EXECUTIVE SUMMARY

In his Third report on the Situation in Venezuela, published July 19, 2017, the Secretary General of the Organization of American States (OAS), Luis Almagro, indicated that there was “evidence that points to the systematic, tactical and strategic use of murder, imprisonment, torture, rape and other forms of sexual violence, as tools to terrorize the Venezuelan people in a planned campaign to quash opposition to the Regime.”

Crimes against humanity are defined and set forth in Article 7 of the Rome Statute as specific crimes committed as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack. On September 14, 2017, the Secretary General appointed a Panel of Independent International Experts to analyze whether there is a reasonable basis for believing that crimes against humanity may have been committed in Venezuela, by the Government of Venezuela under the leadership of President Nicolás Maduro, and whether the situation merits referral to the Office of the Prosecutor of the International Criminal Court (ICC). Venezuela has been a State Party to the Rome Statute since July 1, 2002.

After a comprehensive and thorough analysis and evaluation of the evidence, the Panel of Independent International Experts considers that there are reasonable grounds that satisfy the standard of proof required by Article 53 of the Rome Statute for considering that acts to which the civilian population of Venezuela was subjected to dating back to at least February 12, 2014, constitute crimes against humanity, in accordance with Article 7 of the Rome Statute of the ICC.

As a result, the Panel of Independent International Experts recommends that:

- The Secretary General of the OAS should submit this Report and the evidence collected by the General Secretariat of the OAS to the Office of the Prosecutor of the ICC, for the purposes of opening an investigation into the crimes against humanity set forth therein.

- The Secretary General should invite States Parties to the Rome Statute to refer the situation of Venezuela to the Office of the Prosecutor of the ICC and to call for the opening of an investigation into the crimes against humanity set forth in this Report, in accordance with Article 14 of the Rome Statute.

This Report is divided into two parts. Part I was written by the General Secretariat of the OAS based on source material provided by witnesses who testified during three rounds of public hearings organized by the General Secretariat, on testimonials from victims and family members of the victims submitted to the General Secretariat, as well as on written material and documentary evidence provided by a number of Venezuelan and international non-governmental organizations and intergovernmental organizations, in addition to publicly available information.

Part II of the Report was written by the Panel of Independent International Experts to provide a legal assessment on whether the situation in Venezuela merits referral to the International Criminal Court. It provides a careful and impartial analysis by the Panel of the information and evidence provided in Part I of the Report in addition to other material collected and evaluated by the Panel, as well as an examination of relevant international jurisprudence and precedent. Part II, Chapter I, presents the background and preliminary considerations of the Panel in approaching this process. Part II, Chapter II analyzes the relevant international jurisprudence and
evaluates the requirements including the questions of ICC jurisdiction, admissibility, the contextual elements of the crimes against humanity, as well as the acts themselves. Part II, Chapter III presents the final conclusions of the Panel.

It should be clarified that neither the Panel nor the General Secretariat have investigative powers or the possibility of undertaking field missions to the territory concerned in order to consult with national authorities, victims, civil society organizations, or other interested parties. In addition, sections of the publicly available version of this Report have been redacted in order to protect the identity of some of the victims and/or their family members who fear reprisal for speaking up about the crimes and abuses that have occurred.

Part I, Chapter I, opens with an introduction to the ongoing economic, social, political and juridical crisis in Venezuela, and explains the rationale for developing this Report. It also provides an overview of the institutional authorities for this initiative, detailing the process implemented by the General Secretariat for analyzing whether crimes against humanity may have been committed in Venezuela. Part I, Chapter II presents a summary of the testimony delivered by 26 witnesses, who participated in the five separate public hearings conducted by the General Secretariat in September, October, and November of 2017. The individuals invited to testify represented victims, civil society, former government officials- including representatives of the judiciary and the military, politicians, legislators, and other persons directly affected by the ongoing situation. The testimony revealed a pattern of widespread and systematic attacks against the opposition, which was identified as any individual who expresses views that do not support the ideology of the Bolivarian Government in Venezuela. Witnesses spoke of their experiences of how murder, torture, imprisonment, persecution and other inhumane acts were used against the civilian population, and in particular against anyone calling for the respect of civil, political and economic rights and a return to the constitutional order in Venezuela.

