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Human rights situations that require the Council's attention

Report of the independent international fact-finding mission on the Bolivarian Republic of Venezuela*

Summary

The present report, submitted to the Human Rights Council pursuant to its resolution 45/20 of 6 October 2020, contains the findings of the independent international fact-finding mission on the Bolivarian Republic of Venezuela. The report is focused on the Venezuelan justice system. This includes issues related to independence, the investigation and prosecution of perceived and real opponents of the Government and the perpetuation of impunity for human rights violations and crimes committed against them. The mission continues to keep abreast of cases involving extrajudicial executions, enforced disappearance, arbitrary detention and torture and cruel, inhuman and degrading treatment, including sexual and gender-based violence, occurring in other contexts in the country and will report on those over the course of its extended mandate.

* The present report was submitted after the deadline so as to include the most recent information.



I. Introduction

A. Background

1. In its resolution 42/25 of 27 September 2019, the Human Rights Council established the independent international fact-finding mission on the Bolivarian Republic of Venezuela. The mission presented its first report to the Council in September 2020.¹ Through its resolution 45/20 of 6 October 2020, the Council extended the mission's mandate for an additional two years, until September 2022.

2. The extension of the mandate enabled the mission to continue to investigate gross violations of human rights, including extrajudicial executions, enforced disappearances, arbitrary detention, and torture and other cruel, inhuman or degrading treatment, including those involving sexual and gender-based violence, committed since 2014. The Human Rights Council requested that the mission present a written report on its findings at the Council's forty-eighth session.

3. Through the present report and the paper containing detailed findings,² the mission is carrying out its mandate to work towards combating impunity and ensuring full accountability for perpetrators and justice for victims by deepening its examination of the roles of actors within the Venezuelan justice system in the commission of human rights violations and crimes. The present report is focused on the judicial system's role in investigating and prosecuting real and perceived opponents of the Government, and in perpetuating impunity for human rights violations and crimes committed against them.

4. In the cases investigated, such real and perceived opponents or critics of the Government increasingly include individuals and/or organizations that document, denounce or attempt to address human rights or social and economic problems in the country, and individuals who interfere or are perceived to interfere with interests of government actors, whether political, economic or criminal.

5. Although the mission continues to investigate other human rights violations falling within its mandate, significant delays in recruiting staff members impeded its capacity to carry out in-depth investigations into violations outside the current area of focus to present to the Human Right Council at its forty-eighth session. For most of the one-year period between the forty-fifth and forty-eighth sessions, the mission operated with less than one third of its intended capacity.

6. The focus of the present report in no way minimizes cases involving extrajudicial executions, enforced disappearances, arbitrary detention and torture and cruel, inhuman and degrading treatment, including sexual and gender-based violence, committed against other individuals in the country. The mission remains concerned about continued allegations, including:

(a) Killings consistent with previously documented patterns of extrajudicial executions and other violations in the context of security operations in low-income, urban neighbourhoods in Caracas. These require more in-depth investigation, but indications are that they have continued to occur;

(b) Killings and other alleged violations, including acts of torture and cruel inhuman and degrading treatment, sexual and gender-based violence, and arbitrary detention, in the context of armed confrontations in Apure State as of March 2021, involving State police and military forces;

(c) Human rights violations occurring in the Orinoco Mining Arc region, involving extrajudicial executions, enforced disappearances and sexual and gender-based

¹ [A/HRC/45/33](https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFMV/A_HRC_45_CRP.11.pdf). See also https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFMV/A_HRC_45_CRP.11.pdf.

² Available at <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session48/Pages/ListReports.aspx>.

violence perpetrated by members of the military and non-State armed actors, including violations against indigenous peoples and individuals;

(d) Killings, arbitrary detentions, acts of torture, and other cruel, inhuman and degrading treatment and sexual and gender-based violence, in the context of the Government's response to protests, including those related to economic and social demands;

(e) Continued acts of torture and cruel, inhuman and degrading treatment, including sexual and gender-based violence, by State law enforcement and intelligence services, consistent with previously identified patterns, and detention conditions amounting to cruel, inhuman or degrading treatment.

7. The mission will continue to investigate these and other situations over the course of its extended mandate, and will provide its analysis and conclusions to the Human Rights Council at its forty-ninth and fifty-first sessions. The mission will consider both State and individual responsibility and victims' right to justice with respect to violations and crimes documented in its 2020 report, the present report and future reports.

B. Methodology and standard of proof

8. The mission followed established methodologies and best practices for human rights fact-finding, as developed by the United Nations. The mission conducted its work in accordance with the principles of independence, impartiality, objectivity, transparency and integrity. The methodology used by the mission is detailed in its 2020 report.³

9. For the present report, the mission conducted a detailed analysis of 183 detentions of perceived or real opponents (153 men and 30 women) that took place between 2014 and August 2021, in order to evaluate the time, manner and circumstances in which arrests, detentions and judicial proceedings occurred. These include several cases that were reviewed and analysed for the mission's 2020 report. In relation to those, the mission obtained information about procedural developments, whenever they occurred, and carried out further analysis. The mission also investigated and analysed 73 additional detentions, including 19 that took place since September 2020.

10. As part of these investigations, the mission conducted an extensive document review of thousands of pages of legal case files, including arrest warrant requests by the prosecution, arrest and search warrant orders by courts, and records of initial appearances, preliminary hearings, oral and public trials, appeals and responses to other legal recourses.

11. The mission conducted 177 interviews (99 of men, 76 of women and 2 with groups involving both women and men), including 57 with victims or their family members, 60 with legal representatives and 36 with former judges and prosecutors working in institutions of the justice system during periods within the mission's mandate. In addition, the mission published a questionnaire open to any verifiable current or former judge, prosecutor and/or lawyer admitted to practice in the Bolivarian Republic of Venezuela. It received 86 responses, reflected in the relevant substantive sections below (42 men, 36 women and 8 unidentified).⁴

12. In its resolution 45/20, the Human Rights Council urged Venezuelan authorities to cooperate fully with the mission, to grant it immediate, full and unfettered access to the country, and to provide it with all the information necessary to fulfil its mandate. The mission regrets that two years into its mandate, the Government still has neither permitted its members to visit the country, nor responded to any of the 17 letters the mission sent between September 2020 and September 2021.

13. The mission continued to use "reasonable grounds to believe" as its standard of proof. This standard is met when factual information has been collected that would satisfy an objective and ordinarily prudent observer that the incident has occurred as described with a reasonable degree of certainty. The mission recalls that determinations about individual

³ A/HRC/45/33, paras. 6–11.

⁴ The responses are on file with the mission.

responsibility for the documented violations can be made only by competent judicial authorities, while fully respecting the accused's due process rights, including the right to defence.

II. Independence of the justice system

14. An independent and impartial justice system is essential for upholding the rule of law and ensuring the protection of human rights. In the Bolivarian Republic of Venezuela, the legal and administrative reforms that contributed to the deterioration of judicial system independence took place over many years, at least since the adoption of the 1999 Constitution. More information on these reforms can be found in the mission's detailed findings. According to several former judicial and prosecutorial sources, erosion of prosecutorial and judicial independence has accelerated in recent years, including in the period covered by the mission's mandate.

