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**REPORT OF THE GENERAL SECRETARIAT OF
THE ORGANIZATION OF AMERICAN STATES AND
THE PANEL OF INDEPENDENT INTERNATIONAL
EXPERTS ON THE POSSIBLE COMMISSION OF
CRIMES AGAINST HUMANITY IN VENEZUELA**

Washington D.C., May 29, 2018



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Washington D.C., May 29, 2018

Luis Almagro
Secretary General
Organization of American States

Panel of Independent International Experts:
Santiago Canton
Irwin Cotler
Manuel Ventura Robles

Produced under the direction of Christopher Hernández-Roy and Monika Le Roy
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EXECUTIVE SUMMARY

In his Third report on the Situation in Venezuela, published July 19, 2017, the Secretary General of the Organization of American States (OAS), Luis Almagro, indicated that there was “evidence that points to the systematic, tactical and strategic use of murder, imprisonment, torture, rape and other forms of sexual violence, as tools to terrorize the Venezuelan people in a planned campaign to quash opposition to the Regime.”

Crimes against humanity are defined and set forth in Article 7 of the Rome Statute as specific crimes committed as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack. On September 14, 2017, the Secretary General appointed a Panel of Independent International Experts to analyze whether there is a reasonable basis for believing that crimes against humanity may have been committed in Venezuela, by the Government of Venezuela under the leadership of President Nicolás Maduro, and whether the situation merits referral to the Office of the Prosecutor of the International Criminal Court (ICC). Venezuela has been a State Party to the Rome Statute since July 1, 2002.

After a comprehensive and thorough analysis and evaluation of the evidence, the Panel of Independent International Experts considers that there are reasonable grounds that satisfy the standard of proof required by Article 53 of the Rome Statute for considering that acts to which the civilian population of Venezuela was subjected to dating back to at least February 12, 2014, constitute crimes against humanity, in accordance with Article 7 of the Rome Statute of the ICC.

As a result, the Panel of Independent International Experts recommends that:

- The Secretary General of the OAS should submit this Report and the evidence collected by the General Secretariat of the OAS to the Office of the Prosecutor of the ICC, for the purposes of opening an investigation into the crimes against humanity set forth therein.
- The Secretary General should invite States Parties to the Rome Statute to refer the situation of Venezuela to the Office of the Prosecutor of the ICC and to call for the opening of an investigation into the crimes against humanity set forth in this Report, in accordance with Article 14 of the Rome Statute.

This Report is divided into two parts. Part I was written by the General Secretariat of the OAS based on source material provided by witnesses who testified during three rounds of public hearings organized by the General Secretariat, on testimonials from victims and family members of the victims submitted to

the General Secretariat, as well as on written material and documentary evidence provided by a number of Venezuelan and international non-governmental organizations and intergovernmental organizations, in addition to publicly available information.

Part II of the Report was written by the Panel of Independent International Experts to provide a legal assessment on whether the situation in Venezuela merits referral to the International Criminal Court. It provides a careful and impartial analysis by the Panel of the information and evidence provided in Part I of the Report in addition to other material collected and evaluated by the Panel, as well as an examination of relevant international jurisprudence and precedent. Part II, Chapter I, presents the background and preliminary considerations of the Panel in approaching this process. Part II, Chapter II analyzes the relevant international jurisprudence and evaluates the requirements including the questions of ICC jurisdiction, admissibility, the contextual elements of the crimes against humanity, as well as the acts themselves. Part II, Chapter III presents the final conclusions of the Panel.

It should be clarified that neither the Panel nor the General Secretariat have investigative powers or the possibility of undertaking field missions to the territory concerned in order to consult with national authorities, victims, civil society organizations, or other interested parties. In addition, sections of the publicly available version of this Report have been redacted in order to protect the identity of some of the victims and/or their family members who fear reprisal for speaking up about the crimes and abuses that have occurred.

Part I, Chapter I, opens with an introduction to the ongoing economic, social, political and juridical crisis in Venezuela, and explains the rationale for developing this Report. It also provides an overview of the institutional authorities for this initiative, detailing the process implemented by the General Secretariat for analyzing whether crimes against humanity may have been committed in Venezuela. Part I, Chapter II presents a summary of the testimony delivered by 26 witnesses, who participated in the five separate public hearings conducted by the General Secretariat in September, October, and November of 2017. The individuals invited to testify represented victims, civil society, former government officials- including representatives of the judiciary and the military, politicians, legislators, and other persons directly affected by the ongoing situation. The testimony revealed a pattern of widespread and systematic attacks against the opposition, which was identified as any individual who expresses views that do not support the ideology of the Bolivarian Government in Venezuela. Witnesses spoke of their experiences of how murder, torture, imprisonment, persecution and other inhumane acts were used against the civilian population, and in particular against anyone calling for the respect of civil, political and economic rights and a return to the constitutional order in Venezuela.

Part I, Chapter III describes the development of a policy that turned the country into a theatre of military operations. The opposition, or those identified as such, were branded as the “internal enemy” of the State, turning large segments of the civilian population into targets for the military, paramilitary and regular security forces who operate in a coordinated manner to “defend the Bolivarian Revolution”. In Part II,

Chapter II Section b(1), the Panel of Independent International Experts addressed the contextual elements of crimes against humanity, notably the nature of the attack directed against a civilian population, pursuant to or in furtherance of a State or organization policy. Taking into account the methods used by security forces, it is the conclusion of the Panel that since at least February 12, 2014, widespread and systematic attacks against the civilian population in Venezuela have been carried out according to a State policy to suppress views and opinions that dissent from those of the Government of Nicolás Maduro.

Part I, Chapters IV through IX address the specific acts to be considered under the elements of crimes against humanity codified in Article 7 of the Rome Statute. The General Secretariat has collected a large body of evidence detailing the widespread abuses, including the crimes of Murder (subsection (a)), Imprisonment (e), Torture (f), Rape and other forms of sexual violence (g), Persecution (h), and Enforced Disappearance (i). Each chapter provides a sample of selected cases and incidents that demonstrate a pattern of the widespread and systematic commission of these crimes by the Government, under the overarching plan to suppress and eliminate the political opposition in the country.

The Panel of Independent International Experts provides their analysis of these crimes and the information gathered in Part II, Chapter II, Section (b) addressing Subject Matter Jurisdiction - *ratione materiae*, which breaks down their analysis for each of the crimes outlined in Part I of the Report, considering the elements of each crime as well as their analysis of the situation in Venezuela, highlighting emblematic case studies.

Part I, Chapter IV addresses the use of murder as a tool for the Government in its systematic repression. The perpetrators of these acts are members of the State and regional security forces, as well as government aligned paramilitary groups commonly known as *colectivos*, operating in a coordinated manner. The Report identifies 131 murder victims of the 2014 and 2017 protests, where the perpetrator has been identified as a member of the state security forces and/or the *colectivos*. The tactics used demonstrate a clear pattern of the intent to kill, demonstrated by the location of the death blow (vital areas of the body, in particular, shots to the head and neck), the use of modified and live munitions, and the close range in which these acts were perpetrated. In addition more than 8,292 extrajudicial executions have been recorded since 2015, often a result of various security forces conducting unlawful and violent home raids where false confrontations are staged to rationalize the summary executions of, commonly, young men. This alarming figure further demonstrates the widespread and systematic character of the crime of murder. This figure was provided by former Attorney General Luisa Ortega Diaz for the period 2015 to June 2017. By the date of publication of this Report, the figure is likely to be much higher.

In Part II, Chapter II, Section b(2)(i), the Panel of Independent International Experts examined evidence that documents dozens of murders and thousands of extrajudicial executions that have been committed by State security forces and/or their paramilitary collaborators as part of widespread or systematic attack against the civilian population, particularly targeting members of the opposition or those identified as such, or to exercise social control over the civilian population, in furtherance of a State policy. The Panel, mindful of the scale and context in which the murders took place, considers there to be reasonable grounds to

believe that the crime against humanity of murder, as defined in Article 7(1)(a) of the Rome Statute, has been committed in Venezuela.

Part I, Chapter V addresses the widespread use of torture against detainees. The abuses range from the use of white torture and other forms of psychological torture, to vicious beatings often causing serious physical harm that commonly go untreated, sexual torture, the use of stress positions, electric shocks (including to the genitals), burns, tear gas, serving rotten food, or food mixed with glass shards or excrement, or in some cases having food and water withheld. The torture commonly takes place over extended periods and is repeated over time. The victims are of all ages, including minors, without concern for pre-existing mental or physical conditions. The use of the same tools and techniques are used consistently in facilities around the country, demonstrating a policy of abuse, as if the security forces are using a single manual or guide for the treatment of prisoners.

In Part II, Chapter II, Section b(2)(iii), The Panel of Independent International Experts received documentary evidence of at least 289 cases of torture that inflicted severe physical and mental suffering as part of a widespread or systematic state policy particularly targeting opponents of the regime or those believed to be opponents of the regime. The Panel considers there is a reasonable basis to believe that the crime against humanity of torture, as defined in Article 7(1)(f) of the Rome Statute, has been committed in Venezuela. Further, the Panel believes that these acts of torture have occurred under the control or custody of the State, particularly by the officers who committed the acts of torture. The acts did not happen spontaneously or in isolation, but rather answered to a policy established by the government of Venezuela through acts directed by the highest-level state authorities, setting clear systematic patterns of action.

Part I, Chapter VI discusses the sexual violence used against, both men and women, detainees. The cases recorded include the use of sexual torture including forced undressing, threats of rape, inappropriate touching, lascivious acts, the use of electric shocks on the genitals and breasts of victims, and rape, which have occurred in both public and private settings. Noting the history of impunity that sexual violence has had in Venezuela, the Report highlights that the investigation into the torture and abuses perpetrated against victims must also consider the sexual nature of the acts, recognizing it as a separate crime. Reports received by the General Secretariat demonstrate the strong stigma often experienced by victims of sexual violence and suggest that there are likely much higher incidences of rape and other forms of sexual violence that have taken place than have been recorded.

In Part II, Chapter II, Section b(2)(iv), the Panel of Independent International Experts examined extensive evidence of a pattern of sexual violence against women, including a pattern of sexual violence and rape against persons under state custody. The Panel also examined the relevant jurisprudence and determined that there is a reasonable basis for believing that in Venezuela, the elements of the crime of rape identified by the ICC are present and that therefore the crime against humanity of rape and any other forms of sexual violence, as defined in Article 7(1)(g) of the Rome Statute, has been committed in Venezuela. Further, the Panel considers that these rapes and/or acts of sexual violence were part of a specific type of torture in

which the perpetrators no doubt knew that the conduct was part of a widespread and systematic attack directed against the group identified as political opponents.

With more than 12,000 Venezuelans arbitrarily detained since the election of President Maduro in 2013, equating approximately seven people, per day, every day since his election, Part I, Chapter VII, details the use of arbitrary detention or the severe deprivation of liberty on both a mass and targeted scale to terrorize and silence the population. The number of political prisoners in Venezuela is the highest it has been since the military dictatorship of the 1950s, with close to 676 political prisoners at the height of the 2017 protests. After stabilizing at around 220 in the first four months of 2018, the number of political prisoners spiked again in the weeks leading up to the fraudulent presidential elections of May 20, 2018. As of May 13, 2018, there were 338 political prisoners behind bars. Since 2013, more than 1,300 people have been held as political prisoners. Detention facilities operate autonomously, regularly ignoring court orders to free those in detention. The evidence also disclosed the criminal complicity of judges and prosecutors in ordering these arbitrary arrests, imprisonments, and deprivations of liberty.

In Part II, Chapter II, Section b(2)(ii), citing the evidence presented by the General Secretariat as well as evidence from the United Nations' Working Group on Arbitrary detention and other sources, the Panel of Independent International Experts found that there are reasonable grounds to believe that the more than 12,000 acts of arbitrary detention, imprisonment or other severe deprivation of physical liberty that have been committed in Venezuela since 2013, in violation of fundamental rules of international law and all canons of international due process, constitute the crime against humanity of imprisonment or other severe deprivation of physical liberty, under Article 7(1)(e) of the Rome Statute, given the widespread and systematic targeting of opponents of the regime or suspected "enemies of the state". Further it considers that these acts, for which there is no legal basis, did not take place spontaneously or in isolation, but instead reflect a policy put in place by the Government of Venezuela through acts directed by the highest State authorities.

In addition, after examining a growing pattern of enforced disappearances, where the victim in question is abducted and held incommunicado for periods ranging anywhere from a few days to indefinitely, and where all too frequently, families are only able to learn about the fate of their loved ones through informal channels, the Panel, in Part II, Chapter II, Section b(2)(vi) also found that the enforced disappearances of political opponents or persons believed to be political opponents, meets the definition of the crime against humanity of enforced disappearance of persons, as set forth in Article 7(1)(i) of the Rome Statute.

Part I, Chapters VIII and IX details the various forms of persecution that have been used to target the political opposition or those who simply seek to exercise their political rights. It discusses the inflammatory language demonizing those who oppose the government, the politicization of the justice system with the courts now serving as tools of Executive power criminalizing political activism, removing democratically elected politicians from office and banning them from political participation. It also discusses the government's actions to eliminate the right to free expression and free movement, as it resorts to the violent and excessive

use of force, including illegal raids, to silence its critics. The Regime does not discriminate, targeting children and persons with disabilities as easily as they target political leaders. The Regime has even gone so far as to weaponize the humanitarian crisis they have created, politicizing what little food and necessities are available- providing food to their supporters and withholding it from people who do not support the government. The mass exodus of Venezuelans forced to leave the country seeking food, health care, jobs, and safety has been seized as an opportunity to force even more critics and opponents out of the country, eliminating voices of dissent and enabling President Maduro to further consolidate his unchallenged hold on power, and destabilizing the peace and security of the region.

In Part II, Chapter II, Section b(2)(v), the Panel of Independent International Experts determined that the scale of political persecution has increased dramatically over the years (from February 2014 to date), and that the crime of persecution on political grounds is present in all the crimes against humanity described in this Report, involving violations of the rights to life, personal liberty and humane treatment. In addition, the Panel examined violations of fundamental rights that were not analyzed as part of those crimes, namely: injuries, intimidation, and detriment to the right to health and food due to the political use and weaponization of the humanitarian crisis. The Panel believes there is a reasonable basis for believing that in Venezuela the elements of persecution on political grounds, as defined in Article 7(1)(h) of the Rome Statute, are satisfied.

The Panel also believes that the deprivation of fundamental rights that the victims of political persecution suffered in Venezuela is part of the widespread and systematic attacks connected to the crimes established in Article 7 of the Rome Statute, namely: murder, imprisonment, torture, rape or sexual violence, and enforced disappearance and that the criminal conduct has been directed against a group of persons identifiable on political grounds.

In addition, the Panel evaluated the information submitted with regards to the humanitarian crisis and considers that the use of the crisis as an instrument to pressure a segment of the population that is in opposition or that is identified as such, compounded by the government's denial of the humanitarian crisis and refusal of any humanitarian assistance, constitutes multiple violations of fundamental rights, such as the right to life, the right to humane treatment, the right to health, and the right to food, making it also a crime of persecution for political reasons in connection with the crimes analyzed by the Panel.

Part I, Chapter X details the assault upon the rule of law, and the complete absence of justice in Venezuela. It addresses the lack of independence of the judiciary, including the manipulation of the judicial appointments process, the disregard for the tenure of positions, as well as the direct harassment and intimidation of judges. It also cites specific examples of the politicization of the judicial process where the Supreme Court has been repeatedly used to subvert the democratic process, the former Attorney General has been targeted, and military tribunals have been used to target civilians. It also outlines the direct involvement of the State security apparatus in the murder and torture of civilians on political grounds.

In Part II, Chapter II, Section B, the Panel addresses Complementarity, Admissibility and Interest of Justice. The evidence examined in this Report demonstrates that the massive assault on the rule of law in Venezuela, which has included the widespread and systematic attacks and persecution of the judiciary and the justice system as a whole, has effectively ended any semblance of an independent justice system and judiciary, or the capacity to engage in any genuine legal proceedings to investigate the crimes against humanity as set forth in this Report. Specifically, the Panel considers there to be an absence of justice, noting the staggering rates of impunity, as well as the longstanding lack of independence and impartiality of the judicial branch in Venezuela. Further, the Panel considers that the politicization of the Judicial Branch, from its highest levels, has placed it at the service of impunity for high-level officials and authorities, for human rights violations, and crimes against humanity.

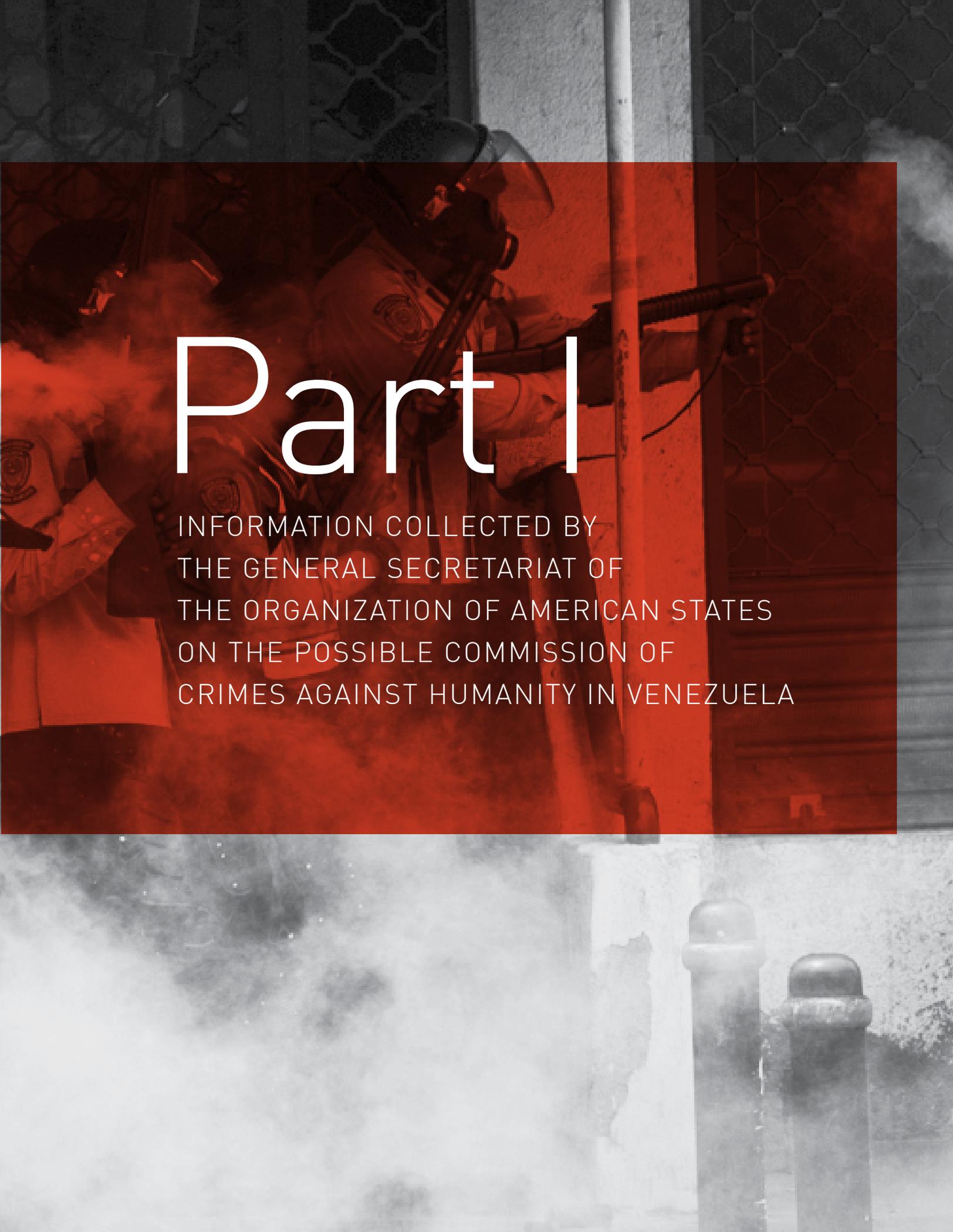
Accordingly, there is no possibility of the invocation and application of the complementarity principle in the Rome Statute. In addition, and as set forth more fully in this Report, the widespread and systematic crimes against humanity herein documented fully satisfy the gravity requirements of the Rome Statute.

Finally, there are no grounds to believe that there are any “interests of justice” that can seek to demand or delay a necessary investigation of these crimes into which the Office of the Prosecutor has already begun a preliminary examination in February 2018.

In conclusion, having received and evaluated a considerable amount of information and evidence from different sources, the Panel considers that there are reasonable grounds to presume that crimes against humanity have been committed in Venezuela, as envisaged in Article 7 of the Rome Statute.

The Panel recommends that the OAS Secretary General submit this Report and the evidence collected by the General Secretariat to the Office of the Prosecutor of the International Criminal Court for investigation. The Panel also recommends that the OAS Secretary General invite State Parties to the Rome Statute to call for the opening of an investigation into the crimes against humanity set forth in this Report, by referring the situation of Venezuela, itself a State Party to the International Criminal Court, to the Prosecutor of the International Criminal Court, the whole in accordance with Article 14 of the Rome Statute.





Part I

INFORMATION COLLECTED BY
THE GENERAL SECRETARIAT OF
THE ORGANIZATION OF AMERICAN STATES
ON THE POSSIBLE COMMISSION OF
CRIMES AGAINST HUMANITY IN VENEZUELA

I. BACKGROUND:

THE ESCALATING

CRISIS IN VENEZUELA



I. BACKGROUND: THE ESCALATING CRISIS IN VENEZUELA

The focus of this Report is the period in Venezuela under the current Government administration led by Nicolás Maduro. Shortly after former Venezuelan President Hugo Chavez died in office, President Maduro was elected by a narrow margin on April 19, 2013. Government policies during his tenure have been marked by numerous nationalization efforts, growing problems of corruption, and an increased role of the military in both government and the economy. One of his first acts as President was to announce the *Plan Patria Segura* which was Maduro's first effort to militarize citizen security in Venezuela by establishing the permanent presence of the military in the streets, alongside the Bolivarian National Police (PNB)¹ under the pretense of combating crime. This was the first of 23 subsequent strategic plans branded in the guise of citizen security that have increased the role of the military in governance as well as establishing a larger physical, political and security presence throughout the country.²

Lacking meaningful diversification, the oil-dependent economy suffered significantly when oil prices dropped in 2014. Combined with widespread corruption issues, bad economic policies created an economic crisis with levels of inflation reaching an unprecedented 2,700%³, a figure the IMF predicts will jump to 13,000% in 2018.⁴ In a country where oil revenues account for 95% of their export earnings⁵, in 2017 alone, corrupt practices and bad management have resulted in the drop of oil production by 629,000 barrels per day despite resurging oil prices.⁶ The government system of controlled currency has created a parallel and illegal currency market.⁷ The official exchange rate controlled by the government had been hovering

¹ The Bolivarian National Police is a unified police force that operates throughout the national territory of Venezuela and answers to the Ministry of People's Power for the Interior, Justice, and Peace. The mission of the PNB is to "ensure the rights of individuals in situations that threaten, jeopardize, endanger, or harm their physical integrity, property, the free exercise of their rights, respect for their guarantees, social peace, harmony, and obedience of the law; to assist in the enforcement of the decisions of the competent authorities; control and guard the roads and traffic; and facilitate conflict resolution through dialogue, mediation, and conciliation, in accordance with established national standards." In addition to the National Police, Venezuela also has state and municipal police forces. <http://www.policianacional.gob.ve/index.php/institucion/2016-11-15-14-00-23/mision>

² *Observatorio Venezolano de Violencia*, "Las 6 claves del relanzamiento del Plan Patria Segura", January 19, 2017, <http://observatoriodeviolencia.org.ve/las-6-claves-del-relanzamiento-del-plan-patria-segura/>

³ Moleiro, A., "La economía venezolana, en estado de coma", *El País*, January 5, 2018, http://elpais.com/internacional/2018/01/05/america/1515108139_270673.html

⁴ International Monetary Fund, <http://www.imf.org/en/Countries/VEN#countrydata>. See also, Fortune, "This Country [Venezuela] Will Experience 13,000% Inflation This Year, IMF Says", January 25, 2018, <http://fortune.com/2018/01/25/venezuela-inflation-imf-estimate/>

⁵ Organization of Petroleum Exporting Countries, "Venezuela facts and figures: Annual Statistical Bulletin 2017", http://www.opec.org/opec_web/en/about_us/171.htm

⁶ Americas Society/Council of the Americas, "Chart: The Collapse of Venezuela's Oil Production", January 24, 2018, <https://www.as-coa.org/articles/chart-collapse-venezuelas-oil-production%20/>; and, The Wall Street Journal, "Venezuela's Oil Production is Collapsing", January 18, 2018, <https://www.wsj.com/articles/venezuelas-oil-industry-takes-a-fall-1516271401>

⁷ OAS General Secretariat, "First Report of the Secretary General on the Situation in Venezuela", May 30, 2018, pages 10-27, <http://www.oas.org/documents/eng/press/OSG-243.en.pdf>

around roughly 10 Venezuelan Bolivars per US dollar.⁸ As of early February, 2018, the black market exchange rate had reached 228,000 Bolivars per US dollar.⁹ On February 5, the Central Bank announced a further devaluation of 99.6% of its official exchange rate while trying to launch a new exchange platform.¹⁰ In 2017, for the third consecutive year, Venezuela's GDP has dropped by more than 10% with IMF projections suggesting that it will decrease by another 15% this year.¹¹ In November of 2017, Venezuela went into default for the first time¹², and as of January was considered in a new category of a 'quasi-default' scenario where some payments have been made, some have not.¹³ It is not clear when and if they will be able to make their next round of payments.

The ravaged economy has led to an unprecedented, man-made humanitarian crisis. Poverty rates have jumped to 82%.¹⁴ Despite numerous government mandated increases to the minimum wage¹⁵, the monthly minimum salary is still worth only approximately \$7 USD on the commonly used black market rates.¹⁶ A family needs to earn the minimum 63 times in order to afford basic food necessities.¹⁷ Government price controls, combined with a lack of access to hard currency to import basic goods have caused massive shortages in both food and medical supplies that has had a devastating impact on the population. With massive food shortages, malnutrition is at an all-time high, and close to 80% of the population is only able to access two meals a day, another 4.5 million people with only enough food for one.¹⁸ A recent report the Food and Agricultural Organization of the UN (FAO) on food security noted that the number of undernourished

8 XE Currency Converter, <http://www.xe.com/currencyconverter/convert/?Amount=1&From=USD&To=VEF> (Date: March 25, 2018)

9 Reuters, "Venezuela announces 99.9 percent devaluation of official forex rate", February 5, 2018, <https://www.reuters.com/article/us-venezuela-economy/venezuela-announces-99-6-percent-devaluation-of-official-forex-rate-idUSKBN1FP2WK?il=0>

10 Voice of America, "Venezuela Announces 99.6 Percent Devaluation of Official Forex Rate", February 5, 2018, <https://www.voanews.com/a/venezuela-announces-99-percent-devaluation-of-official-forex-rate/4240192.html>

11 CNN Money, "Half the Venezuelan economy has disappeared", January 25, 2018, <http://money.cnn.com/2018/01/25/news/economy/venezuela-imf/index.html>

12 Forbes, "Venezuela Defaults, What Now?", November 14, 2017, <https://www.forbes.com/sites/francescoppola/2017/11/14/venezuela-defaults/#3f8aa6c82755>

13 Forbes, "Venezuela is in a 'Limbo Default'", January 12, 2018, <https://www.forbes.com/sites/kenrapoza/2018/01/12/venezuela-is-in-a-limbo-default/#1a726df827ed>

14 *Encuesta sobre Condiciones de Vida en Venezuela*, ENCOVI, "Evolución de la Pobreza", February 2016, <https://www.fundacionbengoa.org/noticias/2017/images/ENCOVI-2016-Pobreza.pdf>

15 *Telesur*, "Venezuela's Maduro Announces 40% Minimum Wage Increase for New Year", January 1, 2018, <https://www.telesur.net/english/news/Venezuelas-Maduro-Announces-40-Minimum-Wage-Increase-for-New-Year-20180101-0011.html>; and, *Telesur*, "Venezuela's Maduro Announces 50% Increase in Minimum Wage", July 2, 2017, <https://www.telesur.net/english/news/Venezuelas-Maduro-Announces-50-Increase-in-Minimum-Wage-20170702-0027.html>;

16 Reuters, "Venezuela raises minimum wage 40 percent, stoking world's fastest inflation", December 31, 2017, <https://www.reuters.com/article/us-venezuela-economy/venezuela-raises-minimum-wage-40-percent-stoking-worlds-fastest-inflation-idUSKBN1EPOK3>

17 OHCHR, "Venezuela: Dire living conditions worsening by the day, UN human rights experts warn", February 9, 2018, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22646&LangID=E>

18 IACHR, "IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights Urge the State of Venezuela to Protect and Respect the Rights to Food and Health", Press Release 2018-16, February 1, 2018, http://www.oas.org/en/iachr/media_center/PReleases/2018/016.asp

people in Venezuela has increased by 1.3 million between 2014 and 2016.¹⁹ Every week, between five and six children die from malnutrition.²⁰ The limited food that is brought into the country is now distributed by the military, and frequently finds its way to the black market where profit is made from the starvation of the population.²¹ Unable to find or afford food, looting and riots have become commonplace.

The healthcare system has been equally devastated. With basic medical supplies unavailable, there has been a resurgence of deaths and complications from treatable conditions. As recently as January, 2018, reports have been published on the number of victims that are suffering chronic, but treatable illnesses including hemophilia, cancer, multiple sclerosis, Parkinson's, dialysis, HIV and more, who are suffering and dying because of the sheer lack of medicine or treatment available in the country.²² By the end of 2017, the shortage of basic medicine to treat diseases related to diabetes, diarrhea, hypertension, and acute respiratory infections had reportedly surpassed 80%, and between 95%-100% of hospitals do not have access to antiretroviral drugs.²³ In 2016, maternal deaths rose by 65% and seven children died before reaching the age of one.²⁴ The government continues to deny the humanitarian crisis, refusing any and all offers international assistance and ignoring the devastating cost to human life that their corruption has caused.

Access to both food and health services is also now managed through a politicized national identity card, *Carnet de la Patria*, restricting access to what limited provisions are available by the individual's relationship with the government. Numerous complaints have been submitted to the IACHR "that food supplies distributed through so-called Local Supply and Production Committees are not being given to people who oppose the government."²⁵

19 FAO, "The State of Food Security and Nutrition in the World", 2017, p. 82, <http://www.fao.org/3/a-17695e.pdf>

20 IACHR, "IACHR and its Special Rapporteurship on Economic, Social, Cultural and Environmental Rights Urge the State of Venezuela to Protect and Respect the Rights to Food and Health", Press Release 2018-16, February 1, 2018, http://www.oas.org/en/iachr/media_center/PReleases/2018/016.asp

21 OAS General Secretariat, "Second Report of the Secretary General on the Situation in Venezuela", March 14, 2017 pages 30-32, 61 <http://www.oas.org/documents/eng/press/Informe-VZ-II-English-Final-Signed.pdf>; and, OAS General Secretariat, "Third Report of the Secretary General on the Situation in Venezuela", July 19, 2017; pages 35-38 <http://www.oas.org/documents/eng/press/TERCER-INFORME-VENEZUELA-ENGLISH-Final-signed.pdf>

22 El Nacional Web (2018), "Codevida denunció que se agotaron los filtros para diálisis en todo el país", January 31, 2018, http://www.el-nacional.com/noticias/salud/codevida-denuncio-que-agotaron-los-filtros-para-dialisis-todo-pais_221228; and, <http://www.euronews.com/2018/02/02/venezuela-s-government-in-denial-as-doctors-warn-of-return-to-medical-stone-age-;> and, <https://twitter.com/codevida/status/957982944114638848>

23 IACHR, "IACHR and its Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights Urge the State of Venezuela to Protect and Respect the Rights to Food and Health", February 1, 2018; Press release 2018-16, http://www.oas.org/en/iachr/media_center/PReleases/2018/016.asp

24 *Comunicado de la sociedad venezolana de puericultura y pediatría*, April 27, 2017; and, OHCHR, "Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela of April 1 to July 31, 2017", Geneva, August 2017, http://www.ohchr.org/Documents/Countries/VE/HCReportVenezuela_1April-31July2017_SP.pdf

25 IACHR, "IACHR and its Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights Urge the State of Venezuela to Protect and Respect the Rights to Food and Health", Press release 2018-16, February 1, 2018, http://www.oas.org/en/iachr/media_center/PReleases/2018/016.asp

This is what can be discerned from the information that is available, predominately provided by local NGOs working with limited resources and often at great risk. For example, the FAO report was only able to record the scale of malnourishment in Venezuela, with international organizations predominately reliant of voluntary submissions of data from countries, that majority of the report remains blank.²⁶ A February statement by UN experts also noted that the “lack of updated official data on food, health and powers cuts made it impossible to assess the full scale of the crisis.”²⁷ Government websites are periodically blocked, including the details pertaining to the investigations led by former Venezuelan Attorney General, Luisa Ortega into the 2017 deaths of protesters.²⁸ The last time the Venezuelan government released official health data on its website in 2016, the Health Minister was fired after the public reacted to the shocking statistics on maternal, newborn and child health and malaria.²⁹

The fundamental right to freedom of expression has been steadily under attack.³⁰ The Venezuelan government has passed increasingly vague and sweeping laws targeting media outlets and journalists, as well as any citizen who is publicly critical of the Regime, despite international condemnation.³¹ More than 50 media outlets have been closed.³² In 2017, the so-called “Law against Hatred” was passed by the illegitimate National Constituent Assembly to allow for severe sanction (10 to 20 years in prison) against any information the Regime deems to undermine “public tranquility”.³³ Since Maduro was elected, the IACHR Special Rapporteur on Freedom of Expression has made 12 public statements on the situation in

26 FAO, “The State of Food Security and Nutrition in the World”, 2017, <http://www.fao.org/3/a-l7695e.pdf>

27 OHCHR, “Venezuela: Dire living conditions worsening by the day, UN human rights experts warn”, 9 February, 2018, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22646&LangID=E>

28 Ministry of Public Prosecution of the Bolivarian Republic of Venezuela, “*Balace de Víctimas fallecidas y lesionadas durante manifestaciones en abril-julio de 2017*”, July 10, 2017, http://www.mp.gob.ve/c/document_library/get_file?uuid=31c69457-3dd2-49d0-94d9-7fca7f6ba8c8&groupid=10136

29 Reuters, “Venezuela releases 2016 health data showing soaring infant mortality and malaria”, May 9, 2017, <https://www.reuters.com/article/venezuela-health/venezuela-releases-2016-health-data-showing-soaring-infant-mortality-and-malaria-idUSL1N1B0JO>; and, BBC News “Venezuela health minister fired over mortality stats”, May 12, 2017, <http://www.bbc.com/news/world-latin-america-39896048>

30 OAS General Secretariat, “First Report of the Secretary General on the Situation in Venezuela”, May 30, 2016; pages 31, 91, 94-104, <http://www.oas.org/documents/eng/press/OSG-243.en.pdf>; and, OAS General Secretariat, “Second Report of the Secretary General on the Situation in Venezuela”, March 14, 2017; pages 52-57, <http://www.oas.org/documents/eng/press/Informe-VZ-II-English-Final-Signed.pdf>; and, OAS General Secretariat, “Third Report of the Secretary General on the Situation in Venezuela”, July 19, 2017; pages 25-27, <http://www.oas.org/documents/eng/press/TERCER-INFORME-VENEZUELA-ENGLISH-Final-signed.pdf>

31 IACHR, “The Office of the Special Rapporteur for Freedom of Expression of the IACHR condemns arbitrary restrictions on freedom of expression and assembly in Venezuela”, July 29, 2017; Press Release R109/17 <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1072&IID=1>;

32 IACHR, The Office of the Special Rapporteur for Freedom of Expression condemns the closure of more than 50 media outlets in Venezuela without legal guarantees and for reasons related to their editorial line”, September 6, 2017; Press release R135/17, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1075&IID=1>; and, Joint Press Release, “Venezuela / Protest: UN and IACHR Rapporteurs condemn censorship, arrests and attacks on journalists”, April 26, 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21535&LangID=E>

33 IACHR, “The Office of the Special Rapporteur for Freedom for Expression Expresses Serious Concern Over The Enactment Of The “Anti-Hate Law” In Venezuela And Its Effects On Freedom Of Expression and Freedom Of The Press”, November 10; Press release No. R135/17, November 20, 2017, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1082&IID=1>

Venezuela.³⁴ The number of political prisoners, individuals detained for their ideas, reached as high as 676 during the 2017 protests³⁵, levels not seen in Venezuela since the period under the Pérez Jiménez dictatorship. Since 2013, more than 1,320 political prisoners have been or are still being held in Venezuela.

With a quickly deteriorating economy, growing government corruption, and increasing public insecurity, the limited popular support held by the newly elected Maduro government diminished quickly. Growing crime levels exacerbated an already tense environment and in 2014 mass student protests were triggered after the attempted rape of a student on a university campus in San Cristobal. Violent clashes broke out, and the government chose to respond with a force against the protesters causing an escalation of the situation which led to hundreds of arrests, hundreds of injuries³⁶, and 43 deaths.³⁷

Recognizing that he had lost the confidence of the Venezuelan public, instead of trying to win back the trust and confidence of the people, President Maduro has worked diligently and consistently to dismantle the country's democratic institutions, consolidating any and all government authority in the hands of the Executive. He chose authoritarianism as his means to hold onto power. The judicial system has been progressively co-opted, and now serves as a vehicle to implement decisions made by the Executive.³⁸ In 2015, the *Mesa de la Unidad Democrática* (MUD) opposition coalition earned a super-majority during the elections for the Legislative Assembly. However, in the days before the term of the former National Assembly ended, the pro-government majority of legislators appointed 13 Magistrates and 21 substitutes

³⁴ IACHR, "Office Of The Special Rapporteur Expresses Serious Concern Over The Enactment Of The "Anti-Hate Law" In Venezuela", Press Release R179/17, November 10, 2017, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1082&IID=1>; IACHR, "Office of the Special Rapporteur condemns the closure of more than 50 media outlets in Venezuela without legal guarantees", Press Release R135/17, September 6, 2017, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1075&IID=2>; IACHR, "The Office of the Special Rapporteur condemns arbitrary restrictions on freedom of expression and assembly in Venezuela", Press Release R109/17, July 29, 2017, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1072&IID=1>; IACHR/UN, "Venezuela / Protests: UN and IACHR Rapporteurs condemn censorship, arrests and attacks on journalists", JOINT PRESS RELEASE R51/17, April 26, 2017, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1062&IID=1>; IACHR, "Office of the Special Rapporteur Condemns Censorship and Intimidation of International Media and Journalists in Venezuela", Press Release R16/17, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1052&IID=1>; IACHR, "IACHR and Office of the Special Rapporteur Condemn Measures to Shut Down Spaces for Political Participation in Venezuela", Press Release R154/16, October 25, 2016, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1043&IID=1>; IACHR/UN, "Venezuela / Crisis: UN and Inter-American experts raise alarm at deterioration of media freedom", Joint Press Release R110/16, August 4, 2016, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1036&IID=1>; IACHR, "Office of the Special Rapporteur Expresses Concern over Defamation Conviction in Venezuela", Press Release R34/16, March 14, 2016, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1016&IID=1>; IACHR, "Office of the Special Rapporteur Condemns Killing of Journalist in Venezuela", Press Release R 3/16, January 25, 2016, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1009&IID=1>; IACHR, "IACHR and the Special Rapporteur Express Deep Concern over the Stigmatization and Judicial Harassment against Three Media Outlets in Venezuela", Press Release 93/15, August 24, 2015, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1002&IID=1>; IACHR, "Office of the Special Rapporteur Expresses Concern over the Situation of the Freedom of Expression in Venezuela", Press Release R 107/14, September 22, 2014, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=961&IID=1>; IACHR, "IACHR Expresses Deep Concern over Acts of Violence in Venezuela and Urges the State to Ensure Democratic Citizen Security", Press Release 13/14, February 14, 2014, http://www.oas.org/en/iachr/media_center/PReleases/2014/013.asp

³⁵ *Foro Penal*, "Lista certificada de presos políticos", August 11, 2017.

³⁶ *Telesur*, "Las protestas golpistas de 2014 dejaron 43 muertos y más de 800 heridos en Venezuela", <https://www.telesurtv.net/news/Conozca-que-son-las-guarimbas-en-Venezuela-y-quienes-estan-detras-20140312-0050.html>

³⁷ *El Nacional*, "Estos fueron los 43 caídos en las protestas de 2014", February 12, 2015, http://www.el-nacional.com/noticias/sociedad/estos-fueron-los-caidos-las-protestas-2014_66320

³⁸ OAS General Secretariat, "First Report of the Secretary General on the Situation in Venezuela", May 30, 2016; pages 36-56, 65-76, <http://www.oas.org/documents/eng/press/OSG-243.en.pdf>; and, OAS General Secretariat, "Second Report on the Situation in Venezuela", March 14, 2017; pages 38-52, 57-59, <http://www.oas.org/documents/eng/press/Informe-VZ-II-English-Final-Signed.pdf>

to the Supreme Court of Venezuela, through an expedited process that violated the legal procedures for the appointment of the Magistrates. The victory of the MUD in the parliamentary elections was quickly undermined by a ruling made by the new TSJ to invalidate the election of three opposition candidates from the State of Amazonas.³⁹ The Supreme Court has repeatedly ruled in favor of the Executive, overturning any decisions made by the Legislative Assembly, effectively nullifying the constitutionally mandated authority of the parliament.⁴⁰ On March 30, 2017, the TSJ ruled the Legislatively Assembly in contempt, stating the Supreme Court would assume its legislative responsibilities, bluntly taking credit for what it had already been doing in practice.⁴¹

Although the decision was rescinded in the days following, the population took to the streets peacefully exercising their right of peacefully assembly and protest. Large scale demonstrations took place across the country from the beginning of April to the end of July 2017. The government crackdown that ensued resulted in at least 133 civilians killed - including at least 105 murdered by state security forces or their paramilitary allies⁴², with estimates for the number of people injured reaching close to 15,000.⁴³ The Government demonstrated a clear and systematic pattern of abuse, wherein any individual seen to be a member of the opposition or critical of the Regime could be detained, imprisoned, beaten tortured or assassinated at will. As of December 31, 2017, 5,475 citizens had been arbitrarily detained since the start of the protests.⁴⁴ Accusations of abuse of power, including the use of torture have been widespread.⁴⁵

In August of 2017, the Office of the UN High Commissioner for Human Rights released a report on the 2017 protests that took place across Venezuela where they observed that the security forces systematically used excessive force, and that these abuses were both widespread and followed a common pattern.⁴⁶

39 OAS General Secretariat, "First Report of the Secretary General on the Situation in Venezuela", May 30, 2016; pages 36-37, 45-48, <http://www.oas.org/documents/eng/press/OSG-243.en.pdf>; (The TSJ decision was originally published on http://www.el-nacional.com/politica/Guerra-sentencias-TSJ-decisiones-AN_0_836316569.html; and was complemented with primary information published in www.tsj.gob.ve)

40 OAS General Secretariat, "First Report of the Secretary General on the Situation in Venezuela", May 30, 2016; pages 36-45, <http://www.oas.org/documents/eng/press/OSG-243.en.pdf>; and, OAS General Secretariat, "Second Report on the Situation in Venezuela", March 14, 2017; pages 41-48, <http://www.oas.org/documents/eng/press/Informe-VZ-II-English-Final-Signed.pdf>

41 OAS General Secretariat, "Venezuela: OAS SG Denounces Self-inflicted Coup D'état", Press release E-019/17, March 30, 2017, http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-019/17

42 See Chapter IV of this report on murder.

43 Diario Libre, "Oposición contabiliza 15,000 heridos tras 63 días de protestas en Venezuela", June 2, 2017, <https://www.diariolibre.com/mundo/latinoamerica/oposicion-contabiliza-15-000-heridos-tras-63-dias-de-protestas-en-venezuela-AN7249002>

44 *Foro Penal*, "Reporte sobre la represión en Venezuela durante manifestaciones, Diciembre de 2017", December, 2017, <https://foropenal.com/en/2018/01/20/diciembre-2017/>

45 Human Rights Watch and *Foro Penal*, "Crackdown on Dissent: Brutality, Torture, and Political Persecution in Venezuela", November 2017, https://www.hrw.org/sites/default/files/report_pdf/venezuela1117web_0.pdf

46 OHCHR, "Human rights violations in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July, 2017", pages 8, 12, 24, 33, http://www.ohchr.org/Documents/Countries/VE/HCRReportVenezuela_1April-31July2017_EN.pdf

Throughout his tenure, the Maduro regime has used increasingly organized and aggressive tactics to exert control over the country. *Plan Patria Segura* was followed by the *Liberation of the People Operation*, and subsequently *Plan Zamora*, military lead strategies that ultimately turned Venezuela into a military operations theatre where anyone critical of, or in opposition to the Government was targeted as an enemy of the state. The government itself has become the entity that threatens the lives of their citizens. Close to 200 Venezuelans have died in protests since 2014; more than 12,000 have been arbitrarily detained or arrested. At least 8,292 extra-judicial killings have taken place, and in recent months there has been the beginning of a pattern of enforced disappearances⁴⁷ bringing to mind the horror of the military-dictatorships that controlled the region in the 1980s and 1990s. Not only have the consequences been severe, the nature of tactics used is getting worse.

In addition, the government's involvement in organized crime and drug trafficking has become an increasing concern whereas the Vice President of Venezuela was designated a "Narcotics Trafficker" by the US Treasury Department in 2017,⁴⁸ with allegedly billions assets frozen⁴⁹; two nephews of Venezuela's First Lady have also been convicted of drug trafficking in a New York federal court⁵⁰; as well as a growing number of indictments against senior government and military officials. Recent reports also describe the threat of a growing presence of terrorist groups engaged in money laundering and drug trafficking networks.⁵¹ As the security situation worsens, it increases the threat against peace and security in neighboring countries.

Repeated democratic and constitutional efforts to challenge the government have been consistently nullified or rejected. This includes the 2016 efforts to hold a constitutionally mandated recall referendum⁵² as well as the July 17 opposition-led vote that brought out an estimated 7 million voters⁵³ to oppose the

⁴⁷ See Chapters IV and VII of this report on murder and on imprisonment for the sources of these figures.

⁴⁸ United States Department of Treasury, "Treasury Sanctions Prominent Venezuelan Drug Trafficker Tareck Al Aissami and his Primary Frontman Samark Lopez Bello", Press release, February 13, 2017, <https://www.treasury.gov/press-center/press-releases/Pages/as0005.aspx>

⁴⁹ PANAM Post, "US Treasury Froze US\$3 Billion in Assets of Venezuela's Vicepresident for Drug Trafficking", March 27, 2017, <https://panampost.com/panam-staff/2017/03/27/us-treasury-froze-us-3-billion-in-assets-of-venezuelas-vicepresident-for-drug-trafficking/>; and, Miami Herald, "US sanctions Venezuela vice president and accuses him of being a drug kingpin", February 13, 2017, <http://www.miamiherald.com/news/nation-world/world/americas/venezuela/article132494809.html>

⁵⁰ United States Department of Justice, "*United States of America v. Efraín Antonio Campo Flores, and Franqui Francisco Flores de Freitas, S2 15 Cr. 765 (PAC)*". July 22, 2016, *New York, New York: United States District Court Southern District of New York*, pages 1–78, <https://www.justice.gov/usao-sdny/file/792936/download>; and, Reuters, "Nephews of Venezuela's first lady sentenced to 18 years in U.S. drug case", December 14, 2017, <https://www.reuters.com/article/us-venezuela-usa-crime/nephews-of-venezuelas-first-lady-sentenced-to-18-years-in-u-s-drug-case-idUSKBN1E833G>

⁵¹ Politico.com, "The Secret Backstory of how Obama let Hezbollah off the hook", 2017, <https://www.politico.com/interactives/2017/obama-hezbollah-drug-trafficking-investigation/>; and, Foreign Policy, "Venezuela's Toxic Brew, Failed Narco-State Meets Iran-Backed Terrorism", March 23, 2017, <http://foreignpolicy.com/2017/03/23/in-venezuelas-toxic-brew-failed-narco-state-meets-iran-backed-terrorism/>

⁵² OAS General Secretariat, "First Report of the Secretary General on the Situation in Venezuela", May 30, 2016; page 76-91, <http://www.oas.org/documents/eng/press/OSG-243.en.pdf>; and, OAS General Secretariat, "Second Report on the Situation in Venezuela", March 14, 2017; pages 12-18, <http://www.oas.org/documents/eng/press/Informe-VZ-II-English-Final-Signed.pdf>

⁵³ Reuters, "Venezuela opposition says 7 million vote in anti-Maduro poll", July 15, 2017, <https://www.reuters.com/article/us-venezuela-politics/venezuela-opposition-says-7-million-vote-in-anti-maduro-poll-idUSKBN1A1040>; and, BBC News, "Venezuela referendum: Big show of support for opposition", July 17, 2017. <http://www.bbc.com/news/world-latin-america-40624313>

establishment of the “National Constituent Assembly”.⁵⁴ In July 30, 2017, the government went ahead and established the so-called constituent assembly that now, in practice, assumes legislative authorities, ultimately rendering the democratically elected National Assembly powerless.⁵⁵

The Presidential elections of May 20, 2018 were an exercise lacking minimum guarantees for the people of Venezuela. They were held in the context of a lack of fundamental freedoms and with electoral authorities that lack any credibility, subservient to the Executive. The majority of principle opposition figures had been imprisoned, forced into exile or prohibited from submitting their candidacy. In addition, the main opposition coalition was banned from participating.⁵⁶ During the weeks leading up to the electoral event, the number of political prisoners increased, spiking between April 29 and May 13, 2018.⁵⁷ Some of the political prisoners that had been released in recent months were again detained and tortured, and there have been reports that the brutality of the torture increased considerably.⁵⁸ The Lima Group issued a statement the day following the electoral event, declaring that they do not recognize the legitimacy of the electoral process because “it does not comply with international standards for a democratic, free, fair and transparent process.”⁵⁹ The European Union stated that the event was held without “complying with the minimum international standards for a credible process, not respecting political pluralism, democracy, transparency, and the rule of law.”⁶⁰ Finally, on May 23, 2018, the G7 stated that “by failing to meet accepted international standards and not securing the basic guarantees for an inclusive and democratic process, this election and its outcome lack legitimacy and credibility. We therefore denounce the Venezuelan presidential election, and its results, as it is not representative of the democratic will of the citizens of Venezuela.”⁶¹

The international community has supported repeated attempts at dialogue between the government and opposition since 2014, in search of a democratic and peaceful solution to the ever escalating crisis. The efforts and good offices of numerous international bodies, including the OAS, UNASUR, MERCOSUR, the Vatican, and the Lima Group, have instead been used by the Government of Venezuela as a smokescreen

54 OAS General Secretariat, “Message from the Secretary General on Venezuela”, July 18, 2017; Press release S-019/17 http://www.oas.org/en/media_center/press_release.asp?sCodigo=S-019/17

55 OAS General Secretariat, “Fourth Report of the Secretary General on the Situation in Venezuela”, September 25, 2017, <http://scm.oas.org/pdfs/2017/CP38157REPORT.pdf>

56 National Public Radio, “Venezuelan Supreme Court Bans Opposition Leaders from Upcoming President Elections”, 26 de enero de 2018, <https://www.npr.org/sections/thetwo-way/2018/01/26/581136290/venezuelan-supreme-court-bans-opposition-leaders-from-upcoming-presidential-elec>; y BBC News, “Venezuelan Opposition banned from running in 2018 election”, 11 de diciembre de 2017, <http://www.bbc.com/news/world-latin-america-42304594>

57 According to *Foro Penal*, on April 29, 2018 there were 249 political prisoners. On May 13, 2018, there were 338.

58 For examples, see Incidents 34 and 35 in Chapter V on Torture.

59 Ministry of External Relations of Peru, “Declaración del Grupo de Lima”, May 21, 2018, <https://www.peruoea.org/declaracion-del-grupo-de-lima/>

60 European Union, “Declaration by the High Representative on behalf of the EU on the presidential and regional elections in Venezuela”, May 22, 2018, http://www.consilium.europa.eu/en/press/press-releases/2018/05/22/declaration-by-the-high-representative-on-behalf-of-the-eu-on-the-presidential-and-regional-elections-in-venezuela/?utm_source=dsms-auto&utm_medium=email&utm_campaign=Declaration+by+the+High+Representative+on+behalf+of+the+EU+on+the+presidential+and+regional+elections+in+Venezuela

61 G7, “G7 Leader’s Statement on Venezuela”, Ottawa, May 23, 2018, <https://pm.gc.ca/eng/news/2018/05/23/g7-leaders-statement-venezuela>

while they further consolidated their power, leaving the country in a worse position than when they started. Throughout these various attempts, none of the preconditions for dialogue outlined by the opposition have been met.⁶²

The latest efforts by the international community to support dialogue for Venezuela, that were taking place in the Dominican Republic collapsed on February 7, 2018. No agreement was reached.

A. The Organization of American States on the Situation in Venezuela

Venezuela has had a challenging history of human rights abuses. The Inter-American system has been critical of Venezuela's human rights record, and in 2003, the Inter-American Commission of Human Rights (IACHR) released its first report on the Human Rights Situation in Venezuela under the presidency of Hugo Chavez, highlighting concerns about the independence of the judiciary and related impunity, as well as increasing violence and the growing attacks against civilians and human rights defenders.⁶³ Since then, the IACHR has continued to closely monitor the situation, while noting that Venezuela refused any further on-site visits to the country. In 2009, the IACHR produced a follow up report describing the further deterioration of the situation noting the State's "punitive power is being used to intimidate or punish people on account of their political opinions," as well as a "pattern of impunity in cases of violence", among other issues.⁶⁴

On February 12, 2018, the IACHR published an updated country report on Democratic Institutions, the Rule of Law and Human Rights in Venezuela. This report details the human rights situation against the backdrop of the deteriorating political and security conditions facing the country. The report highlights the militarization of citizen security, and the steady increasing in extrajudicial executions. In addition to detailing the deterioration of the civil and political rights of Venezuelan citizens with special attention to the attack on the citizen's right to freedom of assembly and expression. Finally, it considers the government's culpability in the collapsing socio and economic conditions in the country.⁶⁵

The scale of the tragedy in Venezuela that has befallen the people of Venezuela is without question. In addition to a long history of questionable human rights practices, the government has undertaken consistent efforts to weaken and dismantle its democratic institutions.

⁶² Letter from Cardinal Pietro Parolin, Secretary of State of the Holy See, December 1, 2016, <http://www.infobae.com/america/america-latina/2016/12/07/la-carta-completa-que-el-vaticano-envio-al-regimen-de-nicolas-maduro-y-a-la-oposicion/>

⁶³ IACHR, "Report on the Situation of Human Rights in Venezuela", December 29, 2003, <http://www.cidh.org/countryrep/Venezuela2003eng/toc.htm>

⁶⁴ IACHR, "Democracy and Human Rights in Venezuela", December 30, 2009, <http://www.cidh.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm>

⁶⁵ IACHR, "Democratic Institutions, the Rule of Law and Human Rights in Venezuela" December 31, 2017; para 257, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

Since the election of Luis Almagro as Secretary General in May of 2015, the General Secretariat has been at the forefront of drawing attention to the drastically deteriorating situation in Venezuela. As the Maduro government began to roll back democratic rights through interference in the 2015 elections for the National Assembly⁶⁶, including the manipulation of the election outcomes⁶⁷, the OAS raised public concern calling for the Government to meet its commitments under the Inter-American Democratic Charter.⁶⁸ Despite these efforts, the situation has only worsened.

In May of 2016, the Secretary General of the OAS performed his duty to address matters that threaten the peace and security of the Hemisphere by invoking the Inter-American Democratic Charter with respect to the situation in Venezuela. Four comprehensive reports have been produced, detailing the assault upon the democratic and constitutional order and the rule of law in Venezuela – the assault on the democratically elected legislature and the independent judiciary – and the inhumane acts contributing to the total collapse of the humanitarian, social, and economic situation.

In accordance with Article 110 of the OAS Charter stating that the “Secretary General may bring to the attention of the General Assembly or Permanent Council any matter which in his opinion might threaten the peace and security of the hemisphere or the development of the Member States”⁶⁹, the First Report was drafted to bring the crisis to the attention of the Permanent Council. The report details the early stages of the humanitarian crisis, as well as the deterioration of the separation of powers and the challenges to the constitutionally mandated recall referendum process stating that here has been an “alteration of the constitutional order.”⁷⁰

As the situation worsened, in March of 2017, the Secretary General produced a Second Report outlining the further deterioration of the conditions in the country, stating that there had been a complete “rupture of the democratic order.”⁷¹ On April 3, 2017, after the TSJ tried to assume the authorities of the Legislative Assembly, the Permanent Council of the OAS passed a resolution, by consensus, recognizing that an “alteration of the constitutional order” had taken place.⁷²

66 Secretary General Almagro’s Letter of Response to the President of the CNE of Venezuela on Dec. 6 Elections, November 10, 2015, http://www.oas.org/en/about/speech_secretary_general.asp?sCodigo=15-0099

67 Letter of the OAS Secretary General to the President of Venezuela, January 12, 2016, http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-362/16

68 Organization of American States, “Inter-American Democratic Charter”, September 11, 2001, http://www.oas.org/charter/docs/resolution1_en_p4.htm

69 Organization of American States, “Charter of the Organization of American States”, February 27, 1967, http://www.oas.org/en/sla/dil/docs/inter_american_treaties_A-41_charter_OAS.pdf

70 OAS General Secretariat, “First Report of the Secretary General on the Situation in Venezuela”, May 30, 2016, <http://www.oas.org/documents/eng/press/OSG-243.en.pdf>

71 OAS General Secretariat, “Second Report on the Situation in Venezuela”, March 14, 2017, <http://www.oas.org/documents/eng/press/Informe-VZ-II-English-Final-Signed.pdf>

72 Organization of American States, “Resolution on the Recent Events in Venezuela”, CP/RES. 1078 (2108/17), April 3, 2017, http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-022/17

The Third Report released in July 2017, amidst the ongoing demonstrations, detailed the government’s strategy of repression and systematic abuses against the Venezuelan population.⁷³ The Fourth Report detailed the complete elimination of democracy following the establishment of the unconstitutional “National Constituent Assembly”.⁷⁴

These reports also outlined an escalating pattern of widespread and systematic targeting of the civilian population in any circumstance where they are perceived to be critical of, or in opposition to, the governing political party. As the situation has worsened, growing voices in the international community have expressed concern for the escalating manifold crises, while introducing measures to hold President Nicolás Maduro and his Regime in Venezuela accountable for systematic and widespread abuses against their own people. For example, faced with the Government’s announcement to hold early presidential elections on April 22, 2018 (which were held on May 20), without any guarantees for free, fair and transparent elections, the Permanent Council of the OAS approved a resolution urging the Government of Venezuela “to reconsider the convening of the presidential elections and to present a new electoral calendar that enables the carrying out of elections with all necessary guarantees of a free, fair, transparent, legitimate and credible process, including independent international observers, free and equal access to public media, and with a National Electoral Council whose composition ensures its independence and autonomy and is trusted by all political actors.”⁷⁵ Likewise, the Council also requested that the necessary measures be taken to prevent the worsening of humanitarian situation, including the acceptance of assistance from the international community.

Nevertheless, the Regime moved forward with the fraudulent elections, continues to act with impunity and the people of Venezuela endure increasing intimidation, fear, repression and assault. The severity of the tactics only increases.

B. The Question of Possible Crimes against Humanity in Venezuela

In accordance with the founding Charter of the Organization of American States (OAS), the OAS is a regional agency of the United Nations – the oldest of the regional agencies – and its Members States are also Members States of the United Nations. Each of the Member States is therefore required to fulfill our obligations under the Charter of the United Nations, in addition to those under the Charter of the OAS. In

⁷³ OAS General Secretariat, “Third Report of the Secretary General on the Situation in Venezuela”, July 19, 2017, <http://www.oas.org/documents/eng/press/TERCER-INFORME-VENEZUELA-ENGLISH-Final-signed.pdf>

⁷⁴ OAS General Secretariat, “Fourth Report of the Secretary General on the Situation in Venezuela”, September 25, 2017, <http://scm.oas.org/pdfs/2017/CP38157REPORT.pdf>

⁷⁵ OAS, Permanent Council, “Resolution on the Latest Events in Venezuela”, Resolution, CP/RES. 1095 (2145/18), February 23, 2018, http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-004/18

2000, under the Presidency of Hugo Chavez, the Bolivarian Republic of Venezuela ratified the Rome Statute of the ICC. Consequently, the International Criminal Court has territorial and temporal jurisdiction over the crimes perpetrated in the territory and/or by the nationals of the country since July 1, 2002.

On July 19, 2017, the Secretary General released his Third Report on the situation in Venezuela which considered that there was evidence that “points to the systematic, tactical and strategic use of murder, imprisonment, torture, rape and other forms of sexual violence, as tools to terrorize the Venezuelan people...” which may constitute crimes against humanity and should be brought to the attention of the International Criminal Court.⁷⁶

This concern has been echoed by other representatives in the international community, and on September 11, 2017, the United Nations High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, in his statement opening the 36th session of the UN Human Rights Council, referring to Venezuela, he stated that his “investigation suggests the possibility that crimes against humanity may have been committed, which can only be confirmed by a subsequent criminal investigation.”⁷⁷

On February 8, 2018, Fatou Bensouda, Prosecutor of the International Criminal Court, announced the opening of a “preliminary examination of the situation in Venezuela will analyze crimes allegedly committed in this State Party since at least April 2017”.⁷⁸

C. The Process to Analyze the Situation in Venezuela

As a follow up to the Secretary General’s report of July 19, 2017, the General Secretariat of the OAS was then tasked with monitoring developments in Venezuela, specifically looking at Governmental officials and institutions directing or complicit in this strategy of repression with a view to identifying whether they may be responsible for crimes against humanity, and determine if these criminal violations warrant further international criminal investigation by the ICC. Because the OAS has been at the forefront of drawing attention to the abuses in Venezuela, it was imperative to establish an independent and impartial review process of the situation of violence and repression.

⁷⁶ OAS General Secretariat, “Third Report of the Secretary General on the Situation in Venezuela”, July 19, 2017; page 39, <http://www.oas.org/documents/eng/press/TERCER-INFORME-VENEZUELA-ENGLISH-Final-signed.pdf>

⁷⁷ OHCHR, “Darker and more dangerous: High Commissioner updates the Human Rights Council on human rights issues in 40 countries”, September 11, 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22041&LangID=E>

⁷⁸ Office of the Prosecutor of the ICC, “Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on opening Preliminary Examinations into the situations in the Philippines and in Venezuela”, February 8, 2018, <https://www.icc-cpi.int/Pages/item.aspx?name=180208-otp-stat>

In order to establish an effective review process of the situation of violence and repression in Venezuela that would respect the rights of all parties concerned, on July 25, 2017, the Secretary General of the OAS appointed an impartial advisor to serve as a Special Advisor on Crimes against Humanity. Dr. Luis Moreno Ocampo, who served as the first Prosecutor of the International Criminal Court (2003-2012), was tasked with designing and launching the process to facilitate through an impartial and independent process, the compilation of evidence that provides a reasonable basis for knowing whether crimes against humanity may have been committed in Venezuela.⁷⁹ The process would allow for the OAS to engage with victims, civil society and other interested parties, including the Government of Venezuela⁸⁰ to participate.

On September 14, 2017, the Secretary General appointed a Panel of Independent International Experts to oversee the process and determine whether the information gathered provides a reasonable basis for knowing whether crimes against humanity may have been committed in Venezuela and recommend whether the information should be brought to the attention of the International Criminal Court for further consideration.

The three Experts are Dr. Santiago Cantón, of Argentina, Secretary of Human Rights of the Province of Buenos Aires, and previously Executive Secretary of the Inter-American Commission on Human Rights, Professor Irwin Cotler of Canada, President of the Raoul Wallenberg Centre for Human Rights, and previously Minister of Justice and Attorney General of Canada, and Manuel Ventura Robles of Costa Rica, former Judge of the Inter-American Court of Human Rights. The Governments of Argentina, Canada, and Costa Rica welcomed the appointment of their recognized citizens as experts on the panel. The Panel assumed their responsibilities on September 28, 2017.

Based on that framework outlined above, a three-fold process was undertaken:

1. Between September and November 2017, the OAS General Secretariat facilitated a series of public hearings chaired by the Independent Panel, which allowed victims, legislators, mayors, judges, members of the armed forces, civil servants, human rights defenders, and other interested parties to participate in this information gathering process through their witness testimony.

⁷⁹ Dr. Moreno Ocampo served *ad honorem*.

⁸⁰ The Government of Venezuela was approached through a formal diplomatic Note Verbale send by the General Secretariat to the Permanent Mission of Venezuela to the OAS on September 4, 2017, inviting them to meet with the Special Advisor in order to encourage the government to participate in the process. No formal response was ever received to the Note Verbale, and informal channels produced no positive response. The Permanent Mission of Venezuela to the OAS was also invited to attend all of the sessions organized by the General Secretariat, as were all Permanent and Observer Missions to the OAS.

2. Between September 2017 and February 2018, The General Secretariat facilitated the gathering and compilation of additional documentary evidence, which together with the testimonies from the public hearings, was presented to the Panel of Independent International Experts to provide them with a reasonable basis to determine whether crimes against humanity may have been committed within the territory of Venezuela.

3. In March and April 2018, the Panel of Independent International Experts reviewed the evidentiary and legal documentation collected and compiled by the General Secretariat and conducted their analysis of the information presented.

The General Secretariat of the OAS would be remiss to ignore the accusations and testimonies presented over the years by Venezuelans who have suffered persecution by the Regime. These testimonies have been presented to the General Secretariat by individuals who had already denounced these cases, or who decided to appear before the Organization, in search of justice. The General Secretariat has not judged these testimonies given that it is the purview of the International Criminal Court, but it has sought to ensure that this information would be given an adequate legal review through the work of the Panel of Independent International Experts, appointed for that purpose.

The first part of this Report contains the information obtained through the public hearings as well as information submitted by interested NGOs and private persons. The second part of this Report contains the legal analysis of the Panel of Independent International Experts. The findings of the Panel are outlined in the conclusion of this Report.

It should be clarified that neither the General Secretariat, nor the Panel, have investigative powers or the possibility of undertaking field missions to the territory concerned in order to consult with national authorities, victims, civil society organizations, or other interested actors.

All of the activities carried out under this process were done without prejudice to the competence and authorities of the Inter-American Commission on Human Rights. With the mandate of the IACHR focused on human rights violations carried out at the state level, the IACHR contributed to the process with the submission of a report on the judicial system in Venezuela.⁸¹

⁸¹ IACHR, “*Insumo sobre la situación del Poder Judicial en Venezuela*”, November 20, 2017.

D. Framework of Inquiry

Since the creation of the Organization of American States (OAS) in 1948, democracy and the respect for human rights have been two core principles enshrined in the common instruments established to support cooperation in the pursuit of peace, security and prosperity in the region. In the following decades, the Organization has created successive treaties and instruments reinforcing our commitment to these basic values that guarantees a basic standard of well-being to all citizens of the Americas.

In accordance with its Charter, the Organization of American States was grounded in the principles of peace and justice. In fulfillment of the obligations outlined in Article 2 of the Charter, the Secretary General and the Organization - the sum of all of its organs including the General Secretariat – work to strengthen the peace and security of the continent and promote and consolidate representative democracy. Article 110 of the Charter empowers the Secretary General to “bring to the attention of the General Assembly or the Permanent Council any matter which in his opinion might threaten the peace and security of the Hemisphere or the development of the Member States.”⁸² The Secretary General has brought the crisis in Venezuela to the attention of the Permanent Council, in fulfillment of this duty.

Since the adoption of the Rome Statute establishing the ICC, the OAS has maintained close ties with the Court through different types of cooperation including working sessions held within the Committee of Juridical and Political Affairs of the Permanent Council, and an annual resolution at the General Assembly.⁸³ This resolution, among other issues, affirms that states have the primary responsibility to judge violations of humanitarian law and international human rights law that occur throughout the world in order to prevent its recurrence; express concern about the impunity of the perpetrators of such acts; and affirms that it is necessary that there are organizations in the international arena of a complementary nature to guarantee access to justice. This resolution also recalls the duty of every State to exercise jurisdiction against those responsible for international crimes.

The Inter-American Juridical Committee, the principal organ of the Organization in matters of legal development in the Americas, also prepared a series of reports on the International Criminal Court that

⁸² Organization of American States, “Charter of the Organization of American States”, February 27, 1967, http://www.oas.org/en/sla/dil/docs/inter_american_treaties_A-41_charter_OAS.pdf

⁸³ Organization of American States, “Resolution: Promotion of the International Criminal Court” AG/RES.1770 (XXXI-O/01), June 5, 2001, <http://www.oas.org/assembly2001/documentsE/Decl-Resol.aprv/ag-RES1770XXXI-O-01.htm>

culminated in 2010 with a guide of principles for the adoption of national legislation as well as for the development of model laws for crimes set forth in the Rome Statute.⁸⁴

In addition, in April 2011, the International Criminal Court and the General Secretariat of the Organization of American States signed an exchange of letters that constitute a Framework Cooperation Agreement between the two organizations. The agreement stipulates that the ICC and General Secretariat of the OAS will cooperate in matters of common interest including, among other issues; “(i) promotion and dissemination of international criminal law; (ii) promotion and dissemination for principles, values and provisions of the Rome Statute and related instruments; and (iii) exchange of information and documents on matters of common interest.”⁸⁵ The process of examining whether crimes against humanity may have been committed in Venezuela was explicitly designed to support the existing cooperation agreements between the OAS and the ICC and is conducted under the authority of the OAS Secretary General.

Article 15 of the Rome Statute stipulates that to identify crimes within the jurisdiction of the International Criminal Court, the Prosecutor shall initiate an investigation on the basis of information received. Thus far, the Prosecutor of the International Criminal Court has not initiated an investigation of the situation in Venezuela; however a preliminary examination in to the situation was announced by the Prosecutor on February 8, 2018. This Report is being submitted to contribute to the work of the Prosecutor in the preliminary investigation phase. The General Secretariat of the OAS is mindful and respectful of the independent performance of the functions of the Prosecutor and the Court.

⁸⁴ Inter-American Juridical Committee, “Progress Report on Efforts Toward adopting National Legislation Based on Guidelines of Principles of the Inter-American Juridical Committee and Training of Employees for the Cooperation of the Member States of the OAS with the International Criminal Court and the Drafting of Model Laws for the Crimes Contemplated in the Rome Statute”, CJI/doc.352/10 rev.1, in Annual Report of the Inter-American Juridical Committee to the Forty-First Regular of the General Assembly, CP/doc.4547/11, March 1, 2011, page 52, <http://www.oas.org/en/sla/iajc/docs/INFOANUAL.CJI.2010.ENG.pdf>. See also, “Report on the Activities on Promotion of the international Criminal Court for Crimes Contemplated in the Rome Statute”, CJI / doc.360 / 10 rev.1, in Annual Report of the Inter-American Juridical Committee to the Forty-First Regular of the General Assembly, CP/doc.4547/11, March 1, 2011, page 75, <http://www.oas.org/en/sla/iajc/docs/INFOANUAL.CJI.2010.ENG.pdf>

⁸⁵ OAS/ICC, “Exchange of Letters between the International Criminal Court and the General Secretariat of the Organization of American States for the establishment of a Framework Cooperation Arrangement”, ICC-PRES/08-02-11, April 18, 2011, <https://www.icc-cpi.int/NR/rdonlyres/824CDB02-5EA2-4E1D-ABF4-3F297C1240E9/283263/ExchangeofletterswithOAS.pdf>

II. HEARINGS OF THE GENERAL

SECRETARIAT TO ANALYZE

THE POSSIBLE COMMISSION OF

CRIMES AGAINST HUMANITY

IN VENEZUELA



A. PERNALETE

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II. HEARINGS OF THE GENERAL SECRETARIAT TO ANALYZE THE POSSIBLE COMMISSION OF CRIMES AGAINST HUMANITY IN VENEZUELA

A. Witness Testimony

To facilitate the General Secretariat's process of gathering information impartially, three rounds of public sessions or hearings were conducted at OAS headquarters in the Hall of the Americas between September and November. The first round hearings were held on September 14 and 15, 2017, presided over by Dr. Moreno Ocampo. The subsequent sessions were held on October 16 and 17, 2017 and November, 16, 2017, and were presided over by the three members of the Panel of Independent International Experts. All of the sessions were open to public and were live broadcast on OAS website and the OAS Facebook page. OAS Member States and Permanent Observers received a special invitation to attend. Full recordings of the hearings in their original language can be found on the OAS YouTube page.⁸⁶

Twenty-six witnesses participated in the hearings⁸⁷. They were chosen to represent a broad section of Venezuelan society, including local and national politicians, military personnel, officials from the judiciary, doctors, parents of students, and non-governmental organizations, all of which have suffered persecution or coercion at the hands of the Government. Many chose, at great risk of further reprisal from the Government, to travel from Venezuela to Washington D.C. in order to testify. Each individual providing testimony made an opening statement or presentation, which was then followed by a series of questions from the members of the Panel. Member States, including Venezuela, and Permanent Observers were

⁸⁶ OAS General Secretariat, http://www.oas.org/en/media_center/videos.asp

⁸⁷ The witnesses who provided testimony were:

September 14, 2017: Julio Henríquez, Foro Penal; Tamara Suju, Executive Director, CASLA Institute; Francisco Márquez, Executive Director, Visión Democrática; Johanna Aguirre, widow of José Alejandro Márquez Fagundez.

September 15, 2017: Captain Igor Nieto Buitrago, National Armed Forces of Venezuela; Lieutenant Coronel José Gustavo Arocha, National Armed Forces of Venezuela; Major General Herbert Garcia Plaza, National Armed Forces of Venezuela.

October 16, 2017: Ralenis Tovar, former Judge for the Caracas Metropolitan Region; Pedro Troconis, President of the criminal chamber, Supreme Court of Venezuela in Exile; Armando Daniel Armas, member of the National Assembly of Venezuela; Isaias Media, former Minister Counselor, Permanent Mission of Venezuela to the United Nations; Rosa Orozco, mother of Geraldine Moreno.

October 17, 2017: David Smolansky, former Mayor of El Hatillo, Caracas; Omar Lares, former Mayor of Campo Elías, State of Mérida; Walter Márquez, former member of the National Assembly of Venezuela; Carlos Vecchio, National Political Coordinator, Voluntad Popular; Doris Coello, mother of Marco Coello.

November 16, 2017: Kerling Sánchez, wife of Lieutenant Coronel Ruperto Sánchez; Ivan Urbina, father of Fabián Urbina; Jose Pernaleta and Elvira Llovera, parents of Juan Pablo Pernaleta; Dr. George Simon and Federica Dávila, Venezuelan Green Cross; Franklin Nieves, former Venezuelan prosecutor; Gustavo Marcano, former Mayor of Diego Bautista Urbajeja, Lechería, state of Anzoátegui; Ramón Muchacho, former Mayor of Chacao, Caracas; William Dávila, member of the Venezuelan National Assembly.

given the opportunity to submit questions in writing, which would be asked of the witnesses by the Panel. No written questions were submitted at any of the hearings. Witnesses were also given the opportunity to submit written presentations and supplementary information related their testimonies to the General Secretariat, after the hearings.

The testimony describes a pattern of targeting the civilian population as part of a State policy of widespread and systematic attacks directed against the political opposition in the country, to include any individual who speaks or otherwise voices peaceful opposition to the policies of the Governments’ “21st Century Bolivarian Socialism”.

The witnesses testified to the violent repression - including murder - used to repress, if not eliminate peaceful political demonstrations. They also described the deliberate, widespread systematic persecution and prosecution of opposition figures and supporters, involving threats, abuse, the deprivation of their political rights, detention, and imprisonment. The witnesses articulated the widespread use of arbitrary detention and imprisonment in cruel and degrading conditions as well as the use of torture as an instrument to coerce false confessions and to inflict severe physical and psychological pain and suffering on individuals as punishment for opposing the Regime – or on individuals for simply exercising their fundamental rights of expression, assembly, and association – while also serving to terrorize the civilian population at large.

They also describe the deliberate, pervasive and persistent state-sanctioned persecution such as weaponizing the shortages of food and medicine through their selective distribution only to groups that support the Government’s agenda, penalizing individuals and groups who support the opposition. The Regime is also accused of exacerbating the situation, by denying the existence of a humanitarian crisis and rejecting all forms of assistance.

B. Hearings: Snapshot of Assaults on Democracy, Human Rights, and the Rule of Law

During the first round of hearings, Major General García Plaza, who has held various senior public positions with the Maduro Government, including Deputy Defense Minister, People’s Power Minister for Water and Air Transportation, and Minister of Food, described the command structure and the operationalization of “law and order” in Venezuela. In Particular, the General devoted an important part of his testimony to explaining the *2017 Zamora Strategic Plan*, which targeted individuals the government “thought were, or who actually were, political dissidents” as the enemy. The *Plan Zamora* turned the country into a military theater of operations with both a formal and informal chain of command, thereby turning the state command structure into a repressive military arm of the Government. Civilians who were critical of the government became enemies of the state.

García Plaza described a formal command structure lead by the President of Venezuela, who oversees the Operational Strategic Command (CEO) at the second tier, along with Bolivarian National Armed Forces (FANBs), the Bolivarian National Militia, and Local Supply and Production Committees (*Comités Locales de Abastecimiento y Producción*: CLAPs). He also described a parallel structure to the CEO, called the Anti-Coup Command that is comprised of Vice President Tareck El Aissami; Congressman and former President of the National Assembly, Diosdado Cabello; Congressman Pedro Carreño, and Freddy Bernal, Secretary General of the CLAPs among other positions. Although the Anti-Coup Command was not designed as a formal part of the military structure, its authority still came directly from President Maduro. The CLAPs, which were originally created as logistical food distribution units, were now also empowered to be involved in local activities in coordination with FANBs. According to García Plaza, the Anti-Coup Command operates autonomously.

In addition to the 2017 introduction of *Plan Zamora*, a Ministry of Defense directive had been in place since 2015 empowering the Bolivarian National Guard (GNB)⁸⁸ to use force, including the use of firearms in responding to demonstrations. He observed that the number of arbitrary detentions noticeably increased after the introduction of the plan, commonly on the grounds of attacking the “sentinel” (military personnel) or for being a *guarimbero*, a colloquial term for the demonstrators that has no meaning in the military rubric.⁸⁹ Subsequent to the hearings, General García Plaza provided further supplemental statements detailing the elements of the Plan.

At the second round of hearings held in October 2017, Carlos Vecchio, the National Policy Coordinator for the political party *Voluntad Popular*, characterized what he considers a “State policy of systematic and widespread political persecution” that is designed to eliminate anyone “who questions or thinks differently”. He described how opposition leaders are the standing targets of regular and constant rhetoric and hate speech inciting animosity and violence against them. He argued that all public and government institutions - including stated-controlled media – are mobilized to this end. In other words, all of the powers of the State are abused to promote hatred of any opposition political figure, entity, or group.

He cited the example when Vice President Tareck El Aissami declared that, “All members and activists of *Voluntad Popular* are fascists. They are not democrats, even less so can they be considered human beings. They are far from being human. Justice will come for them.” He also used the example when President Nicolás Maduro proclaimed, “I shall not be afraid and I will not waver in administering justice. I call on all

⁸⁸ The Bolivarian National Guard is a militarized police force that is part of the Bolivarian National Armed Forces of Venezuela, along with the Bolivarian Army, the Bolivarian Navy, and the Bolivarian Air Force. The GNB “shall conduct the operations required to maintain internal order in the country, cooperate in military operations required to ensure the defense of the nation, exercise its statutory administrative and criminal investigation police functions, and participate actively in national development in the territory and other geographic spaces of the Bolivarian Republic of Venezuela.” <http://www.guardia.mil.ve/web/mision/>

⁸⁹ Testimony of Major General Herbert García Plaza at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 15, 2017, <https://www.youtube.com/watch?v=cKmTJ79prKE>

branches of government to act in the face of the threats by this terrorist group called *Voluntad Popular*.” Vecchio noted that what *Voluntad Popular* is experiencing is also happening to all of the other opposition parties and to any Venezuelan who seeks to exercise their fundamental rights. He stated; “It’s not just us, the politicians. Others have left, for political reasons.”

Vecchio also spoke of the complete lack of the rule of law, accusing the judiciary in Venezuela of being reduced to being a tool of the Regime to systematically persecute opposition figures. He explained that as of his testimony in October 2017, 30 members of his political party alone had faced arbitrary detention, 21 had been injured, 17 of their leaders had been forced into exile, and 5 mayors had been illegally removed from office. He also described numerous attacks on their person including both their intimidation and imprisonment, vandalism and attacks on their headquarters. Members of his party have been banned from running for office. “We feel that we are in exile here, our souls are in prison,” concluded Vecchio.

Vecchio outlined the case of Leopoldo López, the leader of his political party. Public prosecutor Franklin Nieves was ordered by the Executive branch to arrest Leopoldo López along with other opposition leaders when on February 12, 2014, together with Leopoldo López and a group of students, Vecchio and other political leaders called on the people of Venezuela to join a peaceful demonstration for the protection of their rights. Two people had been killed that day and even though an independent investigative journalist concluded that government officials were responsible for these deaths, the government decided to hold López responsible for them. After López was arrested on February 17, 2014, military forces attempted to capture Vecchio and he was forced into hiding. He called the judiciary the regime’s weapon: “There is no institution to which I can go for constitutional guarantees of impartiality and independence.”⁹⁰

These attacks have not been limited to political leaders, but include any civilians who choose to exercise their civil and political rights in questioning or challenging the government or demonstrating support for the opposition, even if they are working within the democratic processes guaranteed by the Venezuelan Constitution. Francisco Márquez Lara, the Executive Director of the NGO *Visión Democrática*, for example, was targeted while travelling to help organize the collection of signatures to initiated the then-active recall referendum process in 2016.

On June 18, 2016, Márquez was arbitrarily detained at a National Guard control post, after security officials found pamphlets in his car advocating to “Free Leopoldo”. He and the colleague with whom he was travelling were detained at the post but given no explanation for why they were being held, nor allowed to contact

⁹⁰ Testimony of Carlos Vecchio at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 17, 2017, <https://www.youtube.com/watch?v=iH9oh8SdhIU>

a lawyer. Officials from the Bolivarian National Intelligence Service (SEBIN)⁹¹ proceeded to interrogate him without a lawyer present. After refusing to answer their questions, he was transferred to Caracas.

Márquez described the abuse he was subject to in the different jails where he was held during his four months of incarceration. He personally witnessed the torture of another prisoner, who was beaten by six individuals for 30 minutes. Upon his release, a high prison official told him “be sure to speak ill of me” suggesting that would help him, indicating a regime penalized those who showed kindness, instead rewarding aggression and those who tortured most. He cited two names of responsible parties within the repressive apparatus in the *Helicoide*, where he was imprisoned: Carlos Calderón, the Director of the SEBIN; and Ronny González, the Deputy Director of the Strategic Investigations division of the SEBIN.

Márquez explained that the intention behind his testimony was to represent those still in custody and experiencing torture in Venezuela. He stated that impunity and injustice reigned in his country and, for that reason; international institutions are the only remaining opportunity for justice. Now living in exile, Márquez shared that he continues to receive blackmail and threats indicating that if he publicly reports his case, the situation of other political prisoners could be affected.⁹²

Former member of the Bolivarian National Armed Forces, Captain Igor Eduardo Nieto, explained the decision by President Nicolás Maduro to begin the persecution of civilians using military justice after the Attorney General of Venezuela, Luisa Ortega Diaz, stopped cooperating with the Government. Nieto explained that the regime typically used two generic crimes to prosecute civilians under military justice: treason and assaulting military personnel. He commented that, the fact that these crimes were undefined enabled the government to use the military justice apparatus to persecute anyone they chose.

As evidence, he cited a case involving the arbitrary arrest of one of his family members by Bolivarian National Guard and SEBIN personnel. When they had another friend contact the judge handling the case, the judge indicated that she had received instructions that they were to deprive political leaders of liberty and precautionary measures were to be imposed on demonstrators so as to intimidate. Nieto received information that in the arrest of his family member, the Bolivarian National Guard, General Directorate of

⁹¹ The Bolivarian National Intelligence Service is the political police of the Bolivarian Government. SEBIN was established in 2009 following the reorganization of the erstwhile National Directorate of Intelligence and Prevention Services. SEBIN’s mission is to “contribute to the overall security, defense, and development of the nation as a fundamental element of the national intelligence and counterintelligence system by identifying and neutralizing threats that harm the supreme interests of the Bolivarian Republic of Venezuela, acting within the law in close observance of guarantees and respect for human rights.” SEBIN has two main facilities in Caracas, each with its own jail (“*Helicoide*” and “*La Tumba*”), where some of the victims mentioned in this report are currently incarcerated in inhuman conditions. Memoria 2013, *Vicepresidencia de la Republica*, “*Servicio Bolivariano de Inteligencia Nacional, SEBIN*”, <http://www.derechos.org/ve/pw/wp-content/uploads/1.3.-SEBIN1.pdf>

⁹² Testimony of Francisco Márquez at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 14, 2017, <https://www.youtube.com/watch?v=KRX0QaJPzRk>

Military Counterintelligence (DGCIM)⁹³, SEBIN, and others did not provide any type of official credential and acted in concert.

Major General García Plaza had also described his experience with the Executive branch using the judicial system to persecute him. After resigning from his post over his disagreement with the President over the politicization of the food distribution policy, he fled Venezuela in January 2016 amidst warnings from three members of the Venezuelan cabinet, including the Minister of Defense that the President intended to open legal proceedings against him. He insisted that justice in Venezuela was directed by the Executive. As an example, he recapped a conversation he witnessed between the Vice President El Aissami and First Lady Cilia Flores discussing whether or not to issue a precautionary measure for a particular individual. He further stated that no ruling prepared by the Supreme Court of Justice (TSJ) is issued without the approval of Elvis Amoroso, a member of the Venezuelan National Assembly and the Vice-President of the National Constituent Assembly, and Cilia Flores.⁹⁴

C. Assaults on the Democratically Elected Mayors

Four mayors representing separate opposition political parties testified to the prejudicial and pernicious tactics used by the Government to incapacitate democratically elected local mayors. David Smolansky, a former Mayor of El Hatillo in Caracas, cited data indicating that 40% of the 80 opposition mayors in the country had been victims of targeted persecution as part of a systematic state practice of repression. “Anyone who speaks against the regime is a victim of threats, repression, removal or arrest,” stated Smolansky. He accused the Supreme Court (TSJ), and the SEBIN of being accomplices in usurping the investigatory functions of the Attorney General and imposing sentences in violation of the Organic Law on the Municipal Power which sets out clear rules and requirements for the removal of a mayor. The proceedings under which the mayors were removed from office do not exist in Venezuelan law. The guarantees of due process were not respected in any of the cases cited.

The described pattern of criminalization and imprisonment of opposition mayors, included: (1) arbitrary arrest; (2) illegal detention (3) isolation; (4) torture, and (5) cruel and degrading treatment and imprisonment

⁹³ The General Directorate of Military Counterintelligence is the intelligence agency of the Bolivarian National Armed Forces (FANB) The mission of the DGCIM is to “[e]xecute counterintelligence operations that impede, disrupt, and prevent enemy espionage and intelligence activities, as well as to contribute to criminal investigations in the military and civilian spheres in order to ensure the protection of the Commander-In-Chief and the security of the FANB through the maintenance of operational readiness, strengthening of discipline, information security, and correct use of military procedures so as to ensure the best possible leadership, establishment, training, and execution of counterintelligence work, thereby strengthening the overall security and defense of the nation.” <http://www.dgim.mil.ve/index.php#>

⁹⁴ Testimony of Major General Herbert García Plaza at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 15, 2017, <https://www.youtube.com/watch?v=cKmTJ79prKE>

(6) denial of right to a fair hearing or any semblance of due process, including less than 48 hours to prepare their defense, the denial of access to their files and of any right to appeal, the arbitrary removal from office. Those accused have also been prohibited from leaving the country and there have been consistent reports that officers of the SEBIN were known to be harassing the homes and families of the accused. In five separate cases, the rulings were identical where only the names of the individuals, the State and the identity card numbers were changed.

Between 2014 and October 2017, 12 mayors were illegally removed from office in Venezuela: four have been jailed; six are in exile, and another two have been removed and banned holding office, but remain in Venezuela. These cases include the arrests of Daniel Ceballos, Enzo Scarano, Antonio Ledezma, Lumay Barreto, Warner Jiménez, Delson Guarate, Gustavo Marcano, Alfredo Ramos, Carlos García, Omar Lares, Ramón Muchacho, and David Smolansky. A further 20 mayors were under investigation at the time of the hearings.⁹⁵

Former political prisoner Francisco Márquez had been working as Director of the office of the now-exiled Mayor David Smolansky when he was detained. He described these actions as typical of the government's actions when a mayor took a position opposing the regime. Mayors were being unlawfully ordered to control demonstrations by a decision issued by the Supreme Court. This ruling enabled the punishment of mayors who did not effectively control or shut down the demonstrations, allowing the mayors to be declared in contempt of court. They would then be convicted, removed from office, and imprisoned. Márquez argued that these persecutions were politically motivated. The criminal proceedings did not follow judicial principles, nor were they grounded in facts. They were guided by political allegiance.⁹⁶

Smolansky was sentenced on August 9, 2017 for “not guaranteeing freedom of movement” which was explained as allowing the opposition protests to take place. He has been banned from holding office and there is an outstanding warrant for his arrest. After spending 25 days in hiding, Smolansky made the 1,300 km trip to cross the border into Brazil on September 13, 2017. He is now living in exile.⁹⁷

Gustavo Marcano, the Mayor of Diego Bautista Urbaneja in the State of Anzoátegui had been the first of the mayors to be arbitrarily removed from office by the TSJ Constitutional court, and was sentenced on July 25, 2017. He explained that the Maduro Regime was systematically persecuting the mayors for respecting the civil and political rights of the Venezuelan people. “We were convicted for having refused to comply with

⁹⁵ Testimony of David Smolansky at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 17, 2017, <https://www.youtube.com/watch?v=iH9oh8SdhlU>

⁹⁶ Testimony of Francisco Márquez at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 14, 2017, <https://www.youtube.com/watch?v=KRX0QaJPzRk>

⁹⁷ Testimony of David Smolansky at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 17, 2017, <https://www.youtube.com/watch?v=iH9oh8SdhlU>

an unconstitutional order issued by an illegitimate body to stop or prohibit demonstrations by our citizens.” In addition to the 12 who were convicted, at the time of his testimony in November, 2017, he spoke of another nine if his colleagues that were under threat.

Marcano argued that Maduro and his regime use political prisoners as “hostages of the dictatorship”. In exchange for their freedom, they are asked to incriminate other leaders of the opposition. Their family members are targeted. Those who choose to leave the country, do so at great risk to their lives. Most of those who did not leave were ultimately detained by the SEBIN.⁹⁸

Omar Lares, the Mayor of the town of Campo Elías in the state of Mérida, spoke of how the regime used tactics that involved targeting the family members and people close to members of the political opposition as a means to threaten and coerce them. Lares described the brutal abduction and arbitrary detention of his son Juan Pedro Lares. The 23 year old has been subject to torture and inhuman treatment by the SEBIN.

On July 30, 2017, in the politically tense period around the election of the National Constituent Assembly, armed *colectivos*⁹⁹ burst into the Lares’ home in Mérida to arrest the mayor. While Omar Lares was able to get away, along with his wife and younger son, his older son, Juan Pedro, was captured by the security forces. Juan Pedro was held *incommunicado* for two days, during which was doused with gasoline and his captors threatened to set him on fire if he did not tell them his father’s whereabouts. There had been no record of his detention, and no complaint or charges were filed against him. On the third day, his family obtained information from officials in the security services as to his whereabouts through unofficial channels. Lares believes that an order to detain and hold his son came from someone “very high up” in the government as a means to intimidate and put pressure on him. The same day as the abduction, the mayor’s personal assistant received a call from “a General” offering to free his son in exchange for Lares turning himself in.¹⁰⁰

Ramón Muchacho, the Mayor of Chacao in Caracas also received directions from senior government officials directing him to take a tough position and ensure that strict crowd control was used to restrict the demonstrations. The police under his authority were not trained to do so. Concerned about the dangers this directive could pose, he likewise, did not comply with the order. Convicted on August 8, 2017, Muchacho’s case matches those of the other opposition mayors. The SEBIN carried out an arrest warrant, he was denied the right to counsel or access to his own file, he was tried before a Court which had no jurisdiction in his

⁹⁸ Testimony of Gustavo Marcano at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, November 16, 2017, <https://www.youtube.com/watch?v=g6zUBXprxQ4>

⁹⁹ *Colectivos* are motorized bands of armed civilians that act as paramilitary groups and refer to themselves as “guardians of the Bolivarian Revolution.” They act as Government shock troops for quelling demonstrations and the opposition. *Colectivos* “exercise territorial control in different Venezuelan cities, where they deploy as security forces and act as the ‘authority’ over public spaces.” *El Impulso.com*, “*Fermin Mármol García: Colectivos constituyen una fuerza paramilitar*”, <http://www.elimpulso.com/noticias/nacionales/fermin-marmol-garcia-colectivos-constituyen-una-fuerza-paramilitar>; and, *Univisión*, “*Las bandas paramilitares chavistas que siembran el terror en Venezuela: los colectivos*”, April 30, 2017, <https://www.univision.com/noticias/america-latina/las-bandas-paramilitares-chavistas-que-siembran-el-terror-en-venezuela-los-colectivos>

¹⁰⁰ Testimony of Omar Lares at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 17, 2017, <https://www.youtube.com/watch?v=iH9oh8SdhIU>

case, had his passport cancelled, and lost the right to hold office or to vote. His family was also targeted, as the passports for his wife and young children were seized and cancelled when they tried to leave the country.

The mayors' witness testimony exposes a regime that arbitrarily and illegally removes and bans democratically elected officials from the electoral process as a systematic practice. The government removes its adversaries from politics and elections by threatening, terrorizing, disqualifying and incarcerating them. In Muchacho's words, there is no possibility of a constitutional solution through the ballot box: "In Venezuela, weapons rule, it is a government by force."¹⁰¹

D. Attack on Democratically Elected Legislators and the Democratically Elected Legislature

The pattern of persecuting the democratically elected local mayors is replicated in the persecution and prosecution of Venezuela's democratically elected legislators. Armando Daniel Armas, a congressman in the National Assembly of Venezuela, explained how the targeting and violent attacks against legislators also extended to the Legislature itself. He described the July 5, 2017 attack on parliament by armed paramilitary gangs, known as *colectivos*, when he almost lost his life and was severely injured.

Armas believes the assault took place with the acquiescence, if not complicity, of the National Guard. He declared it a premeditated and government sanctioned attack and that the National Guard was following orders to not stop the *colectivos*, arguing that this could be seen in the President's public statements attacking the Legislative Assembly as well as the broader rhetoric directing the repression and "this type of situation". He described a government procedure manual on repression: a so-called "anti-coup manual." Colonel Vladimir Lugo, the officer responsible for the security of the National Assembly, has been awarded the *Orden del Libertador* by President Maduro for his services to the country.

In his account, Armas cited numerous documented cases that depict a systematic practice targeting the members of the Legislative Assembly, including through the arbitrary arrest, illegal detention, the use of illegal court proceedings in violation of the rights of deputies, the absence of due process, as well as acts of physical violence, all carried out with complete impunity. He testified that the regime seeks not only to undermine and repress Parliament as a democratic institution, but that this happens in a culture of

¹⁰¹ Testimony of Ramón Muchacho at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, November 16, 2017, <https://www.youtube.com/watch?v=g6zUBXprxQ4>

impunity where those responsible for persecution are rewarded and promoted. He observed that there has been no justice in any of the cases of violence against legislators that have previously taken place, including attacks against Julio Borges, the President of the National Assembly; María Corina Machado, the leader of the political party *Vente Venezuela*; Williams Dávila, a member of the National Assembly; and Delsa Solórzano another member of the National Assembly and the Vice President of the political party *Un Nuevo Tiempo*.¹⁰²

Williams Dávila argued that the Venezuelan Supreme Court has become an agent of repression, constituting an assault on the rule of law, the separation of powers, the independence of the judiciary and the legislative process. He described how the Supreme Court had been repeatedly used to erode the powers of the National Assembly citing the example that 11 out of 15 laws adopted by the National Assembly in 2016 were declared unconstitutional.

Dávila also testified to the routine and systematic abuses targeting members of Congress including (1) illegal detentions and imprisonment; (2) verbal and physical assaults during legislative sessions in the chamber of the Federal Legislative Palace and in surrounding areas; (3) attacks on the National Assembly during its sessions by armed government groups, with the support of State security forces; (4) persecution, harassment and intimidation of members of the legislature, their families and staff, and their property; and (5) practices prejudicial to parliamentary immunity and the exercise of parliamentary functions. Similar to the cases of the opposition mayors described above, Dávila's passport and identity card were cancelled in what he called as a "systematic practice for those who make statements against the national government".

He noted that the Public Ministry ordered the investigation of a number of legislators for seeking to invoke the OAS Inter-American Democratic Charter with regard to the assault on Human Rights and the rule of law. In response, Government officials then accused the legislators of treason and/or terrorism, and threatened to have them sentenced to 50 years in jail.¹⁰³

E. Systematic and Widespread Patterns of Political Persecution:

The Targeting of Students, Civilians, and Members of the Military

Government attacks have not been limited to the political opposition. The government also increasingly persecutes members of the military who are not seen to be sufficiently pro-regime, or failing to champion the political ideology of "21st Century Socialism". Further, as described in General García's testimony, the

¹⁰² Testimony of Armando Armas at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 16, 2017, <https://www.youtube.com/watch?v=ca5zYBQYcVE>

¹⁰³ Testimony of Williams Dávila at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, November 16, 2017, <https://www.youtube.com/watch?v=g6zUBXprxQ4>

attacks have extended to target any civilians critical of the government, considering them an “internal enemy” of the State.

Julio Henríquez, who testified on behalf of the non-governmental organization *Foro Penal*, stated that there is a State policy and systematic pattern of repression, where state sanctioned political prosecution has risen to a level of a crime against humanity. Henríquez described a pattern of political persecution that includes murder, torture, cruel and inhuman treatment, sexual abuse, and arbitrary arrest and unlawful deprivation of liberty. He explained that these crimes were part of a deliberate government strategy to hold onto power, that targeted persecution is promoted at the highest level of government, including through the use of state-controlled media; and that anyone participating in demonstrations or expressing dissent is labeled “*guarimbero*” or “terrorist.” He described strategic plans – including *Plan Zamora* – instructing state security agents, along with state militias and armed civilians groups supporting them, to persecute demonstrators or dissidents, pursuant to the instructions and instigation of the State.

Henríquez further explained that this systematic persecution was designed for the sole purpose of consolidating the power of the Executive, underpinned by the intimidation and exclusion of political opposition figures and the general population. Henríquez noted that as of the September 2017 hearing date, 11,902 individuals had been detained since 2014 in an effort to undermine the population’s exercise of its fundamental right to free expression and association. Similarly, he testified that students who participated in peaceful demonstrations were often targeted in order to curtail and corrode the activities of the broader student movement. He further testified that in order to intimidate and control the judiciary, any judges who ruled contrary to Government positions were themselves the target of state oppression and repression. Moreover, members of the armed forces were frequently imprisoned for challenging the Government’s illegal politicization of the Armed Forces.

Indicating that political prisoners were being held in nearly every state of the country, and that as of September 14, 2017 only 33 of the then 566 political prisoners had been sentenced, Henríquez described the profiles of three categories of the political prisoners *Foro Penal* had identified: (i) individuals whom the government seeks to exclude on political grounds; (ii) individuals seeking to exercise their political and civil rights; and, (iii) any Venezuelan who happens to be caught in the streets, regardless of his or her ideology.¹⁰⁴

Members of the armed forces have also been persecuted for their perceived sympathy towards the political opposition. Kerling Sánchez - wife of political prisoner Lt. Colonel Ruperto Sánchez of the Venezuelan Air Force - testified that her husband was persecuted for not sufficiently supporting the Regime. His crime was to speak to his troops about the Constitution, military regulations and the Rome Statute, instead of lectures about socialism in the 21st century. He was not seen to be sufficiently supporting the revolutionary process in Venezuela.

¹⁰⁴ Testimony of Julio Henríquez at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 14, 2017, <https://www.youtube.com/watch?v=KRXOQaJPzRk>

On May 15, 2014, Sánchez received a phone call telling her that her husband was in prison at the General Directorate of Military Counterintelligence. He was locked in a basement for three months, where he learned that there were also nine other officers imprisoned with him for the same reason. In February of 2015, his trial began at the Caracas Military Court. Colonel Sánchez and the other officers were falsely accused of having held two meetings to conspire to bomb the Miraflores Presidential Palace and other State institutions.

The prosecution presented 96 witnesses, three of who had criminal records that were to be closed after they testified at the trial. The defense was not allowed to present any witnesses. Throughout the 25 hearings lacking any due process for the accused, the court heard the testimony of experts who even explained that the proposed attack would not have been possible. Despite there being no evidence against him, Sánchez was found guilty of instigating a military rebellion and sentenced to 7 years and 3 months in prison.

Imprisoned a 10 hour drive away from their home, the Lt. Colonel has been in jail for three years. He has suffered numerous health issues and is refused medical care. She and her children suffer what she described as “humiliating searches” at the prison, in order to visit her husband and their father.

Throughout these proceedings, Sanchez and the other officers were subjected to mistreatment, including being the victims of defamation and public incitement, targeted by President Maduro on national television. Sánchez described how what happened to her husband was not an isolated event, but part of a clear governmental strategy to control military officers and silence dissent through fear and intimidation.¹⁰⁵

Lt. Col. José Gustavo Arocha’s story illustrates how he was detained under similar circumstances and “lost his company, family, and dignity”. Arocha described the changing nature of the military in the years after his graduation at the military academy in the 1980s, a growing politicization that he considered inconsistent with the service of a professional soldier. Based on his experiences dealing with the protests and repression during the Caracazo in 1989, he spoke of the government’s commitment not to allow repression to be used again. In later years, he would establish informal lines of communication with the opposition and student movement with a goal of ensuring they could meet that commitment.

On May 2, 2014 he was arbitrarily arrested by the SEBIN for allegedly financing terrorism. Under governmental orders, he was later transferred to *La Tumba*, a prison five stories underground, where he was imprisoned under torturous conditions for six months. He was held in cramped quarters, forced to be remain naked in freezing temperatures, and subjected to constant artificial light and sleep deprivation.

¹⁰⁵ Testimony of Kerling Sánchez at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, November 16, 2017, <https://www.youtube.com/watch?v=g6zUBXprxQ4>

Arocha was interrogated in the prison at least three times by the Attorney General's office, and at least five times personally by the director of SEBIN, General González López. He was only brought before a judge after agreeing to sign a false statement. He signed the statement on the condition that he would be released to house arrest and that another one of the prisoners would also be released. The Director of SEBIN had told Arocha that President Maduro was personally apprised and overseeing elements of his case.¹⁰⁶

Captain Igor Eduardo Nieto, who was also a former member of the Armed Forces, recalled that from April 2014 to March 2015 he was the victim of persecution and intimidation because he had been close to Lieutenant Colonel Arocha. Nieto said that later he was the victim of a number of attacks, including shots fired at his home, and that even though he filed a complaint no investigation was carried out. In December 2014, he received a call in which threats were made against him and his family, which he once again reported to the authorities. He said that no one investigated and "no one gave me any security." After these incidents he went into exile in March 2015.¹⁰⁷

Demonstrative of the wider pattern of assaults targeting civilians, four families testified regarding the Government's brutal murder of their children. First, Rosa Orozco, the mother of 23 year old Geraldine Moreno, described the extrajudicial execution of her daughter that was carried out by Detachment 24 of the National Guard. On February 19, 2014, Geraldine was outdoors where here neighbors were demonstrating peacefully "armed only with saucepans, whistles and flags". She joined in the demonstrations around 8:00pm.

Sergeant second class Francisco Caridad Barroso fired at Geraldine's body; another Sergeant, Alvin Bonilla, shot her in the face and then fired at her point blank range as she raised he left hand begging for mercy. Twenty-four military personnel have been identified as participating in the extrajudicial execution of Geraldine. Only two Guard members were prosecuted and sentenced for aggravated first-degree murder, violation of international accords, and torture and cruel treatment. Other complicit members of the Detachment - including Lieutenant Colonel Frank Osura - were promoted and decorated after the incident.¹⁰⁸

Johanna Aguirre, the widow of José Alejandro Márquez Fagundez, described how her husband was brutally beaten to death by the Bolivarian National Guard the night of February 19, 2014. He had been using his cell phone to record GNB raids on Urdaneta Avenue in the La Candelaria area of Caracas, two blocks from their

¹⁰⁶ Testimony of José Gustavo Arocha at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 15, 2017, <https://www.youtube.com/watch?v=cKmTJ79prKE>

¹⁰⁷ Testimony of Captain Igor Eduardo Nieto at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 14, 2017, <https://www.youtube.com/watch?v=KRX0QaJPzRk>

¹⁰⁸ Testimony of Rosa Orozco at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 16, 2017, <https://www.youtube.com/watch?v=ca5zYBQYcVE>

home, and was attacked after refusing to acquiesce to the illegal confiscation of his phone. Witnesses that were present, along with an amateur video published online, show Alejandro trying to flee the police.¹⁰⁹ The victim tripped and fell, then turned to put his hand up indicating surrender.

Thirty minutes passed between when the time GNB officials took Alejandro away to the time he was left at the Vargas hospital. It is not know where or what exactly happened during that time. When he was found at the hospital, he was disoriented and tied to the bed with pieces of his own shirt. He remained in a coma, with the back of his skull fractured, until he died four days later on February 23.

Aguirre has never received an explanation for why her husband was detained. She also noted that the autopsy and a first exhumation did not indicate the cause of death. The first explanation was that her husband had died from a fall, but a second exhumation found that the cause of death was blunt force trauma to the back of the head. Ms. Aguirre explained that her husband had not yet been buried when Diosdado Cabello, in a broadcast of his television program “Con el Mazo Dando,” had falsely accused her husband of being a “hit man” and a “terrorist.”¹¹⁰

José Pernaleté and Elvira Llovera, described the murder of their son Juan Pablo Pernaleté, He was killed at the age of 20 by the GNB while participating in peaceful demonstrations on April 26, 2017. A GNB officer shot a tear gas canister directly into Juan Carlos’s chest from a distance of 15 meters. It caused cardiogenic shock that within minutes resulted in his death.

No one has been charged, and the Pernaletes have accused the National Armed Forces of refusing to provide the information needed to identify those who caused the death of their son. On the same day of his death, Diosdado Cabello falsely asserted that the Bolivarian National Guard was not present at the time, trying instead to blame other protestors for his death. The Pernaletes have also accused government officials, Pedro Carreño; Ernesto Villegas, the Minister of Communication and Information; Vladimir Padrino López, the Minister of Defense; and Delcy Rodríguez, the Foreign Minister at the time, of using official government media to issue false statements about what happened that day.

The Pernaleté family filed complaints and asked for probable cause hearings for cover-up and obstruction of justice against these officials. “We are not afraid. What is driving us is justice for our son and the other young people who were killed because they thought differently. We’ve lost everything.”

On May 24, 2017, former Venezuelan Attorney General Luisa Ortega Díaz, public confirmed that Juan Pablo’s cause of death was a result of the tear gas canister contradicting an earlier statement made in

¹⁰⁹ Youtube, “¿Cómo murió Jose Alejandro Márquez en Venezuela?”, [https://www.youtube.com/watch?v+TWcqS\(-kt-E](https://www.youtube.com/watch?v+TWcqS(-kt-E)

¹¹⁰ Testimony of Johanna Aguirre at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 14, 2017, <https://www.youtube.com/watch?v=KRX0QaJPzRk>

government-controlled media that he had died from other causes. In response, Pedro Carreño called for a medical board to be formed to look into the Attorney General’s mental health. The GNB members responsible for their son’s death have not been identified.¹¹¹

The father of Fabián Urbina described the death of his 17 year old son at the hands of the Venezuelan security agents in 2017. He testified that on June 19, Fabián travelled to Caracas to participate in a peaceful demonstration. Members of the GNB were present at the protests and the officers suddenly unholstered their weapons and fired into the crowd. Five young people were wounded, including Fabián who died shortly after from a gunshot wound to the chest. After he was wounded, GNB officers prevented other protestors from coming to his aid, instead focusing on subduing more protestors.

Fabián’s father shared video evidence of the Government security forces aiming weapons at unarmed protestors, indicating that numerous videos of the incident were posted online.¹¹² Urbina stated that “bearing arms under those circumstances is prohibited by the Constitution of Venezuela” and that he rejected outreach from the government led Truth Commission because this commission declared that a no time did the National Guard violate the rights of protestors. He believes his son was murdered “because he wanted a better Venezuela, a democratic Venezuela.”¹¹³

Dr. George Simon and Frederica Dávila testified on behalf of the *Cruz Verde* (Green Cross), an informal organization of medical professionals and students from the Central University of Venezuela that formed in response to the vacuum of assistance for the victims of the protests: “Nobody was helping the people wounded in the demonstrations.” They formed a group of approximately 250 volunteers who provided assistance to more than 5,000 people at 60 demonstrations in 2017.

“When we began our work in April, the volunteers were given an introductory course on managing wounds in situations of armed conflict. All of the wounds discussed during the course were anecdotal. By the end of three months of work, we unfortunately had the opportunity to deal with all the types of wounds,” they said. The pattern of the wounds escalated as time went on. They said that when the demonstrations began, they had teams who were on foot, but they had to be replaced with teams who moved about on motorcycles because it was not safe for them to remain in the midst of the demonstrations to stabilize the wounded.

¹¹¹ Testimony of José Pernaleté and Elvira Llovera at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, November 16, 2017, <https://www.youtube.com/watch?v=g6zUBXprxQ4>

¹¹² YouTube, “Asesinato de Fabián Urbina por GNB captada en varias tomas”, June 19, 2017, <https://www.youtube.com/watch?v=n1ZdRKtmeQU>

¹¹³ Testimony of Iván Urbina at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, November 16, 2017, <https://www.youtube.com/watch?v=g6zUBXprxQ4>

In their statement, the medical professionals said that the most significant pathologies that they treated included: a) asphyxia resulting from irritation of the airways and other mucosa as the result of exposure to tear gas, which in some cases caused respiratory failure; b) burns and wounds from explosions; c) open and closed trauma to the chest, head and abdomen resulting from impacts from different blunt instruments; and d) gunshot wounds, caused both by rubber and lead bullets (sometimes, because they were used at close range, the cartridges penetrated further into the patients' bodies). They observed an increased in the use of firearms in the month of July, along with serious trauma cases and the number of deaths. On a number of occasions, green cross volunteers had been wounded during the demonstrations, particularly as the result of attacks by security forces.¹¹⁴

In each of these cases, and those further outlined in later chapters of this Report, it is clear that the Government's aim was to terrorize civilians and eliminate the peaceful protests by citizens who were voicing their opposition to the government's policies.

F. Torture as an Instrument of Persecution and Repression

The campaign to persecute and terrorize the opposition has included the use of torture. Tamara Suju, a criminal lawyer and Executive Director of the Center for Latin American Studies (CASLA), explained that she had been collecting evidence of individual cases of torture for 15 years. Suju indicated that torture has taken place since the time of President Hugo Chavez, and is used to intimidate and control the Venezuelan people. She cited the case of Judge María Lourdes Afiuni Mora, who was tortured and violently raped as a warning to other judges to heed the Government's instructions or suffer similar consequences. She noted, however, that torture was selective during Chavez's Government, unlike under the Regime of Nicolás Maduro where the use of torture had become both "disproportionate" and recurring. Indeed, the SEBIN and the General Directorate of Military Counterintelligence both report to the Office of the Vice President and take direct orders on the use of torture from the Venezuelan executive branch.

Until 2012, Tamara Suju visited jails and requested statements from victims, who handwrote them, marking them with an ink fingerprint to attest to the document's authenticity. She explained that she had documented the cases of 289 direct victims of torture that occurred during the Maduro Regime, but knew that a larger, yet unquantifiable number of cases existed because victims that gave her their testimony said they were tortured in groups. The majority of the 289 cases she recorded were victims tortured because they participated in anti-government protests.

¹¹⁴ Ibid.

Suju described various forms of torture used, including severe beatings, electric shock, the use of tear gas and tear gas powder in confined spaces, the denial of food and water, placing victims in stress positions intended to cause pain and suffering, isolation for an extended period of time, rape and other forms of sexual violence and psychological torture, among others. Suju described what she referred to as the government's torture "script": where the intent determined the pattern of torture. For example, if the intent was to punish and intimidate, rather than obtain a confession, marks were deliberately left on the face, arms and/or legs. Suju presented quantitative data that in her view showed systematization of the repression of the Venezuelan regime.

Suju's testimony was corroborated in other witness testimony. Doris Coello told the story of her son Marco Coello, who was arbitrarily detained, tortured and forced to sign a false confession after participating in a street demonstration that took place in Caracas on February 12, 2014. After hearing an explosion during the protest, the 18 year old tried to seek refuge with a group of students but were cornered by a group of armed *colectivos* on motorcycles, wearing masks. Coello was hit by a tear gas canister at his waist and then attacked by a group of five individuals, who beat him with fire extinguishers and riot police helmets.

Coello was then detained and transferred to a station of the Scientific, Penal and Criminal Investigation Police (CICPC)¹¹⁵. He testified that during his detention he was subjected to torture and to cruel, inhuman and degrading treatment by members of the Venezuelan security agencies including both physical and psychological violence. Threatened with his life, officials tried to force him to sign a statement incriminating Leopoldo López for alleged criminal acts that had taken place that day. When Coello refused to sign the incriminating document, he was again tortured; electric shocks were applied to his body, and he was wrapped in a foam pad, kicked and hit with bats, a golf club and wooden sticks. A psychological assessment concluded that he suffers from post-traumatic stress as a result of the torture. Doris Coello denounced the denial of her son's rights and the complete lack of due process in the prosecution of her son.¹¹⁶

G. State Orchestrated Human Suffering

The testimony was not restricted to instances where individuals were systematically targeted; it also addressed how the Regime has targeted the civilian population as a whole. During his testimony, Carlos Vecchio noted that it was not only his political party that was being persecuted, but it was also all opposition

¹¹⁵ The Scientific, Penal, and Criminal Investigative Police (CICPC) is an investigative branch of the police under the Ministry of People's Power for the Interior, Justice, and Peace. The CICPC "is an agency that ensures that crimes are efficiently investigated on the basis of scientific evidence, so that criminal offenses can be effectively prosecuted, and justice soundly administered." The CICPC carries out procedures on the orders of the Ministry of Public Prosecution in order to investigate and find proof of the commission of crimes. <http://www.cicpc.gob.ve/index.php/12-servicios/27-quienes-somos.html>

¹¹⁶ Testimony of Doris Coello at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 17, 2017, <https://www.youtube.com/watch?v=iH9oh8SdhlU>

parties and any Venezuelans who questioned or were critical of the government. This discrimination involved the selective granting of subsidies and benefits, including the preferred access to medical supplies, food, hard currency and other services using the *carnet de la patria*, that determines who receives government benefits and who does not.¹¹⁷

Former member of the National Assembly of Venezuela, Walter Márquez, presented his preliminary analysis of the humanitarian crisis and whether or not it constituted a violation of the Rome Statute. Márquez argued that the lack of food and medicine, combined with the repeated refusal by the government to acknowledge the crisis and subsequent refusals to open channels for humanitarian assistance, including through the veto of the Law on the National Health Crisis, constituted a generalized and systematic attack that sought the extermination of a portion of the civilian population in Venezuela.¹¹⁸

Isaías Medina, a former Minister Counselor to the Permanent Mission of Venezuela to the United Nations, also argued that the omission, concealment, interference, tampering with information and denial of the humanitarian crisis in Venezuela – let alone the rejection of urgent humanitarian and medical relief – constitutes a crime against humanity, as set forth in article 7(k) of the Rome Statute.

Medina described the deterioration of Venezuela into a failed State with an outlaw government. He argued that the State's policy of rejecting humanitarian assistance and denying the humanitarian crisis is criminal and has caused the needless deaths of thousands of Venezuelans. Medina observed repeated efforts by the Foreign Ministry to tamper with data and statistics to hide and deny the humanitarian crisis. The persistent and pervasive refusal to accept medical and humanitarian assistance has resulted in large scale loss of life, including rising patterns of infant and maternal mortality, and skyrocketing levels of preventable diseases such as malaria and tuberculosis.¹¹⁹

Medina went on to describe a deliberate plan to limit access to imports of medicine, and to distribute assistance according to partisan, political criteria. Major General García Plaza, as the former Minister of Food of Venezuela, further elaborated on this strategy. According to the General, parishes selected for food distribution were originally determined according to poverty levels and extreme poverty indicators published by the National Institute of Statistics. However in 2015, he explained that the food subsidy criteria for the poor were replaced by political indicators. García Plaza went on to explain that parishes were instead prioritized on a political basis, using two indicators: voting population and level of sympathy

¹¹⁷ Testimony of Carlos Vecchio at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 17, 2017, <https://www.youtube.com/watch?v=iH9oh8SdhIU>

¹¹⁸ Testimony of Walter Márquez at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 17, 2017, <https://www.youtube.com/watch?v=iH9oh8SdhIU>

¹¹⁹ Testimony of Isaías Medina at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 16, 2017, <https://www.youtube.com/watch?v=ca5zYBQYcVE>

for the government. Parishes that were no longer a priority had their inventories of subsidized food depleted. When he raised this matter with President Maduro over telephone, the President told him that accomplishing both missions called for flexibility.¹²⁰

H. The Elimination of the Rule of Law: The Coopting and Intimidation of the Judiciary

The witness testimony also unmasked a systematic assault on the judiciary and the rule of law, including the imprisonment, torture, and forced exile of judges. Three of the witnesses were former members of the Venezuelan judiciary who testified to the lack of judicial independence and the accompanying assault on the rule of law. They described a judicial system that has been coopted or coerced into following orders from the Executive, beginning with the Supreme Court and including other levels of the judiciary and government prosecutors.

Ralenis Tovar, a former Judge for the Metropolitan Area of Caracas, described the techniques used to ensure that the judicial system is subservient in executing the orders of the Executive. During the hearing, she recounted her personal experience with the Government using threats and coercion to ensure she followed orders and produced their desired rulings.

In particular, Tovar detailed how she was coerced into signing arrest warrants for Leopoldo López and three others in February 2014. She explained as was usual, the coercion began with informal contact, in the case of López it was a phone call, during which the judges were instructed to commit a possibly irregular act. On that particular February 12, sometime after 10 pm, Tovar received a series of phone calls from an unknown phone number directing her to sign the warrants. This included a phone call from her superior, the President of the Supreme Court of Justice (TSJ), Gladys Gutiérrez, instructing her to comply with the earlier phone instructions.

Tovar described how military personnel had taken over the Court offices when she arrived including military intelligence officers, the SEBIN, and the National Guard. She was also struck by the presence of a large number of staff present and appeared to be waiting for her, in particular, four national public prosecutors. The police contingent led the then Judge to an office where the four prosecutors gave her a number of arrest warrants to be signed. The first two concerned people that Tovar did not know, but the third was a name she recognized: Leopoldo López.

¹²⁰ Testimony of Herbert García Plaza at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 15, 2017, <https://www.youtube.com/watch?v=cKmTJ79prKE>

When demurring over the arrest order, Judge Tovar was subject to psychological threats: “You want to be like another Judge Afiuni?” a judge who, as described earlier, was detained in 2009 and violently raped for not following the instructions of the Executive, and whose torture is commonly used as a threat to intimidate the judiciary as a whole. In an act that she said further demonstrated the lack of independence of the Justice System, at 22:30 hours, President Maduro announced on national media that a court had issued an arrest for Lopez, something that did not happen until two hours later. Once the arrests warrants were signed, Tovar was provided a police escort “for her safety.” After an attempt was made to kidnap her daughter from school, Tovar submitted her resignation, fled, and is now seeking asylum in Canada.¹²¹

Franklin Nieves, a former Prosecutor for the Ministry of Public Prosecution and the one responsible for the case of political leader Leopoldo Lopez; bluntly testified, “I was coerced by my superiors”. Nieves was ordered to the SEBIN offices to facilitate the opening of an investigation. He was received by the Director of SEBIN, who asked him to draft four arrest warrants, indicating that it was on the direct instructions of Nicolás Maduro, including a warrant for Leopoldo López. When Nieves asked for the requisite evidence needed to execute such a warrant, the Director of SEBIN tasked a police document to be written up on the spot. The Director of SEBIN ordered one of the officers to stay with him, “do not let the Doctor out of your sight; take him to his office so that he can print the arrest warrant.” Joel Espinoza, the Deputy Attorney General of Venezuela, gave Nieves the name of a judge who would legalize the warrant without asking questions. That is what in fact happened that very day, he said.

Seventy hearings were held in the Leopoldo Lopez trial, and 134 pieces of evidence were presented, and even so, the public prosecutors were unable to prove that Leopoldo López was guilty. Nevertheless on September 10, 2014, the court convicted three students and Lopez. Nieves argued that the arrest of Leopoldo Lopez was politically motivated that “there is not a shred of evidence to convict Lopez, and that he was falsely accused and convicted” and the only thing supporting the arrest warrant was the simple police document. He explained that Leopoldo Lopez was incarcerated because the government was afraid of his leadership, and that they put on a show of an investigation in order to remove him from the political arena. Nieves has also fled Venezuela and is seeking asylum in the United States.¹²²

Pedro Troconis, President of the Criminal Chamber of the Supreme Court of Justice of Venezuela in Exile, explained the circumstances surrounding the illegitimacy of the currently constituted Supreme Court in Caracas, contributing to the culture of impunity while acting as an express agent of the executive. He also described the systematic persecution of each of the 33 judges constitutionally appointed by the National

¹²¹ Testimony of Judge Ralenis Tovar at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 16, 2017, <https://www.youtube.com/watch?v=ca5zYBQYcVE>

¹²² Testimony of Franklin Nieves at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, November 16, 2017, <https://www.youtube.com/watch?v=g6zUBXprxQ4>

Assembly on July 21, 2017. On July 22, 2017 the SEBIN arrested Judge Angel Zerpa. On July 23, President Maduro publicly threatened the Judges with arrest, seizure of assets, and prohibition from leaving the country. Two days later, Judge Jesús Rojas Torres was arrested. While in detention at SEBIN headquarters and allegedly after being tortured, Judge Rojas retracted his oath of office. The SEBIN, coordinated from the capital by Director General Gustavo González López, attempted to detain in their homes, one by one, all of the Judges appointed under the provisions of the Constitution. Most escaped, fleeing to neighboring countries or seeking refuge and protection in embassies in Caracas.

I. Conclusions from the Hearings

The testimony delivered during the September to November 2017 hearings provides an introduction into the major human rights violations and crimes occurring in Venezuela. The hearings are indicative of the patterns of a systematic and widespread attack against a civilian population. These cases suggest the possible commission of the specific individual crimes against humanity typified in the Rome Statute.

In addition to the hearings, the General Secretariat of the OAS has received documentary evidence from a range of Venezuelan and international non-governmental organizations, as well as from private individuals, that detail in much greater depth the commission of crimes that may possibly constitute crimes against humanity.

The subsequent chapters of this Report will provide an overview of the information collected detailing the specific crimes that are believed to have taken place in Venezuela.

III. THE PLANS OF THE

GOVERNMENT AGAINST THE

“INTERNAL ENEMY”



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III. THE PLANS OF THE GOVERNMENT AGAINST THE “INTERNAL ENEMY”

In the Party Platform or Program “*Bases Programáticas*” of the United Sociality Party of Venezuela (*Partido Socialista Unido de Venezuela*: PSUV), approved by the First Special Congress of the party in April 2010, the governing party defined who were the friendly forces and enemies of the Bolivarian Revolution.¹²³ According to the document, the enemy forces include “any and all social sectors” which are opposed to the policies of the Government.¹²⁴ Consequently, with the words “any and all social sectors”, the PSUV identifies any sector, organization or individual, whose views are at odds with those of the governing party, as an enemy, real or imagined, who must be attacked.

Beginning in 2011, the “Plan Sucre, General Guidelines of the Development Plan of the Bolivarian National Armed Forces for the Comprehensive Defense of the Nation”, proposed to build a military force that responds to the interests of the government to maintain itself indefinitely in power, rather than serve the needs of the nation.¹²⁵ Thus, the hypothesis of an internal conflict is used as justification to adopt features typical of a totalitarian system.

Following the student protests that occurred in February and March 2014, a new policy was adopted called the Strategic Operational Plan Zamora, or *Plan Zamora*. This Plan was designed to empower security forces to effectively respond against “economic and political interests of powerful groups at the service of foreign powers” and against “new challenges when dealing with everything related to the notion of internal order.”¹²⁶

Plan Zamora identifies the “enemy” forces as those opposed “to the legally constituted system of government, who undertake destabilizing actions on national territory, in support of violent groups,” among others. It also describes potential threats to internal order, and the top three are the “destabilization of the political system, disloyalty to the ideas and the interests of the country, [and] the destabilizing actions of the opposition parties.”¹²⁷ Anyone whose opinion differs from the ideas or interests of the government is considered an enemy of the State.

¹²³ *Partido Socialista Unido de Venezuela*, “*Bases Programáticas del Partido Socialista Unido de Venezuela*”, Caracas, April 24, 2010, http://www.psuve.org.ve/wp-content/uploads/2010/06/Bases_program%C3%A1ticas.pdf

¹²⁴ Ibid.

¹²⁵ *Dirección de Geografía y Cartografía de la Fuerza Armada Nacional Bolivariana*, “*Plan “Sucre”, Líneas Generales del Plan de Desarrollo de la Fuerza Armada Nacional Bolivariana para la Defensa Integral de la Nación*”, March 24, 2011.

¹²⁶ *Comando Estratégico Operacional, Fuerzas Armadas Nacionales Bolivarianas, CEOFANB “Plan Estratégico Operacional Zamora”*, Caracas, D.C., April 9, 2014.

¹²⁷ Ibid.

Some of the factors cited in the Plan that supposedly contribute to the destabilization of the political system, include “pronouncements from national and international political actors against the management of the Revolutionary Government”; “national and international media campaigns organized by opposition actors [...] to discredit and disregard the powers of the legitimately constituted Government”; “incitement to strikes, protests and non-legitimate street actions in sectors of civil society, by extreme right-wing political actors;” and “media campaigns of extreme right-wing economic and political actors to manipulate and misinform the population, creating uncertainty and doubts undermining the Security of the Nation.”¹²⁸ The Plan allows Officers in charge of each of the eight Strategic Integral Defense Regions of Venezuela to activate the plan and turn the region into a theater of military operations to suppress the existing threat.

Another step to combat the internal enemy was adopted on January 23, 2015, when Minister of Defense General Vladimir Padrino Lopez issued resolution No. 008610, published in the Official Gazette of the Bolivarian Republic of Venezuela on January 27, 2015,¹²⁹ establishing a new model of military control of the public order, which in Article 22. 7 provides for the “use of potentially deadly force, either with a firearm or with another potentially deadly weapon.” In practice, this directive authorized the use of lethal force in the 2017 demonstrations, and served as a legal shield to ensure impunity for the murder of protesters by government security forces.

Also, in January 2017, President Maduro created the National Anti-Coup Command, led by Vice-president Tareck El Aissami. The Command is another tool created to repress the so-called “coup attempts to destabilize Venezuela”.¹³⁰ Its objective is to persecute, attack and intimidate the “internal enemy”. The National Anti-Coup Command is a politicized organization whose civilian and military members are loyal to the Bolivarian revolution. In addition to El Aissami, its members include: Carmen Meléndez, Vladimir Padrino López, Diosdado Cabello, Néstor Reverol, Gustavo González López, César Vega, Iván Hernández Dallas, y Franklin García Duque.¹³¹ When announcing the creation of the National Anti-Coup Command, President Maduro said that the structure would handle coup plans of all types, “I will delegate the battle against the coup d’état in a special anti-coup command, for peace and sovereignty... that will dedicate 24 a day to take preventive, legal and corrective measures against all coup supporters and terrorists within the country”.¹³²

128 Ibid.

129 Resolution No. 008610, published in Official Gazette of the Bolivarian Republic of Venezuela, Caracas, January 27, 2015, https://www.scribd.com/document/254224935/Gaceta-oficial-N%C2%BA-40-589-del-27-01-2015#from_embed

130 Telesur, “Presidente de Venezuela juramenta el Comando Antigolpe”, January 10, 2017, <https://www.telesurtv.net/news/Presidente-de-Venezuela-juramenta-el-Comando-Antigolpe-20170110-0040.html>

131 Ibid.

132 EFE, “Maduro creará un ‘Comando Antigolpe’ que será dirigido por el vicepresidente”, January, 8, 2017, <https://www.efe.com/efe/america/politica/maduro-creara-un-comando-antigolpe-que-sera-dirigido-por-el-vicepresidente/20000035-3142945>

This was not the first time that President Maduro activates an anti-coup command to worsen the repression against the opposition. In the context of the protests of 2014, in February that year President Maduro constituted and activated Popular Anti-Coup Commands to confront coup and fascist plans. The President declared then, “Be on alert, Popular Anti-coup Commands in every factory, in every workplace, in every neighborhood, in every university. We will defeat the fascist coup with the mobilization and organization of the people”.¹³³ On that instance Diosdado Cabello, who was then President of the National Assembly, led the Command. According to Chapter IV of the 2014 Annual Report of the IAHR, the commands were also integrated by the *Unidades de Batalla Bolívar-Chávez*, which are part of the party structure of the PSUV.¹³⁴

On April 1, 2017, hundreds of thousands of Venezuelans took to the streets throughout the country, in both urban and rural areas, as well as in the popular or working class sectors, to peacefully demand their right to vote and to protest Supreme Court decisions 155 and 156, whereby the TSJ attempted to assume the legal authority of the Venezuelan National Assembly. The Government responded by ordering the security apparatus to confront the demonstrators and put into practice the systematic practices of repression through the criminalization of the voices of the opposition and civil society, arbitrary detention, the use of military courts to try civilians, the excessive use of force against peaceful protests, torture, rape, and murder, all under the Plan Zamora, which was activated by President Maduro on April 19, 2017. The military plan was put into operation against the perceived internal enemy, as defined above, and the national territory was transformed into a military theater of operations in order to defeat, dominate, terrorize and force the disappearance of Venezuelans who dissent from the government. The objective was not to bring the demonstrations under control, but to violently crush them.

