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Venezuela: ICC Investigation Gets Go-Ahead

Regional Support Essential to Ensure Justice for Serious Crimes
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(Bogotá) – The resumption of the International Criminal Court (ICC) investigation in Venezuela holds out hope for a measure of justice for victims of serious human rights violations committed by the Maduro government, Human Rights Watch said today.

On June 27, 2023, ICC judges announced that the investigation by the Office of the Prosecutor into alleged crimes against humanity in the country can go ahead. The decision follows a petition by the ICC prosecutor to continue his investigation after the Venezuelan government asked the court in April 2022 to defer to the government’s own inquiries. The government’s request automatically put the ICC investigation, first opened in November 2021, on hold.

“With this decision, ICC judges have greenlighted the main, if not only, credible pathway to justice for the victims of abuses by Nicolás Maduro’s government,” said Juanita Goebertus, Americas director at Human Rights Watch. “The decision confirms that Venezuela is not investigating high-level officials’ role in systematic abuses.”

The ICC inquiry focuses on alleged crimes against humanity committed in Venezuela since at least 2017, including deprivation of physical liberty, torture, rape and other forms of sexual violence, as well as persecution on political grounds.

ICC judges concluded that “[w]hile Venezuela is taking some investigative steps, its domestic criminal proceedings do not sufficiently mirror the scope of the Prosecution’s intended investigation” to warrant a deferral of the investigation to domestic authorities. In particular, the judges found that domestic proceedings have only focused on direct and low-level rights abusers and that Venezuelan authorities have



Exterior view of the International Criminal Court in The Hague, Netherlands.

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not investigated and do not intend to investigate fact-based allegations about possible crimes against humanity.

In reaching their decision to authorize the resumption of the investigation, the ICC judges examined materials submitted to the court by the Venezuelan government and the ICC prosecutor, as well as observations by victims and their families.

When requesting permission from the court's judges in November 2022 to resume his office's investigation, the prosecutor stated that the proceedings carried out by Venezuelan authorities "are not adequately substantiated [...] do not sufficiently mirror the scope of the Prosecution's intended investigation [and] have not been conducted genuinely."

Human Rights Watch has documented the failure of Venezuela's judicial system to adequately investigate widespread abuses despite compelling evidence. Since the late President Hugo Chávez and his supporters in the National Assembly carried out a political takeover of Venezuela's Supreme Court in 2004, the judiciary has stopped functioning as an independent branch of government. Judges have openly rejected the principle of separation of powers and consistently upheld abusive policies and practices.

The ICC prosecutor announced the opening of the investigation during a visit to Caracas in November 2021, following the referral of the situation in Venezuela to the court by a group of six member countries from the Americas region in September 2018 and a three-year preliminary examination by the Office of the Prosecutor.

On the same day, the prosecutor signed a letter of understanding between his office and President Nicolás Maduro "to facilitate [...] cooperation and mutual assistance." The letter states that the Maduro government considers that the allegations should be investigated in Venezuela by existing national institutions. At the same time, it also emphasizes that "despite the differences of views on this issue, [the Office of the Prosecutor and the Venezuelan government] remain committed to actively engage with each other and support efforts further to the principle of complementarity."

More recently, in June 2023, the prosecutor signed a memorandum of understanding with Maduro establishing an in-country office, part of the prosecutor's approach to increasing the presence of his office in countries where the ICC has opened investigations.

The ICC acts as a court of last resort, stepping in only when national courts do not genuinely investigate and, as appropriate, prosecute crimes falling within its jurisdiction. This is the principle known as "complementarity," which keeps the primary responsibility for justice for ICC crimes with national authorities.

Even with the investigation resumed, the ICC can play a meaningful role in supporting national justice efforts, including if they are parallel to the court's own investigations. This should be an essential part of the contribution the court seeks to make to the rule of law, Human Rights Watch said.

It remains to be seen what steps forward, if any, the Venezuelan government will take to ensure justice at the domestic level for serious crimes.

Recent reforms adopted by Venezuelan authorities do not reflect a genuine effort to reverse the serious damage to judicial independence and to investigate human rights violations. In 2022, the National Assembly, controlled by supporters of Nicolás Maduro, appointed new judges to the Supreme Court. The selection process was not independent and justices who had failed to act as a check on executive power were reappointed. Under Venezuelan law, the Supreme Court plays an important role in the appointment and removal of lower court judges.

In moving forward with his own investigation, the ICC prosecutor should be on guard against efforts by the Venezuelan authorities to delay and undermine his office's work, including by stalling their own proceedings or obstructing the court's investigation, said Human Rights Watch.

The ICC lacks a police force, so it must rely on its member states to cooperate with the court in investigations, arrests, and prosecutions. Cooperation with the Office of the Prosecutor will be critical to the success of the court's investigation, Human Rights Watch said.

“Venezuelan authorities have a legal obligation to cooperate with the ICC,” said Goebertus. “Other ICC member countries, particularly in Latin America, should do all they can through their own diplomacy to ensure the Maduro government fulfils this obligation.”

Region / Country

- Venezuela

Topic

- International Justice
- International Criminal Court

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