A. Selection and discipline of judges

15. The Constitution established procedures for the selection of Supreme Court justices and lower court judges, and included safeguards to help ensure the transparent, non-political and merit-based selection of judicial actors.⁵ Progressive failure to comply with these standards lies at the root of the deterioration in judicial independence, both internal and external to the justice system. Political interference in the selection of Supreme Court justices resulted in a permanent shift in its ideological alignment and had a cascading effect over the judiciary as a whole.

1. Supreme Court justices

16. The Constitution states that Supreme Court justices are to be elected for a single term of 12 years through a public and merit-based process.⁶ Over the past decades, the National Assembly has passed laws circumventing this constitutionally mandated process, thus increasing political influence over the selection of Supreme Court justices.

17. The Supreme Court's current configuration was confirmed in December 2015. Following the opposition's win of a majority of the seats in the National Assembly, the outgoing legislature appointed the 32 Supreme Court justices to serve from 2015 to 2027.⁷ The appointments were not carried out in accordance with relevant constitutional provisions, including with respect to procedural time frames.⁸ According to sources with inside knowledge, of the 32 judges, 29 were selected from circles closely aligned to the ruling party's political ideology.

18. In the lead-up to the December 2015 appointments, 13 of the outgoing justices took early retirement. Several of those later testified that the Chief Justice, Maikel Moreno, had pressured them to do so,⁹ sidestepping legal requirements regarding the removal of Supreme Court justices.¹⁰ Successive attempts by other organs of the State to nullify the December 2015 appointments were rejected by the same Supreme Court, effectively allowing the new justices to affirm their own appointments.

19. The significance of these appointments becomes evident given the almost complete control exercised by the Supreme Court over other institutions within the judiciary, including through the appointment and discipline of first instance and appellate judges and the

⁵ Arts. 255, 263 and 264. See also Organic Law on the Supreme Court, art. 37.

⁶ Art. 264.

⁷ Agreement issued by the National Assembly, *Gaceta Oficial de la República Bolivariana de Venezuela*, No. 40.816 (23 December 2015).

⁸ Organic Law on the Supreme Court, arts. 70–71.

⁹ Final report of the special commission of the National Assembly for the study and analysis of the selection process for principal and alternate magistrates of the Supreme Court, 2016, pp. 11–12.

¹⁰ The mission wrote to Mr. Moreno on 30 July and 3 September 2021 about this. It had not received a response at the time of writing.

appointment of Criminal Judicial Circuit presidents. The Supreme Court also carries out constitutional reviews of all laws and other legal provisions.¹¹

2. First instance and appellate judges

20. The Supreme Court is responsible for the appointment and swearing in of judges.¹² By law, admission to the judicial profession and promotions must be determined by a public competitive process, in accordance with the principles of professionalism and suitability of candidates.¹³ Competitive selections of judges have not been held since 2003 and instead, the Supreme Court appoints judges provisionally, meaning that it can both select and remove them without compliance with the constitutional process. In January 2021, at the opening of the judicial year, Chief Justice Moreno reported that 881 provisional judges had been appointed in 2020.¹⁴

21. The Supreme Court appoints provisional judges through its Judicial Commission. The Judicial Commission was initially tasked with mostly administrative functions, but a series of Supreme Court resolutions have progressively granted it further-reaching powers to select and discipline first instance and appellate judges. According to sources consulted, the Judicial Commission makes nominations and removals based mainly on personal or political considerations.

3. Discipline and removal of judges

22. Despite constitutional guarantees that disciplinary proceedings against judges be public, oral, expeditious and in accordance with due process, judges interviewed reported experiencing regular threats of dismissal or pressure to resign or to request early retirement. The judges alleged that the presidents of the Criminal Judicial Circuits were responsible for many such threats, and that the threats were made for retaliatory or coercive purposes.

23. The Constitution (art. 267) stipulates that discipline of judges is to be in accordance with a judicial code of ethics; such a code was adopted by the National Assembly 10 years later, in 2009. In 2013, the Supreme Court issued a judgment holding that the code of ethics did not apply to provisional judges, despite the code's express provisions to the contrary. As explained by one judicial source, this has resulted in two categories of judges: "Those who have rights and those who do not."

24. The Inspectorate General of Courts is responsible for receiving and substantiating complaints filed against judges in the performance of their duties.¹⁵ Although the Inspectorate General is intended to function autonomously, sources with inside knowledge revealed that over time the plenary chamber had intensified its control over the Inspectorate General. Since 2004, all but one of the Inspectors General have served simultaneously on the Supreme Court, compromising the Inspectorate General's independence.

25. Former court inspectors told the mission that Supreme Court justices often intervened in specific cases by issuing requests, either directly or through the Inspector General, to open cases related to specific judges. Court inspectors' work was hindered further because some judicial actors were considered "untouchable" and inspectors were required to find a way to justify dismissing cases against them, even when there were grounds to believe they had committed disciplinary infractions.

B. Selection, discipline and removal of public prosecutors

26. Under article 286 of the Constitution, appropriate measures are to be developed to ensure the suitability, probity and career stability of prosecutors. The Organic Law on the

¹¹ Constitution, art. 334.

¹² *Ibid.*, art. 255.

¹³ *Ibid.*

¹⁴ Maikel Moreno, Nicolás Maduro y M. Ameliach, "Inicio del año judicial 2021 en Venezuela", 22 January 2021, available at <https://www.youtube.com/watch?v=m6mtCRsQcpY> (minute 26:30).

¹⁵ Plenary Chamber of the Supreme Court, resolution No. 216-0022 on the regulation of the functioning of the Inspectorate General of Courts, art. 2.

Public Prosecutor's Office established the career of public prosecutor (art. 93), accessible through public competition and a competitive examination (art. 94).

27. According to information received, nearly all public prosecutors working in the Bolivarian Republic of Venezuela at the time of writing were provisional.¹⁶ In September 2018, the new Chief Prosecutor, Tarek William Saab, effectively eliminated the prosecutorial career track by passing resolution No. 2703, in which he declared that all civil servants within the Public Prosecutor's Office were in "positions of trust" and could be freely appointed and removed. According to former prosecutors consulted, entry to the Public Prosecutor's Office is no longer based on merit and depends largely upon partisan personal or political factors or influence.

28. The mission received consistent information that disciplinary procedures had failed to guarantee prosecutors' rights to an objective evaluation and decision in a process determined in accordance with the law. Prosecutors working at all levels were affected, but especially those prosecuting public political or security officials and investigating violations in the context of political protests. The 2015 Statute of the Public Prosecutor's Office outlines disciplinary measures against public prosecutors; however, those measures do not apply to non-career public prosecutors.¹⁷

29. In its judgment No. 43 of 20 June 2017, the plenary chamber of the Supreme Court stripped Chief Prosecutor Luisa Ortega Díaz of her immunity, for "serious misconduct" arising from her failure to investigate deaths resulting from "violent acts generated by opposition political parties".¹⁸ She was later removed from her position, through one of the National Constituent Assembly's first acts,¹⁹ despite legal provisions reserving this decision for the National Assembly.

