

# Annex 1

# Public

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original : **English**

No. : **ICC-02-18**

Date: **7 August 2023**

**THE APPEALS CHAMBER**

**Before:** Judge Marc Perrin de Brichambaut, Presiding  
Judge Piotr Hofmański  
Judge Luz del Carmen Ibáñez Carranza  
Judge Solomy Balungi Bossa  
Judge Gocha Lordkipanidze

**SITUATION IN THE BOLIVARIAN REPUBLIC OF VENEZUELA I**

**Public Document**

**Request for Leave to Submit *Amicus Curiae* Observations by  
the OAS Panel of Independent International Experts**

**Source: The OAS Panel of Independent International Experts on the Possible  
Commission of Crimes Against Humanity in Venezuela**

**Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**

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**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
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**The Office of Public Counsel for the  
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**States' Representatives**

Competent authorities of the Bolivarian  
Republic of Venezuela

**Amicus Curiae**

## **REGISTRY**

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**Registrar**

Mr Osvaldo Zavala Giler

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Mr Philipp Ambach

**Other**

## I. Introduction

1. Pursuant to Rule 103(1) of the Rules of Procedure and Evidence (RPE), the Panel of Independent International Experts on the possible commission of crimes against humanity in Venezuela (hereinafter 'Panel'), appointed by the Organization of American States (hereinafter 'OAS') on 14 September 2017,<sup>1</sup> respectfully requests the authorisation of the Appeals Chamber to submit observations as *amicus curiae* on the appeal filed by the Bolivarian Republic of Venezuela (hereinafter 'the SoV') on 3 July 2023,<sup>2</sup> against the decision of Pre-Trial Chamber I (hereinafter 'PTC I'), dated 27 June 2023, which authorised the resumption of the investigation in the Venezuela I situation.<sup>3</sup>
  
2. The Panel was appointed by the Secretary-General of the OAS to assess whether there are reasonable grounds to believe that crimes against humanity have been committed in Venezuela and to determine whether there is a sufficient basis to refer this information to the Office of the Prosecutor (hereinafter 'OTP'). However, beyond its initial report,<sup>4</sup> in which it concluded that "acts to which the civilian population of Venezuela was subjected to, dating back to at least February 12, 2014,

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<sup>1</sup> OAS, Press release: Secretary General of the OAS Announces the Appointment of Independent Panel of International Experts. 14 September 2017. Available at:

[https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-069/17](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-069/17)

<sup>2</sup> Venezuelan People's Ministry of Foreign Affairs, Press release: Venezuela notifies ICC of its appeal of the resumption of the investigation in the "Venezuela I" case" 4 July 2023. Available in Spanish at: <https://mppre.gob.ve/comunicado/venezuela-notifica-cpi-apelacion-reanudacion-investigacion-asunto-denominado-venezuela-i/>. In the same way, ICC-02/18-52, The Appeals Chamber, "Decision on the Bolivarian Republic of Venezuela's application for extension of time to file the appeal brief", 12 July 2023, , para. 2. Available at: [https://www.icc-](https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd18051283d.pdf)

[cpi.int/sites/default/files/CourtRecords/0902ebd18051283d.pdf](https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd18051283d.pdf)

<sup>3</sup> ICC-02/18-45, PTC I, Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute, 27 June 2023,. Available at [https://www.icc-](https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1804e8166.pdf)

[cpi.int/sites/default/files/CourtRecords/0902ebd1804e8166.pdf](https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1804e8166.pdf)

<sup>4</sup> OAS, "Report of the General Secretariat of the Organization of American States and the Panel of Independent International Experts on the possible commission of Crimes Against Humanity in Venezuela". Available at:

[https://www.oepaneldeexpertos.org/\\_files/ugd/56aada\\_41aace2447444ac19771886a432cde02.pdf](https://www.oepaneldeexpertos.org/_files/ugd/56aada_41aace2447444ac19771886a432cde02.pdf)

constitute crimes against humanity”<sup>5</sup>, the Panel has also submitted relevant information to the OTP in the context of its initial two reports and played a unique role in galvanising support for the first ever collective referral by six of the member states of the OAS that are also States Parties to the Statute.<sup>6</sup> This collective referral ultimately enabled the ICC Prosecutor to broaden the temporal scope of the preliminary examination of Venezuela I under consideration to include crimes committed since 12 February 2014, the beginning of the state-led violent repression against civilians.

