



Remarks of Jared Genser
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FOSTERING IMPUNITY: THE IMPACT OF THE FAILURE OF THE PROSECUTOR OF THE INTERNATIONAL
CRIMINAL COURT TO OPEN AN INVESTIGATION INTO THE POSSIBLE COMMISSION OF
CRIMES AGAINST HUMANITY IN VENEZUELA

December 2, 2020

Good morning, Buenos dias. I am pleased to be here with you today to present our new report regarding the ongoing alleged crimes against humanity being committed against the Venezuelan people by Nicolas Maduro and his regime. In my brief remarks, I will first provide some important context that has framed the development of this report. Then I will summarize its key findings. And finally, I will discuss our recommendations.

I need to begin by acknowledging the courageous and extraordinary leadership of Secretary General Luis Almagro regarding the situation in Venezuela. He has been relentless and unapologetic in his advocacy efforts to restore freedom, democracy, and human rights to the Venezuelan people, consistent with the OAS Charter and Inter-American Democratic Charter. And, as it relates to the ongoing commission of mass atrocities, he has taken a wide array of actions to address the crisis, which most importantly included the commissioning of the work of the Panel of Independent International Experts who published their landmark report in 2018, finding reasonable grounds to believe that crimes against humanity were being committed against the people of Venezuela.

I was, therefore, both honored and humbled to asked by him to take up this new role as OAS Special Advisor on the Responsibility to Protect. In that context, I will be working more broadly to help develop a regional system for the OAS to more effectively prevent and respond to mass atrocity crimes. When R2P was adopted by the UN World Summit in 2015, its three principles were summarized as including a responsibility to prevent, a responsibility to respond, and a responsibility to rebuild. The pursuit of justice and accountability for perpetrators of mass atrocities does not merely serve a key function for a state to rebuild after mass atrocities have ended, but done well, it can also serve an important prevention role by sending a clear signal to perpetrators committing atrocities that there could be serious consequences for them personally if they continue to commit such crimes.

And so this leads us to our new report today, for which I also need to thank my exceptional staff at my public interest law firm Perseus Strategies for their support in making this report possible.

In sum, since the publication of the last OAS report in 2018, the alleged crimes against humanity in Venezuela being committed by Nicolas Maduro and his regime have only increased in scale, scope, and severity as the country faces unprecedented political and economic turmoil that

combined with food and medical shortages has resulted in a full-blown humanitarian crisis. Drawing on the work of the UN Independent Fact-Finding Mission on Venezuela, UN High Commissioner for Human Rights, NGOs, independent scholars and other credible sources, today's report paints a vivid portrait of a Venezuela wracked by state-sponsored violence and in the throes of a humanitarian disaster. Specifically, in our report we synthesize, summarize, and analyze under the Rome Statute establishing the International Criminal Court the alleged commission of crimes against humanity include those of murder, torture, arbitrary detention, enforced disappearance, rape and sexual violence, persecution, and other inhumane acts inflicting great harm or death.

To get a sense of the scale of the alleged crimes, this includes evidence of more than 18,000 extrajudicial killings, 15,500 cases of arbitrary detention, 700 enforced disappearances, and 650 cases of torture. In addition, there is also a grim humanitarian landscape where more than 100,000 children under age five have been affected by severe acute malnutrition in the broader context of more than 7 million people suffering malnutrition, access to clean water, and access to medical care.

It would not constitute crimes against humanity for a country to simply be impoverished and to be incapable of providing for its people. But what makes the impact of the humanitarian crisis into an alleged set of crimes against humanity is that Maduro and his regime were clearly aware that their corruption, policies, and actions would lead to widespread shortages of food, medicine, malnutrition, disease, lack of medical care, and resulting deaths. For example, to access public assistance including food packages distributed by Local Supply and Production Committees (CLAPs), individuals need a special national ID card that requires the showing of support of the regime. Indeed, after 2015, food was distributed to communities on the basis of voting populations and their support for the regime. As a result of all of these conditions, more than 5 million Venezuelans have also fled their country.

While these are statistics, we cannot forget the individual victims, who each have names and families. In that regard, we owe a special thanks to *Un Mundo Sin Mordaza* directed by Rodrigo Diamonti for having donated a selection of photos from courageous Venezuela photographers that are incorporated into our report to bring to life the atrocities and humanitarian crisis facing Venezuelan people.

I want to emphasize as I now transition to discuss the other important part of our report that it is Nicolas Maduro and his regime who are solely and exclusively responsible for the commission of these alleged crimes against humanity being committed against the Venezuelan people.

So now I will turn to our analysis of the way in which the Prosecutor and her Office have handled its preliminary examination of the situation in Venezuela. As an international human rights lawyer who has spent my career trying to help victims of human rights abuses, I am a strong supporter of the International Criminal Court and believe it is essential to have a robust international system for holding perpetrators of mass atrocities to account for their crimes when justice and accountability cannot be achieved locally. In addition, the existence of a strong international system and the successful prosecutions of perpetrators over time also can have an important deterrent effect in the future.

