

May 30, 2018
OSG/245/18

Her Excellency, Ms. Fatou Bensouda
Prosecutor of the International Criminal Court
Office of the Prosecutor
The Hague, The Kingdom of the Netherlands

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Peru
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Saint Lucia
Saint Vincent and the Grenadines
Suriname
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United States of America
Uruguay
Venezuela

Dear Prosecutor Bensouda:

It is an honor to address you today in your role as Prosecutor of the International Criminal Court. Since the establishment of the Court, you have played an integral role in combating impunity for the worst international crimes. A legacy you have continued since assuming the role of Prosecutor. Accordingly, we are writing to you to address the urgent situation in Venezuela.

The founding Charter of the Organization of American States (OAS) states that the OAS is a regional agency of the United Nations. Each of our Member States is therefore required to fulfill their regional obligations under the UN Charter in addition to those under the Charter of the OAS. In 2000, under the Presidency of Hugo Chavez, the Bolivarian Republic of Venezuela ratified the Rome Statute of the ICC. Consequently, the International Criminal Court has territorial and temporal jurisdiction over any international crimes perpetrated in the territory and/or by the nationals of the country since July 1, 2002.

As Secretary General of the OAS, I performed my duty to address matters that threaten the peace and security of the Hemisphere by invoking the Inter-American Democratic Charter on May 30, 2016, to address the situation in Venezuela.

Four comprehensive reports have been produced, detailing the assault on the democratic and constitutional order and the rule of law in Venezuela – the assault on the democratically elected legislature and the independent judiciary – and the escalation and weaponization of the humanitarian crisis as a tool of persecution against those in Venezuela who do not actively support the Regime. These Reports also outlined the widespread targeting of the civilian population in any circumstance where they are perceived to be critical of, or in opposition to, the governing political party. As the situation has worsened, growing voices in the international community have expressed concern for the escalating manifold crises, while introducing measures to hold President Nicolás Maduro and his Regime in Venezuela accountable for systematic and widespread abuses against their own people. Nevertheless, the Regime continues to act with impunity and the people of Venezuela endure increasing intimidation, fear, repression and assault.

There is no recourse for justice in Venezuela. The Supreme Court, lower courts, judges and prosecutors have been compromised. They lack independence and further have become tools of persecution for the Regime. Efforts to seek justice through the Inter-American system have been repeatedly ignored, and after several adverse judgments by the Court against the Venezuelan State, the Government withdrew from the Inter-American Court of Human Rights in 2013, depriving its citizens of this regional protection.

In my Report dated of July 19, 2017, I determined 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...” We subsequently decided to examine more closely the developments in Venezuela, specifically looking at Government officials and institutions leading or complicit in this strategy of repression with a view to identifying whether they may be responsible for crimes against humanity, and determine if these criminal violations warrant further international criminal investigation by the ICC.

Because the OAS has been at the forefront of drawing attention to the abuses in Venezuela, it was imperative to establish an independent and impartial review process of the situation of violence and repression. To that end, on September 14, 2017, I appointed an Independent Panel of International Experts to oversee the examination process and determine whether the information gathered provides a reasonable basis for knowing whether crimes against humanity have been committed in Venezuela, and recommend whether the information should be brought to the attention of the International Criminal Court for further consideration.

The process conducted under the authority of the OAS Secretary General was explicitly designed to support the existing cooperation agreement signed between the General Secretariat of the OAS and the ICC in April 2011. Based on this cooperation framework, we undertook a three-fold process. The General Secretariat facilitated a series of public hearings which allowed interested parties to present witness testimony on the alleged crimes being committed in Venezuela. We then facilitated the gathering and compilation of additional documentary evidence. Finally, the Panel reviewed all the information compiled by the Secretariat as well as additional sources, and examined the pertinent Inter-American and international jurisprudence in order to conduct their assessment and make their recommendation to the Secretary General.

I reiterate that these efforts have been designed in full recognition of, and respectful of, the independence and mandate of the ICC. In addition to the cooperation framework between our Organizations, Article 15 of the Rome Statute stipulates that to identify crimes within the jurisdiction of the International Criminal Court, the Prosecutor shall initiate an investigation on the basis of information received, noting that intergovernmental and other reliable sources deemed appropriate may provide written or oral testimony at the seat of the Court. The General Secretariat of the OAS has collected this information at a stage prior to the ICC possibly undertaking an investigation.

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 the three rounds of public hearings, in addition to further testimonials submitted, written material and documentary evidence provided by civil society, non-governmental organizations, intergovernmental organizations, as well as 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.

The testimony and information that was presented to the OAS was from individuals who had already reported these cases or had decided to appear before our Organization in their quest for justice. The General Secretariat of the OAS has not evaluated those accounts, this being the purview of the International Criminal Court. Instead, we have striven to ensure that that information had proper judicial reading through the work of the Panel of Experts designated for that purpose.

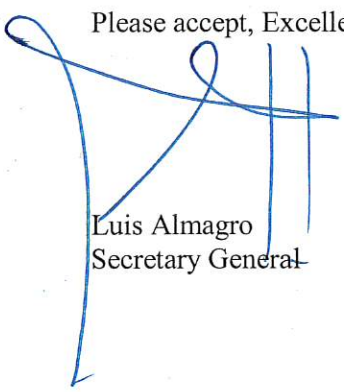
After a comprehensive and thorough analysis and evaluation of the evidence, the Panel of Independent International Experts considers that there are reasonable grounds to believe that the standard of proof required by Article 53 of the Rome Statute, for considering acts to which the civilian population of Venezuela was subjected to dating back to at least February 12, 2014, constitute the crimes of murder, torture, rape and other forms of sexual violence, imprisonment, persecution and enforced disappearances, which are crimes against humanity, in accordance with Article 7 of the Rome Statute of the International Criminal Court.

As a result, the Panel of Independent International Experts recommended:

- That I submit this Report and the evidence collected by the General Secretariat of the OAS to the Office of the Prosecutor of the International Criminal Court, for the purposes of opening an investigation into the crimes against humanity set forth therein.
- That I invite States Parties to the Rome Statute to refer the situation of Venezuela to the Office of the Prosecutor of the ICC and 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.

There is an essential commitment that compels us in our effort to keep the world free of crimes against humanity, and we realize this through our legal instruments and declarations. Today, I write to you to submit this report for your consideration.

Please accept, Excellency, the continued assurances of our highest consideration and respect.



Luis Almagro
Secretary General