30. The mission received credible information from former prosecutors, both tenured and provisional, who described being removed from office for political motives and without any process. Following the change of Chief Prosecutor in August 2017, 196 public prosecutors throughout the country were summarily dismissed, many of whom had publicly expressed criticism of government actions, including the election of the National Constituent Assembly.²⁰

C. Interference with judicial and prosecutorial independence

31. Judicial and prosecutorial actors at all levels told the mission that they had experienced or witnessed external interference and/or received instructions about how to decide certain cases that were not in line with the facts of the case. These instructions came both from political actors and from persons within the judicial or prosecutorial hierarchy, who often acted in coordination.

32. The mission received information from multiple sources within various judicial institutions that certain individuals were untouchable and as such could not face prosecution. These are individuals, including political and security officials, some with links to economic and/or criminal interests, who are able to exercise control and influence over judges and prosecutors.

1. Interference within the Supreme Court

33. Insider sources revealed that Supreme Court justices routinely receive orders with respect to how to decide judgments. At least from 2015 to 2018, the executive branch transmitted orders to the Supreme Court in one of three ways: through direct messages to the relevant justices, sometimes inviting justices to Miraflores (the presidential palace); through an appointed go-between transmitting messages between the executive branch and the

¹⁶ See also Acceso a la Justicia, *Informe sobre el Desempeño del Ministerio Público (2000–2018)*, p. 35.

¹⁷ Statute of the Public Prosecutor's Office, art. 87.

¹⁸ The mission notes having received allegations regarding interference with prosecutorial independence during Ms. Ortega Díaz's tenure as Chief Prosecutor.

¹⁹ See *Gaceta Oficial de la República Bolivariana de Venezuela*, No. 6.322 (5 August 2017).

²⁰ A list of those prosecutors is on file with the mission.

Supreme Court; and/or through public statements by President Maduro or Diosdado Cabello, which were sometimes summarized into minutes and circulated among the justices.

34. According to a former justice with the electoral chamber of the Supreme Court, appointed in December 2015, one of the first decisions brought before him was a draft judgment to disqualify the deputies elected from Amazonas State, which would have eliminated the opposition's qualified majority in the National Assembly. Then outgoing National Assembly president Diosdado Cabello allegedly instructed him to decide the case in accordance with what the electoral chamber president told him to do. The electoral chamber president then told the then-justice that the country was at risk of civil war and that he had to sign the judgment or he would be responsible for the consequences.

35. In addition to instructions received through political actors, justices were subjected to pressure from within the Supreme Court hierarchy. Justices were convened to meetings of the plenary chamber where they were presented with pre-prepared judgments for their signature. In the words of a former Supreme Court justice, "there was no time to read the judgment, no time to reflect". A former Supreme Court lawyer echoed this, saying that judgments were pre-drafted and that they were printed out for the justices' signature: "We all witnessed it, everyone who worked there."

2. Interference within the Criminal Judicial Circuits

36. Former judges – corroborated by clerks – consistently reported receiving instructions or coming under other pressure to decide political cases in a certain way. The instructions usually came from within the judicial hierarchy, through the Criminal Judicial Circuit presidents. In turn, instructions to Criminal Judicial Circuit presidents came from the Supreme Court's criminal appellate chamber and/or the Chief Justice. According to a former judge, high-level political actors would sometimes call judges directly or would send implicit instructions through televised statements.

37. Prosecutors and defence lawyers confirmed the above, telling the mission that they had witnessed judges being instructed on how to decide a case. One defence lawyer recounted witnessing judges leaving the chamber before announcing a decision, in order to receive instructions from superiors. Several such examples are included in the mission's detailed findings.

38. The mission was repeatedly told that in political cases the case-assignment process was manipulated. Criminal Judicial Circuit presidents within jurisdictions assigned cases manually to certain judges who would follow instructions. Formerly, cases were distributed among the procedural courts using a computerized software programme to ensure equitable and randomized distribution.

39. The cases investigated by the mission reflect this selective distribution. Of the cases involving detentions that it examined, 23 per cent were heard in one of the four procedural courts in the specialized terrorism circuit. Of concern is that those terrorism courts were not created by law as article 261 of the Constitution requires, but were created by the Supreme Court through its resolution No. 2012-0026.²¹

40. The State has also used military courts to try civilians in political cases.²² Cases investigated show that this practice became most common in 2017, during the conflict between the executive branch and Ms. Ortega Díaz. The vast majority of the 85 detention cases the mission analysed that were processed by military courts, involving both military members and civilians, were assigned to the same two military judges.

3. Interference with prosecutorial independence

41. Prosecutors at all levels reported having, at times, received instructions about how to handle cases. Such interventions were especially common in cases against actors with links to political, economic and/or criminal interests, and in cases related to detentions in the

²¹ See *Gaceta Oficial de la República Bolivariana de Venezuela*, No. 40.092 (17 January 2013).

²² See https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFMV/A_HRC_45_CRP.11.pdf, paras. 364–367.

context of political protests. Ms. Ortega Díaz told the mission that from 2015 onwards, she had experienced confrontations with the executive branch “every day, about everything”. She shared several examples of the type of pressure she had been subjected to, most were related to cases involving high-profile members or associates of the political opposition.

42. The mission received numerous accounts from public prosecutors regarding instructions received from within the prosecutorial hierarchy in specific cases that were not in line with the facts of the case, specifically from the superior prosecutors or line directors. Several prosecutors indicated a significant increase in such instructions following the change of Chief Prosecutor in 2017.

43. Prosecutors investigating high-profile corruption cases faced particular pressure. Former prosecutors said that a number of such cases languished in the Public Prosecutor’s Office for years without progressing. Investigations gained momentum in late 2016 and early 2017 and were allegedly revealing the participation of numerous high-level political officials in large-scale illicit schemes. In early January 2017, the pressure placed on prosecutors carrying out these investigations started to intensify.

44. According to several public prosecutors interviewed, when Ms. Ortega Díaz, in her capacity as Chief Prosecutor, started to speak out publicly against the Government, especially in 2016 and 2017, the Public Prosecutor’s Office began facing attacks as an institution. Former prosecutors told the mission that during that time, prosecutors had been refused access to detention centres to observe conditions and judges had refused to issue arrest or search warrants.

45. Several insider sources reported that, in the days following Mr. Saab’s appointment as Chief Prosecutor on 5 August 2017, groups of 10 to 15 armed men wearing balaclavas were permitted to enter the Public Prosecutor’s Office. They took photos, set up cordons, entered offices and removed documents. The mission was informed that upon assumption of his duties, Mr. Saab swiftly dismantled various specialized units within the Public Prosecutor’s Office, diminishing its independence with regard to investigating crimes committed by members of State institutions.

D. Other forms of pressure on judges and prosecutors

46. Judges and prosecutors also faced other pressures, including harassment and punishment, that interfered with the legitimate exercise of their professional activities. Unlike the penalties imposed at the outcome of formal proceedings, these implicit sanctions were not provided for by law or in accordance with a regulated procedure, and affected their financial or personal security and/or the ability to carry out their work.

47. Former judges and prosecutors interviewed reported that they and their family members had been subjected to threats and intimidation, including phone tapping, surveillance and monitoring. Nearly half of the former judges and prosecutors interviewed left the country due to safety concerns. Some interviewees reported being threatened by members of the *colectivos* or other non-State armed groups, or being harassed due to their real or perceived political affiliation.