In July, 2017, a few days before the election of the illegitimate National Constituent Assembly, President Maduro blamed the opposition for the violence during the protests and announced that he would never accept the destruction of the Bolivarian revolution: “We will go into combat. We will never surrender! What could not be done with votes, we will do with arms, we will liberate our nation with arms!”¹³⁵

The ensuing increased violence unleashed against the demonstrators stands as proof of the President’s proclamation. According to the Venezuelan Green Cross, an apolitical group of medical students who organized and deployed to provide medical assistance to more than 5,000 persons injured during the 2017

¹³³ Telesur, “Venezuela instaló un Comando Nacional Antigolpe”, February 21, 2014, <https://www.telesur.net/news/Venezuela-instalo-un-Comando-Nacional-Antigolpe-20140221-0051.html>

¹³⁴ IAHR, “2014 Annual Report, Chapter IV Venezuela”, paragraph 390, <https://www.oas.org/es/cidh/docs/annual/2014/docs-es/annual2014-cap4venezuela.pdf>

¹³⁵ *El País*, “Maduro dice que lo que no logre con los votos, lo logrará con las armas”, June 28, 2017, https://elpais.com/internacional/2017/06/28/america/1498601188_429829.html

protests, the death toll rose dramatically in July 2017, as the protests spread, along with the number of cases of serious traumatic injury and death.¹³⁶ The use of firearms also increased during this period; in many instances the cartridges were altered to avoid leaving any ballistic fingerprint.¹³⁷

The violence unleashed by the government is reflected in hard data: during the 6,729 protests, which took place throughout the country between April 1 and July 31, 2017,¹³⁸ at least 105 people were murdered at the hands of the State or the *colectivos*.¹³⁹ It is estimated that the number of injured persons surpasses 15,000.¹⁴⁰ More than 5,400 people were arrested in the context of the demonstrations and 786 civilian demonstrators were illegally brought before military courts between April 2017 and March 31, 2018.¹⁴¹ The number of political prisoners jumped to its highest point on August 11, hitting 676, according to human rights organization, *Foro Penal*.¹⁴² Hundreds of people were tortured.¹⁴³

It is not the first time in Latin American that an authoritarian government conceived of a state of internal war against its civilian population; however, one would have to go back to the military dictatorships of the Southern Cone of South America in the 1970s in order to find parallels with current day Venezuela. It was during this period that *Plan Condor*, a coordinated international strategy to eliminate the leftist opposition in the middle of the Cold War, was conceived and implemented by the security services of the military dictatorships of Brazil, Argentina, Chile, Bolivia, Paraguay and Uruguay, in collaboration with the Central Intelligence Agency of the United States.¹⁴⁴

Those experiences shaped a new concept of war within the military apparatus. The enemy was not a foreign country planning an invasion. It did not carry a flag or wear a uniform.

The repression was illegal and indiscriminate. It usually took place at night, terrorizing the population. It was carried out by people in plainclothes, driving unmarked vehicles, with which they would abduct and

136 Testimony of Federica Dávila at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, November 16, 2017, <https://www.youtube.com/watch?v=g6zUBXprxQ4>

137 Ministry of Public Prosecution of the Bolivarian Republic of Venezuela, “Informe Comparativo Cartuchos Anti-motín”, April 24, 2017.

138 Observatorio Venezolano de Violencia, “Conflictividad Social en Venezuela en 2017”, <https://observatoriodeviolencia.org.ve/informe-ovv-de-violencia-2017>

139 See Chapter IV of this report on murder.

140 Diario Libre, “Oposición contabiliza 15,000 heridos tras 63 días de protestas en Venezuela”, June 2, 2017, <https://www.diariolibre.com/mundo/latinoamerica/oposicion-contabiliza-15-000-heridos-tras-63-dias-de-protestasen-venezuela-AN7249002>

141 Foro Penal, “Reporte Sobre la Represión en Venezuela”, December 2017, page 3, <https://foropenal.com/wp-content/uploads/2018/01/INFORME-REPRESION-DICIEMBRE-2017-1.pdf>; and, Foro Penal, “Reporte Sobre la Represión en Venezuela”, March 2018, page 3, <https://foropenal.com/wp-content/uploads/2018/04/INFORME-REPRESION-MARZO-2018.pdf>

142 Foro Penal, “Presos Políticos en Venezuela”, August 11, 2017.

143 See Chapter V of this report on torture.

144 Notimerica.com, “Qué es la Operación o el Plan Cóndor?”, September 18, 2017, <http://www.notiamerica.com/politica/noticia-operacion-condor-20151109112936.html>

take the victims away to secret holding facilities. There, they would be tortured, executed and then would disappear. This was not a conventional war, it was a “dirty” war in which thousands of people were killed or were disappeared.

It is crimes such as these that have taken place in Latin America and in other parts of the world that prompted the drafting of the Rome Statute in 1998, the founding instrument of the International Criminal Court. This statute defines the precise elements of crimes against humanity: systematic attack on a civilian population, which includes, *inter alia*, murder, and enforced disappearance of persons, rape and other forms of sexual violence, incarceration, torture and politically motivated persecution of a group, among other crimes.

In Venezuela, the Government has declared war against the civilian population that does not follow their ideology. The *Plan Sucre* turns the military institution into an army of ideological soldiers. It divides the country up into military regions, viewing it in terms of a “popular and prolonged” theater of war. The enemy is within; he is a civilian, who holds a “different” ideology.

These conceptual changes reemerge in *Plan Zamora*. Though it was devised by Maduro to keep protests at bay, the doctrinal principles set forth earlier in Plan Sucre are executed through it. Plan Zamora recasts the country as a “theater of operations” for the purpose of restoring the order against internal enemies. This category of enemies includes political opposition parties and forces, the supposed agents of the Empire disloyal to the ideas and interests of the Revolution. On July 18, 2017, Maduro also announced the launch of a new, “special plan for emergency justice” in which the Supreme Court of Justice, the Military Justice system, the GNB, and the Deputy Attorney General of the Republic would work together “for the search, and capture of all conspirators, and for exemplary punishment.”¹⁴⁵

The notion of an internal war against an internal civilian enemy is a central component of the design of a totalitarian public order. As with the dictatorships of the Southern Cone of South America, and the implementation of *Plan Condor*, the government of Venezuela has adopted the widespread and systematic use of repression and persecution as a political strategy to maintain power. *Plan Sucre* and *Plan Zamora* are Maduro’s version of *Plan Condor*. The governments of Hugo Chávez and Nicolás Maduro have turned politics into a class struggle, using inflated hostile rhetoric, daily war of words, and encouragement to persecute anyone whose ideas are not in line with Bolivarian ideology.

¹⁴⁵ YouTube, “Maduro anuncia activación de “Plan Especial de Justicia de Emergencia”, July 18, 2017, <https://www.youtube.com/watch?v=Ze5hIXmB8ZY>

IV. MURDER AS A CRIME

AGAINST HUMANITY



IV. MURDER AS A CRIME AGAINST HUMANITY

Pursuant to Article 7, paragraph 1, subsection (a) of the Rome Statute of the International Criminal Court, murder constitutes a crime against humanity, when it is committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

A. The Context of Violence in Venezuela

As reflected in the Second Report of the Secretary General on the Situation in Venezuela, by the end of 2016, more than 28,000 violent deaths had been reported in the country, making its homicide rate 91 per 100,000 inhabitants.¹⁴⁶ Each day 78 Venezuelans are killed, one death every 20 minutes, a chilling figure which surpasses the number of deaths per day of war-torn countries. Already in 2014, the city of Caracas had become the most violent city on the planet, according to the index of the world's most dangerous cities published by the Mexican NGO, the Citizens' Council for Public Security and Criminal Justice.¹⁴⁷

The context of extreme violence has been extensively described in the reports of several organizations, including the annual reports of the *Observatorio Venezolano de Violencia* (Venezuelan Violence Observatory, or OVV).¹⁴⁸ Until now, it had been characterized as a problem of public security; that is, insecurity in Venezuela had not previously been described as a State policy to exercise control over society. It is evident that the current rates of violence in Venezuela are, at least in a significant measure, a consequence of a State policy to terrorize and subdue the population to prevent the people from claiming their rights or expressing opposition to or criticism of the government.

In the public hearings on crimes against humanity in Venezuela conducted at the OAS on October 17, 2017, exiled Mayor of El Hatillo, Caracas, David Smolansky, explained that “there is a higher than 90% impunity rate [of homicides in the country], there is little investment in citizen security (in the 2016 budget, the military spending was four times higher than police spending) and the lack of functioning streetlights are major causes of the high rates of violence. With 70% of Caracas’s street lighting not working, darkness is

¹⁴⁶ According to a 2014 study by the United Nations Office on Drugs and Crime, the global average homicide rate in 2014 was 6.2 per 100,000. Global Study on Homicide, 2013, UNDOC, Global Study on Homicide, page 12, https://www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf

¹⁴⁷ OAS General Secretariat, “Second Report of the Secretary General on the Situation in Venezuela”, March 14, 2017, <http://www.oas.org/documents/eng/press/Informe-VZ-II-English-Final-Signed.pdf>

¹⁴⁸ *Observatorio Venezolano de Violencia*, “Informe OVV de Violencia 2017”, <https://observatoriodeviolencia.org.ve/informe-ovv-de-violencia-2017>; see also, International Crisis Group, “Violence in Politics in Venezuela”, August 17, 2011, <https://www.crisisgroup.org/latin-america-caribbean/andes/venezuela/violence-and-politics-venezuela>

the light of the criminal. With a judiciary that does not guarantee justice, an inefficient electrical system and laughable investment in citizen security, the national government has made crime a primary reason for emigration from Venezuela. Millions of Venezuelans have stopped enjoying public spaces for fear of becoming a victim of crime. Insecurity has become a State policy to exert social control.”¹⁴⁹

B. Extrajudicial Executions

Citizens not only fear becoming a victim of common crime, but also a victim of security forces. After the July 2015 implementation of Operation Liberation and Protection of the People (OLP) – a government security operation supposedly designed to address high crime rates - there has been a marked increase in the allegations of abuse of power and human rights violations.

The OLP is a security policy implemented in coordinated manner between the Bolivarian National Police, the Scientific, Penal, and Criminal Investigative Police, the Bolivarian National Intelligence Service and the Bolivarian National Guard, which turns citizens into military targets.¹⁵⁰ Although it was presented as if the operation’s objective was to restore peace for the residents of the working class neighborhoods, “it triggered an aggressive course of actions including targeted public attacks and criminalization of specific groups of persons accused of economic destabilization, *bachaqueo*¹⁵¹, paramilitary violence, among others, all practices that should be combatted through the use of governmental force. Thus began a process of rationalizing [the use of] excessive use of force against those who have been branded enemies of the people and who therefore deserve to be exterminated.”¹⁵²

According to the former Attorney General of Venezuela, Luisa Ortega Díaz, “operations were focused on particular neighborhoods in the major cities of the country which were the most impoverished. There, combined taskforces made up of different security agencies would take over public roads, usually at night or in the early hours of the morning, in order to prevent any mobilization of the population. Subsequently, they would use overwhelming and violent intrusion into residences when families would be asleep, destroying property, mistreating the residents and separating young men from their families, some of whom were executed by gunshot, and then concentrate their efforts on staging alleged confrontations where the victims were made to look like dangerous criminals, who had fired guns at the police forces. In

¹⁴⁹ Written testimony of David Smolansky’s for the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 17, 2017.

¹⁵⁰ RunRun.es, “OLP: La máscara del terror oficial en Venezuela”, <http://runrun.es/especiales/olp/>

¹⁵¹ A *bachaqueo* is the practice of buying subsidized food and products and reselling them on the black market at a significantly higher price.

¹⁵² Case file provided by the Attorney General of Venezuela, Luisa Ortega Díaz, to the International Criminal Court, November 16, 2017.

addition, during the course of these operations, hundreds and even thousands of simultaneous random detentions took place, where people were deprived of their liberty for several hours and even days, under the pretext of verifying their identity and police record.”¹⁵³

On November 16, 2017, Attorney General Ortega Díaz, who was by then dismissed by the National Constituent Assembly, publically stated that in 2015, 1,777 individuals were murdered by military and police agents, and in 2016, the figure rose to 4,667 people murdered by military and police officers. At the same time, she stated that as of June 2017, 1,846 had been reported murdered in 2017, “all under orders of the Executive [branch].”¹⁵⁴ This represents a total of 8,292 people who were murdered by their own government in two and a half years. The Attorney General included these figures in the report she submitted to the Prosecutor of the International Criminal Court.¹⁵⁵

Although a little lower, the figures from Venezuelan civil society also show the scale of the massacre of Venezuelan citizens at the hands of the State. According to a report published in 2017 by the respected human rights NGO, COFAVIC, between January 2012 and March 2017, there were 6385 extrajudicial executions, where the Venezuelan State is presumed to be either directly or indirectly responsible.¹⁵⁶ This Report includes testimonials given by the relatives of the victims of about 40 emblematic cases of alleged extrajudicial execution. According to COFAVIC, human rights crimes, including extrajudicial executions, torture, as well as cruel, inhuman and degrading treatment, have seen a significant and sustained increase. COFAVIC has followed the number of extrajudicial executions with concern as it has reported an 11% increase in the first quarter of 2017, as compared to the first quarter of 2016. The increased number coincides with widespread protests throughout the country by demonstrators demanding their political and civil rights. These extrajudicial executions are tantamount to a veritable massacre of the civilian population by agents of the State. Following are summaries of eight of the 40 cases documented in detail by COFAVIC:

From April to June 2013, CICPC officer harassed and threatened Darwilson and Arwilson Sequera (20-years-old and 24-years-old, respectively). Aracelys Librada, their mother, filed a complaint with the prosecutor’s office, but did not receive a reply. “Even now, I still don’t know why they killed my son,” she stated. During the first “visit” to her home, in Jardines de El Valle, Caracas, the police took their identity documents. On a second occasion, they arrived dressed in black and with their faces covered and they beat the elder of the two brothers. During a third intrusion, again without a warrant, they began to extort funds from the family. On their final visit, they beat on the door and the officers went up to the roof to reach Arwilson. When they took him away, he was alive. He was later found dead, shot three times.

¹⁵³ Ibid.

¹⁵⁴ *El País*, “La exfiscal de Venezuela acusa en La Haya al régimen de Maduro de cometer más de 8.000 asesinatos”, November 17, 2017, https://elpais.com/internacional/2017/11/16/america/1510850769_180858.html

¹⁵⁵ Case file provided by the Attorney General of Venezuela, Luisa Ortega Díaz, to the International Criminal Court, November 16, 2017, page 35.

¹⁵⁶ COFAVIC, “Venezuela, Ejecuciones Extrajudiciales, 40 historias de 6385 vidas ignoradas, 2012-2017”, page 60.

On May 8, 2014, according to the police, CICPC officers went to the Alta Florida area of Caracas after receiving a report that a suspect was loitering in the area. The police made a left-handed motorbike taxi driver who was at the scene kneel down and they killed him, shooting him four times at point blank range. The deceased, identified as 23-year-old José Gregorio Parada, was accused of shooting at the officers with a weapon they planted in his right hand.

On August 17, 2015, a CICPC squad killed 16-year-old Ángel Torrealba in Nueva Esparta State, in his sleep. They knocked down the door, invading a private family home without a warrant, and used excessive force against Torrealba's mother, father, and younger brother. "They left my 16-year-old son there dead, and Joel, aged 7, bathed in his brother's blood," their mother, Olga, recounted.

Clara Lira was informed that her 27-year-old son, Anthony Mejías Lara, appeared in a photo in which different youths were marked with an X. On January 8, 2016, in the Caracas' Macarao area, she heard a burst of gunfire and when she looked out, she saw a CICPC unit. The next morning, Clara identified the body of her younger son, 19-year-old Anderson José, who had been shot in the groin. His mother believes he was killed when the CIPCI confused him with his older brother. Three weeks later, on January 29, 2016, Anthony was also murdered during a People's Liberation Operation.

On January 29, 2016, 21-year-old Nelson Enrique García Oropeza was killed; shot twice, once in the head and once in the chest. He died on his mother's bed while talking on the phone with his fiancée, Danielys Perales. She heard the entire incident on the other end of the phone line: CICPC officers were shouting and beating on the door, and asking for "Gonzalito" (presumably the deceased's brother). Nelson opened the door, repeating "I give up ... don't shoot." Finally, she heard the shots that ended her fiancé's life.

On April 26, 2016, CICPC officers stormed a family home in the Cujicito area of San José de Cotiza, Caracas, removing articles from the home and evicting all the women and young children. That day, Oly Vargas, the family member who reported the incident, lost a son, grandson, and nephew. She heard shouts and shots and then the bodies of 16-year-old Illich Carrasco, 18-year-old Ricardo Marrero, and 22-year-old Ludvig Ramírez were taken out of the back of the house. "The police say the boys confronted them with grenades. They were just talking in the living room," Mrs. Vargas said.

On the morning of May 18, 2016, in Callejón Santa Bárbara de San Bernardino, with a similar pattern of forcing the women and children out of the house, CICPC police officers commandeered and occupied the home of Glory Tovar. They covered all windows and doors with sheets, and killed two of her children, a nephew, and a family friend: 28-year-old Darwin Gabriel Rojas Tovar, 19-year-old Carlos Jampier Castro Tovar, 25-year-old Roswil Ernesto Belisario Tovar, and 20-year-old Johandri Antonio Trujilio Núñez.

On March 10, 2017, as part of the People’s Liberation Operations, in El Valle parish, Capital District, police officers arrested, questioned, and killed 24-year-old Ángel Carrasguero in the middle of the street, a father of four with no criminal record.

Perhaps the most emblematic extrajudicial execution – due to the disproportionate use of force used and the celebrity of the victim – is case of CICPC officer, Oscar Pérez; a former military officer who rose up in rebellion against the government of President Maduro. On January 15, 2018, members of the Special Action Forces (FAES) of the National Police, the General Directorate of Military Counterintelligence, and the National Guard, along with *colectivos*, all took part in an operation against Pérez, when the place he was hiding in was discovered by authorities. The assault lasted for more than eight hours. Almost 600 troops were involved, using an arsenal of armored vehicles, anti-tank missiles, Russian-made RPG-7 rocket launchers, AK-103-rifles and pistols.¹⁵⁷

In videos circulating on social media, Pérez clearly indicated that he and his companions were surrendering to the authorities.¹⁵⁸ Police audio recordings of the operation that were delivered to and published by the news organization *Univisión* confirm that Pérez and his group had surrendered to GNB Major Rafael Bastardo, the commander of the National Bolivarian Police’s Special Actions Force that led the raid on the hideout.¹⁵⁹ [REDACTED]

[REDACTED] Oscar Pérez and José Pimentel with their hands tied behind their backs, walking out of the hideout escorted by two officers into the back of a military vehicle, and driven away.

Three hours after the police audio recordings were made, the bodies of Oscar Pérez and his companions, José Alejandro Díaz Pimentel, a former military counterintelligence officer; Abraham Israel Agostini, former police officer in the state of Aragua; Abraham and Jairo Lugo, brothers and former National Guard officers; Lisbeth Ramírez, wife of Jairo Lugo; and journalism student Daniel Soto, were all left in the Caracas Morgue with gunshot wounds to the head.¹⁶⁰ There is no doubt that they were executed shortly after they surrendered to the authorities.

¹⁵⁷ *El País*, “La oposición venezolana califica de ejecución extrajudicial la muerte de Óscar Pérez;”, January 19, 2018, <https://www.youtube.com/watch?v=liKOWRTahb4>

¹⁵⁸ YouTube, “Last Minutes of Oscar Perez!”, <https://www.youtube.com/watch?v=U4tWXDIF3Lc>; and, <https://www.youtube.com/watch?v=aLJEPB32jHI>; and, <https://www.youtube.com/watch?v=liKOWRTahb4>; and, <https://www.infobae.com/america/venezuela/2018/01/17/el-video-que-demuestra-que-oscar-perez-negocio-su-entrega-antes-de-ser-masacrado-por-las-fuerzas-de-nicolas-maduro/>

¹⁵⁹ *Univisión*, “EXCLUSIVE: “No-one shoot ... they’re surrendering.” Venezuelan police radio recording confirms Oscar Pérez was captured alive”, February 2, 2018, <https://www.univision.com/univision-news/latin-america/exclusive-no-one-shoot-theyre-surrendering-venezuelan-police-radio-recording-confirms-oscar-perez-was-captured-alive>

¹⁶⁰ *Ibid.*

This incident received international condemnation and prompted a group of former Heads of State and of Government who are members of the Democratic Initiative of Spain and the Americas (IDEA) to issue a *Declaration of Condemnation against the Crimes of the Dictatorship of Nicolás Maduro in Venezuela* “after learning, through public and widely disseminated means, of the summary and extrajudicial executions carried out by the military and paramilitary forces under his command, with the express consent of prominent collaborators of his regime.”¹⁶¹

Extrajudicial executions are recognized by international standards as the deliberate killing of a person by authorities, executed outside of or without the sanction of judicial proceedings or legal process. They constitute a form of repression where, through the physical elimination of a person, the punishment is intended be used as an example, using terror as a form of social control over the population, sowing mistrust and paralyzing the victims with fear, and decreasing the likelihood of dissent or engagement in activities of organization and protest.¹⁶²

The *Operation Liberation and Protection of the People* and all of the extrajudicial executions ordered by the government of Nicolás Maduro therefore constitute a widespread practice designed to instill terror and control the population, as part of a policy of repression to combat the internal enemy. This all takes place “under the direct orders of a government that chose to end to the lives of thousands of people and served as preamble to the repressive action that was displayed in 2017, when unrestrained force was used against the civilian population which came together at various demonstrations that took place on the streets of Venezuela”, said Attorney General Ortega.¹⁶³

C. Murders during the 2014 Demonstrations

The 2014 Annual Report of the Inter-American Commission on Human Rights and the report of the NGO COFAVIC, “Venezuela: Sentences of Silence,” among others, describe in detail the context and events surrounding the student protests of February-May 2014, that were violently put down by State security forces.¹⁶⁴ It is not the purpose of this report to recount these events.

This chapter will highlight that, during these protests, abusive and arbitrary repression led to the murders of demonstrators by State security forces and pro-government armed groups known as the *colectivos*. In

¹⁶¹ Idea, “Declaration of Condemnation of the Crimes of the Dictatorship of Nicolás Maduro in Venezuela,” January 17, 2018.

¹⁶² Ibid, page 127.

¹⁶³ Case file provided by the Attorney General of Venezuela, Luisa Ortega Díaz, to the International Criminal Court, November 16, 2017.

¹⁶⁴ IACHR, “2015 Annual Report, Chapter IV, Venezuela”, <http://www.oas.org/es/cidh/docs/anual/2014/docs-es/Anual2014-cap4Venezuela.pdf> ; and, COFAVIC, “Venezuela: Sentencias de silencio, informe situación de Derechos Humanos en Venezuela en el contacto de protestas estudiantiles de febrero-mayo 2014”, Caracas, October 2014.

the protests of 2014, there were at least 43 deaths of which at least 25 were murders of demonstrators or bystanders in the vicinity of the demonstrations against the government. In these cases – and in the cases of the murders of protesters in 2017 presented further below - references to “armed civilian groups” or similar references are often used interchangeably with the term *colectivos*.

Two of the cases warrant special mention, as the victims’ family members testified at the hearings organized by the General Secretariat of the OAS on September 14 and October 16, 2017. These are the cases of José Alejandro Márquez Fagundez, which was presented by his widow, Johanna Aguirre, and the case of Geraldine Moreno, which was presented by her mother, Rosa Orozco. A summary of these two cases follows:

1. José Alejandro Márquez Fagundez was a 43 year-old Systems Engineer at the time of his death. He was arrested by the National Guard on February 19, 2014, after recording the demonstrations taking place on Urdaneta Ave., in west Caracas, with his cellphone. Alejandro Márquez was in the vicinity of his place of residence, observing and recording protests that were taking place near his home the night of February 19, when demonstrators blocked the adjacent streets to Urdaneta Ave, in west Caracas. A GNB detail showed up and started to crackdown on the demonstrators, using teargas, shooting their weapons and chasing the protesters. Alejandro Márquez tried to run away and one of the guards fired at him from behind, missing Alejandro but causing him to slip and fall on the pavement. When he was caught by several uniformed officers they began to brutally kick him and beat him. He was forced into the GNB patrol car (still conscious, he got in on his own) and was dropped off at the *Dr. José María Vargas* hospital, where he was admitted with serious injuries on his head, neck, face and arms. The hospital did not have the capacity to treat him and he was transferred by ambulance to a private clinic where he died. The medical report from Vargas Hospital indicated that he had arrived at the hospital in a GNB patrol car, that he had arrived with coagulated facial cranial trauma, severe cerebral hemorrhaging and that a fracture was located in the hardest bone of the skull, the petrous part of the temporal bone. Witnesses later told his family members that the GNB continued to beat Márquez with the butt of their guns inside Vargas Hospital, even inside the X-ray room, and that it was the doctors who asked them to leave. Alejandro Márquez died on February 21 of cranioencephalic trauma.

Márquez’s wife, Johanna Aguirre, testified at the hearings of the OAS General Secretariat on crimes against humanity in Venezuela on September 14, 2017. The video testimony can be viewed at:

<https://www.youtube.com/watch?v=KRX0QaJPzRk&feature=youtu.be&t=1h54m58s>

2. Geraldine Moreno, a cytotechnology student at Arturo Michelena University, was 23 years old at the time of her death. On February 19, 2014 a *cacerolazo* (protest by banging pots and pans) had been called for 8:00 pm, and Geraldine had approached the doorway of her building where people were already banging their pots and pans. At this point, a motorized GNB unit arrived, firing their weapons and along with all the other demonstrators, Geraldine Moreno started to run to escape the bullets and

tried to enter her building, the *Bayona Country* residence, when one of the motorcycles caught up to her. The motorcycle was driven by Sergeant First Class Alexander Lopez Vargas, accompanied by Alvin Bonilla Rojas, who shot Geraldine just she was turning to look at them. Geraldine fell to the ground, face up, and Bonillas Rojas, reloaded his weapon and viciously shot Geraldine directly in the face, while according to witnesses, he was urged on by another member of the unit who shouted “give it to her, give it to her”. He then shot her one more time. The second and third gunshots were at point blank range. The member of the National Guard who killed her, intentionally shot her twice when she was defenseless and cornered by the motorcycle. When he returned to the Command post, as he got off the motorcycle he admitted having shot “that damn woman”, according to testimony provided to the Ministry of Public Prosecution by Officer Alexander Lopez Vargas, also a member of the GNB detail.

Geraldine Moreno underwent two emergency surgeries at *Metropolitano del Norte* hospital, and died two days later, on February 22, from the wounds caused by the gunshots to her face and skull. She also had wounds on her arm, wrist and the palm of her right hand. The cause of death reads verbatim: Herniation of cerebellar tonsil and respiratory cardiac arrest due to hemorrhaging, encephalic and ocular lesions and cerebral edema due to facial cranial fracture from firearm (shotgun) facial-cranial wound by multiple projectiles (shotgun pellets).

Geraldine Moreno’s mother, Rosa Orozco, testified about the murder of her daughter at the hearing on crimes against humanity in Venezuela organized by the OAS General Secretariat on October 16, 2017. The video of the testimony is available at:

<https://www.youtube.com/watch?v=fgxXGbTxEQg>

The other victims who were murdered in the 2014 protests, presented in chronological order, are:

3. Bassil Alejandro Da Costa Frias: (24-years-old) Died on February 12, 2014 from a gunshot wound he received during a student march, on Avenida Sur 11, on the block between Tracabordo and Monroy. Eight officers have been apprehended, including six members of the SEBIN, a Sergeant Major of the Venezuelan Army and a member of the National Police. The SEBIN officers are José Perdomo Camacho (the actual perpetrator of the crime), Manuel Pérez, Edgardo Lara Gómez, Héctor Rodríguez, Jimmy Sáez, Josner Márquez; the Army sergeant is Jonathan Rodríguez, and the PNB officer is Andry Jaspe. Only José Perdomo is still imprisoned. The 48th Control Court of Caracas ordered him to remain imprisoned on June 17, 2014, while the others were granted conditional release and were required to report to court on a weekly basis.
4. Juan Carlos Crisóstomo Montoya: (50 years old) Died on February 12, 2014 from a gunshot wound while he was in the vicinity of a student march, on Avenida Sur 11, on the block between Tracabordo and Monroy. The officers arrested in this case were the same individuals involved in the case of Bassil

Da Costa. Their preliminary hearings were held on the same date before the same judge (all of the accused were implicated in both cases). The charge for the murder of Juan Montoya against Officer Jose Perdomo was dismissed.

5. Roberto Redman: (26 years old) Died on February 12, 2014 from a gunshot wound received on Avenida San Ignacio de Loyola, and Avenida Uslar Pietri, in front of Ferrekel hardware store during a demonstration in the municipality of Chacao. No arrests have been reported in this case.
6. José Ernesto Méndez: (17 years old) He died on February 17, 2014, when he was run over at a protest on Avenida Perimetral de Carúpano, Plaza Miranda sector, in Carúpano, where another five (5) people also were injured. His alleged murderer was identified as a PDVSA (State owned oil company) worker, whose name is reportedly Rodolfo Sanz. No arrests have been made in this case.
7. Génesis Carmona: She was peacefully demonstrating when a group of armed men dressed in plainclothes arrived and opened fire on the demonstration. She died on February 19, 2014, from a gunshot to the head. The case was filed in Caracas and the motive is unknown. No arrests have been made.
8. Asdrúbal Jesús Rodríguez Araguayan: (26 years old) On February 19, 2014, officers of the Chacao Police Department apprehended the aforementioned citizen. He was later found dead, in the vicinity of Avenida Boyacá and Sebuacán. Two Chacao Policemen were arrested. The police are adamant that he was a common criminal.
9. Arturo Alexis Martínez: (58 years old) A member of the PSUV he died on February 20, 2014, as a result of a gunshot, which caused cranioencephalic trauma, as he was picking up rubble debris left at a roadblock, on Avenida Hernán Garmendía, diagonal cross street with Universidad Fermín Toro, Lara state.
10. Danny Joel Melgarejo Vargas: (20 years old) He died on February 22, 2014, after being stabbed repeatedly during a fight at a roadblock in Palo Gordo sector, Municipality of Cárdenas, Táchira state. A juvenile has been arrested for this crime.

- 11.** Wilmer Juan Carballo Amaya (41 years old) On February 24, 2014, he was murdered at the entrance to the residential subdivision *La Fundación*, Cagua, Aragua State, when he was shot in the head allegedly by a group of *colectivos* riding on motorcycles. No arrests were reported in this case.

- 12.** Jimmy Erwill Vargas González: (32 years old) He died on February 24, 2014, as a result of cranioencephalic trauma, after falling from the second floor of the Camino Real building, located on Avenida Pueblo Nuevo, San Cristóbal, in Táchira state. The government claims he fell. His mother contends that the fall was caused by a gunshot from the GNB. No arrests have been made in this case.

- 13.** Sergeant Giovanni Pantoja: He was with another five officers on February 28, 2014 confronting a group of demonstrators in Mañongo, Carabobo state, when armed civilians appeared and opened fire, killing him and wounding another. Pedro Guerra was charged and was under house arrest.

- 14.** José Gregorio Amaris Castillo: (25-years-old) The motorcycle taxi driver died on March 6, 2014 from a bullet wound received during a confrontation between residents and motorcycle officers in Los Ruices. No arrests have been reported in this case.

- 15.** Giselle Rubilar: (47 years old) A Chilean citizen, she was shot in the left eye on March 9, 2014 while moving rubble from a roadblock in Mérida. No arrests have been made in this case.

- 16.** Mariana Ceballos: She was run over while she was at a roadblock protest in Prebo, Valencia, Carabobo state, on March 10, 2014, by an individual driving an SUV who deliberately ran her over. Kenet Martínez, the alleged perpetrator of the crime was arrested and imprisoned.

- 17.** Daniel Tinoco: He was a student leader shot in the chest by an armed civilian on motorcycles in San Cristobal, state of Táchira, on March 10, 2014.

- 18.** Jesús (Jesse) Acosta: The student was in the yard of his home in La Isabelica, Valencia, Carabobo state, on March 12, 2014, when a group of armed civilians arrived and opened fire, shooting him in the head.

19. Guillermo Sánchez: He was murdered by a group of individuals riding on motorcycles on March 12, in La Isabelica, Valencia, Carabobo state. The neighbors observed that it was a group of armed men from the pro-government *colectivos*. He was beaten repeatedly before he was given the “coup de grace.” No arrests have been reported in this case.

20. Anthony Rojas: A second year mechanical engineering student at the National Experimental University of Táchira, he was murdered on March 18, 2014 by a gunshot to the face, allegedly by armed groups on motorcycles who were trying to disperse the protests.

21. Wilfredo Rey: Died on March 21 in Barrio Sucre, San Cristóbal, Táchira state, after being shot in the head during alleged attacks by pro-government *colectivos* on the homes of opposition members who were continuing to participate in street protests. No arrests have been made.

22. Argenis Hernández: He was killed by a gunshot on March 22, 2014, allegedly by a civilian who drove by on a motorcycle, while protesting in San Diego, Carabobo state. To date, no arrests have been made.

23. Jesús Orlando Labrador (40 years old) He died March 22, 2014, after being shot with a firearm in the thorax during an attack by pro-government *colectivos* when they entered the neighborhood of Cardenal Quintero of Merida and opened fire on demonstrators. No arrests have been made in this case.

24. Adriana Urquiola. The journalist was murdered on March 23, 2014, in the vicinity of a roadblock near Los Nuevos Teques. Her murderer was identified as Yonny Eduardo Bolívar Jiménez, who confessed to firing “into the air” and that “he did not try to kill anyone.”

25. Josué Farías. (19 years old) The student of the Dr. Rafael Belloso Chacín University in Maracaibo was shot on May 29, 2014, while at a protest taking place at his university. After undergoing several operations he died of respiratory failure on June 21, 2014 at the Intensive Care Unit of the *Sagrada Familia* clinic where he was taken. It was indicated that PNB officers were reportedly responsible for his death. No arrests have been made in this case.

D. Murders during the 2017 Demonstrations

Hundreds of thousands of Venezuelans once again took to the streets on April 1, 2017. The trigger was decisions 155 and 156 by the TSJ, issued on March 29, in which the court assumed the authorities of the National Assembly. Although these decisions were revised in the following days, citizens throughout the country continued to protest against this abuse, demanding their right to vote, the opening of a channel for humanitarian assistance, the release of political prisoners and the setting of an electoral calendar. The events and circumstances that led citizens nation-wide to openly protest the loss of democracy and the rule of law in Venezuela during this period are fully documented in the Second and Third Reports of the Secretary General on the Situation in Venezuela.¹⁶⁵

In response to the 6729 protests that occurred between April 1 and July 31, 2017¹⁶⁶, the Government ordered the security apparatus to confront demonstrators. The crackdown was not the result of, or collection of a series isolated or random acts. Under direct orders from President Maduro himself, the cabinet and the military commanders implemented a systematic practice of repression and the excessive use of force, including the murder of peaceful protesters. This was not a collection of coincidences. These were calculated actions taken by a dictatorship desperate to hold onto power. The Regime created a ‘new normal’, where the State uses systematic institutional violence in a ‘dirty war’ against its people.

According to Foro Penal, in Venezuela, between April 1, 2014 and September 18, 2017, 177 individuals lost their lives in the context of different demonstrations and protests, as a direct consequence of acts of repression by security agents, or *colectivos* acting with absolute impunity and under the aegis of the State security forces in Venezuela.¹⁶⁷ According to several sources, at least 131 of these people were murdered directly as part of the crackdown against demonstrations by security agents and armed civilians acting outside of the law, or died as a consequence of a gross human rights violation, when they were arbitrarily detained and were denied their rights, including timely medical care.¹⁶⁸

The circumstances around the murders in the context of the demonstrations of 2017, and the alleged perpetrators of each of these murders are described below:

¹⁶⁵ OAS General Secretariat, “Second Report of the Secretary General on the Situation in Venezuela”, March 14, 2017, <http://www.oas.org/documents/eng/press/Informe-VZ-II-English-Final-Signed.pdf>; and, OAS General Secretariat, “Third Report of the Secretary General on the Situation in Venezuela”, July 19, 2017, <http://www.oas.org/documents/eng/press/TERCER-INFORME-VENEZUELA-ENGLISH-Final-signed.pdf>

¹⁶⁶ Venezuelan Violence Observatory, “*Conflictividad Social en Venezuela en 2017*”, <https://observatoriodeviolencia.org.ve/informe-ovv-de-violencia-2017>

¹⁶⁷ Confidential report of *Foro Penal*, delivered to the OAS General Secretariat, December 7, 2017.

¹⁶⁸ Complaint of Attorney General of Venezuela, Luisa Ortega Diaz, before the International Criminal Court, November 6, 2017; and, Confidential report of *Foro Penal*, delivered to the OAS General Secretariat, December 7; Confidential report of Melanio Escobar, Director *RedesAyuda / Humano Derecho* Radio Station.

- 26.** On April 06, 2017, 19-year-old Jairo Johan Ortiz Bustamante, a student of the National Experimental Poly-technical University of Caracas, died from a gunshot, while participating in a demonstration in the town of Carrizal, Miranda state. The independent investigation conducted by the Office of the Public Prosecutor was able to determine that the individual who fired these shots was a Bolivarian National Police officer named Rohenluis Leonel Rojas Mara. Rojas Mara had brandished his standard issue weapon and fired multiple shots into a group of 81 young people demonstrating in the street, despite a constitutional provision banned the use of firearms for the control of demonstrations.
- 27.** On April 10, 2017, 20-year-old Daniel Alejandro Queliz Araca, an only child and third year law student at Arturo Michelena University, in San Diego, Carabobo state, was killed by a gunshot wound to his neck, at a demonstration that was taking place in the residential subdivision of Los Parques, parish of Miguel Peña, Municipality of Valencia, in Carabobo state. The investigation carried out by the Office of the Public Prosecutor found that police officers Marcos Ojeda and Edwin Romero, members of the Carabobo State Police, brandished their standard issue weapons and fired on the demonstrators, hitting the young man, who died instantly.
- 28.** On April 11, 2017, Miguel Ángel Colmenarez Milano, a 36-year-old merchant who sold filters for vehicles in a family-owned business, was killed while observing a demonstration on Calle 59 of Barrio Nuevo, Barquisimeto, in Lara state. He was intercepted by several men, who stripped him of his belongings, and threw two explosive devices known as stun grenades at him, and then fired at him with a shotgun.
- 29.** Also on April 11, 2017, 14-year-old Brayan David Principal Gimenez, was in his third year of high school, was observing a citizen protest in the residential development Alí Primera of El Cují parish, Barquisimeto, Lara state, when he was killed. Principal Gimenez died from a gunshot wound which caused internal hemorrhaging and visceral vascular rupture, from shots that allegedly came from armed civilians in a moving vehicle. The Ministry of Public Prosecution was able to identify the perpetrator and Yohan Zapata was apprehended.
- 30.** On the same date, a Bolivarian National Guardsman shot 32-year-old Gruseney Antonio Canelón Scirpatempo, an athlete, who made a living selling car parts. Known as Tony by his friends and relatives, he was wounded by several gunshots on April 11, 2017, when he was passing through the area of a demonstration that was taking place in Bellas Artes de Cabudare neighborhood of Lara state. After Bolivarian National Guard officers fired at him with a shotgun at point blank range; he was apprehended and taken to a detention facility, instead of a hospital for treatment. Already close to death, he was finally transported to the Hospital Central Antonio Pineda of Barquisimeto, where he died on April 13. The 85th national prosecutor and the 21st prosecutor of Lara state were commissioned to investigate

this crime, which requested and was granted 14 arrest warrants of officers assigned to the Bolivarian National Guard. The officers were never apprehended because of the protection they enjoy from the General Commander of the National Guard and from the Minister of Internal Relations, Justice and Peace.

- 31.** On April 19, 2017, 17-year-old Carlos José Moreno Barón, a first semester economics student at the Central University of Caracas, was killed at a rally taking place in *Plaza de la Estrella*, San Bernardino, in Caracas. A soccer player, he lived with his mother and sister. The teenager was wounded by a gunshot in his cephalic region when a group of armed civilians hurled teargas canisters and fired their guns at those participating in the rally, wounding the aforementioned teenager and an adult present. Both of them were taken to the *Hospital de Clínicas*, Caracas, where Moreno Barón died. The investigation conducted by the Office of the Public Prosecutor was successful in identifying the shooter as an officer of the Municipal Police of Sucre, who also belongs to *Colectivo 5 de Marzo*, and had been dressed in plainclothes to infiltrate the demonstration, based out of the area of Cotiza.
- 32.** That same April 19, 23-year-old Paola Andreína Ramírez Gómez, a student at the Catholic University of San Cristóbal, was killed in the vicinity of the *Plaza de Las Palomas* of the neighborhood of San Carlos, Táchira state, when she was intercepted by several armed civilians on motorcycles “patrolling” the demonstrations taking place in the area. They tried to strip her of her belongings, and as she tried to run away she was struck down by a bullet that perforated her lungs.
- 33.** On April 20, 2017, 16-year-old Albert Rodríguez, a high school student, died on Calle San Andrés, El Valle where he lived with his mother. He suffered from cardiac pathologies and, consequently, led a subdued lifestyle. He was killed that day as he was leaving the house with his uncle. As they reached the first floor of the building, he inhaled teargas that had been released into the air as part of the crackdown by the Bolivarian National Police against the residents of the area. The teargas triggered respiratory complications in Rodríguez causing a heart attack. He was immediately transported to Hospital *Materno Infantil* in El Valle, where he died.
- 34.** During the demonstrations of April 20 in the residential subdivision of El Valle, 28-year-old Ramón Ernesto Martínez Cegarra, a merchant who made a living selling empanadas and fresh juices at a local shop he owned, was killed leaving behind three orphaned children. He was at home the day of his death, but headed to his shop to assess the situation when he heard about looting taking place in the El Valle sector. As he was approaching his store, he exchanged words with some armed civilians, who subsequently shot him.

- 35.** In similar circumstances, on that same date, a 34-year-old bricklayer's assistant, Francisco Javier González Núñez, was killed when he was shot at a demonstration on calle Cajigal, El Valle. He was transported to the hospital *Clínico Universitario*, where he was pronounced dead on arrival.
- 36.** Also during the April 20 demonstrations that took place in the area of El Valle, 19-year-old Kevin Steven León Garzón was shot. He was at a demonstration in front of the Juan Manuel Cajigal residence of Avenida Intercomunal, El Valle, when he sustained a gunshot wound to the head, which fractured his skull.
- 37.** On April 20, 2017, a group of individuals demonstrating in the area around the Francisco Fajardo highway, specifically in the vicinity of the *5 de Julio* neighborhood of Petare, when they were confronted by officers of the Bolivarian National Police and the Bolivarian National Guard, who fired shotguns and teargas into the crowd. The 25-year-old Mervins Fernando Guitian Díaz, who worked as a public works maintenance supervisor in the Mayor's Office of the Municipality of Sucre, Miranda state, was killed by a shot to his abdomen with projectiles that turned out to be a screw and a nut.
- 38.** Also, on April 19, 2017, 48-year-old Almelina Carrillo Virgüez, who had been working as a housekeeper at the *Arboleda* clinic since 1999, was killed on her way to work. She was passing the corner of La Esmeralda, parish of Candelaria, when a bottle of frozen liquid was thrown from inside one of the buildings, hitting her head and causing severe cranioencephalic trauma. She was transported to the *Arboleda* clinic in San Bernardino, where she passed away four days later. Jesús Juan Albi Zambito was identified and accused as the perpetrator of this crime.
- 39.** On April 24, 41-year-old Jesús Leonardo Sulbarán, a criminologist who worked at the State Directorate of the Popular Power for Comprehensive Policy of the Government of Mérida state, was killed after being shot several times on Avenida Las Américas, and Viaducto Campo Elías, Mérida state, when a group of armed civilians fired gunshots into a demonstration that was taking place.
- 40.** That same day, in the same area, 52-year-old Luis Alberto Márquez, was killed in identical circumstances by a gunshot to the occipital region. He worked as a gardener at the School of Sciences of the University of the Andes.
- 41.** On April 24, 2017, 54-year-old Renzo Jesús Rodríguez Rodas was murdered leaving behind one son. He had worked in the field of malariology for 28 years. At the time of his death, Rodríguez Rodas was at a pharmacy on Avenida Intercomunal of Barinitas purchasing medication for his wife. He was shot and killed by gunfire in the left pectoral region, when a demonstration march passed by the location. The

investigation conducted by the Ministry of Public Prosecution identified members of armed civilian *colectivos*, who were firing on the demonstrators, as the perpetrators of his murder. Eight arrest warrants have been issued for this case and so far three individuals have been arrested.

42. On April 25, 22-year-old Orlando Johan Josep Medina Aguilar, a porter at the high school Liceo Seferino Castillo del Tocuyo, Lara state, was murdered. He was at a demonstration on Avenida Lisandro Alvarado, when he was shot and sustained cranioencephalic trauma. The Office of the Public Prosecutor was able to identify the perpetrators, for whom an arrest warrant was issued.
43. On April 25, 2017, 22-year-old citizen Christian Humberto Ochoa Soriano, who was studying to be an electrician, was murdered by a police officer of Carabobo state. He was in the alleyway Callejón Rómulo Gallegos, Francisco de Miranda neighborhood, in Valencia, Carabobo state, during a protest that was taking place in the adjacent area, when state police officers, burst onto the scene firing indiscriminately into the crowd. One of their gunshots hitting him in his abdominal area. The Office of the Public Prosecutor was able to identify the perpetrating officers, and the 35th Prosecuting Attorney of Carabobo state brought charges against one member of the regional police department.
44. On April 26, 2017, 20-year-old citizen Juan Pablo Pernaletе Llovera, a second semester accounting student at *La Universidad Metropolitana*, and a member of the basketball team on a sports scholarship, was murdered at a demonstration in Altamira. Pernaletе Llovera was wounded by a teargas cartridge shot directly at his thorax by an officer of the Bolivarian National Guard. The impact caused him to fall into cardiogenic shock and he was immediately transported to a medical facility of the Municipality of Chacao, Miranda state. He was pronounced dead on arrival.

The parents of Juan Pablo Pernaletе Llovera, José Pernaletе and Elvira Llovera, testified about the murder of their son at the November 16 hearing of the General Secretariat of the OAS. Their video testimony can be seen at:

https://www.youtube.com/watch?v=UkE29_b9DB0

45. On April 26, 2017, 20-year-old Eyker Daniel Rojas Gil was murdered by officers of the Bolivarian National Guard, leaving behind an eight-month-old son. He was at a demonstration on a public roadway of the parish of *Concepción de Barquisimeto* in Lara state, when members of the Bolivarian National Guard arrived on the scene firing their guns on the unarmed civilian population. A bullet struck him in the head in the left temporal region. He was transported to the social security medical facility Pastor Oropeza, Barquisimeto, where he died.

- 46.** On May 02, 2017, 28-year-old citizen Ángel Enrique Moreira González, a former member of the national swim team was murdered as he was at a protest crossing Prados del Este highway in the Municipality of Baruta, Miranda state, in the city of Caracas. Moreira Gonzalez was driving a motorcycle, when the driver of a motor vehicle trying to get through the human roadblock, accelerated to run over the demonstrators, hitting and killing him.
- 47.** On May 03, 2017, 18-year-old Armando Cañizales Carrillo, a young violinist who was a member of the National Symphonic Orchestra System of Venezuela, was murdered by a member of the Bolivarian National Guard. Cañizales Carillo was just beginning his studies at the School of Medicine of the Central University of Venezuela. Taking part in a demonstration on Avenida Río de Janeiro, at the intersection of Calle Jalisco, Las Mercedes, Caracas, he was shot by a spherical metallic projectile, which entered at the base of his neck.
- 48.** May 03, 2017, 38-year-old police officer of the municipality of San Joaquín of Carabobo state Gerardo José Barrera Alonso was murdered. He was on-duty during a demonstration, trying to prevent people from breaking into commercial establishments in the neighborhood, when several men fired multiple gunshots, wounding him in the right femur. He was transported to the Hospital Central de Maracay, Aragua state, where he underwent an operation, but died the next day.
- 49.** On May 04, 2017, 20-year-old student Hecder Vladimir Lugo Pérez was murdered at a demonstration on Avenida Don Julio Centeno, adjacent to the residential complex of Los Tulipanes, in San Diego, Carabobo state. He was shot and wounded in the right frontal region with the bullet egress through his left parietal, when a group of police officers fired on the demonstrators.
- 50.** On May 08, 2017, 31-year-old Anderson Enrique Dugarte Dugarte, who worked as a motorcycle taxi driver, was taking part in a demonstration on Calle 26, and Viaducto Campo Elías, Mérida state, when a group of armed civilians opened fire on the demonstrators. He was wounded in his right temporal region by a projectile fired by a gun.
- 51.** On May 11, 2017, 27-year-old Miguel Fernando Castillo Bracho, a social media broadcaster specializing in audiovisual communications, and a graduate of Santa Maria University, was murdered by officers of the Bolivarian National Guard on the main street of Las Mercedes, municipality of Baruta, Caracas. The GNB were firing metallic spheres, which struck him in the left intercostal area.

52. On May 15, 2017, 18-year-old Luis José Alviarez Chacón was murdered by members of the Bolivarian National Police. He was an only child, a high school graduate and a competitive table tennis player. During a demonstration in the parish of Palmira of the municipality of Guásimos, Táchira state, officers of the Bolivarian National Police opened fire on demonstrators, hitting him with a bullet in the thorax. He was transported to the Hospital de Fundahosta where he died. In this case, the Ministry of Public Prosecution was able to identify two Bolivarian National Policemen as the perpetrators.
53. On May 15, 2017, 17-year-old hardware store clerk Yeison Nathannael Mora Castillo was murdered at a demonstration in the parish of Ciudad Bolivia, municipality of Pedraza, Barinas state, when he was hit by a gunshot in the right infra-orbital region, after officers of the Bolivarian National Guard opened fire on the crowd. He was transported to Hospital Dr. Luis Razetti, where he underwent emergency surgery and died the following day.
54. On May 16, 2017, 32-year-old Diego Armando Hernández Barón was murdered. He held a degree in Business Administration, specialized in Accounting and Finance, and worked as a motorcycle taxi driver. He was at a demonstration on the diagonal street to the Plaza Bolívar, Municipality of Capacho Nuevo, Táchira state, when he was shot in the thorax. In this case, the Office of the Public Prosecutor has been able to identify the perpetrator as Luis Oviedo Ávila, a Táchira State Policeman who fired on the demonstrators.
55. On May 16, 2017, 31-year-old biologist Diego Fernando Arellano De Figueredo was murdered at the entrance to residential subdivision Los Castores, on Av. Perimetral San Antonio de Los Altos, municipality of Los Salías, Miranda state. He was shot in the thorax by members of the Bolivarian National Guard who were firing indiscriminately. After the incident, the victim was transported to the *El Retiro* clinic, where he passed away.
56. On May 16, 2017, 15-year-old Jose Francisco Guerrero Contreras was murdered. The teenager construction worker had six siblings. He was in a food market located in the Sabaneta sector, parish of La Concordia, San Cristóbal, Táchira state, where a demonstration was taking place, when he was shot in the left inferior umbilical region. He was transported to *Dr. José María Vargas* hospital, where he died the next day.

57. On May 17, 2017, Manuel Felipe Castellanos Molina, a 48-year-old merchant married with three children, was murdered by officers of the Bolivarian National Guard. He was at the food market in Tucapé, municipality of Cárdenas, Táchira state, where a roadblock protest demonstration was taking place. Officers of the Bolivarian National Guard fired multiple shots at the demonstrators, hitting the victim in the neck. In this case, the Office of the Public Prosecutor was able to identify three officers belonging to the Bolivarian National Guard as the perpetrator of these crimes.
58. On May 18, 24-year-old student Paúl René Moreno Camacho was murdered. He was in his fifth year of medicine at the University of Zulia, working as a paramedic and a volunteer member with the group providing humanitarian first aid services at the protests. He was in the vicinity of Avenida Fuerzas Armadas of the city of Maracaibo, Zulia state, when an individual driving a vehicle rammed the roadblock hitting and killing Moreno Camacho, in a hit and run. The victim was transported to the *Adolfo Pons* hospital, where he died.
59. On May 18, 2017, 18-year-old Daniel Rodríguez Quevedo, a university student in his first year of law school at the Catholic University of Táchira, was killed on the main avenue of Santa Ana, at a protest in the residential neighborhood of Venecia, municipality of Córdoba, Táchira state. Rodríguez Quevedo was killed when several armed civilians riding motorcycles opened fire on them, hitting the victim in the cephalic region. He was immediately transported to Hospital Central, where he died.
60. On May 15, 2017, 37-year-old Jorge David Escandón Chiquito was killed. He had a university degree in citizen security and was completing a master's degree program in labor administration. He worked as a police officer and served as Adjunct Supervisor of the State Police of Carabobo, assigned to the Motorized Brigade of Naguanagua. He was at the subdivision of *Conjunto Residencial Palma Real*, Naguanagua, Carabobo state, where a confrontation broke out during a demonstration that was taking place. Escandón was wounded in the cephalic region by a gunshot. He was transported to Hospital Metropolitana del Norte, where he died on May 19, 2017.
61. On May 20, 2017, 22-year-old Edy Alejandro Terán Aguilar, a fifth semester student of human resources administration at Simón Rodríguez University, was murdered. He was in the El Murachí sector of the parish of Mercedes Díaz, Valera, Trujillo state, when unknown armed civilians fired their weapons at the demonstrators. Terán Aguilar was hit by a projectile shot from a firearm, causing cardiac perforation. He was immediately transported to the *Central* hospital, Valera, where he died.

62. On May 22, 2017, 18-year-old Yorman Alí Bervecia Cabeza was murdered. He was on Avenida Cuatricentenario of the city of Barinas, state of Barinas, when during a demonstration several individuals began to attack the 33rd detachment of Bolivarian National Guard in protest of the indiscriminate repression that was taking place on a daily basis against the civilian population. During this confrontation, the young man was shot in the left side of his thoracic cage, causing his death.
63. On May 22, 2017, 20-year-old Elvis Adonis Montilla Pérez, a student at Francisco de Miranda de Coro University, Falcon state, was murdered. He was on Avenida Los Llanos during a demonstration in front of the residential subdivision Palma de Oro, parish of Alto Barinas, state of Barinas, when he was hit in his pectoral region by a gunshot fired by an individual wearing a hood who was shooting at the demonstrators.
64. Also on May 22, 2017, 25-year-old citizen Alfredo José Briceño Carrizales was killed. At approximately 7:30 pm he was at a demonstration taking place across from his residence on Calle Cedeño, Barinas state, when he was hit in his left intercostal region, by a projectile shot from a firearm.
65. On May 22, 2017, 25-year-old construction worker Miguel Ángel Bravo Ramírez was murdered in the Plaza Bolívar, Socopó, parish of Ticoporo, Municipality of Antonio José de Sucre, in Barinas state. He was shot several times by policemen who were firing into the demonstration. He died as he was being transported to the clinic San José at Hospital Dr. Luis Razetti.
66. Under the same circumstances, 21-year-old Freiber Darío Pérez Vielma died on May 22, 2017 as he was taking part in a demonstration in the village of La Mula, parish of Dominga Ortiz de Páez, Barinas state. He was wounded by a gunshot to his lung. He was immediately transported to *Dr. Luis Razetti* Hospital, where he died.
67. Likewise, on May 23, 2017, 21-year-old volleyball player and bakery worker Juan Antonio Sánchez Suárez was murdered in Barinas, at a demonstration in the *José Antonio Páez* residential subdivision, parish of Rómulo Betancourt, Barinas state. He was shot twice, once in the pectoral region and once in the intercostal region. He was transported to Hospital Dr. Luis Razetti where he died.

- 68.** On May 23, 2017, 35-year-old restaurant worker Erick Antonio Molina Contreras died from a gunshot wound, leaving behind three orphaned children. He was at a demonstration in Los Próceres, parish of Corazón de Jesús, Barinas, where he was wounded by a gunshot in the scapular region. He was transported to Dr. Luis Razetti Hospital, where he subsequently died.
- 69.** On May 24, 2017, 22-year-old fourth year medical student at Universidad de Oriente (UDO) Augusto Sergio Puga Velásquez was murdered by officers of the Bolívar State Police. Puga Velásquez was near of the UDO dean's office, in the parish of Catedral, municipality of Heres, Bolívar state, where a demonstration was taking place and State police who were cracking down burst onto the university campus firing indiscriminately at demonstrators, when a bullet hit the victim in the cephalic region, causing his death.
- 70.** On May 24, 2017, 23-year old accountant Adrian José Duque Bravo, was killed at a demonstration taking place at Torres del Saladillo, located on Avenida Padilla de Maracaibo, Zulia state. He was hit in the left abdominal region with what turned out to be a glass sphere. He was immediately transported to *Chiquinquirá* hospital, where he died.
- 71.** On May 25, 2017, 33-year-old quality control worker at a food manufacturer in Cabudare Manuel Alejandro Sosa Aponte was murdered by officers of the Bolivarian National Guard. His death orphaned a 5-year-old child. He was at a demonstration in the residential subdivision of Valle Hondo, parish of Cabudare, Lara state, when he was shot in the neck with a 9mm bullet by a Bolivarian National Guardsman, who was firing indiscriminately on the demonstrators. He was immediately transported to Los Leones Surgical Center, in Barquisimeto, where he later passed away following an unsuccessful emergency surgery.
- 72.** On May 27, 2017, 34-year-old retired member of the National Guard, who had attained the rank of lieutenant, Danny José Subero, was murdered in the residential area Valle Hondo, on the main street, parish of Cabudare, municipality of Palavecino, Lara state during the funeral procession of Manuel Sosa. The procession was making its way to the cemetery when he stopped opposite the highway in order to pay respects to the deceased. At this moment, a group of individuals attacked him with blunt objects and shot him three times. The motorcycle he was driving was also set on fire by the assailants. Officers of the Lara State Police came to his aid and transported him to the Cabudare Ambulatory care facility, where he was immediately taken to the Hospital Universitario Antonio María Pineda in Barquisimeto. He died shortly after he was admitted.

- 73.** On May 27, 2017, 20-year-old advertising and marketing student at the *Rodolfo Loero Arismendi* Institute (IUTIRLA) César David Pereira Villegas, was murdered by an officer of the Anzoátegui State Police. At approximately 6:30 pm, Pereira Villegas was at a demonstration taking place in the area surrounding the *El Peñón del Faro* shopping mall, at the intersection with Avenida Arismendi and Avenida Mariño, municipality of Diego Bautista Urbaneja, parish of Lechería, Anzoátegui state, when an Anzoátegui state Police detail appeared on the scene, and violently cracked down on the demonstrators using excessive force. The young student was wounded in the abdominal region with a glass sphere shot from a firearm, and was transported to the closest medical center. He underwent emergency surgery and died the next day. In this case, the Office of the Public Prosecutor was able to obtain proof that the munitions used to control demonstrations had been modified to be more lethal.
- 74.** On May 31, 2017, 37-year-old Nelson Antonio Moncada Gómez, a Judge of the First Chamber of the Court of Appeals of the Supreme Court of Justice in the Criminal Judicial Circuit of the Metropolitan Area of Caracas, was killed by a group of armed individuals. Moncada Gómez was walking along Avenida Páez, El Paraíso, opposite the Bar Association, when he noticed a roadblock and attempted to avoid it. At that point, armed individuals on the scene fired at him several times and then stripped him of his belongings.
- 75.** On June 1, 2017, 45-year-old María Estefanía Rodríguez, a hotel housekeeper, was murdered. The victim was shot in the right intercostal region, as she was walking with a group people along avenida Intercomunal of Barquisimeto, opposite *Escuela La Granja*, municipality of Iribarren, Lara state, where a demonstration was unfolding.
- 76.** On May 17, 2017, 20-year-old Luis Miguel Gutiérrez Molina, a construction material loader, was killed in the vicinity of a demonstration on the 4th Carrera, Tovar, Mérida state, when an armed group opened fire on the protests. He was wounded in the abdomen and admitted to Hospital Universitario Los Andes where he died, seventeen days later.
- 77.** On June 03, 2017, 28-year-old Yoinier Javier Peña Hernández, a man who suffered from a psychomotor disability from birth, died from injuries he sustained at a protest two months earlier. On April 10, 2017, Peña Hernández participated in a demonstration in the area around Avenida Florencio Jiménez and Avenida La Salle, Barquisimeto. Those present at the demonstration were caught by surprise when a moving vehicle fired several shots into the crowd. Peña was wounded in the right intercostal region. He was immediately transported to the *Dr. Antonio José María Pineda* hospital, where he died on June 03, 2017.

- 78.** On June 07, 2017, 17-year-old high school student Neomar Lander, was at a demonstration on Avenida Francisco de Miranda, municipality of Chacao, when he was hit by an object that caused a serious wound to his thoracic cage. He was transported to El Ávila clinic where he was pronounced dead on arrival.
- 79.** On June 12, 2017, 49-year-old Sócrates Jesús Salgado Romero died from injuries sustained while near a demonstration. The retired sergeant, who served as a ramp supervisor at Simon Bolivar International Airport for the now defunct Metropolitan Police Department, had been married for 25 years, leaving behind two children. On June 12, 2017, he was riding on his motorcycle on the main avenue Carlos Soublette, parish of La Guaira, Vargas state, when he came across demonstration, which was being broken up by the Bolivarian National Guard with teargas. The teargas caused him to asphyxiate and triggered a heart attack.
- 80.** On June 13, 2017, 41-year-old Douglas Acevedo Sánchez Lamus was killed, leaving behind three children. Sanchez Lamus had served for 21 years as Chief Supervisor of the Investigation Division of the Merida State Police. He was traveling along Avenida Urdaneta in a police detail, Pie del Llano sector, Municipality Libertador, Parish of El Llano, Merida state, when he encountered a demonstration. He sustained a bullet wound in the left supraclavicular region from gun shots fire by armed civilians. He was transported to the Hospital Universitario de Los Andes, where he died.
- 81.** On June 15, 2017, during a demonstration in the area around the Universidad Rafael Belloso Chacín, parish of Idelfonso Vásquez, municipality of Maracaibo, Zulia state, a group of demonstrators and students were blocking the streets in protest of government repression, when a cargo truck drove by at high speed and rammed into those present, running over Luis Enrique Vera Sulbarán. He was a 20-year-old university student with a double degree, studying architecture at Universidad Rafael Urdaneta and accounting at Universidad Rafael Belloso Chacín. The Ministry of Public Prosecution arrested Darwin José Rubio Ferrebu, who was charged with homicide.
- 82.** On June 15, 2017, 20-year-old José Gregorio Pérez Pérez, a physical education student at the Experimental Pedagogical University Libertador (UPEL) was killed at a demonstration at the end of Avenida Prolongación, Sector Y, municipality of Junín, Rubio, Táchira state. Armed civilians riding on motorcycles fired at the demonstrators, fatally shooting Pérez Pérez in the face.

- 83.** On June 16, 2017, 22-year-old Nelson Daniel Arévalo Avendaño, a law student at Fermín Toro University was murdered at a demonstration on Avenida Hernán Garmendia, across from the Club Hípico Las Trinitarias, parish of Santa Rosa, municipality of Iribarren, Lara state. Several armed individuals opened fire on demonstrators, and Arévalo Avendaño was fatally injured in the neck. He was transported to a nearby medical center where he was pronounced dead on arrival.
- 84.** On June 17, 2017, 17-year-old Fabian Alfonso Urbina Barrios was killed by officers of the Bolivarian National Guard. He was taking part in a demonstration next to the Altamira highway cloverleaf, Municipality of Chacao, when members of the National Guard indiscriminately fired into the mass of young people who were participating in the protests. Urbina Barrios was fatally shot, and another five youths were wounded. This teenager was transported to El Ávila clinic where he was declared dead on arrival. The Office of the Public Prosecutor was able to identify the shooters as members of the National Guard, and issued warrants for their arrest.

The father of Fabian Urbina, Ivan Urbina, testified about the murder of his son at the November 16, 2017 hearing of the General Secretariat of the OAS. The video testimony can be seen at: <https://www.youtube.com/watch?v=tnepjMXE-X0>

- 85.** On June 22, 2017, 22-year-old David José Vallenilla Luis, an only child completing his studies in nursing at the University Institute for Industrial Administrative Technology (*Instituto Universitario de Tecnología de Administración Industrial*), and planning to graduate in August of that year. He was killed at a demonstration at Francisco Fajardo highway, municipality of Chacao, Miranda state. Members of the National Guard, trying to break up the rally, indiscriminately opened fire at the youths who were participating in the protest from the inside of La Carlota air base. The young man was wounded in this thoracic cage by the metallic spheres that had been shot at him by a military officer. Vallenilla Luis was transported to the El Ávila clinic, where he was pronounced dead on arrival.
- 86.** On June 27, 2017, 27-year-old Sergeant First Class of the Bolivarian National Guard was murdered while guarding detainees at a demonstration in the El Castaño sector, municipality of Girardot, Aragua state. Several unknown individuals opened fire and he was wounded in the groin region. He was transported to the Medical Center of Maracay, where he died.
- 87.** On June 27, 2017, 25-year-old truck driver Jhonatan José Zavatti Serrano was murdered at a demonstration taking place next to his residence, on Calle principal 5 de julio, alleyway José Gregorio,

parish of Petare, municipality of Sucre, Miranda state. Zavatti Serrano was hit by a gunshot, and transported to the Hospital Domingo Luciani, where he died.

- 88.** On June 27, 2017, 34-year-old Javier Alexander Toro Trejo was killed leaving behind two children. Toro Trejo was at a demonstration at the intersection of Palo Negro, sector La Pica, Calle Paramaconi, parish of San Martín de Porras, municipality of Libertador, Aragua state, when a group of individuals were trying to break into the commercial premises in the area. A regional police detail tried to disperse the protesters with teargas canisters, and several unknown individuals fired shots into the crowd and he was wounded. He was transported to the Hospital of the Venezuelan Institute of Social Security, where he was pronounced dead on arrival.
- 89.** On June 28, 2017, 18-year-old high school graduate Isael Jesús Macadán Aquino was killed while was taking part in a demonstration on Avenida principal of Boyacá III, Troncal de Barcelona sector, Anzoátegui state. An individual coming out of the commercial premises of *El Empanadón* fired a several shots, wounding him in the head.
- 90.** On June 28, 2017, 24-year-old salesman and cameraman Roberto Enrique Durán Ramírez was murdered at a demonstration in the residential subdivision of Terepaima, parish of Concepción, municipality of Iribarren, Lara state. The GNB and regional policemen used lethal munitions against the citizens in that protest. The victim was shot with a projectile in the left pectoral and was transported to the IDB clinic of Barquisimeto, where he died.
- 91.** On June 28, 2017, 20-year-old Luiyin Alfonzo Paz Borjas was run over by a tanker truck. Paz Borjas, who worked as a fishmonger and was taking a hairdressing course, was at a demonstration at the Perijá highway cloverleaf, Circunvalación 1, parish of Cecilio Acosta, Maracaibo, Zulia state, where the protestors had set up roadblocks. After being run over by the tanker, he was taken to the Hospital General del Sur, where he died.
- 92.** On June 26, 2017, 19-year-old Alfredo José Figuera Gutiérrez was murdered at a demonstration in the residential subdivision of El Limón, Avenida Caracas, Maracay, municipality of Girardot, Aragua state. He was a student writing his final paper to obtain his high school degree. At the demonstration, unknown armed civilians riding on motorcycles opened fire on the crowd. The young man was shot in the head. He was transported to Hospital Central of Maracay, where he was placed in intensive care. He died three days later.

93. On June 13, 2017, 20-year-old Eduardo José Márquez Albarrán, a first year student in the National Training Program, major in Tourism at the Universidad Politécnica Territorial of the State of Mérida, was injured at a demonstration in the Pie del Llano sector, opposite the Mario Charal service station, parish of Domingo Peña, municipality of Libertador, Mérida state. Regional policemen were attempting to contain the demonstration by shooting their firearms and Márquez Albarrán was wounded in the abdomen. He was transported to the *Los Andes* university hospital where he died on June 30, 2017.
94. On June 30, 2017, 33-year-old Rubén Alexander Morillo Pereira, a merchant, was killed at a demonstration on Avenida Libertador, Urbanización Obelisco, parish of Concepción, Municipality of Iribarren, Barquisimeto, Lara state. When Bolivarian National Guardsmen showed up at the scene, they opened fire on the peaceful demonstrations, mortally wounding Morillo Pereira. He was taken to a hospital in the city of Barquisimeto, where he was pronounced dead on arrival.
95. On June 30, 2017, 44-year-old José Gregorio Mendoza Durán, a merchant by trade, was exercising his right to protest peacefully, on Avenida Principal of the Barrio José Félix Ribas, Parish of Juan de Villegas, Lara state, a location adjacent to a supermarket identified as “Felix 13.” This store was broken into by a group of individuals, desperately looking for food, when a Bolivarian National Guard detail arrived on the scene and opened fire on everyone present on the avenue. Mendoza Durán was shot and died from the injuries he sustained.
96. On June 30, 2017, 49-year-old Fernando Rojas Rubio, who worked as a lathe operator, he was exercising his rights, participating in a peaceful protest on Carrera 34 and Calle 42 and 43, Parish of Concepción, Municipality of Iribarren, Lara state, when he was attacked by unknown hooded individuals, who according to witnesses, were categorized as armed *colectivos*. The *colectivos* were driving in trucks and firing indiscriminately at anyone protesting against the national government. As the demonstrators ran to seek shelter in a nearby commercial facility, they were followed by these armed individuals who shot at them repeatedly, hitting Fernando Rojas. Fernando Rojas was transported to the Hospital Central Antonio María Pineda, where he died.
97. On June 30, 2017, 20-year-old Ramses Enrique Martínez Carcamo, a cellphone repairman was peacefully demonstrating in the residential subdivision Urbanización Patarata, Parish of Catedral, Municipality of Iribarren, Lara state, when unknown individuals opened fire on the demonstrators. Martínez Carcamo was shot in the head and died the next day, on July 1, 2017.

- 98.** On July 5, 2017, 29-year-old Jhonathan Alexander Giménez Vaamonde was on his way to the area of Avenida San Martín, at the Capuchinos Metro Station, in order to join a group of demonstrators. He was shot several times and was killed.
- 99.** On July 10, 2017, 17-year-old Ruben Dario Gonzalez was exercising his rights to participate in a peaceful protest at the residential subdivision La Isabelica, Avenida Este-Oeste, parish of Rafael Urdaneta, Carabobo state. After joining other protesters, armed groups burst onto the scene and opened fire on the demonstrators. Dario Gonzalez was wounded by a projectile shot from a firearm into his ribcage. He was transported to the clinic of La Elohim, where he died.
- 100.** On July 11, 2017, 56-year-old Yanet Coromoto Angulo Parra, a teacher retired from the Ministry of Education, was exercising her right to peaceful protest on Avenida José Trinidad Morán, inside the Villa Colonial subdivision, parish of Bolívar, Municipality of Morán, El Tocuyo, where members of the Bolivarian National Guard were trying to contain the demonstrations. Police officers from Lara State were present, guarding the entrance gate to the subdivision. People began to throw blunt objects at the officers, who fired back, wounding Yanet Coromoto Angulo Parra. She was transported by residents of the community to Hospital Dr. Egidio Montesino of El Tocuyo where she died.
- 101.** On July 16, 2017, 60-year-old Xiomara Soledad Scott, a registered nurse, was on Avenida Sucre, in front of the donation center Venalcasa, Parish of Sucre, Municipality Bolivariano Libertador, to participate in the public consultation convened by the opposition. A group of armed *colectivos* who were riding motorcycles, drove past the scene and opened fire. Xiomara Soledad Scott was shot and taken to *Dr. Ricardo Baquero González* hospital, where she died.
- 102.** On July 20, 2017, 23-year-old Andrés José Uzcátegui Ávila, a student at the National Institute of Socialist Training and Education was peacefully exercising his right to protest in *La Isabelica* subdivision, sector 5, parish of Miguel Rafael Urdaneta, Valencia, Carabobo state, when the demonstration was attacked by armed *colectivos*, who opened with fire. Uzcátegui Ávila was wounded in his thorax, causing his death.
- 103.** On July 20, 2017, 25-year-old Ronney Eloy Tejera Soler, who worked in the informal economy, was at a demonstration in the subdivision Urbanización Santa Eulalia, sector Los Bambúes, municipality of Guaicaipuro, Parish of Los Teques, Miranda state. When Guaicaipuro Municipal Policemen arrived on the scene to break up the demonstration, they opened fire on the demonstrators. Tejera Soler was wounded and died.

- 104.** On July 20, 2017, 34-year-old Eury Rafael Hurtado de la Guerra, was exercising his right to peaceful protest in the subdivision Santa Eulalia, sector Los Bambúes, municipality of Guaicaipuro, parish of Los Teques, Miranda state, when Guaicaipuro municipal police officers arrived on the scene to break up the demonstration. The officers withdrew but later returned with in black jackets with yellow letters-attire usually worn by a special group from that agency. Upon their return, they opened fire on the demonstrators, wounding de la Guerra. He was transported to *Hospital Victorino Santaella*, where he died.
- 105.** On July 20, 2017, 15-year-old Jean Luis Camadillo was at a demonstration on the highway interchange of Pomona Sector, Parish of Manuel Dagnino, municipality of Maracaibo, Zulia state. A group of armed *colectivos* riding motorcycles opened fire on the peacefully protests, wounding the teenager. Camadillo was shot in the left posterior intercostal, causing a perforated lung, killing him. He was transported to the CDI of the residential complex of El Pinar, where he was pronounced dead on arrival.
- 106.** On July 26, 2017, 30-year-old bricklayer Rafael Antonio Balza Vergara was exercising his right to protest in the town of Centenario, barrio El Molino, Mesa Seca sector, one block away from the Highway Police Department, in Mérida state. A detail of six motorcycle units of the GNB arrived to control the demonstration. The demonstrators moved down the highway of El Molino neighborhood, as an alternate route to reach their destination. As the GNB detail was passing through the area, the residents of the neighborhood began to shout at them, criticizing the actions of security forces in the context of the protests. The officers proceeded to lash out, at the people ran away in fear. They were pursued by the officers, who caught up with Rafael Balza and shot him. He was treated by paramedics who were present at the demonstration and transported to the care center of the Ejido. He was pronounced dead on arrival.
- 107.** On July 26, 2017, 16-year-old Jean Carlos Aponte was killed at a demonstration in the *5 de Julio* neighborhood, municipality of Sucre, Miranda state. At this location, members of the Bolivarian National Guard were cracking down on demonstrators with firearms and teargas. Aponte was shot by gunfire in the intercostal region of his body, killing him.
- 108.** On June 26, 2017, 23-year-old Enderson Enrique Calderas Ramírez was killed at a demonstration in the area around the Office of the Mayor of the Municipality of Miranda, adjacent to Plaza Bolivar in the parish of Timotes, Mérida state. During the demonstration individuals began firing at the demonstrators, wounding several people, and killing Calderas Ramirez.

- 109.** On July 26, 2017, 16-year-old Gilimber Teran was murdered at a demonstration in the parish of El Paraíso, Municipality Libertador, Caracas. Teran was shot in the head when a group of armed civilians opened fire on the demonstrators. He died the following day.
- 110.** On July 28, 2017, 18-year-old Gustavo Villamizar was murdered when he was shot at a demonstration in the city of San Cristóbal, in the vicinity of Liceo Alberto Adriani. He underwent emergency surgery at a nearby health center, but did not survive the operation.
- 111.** On July 28, 53-year-old retired GNB Lieutenant Colonel Eduardo Rodríguez Gil was killed. In his retirement, he was working as a driver for a moving company. He was allegedly wounded by GNB officers cracking down on demonstrations in the area around the polling station in the Junco sector, in the municipality of Cárdenas, **Táchira** state.

The next fourteen murders that occurred on July 30, 2017, all took place in the context of protests and disturbances organized around the election for representatives of the illegitimate National Constituent Assembly:

- 112.** On July 30, 2017, 15-year-old student Daniela De Jesús Salomón Manchado was killed when she came across a demonstration in the Plaza Venezuela, La Concordia in the city of San Cristóbal, just as a group of pro-government armed civilians opened fire on the protest. She was wounded by a gunshot to the thorax which caused her death.
- 113.** On July 30, 2017, 19-year-old Ender Rafael Peña Sepúlveda was killed late that night during a crackdown by the security forces against the demonstrators of San Cristóbal, Táchira state. Peña was captain of the Táchira Lottery Football Club.
- 114.** On July 30, 2017, 32-year-old Juan Gómez was murdered during protests in Aguada Grande, municipality of Urdaneta, Lara state.
- 115.** On July 30, 2017, 43-year-old Luis Beltrán Zambrano Lucena was murdered by a gunshot to the head. Zambrano Lucena was a sportsman who found himself in the middle of a protest in the El Obelisco

sector of Barquisimeto, Lara state. He had approached the scene to take a look, and was shot as the GNB cracked down on the demonstration taking place on Calle 54 Barquisimeto.

- 116.** On July 30, 2017, 22-year-old Julio Manrique, an active member of the *Un Nuevo Tiempo* political party, died on July 30 after being struck by a bullet as he was participating in protests in Ureña, Táchira state. The incident took place amidst heavy clashes between security forces, armed civilian groups and demonstrators.
- 117.** On July 30, 2017, 52-year-old Albert Rosales, a retired police officer, was murdered on July 30 on the balcony of his residence where he was watching a demonstration in the town of Tucapé, municipality of Cárdenas, Táchira state. He was hit in the chest with a bullet shot by armed motorcycle groups.
- 118.** On July 30, 2017, 13-year-old student Adrián Smith Rodríguez Sánchez, died from a gunshot to the head he received when he was walking near a polling station in the El Calvario sector of Capacho Viejo.
- 119.** On July 30, 2017, 19-year-old farmer Wilmer Smith Flores was killed when he was hit by a gunshot fired by pro-government armed civilians who opened fire on demonstrators. The incident took place near a PNB station in La Grita, Táchira state, where a polling station had been closed.
- 120.** On July 30, 2017, 17-year-old Luis Eduardo Ortiz was hit with a bullet in the thorax when people on motorcycles approached, and opened fire on one of the points of resistance in Tucapé in the municipality of Cárdenas, Táchira state.
- 121.** On July 30, 2017, 28-year-old Ángel Yordano Méndez Sánchez was killed at the Juan Rodríguez Suárez Bolivarian School, San Jacinto sector, Mérida, which was being used as an election polling station. It is presumed that members of the security forces killed people who were trying to enter the polling station to allegedly steal the electoral material.
- 122.** On July 30, 2017, 39-year-old Eduardo Olave, was killed as he was protesting in the morning before the polling station Juan Rodríguez Suárez Bolivarian School, San Jacinto sector, Mérida, was opened. Family members have accused the military officers present of shooting him.

- 123.** On July 30, 2017, the 30-year-old youth secretary from the political party *Acción Democrática*, Ricardo Campos was killed. He was shot in the head by a State security agent, while protesting against the National Constituent Assembly, outside his residence on Bolívar Street, Cumaná, Sucre.
- 124.** On July 30, 2017, 38-year-old Marcel Pereira was killed after being shot in the head by armed *colectivos* as he and others were protesting the installation of polling stations in Chiguará, municipality of Sucre, Mérida state.
- 125.** On July 30, Iraldo Gutiérrez, was shot twice, once in the head and once in the abdomen, at a demonstration in Chiguará, Mérida. He was rushed to the emergency room at Hospital Universitario de Los Andes, but died on the way.
- 126.** On July 31, 2017, 23-year-old Antony Rodrigo Labrador was killed while participating in a demonstration in the township of Ureña, Táchira state. He suffered a gunshot wound in the thorax, when armed *colectivos* attacked the protestors. He was transported to the city of Cúcuta, where despite receiving medical assistance, he died.
- 127.** On August 03, 2017, 25-year-old Jhony Alfredo Colmenares died at a clinic in San Cristóbal after he was victim of a violent beating on July 29 in the municipality of Lobatera, Táchira state. The young man was participating in the continued protests against the election for the representatives of the Constituent Assembly. The armed *colectivos* doused him with gasoline and then beat him to death.
- 128.** On August 06, 2017, 20-year-old Wilmerys Ocarina Zerpa, a geological engineering student at the Universidad de Oriente and mother of a one-year-old girl, was killed on a Sunday evening as she and her husband went to buy food at a stand near a roadblock in Ciudad Bolívar. A group of armed civilians opened fire on the nearby demonstrators at the roadblock and a bullet hit the young woman who happened to be passing by at that precise moment, killing her.
- 129.** On August 06, 2017, 52-year-old, Ramón Antonio Rivas, the regional activism coordinator of the political party *Avanzada Progresista* of Carabobo state was murdered at a demonstration on Avenida Bolívar, Valencia. The leader was wounded while he was participating in demonstration on Avenida Bolívar. He was transported to the *La Viña* clinic, where he was pronounced dead on arrival.

- 130.** On August 07, 2017, 19-year-old Eduardo Orozco, an international business student at the *Universidad José Antonio Páez*, was murdered while protesting with other residents at the Bellas Artes highway, in Cabudare, municipality of Palavecino, Lara state. According to the investigation, a black Explorer SUV and a white Orinoco-make vehicle arrived on the scene. Officers wearing uniforms of National Anti-Extortion Anti-Abduction Command (CONAS)¹⁶⁹ got out of the car and opened fire. One of the gunshots hit Eduardo Orozco in the occipital region, killing him.
- 131.** On August 14, 2017, 15-year-old student and athlete Luis Guillermo Espinoza died two months after being shot during a protest in Carabobo State. Espinoza was wounded on June 5, 2017 and suffered months of agony moving between clinics and hospitals around the state. The teenager was shot by a member of the Bolivarian National Guard who fired on the unarmed civilian population. Espinoza was participating in a protest activity known as the *trancazo* (to bring the city to a standstill), which was called by opposition groups in Tulipán, San Diego, Carabobo state.

The 105 murders during the 2017 protests were committed between April 6 and August 14, 2017, an average of almost one person per day, for each day of the protests.

The Venezuelan Observatory of Social Conflict (OVCS) has denounced the pattern of abuses, and voiced concern that since 2014 “the government has been building a system of repression with a pattern that seeks to characterize a portion of the population as internal enemies and destabilizing agents, all under the logic of the doctrine of national security. Furthermore, the implementation of the civilian-military *Plan Zamora*, by the State since April 19, 2017, institutionalizes joint-operations of the military forces, militia forces, and armed civilians in their efforts to control the public order, and/or in any other domain where they decide it is in the strategic interests of those in power. The institutionalization of the collaboration is confirmation of the tactical and repressive nature of the system that the Venezuelan State has been implementing. In activating *Plan Zamora*, the Regime promoted and consolidated the escalation of repression through the implementation of joint-operations that included State security officers, paramilitary groups and shock troops that terrorized and attacked demonstrators.”¹⁷⁰

The individuals responsible for committing the murders described in this Report are all part of this organizational structure, whether they are a member of the Armed Forces, regional police forces, or the

169 The National Anti-Extortion and Kidnapping Command is a specialized military unit of the Bolivarian National Guard that was set up in April 2013 to combat criminal organizations that engage in kidnapping and extortion. On November 30, 2015, the Minister of Defense, Vladimir Padrino López, said that CONAS also performed “counter subversive and close combat [tasks], and [had] the capacity for electronic intelligence” as well as additional capabilities in relation to other crimes, for example, border crimes. He also said that they could “act as rapid intervention units.”; see, *Informe21.com*, “Comando Nacional Antiextorsión y Secuestro (CONAS) de la Guardia Nacional Bolivariana,” November 30, 2015, <https://informe21.com/tags/comando-nacional-antiextorsion-y-secuestro-conas-de-la-guardia-nacional-bolivariana>

170 *Observatorio Venezolano de Violencia*, “Social Conflict in Venezuela in 2017”, <https://www.observatoriodeconflictos.org.ve/oc/wp-content/uploads/2018/01/Conflictividad-social-en-Venezuela-2017-1.pdf>

paramilitary groups, known as the *colectivos*. Members of the *colectivo* armed civilian groups have openly admitted been hired directly by the regional governments.¹⁷¹ The coordination between security forces and the *colectivos* in their targeting of the people who were murdered during the protests is evidenced through the following patterns:

- The conscious and deliberate unlawful and disproportionate use of force, by the security forces of the state, in collaboration with the *colectivos*, the use of deadly weapons, including firearms, directly against protesters.
- In the majority of cases, bullets were fired at the vital areas of the body that are most likely to cause terminal injuries or death, including the head, thorax, neck, rib-cage and abdomen. This indicates a clear intention by the security forces, and the *colectivos* to kill, not injure the victim.
- Tear gas canisters were not only used to force compliance and disperse crowds, but the canisters were used as projectiles, fired horizontally, at short distances directly at a specific victim. The force of the resulting injury caused instant death in some cases, and in others, grave injuries.
- The intentional use of modified munitions, in addition to lead bullets or plastic pellets, such as metal or glass marbles, or screws and bolts, the were intentionally used as projectiles shot directly at the bodies of protesters, killing some and causing hundreds of injuries. These modified munitions not only increase the trauma and suffering to the victim, they also leave no ballistic evidence.
- In addition, anti-riot plastic-pellet cartridges that were fired at point-blank range so that “the pellets and the plastic wad completely penetrated the body causing much graver injuries to the patient”. These injuries were documented by the volunteer medical organization, *Venezuelan Green Cross*, and were described during the hearings of November, 16, 2017 held at OAS Headquarters.¹⁷²

It is evident that State security forces willfully resorted to the use of excessive force and murder, as part of a systematic policy of repression, targeting anyone who demonstrated or protested against the Maduro government. The paramilitary groups have acted with the full knowledge and cooperation of, if not at the direction of the State security apparatus. In all of the cases outlined, the perpetrators committed murder as part of a widespread and systematic attack against the civilian population, and with the full knowledge that these actions were taken as part of that widespread and systematic attack on the civilian population.

¹⁷¹ *El Nacional*, “Ex colectivo asegura que gobierno de Aragua le pagaba para crear caos”, January 25, 2018, http://www.el-nacional.com/noticias/politica/colectivo-asegura-que-gobierno-aragua-pagaba-para-crear-caos_220285

¹⁷² Testimony of Federica Davila and Dr. George Simon at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, November 16, 2017, https://www.youtube.com/watch?v=Sh3_BwDUkYs

V. TORTURE AS A CRIME

AGAINST HUMANITY



MARCO COELLO

V. TORTURE AS A CRIME AGAINST HUMANITY

Pursuant to Article 7, paragraph 1, subsection (f) of the Rome Statute of the International Criminal Court, torture constitutes a crime against humanity when it is committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

The prohibition of torture is one of the most fundamental principles of international law. Torture, as well as cruel, inhuman or degrading treatment, is prohibited at all times and in all places, even during wartime. No national emergency, no matter how terrible it may be, is justification for the use of torture. There is no room for doubt that torture is completely unacceptable in any democratic society.

The Inter-American Human Rights Commission has been following cases of torture in Venezuela for several years. In 2015, the IACHR received information on 51 alleged cases of torture and in 2016 it received complaints that the SEBIN and the GNB tortured the majority of the members of a group of 21 people who had been detained.¹⁷³ This chapter presents an overview of the known cases that have been recorded of persons who were tortured since the beginning of the Maduro Administration. A number of the cases were documented by attorney Tamara Suju Roa, Executive Director of the CASLA Institute, and provided by her to the OAS General Secretariat. These cases have also been shared with the Office of the Prosecutor of the International Criminal Court¹⁷⁴. The CASLA Institute denounces the President, Nicolás Maduro as principally responsible for the torture, along with high-level representatives in different branches of government. It also denounces the leadership and officials of the State security agencies who were at the top of the chain of command and who were necessary accomplices for the acts of torture and cruel, inhuman and degrading treatment in Venezuela. Additional cases include those that were presented at the hearings organized by the OAS General Secretariat, new cases documented by attorney Suju that have not yet been shared with the International Criminal Court, cases documented in the joint report “Crackdown on Dissent,” published by Human Rights Watch and *Foro Penal* in November 2017, as well as cases of submitted by the *Vente Venezuela* political party.

It should be noted that in several of the incidents described here, the victims attest to their experience of being tortured along with other people. In some instances, the number of people present is provided. In others, it is described as an unquantifiable number of people. This demonstrates the fact that the full scope

¹⁷³ IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 78, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

¹⁷⁴ Case file with the ICC, OTP-CR-210/16.

of cases of torture that have occurred in Venezuela is significantly greater than those we have been able to document. The General Secretariat is aware of the existence of other cases of torture, which have never been reported by the victims or their family members for fear of further retaliation from the government or, when cases were documented, the civil society organizations in possession of the information chose not to share it with the General Secretariat. The General Secretariat is also aware of new cases that are beginning to be documented that will not be completed in time to be included in this report.

Torture in Venezuela is not circumstantial nor is it used in isolated incidents, it has been systematically used as punishment to set an example and instill fear in the public in order to try to suppress the actions of citizens to exercise or defend their rights, as well as to punish dissent and any opponents of the government. The State security agencies have acted in a coordinated and systematic manner, using the same tactics and methods, as if they are following a single user's manual for the physical mistreatment of people considered to be the enemies of the government. The sophistication of the methods of torture and its execution over the years has led the security agencies to remodel or build prisons specifically designed for the use of torture, including prolonged solitary confinement, and in other instances, for the victims to be imprisoned like animals. The prison facility of the Bolivarian National Intelligence Service, colloquially known as *La Tumba* (The Tomb) in Caracas, the basement of the General Directorate of Military Counterintelligence in Boleíta, Caracas, and the *26 de Julio* prison in San Juan de Los Morros, are all examples of such jails.

The incidents presented in this chapter are unprecedented cases of the use of systematic methods of torture in Venezuela. These cases spare no class of person regardless of their sex, age, physical condition, religion or profession. At least 30% of the total number of cases presented here are individuals specifically targeted because of their opposition to the government, because they publicly denounced or have expressed displeasure with the Regime, or demanded their rights and respect for the rule of law and the Constitution. They were also tortured to extract a confession from them or coerce them into accusing other individuals, most commonly, political opposition leaders. The remaining 70% of cases, were individuals tortured for simply protesting or participating in mass public demonstrations, in order to punish, intimidate, coerce force false accusations against other individuals or partisan groups, and even leave them marked for life as "opposition," and to terrorize their families, friends and the population in general.

The cases show how the methods of torture used by the Venezuelan State to violate the civil and political rights of the population became more sophisticated and intensified with the growing discontent resulting from the serious social, economic and political crisis the country is experiencing. These tactics and methods are to instill fear and intimidate, with torture used as punishment to terrorize and set an example for a defenseless population that has been left unprotected in a system where the rights and protections that should be guaranteed by the rule of law, have been eliminated.

A. Incidents of Torture Documented by the CASLA Institute

Each incident of torture documents the victim by name, the date the incident took place, the location of the arrest and the arresting security agency or police force, the institution, agency, or individuals involved in the acts of torture, the methods of torture used, as well as a brief description of the facts and circumstances of the case as presented in the original documentation. The complete archives of the cases presented in this section are in the possession of the CASLA Institute.

The selected cases are presented in chronological order and only include incidents that have taken place during the term of the current presidential administration. Presented below are 64 incidents of torture, with the word “incident” defined as points in time and not individual cases:

Incident 1 The Case of Víctor García Hidalgo

Date and Place of detention: García Hidalgo, the 53-year-old President of *Cifras Online* and editor-in-chief of the website *Informecifras.com*. He was arrested on March 1, 2013 by the National Guard, in Carora, in the State of Lara and charged with the alleged crime of civilian rebellion, for events which occurred at the time of the coup against former President Chavez which took place in April of 2002. His detention was completely arbitrary, given that his case qualifies for amnesty under the Amnesty Decree of December 31, 2007.¹⁷⁵

Institutions or individuals involved in the torture: Officers at the *Yaré III* penitentiary center.

Methods of torture: Garcia Hidalgo was imprisoned at the Yaré III penitentiary center, located in the town of the same name, in the State of Miranda in a cell measuring 18 square meters, along with seven criminals from the general prison population. For 10 months, he slept on the cement floor of his cell, under constant (24 hours a day) exposure to artificial white light, experiencing continuous verbal threats, only allowed to sleep for a few hours at a time. He was never allowed to go outside into the natural daylight and held in very inhumane conditions of imprisonment and isolation. The only visitors he was allowed were his wife and lawyer who were allowed to see him only once a week for 10 minutes.

As a result of the abuse suffered during his detention, he developed acute hypertension and sharp back pain, caused by a physical degenerative disease the discs, between his L2 and L5 vertebra, which he developed

¹⁷⁵ Presidency of the Bolivarian Republic of Venezuela, “Decreto No. 5.790, con Rango, Valor y Fuerza de Ley Especial de Amnistía”, December 31, 2007, <http://virtual.urbe.edu/gacetas/05870.pdf>

while sleeping on the prison floor for 10 months. The forced overexposure to artificial white light caused an ophthalmological disease known as retinal macula. On November 16, 2013, he was moved to house arrest for health reasons. The excruciating lumbar pain he also suffers as a result of a herniated disc was prescribed three sessions of physical therapy per week. He was unable to start because of the complicated process to obtain authorization from the court three times a week. García Hidalgo was detained for more than three years, the first months in the penitentiary center and the remaining two and half years under house arrest. He was released on August 11, 2016.

Incident 2 The Case of Ivonne Echenagusia Guzmán and approximately 26 others including, [REDACTED]

Date and place of detention: [REDACTED]

[REDACTED] elections, between the late President Hugo Chavez and opposition candidate, Henrique Capriles.

Institutions or individuals involved in the torture: Officers of the Bolivarian National Guard, under the command of Colonel Quero Silva, who is currently applying for asylum in the US.

Methods of torture: Echenagusia Guzmán states in her testimony that she was tortured along with approximately 73 other people who were also arrested that day in different locations of the city of Barquisimeto. The victims were divided into three groups, according to where they had been demonstrating. The group in which Echenagusia Guzmán was detained was put into a vehicle; she estimates she was with approximately 26 people. They were beaten repeatedly as they were being transported to the Command Headquarters of the Bolivarian National Guard.

The torture suffered by Echenagusia Guzmán was similar to the treatment received by the other 73 people detained the same day. They were subjected to electric shocks, beaten with nightsticks, fists and repeatedly kicked all over their bodies. At least two of the individuals detained were victims of attempted murder by the guards. One individual suffered from facial disfigurement. They were subjected to psychological torture, sexual torture of forced undressing; they were spit on, threatened with death, while they were forced to chant pro-government slogans such as “Long live Maduro” throughout the abuse. The group was forced to hold stress positions, such as squatting positions, for more than eight hours at a time with their arms handcuffed behind them, while they were beaten with bottles of frozen water. Eight of those detained were refused use of the bathroom. After 24 hours of detention, a doctor conducted a superficial examination on the detainees, who were then pressured to sign a declaration indicating that they had only received “a few

minor injuries". Several victims presented skull fractures from the beatings. One of the victims received a gunshot wound in his leg and did not receive medical treatment.

Echenagusia Guzmán was beaten several times with a nightstick and punched all over her body. The abuse was focused particularly between her legs. Her ribs were fractured after being kicked repeatedly. She was spit on, and received electric shocks to her legs, back, arms, and on her ribs and feet. She was put into an ice cold cellar, where she was doused with ice water and given electric shocks. She was also slapped repeatedly and hit with frozen water bottles. Her arms were burned with cigarettes and she was forced to hold stress positions for long periods. For example, she was forced to crouch for more than eight hours, with her hands tied behind her back, during which she was beaten with frozen water bottles on the back of her head and neck. She was subject to sexual torture including threats of rape and attempted rape. She was subject to psychological torture including intimidation, death threats, and having obscenities shouted at her. They threatened to put her in a cage with general prison population (but the criminals prevented it). She was told that Capriles, the candidate of the opposition, was doing just fine, while they were being tortured. She was also refused food. In an effort to force her to sign a statement of guilt they stabbed her left index finger. The guards also threatened to call her parents to ask for ransom money.

Colonel Quero Silva, the senior officer on duty that day, personally reviewed the documentation on each of the detainees while they were handcuffed and held in stress positions. When he learned that Echenagusia Guzmán was the granddaughter of Venezuelan politician Jovito Villalba, he told the guards on duty at the time to "take this woman aside from the group for me and smack the shit out of her," leading to an increased intensity of her torture.

Echenagusia Guzmán tried to report the torture she had experienced, but was refused entry when, after her release, she went to the office of the Ombudsman. She was not allowed in the offices, told that the elevators were out of order. At the Ministry of Public Prosecution, the then-Attorney General, Luisa Ortega Diaz, told the victims of this incident that they were inventing fake evidence and that they were "crybabies".

The experiences of four of the victims also detained with Echenagusia Guzmán are summarized below:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Incident 3 The Case of [REDACTED]
[REDACTED] Seven youths of in group of 26 victims

Date and place of detention: This group of youths was arrested by the GNB on April 16, 2013 during peaceful demonstrations calling for the CNE to hold a recount during the 2013 presidential elections in the City of Barquisimeto, in the State of Lara. One of the victims estimated that 26 other people were tortured, along with him. Non-governmental organizations reported that at least 73 other people detained that day, were tortured or experienced cruel and inhuman treatment while in custody at Detachment No. 47 of the National Guard in Barquisimeto.

Institutions or individuals involved in the torture: Officials of the GNB assigned to Detachment No. 47 of the City of Barquisimeto.

Methods of torture: Shotgun pellets were fired at the victims at point blank range, in order to do as much damage as possible. They received multiple beatings with helmets, rifle butts and were kicked in the head, ribs, and lumbar area. They were held in solitary confinement. The detainees were forced to hold stress positions, such as crouching with their heads between their legs for extended periods of time. While in this position they received several strong and painful blows to the neck with the butt of a shotgun. They experienced sexual torture including forced undressing and threats of rape. They received electrical shocks and experienced psychological torture including death threats. They were threatened to be sent to prisons with violent criminals, where they would be raped. They were made to chant slogans celebrating the President, and were told that if they did not, they would be beaten. They were held without water or food.

Testimonials from seven of the victim are summarized below:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Incident 4 The Case of Lieutenant Nestor Arturo Nieve Moreno

Date and place of detention: Nestor Nieve was arrested in Caracas, on May 8, 2013.

Institutions or individuals involved in the torture: DGCIM under the command of General Oscar José Bastardo Cabrera, and General Wilmar Nabor Hernández Aquino.

Methods of torture: Nestor Nieve was held in solitary confinement for 42 hours without any access to an attorney. He was held in a dark cell, in the basement of the General Directorate of Military Counterintelligence in Boleíta, Caracas, for seven months without windows or access to natural light, completely disoriented from the time and date. His cell was kept at low temperatures with the victim wearing very little clothing. He was beaten daily, kicked in the back and ribs. He was gassed with toxic gases while his head was covered in a hood. He was given food with crushed pieces of glass in it. He endured psychological torture including threats against his life, as well as threats against his family members, as he was told that they would go after his wife and children. As of April 1, 2018, Lieutenant Nestor Arturo Nieve Moreno remained incarcerated.

His family testified that he was arrested on May 8, 2013. He was tortured, abused, and humiliated for over 42 days at the DGCIM headquarters. He was held *incommunicado* and denied his right to see a lawyer and, not even allowed to see his family, before he was brought before the Control Tribunal. Every day, he was threatened and beaten under the orders of General Oscar José Bastardo Cabrera and by General Wilmar Nabor Hernández Aquino. He was assigned to the DGCIM's prison, in Boleita, Caracas. He was held in isolation in a place known as the "madmen's room", without contact of any kind with the other inmates. The victim could not tell night from day. He lost significant weight, had dermatitis all over his face. He has had to take pills for Vitamin D deficiency due to his lack of exposure to sunlight. They served him food with small pieces of glass in it, causing internal bleeding, after which he was transferred to the Military Hospital. His attorneys tried to get information on his condition at the hospital, but were denied access by the guards. His family could not access him either. He was transferred to the *Ramo Verde* military prison. He was later moved, blindfolded, to *Fenix Lara* prison in Barquisimeto without a transfer order. He was moved again in August to the *26 de Julio* detention facility and then again to the *Rodeo II* prison. Lieutenant Nestor Nieve has been held for close to five years without trial.

Incident 5 The Case of Marco Aurelio Coello

Date and place of detention: Marco Aurelio Coello, was an 18-year-old fifth year high school student at the time of his detention. He was detained on February 12, 2014 by the Scientific, Penal and Criminal Investigative Police, during a Youth Day march that was held throughout the country.

Institutions or individuals involved in the torture: Officers of the CICPC assigned to the headquarters of Parque Carabobo in February 2014.

Methods of torture: Marco Coello was beaten all over his body with blunt objects. He was doused in gasoline and the guards threatened to burn him or kill him several times. They held a gun to his head, handcuffed him, wrapped him in a mat and then beat him for hours. He suffered electric shocks and was handcuffed in stress positions for hours, while guards were stepping on his hands and wrists.

When Marco Coello was preparing to leave the rally, he heard shots, prompting him to seek shelter. A teargas canister was shot at him, hitting him in the hip. The gas stunned him, causing him to fall to the ground. He felt someone throw something in his face and he managed to stand up when a group of men in civilian clothing grabbed him violently, and while holding onto him tightly, beat him with a fire extinguisher. They continued to beat and mistreat him as he was dragged to the CICPC headquarters on Carabobo Ave. Once here, he was handcuffed, put into a room and doused with gasoline. The officers put a gun to his forehead and told him that they were going to kill him. He was told to sign a confession that he had set fire to some patrol cars in the vicinity, and that if he did not they would “break” him right there. Marco Coello repeated that he was innocent, that he did not set the patrol cars on-fire, and asked them not to kill him.

The officers wrapped him in a foam mat, taped him up with packing tape and proceeded to beat him with blunt objects, such as logs, wooden sticks and a fire extinguisher. The beatings were conducted by several officers at a time. The victim was given electric shocks on several parts of his body until he lost consciousness. While handcuffed, the guards stepped on his hands and wrists with heavy boots. Along with the other students arrested that day he was held in a stress position on his knees, still handcuffed, for approximately five hours until they were transferred to the Báez Group of the GNB located in San Agustín. At this point he was held in isolation for 48 hours, without access to his family or an attorney. He was charged with conspiracy, arson, property damage and criminal association. His initial court hearing began at 11:00 pm on Friday February 14, ending at 5:00 am Saturday February 15, 2014. He was remanded into custody at the headquarters of the Municipal Police of Chacao.

Marco Coello underwent three psychiatric and psychological evaluations. The first was conducted by forensic psychiatrists and psychologists of the Division of the Specialized Technical Unit for Comprehensive Care of Children and Adolescents of the Ministry of Public Prosecution in the metropolitan area of Caracas, dated April 2, 2014. The second was a conducted by a specialized psychiatrist acting as an independent

evaluator on March 14, 2014 and May 10, 2014. The third was a psychiatric forensic expert report, issued at the request of Judge Adriana Lopez of the 16th Control Tribunal, and carried out by specialists in psychiatry and psychology of the CICPC on May 23, 2014. All of these evaluations concurred in establishing the delicate state of emotional health and the post-traumatic stress suffered by the victim caused by his violent detention and the torture and cruel and inhuman treatment to which he was subjected. To date, no investigation has been opened nor have any arrests been made. He is currently applying for political asylum in the United States.

Incident 6 The Case of Raúl Ayala Álvarez

Date and place of the detention: Raúl Ayala Álvarez, 21 years of age, student, was detained on February 12, 2014 in Plaza Venezuela, Caracas, by the Bolivarian National Intelligence Service, without cause at the conclusion of a march that was held to protest the then-Attorney General.

Institutions or individuals involved in the torture: Manuel Gregorio Bernal Martínez, the Director of the SEBIN and the officers assigned to the SEBIN headquarters of the Helicoide, in Caracas.

Methods of torture: The victim suffered multiple electric shocks to the head, arms and elbows. He was asphyxiated with plastic bags and hit in the abdomen, causing him to lose consciousness. His head was submerged underwater repeatedly, and he almost drowned multiple times. He was hung by his arms and beaten repeatedly. He also suffered psychological torture including threats against his life and the lives of his family if he told anyone that he had been tortured. During his torture, he was told that his home had been raided and his sisters raped. They told him they had killed his father when he tried to interfere and protect his daughters from the attack.

Raúl Álvarez participated, along with thousands of Venezuelans, in a mass march on the Ministry of the Public Prosecution in Caracas on February 12, 2014. The protesters were calling for the release of the youths that had been arrested at the demonstrations held earlier in the year, in the interior of the country. After the march, Raúl Álvarez was walking home when he was detained by members of SEBIN who beat and kicked him while taking him to their headquarters, El Helicoide.

He was interrogated for 48 continuous hours and subject to intense torture, cruel and inhuman or degrading treatment during his detention. During the interrogation he was asked about the demonstration and about his relationship with political leaders who the government was trying to blame for supposed acts of violence, including whether he had any connections with Leopoldo Lopez, or to Antonio Ledezma, the Mayor of Metropolitan Caracas. He was handcuffed and beaten. He was given more than 30 rounds of electric shocks to his head, arms and elbows. Plastic bags were placed over his head to asphyxiate him, causing him to lose consciousness several times, while they beat him hard on his abdomen. He was told

that his mother was being held in an adjoining location where she was also being tortured and raped. He was also told that a raid had been conducted on his home and that his sisters were raped, his father killed for trying to intervene.

For the 48 hours of his torture, Raúl Álvarez was only given one food ration which was thrown on the floor. He was in a room approximately 4 x 2 meters, along with five other detainees. He was in such terrible physical condition that at one point, another detainee offered to go in with the guards in his place. Near the end of the 48 hour period, one officer told his colleagues to “leave him alone now, you are going to kill him.”

When he was transferred to Court, he was warned to be careful with what he said during his testimony because he would most likely return to the SEBIN and they would get their revenge. His defense attorney demanded that the 22nd Control Tribunal of the Metropolitan Area of Caracas investigate the treatment of Raúl Álvarez and determine who was responsible for his abuse. To date, no investigation has been opened and no one has been held accountable for his torture. Raúl Ayala Álvarez is living in exile.

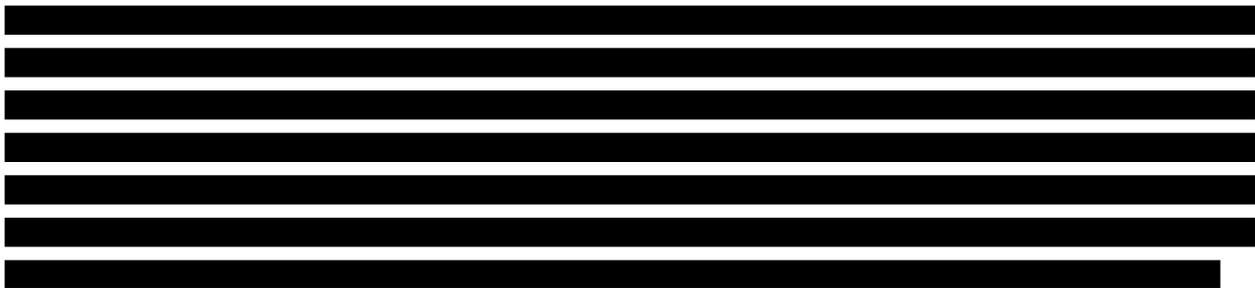
Incident 7 The Case of [REDACTED]

Date and place of the detention: [REDACTED]
February 12, 2014. [REDACTED]
[REDACTED]

Institutions or individuals involved in the torture: Officers of the CICPC assigned to their headquarters in Parque Carabobo, Caracas.

Method of torture: [REDACTED] was beaten with the soldier’s helmets, receiving repeated blows to the head and the back of his neck, including one that knocked him unconscious. He was sprayed repeatedly with pepper spray, directly in his face. He was strongly kicked in the stomach and stood up against a wall so the officers could punch him directly in the face. He was kept for approximately five hours kneeling in front of a wall, his hands in cuffs behind his back. While he remained in that position, he was repeatedly assaulted by the officers, who kicked him in the back of the neck and hitting his face violently against the wall. He was subjected to psychological torture including death threats. He was deprived of communication with his family members and attorneys for the first 48 hours.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]



Incident 8 The Case of Juan Manuel Carrasco

Date and place of detention: Juan Manuel Carrasco, a 21-year-old student, was detained on February 13, 2014 by the Bolivarian National Guard along with two others in the El Trigal residential development in Valencia, State of Carabobo. He was charged with the crimes of property damage, use of a minor to commit a crime, public incitement, association to commit a crime and obstruction of a public thoroughfare.

Institutions or individuals involved in the torture: Officers of the Bolivarian National Guard assigned to the Tocuyito Urban Security detachment including, First Lieutenant José Emilio García Manrique, Major Third Class Hernández Wilfredo, Major Efraín Verdu Torrelles, Sergeant First Class Luis Alejandro Blanco Cedeño, Luis Neil Mejías Aponte and Kimberly Carolina Pirona Ruiz.

Methods of torture: At the time of arrest, Juan Manuel Carrasco was brutally beaten with helmets, sticks and kicked repeatedly. While he lay on the floor, he was stepped and jumped on as the beating continued. He was subjected to constant psychological torture, and received several death threats, including intimidation using police dogs. He was subject to sexual torture, his anus penetrated with a blunt object.

Juan Manuel Carrasco was detained the night of February 13, with Jorge Luis León García (Incident 9) and Jorchual Gregory Vargas as they were leaving a protest that had been held in El Trigal. The Bolivarian National Guard arrived around 10:00 p.m., firing their guns. Carrasco and the two others ran to the car Jorge León had parked in front of the nearby gym *Gimnasio Hércules*. Once they were inside the car, the GNB surrounded them and broke the car windows. They were forced to get out and they were beaten. The GNB then set fire to the young man's car. The youths were moved away from the car and thrown under a tree, where they were beaten with sticks. One officer stomped on Carrasco's head. They were brought to El Trigal, where a group of other young people who were being detained were lying on the ground in the fetal position. Carrasco was forced to lie down, his shorts were pulled down and he was raped with a blunt object. The groups was repeatedly beaten with helmets and pipes.

After this they were taken into custody at the Urban Security Detachment of the National Guard of Valencia, where Juan Manuel Carrasco was held for three days. The torture he endured was bravely detailed at his

initial court hearing. He was released under precautionary measures, and his regular presentation to court was imposed. The Office of the Attorney General had allegedly ordered an investigation into his torture and even though all of the perpetrators involved have been identified no arrests have been made in this case.

Juan Manuel Carrasco continued to suffer serious medical consequences from the torture for several months, including extreme pain and anal bleeding as well as significant pain in his ribs and back. He still suffers from psychological problems. He is living in exile.

See: Interview with Juan Manuel Carrasco, Spanish citizen tortured in Venezuela: <https://www.youtube.com/watch?v=QFDvm12DMEE>

<http://www.elmundo.es/internacional/2014/02/18/5303b724e2704e71118b4577.html>

The case of Mr. Carrasco was also documented by the NGO COFAVIC.¹⁷⁶

Incident 9 The Case of Jorge Luis León García

Date and place of detention: Jorge Luis León García, a 22-year-old third year law student, was detained by the GNB at the same time as Juan Manuel Carrasco (Incident 8) and Jorchual Gregory Vargas, on February 13, 2014 in El Trigal, Valencia, State of Carabobo.

Institution or individuals involved in the torture: Officers of the Bolivarian National Guard assigned to the Tocuyito Urban Security detachment including, First Lieutenant José Emilio García Manrique, Major Third Class Hernández Wilfredo, Major Efraín Verdu Torrelles, Sergeant First Class Luis Alejandro Blanco Cedeño, Luis Neil Mejías Aponte and Kimberly Carolina Pirona Ruiz.

Methods of torture: Jorge León was beaten with the butt of firearms and helmets on his head and over other parts of his body and kicked repeatedly. His glasses were smashed on his face with the butt of a gun. He was jumped on and his legs were driven over with a motorcycle. He received continuous verbal insults and threats, was intimidated with police dogs that were ordered to “kill him.” He was threatened with rape and forced to kneel for more than five hours. He suffered a skull fracture, damage to his left eardrum and a loss of spinal fluid.

Jorge León and was detained with a group of friends as they were leaving the location where they had observed protests and heading to their vehicle, which was parked in front of the gym *Gimnasio Hércules*

¹⁷⁶ COFAVIC, “Venezuela: Sentencias de Silencio, informe situación de Derechos Humanos en Venezuela en contexto de las protestas estudiantiles de febrero-mayo 2014”, Caracas, October 2014”, <http://www.cofavic.org/wp-content/uploads/2014/11/COFAVIC-Sentencias-de-Silencio-Final-.pdf>

in el Trigal. The GNB surrounded the vehicle, broke the windows and forced them to get out. The officers proceeded to set the Jorge's car on fire, while he was almost simultaneously hit in the face with the butt of a gun, smashing his glasses. He and his friends were brutally beaten with the butt of the guns and helmets and kicked repeatedly while being called *guarimberos*. They were all dragged towards the protest to make it appear as if they had been detained nearby, where Jorge León and 10 other young people were piled on top of one another and beaten. They were beaten with shotguns and military helmets and Jorge León's legs were run over by a motorcycle. The three were taken in a convoy of the GNB to the Tocuyito Urban Security Detachment, where they were intimidated with drug-sniffing dogs that were given the order by the guardsmen to kill them.

They were given cloths drenched with gasoline to wipe off their blood. Jorge León and his friends were forced to kneel for five hours. The guardsmen would shoot their guns near their ears and made electric sparks near them in order to scare them. Jorge León later told the media: "A guard would tell us: You won't get an arraignment hearing. You are going straight to the 'pit.' The reason why the Carabobo central prosecutor and 6th prosecutor have come is that you are going to *Tocuyito* or *Tocorón*. [...] We would hear the Carabobo central prosecutor calling the jails and asking: "How are things there? Is the jail full or can I send you some boys, some students?" For 48 hours they were subject to constant death threats. When they were brought to court, Jorge Leon was barred from leaving the country. He was diagnosed with a cranial fracture and a fissure in the left eardrum with a loss of spinal fluid and multiple contusions.

Incident 10 The Case of Leopoldo López Mendoza

Date and place of detention: Leopoldo López Mendoza, a 45-year-old economist and politician, who is also the founder and Director General of the political party *Voluntad Popular* was detained on February 18, 2014 in Caracas, Distrito Capital.

Institutions or individuals involved in torture: López was publicly accused, his guilt affirmed, directly by President Nicolás Maduro, along with then-Attorney General Luisa Ortega Díaz, then-president of the National Assembly Diosdado Cabello, and senior officials of the Ministry of Defense including Minister of Defense Major General Vladimir Padrino López. Military officials assigned to the military prison CENAPROMIL, located in Los Teques, State of Miranda, run by Coronel Homero Miranda Cáceres and Coronel José Salvador Vilorio Sosa. Officials of the CICPC and custodial officers assigned to the prison facility.

Methods of torture: Leopoldo López was subject to white torture and isolation, as well as psychological torture and the sexual torture of forced undressing. He was constantly subjected to punishment, isolation, and cruel, inhuman and degrading treatment. López was held in solitary confinement for 12 months, without access to natural light. During his detention he was subject to violent searches, and his personal belongings were destroyed and smeared with excrement. He was regularly deprived of outside communication,

prohibited from reading and writing, and his correspondence was withheld. He was often cornered in his cell against the wall with a rifle aimed at his face.

The cell where Leopoldo López was located was 2.6 x 2.7 meters. From the time he was sentenced, he spent 24 hours a day in this space in a four story building. He was the only prisoner that was not allowed contact with other prisoners, and rarely allowed to walk down the halls or around the yard. On occasions when he was not being “punished” he would be taken out to the yard for one hour a day, usually very early in the morning. The guards were prohibited from speaking with him and only gave him his food through a slot in his cell door. Leopoldo López did not hear anyone during the day, only the distant sounds of a jailhouse. His books were taken away from him and he was only allowed to read the Bible on selected occasions.

He was subject to long periods of isolation during which he was not allowed outside for exercise or to see sunlight or see his family, or his attorney. For the first 15 months of his imprisonment, between punishment and solitary confinements for periods ranging between 15 days and three weeks, he spent a total of seven months without seeing his children. He was subjected to violent searches when, in addition to being beaten, his few personal belongings were destroyed or stolen, including the legal briefs he was drafting for his defense, along with the photos and drawings of his children. He and the inside of his cell were smeared with feces while the water and electricity were shut off so he could not see or clean himself. He was forced to spend the night in that unsanitary state. During the days of the trial, he would not be allowed to sleep and the guards would play whistles and sirens until 3:00 AM, people would bang on the walls of the guardhouse, fire guns into the air, and pro-government music played at full volume.

Of the 168 hours in a week, López spent 152 hours in solitary confinement. His wife, Lilian Tintori, and his mother were subject to abuse during their visits, forced to undress and forced to take demeaning positions during their searches. Tintori reported receiving death threats. The lack of light began to take effect on Lopez’s health. He was forced to undress at least twice a day, for the purpose of humiliating him.

The prosecuting attorney who handled his case, Franklyn Nieves, later fled the country and testified in the US that Leopoldo López was innocent and that the trial was a farce. Prosecutor Nieves reiterated this testimony at the hearings of the OAS General Secretariat hearing on November 16, 2017. The video testimony of the prosecutor can be viewed at: <https://www.youtube.com/watch?v=GC16ig5hieU>

Incident 11 The Case of Daniel Quintero

Date and place of detention: Daniel Quintero, a 21-year-old student, was arrested on February 21, 2014 by members of the Bolivarian National Guard, on his way home from a demonstration in the city of Maracaibo, State of Zulia. He was taken to Regional Command 3 of the GNB in Maracaibo.

Institutions or individuals involved in the torture: Officers of the Bolivarian National Guard and its Anti-extortion Kidnapping Group (GAES), and the Commander in Chief of the Regional Command.

Method of torture: Daniel Quintero repeatedly suffered violent beatings. He was kicked in his face and all over his body. He received blows to his forehead with the butt of a gun. He suffered burns. He was subjected to sexual torture including lascivious acts and threats of rape. His left hand was handcuffed to a bar on the ground and he was forced to spend the night bent over against the wall.

On February 21, Daniel Quintero participated in protests against the Venezuelan government that were taking place in Maracaibo. On his way home, he was roughly detained by members of the GNB, who threw him to the ground and kicked him in his face and body. He was transported in a GNB armored vehicle and as they arrived to the Regional Command Station, he was beaten with the butts of shotguns. As the officers took turns beating him, the driver of the armored vehicle hit him with some kind of a whip. At the *Marite* jail, he suffered burns and was forced into lascivious acts by one trooper who got on top of him and while being filmed by another officer, began to simulate sexual movements, telling him he was going to rape him and kill him. When they arrived at the command headquarters, the military officer in charge that day threatened to set him on fire showing him a can of gasoline, wires and matches. While Daniel remained in handcuffs he proceeded to hit him on the forehead with his nightstick. Daniel was moved to the headquarters of the GAES in the same city where he was put in a holding cell wearing only his underwear. His left hand was cuffed to a cell bar at ground level and he was forced to remain in that position, bent over, all night under threat of a beating if he sat down.

Incident 12 The Cases of Andrea Jiménez [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] and 11 other victims, including one minor.

Date and place of detention: Andrea Jiménez, a 25-year-old journalist, was detained on February 24, 2014 in the residential development [REDACTED] along with 11 other adults and one girl who was a minor.

Institution or individuals involved in the torture: Officers of the Bolivarian National Guard assigned to Regional Command Post 5 in Tazón, State of Miranda.

Methods of torture: Andrea Jiménez was subject to psychological and sexual torture. She was threatened that her limbs would be cut off during her detention, and that she would be raped and killed. She was hooded during her transport. She was forced to witness the physical torture of youths who had been detained with her.

In the early hours of the morning on February 24, 2014, Andrea Jiménez and 12 others [REDACTED] At approximately 4:55 am, the police arrived to disperse the protest and unblock traffic. Andrea and her neighbors decided to go home.

As they were walking, approximately 150 meters from the location where they had been standing the father of one of the boys they were with pulled up, told them to get into the truck, and that he would take them to their houses. After they were all in the back, they were intercepted by seven motorcycles of the Bolivarian National Guard, with officers who were carrying long arms. They told the group to get out of the vehicle. They were seated on the ground, searched and their hands and mouths were given a smell test, and told that “they were clean”. They were told to get back into the vehicle and accompany them because they were under arrest.

They were taken to the traffic circle Redoma de San Antonio de los Altos, where they were taken out of the pick-up truck. The men were made to kneel on the sidewalk facing the wall and with their hands on their heads, where they were brutally beaten with the weapons and kicked, and the two women were seated on the ground. Then they were put into a GNB vehicle and told to put their heads down and not look at where they were being taken. During the entire trip, the men were beaten with nightsticks and the officers’ helmets and they threatened that they would rape and kill the women (one of whom was a minor). They were told that they were going to be sent to the women’s prison of Los Teques where the female prisoners would rape them, cut off their body parts, and kill them. Throughout, the guards were calling them *escuálidos* (filthy opposition), *guarimberos*, bourgeois, and other derogatory names.

They were taken out of the vehicle on the Pan American highway linking Altos Mirandinos to the city of Caracas one by one. They were handcuffed and their belongings taken from them. They were put into different National Guard vehicles and taken to Regional Command Post 5, located in Tazón. Their handcuffs were removed and they were handcuffed again in pairs. Andrea and the underage girl were handcuffed together. They were seated on an outdoor stairway and for approximately two hours. The National Guard officers that would pass by would insult them, calling them terrorists, bourgeois, oligarchs, coup-mongers, and *escuálidos* who should be killed, among other insults. When they were taken inside the facility, they were lined up while the officers insulted them and told them that they did not understand how they survived the trip there and that they should have been killed on the way. They proceeded to cut off the men’s jackets and shirts so according to the officers, “they would be cold”. Their clothing was cut off with a knife of approximately 25 cm in length, during which one of the young boys was injured by the knife.

They were transported in handcuffs in a bus to the SEBIN headquarters in Plaza Venezuela where they remained for 15 minutes before being taken to the *Helicoide* headquarters where they were held in the bus for approximately two hours before being taken into the building.

At noon the following day they were taken to the *Ramo Verde* military prison in Los Teques, where their preliminary hearing was held. They were released on precautionary measures, barred from taking part in “violent” demonstrations.

Incident 13 The Case of Marvina Jiménez Torres

Date and location of the detention: Marvina Jiménez, 36-years-old, was arrested on February 24, 2014 in Valencia, State of Carabobo. While taking photos of the protest taking place that day with her cellphone, she was brutally overpowered by officers of the Bolivarian National Guard.

Institutions or individuals involved in the torture: Officers of the Bolivarian National Guard.

Methods of torture: She was beaten severely and insulted at the time of her detention. A gun was pointed to her head and she was dragged along the pavement and subdued by an officer of the National Guard who restrained her by the neck, beating her repeatedly on her face with her helmet.

On February 24, 2014, Marvina Jiménez was in the La Isabelita residential development in Valencia, in the State of Carabobo, taking photographs of the demonstration with her cellphone, including photos of the repression being carried out by the State security forces. When a group of officers from the National Guard noticed what she was doing, Marvina Jiménez was surrounded in an intimidating manner and one of them pointed his gun at her head, demanding she hand over the cellphone. Marvina Jiménez stated that the use of firearms at the protests was unconstitutional and one of the officers suddenly grabbed her by hair and pulled to the ground. The officer straddled Marvina Jiménez’s neck and began to violently and repeatedly beat her face with a helmet.

She was transferred and presented in the National Guard headquarters and accused of public incitement, obstruction of a public thoroughfare, bodily injury, resisting arrest and private property damage. She was granted conditional release, required to report every 45 days, and barred from leaving the country. Marvina Jimenez has denounced her treatment, including the targeted intimidation she has suffered, to the Venezuelan judicial institutions, demanding justice. These acts of intimidation include unidentified individuals following her in the residential development where she lives, as well as the harassment she has received at the school where her son studies and the area near her work. Although protective measures were granted to her by a Control Tribunal with jurisdiction over the municipal police in Valencia, they have not been implemented in a manner that protects the integrity of Marvina Jiménez and her family.

Josneidy Nayarit Castillo Mendoza, the GNB officer who participated in the torture and for whom an arrest warrant was issued, is still at large even though she has been seen in public along with other uniformed colleagues at the GNB. The other officers who participated in the abuse have not been identified.

Incident 14 The Case of Wuaddy Moreno Duque

Date and place of detention: Wuaddy Moreno Duque, a 21-year-old farmer, was detained on February 27, 2014 by members of the Bolivarian National Guard, in La Grita, Municipality of Jáuregui, in the State of Táchira for his alleged participation in the protests.

Institutions or individuals involved in the torture: Officers of the Bolivarian National Guard.

Methods of torture: Wuaddy Moreno was severely beaten and subjected to sexual torture including forced undressing and different parts of his body, including his buttocks were burned with a hot screwdriver. He was subjected to constant acts of intimidation, including threats against his person and his family.

Wuaddy Moreno was returning home from a birthday party on a motorcycle at approximately 3:00 am, when he ran out of gas in La Grita, State of Táchira. He was detained along with a friend by a group of National Guardsmen who took him to Plaza Bolívar of La Grita. The Guards made a bonfire and proceeded to burn his identification documents and those of the other detainees. He was then subdued by six guards who began to beat him. They took a screwdriver out from his motorcycle and heated it in the bonfire. They proceeded to burn different parts of his body, demanding that he indicate who was at the demonstrations, who was throwing rocks, etc, pressuring him to implicate the mayor of La Grita. The pulled down his pants and burned his buttocks. They then took him to the GNB command center where he remained until the next day. Wuaddy Moreno filed a complaint with the Ministry of Public Prosecution. After his release, he continued to receive threats and intimidation from members of the GNB, including the same member who tortured him and continued to serve on active duty. His family has also received messages from officers demanding that he withdraw his complaint.

Incident 15 The Case of Four Minors

Date and place of detention: [REDACTED]

Institution or individuals involved in the torture: [REDACTED]

Methods of torture: [REDACTED]

[REDACTED]

Incident 16 The Case of Keyla Josefina Brito and Karkelys Noemí Brito

Date and place of detention: Keyla Josefina Brito and her underage daughter Karkelys Noemí Brito (17 years old) were detained on March 12, 2014, while helping a young woman that had been run over during the street protests. They were detained along with 12 other women who were transported to GNB Detachment 47 located in Barquisimeto, State of Lara.

Institutions or individuals involved in the torture: Officers of the Bolivarian National Guard.

Methods of torture: They were subjected to the sexual torture of forced undressing and threats of rape. They were kicked and violently beaten for several hours with the officer’s helmets. Their eyebrows were shaved off and their hair was cut. They were doused in vinegar and were threatened with teargas. Karkelys Brito suffered scalp detachment.

After they were detained, they were taken to holding cells in GNB Detachment 47 where they were taunted with calls such as “fresh meat has arrived.” After they were undressed, obscenities about to their naked bodies were also shouted at them. A National Guard dragged Karkelys Brito across the floor by her scalp until the skin detached from her skull, requiring her to get five stitches. During their detention they were beaten constantly. They were called *guarimberas* and *escuálidas*, referring to the people demonstrating in the streets against the presidential election results. They were told to sign a document stating that their human rights had not been violated, and when they refused they were beaten again. The guards threatened to put them in cells with male inmates that had been held in custody for a long time, emphasizing that since it had been so long since the prisoners had seen women, that they would be raped. After hours of torture, they agreed to sign the document and were released. The mother and daughter went to the Ministry of Public Prosecution and filed respective complaints.

Incident 17 The Case of [REDACTED]

Date and place of detention: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Institutions or individuals involved in torture: [REDACTED]
[REDACTED]

Methods of torture: [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Incident 18 The Case of [REDACTED], seven youth victims

Date and place of detention: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Institution or individuals involved in the torture: [REDACTED]
[REDACTED]
[REDACTED]

Methods of torture: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] They were all subjected to physical and psychological torture, sexual torture including threats of rape and forced undressing, and obscenities. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

The Office of the Public Prosecutor for Fundamental Rights, a branch of the Ministry of Public Prosecution, has archived the complaints filed against the officers involved and no investigation has been opened.

Incident 19 The Case of [REDACTED], a young male victim

Date and place of detention: [REDACTED]
[REDACTED]

Institutions or individuals involved in the torture: GNB officers assigned to Regional Command 1.
[REDACTED]
[REDACTED]

Methods of torture: [REDACTED]
[REDACTED]
[REDACTED]

Incident 20 The Case of Daniel Ceballos

Date and place of detention: Daniel Ceballos, a 32-year-old agronomic engineer and politician, and the former mayor of San Cristóbal, in the State of Táchira. On March 19, 2014, he was detained by the SEBIN without an arrest warrant, after being forcibly removed from the hotel where he was located. He was charged with the alleged crimes of rebellion and criminal association. Shortly after, he was dismissed from the office of Mayor by the Constitutional Chamber of the Supreme Court of Justice, on March 25, 2014.

Institutions or individuals involved in the torture: Military officers assigned to the *Ramo Verde* military prison located in Los Teques, State of Miranda, commanded by Coronel Homero Miranda Cáceres and Coronel José Viloria, officials from the Ministry of Correctional Sciences, headed by Minister Iris Varela, and officers assigned to the General Penitentiary of Venezuela, located in San Juan de Los Morros, State of Guárico.

Methods of torture: He was subjected to white torture, cruel, inhuman and degrading treatment; he was sprayed with feces, beaten and subjected to a violent search. He had no access to potable water and was exposed to white light 24 hours a day in unsanitary conditions, including during a 20 day on a hunger strike. He experienced psychological torture, including having a gun pointed at his head several times, while in his cell.

Daniel Ceballo remained in the CENAPROMIL military prison *Ramo Verde*, from the day of his arrest until May 23, the day the government learned that he was on a hunger strike along with Leopoldo López. During his time in the military prison he was subjected to solitary confinement and held *incommunicado*, banned from seeing his family and attorneys. His cell was sprayed with feces one night and with the electricity and water shut off, he could not clean himself. He was subjected to several violent searches, beaten, and his few personal belongings were either destroyed or stolen. One of the searches was conducted by hooded gunmen, who violently entered his cell and pointed a gun at his head. At night during his trial, his sleep was purposely disrupted with whistles and sirens going off until 3:00 am, guards would bang on the walls of the guard booth, they fired their guns indiscriminately into the air, while pro-government music was played at full volume in order to prevent him from getting any rest before the hearings.

