

ANNEX B

Public Redacted Version



*El Ministro del Poder Popular para
Relaciones Exteriores
de la República Bolivariana de Venezuela*

000277

Caracas, April 15, 2022

Honourable
Karim Ahmad Khan QC
Prosecutor of the International Criminal Court
The Hague, The Netherlands

Your Excellency,

I have the honour to refer to your communications dated December 16, 2021 (Ref. No. OTP/VEN1/SPs/Notif/161221/KK) and January 13, 2022 (Ref. No. O TP2022/000764) respectively notifying the opening of an investigation under article 18.1 of the Rome Statute, with respect to the Situation in Venezuela ("Venezuela I Situation"), and extending the 30-day term provided for in article 18.2 of the Statute to April 16, 2022.

In accordance with article 18.2, the Bolivarian Republic of Venezuela formally and respectfully confirms that the country, through the Public Ministry and the Judiciary, is investigating or has investigated its nationals or others within its jurisdiction with respect to alleged punishable acts against human rights, in order to determine the truth and establish, should that be the case, the corresponding criminal responsibilities, in accordance with the information provided in the notification of the Prosecutor dated



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December 16, 2021. Therefore, the Government of Venezuela formally requests that the Office of the Prosecutor refrain from investigating in favour of the proceedings being carried out by the appropriate judicial authorities of Venezuela and provide them with assistance and general support.

As you may be aware, based on the request made by the ICC Office of the Prosecutor on October 2, 2020 (OTP2020/019873), the Bolivarian Republic of Venezuela has submitted nine (9) reports to the Office of the Prosecutor, contributing on its own initiative extensive information not only on the legal framework of the State and the institutional structure of the various public bodies, but also on many issues processed internally in Venezuela and the reforms adopted to strengthen national capacities in the field of justice.

Similarly, detailed information was transmitted to the Office of the Prosecutor on the events that occurred as from February 2014, which, through geopolitically sponsored riots, intended to subvert the constitutional order and generate a confrontation among Venezuelans. Those reports also explained the response of the national institutions vis-à-vis such events in application of the provisions of the Constitution and the Venezuelan justice system.



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This all indicates, in a clear and transparent manner, the genuine will to carry out investigations and criminal proceedings on the national territory, in accordance with Venezuela's constitutional and legal rules. These, in general, do not differ from the ordinary models of criminal prosecution in all parts of the world, far from the internationally disseminated media manipulations and pressures that have manifested themselves in recent years in an evident expression of foreign political interference external to the Rome Statute and the jurisdictional system of the Court – especially for a State Party that was the first in the region to ratify to the Statute and that trusts in the consolidation of the strengths of this system.

Likewise, on November 3, 2021, the ICC Office of the Prosecutor and the Government of Venezuela signed a Memorandum of Understanding (“MOU”). In this agreement, the Office of the Prosecutor confirmed its decision to open an investigation and the Bolivarian Republic of Venezuela noted its opposition to said decision, on the grounds that at no time of the Preliminary Examination phase did it have access to the information.

Notwithstanding, both parties reaffirmed the primacy of the Venezuelan jurisdiction over any alleged crime committed in



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Venezuela. Consequently, the country ratified its intention to request the application of article 18.2 of the Statute.

In this framework, in accordance with Rule 52.2 of the Rules of Procedure and Evidence, on January 3, 2022, the Bolivarian Republic of Venezuela submitted to the Office of the Prosecutor a request for detailed information on the facts investigated, in order to exercise the corresponding jurisdiction of the Republic under the Rome Statute.

On January 13, 2022, the ICC Office of the Prosecutor provided some information on the possible issues that are being investigated, as detailed in annexes I and II attached to its communication. Annex I refers to a set of reports on human rights published on the Internet. Annex II listed alleged specific issues extracted from those reports in internet and other public sources. Your Excellency requested, among other things, "(...) to the Government of Venezuela to inform my Office of any national proceeding it has undertaken with respect to the alleged acts against the detained persons that appear in those publicly accessible sources, as well as of any other proceeding that the Government of Venezuela may deem pertinent, and to describe the scope and progress of those proceedings, and, to the extent



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possible, the nature, names, titles or ranks, and/or units of any alleged suspect in those proceedings.”

In accordance with Your Excellency's request, Venezuela, through the appropriate public institutions of the justice system, carried out an exhaustive exploration of all the issues referred to in the list presented by the Office of the Prosecutor and of other general issues not described in that list, but referred to in the eighteen (18) human rights reports in question.

According to the information furnished by the Public Ministry of Venezuela, the information sent by the Office of the Prosecutor sometimes lacked sufficient elements to fully identify the alleged victims and the circumstances of the events. Many of the people were mentioned under pseudonyms. On the other hand, in the list of Annex II some presumed victims were repeated, as is the case of [REDACTED] who appears twice in the list referred to above (even with the same date and place: [REDACTED]). Therefore, once the duplicates were removed, the effective number of issues referred amounted to 124.

Despite these difficulties, I have the honour to inform you that the one hundred twenty-four (124) issues listed in Annex II have been or are being investigated by the Public Ministry of Venezuela, which is



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the constitutional body that directs investigations and conducts criminal prosecution, in accordance with the provisions of article 285.3.4 of the Constitution of the Bolivarian Republic of Venezuela, the Organic Law of the Public Ministry and the Organic Code of Criminal Procedure.

To this date, one hundred and sixteen (116) issues out of that universe are in the preliminary phase, five (5) are in the trial phase and convictions have been decided in three (3) issues. The Venezuelan criminal process is made up of four phases: preliminary, intermediate, trial and execution, the preliminary phase being the one where the proceedings are carried out to determine the circumstances of the event and identify the alleged perpetrators.