3. Furthermore, since 2017, the Panel has continuously monitored the situation of ongoing crimes and repression in Venezuela, collecting and analysing information from various stakeholders, and providing unique insights into the institutional reforms of the SoV.<sup>7</sup>
4. More recently, the Panel has conducted in-depth research, collected open-source data, and obtained first-hand information through interviews with victims and experts, to assess the SoV's ongoing investigations and prosecutions of alleged perpetrators within the country.
5. On 16 April 2022, following the response by the SoV pursuant to Article 18(2) of the Rome Statute whereby SoV confirmed that “[it] is investigating or ha[s] investigated its nationals or others within its jurisdiction with respect to alleged

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<sup>5</sup> OAS, “Report of the General Secretariat of the Organization of American States and the Panel of Independent International Experts on the possible commission of Crimes Against Humanity in Venezuela”, page 453. Available at:

[https://www.oepaneldeexpertos.org/\\_files/ugd/56aada\\_41aace2447444ac19771886a432cde02.pdf](https://www.oepaneldeexpertos.org/_files/ugd/56aada_41aace2447444ac19771886a432cde02.pdf)

<sup>6</sup> ICC, Situation in the Bolivarian Republic of Venezuela I, State Parties referral. 26 September 2018. Available at: [https://www.icc-cpi.int/sites/default/files/itemsDocuments/180925-otp-referral-venezuela\\_ENG.pdf](https://www.icc-cpi.int/sites/default/files/itemsDocuments/180925-otp-referral-venezuela_ENG.pdf)

<sup>7</sup> OAS, “Venezuela’s Institutional Reform Reinforcing Impunity: Capitalizing On The Icc’s Complementarity To Avoid Accountability”, 16 May 2023. Available at: [https://www.oepaneldeexpertos.org/\\_files/ugd/56aada\\_4ee37f935c0244eea1c346d1df92232a.pdf](https://www.oepaneldeexpertos.org/_files/ugd/56aada_4ee37f935c0244eea1c346d1df92232a.pdf)

punishable acts against human rights(...),”<sup>8</sup> the OTP raised concerns about the SoV’s domestic criminal proceedings: “remain 1) very few in number compared to the volume of alleged crimes and the type of harm identified as having been committed in the situation, 2) focused exclusively on low-ranking members of the security forces (and seemingly physical perpetrators), with no apparent investigation of higher-level perpetrators and private individuals or groups, and 3) framed in terms of ‘isolated instances’ without inquiry into larger patterns of conduct or underlying policy.”<sup>9</sup> Similarly, the PTC concluded that the domestic investigations conducted by the SoV appeared insufficient and did not meet the standards required for genuine accountability.<sup>10</sup>

6. Accordingly, the Panel submits that it has relevant information relating to the ongoing criminal proceedings in Venezuela that is critical to the determination of the matter under review and therefore requests the Appeals Chamber’s authorisation to submit its findings relating to the SoV’s domestic investigations and prosecutions of alleged perpetrators as *amicus curiae*.
7. Should the application be granted, it is further requested that the Panel be authorised to submit its findings confidentially to protect the staff members of the non-profit organisations, witnesses, and experts that have provided information to

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<sup>8</sup> ICC-02/18-17, OTP, Notification of the Bolivarian Republic of Venezuela’s deferral request under article 18(2) of the Rome Statute. 20 April 2022. [https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022\\_03184.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_03184.PDF)

<sup>9</sup> ICC-02/18-36, OTP, Public redacted version of “Prosecution’s Response to the ‘Observations of the Government of the Bolivarian Republic of Venezuela’s to the Prosecution request to resume the investigation (ICC-02/18-30-Conf-Exp-AnxII)’”, 31 March 2023, para. 5. <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1804146b9.pdf>