48. Former judges and prosecutors told the mission that they carried out their work under the fear that they would be criminally prosecuted under vexatious and spurious lawsuits. Several judges and lawyers interviewed stated that there had been a discernible downward turn in judicial independence after the criminal prosecution of María Lourdes Afiuni, a judge, following her arrest in 2009. The detention of former prosecutor Luis Sánchez Rangel is also a case in point. At the time of writing, he had spent four years detained at the headquarters of the civil intelligence agency (Bolivarian National Intelligence Service, SEBIN) in El Helicoide without a trial, in a criminal process demonstrating numerous procedural irregularities.

49. Numerous people interviewed said the low pay of legal professionals in the Bolivarian Republic of Venezuela amounted to a form of pressure against them, creating a kind of stronghold on judges and prosecutors, forcing some to leave their positions and making others susceptible to illicit ways of earning money. Many interviewees, including insiders,

confirmed that certain judges and prosecutors charged for transactions, including for legal benefits in cases, to advance a case in the court docket, to file documents or to receive copies of court decisions.

E. Involvement of external actors in criminal prosecutions

50. Criminal prosecutions consist of accusing an individual of committing a crime and requesting enactment of the State's right to punish.²³ The Constitution,²⁴ the 2012 Criminal Procedure Code²⁵ and the 1998 Organic Code of Military Justice²⁶ clearly establish the competence of the Public Prosecutor's Office or the Military Prosecutor's Office,²⁷ where appropriate, to order and direct criminal investigations and prosecutions. The mission's investigations reveal a pattern in which external actors carry out key roles in this process, at times exerting undue influence over it. This is in part due to prosecutorial authorities' failure to ensure adequate control.

51. High-level public officials made public statements commenting on criminal cases involving real or perceived opponents in 102 of the 183 detentions examined. When making such statements, high-level political actors send the message that they have privileged access to criminal investigations or that prosecutorial and judicial actors are acting on their behalf. Public statements from these actors routinely express conclusions about the guilt or innocence, the character or the reputation of defendants, potentially prejudicing the defendants' rights.²⁸

52. In some cases, the statements revealed sensitive or confidential information related to investigations, including evidence that could only have come from prosecutorial, law enforcement or intelligence officials.²⁹ Some made public what high-level officials claimed to be admissions or confessions made by persons under investigation, including without a lawyer present, under duress or torture, or while being held incommunicado. In other statements, high-level government officials presented physical evidence related to the cases, potentially contaminating the evidence or interfering with the chain of custody.

53. In its article 514, the Criminal Procedure Code makes clear that all bodies with criminal investigation powers directly support the Public Prosecutor's Office in the exercise of its functions and are to follow its instructions.

54. In cases involving real or perceived opponents of the Government, the civilian intelligence agency and the military intelligence agency (Directorate General of Military Counterintelligence, DGCIM) play significant roles in directing investigations.³⁰ A former public prosecutor informed the mission that in certain cases, intelligence agencies had *carte blanche* to carry out the investigations, with prosecutors ratifying their actions and decisions. In the cases investigated by the mission, the intelligence agencies carried out surveillance, evidence collection, preparation of expert reports, forensic analysis, arrests, interrogations and detentions, and provided testimony in court.

55. Intelligence bodies' failure to release detainees after courts have ordered their release or once they have served their sentences demonstrates a willingness to operate outside judicial control. Intelligence bodies have kept individuals detained for prolonged periods without charges, such as in the case of Leonard Hinojosa, who was detained in Zulia State on 26 October 2020 and then held by the military intelligence agency at its La Boleíta

²³ Magaly Vásquez González, *Derecho Procesal Penal Venezolano* (Universidad Católica Andrés Bello, Caracas, 2019), p. 52.

²⁴ Art. 285 (3).

²⁵ Arts. 11 and 111.

²⁶ Art. 70. See also the 2020 Constitutional Law on the Bolivarian National Armed Forces, art. 188.

²⁷ The mission refers to both bodies generally as the prosecution.

²⁸ Such rights are set out in the Constitution, art. 49 (2), and the Criminal Procedure Code, art. 8.

²⁹ The confidentiality of proceedings is set out in the Criminal Procedure Code, art. 286.

³⁰ See, for example,

https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFMV/A_HRC_45_CRP.11.pdf, para. 267.

facilities in Caracas until 12 March 2021 without being presented before a judge or informed of the reason for his detention.

56. On 12 May 2021, President Maduro adopted Decree No. 4.610 ordering the transfer within 30 days of detainees in the custody of the civilian or military intelligence agencies to detention centres of the Ministry of Penitentiary Services.³¹ According to the non-governmental organization Foro Penal, at the time of writing 18 individuals had been transferred since the decree came into force on 12 May 2021 and 16 had been transferred the week prior to the decree coming into force. Nineteen political prisoners remained in military intelligence agency facilities.³² No transfers from civilian intelligence agency facilities were documented after 12 May 2021. Even after the adoption of the decree, real and perceived political opponents continued to be detained in these facilities, as in the case of Javier Tarazona and two others sent to El Helicoide following their arrest on 2 July 2021.

III. Acts and omissions of judges and prosecutors

57. The Constitution³³ and the Criminal Procedure Code³⁴ enshrine a series of principles that must be respected during criminal proceedings. These include the presumption of innocence, right to defence, procedural guarantees and the obligation to ensure reparations to victims.

58. The mission's investigations revealed criminal proceedings beset with irregularities committed by prosecutorial and judicial actors at all stages of the process, amounting to arbitrary detention.³⁵ Judicial and prosecutorial actors also failed to prevent or fully address violations and crimes committed by other State actors against real or perceived opponents, despite the legal obligations of prosecutors,³⁶ judges in procedural courts³⁷ and trial judges³⁸ to do so. These failures directly contributed to impunity for human rights violations and crimes and prevented victims of violations perpetuated by State security and intelligence bodies from accessing effective legal recourse and judicial remedies.

A. Failure to ensure the legality of detention and act on violations

59. Under the Criminal Procedure Code, procedural court judges are responsible for ensuring compliance with the principles and guarantees established in the Constitution, in international treaties, conventions or agreements signed and ratified by the Bolivarian Republic of Venezuela and in the Criminal Procedure Code.

1. Arrests in flagrante delicto

60. The Constitution states that no person is to be arrested or detained except by virtue of a court order, unless caught in flagrante delicto.³⁹ The mission's investigation of cases revealed that illegal detentions occur with regularity. Of concern is judgment No. 526 of 2001, in which the Constitutional Chamber of the Supreme Court held that neither procedural courts nor appellate courts are required to review the constitutionality of police arrests without a warrant.

³¹ *Gaceta Oficial de la República Bolivariana de Venezuela* 12 May 2021; extended for 30 days through Presidential Decree No. 4.528, *Gaceta Oficial de la República Bolivariana de Venezuela* No. 42.147 (11 June 2021).

³² Information received from Foro Penal, 27 August 2021.

³³ Arts. 30 and 49.

³⁴ Arts. 1–23.