Part I, Chapter III describes the development of a policy that turned the country into a theatre of military operations. The opposition, or those identified as such, were branded as the “internal enemy” of the State, turning large segments of the civilian population into targets for the military, paramilitary and regular security forces who operate in a coordinated manner to “defend the Bolivarian Revolution”. In Part II, Chapter II Section b(1), the Panel of Independent International Experts addressed the contextual elements of crimes against humanity, notably the nature of the attack directed against a civilian population, pursuant to or in furtherance of a State or organization policy. Taking into account the methods used by security forces, it is the conclusion of the Panel that since at least February 12, 2014, widespread and systematic attacks against the civilian population in Venezuela have been carried out according to a State policy to suppress views and opinions that dissent from those of the Government of Nicolás Maduro.

Part I, Chapters IV through IX address the specific acts to be considered under the elements of crimes against humanity codified in Article 7 of the Rome Statute. The General Secretariat has collected a large body of evidence detailing the widespread abuses, including the crimes of Murder (subsection (a)), Imprisonment (e), Torture (f), Rape and other forms of sexual violence (g), Persecution (h), and Enforced Disappearance (i). Each chapter provides a sample of selected cases and incidents that demonstrate a pattern of the widespread and systematic commission of these crimes by the Government, under the overarching plan to suppress and eliminate the political opposition in the country.
The Panel of Independent International Experts provides their analysis of these crimes and the information gathered in Part II, Chapter II, Section (b) addressing Subject Matter Jurisdiction - \textit{ratione materiae}, which breaks down their analysis for each of the crimes outlined in Part I of the Report, considering the elements of each crime as well as their analysis of the situation in Venezuela, highlighting emblematic case studies.

Part I, Chapter IV addresses the use of murder as a tool for the Government in its systematic repression. The perpetrators of these acts are members of the State and regional security forces, as well as government aligned paramilitary groups commonly known as \textit{colectivos}, operating in a coordinated manner. The Report identifies 131 murder victims of the 2014 and 2017 protests, where the perpetrator has been identified as a member of the state security forces and/or the \textit{colectivos}. The tactics used demonstrate a clear pattern of the intent to kill, demonstrated by the location of the death blow (vital areas of the body, in particular, shots to the head and neck), the use of modified and live munitions, and the close range in which these acts were perpetrated. In addition more than 8,292 extrajudicial executions have been recorded since 2015, often a result of various security forces conducting unlawful and violent home raids where false confrontations are staged to rationalize the summary executions of, commonly, young men. This alarming figure further demonstrates the widespread and systematic character of the crime of murder. This figure was provided by former Attorney General Luisa Ortega Diaz for the period 2015 to June 2017. By the date of publication of this Report, the figure is likely to be much higher.

In Part II, Chapter II, Section b(2)(i), the Panel of Independent International Experts examined evidence that documents dozens of murders and thousands of extrajudicial executions that have been committed by State security forces and/or their paramilitary collaborators as part of widespread or systematic attack against the civilian population, particularly targeting members of the opposition or those identified as such, or to exercise social control over the civilian population, in furtherance of a State policy. The Panel, mindful of the scale and context in which the murders took place, considers there to be reasonable grounds to believe that the crime against humanity of murder, as defined in Article 7(1)(a) of the Rome Statute, has been committed in Venezuela.

Part I, Chapter V addresses the widespread use of torture against detainees. The abuses range from the use of white torture and other forms of psychological torture, to vicious beatings often causing serious physical harm that commonly go untreated, sexual torture, the use of stress positions, electric shocks (including to the genitals), burns, tear gas, serving rotten food, or food mixed with glass shards or excrement, or in some cases having food and water withheld. The torture commonly takes place over extended periods and is repeated over time. The victims are of all ages, including minors, without concern for pre-existing mental or physical conditions. The use of the same tools and techniques are used consistently in facilities around the country, demonstrating a policy of abuse, as if the security forces are using a single manual or guide for the treatment of prisoners.

In Part II, Chapter II, Section b(2)(iii), The Panel of Independent International Experts received documentary evidence of at least 289 cases of torture that inflicted severe physical and mental suffering as part of a widespread or systematic state policy particularly targeting opponents of the regime or those believed to be opponents of the regime. The Panel considers there is a reasonable basis to believe that the crime against humanity of torture, as defined in Article 7(1)(f) of the Rome Statute, has been committed in Venezuela. Further, the Panel believes that
these acts of torture have occurred under the control or custody of the State, particularly by the officers who committed the acts of torture. The acts did not happen spontaneously or in isolation, but rather answered to a policy established by the government of Venezuela through acts directed by the highest-level state authorities, setting clear systematic patterns of action.