<sup>10</sup> ICC-02/18-45, PTC I, Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute. ICC-02/18. 27 June 2023, paras. 131 and 132. Available at: <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1804e8166.pdf>

the Panel in light of the ongoing risks of repression faced by victims and civil society in Venezuela as acknowledged by the UN Fact-Finding Mission.<sup>11</sup>

## II. Procedural Background

8. The SoV ratified the Rome Statute on 13 December 2000, which came into effect on 1 July 2002.<sup>12</sup>
9. On 14 September 2017, the Secretary-General of the OAS, Luis Almagro, appointed a Panel to evaluate whether there are reasonable grounds to believe that crimes against humanity have been committed in Venezuela and make recommendations as to whether there is a sufficient basis to refer this information to the ICC.<sup>13</sup>
10. On 8 February 2018, the OTP opened a preliminary examination on the alleged commission of crimes against humanity in Venezuela, since at least April 2017, in the context of “demonstrations and related political unrest.”<sup>14</sup> By that time, the OTP had received information about the arrest and detention of thousands of actual or perceived members of the opposition, including information that a

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<sup>11</sup> A/HRC/45/CRP.11, Fact-finding mission on the Bolivarian Republic of Venezuela, Detailed findings of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela., 15 September 2020; A/HRC/48/69, Independent International Fact-finding mission on the Bolivarian Republic of Venezuela, Report of the independent international fact-finding mission on the Bolivarian Republic of Venezuela, 16 September 2021; and A/HRC/51/CRP.3, Independent International Fact-finding mission on the Bolivarian Republic of Venezuela, Detailed findings of the independent international fact-finding Mission on the Bolivarian Republic of Venezuela: Crimes against humanity committed through the State’s intelligence services: structures and individuals involved in the implementation of the plan to repress opposition to the Government, 20 September 2022

<sup>12</sup> ICC, States Parties of the Rome Statute : Venezuela. <https://asp.icc-cpi.int/states-parties/latin-american-and-caribbean-states/venezuela>

<sup>13</sup> OAS, Press release: Secretary General of the OAS Announces the Appointment of Independent Panel of International Experts. 14 September 2017. Available at: [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-069/17](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-069/17)

<sup>14</sup> OTP, Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on opening Preliminary Examinations into the situations in the Philippines and in Venezuela. 8 February 2018. Available at : <https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-fatou-bensouda-opening-preliminary-0>

number of them were allegedly subjected to serious abuse and ill-treatment in detention.<sup>15</sup>

11. On 29 May 2018, the Panel published its report in which it determined that there were reasonable grounds to believe that crimes against humanity have been committed against the civilian population in Venezuela dating back to at least 12 February 2014, including the crimes against humanity of murder, imprisonment, torture, rape and other forms of sexual violence, persecution, and enforced disappearance.<sup>16</sup> Based on this conclusion, they recommended that the Secretary-General of the OAS submit the report and the evidence to the OTP and invite OAS States that are also States Parties to the Rome Statute to refer the situation in Venezuela to the OTP.<sup>17</sup>
12. On 27 September 2018, six OAS State Parties (Argentina, Canada, Colombia, Chile, Paraguay, and Peru), submitted a referral to the Office of the Prosecutor,

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<sup>15</sup> OTP, Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on opening Preliminary Examinations into the situations in the Philippines and in Venezuela. 8 February 2018. Available at : <https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-fatou-bensouda-opening-preliminary-0>

<sup>16</sup> OAS, "Report of the General Secretariat of the Organization of American States and the Panel of Independent International Experts on the possible commission of Crimes Against Humanity in Venezuela". Available at:

[https://www.oepaneldeexpertos.org/\\_files/ugd/56aada\\_41aace2447444ac19771886a432cde02.pdf](https://www.oepaneldeexpertos.org/_files/ugd/56aada_41aace2447444ac19771886a432cde02.pdf)

<sup>17</sup> OAS, "Report of the General Secretariat of the Organization of American States and the Panel of Independent International Experts on the possible commission of Crimes Against Humanity in Venezuela". Available at:

[https://www.oepaneldeexpertos.org/\\_files/ugd/56aada\\_41aace2447444ac19771886a432cde02.pdf](https://www.oepaneldeexpertos.org/_files/ugd/56aada_41aace2447444ac19771886a432cde02.pdf)



requesting the opening of an investigation into the crimes against humanity allegedly committed in Venezuela since 12 February 2014.<sup>18</sup>

13. On 14 December 2020, the OTP announced that there were reasonable grounds to believe that crimes had allegedly been committed in the State of Venezuela<sup>19</sup> and on 5 November 2021, the OTP announced the opening of an investigation into the crimes against humanity allegedly committed in the State of Venezuela since 12 February 2014.<sup>20</sup>
14. On 16 April 2022, the SoV requested that the investigation initiated be suspended or postponed and that priority be given to the investigations being conducted by the SoV.<sup>21</sup>
15. On 1 November 2022, the OTP applied to the PTC I for authorisation to resume the investigation on the SoV.<sup>22</sup> On 18 November 2022, the PTC I ordered that potential victims be consulted about whether or not the OTP should resume the investigation,<sup>23</sup> and on 20 April 2023, the report on the VPRS, consultation with victims was published, where the vast majority of victims called for the

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<sup>18</sup> ICC, Situation in the Bolivarian Republic of Venezuela I, State Parties referral. 26 September 2018. Available at: [https://www.icc-cpi.int/sites/default/files/itemsDocuments/180925-otp-referral-venezuela\\_ENG.pdf](https://www.icc-cpi.int/sites/default/files/itemsDocuments/180925-otp-referral-venezuela_ENG.pdf)

<sup>19</sup> OTP, Report on Preliminary Examination Activities 2020, 14 December 2020, para. 202. Available at: <https://www.icc-cpi.int/sites/default/files/itemsDocuments/2020-PE/2020-pe-report-eng.pdf>.

<sup>20</sup> OTP, Press release : "ICC Prosecutor, Mr Karim A.A. Khan QC, opens an investigation into the Situation in Venezuela and concludes Memorandum of Understanding with the Government". 5 November 2021. Available at : <https://www.icc-cpi.int/news/icc-prosecutor-mr-karim-aa-khan-qc-opens-investigation-situation-venezuela-and-concludes>

<sup>21</sup> ICC-02/18-18, OTP, Prosecution request to resume the investigation into the situation in the Bolivarian Republic of Venezuela I pursuant to article 18(2), 1 November 2022. Available at : [https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022\\_06554.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_06554.PDF)

<sup>22</sup> ICC-02/18-18, OTP, Prosecution request to resume the investigation into the situation in the Bolivarian Republic of Venezuela I pursuant to article 18(2), 1 November 2022. Available at : [https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022\\_06554.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_06554.PDF)

<sup>23</sup> ICC-02/18-21, PTC I, Order inviting observations and views and concerns of victims. 18 November 2022. Available at : [https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022\\_06722.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_06722.PDF)

resumption of the investigation.<sup>24</sup> On 27 June 2023, the PTC I authorised the resumption of the Office of the Prosecutor's investigation into the situation of Venezuela I, pursuant to Article 18(2) of the Rome Statute.<sup>25</sup>

16. On 3 July 2023, the State of Venezuela announced and served notice of its appeal of the decision of PTC I, which had allowed the resumption of the investigation.<sup>26</sup>
17. On 7 July 2023, the Office of Public Counsel for Victims (OPCV) filed a request to appear before the Appeals Chamber.<sup>27</sup>
18. On 12 July 2023, the Appeals Chamber set a deadline of 14 August 2023 for the SoV to file and substantiate its appeal brief.<sup>28</sup>
19. On 20 July 2023, the Appeals Chamber rejected the SoV's request for suspensive effect.<sup>29</sup>
20. Finally, on 21 July 2023, the Appeals Chamber granted leave for the OPCV to submit written observations in relation to the collective interests of victims.<sup>30</sup>