On May 23, at 4:00 a.m., without his attorney being notified he was transported by the SEBIN to high security prison known as the *San Juan de los Morros*, in the State of Guárico. They cut his hair and he was given a prison uniform. He was held in a dirty 2 x 3 meter cell with a cement bed and a latrine that had worms and cockroaches on the floor. The only water he had access to was a trickle from the latrine that last for 10 minutes a day. He spent weeks unable to wash himself. Artificial light was purposely left on all night, causing him sleep disturbances. He was prohibited from seeing his children. His attorneys were only allowed to see him for 15 minutes, twice a week. The day he arrived at the prison, Daniel Ceballos went on a 20-day hunger strike during which he lost 10 kilograms and lived in unsanitary conditions. During this period, he was not allowed the professional medical treatment that had been recommended by a forensic doctor who had recommended that he should be examined by an urologist and an internist because he was showing symptoms of renal failure, his health condition was deteriorated and the forensic doctor feared for his life. When he ended the hunger strike, he was transferred to the SEBIN headquarters of the *Helicoide*, where his health continued to deteriorate as a consequence of the hunger strike. On August 11, 2015, he was moved to house arrest on humanitarian grounds, while he regained his health. On August 27, 2016, undercover SEBIN officers appeared in an ambulance under the pretense of a medical examination and took him back to prison, revoking his house arrest. As of April 1, 2018, Daniel Ceballos remained incarcerated.

Incident 21 The Case of Gloria Tobón Fernández, Katherin Martínez Tobón and 20 other people who were detained along with them.

Date and place of detention: Gloria Tobón Fernández, 47 years old at the time of her detention, was detained on March 20, 2014 at in a peaceful protest with 20 other people, in the vicinity of the bus terminal in the city of Rubio, Municipality of Junín, State of Táchira. Gloria Tobón and her 22-year-old daughter Katherin Martínez Tobón were detained by members of the Army and the Bolivarian National Guard and transported to station Number 12, in Rubio, State of Táchira.

Institutions or individuals involved in the torture: Officers of the Armed Forces and the Bolivarian National Guard.

Methods of torture: The mother and daughter were beaten and suffered attempted asphyxiation. A gun was pointed at Gloria Tobón's head twice, threatening her life. Vinegar was thrown in their faces and they were kicked and beaten with blunt objects. Both of the women were blindfolded and handcuffed for more than 12 hours. They were subjected to sexual torture of forced undressing and threats of rape. Gloria Tobón's shirt was ripped off and electric shocks were applied to her fingernails, wrists, breasts and vagina while her feet were in a tub of water. Photos were taken of them in this condition and posted on social media along with their names and address. They were subjected to psychological torture, received multiple death threats and were forced to watch as other detainees were tortured.

On the day of their detention, Gloria Tobón and her daughter were at the bus terminal heading to San Cristóbal, the capital of the State of Táchira, to buy food. The terminal was closed because of the protests and they sat with the people who were protesting. Members of the Armed Forces began to detain people, and when Gloria saw how a member of the GNB was abusing a young woman she tried to intervene to protect her. “The guard member got off [his motorcycle] and pushed me, I fell down onto the sidewalk. When I tried to get up, the guard member threw me down again, kicked me, beat me, and called me a damned bitch. He grabbed me by the hair, lifted me up, threw me against the fence, and pointed a gun at my forehead. Another guard member shouted at him: “Kill that damned bitch.” My daughter came running back and the guard members grabbed her away from me while beating me.” Gloria and her daughter were grabbed by the neck and dragged several meters to a nearby truck. While they were in transit, they were severely beaten along with the other detainees. They were threatened that they would be tortured with electric shocks if they did not identify the leaders of the protest.

When they arrived at the GNB station, Gloria Tobón was stripped naked in front of her daughter, blindfolded and handcuffed sitting down with her feet in a container of water. She was then given electric shocks on her fingernails, wrists, breasts and genitals. During the 48 hours she was detained with her daughter and the rest of the group, they were all beaten continuously and told that they were going to be taken to a mountain to be killed, chopped into little pieces and buried in a common grave where nobody would know where they were. She and her daughter were threatened with rape. While they were blindfolded, they could hear the screams from other detainees that were being beaten while they were asked who was funding the protests. Gloria Tobón was subsequently threatened and persecuted for having reported the incidents to the Ministry of Public Prosecution. The Ministry of Public Prosecution Office allegedly requested that the case be dismissed. No proceedings have been instituted, or convictions obtained, in connection the torture endured by this group of detainees.

Incident 22 The Case of Alexander Antonio Tirado Lara

Date and place of detention: Alexander Antonio Tirado Lara, a 34-year-old university student, was apprehended the afternoon of March 21, 2014 when he was participating in a peaceful protest along with other residents of San Jacinto, State of Aragua. He was detained by officers of the state police of Aragua.

Institution or individuals involved in torture: Guards at the Alayon Penitentiary, State of Aragua and the Ministry of Prison Affairs.

Methods of torture: Alexander Tirado was beaten with the jagged side of a bat that had been split in half. He was held in solitary confinement. Hot food was served in small quantities directly into his hands, when dropped because it was so hot, he was forced to pick it up and eat it. He suffered cruel and degrading treatment, and was beaten with firearms. He was hung by his wrists, which were tied to pipes with only

his knees touching the floor. He was repeatedly asphyxiated with plastic bags, rubbed with insecticide, placed over his head until he passed out. [REDACTED]
Throughout, pro-government music blared at full volume, morning, noon and night for several weeks.

For eight months, Alexander Tirado was subjected to torture by his prison guards. His attorneys filed complaints with the respective authorities, but conditions rarely improved and the physical and psychological abuses continued. Tirado was beaten with the rough side of baseball bats which had been split in half, known as the *come nalgas* (butt eater). He was held in isolation for more than seven days. The hot food he was provided was rotten and served in very small quantities directly in his hands, which often burned him, making him drop the food on the floor, from where he had to pick it up to eat it. For weeks, the prison kept pro-government music blaring at full volume, day and night, preventing him from sleeping or resting. The guards berated him. He was beaten with firearms while he was tied by his hands and hung from a pipe that was above his head. Only his bent knees rested on the ground. Insecticide was repeatedly sprayed into a plastic bag which was then placed on his head until he lost consciousness. [REDACTED]
[REDACTED]
[REDACTED]

Alexander Tirado suffered from severe gastritis, suffered from continuous allergies, lost a tooth and developed a lesion on his right hand as a result of the beatings. The continuous threats to change the prison regime kept him in constant tension and psychological stress. He was confined to a 2 x 4 meter cell with another political prisoner Raúl Baduel (Incident 23). Alexander Tirado was sentenced to an eight year prison term for the crimes of criminal association, incitement to commit a crime and public intimidation. As of April 1, 2018, Alexander Tirado remained incarcerated.

Incident 23 The Case of Raúl Emilio Baduel Cafarelli

Date and place of detention: Raúl Emilio Baduel Cafarelli, was a 36-year-old student of Political Sciences of the University of Carabobo with a degree in Military Sciences and Arts. He was detained in San Jacinto, State of Aragua, on March 21, 2014, by the police of the State of Carabobo, while he was participating in a peaceful protest. He and a group of people were forming a human chain on the sidewalk.

Institutions or individuals involved in the torture: An officer of the GNB with the surname Leal. Guards at the Jail of Alayon, State of Aragua, Ministry of Prison Affairs.

Methods of torture: Raúl Baduel suffered overcrowding, solitary confinement, and physical mistreatment. He was beaten with blunt objects and asphyxiated with plastic bags. [REDACTED]
[REDACTED] He was not provided adequate food.

Raúl Baduel was imprisoned from March 22, 2014 to April 11, 2014 at the *Alayon* penitentiary center in the State of Aragua, where he was held in an 8 x 8 meter cell with more than 60 other people. On April 11, he was moved to the David Viloría Penitentiary Center, where he received kicks on his body and beatings to his head perpetrated by a lieutenant of the Bolivarian National Guard with the last name is Leal. That same day, he was transferred to a punishment cell where he remained until March 3, 2014, in unsanitary conditions, that had feces on the floor. He was served very little food that was too hot to hold in his hands, which would cause him to drop it on the floor and he would then have to pick the food up from the floor to eat. He was woken up at night with firearms pointed at his face. For weeks pro-government music was played day and night. He was forced, through beatings and threats, to chant pro-government slogans. Raúl Baduel was convicted and sentenced to an eight year prison term for the crimes of criminal association, incitement to commit a crime and public intimidation. On repeated occasions, insecticide was poured into a plastic bag which was then placed over his head until he passed out. [REDACTED]

[REDACTED] As of April 1, 2018, Raúl Emilio Baduel Cafarelli remained incarcerated.

Incident 24 The Case of Juan Carlos Nieto Quintero

Date and place of detention: Captain Carlos Nieto Quintero, 38 years of age and retired from the GNB, was detained on April 2, 2014 in Caracas by the General Directorate of Military Counterintelligence.

Institution or individual involved in the torture: Ministry of Defense. Director of the General Directorate of Military Counterintelligence, General Iván Rafael Hernández Dala and officers belonging to the DGCIM identified, including Lieutenant Commander Gómez Lara.

Methods of torture: Juan Carlos Nieto was forced to endure prolonged isolation, was hooded and beaten with gun butts. He was burned with cigarettes and suffered electric shocks on different parts of the body and his private parts. He was tied up for hours in stress positions (e.g. right hand to left foot and vice versa) and subjected to psychological torture including threats against him and his family. He was deprived of medical assistance for treatment of serious ailments caused by the torture he suffered, having serious physical and psychological consequences.

Juan Carlos Nieto was detained by officers of the DGCIM, two days after returning from the United States, where he was shopping for the birth of his baby. He was with his pregnant wife Bethzaida Berrios and their two-year-old daughter Victoria Nieto, at the Plaza Las Américas shopping mall, in Caracas. Two individuals, who identified themselves as DGCIM agents, handcuffed him and took him away at gunpoint. These police officers stated that they did not have an arrest warrant and when his wife tried to resist one of the agents

aimed his gun at her. After he was taken away, the retired captain's family members immediately went to the DGCIM, where they were told that nobody knew anything about the Captain or his whereabouts. A few minutes later, Mrs. Bethzaida received an anonymous call telling her that the Captain had been kidnapped and that they must pay the amount of 200,000 Bolivars as ransom. For two days the family was held in suspense about the forced disappearance of the Captain. On April 4, 2014, DGCIM officials turned Captain Nieto Quintero over to officers of the GNB on Avenida Boyacá, known as *Cota Mil* in Caracas, pretending that it was a kidnapping and not an arbitrary detention and enforced disappearance. When the Captain arrived in the command headquarters of the GNB he was barred from going home or to a health clinic- to get treatment for the brutal torture he was subject to during the two days of his kidnapping- under the pretense that a forensic examination had to be performed on him the following day. On April 5, 2014, he was transported to the morgue of Bello Monte for the forensic medical exam, where agents of the DGCIM appeared to formally arrest the retired Captain. This time an arrest warrant was issued by a judge from the 3rd Military Control Tribunal, Laritza Maria Theis Ferrer, for the crime of incitement to rebellion.

During his disappearance, Juan Carlos Nieto was brutally beaten with the butt of a gun and was given electric shocks on different parts of his body, including his private parts. He was burned with cigarettes. He was hooded, restrained with tape and handcuffed - left hand to right foot - right hand to left foot. The retired Captain identified his torturers, including the chief of the detail, Lieutenant Commander Gómez Lares, who graduated in the same class as Juan Carlos Nieto and who although has been denounced on repeated occasions, has been protected with impunity by the State. He was arbitrarily forced to ingest medications to bring down the hematomas, caused by the torture and beatings he received. After his court appearance, Juan Carlos Nieto was put in solitary confinement at the military police station, where he was held for 45 days not allowed to read, speak with fellow inmates, or access drinking water. On many occasions, his captors would not bring him food.

Juan Carlos Nieto was denied timely medical attention to carry out the tests and treatment he urgently needed. As reflected in the medical report from his examination at the military clinics in his file, he suffered severe headaches, determined to be the result of severe cranial encephalic trauma from the beatings and mistreatment to which he was subjected during his arbitrary detention. He was also denied authorization to be transferred to the hospital to undergo an exam for a kidney stone, which he suffered from as a result of the poor nutrition. As of April 1, 2018, Juan Carlos Nieto Quintero remained incarcerated.

Incident 25 The Case of Robert Anthony González Rodríguez and [REDACTED]

Date and place of detention: Robert Anthony González Rodríguez and [REDACTED] were detained on April 21, 2014 in Victoria, State of Aragua, while participating in the demonstrations that were taking place throughout the country. They were detained along with eight others by the Regional Police of the State of Aragua and taken to Detachment 422 of the Bolivarian National Guard.

Institutions or individuals involved in the torture: Officers from the regional police of the State of Aragua and the GNB.

Methods of torture: Robert González and [REDACTED] were kicked and beaten all over their bodies with helmets and the butts of firearms. The officers stepped and jumped on them with military boots. They were subjected to sleep deprivation and were woken up early in the morning with buckets of cold water and were left outside in the rain in the courtyard for several hours. On several occasions, they were deprived of potable water and food for periods of 24 hours at a time. They were subjected to the sexual torture of forced undressing and were kept naked for four days straight, during which they were covered with a matt and continuously beaten. Although the two detainees were asthmatic, teargas canisters were used to asphyxiate them in their cells on several occasions, the toxic gases causing them to pass out. They were subjected to continuously psychological torture, such as death threats and threatened to be disappeared. They were called names like *guarimberos* while they were forced to chant pro-government slogans.

Incident 26 The Case of [REDACTED], a 22-year-old male victim

Date and place of detention: [REDACTED]
[REDACTED]
[REDACTED]

Institutions or individuals involved in the torture: Officers of the GNB.

Methods of torture: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Incident 27 The Case of Lieutenant Colonel (Army) José Antonio Arocha Pérez

Date and place of detention: Lieutenant Colonel José Antonio Arocha Pérez, 52 years old, was detained by the SEBIN on May 2, 2014, in the offices of the company *Geofenix*, Chacao, Capital District, State of Miranda.

Institutions or individuals involved in the torture: Officers of the Bolivarian National Intelligence Service under its Director, General Gustavo Enrique González López.

Methods of torture: The Lieutenant Coronel was subjected to white torture and solitary confinement for six months in a 3 x 2 meter cell, without access to natural light or ventilation. He was subjected to artificial white light for 24 hours a day, held in a room kept at very low temperatures, losing all notion of day and night. He was disappeared for 45 days, during which his family and attorneys did not know where he was. He had to eat the scarce, cold food he was provided with his hands. He was beaten and kicked in the face and body repeatedly. He and his family's lives were threatened. He was subjected to long interrogations throughout the six months, questioned for hours at a time, sometimes days, without sleep or being allowed to use the bathroom. The testimony obtained from him was taken under duress.

Between June 30, 2014 and December 4, 2014, Lt Col. Arocha was detained at the detention center known as *La Tumba*. He was held in an approximately 3 x 2 meter white, windowless cell, with only a cement bed. Bright artificial lights were kept on 24 hours a day and the room was kept at a very low temperature. The only external sound was a nearby underground metro, which was also the only indicator of the time because the train stops running between 12:00 am and 5:00 am. Between approximately June 30 and August 15, Arocha Perez was held in solitary confinement, without contact from family or attorneys. His only interaction was with the guards when they brought him food. He was interrogated for days at a time, with the officers rotating shifts, while Lt Col. Arocha was not allowed to rest, eat or go to the bathroom. On one occasion, he was interrogated for 48 hours straight and only allowed to use the bathroom once. During the interrogation, SEBIN agents slapped him in the face several times, and two or three agents kicked him while he was on the floor. In order to force a statement, the officers frequently and graphically threatened his safety and life, as well as the lives of his teenage daughter, his young children and their mother. He was not allowed any contact with them to know if they were safe. Communication with the guards was almost non-existent, he was not allowed newspapers, radio or TV, and he did not know what was going on in the outside world. He suffered panic attacks when the lights went out because he believed they were going to kill him. The Director of SEBIN, Major General Gustavo González López, came to his cell to threaten him, telling him how vulnerable his family, his wife and young children were, trying to force him to give testimony that would implicate citizens of the Venezuelan opposition, particularly focused on political leaders such as Antonio Ledezma, Leopoldo López and María Corina Machado. After his interrogation by the Director of SEBIN, he continued to be beaten, kicked and threatened for three more months. All the while they continued trying to force a statement that satisfied the requirements of the government and the judiciary, to implicate others. After they succeeded in forcing the statement, Lt Col. Arocha was moved to house arrest. He escaped Venezuela and is currently seeking political asylum in the US.

Since leaving Venezuela, Lt Col. Arocha has been receiving psychological treatment with specialized torture victim therapists. He is suffering from post-traumatic stress disorder and at times suffers panic attacks, believing he is back in the cell. Some mornings he wakes up in his apartment and he can only urinate in an empty container, as he would do when he was detained. His digestive system has not recovered and he

continues to endure severe gastritis. Additionally, he suffers from kidney lesions, which doctors have told him could have been caused by the beatings and kicking inflicted on him.

Incident 28 The Case of Captain Laided Salazar

Date and place of detention: Laided Salazar, a Captain and military dental surgeon of the Venezuelan Air Force, is married and the mother of a boy who was 12-years-old at the time of her detention. She was detained on May 5, 2014 and prosecuted for the alleged *golpe azul* (blue coup). She was denounced by Nicolas Maduro along with several other members of the same military branch. Laided Salazar was sentenced to eight years and seven months, for the crimes of incitement to rebellion and disrespect of military decorum.

Institutions or individuals involved in the torture: Minister of Defense, Admiral Carmen Meléndez. General Iván Rafael Hernández Dala and the military officers assigned to the General Directorate of Military Counterintelligence located in Boleíta, Caracas. Officers assigned to the Ministry of Prison Affairs *Instituto Nacional de Orientación Femenina* (INOF) in los Teques, State of Miranda and the David Viloría Penitentiary Center, located in Uribana, State of Lara.

Methods of torture: Captain Salazar was subjected to white torture, prolonged periods of isolation, and psychological torture. She did not have access to sunlight, and was held in a cell with unsanitary conditions. She did not have access to potable water and her food rations were intentionally decreased causing symptoms of severe malnutrition. She was subjected to prolonged periods of thirst causing dehydration.

During the first days of her detention in the DGCIM holding cells located in Boleíta, Caracas, Captain Salazar was completely isolated and cut off from communication with her family for several days. She was subjected to psychological intimidation and pressured to testify against her fellow servicemen and sign false statements that would implicate well-known members of the Venezuelan opposition, businessmen and student leaders, and other public figures. Among the individuals pressuring and threatening her was then-Minister of Defense, Admiral Carmen Meléndez.

After being presented to the courts and charged, she was transported to the *Ramo Verde* military prison, where she was held along with other political prisoners including Leopoldo López (Incident 10), Daniel Ceballos (Incident 20) and Raúl Baduel (Incident 23), until she was transferred without a court order to the women's prison INOF, located in Los Teques, State of Miranda, where she was held deprived communication and isolated from the rest of the prison population. She was deprived of sunlight for protracted periods of time. In May 2015, she was moved to the prison in Uribana, located in the State of Lara, where she was again placed in solitary confinement for 45 days, not allowed to see her family or her attorney, who is also her brother. After 45 days, she was allowed a visit from her mother and brother. Her 11-year-old son was

not allowed to see her until six months later, and only on two occasions. In Uribana, Captain Salazar was held in a 4 x 1.5 meter cell. In this cell, there was a cement bed and a hole in the floor (a sort of latrine) that contained worms and crawling insects, which the Captain would try to keep away with pieces of cloth. Once a week, she would receive a bucket of water of approximately 18 liters, with which she was supposed to clean herself and her cell, wash her clothes and also flush the latrine. As a punishment for receiving the opposition parties' nomination to run in the elections for the National Assembly, her food rations were decreased. The food that she did receive was often spoiled or foul-smelling, containing worms. Salazar lost 35 kilograms of weight, her rations reduced to a glass of juice in the morning, a piece of meat of the size of a finger at noon, and a piece of bread at night. She was also subjected to long periods of thirst causing dehydration, which further aggravated her health conditions. Following media pressure and denunciations by international organizations, she was granted house arrest on humanitarian grounds and is currently recovering at her family home.

Incident 29 The Case of Angelly Pernia

Date and place of detention: Angelly Pernia, a 19-year-old student at the Táchira campus of Andres Bello Catholic University, was detained by the Táchira Police, on May 5, 2014, after participating in a protest near the University with her classmates.

Institutions or individuals involved in the torture: The regional police of the State of Táchira. A Commission of deputies from the National Assembly identified the following officials: Assistant Police Chief Wilmer Beltrán, Deputy Officer Omar Laguado, Officer David Moreno, Officer Esmel Estupiñan and Officer Jeison Duarte. Pernia accused Jose Gregorio Vielma Mora, the governor of the State of Táchira, of witnessing some of her mistreatment "from a distance."

Methods of torture: She was heavily beaten and kicked all over her body, especially her face, abdomen and private parts, causing an ovary to detach and severe pain during her detention. She was doused in kerosene and gasoline and threatened with being set on fire. She was spit on and beaten. After her initial court hearing, she was transferred to the hospital for an operation on her injury. Handcuffed to the bed of the Central de San Cristóbal hospital, she was guarded by one of the officers who took part in her beatings. She received threats against her life.

Angelly Pernia was detained on the university campus boulevard while participating in a student assembly. She was forced on her knees and spat on her. The police of the state of Táchira dragged her to the governor's residence, along with another 13 fellow students, who were beaten with blunt objects, including on the face. The officers doused her in kerosene and gasoline. As she was shouting, the officers threatened to "set her on fire" inside the police car if she continued to scream. Angelly Pernia stated that the Governor of Táchira and his wife watched from afar as the abuse was taking place. She was later transported to the

Táchira police headquarters, where the beatings continued. She was brought before 10th Control Tribunal, where she arrived almost unable to walk because of sharp pain in her abdomen. She vomited in the courtroom before passing out when she heard the judge order her imprisonment. She was taken to the San Cristóbal hospital, where she was handcuffed to the bed. One of the officers who assaulted her was assigned to guard her in her room. Four days after she was admitted to the hospital, she underwent an operation for a detached ovary and fluid was drained from her abdomen. While still in recovery, she was granted supervised release and required to report every two weeks. She was also barred from leaving the State of Táchira. She is currently living in exile.

Incident 30 The Case of ██████████, a male victim

Date and place of detention: ██████████, was detained on May 6, 2014 in *El Cardenalito* park in the eastern part of Barquisimeto.

Institutions or individuals involve in the torture: Officers of the GNB and the PNB

Methods of torture: ██████████ was locked in a small space. Along with other demonstrators who had been detained. He was beaten with helmets, nightsticks, clubs, and kicked all over his body. All of the victims were subjected to psychological torture, having guns pointed at them and threatened with death and to be disappeared. Two teargas canisters were hurled at them and they were locked in, causing asphyxiation and loss of consciousness.

He testified that he was detained along with “an unquantifiable number of demonstrators” and the same forms of torture were perpetrated on all of them at the GNB Headquarters.¹⁷⁷

Incident 31 The Case of Gerardo Carrero

Date and place of detention: The 28-year-old student leader was detained on May 8, 2014, in an operation conducted by the National Guard to evict students and youth organization from the public squares of Caracas where they had set up camps with “tent houses” as part of a peaceful protest against the economic and social policies of the Venezuelan government. No arrest warrants were issued by the Venezuelan judicial authorities and none of the young people detained at these camps were committing any crime.

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Institutions or individuals involved in the torture: Agents of the Bolivarian National Intelligence Service under its Director, General Gustavo Enrique González López and Commissioner Carlos Calderón, the Director of Strategic Investigations.

Methods of torture: Gerardo Carrero was hung by his arms with a rope while his legs were beaten with boards until the boards broke. He was subjected to continuous psychological torture and degrading treatment, including constant threats against himself and his family. He was held in isolation, locked in a miniscule cell for 24 hours a day, only to use the bathroom in the daytime. He was deprived of natural light and ventilation for prolonged periods, losing all notion of time, subjected to white light 24 hours a day. He was kept in very low temperatures for long periods of time, subjected to sleep disruption, violent body searches and a lack of timely, professional or continual medical care for the serious ailments he developed while in prison.

After being held in detention at the SEBIN headquarters in the *Helicoide*, Caracas, for 103 days, on August 21, Gerardo Carrero went on a hunger strike for the freedom of all the young people who were detained during the 2014 protests in Venezuela. That same day, at approximately 8:00 pm, SEBIN agents forced him out of his cell and handcuffed him hanging him from a pipe with his wrists wrapped in newsprint and tape, so as not to leave marks. He was beaten on his thighs and knees with wooden boards that were also wrapped in paper, until they broke against his legs. He and his family were threatened and he was subjected to cruel, inhuman and degrading treatment for hours. His defense attorney and the Carrero family went to the Ministry of Public Prosecution to denounce the abuse and Gerardo Carrero was brought before 48th Control Tribunal, where the judge was able to see the marks and bruises caused by his torture. The Court decided to move him to *La Tumba*, another SEBIN prison in la Plaza Venezuela. He remained there until February 22, 2015, when he was transported back to the *Helicoide*.

During his time at *La Tumba*, Gerardo Carrero was subjected to solitary confinement and white torture. He was locked in a 2 x 3 meter cell, 15 meters underground. The only voice he could hear was his own. His cell contained a cement bed with a matt. Because of its subterranean location, there is no air or natural ventilation. Everything was painted white, and the air conditioner kept the rooms at only eight degrees Celsius with white light on 24 hours a day. Without clocks, Gerardo Carrero had no notion of time and the guards intentionally created disorientation, using tactics such as serving breakfast at lunchtime. The food was served through a slot in the cell and he could only go to the bathroom by ringing a buzzer. Often at night he would be forced to relieve himself in a plastic container in his cell. Gerardo Carrero was cut off from outside contact and was under 24 hour video surveillance. The silence in *La Tumba* was “sepulchral.” He could only identify nighttime because of the noise from the subway would stop. For five months, Gerardo Carrero was only taken to the surface once, for five minutes to have a photo taken. During the months Gerardo Carrero was held in *La Tumba*, he presented serious gastrointestinal problems, fever, diarrhea, vomiting, 28 skin abscesses, and dental pain, none of which were treated. He also suffered panic attacks, presented joint pain from a lack of movement, painful dryness of the skin from the cold. On February 7, 2015, he began a hunger strike along with two other political prisoners, Lorent Saleh

(Incident 36) and Gabrielle Valles (Incident 37), to draw attention to the inhuman conditions in the prison. It caused a national and international scandal and the Inter-American Commission of Human Rights issued precautionary measures,¹⁷⁸ leading to Gerardo Carrero's transfer back to the *Helicoide*, a location agreed upon by the parties.

During his time at the *Helicoide*, Gerardo Carrero was held in a 2 x 3 meter cell at the center of the building, without ventilation or natural light. On occasion, he was taken outside into the sunlight depending what officer was on duty. Because of the electricity crisis, the lights and water were regularly shut off. Hygiene conditions consistently grew worse, the air stagnant because the air conditioner stopped. The lack of consistent or specialized medical care to address his physical ailments, especially his gastric problems, affected his day-to-day health. Gerardo Carrero was subjected to three violent body searches during which officers destroyed his belongings. Gerardo Carrero requested that his family stop bringing his children to visit because of the body searches performed on his family members were cruel and he did not want his children to experience them. His parents and his girlfriend were threatened that if they continue to file complaints, they would join him in jail. Gerardo Carrero was released on December 31, 2016.

Incident 32 The Case of Araminta González

Date and place of detention: Araminta González, a 33-year-old engineering student and Technical University Certificate in chemical products, was detained on July 24, 2014 at *Lido* shopping mall in the municipality of Chacao, Caracas. She was detained without an arrest warrant by agents of the Anti-Terror Investigation Unit of the CICPC.

Institutions or individuals involved in the torture: Officers of the CICPC assigned to the Avenida Urdaneta detachment in Caracas and the guards of the *Instituto Nacional de Orientación Femenina*.

Methods of torture: Araminta González was hooded. When she arrived at the CICPC headquarters, she was savagely beaten, while wrapped in a mat so as not to leave marks. She was subjected to sexual torture and continuous psychological torture. She was kicked, and beaten with boards and helmets, her toes hit with a hammer. She was given electric shocks on her breasts and her hair was ripped out. She was suffocated with plastic bags that were placed over her head until she passed out. Officers powered a drill next to her ear and threatened to throw her in the Guaire River in Caracas.

Araminta González was detained after being accused of the crimes of manufacturing an explosive device and criminal association with another detainee, Vasco da Costa (Incident 35). Her accuser was Juan de Dios

¹⁷⁸ IACHR, Precautionary Measures No. 223-13, "Case of Lorent Saleh and Gerardo Carrero respect a Venezuela", March 2, 2015, <http://www.oas.org/es/cidh/decisiones/pdf/2015/MC223-13-.pdf>

Blanco, a member of the *27 de febrero* association. Her room was raided on July 23, 2014, the day before her detention, without her or her legal representative present. She was hooded and taken to the CICPC headquarters on Ave. Urdaneta, where she was savagely beaten. Her hands, feet and head were wrapped with newspaper and taped, she was then wrapped in a mat, kicked and beaten with pipes and sticks, a practice known within the security agencies as a “CICPC massage”. She could hear her romantic partner Liber Diaz being beaten and his life threatened, in the room next to her. Araminta’s hair was pulled out by a tool known at the CICPC as “the helicopter,” which rips out whole chunks of hair at the root, leaving bare scalp. At the same time, they were beating her head against the wall. Her toenails were pulled off and agents took turns mounting her to touch her private parts. She was given electric shocks on her breasts, as they shouted at her to confess that she was a member of some terrorist organization. She consistently denied the accusations, and then the beatings would continue, and the torture described above would be repeated.

Araminta González was moved to the women’s prison INOF in Los Teques, State of Miranda, where she demonstrated serious deterioration of her health as a result of the post-traumatic effects from the torture inflicted on her. She suffers severe panic and anxiety attacks and bouts of depression. She has lost more than 30 kilograms of weight. She has been subjected to cruel, inhuman and degrading treatment. The first days, she was held in solitary confinement in the room known as the punishment cell, without sunlight, or access to food or water. She was only given food, which was normally spoiled, one day a week, consequently went almost 24 days without eating.

She was the constant target of insults and assault when she refused to chant in support of the late President Chavez. She was taken to an area known as *El Tigrito*, which is full of rats and other insects. She was constantly insulted, verbally and physically assaulted by the INOF guards. She has tried to commit suicide twice.

Araminta Gonzalez publically recounted the torture she suffered for the first time in an interview published on January 17, 2018 in *Caraota Digital*.¹⁷⁹

Incident 33 The Case of Efraín Ortega

Date and place of detention: Efraín Ortega, a 42-year-old with a college degree in administration and computer science, was unlawfully detained by the CICPC on July 24, 2014 on Av. Urdaneta of Caracas.

¹⁷⁹ *Caraota Digital*, “Torturas, encuentro con Iris Varela y “hombres a Chávez”: las revelaciones de la ex presa política Araminta González”, January 17, 2018, <http://www.caraotadigital.net/nacionales/humillaciones-el-encuentro-con-iris-varela-y-los-hombres-chavez-las-revelaciones-de-la-ex-presa-politica-araminta-gonzalez/>

Institutions or individuals involved in the torture: Agents of the CICPC assigned to the headquarters of Av. Urdaneta Caracas in July 2014, guards at the *Rodeo II* penitentiary and the Ministry of Prison Affairs.

Methods of torture: Efraín Ortega was brutally beaten. He was forced to hold stress positions for protracted periods of time. He was subjected to electric shocks and forced to kneel for more than seven hours, handcuffed by his hands and feet. His arms were lifted above his head while his hands were handcuffed behind him, breaking his shoulders. He went three months without sleep, only able to close his eyes and doze off because he was kept standing or crouching, and not able to lie down.

Efraín Ortega lost 60 kilograms during his detention, almost half his weight. In the first hours of his detention, he was savagely beaten by agents of the CICPC at their in headquarters in El Rosal. He was forced to kneel for more than seven hours, his hands and feet handcuffed. His whole body was wrapped in newspaper print, cardboard and taped around his head, stomach, ankles and wrists, to prevent marks on his body while he was beaten with a stick. He was handcuffed with his hands behind his back, and his arms were then lifted above his head, breaking his shoulders. He was given electric shocks to his neck, head and ears from 2:00 pm to 9:00 pm Efraín Ortega was forced to stand and crouch without sleeping for 50 days, sharing a cell with prisoners from the general prison population who did not let him sit or lie down.

He was transferred to the *Rodeo II* penitentiary on September 19, 2015. He was held in a cell without any toilet facilities. He caught Hepatitis B and A during an outbreak at the prison and suffered from thrombophlebitis in his lower limbs, as a result of the way he slept at the CICPC prison in El Rosal. He presented symptoms of renal failure from the medications administered for his circulatory problem. On October 18, 2015, he was transferred to *Rodeo III* after a riot broke out among the inmates at *Rodeo II*. At *Rodeo III*, he shared a cell with political prisoner José Luis Santamaría (Incident 34) and ten other inmates. All twelve prisoners ate, slept and relieved themselves in the cell.

Although he was initially accused of terrorism, the charge was later dismissed due to a lack of evidence. He was subsequently charged with the alleged crimes of association to commit a crime and unlawful manufacture of explosives. His preliminary hearing was postponed twenty times. He was finally freed on October 6, 2017.

Incident 34 The Case of José Luís Santamaría

Date and place of detention: José Luis Santamaría, 44 years old, is an electronics technician. He was detained on July 24, 2014 by the CICPC and charged with the crimes association to commit a crime, conspiracy and incitement of violence.

Institution or individuals involved in the torture: Officials of the CICPC assigned to the headquarters on Av. Urdaneta Caracas in July 2014, guards at the *Rodeo II* penitentiary and the Ministry of Prison Affairs.

Methods of torture: José Luis Santamaría was beaten with a baseball bat for hours. He was kept in crouching position with his hands and feet handcuffed for hours at a time and held in solitary confinement.

During the first hours of his detention, José Luis Santamaría was tortured at the headquarters of the CICPC on Av. Urdaneta in Caracas. His body was wrapped with newspaper and cardboard to avoid leaving marks of the beatings he received. When he was not being beaten he was handcuffed in a squatting position. During his detention at *Rodeo II* prison, he was infected with Hepatitis B during an outbreak at the prison, which was left untreated. He was locked in solitary confinement, for several days. On October 18, 2015, he was moved to *Rodeo III*, after a prison riot broke out at the jail. Despite an order for an MRI on his right knee he received at *Rodeo II*, José Luis Santamaría was not allowed to go to a hospital facility. He suffered skin rashes and what was believed to be scabies, from unsanitary conditions mostly because of the lack of water to wash. He did not have access to potable water and was required to drink any water that was available to him, causing him to suffer from continuous diarrhea and gastric problems. He suffered from dental issues. He went for long periods without seeing his son, brother, or his mother and suffered from deep depression. Although he was eventually freed on October 6, 2017, he was detained again on April 16, 2018, six months later. His lawyers and relatives reported that he was, again, subjected to brutal torture. He was beaten all over his body and suffered from electric shocks. His wrists were cut and bloody. On April 26, he was moved to the *Santa Ana* jail in Táchira State after being brought before by a military court as part of an investigation announced by the Minister of Internal Relations, Justice, and Peace, Nestor Reverol, known as *Operación Gedeón II*.

Incident 35 The Case of Vasco Da Costa

Date and place of detention: Vasco Da Costa, a 55-year-old political scientist, was first detained without an arrest warrant and taken the *Helicoide* by the DISIP, the predecessor of the SEBIN, on May 10, 2004. His second detention took place on July 24, 2014, when he was detained by agents of the CICIPC in the residential complex of El Paraíso in Caracas, under an accusation by a “Cooperating Patriot” (anonymous pro-government witness) that he was allegedly “heard talking” about destabilizing the country.

Institutions or individuals involved in the torture: In 2004, Agents of the former DISIP, now the Bolivarian National Intelligence Service. In 2014, agents of the CICPC and three agents assigned to the *San Juan de Los Morros* penitentiary, directed by the Ministry of Prison Affairs.

Methods of torture: During the period between 2014 and 2017, Vasco Da Costa was held in solitary confinement for more than a year. He was locked in a 2 x 2 meter cell, without a window or door, and only

a grate above his head. He had no access to potable water and instead forced to drink the water from the latrine in his cell. He was held *incommunicado* for three months, without seeing his attorney or his family. At one point, he was locked in solitary confinement for 10 days, not able to wash himself and eating on the floor among rats and cockroaches. He was given food only once a day, had no access to sunlight, and was not allowed any reading material.

On July 24, 2014, he was detained at a bakery in the El Paraíso residential development in Caracas by a unit of the CICPC. Charged with association to commit a crime and unlawful manufacture of explosives, his preliminary hearing was postponed 22 times, and his case file moved to six different courts. He was imprisoned on July 26 in the *San Juan de Los Morros* jail in the State of Guárico, in inhuman conditions. Between May 2015 and May 7, 2016 he was kept in a 2 x 2 meter cell with only a cot and a latrine with a trickle of water. The cell had four walls, with no door or windows, only what looked like a sewer grate in the ceiling, which guards walked over. The prison had the basic structure of a warehouse with unventilated rooms and a grate in the roof. For three months Vasco Da Costa was held in isolation, not allowed contact with his attorney or family. He was the constant target of cruel and inhuman treatment. The food that was served was scarce and often rotten and Vasco Da Costa lost 35 kilograms of weight. On December 28, 2015, he was wounded in his arm and buttock by pellets fired during a prison riot started by criminals in the prison's general population who were hungry. He did not receive adequate treatment for his wounds. In the cell contiguous to his, a prisoner with alleged psychological problems was beaten by the guards day and night. His constant moaning and cries for help took a psychological toll on Vasco Da Costa, who was despondent for not being able to help the other prisoner. Vasco Da Costa was transferred to a different cell on May 6, 2016. His family presumes it was because of the announcement of an incoming visit from a representative of the Vatican. He was under surveillance by four security cameras, without access to any type of reading materials or distractions. When the inmates were lined up in the courtyard, Vasco Da Costa was reportedly subjected to violent punishments where he was kicked and beaten when he refused to chant pro-government slogans. The IACHR issued precautionary measures on his behalf on September 30, 2016.¹⁸⁰

He was finally freed on conditional release October 6, 2017, however, he was detained again six months later as part of a new investigation brought by the Minister of Internal Relations, Justice, and Peace, Nestor Reverol, known as *Operación Gedeón II*. On April 16, 2018, a heavily armed DGCIM unit violently entered Vasco Da Costa's home, breaking everything as they went. He and his brother were brutally beaten, kicked all over their bodies and beaten with the butts of the officer's rifles. Vasco Da Costa was taken to an unknown location where he was tortured for 20 hours. He was made to lie face down with his hands tied behind his back while two officials got on top of him, and repeatedly asphyxiated him with water, gas, and plastic bags during which he lost consciousness four times. They then put him on his knees, his hands

¹⁸⁰ IACHR, Precautionary Measure No. 498-16, "Case of Vasco da Costa with respect to Venezuela", September 30, 2016, <http://www.oas.org/es/cidh/decisiones/pdf/2016/MC498-16.pdf>

handcuffed, and in that position, an officer stood on his shoulders and from there put a bag over his head, suffocating him again.

Later he was taken to a house known as *Vista Hermosa*, where he was suspended by his arms, with only the tips of his toes barely touching the floor. He was beaten all over his body in this condition, causing him to lose consciousness several times. The guards wrapped him in a mattress and beat him, focusing on his upper torso and head. Vasco Da Costa was then taken to the DGCIM base in Boleita, where he was again tortured for periods lasting 20 minutes at a time. Vasco da Costa sent a message through his sister, who quoting him relayed: "They had never been this violent before, with this incredible hatred. This is something else." Vasco da Costa was transferred to the *Santa Ana* jail in Táchira State on April 26, after being presented to a military court.

Incident 36 The Case of Lorent Gómez Saleh

Date and place of detention: Lorent Gómez Saleh, a 28-year-old student, was detained on September 6, 2014, in Bogota, Colombia, by the Immigration Police of Colombia, and subsequently turned over to the SEBIN at the Simon Bolivar international bridge crossing.

Institutions or individuals involved in the torture: Agents of the Bolivarian National Intelligence Service, under Director General Gustavo Enrique González López.

Methods of torture: Lorent Saleh was subjected to white torture at the *La Tumba* prison of the SEBIN in Plaza Venezuela in Caracas. He was locked in solitary confinement, losing all notion of time and day, without access to natural light or ventilation for long periods of time. He was locked in a 2 x 3 meter cell, 24 hours a day for five months, without being able to stretch. The air conditioning set to eight degrees Celsius, causing his skin to chap and bleed, numbness and sharp muscular pain and sleep disorders. He suffered fevers, vomiting and diarrhea, giving rise to a serious loss of body weight and muscle mass. He suffered from depression. He experienced serious urological problems for more than two years, which did not receive specialized medical treatment, causing intense pain during urination and dehydration.

Lorent Saleh was held for five months and subjected to white torture, locked in a small cell 24 hours a day. He was only allowed out to go to the bathroom by ringing a buzzer located in the cell. He could not stretch or exercise. White light was on 24 hours a day causing Lorent Saleh and the detainees to lose all track of time. The guards would play tricks to disorient him, bringing him dinner in the morning and lunch at night. The cold he was subjected to was unbearable. The air conditioning was set at eight degrees Celsius and at times it was set even colder as a mechanism of torture and pressure on the detainees. There was no visual contact between the detainees. In a 24 hour period, Lorent Saleh would only see the guard who brought him food through the slot in the cell, and he was prohibited from speaking to him. The only time he was

taken to the surface was when he was transported to the courts. He never saw sunlight or natural air. He was in solitary confinement for four months. Following this initial period, the SEBIN allowed his mother or father, and attorney to visit once a week. He was not allowed books or newspapers.

The prosecutor assigned the case, Katherine Harrington, visited him several times, telling him that if he agreed to testify against some of the well-known Venezuelan opposition politicians, such as Leopoldo López, Antonio Ledezma and María Corina Machado, she would make his imprisonment less harsh and possibly move him to house arrest instead of serving his time in jail.

Lorent Saleh presented symptoms of a nervous breakdown, stomach problems, diarrhea, vomiting, muscle spasms, joint pain, headaches, dermatitis and panic attacks, and only had access to certain medications after his third month of imprisonment. On February 7, 2015, along with political prisoners held in *La Tumba*, Gerardo Carrero (Incident 31) and Gabrielle Valles (Incident 37), he went on a hunger strike that lasted 18 days. On two occasions, Lorent Saleh attempted to physically hurt himself, because of the deep depression he suffered, first self-cutting and subsequently trying to hang himself. The IACHR issued precautionary measures on his behalf.¹⁸¹ Saleh's preliminary hearing was deferred 49 times, leaving him in prison for three and half years without any formal charges against him. As of April 1, 2018, Lorent Saleh remained in prison in the *Helicoide*.

Incident 37 The Case of Gabriel Valles Sguerzi

Date and place of detention: Gabriel Valles Sguerzi, a 29-year-old systems engineer, was detained on September 7, 2014, in the border city of Cucuta, Colombia, by the Colombian immigration police. He was turned over to the SEBIN at the Simon Bolivar international bridge.

Institutions or individuals involved in the torture: Agents of the Bolivarian National Intelligence Service under its Director, General Gustavo Enrique González López. Commissioner Carlos Calderón, the Director of Strategic Investigations of SEBIN.

Methods of torture: Gabriel Valles was held in the *La Tumba* prison and suffered the similar types of torture and abuse as described in the cases of Laurent Saleh (Incident 36) and Gerardo Carrero (Incident 31). The prolonged period of Gabriel Valles' detention has caused serious psychological consequences, making him claustrophobic, hypersensitive to noise and sunlight, and triggering a state of deep depression. During the first five months of his incarceration, Gabriel Valles was subjected to white torture. He was locked in his cell for 24 hours straight, only let out to go to the bathroom by ringing a buzzer located in the cell. Gabriel

¹⁸¹ IACHR, Precautionary Measure No. 223-13, "Case of Laurent Saleh and Gerardo Carrero with respect to Venezuela" March 2, 2015, <http://www.oas.org/es/cidh/decisiones/pdf/2015/MC223-13-ES.pdf>

Valles suffered a great deal when Lorent Saleh attempted suicide, and even the guards started to keep an eye on him for a few nights after the attempted suicide, until his health notably deteriorated because he was unable to sleep. Gabriel Valles' preliminary hearing was deferred 49 times, leaving him in prison for three and half years without formal charges against him. As of April 1, 2018, Gabriel Valles remained in prison, detained in the *Helicoide*.

Incident 38 The [REDACTED], a 20-year-old male victim

Date and place of detention: [REDACTED]
[REDACTED]

Institutions or individuals involved in the torture: [REDACTED]

Methods of torture: [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

Incident 39 The Case of Juan Miguel de Souza

Date and place of detention: Juan Miguel de Souza, a 51-year-old computer engineer, was accused by the then-President of the National Assembly Diosdado Cabello, of allegedly using social media (Twitter) to conspire with hackers to suspend the telephone service of Cantv as part of the plan *Salida II*. He was detained without an arrest warrant, on January 21, 2015, after his house was raided by the SEBIN. He was disappeared, his whereabouts unknown until February 11, 2015 when his family received a call from the victim telling them he was being held at *La Tumba*.

Institutions or Individuals that were involved in the torture: Agents of the SEBIN.

Methods of torture: Juan Miguel was held in solitary confinement, in a cell held at low temperatures, and regularly deprived of sleep. He was beaten and burned with cigarettes. He suffered psychological torture, facing threats against his life and the lives of his children. The SEBIN also directly targeted his children. He was deprived of medical attention. Successively, his attorneys were targeted and intimidated causing more than one to drop his case.

Jose Miguel de Souza was held in *La Tumba*, a prison known as a white torture facility built expressly for detainees that the government views as political enemies. During the two years of his detention, he was placed in solitary confinement twice for periods of six month, only allowed to leave his cell to go to the bathroom. He did not hear any sound other than the voices of the other detainees. The low temperatures caused him painful chapping and cracking of the skin. He was deprived of sleep, as well as given poor quality and sparse meals. He would be woken up by having cold water thrown on him. “If he behave well”, the guards would occasionally turn the lights out so he could sleep. He was beaten on his chest and back and burned with cigarettes when he refused to testify against opposition politicians. He was personally interrogated by Prosecutor Katherine Harrington four times, who was pushing him to make these accusations.

He suffered from psychological torture. He received death threats and was told: @enyukote (Twitter user name), “you can’t imagine how much time we spent looking for you, you can’t imagine how many hours of sleep we lost because of you, you will pay us back for all those hours.” His children were also targeted, and Juan Miguel de Souza would be told that they knew where his children went to school and what color clothes they were wearing. At one point, one of his children was taken off the school bus by a SEBIN agent and lifted up by the shirt. The agents told him “to tell the truth about his dad.” His then 12-year-old daughter was taken off the bus, but people present intervened to keep the agents from further frightening the children. His eldest daughter, Michelle De Sousa, was targeted by a SEBIN agent on the street of Caracas, who emerged from his hiding place when Michelle and her sister were passing by grabbed her by the hair, and then while holding on to her asked: “where is he?”

Seven months after arriving at *La Tumba*, a painful tooth infection worsened until it burst his left eardrum because he was denied timely medical care. Unaware that he was developing prostate cancer, it was very painful for Juan Miguel to urinate and he had blood in his urine. He was denied the medications his family would bring him. He did not receive treatment for his condition while in *La Tumba* and went on an unsuccessful hunger strike in an effort to force treatment. He was later sent to the military hospital with level 8 prostate cancer.

He was deprived of the right to a defense. Four public defenders were assigned to him, all eventually quitting out of fear. One of them took the case for one month and then told his family that she could not continue with the case because she was facing too much persecution because Juan Miguel was Diosdado Cabello’s prisoner. On December 23, 2017, he was released on the condition that he leave the country immediately. He is living in exile.

Incident 40 The Case of Joselyn Prato

Date and place of detention: Joselyn Prato, a 23-year-old university student was detained by the National Guard on August 21, 2015 along with five other people, including her brother Johan Prato. They were detained for allegedly participating in a demonstration on a beach of the State of Falcon, against the Minister of Tourism, Marleny Contreras, who is also the wife of Diosdado Cabello, then-President of the National Assembly.

Institution or individuals involved in the torture: Members of the National Armed Forces and the Bolivarian National Guard assigned to the detachment located in Chichiriviche, State of Falcón, as well as the guards of the women’s penitentiary center in Coro, in the same State.

Methods of torture: Joselyn Prato was fiercely beaten and kicked at the time of her detention, causing her eye to bleed and leaving a bruise that covered 40% of her face, making her pass out. The beating also fractured her left arm. She was subjected to sexual torture of forced undressing and was kept nude for 50 days, while locked in a 2 x 3 meter cell with eight other women. She did not have access to sunlight or natural ventilation and suffered from vomiting and bleeding from the beatings she sustained. The food she was given was rotten and contained maggots. She was subjected to lascivious acts and humiliating body searches in the early morning hours.

Joselyn Prato was with her family at a beach in *Cayo Sal* (Salt Key) in the State of Falcón, arriving only one hour before her detention. That day, Minister of Tourism Marleny Contreras had gone to the beach and had been heckled by those who were there. The National Guard arrived a few hours later with orders to suppress and detain those allegedly responsible for the heckling. The guards later confessed to the detainees that they had been ordered to disperse the bathers with teargas but because there were so many children, they decided not to. While defending her brother, who was trying to find out what was happening, she inadvertently pushed an officer dressed in plainclothes. She was forced onto her knees and handcuffed. Joselyn was brutally beaten and kicked by approximately five officers, who kicked her hard in the abdomen, ribs and in her face. The blows to her face caused an extensive bruise that covered 40% of her face, fractured her left arm and caused her eye to bleed. While unconscious, she was dragged several meters to the dock. She was then transported along with the other detainees, to the GNB barracks in Chichiriviche.

Once at the barracks, the officer in charge shouted at them: “Heads are going to roll, you messed with the boss’ wife. It’s a political case. We need people to be guilty for what happened.” The Captain of the National Guard informed Jocelyn, her brother and their three companions that they had won the “revolutionary lottery.” Because of her injuries, Joselyn was taken to a hospital where the doctor set her arm in a cast and drained the wound, insisting that she needed to be hospitalized. His evaluation report was destroyed by the GNB officer in charge of her transport, and she was returned to the barracks.

Forty-eight hours later, they were transferred to the *Coro* prison, a jail with regular criminals, where Joselyn was stripped and was locked in a 3 x 2 meter cell, with eight other female inmates. In the cell, there was only one cement bed, a shower, a toilet and a sink. Joselyn was vomiting and urinating blood, and as a result of to the shouts of the other women inmates, she was moved to the infirmary and then the hospital where she continued to vomit blood. She was diagnosed was a dilated kidney from the beatings she had sustained. After leaving prison, Joselyn weighed only 35 kilograms, suffering from malnutrition as a result of the poor diet and her refusal to eat spoiled food.

The first night of her detention, Diosdado Cabello, addressed the incident on his television program, stating: “The law arrived and found the assailants of the women. Knock-knock, who is it? This is the SEBIN... We are not going to allow Venezuelan women to be disrespected.” “Among the persons detained was an activist of *Voluntad Popular* from the State of Táchira... May God help you, my dear, Joselyn Prato.” Joselyn Prato and her brother were freed on October 29, 2015. No one has been arrested or detained for the torture she suffered.

Incident 41 The Case of Daniel Morales Hidalgo

Date and place of detention: Daniel Morales, an 18-year-old student at the Central University of Venezuela, was detained on May 18, 2016 by agents of the Bolivarian National Intelligence Service as he was leaving his university campus on the Plaza Venezuela in Caracas.

Institutions or individuals involved in the torture: Agents of SEBIN, directed by the Minister of Internal Relations, Justice and Peace, Major General Gustavo González López.

Methods of torture: Daniel Morales suffered hard beatings with blunt objects and was kicked in his face, back of the neck, abdomen and his private parts. He also received electric shocks to the head. [REDACTED] Teargas was released directly in his face, forcing him to swallow the gas. His fingers were stepped on by guards wearing boots. He was thrown on the floor in his underwear and was forced to take lewd positions, while being told that he was going to be raped. He was threatened that they would retaliate against his family.

Daniel Morales was detained by a detail of SEBIN agents as he was leaving the university campus. They hit him in the face and on the back of his head causing him to pass out. He was transported to SEBIN Headquarters in Plaza Venezuela in Caracas, where he was subjected to torture and cruel, inhuman and degrading treatment by the SEBIN agents. [REDACTED]. They splashed teargas on his face, and he was forced to swallow it. He was beaten while he was blinded by the gas and told that they had the contact information for all his relatives and that they would go after them.

This torture was focused on coercing Daniel Morales to record a video implicating Ángel Coromoto Rodríguez, chief of the security of the National Assembly, of funding the demonstrations. They also wanted him to implicate opposition congressman and political leaders, and he was shown photos of these individuals for him to accuse them. The day of his preliminary hearing, Daniel Morales cried, hugging Coromoto Rodríguez, asking for his forgiveness for having accused him after 48 hours of torture. Daniel Morales was held *El Helicoide* without communication with his attorney at for 19 days, and from his family for 31 days.

Incident 42 The Case of José Gregorio Hernández, with Jheremy Bastardo, Jefferson Araguache, Deivis Hernández, Richard Rondón and Luis Antonio Theis Camacho

Date and place of detention: José Gregorio Hernández, a 20-year-old international trade student, was detained on May 18, 2016 by the Bolivarian National Intelligence Service in the office where he worked at a Caracas branch of the Bank of Venezuela.

Institution or individuals involved in the torture: Officers of the Bolivarian National Police and agents of the SEBIN assigned to Plaza Venezuela. He was also accused directly by the Minister of the Interior and Justice and Director of the SEBIN, General González López.

Methods of torture: José Gregorio Hernández was badly beaten all over his entire body. He suffered sexual torture including being stripped naked, exposing his private parts, he was mocked and they threatened to rape him with a pipe. He received electric shocks to his head. His abdomen was beaten heavily with cushions. He had toxic gas sprayed in his face and eyes, which he was forced to swallow. He was locked in a cell with eight other detainees and had teargas canisters thrown at them. He was not allowed to speak to his attorney.

From the moment he was detained, he was directly accused by Minister of Internal Relations, Justice and Peace and Justice González López of beating a member of the PNB at an opposition-led demonstration that took place in Caracas calling for a date for the recall referendum. He was taken to SEBIN headquarters in Plaza Venezuela and he was not allowed to communicate with his family or attorney. He was beaten hard all over his body. He was stripped of his clothing, left only in his underwear and forced to jump and take positions so his private parts were exposed. They threatened to rape him with a pipe. He was given electric shocks on his head and he was beaten hard with a cushion on his abdomen, his assailants laughing telling him it would not leave any marks. He was subjected to this form of torture for 48 hours while he was pressured to accuse Ángel Coromoto Rodríguez, the chief of security for the National Assembly, and Henry Ramos Allup, President of the National Assembly, of funding the “violent” actions of that day. He was shown photos of political leaders and opposition legislators, insisting that he say that he was connected to them. When José Gregorio Hernández would ask why they were doing this and that he had no link to the political figures, the SEBIN agents would tell him that they needed a “culprit” and he was it. They sprayed

toxic gas in his face and eyes, and he was forced to swallow it. They forced him to wear a dress, hat and glasses and took photos of him.

The following people were detained on the same day as José Gregorio Hernández: Jheremy Bastardo Lugo, 18 years old, detained by the PNB and turned over to the SEBIN; Jefferson Araguache, 24 years old, detained by the PNB and turned over to the SEBIN; Deivis Hernández, 20 years old, detained by the PNB and turned over to the SEBIN. Although he had not participated in the demonstration, Richard Rondón, 30 years old, was also detained by the PNB [REDACTED], and turned over to the SEBIN. Luis Antonio Theis Camacho, 28 years old, was arrested by the PNB as he attempted to help a woman who was being abused by officers in an area near a demonstration that had already ended, and was turned over to the SEBIN. All of the people named above, were subjected to the same patterns of torture at the headquarters of the Bolivarian National Intelligence Service located in Plaza Venezuela and held in the cells of *La Tumba*. They were all forced to undress, were beaten, threatened with rape, doused with toxic gas, locked into a cell into which teargas canisters thrown at them. All to coerce them into accusing Coromoto Rodríguez, and other opposition political leaders and legislators of funding and participating in alleged acts of violence. Jeremy Bastardo Lugo was also threatened that his wife would be raped and killed along with his young daughter. Jefferson Araguache's left shoulder was dislocated by the beatings.

Incident 43 The Case of Francisco Alejandro Sánchez

Date and place of detention: Francisco Alejandro Sánchez, a 22-year-old political science student, was detained by agents of the Bolivarian National Intelligence Service on April 13, 2017, along with his twin brother, Francisco José Sánchez, after participating in a march in the west side of Caracas.

Institution or individual involved the torture: Agents of the Bolivarian National Intelligence Service.

Methods of torture: He was handcuffed and hung from his wrists for 24 hours, causing injuries on his hands and asphyxiation. He was doused with gasoline, as officers threatened to burn him. He was subjected to psychological threats, including that they were targeting his girlfriend, saying that they knew what she had done the day before. They also threatened his younger brother.

Francisco Alejandro Sánchez and Francisco José Sánchez, activists of the *Partido Primero Justicia*, participated in an April 13 march by the Venezuelan opposition in west Caracas. When the demonstration ended, they headed home to the residential development Montalbán when they were taken by the SEBIN, without an arrest warrant. The SEBIN took them to the *Helicoide* in Caracas, where they were separated. Francisco Alejandro Sánchez was hung from his handcuffs for 24 hours. While he was hanging, the guards repeatedly threatened his girlfriend and younger brother. He was doused with gasoline and threatened that they

would burn him. He was psychologically tortured. The torture was used to force him to sign accusations implicating the legislators from of *Primero Justicia* for allegedly funding of acts of destabilization.

Incident 44 The Case of [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED], 42 victims.

Date and Place of detention: The afternoon of May 4, 2017, [REDACTED]
[REDACTED]

Institutions or individuals involved in torture: Command of the Bolivarian National Guard, La Guarapera sector, [REDACTED]

Methods of torture: They were beaten with rifles and blunt objects. Some victims were beaten heavily in the head. They were kicked all over their bodies. They were subjected to sexual and psychological torture, and received electric shocks. They were hung by their wrists, their hands and feet were handcuffed. The detainees were brutally beaten, with no regard for age or sex, with especially hard blows to their head, abdomen and lumbar areas. The women were subjected to sexual torture, including lascivious acts and the threat of being raped. Most of the young males were given electric shocks on their private parts, on several occasions. While hanging by their arms, they were beaten and threatened with death. Their hands and feet were handcuffed in order to restrain their movement as they were subjected to beatings and electric shocks. Their heads were banged against the wall.

[REDACTED]

Incident 45 The Case of Riccardo Polito

Date and Place of detention: Riccardo Polito, a 23-year-old student, was detained on May 4, 2017 in Barquisimeto, State of Lara.

Institutions or individuals involved in the torture: Officers of the Bolivarian National Guard.

Methods of torture: On multiple occasions he was brutally beaten until he lost consciousness. He was held in an armored vehicle without air and locked in a cell with open teargas canisters. He was deprived of sleep and food. His hair was set on fire.

Officers of the GNB and armed *colectivos* on motorcycles broke up a demonstration on May 4, 2017 in Barquisimeto. Riccardo Polito, who had been bringing water to the demonstrators, was standing by his car when three armed men came up to him and asked him to open his car. When Riccardo resisted, he was thrown face down and brutally beaten until he passed out. He was put in his car and transported to a GNB trailer. He was forced to make several calls. The Captain called Riccardo's mother, telling her "your son is dead, we left him shot dead and lying in the Lara-Zulia highway." He was taken to an outpatient clinic. His injuries from the beating were so serious that when he was laid down in a bed, he had trouble breathing and lost consciousness. The GNB wanted to take him away again, but the doctors interceded because of the severity of his condition. After two days, he was released from the clinic and the GNB rotated him through different detachments for 23 days. In one case, he was detained with common criminals in the general prison population. He was locked in an armored vehicle for two days where he could only breathe through a grate. He did not sleep or eat. He was hung from wires and beaten. The GNB locked him in a room with four open teargas canisters and set his hair on fire with a cigarette lighter.

He was prosecuted and convicted by a military court with fabricated evidence. After his health deteriorated, his attorneys managed to secure his transfer to house arrest on humanitarian grounds, on May 26.

Incident 46 The Case of William Delgado, Josué Pabón, ██████████, Felipe Preciado, and Edgar Pérez

Date and place of detention: William Delgado, a 20-year-old student, Josué Pabón a 21-year-old student, ██████████, Felipe Preciado, 25-years-old, and Edgar Pérez, were detained on May 11, 2017 by the police of Barinas.

Institutions or individuals involved in torture: The police of Barinas and the Bolivarian National Guard.

Methods of torture: They were brutally beaten with sticks and baseball bats all over their bodies, dragged along the pavement as they were kicked. They were locked in armored vehicles with open teargas canisters thrown in with them and left inside to suffocate. Inside the same armored vehicle, they were subjected to sexual torture of forced undressing and threats of rape. They were stripped and beaten by the guards, who took turns hitting them, with helmets and punching them in the face.

William Delgado was beaten all over his body, including his head. This beating caused serious injuries that required stitches, resulting in a cranial fissure. These wounds became infected. William Delgado and Josué Pabón were released on August 3, 2017 after 84 days in detention.

Incident 47 The Case of Christian Jimenez Ara, Enmanuel Jesús Barrios Lugo, Manuel Ignacio Martínez Menéndez, [REDACTED], Carlos Alberto Atacho Méndez, [REDACTED], Slender Eduardo Ramón Bravo, Luis Enrique Delgado Delgado, Gustavo Alejandro Molina Reina and [REDACTED]

Date and place of detention: The group was detained on May 15, 2017, in El Limón, Municipality of Mario Vicente Iragorry, State of Aragua.

Institutions or individuals involved in the torture: Offices of the Bolivarian National Police.

Methods of torture: They suffered multiple savage beatings and were kicked in their ribs and face. After being handcuffed and forced to lie down, they were over by motorcycles which caused them serious bodily harm. Toxic gas and powder was put directly in the eyes of the victims, as they were restrained on their knees and handcuffed. They were hung by their arms. They suffered sexual torture of forced undressing, attempted rape and lascivious acts. One of the victims was raped. They suffered psychological torture, including death threats, shouting and serious insults.

Cristian Jiménez Ara, 19 years old, was beaten with the butt of weapons and police helmets, all over his body, especially, on his ribs, abdomen and face. He was forced to kneel while he was beaten. They sprayed pepper spray into his eyes, while they were forced open. He was hung by his arms and handcuffed to bars on the ceiling, so that only his toes were touching the floor. He was beaten in this position until the wind was knocked out of him. A motorcycle ran over his legs several times. [REDACTED]

Enmanuel Jesús Barrio Lugo, a 23-year-old chef's assistant, was brutally beaten with pipes, helmets and the butt of firearms all over his body, including his face. He was kicked multiple times all over his body, especially in his knees causing a seepage of fluid and serious after-effects. [REDACTED]

[REDACTED] He was forced to kneel while he was beaten and had toxic powder blown into his eyes.

Manuel Ignacio Martínez Menéndez, 18 years old, was brutally beaten with blunt objects and kicked all over his body, especially in his knees and in his face. He was forced throughout the beating to "pose" in front of objects placed by the police to take photos of him. He was forced to kneel during the beating. Toxic gas was sprayed in his eyes, while he was forced to keep his eyes open. [REDACTED]

[REDACTED] declined to testify.

Carlos Alberto Atacho Méndez was brutally beaten on his ribs and face while in detention and kicked all over his body. [REDACTED]

[REDACTED] His belongings, ID, cards, and shoes were stolen from him. He was run over by several motorcycles, causing serious injury to his body.

[REDACTED] declined to testify.

Slender Eduardo Ramón Bravo Bastidas, 24 years old, was brutally beaten with nightsticks and police helmets, especially on the face. He was robbed of all of his credit cards. [REDACTED]

[REDACTED] He was hung by his arms and beaten repeatedly, while receiving death threats.

Luis Enrique Delgado Delgado, a 26-year-old athlete, was subjected to brutal beatings with sticks, and blunt objects. He was kicked multiple times all over his body, especially in his ribs. He was having breathing difficulties at the time of his court appearance. [REDACTED]

[REDACTED] He was beaten while hanging from his wrists.

Gustavo Alejandro Molina Reina, a 26-year-old student, was savagely beaten by officers in the area of his body where he had recently had an operation for an intestinal obstruction. He was kicked repeatedly in the same area. He was threatened and intimidated as he was beaten, and was threatened with death. [REDACTED]

[REDACTED], declined to testify.

Incident 48 The Case of Yolibeth Colmenares

Date and place of detention: Yolibeth Colmenares was detained in Barinas, May 15, 2017.

Institutions or individuals involved in the torture: Police officers from Barinas and officers of the Bolivarian National Guard.

Methods of torture: She was brutally beaten by five policemen, who hit and kicked her all over her body. She was covered in feces and forced to swallow it. She was splashed with urine that was taken from the toilets of the inmate's cells. Her pants were opened and it was poured onto her private parts. She was left in this condition for more than 24 hours, causing a serious infection. At the time of her detention, when she did resist letting them put her in an armored vehicle with other detainees she was dragged for more than 50 meters, as they beat her, dragging her through feces in the streets.

Incident 49 The Case of [REDACTED]

Date and place of detention: [REDACTED], 2017 [REDACTED]
[REDACTED]
[REDACTED]

Institutions or individuals involved in torture: Officers of the Bolivarian National Guard.

Methods of torture: Their hair and face were burned with lighters. They were beaten on the head with a blunt object leaving bloody wounds. They were forced to kneel while handcuffed with their hands behind their back. In that position they were beaten with rifles and kicked in the ribs and legs. They were victims of the sexual torture of continuous threats of rape and attempted lascivious acts. They were asphyxiated with ropes, with which they were dragged across the floor. They were constantly threatened with death and subject to psychological torture during the entirety of their detention. They were punched in the face, stomach and ribs while forced to kneel with their hands tied.

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

Incident 50 The Case of [REDACTED], a male victim

Date and place of detention: [REDACTED]

Institutions or individuals involved in the torture: [REDACTED]

Methods of torture: [REDACTED]

Incident 51 The Case of Alex Alexander González Mujica, Kevin Rojas Padrón, Richard Alberto Suarez López, Abraham Quiroz Valencia, Sergio Yender Guevara Cueva, Enyer José Matute Verde, Angelo José Sangronis Medina, José Alberto Saldivia, Boris Humberto Quiñones León, Noneiker Grajirena Fernández, Andrés Emilio Aguilar Solís, Johan García Espinoza, Jesús Lesner Montilla Rojas, Michelle Sosa Herrera, Luis Córdova Córdova, Daniel Mota Celis, Ángel Garrido Zapata, Fabio Cordero Peña, Cesar Ramón Pérez Salazar, Lisandro José Perdomo Ramírez, Keny Abraham Colmenares Reyna, Emtchellt Sosa Herrera, José Rafael González Marrero, Briguitt Carolina Herrada Herrada, Saray Verónica Corso Alvarado, Estefani Coromoto Altuve Rodríguez, Dayana Andreina Martínez Barrios, and Estefanía Andreína Quintero López

Date and place of detention: Alex Alexander González Mujica (35 years old), Kevin Rojas Padrón (24 years old), Richard Alberto Suarez López (22 years old), Abraham Quiroz Valencia (18 years old), Sergio Yender Guevara Cueva, (25 years old), Enyer José Matute Verde (32 years old), Angelo José Sangronis Medina (24 years old), José Alberto Saldivia (27 years old), Boris Humberto Quiñones León (42 years old), Noneiker Grajirena Fernández, Andrés Emilio Aguilar Solís (21 years old) Johan García Espinoza (24 years old), Jesús Lesner Montilla Rojas (25 years old), Michelle Sosa Herrera, Luis Córdova Córdova (23 years old), Daniel Mota Celis (32 years old), Ángel Garrido Zapata (37 years old), Fabio Cordero Peña (27 years old), Cesar Ramón Pérez Salazar (25 years old), Lisandro José Perdomo Ramírez (20 years old), Keny Abraham Colmenares Reyna (35 years old), Emtchellt Sosa Herrera, José Rafael González Marrero, Briguitt Carolina Herrada Herrada (29 years old), Saray Verónica Corso Alvarado (22 years old), Estefani Coromoto Altuve Rodríguez (22 years old), Dayana Andreina Martínez Barrios (25 years old), and Estefanía Andreína Quintero López were detained on July 2, 2017, on Avenida Las Delicias, at the main campus of the Libertator Experimental Pedagogical University (UPEL), Maracay, State of Aragua, during a demonstration. The young people were surrounded on the university campus grounds by police agents.

Institutions or individuals involved in the torture: Agents of the Bolivarian National Police, the Aragua Police and CONAS.

Methods of torture: They were savagely beaten all over their bodies, with sticks and metal pipes. They were kicked all over their bodies, especially ribs, abdomen, faces. They had guns pointed at their heads and were hit directly on the head with the agents' helmets, causing serious injuries to some of the victims. Abraham Quiroz Corrales suffered a cranial fracture. Some were beaten so hard that they suffered skin detachment on parts of their body, including their gluteus and areas of their backs. They suffered sexual torture. [REDACTED]

[REDACTED] The female victims were especially beaten in the face, with the intention to cause disfigurement and bruises. The psychological torture was constant. They received repeated death threats, threats of to be disappeared, as well as degrading and racist treatment. They were called *guarimberos* and asked who from the opposition was paying them.

Incident 52 The Case of [REDACTED], a 19-year-old victim

Date and place of detention: [REDACTED]
[REDACTED]

Institutions or individuals involved in the torture: [REDACTED].

Method of torture: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Incident 53 The Case of [REDACTED], a male victim

Date and place of detention: [REDACTED] July [REDACTED], 2017, at the demonstration known as *el trancazo* (protest designed to bring to bring to bring the city to a standstill), coordinated by the MUD, in Caracas near the SAMBIL Shopping Mall. He claims that he was detained along with an “unquantifiable number” of young people who were also tortured.

Institutions or individuals involved in the torture: Officers from the Bolivarian National Guard and CONAS.

Methods of torture: His wrists were duct taped behind his back and he was viciously beaten all over his body. He was forced to kneel [REDACTED] and while in this position, he was repeatedly kicked and beaten on the back, neck and head. He received several strong blows to his head with the agents’ helmets, causing a deep wound. [REDACTED]. His face was sprayed with pepper spray as he was kept on his knees with his hands restrained. His hair was cut with a knife. They tore his clothes off, leaving him partially naked and he was slapped repeatedly. He was threatened and accused of being a *guarimbero*, and mocked throughout his torture. They tried to extort money for “releasing him.” He was held in isolation, with no contact from his family or attorneys, and was not allowed to make a single call before his court appearance. He was in detention for four days.

Incident 54 The Case of [REDACTED], two students

Date and place of detention: Two students were detained [REDACTED]
[REDACTED]
[REDACTED] They were tortured along with 15 other young people detained at the *el trancazo* demonstration convened by the *Mesa de la Unidad Democrática*.

Institutions or individuals involved in the torture: Officers from the CONAS and the GNB.

Methods of torture: [REDACTED] was beaten and dragged by the hair into a GNB armored vehicle. Her hair was cut inside the vehicle as they threatened and cursed at her. They restrained her forcing her to lie down on the floor, where she was beaten and kicked. [REDACTED]
[REDACTED]. As she was beaten, she was constantly asked how much she had been paid to demonstrate. Her cellphone was stolen.

[REDACTED] was punched in the face, beaten on his head with helmets, and repeatedly beaten on his right leg with a nightstick. He was forced into an armored vehicle [REDACTED]
[REDACTED]. One of the officers sat on his legs to restrain him while the others kicked and beat the rest of his body with helmets, and body shields. They cut his hair with a knife. He was threatened and cursed at throughout his time in detention. He was asked who had paid him to demonstrate, and stole everything he had on him including his cellphone, wallet, and backpack.

These individuals were detained along with 15 other young men and women at the same demonstration, who were also tortured inside the armored vehicles and at [REDACTED] detention center, where they were transferred. [REDACTED]
[REDACTED]

Incident 55 The Case of Gianni Scavino

Date and place of detention: Lechería, State of Anzoátegui, July 13, 2017.

Institutions or individuals involved in the torture: Officers of the Bolivarian National Guard assigned to CORE 7 and the Bolivarian National Police.

Methods of torture: Gianni Scavino, who has Asperger syndrome, and was brutally beaten by a group of officials with their weapons, helmets and protective shields on his head, face and body. He was kicked in

the back, ribs, abdomen and face. He was savagely dragged along the pavement as he was beaten. He was suffocated with plastic bags, had tear gas powder blown on his face and was beaten in the abdomen and ribs repeatedly. He was not allowed contact with his attorney.

This young man was subjected to a vicious group beating, by agents of both security forces, during his detention at CORE 7. [REDACTED]
[REDACTED]
[REDACTED]. There has been no arrest or prosecution for the torture perpetrated against Gianni Scavino.

Incident 56 The Case of [REDACTED], a young male victim

Date and place of detention: [REDACTED], was detained on July 14, 2017, [REDACTED]

Institutions or individuals involved in the torture: The Bolivarian National Guard.

Methods of torture: He was kicked and beaten all over his body with helmets and the butt of firearms, especially on his head, the back of his neck, and abdomen. Hot water was poured on him. He was given electric shocks on his head, genitals and forearms. He was subjected to intense psychological torture throughout his detention [REDACTED]. They threatened to kill and to disappear him. He was subjected to sleep deprivation, kept awake the whole time with beatings and threats.

Incident 57 The Case of [REDACTED], a young male victim

Date and place of detention: [REDACTED] was detained on July 20, 2017, in [REDACTED]. He testified that he was detained with “an unquantifiable number” of other demonstrators who were also tortured in the time that he was tortured [REDACTED].

Institutions or individuals involved in the torture: The Bolivarian National Police.

Methods of torture: He was brutally beaten all over his body, with nightsticks, clubs, and with the butt of guns. He was kicked in the abdomen, ribs, and back causing serious bruises. Teargas powder was blown on his face and [REDACTED]
[REDACTED].” He was subjected to psychological torture throughout his time in detention. They threatened to kill and to disappear him. They threatened to rape his mother.

Incident 58 The Case of [REDACTED]

Date and place of detention: [REDACTED]
[REDACTED]

Institutions or individuals involved in the torture: [REDACTED]

Methods of torture: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Incident 59 The Case of [REDACTED], a male victim

Date and place of detention: [REDACTED] was tortured, along with an “unquantifiable number” of other demonstrators who were detained on July 26, 2017, at an opposition-led demonstration known as *el trancazo* in Chacao, Caracas.

Institutions or individuals involved in the torture: Officers from the Bolivarian National Guard.

Methods of torture: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Incident 60 The Case of [REDACTED], a female victim

Date and place of detention: [REDACTED] was detained on July 26, 2017 at an opposition-led *el trancazo* demonstrating [REDACTED], Caracas.

Institutions or individuals involved in the torture: Officers of the Bolivarian National Guard.

Methods of torture: [REDACTED] was brutally beaten all over her body, with the butt of guns and was punched and kicked multiple times. Her hair and fingernails were cut with a knife. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Incident 63 The Case of Captain Juan Carlos Caguaripano

Date and place of detention: Juan Carlos Caguaripano was detained in Sucre in the metropolitan district of Caracas, by the Sucre municipal police on August 11, 2017.

Institutions or individuals involved in the torture: Officers of the DGCIM and the SEBIN.

Methods of torture: During his interrogation he received heavy blows on his legs with a stick. Plastic bags were placed over his head to suffocate him while he was punched in the abdomen and the ribs. He was struck in the face with the butts of firearms and beaten on the thorax. Based on the description of his pain, he is thought to have a fractured rib. His genitals were beaten, causing heavy bleeding and the dislocation of a testicle that required stitches.

After he was detained in Caracas, he was taken personally by Nestor Reverol, Minister of Interior Relations, Justice, and Peace, and personnel of the Special Actions Forces of the Bolivarian National Police to an unknown location thought to be in Carabobo State, where he was brutally tortured. From the time of his arrest in August, until September 19, Juan Carlos Caguaripano was held *incommunicado* from his lawyers and relatives. The defense lawyer retained by his family was prevented from entering the building when the Captain was taken to court, violating his right to a defense. Instead, he was forced to accept a lawyer assigned by the court. After his hearing, Caguaripano was taken to *La Tumba*, where he has been held *incommunicado*.

Incident 64 The Case of Pedro Urbina, Regulo Castro, and Luis Leal

Place and date of detention: Pedro Urbina, Regulo Castro and Luis Leal were detained by the DGCIM in Caracas together with Jose Luis Santamaria (Incident 34) and Vasco Da Costa (Incident 35) on April 16, 2018.

Institutions or individuals that took part in the torture: Officers of the DGCIM and the SEBIN.

Methods of torture: They were beaten and kicked all over their bodies, especially in the head, thorax, and ribs. Their hands were tied behind their backs and they were made to kneel, while they were beaten and suffocated with plastic bags placed over their heads. Their wrists were cut and bloody. They received

electric shocks to the testicles, which they had first wrapped in wire. They were beaten on the soles of their feet so severely that continues to impede their walking.

The three victims were accused by the Minister of Interior Relations, Justice, and Peace, Nestor Reverol, of participating in the so-called *Operación Gedeón* that was supposedly intended “to destabilize the regime.” They were tortured at the DGCIM headquarters, kicked and beaten with sticks. They were wrapped in mattresses and beaten on the head, thorax, and ribs with a metal bar. They were thrown to the ground with their hands tied behind them, where they were beaten and suffocated with plastic bags. They were presented to military court before being taken to the *Santa Ana* jail in Táchira State.

B. Incidents of Torture documented by Human Rights Watch and *Foro Penal*

In their 2017 report, “Crackdown on Dissent: Brutality, Torture and Political Persecution in Venezuela”, Human Rights Watch and *Foro Penal* documented “88 cases involving at least 314 people who were victims of serious human rights violations during the crackdown between April and September 2017. These abuses were committed by different security forces and armed pro-government groups known as *colectivos* in Caracas and 13 other states – Anzoátegui, Aragua, Carabobo, Barinas, Bolívar, Lara, Mérida, Miranda, Monagas, Sucre, Táchira, Vargas, and Zulia”.¹⁸²

The geographic scope of the crackdown documented by Human Rights Watch and *Foro Penal*, is clear evidence of a widespread policy of repression. The NGOs address this conclusion in their statement “our research shows that the abuses were not isolated cases or the result of excesses by rogue security force members. On the contrary, the fact that widespread abuses by members of security forces were carried out repeatedly, by multiple security forces, in multiple locations across 13 states and the capital – including in controlled environments such as military installations and other state institutions – over the six month period covered by [their] report, supports the conclusion that the abuses have been part of a systematic practice by the Venezuelan security forces.”¹⁸³

Among the cases documented by these two NGOs are 53 cases involving at least 232 people “who were subjected to physical and psychological abuse, with the apparent purpose of either punishing them or forcing

¹⁸² Human Rights Watch and *Foro Penal*, “Crackdown on Dissent, Brutality, Torture and Political Persecution in Venezuela”, November 2017, page 1. https://www.hrw.org/sites/default/files/report_pdf/venezuela1117web_0.pdf

¹⁸³ *Ibid*, page 2.

them to incriminate themselves or others”. They conclude that most of the abuses were carried out by the GNB or the SEBIN and that “in some of these cases, the abuses suffered by detainees clearly constituted torture”.

The type and pattern of punishment inflicted on detainees recorded by Human Rights Watch and *Foro Penal* are identical to the patterns described in the previous Section of this chapter. They include the use of solitary confinement, being placed in stress positions for lengthy periods of time, sleep deprivation, deprivation of natural light, food and water, and medical care, severe beatings with different blunt instruments, asphyxiation – usually employing tear gas or tear gas powder – electric shock, threats of, as well as the acts of sexual abuse and rape.

Human Rights Watch and *Foro Penal*, document seven incidents they consider to clearly constitute cases torture. One of the cases, that of Wuilly Arteaga, was presented in the previous Section of this Report. Summaries of the other six incidences are presented below:

Incident 65 The Case of Ernesto Martin (pseudonym)

Date and place of detention: Ernesto Martin was detained by the DGCIM at his home near Caracas in April 2017.

Institutions or individuals involved in the torture: Members of the GNB and the DGCIM.

Methods of torture: Ernesto Martin was accused of having links to the opposition, receiving money from them, and of being a terrorist. He was beaten and forced to undress in an enclosed space that was cold and had a wet floor. “Once Martin was naked, [a] young officer and two of his colleagues handcuffed Martin’s ankles and wrists together in front of him and attached the handcuffs to a chain that was hanging from the ceiling. They lifted Martin a few centimeters above the ground and started to throw water at him. Martin said he heard someone say that they needed to wet him well so he did not burn. The officers touched Martin with the tip of a long metal stick. An electric shock caused Martin’s body to spasm painfully. A man who Martin thinks was the GNB captain asked him who had given him the dollars, and when Martin said he did not have any dollars, the young officer said, ‘We were asked to give you 440, but since you’re a little girl, we’ll give you 220’”, referring to the voltage of the electricity they were about to apply to his body. “For about 15 minutes, the officers alternated between questioning Martin, giving him electric shocks for five seconds at a time, and dousing him with water. The first time they applied the stick right under his buttocks, which caused him to urinate on himself. He was then left hanging there for about an hour.”¹⁸⁴

¹⁸⁴ Ibid, page 25.

Martin suffered the same electric shock torture on two separate occasions on separate days, as well as continuous physical and psychological torture. He was forcibly disappeared and his family members were not able to identify where he had been taken to for detention, until many days later he was finally allowed to call his wife. He was eventually released, months later, under condition be present himself before the courts every 15 days. In Mid-October 2017, Martin fled Venezuela.

Incident 66 The Case of Orlando Moreno

Date and place of detention: Orlando Moreno, a 26 year-old student and representative of the *Vente Venezuela* opposition political party was detained in Monagas, on June 27, 2017, by members of the Monagas state police.

Institutions or individuals involved in the torture: Officers of the Monagas state police, GNB and SEBIN.

Methods of torture: Orlando Moreno was beaten on the head and back by members of the Monagas state police while he was being transported to the local headquarters of the GNB. At the local headquarters he was subject to psychological torture by officers he believes belonged to the GNB and SEBIN. He was later transferred to the *La Pica* prison where an “officer in charge of overseeing the prison took him outside to the back of the prison and handcuffed him to an elevated water tank high enough that Moreno could barely touch the ground with the tip of his toes. He spent all day—about nine hours—in that position, at times under blazing sun, without access to food, water or a bathroom. While he was hanging there, several officers walked by, identified him as the one who refused to make a video confession, called him a “guarimbero” and beat him on the head or kicked his ribs. A GNB officer stood beside him all day and did not prevent the abuse.”¹⁸⁵ He was severely beaten on separate occasions on different days.

Incident 67 The Case of Armando López Carrera, Javier Mendoza, Antonio Alonzo Rivera, and Andrés Salamanca (all pseudonyms)

Date and place of detention: Teenagers Armando López Carrera, Javier Mendoza, Antonio Alonzo Rivera, and Andrés Salamanca were all arrested on July 20, 2017 at demonstrations in various parts of Valencia, in the state of Carabobo.

Institutions or individuals involved in the torture: Members of the GNB and officers at the Alberto Ravelli Juvenile Prison.

¹⁸⁵ Ibid, page 28.

Methods of torture: The day following their arrest, the four teenagers “were taken to a juvenile court. While the Attorney General’s Office did not find that the evidence against them warranted criminal charges, the judge charged Carrera Rivera, Mendoza, and Salamanca with instigation to public disobedience and injuries and granted them bail. It took well over a week for them to be released”¹⁸⁶. Salamanca had been shot with a shotgun during the demonstration. During his detention he was denied medical attention or the means to dress and disinfect his wounds, even though the court at his hearing had ordered that he receive medical attention. The four were later transferred to the Alberto Ravelli Prison where the guards forced them into stress positions while they beat them with sticks. They were held for up to a week in 1 x 3 meter solitary confinement cells with no light or ventilation. There were all released on different dates in early August, 2017.¹⁸⁷

Incident 68 The Case of Reny Elías

Date and place of detention: On July 20, 2017, Reny Elias, a 35 year-old employee in the health division of the Zulia governor’s office, was detained in his home following an illegal home invasion, or raid, by members of the Bolivarian National Guard, who entered and arrested him without a warrant.

Institutions or individuals involved in the torture: Members of the GNB and the PNB

Methods of torture: Reny Elias was beaten by the GNB officers with their shields and helmets and “was dragged across the street by his hair” into an official vehicle. He was taken to another location where “The officers then forced Elías to lie on the ground with a group of about 20 people, and some 15 PNB officers walked repeatedly on their backs in heavy boots. For about two hours, the officers beat them with their rifle butts, and threw teargas powder and water in their faces. The officers told the detainees not to look at them; if they did, they would beat them harshly. The whole time, they insulted the detainees, calling them ‘fucking guarimberos,’ threatening them with death, and taunting, ‘Tell the opposition to come and get you out of here!’”¹⁸⁸

“During the group’s detention [...], Elías saw officers inappropriately touching the legs and breasts of two female detainees, including a 16-year-old girl. An officer grabbed one of the women’s hands and placed it on his crotch, telling her boyfriend, who was also detained, “Look how your girlfriend touches my penis.” Officers took the woman to another room for about 20 minutes, and when she returned visibly

¹⁸⁶ Ibid, page 29

¹⁸⁷ Ibid, page 30.

¹⁸⁸ Ibid.

traumatized, she did not say what the officers had done to her. The 16-year-old girl was let go, after being threatened with detention again, if she spoke of what had happened. (Another detainee, testifying at his presentation hearing, corroborated Elías's account of sexual abuse that day and reported that an officer had offered another woman her freedom if she would have sex with him.)¹⁸⁹ "Elías told Human Rights Watch he witnessed the officers choosing one young man, pulling down his pants in front of the other detainees, putting teargas powder and water in his anus, and penetrating him with a broom stick. The man 'screamed horribly'".¹⁹⁰

Reny Elias and the other detainees suffered additional beatings and were forced into stress positions; some were beaten with a steel cable others had their hair set on fire. They were not allowed to see their lawyers for a week. On September 15, 2017 a military judge released Elias and the other detainees on conditional liberty.

Incident 69 The Case of Alejandro Pérez Castilla

Date and place of detention: Alejandro Pérez Castilla was detained on July 26, 2017 by members of the GNB in Carabobo state, after clashes between protesters and the GNB at a roadblock.

Institutions or individuals involved in the torture: Members of the GNB.

Methods of torture: GNB officers "beat and kicked him repeatedly. They pushed him into an armored vehicle, where they continued beating him, stepped on his fingers, and burned his back with a cigarette lighter. The officers forced Pérez to lie on the vehicle's floor, placed a shield over top of him, and walked on the shield, which he said painfully compressed his ribcage. Another GNB member took his own penis out of his pants and pushed Pérez's face towards it, while the others laughed. When they found out that Pérez had a daughter, they threatened to rape her."¹⁹¹

"When they arrived at a GNB station, a GNB member rubbed teargas powder on Pérez's face, eyes, nose, and shotgun-pellet wounds [received at the time of the demonstration]. Another officer held his eyes open so they could put powder in them, while a female sergeant told him they were only getting started." Later on, at another GNB station, Pérez was handcuffed to an "air conditioner so high that he could barely stand on tiptoe. While he was hanging there, a sergeant beat Pérez in the ribs for approximately an hour, and later handcuffed him to a metal bench and used a Taser to administer electric shocks to his calf."¹⁹²

¹⁸⁹ Ibid.

¹⁹⁰ Ibid, page 31.

¹⁹¹ Ibid, page 33.

¹⁹² Ibid.

Incident 70 The Case of Manuel Rojas Villas (pseudonym)

Date and place of detention: Manuel Rojas Villas, a 21 year-old had been actively participating in the demonstrations on the day of the election of the National Constituent Assembly, was apprehended in San Cristobal, Táchira state, on July 30, 2017 by unidentified armed men wearing balaclavas.

Institutions or individuals involved in the torture: Individuals reporting to a GNB Commander.

Methods of torture: Rojas was forced him to “record a video in which his captors ordered him to incriminate local youths as leaders of the “Resistance” and admit to being paid 100,000 Bolivars to demonstrate. Whenever he made a mistake in what they wanted him to say, they stopped the camera, hit him, and started recording again. Once they were done, the men tied Roja’s ankles to his wrists behind him, and left him in [a] room with a guard. He felt dizzy from all the blows to his head.” At another location to which he was taken, Rojas was taken to a room “where officers had him sit on the floor and kicked him in the stomach. Four new officers, wearing balaclavas to mask their faces, took him to another cell, where he was handcuffed to a chair and beaten again. They forced him to film another video”.¹⁹³

During his four-day detention, Rojas had effectively been disappeared. He was released at an unknown location after being threatened that he would be killed if he ever spoke about his ordeal.

C. Incidents of Torture documented by *Vente Venezuela*

The two cases in this Section are excerpted from the document “Political Persecution against Members of *Vente Venezuela*, 2013-2017” of the Human Rights Committee of *Vente Venezuela* submitted to the OAS General Secretariat as part of the process to analyze whether crimes against humanity have may have occurred in Venezuela.

Incident 71 The case of Jhosman David Paredes Rolón

Date and place of detention: Jhosman David Paredes Rolón, a graphic design student at the *Instituto Universitario* Antonio José De Sucre in Táchira state and member of *Vente Venezuela* political party, was detained on June 19, 2014 by the Bolivarian National Police at the former main building of the Catholic University of Táchira

¹⁹³ Ibid, pages 33-34.

Institutions or individuals involved in the torture: Members of the GNB and SEBIN.

Methods of torture: After he was apprehended, the agents put a plastic bag over Paredes's head, beat him, administered electric shocks to him and subjected him to psychological torture. At the initial hearing before a judge, he was charged with conspiracy to commit rebellion and Judge Miguel Graterol ordered his confinement at the SEBIN headquarters of the *Helicoide*, in Caracas.

During the first year of his imprisonment, he was taken outside to get sunlight on only six times, causing a deep depression which led him to attempt suicide twice; his defense attorneys filed repeated motions with the court for medical, psychiatric and psychological assistance, but received no response. On January 8, 2016 he was severely beaten by a SEBIN officer who went by the alias *el perro* (the dog). In addition to assaults, as a measure of punishment, Paredes was moved to an area of the *Helicoide* called *Preventiva III*, where common criminals were crowded into a single cell. Then on January 11, he was brought before the courts together with legislators-elect Renzo Prieto and Rosmit Mantilla and political prisoner Gerardo Carrero— where the new charge of instigation of hatred was added to his indictment.

After 17 hearings were postponed, finally on February 16, 2016, the preliminary hearing in his case was held at the 6th Oversight Court of the Metropolitan Area of Caracas, and he was remanded in custody, although no trial date was set. On two occasions, he went on a hunger strike along with other political prisoners detained at the *Helicoide* between June 2015 and December 2016, but SEBIN officials did not respect the minimum conditions established in the Declaration of Malta on Hunger Strikes of the World Medical Assembly. It was denounced that those on the hunger strike were denied intravenous fluids, and were forced, for the duration of the strike, to relieve themselves in inhuman and degrading conditions. On May 30, 2016, Pausolina Rolón, the mother of student Jhosman Paredes joined the hunger strike carried out by a group of young people camped out in front of the OAS offices in Caracas. She ended her strike on June 8, 2016 at the request of her son who, through an open letter, pled for her to not sacrifice her life for his.

On December 23, 2017 Paredes and the other political prisoners, Alfredo Ramos, Roberto Picón, Andrea González, Betty Grossy, Danny Abreu, Rafael Liendo, Carmen Salazar, Alejandro Sierra, Carlos Perez and Andreas Diaz el Nogal, were taken to the illegitimate National Constituent Assembly, where they were forced to sit in a hall set up for a televised event in which Delcy Rodríguez gave a sermon to them on behalf of the Maduro regime. On December 24, 2017, he was released after three years, three months and six days of incarceration without a final judgment ever being issued in his case. At the time of his release, he was informed that he was required to report on the next business day to the Palace of Justice to learn the conditions of his release; however, when he reported on December 26, he found that the court that was handling his case was not in session and, therefore, he did not learn the conditions of his release until January 8, 2018, which were to report every eight days. He was barred from leaving the city of Caracas, and barred from making any public statements or using the social networks for political purposes.

Incident 72 The Case of Griego Nurellett Rivero Jaimes

Date and place of detention: Griego Rivero, a student, member of *Vente* youth party in Táchira state. On July 30, 2017, Griego was together with three of his friends in the Troncal 5 sector of Táchira state, paying close attention to any movements by the *colectivos*, who were in the area terrorizing the citizens participating in the protests, when he was detained at gunpoint by a mixed detail of PNB, GNB and Táchira state police officers.

Institutions or individuals involved in the torture: Members of the GNB.

Methods of torture: Minutes before the detention, the officers fired their 9mm caliber weapons at the youths, repeatedly hitting him in a bullet-proof vest he was wearing as a protection measure, for fear of a possible violent crackdown against the demonstrations. When Griego realized he was wounded by two bullets, he ran to seek cover and fell off the edge of a cliff, falling approximately 50 meters where he was intercepted by a PNB officer with the surname Cacique, who kicked and beat him rolling him down to the road. After this incident, he was forced into a patrol vehicle identified with the initials P50, where he was held for more than two hours while he was beaten on the testicles with a motorcycle helmet and then he was turned upside down on his head and assaulted with nightsticks.

When he arrived at PNB headquarters, he was handcuffed to a column, a teargas canister was set off and he was forced to hold it with his right hand. Then an officer, whose surname was Ramírez, put salt on the palm of his burned hand. Griego was transferred to the CICPC in San Cristóbal and subsequently taken to the *Barrio Adentro* clinic of San Josecito, where he was examined and received superficial treatment for his wounds. The forensic examination report only mentioned a “light scrape on the right hand.” On Tuesday August 1, he was brought before the 10th Control Tribunal of Táchira state and was charged with possession of incendiary items, which, according to the case file, were allegedly found in the vicinity of where the events surrounding his detention took place. Because of the lack of evidence presented by the Ministry of Public Prosecution, the court issued a conditional release order. Irrespective, he remained in custody at the PNB transit headquarters until August 19, 2017.

All of the cases presented in this chapter, in addition to constituting cases of torture, demonstrate clear similarities in the methods of detention in the different forms of physical and psychological torture inflicted on the victims in almost all the states in Venezuela by Government security agents. These similarities cannot be mere coincidences, and are instead, part of a pattern of widespread and systematic persecution against the civilian population opposed to the Government.

VI. RAPE AND OTHER FORMS

OF SEXUAL VIOLENCE AS A

CRIME AGAINST HUMANITY



VI. RAPE AND OTHER FORMS OF SEXUAL VIOLENCE AS A CRIME AGAINST HUMANITY

Pursuant to Article 7, paragraph 1, subsection (g) of the Rome Statute of the International Criminal Court, rape, or any other form of sexual violence of comparable gravity, constitutes a crime against humanity, when it is committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

In 1994, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention)¹⁹⁴ recognized the particular vulnerability “...of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socioeconomically disadvantaged, affected by armed conflict or deprived of their freedom”, as stated in Article 9.

Over the last two decades, mainly as a result of pressure from civil society groups throughout the world, the United Nations Security Council has adopted a series of resolutions on gender, peace and security that together provide a broad framework for the promotion and protection of women’s human rights in conflict and post-conflict situations, as well as their full participation in conflict prevention, resolution and post-conflict reconstruction efforts. Beginning with Security Council Resolution 1820,¹⁹⁵ adopted in 2008, this series of resolutions also began to recognize the use of sexual violence as a weapon and tactic of war, an instrument of torture and a crime against humanity.

In support of this growing legal framework on sexual violence as an instrument of torture and war, a number of international bodies, including the International Criminal Court, the Inter-American Court of Human Rights and the International Criminal Tribunals for Rwanda and the former Yugoslavia and the International People’s Tribunal for Crimes against Humanity in Indonesia¹⁹⁶ have contributed to an increasing body of gender jurisprudence on sexual violence as a form of torture.

¹⁹⁴ Organization of American States, “Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará)”, June 9, 1994, <http://www.oas.org/en/mesecvi/docs/BelemDoPara-ENGLISH.pdf>

¹⁹⁵ UN Security Council, Resolution 1820, June 19, 2008, [http://undocs.org/en/S/RES/1820\(2008\)](http://undocs.org/en/S/RES/1820(2008))

¹⁹⁶ International People’s Tribunal, “Final Report of the IPT 1965”, 2016, <http://www.tribunal1965.org/en/tribunal-1965/tribunal-report/>

Of particular relevance here is the Case of the Miguel Castro-Castro Prison v. Peru,¹⁹⁷ which was decided by the Inter-American Court of Human Rights in 2006. In this case, various forms of sexual and other types of violence were perpetrated against women inmates of the Miguel Castro Castro prison in order to intimidate and shame them, including rape under the guise of medical examination, forced undressing, using the bathroom at gun point, vaginal penetration, denial of feminine hygiene products and other necessities, and denial of medical attention to three pregnant prisoners.

The IACHR has underscored that “...the risks of being subjected to physical, sexual, and psychological violence, as well as other forms of abuse, are accentuated when women are deprived of their liberty and in the custody of State authorities.”¹⁹⁸ The IACHR also notes that “...there is a high level of underreporting of cases due to ‘victim shame or intimidation, non-recognition of offenses, and/or lack of human rights defenders and public officials trained in identifying them.’”¹⁹⁹

International jurisprudence on these issues is also serving to broaden the definition of “conflict” to include social mobilization, as in persecutory rape, including gang rape and multiple rape used by state officials to punish politically active women.

In Venezuela, in addition to the wide range of harassment, physical abuse and violence, detainees- both men and women- are commonly subjected to various forms of sexual torture, including rape. Particularly in cases where the detainee is a woman, threats of a sexual nature are the norm. The Guards threaten them with rape, or threaten to put them in prison cells with criminals from the general population who, the guards say, will rape them. Throughout Chapters V and VI, the cases of torture described document the regularly reported practice of sexual violence, against both men and women detainees of all ages, with the added caveat that sexual abuse and torture commonly go under reported for a variety of reasons, including fear, shame, stigma and the lack of institutional willingness and/or capacity to treat these as serious crimes.

When the Secretary General of the OAS released his Third Report on the situation in Venezuela, he noted that “rape and other forms of sexual violence”, among other acts, were indicators that crimes against humanity had taken place.²⁰⁰ A number of Venezuelan organizations have documented cases of sexual violence and torture perpetrated against detainees. During his testimony at the September 14, 2017 hearing conducted by the OAS General Secretariat, Julio Henríquez of *Foro Penal* stated that his organization had documented numerous cases of sexual violence against both men and women, and that threats of rape, improper

¹⁹⁷ Inter-American Court of Human Rights, “Case of Miguel Castro Castro Prison v. Peru”, Judgment of November 25, 2016, http://www.corteidh.or.cr/docs/casos/articulos/seriec_160_ing.pdf

¹⁹⁸ IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December 2017, paragraph 256, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

¹⁹⁹ Ibid, paragraph 253.

²⁰⁰ OAS General Secretariat, “Third Report of the Secretary General on the Situation in Venezuela”, July 19, 2017; page 39, <http://www.oas.org/documents/eng/press/TERCER-INFORME-VENEZUELA-ENGLISH-Final-signed.pdf>

touching, and lascivious acts were commonly directed at detainees. At the same hearing, Tamara Suju of the CALSA Institute noted that she had documented 192 cases of detainees who had been subjected to an act of sexual violence, and another 140 who were subjected to threats of sexual violence. The nature of the acts she described included 77 cases of forced undressing, and a number of others who were partially undressed. She documented five cases of rape and another seven cases of attempted rape with a pipe or other foreign object.²⁰¹

Among the first documented incidents of which the General Secretariat received reports date back to April 2013. Echenagusia Guzmán (Chapter V, Incident 2) was detained along with approximately 73 others in the city of Barquisimeto where she, and the others, were subject to a broad range of acts of physical, psychological and sexual torture. The sexual torture included forced undressing, threats of rape, and attempted rape. The detainees cited in Incident 3 experienced similar patterns of sexual abuse.

The IACHR and the Inter-American Court of Human Rights have previously raised concern over the history of impunity related to gender-based crimes in Venezuela (and generally in the region). In November 2016, the IACHR filed an application with the Inter-American Court of Human Rights regarding a 2001 case of an 18-year-old Venezuelan woman who had been kidnapped and tortured for a period of four months. During her abduction, in addition to violent beatings, she was subjected to repeated forms of brutal sexual violence and rape.²⁰² During the victims' 15-year pursuit of justice, 59 judges declined to hear her case and the hearings were deferred 38 times. Her abuser was convicted of causing "grievous bodily injury" and "illegitimate deprivation of liberty," but he was never convicted of rape.²⁰³ The IACHR has repeatedly expressed concern over the State of Venezuela's failure to introduce appropriate measures to address gender-based violence and sexual violence.²⁰⁴ In the IACHR's 2018 report on the situation Venezuela, they also noted that "...in cases where rape has been used as torture, the MP [Ministry of Public Prosecution] has only brought charges of cruel treatment. There is no open investigation in the majority of complaints alleging torture."²⁰⁵

The international case law that is developing to address sexual and gender based violence targeting women in Latin America is breaking a significant and longstanding silence on these issues. However, it is important to note that men are also the targets of sexual violence, a practice that has been repeatedly demonstrated

²⁰¹ Testimony of Tamara Suju at the Hearing of the OAS General Secretariat to analyze possible commission of crimes against humanity in Venezuela, September 14, 2017, <https://www.youtube.com/watch?v=KRX0QaJPzRk>

²⁰² IACHR, "IACHR Takes Case involving Venezuela to the Inter-American Court", Press Release 2106-168, November 17, 2016, http://www.oas.org/en/iachr/media_center/preleases/2016/168.asp

²⁰³ The Guardian, "American court opens historic hearing into Venezuela rape and torture case", February 5, 2018, <https://www.theguardian.com/global-development/2018/feb/06/us-human-rights-court-landmark-hearing-venezuela-rape-torture-case-linda-loaiza>

²⁰⁴ IACHR, "IACHR Takes Case involving Venezuela to the Inter-American Court", Press Release 2106-168, November 17, 2016, http://www.oas.org/en/iachr/media_center/preleases/2016/168.asp

²⁰⁵ IACHR, "Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report" December 2017, paragraph 63. <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

in the ongoing situation in Venezuela. In cases of sexual violence perpetrated against men, the intention behind the abuse can differ, as it generally involves a specific intent to degrade and humiliate the victim, questioning their sexuality and stripping them of their masculinity. Commonly, the abuse is considered as a physical act, and the sexual nature of the violence is overlooked. In all of these cases of sexual violence against both men and women, it is essential to consider the sexual nature of the act.²⁰⁶

Venezuela also has a history of using of sexual violence, including threats, lascivious acts, and rape, as a form of punishment in detention facilities. One well-known case is that of Judge Lourdes Afiuni, who was detained after a ruling that went against the political interests of President Chávez. During her detention, Afiuni described how “they destroyed her vagina, anus and bladder when she was in the custody of the INOF and officials of the Ministry of Justice raped her.”²⁰⁷ To this day, her experience is used a threat against judges reluctant to follow political direction.

There has also been a history of sexual abuse perpetrated against individuals detained in the context of social demonstrations. In the IACHR report, they note that among other acts, rape of both men and women is among the abuses and human rights violations used against detainees, as a form of punishment of those who demonstrated and publicly express their opinions.²⁰⁸ In addition to the IACHR, a number of other major international organizations have also noted the practice of using sexual violence against individuals who had participated in social demonstrations. The international NGOs Human Rights Watch²⁰⁹ and Amnesty International²¹⁰ have also reported instances of sexual abuse, including rape perpetrated against individuals who were detained in the context of the protests.

After the 2014 demonstrations began, reports of sexual abuse against protestors who had been detained began almost immediately. After being detained on February 13, 2014, 21-year-old Juan Manuel Carrasco (Chapter V, Incident 8) was raped with a blunt object. In their 2016 annual report, the IACHR documented the case of a Colombian national, Érika Moncada, who was raped and tortured, including the use of electric shocks on her breasts.²¹¹ COFAVIC, in their documentation of cases of torture and cruel, inhuman and

206 International Centre for Truth and Justice, “When No One Calls it Rape: Addressing Sexual Violence Against Men and Boys in Transitional Contexts”, December, 2016, pages 2, 17, https://www.ictj.org/sites/default/files/ICTJ_Report_SexualViolenceMen_2016.pdf

207 *El Universal*, “Afiuni rompió el silencio y habló en el juicio”, June 30, 2015, <http://www.lapatilla.com/site/2015/07/25/que-fue-de-la-juez-afiuni/>; and, ABC.es, “¿Qué fue de la juez Afiuni?”, July 24, 2015, <http://www.abc.es/internacional/20150724/abci-jueza-afiuni-venezuela-201507232152.html>; and, La Patilla, “¿Qué fue de la juez Afiuni?”, July 25, 2015, <http://www.lapatilla.com/site/2015/07/25/que-fue-de-la-juez-afiuni/>

208 IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December 2017, paragraph 191. <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

209 Human Rights Watch and *Foro Penal*, “Crackdown on Dissent, Brutality, Torture and Political Persecution in Venezuela” November 29, 2017, https://www.hrw.org/sites/default/files/report_pdf/venezuela1117web_0.pdf

210 Amnesty International, “Venezuela 2017/2018”, <https://www.amnesty.org/es/countries/americas/venezuela/report-venezuela/>

211 IACHR, “2016 Annual Report, Chapter IV.B, Venezuela”, paragraph 38, <http://www.oas.org/en/iachr/docs/annual/2016/docs/InformeAnual2016cap4B.Venezuela-en.pdf>

degrading treatment that occurred between February and May of 2014, identified 26 cases of sexual torture that followed similar patterns of forced undressing and in some cases rape.²¹²

This practice has continued into 2017 as exemplified in the May 2017 case of William Delgado, Josué Pabón, ██████████, Felipe Preciado, and Edgar Pérez, all in their early twenties (Chapter V, Incident 46). The IACHR has received numerous complaints of sexual violence perpetrated against individuals who participated in demonstrations against the government, in the context of the 2017 protests. Among these complaints, a woman detained by GNB personnel reported sexual abuse, indicating that she had been sexually assaulted and subjected to indecent acts before being given a powder that made her lose consciousness in May of 2017. In June, two university students from Guyana were victims of indecent acts inside the transport vehicle where they were detained. The IACHR received another report that a man from Zulia State was raped with a broom handle, in addition to the frequent use of threats of a sexual nature against him.²¹³

The security forces do not discriminate when selecting targets for abuse. The victims include men and women of any age, high profile political prisoners as well as individuals swept up in mass detentions. The high profile prisoner Leopoldo López (Chapter V, Incident 10) was subjected to forced undressing. His wife and mother have also been subjected to forced undressing and inappropriate searches during their visits, demonstrating how the families of the detainees are also targeted. Forced nudity is a tool that “renders the victim vulnerable and defenseless, increasing the (often-realized) fear that other forms of sexual violence would follow”²¹⁴ The abuse of forced undressing, combined with being subjected to sexual threats, in addition to an array of physical and psychological abuse, has become a common practice, as exemplified in the case Wuaddy Moreno Duque (Chapter V, Incident 14); ██████████; a mother, Keyla Josefina Brito and her 17-year-old daughter, Karkelys Noemi Brito (Chapter Incident 16); ██████████; Robert Anthony González Rodríguez and ██████████ (Chapter V, Incident 25); Joselyn Prato (Chapter V, Incident 40); ██████████

Students have been regular targets, abused while detained in large groups. The IACHR also received reports of a group of youths who were sexually assaulted after being detained in Aragua state on May 15, 2017.²¹⁵

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²¹² COFAVIC and Venezuela Awareness, “La violencia que calla a los detenidos”, June 25, 2017

²¹³ IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December 2017, paragraph 255-256. <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

²¹⁴ International Centre for Truth and Justice. “When No One Calls it Rape: Addressing Sexual Violence Against Men and Boys in Transitional Contexts” December, 2016, page 7, https://www.ictj.org/sites/default/files/ICTJ_Report_SexualViolenceMen_2016.pdf.

²¹⁵ IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December 2017, paragraph 250, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

VII. IMPRISONMENT OR SEVERE

DEPRIVATION OF LIBERTY AS

A CRIME AGAINST HUMANITY



VII. IMPRISONMENT OR SEVERE DEPRIVATION OF LIBERTY AS A CRIME AGAINST HUMANITY

Pursuant to Article 7, paragraph 1, subparagraph (e), of the Rome Statute, the definition of crimes against humanity includes imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

In Venezuela, an individual's liberty can only be restricted by means of an arrest warrant issued by the competent judicial authority, except when a person is caught in the act of committing a crime (*in flagrante delicto*). The Constitution of the Bolivarian Republic of Venezuela states that no person may be arrested or detained without a court order.²¹⁸

The patterns of abuses by both the State security forces and the judiciary in Venezuela demonstrate a widespread and systematic plan to use arbitrary detentions and imprisonment as a weapon against anyone who challenges or criticizes the government. According to *Foro Penal*,²¹⁹ this policy has resulted in the arrest of more than 12,000 individuals since the start of President Nicolas Maduro's administration in April 2013. This is the equivalent of the detention of seven people per day, every day of the year, over the four and a half-year period. The complete list of the names of each of the more than 12,000 individuals is attached to this report as Annex A.

During demonstrations, joint police and military operations are implemented and an excessive use of force is used against protestors or other individuals in the vicinity. Individuals are arbitrarily detained despite not having committed any crime and are held without a prior arrest warrant. In some cases, the security forces raid people's homes and detain them without a search warrant or any legal justification to do so. One such example is an incident that took place in a housing complex known as *Los Verdes*, in the residential subdivision of El Paraíso, in Caracas, where on June 13, 2017, 16 persons were taken away without explanation.²²⁰

As documented in Chapter V, on the use torture, widespread physical abuse is used in most situations to control and disperse public demonstrations. The abuse is used in particular against demonstrators who have already been restrained, including with the use of firearms, toxic substances and other illegal means

²¹⁸ Article 44, Constitution of the Bolivarian Republic of Venezuela, https://www.oas.org/juridico/mla/sp/ven/sp_ven-int-const.html

²¹⁹ *Foro Penal*, "Reporte Sobre la Represión en Venezuela", December 2017, page 1, <https://foropenal.com/2018/01/20/diciembre-2017/>

²²⁰ See Section F on "Illegal Raids" in the Chapter VIII of this report on persecution, page 215.

prohibited by the Venezuelan Constitution as well as by international *jurisprudence* and treaties to which Venezuela is a Party. According to *Foro Penal*, between January 2014 and December 7, 2017, a total of 7,399 individuals have been formally charged for participating, or allegedly participating, in protests against the Venezuelan government, and are undergoing criminal proceedings under precautionary measures including the deprivation of liberty (for both defendants on trial and convicted persons). Even though there may be some cases in which the individual has exceeded the limits of the legitimate exercise of their right to peaceful protest, logic dictates that it would be impossible for so many people in such a short span of time to be taken into custody as criminals for the same acts.²²¹

A. Political Prisoners

According to a report by the NGO *Fundepro*, the government of President Maduro inherited only nine political prisoners from his predecessor. However, by the end of 2014, this number had jumped to 96 political prisoners behind bars. The Regime employs what is described as a “revolving door” policy, meaning that while as some political prisoners released, an equivalent number of new prisoners are simultaneously incarcerated. The monthly average remained consistent at roughly just under 100 political prisoners at one time during the 2014 to 2016 period. This demonstrates the complete absence of due process of law and under which the Venezuelan authorities arbitrarily arrest and incarcerate whom they want, when they want, and choose to either release them or not, when they want.

In 2017, the number of political prisoners skyrocketed, reaching its height on August 11, 2017, when the Regime had 676 political prisoners in custody. Between February 12, 2014 and January 24, 2018, *Foro Penal* documented an accumulative total of 1321 prisoners deprived of their liberty for political reasons; of which more than two hundred of which are still in custody. A complete list including the full identity of these individuals is included Annex B.

The persons arbitrarily detained and held as political prisoners by the Regime include political activists, students, professors, journalists, military members, doctors, human rights defenders and citizens from every walk of life, who were exercising their fundamental right to peaceful protest, and demanding respect for the rights protected by the Constitution, and that have been denied to them by the government of President Maduro.

For example, during the 2017 protests, at least 17 university professors were arbitrarily detained. According to a report by NGO *Aula Abierta Venezuela*, the reasons identified for the detentions vary. They were

²²¹ Confidential report of *Foro Penal*, submitted to the OAS General Secretariat, December 17, 2017; also see: *Foro Penal*, “Reporte Sobre al Represión en Venezuela, November 2017”, <https://foropenal.com/2017/12/14/noviembre-2017/>

detained for causes ranging from the publication of ideas critical of government policies to their participation in demonstrations against the current Venezuelan government. Of these 17 professors, eight were brought before military tribunals, six before ordinary courts and three were released from the detention facilities of the security agencies.²²²

Dr. Jorge Machado, Professor of Philosophy of the Central University of Venezuela (UCV), who “was detained on May 19, 2017 by SEBIN agents when he was participating in a demonstration that was moving down Avenida Boyacá, in Caracas. He was brought before the 3rd Military Control Tribunal and charged with the crime of high treason. Seven months after he was detained, deprived of liberty, he remains in custody at the *Helicoide* prison. He was publically attacked in the state-controlled media by Vice President of the Executive Branch of Government, Tareck El Aissami. Dr. Machado was accused of inciting demonstrators to violence and leading them to confrontation with State security forces, ignoring the fact that the professor teaches a course on ‘peaceful resistance and non-violence.’”²²³

Also referenced in Chapter VIII, addressing persecution, another emblematic case is that of Dr. Santiago Guevara García, a professor of the University of Carabobo. Dr. Guevara García was arbitrarily detained on February 21, 2017 in the state of Carabobo on the charge of high treason after publishing an article critical of the government’s public policies. He was held in custody for 10 months at the headquarters of the General Directorate of Military Counterintelligence in Caracas.²²⁴

At least 339 university students were arbitrarily detained and incarcerated during the period of April to July 2017, the majority of which were prosecuted in military courts and were deprived of their liberty.²²⁵

An illustrative case is that of Carlos Ramirez, a law school student of the University of Los Andes. Ramirez was arbitrarily detained on May 15, 2017 by officers from the Bolivarian National Guard when he was exercising his right to peaceful protest on *Avenida Las Américas*, in the city of Mérida. Once in detention, the university community wasted no time in calling attention to his detention. The Academic Council of the University of Los Andes issued a statement demanding the student’s release. The student was brought before a military tribunal, deprived of liberty, and charged with the crimes of “incitement to rebellion” and “disrespecting the guard.” Ramirez reported that during his detention, he was the victim of cruel, inhuman

²²² *Aula Abierta Venezuela*, “Comunidad Universitaria Alerta sobre Detenciones selectivas contra Profesores Universitarios en Venezuela”, 2017, <http://aulaabiertavenezuela.org/wp-content/uploads/2017/12/INFORME-DE-PROFESORES-DETENIDOS-ACTUALIZADO-Diciembre-2017.pdf>

²²³ *Aula Abierta Venezuela*, “Informe Preliminar: Ataques y Represalias Contra Profesores y Estudiantes Universitarios en Venezuela”, February-October 2017, <http://aulaabiertavenezuela.org/wp-content/uploads/2017/08/Aula-Abierta-Venezuela-Restricciones-y-represalias-contra-estudiantes-y-profesores-universitarios-en-Venezuela-Febrero-Julio-2017-CON-IMAGENES-1-1.pdf>

²²⁴ *Ibid.*

²²⁵ The figure of 339 students was based on the different cases of detention reported in the thematic reports of *Aula Abierta Venezuela* of April, May, June and July, <http://aulaabiertavenezuela.org/index.php/informes/>. See also, *Aula Abierta Venezuela*, “Informe Preliminar: Ataques y Represalias Contra Profesores y Estudiantes Universitarios en Venezuela (Febrero-Octubre 2017)”, February-October 2017, <http://aulaabiertavenezuela.org/wp-content/uploads/2017/08/05-2018-Restricciones-y-represalias-contra-estudiantes-y-profesores-universitarios-en-Venezuela-Febrero-Julio-2017.pdf>

and degrading treatment, including suffering for several days without adequate food and being handcuffed to a chair for days with a black hood over his head. On November 20, 2017, his trial hearing was held, where the military tribunal pronounced his sentence. The charge of incitement to rebellion was dismissed, and for the charge of disrespecting the guard, the court sentenced Ramirez to time served, for the six months he was held in detention.²²⁶ The reports by *Aula Abierta* have documented numerous additional cases of both professors and students who have been arbitrarily detained and incarcerated.²²⁷

Another example of the abuses against students is the case of Carlos Julio Velasco Marín, an 18-year-old student, who was arbitrarily arrested on June 12, 2017 during a demonstration called by opposition coalition *Mesa de la Unidad Democrática*, in the vicinity of the Centro San Ignacio, Municipality of Chacao, Caracas. He was detained while assisting another protestor who was caught in the teargas launched into the crowd by the State security forces. He was charged by the 39th Control Tribunal of the Metropolitan Area of Caracas for the alleged crimes of arson, possession of incendiary materials, gang association, public incitement and the crime of terrorism. Of note, the final charge of terrorism was not filed by the Office of the Public Prosecutor, but added by the judge who was presiding over the case, even though no evidence was presented to support this charge.

During his detention, Velasco Marín suffered from numerous serious maladies including frequent nephritic colic, right intercostal neuritis, gonalgia and insomnia associated with anxiety disorder, which were not addressed with timely treatment. After being deprived of liberty for more than 6 months at the GNB outpost located in Macarao, he was released under precautionary measures on December 24, 2017.²²⁸

The arbitrary detentions and repression have also been used to target journalists. The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights has documented numerous cases of restrictions against the freedom of expression and the persecution of journalists in Venezuela.²²⁹ In April 2017, the UN and IACHR Rapporteurs issued a joint press release condemning government censorship and the blocking of reporting spaces in Venezuela, as well as the detention, assault and stigmatization of journalists and media personnel that cover the protests and demonstrations in the country.²³⁰

²²⁶ Ibid.

²²⁷ *Aula Abierta Venezuela*, <http://aulaabiirtavenezuela.org/index.php/informes/>

²²⁸ *Foro Penal*, “*Reseñas de algunos casos de Presos Políticos en Venezuela*”, document submitted to the General Secretariat on February 18, 2018.

²²⁹ Only for 2017, See press releases: IACHR, “Office of the Special Rapporteur For Freedom of Expression Expresses Serious Concern Over The Enactment Of The ‘Anti-Hate Law’ In Venezuela”, Press Release R179/17, November 10, 2017, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1082&IID=1>; IACHR, “Office of the Special Rapporteur Condemns the Closure of more than 50 Media Outlets in Venezuela without Legal Guarantees and for Reasons Related to their Editorial Line”, Press Release R135/17, September 6, 2017, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1075&IID=2>; IACHR, “Office of the Special Rapporteur for Freedom of Expression of the IACHR Condemns Arbitrary Restrictions on Freedom of Expression and Assembly in Venezuela”, Press Release R109/17, July 29, 2017, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1072&IID=1>; IACHR, “Office of the Special Rapporteur Condemns Censorship and Intimidation of International Media and Journalists in Venezuela”, Press Release R16/17, February 17, 2016, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1052&IID=1>

²³⁰ IACHR/UN, “Venezuela / Protests: UN and IACHR Rapporteurs Condemn Censorship, Arrests and Attacks on Journalists”, April 26, 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21535&LangID=E>

As described in greater detail in Chapter VIII on persecution, the case of Chilean-Venezuelan journalist Braulio Jatar exemplifies the government's targeting of journalists. Jatar was arbitrarily detained by SEBIN agents on September 3, 2016, on his way from his home from a Saturday morning radio program broadcast. After eight months in prison, including stays in four different penitentiaries, losing 30 kilograms of weight and suffering serious bouts of hyper-tension, Jatar has been kept under house arrest since May 2017.²³¹

Another journalist targeted by the Regime is Héctor Pedroza Carrizo, a photojournalist and audiovisual producer, who was arbitrarily detained at his residence in the La Morita sector, Aragua State on December 26, 2017, by a group of agents of the Anti-Extortion Anti-Kidnapping Commando of the GNB. He was deprived of liberty on December 29, 2017 by the 3rd Military Control Tribunal of Caracas, and charged with the crimes of incitement to rebellion and terrorism. He was retained in custody at the military prison at Ramo Verde, in Los Teques. As a civilian prosecuted by a military judge in a military court, his right to a civilian judge was violated.²³²

Human rights activists are also key targets of the regime. Lisbeth Auxiliadora Añez Thomi was detained at Simon Bolivar International Airport of Maiquetía, state of Vargas, while boarding a flight to the city of Miami, in the United States. On May 10, 2017, she was intercepted by officers of the General Directorate of Military Counterintelligence under an arrest warrant for the crimes of high treason and military rebellion. Both criminal offenses are listed in the Organic Code of Military Justice.

The alleged forensic evidence against her in no way linked Añez Thomi to the crimes. The evidence consisted of alleged WhatsApp messages from conversations with former political prisoners in which violent acts at demonstrations were allegedly encouraged. It is of note that these messages were not included in the case file. There was no more hard evidence than the supposed "notoriety" of the protests in Venezuela and their allegedly violent nature used to justify the charges. Añez Thomi, a civilian, was held in preventive detention by the 4th Military Control Tribunal for more than 118 days at the headquarters of the SEBIN in Caracas. On September 7, 2017, she was released under alternative measures, reporting periodically to the military courts with a court order to not make any statements on social media.²³³

The government of President Maduro also lashed out and attacked the family members of its political targets. Twenty-three year old Juan Pedro Lares is the son of Omar Lares, the former Mayor of Ejido, in the Municipality of Campo Elías, in the state of Mérida. On July 30, 2017, the day of the elections for members of the National Constituent Assembly, pro-government gangs (*colectivos*) broke into the Lares family residence in Mérida. Omar Lares managed to flee with his wife and younger son. His older son, Juan Pedro Lares, was apprehended, arbitrarily removed from his home and detained without any judicial authority

²³¹ Excerpt of a testimony provided to the General Secretariat provided by Ana Julia Jatar, sister of Braulia Jatar, February 7, 2018

²³² *Foro Penal*, "Reseñas de algunos casos de Presos Políticos en Venezuela", document submitted to the General Secretariat on February 15, 2018.

²³³ *Ibid.*

or warrant. Pedro Lares was doused in gasoline, and told that he would be set on fire if he did not tell the authorities where his father was hiding. At first, his case was considered an enforced disappearance, with his family unaware of his whereabouts. It has since been identified that he is being held in custody at the headquarters of the Bolivarian National Intelligence Service (SEBIN) in the *Helicoide* prison, in Caracas. He has been in detention since July 2017 and has not yet been brought before a court. He suffers from respiratory difficulties and asthma and also presents a skin disease, presumed to be scabies.

The defense attorney filed a petition for *Habeas Corpus*. Official letters have been sent to SEBIN, the agency holding him in arbitrary detention. No response has been provided by the SEBIN or the Ministry of Public Prosecution.²³⁴ At the October 17 hearing conducted at the OAS General Secretariat, his father, Omar Lares, testified that the orders came from “very high up” in the government to detain his son in order to pressure him, an opposition mayor. The same day of his abduction, the mayor’s personal assistant received a call from “a General” offering to release his son in exchange for the father turning himself in. This is not the first time that the Lares family has been the victim of assault or harassment. In 2006, Omar Lares was the victim of an assassination attempt taking three bullets while serving as the campaign manager for presidential candidate Manuel Rosales. And, in 2016, his political opponents Pedro Alvarez stormed the Lares residence while shooting it up with guns and stealing property.²³⁵

As has been illustrated above, a key tactic used by the governments of both President Chavez and President Maduro to control judicial officials is through the use of fear and intimidation. By punishing one, in a cruel and sadistic way, it becomes an example to the rest. The most well-known case is that of Judge María Lourdes Afiuni. Lourdes Afiuni was removed from office, incarcerated and sexually assaulted while in prison, for simply exercising her independent discretion as a judge. Her story has now given rise to what has come to be known as the “Afiuni effect”. Any judge in Venezuela who dares to defy the regime is acutely aware that they run the risk of meeting the same fate.

Further details on the persecution of the members of the justice system are outlined in Chapters VIII and X on persecution and the absence of justice.

Fifty two year-old Ruperto Chiquinquirá Sánchez Casares offers to the military what Judge Afiuni is to the judiciary. Sánchez Casares was a Lieutenant Colonel in the Venezuelan Air Force when he was detained on May 2, 2014 in the state of Aragua, for his alleged involvement in an attempted coup d’état, known as *Golpe Azul*. The attempted coup was also known as *Operación Jericó*. On May 5, 2015, the Permanent Court Marshall of Caracas convicted him for the crime of incitement to rebellion, sentencing him to 7 years and 6 months in prison at the *Internado Judicial Monagas* detention center known as *La Pica*. He remains

²³⁴ Ibid.

²³⁵ Testimony of Omar Lares at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 17, 2017, <https://www.youtube.com/watch?v=-avAj-1jBaY>

in custody, even though 93 witnesses that testified for the prosecution in his case testified that Ruperto Sánchez did not incite them to commit any crime.

The wife of Lieutenant Colonel Ruperto Chiquinquirá Sánchez Casares, Kerlin Sánchez, testified at the November 16, 2017 hearing of the OAS General Secretariat, about the persecution of her husband. “After the preliminary hearing, they were brought to trial and then sent to Ramo Verde Military Prison. After six months in detention, in February of 2015, the trial proceeding began in Caracas at the Court Martial. It was a very fast summary trial, with 96 witnesses introduced for the prosecution. The defense attorneys were not allowed to introduce any. In response to the question “Were you incited to rebellion by Lieutenant Colonel Ruperto Chiquinquirá Sánchez Casares?” asked by *Foro Penal’s* attorney, who were representing the defense, every single one of the 96 witnesses replied, no.²³⁶ Even the four officers testifying under the status of Cooperating Patriots as star witnesses, who in their testimonies indicated that Sánchez Casares had participated in a meeting to conspire to carry out the alleged coup d’état testified that he was not guilty of incitement.

One essential issue, that was never proven in the trial was whether or not a coup d’état did in fact take place. There was never any evidence to indicate that it was ever anything more than a paranoid fear in the minds of the Regime. Sanchez testified that “Well, you all must wonder why then was Ruperto convicted? Ruperto is a prisoner of conscience, a steadfast defender of the national Constitution who acted in compliance with military regulations. That is why when he was ordered to talk to his subordinates about 21st Century socialism. Ruperto would talk to them about the Constitution, about military laws and the Rome Statute, an action that caused him to get into heated arguments with his superiors, on several occasions.” On these occasions, he would be rebuked, and his loyalty to the Bolivarian revolution questioned. “Obviously, he did not agree with any type of proselytizing, or indoctrination with communist ideology, or socialism within the Armed Forces. As he always expressed to me, it was not in the Constitution, or our Magna Carta.”²³⁷ The Lieutenant Colonel was spuriously convicted and made an example, a warning to the rest of the officers of the Armed Forces who might question government policies.

All of these cases clearly illustrate how the justice system is used to stigmatize any people opposed to the government as criminals. In all of these cases, senior government officials and public figures, from the President of the Republic to the other government spokespersons and PSUV party leaders would stigmatize those detained, from the earliest stages of an investigation or of the trial proceedings, branding the victim as “terrorists” or “criminals.”²³⁸

²³⁶ Testimony of Kerlin Sánchez, the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, November 16, 2017, <https://www.youtube.com/watch?v=qWUdNeIjYTE>

²³⁷ Ibid.

²³⁸ See for example: Tareck El Aissami “Acusa a Freddy Guevara, Henrique Capriles y Carlos Papparoni de dirigir grupos de choque al tiempo que acusa al Partido Voluntad Popular de terrorismo”, April 6, 2017, <https://www.youtube.com/watch?v=eYKuZdmrMY>; and, “Maduro califica de delincuente al Alcalde David Smolankys y pide sea investigado y “mano de hierro” luego de que éste denunciara el uso de gas rojo en manifestaciones, lo cual calificó como mensajes criminales”, September 4, 2017, <https://www.youtube.com/watch?v=rnun6XqycpY>; and, “Iris Varela tilda de delincuente a fiscal Ortega Díaz, establece co-responsabilidad penal por denegación de justicia e inacción ante lo que calificó como actos terroristas de la oposición”, July 12, 2017, <https://www.youtube.com/watch?v=GExyyB5pYgU>

Johanna Aguirre, the widow of José Alejandro Márquez Fagundez, who was murdered in February 2014 by the Bolivarian National Guard after refusing to hand over his telephone, testified at the hearing of the OAS General Secretariat on September 14, 2017 that her husband had not even been buried when he was attacked by Diosdado Cabello on his national broadcast television program *Con el Mazo Dando* (With the Hammer Giving), Diosdado Cabello called Alejandro a “hit man” and “terrorist.”

While in detention, all of the detainees are subjected to harassment, ranging from insults, humiliation and verbal threats to beatings, physical abuse and sexual violence, including rape. In cases where the detainee is a woman, it is common that the threats are of a sexual nature, and are threatened that “they will be raped” or that “they will be put in with criminals in the general prison population” who will rape them. In the cases of torture that are described in this Report, there are numerous instances where sexual violence, including rape or threat of rape is described against both male and female detainees.

B. Enforced Disappearance of persons

Pursuant to Article 7, paragraph 1, subparagraph (i) the enforced disappearance of persons is a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. Article 7(2)(i) defines enforced disappearance as the “arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.”

Venezuela is one of the original signatories of the 1994 Inter-American Convention on Forced Disappearance of Persons. Article II of the Convention establishes that a “forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.”²³⁹

In its August 2017 Report on the protests in Venezuela, the Office of the UN High Commissioner for Human Rights cited the use of enforced disappearances. They referenced the work of the UN Working Group on Enforced or Involuntary Disappearances who have noted that “there is no time limit, no matter how short, for an enforced disappearance to occur” and that “accurate information on the detention of any

²³⁹ Organization of American States, “Inter-American Convention on the Forced Disappearance of Persons”, June 9, 1994, <https://www.oas.org/juridico/spanish/tratados/a-60.html>

person deprived of liberty and their place of detention shall be made promptly available to their family members.”²⁴⁰ After someone is detained, in almost all instances, the detainees are held *incommunicado* and not allowed any contact with their next of kin or with an attorney, including in cases the individual in question is underage. This appears to meet the criteria of what constitutes a systematic practice of the enforced disappearance of persons, holding prisoners *incommunicado* and in unknown locations for periods ranging from a few hours to cases like that of Captain Juan Carlos Caguaripano, detained on August 11, 2017, and held in an unknown location for months.