Part I, Chapter VI discusses the sexual violence used against, both men and women, detainees. The cases recorded include the use of sexual torture including forced undressing, threats of rape, inappropriate touching, lascivious acts, the use of electric shocks on the genitals and breasts of victims, and rape, which have occurred in both public and private settings. Noting the history of impunity that sexual violence has had in Venezuela, the Report highlights that the investigation into the torture and abuses perpetrated against victims must also consider the sexual nature of the acts, recognizing it as a separate crime. Reports received by the General Secretariat demonstrate the strong stigma often experienced by victims of sexual violence and suggest that there are likely much higher incidences of rape and other forms of sexual violence that have taken place than have been recorded.

In Part II, Chapter II, Section b(2)(iv), the Panel of Independent International Experts examined extensive evidence of a pattern of sexual violence against women, including a pattern of sexual violence and rape against persons under state custody. The Panel also examined the relevant jurisprudence and determined that there is a reasonable basis for believing that in Venezuela, the elements of the crime of rape identified by the ICC are present and that therefore the crime against humanity of rape and any other forms of sexual violence, as defined in Article 7(1)(g) of the Rome Statute, has been committed in Venezuela. Further, the Panel considers that these rapes and/or acts of sexual violence were part of a specific type of torture in which the perpetrators no doubt knew that the conduct was part of a widespread and systematic attack directed against the group identified as political opponents.

With more than 12,000 Venezuelans arbitrarily detained since the election of President Maduro in 2013, equating approximately seven people, per day, every day since his election, Part I, Chapter VII, details the use of arbitrary detention or the severe deprivation of liberty on both a mass and targeted scale to terrorize and silence the population. The number of political prisoners in Venezuela is the highest it has been since the military dictatorship of the 1950s, with close to 676 political prisoners at the height of the 2017 protests. After stabilizing at around 220 in the first four months of 2018, the number of political prisoners spiked again in the weeks leading up to the fraudulent presidential elections of May 20, 2018. As of May 13, 2018, there were 338 political prisoners behind bars. Since 2013, more than 1,300 people have been held as political prisoners. Detention facilities operate autonomously, regularly ignoring court orders to free those in detention. The evidence also disclosed the criminal complicity of judges and prosecutors in ordering these arbitrary arrests, imprisonments, and deprivations of liberty.

In Part II, Chapter II, Section b(2)(ii), citing the evidence presented by the General Secretariat as well as evidence from the United Nations’ Working Group on Arbitrary detention and other sources, the Panel of Independent International Experts found that there are reasonable grounds to believe that the more than 12,000 acts of arbitrary detention, imprisonment or other severe deprivation of physical liberty that have been committed in Venezuela since 2013, in violation of fundamental rules of international law and all canons of international due process, constitute the crime against humanity of imprisonment or other severe deprivation of physical liberty, under
Article 7(1)(e) of the Rome Statute, given the widespread and systematic targeting of opponents of the regime or suspected “enemies of the state”. Further it considers that these acts, for which there is no legal basis, did not take place spontaneously or in isolation, but instead reflect a policy put in place by the Government of Venezuela through acts directed by the highest State authorities.

In addition, after examining a growing pattern of enforced disappearances, where the victim in question is abducted and held incommunicado for periods ranging anywhere from a few days to indefinitely, and where all too frequently, families are only able to learn about the fate of their loved ones through informal channels, the Panel, in Part II, Chapter II, Section b(2)(vi) also found that the enforced disappearances of political opponents or persons believed to be political opponents, meets the definition of the crime against humanity of enforced disappearance of persons, as set forth in Article 7(1)(i) of the Rome Statute.

Part I, Chapters VIII and IX details the various forms of persecution that have been used to target the political opposition or those who simply seek to exercise their political rights. It discusses the inflammatory language demonizing those who oppose the government, the politicization of the justice system with the courts now serving as tools of Executive power criminalizing political activism, removing democratically elected politicians from office and banning them from political participation. It also discusses the government’s actions to eliminate the right to free expression and free movement, as it resorts to the violent and excessive use of force, including illegal raids, to silence its critics. The Regime does not discriminate, targeting children and persons with disabilities as easily as they target political leaders. They Regime has even gone so far as to weaponize the humanitarian crisis they have created, politicizing what little food and necessities are available - providing food to their supporters and withholding it from people who do not support the government. The mass exodus of Venezuelans forced to leave the country seeking food, health care, jobs, and safety has been seized as an opportunity to force even more critics and opponents out of the country, eliminating voices of dissent and enabling President Maduro to further consolidate his unchallenged hold on power, and destabilizing the peace and security of the region.