### III. Applicable law

21. The present *amicus curiae* application is made on the basis of Article 21(1)(a) of the Statute, in accordance with Rule 103(1) of the RPE which provides that:

*“At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or*

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<sup>24</sup> ICC-02/18-40-Conf, Annex I public report, Registry, Final Consolidated Registry Report on Article 18(2) Victims' Views and Concerns Pursuant to PreTrial Chamber's Order ICC-02/18-21, ICC-02/18-40-Conf, Annex I public report, 20 April 2023, paras. 28 and 41. Available at: <https://www.icc-cpi.int/sites/default/files/RelatedRecords/0902ebd180441579.pdf>

<sup>25</sup> ICC-02/18-45, PTC I, Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute, 27 June 2023. Available at : <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1804e8166.pdf>

*person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.”<sup>31</sup>*

22. In this respect, The Appeals Chamber has previously allowed *amicus curiae* submissions when they were “desirable for the proper determination of the case” or when the issues raised were novel and could benefit from such interventions.<sup>32</sup>

#### **IV. Mandate, contributions, and composition of the Panel**

23. The OAS is an international organization established in 1948 with the primary objective of achieving among its member states “an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence.”<sup>33</sup> The OAS uses a four-pronged approach to effectively implement its essential purposes based on its main pillars: democracy, human rights, security, and development.<sup>34</sup> Since the creation of the OAS, the States of the Americas have adopted a series of international instruments that have become the normative basis of the regional

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<sup>26</sup> People's Ministry of Foreign Affairs, Press release : Venezuela notifies ICC of its appeal of the resumption of the investigation in the “Venezuela I” case”, 4 July 2023. Available in Spanish at: <https://mppre.gob.ve/comunicado/venezuela-notifica-cpi-apelacion-reanudacion-investigacion-asunto-denominado-venezuela-i/>

<sup>27</sup> ICC-02/18-47, Office of Public Counsel for Victims, Request to appear before the Appeals Chamber pursuant to regulation 81(4) of the Regulations of the Court, 7 July 2023. Available at : <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180504f62.pdf>

<sup>28</sup> ICC-02/18-52, The Appeals Chamber, Decision on the Bolivarian Republic of Venezuela’s application for extension of time to file the appeal brief, 12 July 2023. Available at : <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd18051283d.pdf>

<sup>29</sup> ICC-02/18-53, The Appeals Chamber, Decision on the Bolivarian Republic of Venezuela’s request for suspensive effect of Pre-Trial Chamber I’s “Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute”, 20 July 2023. Available at : <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180527366.pdf>

<sup>30</sup> ICC-02/18-54, The Appeals Chamber, Decision on the OPCV’s “Request to appear before the Appeals Chamber pursuant to regulation 81(4) of the Regulations of the Court”, 21 July 2023. Available at : <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd18052736c.pdf>

<sup>31</sup> ICC, Rules of Procedure and Evidence. Available at : <https://www.icc-cpi.int/sites/default/files/RulesProcedureEvidenceEng.pdf>

<sup>32</sup> ICC-01/09-01/11-942, The Appeals Chamber, Prosecutor v. Ruto and Sang, Decision on the “Requests for Leave to Submit Observations under Rule 103 of the Rules of Procedure and Evidence”, 13 September 2013, para.10.

<sup>33</sup> OAS, Who we are webpage. Available at: [https://www.oas.org/en/about/who\\_we\\_are.asp](https://www.oas.org/en/about/who_we_are.asp)

<sup>34</sup> OAS, Who we are webpage. Available at: [https://www.oas.org/en/about/who\\_we\\_are.asp](https://www.oas.org/en/about/who_we_are.asp)

system for the promotion and protection of human rights, through the recognition of these rights, the establishment of obligations aimed at their promotion and protection, and the creation of organs to oversee their observance. In relation to the human rights pillar, the OAS has established: a) the Inter-American Commission on Human Rights, specialized body with the principal function of promoting the observance and protection of human rights;<sup>35</sup> and b) the Inter-American Court of Human Rights which monitors and promotes regional human rights instruments. Both of these bodies of the OAS have been involved in adjudicating issues relating to the human rights situation in Venezuela since 2003.<sup>36</sup>