³⁵ See also https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFMV/A_HRC_45_CRP.11.pdf, para. 348.

³⁶ Constitution, art. 285 (1).

³⁷ Criminal Procedure Code, art. 264.

³⁸ *Ibid.*, arts. 324, 328 and 345.

³⁹ Art. 44.

61. In its 2020 report, the mission established a pattern in which members of State security and intelligence agencies used the possibility of in flagrante delicto arrests as a basis to conduct arbitrary arrests of real and perceived opponents, despite the fact that no crime had just been committed or was in progress. In some documented cases, the reason provided for the arrest stood in contrast to the charges later filed before a judge at the detainee's initial appearance within a few days of the arrest. The laying of new charges within such a short time frame raises questions about the ability of the prosecution to carry out investigations sufficient to sustain its requests of pretrial detention under the new charges.

2. Foundation for arrests and pretrial detention

62. The procedural court judge, at the request of the prosecution, may only order pretrial deprivation or restriction of liberty exceptionally⁴⁰ and when other precautionary measures are insufficient.⁴¹ Despite this, in cases investigated involving real or perceived opponents, such orders for detention occurred regularly, and were dealt with as a matter of routine. Of the 170 cases involving initial appearances documented by the mission, 146 resulted in pretrial detention for the accused.

63. The mission's review of initial appearance records revealed that procedural court judges often did not provide reasoning for their decisions regarding the existence of well-founded evidence of a risk of flight or obstruction of the investigation, as required under the Criminal Procedure Code.⁴²

64. Cases investigated also revealed a pattern of refusal by procedural court judges to reconsider or lift the pretrial detention measures, even after the expiration of the two-year time limit established under the law and without the application of one of the legal exceptions to that limit.⁴³ At the time of writing, of the 170 initial appearances reviewed by the mission, 80 (47 per cent) had resulted in preventive detention of more than two years.

3. Non-custodial precautionary measures

65. Even in cases in which pretrial detention was not ordered, disproportionately restrictive or extended substitute precautionary measures were often imposed upon defendants. The Criminal Procedure Code is aimed at restricting the imposition of preventive deprivation of liberty as a precautionary measure, by providing eight substitute measures that may be imposed instead.⁴⁴ The application of precautionary measures must be proportional to the penalty of the crime charged.⁴⁵

66. In some cases reviewed by the mission, the precautionary measures were in place for a duration similar to that of the penalty for the underlying crime. In addition, the substitute precautionary measures at times appeared to restrict rights to freedom of expression or assembly, or other constitutional rights, in ways not necessary to ensure the presence of the defendant at trial or non-interference with the investigation. Court closures resulting from the coronavirus disease (COVID-19) pandemic caused further procedural delays, extending the duration of precautionary measures.⁴⁶

4. Discrepancies in arrest warrants and arrest reports

67. The mission documented discrepancies in the issuance of arrest warrants, including between the arrest records issued by intelligence or law enforcement bodies and filings prepared by the prosecution. Prosecutorial and judicial actors either played a direct role in the discrepancies, such as by backdating arrest warrants, or an indirect role, by routinely including inaccurate or deceptive arrest records in the legal case file.

⁴⁰ Criminal Procedure Code, art. 229.

⁴¹ *Ibid.*, arts. 67 and 229.

⁴² *Ibid.*, art. 236.

⁴³ *Ibid.*, art. 230.

⁴⁴ *Ibid.*, art. 242.

⁴⁵ *Ibid.*, art. 9.

⁴⁶ Supreme Court resolution 1 of 2020. This resolution was subsequently extended six times, over seven months.

68. The mission's review of case file documents revealed amended dates appearing to cover up failures to obtain arrest warrants at the time of arrest or failures to present the detainee before a judge within legal time frames. In some cases, the official dates of arrest appear to cover up periods during which victims claim to have suffered short-term enforced disappearances, during which they were held incommunicado and subjected to torture or cruel, inhuman and degrading treatment, including sexual violence.

69. The mission documented 19 arbitrary arrests and short-term enforced disappearances of members of the military, which prosecutors and judges sustained through the issuance of ex post facto arrest warrants. The amended dates created a record of compliance with detainees' rights, which ran contrary to the versions of events recounted by detainees.

5. Failure to act upon other illegalities during arrest and detention, including short-term enforced disappearance

70. Like other State actors, should police investigative bodies commit acts contravening the individual rights guaranteed by the Constitution, those acts are null and void. Public employees ordering or implementing those acts are to incur criminal, civil and administrative liability, whether or not they acted under orders from a superior.⁴⁷ Despite their legal responsibilities in this regard,⁴⁸ the mission's investigation indicates that procedural court judges did not take effective action when faced with information presented to them regarding irregularities or illegalities in detentions carried out by police or intelligence bodies.

71. In some of the cases investigated, defendants raised these irregularities before procedural courts, without receiving a response. This includes the case of Franklin Caldera who, as reported to the fourth terrorism procedural court during his initial appearance, was allegedly taken from Colombia on 11 February 2021 by members of the military intelligence agency and was subsequently interrogated and tortured for some 12 days, during which time his whereabouts were officially unconfirmed.

72. Irregularities in the actions carried out by law enforcement or intelligence bodies during arrests that the mission had previously documented were also reflected in cases examined in the present report. These included failure by arresting authorities to present arrest warrants or explain the reasons for charges; failure to identify themselves at the time of the arrest, including in the form of covering their faces or using aliases; transfer of detainees while they were hooded or blindfolded, or by indirect routes; and excessive use of force or violence during arrests.

73. In some cases, security or intelligence personnel allegedly lured real or perceived opponents to their arrest using criminal tactics, including the kidnapping or detention of family members. One defendant accused of participating in Operation Gedeón in May 2020 told the procedural court at his preliminary hearing that military intelligence agency members had tortured him and had told him that they would apply *Sippenhaft* (a collective punishment tactic used by the Nazis), subsequently arresting his two sisters and his brother-in-law, who were held in La Boleíta for 32 days.

74. Defendants repeatedly denounced being held incommunicado, especially during the first days of detention, without contact with family or lawyers. Under the Criminal Procedure Code, defendants have a right to communicate with their relatives or lawyer to inform them about their detention.⁴⁹ In some cases, the incommunicado detention occurred in secret or unofficial detention facilities, especially in the first hours or days of detention.⁵⁰ In several cases, detainees raised the incommunicado detention before court authorities, but received no response.

⁴⁷ Constitution, art. 25.

⁴⁸ Criminal Procedure Code, art. 264.

⁴⁹ Ibid., art. 127.

⁵⁰ See also https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFMV/A_HRC_45_CRP.11.pdf, para. 315.

75. Some opponents or perceived opponents and persons associated with them were subjected to short-term enforced disappearance.⁵¹ Any person whose liberty is deprived or restricted in violation of constitutional guarantees has the right to file a habeas corpus writ.⁵² The cases reveal that, after being made aware of arbitrary detentions, courts systematically failed to review and address irregular arrests and detentions, including cases involving short-term enforced disappearances, even after habeas corpus requests had been filed.