The case of Captain Caguaripano is of particular concern because of the gravity of the circumstances of his case. In addition to being forcibly disappeared, the Captain was tortured. His defense attorney, Luis Argenis Vielma, stated during a media interview with the Colombia media outlet *Caracol*, that the Captain had suffered a testicular detachment. “That [injury] has not been able to heal because [it] requires medical attention that has not been provided to him,” said Vielma. “He has suffered physical and psychological damages.” He also reported that between 50 and 60 additional officers and civilians have been detained in connection with the Captain Caguaripano’s case. The attorney has now fled to Colombia after being targeted for persecution by the SEBIN and the DGCIM.²⁴¹

As described above, Juan Pedro Lares, the son of the former Mayor of Ejido, in the State of Mérida, was captured by the SEBIN and forcibly removed from his parents’ residence on July 30, 2017, without a warrant for his arrest. His parents were not told where he was being held, and ultimately only learned of his whereabouts through unofficial channels. As a result, this constitutes a case of enforced disappearance.

Jameson Marcial Jiménez Maza, a graphic designer, was detained by unidentified persons at his workplace on January 4, 2018. He disappeared for eight days until he was supposedly rescued by Special Action Forces (see below).

Chapter V on torture presents the case of Juan Carlos Nieto Quintero (Incident 24). Nieto Quintero was arrested without a warrant on April 2, 2014 in Caracas by the DGCIM. He was disappeared for two days, without his family knowing of his whereabouts until April 4, 2014, when officers of the DGCIM handed Nieto Quintero over to officers of the GNB, when they tried to pretend that he had been kidnapped and not forcibly disappeared.

²⁴⁰ OHCHR, “Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July, 2017”, August 2017, http://www.ohchr.org/Documents/Countries/VE/HCReportVenezuela_1April-31July2017_EN.pdf. See also, UN, Human Rights Council, “Report of the Working Group on Enforced or Involuntary Disappearances”, A/HRC/30/38, August 17, 2015, paragraph 102, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Pages/ListReports.aspx>; and, UN, Human Rights Council, “Report of the Working Group on Enforced or Involuntary Disappearances”, A/HRC/33/51, July 28, 2016, paragraph 113, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/167/14/PDF/G1616714.pdf?OpenElement>

²⁴¹ NTN24, “Capitán Caguaripano sufrió un desprendimiento de sus testículos tras descargas eléctricas en tortura, según su defensor”, February 5, 2018, <http://www.ntn24america.com/noticia/capitan-caguaripano-sufrio-un-desprendimiento-de-sus-testiculos-a-traves-de-energia-electrica-segun-164463>

Also documented in Chapter V is the case of Lieutenant-Coronel José Antonio Arocha Pérez (Incident 27), who was detained on May 2, 2014. The Lieutenant-Coronel was kept in solitary confinement in *La Tumba* for six months, and had been disappeared for 45 days, with neither his family nor lawyers knowing his whereabouts.

One other example documented in Chapter V, is the case of Juan Miguel de Souza (Incident 39), who was detained without an arrest warrant on January 21, 2015 by the SEBIN after breaking into his home. He was forcibly disappeared until February 11, 2015, when he was finally able to call his family to inform them that he was imprisoned in *La Tumba*.

Detainees are held *incommunicado* throughout the country, and there are cases in which the attorneys for the accused are also threatened with jail for insisting on talking with and defending their clients. On multiple occasions, the detainee's chosen attorneys are prevented from participating in the defense of their clients, as was the case of Wuilly Arteaga along with several of the cases tried before the military courts. Instead, they are assigned public defenders, against their wishes. The defense attorneys are only allowed access to the detainees for a few short minutes before their initial court appearance, often in deplorable conditions, making it virtually impossible to mount a fulsome and complete defense. Even the representatives of the Ombudsman's Office are prevented from communicating with the detainees. In certain facilities, in particular those of the SEBIN no one is allowed to communicate with those in detention under any circumstances, not even representatives of public institutions.

C. Delaying Tactics

In cases where a political prisoner is convicted, the convictions often stem from a confession obtained under duress. Once the proceedings are opened in these cases, the hearings are systematically and continuously deferred, ensuring that the proceedings themselves become a punishment.

An example is the case of Carlos Pérez who was detained on May 8, 2014 in Caracas, and is still in imprisoned at the SEBIN headquarters in Caracas, without trial, which was suspended after continuous delays.

The preliminary hearing of Skarlynn Duarte, a woman arrested in August 2014, has been postponed more than 40 times. She was finally released on bond on December 31, 2016.

The attorney Marcelo Crovato Sarabia, who works with *Foro Penal*, has been waiting for his preliminary hearing to conclude for more than three years. He was arrested in the municipality of Chacao on April 26, 2014 while assisting some people during a raid at a private residence, on the presumption they were collaborating with the protests. He was detained for allegedly collaborating with the demonstrators. His

arrested was tied to the alleged statement and testimony of a “Cooperating Patriot”, an anonymous witness. He was charged with the crimes of public incitement, association to commit a crime and resisting arrest by the 9th Control Tribunal of the Metropolitan Area of Caracas. His hearing has been deferred repeatedly. Crovato was held in custody at the *Yare III* prison, located in the Municipality of Simon Bolivar, in the state of Miranda, a facility of which the victim was the former Director, in the years prior to his detention.

Crovato Sarabia suffered from serious illnesses that were either not treated at all, or treated at least not in a timely manner. During his detention, he suffered from skin cancer and had two surgical procedures on his spine. He presented psychiatric symptoms, leading to a suicide attempt on December 20, 2014, as well as claustrophobia, agoraphobia, renal and testicular cysts, Myasthenia Gravis or Horner Syndrome and Varicocele. After countless efforts and an extensive campaign for his release, on February 25, 2015 Crovato was moved house arrest.²⁴²

Efraín Ortega, Vasco Da Costa and José Luis Santa María were imprisoned for more than three years without trial, and are now out on conditional release while criminal proceedings are ongoing. Generally speaking in these cases, the only “evidence” of the alleged crimes introduced before the court is a police report consisting solely of a claim made by the arresting officer, or a Cooperating Patriot, none of which the defense attorney is able to verify.

Efraín Ortega was arrested on July 24, 2014 by the Scientific, Penal, and Criminal Investigative Police. Following his arrest, he was taken into custody and held at the CICPC jail located in the *El Rosal* residential subdivision, in Caracas, for 50 days before being transferred to the *Rodeo II* prison in Guarenas, in the state of Miranda, where he was held with the general population and forced to sleep either standing up or crouched in a cell. His case has been heard before at least six different courts. He was first charged with the crime of terrorism which was dismissed due to a lack of incriminating evidence. He was subsequently charged with incitement to commit a crime and the illicit manufacture of explosive devices.”

During his detention, he suffered serious medical pathologies that were not treated in timely manner, despite the efforts made by his defense attorney both nationally and internationally. He suffered the following illnesses: a cyst in his right kidney; left nephrolithiasis; systemic high blood pressure; hepatitis C; bronchial hyperactivity syndrome; progressive venous disease of the right lower extremities; insufficiency of left greater saphenous vein; stage 2 arterial hypertension; prostate hyperplasia; incipient pterygium in the right eye with no monitoring or medical treatment; grayish skin color; thrombosis 12 in his right leg; and nephritic colic 6. Efraín Ortega did not receive any regular medical treatment or follow-up, nor did he have a proper diet to help with his health condition. On October 16, 2017, he was granted conditional released by the Barlovento courthouse, *Tribunal Segundo en Funciones de Juicio* of the State of Miranda. He is required to periodically present himself to the court.²⁴³

²⁴² *Foro Penal, “Reseñas de algunos casos de Presos Políticos en Venezuela”*, confidential document submitted to the General Secretariat on February 15, 2018.

²⁴³ *Ibid.*

D. The Arbitrary Nature of Detentions

The UN Working Group on Arbitrary Detentions has issued an opinion noting the arbitrary nature of the detention in 327 separate cases. In cases that are of a political nature, the opinions and expert assessments of the working group, as along with the decisions of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, have been consistently ignored by the national courts in Venezuela.

In the Opinions adopted at its 80th session, the Working Group used the case of Crovato Sarabia as an example, recalling that “under certain circumstances, systematic imprisonment and other forms of severe deprivation of physical liberty, in violation of recognized international norms, may constitute crimes against humanity.”²⁴⁴ The Group concluded that “in recent years, the Working Group has repeatedly made pronouncements about the commission of multiple arbitrary detentions of persons for belonging to the political opposition to the Government of Venezuela, or for the fact of exercising the rights to freedom of opinion, expression, association, assembly or political participation.”²⁴⁵ In the opinion of the Working Group, this is an attack or systematic practice by the Government to deprive political opponents of physical liberty, particularly those who are perceived as opponents of the regime, in violation of the fundamental norms of international law, such as the Universal Declaration of Human Rights and the Covenant.”²⁴⁶

In cases of a political nature the SEBIN refuses to obey court orders when they involve freedom or transfer of detainees to healthcare facilities for the provision of medical treatment. At the time of this Report’s completion, release orders have been issued for several individuals by the competent courts that have been ignored by the SEBIN.

For example, in the case of Víctor Ugas, who had a release order as of June 2017, when he completed his sentence. He was still in custody at the SEBIN in Caracas. Similarly, Iraj Nirouman is another political prisoner who was held at the *Helicoide* prison, because the SEBIN has ignored a court order for his conditional

244 UN, Human Rights Council, “*Opiniones adoptadas por el Grupo de Trabajo sobre la Detención Arbitraria en su 80° period de sesiones (20 a 24 de noviembre de 2017)*”, *Opinión núm. 87/2017 relativa a Marcelo Eduarod Crovato Sarabia (República Bolivariana de Venezuela, A/HRC/WGAD/2017/87*, January 23, 2018, http://www.ohchr.org/Documents/Issues/Detention/Opinions/Session80/A_HRC_WGAD_2017_87.pdf

245 Here, the Working Group cites the cases of Gilbert Alexander Caro Alfonso, Braulio Jatar; Yon Alexander Goicochea Lara; Antonio Jose Ledezma Díaz; Gerardo Ernesto Carrero Delgado, Gerardo Rafael Resplandor Veracierta, Nizon Alfonso Leal Toro, Carlos Perez and Renzo David Prieto Ramirez, Rosmit Mantilla, Vincenzo Scarano Spisso, Maikel Giovanni Rondón Romero and another 316 people, Leopoldo Lopez, Juan Carlos Nieto Quintero, Daniel Omar Ceballos Morales, Antonio Jose Rivero Gonzalez, Cesar Daniel Camejo Blanco, Raul Leonardo Linares, Sabino Romero Izarra, Hernán Jose Sifontes Tovar, Ernesto Enrique Rangel Aguilera and Juan Carlos Carvallo Villegas, Marcos Michel Siervo Sabarsky, Miguel Eduardo Osio Zamora, Santiago Giraldo Flórez, Luis Carlos Cossio, Cruz Elba Giraldo Flórez, Isabel Giraldo Celedon, Secundino Andres Cadavid, Dimas Oreyanos Lizcano y Omar Alexander Rey Perez, and Eligio Cedeño.

246 UN, Human Rights Council, “*Opiniones adoptadas por el Grupo de Trabajo sobre la Detención Arbitraria en su 80° period de sesiones (20 a 24 de noviembre de 2017)*”, *Opinión núm. 87/2017 relativa a Marcelo Eduarod Crovato Sarabia (República Bolivariana de Venezuela, A/HRC/WGAD/2017/87*, January 23, 2018, http://www.ohchr.org/Documents/Issues/Detention/Opinions/Session80/A_HRC_WGAD_2017_87.pdf

release issued by the *Juzgado Tercero de Primera Instancia en Funciones de Control* of the Metropolitan Area of Caracas.²⁴⁷

Another serious case is the detention of the 14 local police officers of the Municipal Police Department of Chacao, a municipality that at the time was led by opposition mayor Ramon Muchacho until his illegal removal from office August 2017. José Chirinos, Venus Soleil Medina Ferrer, Fred Armando Mavares Zambrano, Jorge Luis Delgado Fragosa, Cesar Eduardo Mijares Oviedo, María de los Santos Pérez, Miguel Jonosky Mora, Edgar José Gonzáles Urtado, Eduardo José Salazar Martínez, Ángel Alfonso Sánchez Blanco, Reggie Jackson Andrade Alejos, Jhonny Roberto Velásquez Gómez, Darwin Estibeen Herde Andrade and Ever Darwin Meses Solano, were all charged with their alleged involvement in the case of the homicide of journalist Ricardo Durán, the communications director of the Government of the Capital District. These 14 officers went to the office of General Gustavo Gonzalez Lopez, the director of the SEBIN who had accused them of the homicide, to turn themselves in voluntarily. They were arrested on June 20, 2016. After their arrest, the 36th national prosecutor, with and the 55th prosecutor of the Metropolitan Area of Caracas, ordered the conditional release for all 14 of the police officers, due to the lack of evidence implicating the defendants. The release order was submitted to the Director of SEBIN, the institution holding them in custody, on August 8, 2016. That release order was not accepted by SEBIN, on the grounds that “it did not have authorization to receive it.” Moreover, the Ministry of Public Prosecution, in September 2016, filed a motion to overturn the release order, but was declared inadmissible by the Court of Appeals. After repeated attempts by the defense and well-executed public awareness campaign, in January 2017, the Court hearing the case upheld the release order. Regardless, the arresting agency (SEBIN) continued to deny the courts orders. The 14 policemen went on a hunger strike several times demanding their release. On December 23, 2017, a year and four months after the release order had been issued, 11 of the 14 officers were finally allowed out of detention on conditional release, required to present themselves to the courts, every 30 days. They were also banned from speaking through the media. Two of the 14 officers, Fred Mavares and Reggie Andrade, are still in custody.²⁴⁸

The SEBIN and other prison authorities have also demonstrated a pattern of denying medical assistance or care for prisoners even when court orders exist for their release. On September 17, 2017, Carlos García, a municipal councilman detained for his political views, died at the headquarters of SEBIN in Guasdalito, state of Apure. In August 2017, García had suffered a stroke and did not receive the required treatment. On September 15, 2017, he was granted conditional release, which if executed would have allowed him to seek medical assistance. The SEBIN did not obey the release order and he died in custody two days later.²⁴⁹

²⁴⁷ Ministry of Public Prosecution of the Bolivarian Republic of Venezuela, CAUSA MP-33662-17.

²⁴⁸ *Foro Penal*, “Reseñas de algunos casos de Presos Políticos en Venezuela”, confidential document submitted to the General Secretariat on February 15, 2018.

²⁴⁹ CNN, “Muere concejal opositor en calabozo de Venezuela: acusan al gobierno”, September 18, 2017, <http://cnnespanol.cnn.com/2017/09/18/muerte-concejal-carlos-andres-garcia-guasdalito-apure-carcel-sebin-primero-justicia-denuncia-derechos-humanos/>

Madinson Enrique Avilés Peñaranda, was arrested on June 12, 2017 in the vicinity of Avenida Francisco de Miranda, near the headquarters of the Executive Directorate of the Judiciary in the Municipality of Chacao, Caracas. He was brought before the 29th Control Tribunal of the Metropolitan Area of Caracas and incarcerated for the crimes of violent property damage, attempted homicide, possession of incendiary materials, public incitement, criminal association and arson and ordered to be retained in custody at the *El Rodeo III* prison, where he is still detained in the psychiatric ward in order to protect his physical integrity, because he has presented significant psychiatric disorders including blurry vision, chills, recurring headaches, and weakness in the legs. He has not received any medication or adequate treatment for these conditions, because he has not been transferred by the prison authorities to have the respective medical tests performed on him, even though his legal team have taken all the appropriate measures to get him treatment.²⁵⁰

The NGO *Una Ventana a la Libertad* produced a thorough assessment of the human rights situation of 14,525 individuals, who have been incarcerated at 198 pretrial detention facilities in the Greater Caracas area, and the states of Apure, Bolívar, Carabobo, Falcón, Lara, Mérida, Miranda, Monagas, Nueva Esparta, Táchira, Vargas and Zulia. The areas were selected because they held the largest prison population in 2017. The pretrial detention facilities have an estimated capacity to house 5,910 inmates. However, as of December 2017 these facilities housed an average of 14,525 prisoners, an overpopulation of 8,615 inmates, or 250% above capacity. The assessment identified inadequacies of the pretrial detention facilities, in violation of the fundamental rights of prisoners. They documented 113 incidents of human rights violations of prisoners by State agencies, which together with other violations by inmates totaling 155 incidents, including the deaths of 39 inmates from health concerns, and the murders of 26 prisoners.²⁵¹ As was illustrated in Chapter V on torture, the threat of sending political prisoners to jails that housed the general prison population was regularly used by security officials to terrorize victims.

E. Prosecution of Civilians in Military Tribunals

Another example of the abusive and arbitrary restrictions on the personal freedom of anyone the Venezuelan government has identified as an opponent or dissident, especially from 2017 onward, are the number of civilians prosecuted under military justice in violation of national and international standards. Between April 2017 and March 31, 2018, according to the records of *Foro Penal*, at least 786 civilians were

²⁵⁰ *Foro Penal*, “*Reseñas de algunos casos de Presos Políticos en Venezuela*”, document submitted to the General Secretariat on February 15, 2018.

²⁵¹ *Una Ventana a la Libertad*, “*La Muerte y la Violencia Asedian a 14.525 Privados de Libertad – Situación de los derechos humanos en los centros de detención preventiva en Venezuela (2017)*”, February 15, 2018, <https://www.derechos.org/ve/actualidad/la-muerte-y-la-violencia-asedian-a-14-525-privados-de-libertad>

prosecuted by military courts. At the completion of 2018, 114 remained deprived of their liberty by order of the military courts.²⁵²

An illustrative case is that of Luis Alejandro Arcila García, the 24-year-old coordinator of the *Juventud Activa Venezuela Unida* (United Active Youth Venezuela), a youth movement in the state of Carabobo. He was arbitrarily detained on November 19, 2017 and prosecuted by the 6th Military Control Tribunal of the state of Carabobo. On November 23, 2017, he was imprisoned by the military tribunal for the crime of high treason and assaulting an officer, violating his right to a natural judge. He was remanded to the *Ramo Verde* military prison, in Los Teques.

Another example is Carlos Graffe, a member of the political party *Voluntad Popular* detained on July 13, 2017 in the vicinity of Avenida Bolívar of Valencia, in the state of Carabobo, by SEBIN agents without an arrest warrant. He was transferred to the Command Post known as *Ciudad Chavez* (Chavez City), and was subsequently tried by the 6th Military Control Tribunal, in the state of Carabobo. He was charged with the crimes outlined in Articles 476 and 570 of the Organic Code of Military Justice after a hearing that lasted until the early morning hours of July 15, 2017. He was imprisoned and remanded into the custody of the *Ramo Verde* military prison, Los Teques. He was released on December 28, 2017, on the condition of periodically reporting, every 15 days, to the military courts.

Jameson Marcial Jiménez Maza, a 36-year-old graphic designer and employee of the Ministry for Communication and Information, was detained on January 4, 2018. He was taken from his place of work by unidentified individuals and was disappeared for eight days. On January 12, he was allegedly rescued from abduction by members of the Special Action Forces. It was evident that he had been beaten, presenting hematomas on his arms and abdomen. After his release, on January 16, Jameson Jiménez testified to the authorities about his alleged abduction. On January 17, he attempted to leave the country with his family for a trip that had been planned prior to his abduction. At immigration, he was flagged in the system as a “missing person”. He was detained at the Simón Bolívar International Airport and taken handcuffed from the premises by agents of the General Directorate of Military Counterintelligence. His family heard nothing about his condition or whereabouts for four days. It was not until January 22 that he was brought before the 2nd Military Control Tribunal of Caracas where he was imprisoned for his alleged crimes of high treason and military rebellion. He was remanded into custody at *Ramo Verde* military prison, in Los Teques, violating his right as a civilian to be tried in a civilian court. Jameson Jiménez’s next of kin presumed that his detention, in strange circumstances, and his subsequent prosecution was because he was a childhood friend of Oscar Pérez, the former CIPC officer who rebelled against the government who was extra-judicially executed by the government in a high profile attack. His family states that there was no recent link between the two men.

²⁵² *Foro Penal*, “Reporte Sobre la Represión en Venezuela”, March 2018, page 3, <https://foropenal.com/wp-content/uploads/2018/04/INFORME-REPRESION-MARZO-2018.pdf>

In each of the more than 12,000 cases of persons who were physically deprived of their liberty included in Annex A, none had, in fact, been caught in the act of committing a crime (circumstances of *in flagrante delicto* detention) and there were no valid arrest warrants. This is a clear violation of both national and international legal standards. The intellectual and materials authors, participants and those who attempted to cover up the mass detentions were fully aware that their conduct constituted a gross violation of the fundamental rights of the persons because, these crimes were executed as part of a widespread or systematic attack against a particular segment of the civilian population who had been targeted for political reasons. Those targeted were labeled as opponents or political dissidents; they were branded as the internal enemy of the government of Nicolas Maduro. Those who perpetrated these acts in the execution of their command duties were personally recognized several times by President Maduro and were decorated as heroes.²⁵³

²⁵³ See: *El Nacional*, “Maduro se acercó a GNB para felicitarlos por reprimir protestas”, May 26, 2017, http://www.el-nacional.com/noticias/gobierno/maduro-acerco-gnb-para-felicitarlos-por-reprimir-protestas_184572; *Panorama.com.ve*, “Nicolás Maduro condecora a efectivos de la GNB heridos durante las manifestaciones”, August 4, 2017, <http://www.panorama.com.ve/politicaeconomia/Nicolas-Maduro-condecora-a-efectivos-de-la-GNB-heridos-durante-las-manifestaciones-20170804-0086.html>; *Univisión*, “Maduro condecora al coronel que grito y empujo al presidente del Legislativo venezolano”, June 30, 2017, <http://www.univision.com/noticias/crisis-en-venezuela/maduro-condecora-al-coronel-que-grito-y-empujo-al-presidente-del-legislativo-venezolano>; *Panorama.com.ve*, “Maduro condecoró al coronel Vladimir Lugo con la orden Cruz de la Guardia de Honor Presidencial”, June 29, 2017, <http://www.panorama.com.ve/politicaeconomia/Maduro-condecoro-al-coronel-Vladimir-Lugo-con-la-orden-Cruz-de-la-Guardia-de-Honor-Presidencial-20170629-0094.html>; *Panorama.com.ve*, “Maduro condecoró a Tibisay Lucena, Maikel Moreno y Tareck William Sabb”, April 8, 2017, <http://www.panorama.com.ve/politicaeconomia/Maduro-condecoro-a-Tibisay-LucenaMaikel-Moreno-y-Tareck-William-Saab-20170804-0082.html>; and, *El Comercio*, “Maduro condecora a funcionarios venezolanos sancionados por EE.UU.”, July 26, 2017, <http://www.elcomercio.com/actualidad/nicolasmaduro-condecora-venezolanos-sancionados-estadosunidos.html>

VIII. WIDESPREAD AND

SYSTEMATIC PERSECUTION

AS A CRIME

AGAINST HUMANITY



MARCO COELLO

VIII. WIDESPREAD AND SYSTEMATIC PERSECUTION AS A CRIME AGAINST HUMANITY

Pursuant to article 7(1)(h) of the Rome Statute, persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in Article 7, paragraph 3, or other grounds that are universally recognized as impermissible under international law is a crime against humanity when committed as part of a widespread and systematic attack against any civilian population, when conducted in connection with any act referred to in Article 7(1) or any crime within the jurisdiction of the Court. The Statute goes on to define persecution as the intentional and severe deprivation of fundamental rights by reason of identity of the group of collectivity.

In Chapter III of this Report, addressing the use of a military plan to target the civilian population, the Bolivarian concept of the *internal enemy* was introduced. To the Venezuelan Government, the internal enemy is any member of the population in opposition to the Bolivarian revolution. By this definition this includes any individual – not just formal political opposition parties – who speaks out against government policies. Although the Government’s systematic persecution has been focused on its political opponents, it has also targeted judges, students, professors, journalists, civil society leaders, NGOs, human rights defenders, and even police and military officers that have been branded as dissident. Anyone can be identified as part of the internal enemy.

These members of the internal enemy are now targets of the Government who has the explicit intent to deprive them of their fundamental rights. This political persecution manifests in multiple ways, which are applied simultaneously, demonstrating a clear ongoing pattern of abuses.

Since President Maduro took office in 2013, the scale of political persecution has escalated dramatically and the government implemented a variety of practices or patterns of persecution, including extrajudicial executions, imprisonment– particularly with the increased detention of political prisoners, torture, and rape and other forms of sexual violence. These crimes have been described in detail in Chapters IV, V, VI, and VII. These crimes may constitute crimes against humanity in and of themselves, they should also be considered as elements of the specific crime of persecution.

Based on the information provided in this Section, it is evident that the Government of President Maduro not only resorts to aggressive tactics of intimidating those who think differently from the Regime but it also use criminal prosecutions as mechanisms of pressure to intimidate its opponents. In this chapter, other patterns of behavior will be examined, that could also amount to the crime of persecution, including public threats by government authorities, the politicization of justice and the judicilization of politics, disqualification from holding public office or political participation, the dismissal of mayors from office, the

deprivation of the right to freedom of expression, illegal raids, violent repression and the excessive use of force, the persecution of children and adolescents, the deprivation of the right to freedom of movement through the revocation of passports, forced exile, and forced political asylum.

Combined with the other crimes detailed in previous chapters, the result of persecution is that citizens who oppose the Regime have, in effect, become prisoners in their own country. They are prisoners because anyone who attempts to think, speak or, even speak of acting, against the regime, is a target and is persecuted and punished one way or another.

A. Threats and Intimidation

The behavior of the Executive in Venezuela has been characterized by a pattern of violent attacks and public verbal threats, many of which are recorded and have been uploaded onto YouTube and other public websites or social media. The speeches and statements made by officials of the Executive, as well as television programs, such as Diosdado Cabello's television program, *Con el Mazo Dando*, are evidence of a systematic strategy to threaten and persecute the domestic enemy and defend the Bolivarian revolution at all costs against the "fascist and terrorist" opposition. The large volume of these widespread attacks that are issued publicly, are of such a magnitude that they could qualify as persecution. Provided below are links to a small selection of examples of such speech:

April 16, 2013, "*Maduro Amenaza a la Oposición con Utilizar las Fuerzas Militares*" ['Maduro threatens opposition with using military force'], <https://www.youtube.com/watch?v=9vqLcXKhxKg>

May 4, 2013, "*Maduro se declara abiertamente Dictador y amenaza a Antonio Ledezma con cárcel*" ['Maduro openly declares himself Dictator and threatens Antonio Ledezma with jail'], <https://www.youtube.com/watch?v=BgHUIayJrFw&t=10shttps://www.youtube.com/watch?v=BgHUIayJrFw&t=10s>

October 21, 2013, "*Maduro amenaza a Capriles*" ['Maduro threatens Capriles'], <https://www.youtube.com/watch?v=HOUyIFLSTyk>

October 28, 2013, "*Diosdado amenaza al Gobernador Henrique Capriles*" ['Diosdado threatens Governor Henrique Capriles'], <https://www.youtube.com/watch?v=8j2fyCxAYCc>

February 16, 2014, "*Nicolás Maduro amenaza a la oposición con utilizar las fuerzas armadas para defenderse*" ['Nicolás Maduro threatens opposition with using armed forces to defend himself'], <https://www.youtube.com/watch?v=2un553XC9fg>

March 17, 2014, "*Nicolás Maduro amenaza y llama Chuky a los manifestantes opositores*" ['Nicolas Maduro threatens and calls opposition demonstrators Chucky'], <https://www.youtube.com/watch?v=BMJZ7IZpXwc>

December 14, 2014, "*Tareck El Aissami amenaza con sabotear toma de posesión la Asamblea Nacional*" ['Tareck El Aissami threatens to sabotage the swearing in ceremony of the National Assembly'], <https://www.youtube.com/watch?v=ioipJ4DdzVM>

May 5, 2016, "*Las nuevas amenazas de Diosdado Cabello*" ['New threats from Diosdado Cabello'], <https://www.youtube.com/watch?v=aZiihEj71g>

May 5, 2016, "*Diosdado Cabello amenaza a Funcionarios de Ministerios, Gobernaciones o Alcaldías chavistas que hayan firmado la solicitud del Referéndum Revocatorio*" ['Diosdado Cabello threatens pro-Chavez officials of the ministries, governor's offices or mayor's offices, who signed the petition for the recall referendum'], https://www.youtube.com/watch?v=aL_qZBaK14

May 20, 2014, "*Maduro amenaza a los alcaldes Ceballos y Scarano*" ['Maduro threatens mayors Ceballos and Scarano'], <https://www.youtube.com/watch?v=WORyeHcpXA8>

October 30, 2015, "*Maduro amenaza con no entregar el gobierno si gana la oposición*" ['Maduro threatens to not hand over the government if the opposition wins'], <https://www.youtube.com/watch?v=B27Gbv2vYY>

November 27, 2015, "*Maduro amenaza a Venezuela si pierde elecciones*" ['Maduro threatens Venezuela if he loses elections'], <https://www.youtube.com/watch?v=hclMZ0XiZpw>

May 2, 2016, "*Maduro Amenaza al Pueblo con una Guerra*" ['Maduro threatens people with a war'], <https://www.youtube.com/watch?v=RYqePYFIM8Q>

May 5, 2016, "*Diosdado amenaza a funcionarios*" ['Diosdado threatens public officials'], https://www.youtube.com/watch?v=gD_PplHmHwY

July 16, 2016, "*Diosdado amenaza a Diputados de Amazonas*" ['Diosdado threatens Congress members from Amazonas state'], https://www.youtube.com/watch?v=_Indp9TLxrQ

August 19, 2016, "*Maduro amenaza a la oposición dice que actuaría peor que Erdogan en Turquía tras intento de golpe*" ['Maduro threatens the opposition saying he'd act worse than Erdogan in Turkey after a coup attempt'], <https://www.youtube.com/watch?v=n5h9NApEsMI>

September 1, 2016, "*Maduro amenaza con retirar inmunidad parlamentaria*" ['Maduro threatens to do away with parliamentary immunity'], https://www.youtube.com/watch?v=OhDHN_6Szpk

October 3, 2016, "*Delcy Rodríguez denuncia a Presidente de la Asamblea Nacional, Henry Ramos Allup por vilipendio y traición a la patria*" ['Delcy Rodríguez denounces President of the National Assembly Henry Ramos Allup for vilifying and betraying the nation'], <https://youtu.be/X7R7ANVfmds>

October 13, 2016, "*Venezuela: Maduro "amenaza" a la oposición*" ['Venezuela: Maduro "threatens" opposition'], https://www.youtube.com/watch?v=ydg05_ip63g

October 28, 2016, "*Maduro amenaza con cárcel a opositores si le abren juicio*" ['Maduro threatens opposition with jail if trial proceedings opened against him'], <https://www.youtube.com/watch?v=VyOrQ42eOGI>

November 4, 2016, "*Maduro nuevamente ataca a la oposición y asegura que no gobernarán en Venezuela*" ['Maduro attacks opposition again and claims that they will not govern Venezuela'], <https://www.youtube.com/watch?v=NJqHNpgpn0A>

February 8, 2017, "*Venezuela: Maduro amenaza al Parlamento*" [Maduro threatens Parliament'], <https://www.youtube.com/watch?v=mHF-nqAC2EQ>

April 23, 2017, "*Maduro amenaza a opositores y los culpa de golpistas*" ['Maduro threatens opposition and blames them for coup-mongering'], <https://www.youtube.com/watch?v=PS5NeCEJSSw>

April 23, 2017, "*Maduro amenaza con meter presos a diputados Guanipa y Guerra*" ['Maduro threatens to put congressmen Guanipa and Guerra in jail'], <https://www.youtube.com/watch?v=PS5NeCEJSSw>

May 15, 2017, "*Freddy Bernal pide juzgar a Borges por traición a la patria*" ['Freddy Bernal calls for Borges to be tried for treason against the nation'], <https://youtu.be/F2RAL29Oso0>

June 26, 2017, "*Padrino López.....armas más letales, contra el propio pueblo*" ['Padrino Lopez... most lethal weapons, against the people itself'], <https://youtu.be/xwXald9ktBQ>

May 27, 2017, "*Maduro amenaza con cárcel a la oposición*" ['Maduro threatens opposition with jail'], <https://www.youtube.com/watch?v=fybQDHO1fqA>

June 27, 2017, "*Maduro amenaza con guerra armada a la oposición si llega a salir del poder*" [Maduro threatens the opposition with armed war if it ever comes to power'], <https://www.youtube.com/watch?v=OdXB8chfss0>

July 23, 2017, "*Maduro amenaza con meter presos a todos los magistrados nombrados por el Parlamento venezolano*" ['Maduro threatens to put all judges appointed by the Venezuelan Parliament in jail'], <https://www.youtube.com/watch?v=1k2-JIsGA2o>

July 29, 2017, “*Maduro Amenaza A Santos y a la MUD - Venezuela Julio 29 de 2017*”, [‘Maduro threatens Santos and the MUD’] <https://www.youtube.com/watch?v=-8pbzmUQfTA>

July 31, 2017, “*Maduro amenaza con levantar la inmunidad a los diputados opositores*” [‘Maduro threatens to lift opposition deputies’ immunity’], <https://www.youtube.com/watch?v=oO0fiOhbH9o>

August 3, 2017, “*Iris Valera descaradamente amenaza con cárcel a la fiscal General Luisa Ortega-Venezuela*” [‘Iris Valera brazenly threatens Attorney General Luisa Ortega with jail’], <https://www.youtube.com/watch?v=5oK-Lqci6LQ>

August 19, 2017, “*Venezuela: Maduro amenaza con reprimir a la oposición*” [‘Maduro threatens to crack down on opposition’], <https://www.youtube.com/watch?v=Gyt9TBMrTJQ>

August 21, 2017, “*Régimen de Maduro amenaza con nuevas medidas para atacar a la oposición*” [‘Maduro regime threatens to attack opposition with new measures’], <https://www.youtube.com/watch?v=3bry7cwtVx8>

October 23, 2017, “*Maduro amenaza a la Oposición*” [‘Maduro threatens opposition’], <https://www.youtube.com/watch?v=WJ2v-k5U6lw>

February 2, 2018, “*Nicolás Maduro Amenaza a la oposición*” [‘Maduro threatens opposition’], <https://www.youtube.com/watch?v=drV4Uy4N45U>

B. The Politicization of Justice and the Judicialization of Politics

In Venezuela, there is no rule of law, no guarantee for the minimum protections, for basic legal remedies, or for a meaningful defense against the arbitrary actions by the government, along with its security and paramilitary forces. The OLP operations murder citizens with impunity and the security forces murder, attack and commit serious abuses against demonstrators or anyone who does not support or is not perceived to support the Bolivarian revolution. The Executive enables or contracts paramilitary groups to terrorize or murder the opposition civilian population. The SEBIN, the National Guard, as well as the state and municipal police forces controlled by the Maduro government, arrest and torture with absolute impunity. The Ministry of Public Prosecution and the *Defensor del Pueblo* (Human Rights Ombudsman) are complicit in the crimes of the regime.

The judiciary in Venezuela no longer acts as an independent body. The Supreme Court of Justice (TSJ) issues rulings without a legal basis that serve to support the authoritarian and undemocratic policies of

the Executive and have consistently prevented the democratically elected National Assembly (AN)²⁵⁴ from taking any constitutional measures to resolve the ongoing political, economic and humanitarian crisis. As an example, in the first ten months of 2016, at least 30 judgments produced by the TSJ were issued against the National Assembly and, at least eight laws enacted by the parliament, were struck down. From June 2016 to February 2017, at least 32 cases or incidents are on record exposing the Court's systematic interpretation in favor of the Government's interests, against those of the Legislative branch, the opposition and/or citizens in general, all of which were explained in detail in the Second Report of the Secretary General on the Situation of Venezuela.²⁵⁵ This Report will further analyze the lack of the justice in Chapter X.

When the Attorney General stopped cooperating with the Regime, the Government resorted to using the military justice system to implement its will. After the former Attorney General, Luisa Ortega Díaz announced on April 25, 2017, that the Ministry of Public Prosecution would issue release orders for the demonstrators detained without satisfying due process, the Government began to prosecute civilian demonstrators under military law, and in military courts, a violation of their rights protected by the nation's Constitution. The prosecution of civilians in military courts is a violation of military codes, as it requires these tribunals to improperly exercise jurisdiction over cases that, in accordance with the Constitution, belong in civilian courts. This constitutes a violation of the basic right to due process and serves as further evidence that the rule of law does prevail in Venezuela.

Prosecutors and judges, who are not militants of the governing party, are forced to carry out orders to falsely charge and prosecute innocent political actors, under coercion and threats to their physical security. This is another component of the broader policy of persecution of political dissidents. In his testimony at the OAS General Secretariat hearing of November 16, 2017, former national prosecutor Franklyn Nieves described how, after Hugo Chávez assumed the Presidency of the Republic, the Venezuelan judicial system underwent a sweeping transformation, turning it into an instrument to consolidate the Bolivarian concept of "21st Century Socialism." This ushered in a process characterized by both the politicization of the justice system and the judicialization of politics, resulting in the consistent deprivation of the fundamental rights of anyone who thinks differently from the Regime.²⁵⁶

He described a process of political control that began in 1999 with the issuance of the August 19 decree by the then-National Constituent Assembly, declaring a "Judicial Emergency" and created a Commission to reorganize and restructure the judicial branch of government. Hundreds of judges were summarily

²⁵⁴ Mora, F., "TSJ ha dictado 30 sentencias contra la Asamblea Nacional", El Universal, October 15, 2016, http://www.eluniversal.com/noticias/politica/tsj-dictado-sentencias-contra-asamblea-nacional_622598; *Transparencia Venezuela*, "La Asamblea Nacional en Cifras, 9 meses de gestión", Observatorio Parlamentario, November 2016, <https://transparencia.org.ve/project/lla-asamblea-nacional-en-cifras-9-meses-degestion/>

²⁵⁵ OAS General Secretariat, "Second Report of the Secretary General on the Situation in Venezuela," March 14, 2017, pages 44-53, <http://www.oas.org/documents/spa/press/Informe-VZ-Spanish-signed-final.pdf>

²⁵⁶ Testimony of Franklyn Nieves at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, November 16, 2017, <https://www.youtube.com/watch?v=GC16ig5hieU>

dismissed, violating the guarantees established in the Venezuelan Constitution to protect judicial independence, including job security.

Nieves add that the previously-Constitutionally mandated process to appoint and remove judges became a discretionary power. Judges became more vulnerable to external pressures influencing their decisions. This decrease in their autonomy is a significant infringement of the rights of citizens' to receive the proper administration of justice. The interim status that judges have held for more than 16 years has lent itself to interference of other branches of government in both their appointment to and removal from office, as well as in the execution of their adjudicatory function, to such a degree that judges have been removed and detained almost immediately after issuing an adverse judicial ruling in cases of interest to the Regime.

On December 10, 2009, ironically the date Human Rights Day is celebrated, an emblematic event took place that created a dire precedent. That fateful day, Judge María Lourdes Afiuni in exercising her judicial authority, accepted a recommendation of the UN Working Group on Arbitrary Detentions to issue the conditional release of Eligio Cedeño, a banker who had been persecuted and jailed by Chavez for his alleged support for opposition groups. That same day, Afiuni was arrested and a criminal investigation against her was opened.

Within hours, then-President Hugo Chávez publically called for the President of the TSJ, Gladys Gutiérrez, to sentence Judge Afiuni to a 30-year prison term, and even consider sentencing her to death by firing squad. This took place under what Nieves described as the complaisant gaze of the Attorney General, Luisa Ortega Díaz. The precedent setting ruling installed a climate of terror for judges and prosecutors who from that day forward had to fear retaliation for judicial decisions, particularly in when cases where the interests of the Executive branch were involved.

This created a so-called "law of fear" that is enforced by the security forces or the "organs of repression", in particular the SEBIN, which began to exert control over the decisions of the judiciary to such an extent that it became subordinate to a police state, as recognized by the former Attorney General Ortega Díaz after her removal from office.²⁵⁷

Nieves described how this state of fear embedded in the judicial system, led his actions in the case of the high profile political prisoner Leopoldo Lopez:

"In my particular case, I was coerced by my superiors, the *Director General de Actuación Procesal* (General Director of Procedural Actions), Joel Espinoza, and the *Director de Delitos Comunes* (Director of Common Crimes), Nelson Mejía, to act against Leopoldo López. For this purpose, the highest authorities of the public powers prepared an institutional ambush where they acted in coordination, not only to harm Leopoldo

257 Ibid.

López, but also intimidate, coerce and threaten the judges, prosecutors, expert witnesses, police officers and witnesses, so that they would obey the wishes and instructions of the Executive, under [threat of] the penalty of themselves being the subject of a criminal and disciplinary proceeding. However, because the Director, Brigadier General Manuel Bernal, along with Member of the National Assembly for the governing party, Freddy Bernal, were there, Bernal illegally and arbitrarily ordered me to request four arrest warrants for Leopoldo López, Iván Carratu, Fernando Gerbasi and Carlos Vecchio, which according to Bernal, were direct instructions from number one, President Nicolas Maduro.

This situation did not conform to the law and I decided to notify Director Joel Espinoza by telephone. He was already aware of this fact and angrily shouted at me to stay at the location. I understood that an ambush has been set up not only against these citizens, but [also] against me. Nonetheless, when I warned General Manuel Bernal that without a case file his request could not be processed because the Court was going to ask for evidence, he ordered a counterintelligence agent to make up a police report and to give it to me. Immediately, he ordered another agent to accompany me and not to take his eyes off of me even for an instant until I gave him the arrest warrants, which I assumed was a measure of intimidation and persecution. If I refused to comply with the General's request, my family and I would be at serious risk. This threat was compounded by the fact that minutes earlier they had confessed that one of their agents had committed the murder of Bassil Da Costa.²⁵⁸ I became more fearful and so under pressure I accepted, hoping the Judge would figure out that there was no evidence and deny the request, but it did not turn out that way because she [the judge] was under the same instructions and pressures."²⁵⁹

In a written statement submitted to the General Secretariat and in her testimony at the hearings of the OAS General Secretariat of October 16, 2017,²⁶⁰ Judge Ralenis Tovar described her experience of how she was coerced into signing the arrest warrant for Leopoldo López:

"On February 12, 2014, when I was a judge of the 16th Control Tribunal of Caracas, Venezuela, I was subjected to coercion from the person who at the time was the President of the Supreme Court of Justice of Venezuela, Magistrate Gladys Rodríguez, to issue an arrest warrant against Mr. Leopoldo López, National Coordinator of the political party *Voluntad Popular*, one of the most prominent leaders of the Venezuelan opposition to the regime of President Nicolas Maduro. I was also presented with two other arrest warrants for two other citizens, whose names I could not recognize, since I had never followed politics very closely. One of the orders was for the arrest of Mr. Fernando Gerbasi, whom later I found out had been Venezuela's Ambassador in Colombia in the period before Chávez, and the other was for the arrest of retired Vice Admiral Mario Iván Carratú, who had been the Chief of the Military Staff of the President of Venezuela, also at a

²⁵⁸ Bassil Da Costa was murdered during the protests in 2014. See case No. 3, Section C under the subheading "Murders during the Protests of 2014" in Chapter IV of this Report, page 64.

²⁵⁹ Written testimony of Franklyn Nieves, submitted to the General Secretariat, November 16, 2017.

²⁶⁰ Testimony of Ralenis Tovar at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 16, 2017, <https://www.youtube.com/watch?v=ca5zYBQYcVE>

time before Chávez, now exiled in Miami, Florida. That night, I received threats from the aforementioned magistrate Gladys Rodríguez, as well as from magistrate Deyanira Nieves, who was at that time Presided over the *Sala de Casación Penal* of the TSJ (Chamber of Criminal Cassation) (now retired). I also received threats on my life from the SEBIN agents.

Obedying the orders of Justice, I started to read the first order, to make sure that it was duly justified. It was an arrest warrant and a warrant to search the residence of Mr. Fernando Gerbasi. I proceeded to issue the order. Then I was told to continue. Next, I read the arrest warrant against retired Vice Admiral Mario Iván Carratú; everything seemed to be in order, so I signed it and issued it. Then I read the last one, which was an arrest warrant against Mr. Leopoldo López, the most famous leader of the opposition to the Maduro regime at that time. I became very nervous and was scared. I looked up at the audience in the room and then prosecutor Franklin Nieves said to me: ‘Sorry, judge, but this is something that we have to do and you were already told to do it.’ I sat for a moment without knowing what to do, and then one of the SEBIN agents said to me in a loud voice: ‘hurry up, we are tired and it is getting late. It seems you want to be the next Afuni.’ I felt terrorized by that veiled threat. Because of these threats and fearing for my life and my daughters, I signed the arrest warrants as written, which had been submitted to me by Prosecuting Attorney Franklin Nieves, who is now living under asylum in the United States and is a protected witness of the United States Government, because he was also forced to prosecute Mr. Leopoldo López.”²⁶¹

On February 15, 2018, the Attorney General in exile, Luisa Ortega Díaz, made a public statement indicating that Diosdado Cabello pressured her to pin the blame opposition leader Leopoldo López for the deaths that took place during the 2014 protests. “I was pressured to say that the perpetrator of the death of Bassil da Costa and Juan Montoya was Leopoldo. Diosdado Cabello pressured me,” she said during an interview with the Colombian network *Blu Radio*. She also claimed she was pressured by Maduro to convict several political leaders, including Leopoldo López.²⁶²

Separately, in an interview with *EFE*, attorney Juan Carlos Gutiérrez asserted that the Ortega Díaz statements are a “confession by omission of the Venezuelan State for having directly participated in generating instructions and pressure mechanisms for the prosecution and conviction of an innocent person.”²⁶³

The testimonies of Franklyn Nieves, Ralenis Tovar and Luisa Ortega stand as proof of a judicial system that has been completely coopted by the Executive, which the regime uses to falsely prosecute opposition leaders, or anyone whose opinion is at odds with the Government. This has been the case for an ever growing number of well-known politicians and high profile figures such as Leopoldo López, or mayors

²⁶¹ Excerpt from the written statement of Judge Ralenis Tovar submitted to the OAS General Secretariat, October 16, 2017.

²⁶² *Caraota Digital*, “Ortega Díaz dijo que Diosdado la presionó para que culpara a López por muertes en protestas 2014”, February 15, 2018, <http://www.caraotadigital.net/nacionales/ortega-diaz-dijo-que-diosdado-la-presiono-para-que-culpara-a-lopez-por-muertes-en-protestas-2014/>

²⁶³ NTN24, “Diosdado me presionó para que dijera que Leopoldo López mató a manifestantes: Luisa Ortega Díaz”, February 15 2018, <http://www.ntn24america.com/noticia/diosdado-me-presiono-para-que-dijera-que-leopoldo-lopez-mato-a-manifestantes-luisa-ortega-diaz-165313>

Antonio Ledezma, David Smolansky, Delson Guárate, Alfredo Antonio Ramos, Warner Jiménez, Gustavo Marcano, Omar Láres, Daniel Ceballos, Enzo Scarano, José Luís Machin, Ronald Aguilar, Ramón Rodríguez, Alejandro Feo La Cruz, and Yovanny Salazar, or Member of the AN Freddy Guevarra, but it is also the case of the 7,399 people who have been formally charged as criminals for protesting against the Venezuelan government during the 2014 to 2017 period.²⁶⁴

C. The Illegal and Arbitrary Dismissal of Mayors

Chapter II, on the hearings organized by the General Secretariat of the OAS, details a significant number of opposition mayors who were illegally and arbitrarily removed from office. Four mayors representing different opposition political parties testified about the perverse tactics used by the Government to bar democratically-elected mayors from serving. They were David Smolansky (Mayor of El Hatillo, Miranda); Gustavo Marcano (Lecherías, Anzoátegui); Omar Lares (Campo Elías, Mérida); and Ramón Muchacho (Chacao, Miranda).

Smolansky testified about 12 mayors who were illegally dismissed in Venezuela between 2014 and October 2017: four were imprisoned and six are in exile, while another two were ousted and banned from holding public office, but remain in Venezuela. These are the cases of Daniel Ceballos (Mayor of San Cristobal, Táchira); Enzo Scarano (San Diego, Carabobo); Antonio Ledezma (Metropolitan District of Caracas); Lumay Barreto (Guasdalito, Páez, Apure); Warner Jiménez (Maturin, Monagas); Delson Guarate (Mario Briceño Iragorry, Aragua); Gustavo Marcano; Alfredo Ramos (Barquisimeto, Iribarren, Lara); Ramón Muchacho; Alirio Guerrero (Jáuregui, Táchira); Carlos García Odón (Libertador, Mérida) and Smolansky himself.²⁶⁵ According to Smolansky, another 20 mayors were being investigated at the time of the hearing.

Among the first group of mayors to be removed from office, Ceballos was sentenced to 12 months in prison on March 25, 2014. He was also suspended and removed from his position as Mayor of San Cristóbal by the Constitutional Chamber of the Supreme Court of Justice, for allegedly disobeying an order from the Ministry of Public Prosecution to remove barricades that protesters had erected in the streets of San Cristóbal during the protests conducted in 2014. The Constitutional Chamber, acting outside its jurisdiction as a criminal court, rendered judgment in a swift trial lasting six hours, where 11 “witnesses” for the prosecution testified, and Ceballos was deprived of the right to defense and deprived of the right due process.²⁶⁶

²⁶⁴ Confidential report of *Foro Penal*, submitted to the OAS General Secretariat, December 17, 2017. Also see: *Foro Penal*, “Reporte Sobre la Represión en Venezuela, November 2017”, <https://foropenal.com/2017/12/14/noviembre-2017/>

²⁶⁵ *Transparencia Venezuela*, “Alcaldes Electos sin Poder Ejercer sus Cargos”, <https://transparencia.org.ve/44-los-alcaldes-oposicion-recipientes-ataques-del-gobierno-nacional/>

²⁶⁶ *Voluntad Popular*, “Persecución Política a Voluntad Popular, Activistas”, Caracas, October 2017, page 76.

A second round of dismissals started on February 19, 2015, with the arrest and subsequent removal of the mayor of the Caracas Metropolitan District, Antonio Ledezma, who was accused of conspiring against President Nicolás Maduro. That same week, Lumay Barreto was removed as mayor of Guadualito.²⁶⁷

According to an article published in the online newspaper El Pitazo, “a third wave of repression surrounded the events of September 1, 2016, when the MUD convened the “Takeover of Caracas.” One week before the protest, an arrest warrant was issued for then mayor of Maturín, Warner Jiménez, for the alleged mismanagement of public funds. Meanwhile, one day after the rally, a similar arrest warrant was issued for the mayor of Mario Briceño Iragorry municipality, Delson Guárate, who was arrested by the Bolivarian National Intelligence Service.²⁶⁸ Both mayors were later removed from their posts.²⁶⁹

The persecution of opposition mayors continued in 2017 when, according to Smolansky’s testimony, the Supreme Court issued identical rulings in five separate cases, with only the name of the accused, the state, and the ID number changed. The right to due process was not respected in any of these cases. The five identical cases are those of Smolansky, Ramón Muchacho, Carlos García Odón (Libertador, Mérida), Alfredo Ramos (Iribarren, Lara), and Gustavo Marcano. They were all charged with contempt for failing to comply with the injunction issued by Judgment N° 371 of May 24, 2017, which ordered against the blocking roads during anti-government demonstrations. Of that group, Ramos remains in detention and the rest were forced into exile.²⁷⁰ All five were arbitrarily removed from office.

Gustavo Marcano, the former mayor of the Diego Bautista Urbaneja municipality, was the first of the mayors to be arbitrarily dismissed from their posts by the Constitutional Chamber of the Supreme Court in 2017. “We were convicted for refusing to comply with an unconstitutional order – issued by an illegitimate body – for us to repress or ban demonstrations by our citizens,” he stated at the OAS General Secretariat hearing on November 16, 2017.²⁷¹

Ramón Muchacho was convicted on August 8, 2017 for failure to comply with a similar order. His arrest warrant was issued by the SEBIN. He was denied the right to legal counsel; had no access to his own files; was tried by a court that did not have jurisdiction over his case; his passport was canceled; and he was banned from running for office.

²⁶⁷ Oriana Vielma, El Pitazo, “Over 1.2 million Venezuelans lose their mayor,” <https://elpitazo.com/reportajes/mas-12-millones-venezolanos-perdieron-alcalde/>

²⁶⁸ Ibid.

²⁶⁹ *Transparencia Venezuela*, “Alcaldes Electos sin Poder Ejercer sus Cargos”, <https://transparencia.org.ve/44-los-alcaldes-oposicion-recibieron-ataques-del-gobierno-nacional/>

²⁷⁰ Oriana Vielma, El Pitazo, “Más de 1,2 millones de venezolanos perdieron a su alcalde”, <https://elpitazo.com/reportajes/mas-12-millones-venezolanos-perdieron-alcalde/>

²⁷¹ Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, November 16, 2017, <https://www.youtube.com/watch?v=g6zUBXprxQ4>

Smolansky was convicted on August 9, 2017 for “not guaranteeing freedom of movement” – which equates to allowing the opposition protests to take place. He was banned from running for office and a warrant was issued for his arrest, forcing him into exile.

According to Transparency Venezuela, “of the country’s 77 opposition mayors who were elected in 2013, according to National Electoral Council data, 39 have been the target of some form of attack by the national government. This means that 44% of the municipal authorities have been removed from office, are in prison, have an arrest warrant, have been banned from leaving the country, have been stripped of their functions, or have been banned from serving. Furthermore, the mayors have been reported to prosecutors or sued, and their fiscal oversight body and municipal police forces taken over, because they did not support measures and policies imposed by President Nicolás Maduro.”²⁷²

D. Disqualification from Election to Public Office

As is exemplified in the cases of the Mayors, the Regime also systematically resorts to disqualifying candidates and political parties as another means of repression, not only depriving the political rights of those running for public office, but also depriving the right of voters to elect their own representatives.

Such is the case of Henrique Capriles, the twice presidential candidate (2012 and 2013), who, on April 7, 2017, was disqualified from holding public office for a period of 15 years by the Comptroller General for allegedly “engaging in illicit activities, such as not submitting the local budget to the legislature of the State of Miranda, entering into international agreements without authorization and signing contracts for the Government of Miranda with ineligible companies.”²⁷³

More recently, mayors Ramón Muchacho (Chacao), Alfredo Ramos (Iribarren) and Gustavo Marciano (Lechería), have also been politically disqualified by the Supreme Court for the duration of their sentences: 15 months for Muchacho, 15 months for Ramos, and 15 months for Marciano.²⁷⁴

²⁷² *Transparencia Venezuela*, “Alcaldes Electos sin Poder Ejercer sus Cargos”, <https://transparencia.org.ve/44-los-alcaldes-oposicion-recipientes-ataques-del-gobierno-nacional/>

²⁷³ *Infobae*, “Elecciones en Venezuela: estos son los principales líderes de la oposición inhabilitados por el régimen de Nicolás Maduro”, January 23, 2018, <https://www.infobae.com/america/venezuela/2018/01/23/estos-son-los-presidenciales-opositores-inhabilitados-por-el-regimen-de-nicolas-maduro/>

²⁷⁴ *Efecto Cocuyo*, “Inhabilitaciones impiden a varios dirigentes opositores participar en Regionales 2017”, August 8, 2017, <http://efectococuyo.com/politica/inhabilitaciones-impiden-a-varios-dirigentes-opositores-participar-en-regionales-2017>

The Comptroller General disqualified the former opposition mayor of the municipality of San Diego, Carabobo, Enzo Scarano, for 15 years on February 17, 2017,²⁷⁵ after which, the MUD issued a press release in which the political coalition noted that “it is the second time that such an order has been imposed on the leader of the *Cuentas Claras* political party, in 2015 he was unable to run as the MUD’s nominee for parliamentary elections for the 3rd Circuit of Carabobo State, even though he was selected in the preceding primary elections.”²⁷⁶

The government also introduced a series of convoluted and opaque processes for the renewal of political party registrations, along with other regulations that are not provided for by law, to create further barriers against political participation and outright prevent their participation in electoral processes. On January 5, 2016, Judgment No. 01/2016 of the Constitutional Chamber of the TSJ ordered 59 political parties to renew their registrations. This decision was taken by the magistrates, based on their interpretation of Article 25 of the Law of Political Parties, Public Assemblies and Demonstrations.²⁷⁷ The justices concluded that any party that had not obtained at least one percent (1%) of valid votes cast in a national election in at least twelve States “must renew its membership lists for its legitimacy.” On May 24, 2016, a new judgment (No. 415) of the TSJ further ordered not only that that renewal was required in January, but imposed a mandatory renewal of all political entities at the beginning of each constitutionally mandated electoral period. On October 21, 2016, a third judgment (No. 878) by the TSJ ordered that any political party that did not comply with “the process of renewal of its registration before the electoral governing body, shall not be able to participate in any internal electoral process of a municipal, state and national character.”²⁷⁸ Not only does the new registration process create a significant hurdle for these smaller parties, but it also provides the government with a list of individuals who do and do not support the governing party.

With these rulings, all of the parties in the MUD coalition and the parties of *Gran Polo Patriótico*, were required to initiate a process of “renewal of the membership lists” on of February 18, 2017, having only 48 hours to accredit their members in 12 states of the country. This process was to be implemented through a system of biometric authentication for each of the members of the organization, and dual membership was expressly prohibited.²⁷⁹

²⁷⁵ *El Nacional*, “*Contraloría inhabilitó a Scarano para el ejercicio de funciones por 15 años*”, March 6, 2017, http://www.el-nacional.com/noticias/politica/contraloria-inhabilito-scarano-para-ejercicio-funciones-por-anos_83995

²⁷⁶ *El Nacional*, “*MUD rechazó inhabilitación de Enzo Scarano por 15 años*”, March 6, 2017, http://www.el-nacional.com/noticias/oposicion/mud-rechazo-inhabilitacion-enzo-scarano-por-anos_84018

²⁷⁷ The Supreme Court of Justice decided on motion for interpretation filed by attorney César Elías Burguera Villegas, regarding Article 67 of the Constitution, and Articles 10, 16 and 25 of the Law of Political Parties, Public Assemblies and Demonstrations, published in the Official Gazette of the Bolivarian Republic of Venezuela, No. 6.013, Special issue dated December 23, 2010.

²⁷⁸ TSJ, Constitutional Chamber, “*Sentencia*”, TSJ/SC N° 878, October 21, 2016, <http://www.accesoalajusticia.org/wp/monitoreo-juridico/sala-constitucional-interpreta-sentencia-sobre-partidos-politicos/>

²⁷⁹ Rules for the Renewal of List of Registered Members of National Organizations with Political Aims, Resolution No. 160304-0010, published in the Official Gazette of the Bolivarian Republic of Venezuela, Issue 801.

Judgment No. 01/2016 by the Constitutional Chamber “pre-disqualified” all political parties forcing them to fulfill the new requirements in order to continue with their political participation. It should be noted that the process of “renewing membership lists” is not provided for in the electoral legislation.

On August 7, 2017, the National Electoral Council approved the final report on the process of renewal of political organizations, in which only 22 of the 59 national political organizations existing in the country were authorized to register candidates for the elections scheduled on May 20, 2018. Among the organizations who maintained their registration status was the *Frente Amplio de la Patria*, the party of Nicolás Maduro, which was supported by the *Partido Socialista Unido de Venezuela*, and other parties aligned with the ruling part.²⁸⁰

On December 10, 2017, at the request of Nicolás Maduro, the National Constituent Assembly ordered that another renewal process be instituted for political parties that had not participated in the 2017 municipal elections even though Article 47 of the Law of Political Parties establishes that the nomination of candidates is a right of political parties, but not an obligation. On December 20, the National Constituent Assembly further ordered the parties *Voluntad Popular*, *Acción Democrática*, *Primero Justicia*, *Mesa de la Unidad Democrática* and *Partido Unión y Entendimiento Nacional* (Puente) to re-register in order to restore their legitimacy with the CNE.²⁸¹

On January 26, 2018, prior to the start of the second renewal process, the TSJ ordered the disqualification of the MUD for committing the offense of dual membership, as prescribed in judgment 871 of October 21, 2016.²⁸² The Constitutional Chamber upheld the disqualification “on the grounds that its make up consists of a grouping of several previously renewed political organizations and others pending renewal, that are eligible to participate in the national electoral process.”

Furthermore, in the context of the second round of political party renewals, both *Voluntad Popular* and *Puente* were disqualified for not participating. *Primero Justicia* and *Acción Democrática* did participate, but only the latter had obtained sufficient votes in more than 12 states. *Primero Justicia*, which obtained enough votes in two states, was able to use the appeals process for insufficient signatures because they

280 Official Communiqué of the National Electoral Council, http://www.cne.gov.ve/web/sala_prensa/noticia_detallada.php?id=3557. The national political organizations authorized to field candidates are: Partido Socialista Unido de Venezuela (PSUV); Independientes Por el Progreso (IPP); Unidad Política Popular 89 (UPP 89); Mesa de la Unidad Democrática (MUD); Partido Unión y Entendimiento (Puente); Nueva Visión para mi País (Nuvipa); Partido Comunista de Venezuela (PCV); Tendencias Unificadas para Alcanzar el Movimiento de Acción Revolucionaria Organizada (Tupamaros); Acción Democrática (AD); Un Nuevo Tiempo Contigo (UNTC); Movimiento Primero Justicia (MPJ); Avanzada Progresista (AP); Voluntad Popular (VP); Movimiento Al Socialismo (MAS); Por la Democracia Social (Podemos); Organización Renovadora Auténtica (ORA); Patria Para Todos (PPT); Movimiento Electoral del Pueblo (MEP); Nuevo Camino Revolucionario (NCR); Copei; Movimiento Político Alianza Para el Cambio (MPAPC); Unidad Popular Venezolana (UPV).

281 *El Nacional*, “ANC aprobó un decreto para la validación de los partidos políticos”, December 20, 2107, http://www.el-nacional.com/noticias/gobierno/anc-aprobo-decreto-para-validacion-los-partidos-politicos_216253

282 *Diario Las Américas*, “Supremo ordena excluir a la Mesa de la Unidad Democrática de validación electoral”, January 25, 2018, <https://www.diariolasamericas.com/america-latina/supremo-ordena-excluir-lamesa-la-unidad-democraticade-validacion-electoral-n4142169>

had attained the required number of signatures in more than one state, as provided for in Article 7 of the Rules of Renewal approved on March 4, 2016. However, Electoral Council member Tania D'Amelio, supported by the votes of members Socorro Hernández, Sandra Oblitas and Tibusay Lucena, imposed a new criterion (subsequent to the process) of validation: that the appeals process was only applicable in cases where 0.5% of the signatures required were obtained on the first day of signature collection, in half of the required number of states.²⁸³

In the end, only 22 political organizations were eligible to participate in the May 20, 2018, presidential elections. The *Mesa de la Unidad Democrática* has been disqualified from participating as a coalition and only two of its coalition members, *Acción Democrática* and *COPEI*, were authorized by the CNE to participate.

E. Attacks on the Freedom of Expression

The Office of the Special Rapporteur for Freedom of Expression of the IACHR has documented a systematic pattern of persecution against journalists and persons in the exercise of their right to the freedom of expression when they have expressed opinions or disseminated information and ideas that are not in line with, or are critical of the ruling party. The discrimination is actualized through different attacks ranging from the closure of media organizations, overt content censorship, stigmatization and smear campaigns targeting journalists, forced self-censorship, increasing economic barriers for operation forcing media outlets to release staff or in some cases close, to direct violent attacks, and the criminalization and incarceration of journalists, political leaders or individuals who exercise their right to freedom of expression. These attacks are implemented unlawfully, or by enforcing a legal framework of persecution that is at odds with both the Bolivarian Constitution and international law.

Through its Petition and Case System, the IACHR has collected evidence for numerous cases of persecution. Two cases that are emblematic cases are the 2006 closure of RCTV television station²⁸⁴ and the dismissal of state officials for signing the petition for the 2004 presidential recall referendum.²⁸⁵ Both of these cases illustrate a longstanding environment of political discrimination where there is a clear intent to silence criticism and concentrate the power of information and public opinion in the hands of the government.

²⁸³ *El Nacional*, "Luis Emilio Rondón: CNE impide a Primero Justicia ir a fase de reparos", February 2, 2018, http://www.el-nacional.com/noticias/politica/luis-emilio-rondon-cne-impide-primero-justicia-fase-reparos_221629

²⁸⁴ Inter-American Court of Human Rights, *Caso Granier y otros (Radio Caracas Televisión) vs. Venezuela*, "Sentencia de 22 de Junio de 2015" (Excepciones Preliminares, Fondo, Reparaciones y Costas), June 22, 2015, http://www.corteidh.or.cr/docs/casos/articulos/seriec_293_esp.pdf

²⁸⁵ IACHR, Report on Merits "Rocío San Miguel Sosa and Others, Venezuela" "Report No. 75/15, Case 12.923, October 28, 2015, <https://www.oas.org/en/iachr/decisions/court/2016/12923FondoEn.pdf>

In 2017, the NGO *Instituto Prensa y Sociedad Venezuela* warned in its annual Index on Journalistic Freedom that “the abuse of state power, restrictions on digital rights and acts of aggression, along with the closure and reduction of news reporting and opinion spaces in the radio media represented a historic setback for freedom of information in the country.” This Index documents at least 518 cases, with a total of 1087 violations of freedom of expression in 2017.²⁸⁶

As reflected in their 2017 country report on Venezuela,²⁸⁷ the IACHR has received complaints of criminal proceedings being initiated against journalists, media outlets, university professors, and citizens in general, with the intent of not only punishing individuals actions but to set an example and in turn encourage an environment of self-censorship to inhibit criticism of the State authorities or other issues of public interest. As it is laid out below, the act of charging people with vague and ambiguous criminal offenses, such as the crimes of criminal defamation, high treason, and incitement to violence, has resulted in the criminalization of public opinion or criticism as well as other journalistic work and amounts to a violation of legal principles and Inter-American standards.²⁸⁸ In other cases, charges have been brought for which either no evidence is ever produced, or the evidence produced is patently false. Criminal proceedings are commonly drawn out in a protracted process, during which time individuals and media companies are targeted using measures such as pretrial detention, legally mandated censorship, travel restrictions, and high bail bonds for conditional release. In several of these cases, the investigations and legal proceedings were initiated after the highest authorities of the State called on public agencies to “act” against the persons undergoing proceedings.

The criminal cases and convictions cited below, are taken from the 2017 Report on the Situation of Human Rights in Venezuela²⁸⁹, have a systemic effect on the general conditions for the exercise of freedom of expression in Venezuela. In addition to the individual dimension of the impact of these measures on the

²⁸⁶ Instituto Prensa y Sociedad Venezuela, “Control remoto: Índice de libertades periodísticas 2017”, <https://ipysvenezuela.org/2018/02/28/control-remoto-indice-libertades-periodisticas-2017/>

²⁸⁷ IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela”, December 31, 2017; paragraph 256, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

²⁸⁸ Also see, March 11, 2016, the Sixth Criminal Trial Court of the state of Bolivar sentenced the Director of the newspaper *Correo del Caroní*, David Natera Febres to a four-year prison term and to payment of a fine of 1,137 tax units, for defamation, because of the news reporting the media company carried out about the case of alleged corruption of the state-owned iron mining company Ferrominera del Orinoco. The court also banned him from leaving the country; ordered him to report to it every 30 days, until his conviction was finalized and the sentence was served; prohibited him from transferring or encumbering the rights of the newspaper and prohibited the *Correo del Caroní* from continuing to disseminate information about the case of *Correo del Caroní*, “*El Tiburón que extorsionaba en la ciudad del hierro*”, July 15, 2013, <http://correodelcaroni.com/index.php/recursos/item/1190-el-tiburon-que-extorsionaba-en-la-ciudad-del-hierro>; *Correo del Caroní*, “*Pioneros de FMO repudian saqueo de su empresa por la corrupción*”, July 16, 2013, <http://correodelcaroni.com/index.php/recursos/item/1191-pioneros-de-fmo-repudian-saqueo-de-su-empresa-por-la-corrupcion>; *Correo del Caroní*, “*Fiscalía solicita enjuiciamiento de empresario por el caso FMO*”, September 6, 2013, <http://correodelcaroni.com/index.php/recursos/item/1408-ministerio-publico-ratifico-cargos-contramustafa-y-exgerentes-de-fmo>; IPYS Venezuela, “*La censura tiene un aval judicial en la sentencia contra el Correo del Caroní*”, March 11, 2016, <https://ipysvenezuela.org/alerta/bolivar-la-censura-tiene-un-aval-judicial-en-la-sentencia-contra-el-correo-del-caroni/>; *Espacio Público*, “*Espacio Público rechaza sentencia contra el Correo del Caroní por informar sobre corrupción*”, March 11, 2016, http://espaciopublico.org/espacio-publico-rechaza-sentencia-correo-del-caroni-informar-corrupcion/?utm_source=&utm_medium=&utm_campaign; *El País*, “*Condenado a cuatro años el director de un diario en Venezuela*”, March 11, 2016, https://elpais.com/internacional/2016/03/11/america/1457736744_542012.html; and IACHR, “Office of the Rapporteur Expresses Concern over Defamation Conviction in Venezuela”, Press Release R34/16, March 14, 2016, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1016&IID=1>

²⁸⁹ IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela”, December 31, 2017, pages 96-100, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

defendants, the criminalization of these rights has a chilling effect on society as a whole, inasmuch as it serves as a deterrent for public debate and can lead to self-censorship preventing or deterring public debate and criticism of public officials.²⁹⁰

On April 21, 2015, the National Assembly president, Diosdado Cabello, filed a criminal and civil suit against the media organizations *El Nacional*, *La Patilla* and *Tal Cual* and their editor-in-chief, Henrique Miguel Otero, Alfredo Ravell and Teodoro Petkoff for defamation. These outlets had disseminated a feature report of the Spanish daily newspaper *ABC* in which a former official close to Cabello had linked him to drug trafficking, a charge he denied.²⁹¹ In May, the courts ordered 22 editors involved not to leave the country and to report to the courts. According to the case made by Cabello in the lawsuit, this measure was requested because of “reasonable presumptions” of risk of flight and hampering the course of justice. Diosdado Cabello also filed a civil suit for moral damages against three daily newspapers and the judge ordered an injunction on the transfer or encumbrance of property.²⁹² On its website, the TSJ expressed its support for the then president of the National Assembly and without any due process, much less any hearing before the court presiding over the case, it released an opinion as to the dissemination of information by the three media organizations stating that “because they lack veracity they warrant the sanctions provided for in national law.”

On August 24, 2015, the IACHR and the Office of the Special Rapporteur for Freedom of Expression issued a release expressing their deep concern over the stigmatization and harassment by the judiciary against the three media organizations.²⁹³ On November 9, 2015, the IACHR approved precautionary measures on behalf of Miguel Henrique Otero, editor in chief of *El Nacional*; Alberto Federico Ravell, director of *La Patilla*, and his daughter Isabel Cristina Ravell; and Teodoro Petkoff, director of *Tal Cual*.²⁹⁴ In making this decision, the IACHR assessed the repeated stigmatizing statements made by high-level government officials, acts of surveillance, including following the individuals in question, the summary criminal and civil proceedings for defamation brought by Cabello, the travel bans, the prejudgment by the TSJ and the encumbrance of property.²⁹⁵ The IACHR considered that in the current context of Venezuela, the media organizations benefitting from the precautionary measure were the only print media outlets with a nationwide circulation, whose editorial line was still independent of the Government’s.

²⁹⁰ IACHR, Precautionary Measure No. 30-14, “*Asunto Fernando Alciblaides Villavicencio Valencia y otros respecto de Ecuador*”, March 24, 2014, paragraphs 34-36, <http://www.oas.org/es/cidh/decisiones/pdf/2014/MC30-14-ES.pdf>

²⁹¹ IACHR, “2015 Annual Report, Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere)”, paragraph 1237, <http://www.oas.org/en/iachr/expression/docs/reports/annual/annualreport2015rele.pdf>

²⁹² IACHR, Precautionary Measure No. 179-15, “*Miguel Henrique Otero y otros respecto de Venezuela*”, November 9, 2015, <http://www.oas.org/es/cidh/decisiones/pdf/2015/MC43-2015-es.pdf>

²⁹³ IACHR, “IACHR and the Special Rapporteur Express Deep Concern over the Stigmatization and Judicial Harassment against Three Media Outlets in Venezuela”, Press Release No. 93/15, August 24, 2015, http://www.oas.org/en/iachr/media_center/PReleases/2015/093.asp

²⁹⁴ IACHR, Precautionary Measure No. 179-15, “*Miguel Henrique Otero y otros respecto de Venezuela*”, November 9, 2015., <http://www.oas.org/en/iachr/expression/docs/reports/annual/annualreport2015rele.pdf>

²⁹⁵ Ibid.

Criminal trial proceedings, which could result in up to four-year jail sentences and high fines, have been stretched out for years. According to available information, in September 2017, the case against journalist Teodoro Petkoff, director of *Tal Cual*, was dismissed. The well-known 85-year-old politician and journalist was found incompetent to stand trial for health reasons. Petkoff's attorneys have called this decision arbitrary and illegal.²⁹⁶

The IACHR and its Office of the Special Rapporteur have held that the use of criminal charges for particular offenses, such as defamation, is a mechanism to hold someone ultimately liable when specially protected speech is involved, is a violation of the freedom of expression protected in Article IV of the American Declaration. In this regard, the IACHR and the Inter-American Court of Human Rights have been emphatic in their position that this type of expression must enjoy a higher degree of protection in the framework of the Inter-American human rights protection system.²⁹⁷

On September 3, 2016, journalist Braulio Jatar was arrested by agents of the SEBIN.²⁹⁸ Jatar is a journalist and director of the digital portal *Reporte Confidencial*, a columnist of the media outlet *Reporte Economía* and radio program host of Margarita Island, state of Nueva Esparta. The arrest was carried out the day President Nicolas Maduro vested the municipality of Villa Rosa on the Island, during which a pot-banging protest demonstration took place, reportedly leading to a directly confrontation between the leader and the demonstrators. Based on the known information, 30 people were arrested and taken into custody and then released. Videos documenting the mobilization were posted on the digital portal edited by Jatar the

296 Before the Court ordered the measure, Diosdado Cabello claimed on his television program: "when I found out [...] that he was ill; I asked a doctor to go and see him, because I'm not interested in hurting anyone, much less someone who is sick, I just want justice to be done [...] this ingrate that is here asked for him to be left out of the suit." *Efecto Cocuyo*, "Sobreseido proceso contra Teodoro Petkoff por "motivos de salud", September 13, 2017, <http://efectococuyo.com/politica/sobreseido-proceso-contra-teodoro-petkoff-por-motivos-de-salud/>; and *El País*, "Un juez cierra la causa contra el periodista venezolano Teodoro Petkoff por difamar a un dirigente chavista", September 14, 2017, https://elpais.com/internacional/2017/09/14/america/1505355744_798244.html

297 IACHR, "1994 Annual Report, Chapter V: Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights", <https://www.cidh.oas.org/annualrep/94eng/TOC.htm>; IACHR, "2004 Annual Report, Report of the Office of the Special Rapporteur for Freedom of Expression; Chapter VI (Desacato Laws and Criminal Defamation)", paragraph 155, <file:///C:/Users/USER/Downloads/Annual%20Report%202004.pdf>; IACHR, "2009 Annual Report, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression)", page 245, <http://www.cidh.org/pdf%20files/Annual%20Report%202009.pdf>; Inter-American Court of Human Rights, Case of Ivcher Bronstein v. Peru, "Judgment of February 6, 2001" (Merits, Reparations and Costs), http://www.corteidh.or.cr/docs/casos/articulos/seriec_74_ing.pdf; Inter-American Court of Human Rights, Case of Herrera Ulloa v. Costa Rica, "Judgment of July 2, 2004" (Preliminary Objections, Merits, Reparations and Costs), http://www.corteidh.or.cr/docs/casos/articulos/seriec_107_ing.pdf; Inter-American Court of Human Rights, Case of Ricardo Canese v. Paraguay, "Judgment of August 31, 2004" (Merits, Reparations and Costs), http://www.corteidh.or.cr/docs/casos/articulos/seriec_111_ing.pdf; Inter-American Court of Human Rights, Case of Palamara Iribarne v. Chile, "Judgment of November 22, 2005" (Merits, Reparations and Costs), http://www.corteidh.or.cr/docs/casos/articulos/seriec_135_ing.pdf; Inter-American Court of Human Rights, Case of Kimel v. Argentina, "Judgment of May 2, 2008" (Merits, Reparations and Costs), http://www.corteidh.or.cr/docs/casos/articulos/seriec_177_ing.pdf; and Technical note on international parameters with respect to freedom of expression and crimes against honor and domestic legal effects of crimes against honor present in the draft amendments to the Brazilian Criminal Code, November 4, 2013; cited in IACHR, "2013 Annual Report, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II, Evaluation on the State of Freedom of Expression in the Hemisphere", paragraph 125, http://www.oas.org/en/iachr/expression/docs/reports/2014_04_22_%20ia_2013_eng%20finalweb.pdf

298 IACHR, "2016 Annual Report, Report of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere)", paragraph 1104, <http://www.oas.org/en/iachr/expression/docs/reports/annual/annualreport2016rele.pdf>

night of September 2, 2016. At 8:45 AM the next morning, a few hours after the videos were posted, members of the SEBIN detained Jatar, without a court order, while he was hosting his radio program in Porlamar, state of Nueva Esparta.²⁹⁹

Available information indicates that in addition to arresting the journalist on September 3, hooded SEBIN agents with long-barrel guns appeared at Jatar's residence to conduct a search, reportedly without a search warrant. On September 4, 2016, Silvia Martínez, Braulio Jatar's wife, was able to visit him for the first time at the SEBIN prison facilities and reported that he had sustained acts of aggression. On September 5, 2016, the journalist was able to contact his attorneys and was brought before a judge, where he was charged with being a "CIA agent" and of "organizing terrorist activities;" he was formally charged for an offense defined in the *Organic Law against Organized Crime and Financing of Terrorism* known as "legitimization of capital," the punishment for which is a prison term of 10 to 15 years, according to the petition before the IACHR.³⁰⁰

During his detention, he was transferred to prisons in different regions of Venezuela. He was prevented from having contact with his next of kin and attorneys for lengthy periods of time and the state of his health began to deteriorate. On December 22, 2016, the IACHR granted precautionary measures on behalf of the journalist, considering the seriousness and urgency of Braulio Jatar's situation, inasmuch as his life and safety were in jeopardy as a consequence of the deterioration of his health and lack of access to medical treatment, on top of the situation of isolation to which he was subjected.³⁰¹ The party requesting the precautionary measures also claimed that there were several irregularities in the case against the journalist, in addition to the fact that he was held *incommunicado* and transferred between prison facilities twice without prior notice to his family members or defense attorneys.³⁰²

On April 27, 2017, in a joint release, the UN Special Rapporteur on the right to freedom of opinion and expression, David Kaye, and the IACHR Special Rapporteur for Freedom of Expression, Edison Lanza, condemned the censorship, detentions and attacks on journalists in Venezuela, and called attention to the unprecedented fact that journalist Braulio Jatar had remained in custody since September 2016, after

²⁹⁹ IACHR, "Democratic Institutions, the Rule of Law and Human Rights in Venezuela", December 31, 2017, paragraph 301, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

³⁰⁰ Ibid, paragraph 302.

³⁰¹ The IACHR requested the government of Venezuela to: a) Adopt the measures necessary to ensure the life and personal integrity of Mr. Braulio Jatar. In particular, to provide adequate medical care, in accordance with his pathologies; b) Ensure that the conditions of detention of Mr. Braulio Jatar conform to international standards, taking into consideration his current state of health; and c) Come to a consensus with the beneficiary and his representative about the measures to be adopted, IACHR, Precautionary Measure No. 750-16, Matter of Braulio Jatar with respect to Venezuela, December 22, 2016, <http://www.oas.org/es/cidh/decisiones/pdf/2016/MC750-16-ES.pdf>

³⁰² IACHR, "Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report" December, 2017; paragraph 303, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

disseminating a video that showed protesters face to face with President Maduro. The IACHR recognized that in May 2017, the journalist was released under house arrest.³⁰³ The case against him is still open.³⁰⁴

In June 2017, the United Nations Working Group on Arbitrary Detention determined that the deprivation of liberty of the journalist is arbitrary and even though the journalist had been transferred to house arrest “a preventive measure of deprivation of liberty remains in effect under said modality.”³⁰⁵ In this regard, it found that detention under the supposed circumstance of *in flagrante delicto* and his subsequent charge for the crime of legitimization of capital were based on exercising his right to freedom of expression, particularly, his job as a journalist and reporter of the digital portal *Reporte Confidencial*, which produces information and critical thinking about the government. Additionally, the Working Group determined that the detention of journalist Braulio Jatar is part of a “systematic practice in recent years, by the government of the Bolivarian Republic of Venezuela, to deprive political opponents of their physical liberty, in violation of the fundamental norms of international law, such as the Universal Declaration of Human Rights and the Covenant.”³⁰⁶

The Working Group noted that the State should “immediately release Braulio Jatar and grant him the effective right to obtain compensation and other types of reparation, in accordance with international law.” The Venezuelan State has not complied with this measure.³⁰⁷

In its response to this report of the IACHR, the Venezuelan State asserted that “it is not the practice or policy of the State to arrest or assault journalists or limit their professional practice. In Venezuela, there are no communicators arrested or subjected to judicial proceedings because of their professional activity.”³⁰⁸

The IACHR and its Office of the Special Rapporteur have stated that the misuse of criminal law by public officials as a tool of intimidation of journalists and criminalization of criticism is a practice patently at odds with principles and standards in the area of freedom of expression, in particular, when criminalization is the product of the manipulation of the punitive power of the State by State and non-State actors in order

303 *Sociedad Interamericana de Prensa (SIP) – Inter American Press Association (IAPA)*, “Venezuela: Braulio Jatar liberado y puesto en arresto domiciliario”, May 16, 2017, <http://www.sipiapa.org/notas/1211472-venezuela-braulio-jatar-liberado-y-puesto-arresto-domiciliario>; and, *El Nacional*, “Braulio Jatar recibe medida de casa por cárcel”, 24 de mayo de 2017, http://www.el-nacional.com/noticias/oposicion/braulio-jatar-recibe-medida-casa-por-carcel_184104

304 IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela”, December 31, 2017, paragraph 304, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

305 UN, Human Rights Council, “Opiniones aprobadas por el Grupo de Trabajo sobre la Detención Arbitraria en su 78° período de sesiones (19 a 28 de abril de 2017) – Opinión núm. 37/2017 relativa a Braulio Jatar (República Bolivariana de Venezuela)”, A/HRC/WGAD/2017/37, June 21, 2017, http://www.ohchr.org/Documents/Issues/Detention/Opinions/Session78/A_HRC_WGAD_2017_37.pdf

306 IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela”, December 31, 2017, paragraph 305, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

307 *Ibid*, paragraph 306.

308 *Ibid*, paragraph 307.

to control or hinder the exercise of the right to freedom of expression. Many times, before such criminal proceedings are instituted, public officials make stigmatizing statements.³⁰⁹

Also of particular concern is the case of University of Carabobo professor Santiago Guevara, who on February 23, was charged by the Ministry of Public Prosecution for the crime of high treason after being tried in a military court in Caracas. The detention was carried out by the General Directorate of Military Counterintelligence, after he published several opinion pieces on the economic crisis in the country.³¹⁰

According to the information received, the detention and trial of Santiago Guevara took place in a context of threats, intimidation and smearing, or acts of criminalization or assault, against professors because of their activities or academic work or their status as a member of the academic community and their professional opinions on the critical situation of services such as health, electricity or infrastructure.³¹¹

Since the time that Professor Guevara was deprived of his liberty at the headquarters of the General Directorate of Military Counterintelligence on February 21, 2017, his health has seriously deteriorated to the extent that the IACHR ordered the Venezuelan State to “adopt the measures necessary to ensure the life and personal integrity of Mr. Guevara García. In particular, by providing adequate medical care as required by his particular pathologies and in keeping with applicable international standards.”³¹² The IACHR noted that on December 23, the Court hearing the case granted Mr. Guevara an alternative measure to incarceration, allowing him to leave the General Directorate of Military Counterintelligence. Pursuant to the State’s communication, Mr. Guevara must periodically report to the courthouse as a condition of release.³¹³

F. Illegal Raids

Organizations such as Amnesty International and the United Nations High Commissioner for Human Rights have documented numerous examples of the systematic use of unlawful home raids and searches executed

³⁰⁹ Ibid, paragraph 308.

³¹⁰ Ibid, paragraph 309.

³¹¹ Ibid, paragraph 310.

³¹² IACHR, Precautionary Measure No. 383-17, “Santiago José Guevara García respecto de Venezuela”, December 1, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/50-17MC383-17-VE.pdf>

³¹³ IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela”, December 31, 2017; paragraph 305, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

by public security forces, which are also part of the broader pattern of persecution across the country, and cannot be regarded as isolated or sporadic acts.³¹⁴

The policy reportedly emanates from the highest level of the Venezuelan government. The same day President Nicolás Maduro announced that the “green phase” of *Plan Zamora*, would be implemented in La Isabélica, Valencia, the Bolivarian National Police and the Scientific, Penal, and Criminal Investigative Police cracked down and conducted a series of raids where they detained at least seven people without a warrant in the neighborhood where the pot-banging protest (*cacerolazo*) had taken place.³¹⁵ As of April 26, 2017, a little more than a week after the government gave this plan a green-light for its activation, attacks were perpetrated by a group of armed civilians who were acting alongside of the GNB and the State-level police force in Sucre of Barquisimeto, Lara, and in La Candelaria, Miranda.³¹⁶ This is also further evidence of the collaboration between government security forces and the *colectivos*. The Venezuelan opposition denounced this policy over Twitter that on June 23, 2017 “the regime continues with its policy of terror and persecution, smears honorable people raiding residences where all of the parties of the MUD Coalition were meeting.”³¹⁷

Amnesty International reported at least 47 complaints of raids and attacks conducted by State security forces and armed civilian groups on residential areas without a court order or search warrant between April and July 2017 in 11 states. This reflects a marked escalation of these attacks, during the period of social upheaval. As of November 2017, the Ministry of Public Prosecution had provided no comment on these raids, perpetuating impunity for this pattern of arbitrary abuse by the security forces and armed civilian groups with the acquiescence of the State.³¹⁸ According to Amnesty: “There is evidence that immediately after the demonstrations, the state security forces entered buildings and residential areas and carried out illegal raids in a continuation of the repression of people in these communities. In other cases, raids occurred many hours - and in some cases days - after all the demonstrations in the streets had ended. (...) the state security forces used disproportionate force when carrying out these raids. (...) People described how the repercussions continue to be felt and they experience problems sleeping, feelings of not being safe in their own homes and a sense of being completely defenseless against the arbitrary actions of the very authorities who should be ensuring their safety.”³¹⁹

314 OHCHR, “Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela of April 1 to July 31, 2017”, Geneva, August 2017, http://www.ohchr.org/Documents/Countries/VE/HCRReportVenezuela_1April-31July2017_SP.pdf

315 *El Carabobeño*, “La Isabélica: nuevamente blanco de represión y allanamientos ilegales”, <https://www.el-carabobeno.com/la-isabelica-nuevamente-blanco-represion-allanamientos-ilegales/>

316 NTN24 Venezuela. @NTN24ve, <https://twitter.com/NTN24ve/status/857463068141531136>

317 EFE, “La oposición venezolana denuncia allanamientos y detenciones de militantes”, June 23, 2017, <https://www.efe.com/efe/america/portada/la-oposicion-venezolana-denuncia-allanamientos-y-detenciones-de-militantes/20000064-3305936>

318 Amnesty International, “Nights of Terror: Attacks and Illegal Raids on Homes in Venezuela”, October 30, 2017, <https://www.amnestyusa.org/wp-content/uploads/2017/10/Venezuela-Nights-of-Terror-Briefing-ENG.pdf>

319 Ibid.

“Amnesty International found that these raids followed a consistent pattern, indicating that they are a part of a policy of repression by the Venezuelan state using methods that constitute human rights violations.” They denounced the mass raids that they characterized as being used to “identifying and detaining young people, mostly boys and young men, who could have taken part in the protests.”³²⁰ Furthermore, they consider that the methods of intimidation used during the illegal raids are inconsistent with the duty of police or military actions, violating the psychological integrity and the right to privacy of the affected persons. The accounts of these raids on homes and communities are all consistent in the illegal, unnecessary and disproportionate use of violence by the Bolivarian National Guard, the Bolivarian National Police, the CONAS, and in some instances, the Bolivarian National Intelligence Service.³²¹ Although they are operating outside their jurisdiction to act under the law, different government security forces have been conducting these illegal operations, using intimidation and the indiscriminate use of firearms, firing pellets and tear gas canisters.³²²

There have been allegations of a pattern of similar arbitrary abuses taking place since July 13, 2015, under *Operación Liberación del Pueblo* directed by the Ministry of Internal Relations, Justice and Peace.³²³ In 60% of the cases of extrajudicial executions documented by the NGO COFAVIC, entry into the homes was unlawful with the agents allegedly perpetrating theft and/or the destruction of property and violence against the family members of the victims.”³²⁴

Some of the outstanding cases among the allegations for illegal raids include, those occurring on April 26, in a residential subdivision in the state of Lara; May 22, in the residential subdivisions of OPS and Sierra Alta de San Antonio de los Altos in the state of Miranda, where Amnesty gained access to a recording of a security video showing a member of the Bolivarian National Police shooting at the camera and putting an end to the video feed, during an illegal raid; June 13 in the residential subdivision of Los Verdes of El Paraíso in the municipality of Libertador in Caracas, which prompted condemnation from the former-Attorney General Luisa Ortega;³²⁵ July 4, in the subdivision of Montaña Alta de Carrizal in the state of Miranda; July

320 Ibid.

321 Since 2014, Amnesty International has been documenting the existence of pro-government armed civilian groups, who act with government acquiescence. See, Amnesty International, “Venezuela: Faces of Impunity: One Year Since the Protests, the Victims are Still Waiting for Justice”, March 2, 2015, <https://www.amnesty.org/download/Documents/AMR5312392015ENGLISH.pdf>

322 Amnesty International, “Nights of Terror: Attacks and Illegal Raids on Homes in Venezuela”, October 30, 2017, <https://www.amnestyusa.org/wp-content/uploads/2017/10/Venezuela-Nights-of-Terror-Briefing-ENG.pdf>

323 The Office of the Attorney General of Venezuela defined the OLPs as militarized police proceedings conducted by different security forces, including the CPNB; GNB; CICPC; SEBIN and some state and municipal police force. Ministry of Public Prosecution of the Bolivarian Republic of Venezuela, “Actuaciones del Ministerio Público relacionadas con las OLP en Venezuela (julio 2015-marzo 2017)”, www.observatoriodeviolencia.org.ve/wp-content/uploads/2017/07/Fiscalia-Informe-sobre-OLP-2017.pdf

324 COFAVIC, “Venezuela, Ejecuciones Extrajudiciales, 40 Historias de 6385 Vidas Ignoradas, 2012-2017”,

325 Infobae, “Allanamientos policiales ilegales y violentos, la nueva estrategia del chavismo para aplacar las protestas”, <https://www.infobae.com/america/venezuela/2017/07/18/allanamientos-policiales-ilegales-y-violentos-la-nueva-estrategia-del-chavismo-para-aplacar-las-protestas/>

20, in the subdivision of La Isabelica, Valencia, in the state of Carabobo; and July 26, in the subdivisions of Montalbán and la Candelaria in the Municipality of Libertador, Capital District (Caracas). On May 22, 2017, in OPS subdivision of San Antonio de los Altos in the state of Miranda, detentions and prosecutions were carried out after the raids. Fifty vehicles were damaged by the security forces and bullet holes were found in windows and residences. There was evidence of destruction of the building gates and entrances, further jeopardizing the security and lives of the people living there.³²⁶

An emblematic case occurred on June 13, 2017 in the El Paraíso sector of La Candelaria, in the municipality of Libertador in Caracas, specifically, at Las Residencias El Paraíso, better known as *Los Verdes*, when three armored vehicles demolished the building gates, and then SEBIN and CONAS agents destroyed the public spaces, firing their weapons indiscriminately. Likewise, there were multiple reports of theft of valuables by government agents during the raids, as well as the destruction of security cameras and other evidence.³²⁷ The operation against the residential complex was carried out without any search warrant issued by a competent judicial body.³²⁸

G. Violent Repression and the Excessive Use of Force

The Government's response to the protests demonstrates a clear and systematic pattern of the excessive use of force in targeting and persecuting citizens who do not support the Bolivarian regime. The arbitrary and excessive use of force by the government against demonstrations is documented in the Secretary General's first three reports on the situation in Venezuela.³²⁹ The pattern of abuse that has taken place throughout the period of Mauro's tenure has been consistent and escalating. The goal of the security forces has not only been to shut down and disperse the protests, but to inflict as much damage as possible on the civilians participating in the demonstrations. The scale of this abuse is exemplified in the Chapters IV, V, VI and VII on the use of murder, torture, rape and other forms of sexual violence and imprisonment. At the same time, the rampant and excessive use of force is also an example of the systematic persecution of all persons who participated in the protests, with the Regime using unjustified violence to deprive citizens of their fundamental rights.

³²⁶ Amnesty International, "Nights of Terror: Attacks and Illegal Raids on Homes in Venezuela", October 30, 2017, <https://www.amnestyusa.org/wp-content/uploads/2017/10/Venezuela-Nights-of-Terror-Briefing-ENG.pdf>

³²⁷ Ibid.

³²⁸ Ministry of Public Prosecution of the Bolivarian Republic of Venezuela, "Case Summary Los Verdes".

³²⁹ OAS General Secretariat, "First Report of the Secretary General on the Situation in Venezuela, May 30, 2018", pages 91-101, <http://www.oas.org/documents/eng/press/OSG-243.en.pdf>; and, OAS General Secretariat, "Second Report of the Secretary General on the Situation in Venezuela", March 14, 2017 pages 22, 35, <http://www.oas.org/documents/eng/press/Informe-VZ-II-English-Final-Signed.pdf>; and, OAS General Secretariat, "Third Report of the Secretary General on the Situation in Venezuela", July 19, 2017; pages 18-20, <http://www.oas.org/documents/eng/press/TERCER-INFORME-VENEZUELA-ENGLISH-Final-signed.pdf>

Widespread demonstrations against Maduro's government began on February 4, 2014, initially by students who were protesting at the lack of security in the country following the rape of a female student at the campus of the Andes University in San Cristobal, Táchira. The protests quickly gained momentum, swelled and spread across the country as hundreds of thousands of people sought to vent their anger at the government. The Government responded with excessive force, including lethal force, against what were by and large, peaceful demonstrations by unarmed protesters. At the time, Human Rights Watch "received multiple reports from local human rights advocates that Venezuelan security forces in Caracas and other parts of the country have beaten or shot at unarmed protesters".³³⁰

On March 4, 2014, Kevin Bejarano, a 22-year-old soccer player and industrial relations student at the Antonio José de Sucre Technological Institute was injured at a protest when he was shot in the face with a tear gas canister fired at close range.

Bejarano and a group of his friends had been at a street protest in the residential development Las Garzas, Av. Atlántico, Puerto Ordaz, State of Bolívar, waiting for other people to bring the supplies to make a soup and barbecue on the street, as had been taking place in other residential neighborhoods in the area. When a patrol vehicle from the State of Bolivar police force showed up, four officers got out. The youths thought nothing of it and continued the preparations for their barbeque. A loud shot was fired from less than 10 meters away and a teargas canister hit Kevin squarely on his left cheekbone. He collapsed to the ground in the midst of the smoke produced by the toxic gas. As the disoriented victim tried to move, he could only hear a ringing in his ears and his friends screaming. For his injury, the Kevin Bejarano had to undergo two surgeries, first a maxillofacial operation to reconstruct his eye socket and cheek bone. Eleven screws and a titanium plate were inserted into his face. He later underwent a third operation. No one has been prosecuted for this incident.³³¹

A few weeks later, in San Jacinto, Maracay, in the State of Aragua, Jamie Yéspica, a 22-year-old engineering student at the Central University of Venezuela was savagely beaten on March 19, 2014 by an officer of the Bolivarian National Police along with the *colectivos*.

Yéspica was at a peaceful student demonstration when the PNB arrived to shut down the demonstrations. As the crackdown began, the demonstrators, including Yéspica, began to flee seeking refuge in the adjacent buildings. Yéspica was caught by a group of *colectivos* who knocked him to the ground and savagely beat him. A police officer named Gabriel Moreno threw a cinderblock at his head and gave him a hard kick in the

³³⁰ Human Rights Watch, "Venezuela: Violence Against Protesters, Journalists", February 21, 2014, <https://www.hrw.org/news/2014/02/21/venezuela-violence-against-protesters-journalists>

³³¹ Full details of the case are in the possession of the CASLA Institute

face. As he lay on the ground, the *colectivos* continued to kick him. His attacked was captured on video.³³² Yéspica was later transported to a clinic where he was diagnosed with a frontal sinus fracture caused by the fierce impact and severe blows to the head, a nasal septum fracture, as well as serious injuries on his arms and abdomen. He had to undergo emergency surgery to reconstruct his fractured skull.³³³

As described in Chapter III, in January of 2015, in violation of the Constitution, the Government of Venezuela introduced a new regulation on the use of force in “maintaining public order, social peace, and peaceful coexistence in public meetings and demonstrations”.³³⁴ These guidelines introduced the explicit authorization for the use of firearms to control public demonstrations, including peaceful protests. Within days of the introduction of the new regulation, the implications of the new policy were realized. The IACHR condemned this new policy in the 2015 Annual Report.³³⁵

The CASLA Institute documented the murders of six victims between the ages of 14 and 22 that had taken part in the protests. All of the victims were shot in the head. Twenty-two-year-old Yamir Tovar and 21-year-old Luis Arianyi were found in Catia, west of Caracas, with gunshots to the head. The victims allegedly had been threatened by the pro-government ‘23 de enero’ *colectivo* members. Twenty-two-year-old Alejandro García and 20 year-old José Frías, both students and residents of the State of Merida, were found dead from several gunshots to the head, in the Municipality of Colón of the State of Zulia, bordering the State of Merida. Their family members stated that they had been detained by agents of the State security forces, after participating in protests.³³⁶ All of the victims were all linked to anti-government student protests in States that were known to have the largest opposition support. They were abducted by unknown individuals and a few hours later, were located, having been beaten, with their hands tied and with their mouths gagged and with a gunshot wound to the head.³³⁷

When large scale protests began again in earnest in 2017, the Regime once again responded with widespread, unjustified violence, during the 6,729 protests documented by OVCS in which civil society

332 YouTube, “Jaime Yéspica describe cómo fue la agresión que recibió de “colectivos apoyados por policías”, March 19, 2014, <https://www.youtube.com/watch?v=4t3kcrztmeE>

333 Full details of the case are in the possession of the CASLA Institute

334 Ministry of the People’s Power for Defense of the Bolivarian Republic of Venezuela, “Normas sobre la actuación de la Fuerza Armada Nacional Bolivariana en funciones de control del orden público, la paz social y la convivencia ciudadana en reuniones públicas y manifestaciones”, Order 8610 of 2015, Official Gazette of the Bolivarian Republic of Venezuela, Decree No. 40.589 of January 27, 2015, <http://www.controlciudadano.org/web/wp-content/uploads/Resoluci%C3%B3n-08610.pdf>

335 IACHR, “2015 Annual Report of the Inter-American Commission on Human Rights”, paragraph 1138, <http://www.oas.org/en/iachr/expression/docs/reports/annual/annualreport2015rele.pdf>

336 Full details of the case are in the possession of the CASLA Institute

337 *Notimérica*, “¿Quién era Kluivert Roa, el adolescente asesinado en Venezuela?”, February, 25, 2018, <http://www.notimerica.com/sociedad/noticia-quien-era-kluivert-roa-adolescente-asesinado-venezuela-20150225120314.html>; and, OAS General Secretariat, “Third Report of the Secretary General on the Situation in Venezuela”, July 19, 2017, page 47, <http://www.oas.org/documents/eng/press/TERCER-INFORME-VENEZUELA-ENGLISH-Final-signed.pdf>

estimates that close to 15,000 people were injured. On April 17, 2017, President Maduro had announced an expansion of the armed civilian militias from 100,000 to 500,000 stating that he would give each militia member a rifle.³³⁸ In response, on April 19, 2017, the IACHR released a statement calling on the Venezuelan government to “Demilitarize [the] Streets”, in which it “expressed its alarm at the militarization and call to arm 500,000 civilian militias”. The statement also noted concern with the violence that had already taken place.³³⁹

During the 2017 protests, in a report released by *Foro Penal*, the NGO described a “repeated, systematic behavior by officials of the GNB, PNB and some regional police (such as the regional police of the States of Táchira, Barinas, Carabobo and Aragua), who have taken advantage of their superior force and who are equipped with arms not permitted for the control of civilian demonstrations to crack down on the demonstrators with considerable cruelty, illegally and unconstitutionally claiming that they are following the orders of their superiors.”³⁴⁰ The 2017 joint report by *Foro Penal* and Human Rights Watch on the protests explicitly notes that the incidents of violence which they reported on “were not carried out by security force personnel who were under attack or threatened with violence.” It goes on to describe the repression, accusing government security forces of “systematically us[ing] excessive force to suppress anti-government protests, often in situations where no use of force appeared to be justifiable.”³⁴¹

The excessive use of force continued, unabated. A few examples of this rampant abuse in the 2017 protests are the cases of Brandon Pacheco, Luis Paz and Mickael Emonet who were detained and brutally beaten by members of the Bolivarian National Guard in the context of the MUD-led demonstrations in Maracaibo, State of Zulia on July 20, 2017. There three individuals were beaten and kicked all over their body, especially in the ribs and abdomen. They also had teargas powder blown in their faces. Three days later, Ernesto José Romero and Diego Díaz were attacked and detained at another protest in Trinidad in Maracaibo. This time the Bolivarian National Guard CORE 3 brutally beat them with clubs, nightsticks and the butts of guns. They were kicked all over their body, especially the abdomen, ribs, and face. These two men were doused with gasoline as members of the GNB threatened to set them on fire. They were also forced to drink the gasoline.³⁴²

³³⁸ *El Nuevo Herald*, “Maduro prometió un fusil para cada miliciano”, April 17, 2017, <http://elnuevoherald.com/noticia/mundo/america-latina/venezuela/venezuela-es/article145054754.html>

³³⁹ IACHR, “IACHR Urges Venezuela to Guarantee the Rights to Protest and to Demilitarize Streets”, April 19, 2017, http://www.oas.org/en/iachr/media_center/preleases/2017/048.asp

³⁴⁰ *Foro Penal*, “Report sobre la repression en Venezuela durante manifestaciones”, May 2017, page 5, <https://foropenal.com/reportes>

³⁴¹ Human Rights Watch and *Foro Penal*, “Nueva información sobre malos tratos y procesamientos arbitrarios de civiles en tribunales militares”, May 15, 2017, <https://www.hrw.org/es/news/2017/05/15/nuevainformacion-sobre-abusos-y-procesamientos-arbitrarios-de-civiles-en-tribunales>

³⁴² Full details of the case are in the possession of the CASLA Institute.

The security forces demonstrated no concern or mercy for anyone, regardless of circumstance, including for individuals suffering from physical challenges or health issues. An example is the case of Leibano Díaz. On April 19, 2017, in Barcelona, State of Anzoátegui, Díaz, who lives with a motor disability and has a pacemaker with electrodes, was participating at a peaceful demonstration held near the *Monagas* Bridge in Lechería when he was detained by the Anzoátegui State Police and the Bolivarian National Police. Despite Leibano Díaz telling the agents about his disability and asking for mercy, he was savagely beaten and kicked by the officers. The guards present mocked him when they learned of his disability and his beating worsened, almost as if to cause more pain to the victim. Even as he was moved between detention facilities and was held by different guards, the brutal treatment continued. At one point, while he was lying on the floor, a guard kicked him in the face and mocking him asked “are you going to cry?” The forensic medical report notes that he presented multiple hematomas all over the body, closed ocular trauma in his left eye, complicated by retinal obstruction and hemorrhaging, which required an emergency surgical procedure.³⁴³

This lack of concern for the conditions of their victims is also exemplified in a number of other cases detailed in Chapter V on torture, including the cases of ██████████ ██████████ ██████████, and Gianni Scavino (Incident #55), among others.

H. The Persecution of Children and Adolescents

The Venezuelan government has also specifically identified minors as targets in the pattern of widespread and systematic persecution of their internal enemy. The regime has arrested and detained children, which under international law is any person under 18 years of age. During the first round of major demonstrations against the Maduro regime, between February 4, 2014 and May 31, 2015, of the close to 4,000 demonstrators detained, 372 were children and adolescents.³⁴⁴ Between April 1, 2017, and April 13, 2018, 442 children and adolescents were arrested in Venezuela. Of these, 188 were released without ever being brought before a judge, 200 were released on conditional liberty, 51 were released unconditionally, two remained in detention, and one was released after admitting responsibility for the facts.³⁴⁵

At 6:00 am on January 10, 2018, intelligence agents detained 17-year-old Ender González, at his home, and confiscated his laptop. The agents told González’s father they needed him for questioning. González was disappeared as his family spent a day searching for him at the courts and in different security forces’

³⁴³ Full details of the case are in the possession of the CASLA Institute.

³⁴⁴ *Foro Penal*, “*Detenciones por motivos políticos, torturas y otros tratos crueles, inhumanos y degradantes asesinatos (2014-2015)*”, page 4, [https://foropenal.com/wp-content/uploads/2017/08/migration/informes/Resumen%20Informe%20FPV%20Septiembre%202015%20\(FINAL%20PDF\).pdf](https://foropenal.com/wp-content/uploads/2017/08/migration/informes/Resumen%20Informe%20FPV%20Septiembre%202015%20(FINAL%20PDF).pdf)

³⁴⁵ Information provided by *Foro Penal* on detentions of children between April 1, 2017 and April 13, 2018.

headquarters in Caracas, but they were never told about his whereabouts. González, along with another youth, 17-year-old Diego Gómez, were charged by a special court for youth with inciting people through Facebook to take to the streets in an anti-government demonstration.³⁴⁶ They were prosecuted under the Law against Hatred, a law that includes penalties of up to 20 years in prison for dissemination information that disrupts the “public tranquility” or actions that might “encourage, promote, or incite” activities vaguely defined as “hatred”.

Another case is that of 16-year-old Dylan Canache, who was detained by intelligence agents at a metro station in the early hours of January 13, 2018. Canache had told his mother that he was going to meet his friend who had called him asking for a place to stay. SEBIN agents were waiting with his friend when he arrived. On January 14, he was also charged before a special court for youth under the Law against Hatred for participating in a group chat about the protests. His whereabouts were unknown to his family until the day after his arraignment.³⁴⁷

The courts ordered the release of all three adolescents, provided they present a guarantor for the boys’ next court date. The SEBIN disregarded the order and did not release them and they were kept in detention at the SEBIN headquarters. The process of requiring the presentation and verification of a guarantor for underage detainees has been used as a common practice to cause unnecessary delays and in some cases, indefinitely. Three months later, as of April 13, the three boys were still in detention, deprived of communication with their families. Although his family has been unable to verify his condition, according to another detainee at the SEBIN facility, Canache is being held with adults in a cell without drinking water and with very poor hygiene. The guards cut his hair, and were making fun of him.³⁴⁸

According to the NGO *Foro Penal*, as of March 22, 2018, five minors are still detained at SEBIN; while three others who were minors at the time of their arrest and are now over 18 years old, remain jailed.³⁴⁹

The prosecution of children by the Venezuelan Regime violates international law concerning childhood welfare. The Universal Declaration of Human Rights of 1948 proclaims that “childhood is entitled to special care and assistance”.³⁵⁰ The actions undertaken by the government of Venezuela, such as holding children as political prisoners, are evidently against the rights declared in this and other more specific international conventions and declarations on the rights of children. Adopted in 1989, the Convention on the Rights of the Child, which considers a child “every human being below the age of eighteen years”, protects children’s

³⁴⁶ The cases described in this Section were documented by Human Rights Watch. Human Rights Watch, “Kids Behind Bars,” April 12, 2018, <https://www.hrw.org/news/2018/04/12/kids-behind-bars-venezuela>.

³⁴⁷ Ibid.

³⁴⁸ Ibid.

³⁴⁹ *Foro Penal*, “Crisis en Venezuela (2018)”, Bulletin No. 29, March 19-28, 2018, <https://foropenal.com/en/2018/03/26/crisis-en-venezuela-boletin-no-29-del-19-al-26-de-marzo-de-2018/>

³⁵⁰ UN, “Universal Declaration of Human Rights”, 1948, Article 25(2), <http://www.un.org/en/universal-declaration-human-rights/>

rights such as freedom to form his or her own views, freedom of speech, freedom of association, freedom of peaceful assembly, and freedom of thought³⁵¹.

Moreover, the Convention declares that State parties should ensure that “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment” and that “no child shall be deprived of his or her liberty unlawfully or arbitrarily”. In the case of minors deprived of liberty, international law states that children shall be treated with humanity and respect, “and in a manner which takes into account the needs of persons of his or her age” meaning that the child should not be separated from adults unless it is not in his or her best interest and that the child has the right to maintain contact with his or her family³⁵². Similar rights are provided for in Venezuelan law.³⁵³ The documented cases of children persecuted, such as Ender, Diego, and Dylan, are tangible and shocking examples of how the Regime is violating fundamental rights.

This targeting of children is also exemplified in a number of cases of victims described in Chapter V on torture, including the cases of [REDACTED] [REDACTED] [REDACTED].

In a similar vein, children as young as 13 years of age were murdered at the hands of government security forces or paramilitary *colectivos* in the protests of 2014 and 2017. The victims described in Chapter IV include José Ernesto Méndez (Case 6); Brayan David Pincipal Giménez (Case 29); Carlos José Moreno Barón (Case 31); Albert Rodríguez (Case 33); Yeison Nathanael Mora Castillo (case 53); José Francisco Guerrero Contreras (Case 56); Neomar Lander (Case 78); Fabián Alfonso Urbina Barrios (Case 84); Rubén Darío González (Case 99); Jean Luis Camadillo (Case 105); Jean Carlos Aponte (Case 107); Gilimber Teran (Case 109); Daniela de Jesus Salomón Manchado (Case 112); Adrián Smith Rodríguez Sánchez (Case 118); Luis Eduardo Ortiz (Case 120) and Luis Guillermo Espinosa (Case 131).

Of all the vile crimes committed by the Maduro Government to maintain itself in power at all cost, the persecution, imprisonment, torture and murder of children stands out as the most heinous.

I. The Invalidation of Passports

The invalidation or revocation of travel documents, through which the government Venezuela deprives its citizens of their freedom of movement, has also been a tool used in the Government’s pattern of persecution. Although the extent to which this method of persecution has been used in the general population is

³⁵¹ UN, “Convention on the Rights of the Child”, 1989, Article 1, 12-15, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

³⁵² Ibid, Article 37.

³⁵³ Bolivarian Republic of Venezuela, “Ley Orgánica para la Protección del Niño y del Adolescente”, October 2, 1998, https://www.oas.org/juridico/mla/sp/ven/sp_ven-mla-law-child.pdf .

unknown, based on number of known and publicized cases, it is clear that it has been used repeatedly to prevent several political figures and journalists from leaving the country to raise awareness about conditions in Venezuela. Both the United Nations High Commissioner for Human Rights and the Secretary General of the Organization of American States have condemned the actions of the government on this issue. Some of more the high-profile cases are noted below to illustrate a sample of the government's pattern of abuse, depriving the population of their rights through a discriminatory approach based on ideological stance.

For example, in October 2016 a criminal court banned Henrique Capriles and another seven opposition members from leaving the country including Jesús Torrealba, Ramón José Medina, José Luis Cartaya, Oscar Antonio Barreto, Ricardo Francisco Sucre, Luis Ernesto Aparicio and Arnoldo Gabaldón. The court order did not lay out the grounds for prohibiting the opposition group from leaving the country.³⁵⁴ Human rights activist Lilian Tintori, the spouse of the high profile political prisoner Leopoldo Lopez, had received an "Order to Retain Document" for her passport from the Ministry of Public Prosecution. On September 2, 2017, Tintori posted on her Twitter account "Urgent: I've just been banned from leaving the country. The dictatorship wants to keep us from conducting a very important international tour", with a message showing the document.³⁵⁵ A Member of the National Assembly, Luis Florido, decried on January 27, 2017, that he was held at Maiquetía airport stating that Passport Control had revoked his passport.³⁵⁶ The passports of congressmen Williams Dávila and Eudoro Gonzalez were invalidated in a similar manner. Also at Maiquetía, Governor Henrique Capriles Radonski was reportedly held and his passport revoked on May 18, 2017.³⁵⁷ Also in 2017, Mayor Ramón Muchacho reported that he had been the victim of the same practice on July 1.³⁵⁸ On July 15, Congressman Jorge Millán denounced that his passport had also been invalidated.³⁵⁹ There were also cases of the revocation of passports of journalists in 2017, including those of César Miguel Rondón on May 17 and Nitu Pérez Osuna on May 22.³⁶⁰

³⁵⁴ *Semana*, "Gobierno venezolano prohíbe a Capriles y otros opositores salir del país", <http://www.semana.com/mundo/articulo/venezuela-gobierno-prohibe-salida-de-capriles-y-otros-opositores/499683>

³⁵⁵ Tintori, Lilian (@liliantintori) "Queda en evidencia por qué la dictadura monta ollas en mi contra: impedir que hable de la crisis humanitaria que vivimos en Venezuela", September 2, 2017, 8:29AM. Tweet: <https://twitter.com/liliantintori/status/904003269294530563/photo/1>

³⁵⁶ Florido, Luis Florido (@LuisFlorido). "#URGENTE Me tienen retenido aeropuerto de Maiquetía y de manera ilegal, se me anula mi pasaporte siendo pdte de la Com. de Política Exterior", January 27, 2017, 1:13 AM. Tweet: https://twitter.com/LuisFlorido/status/825089410853117952?ref_src=twsrc%5Etfw&ref_url=https%3A%2F%2Fwww.vpity.com%2Fvenezuela%2Fsaime-retuvo-al-diputado-luis-florido-y-anulo-su-pasaporte%2F

³⁵⁷ Capriles R., Henrique (@hcapriles) "Retenido", May 18, 2017. Periscope. <https://www.pscp.tv/hcapriles/1gqxvbBvOglxB?t=0>

³⁵⁸ Muchacho, Ramón (@ramonmuchacho) "1J 7:40pm A ESTA HORA, a mi llegada al aeropuerto de Maiquetía, el Gobierno ha anulado mi pasaporte como mecanismo de intimidación! ¼", July 1, 2017, 4:55 PM. Tweet: https://twitter.com/ramonmuchacho/status/881300246072053761?ref_src=twsrc%5Etfw&ref_url=http%3A%2F%2Fwww.elpolitico.com%2Fgobierno-de-maduro-anula-pasaporte-al-alcalde-opositor-ramon-muchacho-en-venezuela%2F

³⁵⁹ Millán, Jorge (@jorgemillant). "#URGENTE El Funcionario Hernández me mantiene retenido en Maiquetía y me anularon el pasaporte, violando mi inmunidad parlamentaria #15Jul." July 15, 2017, 12:19 PM. Tweet: https://twitter.com/jorgemillant/status/886304149301846019?ref_src=twsrc%5Etfw&ref_url=http%3A%2F%2Fwww.elnuevoherald.com%2Fnoticias%2Fmundo%2Famerica-latina%2Fvenezuela-es%2Farticle163204243.html

³⁶⁰ Instituto de Prensa y Sociedad Venezuela. "IPYS Venezuela presentó informe ante la CIDH", <https://ipysvenezuela.org/2017/07/06/noticias-en-cautiverio/>

When the issue was raised at the OAS hearings, congressman Armando Armas described a scenario where “we the Members of the National Assembly are trapped, in our own country, [...] We must bring to light that several congressmen when we attempt to leave Venezuela to decry these atrocities or to take part in international forums such as Parlatino, Parlasur; recently, the Chairman of the National Assembly, Julio Borges, was on his way to the International Parliamentary Union in Saint Petersburg, Russia, and he was not allowed to leave, his passport was taken away in a flagrant restriction of freedom of movement, that is to say, if the situation gets even worse, and congressmen decide to go into exile, then, they take their passports; restriction on freedom of movement.”³⁶¹

J. Persecuted and Forced into Exile

Thousands of people have been forced to flee the country as a result of widespread and systematic persecution, government threats, arbitrary detentions, as well as illegal court orders or arrest warrants. This is the fate of those who express their opposition to the government’s policies. Those forced into exile include political activists, journalists, businessmen, and former government officials, who refused to cooperate with the abuses and flagrant human rights violations by the Regime. Listed here is a selection of some of individuals who were forced to leave Venezuela because of the persecution against them:³⁶²

Antonio Ledezma, the former mayor of Caracas is currently in political exile. He was arrested in 2015 by agents of the Bolivarian National Intelligence Service and held under house arrest until he escaped to Colombia in 2017. During his trial, President Maduro claimed that Ledezma was part of an American plot to overthrow the government. Ledezma was convicted of these charges and incarcerated in the military prison of Ramo Verde. He was later transferred to house arrest because of health problems. After escaping to Colombia, he went into exile in Madrid.

361 Testimony of Armando Armas at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 16, 2017, https://www.youtube.com/watch?v=K3VNOIQN_I4

362 The report “Political Persecution against Voluntad Popular, Activists,” written in October 2017 by the political party Voluntad Popular and submitted to the OAS General Secretariat, describes some of these cases and provides detailed information on other cases of political persecution, such as the cases of Leopoldo Lopez, Daniel Ceballos, Alexander Tirado, Raul Emilio Baduel, Yon Goicoechea, Delson Guarate, Jose Vicente Garcia, Rolman Rojas, Luis Duque, Lennard Garcia, Gilber Caro, Steyci Escalona Mendoza, Tonny Real, Angel Machado, Carlos Graffe, Rsmint Mantilla, Gilberto Sojo, Roniel Farias, Jose Manuel Hernandez, Aldo Rosso, Angel Contreras, Samuel Petit, José de Jesús Chacín, Carlos Hidalgo, Francisco Chourio, Alfredo Menendez, Jose Félix Portillo, Enrique Sierra, Beny Reyes, Eduardo Roque, Ender Augusto Vicia, Luis Alejandro Aguirre, Pedro Gómez, Giuseppe Di Fabio, David Corzo, Jackson Gonzalez, Leonel Grisett, Pedro Hernandez, Oswaldo Rodriguez, Sergio Morales, Carlos Briceño, Alvin Bridgewater, Peter Perez, Adolfo Gross, Guermis Lara, Maria Graterol, Eliel Rangel, Jefferson Contreras, Ligia Delfin, Manuel Rodriguez, Mariannys Mejias, Xavier Garcia, Jonas Diaz, David Bohorquez, Joseph Prado, Victor Salazar, Luis Machado, Victor Ruiz, Jesús Alemán, Carlos Camacho, Xiosmel Herrera, Jimmy Escalona, Xiomara Rodriguez, Greidys Ruiz, Jesus Soto, Susana Campos, Jose Vinicio Fernandez, Luis Andrea, Andres Robayo, Jhoangel Olivo, Luis Aponte, Juan Rodriguez, Guilmar Gallardo, Leonardo Higuera, Maria Peña, Fernando Marquez, Leafar Garcia, Manuel Nuñez, Juan Carlos Quintero, Yorger Jesus Maita Yovera, Alejandro Ledo, Sergio Contreras, David Sosa, Maria Andreina Montilla, Carlos Hidalgo, Gilber Roman, Josue Vargas, Javier Armando Mendez Vera, Ronny Oropeza, David Gallardo, Andres Martinez, Homero Acevedo, Jesus Espinoza, Jorge Machado, Julio Garcia, Johan Garcia and others.

David Smolansky, the former Mayor of the municipality of El Hatillo in Caracas, is currently living in exile in Washington, DC. He began his political career in the communications department of the *Mesa de la Unidad Democrática*, at the same time becoming one of the founding members of *Voluntad Popular*, together with Leopoldo López and Warner Jiménez. After the Maduro regime threatened his arrest in 2017, Smolansky went into hiding and escaped across the border into Brazil after growing long hair and a beard as a disguise. He recounted the circumstances of his persecution at the OAS General Secretariat hearing on October 17, 2017.³⁶³

Warner Jiménez, a Venezuelan politician is currently living in exile in Miami, Florida. He is a founding member of *Voluntad Popular*, along with David Smolansky and Leopoldo López. Jiménez was elected Mayor of the municipality of Maturín in the state of Monagas in 2012. During his tenure as mayor, he was repeatedly the target of a harassment campaign, which also targeted his family. In 2016, he ran for governor of Monagas, but his hopes were dashed when the government issued an arrest warrant against him for “illegal acts.” He then fled to the United States.

Diego Arria is a Venezuelan politician and former representative of Venezuela before the UN, known for his opposition to the Chávez-Maduro regimes. As a longstanding critic of the government, he denounced Hugo Chávez for crimes against humanity and submitted a case to the International Criminal Court. In 2010, federal authorities confiscated his ranch in the state of Yaracuy after it was determined that the land was “fallow.” Arria reported that the ranch had 300 head of cattle and that 90% of his land was being used for some type of farming at the time, a claim backed by photographs he had taken. Subsequently, agents of the Intelligence Service created fake emails alleging that he was involved in a plot to kidnap President Nicolás Maduro.

Ramón Muchacho is a leader of the political party *Justicia Primero* and former mayor of the Municipality of Chacao. Prior to this, he reported on child malnutrition in Venezuela and actively participated in the MUD coalition. Even though he carried the Municipality of Chacao with 84% of the votes in the election, the result was annulled when the government issued an arrest warrant against him, forcing Muchacho to go into exile in the United States. He recounted the circumstances of his persecution at the hearing of the OAS General Secretariat of November 16, 2017.³⁶⁴

Member of the Legislative Council of the State of Zulia Léster Toledo has been a victim of persistent threats by the government. On February 18, 2014, the Legislative Council of Zulia approved a vote of censure against Toledo for reportedly committing acts of violence during student protests. On August 31, 2016, the Minister of the Internal Relations, Justice and Peace, Néstor Reverol, informed the media that an arrest warrant was in force against Toledo for the crimes of financing of terrorism and criminal incitement. Toledo

³⁶³ YouTube, “Alcalde David Smolansky en la OEA – Vzlaenla OEA, Washington D.C.”, October 17, 2017, <https://www.youtube.com/watch?v=Xta9AK46gT8>

³⁶⁴ YouTube, “Ramón Muchacho Vs Maduro en Sesión OEA – Audiencias de Venezolanos ante Corte Penal Internacional”, November 16, 2017, <https://www.youtube.com/watch?v=h1nrRiw6G7A>

has been the constant target of threats and accusations leveled by the national government against him, the threats made real by the arrest warrant. Consequently, he felt forced to leave the country. He is denouncing the human rights violations facing the people of Venezuela before different international bodies.

On Sunday June 19, 2016, the members of *Voluntad Popular* and officials from the Office of the Mayor of El Hatillo, Francisco Márquez and Gabriel San Miguel, were arbitrarily detained without an arrest warrant. The detention was conducted by military personnel at a checkpoint in San Carlos in the state of Cojedes, when the detainees were on their way to the state of Portuguesa to volunteer in the validation of signatures for the recall referendum. At the time of their detention, the security officials found cash (approximately 3 million bolivars) and campaign materials related to the political party *Voluntad Popular* and the leader Leopoldo López, in their vehicle, which was seized along with two laptops and cellphones. They were taken to detachment 321 of the state of Cojedes. Márquez and San Miguel were held *incommunicado* for 48 hours, with no access to an attorney or their next of kin, under constant interrogation by the SEBIN. Their arraignment was held the night of Tuesday June 21, 2016. At that hearing, the Ministry of Public Prosecution charged them with the crimes of money laundering and criminal incitement. The judge agreed to the charges and granted a request for pre-trial detention for San Miguel and Márquez. They were assigned to the Tocuyito prison in Carabobo. When they arrived, they were informed that they would be transferred to the *Julio de 26* prison in the state of Guárico.

They were held in deplorable and inhuman conditions, subject to confinement with criminals in the prison's general population and had restricted visitation rights, with their health declining because of a poor diet and unsanitary conditions in the facility. From the moment of their detention, they were victims of irregular proceeding and had limited opportunities to meet with their lawyers, undermining their ability to mount an adequate defense, which is a flagrant violation of their rights.

On September 9, 2016, Gabriel San Miguel was released, on a court issued release order. A dual Spanish-Venezuelan national, he left for Spain on September 11, forced into exile knowing that if he remained in Venezuela he would be at risk, once again, of being deprived of his liberty on false charges. On October 18, 2016, Francisco Márquez was released on the condition that he must leave the country immediately. He is currently living in exile in the United States. Márquez recounted the circumstances of his persecution at the hearing of the OAS General Secretariat on September 14, 2017.³⁶⁵

Miguel Ángel Martín Tortabu is a former professor of the Central University of Venezuela and the Andres Bello Catholic University. He served as a judge on the Supreme Court of Justice until 2008 when he was suspended for swearing-in the governor-elect Henrique Salas Feo. On July 21, 2017, he was sworn in by the National Assembly, as a judge of the Supreme Court of Justice and was immediately persecuted by agents of the SEBIN, forcing him into exile in the United States. Today he is the Chief Justice of the Supreme Court in Exile.

³⁶⁵ YouTube, "Testimonio de Francisco Marquez en la OEA – Crímenes de lesa humanidad en Venezuela", September 14, 2017, <https://www.youtube.com/watch?v=RhvsLot1XMY>

Elenis del Valle Rodríguez Martínez is the Second Vice President of the Supreme Court of Justice in Exile. Previously, in addition to serving as the personal attorney for opposition leaders such as Leopoldo López and Antonio Ledezma, she had been responsible for investigating the death of Bassil Da Costa, a student who was murdered in the 2014 protests. She was persecuted by agents of the SEBIN and sought refuge in the Embassy of Chile.

The relentless persecution of the members of the Supreme Court of Justice in Exile warrants special attention. It started during the constitutionally mandated process to select and appoint the new magistrates of the Supreme Court of Justice, conducted by the National Assembly in June 2017. President Maduro and Congressman Diosdado Cabello launched a media campaign threatening to imprison the members of the Judicial Nominations Committee, those in charge of this process, as well as the attorneys who submitted their names to apply for these positions.

After the presentation of credentials, interviews and public consultation, on July 21, 2017, the National Assembly proceeded to swear in 13 principal magistrates and 20 alternates in a public ceremony that was open to the public and attended by two thirds of the members of Parliament. That same day, on social media, Nicolás Maduro ordered the opening of an investigation into everyone who had been sworn in. He considered all of them to be guilty of high treason. The following day, the Bolivarian National Intelligence Service began to relentlessly persecute the newly sworn in magistrates, arresting Ángel Zerpa, the Chief Magistrate of the *Sala Político Administrativa* (Political Administrative Chamber), who was brought before a Military Court and charged by the Office of the Military Prosecutor with the crime of high treason and deprived of his liberty. He was not allowed to appoint his own defense attorney, but was forced to accept a military public defender at his arraignment hearing.

Reynaldo Paredes and Francisco Russo, two jurists who had applied for the position, although they were not elected, they were also arrested. Similarly, members of the Judicial Nomination Committee were targeted, including Congressman Carlos Berrizbeitia, who had his passport revoked during the period where the selection process was underway. In the days following the announcement, SEBIN agents showed up at the homes of the magistrates, in their offices, and at the homes of their relatives, prompting a number of the magistrates to go underground, some sought refuge in Embassies of countries including Chile, Panama, Mexico and Brazil, while others fled to other countries including Colombia, Chile and the United States. On September 17, 2017, of the total group of 33 magistrates, eleven were in the United States, six in Colombia, one in Chile, six in the Chilean Embassy, one in the Mexican Embassy, four in the Panamanian Embassy, one in the Brazilian Embassy, one had gone into hiding in Venezuela, and two resigned their positions.³⁶⁶

³⁶⁶ Letter from Magistrate Miguel Ángel Martín Tortabu, President of the Supreme Court of Justice in Exile and of Magistrate Pedro José Troconis Da Silva, President of the Chamber of Criminal Cassation of the Supreme Court of Justice in Exile, addressed to the OAS Secretary General, September 17, 2017.

Another measure of repression ordered by President Maduro during a televised broadcast was an order to freeze the bank accounts and assets of each of the new magistrates, as well as to prevent them from making any registration or notary procedures.

One of the magistrates, Jesús Alfredo Rojas, was arrested and while under torture was forced to write a statement indicating that he been deceived and was forcibly sworn-in as a Magistrate for the new TSJ. He was then forced to read the statement on camera which was later broadcast on the television program *La Hojilla*.³⁶⁷

The systematic nature of these actions targeting each of the individuals nominated to the Court was an attack against the freedom and property of the legitimate magistrates. These abuses were carried out under the direct orders of President Maduro and his accomplices, for the sole purpose of preventing the judicial authorities in the Bolivarian Republic of Venezuela from regaining their independence.³⁶⁸ This allows the Regime to maintain its stranglehold on judicial decision-making in perpetuity, ensuring all of the advantages are guaranteed to the Regime.

On October 13, 2017, the Supreme Court of Justice in Exile was formally installed at an event held at OAS headquarters in Washington DC, with 18 of its members present.

K. Political Asylum

For countries that grant political asylum to refugee claimants, the request must be based on a well-founded fear of future persecution should the applicant return or be forced to return to his or her country of origin. Typically, in order to obtain asylum, the applicant must prove fear of being persecuted on the basis of race, religion, nationality, belonging to a particular social group, or based on political belief.