24. On 19 July 2017, on the basis of the Panel's conclusions, Luis Almagro stated that there was evidence of "systematic, tactical and strategic use of murder, imprisonment, torture, rape and other forms of sexual violence as tools to terrorise the Venezuelan people", which could constitute crimes against humanity, and, therefore, mandated the OAS General Secretariat to continue to monitor the situation in Venezuela. On 25 July 2017, the Secretary-General appointed Luis Moreno Ocampo, the former ICC Prosecutor, as a Special Advisor to coordinate an impartial and independent investigative process led by the OAS involving all stakeholders: civil society, victims, the Venezuelan authorities, and other interested parties, with the aim of assessing whether there are reasonable grounds to believe that crimes against humanity have been committed in Venezuela.<sup>37</sup>
25. At the same time, on 14 September 2017, the OAS Secretary-General appointed individuals with extensive expertise in the field of international law and international criminal law to constitute a Panel to oversee the impartial and

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<sup>35</sup> IACHR, Mandate and functions. Available at:

<https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/functions.asp>.

<sup>36</sup> See, between other, ACHR, annual report 2018, Chapter IV B Venezuela; IACHR, annual report 2019, Chapter IV B Venezuela; IACHR, annual report 2020, Chapter IV B Venezuela; IACHR, annual report 2021, Chapter IV B Venezuela

<sup>37</sup> On this subject, see: <https://www.oepaneldeexpertos.org/sobre-el-panel>

independent investigative process,<sup>38</sup> and to continuously evaluate accountability for the alleged commission of crimes against humanity in Venezuela.

26. Following this decision, public hearings were held at the OAS headquarters between 14 September to 17 November 2017 to hear witnesses representing a broad cross-section of Venezuelan stakeholders including local and national politicians, members of the armed forces, judicial officials, doctors, relatives of victims, and members of civil society.<sup>39</sup>
27. On 29 May 2018, the first report prepared by the Panel was released, which concluded that there were reasonable grounds to believe 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 International Criminal Court, including the crimes of murder, imprisonment, torture, rape and other forms of sexual violence, persecution, and enforced disappearances.”<sup>40</sup>*

28. To achieve this conclusion, the Panel took into account information received about more than 12,000 cases of arbitrary detentions, at least 289 cases of torture, and 192 cases of rape of persons under State control.<sup>41</sup> Due to the findings, the Panel considered it necessary to forward the information gathered to the OTP, as the

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<sup>38</sup> OAS, Press release: Secretary General of the OAS Announces the Appointment of Independent Panel of International Experts, 14 September 2017. Available at:

[https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-069/17](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-069/17)

<sup>39</sup> OAS, “Report of the General Secretariat of the Organization of American States and the Panel of Independent International Experts on the possible commission of Crimes Against Humanity in Venezuela”, page 25. Available at:

[https://www.oepaneldeexpertos.org/\\_files/ugd/56aada\\_41aace2447444ac19771886a432cde02.pdf](https://www.oepaneldeexpertos.org/_files/ugd/56aada_41aace2447444ac19771886a432cde02.pdf)

<sup>40</sup> OAS, “Report of the General Secretariat of the Organization of American States and the Panel of Independent International Experts on the possible commission of Crimes Against Humanity in Venezuela”, page 453. Available at:

[https://www.oepaneldeexpertos.org/\\_files/ugd/56aada\\_41aace2447444ac19771886a432cde02.pdf](https://www.oepaneldeexpertos.org/_files/ugd/56aada_41aace2447444ac19771886a432cde02.pdf)

<sup>41</sup> OAS, “Report of the General Secretariat of the Organization of American States and the Panel of Independent International Experts on the possible commission of Crimes Against Humanity in Venezuela”, page 454. Available at:

[https://www.oepaneldeexpertos.org/\\_files/ugd/56aada\\_41aace2447444ac19771886a432cde02.pdf](https://www.oepaneldeexpertos.org/_files/ugd/56aada_41aace2447444ac19771886a432cde02.pdf)

competent body to assess the situation and take the necessary measures based on the Rome Statute.<sup>42</sup>