6. Failure to investigate allegations of torture and cruel inhuman and degrading treatment, including sexual violence

76. In 113 of the 183 cases examined by the mission, detainees or their representatives have made allegations of acts of torture, sexual violence and/or other cruel, inhuman or degrading treatment perpetrated against them. Such allegations were also raised by family members and legal representatives in written submissions to the procedural courts, the Public Prosecutor's Office and/or the Ombudsperson's Office. In 67 of the 183 cases, detainees either appeared in court with marks of mistreatment or made allegations of mistreatment.

77. In some cases, court records do not include a response from the judge in respect of these allegations. In others, records reveal that procedural court judges responded to torture allegations by ordering the Public Prosecutor's Office to verify the complaints made or to conduct medical examinations. The same court records also reveal that, while doing this, the judges ordered the accused to remain in pretrial detention, under the custody of the alleged torturers, namely the military intelligence agency and the civilian intelligence agency.

78. The actions and omissions of judges hearing torture allegations had devastating consequences on victims, including continued torture and deteriorating health. One detainee stated directly to the procedural court judge that after the judge's decision to return him to military intelligence agency custody, he had been subjected to around three months of continuous torture, including beatings at noon, 6 a.m. and 3 a.m. Another detainee suffered a miscarriage following torture inflicted after her initial appearance, when the procedural court judge returned her to military intelligence agency custody despite receiving torture allegations. Even in cases where judges had requested investigations into torture allegations, victims' representatives contacted by the mission were unaware of any effective investigative steps taken.

79. Several victims, witnesses and defence lawyers told the mission that other defendants did not report torture to judicial authorities, out of either fear or lack of trust in the judicial response. This was especially true during the initial appearances, given that the torture, cruel inhuman or degrading treatment, including sexual violence, had recently occurred.

B. Sustaining the charges

1. Arrests and detentions sustained on insufficient foundation

80. In the cases investigated, defendants were charged with a number of serious crimes carrying high penalties. The mission's review of case files revealed several instances in which procedural courts detained and charged individuals based on facts and supporting documents that did not refer to criminal acts or individualize the defendant's participation in the crimes alleged. Lengthy procedural delays subsequently delayed the opportunity to challenge this evidence at preliminary hearings or at trial within a reasonable time frame, while defendants spent extended periods in pretrial detention or were subjected to substitute precautionary measures, which often amounted to years.

2. Evidence derived from illegal interrogations

81. The Criminal Procedure Code only allows for the admission of evidence obtained by lawful means. Information obtained by means of torture, mistreatment, coercion, threat,

⁵¹ The mission also had reasonable grounds to believe such disappearances had occurred during the previous period under review. *Ibid.*, paras. 278 and 313.

⁵² Organic law on the protection of constitutional rights and guarantees, art. 39.

deceit, undue intrusion to privacy (of the home, correspondence, communications or private files), or information obtained by any other means that undermines the will or violates the fundamental rights of individuals, is not to be admitted (art. 181).

82. The mission identified cases in which confessions, incriminating statements or other information, including telephone and social media passwords, were obtained under duress or during interrogations without lawyers present. The Constitution stipulates that a confession is valid only if made without coercion of any kind,⁵³ and it must be made in the presence of a lawyer.⁵⁴ The mission also documented cases in which the judiciary failed in its duty to guard against arrests based on information illegally obtained from third parties.

83. Of the 183 detentions documented, 82 detainees who had allegedly been subjected to torture continued to be charged with crimes by prosecutorial and judicial authorities. The mission's review of legal case files revealed that even after learning of illegal interrogations, prosecutorial and judicial actors had continued to allow the military and the civil intelligence agencies to carry out criminal investigations and had continued to rely on evidence obtained by those intelligence bodies, including evidence derived from the improperly obtained statements. The detailed findings present several such examples.

3. Evidence derived from illegal searches

84. Despite legal provisions requiring that searches of residences, businesses or public offices take place with prior authorization from a procedural court⁵⁵ and that other conditions are met,⁵⁶ the mission's investigations revealed cases demonstrating a failure to comply with those requirements. In 73 cases documented, officers searched detainees' homes and/or offices and seized items without presenting search warrants, including in the case of the 12 January 2021 search of the organization Azul Positivo. In a number of cases investigated, evidence was seized, during a search without a warrant, from computers or telephones, sometimes after the passwords had been obtained from the owner under duress or torture.

4. Planted, fabricated or manipulated evidence

85. The mission identified a pattern in which prosecutorial or judicial actors relied on fabricated, manipulated or planted evidence to justify an arrest or sustain charges and/or failed to investigate allegations that detentions had been made on the basis of such evidence. The mission identified and documented 24 detentions that involved allegedly falsified, manipulated or planted evidence. In addition, 78.82 per cent of the respondents to the mission's questionnaire, who were all defence lawyers, former prosecutors or former judges, indicated that they had observed such evidence tampering in cases to support charges.

C. Right to defence

86. The mission found that interference with the right to defence was one of the most commonly cited violations. Under the Constitution, the right to legal assistance and defence are inviolable.⁵⁷ The defendant has a right to be assisted, from the initial stages of the investigation, by a defence counsel designated by her or him or by relatives, and, failing that, by a public defender.⁵⁸ Of 170 cases examined in which the defendants were charged, judges denied the accused the right to counsel of their choice at the initial appearance or subsequent investigation phase in 54 cases (32 per cent).

87. Defence lawyers have reported having been prevented access to certain detention facilities, especially those run by the civil and military intelligence agencies, denying them contact with clients to sign power-of-attorney documents. Even once power of attorney was granted, the swearing in of private defence lawyers before the judge was delayed. Defence

⁵³ Art. 49 (5).

⁵⁴ Criminal Procedure Code, art. 132.

⁵⁵ *Ibid.*, art. 196.

⁵⁶ *Ibid.*, art. 197.

⁵⁷ Art. 49 (1).

⁵⁸ Criminal Procedure Code, arts. 127 and 139.

lawyers also complained that court officials regularly prevented them from accessing courts to represent their clients, especially at initial appearances.

88. The mission also identified cases in which initial appearances were held in places of detention, which further impeded access to private defence lawyers, such as in the case of Josnars Baduel and other defendants accused of participating in Operation Gedeón, whose initial appearance and preliminary hearings were held at the El Helicoide premises.

89. Even when defendants were able to secure representation of their choosing, the lawyers' abilities to prepare an adequate defence were hindered in various ways. Defence lawyers who spoke to the mission expressed feeling frustrated, exhausted and defeated in the face of repeated and often arbitrary obstacles in the cases. Under the Criminal Procedure Code, the defendant has a right to be informed of the contents of the investigation files.⁵⁹ In 92 of the 170 detentions examined by the mission that had resulted in judicial proceedings, the prosecutor or judge had failed to provide defence lawyers with important case file information, including police records, indictments or records of hearings.

90. Another factor having an impact on the right to defence is harassment and intimidation by security forces of defence lawyers and/or their families. Of the 56 defence lawyers who responded to the mission's questionnaire, 57 per cent said they had received some form of threat or harassment against themselves or their families, including from military, police or intelligence officials. Such harassment included surveillance, aggressive pursuit in vehicles, receiving intimidating phone calls or being blocked from entering tribunals.

