as soon as practicable, a public redacted version of its Request, Response and their annexes; and directed the Prosecution to file a public redacted version of its Omnibus Request in view of any redactions implemented by Venezuela.² As at the date of this filing, Venezuela is yet to file the public redacted versions of its relevant filings and the litigation therefore remains confidential, apart from the public statements that Venezuela has issued *via* social media alluding to substantive aspects of the litigation.³

2. On 21 June 2021, the Office of the Public Counsel for Victims ("OPCV") filed a request expressing the victims' concerns over their lack of information regarding Venezuela's recent litigation and their inability to participate in it.⁴ In particular, the OPCV notes public statements made by the former Prosecutor and the Attorney General of the Bolivarian Republic of Venezuela, and concludes that "[t]he publicly available information indicates that [the Chamber] is thus seized with a matter related to the Prosecutor's determination on whether or not an investigation into the Situation is to be opened".⁵ The OPCV observes that "any attempt by Venezuela to

¹ ICC-02/18-9-Conf ("Decision"); ICC-02/18-6-Conf-AnxIV ("Request" or "Venezuela's Request"); ICC-02/18-7-Conf ("Prosecution's Omnibus Request"); ICC-02/18-08-Conf-AnxIII ("Venezuela's Response"). Following the Chamber's Decision, the Prosecution filed further observations: ICC-02/18-10-Conf-Red ("15 June 2021 Observations").

² Decision, para. 8, p. 11 (Disposition).

³ See e.g. Twitter, available at <https://twitter.com/MinpublicoVE>, 27-29 May 2021, 14-15 June 2021. The Prosecution notes that the former Prosecutor also made public statements mentioning Venezuela's request for the Chamber to exercise judicial control over the preliminary examination but without commenting on its substantive aspects: see [""Without Fear or Favour": Reflections on my term as Prosecutor of the International Criminal Court: Farewell end of term statement"](#), 15 June 2021, p. 9; France24.com video interview, ["Outgoing ICC chief prosecutor says transfer of Sudan's Bashir 'a possibility'"](#), 4 June 2021, minute 12:43 to 14:39.

⁴ ICC-02-18-11 ("[Victims' Request](#)"). The Prosecution does not respond directly to the Victims' Request (which is filed publicly), but considers it appropriate to instead file this request before the Chamber confidentially in keeping with the confidential nature of the litigation regarding Venezuela's request to-date.

⁵ [Victims' Request](#), para. 2.

prevent or limit the opening of an investigation by the Prosecution critically affects the victims' personal interests",⁶ and thus requests information regarding Venezuela's litigation in order to be able to invoke the victims' rights to address the Court, if necessary.⁷

3. The Prosecution supports the victims' right to receive information regarding Venezuela's recent litigation and appreciates that the filing of the public redacted versions of the filings, as ordered by the Chamber, will likely allay the victims' concerns.⁸ However, the Victims' Request highlights the uncertainty and apprehension that victims and the broader public face as the litigation remains confidential while Venezuela continues to issue public statements mentioning substantive aspects of the litigation and expressing its objections to the Prosecution's preliminary examination.⁹ Likewise, it may lead to speculation concerning the outcome of this litigation—which the Chamber has already decided. Moreover, the circumstances give rise to the potential for misunderstanding or misinformation, as is already demonstrated in the Victims' Request,¹⁰ and this is only likely to be compounded the longer the litigation remains confidential. It is therefore in the interests of transparency and fairness that the litigation be made publicly available at the earliest.

4. The publicity of this litigation is contingent on Venezuela's filing of a public redacted version of its initial request to the Chamber. To avoid any unnecessary delays in this process and minimise the potential for further misunderstanding, the Prosecution respectfully requests the Chamber, in furtherance of its instruction to the parties to file public redacted versions "as soon as possible", to order them to file

⁶ [Victims' Request](#), para. 14.

⁷ [Victims' Request](#), paras. 3, 13-15.

⁸ See, for instance, ICC-01/18-2 ("Palestine Victims Decision"), paras. 10, 12; ICC-01/04-556 OA4 OA5 OA6 ("[DRC Victims Decision](#)"), paras. 53-54.

⁹ Twitter, available at <https://twitter.com/MinpublicoVE>, 14-15 June 2021.

¹⁰ For example, the Victims' Request erroneously concludes on the basis of public statements that "the Chamber is seized with a matter related to the Prosecutor's determination on whether or not an investigation into the Situation is to be opened"): [Victims' Request](#), para. 2.

them by specific dates as determined by the Chamber. The Prosecution stands ready to do so accordingly. The Prosecution also requests the Chamber to make available a public version of its 14 June 2021 Decision, when appropriate.

CONFIDENTIALITY

5. This request is classified as “confidential” pursuant to regulation 23*bis*(2) of the Regulations of the Court as it refers to the contents of filings concerning Venezuela’s litigation that are of the same classification. Once public redacted versions of those filings are filed, there will no longer be a basis to maintain this request as confidential and the Prosecution stands ready to file a public redacted version of it, if ordered to do so by the Chamber.

CONCLUSION AND RELIEF SOUGHT

6. The Prosecution requests the Chamber to set a timetable for the filing of public redacted versions:

- a. by Venezuela of its Request, Response and related annexes; and
- b. by the Prosecution of its Omnibus Request, 15 June 2021 Observations and this request.



Karim A. A. Khan QC, Prosecutor

Dated this 22nd day of June 2021
At The Hague, The Netherlands