In 2016, Venezuelans became the number one nationality of asylum-seekers for the first time in the United States. According to the statistics published by the United States Citizenship and Immigration Services (USCIS), cited by the Voice of America, in 2016, 18,155 Venezuelans filed applications for asylum, an increase of more than 150% over those filed in 2015 and more than six times higher than the number of

³⁶⁷ YouTube, “*Jesús Alfredo Rojas denuncia que fue designado “magistrado” por AN contra de su voluntad*”, July 25, 2017, <https://www.youtube.com/watch?v=OfEzDPIPxRg>

³⁶⁸ Testimony of Magistrate Pedro José Troconis Da Silva at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 16, 2017, <https://www.youtube.com/watch?v=ZhxTCT-bNI8>. Also see, Letter from Magistrate Miguel Ángel Martín Tortabu, President of the Supreme Court of Justice in Exile and of Magistrate Pedro José Troconis Da Silva, President of the Chamber of Criminal Cassation of the Supreme Court of Justice in Exile, addressed to the OAS Secretary General, September 17, 2017.

applications in 2014.³⁶⁹ CNN reported that in the first half of the fiscal year 2017, the number of Venezuelan applications received by USCIS were on track to double, once again. One out of every five applicants for asylum was Venezuelan.³⁷⁰

According to UNHCR, in 2017, a total of 87,020 Venezuelans had filed for asylum in several countries. The United Nations agency reports that in 2017, the main destination countries for Venezuelan asylum seekers were the United States (30,119), Brazil (17,865), Peru (20,000), Spain (7,389), Mexico (4,042), and Costa Rica (3,175). Aruba, Canada, Chile, Colombia, Curacao, Ecuador and Trinidad and Tobago had also received asylum applications from Venezuelans.³⁷¹

The UNHCR has recently renewed its call to United Nations member States to “protect the rights of Venezuelans, particularly the right to seek asylum and have access to fair and effective asylum procedures.” [...] “Venezuelans who do not wish to apply for asylum or whose asylum claims have been rejected should be helped to regularize their situation through alternative means.” The UNHCR has declared that “there should be no involuntary returns to Venezuela.”³⁷²

369 Voice of America, “Venezuela Now Leads US Asylum Requests As Crisis Deepens”, February 12, 2017, <https://www.voanews.com/a/veneucla-china-us-asylum-requests/3719949.html>

370 CNN Money, “Thousands of Venezuelans fleeing to the US”, May 23, 2017, <http://money.cnn.com/2017/05/23/news/economy/venezuela-us-asylum-refugees/index.html>

371 UNHCR, “Venezuela Situation, Situational Update”, March, 2018, www.unhcr.org

372 Ibid.

IX. THE HUMANITARIAN

CRISIS AS A TOOL OF

PERSECUTION



IX. THE HUMANITARIAN CRISIS AS A TOOL OF PERSECUTION

As explained in Chapter VIII on Persecution, Article 7, paragraph 1, subsection (h) of the Rome Statute, states that persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law is a crime against humanity when committed as part of a widespread and systematic attack against any civilian population, when conducted in connection with any act referred to in Article 7, paragraph 1, or any crime within the jurisdiction of the Court. The Statute goes on to define persecution as the intentional and severe deprivation of fundamental rights by reason of identity of the group or collectivity.

Chapter III of this Report introduced the concept of the “internal enemy”. Chapters IV, V, VI and VII detail the commission, by the Government of Venezuela, of the specific crimes of murder, torture, rape and other forms of sexual violence and imprisonment, outlined in the Rome Statute. Chapter VIII provides an overview of the additional broad scope of tools used by the Regime to persecute their internal enemy. Chapter IX will provide a detailed assessment of how the Regime has capitalized on the tragic humanitarian crisis facing the country, using it as a way not only to punish those whose only crime is that they do not pro-actively support the Bolivarian revolution by denying them food and medicine, but also by forcing hundreds of thousands into exile.

The Regime in Venezuela is responsible for what has become one of the worst humanitarian crises the region has experienced. This crisis is man-made and a direct result of inhuman actions by leaders who do not care about the suffering of their people, allowing their citizens to die of hunger and preventable diseases. The severity of the humanitarian crisis is not simply the consequence of negligence, but it has become part of the broader strategy of repression in the country that is guided by ideological and political interests. The economic crisis is a direct result of the economic mismanagement and corruption of a regime that is driven by ideological and personal greed. The resulting humanitarian crisis has been repeatedly denied to the international community, and all offers of assistance that would greatly ease the suffering of the Venezuelan people have been consistently rejected.

Instead, this regime has weaponized the seriously deteriorated living conditions in Venezuela, using what little supplies are available to reward those actively loyal to the regime and in turn, withhold resources as punishment to those who have been deemed their enemy. Food, medicines, and other basic necessities have become tools of political and social control, weapons with which to persecute their own people. The regime has further sought to capitalize on the crisis by facilitating a purge of opposition voices that ultimately works to eliminate anyone who could challenge them from within, helping to ensure their hold on power indefinitely.

On the one hand, the humanitarian crisis, combined with the worsening situation of repression, has caused a spike in volume of emigration, particularly of those who do not support with the Bolivarian socialist ideology of the Regime and are struggling to survive the extreme scarcity and economic depression; while on the other hand, those without the resources to leave the country are forced to fall in line with the Revolution, because that is the only way to ensure access to the little food and healthcare that is available.

The thousands of children suffering from severe malnutrition are the direct victims of the government's food policy. Patients with chronic diseases are dying from the high prices of and/or outright shortages of medicines, a situation that is the result of a destructive economic policy that includes a strict control of all the economic spheres, not only the country's productive apparatus, but who has access to hard currency, foreign exchange, customs and therefore all access to imports and exports. The system suffers from widespread institutionalized corruption with those who control the Regime profiting off the suffering of their people.

The Regime holds total control over all of these economic spheres, allowing them to control society. The sole impetus is to hold onto power for their personal privilege and benefit. If their Revolution were sustainable and attractive for the Venezuelan population, it would not have to be forced through the implementation of monopolistic controls, controls that in reality have only had a negative impact on the wellbeing and quality of life of its people, not to mention the production and distribution of basic human necessities, such as food and health care.

The government's obsessive search for control and its secrecy have their roots in their fear of losing legitimacy and in turn, of losing power. Electoral legitimacy is won through free and fair elections, and political legitimacy is maintained through transparency and good governance, or the effective and accountable delivery of public administration. The government of Venezuela lacks both, and has therefore been forced to impose its will in order to maintain power.

The monopoly over food distribution through the Local Supply and Production Committees, the continued destruction of the national economy, the closing-off of the country to the world, the rejection of foreign humanitarian assistance³⁷³, and the strengthening of state controls over the productive apparatus all favor the Bolivarian leadership and their followers, and in turn discriminate against the rest- those groups of persons identified as part of the internal enemy as described in Chapter III presenting the outline the Government's *Plan Zamora*. The deliberate policy of using hunger and illness³⁷⁴ as tools of political-social control has caused and continues to cause great suffering for those civilians whose perceived loyalty to the

373 According to Amnesty International, the Venezuelan government's refusal to accept foreign aid to respond to the humanitarian crisis and cover the demands for medicines "exacerbated" the health situation. Amnesty International, "Venezuela 2016/2017", 2017, <https://www.amnesty.org/en/countries/americas/venezuela/report-venezuela/>

374 Report of Evidence Requested on October 16, 2017, by the OAS Panel of Experts, Hearing on Crimes against Humanity committed in Venezuela, Isaias Medina III, November 16, 2017, Washington, D.C.

Revolution does not satisfy Maduro and members of his regime. Resources have now been weaponized and are used as tools of persecution to intimidate and discriminate against these groups of persons by denying access to food and health care.

Major government responsibilities have been handed off to the military to create a false sense of hope for reform or improvement, but in reality this was used as a bid to buy the loyalty of the military, giving them greater power as well as direct and discretionary access to government resources. In July 2016, already 29.4% of ministries were controlled by the military. In 2017, that number had reached 37.1% and as of January 2018, 40% of ministries are controlled by the military. Since Maduro's election, the presence of the military in cabinet has more than doubled.³⁷⁵ The increasing militarization of the bureaucracy is, in and of itself, a cause for concern, because these areas of responsibility are not related to military matters of defense and war.³⁷⁶ The militarization of food-distribution responsibilities of the public administration is only one such example.

A. The Economic Crisis

The Venezuelan economy is centralized and managed based on ideological criterion to buy political loyalty, not based on fostering productive and efficient economic development. With an estimated 14% decline in GDP for 2017 and hyperinflation reaching 2,700% at year-end, the economic situation is similar to that of countries that are at war.³⁷⁷ According to a Survey on Living Conditions in Venezuela conducted by National Survey on Living Conditions (*Encuesta Nacional de Condiciones de Vida: ENCOVI*), 82% of the population of Venezuela is living in poverty, and 52% in extreme poverty.³⁷⁸ In a recent statement released by a group of UN experts through the OHCHR, the UN confirms that extreme poverty exceeds 50% of the population.³⁷⁹ In 2018, hyperinflation is projected to reach as high as 13,000%.³⁸⁰ This is evidence of the devastating impact the Government's mismanagement of the economy of what should be one of the wealthiest countries in

³⁷⁵ Runrun.es, "Desde 2013 Maduro duplicó la cantidad de militares en su gabinete", January 2018, <http://runrun.es/rr-es-plus/337994/desde-2013-maduro-duplico-la-cantidad-de-militares-en-su-gabinete.html>

³⁷⁶ According to Provea, five military officers have directed the Ministry of the People's Power for Food during the administration of Nicolás Maduro: Lt. Col. Yván José Bello Rojas, Maj. Gen. Carlos Osorio Zambrano, Brigadier General Félix Osorio, Maj. Gen. Hebert García Plaza, and Division General Rodolfo Marco Torres. Source: Provea, "Los CLAP: 7 indicios de discriminación política," 2017, <https://www.derechos.org/ve/investigacion/los-clap-7-indicios-de-discriminacion-politica>

³⁷⁷ Moleiro, A., "La economía venezolana, en estado de coma", January 5, 2018, *El País*, https://elpais.com/internacional/2018/01/05/america/1515108139_270673.html

³⁷⁸ EFE, "Encovi: 82% de los hogares está en pobreza," February 17, 2017, http://www.el-nacional.com/noticias/crisis-humanitaria/encovi-los-hogares-esta-pobreza_81460

³⁷⁹ OHCHR, "Venezuela: Dire living conditions worsening by the day, UN human rights experts warn", 2018 <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=22646&LangID=S>

³⁸⁰ Biller, D., "IMF Projects Venezuela Inflation Will Soar to 13,000 Percent in 2018," January 25, 2018, <https://www.bloomberg.com/news/articles/2018-01-25/imf-sees-venezuela-inflation-soaring-to-13-000-percent-in-2018>

the hemisphere. At this stage, the Regime has demonstrated its determination to capitalize on the crisis, using it to persecute and even eliminate any opposition. It has become a tool for their political benefit serving to perpetuate themselves in power, while leaving their people to suffer the economic and social costs.

Despite the recent increase in oil prices, which should have helped the oil dependent economy rebound, the price for a family to purchase a basic market basket of goods jumped by 81% between November 2017 and December 2017, alone. The prices of seven essential categories that make up the basic market basket saw increases: food, education, personal hygiene and household cleaning, basic public services, housing, clothing and shoes, and health care.³⁸¹ According to the Center for Documentation and Social Analysis of the Venezuelan Federation of Teachers (CENDAS-FVM), for a family of five to be able to purchase the basket it would need an income 141.5 times the minimum salary.³⁸²

The logic of supply and demand plays out. The supply of these basic products in Venezuela is severely limited and shrinking and yet the demand remains very large. As a result, prices are high and only an ever shrinking portion of the population has the purchasing power to cover them. In this situation the Regime maintains a monopoly over production, imports, and distribution as well as control over who has access to hard currency, and the rate of currency exchange.

The domestic industry is only able to produce approximately 30% of what is required to address the demand for food in Venezuela. The rest is imported.³⁸³ Since 2016, the 30% that is produced domestically has been regulated by a fixed quota system. Companies that produce in-country, such as Polar, are obligated to sell between 50% and 60% of their outputs to the Regime at a pre-determined rate.³⁸⁴

The difference between those who have access to the goods supplied by the state at subsidized rates and those who do not is determined by party affiliation. Those who do not are forced into the black market or *bachaqueros*, where food and supplies are sold at prices that are far out of reach for the vast majority.

Combined with the strictly controlled economy, which is now in a severe depression, is the fact that the country has always been a prisoner of Dutch disease, overly dependent on a single commodity. Historically most consumer products have been imported; therefore, the purchase and guarantee of a steady supply of foreign currency is essential for commercial activity and ensuring sufficient supply to satisfy domestic demand. Not only has the 2014 drop in oil prices had a detrimental impact on the level of international currency reserves to ensure there is sufficient foreign currency to guarantee State imports, but the government has also added controls that restrict the purchase of foreign currency.

381 La Patilla, “Canasta Básica Familiar Llegó a 25 millones de bolívares en diciembre”, January 29, 2017, <https://www.lapatilla.com/site/2018/01/29/canasta-basica-familiar-llego-a-25-millones-de-bolivares-en-diciembre/>

382 *Rescate Venezuela*, “Rescatemos a Venezuela, Centro de Documentación y Análisis Social de la Federación Venezolana de Maestros”, 2018.

383 Prieto, H., “El Estado dejó de ser garante del derecho a la alimentación”, Interview with Susana Raffalli, Prodavinci, November 11, 2017, <http://prodavinci.com/susana-raffalli-el-estado-dejo-de-ser-garante-del-derecho-a-la-alimentacion/>

384 Ibid.

These foreign exchange controls further exacerbate the inefficiency of the economy and hinder incentives for food production and other essential goods. Since the official exchange rate (before a two-tiered, and currently a single tier, Dicom) and the parallel black market exchange rate are so far apart, they operate as a corruption mechanism that is profitable for the elite of the Regime and the military, who, among other portfolios, control customs and ports. Those who can gain access to foreign currency at the preferred, subsidized exchange rate can in turn sell it at a significant profit. State controls feed the state corruption apparatus at the same time as they undermine basic rights.

B. The Humanitarian Crisis

The facts and cases reported by victims, members of the opposition, Chavista dissidents, journalists, prestigious international and national NGOs, and citizens on social networks show the effects of the humanitarian crisis that has been provoked and exacerbated by the government. Instead of choosing policies that could help improve the circumstances of the country, the Regime has repeatedly chosen to profit off the suffering of its people through direct corruption or the political manipulation of the scarce supplies that are available.

In its October 2016 report Human Rights Watch stated: “The Venezuelan government’s response to date has been woefully inadequate. Authorities deny the existence of a crisis. They have not articulated or implemented effective policies to alleviate it on their own, and have made only limited efforts to obtain international humanitarian assistance that could significantly bolster their own limited efforts. While the government continues to argue that the crisis does not exist, Venezuelans’ rights to health and food continue to be seriously undermined with no end in sight.”³⁸⁵ In a 2017 Statement, José Miguel Vivanco, Executive Director of the Americas Division of Human Rights Watch, indicated: “Severe shortages of food, medicines, and medical supplies are making it increasingly difficult for many Venezuelans to feed their families or to access basic medical care.”³⁸⁶

The scarcity of food and medicine is one of the main causes of the forced emigration of Venezuelans, as was explained in Chapter VIII of this report addressing persecution. Other reasons for leaving the country have included threats of violence or outright violence by armed groups (both civilian and military); fear of reprisals for expressing political opinions; violence; as well as the lack of access to essential services.³⁸⁷

³⁸⁵ Human Rights Watch, “Venezuela’s Humanitarian Crisis: Severe Medical and Food Shortages, Inadequate and Repressive Government Response”, October 24, 2016, <https://www.hrw.org/es/report/2016/10/24/crisis-humanitaria-en-venezuela/la-inadecuada-y-represiva-respuesta-del-gobierno>

³⁸⁶ Vivanco, J. M. (2017), “It’s Time for UN Security Council to Send Strong Message on Venezuela,” November 13, 2017, <https://www.hrw.org/es/news/2017/11/13/es-tiempo-de-que-el-consejo-de-seguridad-de-la-onu-emita-un-mensaje-contundente>

³⁸⁷ OHCHR, “Venezuela Situation Update,” Geneva, November 2017.

The humanitarian crisis has been a trigger for increased social conflict. The Venezuelan NGO OVCS estimates that in 2017 there were, on average, 816 protests monthly, or 27 per day. According to OVCS, the key factors sparking the protests is the discriminatory allocation of social benefits; the lack of a democratic institutional framework; the economic and political crisis; and militarization. One of the main demands from those participating in the 2017 protests was the opening of a channel for humanitarian assistance.³⁸⁸

The Government of Venezuela has consistently denied the existence of a humanitarian crisis, rejecting all offers of international assistance. In his First Report to the OAS Permanent Council invoking the Democratic Charter, the Secretary General had already noted how on April 5, 2016, the opposition-led National Assembly attempted to pass³⁸⁹ the “Special Law to address the humanitarian health crisis”³⁹⁰. The law called for the establishment of a channel for humanitarian assistance to address what has already a dramatic health crisis, but it was overturned by the TSJ. In 2017, during his weekly show called “*Los domingos con Maduro* [Sundays with Maduro]”, the President refused any humanitarian assistance. He said, “Venezuela is a thriving country, hardworking, it is not a beggars’ country like some have alleged with respect to humanitarian assistance”.³⁹¹ In 2018, the President of the Venezuelan Constituent Assembly, Delcy Rodríguez, expressed similar views in a TV interview. Rodríguez stated, “Venezuela will not beg, Venezuela has means and in addition, the capacity to purchase medicines, food”.³⁹² The former Minister-Counselor in the Venezuelan Mission to the United Nations, Isaias Medina, explained during the third round of sessions to analyze if the situation in Venezuela warrants referral to the ICC, that the Regime was uninterested in the offer of humanitarian assistance by another UN Member State. “[...] I was informed (by the Regime) that they did not consider it of national interest given that in Venezuela there was no humanitarian crisis”³⁹³, stated Medina during the hearing.

The humanitarian crisis has not come about by chance, nor is it a result of some economic war waged by an internal enemy made up of disparate opposition groups and starving civilians. The only entity that has the capacity to affect the economy in this way would need to control the government institutions across the national territory. Only this way, can the food and economic policies be carried out. Nicolas Maduro and his regime are the only ones in control of these institutions giving them a monopoly of the economic, political,

388 *Observatorio Venezolano de Conflictividad Social*, “*Conflictividad social en Venezuela en 2017*”, <https://www.observatoriodeconflictos.org.ve/tendencias-de-la-conflictividad/conflictividad-social-en-venezuela-en-2017>

389 OAS General Secretariat, “First Report of the Secretary General on the Situation in Venezuela”, May 30, 2018, p. 23, <http://www.oas.org/documents/eng/press/OSG-243.en.pdf>

390 National Assembly of Venezuela, “Special Law to face Health Humanitarian Crisis”, http://www.asambleanacional.gob.ve/uploads/documentos/doc_a41b084cdfbef69ce87dcedd2fb9ae0d59131c9.pdf

391 “Los domingos con Maduro”, Edition #98, December 3, 2017, <https://www.youtube.com/watch?v=QIP7Hf8D1u8>

392 José Vicente Hoy, *Telegen*, “Interview with Delcy Rodríguez”, January 28, 2018, https://www.youtube.com/watch?time_continue=6&v=YbbEbYq3EK

393 Medina III, I. “*Informe de evidencias solicitadas el 16 de octubre de 2017 por el Panel de Expertos de la OEA, Audiencia sobre crímenes de lesa humanidad cometidos en Venezuela*”, November 16, 2017.

and social policy of the country. The only “economic war” is the one that has been waged by the Regime against its own people, intentionally sustaining a humanitarian crisis characterized by extreme hunger and illness; a reality today, that has not been, and is not, inevitable.

C. The Health Crisis

The serious health crisis facing the population is another side of the humanitarian crisis that has been caused by the State. The National Public Health System has collapsed. There are severe shortages of medicines, vaccines, and medical supplies. Hospital infrastructure is in a critical state. There are insufficiently trained medical personnel, and in addition, the security of the hospitals has been compromised, despite the high degree of militarization at the health centers.

The government actively censors information about the health crisis, a crisis that is unnecessary and avoidable. The government has refused to disclose health or epidemiological data and statistics, and punishes those who bring the data to light for the public.³⁹⁴ In May 2017, Minister of Health Antonieta Caporale was removed the day after an epidemiological report on maternal, newborn and child health in Venezuela was published on the website of the Ministry of People’s Power for Health (MPPS).³⁹⁵

In a press release dated January 28, 2018, the NGO Coalition of Organizations for the Right to Health and Life (*Coalición de Organizaciones por el Derecho a la Salud y a la Vida*: Codevida) places the direct responsibility for the health crisis on the Venezuelan government “... we hold them directly responsible for the deaths and severe damage to the health and nutritional status of the population groups hardest hit, which occur on a daily basis and in growing numbers in coming weeks.”³⁹⁶ In their statement, they included figures indicating the number of people affected by the collapse of the health system. They estimate that the government of Venezuela has “the power to save the lives of more than 300,000 people with chronic health conditions (hemophilia, transplants, persons with cancer, multiple sclerosis, Parkinson’s, pulmonary hypertension, ulcerous colitis, and persons in dialysis, among others) and 77,000 people with HIV, due to the absence of antiretrovirals, and assistance for some four million persons with serious problems getting access to their treatments...”³⁹⁷ The medications necessary to treat these illnesses and conditions have been readily available in the past.

³⁹⁴ OAS General Secretariat, “First Report of the Secretary General on the Situation in Venezuela”, May 30, 2016; page 16, <http://www.oas.org/documents/eng/press/OSG-243.en.pdf>

³⁹⁵ Kohut, M and Herrera, I. (2017), “As Venezuela Collapses, Children Are Dying of Hunger”, December 17, 2017, <https://www.nytimes.com/es/interactive/venezuela-hambre-desnutricion-ninos-maduro/>

³⁹⁶ Codevida, Press Release, January 29, 2018, <https://twitter.com/codevida/status/957982944114638848>

³⁹⁷ Ibid.

The WHO maintains a list of essential medicines that are selected on the grounds of “public health relevance, evidence on efficacy and safety and comparative cost effectiveness” that as a standard should be available “at all times in adequate amounts, in the appropriate dosage forms, with assured quality and adequate information, and at a price the individual and the community can afford.”³⁹⁸ The Venezuelan Pharmaceutical Federation (*Federación Farmacéutica de Venezuela: Fefarven*) has identified that of 150 medicines determined to be essential, Venezuela is suffering a 70% shortfall, due to the severe shortage of dollars to purchase the medicines. The president of *Fefarven* warned that the country is experiencing a humanitarian crisis in which the shortage of medicine is estimated at 80%.³⁹⁹ The medicine shortages are not limited to public hospitals, but also affect private pharmacies; estimates are that 85% of the medicines that should be found in private pharmacies were either not available or hard to find.

The October 2016 Human Rights Watch report, *Venezuela’s Humanitarian Crisis: Severe Medical and Food Shortages, Inadequate and Repressive Government Response*, echoes the concerns about the seriousness of the scarcity. Citing an independent survey by a network of more than 200 Venezuelan physicians, Human Rights Watch estimates that 76% of public hospitals do not have the basic medicines that would normally be available at any functioning public hospital, including many of those on the WHO’s List of Essential Medicines.⁴⁰⁰

The inability to meet these demands for medicines is a direct result of state policy. The pharmaceutical companies in Venezuela have not have access to dollars since October 2016. Although the pharmaceutical companies associated with *Fefarven* have the capacity to produce medicines, however, the Government must first sell the foreign exchange to pay the international suppliers; a dependency that is a derivative of the state controlled exchange market that was brought into force in Venezuela in 2003.⁴⁰¹ In their mission report, Amnesty International also collected the opinions of physicians and health professionals, who confirmed the lack of medicines for treating chronic and lethal illnesses.⁴⁰²

The shortages and outright lack of medical supplies is equally alarming. According to Human Rights Watch, these supplies shortages include: gloves and sterile gauze, antiseptics, medical alcohol, scalpels, needles, catheters, intravenous solutions, nebulizers, and surgical sutures, as well as basic sanitizing and cleaning products.⁴⁰³

398 WHO, “Essential Medicines”, www.who.int/topics/essential_medicines/en/

399 EFE, “*Gremio farmacéutico venezolano pide a la OMS el envío de medicinas*,” February 1, 2016, <https://www.efe.com/efe/america/sociedad/gremio-farmacéutico-venezolano-pide-a-la-oms-el-envio-de-medicinas/20000013-2826800>

400 Human Rights Watch, “*Venezuela’s Humanitarian Crisis: Severe Medical and Food Shortages, Inadequate and Repressive Government Response*,” October 2016, <https://www.hrw.org/report/2016/10/24/venezuelas-humanitarian-crisis/severe-medical-and-food-shortages-inadequate-and>

401 EFE, “*Gremio farmacéutico venezolano pide a la OMS el envío de medicinas*,” February 1, 2016, <https://www.efe.com/efe/america/sociedad/gremio-farmacéutico-venezolano-pide-a-la-oms-el-envio-de-medicinas/20000013-2826800>

402 Univisión, “*Se acelera la catastrófica crisis humanitaria en Venezuela, advierte Amnistía Internacional*,” June 10, 2016, <https://www.univision.com/noticias/crisis-en-venezuela/se-acelera-la-catastrofica-crisis-humanitaria-en-venezuela-advierte-amnistia-internacional>

403 Human Rights Watch, “*Venezuela’s Humanitarian Crisis: Severe Medical and Food Shortages, Inadequate and Repressive Government Response*,” October 2016, <https://www.hrw.org/report/2016/10/24/venezuelas-humanitarian-crisis/severe-medical-and-food-shortages-inadequate-and>

In its 2017 publication National Hospital Survey (*Encuesta Nacional de Hospitales*),⁴⁰⁴ the organization Doctors for Health (*Médicos por la Salud*), stated that 51% of the operating rooms in Venezuelan health centers are inoperative and that the hospital food services operate at 13%. The survey also indicated that 39% of the 25,909 hospital beds are out of service.⁴⁰⁵ OHCHR reaffirmed the alarming scale of the shortages in public hospitals: 78% have a scarcity or insufficiency of medicines, and 75% have insufficient surgical equipment.⁴⁰⁶ The IAHRC's 2017 report on Venezuela, states that 80% of the diagnosis services are unavailable⁴⁰⁷.

According to the UN High Commissioner for Human Rights, the allocation of Venezuela's national budget that was directed towards healthcare in 2016 suffered a 62% cut compared with 2015.⁴⁰⁸ The report also notes that maternal deaths increased by 65% and that child mortality increased by 29.5% between 2015 and 2016.

The networks of Venezuelans living outside the country have been extremely active in trying to help obtain medicines for their compatriots in need living in Venezuela. As of March 12, 2018, the Florida-based NGO called My Voice Counts has received more than 1000 personal testimonies concerning medical shortages, through its initiative *Canal Humanitario Venezuela* [Venezuela Humanitarian Channel]. The most recurrent pathologies identified are the lack of medicines for the treatment of carcinogenic tumors (38%), followed by cases of diabetes and hypertension (14%), and for mental and neurological disorders.⁴⁰⁹

Every Venezuelan with health issues, who is injured or who suffers from an illness faces daily torment from the policies of the Regime.

This next Section takes a more in depth look at the specific challenges facing patients that have previously been addressed through comprehensive medical care. This Report documents patients with diseases that had been eradicated, kidney patients, cancer patients, hematology patients, and patients who are minors, and the arduous context they face.

⁴⁰⁴ Survey at 92 hospitals nationwide, with the support of the Subcommittee on Health of the National Assembly.

⁴⁰⁵ Sarmiento, M. (2107), "*En hospitales de Caracas la escasez de analgésicos, antibióticos y anticonvulsivos es más de 90%*", *Crónica*, <http://cronica.uno/hospitales-caracas-cuando-no-mejora-enfermo/>

⁴⁰⁶ OHCHR, "Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela of April 1 to July 31, 2017", Geneva, August 2017, http://www.ohchr.org/Documents/Countries/VE/HCREportVenezuela_1April-31July2017_EN.pdf

⁴⁰⁷ IACHR, "Democratic Institutions, the Rule of Law and Human Rights in Venezuela", December 31, 2017; paragraph 235, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

⁴⁰⁸ OHCHR, "Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017," Geneva, August 2017, http://www.ohchr.org/Documents/Countries/VE/HCREportVenezuela_1April-31July2017_EN.pdf

⁴⁰⁹ *Canal Humanitario Venezuela*, <https://www.canalhumanitariovenueza.com/index.php/testimonios>; 1000 Testimonies were submitted to the General Secretariat of the OAS on March 12, 2018.

Previously Eradicated Diseases - Malaria & Diphtheria

The scarcity of medicines, combined with the reduction in public spending earmarked to fight malaria from US\$10 million in 2015 to US\$2.2 million in 2016⁴¹⁰, has deteriorated the situation precipitously. According to the MPPS bulletin published in May 2017, the most recent information published by official government sources, the number of malaria cases increased 76.4% from the previous year.⁴¹¹

The WHO indicated the malaria outbreak is the worst in Venezuela's history. In 2016, the highest number of malaria cases were reported in the country since they started keeping records, Venezuela became the country contributing the most to the burden of malaria in the Americas. The WHO counts Venezuela among the four countries in the world whose complex situations have resulted in an increase in the number of malaria cases, Nigeria, South Sudan, and Yemen.

After successfully having declared the northern region of Venezuela malaria-free in 1961, the WHO has been recording an increase in the number of reported cases since 2008. Between 2015 and 2016 alone there was an increase of more than 76% cases reported, with total numbers of people afflicted jumping from 136,406 to 240,613.⁴¹²

In an open letter signed by a group of experts including former ministers of health and social assistance, specialists in global health, and researchers from Venezuela, with the Venezuelan Health Observatory (*Observatorio Venezolano de la Salud: OVS*), stated that Venezuela "has the worst performance indicators for malaria in the region for the 2000-2016 period: a 709% increase in cases of malaria, a 521% increase in malaria-related deaths, and a 540% increase in the annual parasite index (API)."⁴¹³ The experts observed that the majority of cases are reported in the states of Bolívar, Sucre, and Amazonas. In the letter shared at the Malaria in the Americas 2017 conference, hosted by PAHO on November 3, 2017, they also highlighted the lack of medicines and "parts and components for the maintenance of vehicles, boats, and motorcycles, needed to perform public health activities in communities."⁴¹⁴

⁴¹⁰ WHO (2017), "World Malaria Report 2017", <http://www.who.int/malaria/publications/world-malaria-report-2017/en/>

⁴¹¹ BBC Mundo, "El gobierno de Venezuela destituye a la ministra de Salud, Antonieta Caporale, luego de que se difundieran cifras sobre el aumento de mortalidad materna e infantil", May 12, 2017, <http://www.bbc.com/mundo/noticias-america-latina-39892614>

⁴¹² WHO, "World Malaria Report 2017", November, 2017, <http://www.who.int/malaria/publications/world-malaria-report-2017/report/en/>

⁴¹³ Provea, "Carta Abierta: Preocupación por la eplbidia de malaria en Venezuela," November 6, 2017, <https://www.derechos.org/ve/actualidad/carta-abierta-preocupacion-por-la-eplbidia-de-malaria-en-venezuela>

⁴¹⁴ Ibid.

In the state of Anzoátegui, a malaria outbreak of 12,000 cases was confirmed 40 years after eradication in that state.⁴¹⁵ The pandemic also reappeared in the states of Monagas, Sucre, Bolívar, and Delta Amacuro.

Diphtheria has also reappeared 40 years after it was eradicated. As of September 26, 2017, the NGO Venezuelan Alliance for Health (*Alianza Venezolana por la Salud: AVS*) had reported 447 cases in the country.⁴¹⁶ According to the MPPS May 2017 bulletin, there were 324 reported cases of diphtheria.

Kidney Disease

Patients suffering from chronic kidney disease due to various causes (diabetes, hypertension, immunological diseases, among others), patients on dialysis (peritoneal and hemodialysis), and transplant patients face a critical situation on a daily basis. In an official press release dated May 29, 2017, the Venezuelan Nephrology Association (*Sociedad Venezolana de Nefrología*) observed “the progressive deterioration” of the quality of health infrastructure, the number of specialized physicians, and the availability of resources and materials for the treatments.⁴¹⁷

In 2017, the MPPS officially suspended transplants from donor cadavers. The Venezuelan Foundation for Organ, Tissue, and Cell Donation and Transplant (*Fundación Venezolana de Donaciones y Trasplante de Órganos, Tejidos y Células: Fundavene*), the technical body responsible for public policy on donations and transplants, notified that it would suspend “temporarily all the procedures associated with seeking kidney donors and transplants from a cadaver donors nationwide” on May 26, 2017.⁴¹⁸ In a press release dated May 31, 2017, the National Transplant Organization of Venezuela (*Organización Nacional de Trasplante de Venezuela: ONTV*) stated that since mid-2014 the implementation of the System for Procuring Organs and Tissues, a MPPS mandated program, began the “unstoppable decline in the activity of donations and transplants in the country, until it came to a standstill.”⁴¹⁹

ONTV noted the complex situation kidney patients face, given the multiple medical deficiencies preventing safe transplant operations and dialysis treatments. Among the issues preventing safe transplant surgeries,

⁴¹⁵ Camacho, J., “La difteria y el paludismo han cobrado la vida de 29 personas en Anzoátegui”, *Crónica*, November 13, 2017 <http://cronica.uno/la-difteria-paludismo-cobrado-la-vida-29-personas-anzoategui/>

⁴¹⁶ EFE, “Médicos piden a OPS pronunciarse por reaparición de enfermedades en Venezuela”, July 26, 2017, <http://www.elperiodico.com/es/sociedad/20170926/medicos-piden-a-ops-pronunciarse-por-reaparicion-de-enfermedades-en-venezuela-6310831>

⁴¹⁷ *Sociedad Venezolana de Nefrología*, “Comunicado oficial a la opinión pública”, May 29, 2017, <http://www.slanh.net/wp-content/uploads/2017/06/COMUNICADO-SOCIEDAD-VENEZOLANA-DE-NEFROLOGIA-29052017.pdf>

⁴¹⁸ Carrero Soto, G., “Ministerio de Salud suspendió programa de trasplante renal”, May 30, 2017, El Pitazo, <https://elpitazo.com/ultimas-noticias/ministerio-salud-suspendio-programa-trasplante-renal/>

⁴¹⁹ *La Organización Nacional de Trasplante (ONTV)*, “Comunicado Público ante las grave crisis del Sistema de Donación y Trasplante de órganos, el Programa de Diálisis y el Sistema Nacional de Salud en Venezuela”, May 31, 2017.

they identify: “the deteriorating infrastructure at the hospitals where the Transplant Centers are based”; “shortages of all types of medicines”; “the unavailability of immunosuppressant treatments ... to avoid rejection of the graft”; “the shortage of reagents for measuring levels of tacrolimus,” which affects post-transplant control; and “the serious shortage of human talent specialized in the area.”⁴²⁰ The depletion and shortage of supplies for peritoneal dialysis and hemodialysis were also noted.

“The impact of these very serious situations on the patients who need transplants and dialysis, as well as on their families, generates the most terrible feelings of desperation, anguish, and uncertainty. They can also cause medical complications that significantly affect their quality of life and put their lives at risk,”⁴²¹ according to the ONTV.

On June 4, 2017, the president of the Central American and Caribbean Nephrology Association (*Asociación Centroamericana y del Caribe de Nefrología*), Guillermo Álvarez Estévez, said that chronic kidney patients in Venezuela “are condemned to die.”⁴²² He also characterized the situation of these patients as “inhuman and disastrous.”⁴²³

In mid-2017 there were an estimated 15,000 patients on hemodialysis and on average 1,500 to 2,000 patients on peritoneal dialysis nationwide.⁴²⁴ Jackeline Pérez, president of the Venezuelan Association for Sports and Health of Transplant Recipients (*Asociación Venezolana para el Deporte y la Salud de los Trasplantados y en Situación de Trasplante*), found that as of January 12, 2018 at least 3,500 transplant patients were at risk of dying nationwide due to the lack of necessary medicines available.⁴²⁵

On January 31, 2018, Francisco Valencia, the director of *Codevida*, told a media outlet that 16,000 persons could die in the days following his statement because of they were running out of the filters needed to perform dialysis.⁴²⁶

420 Ibid.

421 Ibid.

422 Efecto Cucuyo, “En riesgo de muerte pacientes crónicos renales en Venezuela, según especialistas”, June 4, 2017, <http://efectocucuyo.com/secundarias/en-riesgo-de-muerte-pacientes-cronicos-renales-en-venezuela-segunespecialistas>

423 Ibid.

424 Yanes, M., “Crisis dramática e inédita viven pacientes renales”, *El Nacional*, June 13, 2017, http://www.el-nacional.com/noticias/columnista/crisis-dramatica-inedita-viven-pacientes-renales_187272

425 Zaá, J.M., “Pacientes crónicos siguen alzando la voz”, *El Impulso*, January 12, 2018, <http://www.elimpulso.com/home/pacientes-cronicos-siguen-alzando-la-voz>

426 *El Nacional Web*, “Codevida denunció que se agotaron los filtros para diálisis en todo el país”, January 31, 2018, http://www.el-nacional.com/noticias/salud/codevida-denuncio-que-agotaron-los-filtros-para-dialisis-todo-pais_221228; Bello, C., “Venezuela’s government in denial as doctors warn of return to medical ‘stone age,’” *EuroNews*, February 2018, <http://www.euronews.com/2018/02/02/venezuela-s-government-in-denial-as-doctors-warn-of-return-to-medical-stone-age->; and, Codevida, Press Release, January 29, 2018, <https://twitter.com/codevida/status/957982944114638848>

These statistics are not simply numbers. Each figure is the life of a kidney patient who is suffering, along with his or her family, the anguish of not being able to obtain the medicines and/or treatment needed to survive. Fifty-year-old Belkis Solórzano died hours after recording her story, as a result to the lack of medicines for treating her kidney transplant that she received 13 years earlier. She had not received the necessary medications for three months. The tragic loss of Belkis is an undeniable reminder of the consequences of the Regime's inhuman acts. Her story was published by *Codevida* on November 13, 2017.⁴²⁷

Cancer

In a 2018 statement, the Venezuelan Oncology Association (*Sociedad Venezolana de Oncología: SVO*) presented a breakdown of the problems afflicting cancer patients. They outline the scarcity and/or absence of medications for oncological medicine and oncological surgery, as well as the deficiencies and/or lack of adequate equipment for surgery and radiation therapy.⁴²⁸

Gustavo Gotera, the president of the SVO, told a digital media outlet that due to the lack of drugs for cancer treatment, only four out of every 10 patients goes into remission as opposed to the historical average of eight out of every 10 patients.⁴²⁹ Gotera stated that the infrastructure to offer chemotherapy exists; however, he identified the greatest challenge as the lack of the next-generation drugs needed to ensure that the treatment will not fail. Given the lack of drugs, he said, "Physicians have been forced to use second- or third-line medicines to be able to offer some type of treatment to patients."⁴³⁰ In some cases, given the lack of alternatives, he said that treatments being used are from the 1980s. There is a "total shortage"⁴³¹ of monoclonal antibodies, he added.

In November 2017, the SVO published information on the nationwide state of oncology services. Of the 40 services offered at eight oncology centers, only 17 are active (42.5%).⁴³² Nonetheless, all of the services that indicated as active, report limitations and breakdowns.

In a letter sent to the IACHR dated June 15, 2017, the Venezuelan Association for Breast Health (*Sociedad Venezolana de Mastología*) expressed its profound concern "due to the fact that the specific conditions

⁴²⁷ Testimony Belkis Solórzano: <https://twitter.com/codevida/status/930064198901616642>

⁴²⁸ SVO, Press Release of the SVO, 2018, http://www.oncologia.org.ve/site/estructuras/modulo_sencillo.php?id_seccion=846

⁴²⁹ Pineda Sleinan, J., "Solo dos de cada cinco pacientes de cáncer se salvan por escasez de antineoplásticos," December 4, 2017, <http://efectococuyo.com/principales/solo-dos-de-cada-cinco-pacientes-de-cancer-se-salvan-por-escasez-de-antineoplasicos>

⁴³⁰ Ibid.

⁴³¹ Ibid.

⁴³² SVO, "Servicios oncológicos en Venezuela", November 13, 2017, https://twitter.com/info_svo/status/930081278204006400

for providing services in the multiple disciplines involved in the phases of its diagnosis, surgical treatment, radiation therapy, chemotherapy, and rehabilitation are in a critical state.”⁴³³ Among other failings, they report the malfunction of the diagnostic imaging equipment, mammography screening, and for radiation treatment; the scarcity of equipment and supplies for taking and processing biopsies; the lack of materials for extension studies; the lack of medical supplies in operating rooms; and the limited reconstruction treatments.⁴³⁴

Hematological Disorders

In a press release published on January 18, 2018, the Venezuela Hematology Association (*Sociedad Venezolana de Hematología*: SVH) and the Cooperative Transfusional Medicine Group (*Grupo Cooperativo de Medicina Transfusional*) warned that if the blood banks essential for treating patients run the risk of becoming inoperative if short-term measures are not taken.⁴³⁵

Expressing their concern about the deterioration of the blood banks, as well as the lack of medicines to support hospital operations and basic hospital services, the SVH affirmed that the Venezuelan State has the responsibility of guarantor over health for the people of Venezuela.⁴³⁶ As such, they are responsible for the procurement and provision of “supplies and reagents of optimal quality and in sufficient quantity for the time and adequate operation of the blood banks.”⁴³⁷ However, since the second half of 2017 there have been failures in the reception of reagents and inputs needed to test patients and rule out diseases such as hepatitis B and hepatitis C, among others, or to perform surgeries and give transfusion treatments.

Treatment of Children

On February 21, 2018, the IACHR issued precautionary measures on behalf of the children in the nephrology unit of the *JM de los Rios* hospital highlighting the seriousness of the risk to their health due to an alleged shortage of supplies and other structural deficiencies. The IACHR has called on the Government of

⁴³³ *Sociedad Venezolana de Mastología*, Letter to the IACHR, June 15, 2017.

⁴³⁴ *Ibid.*

⁴³⁵ Codevida, “*Sociedad de Hematología advierte sobre deterioro de los Bancos de Sangre*”, January 24, 2018, <http://www.codevida.org/comunidad/sociedad-de-hematologia-advier-te-sobre-deterioro-de-los-bancos-de-sangre>

⁴³⁶ SVH, Letter sent to the Executive Secretary of the IACHR, June 16, 2017.

⁴³⁷ Codevida, “*Sociedad de Hematología advierte sobre deterioro de los Bancos de Sangre*”, January 24, 2018, <http://www.codevida.org/comunidad/sociedad-de-hematologia-advier-te-sobre-deterioro-de-los-bancos-de-sangre>

Venezuela to adopt the necessary measures to guarantee the “life, personal integrity, and health” of the children in the nephrology unit.⁴³⁸

The official figures published in 2017 were the first official data made public since 2014. The May 2017 MPPS bulletin indicated that child mortality increased 30% and maternal mortality 65.79% in one year.⁴³⁹

In a letter to the Executive Secretary of the IACHR, the Venezuelan Pediatric Society (*Sociedad Venezolana de Puericultura y Pediatría*: SVPP) explained that the lack of vaccines for children and adolescents and “as a result of which we are seeing a resurgence of diseases that had been eradicated for more than 25 years.”⁴⁴⁰

The SVPP also mentioned that the scarcity of supplies or treatments specific to infants, such as milk formulas, “places at risk those nursing children who cannot breast feed because of special conditions.”⁴⁴¹

The reality of acute child malnutrition is difficult to reconcile in a country as rich as Venezuela. The SVPP estimates that 80% of children under 5 are facing some degree of child malnutrition.⁴⁴² In its October 2016 report, Human Rights Watch had already pointed out that physicians, community leaders, and parents “were beginning to see symptoms of malnutrition, particularly in children.”⁴⁴³

The New York Times conducted a journalistic investigation that took over five months at 21 public hospitals in 17 states of Venezuela. The correspondents indicate in their reporting that even though the Venezuelan government doesn’t recognize the large numbers of deaths due to malnutrition, the physicians at the hospitals observed that “their emergency rooms were overwhelmed by children with severe malnutrition.”⁴⁴⁴

The president of the SVPP noted that the level of extreme malnutrition resembles that of refugee camps. Malnutrition worsened after the economic collapse which began in 2014 and became especially acute in 2017.

⁴³⁸ IACHR, Precautionary measure No.1039/17, “Children of the Nephrology Unit of the José Manuel los Ríos Hospital Venezuela”, February 21, 2018, <http://www.oas.org/es/cidh/decisiones/cautelares.asp>

⁴³⁹ BBC Mundo, “El gobierno de Venezuela destituye a la ministra de Salud, Antonieta Caporale, luego de que se difundieran cifras sobre el aumento de mortalidad materna e infantil”, May 12, 2017, <http://www.bbc.com/mundo/noticias-america-latina-39892614>

⁴⁴⁰ Letter from the *Sociedad Venezolana de Puericultura y Pediatría* (SVPP) to the Executive Secretary of the IACHR, June 20, 2017.

⁴⁴¹ Ibid.

⁴⁴² *Tal Cual Digital*, “Muy grave, Sociedad de Pediatría: 80% de niños menores de cinco años presentan desnutrición”, June 2, 2017, <https://twitter.com/DiarioTalCual/status/870841980099678208>

⁴⁴³ Human Rights Watch, “Venezuela’s Humanitarian Crisis: Severe Medical and Food Shortages, Inadequate and Repressive Government Response,” October 2016, <https://www.hrw.org/report/2016/10/24/venezuelas-humanitarian-crisis/severe-medical-and-food-shortages-inadequate-and>

⁴⁴⁴ Kohut, M and Herrera, I., “As Venezuela Collapses, Children Are Dying of Hunger,” December 17, 2017, <https://www.nytimes.com/interactive/2017/12/17/world/americas/venezuela-children-starving.html>

Malnutrition in Venezuela today is not a result of war or a natural catastrophe; it is caused by scarcity and inflation provoked by the Regime. Kenyerber Aquino Merchán, who died of hunger at the age of 17 months, is just one of the victims of the humanitarian crisis.⁴⁴⁵ In the face of the evidence of avoidable deaths of children, it is impossible and inhumane to deny and/or conceal the problem. Nonetheless, the Regime continues to deny the existence of a humanitarian crisis and continues to refuse all offers of international assistance.

Extreme thinness points to the acute nutritional deficit. “If of every 100 children 10 die from malnutrition, then you have a crisis,”⁴⁴⁶ according to a consultant with *Caritas Venezuela*. According to their report published May 17, 2017, in a survey of 31 parishes, half of the children under 5 years (48%) suffer from malnutrition or are at imminent risk of suffering it.⁴⁴⁷ “Hospital Pediátrico de Referencia de Caracas (JM de los Ríos) reports a 260% increase in the admission of children with severe malnutrition, compared to the same records in prior years.”⁴⁴⁸ This source also estimates that in 2016, 11,400 children died before their first birthday, whereas in 2007, that number was only 4,000; a 184% increase in only a decade.

D. The Food Crisis

Food shortages and hunger constitute one of the two sides of the humanitarian crisis caused by the Regime. It is now being weaponized against its population.

According to the February 2018 Survey on Living Conditions conducted by ENCOVI, 80% of Venezuelan households are suffering from food insecurity. Of those surveyed 79.8% of Venezuelans say they are eating less because there is not enough food at home., In all, 78.6% say they have eaten less because there is not enough food to buy, and 61.2% go hungry because they didn’t have money to buy food.⁴⁴⁹

Access to food was identified as the top concern facing Venezuelan families (47.2%), according to the survey firm Ratio UCAB, of the Universidad Católica Andrés Bello, in the publication of its monthly study for September 2017.⁴⁵⁰

445 The New York Times, December 17, 2017, <https://twitter.com/nytimes/status/942440086880309250>

446 Prieto, H., “El Estado dejó de ser garante del derecho a la alimentación”, Interview with Susana Raffalli, *Provinci*, November 11, 2017, <http://provinci.com/susana-raffalli-el-estado-dejo-de-ser-garante-del-derecho-a-la-alimentacion/>

447 Caritas Venezuela, “Los niños ante la crisis de alimentos en Venezuela, mientras la malnutrición se dispara”, <https://www.caritas.org/2017/05/los-ninos-ante-la-crisis-de-alimentos-en-venezuela-mientras-la-malnutricion-se-dispara/?lang=es>

448 Ibid.

449 ENCOVI, 2017, <https://www.ucab.edu.ve/wp-content/uploads/sites/2/2018/02/ENCOVI-Alimentaci%C3%B3n-2017.pdf>

450 *El Ucabista*, “Escenarios de 2018 para Venezuela se conocerán en foro de Ratio UCAB”, November 13, 2017, <http://elucabista.com/2017/11/13/escenarios-2018-se-conoceran-foro-ratio-ucab>; <https://twitter.com/UcabRatio/status/925453639556190210>

In the parishes of the states evaluated by *Caritas Venezuela* between April and August 2017, the levels of global acute malnutrition exceed the threshold of severity established by the World Health Organization (WHO) by 10%.⁴⁵¹ The prevalence of malnutrition in children under five increased in all that were parishes monitored, and the rate of deterioration is greater than what had been recorded up until 2016.

In a *Caritas* study of three low-income districts between May and August 2017, the proportion of children with a nutritional deficit jumped from 54% in April 2017 to 98% in August 2017. *Caritas* estimates that 32.5% of Venezuelan children are at risk of malnutrition; another 14.5% suffer global acute malnutrition; and 21% suffer moderate malnutrition. *Caritas* also notes that 71% of households reported having experienced a deterioration of their diet, at the same time as a diminution was observed in the score for food diversity. The percentage of households with deficient food diversity grew from 66% to 85% between February and August 2017.⁴⁵²

Erika Guevara Rosas, the Americas Director for Amnesty International, observed the “dramatic crisis” during a June 2016 mission to Venezuela.⁴⁵³ In the mission report, Amnesty found that the heavily regulated food pricing system limits the supply of basic goods. According to physician testimonials received by Amnesty International “they have seen an increase in cases of malnutrition, weight loss, and acute stress caused by the lack of food.”⁴⁵⁴

In addition, the report 2017: The State of Food Security and Nutrition in the World, published by FAO, describes the undersupply of food and other commodities, especially “as the economy has plummeted with declining oil prices and oil revenues, and foreign-exchange shortages have limited imports of food and basic goods.”⁴⁵⁵ It should be noted that the most recent data and statistics on Venezuela are not presented in the FAO report, because the Government of Venezuela has not made any information available.

In a 2016 report by the FAO and PAHO entitled Panorama of Food and Nutritional Security in Latin America and the Caribbean, Venezuela appears to be the only country in the region to report the high inflation of food prices, over 100 percent, from December 2014 (102.2%) to September 2015 (254.3%).⁴⁵⁶ The official data corresponding to 2016 are not available.

⁴⁵¹ *Caritas Venezuela*, “Monitoreo de la Situación Nutricional en Niños Menores de 5 años”, April-August 2017.

⁴⁵² *Caritas Venezuela*, “Monitoreo de la Situación Nutricional en Niños Menores de 5 años”, Distrito Vargas, Miranda y Zulia: May-August 2017, http://www.icaso.org/wp/wp-content/uploads/2017/10/Cuarto-Boletin-Monit-Centinel-Nutricional-Venezuela-Caritas_May_Agosto-2017.pdf

⁴⁵³ *Univisión*, “Se acelera la catastrófica crisis humanitaria en Venezuela, advierte Amnistía Internacional”, June 10, 2016, <https://www.univision.com/noticias/crisis-en-venezuela/se-acelera-la-catastrofica-crisis-humanitaria-en-venezuela-advier-te-amnistia-internacional>

⁴⁵⁴ *Ibid.*

⁴⁵⁵ FAO, “The State of Food Security and Nutrition in the World, 2017”, page 54, <http://www.fao.org/state-of-food-security-nutrition/en/>

⁴⁵⁶ FAO-PAHO, “Panorama of Food and Nutritional Security in Latin America and the Caribbean”, page 70, <http://www.fao.org/3/a-i7914e.pdf>

The Global Report on Food Crises 2017, published in March 2017 by the Food Security Information Network, a global initiative sponsored by the FAO, the World Food Program, and the International Food Policy Research Institute, identified 65 countries around the world whose populations suffer food insecurity, i.e. countries in need of external food assistance. Of the global total, nine are countries in the Americas that have been impacted by catastrophes (e.g. the impact of Hurricane Matthew) or external climatic phenomena (e.g. droughts). The food crisis in Venezuela, unlike the other cases, is the result of actions taken by the Regime and not due to an external shock. The report recommends monitoring the country's "deteriorating economic situation."⁴⁵⁷

As described above, food scarcity has also been a specific trigger of conflict. According to the Venezuelan Observatory of Social Conflict (*Observatorio Venezolano de Conflictividad Social: OVCS*), the number of protests in the first 11 days of January 2018 surpassed the number held in the entire month of January 2017.⁴⁵⁸ The number of lootings that took place between January 1 and 11, 2018 is greater than what has been documented in the month of January in the each of the last three years (2015, 2016, and 2017).⁴⁵⁹

Both the institutional 'food apartheid' and the economic collapse directed and perpetrated by the Regime have grave consequences for the physical and mental health of the Venezuelan population.

E. The Politicization of Government Services - Food Distribution & the CLAPs

The CLAPs are local organizations that were created to manage the "house-by-house" distribution of products that constitute basic necessities.⁴⁶⁰ They were initiated by President Maduro on April 3, 2016, as part of the government initiative the Great Mission of Sovereign Distribution (GMAS) established under the pretense of improving distribution of food and basic products to the population. According to the Regime, the objective of the CLAPs is to fight the usury, contraband, and hoarding of the economic war.⁴⁶¹ According to ENCOVI, in Venezuela 52% of the population live in extreme poverty.⁴⁶² It is estimated that the

⁴⁵⁷ FSIN, "Global Report on Food Crises 2017", page 20, March 2017, http://documents.wfp.org/stellent/groups/public/documents/ena/wfp291271.pdf?_ga=2.128483087.2018826249.1524944451-1888081823.1524944451

⁴⁵⁸ From January 1 to 11, OVCS recorded 386 protests, 107 lootings or attempted lootings, and five deaths. See, OVCS, "Avance sobre conflictividad en Venezuela en los primeros días de 2018"

⁴⁵⁹ Ibid.

⁴⁶⁰ YouTube, "Vicepresidencia de Venezuela", Official YouTube Channel, July 19, 2016, <https://www.youtube.com/watch?v=sTrp2DSh3vg>

⁴⁶¹ Ibid.

⁴⁶² EFE, "Encovi: 82% de los hogares está en pobreza" February 17, 2017, http://www.el-nacional.com/noticias/crisis-humanitaria/encovi-los-hogares-esta-pobreza_81460

number of Venezuelans able to rely on the CLAPs as their main source to get food is 14% (4.4 million).⁴⁶³ In practice, the CLAPs allow for institutionalization of the doctrine of internal enemies in the provision of government resources and services, by using basic foods as a tool of social control. The government of Venezuela distributes food packages, consisting of boxes or bags of food and basic supplies – depending on availability, to those persons who demonstrate their loyalty to the Regime; and exclude those who do not.

The IACHR and the Office of the Special Rapporteur on Economic, Social, Cultural, and Environmental Rights (ESCER) have received complaints that imply that the CLAP food packages are not delivered to opponents of the Regime. In a joint statement released on February 1, 2018, “The IACHR and its ESCER Special Rapporteurship have also noted with great concern that there are complaints alleging that food supplies distributed through so-called Local Supply and Production Committees are not being given to people who oppose the government. It has also been alleged that there are no clear criteria to determine what products are delivered, how often, and how they are apportioned, and the nutritional needs of the populations being served are not properly considered”.⁴⁶⁴

The State maintains a monopoly, with total control of the food sector including the supply, sale, and distribution of food. This is not a traditional subsidy or supplement. This strategy has even been described as a ‘food apartheid’, since it is implemented based on discrimination, in this case political segregation.

At the September 15, 2017 hearing of the OAS General Secretariat, Major General Herbert García Plaza, who had been Venezuela’s Minister of Food in 2014, indicated that he ultimately resigned his post as minister over differences with President Nicolás Maduro concerning the politicization of criteria used to allocate food distribution in low-income parishes. In his statement, the Major General indicated that historically, the parishes selected for food distribution were strictly determined according to indicators on poverty and extreme poverty published by the National Statistics Institute. He then explained that during his tenure as minister, the criterion for providing food subsidies to persons living based on poverty levels was replaced by a political criterion. García Plaza explained that the parishes were prioritized politically based on two main indicators: the size of the electoral population and the level of support for the government. Inventories were reduced to those parishes that were no longer determined to be a priority under the new criteria.⁴⁶⁵ In addition to the statement by the Major General, an additional four changes in the government’s approach have been identified that illustrate the new politicized policy of food distribution.

⁴⁶³ ABC, “Venezuela con el hambre avanza el control social”, January 25, 2018, <http://www.abcdelasemana.com/2018/01/25/venezuela-con-el-hambre-avanza-el-control-social/>

⁴⁶⁴ IACHR and ESCER Special Rapporteurship, “IACHR and its Special Rapporteurship on Economic, Social, Cultural, Environmental Rights Urge the State of Venezuela to Protect and Respect the Rights to Food and Health”, Press Release, February 1, 2018, https://www.oas.org/en/iachr/media_center/PReleases/2018/016.asp

⁴⁶⁵ Statement by Gen. García Plaza at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 15, 2017, <https://www.youtube.com/watch?v=rY0QU-gUq-M>

In January 2017, President Nicolás Maduro introduced the *Carnet de la Patria*⁴⁶⁶, a type of national identity card that is required in order to get access to government services and products. According to the official website, it allows its holder to directly pay for services of the CLAP and public transportation. The Government uses a coded system to track the socio-economic status of Venezuelans, therefore tracking the delivery of social assistance and also allows card holders to purchase government services electronically, avoiding the use of hard currency in a country where devaluation happens by the hour. Applications for the card are verified through the self-described “political organization” *Movimiento Somos Venezuela*,⁴⁶⁷ led by former foreign minister and current President of the illegitimate National Constituent Assembly, Delcy Rodríguez.⁴⁶⁸ Those persons who apply for this card, whose issuance requires the approval of the governing party, will have the privilege of access to food packages and other benefits accessed with the card.

In order to obtain the services provided by the CLAPs, one must have the *Carnet de la Patria* card. Experts in food security have expressed concern over the fact that it is anguish and desperation that force people accept the *Carnet de la Patria* so they can access basic food and goods in exchange for their political loyalty to the Revolution.⁴⁶⁹

In the lead up to the July 30th vote for the National Constituent Assembly, President Maduro himself made an appeal to voters to go and vote with their national identity cards as well as with their *Carnet de la patria*, announcing that there would be a count to know how many people with a *Carnet de la Patria* had gone to the polls. “And you know, do not forget it tomorrow. Your national identity card and *Carnet de la Patria*, because tomorrow we are going to count how many people with the *Carnet de la Patria* went to the polls. Understand?”⁴⁷⁰ Evidence of the actual implementation of this plan is that the Office of the Attorney General received approximately 100 complaints from individuals, who were threatened and told to participate in the elections of the National Constituent Assembly.⁴⁷¹ Citizens allege having been threatened with being excluded from social programs for education, health, pensions, and housing, and that they would not receive their bag of food from the CLAP if they did not go to cast their vote.⁴⁷² Government officials have

⁴⁶⁶ www.patria.org.ve/login; and <https://www.carnetdelapatria.net/>

⁴⁶⁷ <https://www.carnetdelapatria.net/>

⁴⁶⁸ The mandate of the *Movimiento Somos Venezuela* is the “defense of the social policies created during the years of the Bolivarian Revolution”, www.minci.gob.ve/2018/02/somos-venezuela-activa-pagina-web-de-registro

⁴⁶⁹ Prieto, H. (2017), “*El Estado dejó de ser garante del derecho a la alimentación*”, Interview with Susana Raffalli, *Prodavinci*, November 11, 2017, <http://prodavinci.com/susana-raffalli-el-estado-dejo-de-ser-garante-del-derecho-a-la-alimentacion/>

⁴⁷⁰ *Noticiero Digital.com*, “*Maduro pide saber cuántas personas con carnet de la patria van a votar y dice: “¿entendido?”*”, July 29, 2017, <http://www.noticierodigital.com/2017/07/maduro-pide-saber-cuantas-personas-con-carnet-de-la-patria-van-a-votar-y-agrega-entendido/>

⁴⁷¹ *Infobae*, “*La Fiscalía venezolana recibió un centenar de denuncias de personas amenazadas: los obligan a participar en la Constituyente*”, July 26, 2017, <http://www.infobae.com/america/venezuela/2017/07/26/la-fiscalia-venezolana-recibio-un-centenar-de-denuncias-de-personas-amenazadas-los-obligan-a-participar-de-la-constituyente/>

⁴⁷² *El Cooperante*, “*Así intimidan y obligan a empleados públicos para que acudan a las elecciones de la ANC*”, July 29, 2017, <http://elcooperante.com/asi-intimidan-y-obligan-a-empleados-publicos-para-que-acudan-a-las-elecciones-de-la-anc/>

likewise reported intimidation through harassing phone calls, threats of dismissal, pressure, among other reprehensible actions.

In October 2017, during period of the regional elections, the representative of each family receiving a CLAP food subsidy was now required to include the number of their *Carnet de la Patria* ID card on the form documenting the delivery of the packages, allowing the government to also track the identity of the recipients.⁴⁷³ *Transparencia Venezuela* described the policy as one where “The *Carnet* has power, and food is not a right, but a benefit granted discretionally according to the guidelines that come from the President of the Republic or the respective minister to the coordinator or block coordinator in any given community.”⁴⁷⁴

Several statements given by Regime officials offer a second example of the new approach in which hunger is used as an instrument of control. “The CLAPs are a political cadre, in defense of the people, we don’t deny it,” said then-Executive Vice President Aristóbulo Istúriz.⁴⁷⁵ He continued: “The political role is for every house to know who defends the people, who attacks them ... If we do not socialize the consciousness they can divide us. This is why the work of the CLAPs, the first political role, is to accelerate the process of raising awareness among our people in this direct and daily contact”.

Erika Farías, an activist with the governing party and the current mayor of the municipality of Libertador, in Caracas, explained, in that her capacity as coordinator of the CLAPs, the political significance of the local committees: “...no one should have any doubts that the CLAPs are a new form of struggle, a new organization, that has emerged in times of war, and that constitutes an army of the revolutionary vanguard to defend the homeland and further the revolution”.⁴⁷⁶ Farías further added that “The CLAPs cannot include those who are corrupt and dishonest, there can’t be *bachaqueros* ... We have to go house by house to talk with our fellow compatriots, to convince those who are not convinced, to convince them beyond the bags [food package].”⁴⁷⁷ These comments illustrate that the CLAPs are political entity, and that their motivations and actions goes far beyond the distribution of food packages to people in need.

While making a presentation to the National Constituent Assembly in January 2018, Freddy Bernal, the Minister of Urban Agriculture and national coordinator for the CLAPs, described the political-electoral function of the food packages. “The CLAP has become a tool of consciousness, an organizational tool, and

⁴⁷³ *Transparencia Venezuela*, “Los CLAP: La dominación se entrega puerta a puerta”, <https://transparencia.org.ve/project/los-clap-la-dominacion-se-entrega-puerta-puerta/>

⁴⁷⁴ Ibid.

⁴⁷⁵ *El Universal*, “Istúriz: Los CLAP son cuadros políticos, no lo negamos”, June 8, 2016, http://www.eluniversal.com/noticias/politica/isturiz-los-clap-son-cuadros-politicos-negamos_314069

⁴⁷⁶ Multimedia VTV, June 8, 2016, <https://www.youtube.com/watch?v=QMhRHanwkg4>

⁴⁷⁷ 2001.com, “Erika Farías: Los Clap no son para los escualidos”, February 12, 2018, <http://www.2001.com.ve/en-la-agenda/133008/erika-farias-los-clap-no-son-para-los-escualidos.html>

we can responsibly say that the CLAP, together with the *Partido Socialista Unido de Venezuela*, contributed substantially to winning the Constituent Assembly, the elections for governorships, and the elections of mayors”.⁴⁷⁸ Bernal has also commented that “the CLAP has come not only to distribute food; it came to exercise political control, social control, [and] popular control in the territory.”⁴⁷⁹

A third element that illustrates the new politicized policy used to determine who would be provided or deprived of food in the new distribution system, is the partisan structure- with its overt bias towards the ruling party- of the CLAPs. According to an official YouTube video published by the Office of the Vice President of Venezuela, each committee of the CLAP is composed of four entities: the *National Union of Women (UnaMujer)*, the *Bolívar-Chávez Battle Unit (UBCh)*, the *Francisco de Miranda Front (FFM)*, and the Communal Councils.

UnaMujer falls under the *Ministry of People’s Power for Women and Gender Equality (MinMujer)*. In other words, it is an organization that follows the political direction set by the Regime. On the government’s official website it indicates “*UnaMujer* is an organizational strategy of Venezuelan women who have been seeking to build an alternative that will promote common ground and articulation of all the patriotic, revolutionary, and anti-imperialists.”⁴⁸⁰ Although *MinMujer’s* website indicates that *UnaMujer* is not formally part of the government structure, in practice, it is a government initiative with an unquestionably ideological foundation that serves as a yet another resource of the governing party by creating a political forum for organizing women. The Vice-Minister for the Defense of Women’s Rights, Yekuana Martínez, recently declared that with *UnaMujer* “they will continue deepening the major gains achieved by Venezuelan women in the Revolution,”⁴⁸¹ a narrative that is almost identical to the statements made by other supporters of the party in power, such as Erika Farías.⁴⁸²

The UBCh are formally grassroots structures of the PSUV.⁴⁸³ As subsidiaries of the governing party, their alignment to the Regime is clear.

The *Francisco de Miranda Front* is a political organization founded by Hugo Chávez and Fidel Castro in 2003 as an indoctrination tool for training social actors, mainly youths, to strengthen their loyalty and commitment to the revolution, through initiatives such as by providing support for government initiatives

478 *Panorama*, “Freddy Bernal: Ley de los Clap combatirá distorsiones económicas”, January 5, 2018, <http://www.panorama.com.ve/politicayeconomia/Freddy-Bernal-Los-Clap-surgieron-para-evitar-una-explosion-social-20180105-0065.html>

479 *Transparencia Venezuela*, “CLAP: Corrupción y mecanismo de control político y social”, <https://www.youtube.com/watch?v=QqxBeGL4xrg>

480 Ministry of People’s Power for Women and Gender Equality of the Bolivarian Republic of Venezuela, 2018, <http://www.minmujer.gob.ve/?q=prensa/uni%C3%B3n-nacional-de-mujeres-unamujer>

481 Ibid.

482 Multimedio VTV, “Erika Farías: Los CLAP son una forma de lucha en tiempos de guerra para defender la Patria”, June 8, 2016, <https://www.youtube.com/watch?v=QMhRHanwkg4>

483 *Partido Socialista Unido de Venezuela*, “Las UBCH”, November 10, 2013, www.psuve.org/temas/noticias/ubch/

and Missions. Given its origins and ideology, it is widely accepted as an organization that operates with a bias in favor of the pro-government forces.⁴⁸⁴

The Communal Councils are participatory organizations created through the 2009 Organic Law on Community Councils adopted by the National Assembly, when the PSUV held a legislative majority. This happened in the wake of the 2007 referendum rejecting proposed Constitutional reforms. The Community Council model is controversial for a number of reasons, reasons which also explain their bias towards the government. First, this type of organization is not included in the country's Constitution within the definition of the distribution of powers, but they are designed to be a part of the state apparatus, with a political mandate imposed by the PSUV. Second, the Councils create a political-territorial structure that runs parallel to the structure mandated by the Constitution, which results in a decentralization of the power municipalities to a purely political body. And third, the Councils are directly aligned with the ruling PSUV party and political wing of the central government that favors channels of clientelism and political control in the country to the detriment of the autonomy and independent exercise of democratic power by the local authorities.

The evident partisan affiliation of the entities managing the operations of the CLAPs – *UnaMujer*, UBCh, FFM and the Communal Councils – is further evidence that the selection of recipients and distribution of the food packages is guided by political considerations and is not needs based.

The fourth is best illustrated by the testimonies of citizens who have experienced the persecution from the partisan political actions of the CLAPs, including their use of aggravated threats and intimidation for politically partisan reasons, a criminal practice that this Report has extensively documented. This is demonstrated in the case of the complaint filed on June 12, 2017 by Rafael Uzcátegui, general coordinator of the human rights NGO *Programa Venezolano de Educación en Acción en Derechos Humanos* (Provea), and Lexys Rendón, director of the NGO *Laboratorio de Paz*, with the Office of the Attorney General in Venezuela. In their complaint Uzcátegui and Rendón accuse Zulay Hernández, the coordinator of the CLAP of Avenida María Teresa Toro, of the “unconstitutional performance of citizen security activities and the promotion of discrimination based on the public policy called ‘CLAP’”.

In addition, during the October 2017 regional elections video testimonies were recorded by persons who had received warnings that if they did not vote for the PSUV, they would not receive the CLAP food packages.⁴⁸⁵ These testimonials reinforce the statements made by Bernal that have been cited above, about the CLAPs's contribution of as a tool for winning elections.

⁴⁸⁴ Frente Francisco de Miranda, “Quiénes somos?”, <https://frentefranciscodemirandasocopo.blogspot.com/p/sobre.html>

⁴⁸⁵ *Transparencia Venezuela*, “CLAP: Corrupción y mecanismo de control político y social”, 2018, <https://www.youtube.com/watch?v=QqxBeGL4xrg>,

Transparencia Venezuela published the testimonies of voters that demonstrate the political criteria used in the daily discrimination of the CLAPs. According to the report, “That day, people vote. From there they go to the usual ‘red point’, today called the ‘tricolor point’. They hand over their *Carnet*, it is scanned and the image is sent in real time to a reception center. A form is signed that goes to the PSUV – according to what the signatory explained to us – and, once the process has been completed, they can leave, with their *Carnet*, once again. If their ID card has not been scanned or their signature is not on the form, there is a risk that you will be deprived of the benefits you are receiving through the official circuit for the distribution of products, goods, and services.”⁴⁸⁶

The humanitarian crisis in Venezuela that has been described is the result of intentional actions of the Regime. The government, through the statements made by the Vice President Tareck El Aissami, has even required the *Carnet de la Patria* to obtain access to vaccines.⁴⁸⁷ The IACHR mentioned in its report that they received complaints with reference to the use of CLAP to access health services.⁴⁸⁸ It is evident that the current serious situation is not the result of negligence, but of a strategy guided by ideological-partisan interests to seriously deteriorate the living conditions of Venezuelans, and is now being used to penalized those who do not support the Bolivarian revolution, in some cases going as far as to purge the opposition, helping to secure the Regime’s hold on power indefinitely.

The health crisis is the responsibility of the Regime, particularly since was an entirely completely preventable situation. Nonetheless, the drive to maintain totalitarian control over different spheres of the lives of Venezuelans provokes all sorts of scarcities, including of basic medicines and medical equipment and supplies. Thousands of persons, including minors, have died due to the policies of the Regime. A look at the situation of patients suffering from diseases that had already been eradicated, as well as kidney, cancer, and hematology patients, plus minors, is evidence of the intentional actions of the government to provoke grave suffering in the population.

The government has weaponized the distribution of the scarce supply of food and basic goods. Only those who support the Regime can access the resources through the partisan *Carnet de la Patria* ID card. The CLAPs are a perverse tool creating a food apartheid in an already desperate situation, which can be seen through the repeated statements made by officials of the Regime; the political structure of the CLAPs, with their directed prioritization of government supporters; the expanding requirements of the *Carnet de la Patria* in order to access subsidized foods and basic goods; all supported by the testimonies of citizens who have suffered as a consequence of these policies.

⁴⁸⁶ *Transparencia Venezuela*, “Los CLAP: La dominación se entrega puerta a puerta”, 2017, <https://transparencia.org.ve/project/los-clap-la-dominacion-se-entrega-puerta-puerta/>

⁴⁸⁷ *El Nacional*, “Exigirán carnet de la patria para acceder a vacunas”, September 7, 2017, http://www.el-nacional.com/noticias/sociedad/exigiran-carnet-patria-para-acceder-vacunas_202442

⁴⁸⁸ IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, page 240, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

On May 17, 2018, President Santos announced in a televised press conference that the Colombian government had seized a shipment of expired food in the port of Cartagena that was about to be exported to Venezuela. The President stated “In Venezuela, the Maduro regime has invented the “Local Production and Supply Committees [CLAPs]”. These are used by political organizations that support the regime to distribute food and necessities among the country’s poorest. They exploit Venezuela’s humanitarian crisis not only to exercise political and social control, but also for electoral purposes and to repress the opposition. Yesterday, May 16, in Cartagena, the Customs and Revenue Police (*Policía Fiscal y Aduanera*), the Domestic Taxes and Customs Department of Colombia (*Dirección de Impuestos y Aduanas Nacionales de Colombia*), and the National Institute for Medicine and Food Inspection (*Instituto Nacional de Vigilancia de Medicamento*) seized nearly 400 tons of food not fit for human consumption that was to be distributed in Venezuela by these political and social control committees. This is just the tip of the iceberg of an abhorrent business involving shell companies in Colombia, Mexico, and many other countries. This investigation, which has been under way for some time and made this seizure possible, has obtained evidence suggesting crimes of corruption, money laundering, and illicit enrichment. [...] Maduro’s denial of the crisis is such that he is saying that Venezuelans are not only abandoning, but also returning to, Venezuela. The truth is that Venezuela has reached a point where the so-called *colectivos* have been authorized to plunder family homes for food.”⁴⁸⁹

Through the CLAPs, the Regime has created a political body that uses the self-made humanitarian crisis against the people, a crisis which they continue to deny. Instead, the suffering of the people has become a tool of political and social control, enabling the Government’s persecution of their own citizens. Their supporters are rewarded, and those deemed the internal enemy, are not only deprived of their rights, they are deprived of basic food and necessities that Venezuelans are increasingly desperate to access.

F. Exiled by the Humanitarian Crisis

Millions of Venezuelans have also been forced to leave their homes and their country in recent years because of the humanitarian crisis caused by the government’s strategy, based on ideological-partisan interests, to capitalize on the seriously deteriorated living conditions of Venezuelans, using it to rid the country of opposition voices.⁴⁹⁰ By eliminating those who do not actively support them, the Regime strengthens its hold on power indefinitely, ensuring that the remaining population, which is totally dependent on government

⁴⁸⁹ Presidency of the Republic of Colombia, “Declaración del Presidente Juan Manuel Santos sobre decomiso de alimentos hacia Venezuela”, Bogotá, May 17, 2018, <http://es.presidencia.gov.co/discursos/180517-Declaracion-del-Presidente-Juan-Manuel-Santos-sobre-decomiso-de-alimentos-hacia-Venezuela>. The complete video of the press conference is available on YouTube. See, “Santos anuncia decomiso de 400 toneladas de comida “Clap” no apta para consumo y red de corrupción,” May 17, 2018, <https://www.youtube.com/watch?v=ps3gz8sNv7w&feature=youtu.be>

⁴⁹⁰ One source estimates that the Venezuelan diaspora may reach as high as 4 million; see *Actualy.es*, “Díaspóra venezolana alcanza a 4 millones, según Consultores 21”, January 19, 2018, <http://actualy.es/diaspora-venezolana-alcanza-a-4-millones-segun-consultores-21/>

distribution of food and medication and government provision of other social services, has no choice but to support them.

In 2015, the International Organization for Migration reported that 697,562 Venezuelans were residing abroad, the majority of which lived in the United States, Spain, Italy, and Portugal. By 2017, that number had jumped by 133%, to 1,622,109. The vast majority of Venezuelans, who have left, remain in the region representing a jump from 88,975 to 885,891 (895% in three years).⁴⁹¹ UNHCR estimates indicate that the number of Venezuelans who have applied for Refugee status has increased close to 9 times, from 10,168 in 2015 to 94,284 in 2017, illustrating a similar jump in numbers.⁴⁹²

As of November 2017, the number of Venezuelans displaced by the humanitarian crisis that have traveled to Colombia had more than doubled from the number of the previous year. According to UNHCR, in a matter of four months (June to November), the number of people entering Colombia from Venezuela soared from 300,000 to 660,000.⁴⁹³ More than a million Venezuelans have filed for the Border Mobility Card (TMF), which allows them to enter Colombian territory without a passport, with 52% of the cardholders entering Colombian territory in order to purchase medicine or food.

In Brazil, there are also alarming numbers of displaced Venezuelans living in border towns and cities including Boa Vista, and Pacaraima, both in the State of Roraima. In 2017 alone, 15,645 Venezuelans applied for asylum in the country.⁴⁹⁴ This figure does not count the flow of undocumented Venezuelans moving into Brazil, who cross anywhere along the 2,200 kilometers of land border shared by the two countries. Thousands of Venezuelans have gone to Brazil seeking protection as refugees, to work, as well as for urgent medical care, greatly overburdening local health services.

This situation repeats itself in other parts of the hemisphere. In Peru, there are more than 150,000 Venezuelans.⁴⁹⁵ During 2017, an average of 74 Venezuelans per day settled in Argentina, resulting in 27,075 in total, according to the Argentine national migration bureau.⁴⁹⁶ This extraordinary flow of migration nearly doubled, in barely one year, with the Venezuelan community in that country skyrocketing from 13,000 registered nationals in 2015 to 24,400 by the close of 2016, according to a report of the National Directorate of Migration. The same situation can be seen in Chile and Ecuador. Countries such as Panama

491 UNHCR, "Situation Update: Venezuela Situation", March 2018.

492 International Organization for Migration, "National Migration Trends in South America : Bolivarian Republic of Venezuela", February 2018, http://robuenosaires.iom.int/sites/default/files/Informes/National_Migration_Trends_Venezuela_in_the_Americas.pdf

493 UNHCR, "Situation Update: Venezuela Situation", November 2017.

494 Ibid.

495 *El Nacional*, "En Perú hay más de 115,000 venezolanos, 31,000 con permiso temporal", March 9, 2018, http://www.el-nacional.com/noticias/mundo/peru-hay-mas-111500-venezolanos-31000-con-permiso-temporal_226145

496 *Clarín*, "La llegada de venezolanos creció 140% en 2017: entró 1 cada 20 minutos", January 14, 2018, http://www.clarin.com/sociedad/llegada-venezolanos-crecio-140-2017-entro-20-minutos_0_rknt-QyNz.html

and Costa Rica have also received a significant influx of Venezuelans, as have some of the islands of the English-speaking Caribbean.

It is important to note that these figures are based on the best, publicly available data but likely underestimate the gravity of the situation in region where informal migration flows are already a prevalent challenge. Venezuela had historically been a recipient country in the flow of migrants. Now their role has reversed. The situation of the massive influx of Venezuelans had caused the authorities of the countries of the region to face up to the considerable difficulties of providing a response that offers protection and care for the refugees seeking safe harbor from the dictatorship, on the one hand, and enforcing their own migration laws, on the other. As they are receiving increasingly high volumes of Venezuelans in their territory, national governments, but more urgently, local governments are compelled to provide everything from health care services to people facing serious health conditions resulting from the intentional and longstanding lack of adequate medical care, as well as education and employment services and legal and migratory regularization assistance, among others, exacerbating the demand on already overburdened resources of these local governments.

The Venezuelan refugee crisis is just beginning, and it will place a growing and heavy burden on systems of care and assistance provided to these populations in the destination countries for years to come.

X. THE ABSENCE OF

JUSTICE IN VENEZUELA

CONSTITUCIÓN
de la República
BOLIVARIANA
de Venezuela
1999



X. THE ABSENCE OF JUSTICE IN VENEZUELA

Article 53 of the Rome Statute outlines the requirements that must be met in order to decide whether or not an investigation should be opened into a particular situation. This decision requires an examination of a) jurisdiction, b) admissibility (which includes determining whether or not the requirements of complementarity and gravity have been met) and c) the interests of justice of the International Criminal Court.

As provided for in Article 53.1.b and Article 17.1, complementarity is assessed on a case-by-case basis to determine whether the cases identified by the Office of the Prosecutor in the respective State have been, or are being, investigated and genuinely prosecuted.⁴⁹⁷

The Office of the Prosecutor of the International Criminal Court of Justice wrote in its “Policy Paper on Preliminary Examinations” that “Independence in the proceedings at hand may be assessed in light of such indicators as, *inter alia*, the alleged involvement of the State apparatus, including those departments responsible for law and order, in the commission of the alleged crimes; the constitutional role and powers vested in the different institutions of the criminal justice system; the extent to which appointment and dismissal of investigators, prosecutors and judges affect due process in the case; the application of a regime of immunity and jurisdictional privileges for alleged perpetrators belonging to governmental institutions; political interference in the investigation, prosecution or trial; recourse to extra-judicial bodies; and corruption of investigators, prosecutors and judges.”⁴⁹⁸

In that same paper, it sets forth that “impartiality in the proceedings at hand may be assessed in light of such indicators as, *inter alia*, connections between the suspected perpetrators and competent authorities responsible for investigation, prosecution or adjudication of the crimes as well as public statements, awards, sanctions, promotions or demotions, deployments, dismissals or reprisals in relation to the investigative, prosecutorial or judicial personnel concerned. Respect for principles of due process may be assessed in light of the provision of Article 67 of the Statute as well as of the principles of due process recognized by international law as elaborated in the relevant international instruments and customary international law.”⁴⁹⁹

⁴⁹⁷ Pursuant to the wording of Article 18(1) and Article 19(2)(b), the principle of complementarity covers any State, which has jurisdiction over a case, regardless of whether or not that State is a party to the Rome Statute.

⁴⁹⁸ Office of the Prosecutor of the International Criminal Court, “Policy Paper on Preliminary Examinations”, November 2013, paragraphs 52-53, https://www.icc-cpi.int/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf

⁴⁹⁹ *Ibid*, paragraphs 54-55.

A. Lack of Independence

The Inter-American Commission on Human Rights wrote in its recent report *Democratic Institutions, the Rule of Law and Human Rights in Venezuela*⁵⁰⁰ that “the Judiciary in Venezuela has a serious problem of lack of independence. The IACHR has repeatedly pointed this out through its various mechanisms, and as a result over the past 10 years the IACHR has included Venezuela in Chapter IV of its annual reports.”⁵⁰¹

The IACHR believes that the main factors which led to the situation are faults with the process for naming and removing TSJ magistrates; the highly provisional nature of the tenure of judges in the criminal justice system; and the serious threats and intimidation suffered by members (officers, staff) of the criminal justice system.⁵⁰²

The judiciary in Venezuela has also been a subject of concern for the United Nations mechanisms, as an example, 21 recommendations issued in December 2016 as part of the second cycle of the universal periodic review for Venezuela, address issues relating access to justice and are mostly related to the lack of independence of the judiciary.⁵⁰³ Similarly, the 2016 Rule of Law Index, prepared by World Justice Project, ranks Venezuela last out of 113 countries, which considers that the judiciary must be free from the undue influence from the government, as an essential element of the Rule of Law.⁵⁰⁴

The IACHR considers that among the principal factors undermining the independence of the judiciary are the politicization of the judicial appointments and removals process of the TSJ; the highly insecure tenure of judges in the judicial system; and very serious and real practice of harassment and intimidation against members of the judiciary.⁵⁰⁵

500 IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela”, December 31, 2017, paragraph 76, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

501 IACHR, 2016 Annual Report, Chapter IV.B, Venezuela, paragraphs 57-69, <http://www.oas.org/en/iachr/docs/annual/2016/docs/informeannual2016cap4b.venezuela-en.pdf>; IACHR, 2012 Annual Report, Chapter IV, Venezuela, paragraphs 464-509, www.oas.org/en/iachr/docs/annual/2012/chap.4.venezuela.doc; IACHR, 2008 Annual Report, Chapter IV, Venezuela, paragraphs 39-403, <http://www.cidh.org/annualrep/2008eng/Chap4.f.eng.htm>; and, IACHR, 2004 Annual Report, Chapter V, Venezuela, paragraphs 167-192, <https://www.cidh.oas.org/annualrep/2004eng/toc.htm>

502 IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 78, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

503 UN, “Report of the Working Group on the Universal Periodic Review, Bolivarian Republic of Venezuela”, A/HRC/24/6, December 27, 2016, Recommendations 154-174, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/441/42/PDF/G1644142.pdf?OpenElement>. See also, UN, “Report of the Working Group on Universal Periodic Review, Bolivarian Republic of Venezuela, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review”, A/HRC/34/6/Add.1, March 13, 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/055/93/PDF/G1705593.pdf?OpenElement>

504 Venezuela received a score of 0.05 out of 1; see, World Justice Project, Rule of Law Index 2016, page 156, https://worldjusticeproject.org/sites/default/files/documents/RoLI_Final-Digital_0.pdf

505 IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela”, December 31, 2017; paragraph 78, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

B. The Appointment and Removal of Supreme Court Magistrates

The lack of independence of the magistrates of the Supreme Court of Justice, the highest judicial body in Venezuela, is the result of an improper selection processes and deprives judges of the guarantees of tenure in office.⁵⁰⁶ The IACHR notes that the procedure for the appointment of TSJ judges is outlined in the 1999 Constitution,⁵⁰⁷ which establishes the Court and the Organic Law of the TSJ.⁵⁰⁸ The Constitution does not establish the number of members who sit on the Court, but it does dictate that the appointment is for a 12-year term. The Constitution establishes a selection procedure that entails the pre-selection of candidates by the Judicial Nominations Committee, which requires the participation of civil society. This is followed by a second review of the selection, carried out by the *Comité de Evaluación de Postulaciones del Poder Ciudadano*, a subcommittee of the tripartite Citizen's Power Committee which includes the Attorney General, the Ombudsman, and the Comptroller General. The final decision is made by the National Assembly, which must approve the members with an absolute majority of two thirds of all votes. The Organic Law does allow that in cases where no consensus is reached after three plenary sessions, the appointments can be made by simple majority.⁵⁰⁹

The independence of the members of the TSJ is also undermined by the lack of tenure in their positions; the reality is that they can be removed by a decision of the Executive. This situation is worrying because the Constitution establishes that a Magistrate of the TSJ may only be removed on the grounds of having committed serious offenses by a vote of two thirds of the members of the National Assembly.⁵¹⁰ According to information received by the Inter-American Commission and reflected in its report, of the 84 TSJ justices appointed since the creation of the court, only seven have served the full 12-year term, as prescribed under the Constitution.⁵¹¹ Nearly 60% of the justices, who did not serve their full term, left the position under the pretense of early retirement.⁵¹² The IACHR has established, based on the information available, that these retirements have not been voluntary in every instance⁵¹³ and points to the 13 justices who were “retired” in 2015 for the Assembly to appoint nine new members that same year. On February 17, 2016, two of the

⁵⁰⁶ Ibid, paragraph 79.

⁵⁰⁷ Article 262, 263, and 264, Constitution of the Bolivarian Republic of Venezuela, https://www.oas.org/juridico/mla/sp/ven/sp_ven-int-const.html

⁵⁰⁸ The Organic Law of the TSJ lays out the selection procedure in different articles, particularly: i) the period of appointment and selection by the National Assembly; Article 38; ii) conduct of the Nominations Committee (*Comité de Postulación*), Articles 64-73; and, iii) citizen actions (*Poder Ciudadano*) Article 74.

⁵⁰⁹ IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela”, December 31, 2017, paragraph 79, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

⁵¹⁰ Art. 265, Constitution of the Bolivarian Republic of Venezuela, https://www.oas.org/juridico/mla/sp/ven/sp_ven-int-const.html; The Organic Law of the TSJ governs the removal of its members in Articles 62 and 63. Article 44 provides that justices may retire, pursuant to their status.

⁵¹¹ Access to Justice, “*El TSJ: La joya que pocos han podido retener*”, March 30, 2017, page 1, cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela”, December 31, 2017, paragraph 83, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

⁵¹² Ibid.

⁵¹³ Ibid.

retired judges reported that they were forced into early retirement by a special commission created by the Assembly to investigate the express selection process of 2015.⁵¹⁴

C. Temporary Status of Judges

The Committee against Torture⁵¹⁵, the United Nations High Commissioner for Human Rights, the Inter-American Commission on Human Rights⁵¹⁶ and the Inter-American Court of Human Rights agree in expressing their concern for the lack of independence of judges, noting that most judges do not have the stability that tenure of their position should provide, and that they can be removed by the Executive, at its discretion. The High Commissioner, went further claiming: “The judiciary, and in particular the TSJ, is viewed as supportive of the Executive and appears to allow this branch to govern without adequate oversight, which undermines the separation of powers necessary for a functioning democracy.”⁵¹⁷

The problem of the provisional status of judges undermining their independence has been a longstanding issue for Venezuela, even prior to the current administration. The IACHR explained in its 2009 report “Democracy and Human Rights in Venezuela” that even though it has been a problem for many years, it “has increased and worsened since the judicial restructuring process began with the enactment of the 1999 Constitution.”⁵¹⁸ For its part, the IACHR has been following up on the information provided to it by different sources since 2003 and in the 2016 Annual Report, it concluded that “continuing with the monitoring the Commission performs on access to justice and the fragile status of judicial independence, it has observed in the past that a large number of judges in Venezuela have provisional appointments and can be removed without a disciplinary proceeding, a situation that persisted in 2016.”⁵¹⁹

514 Ibid.

515 UN, Committee Against Torture, “Concluding Observations on the Combined Third and Fourth Periodic reports of the Bolivarian Republic of Venezuela,” CAT/C/VEN/CO/3-4, December 12, 2014, paragraph 16, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/241/72/PDF/G1424172.pdf?OpenElement>

516 IACHR, “2016 Annual Report. Chapter IV on Venezuela”, paragraph 57, <http://www.oas.org/en/iachr/docs/annual/2016/docs/informeannual2016cap4b.venezuela-en.pdf>

517 In 2014, the Committee Against Torture expressed its concern over “the lack of independence of the Judiciary from the Executive”, UN, Committee against Torture, “Concluding Observations on the Combined 3rd and 4th Periodic Reports of the Bolivarian Republic of Venezuela”, CAT/C/VEN/CO/3-4, December 12, 2014, paragraph 16. And, in 2015, the Human Rights Committee expressed its concern “at the situation of the judiciary of the State party, in particular with regard to its autonomy, independence and impartiality”, UN, Human Rights Committee, “Concluding Observations on the fourth periodic report of the Bolivarian Republic of Venezuela”, CCPR/C/VEN/CO/4, August 14, 2015, paragraph 15, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/VEN/CO/4&Lang=En. OHCHR, “Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from April 1 to July 31, 2017,” Geneva, August 2017, page 4, http://www.ohchr.org/Documents/Countries/VE/HCRReportVenezuela_1April-31July2017_EN.pdf

518 IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela”, December 31, 2017, paragraph 253, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

519 IACHR, “2016 Annual Report, Chapter IV regarding Venezuela”, paragraph 57, <http://www.oas.org/en/iachr/docs/annual/2016/docs/informeannual2016cap4b.venezuela-en.pdf>

The Inter-American Court of Human Rights has concluded that the possibility of “discretionary” removal hanging over the heads of judges undermines judicial independence inasmuch as judges feel coerced into following instructions or feel forced to abstain from contesting both the nominating and the punishing entity.⁵²⁰ And the IACHR likewise has concluded that “indefinite temporary tenure and the nonexistence of stability guarantees entail a risk that judges may take decisions to please the authority responsible for their appointment or removal, a state of affairs that seriously impairs their independence.”⁵²¹

D. Acts of Harassment and Intimidation

The ICAHR has observed that for several years there have been multiple and consistent reports of acts of harassment of judges in order to intimidate them and improperly pressure them in their rulings, undermining the exercise of their judicial independence.⁵²²

During her testimony at the hearings conducted by the OAS General Secretariat of October 16, 2017, former Judge Ralenis Tovar pointed to the lack of independence and impartiality in the context of assessing that crimes against humanity have been committed in Venezuela. She recounted that prior to signing the arrest warrant for Mr. Leopoldo López, she received a telephone call from the President of the Supreme Court of Justice, Gladys Gutiérrez, when she was on her way home, asking her to return to her chambers because she needed to be there to issue arrest warrants.⁵²³ She was later threatened by a SEBIN agent, who sarcastically asked her whether she wanted to be the next Judge Afiuni.⁵²⁴

The former judge explained that many irregular situations arose throughout the case of Leopoldo López. For example, she was asked for the court case file, every decision that had to be made had to be pre-approved by the office of the chief of the Judicial Circuit and by the Supreme Court so they could rig

⁵²⁰ See Inter-American Court of Human Rights, Case of Reverón Trujillo v. Venezuela, “Judgment of June 30, 2009” (Preliminary Objection, Merits, Reparations and Costs), paragraph 81, http://www.corteidh.or.cr/docs/casos/articulos/seriec_197_ing.pdf

⁵²¹ IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela”, December 31, 2017, paragraph 88, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

⁵²² *Ibid*, paragraph 90.

⁵²³ Testimony of Ralenis Tovar at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 16, 2017, <https://www.youtube.com/watch?v=ca5zYBQYcVE>

⁵²⁴ *El Universal*, “Afiuni rompió el silencio y habló en el juicio”, June 30, 2015, <http://www.lapatilla.com/site/2015/07/25/que-fue-de-la-juez-afiuni/>; and, ABC.es, “¿Qué fue de la juez Afiuni?”, July 24, 2015, <http://www.abc.es/internacional/20150724/abci-jueza-afiuni-venezuela-201507232152.html>; and, La Patilla, “¿Qué fue de la juez Afiuni?”, July 25, 2015, <http://www.lapatilla.com/site/2015/07/25/que-fue-de-la-juez-afiuni/>

the hearings, and it was all returned to her reading differently than how she had originally written it. In response to this statement, she was asked whether the Supreme Court of Justice had a function, to which she replied it did not.⁵²⁵

She testified that the Supreme Court also interfered in other rulings she was supposed to issue. She recalled that one of Leopoldo Lopez's hearings was reviewed three times. She was supposed to submit it by mail, and it was returned with changes and until it was given the final okay, it could not be printed. She also claimed that she was forced to issue records that were improper. She described one situation where the defense tried to introduce experts, and she was told not to allow them to testify, in violation of the law. Lastly, she mentioned that it is a known fact that certain judges are pro-regime and it is to their courtrooms that cases are sent because the government knows the rulings will be in its favor.⁵²⁶ Further details from the testimony of Judge Ralenis Tovar can be found in Chapters II and VIII of this Report.

Separately, former prosecuting attorney Franklin Nieves recounted his version of the same event and the pressure to which he was subjected to call for the arrest of Mr. Leopoldo López. He said that when he arrived at the SEBIN, an agent approached to tell him that Manuel Bernal, Director of the SEBIN, told him to say that "they needed the arrest warrants at the instruction of Nicolás Maduro." He said that when he was still in the chamber of former judge Tovar, the telephone rang and it was the chief of the Judicial Circuit of the Metropolitan Area of Caracas, Zinnia Briseño, who told him that "he had already received the warrants and that he should approve them without wasting time."⁵²⁷

He explained that he was pressured to make many decisions against his own personal convictions because Mejía threatened to bring disciplinary or criminal proceedings against him, which was a common practice and had happened to other prosecutors. On March 19, 2014, Mejía, once again called him to his office and when he arrived he noted that there were two people there. He was informed that they would be the experts who would conduct the expert analysis of Lopez's speech and his 700 Tweets. From that point on, Mejía took control of that analysis and would add things on his own volition to implicate Lopez in the crimes for which he was being investigated.⁵²⁸

⁵²⁵ Testimony of Ralenis Tovar at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 16, 2017, <https://www.youtube.com/watch?v=ca5zYBQYcVE>

⁵²⁶ Ibid.

⁵²⁷ Testimony of Franklin Nieves at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 16, 2017, <https://www.youtube.com/watch?v=ca5zYBQYcVE>

⁵²⁸ Ibid.

E. Decisions of the Supreme Court of Justice Exposing Total Lack of Separation and Independence of Powers

The collusion between the Executive, Electoral and Judicial branches of government, and the systematic invalidation and disregard of the authorities of the democratically elected National Assembly by the Supreme Court of Justice have contributed to a scenario where the rule of law no longer exists in Venezuela. Instead of the rule of law, guided by the principles of accountability, impartiality, justice, equal access and equality under the law, there is a State, whose actions are guided by the political interests of those in power. The result is a regime that does not effectively guarantee the political and civil rights of citizens.

From June 2016 to February 2017, at least 32 cases or incidents were reported that stand as evidence of a systematic interpretation of the law, in favor of the interests of the government and running counter to the legislature, the opposition and/or citizens in general.

Failure to Seat the Legislators from Amazonas in the National Assembly

As was explained by the Secretary General in his Second Report on the Situation in Venezuela, on December 29, 2015, the Electoral Chamber of the Supreme Court of Justice of Venezuela received a petition regarding to the voting process in the parliamentary elections of December 6, 2015, in the electoral circuit of the State of Amazonas.⁵²⁹

Three opposition members from the MUD, Julio Ygarza, Nirma Guarulla and Romel Guzamana, were elected to the National Assembly to represent the state of Amazonas, on December 6, 2015 as part of a wave of support for the Venezuelan opposition. The PSUV challenged the election results alleging irregularities in the process, and the Supreme Court of Justice issued an injunction on December 30, 2015, suspending the election results of the three deputies to the National Assembly, while an investigation was supposedly conducted.⁵³⁰

This maneuver by the PSUV and the Supreme Court was a government effort to deny the opposition a supermajority in the National Assembly, which it would have had with the members of the State of Amazonas taking their seats in the legislature. During a session of the National Assembly that was held on January 13, 2016, the legislative body agreed to the removal of the three opposition legislators elected for

⁵²⁹ OAS General Secretariat, "Second Report of the Secretary General on the Situation in Venezuela," March 14, 2017, pages 19-20, <http://www.oas.org/documents/spa/press/Informe-VZ-Spanish-signed-final.pdf>

⁵³⁰ A legislator from the ruling party for the state of Amazonas was also suspended.

the state of Amazonas in response to the Supreme Court decision. Notwithstanding, on July 28, 2016, after many months of inaction by the authorities, and the TSJ, as they refused to clarify the circumstances of the election of the three legislators, the MUD swore the three legislators in question into office.

The decision of the National Assembly to swear in the representatives of the state of Amazonas triggered a quick reaction from the Supreme Court, which ruled on August 1, 2016, that this action constituted “a flagrant violation of the public constitutional order.”⁵³¹ In addition, the TSJ found that the National Assembly was in contempt of the Supreme Court and reaffirmed that all activity by the legislative body would be invalidated, as long as the three members from Amazonas remained seated. This ruling would become the first of many decisions by the TSJ that would block future decisions and usurp the authorities of the National Assembly.

Declarations of States of Exception and Economic Emergency

As was described in the First Report of the Secretary General on the Situation in Venezuela, President Nicolás Maduro has repeatedly used declarations of states of emergency in the country. In August 2015, he declared a State of Emergency in 23 municipalities on the border with Colombia, suspending the constitutional requirement for authorities to obtain a warrant from the courts to enter the private residences of citizens or to violate individuals’ private communications, among other rights.⁵³²

These states of emergency have been continually extended. Another measure that is included in these states of emergency is the suspension of the right to free movement throughout the country, and also extends to travel across international borders.

One of the most controversial incidents with regard to these declarations took place in late January 2016, when President Nicolás Maduro introduced an Economic Emergency decree in the National Assembly. The majority block of MUD legislators rejected it, and the Constitutional Chamber of the Supreme Court of Justice, overruled the decision, ruling in favor of the Executive branch. Under Decision 4/2016 the Constitution Chamber declared the Decree of Economic Emergency constitutional and ordered its enforcement.

Under Decision 7/2016, dated February 11, 2016, the Constitutional Chamber enacted the Decree, sending a clear signal that even though the opposition in Venezuela held a wide majority in the National Assembly, the laws it approved would still face obstacles, namely, on the grounds that they were “unconstitutional.”

⁵³¹ Venezuela Analysis, “Venezuelan Supreme Court Blocks Swearing in of Amazonas Legislators”, August 3, 2016, <https://venezuelanalysis.com/news/1211648>

⁵³² OAS General Secretariat, “First Report of the Secretary General on the Situation in Venezuela,” May 30, 2016, pages 54-58, <http://www.oas.org/documents/spa/press/OSG-243.es.pdf>

After the initial State of Emergency had lapsed, Maduro and his cabinet decided to extend the provision. The extension was, also rejected by the legislative branch and, once again, approved by the Constitutional Chamber of the TSJ (Decision 184/2016 of March 17, 2016). On May 13, 2016, President Nicolás Maduro approved Decree 2.323, again declaring a State of Exception and Economic Emergency throughout the entire country.

Judgments 155 and 156

On March 29, 2017, the TSJ ruled on a motion to void the National Assembly's March 21, 2017 legislation entitled 'Decision on the Reactivation of the Process of Application of the Inter-American Charter of the OAS, as a mechanism of peaceful dispute resolution to restore constitutional order in Venezuela.' The TSJ invoked a new concept they called "*control innominado de la constitucionalidad*" ['unnamed control over constitutionality'], and ruled the National Assembly unconstitutional.

In judgment No. 155, the TSJ ordered the President to take the international measures he determined were necessary to protect the constitutional order. They also authorized any action - civil, economic, military, criminal, administrative, political, legal and social – that the President determined were necessary to ensure stable governance in Venezuela. In the context of the State of Exception, substantive and procedural legislation including the Organic Law against Organized Crime and Financing of Terrorism, the Law against Corruption, the Criminal Code, the Organic Criminal Procedural Code and the Code of Military Justice, were to be reviewed on an exceptional basis. The latter, pertaining to the Military Code, called for the use of military courts to prosecute political dissidents.⁵³³

Judgment No. 156 eliminated the requirement of obtaining authorization from the National Assembly to form joint ventures in the field of hydrocarbons, as was required by existing law, ruling that: "[...] as long as the situation of contempt of court and invalidation of activities of the National Assembly is in effect, this Constitutional Chamber will ensure that the parliamentary remit shall be directly exercised by this Chamber or by the organ it so instructs, in order to protect the rule of law."⁵³⁴

Thus, the TSJ sought to take over the constitutional powers of the National Assembly, triggering an institutional self-coup d'état or power grab. The International Commission of Jurists described these

⁵³³ International Commission of Jurists, "The Supreme Court of Justice of Venezuela: an Instrument of the Executive Branch", September 12, 2017, page 37, <https://www.icj.org/wp-content/uploads/2017/09/Venezuela-Suprem-Court-Publications-Reports-Thematic-reports-2017-ENG.pdf>

⁵³⁴ Ibid, page 38.

rulings as “the TSJ’s final blows.”⁵³⁵ These decisions, which ultimately sought to have the TSJ, assume the constitutionally mandated authorities of the Legislature were the principal triggers for the large-scale protests that broke out nationwide on April 1, 2017.

Other Cases

Presented below are a sampling of other cases excerpted from the OAS Secretary General’s Second Report on the Situation in Venezuela⁵³⁶ regarding the usurping of the Legislative branch by the judiciary:

1. Decision 460/2016 of June 9, 2016: The Constitutional Chamber of the TSJ ruled that the National Assembly approved Special Law for Addressing the National Health Crisis was unconstitutional on the grounds that the law usurped the functions of the President of the Republic.⁵³⁷ The legislation called for the opening of a channel for international humanitarian assistance to address the health crisis.
2. Decision 478/2016 of June 14, 2016: The Constitutional Chamber invalidated the legislative acts approved between May 31, 2016, and June 10, 2016, using the justification that the Assembly had usurped functions belonging to the Executive.⁵³⁸

This decision was echoed in Decision 797/2016 of August 19, 2016 suspending the acts of seven parliamentary sessions held in April and May of 2016.⁵³⁹

3. Decision 611/2016 of July 15, 2016: The Constitutional Chamber declared that parliamentary immunity only applied to principal legislators, and that alternates were no longer protected and

⁵³⁵ Ibid.

⁵³⁶ General Secretariat of the OAS, “Second Report of the Secretary General of the OAS on the Situation in Venezuela”, pages 44-51, <http://www.oas.org/documents/eng/press/Informe-VZ-II-English-Final-Signed.pdf>

⁵³⁷ TSJ, <http://historico.tsj.gob.ve/decisiones/scon/junio/188165-460-9616-2016-16-0500.HTML>

⁵³⁸ *Transparencia Venezuela, Observatorio Parlamentario, “La Asamblea Nacional en Cifras”,* November 2016, <https://transparencia.org.ve/wp-content/uploads/2016/11/9-meses-Observador-parlamentario.pdf>

⁵³⁹ *El Nacional, “El TSJ ha emitido 27 sentencias contra la Asamblea Nacional”,* September 8 2016, http://www.el-nacional.com/noticias/politica/tsj-emitido-sentencias-contra-asamblea-nacional_10854; and, <http://www.tsj.gob.ve/-/sala-constitucional-ordena-suspender-cautelamente-efectos-de-sesiones-de-la-asamblea-nacional-realizadas-en-abril-y-mayo>

ruled against the release of three alternate legislators, Renzo Prieto, Rosmit Mantilla and Gilberto Sojo, who were detained as political prisoners.⁵⁴⁰

4. Decision 612/2016 of July 15, 2016: The effects of decision 612 posed a similar attack on the democratically elected Prieto, Mantilla and Sojo, as decision 611. The Constitutional Chamber determined that the political prisoners were not eligible to take their seats.⁵⁴¹
5. Decision 614/2016 of July 19, 2016: The Constitutional Chamber declared null and void the National Assembly's appointment of a Special Commission to Reclaim the Institution of the Supreme Court of Justice (*Comisión Especial para el Rescate de la Institucionalidad del TSJ*), in addition to all acts stemming from its July 14, 2016 session.⁵⁴²
6. Decision 615/2016 of July 19, 2016: This decision declared Decree 2371 constitutional, which permitted a 60-day extension of President Nicolás Maduro's second State of Exception and Economic Emergency in 2016. The decree was adopted without the approval of the National Assembly.⁵⁴³

This is one of four decisions including Decision 810/2016 of September 21, 2016⁵⁴⁴, Decision 952/2016 of November 21, 2016⁵⁴⁵, and Decision 4/2017 of January 19, 2017⁵⁴⁶ extending President Maduro's nation-wide State of Exception and Economic Emergency decrees four times in one year. All were adopted without the approval of the National Assembly.

7. Decision 618/2016 of July 20, 2016: The Constitutional Chamber declared that the Central Reserve Bank could borrow from the Latin American Reserve Fund (FLAR) autonomously, nullifying the

⁵⁴⁰ According to Amnesty International, political prisoners elected as legislators have been released in the past. Under decisions by the previous Supreme Court (*Corte Suprema de Justicia*), David Nieves and Fortunaro Herrera were released in 1978, <https://www.derechos.org/ve/actualidad/amnistia-internacional-doce-preguntas-y-respuestas-sobre-la-inmunidad>

⁵⁴¹ *Transparencia Venezuela, Observatorio Parlamentario, "La Asamblea Nacional en Cifras"*, November 2016, <https://transparencia.org.ve/wp-content/uploads/2016/11/9-meses-Observador-parlamentario.pdf>

⁵⁴² TSJ, <http://historico.tsj.gob.ve/decisiones/scon/julio/189122-614-19716-2016-16-0153.HTML>

⁵⁴³ TSJ, <http://historico.tsj.gob.ve/sr/print.asp?url=http://historico.tsj.gob.ve/decisiones/scon/julio/189123-615-19716-2016-16-0470.HTML>

⁵⁴⁴ TSJ, <http://historico.tsj.gob.ve/decisiones/scon/septiembre/190408-810-21916-2016-16-0897.HTML>; also see

⁵⁴⁵ TSJ, <http://historico.tsj.gob.ve/sr/print.asp?url=http://historico.tsj.gob.ve/decisiones/scon/noviembre/192945-952-211116-2016-16-0897.HTML>

⁵⁴⁶ TSJ, <http://historico.tsj.gob.ve/decisiones/scon/enero/195170-04-19117-2017-2017-0069.HTML>

Assembly's constitutionally mandated function of providing financial oversight and approval of government debt.⁵⁴⁷

8. Decision 858/2016 of August 9, 2016: The Supreme Court dismissed a suit by the Standing Committee on Finance and Economic Development addressing the Government's failure to publish the 2015 National Consumer Price Index.⁵⁴⁸
9. Decision 814/2016 of October 11, 2016: The Constitutional Chamber of the TSJ declared that the Executive was exempt from submitting the budget to the National Assembly and instead, it would be submitted directly to the Constitutional Chamber, as a decree.⁵⁴⁹
10. Decision 948/2016 of November 14, 2016: The Constitutional Chamber removed the protections provided for the exercise of the right to peaceful demonstration, specifically, in contravention of Articles 53 and 68 of the Constitution.⁵⁵⁰
11. Decision 1086/2016 of December 13, 2016: The Constitutional Chamber unilaterally re-appointed two members of the National Electoral Council, Socorro Hernández and Tania D'Amelio, for positions whose mandates expired in December 2016, bypassing the constitutionally mandated appointments process led by the National Assembly.⁵⁵¹
12. Decision 1421/2016 of December 15, 2016: In response to a request by the Executive seeking legal clarification on financial oversight of the security services, the Political-Administrative Chamber took the decision that allowed the Ministry of People's Power for Defense to exercise oversight of its own management of public resources.⁵⁵²

547 TSJ, <http://www.tsj.gob.ve/-/tsj-resuelve-interpretacion-sobre-la-autonomia-del-bcv-para-suscribir-contratos>

548 TSJ, <http://www.talcualdigital.com/Nota/132518/las-5-sentencias-del-tsj-contras-el-parlamento-en-agosto>

549 *El Universal*, "TSJ Dictado Sentencias contra Asamblea Nacional", http://www.eluniversal.com/noticias/politica/tsj-dictado-sentencias-contras-asamblea-nacional_622598; and, TSJ, <http://historico.tsj.gob.ve/decisiones/scon/octubre/190792-814-111016-2016-2016-897.HTML>

550 PROVEA, "El TSJ continua extinguiendo el Estado de Derecho en Venezuela", November 16, 2016, <https://www.derechos.org/ve/actualidad/el-tsj-continua-extinguiendo-el-estado-de-derecho-en-venezuela>

551 TSJ, <http://historico.tsj.gob.ve/decisiones/scon/diciembre/193866-1086-131216-2016-16-1191.HTML>

552 TSJ, <http://historico.tsj.gob.ve/decisiones/spa/diciembre/194202-01421-151216-2016-20110044.HTML>

- 13.** Decision 1448/2016 of December 16, 2016: The TSJ dismissed an appeal, allowing for the denial of a precautionary measure for the protection of children’s right to health in the face of severe medicine shortages.⁵⁵³
- 14.** Decision 2/017 of January 11, 2017: The Constitutional Chamber declared the “unconstitutionality by omission of the National Legislative Branch because it did not take the steps indispensable to ensuring adherence to the Constitution and the orders issued by this Highest Court.”⁵⁵⁴ Among the acts voided was the January 9, 2017 statement charging President Maduro with “dereliction of duty.”⁵⁵⁵
- 15.** Decision 3/2017 of January 11, 2017: In response to a request for legal interpretation filed by President Maduro, and upholding the ruling that the National Assembly was in contempt, the Constitutional Chamber ordered President Maduro to deliver his Annual Message to the Supreme Court of Justice and not the legislature.⁵⁵⁶
- 16.** Decision 5/2017 of January 19, 2017: The decision ruled that the Executive branch should eliminate the salaries and other remunerations for the staff and members of the National Assembly.⁵⁵⁷
- 17.** Decision 7/2017 of January 26, 2017: In this ruling, the Chamber requested that “the bodies that make up the Republican Moral Council be ordered to commence an investigation to determine the individual criminal liability of the National Assembly members that make up the so-called Unity Bloc, for the crime of conspiracy to destroy the republican form [of government] of this nation, criminalized in Article 132 of the Criminal Code, as well as for the usurpation of functions, misappropriation of power and violation of the Constitution.”⁵⁵⁸

⁵⁵³ TSJ, <http://historico.tsj.gob.ve/decisiones/scs/diciembre/194598-1448-161216-2016-16-559.HTML>

⁵⁵⁴ TSJ, <http://historico.tsj.gob.ve/decisiones/scon/enero/194891-02-11117-2017-17-0001.HTML>

⁵⁵⁵ TSJ, <http://historico.tsj.gob.ve/decisiones/scon/enero/194891-02-11117-2017-17-0001.HTML>; *Telesur*, <http://www.telesurtv.net/news/TSJ-de-Venezuela-declara-nulas-nuevas-acciones-del-Parlamento-20170111-0057.html>; and, *El Billuyo*, “TSJ anula directiva y sesiones de la Asamblea Nacional”, <http://elbilluyo.com/economia-politica/tsj-anula-directiva-sesiones-la-asamblea-nacional/>;

⁵⁵⁶ TSJ, <http://historico.tsj.gob.ve/decisiones/scon/enero/194892-03-11117-2017-17-0002.HTML>

⁵⁵⁷ <https://www.civilisac.org/civilis/wp-content/uploads/Sentencia-05-Sala-Constitucional-19-1-17.pdf>

⁵⁵⁸ TSJ, <http://historico.tsj.gob.ve/decisiones/scon/enero/195578-07-26117-2017-17-0010.HTML>

F. Attack on the Former Attorney General

Just as it had previously attacked the National Assembly, the Supreme Court of Justice also targeted the Attorney General Luisa Ortega Díaz after she began to act openly against the political interests of the Regime. The TSJ took the decision to try her for alleged “serious offenses in the discharge of her duties,” aimed at removing her from office.⁵⁵⁹

On June 27, 2017, the Constitutional Chamber of the TSJ took the unconstitutional decision to unilaterally assign the same legal powers to charge and investigate, which are the exclusive competence of the Ministry of Public Prosecution, under Articles 284 and 286 of the Constitution, to the Ombudsman’s Office. The Court decided that the Ombudsman “has the powers to investigate, issue opinions and receive complaints requesting, should it be necessary, the collaboration of the other bodies of the public Power.” This is another case in point of the TSJ deliberately and unconstitutionally manipulating democratic institutions of the State and undermining the rule of law.⁵⁶⁰

The Court also struck down the appointment of Deputy Attorney General, Rafael González, to replace the Attorney General Ortega Díaz, and on June 28, 2017, it decided to prevent the Attorney General from leaving the country, in addition to freezing her bank accounts and preventing the sale of her properties. The Office of the United Nations High Commissioner for Human Rights, on June 30, said it was disturbed by the decision of the Supreme Court, and hailed the Attorney General for her “important steps to defend human rights, documenting deaths, insisting on due process and the importance of the separation of powers, and issuing a call for the immediate release of persons who have been arbitrarily detained.” It also said: “The dismissal of judicial authorities must be carried out under strict criteria that do not affect independence and impartiality in the discharge of their duties.”⁵⁶¹

G. The National Constituent Assembly

The systematic and repeated disruption of institutional order and the rule of law came to a head with the establishment of the illegitimate National Constituent Assembly (ANC).

⁵⁵⁹ OAS General Secretariat, “Third Report of the Secretary General on the Situation in Venezuela,” July 19, 2017, page 10, <http://www.oas.org/documents/spa/press/TERCER-INFORME-VENEZUELA-SPANISH-Final-signed.pdf>

⁵⁶⁰ Ibid, page 13.

⁵⁶¹ OHCHR, “Press Briefing note on Iraq, Al Jazeera, Venezuela and Guatemala”, June 30, 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21818&LangID=E>

The rules used by the National Electoral Council during the July 30, 2017 “election” of members of the National Constituent Assembly, violated the principles of equality and universal suffrage, the basic principles of democracy enshrined in international treaties and in Venezuela’s own Constitution.

According to the Venice Commission, the rules established for the election violated the principle of “equal weight of individual votes” and “benefit rural areas with low numbers of voters and harm the country’s most populated districts.” The Commission also noted that “the rules based on sectorial representation set out in Decree 2878 violate the egalitarian principle of ‘one citizen, one vote,’ as established by articles 1, 2, 21 and 63 of the Constitution of Venezuela, as well as the democratic principle of equal voting rights.” The Venice Commission added that this system of representation, known as “corporative democracy” is a method that has been used in the past by dictatorial regimes such as under Franco in Spain, Salazar in Portugal, and Mussolini in Italy and, therefore, the “democratic” nature of such a system may be called into question.⁵⁶²

In order to execute its plan to elect the members of a Constituent Assembly, the government used the social safety net to intimidate voters. This is a questionable practice in any electoral process, but highly reprehensible when it happens in circumstances in which people are going hungry. On Election Day, the polling stations used the *Carnet de la Patria* ID cards to identify voters, as well as to monitor their participation.⁵⁶³

Illegitimate from the moment it saw the light of day, the National Constituent Assembly from the outset, sought to determine the future of Venezuelans over the next two years, by decree. In no time at all, the ANC stripped the National Assembly of its constitutionally granted legislative functions, but without dissolving it.⁵⁶⁴

With the collusion of the Supreme Court, the Attorney General was also removed from office by the ANC⁵⁶⁵ and then it approved a decree to institute trial proceedings for high treason against anyone regarded as responsible for “having encouraged economic aggression and interference with the Bolivarian Republic of Venezuela.”⁵⁶⁶ By decree, the Regime institutionalized repression, persecution and censorship of dissension, and stripped legislators of their parliamentary immunity.

⁵⁶² Council of Europe, European Commission for Democracy through Law, “Venezuela: Preliminary Opinion on the legal issues raised by decree No. 2878 of May 23 2017 of the President of the Republic on calling elections to a National Constituent Assembly”, 2017, <http://www.venice.coe.int/webforms/events/>

⁵⁶³ OAS General Secretariat, “Fourth Report of the Secretary General on the Situation in Venezuela,” September 25, 2017, page 10, <http://scm.oas.org/pdfs/2017/CP38157INFORME.pdf>

⁵⁶⁴ Ibid, page 21.

⁵⁶⁵ BBC, “La Asamblea Constituyente de Venezuela destituye a la fiscal general Luisa Ortega”, August 5, 2017, <http://www.bbc.com/mundo/noticias-america-latina-40838619>

⁵⁶⁶ *El Nacional*, “ANC fraudulenta enjuiciará a opositores por ‘traición a la patria’”, August 29, 2017, http://www.el-nacional.com/noticias/gobierno/anc-fraudulenta-enjuiciara-opositores-por-traicion-patria_201177

The Truth, Justice, Peace and Public Tranquility Commission was created as a *de facto* tribunal on August 8, 2017, by the illegitimate National Constituent Assembly. The Truth Commission was presented as an investigative body of the ANC with a mandate to examine “acts of violence committed for political and intolerant motives, as well as related collective dynamics”.⁵⁶⁷ Although presented as a judicial mechanism to protect human rights, it is in practice an illegitimate⁵⁶⁸ tool for political persecution with politically charged origins. Its membership consists of partisan actors, loyal to the Regime. *Transparencia Venezuela* and a number of other renowned experts have publicly questioned whether the alleged Truth Commission of the ANC is intended to be a vengeance commission⁵⁶⁹ and an inquisition tribunal⁵⁷⁰.

After the regional elections of October 15, 2017, in violation of the Constitutions of the states of Venezuela, the National Constituent Assembly convened a session to swear in the governors-elect. The Governor-elect of the State of Zulia, Juan Pablo Guanipa, member of the opposition party *Primero Justicia*, refused to be sworn in before the ANC. Consequently, the Legislative Council of the state of Zulia, controlled by the ruling party, declared the *falta absoluta* “permanent absence” of the Governor-elect. This decision can be viewed as a coup d’état against the Governor-elect, inasmuch as it disregards the electoral choice made by the people of the state of Zulia.

In the opinion of one expert, “the failure to recognize the election of Governor Guanipa, and the coercion under which the other four opposition governors were successfully sworn in, only shows that the ANC is, in actuality, a *de facto* government that exerts dictatorial powers with a totalitarian bent. That is, powers that do not emanate from constitutional democracy and that are intended to control all branches of the State and civil society.”⁵⁷¹

On November 6, the ANC stripped the First Vice President of National Assembly Freddy Guevara of his parliamentary immunity. During the special session, the Constituent Assembly decided “to authorize the continuation of the trial proceedings” against Guevara, after the Supreme Court requested the lifting of his parliamentary immunity on November 3 and ruled that he must be tried for “association, continued public incitement and use of adolescents to commit crime.”⁵⁷²

⁵⁶⁷ *Acceso a la Justicia*, “La ANC tiene su propio tribunal: la Comisión de la Verdad”, September 20, 2017, <http://www.accesoalajusticia.org/wp/noticias/la-anc-tiene-su-propio-tribunal-la-comision-de-la-verdad-2/>

⁵⁶⁸ Hernández, J.I., “La Comisión para la Verdad: un Tribunal de Inquisición”, August 17, 2017, <http://historico.prodavinci.com/blogs/la-comision-para-la-verdad-un-tribunal-de-inquisicion-por-jose-ignacio-herandez/>

⁵⁶⁹ *Transparencia Venezuela*, “¿Comisión de la verdad o de la venganza?”, <https://transparencia.org.ve/comision-la-verdad-la-venganza/>

⁵⁷⁰ Hernández, J.I., “La Comisión para la Verdad: un Tribunal de Inquisición”, August 17, 2017, <http://historico.prodavinci.com/blogs/la-comision-para-la-verdad-un-tribunal-de-inquisicion-por-jose-ignacio-herandez/>

⁵⁷¹ Hernández, J.I., “La ilegítima destitución del gobernador del estado Zulia”, October 26, 2017, <http://historico.prodavinci.com/blogs/la-ilegitima-destitucion-del-gobernador-del-estado-zulia-por-jose-ignacio-herandez/>

⁵⁷² DW, “Venezuela: Asamblea Constituyente aprueba juicio a Guevara”, November 7, 2017, <http://www.dw.com/es/venezuela-asamblea-constituyente-aprueba-juicio-a-guevara/a-41268195>

On November 8, 2017, the illegitimate National Constituent Assembly approved the “Law against Hatred,” which provides for harsh punishments of 10- to 20-year prison terms against anyone who disseminates information that the Regime considers as undermining “public tranquility.” Any pronouncement of the opposition against the Government’s policies could be punished under this law. The law further states: “political parties that promote fascism, intolerance or hatred, may not be registered with the National Electoral Council, and the registrations of those that do not comply with this instant provision shall be revoked”. The law is another tool of repression to politically disqualify any political party that issues an opinion in disagreement with the government.

All of these actions demonstrate that the National Constituent Assembly represents the very embodiment of the rupture of democratic order and the systematic and repeated disruption of constitutional order and the rule of law in Venezuela.

H. Civilians Tried by Military Courts

As was discussed in Chapter VII of this Report on imprisonment, another concerning practice is the number of civilian citizens who are prosecuted by the military justice system. The IACHR noted with deep concern that civilians are being prosecuted and tried in military courts.⁵⁷³ The Secretary General’s Third Report on the Situation in Venezuela, also addresses the unconstitutional use of military courts to arbitrarily try civilian protesters.⁵⁷⁴

On May 4, Major General Antonio José Benavides Torres, in his capacity as commander of the Bolivarian National Guard (GNB), announced that, under the orders of President Maduro, military justice would be in effect in the State of Carabobo under Plan Zamora, in light of events affecting public order. According to El Universal, Benavides Torres explained that in accordance with *Plan Zamora*, a large number of military and police officers would be deployed in Carabobo, and would work in coordination with the State’s military tribunals.

Criminal offenses such as “high treason”, “terrorism, or theft of military equipment”, or “rebellion” were brought against individuals detained for political reasons without an arrest warrant. The charges were brought on the allegation that the perpetrators were caught *in flagrante delicto*, in order to allow the military trials to proceed.⁵⁷⁵

⁵⁷³ IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela”, December 31, 2017, paragraph 257, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

⁵⁷⁴ General Secretariat of the OAS, “Third Report of the Secretary General of the OAS on the Situation in Venezuela,” July 19, 2017, <http://www.oas.org/documents/spa/press/TERCER-INFORME-VENEZUELA-SPANISH-Final-signed.pdf>

⁵⁷⁵ Amnesty International, “Silenced by Force, Politically-Motivated Arbitrary Detentions in Venezuela”, 2017, page 13, <https://www.amnesty.org/download/Documents/AMR5360142017English.PDF>

The decision to start prosecuting civilians in military courts appeared to be the Regime's response to a press conference held on April 25, 2017, where Attorney General Luisa Ortega Díaz, stated that the Ministry of Public Prosecution would release opposition demonstrators who had been arrested without adherence to due process. She specifically referenced an April 19th case she described as "anomalous", where personnel from the National Guard detained 38 people in Nueva Esparta. The Attorney General asked that the detentions be set aside on the grounds that they were lacking legal foundation. Her decision unmasked the pattern of using arbitrary detentions as a means of repression and deterrence against the anti-government protests by the security forces.⁵⁷⁶

According to *Foro Penal*, from April 2017 to March 31, 2017, 786 people were brought before military courts, 552 of which were imprisoned. By the end of March 2018, 114 of these people remained in prison by order of the military tribunals.⁵⁷⁷

Article 261 of Venezuela's own Constitution clearly states that the commission of crimes will be judged by courts of a civilian jurisdiction, "The jurisdiction of military courts is limited to crimes of a military nature."⁵⁷⁸ Placing civilians under military jurisdiction is a manipulation of the military codes of justice, and requires that military courts assume powers that do not belong to them. In cases where civilians are prosecuted by military courts, they are deprived of their basic right to due process, further illustrating that the rule of law no longer exists.

According to the November 2017 report by *Human Rights Watch* and *Foro Penal*, while no public record of these proceedings is available—a problem in its own right—"the accounts by lawyers and family members include many disturbing allegations of abuses and procedural defects in the conduct of these prosecutions, including the following:

- Detainees being subjected to physical and other abuses that may in some cases amount to torture at the moment of their arrest or during detention.
- Hearings being held in military courts or other military installations, presided over by military judges who report to the Minister of Defense, and sometimes in the presence of armed guards.

⁵⁷⁶ General Secretariat of the OAS, "Third Report of the Secretary General of the OAS on the Situation in Venezuela", July 19, 2017, <http://www.oas.org/documents/eng/press/TERCER-INFORME-VENEZUELA-ENGLISH-Final-signed.pdf>

⁵⁷⁷ *Foro Penal*, "Reporte Sobre la Represión en Venezuela", March 2018, page 3, <https://foropenal.com/wp-content/uploads/2018/04/INFORME-REPRESION-MARZO-2018.pdf>

⁵⁷⁸ Article 261, Constitution of the Bolivarian Republic of Venezuela, https://www.oas.org/juridico/mla/sp/ven/sp_ven-int-const.html

- Judges accepting the prosecution charges against groups of protestors en masse, without any individualized consideration of the evidence against them.
- Hearing times not being specified in advance, forcing independent lawyers and families to wait for hours at the entrance of military facilities or courts. Lawyers say that when the hearings are finally held, they are sometimes not allowed to enter the courtroom. They also said that when they are allowed to enter, they are generally permitted to speak with the detainees only a few minutes before the hearings, have access to the criminal file only when they are at the hearings, and cannot take pictures or copies of the files.
- Cases of protestors being charged with serious crimes under the Military Code, such as “rebellion” and “treason” for alleged acts of violence at protests.⁵⁷⁹

On May 26, the Inter-American Commission on Human Rights expressed its “deep concern regarding the prosecution and detention of civilians in the military criminal justice system and the use of military operations to control public demonstrations in Venezuela.” In its Press Release, the IACHR recalled “that the use of military courts to prosecute civilians entails a violation of a series of rights, such as the right to a natural judge, and vitiates judicial guarantees across the entire process, which has serious consequences for the effectiveness of the rule of law”.⁵⁸⁰

I. Involvement of the State Apparatus in Murders and Torture

As has been detailed in Chapters IV, state agents, or their paramilitary collaborators (*colectivos*), were the material authors of at least 105 murders in the context of the 2017 protests. According to former Attorney General Luisa Ortega Díaz a total of 8,292 people were victims of extrajudicial killings, murdered by their own government between 2015 and June 2017.⁵⁸¹

One of the main concerns of the family members of the victims of alleged extrajudicial executions in Venezuela is illustrated by the statistics. The reality is that the police force implicated with the highest rate

⁵⁷⁹ *Foro Penal* and Human Rights Watch, “Nueva información sobre malos tratos y procesamientos arbitrarios de civiles en tribunales militares”, May 15, 2017, <https://www.hrw.org/es/news/2017/05/15/nuevainformacion-sobre-abusos-y-procesamientos-arbitrarios-de-civiles-en-tribunales>

⁵⁸⁰ IACHR, “IACHR Deeply Concerned about the Worsening Violence in Venezuela and the Use of Military Courts to Prosecute Civilians”, May 26, 2017, http://www.oas.org/en/iachr/media_center/PReleases/2017/068

⁵⁸¹ Case file provided by the Attorney General of Venezuela, Luisa Ortega Díaz, to the International Criminal Court, November 16, 2017, page 35.

of incidences in the cases of alleged extrajudicial executions is also the police force in charge of providing support services in all criminal investigations nation-wide.

According to COFAVIC, “2015, was the beginning of the OLP as a national citizen security policy, this was a variation in the conduct of the police and military forces, since their activities began to be combined, with a high number of police and military officers working jointly during operations. The CICPC continued to be the police force with the highest number of cases [of alleged extrajudicial executions] reported [...] with 30% (419 cases), Municipal Police Departments 15% (209 cases), State Police forces 26% (363 cases), the Armed Forces 12% (168 cases), Bolivarian National Police el 8% (112 cases), Bolivarian National Intelligence Service 6% (84 cases) and 3% (42 cases) attributable to other armed civilian groups with the alleged acquiescence of the State.”⁵⁸²

COFAVIC concluded: “In most of the extrajudicial execution and torture cases documented by NGOs, it was found that in the performance of the investigations, the authorities did not follow the Minnesota Protocol⁵⁸³ or the Istanbul Protocol⁵⁸⁴. On the contrary, in the most relevant number of the cases, the initial expert witness reports were written by the CICPC, the police entity that, as we have underscored above, is allegedly responsible for a high number of reported extrajudicial executions.”⁵⁸⁵

The cases of torture documented in Chapter V of this Report were committed by a wide range of state officials, including the Bolivarian National Guard, regional police forces, the Bolivarian National Police, the Anti-Abduction and Anti-Extortion Commando, members of the Army, officials of the Ministry of Prison Affairs, the Bolivarian Intelligence Service, the General Directorate of Military Counterintelligence, the Scientific, Penal, and Criminal Investigative Police, the Military Police, the Anti-Extortion Anti-Abduction Group.

If the agents of the State are committing the high number of extrajudicial executions and cases of torture; and if, as has been demonstrated, the judicial apparatus has been co-opted and serves the interests of the Executive, and impunity reigns when even the slightest protection of justice in Venezuela cannot be ensured.

⁵⁸² Ibid, page 56.

⁵⁸³ UN, “The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016)”, The Revised United National Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, 2016, <http://www.ohchr.org/Documents/Publications/MinnesotaProtocol.pdf>

⁵⁸⁴ UN, “Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”, No. 8/Rev.1, 1999, <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>

⁵⁸⁵ Ibid, page 64.

XI. INDIVIDUAL CRIMINAL

RESPONSIBILITY – CHAIN

OF COMMAND



XI. INDIVIDUAL CRIMINAL RESPONSIBILITY – CHAIN OF COMMAND

The violent repression and abuse continues in Venezuela unabated and as the situation worsens, so does the seriousness of the crimes. With the judicial branch in Venezuela acting as a tool of the repression, these crimes continue with impunity. There is no justice left in Venezuela. We must look to international fora in search of justice for the people of Venezuela and to seek accountability for the crimes.

