

New York, September 26, 2018

To the Honorable Prosecutor of the International Criminal Court,

We have the honor to address you on behalf of the Governments of the Republic of Argentina, Canada, the Republic of Colombia, the Republic of Chile, the Republic of Paraguay and the Republic of Peru, in order to refer for your investigation the situation relating to crimes against humanity under the jurisdiction of the International Criminal Court (hereinafter, the Court or the ICC) that would have been committed in the Bolivarian Republic of Venezuela (hereinafter, Venezuela) since February 12, 2014, for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes. This referral is made under the provisions of article 14, paragraph 1, of the Rome Statute of the International Criminal Court (hereinafter, the Statute), made on July 17, 1998 and in force as of July 1, 2002, to which Argentina, Canada, Colombia, Chile, Paraguay and Peru are also States Parties.

#### I Subject

The situation regarding crimes against humanity under the jurisdiction of the Court, as defined in article 7 of the Statute, which would have been committed since February 12, 2014 in Venezuela, State Party to the Statute since its entry into force on July 1, 2002.

#### II Facts

In accordance with the provisions of article 14, paragraph 2 of the Statute, the relevant circumstances that motivate the referral of the aforementioned situation in Venezuela to the Office of the Prosecutor of the Court are detailed below:

To the Honorable Ms.  
Fatou Bensouda  
Prosecutor of the International Criminal Court  
The Hague.-

2.1 On February 8, 2018, Office of the Prosecutor of the ICC ordered that a "preliminary examination" be opened to analyze whether, since at least April 2017, crimes within the jurisdiction of the Court have been committed in Venezuela in the context of demonstrations and of the related political instability. To this end, the Office of the Prosecutor considered the information that was provided to it a few months prior by the deposed Attorney General of Venezuela, Ms. Luisa Ortega.

2.2 Previously, on December 31, 2017, the Inter-American Commission on Human Rights presented the report entitled "Democratic Institutions, the Rule of Law and Human Rights in Venezuela," which highlights "the weakness in democratic institutions and the progressive deterioration of the human rights situation in Venezuela, which have deepened and intensified significantly since 2015 and alarmingly in 2017 " (paragraph 43).

2.3 On May 29, 2018, the "Report of the General Secretariat of the Organization of American States and the Panel of Independent Experts on the Possible Commission of Crimes against Humanity in Venezuela" was presented (hereinafter, the Report of the General Secretariat of the OAS). This document consists of two Parts: I) Information collected by the General Secretariat on the possible commission of crimes against humanity in Venezuela and II) Analysis and Conclusions of the Panel of Independent International Experts to assess whether the situation in Venezuela merits referral to the International Criminal Court.

The panel of experts was appointed by the Secretary General of the Organization of American States (hereinafter, the OAS) on September 14, 2017 and was composed of Mr. Manuel Ventura Robles (of Costa Rica, former Judge of the Inter-American Court of Human Rights); Mr. Santiago Cantón (from Argentina, Secretary of Human Rights of the Province of Buenos Aires and former Executive Secretary of the Inter-American Commission on Human Rights); and Mr. Irwin Cotler (from Canada, president of the Raoul Wallenberg Human Rights Center, and former Minister of Justice and Attorney General of his country).

The report of the General Secretariat of the OAS emphasizes that, despite various requests, there was no possibility of going to the territory of Venezuela, but that the information that serves as support for it comes from, among other sources, public hearings held at the headquarters of the organization, where people who claimed to have been affected by the commission of serious crimes or their immediate family members gave testimony.

The analysis of the panel of experts includes a detailed evaluation of how a situation of commission of crimes against humanity in Venezuela would have been configured, based on generalized or systematic attacks against a part of the civilian population of that country, constituted by the opposition to the government of President Nicolás Maduro. They give a detailed explanation of how various crimes against humanity would have occurred, including references to specific cases that would serve as examples. A particularly dramatic aspect are the alleged arbitrary detentions, murders, extrajudicial executions, torture, sexual abuse and rape, as well as flagrant attacks against due process, to the detriment of people of both sexes, including minors. At the same time, a systematic action would be carried out against young men between 15 and 30 years old, who, without justification, would be arrested or taken

away from their homes to accuse them of acts they would not have committed, or to kill them on the grounds that they resisted.

The general or systematic actions would be part of security plans (such as the so-called Zamora Plan) designed by the government of President Nicolás Maduro, which involved not only of State security forces, but also of organizations and groups of people aligned with the government which, without being part of said forces, act in a coordinated manner with these as part of a State anti-opposition policy.