The processes referred to above have been oriented mainly towards the investigation of the alleged participation of officers of the Bolivarian National Guard, the Bolivarian National Police, the Bolivarian National Intelligence Service, the General Directorate of Military Counterintelligence and the Scientific Criminal Investigation and Criminalistics Body, as well as individuals, for events that have occurred at least since 2014.

Within the framework of criminal proceedings, the Public Ministry has taken multiple steps aimed at investigating and recording the



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commission of such crimes, with all the circumstances that may influence their classification and the responsibility of the authors and other participants, and the securing of the active and passive objects related to the perpetration, including interviews with victims and witnesses, together with evaluations by experts in various fields.

To this end, the Public Ministry has mainly relied upon the assistance of the Human Rights Violations Criminalistics Unit, which is subordinated to the Office of the Prosecutor General of the Republic and counts on a wide array of criminalistics experts for the development of the investigations required.

Also, for certain issues, the collaboration of auxiliary investigative bodies such as the National Service of Medical Examiners and Forensic Sciences and Scientific Criminal Investigation and Criminalistics Body has been requested, all duly regulated in the Organic Law of the Service of the Investigative Police, the Scientific Criminal Investigation and Criminalistics Body and the National Service of Medical Examiners and Forensic Sciences.

As of the date hereof, a total of thirty (30) have been arraigned and twenty-seven (27) charged for their alleged responsibility in the events under investigation. In total, fourteen (14) officers currently remain deprived of their liberty. Likewise, [redacted] arrest warrants



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are about to be issued and nineteen [REDACTED] are going to be formally arraigned.

As a sign of the commitment and capacity of the State institutions to administer justice in the face of complaints of alleged human rights violations committed in its territory, it is worth noting the conviction adopted in May 2021 against eight (8) officers of the Bolivarian National Police for cruel treatment and rape to the detriment of Javier Darío Campos Amaya, with a sentence to prison for 24 years and 3 months. These officers are serving the aforementioned sentence in the corresponding detention centre..

Further, in addition to the one hundred twenty-four (124) issues mentioned above, the Public Ministry is investigating other cases that are reflected in the eighteen (18) open-source human rights reports that were referred by the ICC Office of the Prosecutor, as well as in other documents of a similar nature, in relation to complaints of deprivation of liberty, torture, among other potential human rights violations.

Simultaneously, the Bolivarian Republic of Venezuela has been adopting a set of regulatory and institutional reforms to strengthen national capacities to ensure the effective administration of justice, in accordance with international standards in this matter.



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Thus, for example, in September 2021, the Organic Code of Criminal Procedure was amended to expand the participation of victims in the process and strengthen the guarantees of the defendants in circumstances that could constitute a violation of their rights.

Likewise, the amendment of the Organic Code of Military Justice, which amendment was completed in the same month and year, prohibits, for the first time in our history, that civilians be tried by military jurisdiction, that is, the declination, in favour of the ordinary jurisdiction (Public Ministry and non-military criminal courts), of three hundred and twenty-eight (328) issues that were being processed by the military criminal justice system. So, at present, no civilian is being prosecuted by the military jurisdiction.

Similarly, the Public Ministry developed in 2021 a Special Regularisation Plan for Temporary Prosecutors, resulting in the official entitlement of office for forty-two (42) prosecutors, including those in charge of investigations related to the present matter. On February 24, 2022, the Rules of the VII Credentials Competition and Examination Process for Admission as Career Prosecutors were published in Official Gazette No. 42,326.



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For its part, in January 2022 the National Assembly passed a partial amendment of the Organic Law of the Supreme Court of Justice and began the process for the appointment of Magistrates of the Supreme Court of Justice, the General Inspectorate of Courts and the National School of the Judiciary.

In this sense, the doctrine indicates that, for a State, refraining from requesting an inhibition after receiving a notification based on Article 18(1) of the Statute can be deemed an "implicit referral" of the situation to the Court, that is, as a tacit acceptance that internal investigations are either non-existent or lack the required authenticity. Said position would not be compatible neither with the position of the Bolivarian Republic of Venezuela, as has been constantly expressed in the course of the constructive dialogue with the Office of the Prosecutor and the Court, nor with the content of the Memorandum of Understanding, nor, what is far more important, with the factual reality of ongoing criminal proceedings in the country.

In this context, in the correct spirit and fair execution of the Memorandum of Understanding ("Considering that this letter of understanding is without prejudice to the full rights that the Rome Statute confers on the States Parties, including, among others, the



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provisions of article 18”) and in accordance with article 18.2 of the Statute, the Government of the Bolivarian Republic of Venezuela formally requests that the Office of the Prosecutor inhibits itself in favour of the continuation of these procedures by the appropriate judicial authorities of Venezuela. In order to facilitate these proceedings, the Government respectfully requests the Office of the Prosecutor– within the limits that confidentiality and other requirements that the Rome Statute may provide – to furnish any relevant information available to the Office of the Prosecutor in relation to this matter.

The Bolivarian Republic of Venezuela avails itself of this opportunity to reiterate, within the framework of the Rome Statute and, in particular, its article 18.5, its full willingness to collaborate with the Office of the Prosecutor and to keep it systematically informed of all developments and progress in relation to the internal procedures underway and the institutional reforms carried out.

Based on the foregoing reasons, the Government of the Bolivarian Republic of Venezuela, acting under the provisions of article 18.2 of the Rome Statute and in accordance with the Memorandum of Understanding signed on November 3, 2021:



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- i. Respectfully 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.**
- ii. Respectfully 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.**
- iii. Respectfully requests the Office of the Prosecutor to continue 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.**

Please accept, Your Excellency, dear Mr. Prosecutor, the assurances of our highest regard.

Félix Plasencia González