Article 25 of Rome Statute establishes the requirements for the individual criminal responsibility of anyone who has committed a crime within the jurisdiction of the Court. Article 27 and 28 outline command responsibility, as well as the responsibility of those acting in an official capacity. Article 30 defines the intent of the perpetrators.

The President of the Bolivarian Republic of Venezuela, Nicolás Maduro Moros and the senior leadership with which he has surrounded himself who hold the real power in Venezuela are the intellectual authors behind the repression and the war on the internal enemy. These individuals are those responsible for the systematic and widespread repression and persecution taking place across the country including the arbitrary and mass detentions, enforced disappearances, murder, torture, rape and other forms of sexual violence, and persecution committed by their subordinates down the civilian and military chains of command. It is the opinion of the General Secretariat that there is sufficient information available to warrant further criminal investigations into the actions these individuals to assess their culpability for the crimes documented in this Report.

The International Criminal Court should investigate the principal responsibility of the following officials for the actions and cases outlined in this Report:

- Nicolás Maduro Moros, President of the Bolivarian Republic of Venezuela.
- Tareck El Aissami, Vice President, who oversees the SEBIN and the DGCIM and is Chairman of the Anti-Coup Command.
- Jorge Arreaza Montserrat, Vice President 2013-2016, Minister of Foreign Affairs.
- Elias Jaua Milano, Vice President for Social Development and Mission Revolution.
- Jorge Rodríguez Gómez, Minister of Popular Power for Communication and Information.

- Delcy Eloina Rodríguez Gómez, Minister of Foreign Relations of Venezuela 2014-2017, President of the National Constituent Assembly.
- Vladimir Padrino López, Operational Strategic Commander of the FAN, 2014-2017, Minister of Defense
- Néstor Luis Reverol Torres, Major General, Minister of Internal Relations, Justice and Peace
- Gustavo Enrique Gonzalez López, Major General, Minister of Internal Relations, Justice and Peace, 2015-2016, *currently* Director of the SEBIN, member of the Anti-Coup Command
- Antonio Benvides Torres, Major General, Commander General of the Bolivarian National Guard.
- Carlos Alfredo Pérez Ampueda, Brigadier General, Director of the Bolivarian National Police.

The OAS General Secretariat considers that the 146 individuals listed below also warrant criminal investigation for their alleged role in the violence and repression that has taken place in Venezuela.

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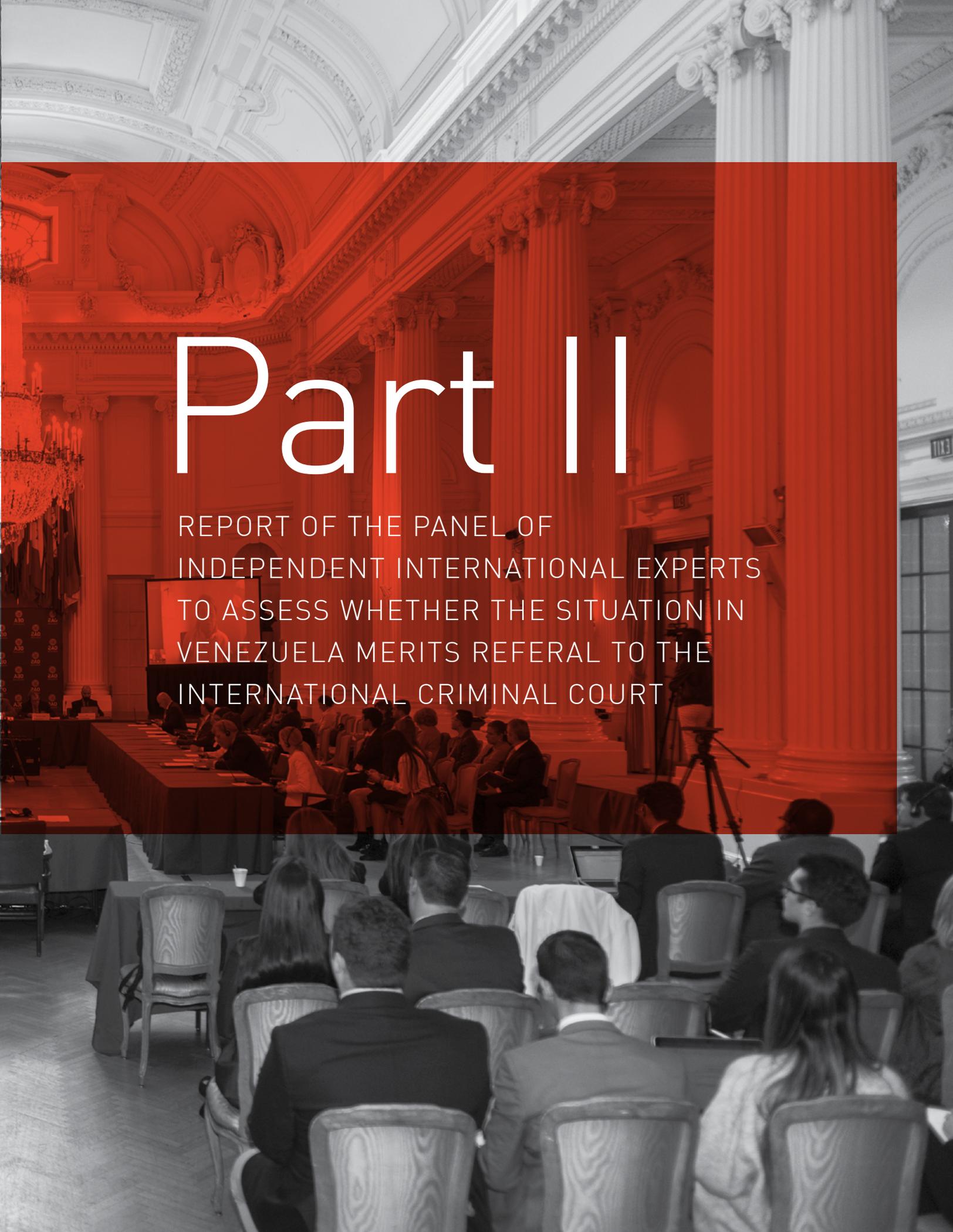
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Part II

REPORT OF THE PANEL OF
INDEPENDENT INTERNATIONAL EXPERTS
TO ASSESS WHETHER THE SITUATION IN
VENEZUELA MERITS REFERAL TO THE
INTERNATIONAL CRIMINAL COURT

I. INTRODUCTION



I. INTRODUCTION

A. Background on the Process of Preparing the Report

On July 25 the Secretary General of the Organization American States (hereinafter, “OAS”), Luis Almagro, implemented a procedure to evaluate the allegations that crimes against humanity have been committed in Venezuelan territory, and to determine whether, in keeping with the agreement signed with the International Criminal Court (hereinafter, “ICC”) the information collected should be forwarded to the Office of the Prosecutor of the International Criminal Court (hereinafter, “Office of the Prosecutor of the ICC” or “the Prosecutor”).

On September 14, 2017, the Secretary General appointed three international experts: Santiago Canton, Secretary for Human Rights of the Province of Buenos Aires, and former Executive Secretary of the Inter-American Commission on Human Rights; Manuel Ventura Robles, former Judge of the Inter-American Court of Human Rights; and Professor Irwin Cotler, President of the Raoul Wallenberg Centre for Human Rights and former Minister of Justice and Attorney General of Canada, to analyze the evidence collected by the General Secretariat of the OAS and other sources, produce a final report, and make their recommendations to the Secretary General.

B. Preliminary Considerations on the Preparation of the Report

Crimes against humanity are serious acts of violence that harm human beings by attacking that which is most essential to them: their lives, their freedom, their physical well-being, their health, and/or their dignity. They are inhumane acts which, due to their extent and seriousness, go beyond the limits of what is tolerable for the international community, which must necessarily demand that they be punished. Yet crimes against humanity also transcend the individual, because when the individual is attacked, all humanity is attacked and is negated. Therefore, crimes against humanity are characterized essentially by the concept of humanity as victim.⁵⁸⁶

Regulation 25(a) of the Regulations of the Office of the Prosecutor of the International Criminal Court establishes that the preliminary examination and evaluation of a situation may be initiated by the Office

⁵⁸⁶ International Criminal Tribunal for the former Yugoslavia (hereinafter, ICTY), *The Prosecutor v. Drazen Erdemovic*, “Sentencing Judgment”, IT-96-22-T, November 29, 1996, paragraph 28, <http://www.icty.org/case/erdemovic/4>

of the Prosecutor based on information submitted by individuals or groups, States, and intergovernmental or non-governmental organizations.⁵⁸⁷ Once the preliminary examination has been initiated, the Office of the Prosecutor may keep it open until it “concludes that there is a reasonable basis to proceed with an investigation” under the terms of Article 15(3) of the Statute. It may then proceed to submit a request for authorization of an investigation to the Pre-Trial Chamber, together with the supporting documentation that has been collected.

In order to open an investigation, the Office of the Prosecutor must evaluate the information made available to it, and determine if the requirements set out in sections (a) through (c) of Article 53(1) of the Rome Statute of the International Criminal Court (hereinafter, “Rome Statute”) are found to be present.⁵⁸⁸

a. Powers of the Panel to Present Information

The Office of the Prosecutor may initiate an investigation⁵⁸⁹ of a situation taking into consideration any information on the crimes within the jurisdiction of the ICC, namely, genocide, crimes against humanity, or war crimes (and, as the case may be, the crime of aggression).⁵⁹⁰ This includes: (a) information on crimes provided by individuals or groups, States, or intergovernmental or nongovernmental organizations, or other reliable sources (also called “communications”);⁵⁹¹ (b) referrals from states parties or from the Security Council,⁵⁹² or (c) declarations of acceptance of the exercise of the jurisdiction by the ICC deposited pursuant to Article 12(3) by States not party to the Statute. Under Article 15 of the Rome Statute, the Office of the Prosecutor may receive information about crimes from multiple sources. Those communications do not automatically trigger the opening of an investigation of a specific situation, because the first phase of the approach is to discard those that are manifestly outside the Court’s jurisdiction. The Office of the Prosecutor will only initiate an investigation on the basis of the communications that are referred to it under Article 15 when the crimes alleged appear to be within the Court’s jurisdiction and comply with the

587 Office of the Prosecutor of the International Criminal Court, “Policy Paper on Preliminary Examinations”, November 2013, paragraphs 4 and 73, https://www.icc-cpi.int/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf

588 ICC, “Regulations of the Office of the Prosecutor of the International Criminal Court”, ICC-BD/05-01-09, 2009, Regulation 29(1), <https://www.icc-cpi.int/NR/rdonlyres/FFF97111-ECD6-40B5-9CDA-792BCBE1E695/280253/ICCBD050109ENG.pdf>; See also, Office of the Prosecutor of the International Criminal Court, “Policy Paper on Preliminary Examinations”, November 2013, paragraphs 4, 73, https://www.icc-cpi.int/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf

589 UN, “Rome Statute of the International Criminal Court”, 1998, Article 53(1), https://www.icc-cpi.int/NR/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf; and, ICC, “Rules of Procedure and Evidence”, 2002, Rule 48, <https://www.icc-cpi.int/iccdocs/pids/legal-texts/rulesprocedureevidenceeng.pdf>https://www.icc-cpi.int/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf

590 UN, “Rome Statute of the International Criminal Court”, 1998, Article 5, <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>

591 UN, “Rome Statute of the International Criminal Court”, 1998, Article 53(1), <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>; and, ICC, “Rules of Procedure and Evidence”, 2002, Rule 48, <https://www.icc-cpi.int/iccdocs/pids/legal-texts/rulesprocedureevidenceeng.pdf>

592 UN, “Rome Statute of the International Criminal Court”, 1998, Articles 15 *bis* - 15 *ter*, <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>

requirements of Article 53(1) of the Rome Statute. On the basis of these normative provisions, and with the intention of contributing to the work of the Office of the Prosecutor with a view to opening an investigation into the situation in Venezuela, this Panel has prepared this Report, for evaluation by the Office of the Prosecutor, within the framework of Regulation 27(b) of the Regulations of the Office of the Prosecutor of the International Criminal Court⁵⁹³.

It is necessary to note that the information and legal analysis that will be presented below coincides, in part, with the information made public by the Office of the Prosecutor in its statement on opening a preliminary examination into the situation in Venezuela⁵⁹⁴ regarding the crimes allegedly committed that will be analyzed in this preliminary examination. Likewise, this Panel understands that there is sufficient evidence to extend the timeframe of the situation at least back to February 12, 2014 and to crimes that may not be considered by the Prosecutor's Office, as is the case of the crimes of murder, rape, persecution, and forced disappearance.

b. Evaluation of the Information Received by the Panel

With a view to addressing the factual and legal arguments, this Report has adopted a modality for analyzing information that is consistent with that used by the Office of the Prosecutor of the International Criminal Court in the preliminary examination process.⁵⁹⁵

The Panel proceeded to gather all the necessary information to make a fully-informed determination as to whether there exists a reasonable basis for the Prosecutor of the ICC to initiate an investigation into the Bolivarian Republic of Venezuela.⁵⁹⁶ In this process, and as noted in this Report, this Panel has compiled the available information produced by the General Secretariat of the OAS, international and regional human rights organizations, international and Venezuelan NGOs, as well as the information received in the public hearings conducted by the OAS General Secretariat for this purpose, and the supplemental information presented directly to this Panel by NGOs, the persons who testified in the public hearings, and others. Information reported by the media has also been used as a secondary source, which due to the seriousness of the information and the existing context, was compared with all of the other available information, considering it to be essential to include it due to the intrinsic value this may have for the investigation in

593 ICC, "Regulations of the Office of the Prosecutor", 2009, Regulation 27(b), <https://www.icc-cpi.int/NR/rdonlyres/FFF97111-ECD6-40B5-9CDA-792BCBE1E695/280253/ICCBD050109ENG.pdf>

594 Office of the Prosecutor of the International Criminal Court, "Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on opening Preliminary Examinations into the situations in the Philippines and in Venezuela", February 8, 2018, <https://www.icc-cpi.int/Pages/item.aspx?name=180208-otp-stat>

595 Office of the Prosecutor of the International Criminal Court, "Policy Paper on Preliminary Examinations", November 2013, paragraph 25, https://www.icc-cpi.int/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf

596 Ibid, paragraph. 2.

this preliminary stage. In all circumstances, and in accordance with the modality of work carried out by the Office of the Prosecutor of the ICC⁵⁹⁷, the available information has been independently evaluated and the seriousness of the information received was analyzed.

In this regard, an initial evaluation of all the information on alleged crimes (communications) was carried out first. As appears from the *Policy Paper on Preliminary Examinations* adopted by the Office of the Prosecutor, the purpose of the initial phase is to analyze and verify the seriousness of information received and, in the opinion of the Panel, setting aside information on crimes that are determined to be outside the jurisdiction of the ICC and identify those that, appear to be within the jurisdiction of the Court. Specifically, the initial assessment should distinguish between communications related to matters that are manifestly outside the jurisdiction of the ICC and those that may be acts that constitute crimes against humanity under Article 7 of the Rome Statute.⁵⁹⁸

Once the initial evaluation of the information was completed, the Panel paid particular attention to whether the conditions were satisfied for the exercise of the ICC's jurisdiction under Article 12 of the Rome Statute, and whether there is a reasonable basis for believing that the alleged crimes are within the Court's material jurisdiction.⁵⁹⁹ At this stage, the Panel made a factual and legal evaluation of the crimes allegedly committed in the Bolivarian Republic of Venezuela. In order to verify whether the contextual elements of crimes against humanity are present, particular attention was given to the human rights violations when committed as part of a widespread or systematic attack directed against any civilian population and where the perpetrators had knowledge of the attack.⁶⁰⁰ In addition, information related to the relevant national procedures linked to the grave human rights violations has also been analyzed.

Based on the information available, this Panel has prepared this Report for the purpose of providing a legal characterization of the criminal acts that have been committed in the Bolivarian Republic of Venezuela within a given time period (see below II.A.a), with an exhaustive description of the facts, the places where they occurred, and a description of the groups of persons involved. This description of the facts corresponds to the preliminary examination stage, it is not binding for the Office of the Prosecutor of the International Criminal Court, and is presented for the Office of the Prosecutor to consider whether the requirements set out in Article 53 for the opening an investigation in the Bolivarian Republic of Venezuela over possible commission of crimes against humanity, in accordance with Article 7 of the Rome Statute, have been met.

597 Ibid, paragraph 12.

598 Ibid, paragraph 78.

599 UN, "Rome Statute of the International Criminal Court", 1998, Article 53(1), <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>

600 Ibid, Article 7(1)(a).

Finally, this Panel has decided to present facts that are outside the timeframe that is intended to be studied, but which, while outside the temporal jurisdiction of the ICC, are necessary to explain the context in which the other facts presented within the temporal jurisdiction of the Court occurred.

II. REQUIREMENTS



II. REQUIREMENTS

Article 53 of the Rome Statute establishes the requirements for determining whether to initiate an investigation into a given situation.⁶⁰¹ These requirements imply an analysis of jurisdiction⁶⁰², admissibility (which includes the findings regarding the existence of the requirements of complementarity and gravity)⁶⁰³, and the interests of justice of the International Criminal Court.⁶⁰⁴

The standard of proof established at Article 53 of the Statute for determining the existence of these requirements is that of *reasonable basis*. In its decisions, the Pre-Trial Chambers of the ICC have related this standard to whether there is a sensible or reasonable justification to believe that a crime within its jurisdiction has been or is being committed.⁶⁰⁵

It should be emphasized that this threshold is considered the lowest evidentiary standard provided for in the Statute.⁶⁰⁶ When it reviewed this situation against this standard, the Pre-Trial Chamber has in the past decided to open an investigation although facts or accounts were difficult to establish, unclear, or conflicting; nonetheless, the relevant requirements to open an investigation of a specific situation had been met.⁶⁰⁷

In the light of that standard of proof, this Panel will next analyze the factual and legal analysis that justifies opening an investigation in the terms set out at Article 53 of the Rome Statute.

⁶⁰¹ Office of the Prosecutor of the International Criminal Court, “Policy Paper on Preliminary Examinations”, November 2013, paragraph 34, https://www.icc-cpi.int/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf

⁶⁰² UN, “Rome Statute of the International Criminal Court”, 1998, Article 53(1)(a), <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CD7CF02886/283503/RomeStatutEng1.pdf>

⁶⁰³ *Ibid*, Articles 53(1)(b), 17.

⁶⁰⁴ *Ibid*, Article 53(1)(c).

⁶⁰⁵ ICC, Pre-Trial Chamber II, Situation in the Republic of Kenya, “*Décision relative à la demande d’autorisation d’ouvrir une enquête dans le cadre de la situation en République du Kenya rendue en application de l’article 15 du Statut de Rome*”, ICC-01/09, March 31, 2010, paragraph 35, https://www.icc-cpi.int/CourtRecords/CR2011_03256.PDF. See also, ICC, Pre-Trial Chamber I, Situation in Georgia, “Decision on the Prosecutor’s request for authorization of an investigation”, ICC-01/15-12, January 27, 2016, paragraph 4, https://www.icc-cpi.int/CourtRecords/CR2016_00608.PDF

⁶⁰⁶ ICC, Pre-Trial Chamber III, Situation in the Republic of Burundi, Public Redacted Version of “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi”, ICC-01/17-X, October 25, 2017, paragraph 30, https://www.icc-cpi.int/CourtRecords/CR2017_06720.PDF. See also, ICC, Pre-Trial Chamber II, Situation in the Republic of Kenya, “*Décision relative à la demande d’autorisation d’ouvrir une enquête dans le cadre de la situation en République du Kenya rendue en application de l’article 15 du Statut de Rome*”, ICC-01/09, March 31, 2010, paragraphs 33-34, https://www.icc-cpi.int/CourtRecords/CR2011_03256.PDF

⁶⁰⁷ *Cf.* ICC, Pre-Trial Chamber III, Situation in the Republic of Burundi, Public Redacted Version of “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi”, ICC-01/17-X, October 25, 2017, paragraph 30, https://www.icc-cpi.int/CourtRecords/CR2017_06720.PDF

A. Jurisdiction

It is necessary to first determine whether there is jurisdiction⁶⁰⁸ *ratione temporis*, *ratione loci*, *ratione materiae*, and *ratione personae*.

a. Temporal Jurisdiction - jurisdiction *ratione temporis*

The jurisdiction *ratione temporis* of the ICC is limited by the entry into force of the Rome Statute, July 1, 2002, and upon the ratification of the States, in the case of Venezuela, the date of ratification was June 7, 2000. Consequently, from the date the Rome Statute entered into force, the ICC had temporal jurisdiction.

The information evaluated by the Panel is related to acts that occurred, at least as of February 12, 2014, the date on which numerous acts were documented that are part of the widespread and systematic attack directed against the civilian population, with knowledge of the attack. However, the Panel also received information about events that occurred previously that, eventually, could be considered within the temporal jurisdiction of the ICC.

b. Subject Matter Jurisdiction - jurisdiction *ratione materiae*

The jurisdiction of the Court *ratione materiae* over crimes against humanity is established in Article 5(b) of the Rome Statute. Next, this Panel will analyze whether the material elements of crimes against humanity, as well as the commission of crimes defined in Article 7 of the Rome Statute are satisfied.

b.1 Contextual Elements of Crimes Against Humanity

This Panel will analyze the contextual elements of the crimes against humanity as established by the Rome Statute, including the attack directed against any civilian population, pursuant to or in furtherance of a State or organizational policy, the widespread and systematic nature of the attack, the connection between individual act and the attack, and knowledge of the attack.

⁶⁰⁸ UN, "Rome Statute of the International Criminal Court", 1998, Article 12, <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>

i. Attack Directed Against the Civilian Population – Course of Conduct Involving the Multiple Commission of Acts Against the Civilian Population

An *attack* under Article 7 of the Rome Statute means a course of conduct involving the multiple commission of acts.⁶⁰⁹ Such an attack does not need to constitute a military attack⁶¹⁰, but involves a campaign or operation directed against the civilian population.⁶¹¹ In effect, although the number of the individual types of acts is considered irrelevant, the requirement is that the acts be part of a course or line of conduct which demonstrates the intent to exclude isolated acts from the analysis of the contextual elements.⁶¹²

The International Criminal Court has been clear on requiring that the commission of multiple acts refers only to those listed under Article 7 of the Rome Statute.⁶¹³

The International Criminal Tribunal for the former Yugoslavia (hereinafter “ICTY”) explained, in relation to this requirement, that if the perpetrator has knowledge, either real or imputable, that these acts occurred on a widespread or systematic basis and did not commit the act solely for personal motives unrelated to the attack on a civilian population, that is sufficient to argue that he or she is responsible for a crime against humanity. Therefore, the person responsible must have knowledge of the attack against the civilian population, know that said act is part of the attack, and that the criminal act was not committed solely for personal motives.⁶¹⁴ To determine responsibility the accused’s motives for participating in the attack is irrelevant. Moreover, the accused may not share the motives behind the attack. It was also irrelevant for the ICTY whether the acts were directed against the target population or only against the individual victim. It is the attack, and not the acts of the accused that must be directed against a given population and the person responsible need only know that this act is part of the attack.⁶¹⁵

⁶⁰⁹ Ibid, Article 7(2)(a). See also, ICC, “Elements of Crimes”, Article 7, Introduction (3), <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>

⁶¹⁰ ICC, “Elements of Crimes”, 2011, introduction to Article 7(3), <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>. See also, ICC, Pre-Trial Chamber III, Situation in the Republic of Burundi, Public Redacted Version of “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi”, ICC-01/17-X, October 25, 2017, paragraph 30, https://www.icc-cpi.int/CourtRecords/CR2017_06720.PDF; and, ICC, Pre-Trial Chamber II, Situation in the Republic of Kenya, “*Décision relative à la demande d’autorisation d’ouvrir une enquête dans le cadre de la situation en République du Kenya rendue en application de l’article 15 du Statut de Rome*”, ICC-01/09, March 31, 2010, paragraph 80, https://www.icc-cpi.int/CourtRecords/CR2011_03256.PDF; and, ICC, Trial Chamber II, Situation in the Democratic Republic of Congo in the case of The Prosecutor v. Germain Katanga, “Judgment pursuant to Article 74 of the Statute”, ICC-01/04-01/07, March 7, 2014, paragraph 1101, https://www.icc-cpi.int/CourtRecords/CR2015_04025.PDF; and, ICC, Trial Chamber III, Situation in the Central African Republic in the case of The Prosecutor v. Jean-Pierre Bemba Gombo, “Judgment pursuant to Article 74 of the Rome Statute”, ICC-01/05-01/08, March 21, 2016, paragraph 149, https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF

⁶¹¹ Ibid.

⁶¹² ICC, Trial Chamber III, Situation in the Central African Republic in the case of The Prosecutor v. Jean-Pierre Bemba Gombo, “Judgment pursuant to Article 74 of the Rome Statute”, ICC-01/05-01/08, March 21, 2016, paragraph 150, https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF

⁶¹³ Ibid, paragraph 151.

⁶¹⁴ ICTY, Trial Chamber, Prosecutor v. DU[KO TADI] a/k/a/ “DULE”, Opinion and Judgment, IT-94-1-T, May 7, 1997, paragraph 659, <http://www.icty.org/x/cases/tadic/tjug/en/tad-tsj70507JT2-e.pdf>. See also, ICTY, Appeals Chamber, The Prosecutor v. DU[KO TADI], “Judgment”, IT-94-1-A, July 15, 1999, paragraph 251, <http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf>

⁶¹⁵ ICTY, Appeals Chamber, The Prosecutor v. DU[KO TADI], “Judgment”, IT-94-1-A, July 15, 1999, paragraph 251, <http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf>

i.(a) *Distinction between “act” and “attack”*

It is necessary to distinguish between the attack itself –as a course of conduct⁶¹⁶– and the acts that are committed as part of it.⁶¹⁷ The ICC has established, in the *Bemba Gombo* case⁶¹⁸ that the multiplicity of acts referred to in Article 7(2) of the Rome Statute is a quantitative indicator, but that, in itself, the number of acts is irrelevant provided they are part of the course of conduct (attack) and cumulatively satisfy the quantitative threshold that said article establishes.⁶¹⁹ Along similar lines, it has said, in the *Katanga* case⁶²⁰, that a single event can constitute an attack under the terms of Article 7(2)(a) of the Rome Statute if the remaining contextual elements of the crime against humanity are present.⁶²¹

Without prejudice to the fact that the widespread and systematic nature of the attack will be demonstrated in greater depth in the following paragraphs, it is fundamental to note from the outset that the distinction between attack and acts is relevant whenever the requirement that the crime be committed in a widespread or systematic manner goes only to the attack – the course of conduct – and not to the specific acts carried out in this context.⁶²²

In effect, and as has been established by the International Criminal Tribunal for the former Yugoslavia in the *Tadic* case⁶²³, this implies that the acts committed must be related to the attack or undertaken for the same purpose and acting to achieve it. From this point of view, it can be said that a single act could constitute a crime against humanity.⁶²⁴

The information available indicates that at least since February 12, 2014, as will be shown below, the civilian population identified as or suspected of being an opponent of the Government has been victim of an attack by the different agencies of the Venezuelan State as well as by members of “*colectivos*” acting in coordination with the State to carry out the defined policy.

⁶¹⁶ UN, “Rome Statute of the International Criminal Court”, 1998, Article 7(2)(a), https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

⁶¹⁷ Ibid.

⁶¹⁸ ICC, Trial Chamber III, Situation in the Central African Republic in the case of The Prosecutor v. Jean-Pierre Bemba Gombo, “Judgment pursuant to Article 74 of the Rome Statute”, ICC-01/05-01/08, March 21, 2016, https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF

⁶¹⁹ Ibid, paragraph 150.

⁶²⁰ ICC, Trial Chamber II, Situation in the Democratic Republic of Congo in the case of The Prosecutor v. Germain Katanga, “Judgment pursuant to Article 74 of the Statute”, ICC-01/04-01/07, March 7, 2014, paragraph, https://www.icc-cpi.int/CourtRecords/CR2015_04025.PDF

⁶²¹ Ibid, paragraph 1101.

⁶²² ICC, Trial Chamber III, Situation in the Central African Republic in the case of The Prosecutor v. Jean-Pierre Bemba Gombo, “Judgment pursuant to Article 74 of the Rome Statute”, ICC-01/05-01/08, March 21, 2016, paragraph 162, https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF

⁶²³ ICTY, Trial Chamber, Prosecutor v. DU[KO TADI] a/k/a/ “DULE”, Opinion and Judgment, IT-94-1-T, May 7, 1997, <http://www.icty.org/x/cases/tadic/tjug/en/tad-ts70507JT2-e.pdf>

⁶²⁴ Ibid.

The information received reveals that dozens of civilians have been assassinated, dozens have been raped, hundreds of Venezuelans have been tortured, and thousands of persons have been detained or arrested in the course of the operation carried out by the state agencies and the “*colectivos*.”⁶²⁵

i.(b) *Directed against the civilian population*

The acts committed as part of a widespread or systematic attack must be directed against the civilian population.⁶²⁶ The notion of civilian population has a collective, not individual, connotation.⁶²⁷ In addition, civilians must be the principal target of the attack.⁶²⁸

Along these lines, the Court has been clear on stating that the Office of the Prosecutor does not need to prove that the entire civilian population of a specific geographic area is the target of the attack.⁶²⁹ Rather, what it must show is that the number of civilians attacked is sufficient to prove that the attack directly targets the segment of the civilian population composed of political opponents or individuals identified as such.

Whilst the attack has to be against civilians, the individual victims need not be civilians themselves.⁶³⁰ What matters is that “the civilian population must constitute the primary target of the attack. In order to determine whether this is the case, the Trial Chamber must consider, among other indicia, the means and methods employed during the attack, the status of the victims, their number, the discriminatory character of the attack, the nature of the crimes committed during the attack, the resistance to the assailants at the time, as well as the extent to which the attacking forces may be said to have complied or attempted to comply with the precautionary requirements of the laws of war.”⁶³¹

⁶²⁵ Cf. ICC, Pre-Trial Chamber III, Situation in the Republic of Burundi, Public Redacted Version of “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi”, ICC-01/17-X, October 25, 2017, paragraph 38, https://www.icc-cpi.int/CourtRecords/CR2017_06720.PDF

⁶²⁶ UN, “Rome Statute of the International Criminal Court”, 1998, Article 7(1)(a), https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

⁶²⁷ ICC, Trial Chamber III, Situation in the Central African Republic in the case of The Prosecutor v. Jean-Pierre Bemba Gombo, “Judgment pursuant to Article 74 of the Rome Statute”, ICC-01/05-01/08, March 21, 2016, paragraphs 152, 154, https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF

⁶²⁸ Ibid.

⁶²⁹ Ibid, 154.

⁶³⁰ “Whereas the civilian status of the victims, the number of civilians, and the proportion of civilians within a civilian population are factors relevant to the determination of whether the chapeau requirement of Article 5 of the Statute that an attack be directed against a “civilian population” is fulfilled, there is no requirement nor is it an element of crimes against humanity that the victims of the underlying crimes be “civilians”, cited in ICTY, Appeals Chamber, Prosecutor v. Zdravko Tolimir, “Judgment” IT-05-88/2-A, April 8, 2015, paragraphs 141-142, http://www.icty.org/x/cases/tolimir/acjug/en/150408_judgement.pdf

⁶³¹ ICTY, Trial Chamber, Prosecutor v. Jadranko Prlić, Bruno Stolić, Slobodan Praljak, Milivoj Petković, Vanelintin Ćorić, Berislav Pušić, “Judgment”, IT-04-74-T, May 29, 2013, paragraph 36, <http://www.icty.org/x/cases/prlic/tjug/en/130529-1.pdf>

Note interestingly that, according to the ICTY, “[I]n international law there is no justification for attacks on civilians carried out either by virtue of the *tu quoque* principle (i.e. the argument whereby the fact that the adversary is committing similar crimes offers a valid defence to a belligerent’s crimes) or on the strength of the principle of reprisals.”⁶³²

In the current situation of the Bolivarian Republic of Venezuela, it will be shown below, there are sufficient elements to demonstrate that the attack is directed against the political opposition, and any persons who demonstrate against the government, or who are perceived as political opponents.⁶³³

ii. *Policy of the State or Organization*

The Rome Statute⁶³⁴ and the Elements of Crimes also require that acts against the civilian population be committed as part of a widespread or systematic attack carried out as part of the policy of a state or an organization in committing the acts or promoting that policy.⁶³⁵

First, the term “policy” needs to be defined. This term requires actively promoting or encouraging the commission of an attack against the civilian population.⁶³⁶ However, that policy, in exceptional circumstances, could be carried out by means of a deliberate failure to act⁶³⁷ and that it is consciously aimed at encouraging such an attack. The existence of such a policy cannot be deduced exclusively from the lack of action of the government or the organization.⁶³⁸

In addition, this policy does not need to be explicit, but can be inferred from the analysis of factors which, taken together, evidence the existence of a given policy. In this regard, the planning, direction,

⁶³² ICTY, Trial Chamber, Prosecutor v. Kupre[KI], Mirjan Kupre[KI], Vlatko Kupre[KI], Drago Josipovi], Dragan Papi], Vladimir [ANTI], also known as “VLADO”, “Judgment”, IT-95-16-T, January 14, 2000, paragraph 765, <http://www.icty.org/x/cases/kupreskic/tjug/en/kup-tj000114e.pdf>

⁶³³ OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018. See also, OHCHR, “Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela of April 1 to July 31, 2017”, Geneva, August 2017, page 11, http://www.ohchr.org/Documents/Countries/VE/HCRreportVenezuela_1April-31July2017_EN.pdf

⁶³⁴ UN, “Rome Statute of the International Criminal Court”, 1998, Article 7(1)(a) and (2), <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>

⁶³⁵ Ibid, Article 7(2).

⁶³⁶ ICC, “Elements of Crimes”, 2011, Article 7(3), <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>. See also, ICC, Trial Chamber III, Situation in the Central African Republic in the case of The Prosecutor v. Jean-Pierre Bemba Gombo, “Judgment pursuant to Article 74 of the Rome Statute”, ICC-01/05-01/08, March 21, 2016, paragraph 159, https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF; and, ICC, Trial Chamber II, Situation in the Democratic Republic of the Congo in the case of The Prosecutor v. Germain Katanga, “Judgment pursuant to Article 74 of the Rome Statute”, ICC-01/04-01/07, March 7, 2014, paragraphs 1108 and 1113, https://www.icc-cpi.int/CourtRecords/CR2015_04025.PDF

⁶³⁷ ICC, Trial Chamber II, Situation in the Democratic Republic of Congo in the case of The Prosecutor v. Germain Katanga, “Judgment pursuant to Article 74 of the Statute”, ICC-01/04-01/07, March 7, 2014, paragraphs 1108 and 1113, https://www.icc-cpi.int/CourtRecords/CR2015_04025.PDF

⁶³⁸ ICC, “Elements of Crime”, 2002, Introduction to Article 7, footnote 6, <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>

and organization of the attack; the use of public or private resources to carry out or further the policy; the participation of the State or organization; the recurrent use of violence as a pattern of conduct; the instructions, statements, and documentation aimed at encouraging the commission of crimes; and/or an underlying motivation are all elements that allow one to determine that in effect the attack against the civilian population answers to a policy organized by a State or organization.⁶³⁹

To prove this policy, it is sufficient to determine that the acts that are part of the attack occur repeatedly, following the same pattern or sequence, or that there is a collective design or preparation that is orchestrated and coordinated by the State or organization that is carrying out the policy.⁶⁴⁰

Furthermore, it is not necessary to prove the objectives or motivation of the policy, without prejudice to the possibility of their having probative value.⁶⁴¹ What must be proven is that there is a connection between the course of conduct (the attack) and the policy of the State or organization⁶⁴², in order to exclude those acts that are carried out by individuals, in isolation or without any coordination.⁶⁴³

It is necessary to differentiate the notion of systematic attack from the political element that the Rome Statute requires as a contextual element for the commission of crimes against humanity. In this regard, the ICC has been clear in stating that the adjective “systematic” allows the nature of the attack to be characterized as involving a pattern of repeated conduct, or its periodic or continuous, interrelated commission.

To establish a “policy” one must only demonstrate the intent of the State or an organization to commit an attack against any civilian population.⁶⁴⁴

The information received by this Panel is sufficient to verify that the crimes of murder, severe deprivation of liberty, torture, rape and other forms of sexual violence, persecution, and enforced disappearance are part of a state policy of attack directed against an identifiable segment of the civilian population: political opponents or those who were perceived as such.⁶⁴⁵

639 ICC, Trial Chamber III, Situation in the Central African Republic in the case of The Prosecutor v. Jean-Pierre Bemba Gombo, “Judgment pursuant to Article 74 of the Rome Statute”, ICC-01/05-01/08, March 21, 2016, paragraph 160, https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF

640 ICC, Trial Chamber II, Situation in the Democratic Republic of the Congo in the case of The Prosecutor v. Germain Katanga, “Judgment pursuant to Article 74 of the Rome Statute”, March 7, 2014, paragraphs 1109, https://www.icc-cpi.int/CourtRecords/CR2015_04025.PDF

641 ICC, Trial Chamber III, Situation in the Central African Republic in the case of The Prosecutor v. Jean-Pierre Bemba Gombo, “Judgment pursuant to Article 74 of the Rome Statute”, ICC-01/05-01/08, March 21, 2016, paragraph 159, https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF

642 *Ibid*, paragraph 161.

643 *Ibid*.

644 ICC, Trial Chamber II, Situation in the Democratic Republic of Congo in the case of The Prosecutor v. Germain Katanga, “Judgment pursuant to Article 74 of the Statute”, ICC-01/04-01/07, March 7, 2014, paragraph 1109, https://www.icc-cpi.int/CourtRecords/CR2015_04025.PDF

645 *Cf.* ICC, Pre-Trial Chamber III. Situation in the Republic of Burundi. Public Redacted Version of “Decision on the Authorization of an Investigation into the Situation in the Republic of Burundi”, ICC-01/17-X, October 25, 2017, paragraph 40, https://www.icc-cpi.int/CourtRecords/CR2017_06720.PDF

This Panel notes that the State policy is evident in the number of different security forces that participated in the attack in a coordinated manner (Bolivarian National Guard (hereinafter, “GNB”), Bolivarian National Police (hereinafter, “PNB”), Anti-Extortion and Kidnapping Command, the Bolivarian National Intelligence Service (hereinafter, “SEBIN”), the Scientific, Penal, and Criminal Investigative Police (hereinafter, “CICPC”), and the General Directorate of Military Counterintelligence (hereinafter, “DGCIM”), among others, in which acts were carried out in most of the states of Venezuela (at least 13 states and the Capital District) and that they happened continuously since, at least, February 12, 2014. This demonstrates that the abuses did not constitute isolated cases, nor were they the result of simple excesses on the part of insubordinate members of the security forces.

According to the Inter-American Commission for Human Rights (hereinafter, “IACHR”), in the case of alleged torture carried out by the SEBIN, acts of torture were documented in the headquarters of the *Helicoide* and Plaza Venezuela (*La Tumba*).⁶⁴⁶ In relation to alleged cases perpetrated by the GNB, acts of torture were reported in the command known as “*Ciudad Chávez*”⁶⁴⁷, in Commando 433⁶⁴⁸ and in the detention center *La Ciega*.⁶⁴⁹ Torture cases have also been documented in the Scientific, Penal and Criminal Investigative Police detachment of *Villa de Rosario*⁶⁵⁰ and at PNB headquarters in the state of Aragua.⁶⁵¹ Likewise, there are documented reports of torture that took place in different prisons including *La Pica*⁶⁵², the DESUR detention

646 UVAL, “Informe sobre la situación de los derechos humanos de las personas privadas de libertad en las sedes del SEBIN del Helicoide y Plaza Venezuela”, page 4. The IACHR have also issued precautionary measures on behalf of detainees held in SEBIN headquarters; see, IACHR, Precautionary Measure, No. 223-13, “Asunto Lorent Saleh y Gerardo Carrero respect a Venezuela”, March 2, 2015, cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 246, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

647 The FPV documented the case of E.M.G., who was apprehended on June 12, 2017, outside his secondary school, by officers of the GNB, and taken to the command known as “*Ciudad Chávez*,” where he was beaten, two tear gas canisters were thrown at him, and he had a weapon pointed at him; see, *Foro Penal*, “Reporte sobre la represión del Estado en Venezuela, June 2017”, page 7, cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 246, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

648 Wuilly Arteaga, known for peacefully demonstrating while playing his violin, denounced that he was tortured during his detention at Command 433 of the GNB, situated in the El Paraíso district of Caracas *Foro Penal*, “Reporte sobre la represión del Estado en Venezuela, July 2017”, page 5, cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 246, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

649 Brandon Becerra denounced physical and verbal aggression by the GNB during his detention at *La Ciega*; see *CODHEZ* and *Aula Abierta*, “Informe preliminar sobre la situación de los derechos humanos en el estado Zulia en el marco de la protesta: Julio-Agosto 2017”, September 2017, pages 17-18, cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 246, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

650 Sixteen persons were detained by the GNB during a demonstration on May 5, 2017 and held at the offices of the CICPC in *Villa del Rosario* where a powder called “*prioca*” which provokes the same effects as teargas, was thrown in their faces. *Foro Penal*, “Reporte sobre la represión del Estado en Venezuela, May 2017”, page 11, cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 246, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

651 A group of 10 youths, detained on May 15, 2017, denounced having been victims of torture and sexual violence at the headquarters of the PNB in the state of Aragua. BBC, “*Gritaba y lloraba... tenía tanto miedo que me oriné: detenidos en protestas opositoras en Venezuela denuncian violaciones, golpizas y torturas*”, June 29, 2017. In addition, *CODHEZ* and *Aula Abierta* denounced that at military garrisons such as *La Ciega* and *Desur* in Maracaibo, cruel, inhuman, and degrading treatment was perpetrated within the facilities. *CODHEZ* y *Aula Abierta*, “Informe preliminar sobre la situación de los derechos humanos en el estado Zulia en el marco de la protesta: Julio-Agosto 2017”, September 2017, page 16, cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 246, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

652 There was the case of Orlando Moreno, detained on June 27, 2017, during a protest; he was taken to the *La Pica* jail, where he was suspended for 24 hours from his handcuffed hands, facing upward, and beaten repeatedly to demand that he denounce political leader María Corina Machado, *Foro Penal*, “Reporte sobre la represión del Estado en Venezuela, June 2017”, page 8, cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 246, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

center⁶⁵³, the CENAPROMIL military prison (*Ramo Verde*)⁶⁵⁴, the *Uribana* prisoner, and the processing center *26 de Julio*⁶⁵⁵. There have also been reported cases of torture in makeshift detention facilities created to hold demonstrators for hours, including at the facilities of the National Electric Corporation (CORPOELEC) in the Amparo sector and the headquarters of the *Fundación Servicio de Atención* in Zulia (Funsaz 171) in Av. La Limpia, in Maracaibo, in the state of Zulia⁶⁵⁶.

The existence of the State policy is also evident at three different levels: first, the planned, directed, and organized nature of the attack, relying on public resources for its implementation, using reoccurring acts of violence as a pattern of conduct, with the acts being crimes in and of themselves. Second, we find different and numerous actions, and official documents that are part of a same course of conduct. And finally, the public pronouncements made by high-level officials aimed at inciting or encouraging the commission of the crimes against humanity, especially the crime of persecution.

ii.(a) *The Attack as Objective Evidence*

The acts that make up part of the planned, directed, and organized attack⁶⁵⁷ will be developed in the Section that examines the alleged crimes. In order to prove the existence of a policy, the occurrence of these acts that will be considered as part of the attack are widely recognized by different international organizations, nongovernmental organizations, both international and national, and, in many cases, by the State itself.

ii.(b) *Actions of the National Executive Branch*

The acts that are part of the same course of conduct are directly related to decisions adopted by the high-level authorities of the State of Venezuela and are formal evidence of a State policy.

⁶⁵³ CODHEZ y Aula Abierta, “Informe preliminar sobre la situación de los derechos humanos en el estado Zulia en el marco de la protesta: Julio-Agosto 2017”, September 2017, pages 11-14, cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 246, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

⁶⁵⁴ Leopoldo López and Daniel Ceballos, opposition, denounced having been tortured in the CENAPROMIL military prison (*Ramo Verde*). Amnesty International, “Venezuela: Preso de conciencia Leopoldo López denuncia tortura”, June 28, 2017, <https://www.amnesty.org/es/latest/news/2017/06/venezuela-presos-de-conciencia-leopoldo-lopez-denuncia-tortura/>; IACHR, Precautionary Measure No. 335-14, “Regarding Leopoldo López and Daniel Ceballos with respect to Venezuela”, April 20, 2015, cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 246, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

⁶⁵⁵ Alexander Tirado and Raúl Emilio Baduel alleged that they had been victims of torture in the *Uribana* jail, in the state of Lara. In addition, Baduel and Tirado stated that they were kept in inhuman conditions at the Centro para Procesados, *26 de julio*. IACHR, Precautionary Measure No. 475-15, “Members of the *Partido Voluntad Popular* with respect to Venezuela”, January 14, 2017, cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 246, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

⁶⁵⁶ CODHEZ y Aula Abierta, “Informe preliminar sobre la situación de los derechos humanos en el estado Zulia en el marco de la protesta: Julio-Agosto 2017”, September 2017, page 15, cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 246, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

⁶⁵⁷ Cf. ICC, Trial Chamber III, Situation in the Central African Republic in the case of The Prosecutor v. Jean-Pierre Bemba Gombo, “Judgment pursuant to Article 74 of the Rome Statute”, ICC-01/05-01/08, March 21, 2016, paragraph 160, https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF

The State policy is, first of all, evidenced in the document of the platform of the governing party *Partido Socialista Unido de Venezuela*, “Programmatic Bases”, in which the party defines forces with are “friendly” or “enemies” of the Bolivarian Revolution, the latter of which must be attacked.⁶⁵⁸ This enemy is all those considered to be opposition, or those identified as such. According to the governing party, a large segment of the civilian population of Venezuela is considered as the “enemy”.

The State policy is also evidenced in the transformation of the Armed Forces into a tool to defend the ideology of the governing party, instead of serving the interests of the nation, and this is accomplished through the “Plan Sucre, General Guidelines of the Development Plan of the Bolivarian National Armed Forces for the Comprehensive Defense of the Nation”.⁶⁵⁹

According to the Report of the General Secretariat, “following the student protests that occurred in February and March 2014, a new policy was adopted called the Strategic Operational Plan Zamora, or *Plan Zamora*. This Plan was designed to empower security forces to effectively respond against the “economic and political interests of powerful groups at the service of foreign powers” and against “new challenges to dealing with everything related to the notion of internal order.”⁶⁶⁰

“Plan Zamora identifies the “enemy” forces as those opposed “to the legally constituted system of government, who undertake destabilizing actions on national territory, in support of violent groups,” among others. It also describes potential threats to internal order, and the top three are the “destabilization of the political system, disloyalty to the ideas and the interests of the country, [and] the destabilizing actions of the opposition parties.”⁶⁶¹

Finally, the creation and use of different bodies, structures, legal tools, and public statements, in addition to the actions of the various pre-existing State security forces (CICPC, CONAS, DGCIM, GNB, PNB, SEBIN, etc.) to “defend” the Bolivarian Revolution, also point to the existence of a State policy to attack a certain part of the civilian population, composed of individuals opposed to the Government or who are perceived as such. These entities, etc., include the People’s Anti-Coup Command, the Bolivarian Workers Militia, the Special Brigade against the Actions of Groups Generating Violence, the “Shock Force” under the Strategic Operational Command, the People’s System for Protection of Peace, Resolution 008610 of the Ministry of the People’s Power for Defense, Plan Zamora, the *colectivos*, and statements by high-level officials, all described in the following paragraphs.

⁶⁵⁸ OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter III, page 49.

⁶⁵⁹ Ibid.

⁶⁶⁰ *Comando Estratégico Operacional, Fuerzas Armadas Nacionales Bolivarianas, CEOFANB “Plan Estratégico Operacional Zamora”*, Caracas, D.C., April 9, 2014, cited in the OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter III, page 49.

⁶⁶¹ Ibid.

ii.(b)1 *The People's Anti-Coup Commandos*

The IACHR documented that in the context of the demonstrations that took place in the first months of 2014, the President of the Republic announced the formation of the “People’s Anti-Coup Commandos” which were “to review and counteract coup plotters and fascists” against the Government.⁶⁶² The IACHR affirmed that these commandos were also included in what were called the “Bolívar-Chávez Battle Units”⁶⁶³ created within the *Partido Socialista Unido de Venezuela*.⁶⁶⁴

In addition, in the context of the demonstrations, the IACHR also received complaints about the actions of the “People’s Guard,”⁶⁶⁵ a body established as part of the “Bicentennial Contingent for Citizen Security” in 2012.⁶⁶⁶

Similarly, in February 2014, faced with the student demonstrations that began early that month and the mobilization called by opposition leaders, the President stated “If they have decided to take the shortcut of another coup attempt, I call on the people, I call on the Armed Forces. Everyone prepare. I have reactivated the Anti-Coup Commando. We have met in the early morning hours all of these days. We are almost ready with the plan, zone by zone of the country, and name by name. And we will act to defend democracy, to defend the revolution, to defend the legacy of Commander Chávez.”⁶⁶⁷ A few days later (February 18, 2014), in response to the demonstrations in the state of Táchira and other states of the country, President Maduro informed pro-government workers assembled in Miraflores that he was personally conducting military operations against the “fascist attacks” to guarantee peace in the country.⁶⁶⁸

ii.(b)2 *Bolivarian Workers Militia*

The IACHR also reported that in 2014 it received information about the operations of the Bolivarian Workers Militia (*Milicia Obrera Bolivariana*) established in 2013 for the “defense of the fatherland”, and “to

⁶⁶² IACHR, “Annual Report 2014, Chapter IV, Venezuela”, paragraph 353, <http://www.oas.org/en/iachr/docs/annual/2014/docs-en/annual2014-chap4venezuela.pdf>

⁶⁶³ AVN, “*En Monagas comando popular antigolpe ayuda a mantener la paz ciudadana*”, February 25, 2014, <http://www.avn.info.ve/contenido/monagas-comando-popular-antigolpe-ayuda-mantener-paz-ciudadana>, cited in IACHR, “Annual Report 2014, Chapter IV, Venezuela”, paragraph 353, <http://www.oas.org/en/iachr/docs/annual/2014/docs-en/annual2014-chap4venezuela.pdf>

⁶⁶⁴ IACHR, “Annual Report 2014, Chapter IV, Venezuela”, paragraph 353, <http://www.oas.org/en/iachr/docs/annual/2014/docs-en/annual2014-chap4venezuela.pdf>

⁶⁶⁵ Ibid.

⁶⁶⁶ Published in the Official Gazette of the Bolivarian Republic of Venezuela, No. 392.930, April 18, 2012, http://www.mp.gob.ve/c/document_library/get_file?p_l_id=29938&folderId=992304&name=DLFE-3938.pdf, cited in IACHR, “Annual Report 2014, Chapter IV, Venezuela”, paragraph 353, <http://www.oas.org/en/iachr/docs/annual/2014/docs-en/annual2014-chap4venezuela.pdf>

⁶⁶⁷ YouTube, “*Maduro exhorta a estar “preparados” en caso de golpe de Estado*”, VTV, February 10, 2014, <https://www.youtube.com/watch?v=5ZatDbwaAy0>

⁶⁶⁸ Telesur, “*Presidente de Venezuela: Junto al pueblo frenamos la violencia de la derecha*”, 18 de febrero de 2014, <https://www.telesurtv.net/news/Presidente-de-Venezuela-Junto-al-pueblo-frenamos-la-violencia-de-la-derecha-20140218-0022.html>

strengthen the worker-military alliance, of the Bolivarian National Armed Forces, with all of the workers of the homeland” or “the working class.”⁶⁶⁹

Amidst the mass protests of 2017, President Maduro announced the expansion of the Bolivarian militias from 100,000 to 500,000 promising a rifle to each militia member.⁶⁷⁰ In response, on April 19, 2017, the IACHR released a statement calling on the Venezuelan government to “Demilitarize [the] Streets”, “expressing alarm at the militarization and call to arm 500,000 civilian militias”. The statement also noted concern with the violence that had already taken place.⁶⁷¹

ii.(b)3 *Creation of the Special Brigade against the Actions of Groups Generating Violence and the “Shock Force” under the Strategic Operational Command*

On June 25, 2014, presidential decree number 1014 of May 30, 2014 was published in the Official Gazette of the Bolivarian Republic of Venezuela No. 40,440, which established the “Special Brigade against Actions of Groups Generating Violence” for the purpose of “coordinating, analyzing, evaluating, organizing, directing, executing and collecting information and actions from all the Citizen Security and Intelligence Agencies of the State and other public and private entities to neutralize and control activities that could be carried out related to the actions of groups generating violence.”⁶⁷²

Some months later, on September 22, 2014, Resolution 006574 of the Ministry of People’s Power for Defense was published in the Official Gazette of the Bolivarian Republic of Venezuela number 40,502, which created and activated the “Shock Force”, under the Strategic Operational Command, to fight plans that would destabilize the country.

ii.(b)4 *Creation of the People’s System for Protection of Peace*

In November 2014, through the Enabling Act, President Maduro amended the Organic Law on Security of the Nation for the purpose of creating the Popular System for the Protection of Peace (*SP3: Sistema Popular de Protección de la Paz*)⁶⁷³ as the working revolutionary mechanism for integrating “all the government

⁶⁶⁹ IACHR, “Annual Report 2013, Chapter IV, Venezuela”, paragraph 474, <http://www.oas.org/en/iachr/docs/annual/2014/docs-en/annual2014-chap4venezuela.pdf>

⁶⁷⁰ *El Nuevo Herald*, “Maduro prometió un fusil para cada miliciano”, April 17, 2017, <http://elnuevoherald.com/noticia/mundo/america-latina/venezuela/venezuela-es/articulo145054754.html>

⁶⁷¹ IACHR, “IACHR Urges Venezuela to Guarantee the Rights to Protest and to Demilitarize Streets”, April 19, 2017, http://www.oas.org/en/iachr/media_center/preleases/2017/048.asp, cited in the OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter VII, Section G, page 221.

⁶⁷² Presidential Decree number 1014 of May 30, 2014”, published in the Official Gazette of the Bolivarian Republic of Venezuela, number 40.440, June 25, 2014, <http://www.defesanet.com.br/riots/noticia/15887/Venezuela---Decreto-1014-da-BEGV/>

⁶⁷³ Official Gazette of the Bolivarian Republic of Venezuela, No. 40,582, January 16, 2015, Decree No. 1,417.

institutions at all political-territorial levels (national, state and municipal, Popular Power, and communal governments), in order to integrate the people and the government to jointly promote and implement a new mode of planning policies against crime, terrorism and the furtherance of plans on citizen security to counter internal and external threats to the security of the Nation.”⁶⁷⁴ The Minister of People’s Power for Defense indicated, in turn, that the SP3 was born as a result of “the constant threats that have arisen over the 15 years of revolution,” recalling the “*guarimbas*” – referring to the demonstrations of 2014 – that the country had faced six months earlier “as the most recent experience of violent groups.” The Minister added, “The most important thing is to articulate and prevent so as to have the information on time where we discover and neutralize all the internal and external threats.”⁶⁷⁵

ii.(b)5 *Publication of resolution 008610 of the Ministry of the People’s Power for Defense, which establishes the “Rules on the action of the Bolivarian National Armed Forces in functions of maintaining public order, social peace, and citizen coexistence in public assemblies and demonstrations”*

In the face of mounting demonstrations against the government, on January 27, 2015 resolution 008610 of the Ministry of People’s Power for Defense was published in the Official Gazette of the Bolivarian Republic of Venezuela, number 40,589; it established the “Rules on the action of the Bolivarian National Armed Forces in its functions for controlling public order, social peace, and citizen coexistence in public assemblies and demonstrations.” The resolution formalized an order authorizing the use of firearms in the context of public assemblies and demonstrations. In effect, these Rules issued by the Ministry of Defense expressly authorize military personnel “to use their firearm” (Article 5(5)); to which end, military personnel are authorized to “carry and use” firearms in the “control of public assemblies and peaceful demonstrations,” subject to the necessity and proportionality of the means employed (section 9).

In response to the publication of this resolution, several United Nations rapporteurs issued a joint statement questioning several of its points. The communiqué was signed by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to the freedom of peaceful assembly and association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on extrajudicial, summary or arbitrary executions. They noted their concern that the text “includes provisions that would unduly restrict fundamental rights, including

⁶⁷⁴ VTV, “Sistema Popular de Protección de la Paz reforzará seguridad ciudadana en todo el país”, December 27, 2014, <http://www.vtv.gob.ve/articulos/2014/12/27/sistema-popular-de-proteccion-de-la-paz-reforzara-seguridad-ciudadana-en-todo-el-pais-1269.html>, cited in *Sinergia y Civilis*, “Examen de Cuarto Informe Periódico de Venezuela sobre cumplimiento del Pacto Internacional de Derechos y Políticos, Informe Alternativo sobre Artículos 20, 21 y 22, Pacto Internacional de Derechos Civiles y Políticos”, June 2015, paragraph 25, http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/VEN/INT_CCPR_CSS_VEN_20719_S.pdf.

⁶⁷⁵ Ministra Meléndez, “Activación del SP3 se realizará con las comunidades e instituciones.” *Prensa MPPRIIP*, November 22, 2014, <http://cpnb.gob.ve/index.php/noticias/externas/735-ministra-melendez-activacion-del-sp3-se-realizaracon-las-comunidades-e-instituciones>, cited in *Sinergia y Civilis*, “Examen de Cuarto Informe Periódico de Venezuela sobre cumplimiento del Pacto Internacional de Derechos y Políticos, Informe Alternativo sobre Artículos 20, 21 y 22, Pacto Internacional de Derechos Civiles y Políticos”, June 2015, paragraph 25, http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/VEN/INT_CCPR_CSS_VEN_20719_S.pdf.

the right to the freedom of peaceful assembly and the right to freedom of expression, by conflating peaceful protest with threats to the public order and granting broad powers to the security forces in the context of the dissolution of peaceful demonstrations and assemblies,” by characterizing the “peaceful resistance” as “violent”. The provisions contained in Chapter IV, Article 22, do not distinguish between peaceful assemblies and violent acts, and therefore could be used to justify the use of force, gradually and progressively, by the Bolivarian National Armed Forces (hereinafter, FANB), to disperse peaceful gatherings” and that “it would appear to prioritize the adoption of measures that turn to the use of force to ‘counter’ peaceful demonstrations and gatherings and suggests *a priori* that the demonstrators are violent.” They also reiterated “the concerns expressed by the Committee against Torture during its review of the country in 2014 regarding the participation of military forces, such as the FANB, in the control of demonstrations, since resolution 008610 identifies them as being the ones principally in charge of performing security functions in facilitating assemblies”⁶⁷⁶.

ii.(b)6 *Publication of Decree No. 2323, declaring the State of Exception and Economic Emergency*

On May 13, 2016, Decree No. 2323, signed by President Maduro the same day it was issued, and titled “by which the State of Exception and Economic Emergency is declared in light of the extraordinary Social, Economic, Political, Natural, and Environmental circumstances that have a serious negative impact on the National Economy,” was published in Official Gazette of the Bolivarian Republic of Venezuela in special issue number 6227.”⁶⁷⁷

The decree provides at Article 2(7) the decision on “the temporary and exceptional suspension of the enforcement of political sanctions against the highest-level authorities of the Government and other high-level officials, when those sanctions may obstruct the continuity of the implementation of economic measures for the urgent recovery of the national economy, the supply of essential goods and services to the Venezuelan people, or violate the security of the nation.” What was sought was to prevent the National Assembly (controlled by the opposition), the exercise of their constitutionally mandated authority to call ministers and other political and military authorities of the Executive branch to account. In addition, Article 2(9) establishes that “functions of surveillance and organization are attributed to the Local Committee for Supply and Distribution (CLAP: *Comités Locales de Abastecimiento y Distribución*), the Communal Councils, and all other organizations at the base of People’s Power, together with the Bolivarian National Armed Forces, the Bolivarian National Police, the State and Municipal Police Corps, to maintain public order and

⁶⁷⁶ OHCHR, “Mandatos Relator Especial sobre la promoción y la protección del derecho a la libertad de opinión y de expresión; del Relator Especial sobre los derechos a la libertad de reunión pacífica y de asociación; de Relator Especial sobre la situación de las y los defensores de los derechos humanos; y el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias”, February 20, 2015, https://spdb.ohchr.org/hrdb/29th/public_-_OL_Venezuela_20.02.15_%281.2015%29.pdf

⁶⁷⁷ Cfr. OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter X, Section E, page 273. See Also, IACHR, “Annual Report 2016, Chapter IV, Venezuela”, paragraph 42, <http://www.oas.org/en/iachr/docs/annual/2016/docs/InformeAnual2016cap4B.Venezuela-en.pdf>

ensure the security and sovereignty of the country.” Article 2(16) authorizes the Executive Branch to issue the measures it considers advisable in terms of security and public order, especially to “issue measures and carry out special plans for public security that ensure that public order is preserved in the face of destabilizing actions that aim to affect the internal life of the country.”⁶⁷⁸

ii.(b)7 *Implementation of the Zamora Strategic Plan in its “green phase”*

On April 18, 2017, the President announced the implementation of the Zamora Strategic Plan in its “green phase,”⁶⁷⁹ which converted the territory of Venezuela into a “theater of operations.”⁶⁸⁰ *Plan Zamora* not only implies the participation of the national armed forces in security tasks, it also provides that all autonomous police forces of the states and municipalities take orders from the GNB, which assumes the militarization of the activities of all security forces under the overall and sole command of the National Executive⁶⁸¹.

In a video that was made public, Nicolás Maduro justified the measure with the objective of “defeating the coup d’état, the escalation of violence, and guaranteeing peace in Venezuela.” At the hearing conducted by the OAS General Secretariat on September 15, 2017 before the OAS, Major General Hebert García Plaza explained that “the *Plan Zamora* is the military plan for integral defense of the nation. A military order, in military language, it distinguishes ‘friendly and enemy’ forces.”⁶⁸² Military plans are not conceived of in any other way.” This former vice-minister of defense, Minister of People’s Power for Aquatic and Air Transport, and Minister of Food, recounted that the grounds set forth in the Zamora Strategic Plan for its implementation were: “disloyalty to the ideas and interests of the country,” “destabilizing actions of opposition parties,” or “pronouncements of national and international actors against the performance of the revolutionary government.”⁶⁸³ Among the factors that are believed to contribute to the destabilization of the political system, the Plan includes “pronouncements of national and international actors against the performance of the Revolutionary Government”; “national and international media campaigns organized by opposition actors, planned by Hegemonic Powers, to discredit and repudiate the powers of the legitimately constituted Government”; “Incitement to strike, protests, and illegitimate street actions in sectors of civil

⁶⁷⁸ Ibid.

⁶⁷⁹ Testimony of Major General Hebert García Plaza at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 15, 2017, <https://www.youtube.com/watch?v=cKmTJ79prKE>.

⁶⁸⁰ Ibid.

⁶⁸¹ CDH-UCAB, “10 pistas para entender el Plan Zamora 200”, 2017, page 1; and, *Tal Cual Digital*, “Guardia Nacional asumirá el control de las policías regionales”, April 18, 2017, cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela”, December 31, 2017, paragraph 381, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

⁶⁸² Testimony of Major General Hebert García Plaza at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 15, 2017, <https://www.youtube.com/watch?v=cKmTJ79prKE>.

⁶⁸³ Ibid.

society, by political actors of the far right wing”; and “media campaigns by economic and political actors of the far right to manipulate and misinform the population, creating uncertainty and doubts and attacking the Security of the Nation.”

In addition, Major General García Plaza clarified that to set in motion a military plan the Commander-in-Chief should “take stock of and plan a military operation to prevent the enemy from achieving its objective.”⁶⁸⁴

Mr. Julio Henríquez, representing *Foro Penal*, also gave testimony in the public hearing conducted by the OAS General Secretariat on September 14, 2017, explaining that “in government defense plans, for example *Plan Zamora*, one sees a direct correlation between an order or declaration by the government that this plan will be implemented and in the following days one notes arbitrary detentions, assassinations, and persons wounded.”⁶⁸⁵ He explained that this *Plan Zamora* also considers using military courts to try civilians.⁶⁸⁶

On May 4, 2017, Major General Antonio José Benavides Torres, in his capacity as general commander of the Bolivarian National Guard, announced that the military courts would be activated in the state of Carabobo under the *Plan Zamora* pursuant to instructions from the President of the Republic and in light of events related to matters of public order. Benavides Torres explained that with *Plan Zamora* in Carabobo a large number of military and police officers would be activated in coordination with military courts in that state. On that same day the General stated: “thus far a total of 43 persons are under the charge of the military courts through the Office of the Chief Military Prosecutor (*Ministerio Público Militar*) and the military courts, persons involved in serious crimes against public order such as lootings, rebellion, assault on the sentinel, and attack on the sentinel [assaulting and attacking a soldier].”⁶⁸⁷

ii.(b)8 Participation of the “colectivos”

As regards the participation of the “colectivos,” the Office of the United Nations High Commissioner for Human Rights (hereinafter, “OHCHR”), in a report that collects and analyzes the violations and abuses committed in the context of protests between April 1 and July 31, 2017, said that it “received numerous

⁶⁸⁴ Ibid.

⁶⁸⁵ Testimony of Julio Henríquez at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 14, 2017, September 14, 2017, <https://www.youtube.com/watch?v=KRX0QaJPzRk>

⁶⁸⁶ Ibid.

⁶⁸⁷ *El Universal*, “Anuncian activación de justicia militar en Carabobo a través de Plan Zamora”, May 4, 2017, http://www.eluniversal.com/noticias/politica/anuncian-activacion-justicia-militar-carabobo-traves-planzamora_651223, cited in OAS General Secretariat, “Third Report of the Secretary General on the Situation in Venezuela”, July 19, 2017; page 28, <http://www.oas.org/documents/eng/press/TERCER-INFORME-VENEZUELA-ENGLISH-Final-signed.pdf>

accounts about the activities of pro-Government armed groups (armed *colectivos*) in the context of protests. According to these accounts, armed *colectivos* routinely broke into protests riding motorcycles and carrying firearms. They harassed, attacked and shot at demonstrators, media workers and by-standers. They also arrested demonstrators and participated in violent house raids. Witnesses and sources reported how these groups had been operating with the acquiescence of, and sometimes in coordination with, security forces and local authorities. According to OHCHR estimates, armed *colectivos* are allegedly responsible for at least 27 killings during recent demonstrations.”⁶⁸⁸

In addition to terrorizing, injuring, and sometimes killing demonstrators, according to the OHCHR “armed *colectivos* were allegedly involved in lootings and in the detention of demonstrators”⁶⁸⁹. An eyewitness interviewed by the OHCHR said: ‘We ran away from the security forces that were chasing us. When we reached a public square, the security forces started to withdraw from the streets and then came the *colectivos* with their motorcycles. They were about 20 people, armed, with their heads covered, and no license plates on the motorcycles’”⁶⁹⁰. Security forces did not protect people from armed *colectivos* and either left the scene when they arrived or did nothing to stop them. In one case, while armed *colectivos* were attacking a group of demonstrators, a person later interviewed by OHCHR asked the police to stop them. She was told: ‘We have orders not to intervene’”.⁶⁹¹ A notable incident was the violent break-in by armed *colectivos* to the National Assembly on July 5, 2017, during which the state security forces did not intervene while armed civilians attacks the legislators who were present.⁶⁹²

Amnesty International made a statement along the same lines, noting that in addition to the acts of illegal violence committed by state security forces, they “have evidence of several cases of armed civilian groups that have attacked the civilian population with the acquiescence of the authorities, which also appears to be linked to a state policy of violence”⁶⁹³. According to Amnesty International, these violent acts have been directed against dissident demonstrations and also against homes in several states of Venezuela, which emphasizes the widespread nature of the strategy of violence.

Julio Henríquez explained in the public hearing before this Panel on September 14, that “the *Plan Zamora* implies something they call ‘civic-military union’; what it does is articulate armed civilians with security corps. This articulation allows armed civilians to participate in the formal process of repression, and to

⁶⁸⁸ OHCHR, “Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela of April 1 to July 31, 2017”, Geneva, August 2017, page iii, http://www.ohchr.org/Documents/Countries/VE/HCHRreportVenezuela_1April-31July2017_EN.pdf

⁶⁸⁹ Ibid, page 30.

⁶⁹⁰ Ibid.

⁶⁹¹ Ibid. See also, IACHR, “2016 Annual Report, Chapter IV on Venezuela”, paragraph 165, <http://www.oas.org/en/iachr/docs/annual/2016/docs/InformeAnual2016cap4B.Venezuela-en.pdf>

⁶⁹² Ibid.

⁶⁹³ Amnesty International, “Venezuela: Lethal violence, a state policy to strangle dissent,” July 10, 2017, <https://www.amnesty.org/en/latest/news/2017/07/venezuela-violencia-letal-una-politica-de-estado-para-asfixiar-a-la-disidencia/>

participate, for example, in trying to control a demonstration.”⁶⁹⁴ Mr. Henríquez stated that, among other public acts, the articulation is evident in that these groups of armed civilians have operated in areas where the Government had announced that *Plan Zamora* would be implemented.⁶⁹⁵

Also speaking in the September 15, 2017 public hearing conducted by the OAS General Secretariat, Igor Eduardo Nieto Buitrago, an ex-Captain in the Bolivarian National Armed Forces, stated that civilians were involved in detaining demonstrators in the context of the protests, “armed *colectivos* who act in coordination with the National Guard, the SEBIN, the Military Counterintelligence Service [DGCIM], and in coordination with the judges and prosecutors.”⁶⁹⁶

At the hearing on October 17, 2017, Carlos Vecchio, the National Political Coordinator for *Voluntad Popular*, denounced that there is cooperation between the security forces and the “*colectivos*” that is proven by testimony and images. He explained that it is clear how the State security forces are at the forefront of the demonstrations and behind them are the “*colectivos* or armed paramilitary groups” and that the security forces open up space so that the “*colectivos*” can attack or cause injuries to those who are peacefully demonstrating and are then protected by these same forces.⁶⁹⁷

ii.(c) *Statements by high-level officials*

Another element that should be analyzed to prove the existence of the plan are the statements by high-level officials that openly encourage or incite the commission of crimes. The evidentiary material in this sense is vast and eloquent. The Report of the General Secretariat includes 36 examples which demonstrate the magnitude of the phenomenon.⁶⁹⁸

On March 20, 2014 the government television channel *Venezolana de Televisión* (hereinafter “VTV”) broadcast a meeting with mayors and governors who supported the government, where President Nicolás Maduro affirmed, referring to the opposition mayor of the municipality of Chacao in Caracas “... there are some of them who are mayors, like Ramón Muchacho. We liberated the Altamira Plaza. We had all the

⁶⁹⁴ Testimony of Julio Henríquez at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 14, 2017, <https://www.youtube.com/watch?v=KRX0QaJPzRk>

⁶⁹⁵ Ibid.

⁶⁹⁶ Testimony of Igor Eduardo Nieto Buitrago at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 15, 2017, <https://www.youtube.com/watch?v=cKmTJ79prKE>

⁶⁹⁷ Testimony of Carlos Vecchio at the at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 17, 2017, <https://www.youtube.com/watch?v=iH9oh8SdhIU>

⁶⁹⁸ OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter VIII, Section A, page 196.

information that Ramón Muchacho was behind the logistics, the support for the fascist groups...,” referring to the citizen protests that were being organized by the Venezuelan opposition in Chacao.⁶⁹⁹

On August 1, 2015 Nicolás Maduro threatened that the alternative to the regime was outright conflict: “Prepare yourselves for a time of massacre and death if the Bolivarian revolution fails.”⁷⁰⁰

In a speech before the Armed Forces on June 24, to celebrate the 196th anniversary of the Battle of Carabobo, President Maduro insisted to the public that there was another conspiracy to carry out a coup d’état against his government, planned by the opposition with foreign military intervention. During the speech he asked: “What would happen if the PSUV were to make an appeal to an armed civic-military rebellion to arrest the leaders of the opposition and dissolve the National Assembly and implement a regime of force like party leaders do?” The president answered his own question, threatening all the members of the opposition: “What would happen if I were to order all the forces of the Fatherland that we have, to go in search of all the oligarchy and detain them?”⁷⁰¹

Finally, on June 27 Maduro sent another clear message of threats, intimidation, and aggression. During a ceremony on the Constituent Assembly that he was promoting, he invited his base to opt for the path of violence and to use their weapons against the political opposition and in the streets: “If Venezuela were bogged down in chaos and violence, and the Bolivarian revolution were destroyed, we would go into combat. We would never surrender. And what could not be done with votes, we would do with weapons.”⁷⁰²

President Nicolás Maduro has personally declared “Erdogan [President of Turkey] will be looking like a baby at the breast compared to what the Bolivarian revolution will do if the right crosses the line of a coup.” This was supported by legislator Cabello, who announced that “justice will be applied” to each member of the opposition who “steps out of line with the law” and that they were alert to any “subversive attack from the right.” He indicated that the intelligence agencies would be undertaking operations to capture alleged conspirators.⁷⁰³ These statements were followed by the arrests of members of opposition political parties, particularly the party *Voluntad Popular*.

⁶⁹⁹ *Centro de Justicia y Paz*. Report to the Human Rights Committee of the United Nations on occasion of the Review of the Fourth Periodic Report of the Venezuelan State at the 114th session in June 2015, on the International Covenant on Civil and Political Rights. “Persecución política en Venezuela. Sistematización de patrones de persecución a la disidencia política venezolana”, page 17.

⁷⁰⁰ OAS General Secretariat, “Third Report of the Secretary General on the Situation in Venezuela”, July 19, 2017; page 42, <http://www.oas.org/documents/eng/press/TERCER-INFORME-VENEZUELA-ENGLISH-Final-signed.pdf>

⁷⁰¹ Ibid.

⁷⁰² Ibid.

⁷⁰³ IACHR, “2016 Annual Report, Chapter IV on Venezuela”, paragraph 168, <http://www.oas.org/en/iachr/docs/annual/2016/docs/informeanual2016cap4b.venezuela-en.pdf>

ii.(d) Conclusion

This information is evidence of the existence of a process of the control and militarization of society and of collusion between the State and pro-government, irregular armed groups both formally through the People's Anti-Coup Commandos, the use of the Bolivarian Workers Militia, and the "combatant corps", the activation of *Plan Zamora*, as well as informally with the so-called "*colectivos*," accompanied by the actions of the security forces, with which they shared objectives and methods of attack, to repress the opposition demonstrators, suffocate the dissent, and instill fear in a segment of society. The objective of the Government was not to control demonstrations, but to violently end them.

We find that both with the enactment of laws, decrees, orders, resolutions, military plans or structural reforms within the Armed Forces, and with the official announcement of decisions, formal and informal (*colectivos*) militarized hierarchical structures were created to act in a coordinated way to participate in the attacks directed against the civilian population. These acts by the Executive Power were constantly accompanied by public declarations by high level State officials designed to incite the commission of the crimes.

Significant evidence for understanding the militarization of the society was presented in the hearing on September 15 by Major General Herbert García Plaza. In that hearing he played a video in which one sees legislator Pedro Carreño presenting, on May 8, 2017, the "Framework Plan for Reorganization of the Structure of the PSUV for its incorporation in Integral Defense through the System for Defense of the Territory" (*Plan de Encuadramiento de la Estructura del PSUV para su incorporación al Defensa Integral a la Defensa Integral a través del Sistema Defensivo Territorial*). In that television interview he stated that "understanding the juncture we are living in and under the assumption that this situation may *crescendo* and having a greater escalation of violence, the Partido Socialista Unido de Venezuela has a very high responsibility to join as combatants along four main lines: (a) registration, which we have already completed; (b) organization, which we are doing at this time; (c) training, we activists of the PSUV are going to go to the camps to train in shooting and combat, infiltration, instinctive shooting, self-defense, anti-riot, we prepare them for every scenario; and the last (d) deployment. [...] How are we going to organize ourselves? We already have 60 activists in 10,176 UBCH [Bolívar-Chávez Combat Units]. Each UBCH will get 20 compatriots and each UBCH is going to be a platoon. Four UBCH, which constitute a CLP, are going to be a company, that is to say that today we have 3680 CLP, 3680 companies. And every four CLP make a militia battalion. In other words, that we are going to provide, for the integral defense of the Nation, for any scenario, upon orders from our Commander in Chief, Compañero President Nicolás Maduro, 920 territorial battalions of militia made up of ourselves, for defense.[...]"⁷⁰⁴

⁷⁰⁴ YouTube, "Pedro Carreño: Militantes de Psuv se alistan para defender la Patria y asegurar la paz", Multimedia VTV, May 8, 2017, <https://youtu.be/dFbBYsQcUhl>

All of these probative elements leave no doubt with the members of this Panel of the existence of a State policy to attack the segment of the civilian population composed of political opponents or those identified as such.

iii. *The Widespread or Systematic Nature of the Attack*

According to the ICTY, “The widespread or systematic nature of the attack is essentially a relative notion. The Trial Chamber must first identify the population which is the object of the attack and, in light of the means, methods, resources and result of the attack upon this population, ascertain whether the attack was indeed widespread or systematic.”⁷⁰⁵ The terms have been further defined by the case law: the term “widespread” refers to the large scale nature of the attack and the number of victims, whereas the term “systematic” refers to “the organised nature of the acts of violence and the improbability of their random occurrence”.⁷⁰⁶

iii.(a) *Widespread attack*

The Pre-Trial Chamber of the ICC has established in the Decision on the Confirmation of Charges in the Katanga case⁷⁰⁷ that the widespread nature of the attack necessarily requires that it be committed on a large scale or against a large number of victims.⁷⁰⁸ Subsequently, the ICC was more specific in the *Bemba Gombo* case⁷⁰⁹ on stating that the widespread element includes the nature of a large-scale attack, which may be “massive, frequent, carried out with a considerable seriousness and directed against a multiplicity of victims”.⁷¹⁰ As such, the element refers to both the nature of a large-scale attack and the number of victims of the attack.⁷¹¹

⁷⁰⁵ ICTY, Trial Chamber, Prosecutor v. Dragoljub Kunarac, Radomir Kovac, and Zoran Vukovic, “Judgment”, IT-96-23-T & IT-96-23/1-T, February 21, 2001, paragraph 430, <http://www.icty.org/x/cases/kunarac/tjug/en/kun-tj010222e.pdf>

⁷⁰⁶ International Criminal Tribunal for Rwanda (hereinafter, ICTR), Appeals Chamber, Augustin Nindiliyimana, François-Xavier Nzuwonemeye, Innocent Sagahutu v. The Prosecutor, “Public and Redacted – Judgment” ICTR-00-56-A, February 11, 2014, paragraph 260, <http://unictr.unmict.org/sites/unictr.org/files/case-documents/ict-00-56/appeals-chamber-judgements/en/140211.pdf>

⁷⁰⁷ ICC, Pre-Trial Chamber I, Situation in the Democratic Republic of Congo in the case of The Prosecutor v. Germain Katanga and Mathieu Ngudjolo, Public Redacted Version “Decision on the confirmation of charges”, ICC-01/04-01/07, September 30, 2008, https://www.icc-cpi.int/CourtRecords/CR2008_05172.PDF

⁷⁰⁸ *Ibid*, paragraph 395 *ff*.

⁷⁰⁹ ICC, Trial Chamber III, Situation in the Central African Republic in the case of The Prosecutor v. Jean-Pierre Bemba Gombo, “Judgment pursuant to Article 74 of the Rome Statute”, ICC-01/05-01/08, March 21, 2016, https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF

⁷¹⁰ *Ibid*, paragraph 163.

⁷¹¹ *Ibid*.

Nonetheless, it should be noted that the evaluation is not exclusively quantitative or geographic but must be carried out on the basis of individual acts.⁷¹² Accordingly, a widespread attack may be the cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude.⁷¹³

Along these lines, it is not a minor point to note that the term *widespread* appeared in the Rome Statute only after the drafts of 1991, 1994, and 1996. From the term “mass scale” in 1991⁷¹⁴ came “large-scale” in 1994⁷¹⁵ and 1996⁷¹⁶, so as to finally end up in the concept of “widespread.”

In addition, the requirement of the multiple commission of acts which the Rome Statute references⁷¹⁷ is not tied to the widespread nature of the attack.⁷¹⁸ If it were, the alternative test of the *widespread* or *systematic nature* of the attack by which crimes against humanity may be committed would be meaningless.⁷¹⁹

iii.(b) *Systematic attack*

According to the interpretations rendered by the ICC in the *Katanga* case⁷²⁰, the systematic nature of an attack refers specifically to the organized nature of the acts of violence and the impossibility of them

712 Ibid.

713 ICC, Pre-Trial Chamber III, Situation in the Republic of Burundi, Public Redacted Version of “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi”, ICC-01/17-X, October 25, 2017, paragraph 30, https://www.icc-cpi.int/CourtRecords/CR2017_06720.PDF. See also, ICC, Pre-Trial Chamber II, Situation in the Republic of Kenya, “*Décision relative à la demande d’autorisation d’ouvrir une enquête dans le cadre de la situation en République du Kenya rendue en application de l’article 15 du Statut de Rome*”, ICC-01/09, March 31, 2010, https://www.icc-cpi.int/CourtRecords/CR2011_03256.PDF.

714 UN, International Law Commission, Annual Report, 1991, “Report of the International Law Commission on the work of its forty-third session”, A/46/10 1991, Vol. II(2), page 103, http://legal.un.org/docs/?path=../ilc/documentation/english/reports/a_46_10.pdf&lang=EF5XP

715 UN, International Law Commission, Annual Report, 1994, “Report of the International Law Commission on the work of its forty-sixth session”, A/49/10, 1994, Vol. II(2) page 40, http://legal.un.org/docs/?path=../ilc/documentation/english/reports/a_49_10.pdf&lang=EF5XP

716 UN, International Law Commission, Annual Report 1996, “Report of the International Law Commission on the work of its forty-eighth session”, A/51/10, 1996, Vol. II(2), page 47, http://legal.un.org/docs/?path=../ilc/documentation/english/reports/a_51_10.pdf&lang=EF5XP

717 UN, “Rome Statute of the International Criminal Court”, Article 7(2)(a), <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>

718 ICC, Trial Chamber III, Situation in the Central African Republic in the case of The Prosecutor v. Jean-Pierre Bemba Gombo, “Judgment pursuant to Article 74 of the Rome Statute”, ICC-01/05-01/08, March 21, 2016, footnote 371, https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF

719 Ibid, footnote 371.

720 ICC, Trial Chamber II, Situation in the Democratic Republic of Congo in the case of The Prosecutor v. Germain Katanga, “Judgment pursuant to Article 74 of the Statute”, ICC-01/04-01/07, March 7, 2014, https://www.icc-cpi.int/CourtRecords/CR2015_04025.PDF

occurring spontaneously.⁷²¹ In the same case, but in the *decision on confirmation of charges*⁷²², it also mentioned, both the existence of an organized plan carried out as per a common policy and that followed a regular pattern, resulting in the continuing commission of acts⁷²³ or the existence of “patterns of crimes”⁷²⁴ that are reflected in criminal conduct that is repeated in a regular and non-accidental manner.⁷²⁵

In the situation of Venezuela, the evidentiary material available reveals that the acts of violence did not occur spontaneously in isolation, but were planned and organized following a pattern of violence directed against the segment of the civilian population composed of political opponents or those identified as such.⁷²⁶

At the same time, the element of widespread attack is confirmed in that the attack was large-scale and massive, directed against a multiplicity of victims, if we consider the documented number of persons detained, tortured, and murdered. In addition, the widespread nature is evident in the multiplicity of forces that participated in the attack and by the fact that it occurred in most of the states that make up Venezuelan territory.

iii.(c) *Connection Between the Individual Act and the Attack*

The acts mentioned at Article 7(1)(a) to (k) of the Rome Statute must be committed as part of the widespread or systematic attack against the civilian population.⁷²⁷ In order to determine the existence of this link, an objective analysis is necessary, to consider in particular, the characteristics, nature, aims, and/

⁷²¹ ICC, Trial Chamber II, Situation in the Democratic Republic of the Congo in the case of The Prosecutor v. Germain Katanga, “Judgment pursuant to Article 74 of the Rome Statute”, ICC-01/04-01/07, March 7, 2014, paragraph 1123, https://www.icc-cpi.int/CourtRecords/CR2015_04025.PDF. See also, ICC, Pre-Trial Chamber I, Situation in the Democratic Republic of Congo in the case of The Prosecutor v. Germain Katanga and Mathieu Ngudjolo, Public Redacted Version “Decision on the confirmation of charges”, ICC-01/04-01/07, September 30, 2008, paragraph 397; https://www.icc-cpi.int/CourtRecords/CR2008_05172.PDF; and, ICC, Pre-Trial Chamber I, Situation in Darfur, Sudan, In the case of The Prosecutor v. Ahmad Muhammad Harun (“Ahmad Harun”) and Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”), “Decision on the Prosecution Application under Article 58(7) of the Statute”, ICC-02/05-01/07, April 27, 2007, paragraph 62, https://www.icc-cpi.int/CourtRecords/CR2007_02899.PDF

⁷²² ICC, Pre-Trial Chamber I, Situation in the Democratic Republic of Congo in the case of The Prosecutor v. Germain Katanga and Mathieu Ngudjolo, Public Redacted Version “Decision on the confirmation of charges”, ICC-01/04-01/07, September 30, 2008, https://www.icc-cpi.int/CourtRecords/CR2008_05172.PDF

⁷²³ Ibid, paragraph 397.

⁷²⁴ Ibid.

⁷²⁵ Ibid.

⁷²⁶ Cf. ICC, Pre-Trial Chamber III, Situation in the Republic of Burundi, Public Redacted Version of “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi”, ICC-01/17-X, October 25, 2017, paragraph 47, https://www.icc-cpi.int/CourtRecords/CR2017_06720.PDF

⁷²⁷ ICC, Trial Chamber III, Situation in the Central African Republic in the case of The Prosecutor v. Jean-Pierre Bemba Gombo, “Judgment pursuant to Article 74 of the Rome Statute”, ICC-01/05-01/08, March 21, 2016, paragraph 164, https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF

or consequences of the act.⁷²⁸ In the situation being studied, it will be verified with the differentiated analysis of each of the crimes that the acts were committed as part of the widespread and systematic attack directed against the civilian population, and each of these acts constitutes an essential part of a plan defined by the State to attack the segment of the civilian population made up of political opponents or persons identified as such.

iv. *Knowledge of the Attack*

Finally, to determine whether these acts effectively constitute crimes against humanity, according to the provisions in Article 7 of the Rome Statute, the accused in this case must have acted with knowledge that their acts were part of a widespread and/or systematic attack directed against the civilian population.

In this regard, the ICC has stated in the *Bemba Gombo*⁷²⁹ case that it is not necessary to prove that the perpetrator had knowledge of all the characteristics of the attack or the precise details of the plan or policy of the State or organization, or that the acts he or she was about to commit were inhumane. What it does need to determine is that the perpetrator had knowledge that his conduct was part of or was intended to be part of a widespread or systematic attack against the civilian population.⁷³⁰ Knowledge of the inhumane nature of the act is examined objectively and may be deduced from the circumstances in which the act occurred.⁷³¹

In the present case it has been demonstrated that the perpetrators had knowledge that their conduct was or was intended to be part of a widespread or systematic attack directed against the segment of the civilian population composed of political opponents or those identified as such. The knowledge of the attack is corroborated by the existence of the People's Anti-Coup Commandos and the Bolivarian Workers Militia, the creation of the Special Brigade against the Actions of Groups Generating Violence, and the "Shock Troops" assigned to the strategic operational command, the creation of the People's System for Protection of Peace, and the above-cited resolution 008610 of the Ministry of People's Power for Defense authorizing the use of firearms to control demonstrations, the implementation of the military *Plan Zamora* in its "green phase" and the constant public statements of high-level officials that were analyzed *supra*; and by the

728 ICC, Pre-Trial Chamber II, Situation in the Central African Republic in the case of The Prosecutor v. Jean Pierre Bemba Gombo, "Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo", ICC-01/05-01/08, June 15, 2009, paragraph 86, https://www.icc-cpi.int/CourtRecords/CR2009_04528.PDF

729 ICC, Trial Chamber III, Situation in the Central African Republic in the case of The Prosecutor v. Jean-Pierre Bemba Gombo, "Judgment pursuant to Article 74 of the Rome Statute", ICC-01/05-01/08, March 21, 2016, https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF

730 Cf. Robinson, D, "The Elements of Crimes Against Humanity," in Roy Lee (ed.), *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence*, 2001, page 73, <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>

731 ICTY, Trial Chamber, Prosecutor v. DU[KO TADI] a/k/a/ "DULE", Opinion and Judgment, IT-94-1-T, May 7, 1997, paragraph 657, <http://www.icty.org/x/cases/tadic/tjug/en/tad-ts70507JT2-e.pdf>

commission of acts, in repeated patterns of action, executed by the different security forces and parastatal groups in a large part of Venezuelan territory.

In addition, the constant use of stigmatizing insults with degrading political epithets, such as accusations of being “*guarimberos*” —a pejorative term used by government supporters to describe those who participate in opposition demonstrations – among others, shows that the members of the security forces knew that the acts that they were committing, namely, the murders, imprisonment or other severe deprivation of liberty, torture, rape and other forms of sexual violence, persecution, and enforced disappearances, were part of the attack directed against a the segment of the civilian population composed of political opponents or those identified as such.

V. Conclusion

Based on the analysis of the contextual elements and the facts of the crimes against humanity, this Panel finds that there is a reasonable basis to believe that since at least since February 12, 2014, an attack against the civilian population in Venezuela has been carried out according to a State policy to suppress views and opinions that dissent from those of the Government of President Nicolás Maduro.⁷³²

Taking into account the methods used by the security forces, the discriminatory nature of the crimes committed, and the number of victims, this Panel is convinced that the attack was directed against the civilian population. In addition, this panel understands that it has been shown that the attack was both widespread and systematic.⁷³³

b.2 Alleged Crimes Against Humanity

Before proceeding to the study of the crimes that have been committed in the context of this situation, this Panel considers it necessary to develop the importance of human rights for examining crimes against humanity.

Article 21(3) of the Rome Statute requires that the interpretation and application of the law be consistent with internationally recognized human rights. The ICC has been clear in considering that human rights are

⁷³² Cf. ICC, Pre-Trial Chamber III, Situation in the Republic of Burundi, Public Redacted Version of “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi”, ICC-01/17-X, October 25, 2017, paragraph 48, https://www.icc-cpi.int/CourtRecords/CR2017_06720.PDF

⁷³³ Ibid.

immersed in each of the provisions of the Rome Statute, including the exercise of the Court's jurisdiction.⁷³⁴ In effect, in many decisions it has turned to the interpretation and application of human rights.⁷³⁵

To this end, the Panel considers that, in the interpretation and application of the Rome Statute, the ICC and the Office of the Prosecutor should consider, in particular, a regional contextual perspective. This means that standards of the Inter-American Human Rights System are particularly applicable to the situation of Venezuela. The International Criminal Court has recognized the significant contribution that the jurisprudence of the Inter-American Court of Human Rights has made to the promotion and defense of human rights in the Americas, as well as the rights of victims of grave human rights violations to obtain justice, as a way to fight impunity.⁷³⁶ Moreover, the ICC turns mainly to the regional human rights systems, as the counterparts to the universal system of protection; the regional systems provide broader protection mechanisms.

Based on the information available, this Panel considers that there is a reasonable basis to believe that the following crimes have been committed in the context of the situation in Venezuela, under the Rome Statute.

i. Murder under Article 7(1)(a)

i.(a) Elements of the crime

The crime against humanity of murder is provided for at Article 7(1)(a) of the Rome Statute. For it to be committed, the Rome Statute requires that the perpetrator – as part of a widespread or systematic attack

⁷³⁴ ICC, Appeals Chamber, Situation in the Democratic Republic of the Congo in the case of The Prosecutor v. Thomas Lubanga Dyilo, "Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19(2) (a) of the Statute of 3 October 2006", ICC-01/04-01/06 (OA4), December 14, 2006, paragraph 37, https://www.icc-cpi.int/CourtRecords/CR2007_01307.PDF

⁷³⁵ ICC, Appeals Chamber, Situation in the Democratic Republic of the Congo in the case of The Prosecutor v. Thomas Lubanga Dyilo, "Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19(2)(a) of the Statute of 3 October 2006", ICC-01/04-01/06 (OA4), December 14, 2006, paragraph 37, https://www.icc-cpi.int/CourtRecords/CR2007_01307.PDF. See also, ICC, Pre-Trial Chamber I, Situation in the Republic of Côte D'Ivoire in the case of The Prosecutor v. Laurent Gbagbo, "Decision on the "Corrigendum of the challenge to the jurisdiction of the International Criminal Court on the basis of articles 12(3), 19(2), 21(3), 55 and 59 of the Rome Statute filed by the Defence for President Gbagbo (ICC-02/11-01/11-129)", ICC-02/11-01/11, August 15, 2012, paragraph 89, https://www.icc-cpi.int/CourtRecords/CR2015_05116.PDF; and, ICC, Pre-Trial Chamber III, Situation in the Republic of Côte D'Ivoire, "Corrigendum to "Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire", ICC-02/11, November 15, 2011, paragraph 211, https://www.icc-cpi.int/CourtRecords/CR2011_18794.PDF; and ICC, Appeals Chamber, Situation in the Central African Republic, The Prosecutor v. Jean-Pierre Bemba Gombo, "Judgment on the appeal of Mr. Jean-Pierre Bemba Gombo against the decision of Pre-Trial Chamber III entitled "Decision on application for interim release", ICC-01/05-01/08 OA, December 16, 2008, paragraph 28, https://www.icc-cpi.int/CourtRecords/CR2008_07871.PDF

⁷³⁶ ICC, Memorandum of Understanding between the International Criminal Court and the Inter-American Court of Human Rights, ICC-PRES/17/01/2016, which came into force on February 15, 2016.

directed against any civilian population⁷³⁷ either by act or omission⁷³⁸ has killed (or caused the death⁷³⁹) of one or more persons.⁷⁴⁰

With this definition, the ICC has interpreted that it is not necessary to prove the identity of the victim or the perpetrator.⁷⁴¹

i.(b) *The Analysis of the Panel on the situation in Venezuela*

This Panel received information from different sources about the commission of dozens of murders committed in the context of the demonstrations. While there are differences between the total number of persons who died in the context of demonstrations counted by the State and by some NGOs, the Committee against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter, “CAT”) stated its concern in 2014 because of the 43 who died⁷⁴² that the Ministry of Public Prosecution itself counted

737 Elements of Crimes, Article 7(1)(a) (2), <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>

738 ICC, Pre-Trial Chamber II, Situation in the Central African Republic in the case of The Prosecutor v. Jean Pierre Bemba Gombo, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo”, ICC-01/05-01/08, June 15, 2009, paragraph 132, https://www.icc-cpi.int/CourtRecords/CR2009_04528.PDF

739 Footnote 7 of the Elements of Crimes clarifies that the term “killed” is interchangeable with the term “caused death.”

740 Elements of Crimes, Article 7(1) (a)(1), <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>.

741 ICC, Trial Chamber III, Situation in the Central African Republic in the case of The Prosecutor v. Jean-Pierre Bemba Gombo, “Judgment pursuant to Article 74 of the Rome Statute”, ICC-01/05-01/08, March 21, 2016, paragraph 88, https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF

742 List documented in Amnesty International: “Venezuela: The Faces of Impunity: A Year after the Protests Victims Still Await Justice,” 2015, <https://www.amnesty.org/download/Documents/AMR5312392015ENGLISH.pdf>: KILLED DURING THE PROTESTS OF FEBRUARY TO JULY 2014: Bassil Alejandro Da Costa Fria, 24 years old, carpenter, February 12, 2014, Caracas; Juan Carlos Crisóstomo Montoya, 50 years old, social leader, February 12, 2014, Caracas; Roberto José Redman Orozco, 26 years old, pilot, February 12, 2014, Caracas; Asdrúbal Jesús Rodríguez Araguayán, 26 years old, worker, February 19, 2014, Caracas; Elvis Rafael Durán De La Rosa, 29 years old, worker, February 21, 2014, Caracas; José Alejandro Márquez, 45 years old, engineer, February 22, 2014, Caracas; José Gregorio Amaris Cantillo, 25 years old, moto-taxi driver, March 6, 2014, Caracas; Acner Isaac López Lyon, 29 years old, sergeant in the GNB, March 6, 2014, Caracas; Johan Alfonso Pineda Morales, 37 years old, contractor, March 7, 2014, Caracas; Glidis Karelis Chacón Benítez, 25 years old, officer of the SEBIN, March 7, 2014, Caracas; Francisco Alcides Madrid Rosendo, 32 years old, worker, March 18, 2014, Caracas; Jorge Steven Colina Tovar, 24 years old, Officer of the PNB, May 8, 2014, Caracas; Wilmer Juan Carballo Amaya, 43 years old, merchant, February 24, 2014, Aragua; Johan Gabriel Quintero Carrasco, 33 years old, worker, February 5, 2014, Aragua; José Isabelino Guillén Araque, 34 years old, captain in the GNB, March 16, 2014, Aragua; Geraldin Moreno Orozco, 23 years old, student, February 22, 2014, Carabobo; Eduardo Ramón Anzola Carmona, 29 years old, carpenter, February 25, 2014, Carabobo; Julio Eduardo González Pinto, 45 years old, auxiliary prosecutor, February 18, 2014, Carabobo; Génesis Cristina Carmona Tovar, 22, student, February 18, 2014, Carabobo; Giovanni José Pantoja Hernández, 28 years old, sergeant in the GNB, February 28, 2014, Carabobo; Jesús Enrique Acosta Matute, 22 years old, student, March 12, 2014, Carabobo; Guillermo Alfonso Sánchez Velásquez, 42 years old, mason, March 12, 2014, Carabobo; Ramzor Ernesto Bracho Bravo, 36 years old, captain in the GNB, March 12, 2014, Carabobo; Argenis de Jesús Hernández Moreno, 30 years of age, worker, March 21, 2014, Carabobo; Mariana del Carmen Ceballos Belisario, 32 years old, secretary, April 10, 2014, Carabobo; Arturo Alexis Martínez, 58 years old, taxi driver, February 20, 2014, Lara; José Cirilo Damas García, 24 years old, officer of the PNB, April 9, 2014, Lara; Doris Elena Lobo Arias, 40 years old, housewife, February 20, 2014, Mérida; Gisella Victoria Rubilar Figueroa, 46 years old, teacher, March 9, 2014, Mérida; Jesús Orlando Labrador Castiblanco, 39 years old, electronics technician, March 22, 2014, Mérida Miguel Antonio Parras, 42 years of age, sergeant in the GNB, March 24, 2014, Mérida Adriana Grissel Urquiola Pérez, 28 years old, sign language interpreter, March 23, 2014, Miranda; José Ernesto Méndez Gómez, 17 years old, February 17, 2014, Sucre; Jimmy Erwill Vargas González, 32 years old, worker, February 20, 2014, Táchira; Danny Joel Melgarejo Vargas, 20 years old, student, February 22, 2014, Táchira; Luis Alejandro Gutiérrez Camargo, 23 years old, March 4, 2014, Táchira; Edicson Olivo Daniel Tinoco Carrillo, 24 years old, March 10, 2014, Táchira; Jhon Rafael Castillo, 23 years old, second sergeant in the GNB, March 19, 2014, Táchira; Franklin Alberto Romero Moncada, 44 years old, manager, March 28, 2014, Táchira; Wilfredo Giovanni Rey Jaimes, 32 years old, bus driver, April 22, 2014, Táchira; Jonathan Enrique Martínez García, 30 years old, unemployed, March 8, 2014, Zulia; Roberto Luis Annese Gorin, 33 years old, merchant, March 29, 2014, Zulia; and Josue Emmanuel Fariás Sánchez, 19 years old, student, May 25, 2014, Zulia.

between February and June of that year⁷⁴³, of which the General Secretariat of the OAS documented that at least 25 were murders at the hands of agents of State security forces or the *colectivos*⁷⁴⁴. The OHCHR expressed concern over the 124 deaths recorded by the Ministry of Public Prosecution from April 1 to July 31, 2017⁷⁴⁵. In relation to the persons murdered in 2017, the General Secretariat of the OAS received information documenting, at least, 105 murders committed by agents of the State security forces or at the hands of the *colectivos*.⁷⁴⁶

In relation to the events of 2017, the OHCHR concluded that the security forces used their service weapons during the demonstrations, causing the deaths of 27 protesters.⁷⁴⁷ The Ministry of Public Prosecution initiated investigations into 124 deaths that occurred in the context of the demonstrations. This institution identified 41 security agents as alleged perpetrators of 14 of these deaths and ordered their arrest. As of July 31, 2017, 33 security agents had been arrested.⁷⁴⁸

Julio Henríquez explained in a public hearing that while the number of persons killed in the context of protest appears to come to 138, *Foro Penal* has recorded that number of murders committed by public officials or civilians in coordination with these security forces was 116, 97 of which occurred as of April 1, 2017.⁷⁴⁹

This Panel received information from the General Secretariat of the OAS about 8,292 extrajudicial executions committed between 2015 and June of 2017 by the State security forces as part of “a security policy implemented in a coordinated manner between the Bolivarian National Police, the Scientific, Penal, and Criminal Investigative Police, the Bolivarian National Intelligence Service and the Bolivarian National Guard, which turns citizens into military targets”⁷⁵⁰ that “triggered an aggressive course of action including targeted public attacks and criminalization of specific groups of persons accused of economic

743 UN, CAT, “Concluding observations on the combined third and fourth periodic reports of the Bolivarian Republic of Venezuela,” CAT/C/VEN/CO/3-4, December 12, 2014, paragraph 12, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/241/72/PDF/G1424172.pdf?OpenElement>

744 OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter IV, Section C, page 63.

745 OHCHR, “Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela of April 1 to July 31, 2017”, Geneva, August 2017, page 11, http://www.ohchr.org/Documents/Countries/VE/HCRReportVenezuela_1April-31July2017_EN.pdf

746 OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter IV, Section D, page 88.

747 OHCHR, “Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela of April 1 to July 31, 2017”, Geneva, August 2017, page 14, http://www.ohchr.org/Documents/Countries/VE/HCRReportVenezuela_1April-31July2017_EN.pdf

748 *Ibid*, page 16.

749 Testimony of Julio Henríquez at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 14, 2017, <https://www.youtube.com/watch?v=KRX0QaJPzRk>

750 OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter IV, Section B, page 58.

destabilization, *bachaqueo*, paramilitary violence, among others, all practices that should be combatted through the use of governmental force”⁷⁵¹ These executions constitute “a widespread practice designed to instill terror and control the population, as part of a policy of repression to combat the internal enemy.”⁷⁵² This Panel decided to include these cases because, should the argument made by the General Secretariat prove to be correct, these cases would be part of an attack against the civilian population.

i.(c) *Case studies*

i.(c)1 *Murders in the context of the demonstrations*

José Alejandro Márquez Fagundez

Johanna Aguirre, the widow of José Márquez, declared in a public hearing before this Panel that her husband was persecuted and assassinated on February 19, 2014 for having filmed the events that were happening near his house when the National Guard was repressing a demonstration.⁷⁵³ He was 43 years old at the time of his death.

According to the Report of the General Secretariat of the OAS, “a GNB detail showed up and started to crackdown on the demonstrators, using teargas, shooting their weapons and chasing the protesters. José Márquez tried to run away and one of the guards fired at him from behind, missing José Márquez but causing him to slip and fall on the pavement. When he was caught by several uniformed officers they began to brutally kick him and beat him.”⁷⁵⁴

Ms. Aguirre recounted that they found Mr. Márquez tied to a stretcher only in his underwear and that later they were able to reconstruct what happened from videos. There were two exhumations that showed that the cause of death was severe cranioencephalic trauma caused by a blunt object, and not the result of a fall, as was maintained at the outset of the investigation.⁷⁵⁵

⁷⁵¹ Ibid.

⁷⁵² Ibid.

⁷⁵³ Testimony of Johanna Aguirre at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 14, 2017, <https://www.youtube.com/watch?v=KRXOQaJPzRk>

⁷⁵⁴ OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter IV, Section C, page 63.

⁷⁵⁵ Testimony of Johanna Aguirre at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 14, 2017, <https://www.youtube.com/watch?v=KRXOQaJPzRk>

Geraldine Moreno Orozco

Rosa Orozco, the mother of Geraldine Moreno, stated in the public hearing of October 16, 2017, that on February 19, 2014, she went to the door of her building since local residents were demonstrating. A few minutes after she stepped outside she heard five detonations. A friend came up to her and told her that her daughter had been shot in the face, and when she stepped out she saw her sprawled out on the ground. Guard member Albin Bonilla shot her in the face, then dismounted from his motorcycle and at a distance of 10 cm from her face shot her once again. She immediately took her daughter to the clinic, where they gave her medical attention put her in intensive care, but she died three days later.⁷⁵⁶ She was 23 years old at the time of her death.

Ms. Orozco recounted that the day they shot her, the 24th detachment of the Bolivarian National Guard entered the residential area where they lived in the state of Carabobo. They arrived shooting at the neighbors, who had only pots and pans, whistles, and banners. Only two of the 24 members of the military who participated in that execution have been tried, the two second sergeants, whom she believes arrived last in the group of motorcycles, so they were low-ranking.⁷⁵⁷

Juan Pablo Pernaleté

He was 20 years old when he was murdered on April 26, 2017, by a member of the Bolivarian National Guard. His parents declared in a public hearing conducted by the OAS General Secretariat that the GNB office shot a teargas canister directly at his chest from a distance of approximately 15 to 20 meters, which according to the studies by the ballistics specialists at the Ministry of public Prosecution was set off at a right angle, causing this impact. That weapon, according to regulations, should be used at a 45-degree angle, to control demonstrations, and has a range of 100 meters to 150 meters.⁷⁵⁸

That same day Diosdado Cabello, on his program, said that the Bolivarian National Guard had not been present, and that Juan Pablo Pernaleté had been murdered by the demonstrators, whom he called terrorists. Subsequently, the investigation by the Ministry of Public Prosecution led to a pronouncement by Attorney General Luisa Ortega Díaz, on May 24, on the cause of the death, stating that it was a teargas canister. The next day Minister Padrino López issued a press release saying that he did not agree with the hypothesis

⁷⁵⁶ Testimony of Rosa Orozco at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 16, 2017, <https://www.youtube.com/watch?v=ca5zYBQYcVE>

⁷⁵⁷ Ibid.

⁷⁵⁸ Testimony of José Pernaleté and Elvira Llovera at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, November 16, 2017, <https://www.youtube.com/watch?v=g6zUBXprxQ4>

adopted by the Attorney General, and that those opinions go against the spirit of the Bolivarian Armed Forces, accordingly, he instructed his subordinates not to cooperate with the investigation.⁷⁵⁹

On June 13, legislator Pedro Carreño asked the Supreme Court for a merit hearing to consider Attorney General Luisa Ortega's mental stability. In his request he mentioned that the case of Juan Pablo Pernalet, wondering how it was possible for the one person to say that another was killed by a tear gas canister without having any kind of trial or evidence.

Fabían Urbina

According to the account of Iván Urbina, father of Fabían Urbina, in the public hearings of the OAS General Secretariat, the repression by the State was so disproportionate that at 3:30 p.m. on June 17, 2017 when a march was moving by the *Distribuidora Altamira* store several members of the National Guard unholstered their firearms, aimed them, and fired at the people who were demonstrating. The result was that five people were killed, among them Fabían Urbina, who died minutes after being shot, a result of the severity of his wounds. He was 17 years old at the time of his death." Iván Urbina confirmed that there are videos and photos showing armed guards in a position to shoot.⁷⁶⁰

Luis Guillermo Espinoza

He died on August 14, 2017. He was a 15-year-old high school student and athlete. He was wounded on June 5, 2017 and died after two months of agony, moving between hospitals and clinics in the state of Carabobo. The teenager was shot during a demonstration by a member of the Bolivarian National Guard who fired on the unarmed civilian demonstrators.⁷⁶¹

Janeth Angulo

She died on July 11, 2017 as the result of the impact of a projectile shot by members of the security forces through the doors of a residential complex in El Tocuyo, state of Lara. Janeth Angulo, 55 years of

⁷⁵⁹ Ibid.

⁷⁶⁰ Testimony of Iván Urbina at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, November 16, 2017, <https://www.youtube.com/watch?v=g6zUBXprxQ4>

⁷⁶¹ OAS General Secretariat, "Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela", May 2018, Chapter IV, Section D, page 88.

age, was a retired physical education teacher and a community organizer. She was not participating in the demonstrations but rather was standing in front of her home. “She had gone out to allow a pregnant woman to take refuge in her home, which is about 300 meters from where the security forces were shooting, when they hit her with a bullet in the head,” said one of her sisters. Her family members said that later a member of the police was arrested in Angulo’s death.⁷⁶²

i.(c)2 *Extrajudicial executions*

Arwilson Sequera

Between April and June 2013, CICPC officers harassed and threatened Darwilson and Arwilson Sequera, 20-years-old and 24-years-old, respectively. Aracelys Librada, their mother, filed a complaint with the prosecutor’s office, but did not receive a reply. “Even now, I still don’t know why they killed my son,” she stated. During the first “visit” to her home, in Jardines de El Valle, Caracas, the police took their identity documents. On a second occasion, they arrived dressed in black and with their faces covered and they beat the elder of the two brothers. During a third intrusion, again without a warrant, they began to extort funds from the family. On their final visit, they beat on the door and the officers went up to the roof to reach Arwilson. When they took him away, he was alive. He was later found dead, shot three times.⁷⁶³

Ángel Torrealba

On August 17, 2015, a CICPC squad executed Ángel Torrealba while he sleep, in Nueva Esparta State. He was 16-years-old at the time of his death. They knocked down the door, broke into a family home without a warrant, and committed acts of abuse through the excessive use of force against Torrealba’s mother, father, and younger brother. “They left my 16-year-old son there dead, and Joel, aged 7, bathed in his brother’s blood,” their mother, Olga, recounted.⁷⁶⁴

⁷⁶² Interview by Human Rights Watch of Judith Angulo, August 14, 2017, cited in Human Rights Watch and *Foro Penal*, “Crackdown on Dissent, Brutality, Torture and Political Persecution in Venezuela”, November 2017, page 64, https://www.hrw.org/sites/default/files/report_pdf/venezuela1117web_0.pdf.

⁷⁶³ OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter IV, Section B, page 59.

⁷⁶⁴ *Ibid*, page 46.

Anderson José and Anthony Mejías Lara

Clara Lira was informed that her 27-year-old son, Anthony Mejías Lara, appeared in a photo in which different youths were marked with an X. On January 8, 2016, in the Caracas' Macarao area, she heard a burst of gunfire and when she looked out, she saw a CICPC unit. The next morning, Clara identified the body of her younger son, 19-year-old Anderson José, who had been shot in the groin. His mother believes he was killed when the CIPCI confused him with his older brother. Three weeks later, on January 29, 2016, Anthony was also murdered during a People's Liberation Operation.⁷⁶⁵

Darwin Gabriel Rojas Tovar, Carlos Jampier Castro Tovar, Roswil Ernesto Belisario Tovar and Johandri Antonio Trujilio Núñez

On the morning of May 18, 2016, in Callejón Santa Bárbara de San Bernardino, with the cry of "women and children outside", CICPC police officers commandeered and occupied the home of Glory Tovar. They covered all windows and doors with sheets, and killed two of her children, a nephew, and a family friend: 28-year-old Darwin Gabriel Rojas Tovar, 19-year-old Carlos Jampier Castro Tovar, 25-year-old Roswil Ernesto Belisario Tovar, and 20-year-old Johandri Antonio Trujilio Núñez.⁷⁶⁶

Oscar Pérez, Daniel Enrique Soto Torres, Abraham Israel Agostini, José Alejandro Díaz Pimentel, Jairo Lugo, his brother Abraham Lugo and Lisbeth Andreína Ramírez Mantilla

On January 16, 2016, Interior Minister Néstor Reverol confirmed the death of Oscar Pérez during an operation to detain him in the Caracas neighborhood of El Junquito. "In response to an attack that placed the lives of the officers at risk, the protocol was followed for neutralizing the assailant group, unfortunately with a result of seven terrorists deceased," said the Minister of Internal Relations, Justice and Peace.⁷⁶⁷

Oscar Pérez had become famous when on June 27, 2017 he took a helicopter, flew to the headquarters of the Ministry of Internal Relations, Justice and Peace, and fired 15 shots over a party with about 80 guests. He then went to the Supreme Court of Justice, where in addition to firing shots while the Constitutional

⁷⁶⁵ Ibid.

⁷⁶⁶ Ibid.

⁷⁶⁷ *BBC Mundo*, "Las incógnitas que rodean la operación policial en la que murieron el piloto Óscar Pérez y otros "seis terroristas" en Venezuela", January 16, 2018, <http://www.bbc.com/mundo/noticias-america-latina-42712090>

i.(d) Conclusion

As can be noted through the information collected and the cases illustrated, the material nature of the acts of murder in Venezuela is proven.

In addition, this Panel considers that the connection with the contextual element is proven, since the murders were of persons who make up the identified group that was targeted by the attack and they were committed by agents who undoubtedly had knowledge of the existence of the policy.

Nonetheless, on the assumption that there is any doubt as to whether it is sufficiently proven that the acts of murder have taken place in the context of the systematic and widespread attack that was carried out against the civilian population of Venezuela, we recall that the Pre-Trial Chamber of the ICC, in the decision authorizing the opening of an investigation into the Situation of the Republic of Burundi, cited that the different Pre-Trial Chambers have uniformly stated⁷⁷⁴ that a “reasonable justification” to believe that crimes that are within the jurisdiction of the Court have been committed is sufficient to open an investigation into a given situation⁷⁷⁵, since it is not necessary that the facts collected in a preliminary investigation yield conclusive findings.⁷⁷⁶ Thus, when the facts presented are conflictive or unclear, the Court has been emphatic in stating that this is the argument that activates a decision with respect to Article 15 of the Rome Statute.⁷⁷⁷

In light of these considerations, and mindful of the scale and context in which the murders took place, this Panel considers that the necessary requirements are present for the Office of the Prosecutor to investigate the possible commission of these acts as part of a widespread and systematic attack, directed against the civilian population, pursuant to Article 7 of the Rome Statute.

⁷⁷⁴ ICC, Pre-Trial Chamber III, Situation in the Republic of Burundi, Public Redacted Version of “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi”, ICC-01/17-X, October 25, 2017, paragraph 30, https://www.icc-cpi.int/CourtRecords/CR2017_06720.PDF

⁷⁷⁵ Ibid, paragraph 30. See also, ICC, Pre-Trial Chamber II, Situation in the Republic of Kenya, “*Décision relative à la demande d’autorisation d’ouvrir une enquête dans le cadre de la situation en République du Kenya rendue en application de l’article 15 du Statut de Rome*”, ICC-01/09, March 31, 2010, paragraph 35, https://www.icc-cpi.int/CourtRecords/CR2011_03256.PDF

⁷⁷⁶ ICC, Pre-Trial Chamber III, Situation in the Republic of Burundi, Public Redacted Version of “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi”, ICC-01/17-X, October 25, 2017, paragraph 30, https://www.icc-cpi.int/CourtRecords/CR2017_06720.PDF

⁷⁷⁷ Cf. Ibid.

ii. *Imprisonment or other severe deprivation of physical liberty under Article 7(1)(e)*

ii.(a) *Elements of the crime*

The crime of imprisonment or other severe deprivation of physical liberty in violation of fundamental norms of international law is provided for in Article 7(1)(e) of the Rome Statute. For its commission, the Elements of Crimes require: (i) the perpetrator imprisoned or otherwise subjected them to a severe deprivation of physical liberty of one or more persons; (ii) The gravity of the conduct was such that it constitutes a violation of the fundamental rules of international law.⁷⁷⁸

Neither the Rome Statute⁷⁷⁹ nor the Elements of Crimes⁷⁸⁰ contains a clear definition of the concept of severe deprivation of physical liberty. In 2002, the International Criminal Tribunal for the former Yugoslavia referred to the lack of a uniform notion of this term.⁷⁸¹ Accordingly, in the *Knorjelac* case it has stated that the right of an individual not to be deprived of liberty is enshrined in several universal⁷⁸² and regional⁷⁸³ human rights instruments. This right is not an “absolute right,” and may be restricted by the procedures established by the applicable law.⁷⁸⁴ Nonetheless, international instruments do not adopt a uniform definition of what should be understood to constitute an arbitrary deprivation of liberty.⁷⁸⁵ In effect, the Universal Declaration of Human Rights establishes: “No one shall be subjected to arbitrary arrest, detention or exile.”⁷⁸⁶ There are no exceptions to this prohibition, and by definition a detention that is not arbitrary would then be allowed.⁷⁸⁷ The International Covenant on Civil and Political Rights allows the deprivation of liberty only for

778 ICC, Elements of Crimes, 2002, Article 7(1) (e), <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>

779 UN, “Rome Statute of the International Criminal Court”, 1998, Article 7(1) (e), https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

780 ICC, Elements of Crimes, 2002, Article 7(1) (e), <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>

781 ICTY, Trial Chamber II, Prosecutor v. Milorad Krnojelac, “Judgment”, March 15, 2002, IT-97-25-T, paragraph 113, <http://www.icty.org/x/cases/knojelac/tjug/en/krn-tj020315e.pdf>

782 Ibid, citing Article 9 of the Universal Declaration of Human Rights (1948), which provides: “No one shall be subjected to arbitrary arrest, detention or exile”; and Article 9 of the International Covenant on Civil and Political Rights (1966), which establishes: “No one shall be subjected to arbitrary arrest or detention....”

783 Ibid, citing Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) stating “no one shall be deprived of his liberty” except in specific cases specific case established by law; and, Article 7 of the American Convention on Human Rights (1969), which provides “No one shall be deprived of his physical liberty” with exceptions for reasons and conditions that are constitutionally mandated beforehand, and that “no one shall be subject to arbitrary arrest or imprisonment.”

784 Ibid, paragraph 109.

785 The OHCHR Working Group on Arbitrary Detention arrived at the same conclusion, stating that the question of when detention is or becomes arbitrary is not definitely answered by the international instruments. OHCHR, “Fact Sheet No. 26, The Working Group on Arbitrary Detention”, page 4, <http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>

786 UN, “Universal Declaration of Human Rights”, 1948, Article 9, <http://www.un.org/en/universal-declaration-human-rights/>

787 ICTY, Trial Chamber II, Prosecutor v. Milorad Krnojelac, “Judgment”, March 15, 2002, IT-97-25-T, paragraph 113, <http://www.icty.org/x/cases/knojelac/tjug/en/krn-tj020315e.pdf>

the causes set forth by law and pursuant to the procedure established by law.⁷⁸⁸ The American Convention on Human Rights, at Article 7(2), provides: “No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto,” and at Article 7(3): “No one shall be subject to arbitrary arrest or imprisonment.”

At the United Nations, the Human Rights Council has established and confirmed the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court of the Working Group on Arbitrary Detention. These principles define when determining whether a deprivation of liberty is considered “arbitrary”:

- “(a) When it is clearly impossible to invoke any legal basis to justify the deprivation of liberty (such as when a person is kept in detention after the completion of his or her sentence, or despite an amnesty law applicable to the detainee, or when a person detained as a prisoner of war, is kept in detention after the cessation of effective hostilities);
- (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights;
- (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the State concerned, is of such gravity as to give the deprivation of liberty an arbitrary character;
- (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy;
- (e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability or other status, and which is aimed at or may result in ignoring the equality of human rights.”⁷⁸⁹

⁷⁸⁸ UN, “International Covenant on Civil and Political Rights”, adopted and opened for signature, ratification, and accession by the General Assembly in resolution 2200 A (XXI), December 16, 1966, Entered into force: March 23, 1976, Article 9(1), <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>

⁷⁸⁹ UN, Human Rights Council, Working Group on Arbitrary Detention, “United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court”, July 6, 2015, paragraph 10, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_37_ENG.docx

In 2017, the Pre-Trial Chamber III of the International Criminal Court defined the scope of this term in the *Decision on the Authorization of an Investigation in the Republic of Burundi*.⁷⁹⁰ According to the Court's interpretation, the notion of "imprisonment" includes the arbitrary detention of a person in a closed environment, such as a prison or psychiatric institution, and the term "severe deprivation of physical liberty" refers to the unlawful restriction of the movements of a person in a given area, such as a ghetto, camp, or house. Such deprivation of liberty must be in violation of the fundamental rules of international law, such as a physical deprivation of liberty without due process of law.⁷⁹¹ These two alternatives – imprisonment or any form of severe deprivation of liberty – suggest that the term imprisonment should be understood broadly, even in cases of imprisonment after conviction by a court.⁷⁹²

As for the second constitutive element set forth in the Elements of Crimes (that the gravity of the conduct was such that it was in violation of fundamental rules of international law⁷⁹³), the International Criminal Court has found that conduct is in violation of a fundamental norms of international law when, for example, there is no legal basis to detain a person, or his or her procedural rights are denied. The analysis of these constitutive elements should come prior to any consideration related to the analysis of the contextual elements of crimes against humanity.⁷⁹⁴

Finally, the Pre-Trial Chamber concluded, interpreting and applying Article 7(1)(e) in a manner compatible with internationally recognized human rights – referring to the case law of the international human rights tribunals⁷⁹⁵ – that the time that a person spends in detention is not an obstacle to determining the existence of the constitutive elements of these crimes.⁷⁹⁶ In effect, unlike what is provided for in Article 7(2)(i) of the Rome Statute when it regulates the enforced disappearance of persons, Article 7(1)(e) of the Statute does not require a prolonged period of detention.⁷⁹⁷

790 ICC, Pre-Trial Chamber III, Situation in the Republic of Burundi, Public Redacted Version of "Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi", ICC-01/17-X, October 25, 2017, https://www.icc-cpi.int/CourtRecords/CR2017_06720.PDF

791 Ibid, paragraph 68.

792 Rodney Dixon/Christopher K. Hall, "Chapeau", in [Otto Triffterer \(Ed.\)](#), "Commentary on the Rome Statute of the International Criminal Court – Observers' Notes, Article by Article", Second Edition, C.H. Beck/Hart/Nomos, München/Oxford/Baden-Baden, 2008, page 201; see also, Bassiouni, C., "Crimes Against Humanity in International Criminal Law", Second Revised Edition, Kluwer Law International, pages 362-363.

793 Elements of Crimes, Article 7(1) (e), <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimes-Eng.pdf>

794 ICTY, Trial Chamber, Prosecutor v. Dario Kordić and Mario Čerkez, "Judgment", February 26, 2001. IT-95-14/2-T, paragraph 302.

795 ICC, Pre-Trial Chamber III. Situation in the Republic of Burundi, Public Redacted Version of "Decision on the Authorization of an Investigation into the Situation in the Republic of Burundi", ICC-01/17-X, October 25, 2017, footnote 170, https://www.icc-cpi.int/CourtRecords/CR2017_06720.PDF

796 Ibid, paragraph 68.

797 Ibid.

ii.(b) *The Analysis of the Panel on the situation in Venezuela*

The Committee against Torture took note of the information from the Ministry of Public Prosecution according to which 3,306 persons, including almost 400 adolescents, were detained between February and June 2014 as the result of the demonstrations that took place during this period. The Committee expressed concern about consistent reports according to which a large number of these detentions were arbitrary, as there were no judicial warrants and they were not detained *in flagrante*, such as the detentions which occurred in residences surrounding the areas where demonstrations were held.⁷⁹⁸

The CAT also said it had received information according to which a large number of the detainees were not informed of the reasons for their detention, did not have confidential access to a lawyer until minutes before the court hearing, and were transferred to various detention centers without their whereabouts being communicated to their family. In addition, in certain cases the detainees did not receive medical care until the court hearing, even though they showed clear signs of having suffered violence.⁷⁹⁹

Since April 2014, the Working Group on Arbitrary Detention has rendered opinions in 14 communications finding the arbitrary deprivation of liberty of 334 persons. As of July 2015, the Group has been stating expressly in each response to communications that it has been identifying a systematic pattern of arbitrary detentions and that they have in common the fact that they were directed against persons who identified themselves as political opponents.⁸⁰⁰ The Working Group thus established that this constituted “a systematic attack or practice by the Government, which is contrary to the fundamental norms of international law, to deprived political opponents of their liberty, especially those who are perceived to be opposed to the regime”; and that the imprisonment or other severe deprivation of liberty “may constitute crimes against humanity”⁸⁰¹.

Among the violations of due process documented by the OHCHR are the lack of arrest warrants, *incommunicado* detention, the lack of access to a lawyer, and the failure to observe the principle of the presumption of innocence. Numerous lawyers and civil society organizations have confirmed the existence

⁷⁹⁸ CAT, “Concluding observations on the combined third and fourth periodic reports of the Bolivarian Republic of Venezuela,” CAT/C/VEN/CO/3-4, December 12, 2014, paragraph 9, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/241/72/PDF/G1424172.pdf?OpenElement>

⁷⁹⁹ Ibid.

⁸⁰⁰ For example, UN, Human Rights Council, “Opinions adopted by the Working Group on Arbitrary Detention at its seventy-second session (20-29 April 2015), A/HRC/WGAD/2015/7, July 13, 2015, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/249/03/PDF/G1524903.pdf?OpenElement>. See also, UN, Human Rights Council, “Opinions adopted by the Working Group on Arbitrary Detention at its seventy-third session (31 August-4 September 2015)”, A/HRC/WGAD/2015/27, November 2, 2015, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/249/03/PDF/G1524903.pdf?OpenElement>; and, UN, Human Rights Council, “Opiniones adoptadas por el Grupo de Trabajo sobre la Detención Arbitraria en su 78° periodo de sesiones (19 a 28 de abril de 2017)”, A/HRC/WGAD/2017/37, June 21, 2017, http://www.ohchr.org/Documents/Issues/Detention/Opinions/Session78/A_HRC_WGAD_2017_37.pdf

⁸⁰¹ UN, Human Rights Council, “Opiniones adoptadas por el Grupo de Trabajo sobre la Detención Arbitraria en su 80° periodo de sesiones (20 a 24 de noviembre de 2017)”, A/HRC/WGAD/2017/84, January 23, 2018, paragraphs 58 and 59, http://www.ohchr.org/Documents/Issues/Detention/Opinions/Session80/A_HRC_WGAD_2017_84.pdf

of the patterns documented by the OHCHR.⁸⁰² The OHCHR has documented that the security forces often arrested persons without a court order and that they later said they had been caught *in flagrante delicto*. The OHCHR interviewed persons who had been arrested when they were walking away from a demonstration, others when they were demonstrating peacefully, and still others hours after having participated in a demonstration. One physician witnessed how members of the National Guard entered several hospitals to arrest wounded demonstrators. In addition, the OHCHR has documented cases of persons who were arrested even without having participated in demonstrations or simply for being considered supporters of the opposition.⁸⁰³

In general, the persons detained were not informed of the reasons for their arrest and were only told of the charges against them at the moment they were brought before the judge. The persons detained were accused of common crimes, such as disturbing the public order and assaulting security agents, but also of crimes related to terrorism and military crimes.⁸⁰⁴

The OHCHR found the existence of a pattern consisting of the security forces planting material evidence against the persons arrested, such as gas masks, helmets, and Molotov cocktails. It was also reported that the authorities falsified their operations reports.⁸⁰⁵

On August 4, 2017, United Nations independent experts José Antonio Guevara Bermúdez, Chair of the Working Group on Arbitrary Detentions; David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Annalisa Ciampi, Special Rapporteur on the rights to freedom of peaceful assembly and of association; Diego García-Sayán, Special Rapporteur on the independence of judges and lawyers; and Nils Melzer, Special Rapporteur on torture and other cruel, inhuman and degrading treatment, asked the Government of Venezuela to: (a) stop the systematic arrests of demonstrators and to stop the expanding use of military courts to try civilians; (b) noted that such acts were likely in open violation of the right not to be arbitrarily deprived of liberty, to due process, and to be tried by a judge with jurisdiction who is independent and impartial. In addition, they are likely serious violations of the rights to the freedom of peaceful assembly and freedom of expression; and (c) noted that the increasing use of military courts to try civilians was especially worrisome. At least 400 demonstrators were said to have been tried in this fashion, and the great majority had been deprived of liberty on accusations of crimes provided for in the Organic Code of Military Justice, such as military rebellion, treason, and assault.⁸⁰⁶

⁸⁰² OHCHR, “Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela of April 1 to July 31, 2017”, Geneva, August 2017, pages 20, http://www.ohchr.org/Documents/Countries/VE/HCReportVenezuela_1April-31July2017_EN.pdf

⁸⁰³ Ibid.

⁸⁰⁴ Ibid, page 21.

⁸⁰⁵ Ibid.