The crimes against humanity that would have been subject to verification by the panel of international experts include: (i) murder; (ii) imprisonment or other severe deprivation of physical liberty; (iii) torture; (iv) rape; (v) the persecution of an identifiable group or collectivity on political grounds; and (vi) the enforced disappearance of persons.

A particularly relevant detail included in Part II of the Report is that the information received by the panel of experts "is related to events that occurred, as of at least February 12, 2014, the date on which numerous acts were documented that are part of the generalized or systematic attacks against the civilian population and with knowledge of said attack" (page 262).

The panel of experts finally recommends that the OAS Secretary General: (i) forward the Report and the evidence gathered by the General Secretariat to the Office of the Prosecutor of the International Criminal Court, which has already been done; and (ii) invite the States Parties to the Rome Statute to refer the situation of Venezuela to the Office of the Prosecutor of the ICC, and ask the Prosecutor to open an investigation into the crimes against humanity that are collected in the report, in accordance with article 14 of the Rome Statute (page 389).

2.4 Furthermore, in June 2018, the Office of the United Nations High Commissioner for Human Rights (OHCHR) released a report entitled "Human Rights Violations in the Bolivarian Republic of Venezuela: a Downward Spiral with No End in Sight".

The report highlights that the Government of Venezuela did not allow OHCHR to have access to its territory, but that it supports the findings contained therein through one hundred and fifty (150) interviews with victims and witnesses, as well as representatives of civil society, journalists, lawyers, doctors and university students. As highlighted in the Executive Summary,

"The Report also documents the human rights violations committed by state authorities since August 2017, such as the excessive use of force in security operations unrelated to the protests, the repeated practice of arbitrary arrests, torture and ill-treatment, and the violation of the rights to enjoy the highest level of health and adequate food.

In addition, the Report documents other human rights violations, such as extrajudicial executions, arbitrary arrests, torture and ill-treatment, committed by state authorities since 2014" (sic, page ii).

Finally, taking into account that the Report of the General Secretariat of the OAS, mentioned above in section 2.3, has already been submitted to the ICC Prosecutor's Office, as well as the fact that the report recommends both its referral by States Parties to the Statute, and that they request the opening of an investigation in accordance with article 14 of said instrument, for the purpose indicated in paragraph 2 of article 14 of the Statute, we consider as supporting documentation that contained in said report.

### III Jurisdiction of the Court

The jurisdiction of the ICC in relation to the matter that motivates the present referral would be supported by articles 5, which details the crimes under the competence of the Court; 7, which defines what is meant by crimes against humanity; 11, paragraph 1; and 12, paragraph 2, subparagraphs a) and b), since Venezuela is a State Party to the Statute since its entry into force on July 1, 2002, and the facts referred to are as of February 12, 2014; 13, subparagraph a); and 14 of the Statute of the Court, taking into account that the Argentine Republic, Canada, the Republic of Colombia, the Republic of Chile, the Republic of Paraguay and the Republic of Peru also have the status of States Parties to said international instrument and act as such in proceeding in this manner.

### IV Legal basis

The legal basis for making this referral to the Prosecutor of the ICC is given by the provisions of Article 14 of the Statute, which empowers a State Party, such as the Argentine Republic, Canada, the Republic of Colombia, the Republic of Chile, the Republic of Paraguay and the Republic of Peru, to refer a situation in which it appears that one or more crimes within the jurisdiction of the Court appear to have been committed and request the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.

### V Decision required

To the merit of the foregoing and for the aforementioned considerations, the Prosecutor of the Court is requested, after evaluating the information available to her in accordance with the provisions of Article 53 of the Statute, to initiate an investigation into the commission of crimes against humanity that would have taken place in Venezuela under the government of President Nicolás Maduro, beginning on February 12, 2014, for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.

All communications regarding this matter should be sent to the Embassies of the Republic of Argentina, Canada, the Republic of Chile, the Republic of Colombia, the Republic of Paraguay and the Republic of Peru in the Kingdom of the Netherlands.

**UNOFFICIAL TRANSLATION**

Sincerely,

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President of the Republic of Argentina  
Mauricio Macri

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Prime Minister of Canada  
Justin Trudeau

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President of the Republic of Colombia  
Iván Duque Márquez

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President of the Republic of Chile  
Sebastián Piñera Echenique

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President of the Republic of Paraguay  
Mario Abdo Benítez

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President of the Republic of Peru  
Martín Vizcarra Cornejo