In Part II, Chapter II, Section b(2)(v), the Panel of Independent International Experts determined that the scale of political persecution has increased dramatically over the years (from February 2014 to date), and that the crime of persecution on political grounds is present in all the crimes against humanity described in this Report, involving violations of the rights to life, personal liberty and humane treatment. In addition, the Panel examined violations of fundamental rights that were not analyzed as part of those crimes, namely: injuries, intimidation, and detriment to the right to health and food due to the political use and weaponization of the humanitarian crisis. The Panel believes there is a reasonable basis for believing that in Venezuela the elements of persecution on political grounds, as defined in Article 7(1)(h) of the Rome Statute, are satisfied.

The Panel also believes that the deprivation of fundamental rights that the victims of political persecution suffered in Venezuela is part of the widespread and systematic attacks connected to the crimes established in Article 7 of the Rome Statute, namely: murder, imprisonment, torture, rape or sexual violence, and enforced disappearance and that the criminal conduct has been directed against a group of persons identifiable on political grounds.
In addition, the Panel evaluated the information submitted with regards to the humanitarian crisis and considers that the use of the crisis as an instrument to pressure a segment of the population that is in opposition or that is identified as such, compounded by the government’s denial of the humanitarian crisis and refusal of any humanitarian assistance, constitutes multiple violations of fundamental rights, such as the right to life, the right to humane treatment, the right to health, and the right to food, making it also a crime of persecution for political reasons in connection with the crimes analyzed by the Panel.

Part I, Chapter X details the assault upon the rule of law, and the complete absence of justice in Venezuela. It addresses the lack of independence of the judiciary, including the manipulation of the judicial appointments process, the disregard for the tenure of positions, as well as the direct harassment and intimidation of judges. It also cites specific examples of the politicization of the judicial process where the Supreme Court has been repeatedly used to subvert the democratic process, the former Attorney General has been targeted, and military tribunals have been used to target civilians. It also outlines the direct involvement of the State security apparatus in the murder and torture of civilians on political grounds.

In Part II, Chapter II, Section B, the Panel addresses Complementarity, Admissibility and Interest of Justice. The evidence examined in this Report demonstrates that the massive assault on the rule of law in Venezuela, which has included the widespread and systematic attacks and persecution of the judiciary and the justice system as a whole, has effectively ended any semblance of an independent justice system and judiciary, or the capacity to engage in any genuine legal proceedings to investigate the crimes against humanity as set forth in this Report. Specifically, the Panel considers there to be an absence of justice, noting the staggering rates of impunity, as well as the longstanding lack of independence and impartiality of the judicial branch in Venezuela. Further, the Panel considers that the politicization of the Judicial Branch, from its highest levels, has placed it at the service of impunity for high-level officials and authorities, for human rights violations, and crimes against humanity.

Accordingly, there is no possibility of the invocation and application of the complementarity principle in the Rome Statute. In addition, and as set forth more fully in this Report, the widespread and systematic crimes against humanity herein documented fully satisfy the gravity requirements of the Rome Statute.

Finally, there are no grounds to believe that there are any “interests of justice” that can seek to demand or delay a necessary investigation of these crimes into which the Office of the Prosecutor has already begun a preliminary examination in February 2018.

In conclusion, having received and evaluated a considerable amount of information and evidence from different sources, the Panel considers that there are reasonable grounds to presume that crimes against humanity have been committed in Venezuela, as envisaged in Article 7 of the Rome Statute.

The Panel recommends that the OAS Secretary General submit this Report and the evidence collected by the General Secretariat to the Office of the Prosecutor of the International Criminal Court for investigation. The Panel also recommends that the OAS Secretary General invite State Parties to the Rome Statute to call for the opening of an investigation into the crimes against humanity set forth in this Report, by referring the situation of Venezuela, itself a State Party to
the International Criminal Court, to the Prosecutor of the International Criminal Court, the whole in accordance with Article 14 of the Rome Statute.