⁸⁰⁶ OHCHR, “Venezuela must end systematic detentions and military trials for protesters – UN experts”, Geneva, August 4, 2017, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21939&LangID=E>

Even before 2014, the IACHR was receiving information on a context of “mass detentions”⁸⁰⁷ and a large number of detentions that were executed without a court order, the failure to be brought before a judicial authority in a timely manner, as well as delays and other impediments to allow initial contact with lawyers or family members.⁸⁰⁸ The Commission also said that it had received information indicating that a number of the detentions were made in an environment where agents of government security forces conducted what were considered illegal and arbitrary searches, they were looking for persons supposedly involved in the protests. These reports denounced a practice of using “generic charges” against persons who were detained in groups, without any specific description of the alleged individual conduct that would give rise to their criminal liability.⁸⁰⁹

Among the cases of arbitrary detentions without a court order, Amnesty International is also concerned about the growing use of this type of police action against popularly-elected officials associated with the opposition while they are performing their duties. The detention of persons without a court order followed by criminal prosecution, in some cases has led to the dismissal of persons from public office, despite being popularly-elected, when the individual subject to the accusations was affiliated with the opposition.⁸¹⁰

Foro Penal has documented, from April 2013 to January 28, 2018, that more than 12,000 persons were arbitrarily detained.⁸¹¹ The list of the more than 12,000 detainees is included in Annex A of the Report of the General Secretariat of the OAS. In addition to those persons still in detention, as of December 31, 2017, 7,174 persons were subject to criminal investigations and various forms of restriction on their liberty with non-custodial measures such as reporting periodically in person and house arrest, among others. Counting those who are still detained and those who continue to face criminal charges while under non-custodial measures, of the overall total of the more than 12,000 persons arrested in the context of the protests and demonstrations against the Venezuelan government, between January 2014 and January 28, 2018, 62.4% (7,484 persons) have been formally criminalized and continue to be subject to criminal investigations or prosecutions.⁸¹²

807 UCAB, *Centro de Derechos Humanos, “Licencia para protestar”*, Caracas, June 2014, Chapter VI, page 20, cited in IACHR, “Annual Report 2014, Chapter IV, Venezuela”, paragraph 381, <http://www.oas.org/en/iachr/docs/annual/2014/docs-en/annual2014-chap4venezuela.pdf>

808 IACHR, “IACHR expresses deep concern over the situation with respect to the right to peaceful protest, freedom of association and freedom of expression in Venezuela”, Press Release 17/14, February 21, 2014, https://www.oas.org/en/iachr/media_center/preleases/2014/017.asp

809 Information received during the hearing on the *General Situation of Human Rights in Venezuela*, held during the 150th regular period of sessions. March 2014, cited in IACHR, “Annual Report 2014, Chapter IV, Venezuela”, paragraph 381, <http://www.oas.org/en/iachr/docs/annual/2014/docs-en/annual2014-chap4venezuela.pdf>

810 Amnesty International, “Silenced by Force: Political-Motivated Arbitrary Detentions in Venezuela,” 2017, page 7, https://www.amnestyusa.org/wp-content/uploads/2017/05/venezuela_silenced_by_force.compressed.pdf

811 OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter VII, page 147.

812 *Foro Penal*, “Reporte sobre la represión en Venezuela. Diciembre 2017”, page 2, <https://foropenal.com/wp-content/uploads/2018/01/IN-FORME-REPRESION-DICIEMBRE-2017-1.pdf>

Finally, *Foro Penal* documented that as of December 31, 2017 there were 214 political prisoners in Venezuela, distributed across several prisons throughout the country. It further documented a cumulative total of 1321 people who were at one point held as political prisoners between January 4, 2104 and January 24, 2018. The Report of the General Secretariat of the OAS lists the names of the 1321 political prisoner in its Annex B. Of the total number of political prisoners, at least 53 have delicate health situations and their lives are at risk.⁸¹³

ii.(c) *Political motivation for the detentions*

Different international organizations and NGOs have made statements on the connection of these crimes with the policy of the State. In this regard, the OHCHR considered that these detentions are “arbitrary because of repeated serious due process violations and because they occurred in response to the exercise of human rights, in particular freedom of opinion and expression and freedom of peaceful assembly.”⁸¹⁴ [...] This unprecedented number of protest-related detentions has had a strong intimidating effect on the population.”⁸¹⁵ Similarly, since the UN Working Group on Arbitrary Detentions, as was seen above, had repeatedly warned over the past few years of the multiple arbitrary detentions of persons “who are part of the political opposition to the Government, or who have exercised their rights to freedom of opinion, expression, association, meeting or political participation”, it allowed the Group to conclude that this constitutes a systematic practice or attack by the Government to “deprive political opponents of their liberty, especially those who are perceived to be opposed to the regime, which is contrary to the fundamental norms of international law”⁸¹⁶.

Amnesty International has said that “it is extremely worrying that there is evidence to suggest political motivation behind these arbitrary detentions and that these tend to be associated with criticism, dissidence and opposition to government policies.”⁸¹⁷ “Amnesty International believes that arbitrary detention mechanisms are being repeatedly used to silence political dissent, and that the existence of such practices encourages the perpetration of other serious human rights violations such as torture and ill-treatment, and even forced disappearances.”⁸¹⁸ Finally, Amnesty International emphasized the direct link between

⁸¹³ Ibid, page 1.

⁸¹⁴ OHCHR, “Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela of April 1 to July 31, 2017”, Geneva, August 2017, page 22, http://www.ohchr.org/Documents/Countries/VE/HCRReportVenezuela_1April-31July2017_EN.pdf

⁸¹⁵ Ibid, page 20.

⁸¹⁶ For example, UN, Human Rights Council, “*Opiniones adoptadas por el Grupo de Trabajo sobre la Detención Arbitraria en su 80° período de sesiones (20 a 24 de noviembre de 2017)*”, A/HRC/WGAD/2017/84, January 23, 2018, paragraphs 58 and 59, http://www.ohchr.org/Documents/Issues/Detention/Opinions/Session80/A_HRC_WGAD_2017_84.pdf

⁸¹⁷ Amnesty International, “Silenced by Force: Political-Motivated Arbitrary Detentions in Venezuela,” 2017, page 4, <https://www.amnestyusa.org/reports/silenced-force-politically-motivated-arbitrary-detentions-venezuela/>

⁸¹⁸ Ibid.

the illegal searches and the arbitrary detentions; the justification of the authorities on carrying out such operations is generally to go after alleged demonstrators, and, according to the cases documented, the pattern of action includes searching for young men aged 15 to 25 years and arresting them without a court order or detained *in flagrante delicto*.⁸¹⁹

The organization *Foro Penal* has stated that “the arbitrary arrests are clearly connected to the street protests called by sectors that oppose the national Government, and in all cases answer to a clear policy of the State aimed at criminalizing those who are identified as dissidents or opponents.”⁸²⁰

ii.(d) *Proceedings before military jurisdiction*

This Panel is also concerned about the number of civilians prosecuted under military jurisdiction. For the period between April 1, 2017 and March 31, 2018 *Foro Penal* recorded the cases of 786 persons, at least 554 of whom were formally deprived of liberty by military courts without the guarantee of due process.⁸²¹ As of March, 2018, 114 of these persons continued were still in detention by order of military courts.⁸²²

Igor Eduardo Nieto Buitrago declared in the public hearing of the OAS General Secretariat on September 15, 2017 before this Panel, that “until March of this year [2017] military tribunals held jurisdiction over persons who breached the Organic Code of Military Justice, that is, for the crimes provided for therein [violations of the military]. As of the month of March, when Attorney General Luisa Ortega Díaz, while presenting her annual accounting of activities, began to show the Government of Nicolás Maduro that it was not respecting human rights guidelines, they made the decision to migrate those judicial persecutions, which are systematic, that the State has used them to intimidate, to exemplify [...] President Nicolás Maduro decided to begin to use the military courts to try civilians.”⁸²³ He then explained the legal rationale used to bring cases involving civilians under military jurisdiction. They do so through two offenses that the witness calls “blank checks”: the crime of high treason and the crime of attacking military personnel [*ataque al centinela*].⁸²⁴

⁸¹⁹ Amnesty International, “Nights of terror: Attacks and illegal raids on homes in Venezuela,” October 30, 2017, pages 14-15, <https://www.amnestyusa.org/wp-content/uploads/2017/10/Venezuela-Nights-of-Terror-Briefing-ENG.pdf>

⁸²⁰ *Foro Penal*, “Reporte sobre la represión en Venezuela. Octubre 2017”, page 2, <https://foropenal.com/wp-content/uploads/2018/01/INFORME-REPRESION-DICIEMBRE-2017-1.pdf>

⁸²¹ *Foro Penal*, “Reporte Sobre la Represión en Venezuela”, March 2018, page 3, <https://foropenal.com/wp-content/uploads/2018/04/INFORME-REPRESION-MARZO-2018.pdf>

⁸²² *Ibid.*

⁸²³ Testimony of Igor Eduardo Nieto Buitrago at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 15, 2017, <https://www.youtube.com/watch?v=cKmTJ79prKE>

⁸²⁴ *Ibid.*

The use of criminal offenses such as “high treason,” “terrorism or theft of military effects” or “rebellion,” are the basis for accusations leveled against the persons detained for political reasons and without a court order, that is, using the allegation of the situation *in flagrante delicto* in order to initiate proceedings⁸²⁵, even subjecting these civilians to military justice. The use of these criminal offenses, due to the ambiguity of their definitions, and the broad discretion involved in their use, jeopardizes the right to a fair trial with due process. Accusations of military offenses and invoking the anti-terrorism legislation also results in cases being judged by special jurisdictions such as the military jurisdiction and the anti-terrorism jurisdiction.⁸²⁶

Finally, Mr. Nieto Buitrago described, as an example of what happens to a civilian subjected to military jurisdiction, the case of a person close to his family who was detained along with other persons by officers of the National Guard and the SEBIN and was brought before the military jurisdiction. He explained that a person very close to the military judge to whom the case had been assigned approached him to ask what she was going to do with the trial, and the judge, an Army captain, answered that she had received instructions that the leaders should remain deprived of liberty and the other demonstrators should be subjected to interim measures to keep them far from the street protests. Nieto Buitrago added that this person spent three days detained at Regional Command No. 1, the National Guard command, until the habeas corpus hearing, and, finally, they sent him to the military prison known as *Cárcel de Occidente*, in San Cristóbal.⁸²⁷

ii.(e) Case studies

Marcelo Crovato

An attorney and member of the organization *Foro Penal* was arrested on April 22, 2014, when he went to provide his services as an attorney at the home of some clients that were being raided by the authorities in the municipality of Chacao, in the capital Caracas. In this raid, evidence was being sought of the financing and support for the anti-government protests that had been taking place since early February 2014. The Ministry of Public Prosecution accused Marcelo Crovato of the crimes of obstructing circulation, instigating disobedience of the laws, public intimidation, and association to engage in criminal conduct, which carries a penalty of at least 15 years in jail. The indictment by the Ministry of Public Prosecution, to which Amnesty International had access, is based primarily on the testimony of an unidentified police agent who accused him of having participated in a meeting on April 10, 2014.⁸²⁸

⁸²⁵ Amnesty International, “Silenced by Force: Politically-Motivated Arbitrary Detention in Venezuela,” 2017, p. 12, <https://www.amnestyusa.org/reports/silenced-force-politically-motivated-arbitrary-detentions-venezuela/>

⁸²⁶ Ibid.

⁸²⁷ Testimony of Igor Eduardo Nieto Buitrago at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 15, 2017, <https://www.youtube.com/watch?v=cKmTJ79prKE>

⁸²⁸ Amnesty International: “Venezuela: The Faces of Impunity: A Year after the Protests Victims Still Await Justice,” 2015, page 36, <https://www.amnesty.org/download/Documents/AMR5312392015ENGLISH.pdf>

Christian Holdack

He was detained February 12, 2014, when he was arrested in the vicinity of an anti-government protest in Caracas. Christian Holdack has stated that he was beaten, insulted, and forced to stay on his knees for long periods during his detention at the facilities of the investigative police, until he was presented in court two days later. He was accused of the crimes of instigating criminal conduct, arson, property damage, and criminal conspiracy, which carry penalties of at least eight years in prison. The accusation of the Ministry of Public Prosecution, to which Amnesty International has had access, does not offer any solid evidence to support the charges against him.⁸²⁹

Ruperto Chiquinquira Sánchez Casares

Sánchez Casares was 52 years old and a Lieutenant Colonel in the Venezuelan Air Force when he was detained on May 2, 2014 in the state of Aragua, for his alleged involvement in an attempted coup d'état, known as *Golpe Azul*, named because the alleged officers involved were members of the Air Force. The attempted coup was also known as *Operación Jericó*. On May 5, 2015, the Permanent Court Marshall of Caracas convicted him for the crime of incitement to rebellion, sentencing him to 7 years and 6 months in prison at the *Internado Judicial Monagas* detention center known as *La Pica*. He remains in custody, even though 96 witnesses that testified for the prosecution in his case testified that Ruperto Sánchez did not incite them to commit any crime.⁸³⁰ The wife of Kerlin Sánchez testified about the trial against her husband during the hearings held by the OAS General Secretariat on November 16, 2017.

The Report of the OAS General Secretariat states that “one essential issue, that was never proven in the trial was whether or not a coup d'état did in fact take place. There was never any evidence to indicate that it was ever anything more than a paranoid fear in the minds of the Regime.”⁸³¹

Rosmit Mantilla

Rosmit is an LGBTI rights activist and member of the opposition political party *Voluntad Popular*, who was detained by agents of the SEBIN. On January 20, 2015, after 11 deferrals of his preliminary hearing and following nine months of procedural delays, the judge opened the case against him, despite a lack of

⁸²⁹ Ibid, page 37.

⁸³⁰ OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter VII, Section A, page 181.

⁸³¹ Ibid, page 153.

evidence. On May 2, 2014 Rosmit Mantilla was detained at his house in Caracas. The arrest warrant against him was based on the accusation of an anonymous person that indicated that Rosmit Mantilla had received money from a group of businesspersons to finance the anti-government protests that were taking place in Caracas at that time. During the search of his home the same day as his arrest the SEBIN officers said they found leaflets calling for protests against the government and envelopes with money, which both Rosmit Mantilla and his family deny. According to his testimony, the officers entered Rosmit Mantilla's bedroom, placed money in some envelopes and marked the envelopes with the names of the two plazas in Caracas where groups of demonstrators, mostly students, had set up encampments as a sign of protest against the government. Amnesty International considered that the Ministry of Public Prosecution has not presented any reliable evidence linking Rosmit Mantilla to the crimes for which he is accused.⁸³²

Alberto Brito and Maribel Ilarraza

On April 13, 2017 members of "*colectivos*" illegally detained the two individuals in separate incidents in Caracas, and then turned them over to the security forces, according to relatives of Brito and his attorney. These two persons did not know one another. The day after they were detained they were taken before the same court in Caracas, where a judge accused them of "instigation of criminal conduct" and "possession of incendiary substances" during an anti-government demonstration. The judge ordered Brito released on bail and authorized the release of Ilarraza without any surety, instead releasing her on her own recognizance. The attorney for Brito and Ilarraza filed the documents on their cases on April 24, but a year later the court had still not processed the documents.⁸³³

Lina Espinoza (pseudonym)

On May 4, three women who were part of a "*colectivo*" detained the 19-year-old student as she was getting into a car after having gone to a pharmacy, according to what she told Human Rights Watch.⁸³⁴ Espinoza said that the women kicked and punched her while asking if she was a student. They forced her to start the car and sit in the back seat between two of them. The third one drove the car to an office of the Bolivarian

⁸³² Amnesty International: "Venezuela: The Faces of Impunity: A Year after the Protests Victims Still Await Justice", 2015, page 38, <https://www.amnesty.org/download/Documents/AMR5312392015ENGLISH.pdf>

⁸³³ Human Rights Watch and *Foro Penal*, "Crackdown on Dissent, Brutality, Torture and Political Persecution in Venezuela", November 2017, pages 51-21, https://www.hrw.org/sites/default/files/report_pdf/venezuela1117web_0.pdf

⁸³⁴ Ibid.

National Guard. When they arrived, they pushed Espinoza out of the car, towards an agent of the GNB, and told him: “Here we brought you another one.”⁸³⁵

Espinoza said that they forced her into an official vehicle together with a wounded boy approximately 15 years of age, and that there was also a third detainee. “They put me in a trailer. They searched my car and then got inside it. Four or five *colectivos* got in and said, ‘Let’s go kill some students,’ and they left,” Espinoza said.⁸³⁶

Santiago Guevara

He was arbitrarily detained on February 21, 2017 in the state of Carabobo, on the charge of “high treason” after publishing a series of opinion articles on the country’s economic crisis⁸³⁷. He was held in custody for 10 months at the headquarters of the General Directorate of Military Counterintelligence in Caracas.⁸³⁸ The Inter-American Commission on Human Rights has issued precautionary measures in his case.⁸³⁹

Jorge Machado

He was detained on May 19, 2017 by SEBIN agents and brought before the 3rd Military Control Tribunal and charged with the crime of high treason. He remains in custody at the *Helicoide* prison. He was publically attacked in the state-controlled media by Vice President of Venezuela, Tareck El Aissami. Dr. Machado was accused of inciting demonstrators to violence and leading them to confrontations with State security forces.⁸⁴⁰

⁸³⁵ Human Rights Watch and *Foro Penal*, “Crackdown on Dissent, Brutality, Torture and Political Persecution in Venezuela”, November 2017, page 52. https://www.hrw.org/sites/default/files/report_pdf/venezuela1117web_0.pdf

⁸³⁶ Ibid.

⁸³⁷ IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraphs 309-311, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

⁸³⁸ *Aula Abierta Venezuela*, “Informe Preliminar: Ataques y Represalias Contra Profesores y Estudiantes Universitarios en Venezuela”, February-October 2017, <http://aulaabiervenezuela.org/wp-content/uploads/2017/08/Aula-Abierta-Venezuela-Restricciones-y-represalias-contra-estudiantes-y-profesores-universitarios-en-Venezuela-Febrero-Julio-2017-CON-IMAGENES-1-1.pdf>, cited in OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter VII, Section A, page 177.

⁸³⁹ IACHR, Precautionary Measure No. 383-17, “Santiago José Guevara García respecto de Venezuela”, December 1, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/50-17MC383-17-VE.pdf>

⁸⁴⁰ *Aula Abierta Venezuela*, “Informe Preliminar: Ataques y Represalias Contra Profesores y Estudiantes Universitarios en Venezuela”, February-October 2017, <http://aulaabiervenezuela.org/wp-content/uploads/2017/08/Aula-Abierta-Venezuela-Restricciones-y-represalias-contra-estudiantes-y-profesores-universitarios-en-Venezuela-Febrero-Julio-2017-CON-IMAGENES-1-1.pdf>, cited in OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter VII, Section A, page 177.

Carlos Julio Velasco Marín

He was arbitrarily detained on June 12, 2017 during a demonstration called by opposition coalition *Mesa de la Unidad Democrática*, in the vicinity of the Centro San Ignacio, Municipality of Chacao, Caracas. He was detained while assisting another protestor who got caught in the teargas launched into the crowd by the State security forces. He was 18 years old at the time of his detention. He was charged by the 39th Control Tribunal of the Metropolitan Area of Caracas for the alleged crimes of arson, possession of incendiary materials, gang association, public incitement and the crime of terrorism. Of note, the final charge of terrorism was not filed by the Ministry of Public Prosecution, but added by the judge who was presiding over the case, even though no evidence was presented to support this charge. During his detention, Velasco Marín suffered from numerous serious maladies including frequent nephritic colic, right intercostal neuritis, gonalgia and insomnia associated with anxiety disorder, which were not addressed with timely treatment. After being deprived of liberty for more than six months at the GNB detachment located in Macarao, he was released on precautionary measures on December 24, 2017.⁸⁴¹

Ender González and Diego Gómez

Ender González, 17-years-old, was arrested and taken from his home with his laptop at 6:00 am. On January 10, 2018, a group of armed intelligence agents banged heavily on the door to his house. The agents told González's family they needed him for questioning. González was disappeared as his family spent day searching for him at the courts and in different security forces' headquarters in Caracas, but they were never told about his whereabouts.⁸⁴²

Eventually, the mother of another 17-year-old youth who had also been arrested, Diego Gomez, told González' parents that both youths were about to be charged by a special court for youth in Caracas. Argenis González, the father of Ender González, was present at the hearing where the boys were charged with inciting other people through Facebook to take to the streets in an anti-government demonstration.⁸⁴³ They were prosecuted under the "Law against Hatred" adopted by the National Constituent Assembly in November of 2017. The law provides penalties of up to 20 years in prison for disseminating information that disrupts the "public tranquility" or actions that might "encourage, promote, or incite" activities vaguely defined as "hatred".⁸⁴⁴

⁸⁴¹ *Foro Penal, "Reseñas de algunos casos de Presos Políticos en Venezuela"*, document submitted to the General Secretariat on February 18, 2018.

⁸⁴² Human Rights Watch, "Kids Behind Bars," April 12, 2018, <https://www.hrw.org/news/2018/04/12/kids-behind-bars-venezuela>.

⁸⁴³ Ibid.

⁸⁴⁴ Ibid.

Dylan Canache

Dylan Canache, 16, is another teenager detained in 2018. According to Human Rights Watch, at dawn on January 13, Dylan told his mother that he was going to a nearby metro station to meet a friend who had called him looking for a place to stay. Intelligence agents were waiting at the station with his friend and arrested Dylan. Dylan's family was frantic searching for him until they were able to locate him on January 15, at SEBIN headquarters after his arraignment the day before. Intelligence agents later told Dylan's family that he was accused of participating in an online group chat in which participants discussed the demonstrations. His family learned from the court that he was charged with "inciting hatred."⁸⁴⁵

Family members indicated that the courts allowed the release of the three boys under a form of bail in which, in Venezuela, a guarantor assures the judge that the accused will show up for court. Although the court accepted the guarantors' paperwork, SEBIN agents failed to release them. The boys remain in detention at SEBIN headquarters.⁸⁴⁶

According to Human Rights Watch, Dylan is being detained with adults in a cell without drinking water and with very poor hygiene conditions, according to a detainee who is being held at SEBIN and spoke with him briefly. The source said that the Guards cut his hair while making fun of him. Dylan's family has been unable to verify how he's doing.⁸⁴⁷

ii.(f) *Conclusion*

Based on these statements and the cases exemplified in the preceding paragraphs, this Panel considers that there are reasonable grounds to believe that acts of imprisonment or other severe deprivation of physical liberty have been committed within the territory of Venezuela that may be characterized as crimes against humanity as provided for in Article 7(1)(e) of the Rome Statute. The factual elements provided suggest that thousands of such imprisonments have taken place that constitute violations of fundamental rules of international law, in which there is no legal basis for the arrests or the denial of procedural guarantees, among others, that did not take place spontaneously or in isolation, but instead reflect policy put in place by the Government of Venezuela through acts directed by the highest State authorities that establishes clear and systematic patterns of action.

⁸⁴⁵ Ibid.

⁸⁴⁶ Ibid.

⁸⁴⁷ Ibid.

iii. *Torture under Article 7(1)(f)*

iii.(a) *Elements of the crime*

According to Article 7(2)(e) of the Rome Statute⁸⁴⁸, the crime against humanity of torture⁸⁴⁹ involves intentionally causing serious pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused. However, according to this same provision, torture shall not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions. The Elements of Crimes require that:

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
2. The person or persons were in the custody or under the control of the perpetrator.
3. The pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.⁸⁵⁰

In determining the scope of these constitutive elements, the ICC has stated in the decision on the confirmation of charges in the *Bemba* case⁸⁵¹ that while there is no definition of the seriousness of the threshold required for considering acts of torture that constitute crimes against humanity⁸⁵², it is widely accepted in treaties and applicable jurisprudence that a major degree of pain and suffering must be reached for a criminal act to be able to be considered an act of torture.⁸⁵³

⁸⁴⁸ UN, "Rome Statute of the International Criminal Court", 1998, Article 7(2)(e), <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>

⁸⁴⁹ Ibid, Article 7(1)(f).

⁸⁵⁰ ICC, "Elements of Crimes", 2002, Article 7(1)(f), <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>

⁸⁵¹ ICC, Pre-Trial Chamber II, Situation in the Central African Republic in the case of The Prosecutor v. Jean Pierre Bemba Gombo, "Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo", ICC-01/05-01/08, June 15, 2009, https://www.icc-cpi.int/CourtRecords/CR2009_04528.PDF

⁸⁵² Ibid, paragraph 193.

⁸⁵³ Ibid.

In this case, the ICC has suggested having recourse to the case-law of the Inter-American Court of Human Rights (hereinafter, “Inter-American Court”) to determine the scope of the threshold for severity.⁸⁵⁴

First, the Inter-American Court has established in its jurisprudence that torture, cruel and inhuman or degrading punishment or treatment are strictly prohibited by international human rights law. The absolute prohibition on torture, both physical and psychological, belongs to the domain of international *jus cogens*. The absolute prohibition remains even in the most difficult circumstances, such as war, threat of war, the fight against terrorism and any other crimes, state of siege or emergency, riot, or internal conflict, suspension of constitutional guarantees, internal political instability, or other public emergencies or calamities.⁸⁵⁵

Universal⁸⁵⁶ and regional⁸⁵⁷ treaties enshrine this prohibition, and the non-derogable right not to be tortured. In addition, numerous international instruments enshrine that right and reiterate the same prohibition⁸⁵⁸, including under international humanitarian law.⁸⁵⁹

The Inter-American Court, considering the first part of Article 2 of the Inter-American Convention to Prevent and Punish Torture, “understands that the elements of torture are as follows: (a) an intentional act; (b) which causes severe physical or mental suffering, (c) committed with a specific purpose or aim.”⁸⁶⁰

854 Ibid, footnote 268.

855 Cf. Inter-American Court of Human Rights, Case of Miguel Castro Castro Prison v. Peru, Judgment of November 25, 2006”, (Merits, Reparations and Costs) paragraph 271, http://www.corteidh.or.cr/docs/casos/articulos/seriec_160_ing.pdf. See also, Inter-American Court of Human Rights, Case of Baldeón García v. Perú, “Judgment of April 6, 2006”, (Merits, Reparations and Costs), paragraph 117, http://www.corteidh.or.cr/docs/casos/articulos/seriec_147_ing.pdf; and, Inter-American Court of Human Rights, Case of García Asto and Ramírez Rojas v. Peru, “Order of the Inter-American Court of Human Rights of November 25, 2005”, (Preliminary Objection, Merits Reparations and Costs), paragraph 222, http://www.corteidh.or.cr/docs/casos/articulos/seriec_137_ing.pdf; In this regard, see also, Inter-American Court of Human Rights, Case of Bueno Alves v. Argentina, “Judgment of May 11, 2007”, (Merits, Reparations and Costs), paragraph 76, http://www.corteidh.or.cr/docs/casos/articulos/seriec_164_ing.pdf

856 UN, “International Covenant on Civil and Political Rights”, Article 7, <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>; UN, “Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment”, Article 2, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>; UN, “Convention on the Rights of the Child”, Article 37, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>; and, UN, “International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families”, Article 10, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>

857 OAS, “Inter-American Convention to Prevent and Punish Torture”, Article 2, <http://www.oas.org/juridico/english/treaties/a-51.html>; African Union, “African Charter on Human and Peoples’ Rights”, Article 5, http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf; African Union, “African Charter on the Rights and Welfare of the Child”, Article 16, http://www.achpr.org/files/instruments/child/achpr_instr_charterchild_eng.pdf; OAS, “Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of *Belém do Pará*)”, Article 4, <https://www.oas.org/en/mesecvi/docs/BelemDoPara-ENGLISH.pdf>; and, Council of Europe, “European Convention for the Protection of Human Rights and Fundamental Freedoms”, Article 3, https://www.echr.coe.int/Documents/Convention_ENG.pdf

858 UN, “Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment”, December 9, 1988, Principle 6, <http://www.ohchr.org/Documents/ProfessionalInterest/bodyprinciples.pdf>; UN, “Code of Conduct for Law Enforcement Officials”, December 17, 1979, Article 5, <http://www.ohchr.org/Documents/ProfessionalInterest/codeofconduct.pdf>; UN, “Rules for the Protection of Juveniles Deprived of their Liberty”, December 14, 1990, Rule 87(a), http://www.ohchr.org/Documents/ProfessionalInterest/res45_113.pdf; UN, “Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live”, December 13, 1985, Article 6, <http://www.un.org/documents/ga/res/40/a40r144.htm>; UN, “Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)”, November 29, 1985, Rule 17.3, <http://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>; UN, “Declaration on the Protection of Women and Children in Emergency and Armed Conflict”, December 14, 1974, Article 4, http://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.19_declaration%20protection%20women%20armed%20conflict.pdf; and, Council of Europe, Committee of Ministers, “Guidelines on the Council of Europe on human rights and the fight against terrorism”, July 11, 2002, Guideline IV, https://www.coe.int/t/dlapi/cahdi/Source/Docs2002/H_2002_4E.pdf

859 Inter-American Court of Human Rights, Case of Bueno Alves v. Argentina, “Judgment of May 11, 2007”, (Merits, Reparations and Costs), paragraph 77, http://www.corteidh.or.cr/docs/casos/articulos/seriec_164_ing.pdf

860 Ibid, paragraph 79.

In order to analyze intentionality, the Inter-American Court took into account whether the acts committed were deliberately inflicted on the victim and not the result of negligent conduct, an accident, or *force majeure*.⁸⁶¹ Moreover, when it comes to analyzing whether the facts qualify as severe suffering, the Inter-American Court of Human Rights held that “upon determining the degree of suffering endured by the victim, the Court must take into account the specific circumstances of each case, in view of objective and subjective factors. The former refer to the characteristics of mistreatment, such as the duration, the method or manner used to inflict harm, and the physical and psychological effects such harm may cause. The latter refer to the characteristics of the individual undergoing mistreatment, including age, gender, health condition, and any other personal circumstance.”⁸⁶² Finally, to analyze the purpose, the Inter-American Court of Human Rights affirmed that physical and mental torture are acts “planned and inflicted deliberately upon the victim to wear down his psychological resistance and force him to incriminate himself or to confess to certain illegal activities, or to subject him to other types of punishment, in addition to imprisonment itself.”⁸⁶³ And it added that “in situations of massive human rights violations, the systematic use of torture has the aim of intimidating the population.”⁸⁶⁴

With regards to the different degrees of suffering, the Inter-American Court has said in the case of *Loayza Tamayo v. Peru* that the violation of the right to physical and psychological integrity of persons is in a class of violations that have various connotations of degree and that encompass from torture to other types of mistreatment or cruel, inhuman, or degrading treatment whose physical and psychological consequences vary in intensity depending on the endogenous and exogenous factors that must be shown in each specific situation. Even in the absence of injuries, physical and moral suffering, accompanied by psychological disturbances during interrogation sessions, may be considered inhuman treatment. The degrading nature is expressed in a feeling of fear, anxiety, and inferiority with the aim of humiliating and degrading the victim and breaking his or her physical and moral resistance.⁸⁶⁵ That situation is aggravated by the vulnerability of a person who has been unlawfully detained.⁸⁶⁶

⁸⁶¹ Ibid, paragraph 81.

⁸⁶² Ibid, paragraph 83.

⁸⁶³ Cf. Inter-American Court of Human Rights, Case of *Tibi v. Ecuador*, “Judgment of September 7, 2004” (Preliminary Objections, Merits, Reparations and Costs), paragraph 146, http://www.corteidh.or.cr/docs/casos/articulos/seriec_114_ing.pdf. See also, Inter-American Court of Human Rights, Case of *Maritza Urrutia v. Guatemala*, “Judgment of November 27, 2003” (Merits, Reparations and Costs), paragraph 93, http://www.corteidh.or.cr/docs/casos/articulos/seriec_103_ing.pdf; and, Inter-American Court of Human Rights, Case of *Cantoral Benavides v. Peru*, “Judgment of August 18, 2000” (Merits) paragraph 104, http://www.corteidh.or.cr/docs/casos/articulos/seriec_69_ing.pdf

⁸⁶⁴ Cf. Inter-American Court of Human Rights, Case of the *Gómez-Paquiyaui Brothers v. Peru*, “Judgment of July 8, 2004” (Merits, Reparations and Costs), paragraph 116, http://www.corteidh.or.cr/docs/casos/articulos/seriec_110_ing.pdf

⁸⁶⁵ Cf. Council of Europe, European Court of Human Rights, *Ireland v. the United Kingdom*, “Judgment of January 18, 1978”, paragraph 167, https://www.cvce.eu/en/obj/judgement_of_the_european_court_of_human_rights_ireland_v_the_united_kingdom_18_january_1978-en-e07eaf5f-6d09-4207-8822-0add3176f8e6.html

⁸⁶⁶ Cf. Council of Europe, European Court of Human Rights, Case of *Ribitsch v. Austria*, “Judgment”, 18896/91, December 4, 1995, paragraph 36, [file:///C:/Users/USER/Downloads/001-57964%20\(1\).pdf](file:///C:/Users/USER/Downloads/001-57964%20(1).pdf)

With regards to the different types of torture that it analyzed, it held that “according to international standards for protection, torture can be inflicted not only through the exercise of physical violence, but also through acts that produce severe physical, psychological or moral suffering in the victim.”⁸⁶⁷

Moreover, it “has also been recognized that, under certain circumstances, threats and the real danger of a person being subjected to physical injuries produces such a degree of moral anguish that it can be considered psychological torture.”⁸⁶⁸ Along the same lines, the Inter-American Court has held that “the mere threat of a conduct prohibited by the provisions of Article 5 of the American Convention, when this is sufficiently real and imminent, may in itself be in conflict with the right to personal integrity.” Finally, it held that “creating a threatening situation or threatening to kill an individual may constitute, at the very least, inhuman treatment in some circumstances.”⁸⁶⁹

iii.(b) *The Analysis of the Panel on the situation in Venezuela*

With regards to the particular situation of the Bolivarian Republic of Venezuela, it should be noted that both the public hearings conducted by the OAS General Secretariat aimed at determining whether crimes against humanity have been committed in that State. In the documentation analyzed by this Panel, alarming data related to the commission of acts of torture was recorded.

In its concluding observations of 2014, the CAT expressed its alarm in the face of consistent reports alleging acts of torture and mistreatment of persons arrested in the context of the demonstrations held between February and July 2014. Such acts reportedly include, according to the Committee, beatings, electric shock, burns, asphyxiation, rape, and threats, purportedly for the purpose of destroying evidence of the actions of the security forces, to obtain information, punish, and obtain confessions, and are motivated by gender discrimination.⁸⁷⁰

The OHCHR documented the existence of patterns of mistreatment, which on occasion could amount to torture, mistreatment, and grave violations of due process by the Venezuelan authorities to the detriment of the persons detained in connection with the protests.⁸⁷¹

⁸⁶⁷ Inter-American Court of Human Rights, Case of Cantoral Benavides v. Peru. “Judgment of August 18, 2000” (Merits) paragraph 100, http://www.corteidh.or.cr/docs/casos/articulos/seriec_69_ing.pdf

⁸⁶⁸ Inter-American Court of Human Rights, Case of J. v. Peru, “Judgment of November 27, 2013”, (Preliminary Objection, Merits, Reparations and Costs), paragraph 364, http://www.corteidh.or.cr/docs/casos/articulos/seriec_275_ing.pdf

⁸⁶⁹ Inter-American Court of Human Rights, Case of Barrios Family v. Venezuela, “Judgment of November 24, 2011”, (Merits, Reparations and Costs), paragraph 82, http://www.corteidh.or.cr/docs/casos/articulos/seriec_237_ing.pdf

⁸⁷⁰ CAT, “Concluding observations on the combined third and fourth periodic reports of the Bolivarian Republic of Venezuela,” CAT/C/VEN/CO/3-4, December 12, 2014, paragraph 10, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/241/72/PDF/G1424172.pdf?OpenElement>

⁸⁷¹ OHCHR, “Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela of April 1 to July 31, 2017”, Geneva, August 2017, page ii, http://www.ohchr.org/Documents/Countries/VE/HCReportVenezuela_1April-31July2017_EN.pdf

In almost all cases of detention recorded by the OHCHR, the security forces subjected the detainees, including children, to one more or forms of cruel, inhuman, or degrading treatment or punishment, tantamount in several cases to acts of torture. The mistreatment included major beatings, electric shocks, stress positions, asphyxiation, and threats of sexual violence and death.⁸⁷² These acts had the purpose of punishing, humiliating, and terrorizing the persons detained, as well as extracting confessions from them along with information about purported anti-government activities.

The OHCHR confirmed that it met with various attorneys and physicians and had access to clinical histories that confirmed the reports of torture and mistreatment.⁸⁷³ It emerged from these interviews that security forces often used excessive and unnecessary force at the time of arrest; for example, they beat, kicked, and sprayed the detainees with pepper spray, at times grievously wounding them.⁸⁷⁴

Finally, the OHCHR also affirmed that many of the detainees interviewed were beaten about the entire body, including the genitals, with sticks, metal rods, pliers, helmets, baseball bats, and weapons. At times the detainees were wrapped in padding to keep the beatings from leaving any marks.⁸⁷⁵ The OHCHR also documented cases in which the security forces used teargas and other chemical products in confined spaces or applied them directly to the detainees' respiratory system to stimulate their asphyxiation.⁸⁷⁶

Independent experts José Antonio Guevara Bermúdez, Chair-Rapporteur of the Working Group on Arbitrary Detention; David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Annalisa Ciampi, Special Rapporteur on the rights to freedom of peaceful assembly and association; Diego García-Sayán, Special Rapporteur on the independence of judges and lawyers; and Nils Melzer, Special Rapporteur on torture and other cruel, inhuman, or degrading treatment, released a statement on August 4, 2017 indicating they received information alleging that many of the detainees had reported torture or cruel, inhuman and degrading treatment when they were presented to the courts.⁸⁷⁷

The report produced by Human Rights Watch and the *Foro Penal*, "Crackdown on Dissent: Brutality, Torture, and Political Persecution in Venezuela" affirmed that the human rights violations have occurred in the Bolivarian Republic of Venezuela are not isolated acts. The report examines the grave human rights violations committed between April and September 2017 and states: "While Human Rights Watch and the Penal Forum have, to date, been unable to determine the full scope of human rights violations committed

⁸⁷² Ibid.

⁸⁷³ Ibid, page 17.

⁸⁷⁴ Ibid, page 18.

⁸⁷⁵ Ibid.

⁸⁷⁶ Ibid.

⁸⁷⁷ OHCHR, "Venezuela must end systematic detentions and military trials – UN experts", Geneva, August 4, 2017, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21939&LangID=E>

during the crackdown, our research shows that the abuses were not isolated cases or the result of excesses by rogue security force members. On the contrary, the fact that widespread abuses by members of security forces were carried out repeatedly, by multiple security forces, in multiple locations across 13 states and the capital—including in controlled environments such as military installations and other state institutions—over the six-month period covered by this report, supports the conclusion that the abuses have been part of a systematic practice by the Venezuelan security forces.”⁸⁷⁸

That report documented 53 cases in which at least 232 persons were detained and subjected to physical and psychological abuse for the apparent purpose of punishing them or forcing them to incriminate themselves or compromise other persons. The majority of these abuses occurred at bases of the Bolivarian National Guard or at the offices of the SEBIN. In some of these cases the abuses clearly constituted torture. The abuses suffered by the persons detained have included: electric shocks, brutal beatings, being suspended in uncomfortable and stress positions, sleep deprivation, asphyxiation, and sexual abuse.⁸⁷⁹

The report refers to some cases that demonstrate that the acts of torture that took place in Venezuela did not occur spontaneously or in isolation, but rather denote a clearly systematic and widespread pattern.

Amnesty International explains that the evidence obtained through interviews of victims, witnesses, attorneys, human rights defenders, and medical personnel indicate that most of the persons subjected to torture and other mistreatment did not report it. In the interviews they explain that they don't report it both out of fear of reprisals by the perpetrators and for fear of being detained if they admitted having taken part in protests, or out of fear that having participated in the protests, charges could be brought against them, and that an allegation of torture and other forms of mistreatment might have a negative impact in the trials against them.⁸⁸⁰ During the visit to the country in July 2014, Amnesty International was able to identify some of the obstacles that have made it difficult for victims to access justice. For example, victims, attorneys, and human rights defenders indicate that on occasion, despite obvious signs of injuries on the persons detained, prosecutors did not initiate investigations on their own initiative, or the judges did not determine that such investigations should be initiated. The complaints received from lawyers and human rights defenders indicated that most of the persons detained did not undergo medical exams upon entering the detention centers, and in some cases, they did not receive medical care until the hearing before a judge, at least 48 hours after their detention, despite showing wounds caused by pellets or rubber bullets or having requested medical care for the lesions caused by the beatings inflicted at the time of detention.⁸⁸¹ According to the testimony, out of fear of reprisals physicians refused to issue complete medical reports that

⁸⁷⁸ Human Rights Watch and *Foro Penal*, “Crackdown on Dissent, Brutality, Torture and Political Persecution in Venezuela”, November 2017, page 2. https://www.hrw.org/sites/default/files/report_pdf/venezuela1117web_0.pdf

⁸⁷⁹ *Ibid*, page 3.

⁸⁸⁰ Amnesty International: “Venezuela: The Faces of Impunity: A Year after the Protests Victims Still Await Justice,” 2015, pages 26, <https://www.amnesty.org/download/Documents/AMR5312392015ENGLISH.pdf>

⁸⁸¹ *Ibid*, page 27.

indicated that the detainees showed indications of torture or other mistreatment.⁸⁸² Amnesty International gained access to some forensic medical reports and considers that in some cases they do not meet the minimum standards set forth in the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁸⁸³

According to the statements by Tamara Suju, Director of CASLA Institute, in the context of the public hearings conducted by the OAS General Secretariat, since April 19, 2013, at least 289 persons were victims of torture. Some of these victims stated that they were tortured along with other persons, with which one could assume that at least 500 persons were likely subjected to acts of torture.⁸⁸⁴

Of the cases of victims that have been documented by the direct testimony of the victims, their lawyers, and other reliable sources, it appears that 223 were male and 66 female. Of the total, 79% are in the 18-to-30-year age group, thus the pattern is more geared to young persons; 11% are 31 to 40 years old; 5% are minors; and the remaining 5% are over 40.⁸⁸⁵

With regards to the reasons for the aberrant acts of torture, Tamara Suju has stated that at least 222 persons were tortured for participating in demonstrations, for having been accused of conspiracy, or simply for expressing their opposition to the government. In addition, at least 66 cases were documented of persons who were also tortured to obtain a confession or accusation, mainly against the political leaders of the opposition. This was reinforced by Julio Henríquez of the *Foro Penal* in his statement in a session before the OAS; he added that the motivation behind torture is to punish and to intimidate.⁸⁸⁶

Finally, Tamara Suju concluded, in relation to the documented cases of torture, that basic patterns have been observed in all the security agencies, and even the places for perpetrating torture have been planned, leading to the use of government buildings, prisons such as the *Helicoide*, “*La Tumba*” of the SEBIN, the headquarters of the DGCIM, the bases of the different commands of the Bolivarian National Guard, and several jails. “Torture has been systematic because all the security agencies of the State have used torture, places have been created for torturing, and the same methods are used, as if there were a script by which torture is used to obtain information or to punish.”⁸⁸⁷ The modalities of torture to which Tamara Suju referred to were various, aimed at marking the parts of the body that are visible, such as the case of extracting the powder from teargas canisters so as to apply it directly to the victims’ faces, and then covering them with

⁸⁸² Ibid.

⁸⁸³ Ibid.

⁸⁸⁴ Testimony of Tamara Suju at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 14, 2017, <https://www.youtube.com/watch?v=KRXOQaJPzRk>

⁸⁸⁵ Ibid.

⁸⁸⁶ Ibid.

⁸⁸⁷ Ibid.

plastic bags to maximize the effect, and the use of teargas on persons who are put in small spaces, causing fainting and respiratory problems.⁸⁸⁸ Other methods of torture consist of electric shock, asphyxiation⁸⁸⁹, or the use of forms of white torture, which leave psychological but not physical traces, such as isolation in very small places, at low temperatures, with no notion of the day or time.⁸⁹⁰ In her statement Suju attributes these acts of torture to the Bolivarian National Guard and the regional police forces, among other agencies of the State.⁸⁹¹

iii.(c) Case studies

Marco Aurelio Coello

The 18-year-old was detained on February 12, 2014, by the CICPC, in the context of the march on Youth Day, which was being celebrated that day in the country. When Marco Coello was preparing to leave the gathering he heard detonations, which led him to seek shelter, and then received an impact in his leg, at the height of the hip. A tear gas canister had been launched against him and the gasses caused him to fall, stunned. He felt that someone put something on his face and was able to get up and a group of men in civilian dress (six) grabbed him violently and harshly and also beat him with a fire extinguisher and he was the victim of blows and mistreatment while they dragged him to the headquarters of the CICPC on Avenida Carabobo. Here they handcuffed him, placed him in a room, and poured gasoline over him. The officials told him they were going to “plant” him (kill him), and they put a weapon to his forehead. They told him to sign that he had been the one who had burned some patrol cars near the place, and that if he did not do so they were going to “break” him right then and there. Marco Coello repeated that he had not burned those patrol cars, that they should not kill him, that he hadn’t done any of that. The officers wrapped him in a foam mattress and tied him with adhesive tape and began to beat him with blunt objects, such as logs, wooden sticks, and even with a fire extinguisher. He received blows from several officers at once. They applied electric shocks to Coello on different parts of his body until he fainted; they stepped on his hands and wrists while handcuffed, with military boots. They then kept him kneeling and handcuffed for around five hours along with other students detained that day, until they were transferred to the detachment of the *Grupo Báez*, the Special Forces Brigade of the CICPC, situated in San Agustín, where he was held in *incommunicado* detention for 48 hours, without access to his family or lawyers. He was accused of the crimes of instigation to engage in criminal conduct, arson, material damages, and conspiracy.⁸⁹²

⁸⁸⁸ Ibid.

⁸⁸⁹ Ibid.

⁸⁹⁰ Ibid.

⁸⁹¹ Ibid.

⁸⁹² OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter V, Section A, Incident 5, page 101.

Raúl Ayala Álvarez

He was detained by the SEBIN the conclusion of a march that was held to protest against the Office of the Attorney General on February 12, 2014, at the Plaza Venezuela, Caracas, without an arrest warrant or an offense, but supposedly *in flagrante delicto* that would justify the arrest. He was 21-years-old at the time of his detention. He was taken to the *Helicoide* and subjected to intense questioning for 48 continuous hours. They handcuffed him and beat him, they applied electric shocks to his head, arms, and elbows on more than 30 occasions, they put bags over his head causing him to faint on several occasions, while they beat him harshly in the abdomen and told him that they had his mother next to where they were torturing him and that they were raping her. At the moment when he was taken to their courts they threatened him, telling him to be careful with what he was going to say because certainly he was going to return to the SEBIN and there they were going to take revenge on him, among other things.⁸⁹³

Gloria Tobón Fernández

She was detained by the GNB on March 20, 2014, near the bus terminal in the city of Rubio, in the municipality of Junín, state of Táchira, when she participated in a peaceful protest, along with 20 other people. She was 47-years-old at the time of her detention. She was accompanied by her daughter Katherin Martínez Tobón, 22-years-old. They were taken to station Number 12 in the city of Rubio, state of Táchira. During the transfer they were harshly beaten, along with the rest of the detainees, and they were threatened that they would be tortured with electricity if they didn't name the leaders of the protests. When they reached the command, Gloria was stripped in front of her daughter, blindfolded, handcuffed, seated, and her feet were placed in a vessel with water. She then received electric shocks on her fingernails, wrists, breasts, and genitals. For the 48 hours she was detained along with her daughter and the other persons, all were continuously beaten; they told them that they were going to take them to a mountain to kill them and then cut them into little pieces, that they would bury them in a mass grave and that no one would know where they were. She was also threatened; they told her that she and her daughter would be raped. While blindfolded they heard the shouts of the other persons when they beat them and asked them who was financing the protests.⁸⁹⁴

Alexander Antonio Tirado Lara

He was apprehended on March 21, 2014, in the afternoon hours, when he was engaged in a peaceful protest along with other residents of San Jacinto, in the state of Aragua. He was 34-years-old at the time

⁸⁹³ Ibid, Incident 6, page 102.

⁸⁹⁴ Ibid, Incident 21, page 116.

the headquarters of the CICPC at Avenida Urdaneta, where they covered her hands, feet, and head with newsprint and adhesive tape so as to then wrap her in a mattress and beat her with pipes, sticks, and kicks. Those tortures are known within these state security agencies as “CICPC massages.”⁸⁹⁷

They pulled out Araminta’s hair using an instrument known in the CICPC as “the helicopter,” which pulls out complete locks of hair, leaving parts of the scalp torn and bloodied. They extracted her toenails and officers climbed over her to touch her intimate parts. They applied electric shocks to her breasts and they shouted at her to confess that she was a member of some terrorist organization, which she constantly denied, and then she received more beatings and repetition of the torture described above.⁸⁹⁸

Efraín Ortega

The 42-year-old was detained on July 24, 2014 on Avenida Urdaneta in Caracas, by the CICPC. He was forced to stay kneeling for more than seven hours, he was cuffed at the feet and hands, they wrapped his entire body in newsprint, cardboard, and packaging tape around areas of his head, stomach, ankles, and wrists so as not to leave marks on his body and then they beat him with a stick. They handcuffed his hands behind his back so as to then lift him, suspended, to break his shoulders. They applied electricity to his neck, head, and ears, from 2:00 p.m. until 9:00 p.m. Efraín Ortega was standing and crouching without sleeping for 50 days, sharing a cell with common prisoners, who did not let him sit down or lie down, while their transfer to the respective prisons was being sorted out.⁸⁹⁹

Joselyn Prato

She was detained by the National Guard on August 21, 2015, along with five other persons, among them her brother Johan Prato, for supposedly having participated in a demonstration at a beach in the state of Falcón against the Tourism Minister Marleny Contreras, Diosdado Cabello’s wife. She was 23-years-old at the time of her detention. That day Tourism Minister Marleny Contreras had gone to that beach and had been booed by the persons there. The National Guard went to the place hours later with orders from above to repress and detain the persons supposedly guilty of the booing, and they themselves confessed to the detainees that the order was to disperse the beachgoers with teargas, but there were many children, so it was decided not to do so. When trying to defend her brother, who was trying to find out what was happening she inadvertently pushed an officer in civilian dress and as a result was made to drop to her knees and was handcuffed. She was

⁸⁹⁷ Ibid, Incident 32, page 127.

⁸⁹⁸ Ibid, page 128.

⁸⁹⁹ Ibid, Incident 33, page 129.

brutally beaten and kicked by approximately five officers. They kicked her forcefully in the abdomen, about her ribs, and in the face, causing a major hematoma covering 40% of her face, and one eye was bleeding and she suffered a fracture in her left arm. She was dragged several meters to the pier, where she fainted. She was taken, along with the other detainees, to the GNB barracks in Chichiriviche.⁹⁰⁰

At the barracks the officer in charge shouted at them: “here heads have to roll, you messed with the boss’s wife. It’s a political case, we need persons guilty of what happened.” 48 hours later they were transferred to the prison known as Penal de Coro, a prison for common prisoners, and Joselyn was stripped and confined in a 3-meter by 2-meter cell, with eight other female prisoners. The cell had only one cement bed, one shower, one toilet, and one sink. Joselyn vomited and urinated blood, and thanks to the shouts of the female prisoners she was transferred to the infirmary and then to the hospital because she continued vomiting blood. The diagnosis was a dilated kidney due to the blows received.⁹⁰¹

The night of her detention, on the television program of Diosdado Cabello, President of the National Assembly and the husband of the minister of tourism said: “The law arrived and sought out the assailants of women. Knock, knock, who is it? It’s the SEBIN... We are not going to allow lack of respect for Venezuelan women ... Among the detainees is the activist with *Voluntad Popular* from the state of Táchira... May God care for you, my queen, Joselyn Prato.”⁹⁰²

Ernesto Martín (pseudonym)

The 34-year-old was detained in April 2017. A group of men in civilian garb came to Martín’s home and identified themselves as members of the General Directorate of Military Counterintelligence. The agents placed Martín on a pickup truck and took him to Caracas, where they turned him over to agents of the DGCIM and he was taken to a well-lit room, 2 x 2 meters room, at an office of the DGCIM. They handcuffed Martín with his hands behind his back and placed a blindfold over his eyes. They left him there until the early morning hours, when they took him to another room in the same building, where a man who was wearing the uniform of a captain in the Bolivarian National Guard asked if he knew why he was there, and he indicated that it was for a “very grave crime” and for “meddling with” the government. The official referred to a public statement made by Martín the day before, in which he had criticized the regime.⁹⁰³

⁹⁰⁰ Ibid, Incident 40, page 136.

⁹⁰¹ Ibid.

⁹⁰² Ibid, page 137.

⁹⁰³ Human Rights Watch and *Foro Penal*, “Crackdown on Dissent, Brutality, Torture and Political Persecution in Venezuela”, November 2017, page 25, https://www.hrw.org/sites/default/files/report_pdf/venezuela1117web_0.pdf

The GNB captain, who accused Martín of being a terrorist and having ties with the opposition, told him: “You receive dollars from the opposition and you will tell us who gave you those dollars.” He slapped him in the face and instructed a young officer from the DGCIM to give him “reverse 440,” referring to the voltage of the electric shocks that they were about to apply to Martín. The young officer took Martín to an enclosed space where it was cold, and the floor was wet, and forced him to undress.⁹⁰⁴ Once Martín was naked, the young agent and two of his colleagues handcuffed his ankles and wrists together in front and attached the handcuffs to a chain that was hanging from the ceiling. They elevated Martín a few centimeters from the floor and began to throw water at him. Martín said that he had heard someone say that they should wet him down so that he wouldn’t burn. The agents touched Martín with the tip of a long metallic prod. The electric shock caused Martín to have a painful spasm throughout his body. A man, who Martín believes was the GNB captain, asked him who had given him the dollars, and when Martín answered that he didn’t have any dollars, the young agent told him: “We were asked to give you 440, but since you’re a little girl, we’ll give you 220.”⁹⁰⁵

For approximately 15 minutes the agents alternated asking Martín questions and applying electric shocks, five seconds at a time, while drenching him in water. The first time, according to Martín, they applied the prod just below the gluteus muscles, and it made him urinate. Then they left him hanging for nearly an hour.⁹⁰⁶

Once they lowered him and allowed him to get dressed he was taken to a room where the young agent pointed a weapon at his head and told him that if he didn’t talk he would never be released. The agents left Martín in that room for three days; they entered only to give him food three times a day, and twice a day to take him to the bathroom. The food they gave him had insects or cigarette ash, or they had spat or urinated in it, he said.⁹⁰⁷

Alejandro Pérez Castilla (pseudonym)

On July 26, 2017 members of the GNB detained him when he tried to intercede to prevent these officers from detaining a youth with a disability. Alejandro Pérez Castilla, who was 32-years-old at the time of his detention, received several impacts of rubber bullets shot in the arm, chest, and abdomen.⁹⁰⁸ He tried to escape, but an agent of the GNB blocked his way with his motorcycle. Several agents beat and kicked him repeatedly. They forced him into an armored vehicle, where they continued beating him; they stepped

904 Ibid.

905 Ibid.

906 Ibid.

907 Ibid, page 26.

908 Ibid, page 32.

on his fingers and burned his back using a lighter. The agents forced Pérez to lie down on the floor of the vehicle, placed a shield on him, and walked on it, causing him acute pain as it compressed his ribcage, according to him. Another member of the GNB took his penis out of his pants and rubbed it against Pérez's face, while the others laughed. When they found out that Pérez had a daughter they threatened to rape her.⁹⁰⁹ When they reached a GNB station a GNB member rubbed teargas powder on Pérez's face, eyes, and nose and on the shotgun-pellet wounds. Another agent kept his eyes open so that they could put powder in them, while a female sergeant told him they were only getting started.

GNB officers took Pérez to receive medical care, but one of them later threw away the painkillers that the medical personnel had given him. When they arrived at another GNB station the officers handcuffed Pérez to the cage of an air conditioner so high that he could barely stand on his tiptoes. While he was hanging there, a sergeant beat Pérez in the ribs for nearly an hour, and later handcuffed him to a metal bench and used a taser to administer electric shocks to his calf.⁹¹⁰

An officer then ordered that they put Pérez in a small windowless room, into which officers threw a teargas canister and closed the door. After Pérez fainted the officers removed him from the room. When he came to, a captain put teargas powder on a damp towel, added inflammable oil, set it on fire, and forced Pérez to blow. When he did, it burned his face. Two guards and a third person who Pérez could not identify once again beat him and urinated on him, before taking him to a small, overcrowded cell. Some detainees in the cell shared Betadine antiseptic that they had hidden with Pérez, so he could clean some of his wounds. He did not receive any medical treatment from the authorities.⁹¹¹

Yolibeth Colmenares

She was detained on May 15, 2017. She was brutally beaten by five police from the state of Barinas, who beat and kicked her all about the body. She was bathed in feces, and forced to swallow it. She was also bathed in urine taken from the toilets in the holding cells, where the prisoners urinate, opening her pants to put it on her intimate parts, leaving her in these conditions for more than 24 hours, causing a serious infection.⁹¹²

⁹⁰⁹ Ibid, page 33.

⁹¹⁰ Ibid.

⁹¹¹ Ibid.

⁹¹² OAS General Secretariat, "Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela", May 2018, Chapter VII, Section A, Incident 48, page 143.

Manuel Rojas Villas (pseudonym)

On the morning of July 30, the day of the Constituent Assembly election, the 21-year-old young man, who had participated actively in demonstrations, was walking home near the city of San Cristóbal, Táchira state, after an evening out with friends. It was in this context, he told Human Rights Watch that he walked past a parked truck and five armed men wearing balaclavas got out.⁹¹³ One of them said, “You’re a *guarimbero!*” and punched him in the head. Rojas fell to the ground, and the men used his own jacket to cover his head, preventing him from seeing anything, and put him in the truck. They never identified themselves or offered any reason for why they detained him.⁹¹⁴

Rojas’s captors forced him to hold Molotov cocktails while they took pictures.⁹¹⁵ They sat him on the floor, took his blindfold off, and forced him to record a video in which they ordered him to incriminate local youths as leaders of the “Resistance” and admit to being paid 100,000 bolivars to demonstrate. Whenever he made a mistake in what they wanted him to say, they stopped the camera, hit him, and started recording again. Once they were done, the men tied Rojas’s ankles to his wrists behind him and left him in the room with a guard. He felt dizzy from all the blows to his head.⁹¹⁶

After about 90 minutes men wearing green uniforms that Rojas could not identify came in, blindfolded Rojas, and took him to a white truck parked outside. They drove Rojas to what appeared to be a GNB base, given the presence of several GNB members on the scene. They took him immediately to a room downstairs, where officers had him sit on the floor and kicked him in the stomach. Four new officers, wearing balaclavas to mask their faces, took him to another cell, where he was handcuffed to a chair and beaten again. They forced him to film another video, then took him to a cell.⁹¹⁷

iii.(d) *Conclusion*

Based on these statements and the cases illustrated in the foregoing paragraphs, this Panel considers that there is a reasonable basis for believing that aberrant acts of torture have been committed in the territory of Venezuela that can be characterized as crimes against humanity, as provided for in Article 7(1) (f) of the Rome Statute. As appears from the facts set forth, these are acts of torture that have inflicted severe physical and mental suffering on a considerable number of persons who were under the control or

⁹¹³ Human Rights Watch and *Foro Penal*, “Crackdown on Dissent, Brutality, Torture and Political Persecution in Venezuela”, November 2017, page 34, https://www.hrw.org/sites/default/files/report_pdf/venezuela1117web_0.pdf

⁹¹⁴ Ibid.

⁹¹⁵ Ibid.

⁹¹⁶ Ibid.

⁹¹⁷ Ibid, pages 34-35.

custody of the State, particularly of the officers who committed the acts of torture, which did not happen spontaneously or in isolation, but rather answer to a policy established by the government of Venezuela through acts directed by the highest-level state authorities, setting clear systematic patterns of action.

iv. *Rape under Article 7(1)(g)*

iv.(a) *Elements of the crime*

The crime against humanity of rape is codified in Article 7(1)(g) of the Rome Statute. The Elements of Crimes⁹¹⁸ require the following specific elements, to demonstrate that it has been committed, in addition to the contextual elements:

- “(i) The perpetrator invaded⁹¹⁹ the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.
- (ii) The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.”⁹²⁰

The International Criminal Court has interpreted these contextual elements in the judgment in the *Bemba Gombo* case. The first element refers to the invasion of a person’s body.⁹²¹ On interpreting this element, the ICC has taken as a reference the jurisprudence of the International Criminal Tribunal for the former Yugoslavia⁹²², which determined that oral penetration by a sexual organ can constitute rape and is a degrading attack that constitutes an assault on human dignity that can be as humiliating and traumatic as vaginal or anal penetration.⁹²³

⁹¹⁸ ICC, “Elements of Crimes”, 2002, Article 7(1) (g)-1, <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>

⁹¹⁹ Ibid. According to footnote 15 of the Elements of Crimes, the concept of “invasion” is intended to be broad enough to be gender-neutral.

⁹²⁰ Ibid. According to footnote 16 of the Elements of Crimes, “It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity. This footnote also applies to the corresponding elements of article 7(1) (g)-3, 5 and 6.”

⁹²¹ ICC, Trial Chamber III, Situation in the Central African Republic in the case of The Prosecutor v. Jean-Pierre Bemba Gombo, “Judgment pursuant to Article 74 of the Rome Statute”, ICC-01/05-01/08, March 21, 2016, paragraph 101, https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF

⁹²² Ibid.

⁹²³ ICTY, Trial Chamber, Prosecutor v. Anto Furundžija. “Judgment”, IT-95-17/1-T, December 10, 1998, paragraphs 183-185, <http://www.icty.org/x/cases/furundzija/tjug/en/fur-tj981210e.pdf>. See also, ICTY, Trial Chamber, Prosecutor v. Zejnil Delalić, Zdravko Mucić also known as “PAVO”, Hazim Delić, Esad Lanza also known as “Zenga”, “Judgment”, IT-96-21-T, November 16, 1998, paragraph 1066, http://www.icty.org/x/cases/mucic/tjug/en/981116_judg_en.pdf

The second element details the circumstances and conditions that determine that the invasion of the body of the victim or of the perpetrator constitutes the crime of rape.⁹²⁴ In this regard, the ICC has undertaken an analysis of the four circumstances in which rape may take place: (i) by force; (ii) by the threat of force or by coercion, such as that caused by the fear of violence, intimidation, detention, psychological oppression, or the abuse of authority, against the person to whom the threat is made or another person; (iii) taking advantage of an environment of coercion, or; (iv) against a person incapable of freely giving their consent.⁹²⁵

The first two circumstances do not present great discussion about their interpretation. With regards the notion of “coercive environment,” the ICC, citing the *Akayesu*⁹²⁶ case – both in the judgment⁹²⁷ and in the decision of the confirmation of charges in the *Bemba* case⁹²⁸ – has interpreted that it is not necessary that physical force be used. Threat, intimidation, or other forms of coercion also constitute circumstances that can create the conditions for committing rape.⁹²⁹ In addition to these factors, the Trial Chamber has considered in the judgment in *Bemba* that the number of persons involved in committing the crime, in a context of the commission of other crimes, may also lead to a coercive environment.⁹³⁰

iv.(b) *The Analysis of the Panel on the situation in Venezuela*

The General Secretariat of the OAS has highlighted that Venezuela has “a history of using sexual violence, including threats, lascivious acts, and rape, as a form of punishment in detention facilities.”⁹³¹ One well-known case is that of Judge Lourdes Afiuni, who was detained after a ruling that went against the political

924 ICC, Trial Chamber III, Situation in the Central African Republic in the case of The Prosecutor v. Jean-Pierre Bemba Gombo, “Judgment pursuant to Article 74 of the Rome Statute”, ICC-01/05-01/08, March 21, 2016, paragraph 102, https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF. See also, ICC, Trial Chamber II, Situation in the Democratic Republic of Congo in the case of The Prosecutor v. Germain Katanga, “Judgment pursuant to Article 74 of the Statute”, ICC-01/04-01/07, March 7, 2014, paragraph 964, https://www.icc-cpi.int/CourtRecords/CR2015_04025.PDF.

925 ICC, Trial Chamber III, Situation in the Central African Republic in the case of The Prosecutor v. Jean-Pierre Bemba Gombo, “Judgment pursuant to Article 74 of the Rome Statute”, ICC-01/05-01/08, March 21, 2016, paragraph 102, https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF.

926 ICTR, Trial Chamber, The Prosecutor versus Jean Paul Akayesu, “Judgment”, ICTR-96-4-T, September 2, 1998, ICTR-96-4-T, paragraph 688, <http://www.un.org/en/preventgenocide/rwanda/pdf/AKAYESU%20-%20JUDGEMENT.pdf>

927 ICC, Trial Chamber III, Situation in the Central African Republic in the case of The Prosecutor v. Jean-Pierre Bemba Gombo, “Judgment pursuant to Article 74 of the Rome Statute”, ICC-01/05-01/08, March 21, 2016, paragraph 103, https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF.

928 IICC, Pre-Trial Chamber II, Situation in the Central African Republic in the case of The Prosecutor v. Jean Pierre Bemba Gombo, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo”, ICC-01/05-01/08, June 15, 2009, paragraph 162, https://www.icc-cpi.int/CourtRecords/CR2009_04528.PDF

929 ICTR, Trial Chamber, The Prosecutor versus Jean Paul Akayesu, “Judgment”, ICTR-96-4-T, September 2, 1998, paragraph 688, <http://www.un.org/en/preventgenocide/rwanda/pdf/AKAYESU%20-%20JUDGEMENT.pdf>

930 ICC, Trial Chamber III, Situation in the Central African Republic in the case of The Prosecutor v. Jean-Pierre Bemba Gombo, “Judgment pursuant to Article 74 of the Rome Statute”, ICC-01/05-01/08, March 21, 2016, paragraph 104, https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF.

931 OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter VI, page 168.

interests of President Chávez.⁹³² During her detention, Afiuni described how “they destroyed her vagina, anus and bladder when she was in the custody of the National Institute for Female Orientation (*Instituto Nacional de Orientación Femenina*: INOF) and officials of the Ministry of Justice raped her.”⁹³³ To this day, her experience is used as a threat against judges reluctant to follow political direction.⁹³⁴

According to the Report of the General Secretariat of the OAS, “In Venezuela, in addition to the wide range of harassment, physical abuse and violence, detainees- both men and women- are commonly subjected to various forms of sexual torture, including rape. Particularly in cases where the detainee is a woman, threats of a sexual nature are the norm. The Guards threaten them with rape, or threaten to put them in prison cells with criminals from the general population who, the guards say, will rape them.”⁹³⁵ Throughout Chapters V and VI of the Report addressing the use of torture and rape, respectively, the cases described by the General Secretariat, “document the regularly reported practice of sexual violence, against both men and women detainees of all ages, with the added caveat that sexual abuse and torture commonly go under reported for a variety of reasons, including fear, shame, stigma and the lack of institutional willingness and/or capacity to treat these as serious crimes.”⁹³⁶

Several cases of rape and other sexual violence were documented during the period under consideration in the Bolivarian Republic of Venezuela. According to some sources, as many as 192 cases have been documented.⁹³⁷

Julio Henríquez explained in the public hearing that the use of sexual violence against women has become a pattern. They have also documented cases of sexual violence against men. He argued that threats of rape, improper touching, and lascivious acts are commonly directed against detained persons.⁹³⁸

932 On December 10, 2010, María Lourdes Afiuni Mora, Judge of the 31st Control Court of the Caracas Metropolitan Area, decided to replace the custodial measure imposed on Mr. Elegio Cedeño with a less onerous precautionary measure since, as of that date, he had been held for over two years, in violation of the maximum period for pretrial detention established in the Organic Code of Criminal Procedure—two years—, based on Working Group on Arbitrary Detention Opinion No. 10/2009 (Venezuela). Judge Afiuni was arrested minutes after issuing her order. The next day, on the national radio and television channel, former President of the Republic Hugo Chávez characterized Judge Afiuni as a “gangster” and indicated: “I call for toughness against this judge. I even told the President of the Supreme Court of Justice [Luisa Estela Morales] and I now say to the National Assembly: a law will have to be enacted because a judge who frees a criminal is much, much more serious than the criminal himself. This is much, much more serious than murder. This judge, and anyone else who does the same, should be given the maximum penalty ... I ask for 30 years in prison for this judge, in the name of the dignity of the country.” During her detention, she was repeatedly raped and threats were made and intimidating shots fired at her house.

933 *El Universal*, “Afiuni rompió el silencio y habló en el juicio”, June 30, 2015, <http://www.lapatilla.com/site/2015/07/25/que-fue-de-la-juez-afiuni/>; and, ABC.es, “¿Qué fue de la juez Afiuni?”, July 24, 2015, <http://www.abc.es/internacional/20150724/abci-jueza-afiuni-venezuela-201507232152.html>; and, La Patilla, “¿Qué fue de la juez Afiuni?”, July 25, 2015, <http://www.lapatilla.com/site/2015/07/25/que-fue-de-la-juez-afiuni/>

934 OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter VI, page 168.

935 *Ibid*, page 166.

936 *Ibid*.

937 Testimony by Tamara Suju at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 14, 2017, <https://www.youtube.com/watch?v=KRXOQaJPzRk>

938 Testimony by Julio Henríquez, at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 14, 2017, <https://www.youtube.com/watch?v=KRXOQaJPzRk>

iv.(c) Case studies

Juan Manuel Carrasco

He stated that on February 13, 2014, he was detained by the GNB in the housing development El Trigal, Valencia, Carabobo state, when he was found leaving a demonstration held in the vicinity. At the time of his detention, he was 21 years old. Both he and a group of detainees were put in the fetal position, kneeling, and were beaten repeatedly. They pulled down his boxers and he was raped with a blunt object.⁹³⁹

[REDACTED]

[REDACTED]

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Wuilly Arteaga

On July 27, 2017, Wuilly Arteaga, a violinist, was detained in the neighborhood of El Paraíso in Caracas in a protest taking place that day. He was brutally beaten with his own violin, as well as with helmets and nightsticks of the policemen, on his head, face and neck, and on his right ear, which caused internal hemorrhaging and, permanent loss off hearing in his right ear. They split his lip, causing a large bruise. They burned the hair on his head and legs with a cigarette lighter. He was subjected to repeated psychological torture. He was denied food, and was forced to eat food left over from the other prisoners. He was denied medical care. He was repeatedly tortured and mistreated by the guards during the 20 days of his detention. He testified that he was detained “along with approximately 27 people” and that one of the young women detained with him was subjected to the sexual torture of rape and lascivious acts on her private parts in front of the other detainees.⁹⁴¹

⁹³⁹ OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, page 104, Incident 8.

⁹⁴⁰ [REDACTED]

⁹⁴¹ OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Incident 61, page 142.

Reny Elías

On July, 20 2017, the 35-year-old employee of the Secretariat of Health of the state government of Zulia was working from home. Elías recounted that he also worked as a stylist, and that he was serving clients in that line of work at his home, when at about 5:30 pm, he opened the door for a client who was leaving, a group of uniformed members of the Bolivarian National Police, heavily armed, abruptly entered without showing a judicial warrant.⁹⁴² The officers beat him with their shields and helmets, dragged him into the street by the hair, and put him in an official vehicle.⁹⁴³

While detained with a larger group, Elías saw that agents groped the legs and breasts of two female detainees, one of them 16 years of age. An officer took the hand of one of the women and placed it between his legs, telling her boyfriend, who was also detained: “Look, your girlfriend is touching my penis.” (Another detainee, on testifying during his *habeas corpus* hearing, corroborated Elías’s account regarding the sexual abuse that occurred that day and reported that another agent had offered to release another woman if she had sexual relations with him).⁹⁴⁴

Continuing his account of July 20, Elías said that he also witnessed two agents select a young man, lower his pants in front of all the other detainees, apply teargas powder and water to his anus, and then penetrate it with the stick of a broom.⁹⁴⁵

[REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]⁹⁴⁶

⁹⁴² Human Rights Watch and *Foro Penal*, “Crackdown on Dissent, Brutality, Torture and Political Persecution in Venezuela”, November 2017, page 30. <https://www.hrw.org/report/2017/11/29/crackdown-dissent/brutality-torture-and-political-persecution-venezuela>

⁹⁴³ Ibid.

⁹⁴⁴ Ibid, page 31.

⁹⁴⁵ Ibid.

⁹⁴⁶ [REDACTED]
 [REDACTED]

[REDACTED]

[REDACTED]

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iv.(d) *Conclusion*

Based on these statements and the cases illustrated in the foregoing paragraphs, this Panel considers that there is a reasonable basis for believing that in Venezuela the two elements identified by the ICC in the judgment in the *Bemba Gombo* case are present: first, in all cases there was an invasion of the person's body, and second, this invasion occurred "by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person."⁹⁴⁸ There are numerous additional cases documented that also appear to satisfy the other elements outlined for this crime, including invasion by force, by taking advantage of a coercive environment, and/or against a person incapable of giving genuine consent.⁹⁴⁹ These rapes or acts of sexual violence were part of a specific type of torture in which the perpetrators no doubt knew that the conduct was part of a widespread and systematic attack directed against the group identified as political opponents.

v. *Persecution of an identifiable group or collectivity on political grounds, under Article 7(1)(h)*

v.(a) *Elements of the crime*

The Rome Statute has defined the crime of persecution as "the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity."⁹⁵⁰ The crime of persecution requires a severe deprivation of fundamental rights based on discriminatory grounds.

947 [REDACTED]

948 ICC, Trial Chamber III, Situation in the Central African Republic in the case of The Prosecutor v. Jean-Pierre Bemba Gombo, "Judgment pursuant to Article 74 of the Rome Statute", ICC-01/05-01/08, March 21, 2016, paragraph 102, https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF

949 Ibid. See also, ICC, "Elements of Crimes", 2002, Article 7(1)(g)-1, <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>

950 UN, "Rome Statute of the International Criminal Court", 1998, Article 7(2)(g), <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>. See also, ICC, "Elements of Crimes", 2002, Article 7(1)(h)(2), <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>; and, Lafuente, A.L., "La tipificación del crimen de persecución en el Estatuto de Roma y su primera aplicación en Timor Oriental", *Revista Electrónica de Ciencia Penal y Criminología*, Number 10-12, 2008, page 4.

Both the Rome Statute⁹⁵¹ and the Elements of Crimes⁹⁵² provide that the motives for committing the prohibited acts include, *inter alia*, political grounds.⁹⁵³ In addition, the Rome Statute requires a connection between the persecution and any other crime within the jurisdiction of the Court, or any other act listed in Article 7(1).⁹⁵⁴

The ICTY has undertaken an analysis of the doctrine and jurisprudence to define the crime of persecution. One of the doctrinal studies establishes that:

Throughout history ... the terms “persecute” and “persecution” have come to be understood to refer to discriminatory practice resulting in physical or mental harm, economic harm, or all of the above.... The words “persecute” and the act of “persecution” have come to acquire a universally accepted meaning for which a proposed definition is: State Action or Policy leading to the infliction upon an individual of harassment, torment, oppression, or discriminatory measures, designed to or likely to produce physical or mental suffering or economic harm, because of the victim’s beliefs, views, or membership in a given identifiable group (religious, social, ethnic, linguistic etc.), or simply because the perpetrator sought to single out a given category of victims for reasons peculiar to the perpetrator.⁹⁵⁵

However, after consider other sources the ICTY established that in order for the crime of persecution to exist, there must be some type of deliberate discrimination that results in a grave violation of the fundamental rights of an individual, and that clearly it is the grave violation of the right to equality that violates the enjoyment of a basic or fundamental right and that constitutes the crime of persecution.⁹⁵⁶

Based on these definitions, the first element of the crime of persecution that arises consists of the perpetrator having grievously deprived one or more persons of their fundamental rights in violation of

⁹⁵¹ UN, “Rome Statute of the International Criminal Court”, 1998, Article 7(1)(h), <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>

⁹⁵² ICC, “Elements of Crimes”, 2002, Article 7(1)(h)(3), <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>

⁹⁵³ UN, “Rome Statute of the International Criminal Court”, 1998, Article 7(1)(h), <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>. See also, “Elements of Crimes”, 2002, Article 7(1)(h)(3), <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>

⁹⁵⁴ UN, “Rome Statute of the International Criminal Court”, 1998, Article 7(1)(h), <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>. See also, “Elements of Crimes”, 2002, Article 7(1)(h), <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>

⁹⁵⁵ Bassiouni, M. Cherif, “Crimes Against Humanity in International Criminal Law”, Nijhoff: Dordrecht, 1992, 317, cited in ICTY, Trial Chamber, Prosecutor v. DU[KO TADI] a/k/a/ “DULE”, Opinion and Judgment, IT-94-1-T, May 7, 1997, paragraph 695.

⁹⁵⁶ *Ibid*, paragraph 697.

international law.⁹⁵⁷ On the occasion of confirming charges in *Kenyatta*⁹⁵⁸, the Pre-Trial Chamber affirmed that life and sexual, physical, and psychological integrity constitute fundamental rights.⁹⁵⁹ Moreover, in the recent decision on initiating an investigation in the Republic of Burundi, the International Criminal Court mentioned some examples of fundamental rights – whether or not they are considered non-derogable – such as the right to life, the right not to be subjected to torture or cruel, inhuman or degrading treatment, the right to freedom of expression, and the right to private property.⁹⁶⁰

In addition, and on attempting to define the scope of the notion of fundamental rights, in the *Tadic* case reference has been made to the rights contained in the United Nations Charter and the International Covenant on Civil and Political Rights.⁹⁶¹ In similar terms, the International Law Commission has made it clear that acts of persecution may take many forms. But their most notable characteristic is the denial of the human rights and fundamental freedoms to which every person has a right, without distinction, as recognized by the United Nations Charter (Article 1 and 55) and the International Covenant on Civil and Political Rights (Article 2).⁹⁶²

Here the fundamental rights contained in the American Convention of Human Rights are especially applicable. The regional system of protection takes on particular importance when it comes to the notion of “violation of fundamental rights” in a manner compatible with internationally recognized human rights, in keeping with Article 21(3) of the Rome Statute.

The American Declaration on the Rights of Man, in its preamble, establishes that “the essential rights of man are not derived from one’s being a national of a certain state, but are based upon attributes of the human personality.” The fundamental rights of which thousands of Venezuelans were deprived have been recognized as human rights, first, by the very American Convention on Human Rights and confirmed

⁹⁵⁷ ICC, “Elements of Crimes”, 2002, Article 7(1)(h)(1), <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>

⁹⁵⁸ ICC, Pre-Trial Chamber II, Situation in the Republic of Kenya in the case of the Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, “Public Redacted Version, Decision on the confirmation of charges pursuant to Article 61(7)(a) and (b) of the Rome Statute”, ICC-01/09-02/11, January 23, 2012, https://www.icc-cpi.int/CourtRecords/CR2012_01004.PDF

⁹⁵⁹ *Ibid*, paragraph 283.

⁹⁶⁰ ICC, Pre-Trial Chamber III, Situation in the Republic of Burundi, Public Redacted Version of “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi”, ICC-01/17-X, October 25, 2017, paragraph 132, https://www.icc-cpi.int/CourtRecords/CR2017_06720.PDF. See also, ICC, Pre-Trial Chamber II, Situation in the Democratic Republic of the Congo in the case of The Prosecutor v Bosco Ntaganda, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda”, ICC-01/04-02/06, June 9, 2014, paragraph 58, https://www.icc-cpi.int/CourtRecords/CR2014_04750.PDF

⁹⁶¹ ICTY, Trial Chamber, Prosecutor v. DU[KO TADI] a/k/a/ “DULE”, Opinion and Judgment, IT-94-1-T, May 7, 1997, paragraph 697, <http://www.icty.org/x/cases/tadic/tjug/en/tad-ts70507JT2-e.pdf>

⁹⁶² UN, International Law Commission, Annual Report 1996, “Report of the International Law Commission on the work of its forty-eighth session”, A/51/10, 1996, Vol.II(2), page 53, http://legal.un.org/docs/?path=..//ilc/documentation/english/reports/a_51_10.pdf&lang=EFSP

throughout the case-law of both the Inter-American Commission on Human Rights⁹⁶³ and the Inter-American Court of Human Rights.⁹⁶⁴

According to the Rome Statute the grounds for committing the crime of persecution can be, *inter alia*, political.⁹⁶⁵ In this regard, the ICC has interpreted that political motives can be the basis of identifying the civilian population as the target in the crime of persecution.⁹⁶⁶

The Rome Statute requires that the crime of persecution be connected to any other act mentioned in Article 7 of the Rome Statute⁹⁶⁷, or to any crime within the Court's jurisdiction.⁹⁶⁸ This element is controversial,⁹⁶⁹ but is satisfied by a linkage to even one other act in Article 7(1).⁹⁷⁰ In this situation, persecution against a civilian population includes other acts prohibited in Articles 7(1)(a), 7(1)(e), 7(1)(f), 7(1)(g), and 7(1)(i).

⁹⁶³ By way of example, see IACHR, "Democracy and Human Rights in Venezuela", December 30, 2009, <http://www.cidh.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm>. See also, IACHR, "Annual Report 2015, Ch. IV.A The Use of Force", December 31, 2015, <http://www.oas.org/en/iachr/docs/annual/2015/doc-en/informeannual2015-cap4a-fuerza-en.pdf>; and, IACHR, "2016 Annual Report, Chapter IV on Venezuela", March 15, 2017, <http://www.oas.org/en/iachr/docs/annual/2016/docs/InformeAnual2016cap4B.Venezuela-en.pdf>

⁹⁶⁴ By way of example, see Inter-American Court of Human Rights, Case of Blanco Romero et al. v. Venezuela (Merits, Reparations and Costs) November 28, 2005, http://www.corteidh.or.cr/docs/casos/articulos/seriec_138_ing.pdf. See also, Inter-American Court of Human Rights, Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, "Judgment of August 5, 2008" (Preliminary Objection, Merits, Reparations and Costs), http://www.corteidh.or.cr/docs/casos/articulos/seriec_138_ing.pdf; Inter-American Court of Human Rights, Case of Brothers Landaeta Mejías et al. v. Venezuela, "Judgment of August 27, 2014", (Preliminary Objections, Merits, Reparations and Costs), http://corteidh.or.cr/docs/casos/articulos/seriec_281_ing.pdf; and, Inter-American Court of Human Rights, *Caso Ortiz Hernández y otros vs. Venezuela*, "Sentencia de 22 de Agosto de 2017", (Fondo, Reparaciones y Costas), http://www.corteidh.or.cr/docs/casos/articulos/seriec_338_esp.pdf

⁹⁶⁵ UN, "Rome Statute of the International Criminal Court", 1998, Article 7(1) (h), <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>

⁹⁶⁶ ICC, Pre-Trial Chamber II, Situation in the Republic of Kenya in the case of the Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, "Public Redacted Version, Decision on the confirmation of charges pursuant to Article 61(7)(a) and (b) of the Rome Statute", ICC-01/09-02/11, January 23, 2012, paragraph 416, https://www.icc-cpi.int/CourtRecords/CR2012_01006.PDF

⁹⁶⁷ UN, "Rome Statute of the International Criminal Court", 1998, Article 7(1) (h), <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>. See also, ICC, Pre-Trial Chamber II, Situation in the Republic of Kenya in the case of the Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang, "Decision on the confirmation of charges pursuant to Article 61(7) (a) and (b) of the Rome Statute", ICC-01/09-01/11, January 23, 2012, paragraph 269, https://www.icc-cpi.int/CourtRecords/CR2012_01004.PDF; and, ICC, Pre-Trial Chamber II, Situation in the Republic of Kenya in the case of the Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, "Public Redacted Version, Decision on the confirmation of charges pursuant to Article 61(7)(a) and (b) of the Rome Statute", ICC-01/09-02/11, January 23, 2012, paragraph 282, https://www.icc-cpi.int/CourtRecords/CR2012_01006.PDF

⁹⁶⁸ UN, "Rome Statute of the International Criminal Court", 1998, Article 7(1) (h), <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>. See also, ICC, Pre-Trial Chamber II, Situation in the Republic of Kenya in the case of the Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang, "Decision on the confirmation of charges pursuant to Article 61(7) (a) and (b) of the Rome Statute", ICC-01/09-01/11, January 23, 2012, paragraph 269, https://www.icc-cpi.int/CourtRecords/CR2012_01004.PDF

⁹⁶⁹ Lafuente, A.L., "La tipificación del crimen de persecución en el Estatuto de Roma y su primera aplicación en Timor Oriental," *Revista Electrónica de Ciencia Penal y Criminología*, 2008.

⁹⁷⁰ Cryer et al, "An Introduction to International Criminal Law and Procedure", Third Edition, Cambridge University Press, 2014, pages 257-158; and, Georg Witschel and Wiebke Rückert, "Crime Against Humanity of Persecution" in Roy S. Lee et al (Eds), *The International Criminal Court: Elements of Crimes and Rules of Procedure*, Transnational Publishers, 2001, pages 94-97.

v.(b) *The Analysis of the Panel's on the situation in Venezuela*

In the present situation this Panel understands that in the Bolivarian Republic of Venezuela persons were deprived of their fundamental rights for the mere fact of belonging to opposition political groups, or for expressing their disagreement with the decisions made by the Government.

The IACHR, in its report “Democratic Institutions, the Rule of Law and Human Rights in Venezuela,” noted “with concern the existence of a pattern of very serious violations of the human rights of persons who demonstrate or publicly espouse positions at variance with those of the Executive, which are backed by actions taken in other branches of government, for instance by the TSJ and the National Constituent Assembly. The Commission observes that such acts are not isolated and that they are directed against numerous dissidents at different levels in the power structure.”⁹⁷¹ And it continued: “The information provided to the IACHR paints a pattern of multiple acts of harassment, persecution through the media, the removal of political dissidents from public office, disqualification from political activity, violation of immunity, interference in public functions, unlawful raids on private property, and acquiescence in the face of violent acts against members of the opposition and, in general, against anyone voicing dissent. Harassment also takes the form of numerous stigmatizing pronouncements against senior officials and opposition leaders”⁹⁷². “In 2016, the Commission had already voiced its concern at the wave of arrests and opening of trials against opposition party members”⁹⁷³. “In 2017, however, this situation has further deteriorated to levels never before seen in Venezuela”⁹⁷⁴.

The General Secretariat of the OAS stated in its Report that “the Government of President Maduro not only resorts to aggressive tactics of intimidating those who think differently from the Regime but it also uses criminal prosecutions as mechanisms of pressure to intimidate its opponents” and then analyzed patterns of action that point to the crime of persecution, including public threats by the authorities, the judicialization of politics and the politicization of the justice system, disqualification of persons from holding political office, the deprivation of the right to freedom of expression, the illegal searches of homes, violent repression and the use of force, the persecution of children and adolescents, the deprivation of the right of freedom of movement by voiding passports, forced exile, political banishment, the humanitarian crisis, and exile due to the humanitarian crisis.⁹⁷⁵

⁹⁷¹ IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 163, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

⁹⁷² Ibid, paragraph 164.

⁹⁷³ IACHR, “2016 Annual Report, Chapter IV on Venezuela”, paragraph 91, <http://www.oas.org/en/iachr/docs/annual/2016/docs/InformeAnual2016cap4B.Venezuela-en.pdf>, cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 165, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

⁹⁷⁴ *Foro Penal*, “Reporte sobre la repression del Estado en Venezuela – Agosto de 2017”, page 6, cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 165, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

⁹⁷⁵ OAS General Secretariat, “Report of the General Secretariat of the OAS on the possible commission of crimes against humanity in Venezuela”, May 2018, Chapter VIII, page 185.

In the public hearing before this Panel Mr. Julio Henríquez explained that the deprivation of fundamental rights is evident in Venezuela, in particular the rights to life, personal liberty, freedom of conscience, the free expression of thought, autonomy and physical, psychological, and moral integrity. And this deprivation of fundamental rights in the context of a crime of persecution was politically motivated, “attempting to keep himself in power,” against two groups with their own identities: the first is a group that the government wants to remove from the political arena, the first case being that of Mayor Antonio Ledezma; and the second is made up of persons who attempt to exercise their civil and political rights and who the government seeks to intimidate.⁹⁷⁶

This Panel considers that the crime of persecution is present in all the crimes discussed in this report. In that regard, from the perspective of the human right violation, crimes of persecution were committed due to violations of the rights to life, personal liberty, and humane treatment, and forced disappearance as a multiple and continuing violation of rights. This Panel will also analyze violations of fundamental rights that were not analyzed as part of the crimes, namely: injuries, intimidation, and detriment to the right to health and food due to the political use of the humanitarian crisis.

v.(b)1 *Injuries*

The most recent statistics published by the Ministry of Public Prosecution during the term of Luisa Ortega Díaz, indicate that at the end of July, almost 2,000 cases of persons injured during the protests that began April 1, 2017, were being investigated. While this number appears to include cases in which demonstrators and members of the security forces were the alleged perpetrators, in more than half of the cases the Ministry of Public Prosecution was investigating alleged violations of fundamental rights.⁹⁷⁷ The OHCHR also recounted in its report that the members of the National Assembly suffered 90 physical assaults and 44 acts of intimidation from January to June 2017. It also noted that during the demonstrations dozens of legislators and political leaders were wounded by the security forces, at times intentionally.⁹⁷⁸ Among these is the case of a woman legislator who had to be hospitalized after having been hit in the chest with a teargas canister.⁹⁷⁹

Dr. George Simon and medical student Federica Dávila stated in a public hearing before this Panel that as of April 1, 2017, the Green Cross (*Cruz Verde*) intervened in 60 demonstrations, during all of which there

⁹⁷⁶ Testimony of Julio Henríquez at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 14, 2017, <https://www.youtube.com/watch?v=KRXQqJPzRk>

⁹⁷⁷ Office of the Attorney General of the Bolivarian Republic of Venezuela, “*Balance de víctimas fallecidas y lesionadas durante manifestaciones en abril-julio de 2017*”.

⁹⁷⁸ OHCHR, “Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela of April 1 to July 31, 2017”, Geneva, August 2017, page 28, http://www.ohchr.org/Documents/Countries/VE/HCReportVenezuela_1April-31July2017_EN.pdf

⁹⁷⁹ Ibid.

was some sort of incident, assisting more than 5,000 persons who had suffered injuries.⁹⁸⁰ Of the most significant pathologies, the most common was asphyxiation due to irritation of the respiratory system and other mucosa membranes as the result of the exposure to teargas. Assistance was also provided for burns that resulted from explosions, trauma, both open and closed, the most common being cranioencephalic trauma, and trauma to the chest and abdomen. Among the most serious cases were persons with gunshot wounds, including individuals who died.⁹⁸¹

Dr. Simon explained that the statistics show that while a pattern of asphyxiation was initially prevalent, the most common problem evolved to become gunshot wounds, understanding these to also include plastic pellets.⁹⁸²

Legislator Armando Armas presented cases of legislators who suffered injuries inflicted by the Bolivarian National Guard and the Bolivarian National Police when repressing citizen protests in which the legislators participated. He documented, with photographs, the attacks against legislators Juan Requesens, José Brito, Julio Borges, Richard Blanco, Milagros Valera, Juan Guaidó, Rafael Guzmán, and Carlos Paparoni, who were wounded during the protests. He agreed with Dr. Simon in denouncing the use of modified munitions to include marbles by the security forces, so as not to leave any ballistic trace.⁹⁸³

v.(b)2 Intimidation

From March 2015, the IACHR has granted 16 precautionary measures⁹⁸⁴ to protect the life and integrity of 35 opposition political figures and human rights defenders, as well as some of their families. Most of

⁹⁸⁰ Testimony of Dr. George Simon and Frederica Dávila at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, November 16, 2017, https://www.youtube.com/watch?v=Sh3_BwDUkYs

⁹⁸¹ Ibid.

⁹⁸² Ibid.

⁹⁸³ Testimony of Armando Armas at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 16, 2017, https://www.youtube.com/watch?v=K3VNOIQN_14

⁹⁸⁴ IACHR, Precautionary Measure, 143/13, “Alfredo Romero y otros respecto de Venezuela”, March 17, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC143-13-ES.pdf>; IACHR, Precautionary Measure 71/15, “Marco Antonio Ponce respecto de Venezuela”, March 20, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2017/2-17MC994-16-VE.pdf>; IACHR, Precautionary Measure 335/14, “Asunto Leopoldo López y Daniel Ceballos respecto de Venezuela”, April 20, 2015, <http://www.oas.org/es/cidh/decisiones/pdf/2015/MC335-14-ES-ampliacion.pdf>; IACHR, Precautionary Measure 127/15, “Asunto José Vicente Haro y Pierina Camposeo respecto de Venezuela”, August 28, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC127-15-ES.pdf>; IACHR, Precautionary Measure 335/14, “Leopoldo López, Daniel Ceballos, y sus familiares, Ampliación de beneficiarios respecto a Venezuela”, October 12, 2015, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC335-14-ES-ampliacion.pdf>; IACHR, Precautionary Measure 438/15, “Asunto Marino Alvarados y otros respecto de Venezuela”, October 14, 2015, <http://www.oas.org/es/cidh/decisiones/pdf/2015/MC438-15-ES.pdf>; IACHR, Precautionary Measure 335/14, “Leopoldo López, Daniel Ceballos, familiares y abogados, Ampliación de beneficiarios respecto a Venezuela”, April 1, 2016, <https://www.oas.org/es/cidh/decisiones/pdf/2017/15-17MC248-17-VE.pdf>; IACHR, Precautionary Measure 413/16, “Asunto Lester Toledo y otros respecto de Venezuela”, June 4, 2016, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC413-16-ES.pdf>; IACHR, Precautionary Measure 359/16, “Asunto Américo de Grazia respecto de Venezuela”, July 21, 2016, <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC359-16-ES.pdf>; IACHR, Precautionary Measure 475/15, “Miembros del Partido Voluntad Popular respecto de Venezuela”, January 14, 2017, <http://www.oas.org/es/cidh/decisiones/pdf/2017/1-17MC475-15-VE.pdf>; IACHR, Precautionary Measure 994/16, “Lorenzo Mendoza y familia respecto de Venezuela”, January 20, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/2-17MC994-16-VE.pdf>; IACHR, Precautionary Measure 616/16, “Luis Florido, Venezuela”, April 7, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/12-17MC616-16-VE.pdf>; IACHR, Precautionary Measure 403/17, “Julio Borges y otros respect de Venezuela”, July 28, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/24-17MC403-17-VE.pdf>; IACHR, Precautionary Measure 248/17, “Henrique Capriles Radonski respect de Venezuela”, June 2, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/15-17MC248-17-VE.pdf>; IACHR, Precautionary Measure 449/17, “Luisa Ortega Díaz y familia respect de Venezuela”, August 3, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/27-17MC449-17-VE.pdf>; and, IACHR, Precautionary Measure 533/17, “Williams Dávila respecto de Venezuela”, September 6, 2017, <https://www.oas.org/es/cidh/decisiones/pdf/2017/35-17MC533-17-VE.pdf>

these measures were granted after verifying that there were threats, acts of intimidation, harassment, or violence directed at the beneficiaries of those measures.

In addition, the IACHR stated: “According to the information available, as of August 11, 2017, 39 of the 77 pro-opposition mayors had suffered acts of political persecution by the Government.”⁹⁸⁵ Of these, “four had been dismissed from office and are allegedly imprisoned”⁹⁸⁶; “five more were allegedly dismissed and warrants for their arrest were issued”⁹⁸⁷; “one was reportedly just dismissed”⁹⁸⁸; “one allegedly faced an arrest warrant”⁹⁸⁹; “two had their mayoral powers withdrawn”⁹⁹⁰; “three were allegedly disqualified from office by the Office of the Comptroller General of the Republic”⁹⁹¹; “two were allegedly banned from leaving the country”⁹⁹²; and one was reportedly detained for 72 hours.⁹⁹³ “Six more are reportedly out of the country.”⁹⁹⁴

985 See footnote 330. IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 166, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

986 This would be the case of: (i) Daniel Ceballos (San Cristóbal, Táchira); (ii) Antonio Ledezma (Metropolitan District); (iii) Alfredo A. Ramos Acosta (Iribarren, Lara); and (iv) Delson Guárate (Mario Briceño Iragorry, Aragua). Enzo Scarano (San Diego, Carabobo) was also said to have been removed and imprisoned but was said to have been released on February 4, 2016 [*Transparencia Venezuela*, “Aumenta a 51% las alcaldías que han sido atacadas por el Gobierno”, August 11, 2017], cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 166, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

987 This would be the case of: (i) Warner Jiménez (Maturín, Monagas); (ii) Gustavo Marcano (Diego Bautista Urbaneja, Anzoátegui); (iii) Ramón Muchacho (Chacao, Miranda); (iv) David Smolansky (Hatillo, Miranda); and (v) Carlos García (Libertador, Mérida) [*Transparencia Venezuela*, “Aumenta a 51% las alcaldías que han sido atacadas por el Gobierno”, August 11, 2017]. In this respect, it should be noted that the figure for mayors removed and with arrest warrants increased from two to five based on the reports of *Transparencia Venezuela* from July 31 to August 11, 2017 [*Runrun*, “Gobierno ha arremetido contra 34 de los 77 alcaldes de oposición”, August 1, 2017], cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 166, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

988 This would be the case of Lumay Barreto (Páez, Apure) [*Transparencia Venezuela*, “Aumenta a 51% las alcaldías que han sido atacadas por el Gobierno”, August 11, 2017], cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 166, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

989 This would be the case of Omar Lares (Campo Elías, Mérida) [*Transparencia Venezuela*, “Aumenta a 51% las alcaldías que han sido atacadas por el Gobierno”, August 11, 2017], cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 166, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

990 This would be the case of: (i) Antonio Ledezma (Metropolitan District); and (ii) Eveling Trejo (Maracaibo, Zulia). [*Transparencia Venezuela*, “Aumenta a 51% las alcaldías que han sido atacadas por el Gobierno”, August 11, 2017], cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 166, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

991 This would be the case of: (i) Enzo Scarano (San Diego, Carabobo); (ii) Daniel Ceballos (San Cristóbal, Táchira); and (iii) Alirio Guerrero (Jauregui, Táchira) [*Transparencia Venezuela*, “Aumenta a 51% las alcaldías que han sido atacadas por el Gobierno”, August 11, 2017], cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 166, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

992 This would be the case of: (i) Moisés Carvallo (Chacao, Miranda); and José Barreras (Palavecino, Lara), [*Transparencia Venezuela*, “Aumenta a 51% las alcaldías que han sido atacadas por el Gobierno”, August 11, 2017], cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 166, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

993 This would be the case of Pedro Loreto (Leonardo Infante, Guarico) [*Transparencia Venezuela*, “Aumenta a 51% las alcaldías que han sido atacadas por el Gobierno”, August 11, 2017], cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 166, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

994 IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report”, December, 2017, paragraph 166, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

The Inter-American Commission mentioned in its 2014 Annual Report that civil society organizations have denounced that during the protests from February to May 2014⁹⁹⁵, there “was pattern of equally systematic acts of intimidation, harassment and assault against the inhabitants and residents of neighborhoods and developments, houses and buildings, the environs of which the protests were confined to and the access roads were blocked, as a consequence of the risk of being assaulted or detained for going out and demonstrating. During the time that these attacks were executed, the areas were subjected to military control and to undeclared states of siege, as an excuse to crack down with extremely repressive and indiscriminate force. Groups of civilian assailants, who often acted in coordination and under the protection of military and police officers took part in these incidents, committing collective and multiple human rights violations through physical, psychological and material damage.”⁹⁹⁶

On January 13, 2017, Amnesty International alleged that the recent wave of arrests of leaders and members of opposition political parties pointed to a systematic pattern of abuses against those who come out against the government. Its press release cites a statement by the director of Amnesty International, Erika Guevara-Rosas, in which she asserts: “It looks like the government of President Maduro continues with its witch hunt against anyone who dares to voice an opinion contrary to his policies.”⁹⁹⁷

Criminal offenses such as “high treason,” “terrorism or theft of military effects,” or “rebellion” are among the ones invoked in the accusations made against the persons detained without a court order and for political reasons – that is, a supposed situation of flagrancy is alleged in order to initiate proceedings⁹⁹⁸—subjecting these civilians to the military justice system.

The use of criminal offenses such as “terrorism” or “treason,” given the ambiguity of their definition and the broad margin of discretion, imperils the chance of holding a fair trial and observing due process. Accusations of military crimes or crimes or terrorism also mean that the facts are judged by special jurisdictions such as the military jurisdiction and the jurisdiction for terrorism.⁹⁹⁹

⁹⁹⁵ IACHR, “2014 Annual Report, Chapter IV Venezuela”, paragraph 390, <https://www.oas.org/es/cidh/docs/anual/2014/docs-es/anual2014-cap4venezuela.pdf>

⁹⁹⁶ Informe Venezuela 2014. *Protestas y Derechos Humanos*. June 2014, p. 94. Produced jointly by the civic organizations Derechos Humanos, Espacio Público, Foro Penal Venezolano, Asociación Civil Justicia, Solidaridad y Paz (FUNPAZ) of the state of Lara, PROVEA, Inter-institutional Commission on Human Rights of the School of Legal and Political Sciences of the Universidad del Zulia, the Law School at the Universidad Rafael Urdaneta, the Commission on Human Rights of the Bar Association of the state of Zulia, Center for Human Rights of the UCAB, Observatorio Venezolano de Conflictividad Social, and Comité Paz y Vida por los derechos humanos of the state of Barinas. In a report published by Human Rights Watch on the demonstrations in Venezuela, the organization also denounced that in this context the security forces had allowed the actions of the armed pro-government gangs (called “colectivos”) to “to attack protesters, journalists, students, or people they believed to be opponents of the government,” and in some cases noted joint action by the state and the “colectivos.” See: Human Rights Watch, *Punished for protesting. Rights violations in Venezuela’s streets, detention centers and justice System*. May 2014.

⁹⁹⁷ Amnesty International, “Venezuela: Detentions on the rise amid Witch-Hunt against Opposition,” January 13, 2017, <https://www.amnesty.org/en/latest/news/2017/01/venezuela-aumentan-detenciones-de-opositores-en-nueva-caceria-de-brujas/>

⁹⁹⁸ Amnesty International, “Silenced by Force: Political-Motivated Arbitrary Detentions in Venezuela,” 2017, page 12, <https://www.amnesty.org/download/Documents/AMR5312392015ENGLISH.pdf>

⁹⁹⁹ Ibid, page 12.

The Report of the General Secretariat of the OAS presents a sampling of 36 videos which include clear, direct and violent threats against different members of the opposition, including threats by President Maduro, Vice-President Tarek El-Aissami, Minister of Defence Padrino López, Member of the National Assembly Diosdado Cabello, the former Minister of Agriculture Freddy Bernal, the former foreign minister Delcy Rodríguez, and Iris Varela, Minister of the Penitentiary Service.¹⁰⁰⁰

In a study by *IPYS-Venezuela*, from October 3, to December 3, 2014, it was found that Diosdado Cabello, on his television program, “*Con el mazo dando*”, accused 165 persons and organizations of alleged crimes and actions that he characterized as irregular. The pattern of accusations reveals a process of constant surveillance of various actors: political party leaders, members of nongovernmental organizations, journalists, owners of media outlets, student leaders, and members of the Catholic Church, university authorities, political and economic analysts, and citizens detained and facing judicial proceedings. These accusations were made in the *Los Mazazos* section of the program, where the host reads messages from supposed informants he identifies by their pseudonyms, including *Patriota Mundo*, *Patriota Avioncito*, *Chespirito*, *El Chef*, and *el Superagente*. According to the study, “He also cites reports forwarded to him by purported members of political parties and public officials, who do not even appear with nicknames. These informants – Cabello often says they are everywhere”¹⁰⁰¹. The information reported included travel routes and itineraries, outlines of purportedly closed meetings, and data from invoices that demonstrate labor ties, among others.¹⁰⁰²

During the public hearings this Panel was informed of specific episodes of discrimination that the political opponents or those perceived as such in Venezuela suffered at the hands of the Executive. An account was presented of how the Government had illegally deprived them of their fundamental rights for the sole purpose of attacking them for being political opponents or expressing their dissidence from the Government.

Francisco Márquez, Executive Director of *Visión Democrática*, reported that in 2016, the *Mesa de Unidad Democrática*, entrusted him with the collection of signatures for the constitutionally mandated recall referendum process that was being pursued. While on his way to the state of Portuguesa with Gabriel San Miguel, he was stopped at a National Guard checkpoint. The GNB conducted a search that was characterized as routine, until the guard’s attitude changed when they found 50 pamphlets that said, “Liberty for Leopoldo López” in the car.¹⁰⁰³

¹⁰⁰⁰ OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter VII, Section A, page 196.

¹⁰⁰¹ Instituto Prensa y Sociedad, “Reportes IPYS Venezuela: “Los mazazos” contra los medios y la disidencia”, January 2015, <http://www.civilisac.org/alertas/ipys-165-personas-y-organizaciones-senaladas-porsupuestas-actividades-conspirativas-por-patriotas-cooperantes-programa-con-el-mazo-dando>

¹⁰⁰² Sinergia y Civilis, “Examen de Cuarto Informe Periódico de Venezuela sobre cumplimiento del Pacto Internacional de Derechos y Políticos, Informe Alternativo sobre Artículos 20, 21 y 22, Pacto Internacional de Derechos Civiles y Políticos”, June 2015, paragraph 36, http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/VEN/INT_CCPR_CSS_VEN_20719_S.pdf

¹⁰⁰³ Testimony of Francisco Márquez at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 14, 2017, <https://www.youtube.com/watch?v=KRX0QaJPzRk>

He explained that they took him to another nearby checkpoint, and after two hours they informed him that he was detained, without any reason and without affording him an opportunity to call a lawyer. Hours later, SEBIN officers appeared to interrogate him without counsel present. The interrogation was focused on who their bosses were, their political ideologies, and in the case filed they were said to be a part of a fascist organization. When he refused to answer questions he was threatened with torture. He concluded that during his detention he was held at four different prisons, with limited access to his lawyers and family members, and that a few days before the hearing he was told through a messenger not to say anything, because his denunciation would cause harm to other political prisoners.¹⁰⁰⁴

Igor Eduardo Nieto Buitrago explained in the public hearing before this Panel that the use of military jurisdiction to try civilians is not the only measure taken as part of the persecution of political opponents, but that there has been systematic use of persecution of the direct family members of the persons accused, especially the family members of persons who manage to leave Venezuela. He said that after his exile his brother was visited five times by the SEBIN and that after this all his siblings had to leave Venezuela. Another case is that of Navy Captain Carlos Denis, who told Nieto Buitrago directly that after he left Venezuela his father, who was over 80 years old, had been called to make statements to the SEBIN 12 times.¹⁰⁰⁵

José Gustavo Arocha, a Lieutenant Colonel in the Bolivarian National Armed Forces, stated that the sixth months that he was detained at “La Tumba” were to get him to sign a statement that incriminated opponents. He explained that the prosecutor visited him three times and told him that he should collaborate with them because his family was in danger and that if he did not collaborate, his fate would be to stay at “La Tumba” forever.¹⁰⁰⁶

Judge Ralenis Tovar, a former magistrate from the metropolitan area of Caracas, stated in the public hearing that when signing the arrest warrant for Leopoldo López, seated before a large number of officials of the DGCIM, the SEBIN, the National Guard, and four national prosecutors, she was threatened with becoming the next Judge Afiuni¹⁰⁰⁷. She said that she was frightened by what all those persons could do, knowing about what had happened to Judge Afiuni and Judge Alí Paredes (see below). She said that after her involvement in the Leopoldo López case she suffered threats and persecution by the DGCIM, who would linger around her house. She was assigned four bodyguards to stay with her even when she was outside of the court house, two of whom had to be inside her car, accompanying her everywhere, supposedly to maintain her physical integrity, although she was convinced it was to find out with whom she was meeting

1004 Ibid.

1005 Testimony of Igor Eduardo Nieto Buitrago at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 15, 2017, <https://www.youtube.com/watch?v=cKmTJ79prKE>

1006 Testimony of José Gustavo Arocha at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 15, 2017, <https://www.youtube.com/watch?v=cKmTJ79prKE>

1007 Testimony of Ralenis Tovar at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 16, 2017, <https://www.youtube.com/watch?v=ca5zYBQYcVE>

with and sharing information. She added that her daughter was almost kidnapped from school, and that along with other acts of intimidation they began to publish her address and phone number on Facebook.¹⁰⁰⁸

Pedro Troconis, Chief Judge of the Criminal Chamber of the Supreme Court of Venezuela, who is currently in exile, stated in a public hearing that the entirety of the Supreme Court designated by the National Assembly on June 13, 2017, is performing its functions from exile due to the persecution they suffered from the moment of their designation. He explained that on July 23, 2017, Maduro stated publicly that measures should be taken to detain them, to seize or block their accounts, and other measures against their property. Immigration and border control authority was informed to seize their passports. The vast majority were able to leave Venezuela thanks to neighboring countries.¹⁰⁰⁹

Regarding his specific case, he explained that 18 officers arrived with long guns and balaclavas at his mother-in-law's home looking for his wife and that it was in response to this warning that they decided to flee their home. He said that the SEBIN also went to the homes of Antonio José Marval Jiménez, Romero Rubén Carrillo Romero, José Fernando Núñez Sifontes, Ramsis Ghazzaoui, Gustavo José Sosa Izaguirre, Thomas David Alzuru Rojas, Beatriz Josefina Ruiz Marín, Zuleima del Valle González, José Savino Zamora Zamora, Coromoto Janette Cioly Zambrano Álvarez, Cruz Alejandro Graterol Roque, Rommen Gil Pino, Alvaro Marín, Domingo Javier Salgado Rodríguez, and Gabriel Ernesto Calleja Ángulo.¹⁰¹⁰

Finally, he said that the political persecution and threats, the most significant incident of which was the July 22, 2017 detention of Judge Ángel Zerpa, continued even after they went into exile. On October 13, 2017 they constituted themselves as the Supreme Court of Justice outside of Venezuela's borders, and that same day the "illegitimate" president of the TSJ in Caracas threatened them with statelessness, calling them traitors who should go to prison, and urging the international community to arrest them as subversives and for treason.¹⁰¹¹

Opposition Legislator Armando Daniel Armas denounced in a public hearing that since taking office on January 5, 2016 up until the date of his statement, there had been at least 215 violent attacks, many of them at the building of the National Assembly, with 90 cases of physical assault against legislators. According to the legislator, those attacks have been perpetrated by officers of the Bolivarian National Guard and the Bolivarian National Police, repressing the citizen protests in which the legislators participated.¹⁰¹²

1008 Ibid.

1009 Testimony of Magistrate Pedro José Troconis Da Silva at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 16, 2017, <https://www.youtube.com/watch?v=ZhxTCT-bN18>

1010 Ibid.

1011 Ibid.

1012 Testimony of Armando Armas at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 16, 2017, https://www.youtube.com/watch?v=K3VNOIQN_I4

Legislator Williams Dávila agreed with this statement, noting that in 2017 they had suffered 67 attacks by the above-mentioned forces.¹⁰¹³

Armando Armas also stated that the legislators were trapped in their own country. He explained that several legislators, when they tried to leave Venezuela to denounce the situation (expressly citing the case of Julio Borges), had their passports taken away.¹⁰¹⁴

Another form of pressure and intimidation the opposition legislators are suffering that Armas denounced, is the suspension of their salaries for the past two years.¹⁰¹⁵ By Decision No. 5 of January 2017, the Supreme Court of Justice established that the Executive branch should not pay the salaries and all other compensation to the workers of the National Assembly.¹⁰¹⁶

At the October 17 hearing, former mayor David Smolansky, together with Leopoldo López, co-founder of *Voluntad Popular*, denounced the “systematic and widespread persecution against the opposition mayors in Venezuela.” He recounted that he was unjustly removed from his position on August 9, 2017, and that since then an arrest warrant was issued for him to be detained in the *Helicoide* prison, he spent 35 days in hiding, travelling 1,300 kilometers across Venezuela to go into exile in Brazil. Twenty-four hours after he was sentenced, after he had gone into hiding, his director of citizen security was abducted by the SEBIN for 10 hours, during which time he was held in a vehicle and pressured to say where Mr. Smolansky was, during which all of the information was taken from his cell phone. Several officials in the mayor’s office received calls threatening them if they did not say where he was. His place of residence and that of his parents were constantly visited by the SEBIN.¹⁰¹⁷

He explained that all the members of the opposition in Venezuela “have a number and that what varies is when the guillotine comes down.” He continued saying that “anyone who thinks or speaks out differently from the Regime of Nicolás Maduro is a victim of threats, defamation, persecution, repression, and arrest.”¹⁰¹⁸

He explained that since he was elected mayor he had experienced several episodes of persecution: in 2014 the Constitutional Chamber of the Supreme Court of Justice issued the first judgment against several

1013 Testimony of Williams Dávila at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, November 16, 2017, <https://www.youtube.com/watch?v=g6zUBXprxQ4>

1014 Testimony of Armando Armas at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 16, 2017, https://www.youtube.com/watch?v=K3VNOIQN_I4

1015 Ibid.

1016 OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter X, Section E, page 277.

1017 Testimony of David Smolansky at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 17, 2017, <https://www.youtube.com/watch?v=iH9oh8SdhIU>

1018 Ibid.

mayors for failing to guarantee free transit when all they had done was to guarantee the right to peaceful protest. In 2015 two SEBIN security agents broke into the Municipal Theater of El Hatillo to be able to record a working meeting in which he was with the public servants who worked with the municipal government.

In 2016 his residence was attacked, and all the electronic equipment was taken and a slogan was left behind that said, “imperialist dog, Zionist of shit” (“*cachorro del imperio, sionista de mierda*”). He explained that he has been attacked for his Jewish roots in the social networks and state news media and that Diosdado Cabello himself publicly attacked him on numerous occasions referring to him as “the head of Zionism in Venezuela.”¹⁰¹⁹

He continued explaining that on September 9, 2016, he was summoned to an illegal interrogation at the Helicoide prison. In response to this summons he went to the Office of the Attorney General to argue that it was the only entity with the authority to investigate, not the SEBIN, which led to him have to go underground for several days before going back to his work as mayor. Several mayors were summoned at that time to the Helicoide prison.¹⁰²⁰

Finally, he explained that in the course of 2017 several mayors had been dismissed, but that during the three years and 10 months of his term, 12 mayors have been removed in Venezuela: four are in prison, six are in exile, and two remain in Venezuela, having been removed or disqualified. He added that more than 20 mayors are under investigation in Venezuela, all from the opposition.¹⁰²¹

He said that the cases of Gustavo Marcano, Carlos García, Alfredo Ramos, Ramón Muchacho, and his own, all had the same judgment. The words are identical, and the only thing the Constitutional Chamber has changed is the name and the document number. He said that they were not able to exercise the right to appeal those judgments, and that they were given notice just hours before the hearings in which their cases were decided; in his case he was given notice of the hearing 41 hours earlier. He said that these were decisions taken weeks after Maduro ordered that there be justice against the fascist, stateless, and terrorist mayors who were impeding freedom of movement.¹⁰²²

Finally, he denounced that “the whole state apparatus: the Ministry of Public Prosecution, the Supreme Court of Justice, with all the chambers that constitute it, and the security forces are solely and exclusively at the service of going after everyone in Venezuela who thinks differently.”¹⁰²³

1019 Ibid.

1020 Ibid.

1021 Ibid.

1022 Testimony of Gustavo Marcano at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, November 16, 2017, <https://www.youtube.com/watch?v=g6zUBXprxQ4>

1023 Ibid.

Mayor Omar Lares, in a public hearing, recounted the political persecution directed against him that ended with the forced disappearance, detention and torture of his son.¹⁰²⁴

Carlos Vecchio said that during the five days in which Leopoldo López was in hiding, the entire party (*Voluntad Popular*) was subjected to brutal persecution. On February 17, 2014, the day his arrest warrant was issued, they had to resist three armed attacks by the state security forces to arrest him, without a search warrant or arrest warrant. He said that for three months they sent him messages saying they had an order to shoot him, that they were under surveillance, and that they knew where his wife would give birth. Given these circumstances, Vecchio decided to leave the country for political reasons.¹⁰²⁵

Former mayor Gustavo Marcano began his presentation at the public hearing with a video in which he showed different public statements by officials threatening him for not repressing the peaceful protests that were taking place in his municipality. He then explained, as former mayor David Smolansky had done, what took place during the judicial proceeding in which he was dismissed. He described it as “non-existent in the Venezuelan legal system”: he denounced that he was not allowed to see the case file or produce evidence, that the trial before the Constitutional Chamber of the Supreme Court did allow an option for appeal, and that there was a single hearing in which the judges heard the arguments and imposed the judgment.¹⁰²⁶

Former mayor Ramón Muchacho, like Marcano, presented a video in which one sees Maduro making statements publicly threatening him. Next, he described other threats against his person and family: in late July 2017, he made a trip to Peru and Chile, and upon his return, government officials voided and confiscated his passport. This also happened to his wife as she was preparing to leave Venezuela. Another threat he received was a call from the Minister of Internal Relations, Justice and Peace, who pressured him to order the police in Chacao to counter the demonstrations. He denounced the same violation of due process as former mayors Smolansky and Marcano.¹⁰²⁷

Finally, legislator Williams Dávila denounced the persecution directed against legislators. He explained that of the 67 attacks involving physical aggression they had suffered in 2017 at the hands of the National Guard, including injuries suffered by Dávila himself, the Government had used the illegal deprivation of liberty, citing legislator Renso Prieto’s detention by the SEBIN on May 10, 2014, when he was accused of association to engage in criminal conduct and the manufacture of weapons; the January 12, 2017 detention

1024 Testimony of Omar Lares at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 17, 2017, <https://www.youtube.com/watch?v=iH9oh8SdhIU>

1025 Testimony of Carlos Vecchio at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 17, 2017, <https://www.youtube.com/watch?v=iH9oh8SdhIU>

1026 Testimony of Gustavo Marcano at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, November 16, 2017, <https://www.youtube.com/watch?v=g6zUBXprxQ4>

1027 Testimony of Ramón Muchacho at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, November 16, 2017, <https://www.youtube.com/watch?v=g6zUBXprxQ4>

of legislator Gilbert Caro, by the SEBIN in the state of Carabobo; the May 15, 2017 detention of legislator Janet Fermín, by the National Guard at a peaceful protest in Nueva Esparta as she attempted to prevent the detention of some demonstrators; and the July 4, 2017 detention of legislator Daniel Antequera, by officers of the National Guard in Barquisimeto, during a peaceful protest. Finally, he described the case of Freddy

Guevara, whose parliamentary immunity was lifted on November 3, 2017 under allegations of the crime of public instigation, among other crimes, and who, at the time of the Davila's testimony, was taking refuge in the embassy of Chile in Caracas.¹⁰²⁸

v.(b)3 *The humanitarian crisis as an instrument of persecution*

The context in which human rights violations take place in the Bolivarian Republic of Venezuela is profoundly marked by a serious humanitarian crisis.¹⁰²⁹ Due to the scarcity of medication and medical supplies, for the majority of Venezuelans it is extremely difficult to obtain essential medical care. The severe scarcity of food and other articles is also an obstacle for a large portion of the inhabitants to obtain adequate nutrition and to address the basic needs of their families.¹⁰³⁰

The existence of this humanitarian crisis has been consistently denied by the administration of Nicolas Maduro, at least for the last three years.¹⁰³¹ In its report, the General Secretariat sites a number of examples where the Venezuelan government has denied the existence of any crisis, including the 2016 Supreme Court decision overruling legislation passed by the National Assembly attempting to open a channel for humanitarian assistance to address the severe health shortages.¹⁰³² At a Special Session of the Permanent Council of the OAS on June 23, 2016, Venezuelan Foreign Minister Delcy Rodríguez stated: "There is no

1028 Testimony of Williams Dávila at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, November 16, 2017, <https://www.youtube.com/watch?v=g6zUBXprxQ4>

1029 OAS General Secretariat, "Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela", May 2018, Chapter IX. See also, OAS General Secretariat, "First Report of the Secretary General on the Situation in Venezuela", May 30, 2018, page 235, <http://www.oas.org/documents/eng/press/OSG-243.en.pdf>; OAS General Secretariat, "Second Report of the Secretary General on the Situation in Venezuela", March 14, 2017 page, pages 26-33, <http://www.oas.org/documents/eng/press/informe-VZ-II-English-Final-Signed.pdf>; and, OAS General Secretariat, "Third Report of the Secretary General on the Situation in Venezuela", July 19, 2017; pages 35-38, <http://www.oas.org/documents/eng/press/TERCER-INFORME-VENEZUELA-ENGLISH-Final-signed.pdf>; and, Human Rights Watch, "Venezuela's Humanitarian Crisis: Severe Medical and Food Shortages, Inadequate and Repressive Government Response", October 24, 2016, https://www.hrw.org/sites/default/files/report_pdf/venezuela1016_brochure_web.pdf; and, OHCHR, "Arria formula meeting on the situation in Venezuela - Statement by the UN High Commissioner for Human Rights, Mr. Zeid Ra'ad Al Hussein", November 13, 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22392&LangID=E>; and, World Health Organization (hereinafter, "WHO"), "World Malaria Report 2017", page 16 <http://apps.who.int/iris/bitstream/10665/259492/1/9789241565523-eng.pdf>

1030 Ibid.

1031 Human Rights Watch, "Venezuela's Humanitarian Crisis: Severe Medical and Food Shortages, Inadequate and Repressive Government Response", October 24, 2016, https://www.hrw.org/sites/default/files/report_pdf/venezuela1016_brochure_web.pdf. See also, OHCHR, "Arria formula meeting on the situation in Venezuela - Statement by the UN High Commissioner for Human Rights, Mr. Zeid Ra'ad Al Hussein", November 13, 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22392&LangID=E>; and, WHO, "World Malaria Report 2017", page 16, <http://apps.who.int/iris/bitstream/10665/259492/1/9789241565523-eng.pdf>

1032 OAS General Secretariat, "Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela", May 2018, Chapter IX, Section B, page 240.

humanitarian crisis [in Venezuela]. There isn't. I affirm it with full responsibility."¹⁰³³ That same month, Minister of Health Luisana Melo told the Inter-American Commission on Human Rights that "in general, the Venezuelan population is guaranteed treatment for all their illnesses."¹⁰³⁴ In those cases in which the scarcity has been recognized by government officials, they have argued that it is due to an "economic war" waged by the political opposition, the private sector, and foreign powers.¹⁰³⁵

More recently, on January 8, 2018, Nicolás Maduro himself rejected reports that the country is facing a humanitarian crisis when he stated: "they keep talking about a supposed humanitarian crisis in Venezuela. No one is going to intervene in Venezuela, Venezuela is working for its social security, for equality."¹⁰³⁶

On February 26, 2018, the Venezuelan foreign minister did the same at the inauguration of the 37th Regular Session of the United Nations Human Rights Council when he affirmed: "We would like to note here the dangerous scenario the government of the United States and its allies seek to bring about. From the economic sanctions that harm the people; from the pressure and political and financial extortion that Washington exercises over governments of Europe, the Latin American and Caribbean governments; and from a ferocious psychological media war that is very well planned and financed, an effort is made to get the whole world to believe that there is a humanitarian crisis in Venezuela. This is an old unilateralist trick." He also accused the High Commissioner of issuing reports without any foundation, arguing: "Several UN experts publish assessments based on unusual sources, without ever having visited Venezuela or requested official information."¹⁰³⁷

Despite the denial by the Government of Venezuela, international and national agencies and NGOs have documented the humanitarian crisis that Venezuela has experienced in recent years.

In September 2016, the United Nations High Commissioner for Human Rights stated that Venezuela has experienced a "dramatic decline in enjoyment of economic and social rights, with increasingly widespread hunger and sharply deteriorating health-care."¹⁰³⁸ This situation did not improve throughout 2017, as the United Nations High Commissioner for Human Rights again stated that millions of Venezuelans

1033 OAS, "Special Meeting of the Permanent Council", June 23, 2016, <https://www.youtube.com/watch?v=8817-kBhLhc&list=PLkh9EPFuEx2vXUn3lGbn04yY2EZrjr6lC&index=16>

1034 Youtube, "Venezuela: Salud y acceso a medicamentos," IACHR, June 7, 2016, <https://www.youtube.com/watch?v=xkBHUIOQBtc>

1035 *Telesur*, "Maduro: Guerra económica tiene por objetivo confundir al pueblo", *Telesur TV*, December 15, 2015, <https://www.youtube.com/watch?v=QL0eG7if3T0>; *Telesur*, "En 2015 se derrotará a la derecha en guerra económica: Nicolás Maduro", November 8, 2014, <https://www.youtube.com/watch?v=rEIOVT9lUUG>; and, YouTube, "Nicolás Maduro, Diosdado Cabello, Jorge Arreaza y Elías Jaua. Gringos expulsados, guerra económica," October 31, 2013, <https://www.youtube.com/watch?v=x85y8cCASTc>; cited in Human Rights Watch, "Venezuela's Humanitarian Crisis: Severe Medical and Food Shortages, Inadequate and Repressive Government Response", October 24, 2016, https://www.hrw.org/sites/default/files/report_pdf/venezuela1016_brochure_web.pdf

1036 *Excélsior*, "Niega Maduro que haya crisis humanitaria en Venezuela", January 8, 2018, <http://www.excelsior.com.mx/global/2018/01/08/1212339>

1037 *Crónica. Uno*, "Jorge Arreaza va a la ONU, niega crisis humanitaria y tilda de falsos los informes del organismo," February 26, 2018.

1038 Human Rights Watch, "Venezuela's Humanitarian Crisis: Severe Medical and Food Shortages, Inadequate and Repressive Government Response", October 24, 2016, https://www.hrw.org/sites/default/files/report_pdf/venezuela1016_brochure_web.pdf

live in very complicated economic and health conditions and that about 1,300,000 Venezuelans are experiencing malnutrition.

Venezuela's health system is immersed in a scarcity of medications and other basic medical supplies that resulted in a marked deterioration in the quality and safety of care in the hospitals that has been documented in a report produced by Human Rights Watch. These shortages have worsened since 2014, according to interviews that the organization has conducted with health care professionals and patients and information published by professional, academic and non-governmental organizations.¹⁰³⁹ Human Rights Watch conducted interviews with 20 health care professionals, including doctors and nurses, who worked in 10 hospitals. In all the hospitals Human Rights Watch visited, physicians and patients reported severe shortages – and in some cases, the total depletion of supplies – of essential medicines including antibiotics, antiepileptics, anticonvulsants, myorelaxants, and painkillers, among many others.¹⁰⁴⁰ An independent survey conducted by a network of more than 200 physicians in August 2016 determined that 76 percent of the public hospitals did not have basic medications which, according to the physicians, should be available in any functioning public hospital, including many on the List of Essential Medicines of the World Health Organization (hereinafter, "WHO").¹⁰⁴¹ This represented a 55 percent increase in the number of hospitals facing this situation as compared to 2014, and a 67 percent increase compared to 2015.¹⁰⁴² Among the supplies lacking or scarce at public hospitals were sterile gloves and gauze, antiseptics, alcohol for medical use, scalpels, needles, catheters, I-V solutions, nebulizers, and surgical sutures. It was even common for basic cleaning products (such as bleach) to be lacking; these are essential for ensuring a sterile environment in hospitals. Insalubrious conditions have caused nosocomial infections that could have been prevented.¹⁰⁴³

The information released by the IACHR in its report "Democratic Institutions, the Rule of Law and Human Rights in Venezuela" indicates: "According to figures provided by PROVEA and CodeVida, at present, there is a 90 percent shortage of medicines and supplies nationwide."¹⁰⁴⁴ "According to the National Hospitals Survey, hospital infrastructure has collapsed across the country, with 50 percent of operating theaters inactive and 80 percent of diagnostic services unable to function."¹⁰⁴⁵

1039 Ibid. See also, The New York Times, "As Venezuela Collapses Children Are Dying of Hunger", December 17, 2017, <https://www.nytimes.com/interactive/2017/12/17/world/americas/venezuela-children-starving.html>

1040 Human Rights Watch, "Venezuela's Humanitarian Crisis: Severe Medical and Food Shortages, Inadequate and Repressive Government Response", October 24, 2016, https://www.hrw.org/sites/default/files/report_pdf/venezuela1016_brochure_web.pdf

1041 Ibid.

1042 Ibid.

1043 Ibid.

1044 PROVEA and CodeVida, "Venezuela: Informe sobre el derecho a la salud, 2014-2017, en un contexto humanitario de privación prolongada de medicinas y servicios sanitarios", page 2, cited in IACHR, "Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report" December, 2017, paragraph 434, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

1045 Sociedad Venezolana de Puericultura y Pediatría, "Letter to the Secretary General of the OAS", June 20, 2017, cited in IACHR, "Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report" December, 2017, paragraph 434, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

The IACHR also notes that in the face of this situation many patients have been forced to purchase their own medicines and supplies to be able to receive medical care. In addition, three million persons with chronic diseases have reportedly gone at least one year without access to any treatment.¹⁰⁴⁶ The IACHR has also received information on the difficulties hemophilia patients have obtaining medicines, such as prophylaxis or factor VII.¹⁰⁴⁷

The IACHR has also been alerted¹⁰⁴⁸ to the lack of treatments such as chemotherapy for women with breast cancer; dialysis; immunosuppressant medications to keep transplanted organs from being rejected; pacemakers; medicines for persons with multiple sclerosis, Parkinson's disease, and Alzheimer's disease; antiretrovirals for persons living with HIV or AIDS; infant formulas for babies born to mothers with HIV or other diseases due to which they cannot breastfeed; among others.¹⁰⁴⁹

The General Secretariat has reported that "the scarcity of medicines, combined with the reduction in public spending earmarked to fight malaria from US\$10 million in 2015 to US\$2.2 million in 2016, has deteriorated the situation precipitously. According to the MPPS [Ministry of the People's Power for Health] bulletin published in May 2017, the most recent information published by official government sources, the number of malaria cases increased 76.4% from the previous year."¹⁰⁵⁰

The General Secretariat cited the WHO's report that the situation of malaria in Venezuela has reached the worst point in the country's history. "In 2016, the highest number of malaria cases were reported in the country since they started keeping records, Venezuela became the country contributing the most to the burden of malaria in the Americas. The WHO counts Venezuela among the four countries in the world whose complex situations have resulted in an increase in the number of malaria cases, along with Nigeria, South Sudan, and Yemen. After successfully having declared the northern region of Venezuela malaria-free in 1961, the WHO has been recording an increase in the number of reported cases since 2008. Between 2015 and 2016 alone there was an increase of more than 76% cases reported, with total numbers of people afflicted jumping from 136,406 to 240,613."¹⁰⁵¹

1046 PROVEA and CodeVida, "Venezuela: Informe sobre el derecho a la salud, 2014-2017, en un contexto humanitario de privación prolongada de medicinas y servicios sanitarios", page 2; and, IACHR, "Democratic Institutions, the Rule of Law and Human Rights in Venezuela", December 31, 2017, paragraph 435, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

1047 IACHR, "Democratic Institutions, the Rule of Law and Human Rights in Venezuela", December 31, 2017, paragraph 435, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

1048 Ibid, page 436.

1049 PROVEA and CodeVida, "Venezuela: Informe sobre el derecho a la salud, 2014-2017, en un contexto humanitario de privación prolongada de medicinas y servicios sanitarios", pages 2-3, cited in IACHR, "Democratic Institutions, the Rule of Law and Human Rights in Venezuela", December 31, 2017, paragraph 436, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

1050 OAS General Secretariat, "Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela", May 2018, Chapter IX, Section C, page 244.

1051 WHO, "World Malaria Report 2017", November, 2017, <http://www.who.int/malaria/publications/world-malaria-report-2017/report/en/>; cited in OAS General Secretariat, "Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela", May 2018, Chapter IX, Section C, page 244.