D. Undue delays

91. Under the Criminal Procedure Code, judges must not abstain from rendering a decision and must ensure that judgments are issued without undue delay.⁶⁰ The cases investigated or reviewed displayed systematic non-compliance with the time frames established by law for the various procedural steps under the Criminal Procedure Code. Many of these extended beyond the procedural term limits. In 2020, the delays were exacerbated by the seven-month period in which courts were ordered to suspend sessions due to the COVID-19 pandemic.

92. The mission was able to assess the procedural time frame in 144 of the 183 detentions reviewed⁶¹ and found significant disparities between the time periods permitted by law and the practice. Seventy-seven per cent of the initial appearances examined occurred outside the 48-hour period permitted by law, with 18 per cent of detainees held for more than a week before their initial appearances. Detainees were often held incommunicado and without oversight during this period and were vulnerable to torture, sexual violence and other cruel, inhuman or degrading treatment.

93. The most egregious delays occurred between initial appearances and preliminary hearings. The average time between arrest and preliminary hearing was 243 days (around eight months).⁶² In 102 detentions documented, the preliminary hearings were deferred more than once and usually many times. The mission documented 16 detention cases in which the preliminary hearing was deferred for more than two years, during which time the detainees remained either in pretrial detention or were subjected to alternative precautionary measures.

94. The cases investigated also demonstrated delays in setting trial dates, in resolving appeals and in responding to defence motions. In some cases, despite an appearance of progress in the criminal procedure, the defendants remained in pretrial detention, thus in effect resulting in no change in their situations. The mission reviewed 55 detentions in which the proceedings had advanced to trial, noting an average of 523 days (over 17 months) between the date of the preliminary hearing and the start of the trial. Only 19 of these

⁵⁹ *Ibid.*, art. 127.

⁶⁰ *Ibid.*, art. 6.

⁶¹ Cases were excluded if detainees were never presented before a judge, or if no relevant arrest or hearing dates could be established with precision.

⁶² The minimum length of time documented was 82 days between arrest and preliminary hearing, while the maximum length of time was 1,308 days (about three and a half years).

proceedings had reached a verdict at time of writing, with an average time lapse of 759 days (more than two years) after the arrest.

IV. Judicial system responses to allegations of human rights violations

95. The State is under a constitutionally mandated obligation to investigate and, when applicable, to punish public officials for crimes involving human rights violations.⁶³ In accordance with the Constitution, crimes against humanity, gross human rights violations and war crimes are excluded from pardons and amnesties and may not be subject to any statute of limitations.⁶⁴

96. While the present report is focused on the responses of the justice system in cases involving real or perceived opponents of the Government, the data referred to and analysed with respect to accountability has a broader scope, touching upon human rights violations in other contexts. The present analysis is focused on actions taken by the justice system to carry out investigations and prosecution in relation to the specific crimes identified in the 2020 report, including extrajudicial executions, enforced disappearances, arbitrary detentions and torture and cruel, inhuman or degrading treatment, including sexual and gender-based violence.

97. Under the Constitution, all citizens have a right to be informed of the status of proceedings in which they have a direct interest.⁶⁵ By law, the Public Prosecutor's Office is to exercise its functions with transparency.⁶⁶ The Chief Prosecutor must present an annual public report before the National Assembly on the work of the Office, including efforts to investigate and punish human rights violations.⁶⁷

98. The Public Prosecutor's Office presented written reports in 2014, 2015 and 2016 to the National Assembly in compliance with the constitutional mandate, while under the former Chief Prosecutor, Ms. Díaz. In 2017, following Mr. Saab's appointment as Chief Prosecutor, the Public Prosecutor's Office stopped issuing publicly available written annual reports and has only provided oral updates, including through interviews, press conferences and social media, which gave selected information about the work of the Office.

99. The mission prepared the following chart based on information provided by the Chief Prosecutor since 2014 and information contained in a public report issued in 2020,⁶⁸ which in part addressed aspects of the mission's 2020 report. The State disaggregated information based on the number of officials charged, indicted, arrested and convicted, specifying the source and the period covered. However, it did not disaggregate by year, sex or age of the perpetrator, crime charged, type and severity of penalties or rank of the individuals investigated, charged, indicted or convicted.

Investigations and prosecutions of crimes connected to human rights violations reported by the Public Prosecutor's Office

<i>Source of information and period covered</i>	<i>Number of officials charged</i>	<i>Number of officials indicted</i>	<i>Number of officials arrested</i>	<i>Number of officials convicted</i>
Annual report of the Chief Prosecutor (2014) (January–December 2014)	30

⁶³ Constitution, art. 29.

⁶⁴ Ibid., arts. 29 and 271.

⁶⁵ Ibid., arts. 51 and 143.

⁶⁶ Organic Law on the Public Prosecutor's Office, art. 11.

⁶⁷ Constitution, art. 276.

⁶⁸ Bolivarian Republic of Venezuela, *La verdad de Venezuela contra la infamia Datos y testimonios de un país bajo asedio*, 28 September 2020.

<i>Source of information and period covered</i>	<i>Number of officials charged</i>	<i>Number of officials indicted</i>	<i>Number of officials arrested</i>	<i>Number of officials convicted</i>
Annual report of the Chief Prosecutor (2015) (January–December 2015)	1 312	959
Annual report of the Chief Prosecutor (2016) (January–December 2016)	2 441	635	225	226
Address to the National Constituent Assembly (February 2018) (August 2017–February 2018)	..	28
Press conference of the Chief Prosecutor (9 August 2019) (August 2017–August 2019)	406	695	353	109
Press conference of the Chief Prosecutor (27 November 2019) (August 2017–November 2019)	505	766	390	127
Press conference of the Chief Prosecutor (20 August 2020) (August 2017–August 2020)	584	925	450	140
Public report issued by the State (2020) (August 2017–August 2020)	603 (+35 civilians)	811 (+129 civilians)	452 (+29 civilians)	127 (+13 civilians)
Chief Prosecutor’s address to the National Assembly (25 February 2021) (August 2017–December 2020)	677 (+39 civilians)	1 119	519	171 (+13 civilians)
Press conference of the Chief Prosecutor (1 May 2021) (August 2017–May 2021)	716	1 064	540	153

100. The mission notes some discrepancies in the numbers provided, in particular between the numbers reported in the August 2020 press conference and those provided in the 2020 State report, which were said to have covered the same period (August 2017 to August 2020); and between the numbers reported by the Chief Prosecutor in his February 2021 address to the National Assembly and those provided in his 1 May 2021 press conference.

101. The Ombudsperson’s Office has a mandate to assist in providing accountability for human rights violations.⁶⁹ It also has an obligation to produce an annual report on its work.⁷⁰ At the time of writing, annual reports were publicly available for 2014, 2015, 2016, 2017 and 2020, but not for 2018 and 2019. The information contained in those reports provided insights into its work. It would appear, nonetheless, that the activities reported by the Ombudsperson’s Office in relation to the large numbers of complaints it received fall short of fulfilling its constitutional role to further, defend and oversee rights and guarantees established under the Constitution and in human rights treaties.