The Prosecutor's Office began reviewing the situation in February 2018 and, almost three years later has yet to open an investigation and has only completed two of four stages of the "preliminary examination," as it is referred to by the ICC. In this third stage of review, the Prosecutor's Office will review the potential admissibility of the situation, examining if national authorities are engaging in credible investigations of alleged crimes (referred to as complementarity) and also whether the alleged crimes are of sufficient gravity to justify further action. And in the fourth stage, the Prosecutor's Office would review its findings and ask if there was any reason to conclude that opening an investigation would not serve the interests of justice. At that point, the Prosecutor could potentially announce a decision to open an investigation.

While it is understood and appreciated the Prosecutor must take great care in reviewing evidence, the very slow pace of the examination appears utterly unaffected by the widespread, severe, ongoing, and worsening alleged crimes against humanity being committed by Nicolas Maduro and his regime.

Yet it is hard to overstate the need for the Prosecutor to open an investigation and then to move as rapidly as possible to indictments and prosecutions. This is so important for the people of Venezuela because there are, in fact, no credible means inside Venezuela to hold perpetrators to account given the lack of an independent and impartial judiciary; there is no foreseeable quick end to the political crisis; and it is only by real prosecutions beginning that key actors in the Venezuelan military and security forces chain of command might start hesitating in executing illegal orders to carry out crimes against humanity.

In our report, we examine in detail how this situation has been handled by the Prosecutor's Office and whether it has been conducted in a manner that is consistent with the stated requirements for such an examination. We conclude that it has not in a variety of ways.

First, one of the Office's stated goals for preliminary examinations is promoting prevention, deterrence, and the putting of perpetrators on notice. There have been a wide array of ways the Prosecutor has advanced that goal in the past, including by issuing preventative statements, holding press conferences, threatening prosecutions, undertaking media interviews, and conducting country missions. Our report documents numerous such actions undertaken in other preliminary examinations and that the Office has even undertaken some of these actions in situations that were not yet even under preliminary examination. But, without explanation, the Office has taken none of these actions on the situation in Venezuela.

Second, the Office has emphasized preliminary examinations must be conducted in accordance with the principles of impartiality and objectivity. Yet in the Office's annual report on preliminary examinations in 2018 and 2019, it dramatically underreported the scale of the alleged crimes. You can see the stark disparity between what the Office reported in December 2019 and what was known publicly at that time in a chart in our report on pages 42-43. But to give one example to illustrate our concern, the Office's said there were allegations of between 100-117 murders between 2017-2019 by security forces. Yet it had already been publicly reported by the former Venezuela Attorney General Luisa Ortega, who had fled into exile, that

her office had documented 8,292 extrajudicial murders of civilians by security forces between 2015-2017 and a credible NGO had reported by then it had documented 9,647 extrajudicial killings in 2018-2019. No explanation has been provided by the Office of the Prosecutor to explain why so much credible reporting was simply set aside and ignored.

And third, the way in which the Venezuela examination has been conducted has also been contrary to the Office's own strategic plans, which have stated that preliminary examinations and investigations should be undertaken "expeditiously." In response to criticism about the delays, one key official in the Prosecutor's Office said last year "We would like to proceed faster but do not want to jump to conclusions." Our report does not recommend jumping to conclusions. It simply finds there is a reasonable basis on which to conclude crimes against humanity are being committed in Venezuela and that as a result the Prosecutor's Office should simply open its investigation into the alleged crimes.

As a result of the extended delays, the Maduro regime has been emboldened to commit more crimes, in the belief it can act with total impunity.

That said, our report today should not be viewed as not an attack on the Prosecutor's Office, but rather as a simple call for transparency, accountability, and urgency. In light of how this examination has been handled to date, it is both reasonable and necessary that probing questions be asked about the pace of the examination, its failure to employ ordinary preventative actions, and its exclusion of significant credible evidence.

There has also been another recent development that will hopefully assist the Prosecutor's Office in expediting the opening of an investigation. Specifically, in February 2020 the Maduro regime itself referred the situation to the Prosecutor's Office for investigation alleging that sanctions by foreign countries have resulted in crimes against humanity in Venezuela. Last month, Ms. Bensouda met with a high-level delegation from the Maduro regime in The Hague, which presented its views of the situation.

But what is remarkable is that now both the Government of Juan Guaido and Maduro regime agree crimes against humanity are being committed in Venezuela, albeit by different parties, and that the Prosecutor should rapidly open an investigation into those alleged crimes. Our report recommends that the Prosecutor's Office immediately request full and open access to conduct a country mission, which would be impossible for Maduro to decline given he wants an investigation to be opened quickly too. We also urge the Prosecutor to issue a detailed public statement about the deteriorating situation in Venezuela and to highlight these concerns with an accurate and complete presentation of alleged crimes in the Office's forthcoming annual report on preliminary examinations.

In conclusion, our recommendations in this report that we published today all reinforce our most basic request – that the Prosecutor's Office simply follow through on its own stated commitments. For example, in its strategic plans, it has said:

"Preliminary examinations can also help deter actual or would-be perpetrators of atrocity crimes through the threat of international prosecutions" and "proceedings must be expeditious in order

to respect and serve the rights and interests of victims in their communities, suspects, and accused persons, and be responsive to the expectations of the broader stakeholders of the Rome Statute system.”

I agree fully with these statements and I call on the Prosecutor’s Office to close the gap between these commitments and their implementation in practice and to move expeditiously to open an investigation into the alleged crimes against humanity in Venezuela. To do so would send a critical signal to the Maduro regime that impunity will not be tolerated and also that justice and accountability could be close at hand.

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