In addition, the General Secretariat also pointed out that “the president of Central American and Caribbean Nephrology Association, Guillermo Álvarez Estévez, said that chronic kidney patients in Venezuela “are condemned to die.” He also characterized the situation of these patients as “inhuman and disastrous.””¹⁰⁵² On January 12, 2018, Jackeline Pérez, president of the Association for Sports and Health of Transplant Recipients, stated that the lives of at least 3,500 transplant patients were at risk because of the shortage of necessary medicines. On January 31, 2018, the director of *Codevida*, Francisco Valencia, informed the media that the lives of 16,000 persons were at immediate risk due to a severe shortage of filters needed to perform dialysis.¹⁰⁵³

As noted above, there is a severe shortage of basic necessities in Venezuela, including food. It is increasingly difficult for many Venezuelans – especially low-income and middle-income families who depend on the goods subject to maximum prices set by the government – to obtain adequate nutrition.¹⁰⁵⁴

Already in 2015, civil society organizations and two prestigious Venezuelan universities conducted a survey in which 1,488 persons from 21 cities across the country were consulted. They determined that 87 percent of the persons interviewed – most of whom were from low-income families – had difficulty buying food. Twelve percent of the persons interviewed ate no more than two meals a day.¹⁰⁵⁵

The information provided by civil society organizations to the IACHR¹⁰⁵⁶ indicates that in 2016 the scarcity of items in the basic market basket of food products came to approximately 82.8%.¹⁰⁵⁷ In addition, the national survey on living conditions of the Venezuelan population (ENCOVI) for that year on food and nutrition reported that approximately 9.6 million persons consumed two meals or less, with the frequent absence of proteins; accordingly, food insecurity affects 9 of every 10 Venezuelan households. More than 70% of those surveyed indicated that in 2016 they had lost weight, on average 8.7 kilograms, and 9 kilograms in the case of persons living in extreme poverty. Of the sample, 93.3% considered that their income was not enough to buy food.¹⁰⁵⁸

1052 OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter IX, Section C, page 246.

1053 *Ibid*, page 246.

1054 *Ibid*, Chapter IX, page 236.

1055 Human Rights Watch, “Venezuela’s Humanitarian Crisis: Severe Medical and Food Shortages, Inadequate and Repressive Government Response”, October 24, 2016, https://www.hrw.org/sites/default/files/report_pdf/venezuela1016_brochure_web.pdf.

1056 IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 422, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

1057 CEPAZ, “Asociación Civil Mujeres en Línea, Freya y Avesa, Informe sobre situación de los derechos de las mujeres en Venezuela”, September 2017, page 17.

1058 ENCOVI, “Encuesta Nacional de Condiciones de Vida Venezuela 2016 - Alimentación”, 2016, <https://www.fundacionbengoa.org/noticias/2017/images/ENCOVI-2016-Alimentacion.pdf>

A report produced by Human Rights Watch highlighted the long lines that form every time supermarkets receive price-regulated products. Several persons who were waiting in line for food explained to the researchers that they were attempting to purchase a few articles that are sold at the maximum prices set by the government, such as rice, pasta, and flour. Oftentimes the supermarkets would run out of the limited goods long before having served all those who were in line.¹⁰⁵⁹ Such food and other basic articles – such as diapers, toothpaste, and toilet paper – that people could buy were strictly rationed, if one was able to get any at all.¹⁰⁶⁰

With the objective of providing food to the people most in need, the Government created the Local Supply and Production Committees. The Report of the OAS General Secretariat cites a video from the Vice-Presidency of the Bolivarian Republic of Venezuela which explains “the CLAPs are local organizations that were created to manage the house-by-house distribution of products that constitute basic necessities”.¹⁰⁶¹ They were initiated by President Maduro on April 3, 2016, as part of the government initiative the Great Mission of Sovereign Distribution (GMAS) established under the pretense of improving distribution of food and basic products to the population. According to the Regime, the objective of the CLAPs is to fight usury, contraband, and hoarding of the economic war.¹⁰⁶² In addition, the Report indicates that “In January 2017, President Nicolás Maduro introduced the *Carnet de la Patria*, a national identity card that is required in order get access to government services and products. According to the official website, it allows its holder to directly pay for services of the CLAP and public transportation. The Government uses a coded system to track the socio-economic status of Venezuelans, therefore tracking the delivery of social assistance and also allows card holders to purchase government services electronically, avoiding the use of hard currency in a country where devaluation happens by the hour. Applications for the card are verified through the self-described “political organization” *Movimiento Somos Venezuela*, led by former foreign minister and current President of the illegitimate National Constituent Assembly, Delcy Rodríguez. Those persons who undergo the application process to have this card issued to them, whose issuance requires the approval of the governing party, will have the privilege of access to these food packages and other benefits provided through the card.”¹⁰⁶³

1059 Human Rights Watch, “Venezuela’s Humanitarian Crisis: Severe Medical and Food Shortages, Inadequate and Repressive Government Response”, October 24, 2016, https://www.hrw.org/sites/default/files/report_pdf/venezuela1016_brochure_web.pdf.

1060 Ibid.

1061 “*Vicepresidencia de Venezuela*”, Official YouTube Channel, July 19, 2016, <https://www.youtube.com/watch?v=sTrp2DSh3vg>, cited in the OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter IX, Section E, page 252.

1062 Ibid.

1063 OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, page 254. humanitarian

Finally, according to a survey conducted by ENCOVI cited in the General Secretariat's report, 52% of the population in Venezuela lived in extreme poverty in 2016.¹⁰⁶⁴ It is estimated that the number of Venezuelans able to rely on the CLAPs as their main source to get food is 14% (4.4 million).¹⁰⁶⁵

Based on the information received, this Panel will not evaluate the origin of the humanitarian crisis, but it will consider what the Government's response to address the crisis has been and what impact it has had on fundamental rights.

The OHCHR emphasized in its statements that discrimination on political grounds is a determinant factor when being refused access to the official food distribution program known as CLAP, and that this program was also used for electoral purposes.¹⁰⁶⁶

Access to food and medicine is conditional on the presentation of the *Carnet de la Patria* which would accredit the card-holder with support for the ruling party. Erika Farías, an activist with the governing party and the current mayor of the municipality of Libertador, Caracas, explained the political significance of the local committees: "...no one should have any doubts that the CLAPs are a new form of struggle, a new organization, that has emerged in times of war, and that constitutes an army of the revolutionary vanguard to defend the homeland and further the revolution".¹⁰⁶⁷

The Report by the General Secretariat of the OAS describes that in October of 2017, during the regional elections, "the representative of each family receiving a CLAP food subsidy was now required to include the number of their *Carnet de la Patria ID* card on the form documenting the delivery of the packages, allowing the government to also track the identity of the recipients."¹⁰⁶⁸ It also noted that *Transparencia Venezuela* published the testimonies of voters that demonstrate how the CLAPs use political criteria to discriminate against those in need on a daily basis: "That day, people vote. From there they go to the usual 'red point', today called the 'tricolor point'. They hand over their *Carnet*, it is scanned and the image is sent in real time to a reception center. A form is signed that goes to the PSUV – according to what the signatory explained

1064 EFE, "Encovi: 82% de los hogares está en pobreza", February 17, 2017, http://www.el-nacional.com/noticias/crisis-humanitaria/encovi-los-hogares-esta-pobreza_81460, cited in OAS General Secretariat, "Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela", May 2018, Chapter IX, Section E, page 237

1065 ABC, "Venezuela con el hambre avanza el control social", <http://www.abcdelasemana.com/2018/01/25/venezuela-con-el-hambre-avanza-el-control-social/>, cited in OAS General Secretariat, "Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela", May 2018, Chapter IX, Section E, page 253.

1066 OHCHR, United Nations High Commissioner for Human Rights, Arria formula meeting on the situation in Venezuela Statement by the UN High Commissioner for Human Rights, Mr. Zeid Ra'ad Al Hussein, November 13, 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22392&LangID=E>

1067 YouTube, , "Erikas: Los CLAP son una forma de lucha en tiempos de guerra para defender la Patria", Multimedio VTV, June 8, 2016, <https://www.youtube.com/watch?v=QMhRHanwkg4>

1068 OAS General Secretariat, "Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela", May 2018, Chapter IX, Section E, page 255.

to us – and, once the process has been completed, they can leave, with their *Carnet*, once again. If their ID card has not been scanned or their signature is not on the form, there is a risk that you will be deprived of the benefits you are receiving through the official circuit for the distribution of products, goods, and services.”¹⁰⁶⁹

The political-electoral intention of the food bags delivered by the CLAP is laid bare in the statements made by Freddy Bernal, the Minister of Urban Agriculture and national coordinator for the CLAPs, when he was making a report to the National Constituent Assembly in January 2018: “The CLAP has been become a tool of consciousness, an organizational tool, and we can responsibly say that the CLAP, together with the *Partido Socialista Unido de Venezuela*, contributed substantially to winning the Constituent Assembly, the elections for governorships, and the elections of mayors,”¹⁰⁷⁰ and he added that “the CLAP has come not only to distribute food, it came to exercise political control, social control, [and] popular control in the territory.”¹⁰⁷¹

The IACHR made a similar argument in its report “Democratic Institutions, the Rule of Law and Human Rights in Venezuela” where it mentioned that “the research warned that 4.2 million people living in poverty were not benefiting from the programs, while 4.4 million who were not poor were doing so. According to the poll, only 2 in 10 people said that they did not need assistance from government social programs (*misiones sociales*). It was also highlighted that 46.6 percent of people were not beneficiaries of the Government’s social programs because “they excluded them,” while 16.9 percent were not because they “did not agree/opposed” them.”¹⁰⁷²

Isaías Medina, former minister counselor at the Permanent Mission of Venezuela to the United Nations, made a statement along similar lines at the public hearing on October 16, 2017, when he told this Panel that in Venezuela food and medicines are distributed based on a political objective, which has a serious detrimental impact on the sectors not supportive of the government.¹⁰⁷³

The IACHR and the Office of the Special Rapporteur on Economic, Social, Cultural, and Environmental Rights (ESCR) have received complaints that imply that the CLAP food packages are not delivered to opponents of the Regime. In a joint statement released on February 1, 2018, “The IACHR and its ESCR Special Rapporteurship have also noted with great concern that there are complaints alleging that food

¹⁰⁶⁹ *Transparencia Venezuela*, “Los CLAP: La dominación se entrega puerta a puerta”, <https://transparencia.org.ve/project/los-clap-la-dominacion-se-entrega-puerta-puerta/>

¹⁰⁷⁰ *Panorama*, “Freddy Bernal: Ley de los Clap combatirá distorsiones económicas”, January 5, 2018, <http://www.panorama.com.ve/politicayeconomia/Freddy-Bernal-Los-Clap-surgieron-para-evitar-una-explosion-social-20180105-0065.html>

¹⁰⁷¹ *Transparencia Venezuela*, “CLAP: Corrupción y mecanismo de control político y social”, <https://www.youtube.com/watch?v=QqxBeGL4xrg>

¹⁰⁷² IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela”, December 31, 2017, paragraph 418, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

¹⁰⁷³ Testimony of Isaías Medina at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 16, 2017, <https://www.youtube.com/watch?v=ca5zYBQYcVE>

supplies distributed through so-called Local Supply and Production Committees are not being given to people who oppose the government. It has also been alleged that there are no clear criteria to determine what products are delivered, how often, and how they are apportioned, and the nutritional needs of the populations being served are not properly considered”.¹⁰⁷⁴

The Report of the General Secretariat of the OAS noted “In the lead up to the July 30th vote for the National Constituent Assembly, President Maduro himself made an appeal to voters to go and vote with their national identity cards as well as with their *Carnet de la patria*, announcing that there would be a count to know how many people with a *Carnet de la Patria* had gone to the polls. ‘And you know, do not forget it tomorrow. Your national identity card and *Carnet de la Patria*, because tomorrow we are going to count how many people with the *Carnet de la Patria* went to the polls. Understand?’¹⁰⁷⁵”

The OAS General Secretariat also noted that “Evidence of the actual implementation of this plan is that the Office of the Attorney General received approximately 100 complaints from individuals, who were threatened and told to participate in the elections of the National Constituent Assembly.¹⁰⁷⁶ Citizens allege having been threatened with being excluded from social programs for education, health, pensions, and housing, and that they would not receive their bag of food from the CLAP if they did not go to cast their vote.¹⁰⁷⁷ Government officials have likewise reported intimidation through harassing phone calls, threats of dismissal, pressure, among other reprehensible actions.”¹⁰⁷⁸

The General Secretariat of the OAS also received information that “during the October 2017 regional elections video testimonies were recorded by persons who had received warnings that if they did not vote for the PSUV, they would not receive the CLAP food packages.¹⁰⁷⁹ These testimonials reinforce the statements made by Bernal that have been cited above, about the CLAPs’s contribution of as a tool for winning elections.”¹⁰⁸⁰

1074 IACHR and ESCERSpecial Rapporteurship (2018), Press Release, February 1, 2018, <https://www.oas.org/es/cidh/prensa/comunicados/2018/016.asp>, cited in OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter IX, Section E, page 254.

1075 OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter IX, Section E, page 217. See also: *Noticiero Digital.com*, “Maduro pide saber cuántas personas con carnet de la patria van a votar y dice: ‘¿entendido?’”, July 29, 2017, <http://www.noticierodigital.com/2017/07/maduro-pide-saber-cuantas-personas-con-carnet-de-la-patria-van-a-votar-y-agrega-entendido/>

1076 *Infobae*, “La Fiscalía venezolana recibió un centenar de denuncias de personas amenazadas: los obligan a participar en la Constituyente”, July 26, 2017, <http://www.infobae.com/america/venezuela/2017/07/26/la-fiscaliavenezolana-recibio-un-centenar-de-denuncias-de-personas-amenazadas-los-obligan-a-participar-de-la-constituyente/>

1077 *El Cooperante*, “Así intimidan y obligan a empleados públicos para que acudan a las elecciones de la ANC”, July 29, 2017, <http://elcooperante.com/asi-intimidan-y-obligan-a-empleados-publicos-para-que-acudan-a-las-elecciones-de-la-anc/>

1078 OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter IX, Section E, page 255.

1079 *Transparencia Venezuela*, “CLAP: Corrupción y mecanismo de control político y social”, <https://www.youtube.com/watch?v=QqxBeGL4xrg>

1080 OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter VII, Section E, page 257

At the public hearing on September 15, Herbert García Plaza referred to the “impossibility of Venezuelans simply dissenting from the National Government in their ideas of having access to human rights such as health.” To exemplify this violation, he showed a video in which a government official explained that for children to get vaccinated one had to show the “*carnet de la patria*” ID cards. And he explained that the “*carnet de la patria* card is an instrument created by the President of the Republic in 2017 as a tool for supervising access to human rights.”¹⁰⁸¹

The response to this crisis has been none other than intimidating and repressing those who denounce this situation.¹⁰⁸² Nor have effective policies been articulated or implemented to mitigate the crisis, and they have carried out very limited actions to obtain the international humanitarian assistance that could substantially improve the results of their limited efforts.¹⁰⁸³

Human Rights Watch documented dozens of cases of Venezuelans who stated that they suffered acts of intimidation or violence by government agents in response to public criticisms of or protests over the government’s response to the humanitarian crisis in the country.¹⁰⁸⁴ Both physicians and nursing professionals indicated that they have been threatened with reprisals, including being removed from their posts, after having spoken publicly about the scarcity of medicines and medical supplies, and about the precarious state of the infrastructure in the hospitals where they worked.¹⁰⁸⁵

At the same time, Venezuelan citizens stated that they had been detained during protests over the food scarcities – some organized and others spontaneous – and suffered blows and other mistreatment during their detention. These detentions had a similar pattern as many other cases documented by Human Rights Watch in Venezuela in 2014, when the authorities carried out widespread repression of anti-government protests, most of which were peaceful.¹⁰⁸⁶ Human Rights Watch collected reliable information on new cases that occurred in six states, from January to June 2016 that involved the detention and criminal prosecution of at least 31 persons, at least 20 of whom suffered physical abuse while detained. In most of these recent cases the persons arrested were charged in military courts, which is a violation of their right to a fair trial.¹⁰⁸⁷ In a large number of the cases the prosecutors did not present credible evidence that the accused were implicated in any criminal activity. As in earlier cases documented by Human Rights Watch, the 31 persons

1081 Testimony of Herbert García Plaza at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 15, 2017, <https://www.youtube.com/watch?v=cKmTJ79prKE>

1082 Human Rights Watch, “Venezuela’s Humanitarian Crisis: Severe Medical and Food Shortages, Inadequate and Repressive Government Response”, October 24, 2016, https://www.hrw.org/sites/default/files/report_pdf/venezuela1016_brochure_web.pdf

1083 Ibid.

1084 Ibid.

1085 Ibid.

1086 Ibid.

1087 Ibid.

arrested were released conditionally, awaiting formal indictments; most were warned not to participate in protests in the future.¹⁰⁸⁸

The General Secretariat of the OAS affirmed in its Report that “It is evident that the current serious situation is not the result of negligence, but of a strategy guided by ideological partisan interests to seriously deteriorate the living conditions of Venezuelans, and is now being used to penalized those who do not support the Bolivarian revolution, in some cases going as far as to purge the opposition, helping to secure the Regime’s hold on power indefinitely.”¹⁰⁸⁹

As a consequence of the humanitarian crisis, millions of Venezuelans have been forced to leave their country. In 2015, the international organization for migration reported that 697,562 Venezuelans resided outside their country the majority of whom lived in the US, Spain, Italy and Portugal. By 2017, that number had increased by 133% to reach 1,622,109.¹⁰⁹⁰

v.(c) *Conclusion*

Based on these statements and the cases illustrated in the foregoing paragraphs, this Panel considers that there is a reasonable basis for believing that in the Venezuela the elements of persecution on political grounds are satisfied. This Panel considers that the crime of persecution is established by the violations of the rights to life, personal liberty, and humane treatment, reflected in all of the crimes described in this report. In addition, the Panel examined violations of fundamental rights that were not analyzed as part of those crimes, namely: injuries, intimidation, and detriment to the right to health and food due to the political use of the humanitarian crisis.

This Panel, after evaluating the information on the humanitarian crisis, considers that the use of the crisis as an instrument to pressure a segment of the population that is in the opposition or that is identified as such, constitutes multiple violations of fundamental rights, such as the right to life, the right to humane treatment, the right to health, and the right to food, making it a crime of persecution for political reasons in connection with the crimes analyzed by this Panel.

It has been shown that the criminal conduct is directed against a group of persons identifiable as the political group of the opposition or the group of persons who express disagreement with the decisions of the Government; and that it is politically motivated.

¹⁰⁸⁸ Ibid.

¹⁰⁸⁹ OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter IX, Section E, page 258.

¹⁰⁹⁰ Ibid, Chapter IX, Section F, page 260.

As has been documented and analyzed above, the deprivation of the fundamental rights that the victims of political persecution suffered in Venezuela is part of the widespread and systematic attack and is connected to the crimes established in Article 7 of the Rome Statute, namely: murder, imprisonment, torture, sexual violence or rape, and enforced disappearance. In addition, it has been shown that the criminal conduct is directed against a group of persons identifiable as the political group of the opposition or the group of persons who express disagreement with the decisions of the Government; and that it is politically motivated.

vi. *Enforced disappearance of persons under Article 7(1)(i)*

vi.(a) *Elements of the Crime*

The crime of enforced disappearance of persons is provided for at Article 7(1)(i) of the Rome Statute and defined as the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a state or a political organization, followed by a refusal to acknowledge that deprivation of liberty or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.¹⁰⁹¹

The Elements of Crimes¹⁰⁹² define more specifically its constitutive elements, requiring,

1. That perpetrator has:
 - (a) Arrested, detained or abducted one or more persons; or
 - (b) Refused to acknowledge the arrest, detention or abduction, or to give information on the fate or whereabouts of such person or persons.
2. (a) That such arrest, detention or abduction was followed or accompanied by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons; or
 - (b) Such refusal was preceded or accompanied by that deprivation of freedom.

¹⁰⁹¹ UN, "Rome Statute of the International Criminal Court", 1998, Article 7(2) (i), <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>

¹⁰⁹² ICC, "Elements of Crimes", 2002, Article 7(1) (i), <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>

3. The perpetrator was aware that:
 - (a) Such arrest, detention or abduction would be followed in the ordinary course of events by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons; or
 - (b) Such refusal was preceded or accompanied by that deprivation of freedom.
4. Such arrest, detention or abduction was carried out by, or with the authorization, support or acquiescence of, a State or a political organization.
5. Such refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons was carried out by, or with the authorization or support of, such State or political organization.
6. The perpetrator intended to remove such person or persons from the protection of the law for a prolonged period of time.¹⁰⁹³

In its *Decision on Initiating an Investigation in Burundi*, Pre-Trial Chamber III considered that there was a reasonable basis for believing that crimes against humanity involving enforced disappearance of persons (among others) had been committed, making reference to cases in which members of the opposition, from civil society, were removed from the protection of the law and abducted, arrested, and detained by members of the security forces. Their whereabouts were unknown for months, and even for years in some cases.¹⁰⁹⁴ In this decision the Court has had an opportunity to interpret the scope of the constitutive elements of this crime; after making reference to the Rome Statute and the Elements of Crimes¹⁰⁹⁵, it concluded that the crime of enforced disappearance encompasses two closely related components: (i) the deprivation of liberty of the victim; and (ii) the consequent denial or suppression of information.¹⁰⁹⁶

With respect to the first element, Pre-Trial Chamber III considered that the terms arrest, detention, or abduction should be understood broadly, and take in any form of deprivation of liberty. This crime also includes those cases in which the victim was detained or arrested lawfully and then “disappeared” while

¹⁰⁹³ ICC, “Elements of Crimes”, 2002, Article 7(1)(i), <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>

¹⁰⁹⁴ ICC, “Questions and Answers on the decision to open an investigation regarding Burundi”, ICC-PIOS-Q&A/BUR-001/17_Eng, November 9, 2017, page 3, https://www.icc-cpi.int/iccdocs/PIDS/publications/QandA_ENG.pdf

¹⁰⁹⁵ ICC, Pre-Trial Chamber III, Situation in the Republic of Burundi, Public Redacted Version of “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi”, ICC-01/17-X, October 25, 2017, paragraph 117, https://www.icc-cpi.int/CourtRecords/CR2017_06720.PDF

¹⁰⁹⁶ *Ibid*, paragraph 118.

in custody.¹⁰⁹⁷ With respect to the second component, the Chamber held that the refusal to acknowledge or give information about the situation includes the direct denial and provision of false information about the victim's fate or whereabouts. Independent of whether the victim's family files a formal complaint, the authorities of the State are obligated to begin, without delay, an impartial and exhaustive investigation into the victim's disappearance.¹⁰⁹⁸

As a result of enforced disappearance, the victim is removed from all protection of the law. In effect, the victim does not have access to judicial protection or to judicial proceedings.¹⁰⁹⁹ The way in which a person is generally deprived of his or her liberty (detention without a court order, in secret or in clandestine centers; or the absence of official records of the persons detained) makes it possible to infer the intent to remove the victim from the protection of the law.¹¹⁰⁰

Finally, the arrest, detention, or abduction must have taken place for a prolonged period. On this point, the Court understood that a period of several months or years satisfies this last contextual element. The crime of enforced disappearance is considered a continuing crime, for as long as the authorities continue hiding the fate and whereabouts of the person or persons disappeared and the facts have not been clarified.¹¹⁰¹

Mindful of an interpretation compatible with internationally recognized human rights, the case-law of the Inter-American Court of Human Rights is especially relevant, as the ICC has found in other cases, and the United Nations mechanisms and committees that work specifically on this issue have also found.

The Inter-American Court of Human Rights, after its first judgment in the *Case of Velázquez Rodríguez v. Honduras*, has held that disappearances constitute a complex form of human rights violation that must be understood and addressed in an integral manner¹¹⁰², since it is a crime against humanity.¹¹⁰³ For the

1097 Ibid.

1098 Ibid.

1099 Ibid, paragraph 120. See also, UN, "International Convention for the Protection of All Persons from Enforced Disappearance", 2006, Article 17, <http://www.ohchr.org/Documents/ProfessionalInterest/disappearance-convention.pdf>; OAS, Inter-American Convention on Forced Disappearance of Persons, March 29, 1994, Article XI, <http://www.oas.org/juridico/english/treaties/a-60.html>; African Union, "African Charter on Human and Peoples' Rights", October 21, 1986, Articles 6-7, http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf; UN, "International Covenant on Civil and Political Rights", December 16, 1966, Article 9, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; OAS, American Convention on Human Rights, November 22, 1969, Article 7, <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>; Council of Europe, European Convention on Human Rights, 1950, Article 5, https://www.echr.coe.int/Documents/Convention_ENG.pdf.

1100 ICC, Pre-Trial Chamber III, Situation in the Republic of Burundi, Public Redacted Version of "Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi", ICC-01/17-X, October 25, 2017, paragraph 120, https://www.icc-cpi.int/CourtRecords/CR2017_06720.PDF

1101 Ibid, paragraph 121.

1102 Inter-American Court of Human Rights, Case of Velásquez Rodríguez v. Honduras, "Judgment of July 29, 1988", (Merits), paragraph 150, http://www.corteidh.or.cr/docs/casos/articulos/seriec_04_ing.pdf

1103 Ibid, paragraph 153.

Inter-American Court of Human Rights: “The forced disappearance of human beings is a multiple and continuous violation of many rights under the Convention that the States Parties are obligated to respect and guarantee.”¹¹⁰⁴

Years later, in the case of *Gelman v. Uruguay*, the Inter-American Court of Human Rights reiterated that forced disappearance constitutes a multiple violation of several rights protected by the American Convention that places the victim in a completely defenseless situation, leading to other violations¹¹⁰⁵, and developed the notion that the violation is especially grave when it is part of a systematic pattern implemented or tolerated by the State.¹¹⁰⁶ The practice of enforced disappearance implies a clear abandonment of the essential principles on which the inter-American system of human rights is founded and its prohibition has attained the status of *jus cogens*.¹¹⁰⁷

vi.(b) *The Analysis of the Panel on the situation in Venezuela*

In the Republic of Venezuela enforced disappearances of political opponents, or persons who are presumed to be such, have been committed and continue to be committed as part of the attack on this group of the civilian population.

The OHCHR also recorded several cases of enforced disappearances, which it describes as “a particularly aggravated form of arbitrary detention, which violates substantive and procedural human rights standards.”¹¹⁰⁸

Amnesty International has documented cases in which the person was detained and was not allowed to have contact with his or her family or defense attorneys. It has learned of cases in which the SEBIN has detained a person without a court order and, before being taken before the courts, the person has been held in custody without any information about his or her situation or whereabouts.¹¹⁰⁹

1104 Ibid, paragraph 155.

1105 Inter-American Court of Human Rights, Case of *Gelman v. Uruguay*, “Judgment of February 24, 2011”, (Merits and Reparations) paragraph 74, http://corteidh.or.cr/docs/casos/articulos/seriec_221_ing.pdf

1106 Ibid .

1107 Ibid.

1108 OHCHR, “Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela of April 1 to July 31, 2017”, Geneva, August 2017, page 22, http://www.ohchr.org/Documents/Countries/VE/HCRReportVenezuela_1April-31July2017_EN.pdf

1109 Amnesty International, “Silenced by Force: Political-Motivated Arbitrary Detentions in Venezuela,” 2017, page 13, <https://www.amnestyusa.org/reports/silenced-force-politically-motivated-arbitrary-detentions-venezuela/>

vi.(c) Case studies

José Gustavo Arocha

He recounted in the OAS General Secretariat public hearing of September 15 before this Panel that he was taken to a jail and then transferred to “*La Tumba*,” where he remained for six months, without his family members being notified and without any record of it in the case.¹¹¹⁰

Wilmer Azuaje

Armando Daniel Armas, a legislator of the National Assembly, referred, in a public hearing, to the case of Mr. Wilmer Azuaje. According to his statement – and his version coincides with what was documented by Human Rights Watch¹¹¹¹ – Azuaje, an opposition legislator, was detained by intelligence agents on May 2, 2017. Azuaje and a member of his team were driving in the state of Barinas when agents made Azuaje get out of his vehicle, handcuffed him, and took him to the SEBIN base in Barinas, as appears in the documents filed by his mother with Ministry of Public Prosecution and the Office of the Human Rights Ombudsperson (*Defensoría del Pueblo*) days later. The agents did not have an arrest warrant.¹¹¹² He was abducted for more than four months, and was not presented to a court until August 2017.¹¹¹³ The Supreme Court of Justice ruled that Azuaje had been detained while committing a crime, because when SEBIN agents arrested him and searched his vehicle, the agents claimed to have found grenades and explosives.¹¹¹⁴

Juan Pedro Lares

Mr. Omar Lares, opposition mayor of the municipality of Campo Elías, personally described to this Panel the enforced disappearance of which his son, Juan Pedro Lares, was a victim. At the time of his father’s testimony to the Panel, he had been disappeared for 81 days, during which time Juan Pedro Lares was

¹¹¹⁰ Testimony for José Gustavo Arocha for Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 15, 2017, <https://www.youtube.com/watch?v=cKmTJ79prKE>

¹¹¹¹ Human Rights Watch and *Foro Penal*, “Crackdown on Dissent, Brutality, Torture and Political Persecution in Venezuela”, November 2017, page 38, https://www.hrw.org/sites/default/files/report_pdf/venezuela1117web_0.pdf

¹¹¹² Interviews by Human Rights Watch with relative of Wilmer Azuaje, May 2017; there are copies of the documents filed by the family members, as well as relevant photographs and videos, in the records of Human Rights Watch, cited in Human Rights Watch and *Foro Penal*, “Crackdown on Dissent, Brutality, Torture and Political Persecution in Venezuela”, November 2017, page 38, https://www.hrw.org/sites/default/files/report_pdf/venezuela1117web_0.pdf

¹¹¹³ Testimony for Armanda Armas for Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 16, 2017, <https://www.youtube.com/watch?v=ca5zYBQYcVE>

¹¹¹⁴ Human Rights Watch and *Foro Penal*, “Crackdown on Dissent, Brutality, Torture and Political Persecution in Venezuela”, November 2017, page 38, https://www.hrw.org/sites/default/files/report_pdf/venezuela1117web_0.pdf

being held by the SEBIN. The objective was to arrest the mayor, in the context for the election for the National Constituent Assembly, but as he escaped through the back side of his property, the agents decided to take his son. He noted that there was no warrant for his arrest warrant or a search warrant for his home. Once detained, Juan Pedro Lares was tortured and doused in gasoline; they threatened him that if he did not reveal his father's whereabouts they would set him on fire.¹¹¹⁵

Mr. Lares states that his son does not appear on the list of detainees at the prison facility where he is being held. They have only confirmed where he is because there have been two consular visits by Colombia to check on his health. It was also learned that the officials themselves call him “the *Helicoide* hostage.”¹¹¹⁶

Roberto Picón

He was arrested the night of June 22, 2017 when a group of more than 30 members of the SEBIN entered the home of Mr. Arístides Moreno along with other persons, without the corresponding court order. On June 25 President Maduro stated on television that days earlier the security forces had confiscated two servers which, according to Maduro, were used to organize “a process of hacking, intervention, and sabotage” of the electoral information technology system. He accused Roberto Picón, who he referred to as a person “very intimate with and close to” opposition leader Henrique Capriles Radonski, of directing the hacking attempt.¹¹¹⁷ For four days Picón's family did not receive official information on his whereabouts. The authorities allowed him to see his children after 57 days in detention, and to see his lawyer another 13 days after that.¹¹¹⁸

Rafael Ángel Cardozo Maldonado,

Rafael Ángel is a 23-year-old who lives with a mental disability. He was detained on March 17, 2014 while walking towards his house near a demonstration, when multiple units from the GNB and PNB arrived to repress the demonstrators, as part of an operation carried out in the city of San Cristóbal, in the state of Táchira.¹¹¹⁹ He was detained for five days, including at least one day where he was held in *incomunicado*

¹¹¹⁵ Testimony for Omar Lares for Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 17, 2017, <https://www.youtube.com/watch?v=ca5zYBQYcVE>

¹¹¹⁶ Ibid.

¹¹¹⁷ YouTube, “Roberto Picón, amigo de Capriles Radonski, lideraba hackeo informático del CNE”, uploaded by Multimedia VTV June 25, 2017, <https://www.youtube.com/watch?v=Kmywil3prgY> (visited on October 9, 2017).

¹¹¹⁸ Human Rights Watch and *Foro Penal*, “Crackdown on Dissent, Brutality, Torture and Political Persecution in Venezuela”, November 2017, page 44, https://www.hrw.org/sites/default/files/report_pdf/venezuela1117web_0.pdf

¹¹¹⁹ Testimony can be found at Amnesty International: “Venezuela: The Faces of Impunity: A Year after the Protests Victims Still Await Justice,” 2015, page 34, <https://www.amnestyusa.org/reports/silenced-force-politically-motivated-arbitrary-detentions-venezuela/>

at a military barracks. Amnesty International spoke with him and his attorney in July 2014 in Táchira and recounted how the military personnel repeatedly denied that Ángel was detained and refused to access the detainee.¹¹²⁰

Juan Carlos Caguaripano

Juan Carlos Caguaripano was detained on August 11, 2017 in Sucre in the metropolitan district of Caracas, by officers of the Sucre municipal police. After he was detained in Caracas, he was taken by personally by Nestor Reverol, Minister of Interior Relations, Justice, and Peace, and personnel of the Special Actions Forces of the Bolivarian National Police to an unknown location, presumably located in the state of Carabobo, where he was brutally tortured. His whereabouts were unknown until months later. He suffered a dislocation of his testicle with heavy bleeding that required stitches from a severe beating. From the time of his detention in August, until September 19, Juan Carlos Caguaripano was held *incommunicado*, with no contact from his lawyers or family. His defense lawyer was prevented from entering the court house at the time of his hearing, and he was forced to accept a court assigned lawyer instead. After his hearing, Caguaripano was taken to *La Tumba*, where he remains *incommunicado*.¹¹²¹

vi.(d) Conclusion

Based on these statements and the cases illustrated in the preceding paragraphs, this Panel considers that there is a reasonable basis to believe that enforced disappearances have been committed in the territory of Venezuela, in accordance with Article 7(1)(i) of the Rome Statute.

To consider the elements of the crime of enforced disappearance as proven, the ICC maintained that it includes two intimately interconnected components: (i) the deprivation of the victim's freedom; and (ii) the consequent denial or suppression of information.¹¹²² In all the cases presented and in the rest of those analyzed the presence of these two elements has been shown.

As for the temporal element required by the definition in the Rome Statute, this Panel considers that it has been demonstrated that there is a reasonable basis for believing that in several cases the forced

¹¹²⁰ Ibid.

¹¹²¹ General Secretariat of the OAS, "Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela", Chapter VII, Section B, page 183.

¹¹²² See ICC, Pre-Trial Chamber III, "Situation in the Republic of Burundi. Public Redacted Version of Decision on the Authorization of an Investigation into the Situation in the Republic of Burundi", ICC-01/17-X, October 25, 2017, paragraph 118, https://www.icc-cpi.int/CourtRecords/CR2017_06720.PDF

disappearance continued “for months,” which is what Pre-Trial Chamber III found in its *Decision to Open an Investigation into Burundi*.¹¹²³

Nonetheless, this Panel considers it necessary to put forward an analysis of the temporal context.

While in Article 7(2)(i) the Rome Statute establishes that the deprivation of freedom and the refusal to admit said deprivation of freedom or to provide information about the fate or whereabouts of such persons should have the intention of removing them from the protection of the law for a “prolonged period”, we consider that the interpretation of this element should take into account the existing human rights standards in this area.

The United Nations Working Group on Enforced or Involuntary Disappearances has underscored that “there is no time limit, no matter how short, for an enforced disappearance to occur,” and that “accurate information on the detention of any person deprived of liberty and their place of detention shall be made promptly available to their family members.”¹¹²⁴ In addition, in a July 2017 report it expressed its profound concern over the finding of a pattern of forced disappearances for short periods of time in many countries, recalling that “that no enforced disappearance is acceptable, no matter how short its duration.”¹¹²⁵ The Committee on Enforced Disappearances also recalls that to constitute an enforced disappearance, the deprivation of liberty must be followed by the refusal to recognize said deprivation of liberty or the concealment of the fate or whereabouts of the person disappeared, removing him or her from the protection of the law, whatever the duration of such deprivation of freedom or concealment.¹¹²⁶ Given that there is an almost exact coincidence with the other elements of the crime, it is difficult to justify the Rome Statute moving away from these standards, as the crime defined at Article 7(1)(i) is at the same time a human rights violation.

In this regard, when it comes to resolving a case, the Committee on Enforced Disappearances considered that the lack of a response by the prison authorities to requests for information from the family of a person detained as to the person’s whereabouts, as well as the lack of information on what happened for more than seven days in which the whereabouts remained unknown, constitute concealment of the person’s fate and whereabouts for the purposes of Article 2 of the Convention. It also considered that throughout this time period the victim was unable to communicate with anyone, or receive visits, and that neither the

¹¹²³ ICC, “Questions and Answers on the decision to open an investigation regarding Burundi”, ICC-PIOS-Q&A/BUR-001/17_Eng, November 9, 2017, page 3.

¹¹²⁴ UN, Human Rights Council, “Report of the Working Group on Enforced or Involuntary Disappearances”, A/HRC/33/51, July 28, 2016, paragraph 113, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/167/14/PDF/G1616714.pdf?OpenElement>

¹¹²⁵ UN, Human Rights Council, “Report of the Working Group on Enforced or Involuntary Disappearances”, A/HRC/36/39, October 10, 2017, paragraph 115, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/229/15/PDF/G1722915.pdf?OpenElement>

¹¹²⁶ UN, “International Convention for the Protection of All Persons from Enforced Disappearance”, CED/C/10/D/1/2013, April, 12, 2016, paragraph 10.3, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CED/C/10/D/1/2013&Lang=en

victim or his family had access to a court that could, without delay, determine the legality of the situation in which the victim found himself in when he was transferred from the prison.¹¹²⁷

Finally, the Committee emphasized that the States Parties are in a special position as guarantors of the rights of the persons deprived of liberty, as prison authorities exercise strong control or domination over them. Therefore, they are under a special obligation to ensure, for persons deprived of liberty, the rights established in the Convention, and to take effective measures so that, among other things, the deprivation of liberty does not have the potential to become, at any time, a secret detention or enforced disappearance.¹¹²⁸ The Committee also cited Article 17 of the Convention, “No one shall be held in secret detention”; and the States Parties have an obligation to guarantee that the relevant information on the deprivation of liberty and the development of the detention is available in detailed and accessible records. Along the same lines, pursuant to Article 18 of the Convention, the States Parties shall “guarantee to any person with a legitimate interest [...], such as relatives of the person deprived of liberty, their representatives or their counsel, access to at least the following information: [...]The whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of deprivation of liberty, the destination and the authority responsible for the transfer.”¹¹²⁹

Therefore, proposing a harmonious interpretation of the international *corpus juris*¹¹³⁰ for protection from forced disappearances and guaranteeing the principle of legality recognized in Articles 22 and 23 of the Rome Statute, this Panel considers that the expression “for a prolonged period” in Article 7(2)(i) of the Rome Statute should be interpreted as a parameter for reliably determining the intent to keep a person removed from the protection of the law and not as an objective time standard that renders the article inapplicable or leaves it open to discretion. In conclusion, this Panel finds that a showing has been made of the elements established in the Rome Statute, the Elements of Crimes, and the interpretation of these instruments by the ICC for considering the crime of enforced disappearance of persons in Venezuela, as a crime against humanity.

b.3 Conclusion

In this analysis, and by virtue of the arguments presented above, this Panel considers that crimes against humanity, as defined in Article 7 of the Rome Statute, have been committed and continue being committed in the State of Venezuela, and that therefore the ICC has jurisdiction *ratione materiae* over the facts presented.

¹¹²⁷ Ibid, paragraph 10.4.

¹¹²⁸ Ibid, paragraph 10.5.

¹¹²⁹ Ibid.

¹¹³⁰ UN, “Rome Statute of the International Criminal Court”, 1998, Article 21(1) (b), <https://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>

c. Territorial Jurisdiction – jurisdiction *ratione loci*

The territorial jurisdiction of the Court is determined, as provided for at Article 12(2) (a), for the commission of crimes against humanity¹¹³¹ in the territory of a State Party to the Rome Statute. This requirement is satisfied, since, as mentioned in the previous paragraphs, the facts subject to analysis were committed in the territory of the Bolivarian Republic of Venezuela, a State Party to the Rome Statute at the time of the acts.

d. Personal Jurisdiction – jurisdiction *ratione personae*

At this stage of the procedure in the process of the Office of the Prosecutor it is not necessary to determine personal responsibility, but rather the existence of a reasonable basis that crimes against humanity under the jurisdiction of the ICC have been committed. Without prejudice to this, the Panel, in the preparation of this report, refers to numerous persons, both civilian and military, who, while representing the Venezuela State, participated in the commission of the alleged crimes against humanity, who could eventually be held criminally responsible by the ICC.

The Panel notes that the General Secretariat has presented of list of individuals they have identified as allegedly culpable for the crimes presented.

B. Admissibility

To initiate an investigation, one must determine whether a case is or could be admissible in the terms of Article 17(1) of the Rome Statute.¹¹³² In this regard, admissibility requires an evaluation of complementarity (section (a), (b), and (c)) and gravity (section d).¹¹³³

¹¹³¹ Ibid, Article 7(1).

¹¹³² Ibid, Article 53(1) (b).

¹¹³³ Ibid, Article 17(1), cited in Office of the Prosecutor of the International Criminal Court, “Policy Paper on Preliminary Examinations”, November 2013, paragraph 42, https://www.icc-cpi.int/iccdocs/otp/otp-policy_paper_preliminary_examinations_2013-eng.pdf

a. Complementarity

According to the requirements of Article 53(1)(b) and Article 17(1)(a) to (c), complementarity is evaluated on a case-by-case basis and is aimed at determining whether genuine investigations and prosecutions have been carried out or are under way with respect to the case or cases identified by the Office of the Prosecutor in the respective state.¹¹³⁴ Complementarity is evaluated with respect to the possible cases that may potentially arise from an investigation of the situation.¹¹³⁵

As has been confirmed by the Appeals Chamber, the first issue in the evaluation of complementarity is an empirical inquiry: whether there are or have been relevant national investigations or prosecutions.¹¹³⁶ This is stated expressly at Article 17(1)(a) as “is being investigated or prosecuted,” (b) “has been investigated,” and (c) “has already been tried.” The absence of national proceedings is sufficient for a case to be admissible.¹¹³⁷ The Chambers of the Court have also said that this evaluation cannot be based on hypothetical national prosecutions that may or may not take place in the future: it must be based on the concrete facts as they exist at the moment.¹¹³⁸ The determination, as indicated, is made on a case-by-case basis. This requires verifying that the national proceedings concern the same persons for the same conduct that is the basis of the proceeding before the Court.¹¹³⁹

1134 It should be noted, consistent with the text of Article 18(1) and Article 19(2)(b), that the principle of complementarity encompasses every state that has jurisdiction over a case and applies independent of whether that state is a party to the Statute.

1135 ICC, Pre-Trial Chamber II, Situation in the Republic of Kenya, “*Décision relative à la demande d’autorisation d’ouvrir une enquête dans le cadre de la situation en République du Kenya rendue en application de l’article 15 du Statut de Rome*”, ICC-01/09, March 31, 2010, paragraphs 50 and 182, https://www.icc-cpi.int/CourtRecords/CR2011_03256.PDF. See also, ICC, Pre-Trial Chamber III, Situation in the Republic of Côte D’Ivoire, “Corrigendum to “Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d’Ivoire”, ICC-02/11, November 15, 2011, paragraphs 190 and 191, https://www.icc-cpi.int/CourtRecords/CR2011_18794.PDF

1136 ICC, Appeals Chamber, Situation in the Democratic Republic of the Congo, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, “Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case”, ICC-01/04-01/07 OA 8, September 25, 2009, paragraph 78, https://www.icc-cpi.int/CourtRecords/CR2009_06998.PDF

1137 *Ibid.*

1138 ICC, Pre-Trial Chamber II, Situation in Uganda in the case of the Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen, “Decision on the admissibility of the case under article 19(1) of the Statute”, ICC-02/04-01/05, March 10, 2009, paragraphs 49-52, https://www.icc-cpi.int/CourtRecords/CR2009_01678.PDF

1139 ICC, Appeals Chamber, Situation in the Republic of Kenya in the case of the Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang, “Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled “Decision of the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute””, ICC-01/09-01/11 OA, August 30, 2011, paragraphs 1, 47, https://www.icc-cpi.int/CourtRecords/CR2011_13814.PDF. See also, ICC, Appeals Chamber, Situation in the Republic of Kenya, *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, “Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled “Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute,”” ICC-01/09-02/11 OA, August 30, 2011, paragraphs 1 and 46, https://www.icc-cpi.int/CourtRecords/CR2011_13819.PDF; and, ICC, Pre-Trial Chamber I, Situation in Libya in the case of *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, “Public Redacted Decision on the admissibility of the case against Abdullah Al-Senussi”, ICC-01/11-01/11, October 11, 2013, paragraph 66: “for the Chamber to be satisfied that the domestic investigation covers the same “case” as that before the Court, it must be demonstrated that: a) the person subject to the domestic proceedings is the same person against whom the proceedings before the Court are being conducted; and b) the conduct that is subject to the national investigation is substantially the same conduct that is alleged in the proceedings before the Court.... the determination of what constitutes ‘substantially the same conduct’ will vary according to the concrete facts and circumstances of the case at hand, and therefore requires a case-by-case analysis”, https://www.icc-cpi.int/CourtRecords/CR2013_07445.PDF

The absence of national proceedings in relation to a given case may stem from numerous factors, among them the lack of an adequate legislative framework; the existence of laws that constitute an obstacle to domestic proceedings, such as amnesties, immunities, or rules on prescription; the fact that the proceedings are directed deliberately against persons whose roles are marginal or low-level, even though there is evidence with respect to those who bear more direct responsibility; or other more general issues related to the lack of political will or judicial capacity.¹¹⁴⁰

As the Office of the Prosecutor established in the Policy Paper on Preliminary Examinations, “when there are or have been national investigations or prosecutions, the Office of the Prosecutor will examine whether those proceedings are related to possible cases being examined by the Office of the Prosecutor and, in particular, whether they are directed against the persons who bear the greatest responsibility for the most serious crimes that have been committed. If so the Office of the Prosecutor will move on to evaluate whether those national proceedings are vitiated by a lack of willingness or inability to genuinely conduct the proceeding”¹¹⁴¹, as per Article 17(2) of the Rome Statute.

In addition, it explains that “for the purpose of assessing unwillingness to investigate or prosecute genuinely in the context of a particular case, pursuant to article 17(2), the Office shall consider whether (a) the proceedings were or are being undertaken for the purpose of shielding the person concerned from criminal responsibility for crimes within the ICC jurisdiction, (b) there has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice, and (c) the proceedings were or are not conducted independently or impartially and in a manner consistent with an intent to bring the person concerned to justice. In so doing, the Office may consider a number of factors.”¹¹⁴²

The Office of the Prosecutor also lists a series of indicators through which one can evaluate whether there is evidence of an “intent to shield a person from criminal responsibility may be assessed in light of such indicators as, manifestly insufficient steps in the investigation or prosecution; deviations from established practices and procedures; ignoring evidence or giving it insufficient weight; intimidation of victims, witnesses or judicial personnel; irreconcilability of findings with evidence tendered; manifest inadequacies in charging and modes of liability in relation to the gravity of the alleged conduct and the purported role of

1140 Office of the Prosecutor of the International Criminal Court, “Policy Paper on Preliminary Examinations”, November 2013, paragraph 48, https://www.icc-cpi.int/iccdocs/otp/otp-policy_paper_preliminary_examinations_2013-eng.pdf

1141 Pre-Trial Chamber I has observed “evidence related, inter alia, to the appropriateness of the investigative measures, the amount and type of resources allocated to the investigation, as well as the scope of the investigative powers of the persons in charge of the investigation are relevant for both limbs since such aspects, which are significant to the question of whether there is no situation of “inactivity” at the national level, are also relevant indicators of the State’s willingness and ability genuinely to carry out the concerned proceedings”; ICC, Pre-Trial Chamber I, Situation in Libya in the case of The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi, “Public Redacted Decision on the admissibility of the case against Abdullah Al-Senussi”, ICC-01/11-01/11, October 11, 2013, paragraph 210, https://www.icc-cpi.int/CourtRecords/CR2013_07445.PDF, cited in Office of the Prosecutor of the International Criminal Court, “Policy Paper on Preliminary Examinations”, November 2013, paragraph 49, https://www.icc-cpi.int/iccdocs/otp/otp-policy_paper_preliminary_examinations_2013-eng.pdf

1142 Office of the Prosecutor of the International Criminal Court, “Policy Paper on Preliminary Examinations”, November 2013, paragraph 50, https://www.icc-cpi.int/iccdocs/otp/otp-policy_paper_preliminary_examinations_2013-eng.pdf

the accused; mistaken judicial findings arising from mistaken identification, flawed forensic examination, failures of disclosure, fabricated evidence, manipulated or coerced statements, and/or undue admission or non-admission of evidence; lack of resources allocated to the proceedings at hand as compared with overall capacities; and refusal to provide information or to cooperate with the ICC.”¹¹⁴³

It further establishes that an “unjustified delay in the proceedings at hand may be assessed in light of indicators such as, the pace of investigative steps and proceedings; whether the delay in the proceedings can be objectively justified in the circumstances; and whether there is evidence of a lack of intent to bring the person(s) concerned to justice.”¹¹⁴⁴

In relation to the evaluation of the independence of the proceedings, the Prosecutor recognizes that it “may be assessed in light of such indicators as, inter alia, the alleged involvement of the State apparatus, including those departments responsible for law and order, in the commission of the alleged crimes; the constitutional role and powers vested in the different institutions of the criminal justice system; the extent to which appointment and dismissal of investigators, prosecutors and judges affect due process in the case; the application of a regime of immunity and jurisdictional privileges for alleged perpetrators belonging to governmental institutions; political interference in the investigation, prosecution or trial; recourse to extra-judicial bodies; and corruption of investigators, prosecutors and judges.”¹¹⁴⁵

The Prosecutor also establishes in the cited document that “impartiality in the proceedings at hand may be assessed in light of such indicators as, inter alia, connections between the suspected perpetrators and competent authorities responsible for investigation, prosecution or adjudication of the crimes as well as public statements, awards, sanctions, promotions or demotions, deployments, dismissals or reprisals in relation to investigative, prosecutorial or judicial personnel concerned.”¹¹⁴⁶

For the purposes of assessing the inability to investigate or genuinely prosecute in a particular case, the Prosecutor indicates that it “will consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to collect the necessary evidence and testimony, unable to obtain the accused, or is otherwise unable to carry out its proceedings.”¹¹⁴⁷ In conducting its evaluation, the Office may consider, inter alia, the ability of the competent authorities to exercise their judicial powers in the territory concerned; the absence of conditions of security for witnesses, investigators, prosecutors and judges or the lack of adequate protection systems; the absence of the required legislative framework

1143 Ibid, paragraph 51.

1144 Ibid, paragraph 52.

1145 Ibid, paragraph 53.

1146 Ibid, paragraph 54.

1147 Ibid, paragraph 56.

to prosecute the same conduct or forms of responsibility; the lack of adequate resources for effective investigations and prosecutions; as well as violations of fundamental rights of the accused.”¹¹⁴⁸

And finally, the Prosecutor considers that “when assessing unwillingness and inability, the Office considers whether any or a combination of the factors above impact on the proceedings to such an extent as to vitiate their genuineness. The complementarity assessment is made on the basis of the underlying facts as they exist at the time of the determination and is subject to revision based on change in circumstances.”¹¹⁴⁹

i. *Considerations of the Panel of Expert*

Next, this Panel will assess, on the one hand, whether there are or have been in the past relevant national investigations or prosecutions and, on the other, whether there is unwillingness to investigate or whether such investigation could have been vitiated by the lack of independence or impartiality of the Venezuelan justice system.

ii. *Absence of Justice*

In relation to the absence of justice, this Panel notes the very high level of impunity which exists in Venezuela in relation to human rights violations. Citing data from the annual reports of the Ministry of Public Prosecution for 2013 and 2014, the NGO COFAVIC has shown that only 1% of the reported violations of fundamental rights ever went to trial. In 2013, of 8196 cases only 117 cases of human rights violations went to trial. In 2014, there were only 105 trials out of a total of 8,049 cases. In 2015 and 2016, the Ministry of Public Prosecution did not publish any information on the number of cases of human rights violations.¹¹⁵⁰

In relation to the inactivity of the justice system, this Panel takes note of what was indicated by the United Nations Committee against Torture in its observations on the third and fourth periodic reports: in the context of the demonstrations held from February to July 2014, it observed that of the 185 investigations carried out by the Ministry of Public Prosecution for cruel treatment, only five indictments have been handed down.¹¹⁵¹ The OHCHR recorded in its August 2017 report, based on information provided by the

¹¹⁴⁸ Ibid, paragraph 57.

¹¹⁴⁹ Ibid, paragraph 58.

¹¹⁵⁰ COFAVIC, “Venezuela, Ejecuciones Extrajudiciales, 40 historias de 6385 vidas ignoradas 2012-2017”, 2017.

¹¹⁵¹ CAT, “Concluding observations on the combined third and fourth periodic reports of the Bolivarian Republic of Venezuela,” CAT/C/VEN/CO/3-4, December 12, 2014, paragraph 10, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/241/72/PDF/G1424172.pdf?OpenElement>

Ministry of Public Prosecution, that only 41 agents were noted as alleged perpetrators of 14 of the 124 deaths that occurred from April 1 to July 31, 2017.¹¹⁵²

In its annual report for 2016/2017, Amnesty International indicated that most of the individuals suspected of being culpable for crimes under international law and for human rights violations during the 2014 protests had yet to be brought to justice.¹¹⁵³

In all the cases that this Panel documented, the criminal investigations or proceedings initiated pointed to marginal or low-level perpetrators, even though this Panel has shown that there is evidence against the persons most responsible for the most serious crimes that have been committed.¹¹⁵⁴ This type of state response, which seeks to deny the existence of a state policy and create the appearance of justice, implies a form of inactivity that authorizes the opening of an investigation.¹¹⁵⁵

iii. *Lack of independence and impartiality*

Although the lack of justice, as demonstrated in the preceding Section, is sufficient to consider that the requirement of complementarity has been met, this Panel considers it necessary to proceed to analyze the existing lack of independence and impartiality in Venezuela.

As will be described in greater detail below, the lack of independence and impartiality of the Venezuelan Judicial branch has been a recurrent theme in the statements of witnesses in the public hearings conducted by the OAS General Secretariat, in reports by international organizations, and in reports by Venezuelan NGOs and international NGOs with a presence in Venezuela.

The International Commission of Jurists stated, in a September 2017 report: “The judiciary, as the result of judgments that advanced the political interests of the executive branch, has lost its essential and characteristic attributes, such as autonomy, independence, and legitimacy. The executive branch has blatantly used the judiciary, through the Supreme Court, to suppress the [National Assembly] and the Attorney General’s Office (*Fiscalía General de la Nación*) by means of a clear power struggle between

¹¹⁵² Cf. OHCHR, “Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela of April 1 to July 31, 2017”, Geneva, August 2017, page 15, http://www.ohchr.org/Documents/Countries/VE/HCRReportVenezuela_1April-31July2017_EN.pdf

¹¹⁵³ Amnesty International. “Venezuela 2016/2017”, <https://www.amnesty.org/en/countries/americas/venezuela/report-venezuela/>

¹¹⁵⁴ Pre-Trial Chamber I has observed that “evidence related, inter alia, to the appropriateness of the investigative measures, the amount and type of resources allocated to the investigation, as well as the scope of the investigative powers of the persons in charge of the investigation ... which are significant to the question of whether there is no situation of ‘inactivity’ at the national level, are also relevant indicators of the State’s willingness and ability genuinely to carry out the concerned proceedings. Cf. ICC, Pre-Trial Chamber I, Situation in Libya in the case of The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi, “Public Redacted Decision on the admissibility of the case against Abdullah Al-Senussi”, ICC-01/11-01/11, October 11, 2013, paragraph 210, https://www.icc-cpi.int/CourtRecords/CR2013_07445.PDF

¹¹⁵⁵ Cf. Office of the Prosecutor of the International Criminal Court, Policy Paper on Preliminary Examinations, November 2013, paragraph 48, https://www.icc-cpi.int/iccdocs/otp/otp-policy_paper_preliminary_examinations_2013-eng.pdf

these branches of the state.”¹¹⁵⁶ It next held: “The Supreme Court has been co-opted by the ruling party, becoming an appendage of the executive branch, and has ceased to exercise its constitutional function as the guarantor of the rule of law, human rights, and fundamental freedoms.”¹¹⁵⁷ And, in particular, analyzing the cases of protection of human rights, it explained: “the Supreme Court’s actions have meant profound regression and a lack of protection for people, opting instead to uphold a political defense of the government. Thus, the independence and autonomy of the judiciary have been seriously undermined, affecting the right of victims to obtain impartial justice and reparation for actions by agents of the State.”¹¹⁵⁸

iii.(a) *Independence*

The CAT¹¹⁵⁹ and the OHCHR¹¹⁶⁰, as well as the Inter-American Commission on Human Rights¹¹⁶¹ and the Inter-American Court of Human Rights agree in stating their concern over the lack of independence of judges, as the vast majority of judges do not have regular appointments, have no stability, and may be removed by the Executive at its discretion. The OHCHR went further, finding: “The judiciary ... is viewed as supportive of the Executive and appears to allow this branch to govern without adequate oversight, which undermines the separation of powers necessary for a functioning democracy¹¹⁶².”¹¹⁶³ Finally, the issue has also been followed by the United Nations mechanisms, as demonstrated by the 21 recommendations issued during the second round of the Universal Periodic Review of Venezuela, done in December of 2016, which are related to access to justice, and specifically, are mostly related to the independence of the judiciary.¹¹⁶⁴

1156 International Commission of Jurists, “The Supreme Court of Justice of Venezuela: An Instrument of the Executive Branch,” September 12, 2017, page 51, <https://www.icj.org/wp-content/uploads/2017/09/Venezuela-Suprem-Court-Publications-Reports-Thematic-reports-2017-ENG.pdf>

1157 *Ibid.*

1158 *Ibid.*

1159 CAT, “Concluding observations on the combined third and fourth periodic reports of the Bolivarian Republic of Venezuela,” CAT/C/VEN/CO/3-4, December 12, 2014, paragraph 16, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/241/72/PDF/G1424172.pdf?OpenElement>

1160 OHCHR, “Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela of April 1 to July 31, 2017,” Geneva, August 2017, page 4, http://www.ohchr.org/Documents/Countries/VE/HCRReportVenezuela_1April-31July2017_EN.pdf

1161 IACHR, “2016 Annual Report, Chapter IV.B, Venezuela”, paragraph 57, <http://www.oas.org/en/iachr/docs/annual/2016/docs/InformeAnual2016cap4B.Venezuela-en.pdf>.

1162 In 2014, the Committee against Torture stated its concern over “the judiciary’s lack of independence from the executive branch”. CAT, “Concluding observations on the combined third and fourth periodic reports of the Bolivarian Republic of Venezuela”, CAT/C/VEN/CO/3-4, December 12, 2014, paragraph 16, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/241/72/PDF/G1424172.pdf?OpenElement>. In 2015 the Human Rights Committee expressed its concern “at the situation of the judiciary in the State party, in particular with regard to its autonomy, independence and impartiality”. ICC, “Concluding observations on the fourth periodic report of the Bolivarian Republic of Venezuela”, CCPR/C/VEN/CO/4, August 14, 2015, paragraph 15, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/VEN/CO/4&Lang=En

1163 OHCHR, “Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela of April 1 to July 31, 2017”, Geneva, August 2017, page 3-4, http://www.ohchr.org/Documents/Countries/VE/HCRReportVenezuela_1April-31July2017_EN.pdf

1164 UN, “Report of the Working Group on the Universal Periodic Review, Bolivarian Republic of Venezuela”, A/HRC/24/6, December 27, 2016, Recommendations 154-174, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/441/42/PDF/G1644142.pdf?OpenElement>. See also, UN, “Report of the Working Group on Universal Periodic Review, Bolivarian Republic of Venezuela, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review”, A/HRC/34/6/Add.1, March 13, 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/055/93/PDF/G1705593.pdf?OpenElement>

The problem of the provisional status of judges, which undercuts judicial independence, has affected Venezuela for many years before the period studied by this Panel, and before the present administration. The IACHR, in its 2009 report “Democracy and Human Rights in Venezuela,” explained that while the problem goes back many years, it “has increased and worsened since the judicial restructuring process began with the enactment of the 1999 Constitution.”¹¹⁶⁵ The IACHR itself has been monitoring the information provided by various sources on this issue since 2003, and in the 2016 Annual Report concluded: “Continuing with the monitoring the Commission performs of access to justice and the fragile status of judicial independence, it has observed in the past that a large number of judges in Venezuela have provisional appointments and can be removed without a disciplinary proceeding, a situation that persisted in 2016.”¹¹⁶⁶

Specifically referring to the members of the Supreme Court of Justice, the IACHR finds that their lack of independence is related to the use of inadequate procedures for selecting the judges and the lack of guarantees of stability in the position.¹¹⁶⁷

With regards the selection of the members of the Court, in its annual reports the Commission has noted the various problems that this has entailed in practice; the process is highly politicized. Accordingly, in its 2002 Annual Report the IACHR noted that the appointment was made without complying with the constitutional requirement of having the candidates evaluated by a Judicial Nominations Committee and a Nominations Evaluation Committee of the Citizen Power (*el Poder Ciudadano*).¹¹⁶⁸ In addition, the Commission has questioned the provision in the Organic Law of the Supreme Court of 2004 that allows for the members of the Court to be selected by simple majority, without complying with the requirement that they must enjoy a broad political consensus. It has also been critical of the creation, by that law, of new grounds for suspending and removing the members of the Supreme Court.¹¹⁶⁹ It has also observed that since the

1165 IACHR, “Democracy and Human Rights in Venezuela”, December 20, 2009, paragraph 253, <https://www.cidh.oas.org/pdf%20files/VENEZUELA%202009%20ENG.pdf>

1166 IACHR, “2016 Annual Report, Chapter IV on Venezuela”, paragraph 57, <http://www.oas.org/en/iachr/docs/annual/2016/docs/InformeAnual2016cap4B.Venezuela-en.pdf>

1167 IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 79, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

1168 The IACHR observed in its 2002 Annual Report that the selection of the then-judges of the Supreme Court was done based on the Special Law for the Ratification or Designation of Public Officials of the Citizen Power and Members of the Supreme Court of Justice, without respecting the mechanisms established by the Constitution, which provided for candidates to be evaluated by the Judicial Nominations Committee and a Nominations Evaluations Committee. IACHR, “2002 Annual Report, Chapter IV on Venezuela”, paragraph 26, cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela”, December 31, 2017, paragraph 80, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

1169 IACHR, “2004 Annual Report, Chapter V on Venezuela”, paragraphs 174-175, cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela”, December 31, 2017, paragraph 80, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

Constitution does not set the number of members of the Supreme Court, the National Assembly has been able to modify the number of members discretionally.¹¹⁷⁰

And with regards to stability in the position, the Inter-American Commission argues: “According to information received by the Commission, of the 84 TSJ judges appointed since it was established, only 7 reportedly served the 12-year term established in the Constitution.”¹¹⁷¹ “Almost two-thirds (60 percent) of those who did not complete the term took early retirement.”¹¹⁷² It concludes by ensuring that “the information available suggests that retirement was by no means always voluntary.”¹¹⁷³

The Constitutional Chamber of the Supreme Court of Justice of Venezuela established, in 2007: “Provisional judges [...] occupy judicial positions, but they do not enjoy the condition of career judges, since they have not entered through a public competition in which they would have been evaluated through different tests (written, practical, oral). Their appointment is made by the Judicial Commission, by a delegation made up by the Full Court of the Supreme Court of Justice, based on the need to fill judicial positions while the mentioned restructuring and reorganization process of the Judicial Power culminates. [...] Without doubt, there is a distinction between career judges and provisional judges: The first acquire the title after winning a public competition; on the other hand, provisional judges are appointed discretionally, after an analysis of their credentials. Career judges enjoy stability and may only be punished or dismissed from their position if it is proven, through an oral and public hearing with guarantees of defense ... that they have committed any of disciplinary offenses established in the Organic Law of the Council of the Judiciary and the Law on the Judicial Career. This is not the case for provisional judges, who may be separated from their position in the same way in which they were appointed: discretionally.”¹¹⁷⁴

Since 2007, the Inter-American Court of Human Rights has condemned Venezuela on at least three occasions for the existence of a widespread pattern of lack of judicial independence in which judges are removed discretionally and without the right to an effective remedy. These cases, involving judges who have ruled

1170 It increased the number of members of the Supreme Court from 20 to 32. This was a matter of concern for the IACHR, in view of the dangers implicit in the National Assembly being able to change the number of its members at any time [IACHR, Report on the Situation of Human Rights in Venezuela (2003), paragraph 158]. It was also noted by the UN Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, who indicated that this change would enable “the coalition in power in the National Assembly to appoint 12 judges, thereby obtaining a strong majority of judges on the Supreme Court...,” which created a politicized judicial branch. UN, “Report of the Special Rapporteur on the independence of judges and lawyers”, E/CN/4/2005/60/Add.1, March 18, 2005, paragraph 167. With respect to this point, it should be noted that Article 262 of the Constitution of Venezuela does not establish the number of judges that the Supreme Court should have; cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela”, December 31, 2017, paragraph 80, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

1171 *Acceso a la Justicia*, “El TSJ: La joya que pocos han podido retener”, March 30, 2017, page 1, IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 83, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

1172 Ibid.

1173 IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report” December, 2017, paragraph 83, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

1174 Cf. Judgment No. 2414 of the Constitutional Chamber of the Supreme Court handed down on December 20, 2007 (file of annexes to the answer to the complaint, Tome II, annex 23, folios 1075 and 1076), cited in Inter-American Court of Human Rights, *Reverón Trujillo v. Venezuela*, “Judgment of June 30, 2009” (Preliminary Objection, Merits, Reparations and Costs), paragraph 102, http://www.corteidh.or.cr/docs/casos/articulos/seriec_197_ing.pdf

against the interests of the Administration, which then retaliates by removing them are the *Case of Apitz Barbera, Rocha Contreras and Ruggeri Cova*¹¹⁷⁵; the *Case of María Cristina Reverón Trujillo*¹¹⁷⁶; and the *Case of Mercedes Chocrón Chocrón*¹¹⁷⁷.

Following the United Nations Basic Principles on the Independence of the Judiciary, the Inter-American Court held that “an adequate appointment process” and “tenure in the position” are among the “guarantees ... derived from ... judicial independence.”¹¹⁷⁸ The Basic Principles highlight as preponderant elements for the appointment of judges integrity, ability, and appropriate legal training or qualifications.¹¹⁷⁹ In this regard, the Inter-American Court of Human Rights held that “judges must be selected exclusively based on their personal merits and professional qualifications, through objective selection and continuance mechanisms that take into account the peculiarity and specific nature of the duties to be fulfilled.”¹¹⁸⁰

As regards the guarantee of tenure of judgeships, the Human Rights Committee has indicated that judges may only be removed for grave disciplinary breaches or incompetence and in keeping with fair procedures that ensure their objectivity and impartiality as per the constitution or the law.¹¹⁸¹ Moreover, the Committee has said: “The dismissal of judges by the executive, e.g. before the expiry of the term for which they have been appointed, without any specific reasons given to them and without effective judicial protection being available to contest the dismissal is incompatible with the independence of the judiciary.”¹¹⁸² The Inter-American Court of Human Rights explained that in order for this guarantee to be respected, “the authority in charge of the process for the dismissal of a judge shall be allowed to act independently and impartially in the proceedings established for that effect and allow the exercise of the right to a defense.”¹¹⁸³ This is so since the free removal of judges foments an objective doubt in the observer regarding the effective possibility they may have to decide specific controversies without fearing retaliation.”¹¹⁸⁴

¹¹⁷⁵ Inter-American Court of Human Rights, *Case of Apitz Babera et al. (“First Court of Administrative Disputes”) v. Venezuela*, “Judgment of August 5, 2008” (Preliminary Objection, Merits, Reparations and Costs), http://www.corteidh.or.cr/docs/casos/articulos/seriec_182_ing.pdf

¹¹⁷⁶ Inter-American Court of Human Rights, *Reverón Trujillo v. Venezuela*, “Judgment of June 30, 2009” (Preliminary Objection, Merits, Reparations and Costs), http://www.corteidh.or.cr/docs/casos/articulos/seriec_197_ing.pdf

¹¹⁷⁷ Inter-American Court of Human Rights, *Case of Chocrón Chocrón v. Venezuela*, “Judgment of July 1, 2011”, (Preliminary objection, merits, reparations and costs), http://www.corteidh.or.cr/docs/casos/articulos/seriec_227_ing.pdf

¹¹⁷⁸ Inter-American Court of Human Rights, *Reverón Trujillo v. Venezuela*, “Judgment of June 30, 2009”, (Preliminary Objection, Merits, Reparations and Costs), paragraph 70, http://www.corteidh.or.cr/docs/casos/articulos/seriec_197_ing.pdf

¹¹⁷⁹ Cf. UN, *Basic Principles of the Independence of the Judiciary*, 1985, Principle 10, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>

¹¹⁸⁰ Inter-American Court of Human Rights, *Reverón Trujillo v. Venezuela*, “Judgment of June 30, 2009” (Preliminary Objection, Merits, Reparations and Costs), paragraph 72, http://www.corteidh.or.cr/docs/casos/articulos/seriec_197_ing.pdf

¹¹⁸¹ Cf. UN, *Human Rights Committee, General Comment No. 32, Article 14*, paragraph 20, <http://www.refworld.org/docid/478b2b2f2.html>

¹¹⁸² Ibid.

¹¹⁸³ Cf. Inter-American Court of Human Rights, *Case of the Constitutional Court v. Peru*, “Judgment of January 31, 2001”, (Merits, Reparations and Costs), paragraph 74, http://www.corteidh.or.cr/docs/casos/articulos/seriec_71_ing.pdf. See also, Inter-American Court of Human Rights, *Case of Apitz Babera et al. (“First Court of Administrative Duties”) v. Venezuela*, “Judgment of August 5, 2008” (Preliminary Objection, Merits, Reparations and Costs), paragraph 44, http://www.corteidh.or.cr/docs/casos/articulos/seriec_182_ing.pdf

¹¹⁸⁴ Inter-American Court of Human Rights, *Reverón Trujillo v. Venezuela*, “Judgment of June 30, 2009” (Preliminary Objection, Merits, Reparations and Costs), paragraph 78, http://www.corteidh.or.cr/docs/casos/articulos/seriec_197_ing.pdf

The possibility of being removed “as a matter of discretion” as was recognized by the Supreme Court itself, impairs judicial independence insofar as judges are threatened to follow instructions or refrain from contravening both the appointing entity and the sanction-imposing agency.¹¹⁸⁵

In June 2014, the Special Rapporteur for the independence of judges and lawyers, Gabriela Knaul, expressed her concern over “the interference of the political branches in the judicial branch and the increase in the incidents that violate the human rights of Venezuelan judges and prosecutors.”¹¹⁸⁶ The Rapporteur noted having received “innumerable reports on the lack of independence of judges and prosecutors,” and noted that one of the key problems was “the lack of career judges, and the fact that most judges have short-term appointments,” which “weakens the judicial system.”¹¹⁸⁷

Chapter IV of the 2016 Annual Report of the IACHR refers to a study by the *Observatorio Venezolano de la Justicia* that found that approximately two-thirds of the judges (67.35%) were not career judges, that is, they have not been appointed through the public competitive process outlined in the Constitution, and as a result they do not enjoy stability and their removal is discretionary.¹¹⁸⁸ It found that the Judicial Branch does not meet the obligation of accounting for its performance, and reporting on its budget, and that it has failed to provide statistics on the courts for the last five years.¹¹⁸⁹

In that same Annual Report, the IACHR explained that the Constitutional Chamber of the Supreme Court of Justice ratified the powers of the Judicial Commission of the Supreme Court to remove discretionally all the provisional judges, indicating that the judicial disciplinary jurisdiction does not have the power to bring matters against a provisional judge who commits some irregularity.¹¹⁹⁰ PROVEA indicated that this means that fewer than 700 of the 2,000 judges in Venezuela may be subjected to proceedings without due process guarantees, since they are career judges with a regular appointment, and that the remaining 66%, as they are provisional, may be removed by the Judicial Commission at its discretion at any time with no prior procedure, without any legal ground, nor any right to a judicial remedy.¹¹⁹¹

¹¹⁸⁵ Cf. *Ibid*, paragraph 81.

¹¹⁸⁶ Statements made in news articles. According to the information available, they were made in the context of the event titled “Strengthening the Rule of Law in Venezuela,” held at the same time as the 26th session of the UN Human Rights Council, in Brussels (Belgium). See *El Nacional*, “ONU “preocupada” por falta de independencia de jueces y fiscales en Venezuela”, June 11, 2014, http://www.el-nacional.com/noticias/politica/onu-quotpreocupadaquot-por-falta-independencia-jueces-fiscales-venezuela_110791

¹¹⁸⁷ Statements made in news articles. According to the information available, they were made in the context of the event titled “Strengthening the Rule of Law in Venezuela,” held at the same time as the 26th session of the United Nations Human Rights Council, in Brussels (Belgium). *El Nacional*, “ONU “preocupada” por falta de independencia de jueces y fiscales en Venezuela”, June 11, 2014, http://www.el-nacional.com/noticias/politica/onu-quotpreocupadaquot-por-falta-independencia-jueces-fiscales-venezuela_110791

¹¹⁸⁸ OVI, “Informe sobre el desempeño del poder judicial venezolano (2001-2015)”, page 55, cited in IACHR, “2016 Annual Report, Chapter IV on Venezuela”, paragraph 58, <http://www.oas.org/en/iachr/docs/annual/2016/docs/informeAnual2016cap4B.Venezuela-en.pdf>

¹¹⁸⁹ *Ibid*, Conclusions, cited in IACHR, “2016 Annual Report, Chapter IV on Venezuela”, paragraph 58, <http://www.oas.org/en/iachr/docs/annual/2016/docs/informeAnual2016cap4B.Venezuela-en.pdf>

¹¹⁹⁰ TSJ, Judgment No. 1082 of August 11, 2015; See *Provea*, Annual Report 2015, “Provisionalidad de jueces sigue erosionando independencia del Poder Judicial”, cited in IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela”, December 31, 2017, paragraph 85, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

¹¹⁹¹ *Ibid*.

Former Judge Ralenis Tovar recognized, in the public hearings hearing conducted by the OAS General Secretariat, the lack of independence and impartiality that exists in relation to the crimes against humanity that have been committed in Venezuela. She recounted that prior to signing the arrest warrant for Mr. Leopoldo López she received a phone call from the President of the Supreme Court of Justice, Gladys Gutiérrez, as she was heading home, asking her to go back to the courthouse, since she needed her there to issue some arrest warrants.¹¹⁹²

She stated that on arriving at her office, she found the entire building taken over both by military intelligence agencies, under the Executive Branch, and the Bolivarian National Intelligence Service, as well as the National Guard. They were accompanied by personnel from those security and intelligence forces, which also entered the building. When they gave her the arrest warrant for Leopoldo López for her signature, she asked what it was all about, and they told her it was an order she had to sign. She answered that it could wait until the next day, so she could review it carefully, to see if she was in agreement, to which they answered in the negative. On observing her reaction, one of the persons from the General Directorate of Military Intelligence told her: “Do you want to be like the second Judge Afuni?”¹¹⁹³

Former prosecutor Franklyn Nieves recounted his version of the same incident and the pressure that he suffered to get him to seek the arrest of Mr. Leopoldo López. He said that when he arrived at the SEBIN, an official approached him to tell him that Manuel Bernal, the then new director, was sending a message that “they needed some arrest warrants upon instructions of Nicolás Maduro.” He went on to say that once in the office of former Judge Tovar he handed her the documentation, clarifying that there wasn’t sufficient evidence to issue those arrest warrants. According to Mr. Nieves, the then-judge signaled to him to say nothing, since the SEBIN official was outside. He said that when he was still in the former Judge’s office, Tovar’s telephone rang, and it was the chief judge of the Judicial Circuit for the Metropolitan Area of Caracas, Zinnia Briseño, who told him that she told her that “she had already received the arrest warrants and that they should be decided upon without wasting any time.” Finally, Mr. Nieves received the arrest warrant, delivered it to a SEBIN official, and went home.¹¹⁹⁴

Former Judge Tovar explained that over the course of the Leopoldo López case there were many irregular situations: for example, they would order her to request the case file, each decision that had to be made required the approval of the chief judge of the Judicial Circuit and of Supreme Court for them to arrange the hearings, what should be put in each request, so as to approach it differently. In response to this assertion she was asked if the Supreme Court of Justice performs any function, which was answered in the negative.¹¹⁹⁵

1192 Testimony of Ralenis Tovar at Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 16, 2017, <https://www.youtube.com/watch?v=ca5zYBQYcVE>

1193 Ibid.

1194 Testimony of Franklyn Nieves at Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, November 16, 2017, <https://www.youtube.com/watch?v=g6zUBXprxQ4>

1195 Testimony of Ralenis Tovar at Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 16, 2017, <https://www.youtube.com/watch?v=ca5zYBQYcVE>

In his statement former prosecutor Nieves said that on February 18, 2014 when López turned himself in voluntarily, Nelson Mejía, the Director for Common Crimes of the Office of the Attorney General, called them in to review the offenses of which he would be accused, because initially the arrest warrant was for nine offenses, but none of these could be shown. Nieves told them to “draw up a brief and ask that he be joined to the case involving the students.” Continuing with the account, Nieves said that “the one who took charge of taking López to the Palace of Justice was Diosdado Cabello, with General Benavente; they set out to draw up a police report with María Alejandra Poleo, who was one of the coordinators of the prosecutors.” Finally, he recounted that “the 16th court of review was constituted in violation of due process. The hearing lasted all night and as the judge already had the order to impose pretrial detention, at 6:00 she issued that order, and that all this was coordinated by a rapporteur of the Supreme Court, Federico Fuenmayor, who was receiving instructions from Gladys Gutiérrez.” Nieves explained that he had to make many decisions that went against his convictions since Mejía threatened him, saying he would open a disciplinary or criminal investigation, which was quite common and was happening to other prosecutors. On March 19, 2014, once again Mejía called him to his office and on arriving observed that two persons were there. He told him that they were the experts who would perform an analysis of López’s speech and his 700 tweets. From that moment Mejía began to oversee the production of those reports and he himself introduced additions to tie López to the facts for which he was being investigated.¹¹⁹⁶

At the October 16, 2017, hearing of the OAS General Secretariat, former Judge Tovar declared that the Supreme Court also intervened in other decisions that she had to make. She recalled that one of the hearings in the case of Leopoldo López was reviewed three times. She had to send it by mail, and it was returned with changes, and she could not print it until getting the definitive approval. She also said that she was repeatedly forced to do things, in respect of legal actions, that were not in order. For example, in one case the defense moved to present two experts, and she was asked to deny the motion, which was unlawful. Finally, she said that nowadays it is known that there are judges who favor the Venezuelan regime, and they are sent the cases to rule in the government’s favor.¹¹⁹⁷ Along the same lines, at the September 14, 2017 conducted before this Panel, Julio Henríquez stated that he had evidence that the judges received specific instructions.¹¹⁹⁸

The former judge also recalled that on the day of the López hearing, two hours before it ended, President Maduro announced on a national broadcast (*cadena nacional*) that the pretrial detention of Leopoldo López at the military prison of Ramo Verde was already decided upon.¹¹⁹⁹ She said that after this episode she

1196 Testimony of Franklyn Nieves at Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, November 16, 2017, <https://www.youtube.com/watch?v=g6zUBXprxO4>

1197 Testimony of Ralenis Tovar at Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 16, 2017, <https://www.youtube.com/watch?v=ca5zYBQYcVE>

1198 Testimony of Julio Henríquez at Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 14, 2017, <https://www.youtube.com/watch?v=KRXOQaJPzRk>

1199 Testimony of Ralenis Tovar at Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 16, 2017, <https://www.youtube.com/watch?v=ca5zYBQYcVE>

received numerous threats, and that patrols from the General Directorate of Military Counterintelligence were continuously making the rounds by her house, even when she was no longer in the Judicial Branch. She mentioned that she was also persecuted through social networks, and even in the Judicial Branch for having resigned.¹²⁰⁰

Finally, former Judge Tovar recounted the case of Walid Makled, who was convicted of narcotics trafficking. She noted that in that case, the presiding Judge, Alí Paredes, had two orders, one issued by Makled's people, which was to conduct the trial and arrive at a fair conviction, otherwise his family would suffer the consequences, and also an order from the National Executive which sought to have Makled sentenced to 30 years in prison. As the judge conducted a fair trial and convicted him to 14 years and 6 months, his arrest was ordered.¹²⁰¹

The attack against Judge Afiuni by the Executive was recalled in several hearings. Though the attack on Judge Afiuni is outside of the temporal framework of the facts studied in this report, it is necessary to present the relevant facts since, as indicated by several declarants, the effects of that attack are projected into the present day insofar as "the case of Judge Afiuni" continues to be used to threaten judicial officers. The IACHR indicated that the case of Judge Afiuni "sends a strong signal – to society and to other judges – that the judiciary does not enjoy the freedom to adopt rulings that go against government interests¹²⁰² and, if they do so, that they face the risk of being removed from office."¹²⁰³ The cruel and inhuman treatment of Judge Afiuni by the government when she was in prison led the Inter-American Court to issue provisional measures on behalf of her life and integrity on December 10, 2010.¹²⁰⁴

The 31st Judge of Control of the Metropolitan Area, María Lourdes Afiuni Mora, decided on December 10, 2009, to replace the custody measure by which citizen Eligio Cedeño was being deprived of liberty by a less burdensome precautionary measure¹²⁰⁵, since as of that date he had been deprived of liberty with more than two years, in violation of the maximum period for pretrial detention provided for in the Organic Code of Criminal Procedure (two years)¹²⁰⁶, based on Opinion No. 10/2009 (Venezuela) adopted by the Working Group on Arbitrary Detention of the Human Rights Council on September 1, 2009. In that opinion the

1200 Ibid.

1201 Ibid.

1202 IACHR, "Democracy and Human Rights en Venezuela", December 30, 2009, Chapter III, paragraph 301, <http://www.cidh.org/countryrep/Venezuela2009eng/VE09CHAPIENG.htm>

1203 IACHR, "2012 Annual Report, Chapter IV on Venezuela", 2012, paragraph 496, <http://www.oas.org/en/iachr/docs/annual/2012/toc.asp>

1204 IACHR, "Resolución del Presidente de la Corte interamericana de Derechos Humanos, Asunto María Lourdes Afiuni", "December 10, 2010, http://www.corteidh.or.cr/docs/medidas/Afiuni_se_01.pdf

1205 According to Opinion No. 20/2010 of September 3, 2010 of the United Nations Working Group on Arbitrary Detention, Judge Afiuni Mora ordered the release on bond of Eligio Cedeño in the full exercise of her judicial functions, ordering a less cumbersome precautionary measure that included the prohibition on Eligio Cedeño leaving the national territory; withholding his passport; and appearing before the court every two weeks.

1206 IACHR, "Democracy and Human Rights en Venezuela", December 30, 2009, Chapter III, paragraph 297, <http://www.cidh.org/countryrep/Venezuela2009eng/VE09CHAPIENG.htm>

Working Group on Arbitrary Detention declared the deprivation of liberty of Mr. Cedeño to be arbitrary, based on his prolonged pretrial detention.¹²⁰⁷

Judge Afiuni was arrested, minutes after handing down her ruling, by agents of the Public Security Police under the Directorate of Intelligence and Prevention Services \, who did not state the reason for the arrest or the authority that had ordered it, nor did they show any judicial warrant.¹²⁰⁸ The next day, on a national radio and television broadcast, President of the Republic Hugo Chávez called Judge Afiuni a “bandit” (“*bandida*”) and stated: “I call for toughness against this judge, I even told the president of the Supreme Court [of Justice, Luisa Estela Morales], and I tell the National Assembly: a law must be passed because a judge who frees an outlaw is much worse than the outlaw himself. It is infinitely more serious for a Republic, for a country, that an assassin, because he pays, is freed by a judge. It is more serious than an assassination; therefore, we must apply the maximum penalty against this judge and against others who do this. I call for thirty years in prison in the name of the dignity of the country.”¹²⁰⁹

At the hearing for her trial, Afiuni told the judge about the torture, mistreatment, and rape she alleges having suffered during her deprivation of liberty at the National Institute of Female Orientation; and she explained to the court “how they destroyed her vagina, anus, and bladder when women guards of the INOF and officers of the Ministry of Justice raped her,”¹²¹⁰ among other serious human rights violations. Judge Afiuni’s defense also recalled that Afiuni had been transferred repeatedly to the “Dr. Carlos Arvelo” Military Hospital for medical exams, and that on one occasion, “to conduct a gynecological exam they made her strip in the presence of more than 20 officials of the GNB.”¹²¹¹

Since February 2011 Judge Afiuni has been under house arrest, having been transferred home after undergoing emergency surgery.¹²¹² As noted by the IACHR in its 2012 annual report¹²¹³, on September 16, 2012, it was learned that the building where she is confined was attacked with more than 20 gunshots from what is presumed to be a rifle. The building and place where Afiuni is confined did not suffer major

¹²⁰⁷ IACHR, “2012 Annual Report, Chapter IV on Venezuela”, paragraph 485, <http://www.oas.org/en/iachr/docs/annual/2012/toc.asp>

¹²⁰⁸ IACHR, “Democracy and Human Rights en Venezuela”, December 30, 2009, Chapter III, paragraph 297, <http://www.cidh.org/countryrep/Venezuela2009eng/VE09CHAPIENG.htm>; United Nations Human Rights Council, Working Group on Arbitrary Detention, Opinion No. 20/2010 (Bolivarian Republic of Venezuela) adopted September 3, 2010, in relation to the case of the detention in Venezuela of Judge María Lourdes Afiuni Mora, paragraph 7.

¹²⁰⁹ IACHR, “Democracy and Human Rights en Venezuela”, December 30, 2009, Chapter III, paragraph 298, <http://www.cidh.org/countryrep/Venezuela2009eng/VE09CHAPIENG.htm>

¹²¹⁰ *El Universal*, “Afiuni rompió el silencio y habló en el juicio”, June 30, 2015, <http://www.lapatilla.com/site/2015/07/25/que-fue-de-la-juez-afiuni/>; and, ABC.es, “¿Qué fue de la juez Afiuni?”, July 24, 2015, <http://www.abc.es/internacional/20150724/abci-jueza-afiuni-venezuela-201507232152.html>; and, La Patilla, “¿Qué fue de la juez Afiuni?”, July 25, 2015, <http://www.lapatilla.com/site/2015/07/25/que-fue-de-la-juez-afiuni/>

¹²¹¹ IACHR, “Annual Report 2015, Chapter IV.B Venezuela”, paragraph 277, <http://www.oas.org/en/iachr/docs/annual/2015/doc-en/informeanual2015-cap4-venezuela-en.pdf>

¹²¹² IACHR, “2012 Annual Report, Chapter IV on Venezuela”, paragraph 488, <http://www.oas.org/en/iachr/docs/annual/2012/toc.asp> “gaphmony of David Smolanksy at the ions and Costs”*tute.ress a demonstration*

¹²¹³ *Ibid*, paragraph 494.

damage, unlike the apartment upstairs, which received many gunshots in the window.¹²¹⁴ As of the date of publication of this report, Judge Afiuni was still subject to a criminal proceeding against her, with grave unjustified delays, while she is suspended as a judge, has restrictions on her freedom of movement, is required to regularly present herself before the courts, and is barred from making any public statements.

Julio Henríquez stated in the public hearings conducted by the OAS General Secretariat that what they did to Judge Afiuni in 2009 was a “milestone for perverting and politicizing the judicial system.” He stated that “what was sent was a message that those judges who want to exercise their independence would suffer the same fate.”¹²¹⁵ He concluded that based on what happened to Judge Afiuni, “it is highly unusual to find a judge in Venezuela who acts independently.”¹²¹⁶ Along the same lines, former prosecutor Franklyn Nieves argued that “with this incident, many judges and prosecutors were intimidated, and there began the law of fear against judges and prosecutors, who could not make a decision adverse to the regime because they knew what the consequences would be.”¹²¹⁷

Finally, at the public hearing of September 14, 2017 before this Panel, Mr. Julio Henríquez explained that “the judges do not act to carry out the law, but to get the Executive to remain in power.” And he concluded: “there is no longer a façade, the Regime has imposed illegitimate institutions that facilitate the implementation of state policies that satisfy the elements of the crime of persecution, ensuring impunity for their own crimes.”¹²¹⁸

Herbert García Plaza echoed this statement in the hearing on September 15, 2017 when he stated that “it is a secret to no one, it is in fact a notorious public fact in the communications media that justice in Venezuela answers only to the Government. In other words, it is the National Executive that issues orders to open or close judicial proceedings.”¹²¹⁹

At the OAS General Secretariat hearing of October 17, 2017, Carlos Vecchio concluded: “the branches of government are used in Venezuela to persecute those who think differently. There is no justice. The decision is made by Nicolás Maduro and the so-called judges, then implement the decision made by Nicolás Maduro. The trial begins from the opposite end in Venezuela: first you are guilty, I hand down your judgment, and

1214 Ultimas Noticias.com, “Disparan a la Residencia de la Juez María Afiuni”, <http://www.ultimasnoticias.com.ve/noticias/actualidad/sucesos/la-foto--el-disparo-en-la-casa-de-afiuni.aspx>

1215 Testimony of Julio Henríquez at Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 14, 2017, <https://www.youtube.com/watch?v=KRX0QaJPzRk>

1216 Ibid.

1217 Testimony of Franklyn Nieves at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, , November 16, 2017, <https://www.youtube.com/watch?v=g6zUBXprxQ4>

1218 Testimony of Julio Henríquez at Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 14, 2017,, September 14, 2017, <https://www.youtube.com/watch?v=KRX0QaJPzRk>

1219 Testimony of Herbert García Plaza at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, , September 15, 2017, <https://www.youtube.com/watch?v=cKmTJ79prKE>

then I am going to see how I can justify it, how I can implement it, and how I issue that arrest warrant.” And he added, “The branches of government in Venezuela are managed and controlled politically. And the weapon that has been used the most is the Judicial Branch, where it is used simply without evidence, without proof to persecute dissidents. And those are the constant threats to which the political leaders and everyday Venezuelans are subjected. So, there is no possibility that we are going to have a timely response from the Venezuelan justice system in today’s Venezuela.”¹²²⁰

As evidence of the type of orders issued by the Executive Branch and implemented by the Judicial Branch, David Smolansky explained that the criminal cases of Gustavo Marcano, Carlos García, Alfredo Ramos, Ramón Muchacho, and his own case all have the same judgment: the words are identical, and the only thing that the Constitutional Chamber changed was the name and the document number. He also said that these were decisions that were made weeks after Maduro ordered justice against the “fascist, stateless, and terrorist” mayors who were impeding freedom of movement.¹²²¹

As indicated in the testimony by former prosecutor Franklyn Nieves, the attacks on independence were not only against judges, but also included prosecutors. The IACHR has already stated its concern over the situation of prosecutors in Venezuela, recalling that “in addition to the possible undermining of their independence and impartiality that could arise from the constant removals and new appointments, the provisional status and resultant lack of tenure of the civil servants responsible for initiating and pursuing criminal investigations could also necessarily lead to difficulties in identifying, pursuing, and concluding specific lines of investigation as well as in meeting the procedural deadlines set for the investigation phase. Changes in investigating prosecutors have a negative impact on the pursuit of the corresponding investigations in terms of, for instance, the collection and ongoing assessment of evidence.”¹²²²

According to the information available at the official portal of the Ministry of Public Prosecution, as of 2016 none of the prosecutors in the prosecutorial offices with national jurisdiction hold regular appointments; rather, of the 208 prosecutors 84 are provisional and 124 are auxiliary.¹²²³ That means that prosecutors are also appointed and removed discretionally.

Former prosecutor Nieves stated in the public hearing that “that lack of justice [the attack on Judge Afiuni] is what has made it possible to use the punitive power of the State to criminalize those who think differently. The prosecutorial authority did not escape that reality.” He next explained that in 2017 “the

¹²²⁰ Testimony of Carlos Vecchio at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, October 17, 2017, <https://www.youtube.com/watch?v=iH9oh8SdhIU>

¹²²¹ Testimony of David Smolansky at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, , October 17, 2017, <https://www.youtube.com/watch?v=iH9oh8SdhIU>

¹²²² IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela”, December 31, 2017, paragraph 265, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

¹²²³ Ministry of Public Prosecution, reviewed October 28, 2016, cited in IACHR, “2016 Annual Report, Chapter IV on Venezuela”, paragraph 63, <http://www.oas.org/en/iachr/docs/annual/2016/docs/InformeAnual2016cap4B.Venezuela-en.pdf>

National Constituent Assembly adopted an emergency decree by which it removed the Attorney General and disqualified her from holding public office under the argument that a renewal was needed in the institution and that it was part of the struggle against impunity. The same day they militarized all the offices of the Office of the Attorney General and did not allow any staff members in, not even to recover their belongings. After Tarek William Saab was sworn in as the new Attorney General by the National Constituent Assembly he removed more than 70% of the prosecutors, and then proceeded to appoint prosecutors sympathetic to the government.”¹²²⁴

Furthermore, the lack of independence of the Judicial Branch is evident in the efforts by the Judicial Branch and the Electoral Branch to limit the authorities of the Legislative Branch, especially after the December 2015 legislative elections, which gave the majority in the National Assembly to the opposition Mesa de Unidad Democrática (MUD) coalition.

iii.(b) *Impartiality*

It is understood that impartiality “demands that the judge acting in a specific dispute approach the facts of the case subjectively, free of all prejudice and also offer sufficient, objective guarantees to exclude any doubt the parties or the community might entertain as to his or her lack of impartiality.”¹²²⁵ PROVEA has denounced that the decisions of the Supreme Court mostly “favor the positions of the government,”¹²²⁶ and that certain actions or statements by high-level officials also reflect the alleged meddling of the Executive Branch in the Judicial Branch.¹²²⁷ The most evident case was in the speech opening the 2014 judicial year, when the Chief Judge of the Supreme Court announced that “... the first steps” were being taken “to adapt this institution and subordinate it to the agreed interpretation of the Constitutional provisions under the *Plan de la Patria* 2013-2019.”¹²²⁸

¹²²⁴ Testimony of Franklyn Nieves at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, November 16, 2017, <https://www.youtube.com/watch?v=g6zUBXprxQ4>

¹²²⁵ Inter-American Court of Human Rights, Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela, “Judgment of August 5, 2008” (Preliminary Objection, Merits, Reparations and Costs, paragraph 56, http://www.corteidh.or.cr/docs/casos/articulos/seriec_182_ing.pdf

¹²²⁶ PROVEA, “*Situación de los derechos humanos en Venezuela*”, Annual Report 2013. Caracas, May 5, 2014, page 341, <https://www.derechos.org.ve/informe-anual/informe-anual-enero-diciembre-2013>

¹²²⁷ Ibid, page 342.

¹²²⁸ See statements in: El Universal, “*Gutiérrez: TSJ inició proceso para adaptarse al Plan de la Patria*”, January 24, 2014, <http://historico.tsj.gob.ve/sr/print.asp?url=http://historico.tsj.gob.ve/decisiones/scon/marzo/185627-09-1316-2016-16-0153.HTML>; The “*Plan de la Patria* 2013-2019” corresponds to the “Second Socialist Plan for Economic and Social Development of the Nation,” which pursues “the transition to Bolivarian socialism of the 21st century.” Presented to the National Assembly by President Nicolás Maduro, on September 28, 2013, http://www.asambleanacional.gob.ve/uploads/botones/bot_90998c61a54764da3be94c3715079a7e74416eba.pdf, cited in IACHR, “Annual Report 2014, Chapter IV on Venezuela”, paragraph 551, <http://www.oas.org/en/iachr/docs/annual/2014/docs-en/annual2014-chap4venezuela.pdf>

The IACHR stated that “the exacerbation of the recent crisis in Venezuela is closely, albeit not exclusively, related to rulings of the TSJ since 2015, which amounted to serious meddling with the powers of the National Assembly and flaunted the principle of the separation of powers.”¹²²⁹

The International Commission of Jurists concluded in a report: “The Supreme Court has taken on the task of giving the appearance of legal legitimacy to the arbitrary political actions of the executive branch. This has been made evident through the declared constitutionality of the decrees that enacted the State of Economic Emergency and their subsequent extensions, among other things. Furthermore, in these cases the Supreme Court provided a political defense of the executive branch’s decisions, fully upholding the grounds for the declarations of economic emergency, annulling and disregarding the oversight function that the Constitution assigns to the [National Assembly].”¹²³⁰

During its 153rd regular period of sessions, held in 2014, the IACHR held a hearing on the situation of judicial independence in Venezuela in which the organization “*Un Estado de Derecho*” presented the results of a research study that analyzed the decisions of three of the Chambers that made up the Supreme Court from 2005 to 2013.¹²³¹ Regarding the Constitutional Chamber, the report concluded that based on an exhaustive review done of a total of 20,798 rulings in the period under study, “only 9% resolved matters related to direct or abstract checks on the branches of government,” and of that set of decisions, only 7% were decisions that ruled in favor or partially in favor of the plaintiffs’ claims, whereas 47% of the cases found the actions or remedies inadmissible. The report notes that none of the decisions adopted by the Chamber have ruled favorably on a constitutional *amparo* remedy brought against the President of the Republic, nor has any executive act been annulled from 2005 to 2013, even though during that period “innumerable legal provisions [were enacted] based on the Enabling Statutes (*Leyes Habilitantes*).”¹²³² Using the same methodology, the report concluded that based on the action of the Political-Administrative Chamber, in recent years “public officials in Venezuela lack effective limits and oversight and limitation by the contentious-administrative courts,” since of all the judgments analyzed, none had “questioned decisions by the executive in sectors considered strategic or of national interest,” or ordering “reparation for damages” for “acts and deeds imputable directly to the President of the Republic”.¹²³³

1229 IACHR, “Democratic Institutions, the Rule of Law and Human Rights in Venezuela”, December 31, 2017, paragraph 43, <http://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>

1230 International Commission of Jurists, “The Supreme Court of Justice of Venezuela: An Instrument of the Executive Branch,” September 12, 2017, page 50, <https://www.icj.org/wp-content/uploads/2017/09/Venezuela-Suprem-Court-Publications-Reports-Thematic-reports-2017-ENG.pdf>

1231 The study performs “a quantitative analysis of the judgments handed down by the Supreme Court, in the three chambers or sections that directly review the government authorities, namely the Constitutional Chamber, the Political-Administrative Chamber, and the Electoral Chamber, from 2005 to 2013; [and] a qualitative analysis, or of the criteria laid down by those Chambers of the Supreme Court on issues of major political or electoral importance for the government.” *Un Estado de Derecho*, “*Situación de la independencia judicial en Venezuela*”, October 28, 2014. Received during the hearing held on the same subject at the 153rd regular period of sessions.

1232 *Un Estado de Derecho*, “*Situación de la independencia judicial en Venezuela*”, October 28, 2014.

1233 *Ibid.*

In this context, in 2016 and 2017, the National Assembly adopted a series of laws which were all rejected by the Constitutional Chamber of the Supreme Court. The Court acted in response to a communication by President Maduro requesting prior constitutional review of those laws and other appeals presented on behalf of the Government. The Supreme Court also adopted judgments that have had the initial effect of limiting all constitutional powers of the National Assembly¹²³⁴ and ultimately found all the acts emanating from the Assembly manifestly unconstitutional and “absolutely null and lacking any force and legal efficacy,” including any laws that were passed, as the contempt of the Electoral Chamber was maintained¹²³⁵, violating the principle of separation of powers necessary for a democratic society, the Constitution, and popular sovereignty.¹²³⁶ Seventeen examples of these decisions are detailed in Chapter X, Section D of the Report of the General Secretariat of the OAS.

In March 2016, the Supreme Court issued a decision to “indicate the democratic limits of the National Assembly in the face of unconstitutional actions,” which limited legislative oversight exclusively to the Executive doing away with the possibility of the National Assembly supervising the acts of the Judicial, Electoral, and Citizen branches.¹²³⁷

In addition, the Supreme Court issued a series of decisions that endorsed the decisions of the Electoral Chamber, as well as all the emergency decrees handed down by the Executive Branch. Of the 112 seats obtained in the elections of December 6, 2015, by the opposition in the National Assembly, the Electoral Chamber ordered, by a precautionary order issued in a matter of hours in the middle of a judicial holiday in December 2015, that the four legislators for the state of Amazonas be removed, three of them opposition legislators, including one from the indigenous circuit, and one pro-government legislator. With this decision, the opposition lost its supermajority in the National Assembly.¹²³⁸ The Constitutional Chamber ratified this decision by a judgment that went against its own case-law.¹²³⁹

After the opposition legislators from the state of Amazonas were sworn-in, the Court held that the National Assembly was “in contempt” (en “*desacato*”) for having sworn in the three legislators that the Electoral Chamber of the Supreme Court had ordered be suspended pending an investigation of the challenges to

1234 TSJ, Constitutional Chamber, Judgment No. 9, March 1, 2016, <http://historico.tsj.gob.ve/sr/print.asp?url=http://historico.tsj.gob.ve/decisiones/scon/marzo/185627-09-1316-2016-16-0153.HTML>

1235 TSJ, Judgment of September 2, 2016, <http://historico.tsj.gob.ve/decisiones/scon/septiembre/190395-808-2916-2016-16-0831.HTML>

1236 IACHR, “2016 Annual Report, Chapter IV.B, Venezuela”, paragraph 70, <http://www.oas.org/en/iachr/docs/annual/2016/docs/InformeAnual2016cap4B.Venezuela-en.pdf>

1237 TSJ, Constitutional Chamber, Judgment No. 9, March 1, 2016, <http://historico.tsj.gob.ve/sr/print.asp?url=http://historico.tsj.gob.ve/decisiones/scon/marzo/185627-09-1316-2016-16-0153.HTML>; See also, IACHR, “2016 Annual Report, Chapter IV on Venezuela”, paragraph 73, <http://www.oas.org/en/iachr/docs/annual/2016/docs/InformeAnual2016cap4B.Venezuela-en.pdf>

1238 OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter X, Section E, page 271.

1239 Noticias 24, “TSJ declara procedente desacato de la AN ante juramentación de los diputados de Amazonas”, January 11, 2016, <http://www.noticias24.com/venezuela/noticia/307249/tsj-declara-procedente-el-desacato-contra-diputados-indigenas-en-la-asamblea-nacional/>

their election¹²⁴⁰, declaring all the decisions of the National Assembly to be null and without any legal force or efficacy.¹²⁴¹

Since the issuance of that judgment several acts or constitutional powers of the National Assembly have been annulled, restricted, or obstructed, one after another, by other judgments of the Supreme Court. For example, when the National Assembly rejected the presidential decree extending the state of emergency (No. 2,452), the Supreme Court ruled on its own initiative, and without any petition by any party, considering it “newsworthy,” arguing that all the acts of the National Assembly, would be null, non-existent, and inefficacious so long as the “illegal situation” (*“situación antijurídica”*) of contempt persisted. It further declared that any future decisions would be null and void.”¹²⁴²

Subsequently, the Supreme Court ruled to expand the declaration of unconstitutionality of the acts emanating from the National Assembly¹²⁴³, at the request of President Maduro, so long as the Assembly maintained its “contempt” for the precautionary decision of the Electoral Chamber. In that judgment it also ruled that the President should present the national budget by decree, and that it would have the rank and force of statute for the 2017 fiscal year. The Supreme Court indicated that with that decision, the National Assembly may not alter the budget items “nor seek to obstruct or have any impact on the integrity of the provisions” established in the budget decree.¹²⁴⁴ Under the Constitution, the National Assembly is the body authorized to approve, by statute adopted annually, the budget proposed by the President of the Republic. The TSJ also held that the President was relieved of the requirement of submitting to any other claimed political check that may be exercised constitutionally by that legislative body, so long as the “contempt” being voluntarily maintained by the majority of legislators persists.¹²⁴⁵

The National Assembly also conducted a procedure to review the “express” appointment, before the appropriate time, of the members of the Supreme Court undertaken by the previous National Assembly, the majority of which was controlled by the Executive at the time; right after the pro-government forces lost the December 2015 legislative elections. The National Assembly established the Special Commission for Rescue of the Institutions, of the Supreme Court of Justice, on June 7, 2016, and entrusted it with studying

1240 TSJ, Judgment of September 2, 2016, <http://historico.tsj.gob.ve/decisiones/scon/septiembre/190395-808-2916-2016-16-0831.HTML>.

1241 OAS General Secretariat, “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter X, section E, page 274.

1242 TSJ, Constitutional Chamber, Judgment No. 810, September 21, 2016, <http://historico.tsj.gob.ve/sr/print.asp?url=http://historico.tsj.gob.ve/decisiones/scon/septiembre/190408-810-21916-2016-16-0897.HTML>; See also IACHR, “Annual Report 2016, Chapter IV”, paragraph 84, <http://www.oas.org/en/iachr/docs/annual/2016/docs/InformeAnual2016cap4B.Venezuela-en.pdf>

1243 TSJ, Constitutional Chamber, Judgment No. 814, October 11, 2016, <http://historico.tsj.gob.ve/sr/print.asp?url=http://historico.tsj.gob.ve/decisiones/scon/octubre/190792-814-111016-2016-2016-897.HTML>

1244 TSJ, Constitutional Chamber, Judgment No. 814, October 11, 2016, <http://historico.tsj.gob.ve/decisiones/scon/octubre/190792-814-111016-2016-2016-897.HTML>

1245 TSJ, Constitutional Chamber, Judgment No. 814, October 11, 2016, <http://historico.tsj.gob.ve/sr/print.asp?url=http://historico.tsj.gob.ve/decisiones/scon/octubre/190792-814-111016-2016-2016-897.HTML>; cited in IACHR, “2016 Annual Report, Chapter IV on Venezuela”, paragraph 85, <http://www.oas.org/en/iachr/docs/annual/2016/docs/InformeAnual2016cap4B.Venezuela-en.pdf>

and analyzing the process of selecting the Members and Alternatives of the Supreme Court under the premise that “the National Assembly, based on the power of self-protection, has the authority to review, at any moment, its own acts, so long as, through its powers to investigate, review, study, and analyze, it determines that they have been handed down in violation of the formalities and procedural requirements established in the Constitution, the Internal Rules of Procedure and debate of the National Assembly, and all other provisions handed down in respect of each subject matter; in that regard, once the violations or vices that affect their validity are verified, it may agree to overturn or absolutely void and consequently declare the inefficacy of such acts.”¹²⁴⁶

The Commission presented a final report in which it recommended that the National Assembly find null and void “the procedural acts of the invalid process of selecting principal and alternative members of the Supreme Court of Justice that culminated in December 2015.” In addition, the Commission recommended proceeding to designate as soon as possible the members who should constitute the Judicial Nominations Committee that will have to take charge of the process of selecting the new members of the Supreme Court.¹²⁴⁷ The National Assembly approved the Commission’s recommendations in its plenary session of July 14.

The Supreme Court responded with Judgment 614/2016 of July 19, 2016, invalidating the Assembly’s decision.¹²⁴⁸

According to the non-governmental organization *Acceso a la Justicia*, of the principal members of the Supreme Court, 16 do not meet all of the requirements to hold their positions.¹²⁴⁹ For example, one of the constitutional requirements for serving as a member of the Supreme Court is being recognized as an upstanding citizen (*de reconocida honorabilidad*). According to the Venezuelan organization, over nine of the members “a reasonable doubt looms as to their honor and reputation.”¹²⁵⁰ One was criminally prosecuted for homicide on two occasions and was also subjected to disciplinary sanctions. Four other judges were suspended or removed from their positions at some point in their professional careers, and the other four were said to have engaged in not-very-ethical conduct in the performance of their functions in the judiciary. The published list of those nine judges includes the recently appointed Chief Judge of the Supreme Court, Maikel Moreno Pérez, since “on two occasions he was tied to homicide cases.”¹²⁵¹

1246 National Assembly of the Bolivarian Republic of Venezuela, “*Asamblea Nacional designó una Comisión Especial para el rescate de la institucionalidad del TSJ*”, June 8, 2016, <http://monitorlegislativo.net/asamblea-nacional-designo-una-comision-especial-para-el-rescate-de-lainstitucionalidad-del-tsj/>

1247 National Assembly of the Bolivarian Republic of Venezuela, “*Informe Final, Comisión Especial para el Rescate de la Institucionalidad del Tribunal Supremo de Justicia*”, July 7, 2016, http://www.asambleanacional.gob.ve/uploads/botones/bot_4c4923abf6878796d3058018b1166ddbdc9dfa6e.pdf

1248 TSJ, <http://historico.tsj.gob.ve/decisiones/scon/julio/189122-614-19716-2016-16-0153.HTML>

1249 *Acceso a la Justicia*, “*Informe sobre el cumplimiento de los requisitos exigidos por parte los magistrados del TSJ*”, July 2016, <http://www.accesoalajusticia.org/wp/wp-content/uploads/2016/07/Perfil-de-magistrados-delTSJ-julio-2016.pdf>

1250 *Ibid*, page 7.

1251 *Ibid*, page 8.

The report also concluded that “at least nine of the 32 judges were political party activists, which is why they could not serve in that position, unless they first stepped down from their parties. It is not known whether in effect they submitted resignations, but their political ties and their activities vis-à-vis the Supreme Court lead one to suspect that the ties with their respective political camps are still in place. Of the 23 who are not political party activists, at least six have shown their sympathy with the regime through their decisions and speeches, casting doubt over whether they really act with autonomy and independence, essential conditions for serving as a judge on the highest court of the Republic.”¹²⁵²

In 2017 the Supreme Court resolved judgments 155 and 156, which were characterized by the International Commission of Jurists as “the final blows” dealt by the Supreme Court.¹²⁵³ Judgment 155 resolved a motion for annulment on grounds of unconstitutionality filed by a pro-government legislator against “the legislative act approved by the National Assembly on March 21, 2017, called ‘Agreement on Reactivation of the Process of Applying the Inter-American Charter of the OAS as a peaceful dispute settlement mechanism to restore the constitutional order in Venezuela.’” The Constitutional Chamber of the Supreme Court invoked the idea of “constitutional review not specifically provided for” (“*control innominado de la constitucionalidad*”), a concept that does not exist in the Venezuelan legal system, to rule on the motion.

One particularly serious element of the judgment is that it repudiates the legislative immunity of opposition legislators. The ruling, with respect to Article 200 of the Constitution and reiterating its thesis on contempt (*desacato*), stated that: “... parliamentary immunity only protects [...] the acts undertaken by the legislators in the exercise of their constitutional attributions (which is not compatible with the current situation of contempt in effect in the National Assembly) and, furthermore, in no case [is it applicable] to constitutional and criminal offenses.”¹²⁵⁴

The Constitutional Chamber of the Supreme Court declared unconstitutional the Decision of the National Assembly on the Reactivation of the Process of Applying the Inter-American Democratic Charter of the OAS and, according to the International Commission of Jurists, ordered two measures that violate the domestic legal order. First, the Constitutional Chamber ordered the President of the Republic to proceed to adopt the international measures he deemed appropriate and necessary to safeguard the constitutional order; to take the civil, economic, military, criminal, administrative, political, legal, and social measures he deems appropriate and necessary to guarantee the country’s governability; and in the context of the State of Exception and in the face of the contempt and continuing legislative omission on the part of the National Assembly, to review on an exceptional basis the substantive and procedural legislation (including the Organic Law against Organized Crime and Financing Terrorism, the Law Against Corruption, the Criminal

¹²⁵² *Acceso a la Justicia*, “Informe sobre el cumplimiento de los requisitos exigidos por parte los magistrados del TSJ”, July 2016, page 41, <http://www.accesoalajusticia.org/wp/wp-content/uploads/2016/07/Perfil-demagistrados-del-TSJ-julio-2016.pdf>

¹²⁵³ International Commission of Jurists, “The Supreme Court of Justice of Venezuela: An Instrument of the Executive Branch,” September 12, 2017, page 37, <https://www.icj.org/wp-content/uploads/2017/09/Venezuela-Suprem-Court-Publications-Reports-Thematic-reports-2017-ENG.pdf>

¹²⁵⁴ *Ibid*, page 37.

Code, the Organic Code of Criminal Procedure, and the Code of Military Justice). This implies a grave call to make use of the military jurisdiction to judge political dissidents.¹²⁵⁵

Judgment No. 156 refers to a request for interpretation of Article 33 of the Organic Law on Hydrocarbons submitted by the *Corporación Venezolana de Petróleo* for the purpose of eliminating the requirement of authorization by the National Assembly for the incorporation of public-private joint ventures in the hydrocarbons sector, which is required by that provision. With this Supreme Court judgment the final blow was dealt to the rule of law, on ruling not only that authorization by the National Assembly is not necessary, but also on indicating that: “... so long as the situation of contempt and invalidity of the National Assembly’s proceedings is in effect, this Constitutional Chamber shall ensure that legislative powers are exercised directly by this Chamber or by the body that it delegates, to ensure the rule of law.”¹²⁵⁶

UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein expressed his profound concern over the decision by the Supreme Court and indicated: “The separation of powers is essential for democracy to function, and keeping democratic spaces open is essential to ensure human rights are protected.”¹²⁵⁷ For its part, the Inter-American Commission on Human Rights considered that the decisions of the Supreme Court “constitute a usurpation of legislative functions by the judicial and executive branches, and a de facto nullification of the popular vote by which the National Assembly deputies were elected ..., [a] grave interference by the judicial branch in the National Assembly [... and] jeopardize the effective exercise of human rights and basic democratic principles, due to the concentration of power in the executive and judicial branches and the violation of the principle of separation of powers in a democratic system.”¹²⁵⁸

For the International Commission of Jurists: “This clearly demonstrated the judiciary’s lack of independence, the rupture of constitutional order and serious risk for the personal freedom of the [National Assembly] deputies, whose immunity had been overturned, and for any dissidents of the Venezuelan regime.”¹²⁵⁹

TSJ Judgements 155 and 156 were strongly rejected both at the national and international levels, including by the Attorney General. According to the International Commission of Jurists, “The President of the Republic declared that he had no knowledge of the judgments or the Attorney General’s declarations, and he decided to convene the Defense Council of the Nation to resolve what he called an “impasse” between the

¹²⁵⁵ Ibid, page 37.

¹²⁵⁶ Ibid, page 38.

¹²⁵⁷ OHCHR, “Preserve separation of powers, Zeid urges Venezuela,” Geneva, March 31, 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21470&LangID=E>

¹²⁵⁸ IACHR, “IACHR Condemns Supreme Court Rulings and the Alteration of the Constitutional and Democratic Order in Venezuela,” Press Release No. 041/17, March 31, 2017, http://www.oas.org/en/iachr/media_center/preleases/2017/041.asp

¹²⁵⁹ International Commission of Jurists, “The Supreme Court of Justice of Venezuela: An Instrument of the Executive Branch,” September 12, 2017, page 38, <https://www.icj.org/wp-content/uploads/2017/09/Venezuela-Suprem-Court-Publications-Reports-Thematic-reports-2017-ENG.pdf>

Ministry of Public Prosecution (*Ministerio Público*) and the [TSJ].”¹²⁶⁰ The Commission found it “inexplicable how the Defense Council of the Nation, the top body for planning and advising the Public Power on matters of “integral defense of the Nation,” would be the jurisdiction to settle an alleged “controversy” between the Supreme Court and the Attorney General, nor how it would have the powers to do so.”¹²⁶¹

On March 31, 2017, the Defense Council met, in breach of its constitutional obligation to convene the President of the National Assembly.¹²⁶² On the morning of April 1, President Maduro announced: “We have reached an agreement to resolve this controversy and I can say that with the reading of this communiqué and the publication of the clarification and respective corrections of Judgments 155 and 156, this controversy has been surmounted, demonstrating the capacities of dialogue and resolution that may be activated under our Constitution.”¹²⁶³

The International Commission of Jurists described how, “the Supreme Court of Justice, following instructions from a state body that had no authority, on April 1 issued Judgments No. 157 and 158, as “clarifications unto itself” of Judgments No. 155 and 156, respectively.”¹²⁶⁴ According to the Commission, “Judgment No. 157, which “clarified” the content of Judgment No. 155, suppressed or revoked the precautionary measure calling for the use of military justice, as well as that which referred to the elimination of legislative immunity. Judgment No. 158 revoked the authorization that had been given to the President of the Republic to modify the Organic Law on Hydrocarbons and that which referred to the possibility of having the TSJ’s Constitutional Chamber exercise the powers of the National Assembly directly.”¹²⁶⁵

The International Commission of Jurists concluded: “These rulings made it entirely clear that the Supreme Court of Justice is at the service of the executive branch, because it was at the order of the President of the Republic that the TSJ’s Constitutional Chamber decided to clarify and modify its rulings unto itself, in flagrant violation of the principles of separation of powers and independence of the judiciary, as established by the Constitution.”¹²⁶⁶

¹²⁶⁰ Ibid.

¹²⁶¹ Ibid.

¹²⁶² Ibid.

¹²⁶³ *El Nacional*, “Consejo de Defensa exhorta al TSJ revisar sentencias 155 y 156”, April 1, 2017, http://www.el-nacional.com/noticias/gobierno/consejo-defensa-exhorta-tsj-revisar-sentencias-155-156_88454. See also, *BBC Mundo*, “Venezuela: el Consejo de Defensa pide al Tribunal Supremo de Justicia que revise sus decisiones sobre la Asamblea Nacional”, April 1, 2017, <http://www.bbc.com/mundo/noticias-america-latina-39402013>, cited in International Commission of Jurists, “The Supreme Court of Justice of Venezuela: An Instrument of the Executive Branch,” September 12, 2017, page 38, <https://www.icj.org/wp-content/uploads/2017/09/Venezuela-Suprem-Court-Publications-Reports-Thematic-reports-2017-ENG.pdf>

¹²⁶⁴ International Commission of Jurists, “The Supreme Court of Justice of Venezuela: An Instrument of the Executive Branch,” September 12, 2017, page 38, <https://www.icj.org/wp-content/uploads/2017/09/Venezuela-Suprem-Court-Publications-Reports-Thematic-reports-2017-ENG.pdf>

¹²⁶⁵ Ibid.

¹²⁶⁶ Ibid, page 39.

Finally, the General Secretariat of the OAS documented that on June 27, 2017, the Constitutional Chamber of the TSJ unconstitutionally decided to unilaterally assign the same powers to accuse and investigate that are a monopoly of the Ministry of Public Prosecution to the Ombudsman, and decide to prosecute and dismiss then-Attorney General, Luisa Ortega Díaz for alleged “serious misconduct in the exercise of her office.”¹²⁶⁷

iii.(c) *Conclusion*

The previous analysis shows not only the lack of independence and impartiality of the Judicial Branch in Venezuela, but also its politicization. The politicization of the Judicial Branch, from its highest levels, has placed it at the service of impunity for high-level officials and authorities, for human rights violations, and crimes against humanity.

This Panel considers that, given the information and the facts set forth above, there are sufficient elements, at this stage of the process, to consider it proven that no genuine investigations and prosecutions have been carried out with respect to the case or cases that could arise from an investigation into the situation in Venezuela, due to the inactivity of the justice system and the lack of independence and impartiality of the Judicial Branch. Therefore, this Panel believes that the conditions for authorizing the opening of an investigation are satisfied.

iv. *Gravity*

While every crime within the jurisdiction of the Court is grave¹²⁶⁸, Article 17(1) requires that the Court evaluate, as a threshold of admissibility, whether the case is of sufficient gravity to justify the Court adopting additional measures. In the preliminary examination stage, consistent with the approach of complementarity set forth above, the Office of the Prosecutor evaluates the gravity of each of the cases that could potentially arise from an investigation into a situation.¹²⁶⁹

The Appeals Chamber of the International Criminal Court has opted not to establish an excessively restrictive legal barrier for interpreting gravity that blocks the deterrent role of the Court. In addition, it has observed

¹²⁶⁷ General Secretariat of the OAS “Report of the General Secretariat of the OAS on the Possible Commission of Crimes Against Humanity in Venezuela”, May 2018, Chapter X, section F, page 278.

¹²⁶⁸ See fourth paragraph of the preamble and Articles 1 and 5 of the Statute.

¹²⁶⁹ ICC, Pre-Trial Chamber II, Situation in the Republic of Kenya, “*Décision relative à la demande d’autorisation d’ouvrir une enquête dans le cadre de la situation en République du Kenya rendue en application de l’article 15 du Statut de Rome*”, ICC-01/09, March 31, 2010, paragraphs 50 and 188, https://www.icc-cpi.int/CourtRecords/CR2011_03256.PDF. See also, ICC, Pre-Trial Chamber III, Situation in the Republic of Côte D’Ivoire, “Corrigendum to “Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d’Ivoire”, ICC-02/11, November 15, 2011, paragraphs 202-204, https://www.icc-cpi.int/CourtRecords/CR2011_18794.PDF

that the role of persons or groups may vary considerably depending on the circumstances of the case and therefore it should not be evaluated or predetermined based exclusively on overly-formalistic criteria.¹²⁷⁰

Paragraph 2 of Regulation 29 of the Regulations of the Office of the Prosecutor, establishes the factors that guide the evaluation of gravity made by the Office of the Prosecutor including their scale, nature, and the manner by which crimes are committed, as well as their impact.¹²⁷¹

The Prosecutor explains in the Policy Paper in Preliminary Examinations that “the scale of the crimes may be assessed in light of considerations including the number of direct and indirect victims, the extent of the harm caused by the crimes, in particular the bodily or psychological harm inflicted on the victims and their families, or their extent geographically and over time (high intensity of the crimes during a brief period or low intensity of the crimes over an extended period).”¹²⁷²

The Policy Paper further states that the “assessment of gravity includes both quantitative and qualitative considerations”¹²⁷³. In addition, it established that “the nature of the crimes refers to the specific elements of each offense, for example homicides, rapes, and other crimes that entail sexual or gender-based violence and crimes committed against children, persecution or imposing living conditions on a group calculated to provoke their destruction.”¹²⁷⁴

In relation to the other factors described, “the manner in which the crimes are committed may be evaluated in light of, among other factors, the means used to carry out the crime, the degree of participation and intent of the perpetrators (if it is discernible at this stage), the extent to which the crimes were systematic or resulted from an organized plan or policy, or were the result of abuses of power or an official function, and particular elements of cruelty, such as the vulnerability of the victims, any motive entailing discrimination, or the use of rape and sexual violence as a means of destroying groups.”¹²⁷⁵

1270 ICC, Appeals Chamber, Situation in the Democratic Republic of the Congo, “Judgment on the Prosecutor’s appeal against the decision of Pre-Trial Chamber I entitled “Decision on the Prosecutor’s Application for Warrants of Arrest, Article 58”, ICC-01/04, sealed, July 13, 2006; reclassified as public on September 23, 2008, paragraphs 69-79, https://www.icc-cpi.int/CourtRecords/CR2006_01807.PDF

1271 ICC, “Regulations of the Office of the Prosecutor of the International Criminal Court, 2009, Regulation 29(2), <https://www.icc-cpi.int/NR/rdonlyres/FFF97111-ECD6-40B5-9CDA-792BCBE1E695/280253/ICCBDO50109ENG.pdf>. See also, ICC, Pre-Trial Chamber II, Situation in the Republic of Kenya, “*Décision relative à la demande d’autorisation d’ouvrir une enquête dans le cadre de la situation en République du Kenya rendue en application de l’article 15 du Statut de Rome*”, ICC-01/09, March 31, 2010, paragraph 188, https://www.icc-cpi.int/CourtRecords/CR2011_03256.PDF; and, ICC, Pre-Trial Chamber III, Situation in the Republic of Côte D’Ivoire, “Corrigendum to “Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d’Ivoire”, ICC-02/11, November 15, 2011, paragraphs 203-204, https://www.icc-cpi.int/CourtRecords/CR2011_18794.PDF

1272 Office of the Prosecutor of the International Criminal Court, “Policy Paper on Preliminary Examinations”, November 2013, paragraph 62, https://www.icc-cpi.int/iccdocs/otp/otp-policy_paper_preliminary_examinations_2013-eng.pdf

1273 Ibid, paragraph 61. See also, See also, ICC, Pre-Trial Chamber III, Situation in the Republic of Côte D’Ivoire, “Corrigendum to “Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d’Ivoire”, ICC-02/11, November 15, 2011, paragraph 203, https://www.icc-cpi.int/CourtRecords/CR2011_18794.PDF

1274 Office of the Prosecutor of the International Criminal Court, “Policy Paper on Preliminary Examinations”, November 2013, paragraph 63, https://www.icc-cpi.int/iccdocs/otp/otp-policy_paper_preliminary_examinations_2013-eng.pdf

1275 Ibid, paragraph 64.

According to the Prosecutor, “the impact of the crimes may be evaluated in light of, among other factors, the suffering caused the victims and the increase in their vulnerability; the terror subsequently instilled; or the social, economic, and environmental harm inflicted on the communities affected.”¹²⁷⁶

Finally, the Policy Paper considers that “The gravity assessment is an important consideration in the opening of investigations, bearing in mind the potential cases that are likely to arise from an investigation.” The principle of impartiality is not the ‘equivalence of blame’ in a particular situation, or that the Prosecutor must necessarily pursue all of the parties involved. Rather, the Office of the Prosecutor must “focus its efforts objectively on those most responsible for the most serious crimes within a situation in a consistent manner, irrespective of the states or parties involved or the person(s) or group(s) concerned.”¹²⁷⁷

In this case, this Panel considers that for the reasons that will be developed below when analyzing the particular crimes, the thresholds for gravity that could justify the adoption of additional measures by the Court have been met. The scale, nature, and manner in which the crimes were committed, as well as their impacts, are sufficient in light of the standards for opening an investigation into a particular situation.

b. Interest of Justice

According to Article 53(1) of the Statute, whereas jurisdiction and admissibility are positive requirements that must be shown, the “interests of justice” are also to be considered and may constitute a countervailing consideration justifying a decision not to initiate an investigation.¹²⁷⁸

This Panel considered the interests of the victims of the purported crimes as well as the pronouncements of international organizations, both intergovernmental and nongovernmental, in light of which it has no grounds for stating that opening an investigation into the situation in Venezuela is contrary to the interests of justice.

¹²⁷⁶ Ibid, paragraph 65.

¹²⁷⁷ Ibid, paragraph 66.

¹²⁷⁸ Ibid, paragraphs 67-71.

III. CONCLUSION



III. CONCLUSION

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

This Panel of Independent International Experts recommends that:

- The Secretary General of the OAS should submit this Report and the evidence collected by the General Secretariat of the OAS to the Office of the Prosecutor of the International Criminal Court.
- The Secretary General should invite States Parties to the Rome Statute to refer the situation of Venezuela to the Office of the Prosecutor of the ICC and to call for the opening of an investigation into the crimes against humanity set forth in this report, in accordance with Article 14 of the Rome Statute.

The Panel gathered available information produced by the OAS General Secretariat, international and regional human rights agencies, and international and national NGOs, as well as information from public hearings held in that regard by the OAS General Secretariat and additional information provided directly to the panel by NGOs, people who testified at the hearings, and other private citizens.

It should be recalled that the Panel did not have investigative powers or the possibility of undertaking field missions to the territory concerned in order to consult with national authorities, victims, civil society organizations, or other interested actor.

Accordingly, the Panel examined evidence of at least 131 murders of people who were taking part in demonstrations and where the perpetrator has been identified as a member of the State Security forces and/or the *colectivos* and of at least 8,292 cases of extrajudicial executions committed as part of a widespread or systematic attack against the civilian population particularly targeting members of the opposition or those identified as such, satisfying the contextual requirements to be considered murder within the meaning of Article 7(1)(a) of the Rome Statute.

Furthermore, it received information about more than 12,000 arbitrary detentions, at least 289 cases of torture, and 192 cases of rape of persons under State control, and a number of enforced disappearances. Thousands of persons have been persecuted, a number that reaches hundreds of thousands, if not millions, resulting from the weaponization of food and healthcare. In all of those crimes, the Panel verified the existence of a clear association with politically motivated persecution.

It was established that all of these criminal acts were committed as part of a widespread and systematic attack directed against the segment of the civilian population made up of political opponents or identified as such by individuals who had knowledge of the attack. The systematic nature of the attack was evidenced by the fact that the acts of violence did not occur randomly, but were planned and organized following a pattern of violence against civilians.¹²⁷⁹ At the same time, the widespread nature of the attack was demonstrated by the fact that it was massive and on a large scale, and directed at multiple victims, bearing in mind the evidence of people murdered, imprisoned, tortured, raped or victims of sexual violence, disappeared, and persecuted, the whole as documented in this report. The widespread aspect is also evidenced by the multiple forces that took part in the attack and by the fact that it occurred in most of the states in Venezuelan territory.

The preamble of the Rome Statute recalls “the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes” and provides that the ICC “shall be complementary to national criminal jurisdictions.” However, as the Office of the Prosecutor has established, “[w]here national systems remain inactive or are otherwise unwilling or unable to genuinely investigate and prosecute, the ICC must fill the gap left by the failure of States to satisfy their duty.”¹²⁸⁰

The Panel takes the complementarity requirement as met owing to a massive assault on the rule of law and the justice system, including criminal complicity of judges and prosecutors, and the utter impunity underpinning crimes against humanity committed by senior members of the regime, State security forces, and *colectivos*, the whole as part of the widespread and systematic attack against the civilian population. Apart from the absence of justice, the Panel has found an utter absence of independence and impartiality on the part of the judiciary as otherwise also determined by various international organizations over the years in relation to Venezuela

In addition, the Panel considers it important that, first, the Office of the Prosecutor, and eventually, the ICC, take into account the regional international *corpus juris* in weighing the systematic, widespread, and serious nature of the facts evaluated by the Panel. The objective of the ICC to put an end to impunity for the

¹²⁷⁹ Cf. ICC, Pre-Trial Chamber III, Situation in the Republic of Burundi, Public Redacted Version of “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi”, ICC-01/17-X, October 25, 2017, paragraph 47, https://www.icc-cpi.int/CourtRecords/CR2017_06720.PDF

¹²⁸⁰ Office of the Prosecutor of the International Criminal Court, Policy Paper on Preliminary Examinations, November 2013, paragraph 100, https://www.icc-cpi.int/iccdocs/otp/otp-policy_paper_preliminary_examinations_2013-eng.pdf

most serious crimes of concern to the international community and thus contribute to the prevention of such crimes (as the Preamble of the Rome Statute affirms) must factor in the region's political and juridical context.

The regional mechanisms for international protection, whether judicial or quasi-judicial and political, have sought by different means to put an end to the gross violations of human rights and crimes against humanity. However, the criminality and impunity continues, further worsening the plight of Venezuelans and depriving them of their fundamental rights to life, freedom, health, dignity, and protection from persecution. In the absence of effective domestic mechanisms and the difficulty that regional mechanisms have in stopping the grave human rights violations and crimes against humanity in Venezuela, the Office of the Prosecutor of the International Criminal Court and the ICC have become the international body of last resort for pursuing justice, ending the impunity in Venezuela, and preventing and deterring the crimes that offend the conscience of the international community.





OAS

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