29. The presentation of this report before the OAS State Parties galvanised the diplomatic efforts of six of the OAS State Parties that collectively submitted the first referral to the ICC.
30. The second report of the Panel was published on 16 May 2023, presented an in-depth analysis of the institutional reform initiated by the State of Venezuela and concluded that:

*“on the facts analyzed, that the so-called judicial reform, that was enacted in haste, without appropriate due diligence, drafting expertise and consultation with the stakeholders and members of the National Assembly as required by the Constitution of Venezuela, is largely cosmetic in nature, in a number of instances includes amendments blatantly in violation of the Constitution and fails to: i) reinforce the capacity of the existing judicial system to investigate and prosecute alleged perpetrators, ii) create effective and viable accountability mechanisms to bring alleged perpetrators to justice, and iii) establish appropriate remedies for victims, demonstrating the lack of genuine political will to address accountability at all levels within the state”.*<sup>43</sup>

31. It was clearly superficial in the sense that it did not address the substantial aspects of the institutional crisis that the country is going through and, rather, furthered the lack of accountability, as well as the impunity, of those allegedly responsible for the commission of crimes.

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<sup>42</sup> OAS, “Report of the General Secretariat of the Organization of American States and the Panel of Independent International Experts on the possible commission of Crimes Against Humanity in Venezuela”. Available at:

[https://www.oepaneldeexpertos.org/\\_files/ugd/56aada\\_41aace2447444ac19771886a432cde02.pdf](https://www.oepaneldeexpertos.org/_files/ugd/56aada_41aace2447444ac19771886a432cde02.pdf)

<sup>43</sup> OAS, “Venezuela’s Institutional Reform Reinforcing Impunity: Capitalizing On The Icc’s Complementarity To Avoid Accountability”. 16 May 2023. Available at:

[https://www.oepaneldeexpertos.org/\\_files/ugd/56aada\\_4ee37f935c0244eea1c346d1df92232a.pdf](https://www.oepaneldeexpertos.org/_files/ugd/56aada_4ee37f935c0244eea1c346d1df92232a.pdf)

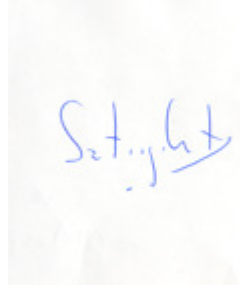
32. As part of the preparation for its third report, the Panel has collected and analysed data relating to a representative sample of investigations or prosecutions that have been or are being carried out at the domestic level against alleged perpetrators to provide an objective assessment of the domestic proceedings.
33. The Panel's findings are material to the appeal proceedings as they lend substantive support to the argument of the OTP and PTC I that the domestic investigations in Venezuela are not investigating or have not investigated criminal acts sufficiently enough to mirror the scope of the Prosecution's intended investigation.<sup>44</sup> The Panel's findings could significantly contribute to the ongoing appeal process, shedding light on the necessity of the ICC's involvement in light of the SoV's failure to meet its duties as a primary state.

## VI. Conclusion

34. Based on the above information, it is submitted that, if the application is granted, the Panel's *amicus curiae* submission will provide unique and relevant information to assist the Appeal Chambers in reaching the appropriate findings relating to the willingness and ability of the SoV to conduct genuine investigations and prosecutions of alleged perpetrators domestically and to discharge its obligations as a primary state.
35. In addition, it is requested that the Panel be allowed to have access to the appeal presented by the State of Venezuela, since the matter will address issues within the knowledge of the Panel, which the Panel would be able to comment on based on the data it has collected and analysed relating to the domestic investigations and prosecutions of the SoV against alleged perpetrators.

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<sup>44</sup> Cfr. ICC-02/18-45, PTC I, Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute, 27 June 2023, para. 132. Available at: <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1804e8166.pdf>



**Santiago Cantón**  
Chairman of the Panel



**Joanna Frivet**  
Member of the Panel

Dated this 7 August 2023

At The Hague, the Netherlands