102. In press conference on 1 May 2021, the Chief Prosecutor reported progress in what he called emblematic cases, having received questions about the preliminary examination of the Office of the Prosecutor of the International Criminal Court. The Preliminary Examination concerns the treatment of government opponents or persons perceived as such in detention since at least April 2017.⁷¹ The Chief Prosecutor referred specifically to three cases investigated by the mission: those of Fernando Alberto Albán, Rafael Acosta Arévalo

⁶⁹ Constitution, arts. 280–281.

⁷⁰ *Ibid.*, art. 276; Organic Law of the Ombudsperson’s Office of 2004, arts. 29–30; and Organic Law on the Citizen Branch of 2001, art. 65.

⁷¹ Office of the Prosecutor, International Criminal Court, *Report on Preliminary Examination Activities 2020* (14 December 2020), paras. 202–203 and 206.

and Juan Pablo Pernaleté. The mission observes that in all three cases, the scope of investigations is limited to less serious crimes and/or only the lowest-level perpetrators face criminal prosecution.

103. The mission reviewed the status of domestic investigations and proceedings concerning all 19 cases included in its 2020 detailed finding involving targeted repression against real or perceived opponents of the Government. The information available to the mission does not indicate that tangible, concrete and progressive investigative steps were undertaken, other than in the cases of Mr. Albán, Mr. Acosta Arévalo and one other person.

104. The mission contacted victims, families and lawyers in connection with all 19 cases. Except for those related to the three above-mentioned cases, all reported that they had not been contacted by prosecutorial or judicial actors for witness statements or notified about any procedural steps or other measures taken. At the time of writing, the Bolivarian Republic of Venezuela had not responded to the mission's requests for further information about those cases.

105. In total, in the period between January 2014 and May 2021, the State reported that between 379 and 397 State officials were convicted for human rights violations. The limited availability of public information regarding prosecutions in such cases, and in particular the lack of disaggregated data, creates significant challenges in assessing the Government's efforts to investigate and prosecute human rights violations.

106. The public information reviewed by the mission did not indicate that the State was carrying out investigations into responsibility for violations further up the chains of command. Instead, the cases referenced in the Government's reports suggested that only lower-level perpetrators faced criminal prosecution. If high-level officials, including those identified in the mission's 2020 report, had been subject to criminal prosecutions, they would have been subjected to a process to lift their immunity (*antejuicio de mérito*), as required by law.⁷²

107. Beyond the investigations and prosecutions of perpetrators, victims and their families have the right to know the truth about the circumstances in which violations took place. In the cases examined, family members and lawyers consistently indicated that, despite multiple requests, they had been denied meaningful access to case files and other essential information. Crucial pieces of evidence had remained undisclosed, preventing family members and lawyers from making relevant submissions. At the time of writing, victims still faced serious obstacles to their right to know the truth about the events, and attempts to bring those involved to justice continued.

V. Conclusions and recommendations

108. The erosion of the justice system's ability to protect human rights and prevent State-sponsored crimes perpetrated against sectors of the population of the Bolivarian Republic of Venezuela predates the mission's mandate for reporting, which begins in 2014, but it has continued in recent years, as the Government has built upon and taken advantage of the system in place.

109. The selection and discipline of judges and prosecutors outside of the requirements of the 1999 Constitution and subsequent laws, in particular the appointment of provisional judges and prosecutors and their dismissal outside of formal processes ensuring guarantees, has been especially detrimental to the independence of the justice system.

110. The mission has reasonable grounds to believe that judges and prosecutors in the cases examined have denied, as opposed to guaranteed, some rights to real or perceived government opponents, in response to interference from political actors or from within

⁷² Constitution, arts. 200 and 266 (1)–(2). High-level officials include the President, the Vice President, ministers, the Chief Prosecutor, high-command military officials, state Governors, National Assembly members and Supreme Court justices. See also the Criminal Procedure Code, art. 381.

the judicial or prosecutorial hierarchy. Irregularities in cases before specialized terrorism courts were especially prevalent.

111. The mission has reasonable grounds to believe that prosecutors and judges failed to protect real and perceived opponents of the Government from arbitrary arrest and detention, by accepting or, in some cases, providing legal cover for illegal arrests, made without warrants and often justified as in flagrante delicto when facts indicated otherwise.

112. Judges ordered pretrial detention as a routine, rather than an exceptional measure and without providing sufficient or appropriate justification. At times, judges ordered pretrial detention in Bolivarian National Intelligence Service or Directorate General of Military Counterintelligence facilities, despite the risk of or commission of torture, even when detainees denounced or displayed signs consistent with torture in courtrooms.

113. The mission has reasonable grounds to believe that prosecutors and judges at times played key roles in arbitrary detentions by sustaining arrest warrants, pretrial detention orders and criminal charges based on facts and supporting evidence that did not involve criminal acts or individualize the defendant's participation. In some cases, prosecutors and judges sustained detentions or charges on the basis of illegally obtained, manipulated or fabricated evidence, including evidence obtained through torture or coercion.

114. In addition to interfering with the right to an expeditious process, frequent procedural delays beyond legal time frames resulted in the harmful effect of extended periods of pretrial detention or precautionary measures, with devastating effects on the lives of suspects, including their physical and mental health, and those of their families.

115. The mission has reasonable grounds to believe that justice system actors are also responsible for depriving detainees of their right to legal defence, at times refusing to appoint private defence lawyers and insisting that detainees be represented by public defenders. Court officials have refused to provide defence lawyers with access to crucial legal documents.

116. Overall, the State is not taking tangible, concrete and progressive steps to remedy violations, combat impunity and provide the victims with redress through domestic investigations and prosecutions. There is a scarcity of official information, but all available indications are that the numbers of domestic prosecutions for crimes connected to human rights violations are low and limited to the lowest-level perpetrators.

117. The mission acknowledges some recent developments announced by the Government. This includes the 12 May 2021 order to transfer detainees under military intelligence agency and civil intelligence agency custody to detention centres of the Ministry of Penitentiary Services; the 29 April 2021 adoption by the Supreme Court of a streamlining plan⁷³ to speed up the judicial processes of detainees in police detention centres; and the 21 June 2021 announcement of the formation of a special commission to address procedural delays and prison overcrowding, among other things.⁷⁴ More time is needed to evaluate the implementation of the announced measures.

118. The mission has reasonable grounds to believe that had the prosecutorial and judicial actors performed their constitutional role appropriately and fully, they could have either prevented many of the crimes and violations committed against real or perceived opponents of the Government, or placed rigorous impediments upon public security and intelligence services' ability to commit them.

119. The mission has reasonable grounds to believe that instead of providing protection to victims of human rights violations and crimes, the justice system has

⁷³ Supreme Court resolution No. 2021-002.

⁷⁴ Venezolana de Televisión, "Presidente Nicolás Maduro encabeza este lunes reunión del Consejo de Estado en Miraflores", 21 August 2021.

played a significant role in the State's repression of government opponents. The effects of the deterioration of the rule of law extend beyond those directly affected and have an impact on society as a whole.

120. The detailed findings contain 45 recommendations for urgent action, addressed to the Supreme Court; criminal judges; the Public Prosecutor's Office; the Military Prosecutor's Office; the Public Defender's Office; the Ombudsperson's Office; the National Assembly and the executive branch.
