



The Hague, 9 February 2006

Thank you for your communication concerning the situation in Venezuela.

The Office of the Prosecutor has received twelve communications concerning the situation in Venezuela. Most of the communications relate to crimes alleged to have been committed by the Venezuelan government and associated forces. One relates to crimes alleged to have been committed by groups opposed to the government.

Mandate of the Office

In accordance with Article 15 of the Rome Statute, my duty is to analyse information received on potential crimes, in order to determine whether there is a reasonable basis to proceed with an investigation.

Unlike a national prosecutor, who may initiate an investigation on the basis of very limited information, the Prosecutor of the International Criminal Court (ICC) is governed by the relevant regime under the Rome Statute. Under this regime, my responsibility is to carry out a preliminary phase of gathering and analyzing information, after which I may seek to initiate an investigation only if the relevant criteria of the Statute are satisfied.

I am required to consider three factors.¹ First, I must consider whether the available information provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed.² Where this requirement is satisfied, I must then consider admissibility before the Court, in light of the requirements relating to gravity and complementarity with national proceedings.³ Third, if these factors are positive, I must give consideration to the interests of justice.⁴

Systematic analysis of these questions can take time. Using the limited powers at its disposal in the analysis phase, the Office will seek to collect information until it is possible to determine that there is,

¹ See Articles 15 and 53 of the Rome Statute and Rule 48 of the Rules of Procedure and Evidence.

² Article 53(1)(a).

³ Article 53(1)(b) and Article 17. The term “proceedings” encompasses investigations and prosecutions (Article 17).

⁴ The third consideration is whether “taking into account the gravity of the crime and the interests of justice, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice” (Article 53(1)(c)).

or is not, a reasonable basis to proceed with an investigation in accordance with the criteria of the Statute.

Where the requirements are satisfied, I shall submit to a Pre-Trial Chamber of the Court a request for authorization to initiate an investigation.⁵

Where the requirements are not satisfied, I shall inform those who provided the information. This does not preclude me from considering further information regarding the same situation in the light of new facts or evidence.⁶

The analysis

The analysis of Venezuela-related communications was conducted in accordance with Article 15 of the Rome Statute, as no referrals from States have been received.

The Office reviewed the communications, including supplementary information submitted by senders of communications, and examined the relevant documentation and video-recorded information. In addition, we conducted an exhaustive search of all readily-available open source information, including media reports and reports of non-governmental organizations and international organizations.

The Office produced a crime analysis of all the available information, in accordance with our standard methodology and rules of source evaluation and measurement. The analysis included preparation of tables of allegations and pattern analysis. In addition, we conducted legal research and analysis on the main doctrinal issues. The process was overseen by the Executive Committee, composed of the Prosecutor and the heads of divisions.

Personal and Territorial Jurisdiction

Venezuela ratified the ICC Statute on 7 June 2000 and pursuant to Articles 11(1) and 126(1), the ICC has jurisdiction over crimes perpetrated in the territory or by nationals of Venezuela after 1 July 2002, when the Statute entered into force. The events alleged in the communications occurred on the territory of Venezuela.

⁵ Article 15(3) of the Rome Statute.

⁶ Article 15(6) of the Rome Statute.

Temporal Jurisdiction

A considerable number of the allegations referred to incidents that are alleged to have taken place prior to 1 July 2002, in particular in connection with incidents occurring in the context of the short-lived coup in April 2002. These events occurred prior to the temporal jurisdiction of the Court and cannot be considered as the basis for any investigation under the Statute.

Detailed consideration was however given to the allegations which fall within the temporal jurisdiction of the Court.

Allegations concerning Crimes Against Humanity

Communications put forward allegations that crimes against humanity had been committed against the political opponents of the Venezuelan government. The allegations in the communications that fell within the temporal jurisdiction of the Court included 45 victims of murder, 39 to 44 of imprisonment, 42 of torture and larger numbers of victims of persecution.

Many of the allegations of persecution did not appear to satisfy the elements for the crime of persecution.⁷

A considerable challenge in analysing the information received was the lack of precision as well as internal and external inconsistencies in the information. There were numerous instances in which the lack of even approximate data rendered information unreliable for purposes of analysis. Some allegations were missing vital data such as the date of incident, the location of incident and name of the alleged victim. In other instances, the same individuals appeared on different lists of allegations in different communications; the same individuals were allegedly victimized on different dates for the same crimes; individuals' names were repeated twice on lists of alleged victims of murder; and there were frequent inconsistencies in victims' names, ages and location of alleged incidents. These difficulties did not disqualify the information but rendered more complex the evaluation of allegations and the crime analysis. The Office also drew upon other reliable sources, including the reports of the Inter-American Human Rights Commission, which had helpful information.

The Office consolidated the information and examined the overall patterns arising from the information in communications and open sources. In order to constitute a crime against humanity,

⁷ Article 7(1)(h) of the Statute refers to "persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender... or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court". Article 7(2)(g) indicates that "'persecution' means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity".

Article 7(1) of the Rome Statute provides that particular acts must have been committed as part of a widespread or systematic attack directed against any civilian population. This test creates a stringent threshold.⁸ Even on a generous evaluation of the information provided, the available information did not provide a reasonable basis to believe that the requirement of a widespread or systematic attack against any civilian population had been satisfied.

The Office also examined allegations that groups opposed to the government had committed crimes against humanity. The allegations were very generalized, except for a few relating to political demonstrations, and could not be substantiated by analysis of open source information. The available information did not provide a reasonable basis to believe that the requirement of a widespread or systematic attack against any civilian population had been satisfied.

These conclusions may be reviewed in the light of new facts or evidence.⁹

Allegations concerning War Crimes and Genocide

There were no allegations received specifically alleging war crimes. Based on the available information concerning events in Venezuela since 1 July 2002, the situation clearly does not meet the threshold of an armed conflict. There is therefore no reasonable basis to believe that war crimes have been committed within the jurisdiction of the Court.

No allegations were received concerning genocide and the available information provides no reasonable basis to believe that genocide has been committed.

Conclusion

For the above reasons, in accordance with Article 15(6) of the Rome Statute, I wish to inform you of my conclusion that, at this stage, the Statute requirements to seek authorization to initiate an investigation in the situation in Venezuela have not been satisfied.

This conclusion can be reconsidered in the light of new facts or evidence. I wish to remind you, in accordance with Rule 49(2) of the Rules of Procedure and Evidence, that should you have additional

⁸ The Office took note of the pertinent jurisprudence from various sources, including the International Tribunals for the former Yugoslavia and Rwanda, on widespread or systematic attack directed against any civilian population.

⁹ Article 15(6) of the Statute.

information regarding crimes within the jurisdiction of the Court, you may submit it to the Office of the Prosecutor.¹⁰

I thank you very much for providing information regarding alleged crimes to the Office of the Prosecutor of the International Criminal Court. For more information on our activities and our policies, I would invite you to visit our webpage at www.icc-cpi.int.

Yours sincerely,

Luis Moreno-Ocampo
Chief Prosecutor of the International Criminal Court

¹⁰ Article 15(6) of the Statute; Rule 49 of the Rules of Procedure and Evidence.