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

Summary

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

* The present report was submitted after the deadline in order to reflect recent developments.

I. Introduction

A. Background

1. In its resolution 42/25 of 27 September 2019, the Human Rights Council established the independent international fact-finding mission on the Bolivarian Republic of Venezuela (hereinafter "the Mission" and "Venezuela", respectively). The Mission presented its first report to the Human Rights Council on 15 September 2020.[1] On 6 October 2020, the Human Rights Council extended the Mission's mandate for an additional two years, until September 2022, through resolution 45/20.

2. Resolution 45/20 enabled the Mission to continue investigating gross human rights violations, including extrajudicial executions, enforced disappearances, arbitrary detentions, and torture and other cruel, inhuman or degrading treatment, including those involving sexual and gender-based violence since 2014. The Human Rights Council requested that the Mission present written reports on its findings during its forty-eighth session.[2]

3. In the present report and the report with detailed findings, the Mission is furthering its mandate to work towards combatting impunity and ensuring justice and accountability by deepening its examinations into the roles of actors within the Venezuelan justice system in the commission of human rights violations and crimes. The present report will focus on the judicial system's role in investigating and prosecuting real and perceived opponents of the Government, and in perpetuating impunity for human rights violations and crimes committed against them.

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

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

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

- Killings consistent with previously documented patterns of extrajudicial executions and other violations in the context of security operations in low-income, urban neighbourhoods in Caracas. These require more in-depth investigation, but available indications are that they have continued apace.
- Killings and other alleged violations, including acts of torture and cruel inhuman and degrading treatment, sexual and gender-based violence, and arbitrary detentions, in the context of armed confrontations in Apure state as of March 2021, involving State police and military forces.
- Human rights violations occurring in the Arco Minero region, involving extrajudicial executions, enforced disappearances and sexual and gender-based violence, by members of the military and non-State armed actors, including violations against indigenous peoples and individuals.

[1] A/HRC/45/33 and A/HRC/45/CRP.11.
[2] A/HRC/RES/45/20, para. 15.

- Killings, arbitrary detentions, acts of torture, and other cruel, inhuman and degrading treatment and sexual and gender-based violence, in the context of the Government's response to protests, including those related to economic and social demands.
- Continued acts of torture and cruel, inhuman and degrading treatment, including sexual and gender-based violence, by State law enforcement and intelligence services, consistent with previously identified patterns, and detention conditions amounting to cruel, inhumane or degrading treatment.

7. The Mission will continue to investigate these and other situations over the course of its extended mandate, to provide analysis and conclusions to the Human Rights Council at its forty-ninth and fifty-first sessions. The Mission will consider both State and individual responsibility and victims' right to justice, with respect to violations and crimes documented in its 2020 and 2021 reports, as well as in future reports.

B. Methodology and standard of proof

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

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

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

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

12. Human Rights Council Resolution 45/20 urged Venezuelan authorities to cooperate fully with the Mission, to grant it immediate, full and unfettered access to the country, and to provide it with all the information necessary to fulfil its mandate.[5] The Mission regrets that two years into its mandate, the Venezuelan government still has neither permitted its members to visit Venezuela, nor responded to any of the 17 letters the Mission sent between September 2020 and September 2021.

13. The Mission continued to use "reasonable grounds to believe" as its standard of proof. This standard is met when factual information has been collected which would satisfy an objective and ordinarily prudent observer that the incident has occurred as described with a reasonable degree of certainty. The Mission recalls that determinations about individual responsibility for the documented violations can only be made by competent judicial

[3] Ibid., paras. 9-14.
[4] Responses on file with the Mission.
[5] A/HRC/RES/45/20, para. 16.

authorities, while fully respecting the accused's due process rights, including the right to defence.

II. Independence of the justice system

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

A. Selection and discipline of judges

15. The 1999 Constitution established procedures for the selection of Supreme Tribunal justices and lower court judges, and included safeguards to help ensure the transparent, non-political and merit-based selection of judicial actors.[6] Progressive failure to comply with these standards lies at the root of the deterioration in judicial independence, both internal and external to the justice system. Political interference in the selection of Supreme Tribunal justices resulted in a permanent shift in its ideological alignment and had a cascading effect over the judiciary as a whole.

1. Supreme Tribunal justices

16. The 1999 Constitution states that Supreme Tribunal justices shall be elected for a single term of 12 years through a public and merit-based process.[7] Over the past decades, the National Assembly has passed laws circumventing this constitutionally mandated process and increasing political influence over the selection of Supreme Tribunal justices.

17. The Supreme Tribunal of Justice's current configuration was confirmed in December 2015. Following the opposition's majority win of the National Assembly, the outgoing legislature appointed the 32 Supreme Tribunal justices to serve from 2015-2027.[8] The appointments were not carried out in accordance with relevant constitutional provisions, including with respect to procedural timeframes.[9] According to sources with inside knowledge, of the 32 judges, 29 were selected from circles closely aligned to the ruling party's political ideology.

18. In the lead up to the December 2015 appointment, 13 of the outgoing justices took early retirement, several of whom later testified that Chief Justice Maikel Moreno had pressured them to do so,[10] sidestepping legal requirements regarding the removal of Supreme Tribunal justices.[11] Successive attempts by other organs of the State to nullify the December 2015 appointments were rejected by the same Supreme Tribunal of Justice, effectively allowing the new justices to affirm their own appointments.

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

[6] Ibid., arts. 255, 263 and 264; 2010 Organic law of the Supreme Tribunal of Justice, art. 37.
[7] 1999 Constitution, art. 264.
[8] Agreement issued by the National Assembly, Published in the Official Gazette of the Bolivarian Republic of Venezuela No. 40.816 of 23 December 2015.
[9] 2010 Organic Law of the Supreme Tribunal of Justice, arts. 70 and 71.
[10] Final Report, Special Commission of the National Assembly for the study and analysis of the selection process of principal and alternate magistrates of the Supreme Tribunal of Justice, 24 March 2016, pp. 11-12.
[11] The Mission wrote to Chief Justice Moreno on 30 July and 3 September 2021 about this. It had not received a response at the time of writing.

the appointment of Criminal Judicial Circuit presidents. The Supreme Tribunal also carries out constitutional reviews of laws and other legal provisions[12] at all levels of the State.

2. First instance and appellate judges

20. The Supreme Tribunal of Justice is responsible for the appointment and swearing in of judges.[13] By law, admission to the judicial profession and promotions must be determined by a public competitive process, in accordance with the principles of professionalism and suitability of candidates.[14] Competitive selections of judges have not been held since 2003 and instead, the Supreme Tribunal appoints judges provisionally, meaning that it can both select and remove them without compliance with the constitutional process. In January 2021, at the opening of the judicial year, Chief Justice Maikel Moreno reported that 881 provisional judges had been appointed in 2020.[15]

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

3. Discipline and removal of judges

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

23. The 1999 Constitution provides that discipline of judges shall be in accordance with a Judicial Code of Ethics, which was adopted by the National Assembly ten years later, in 2009.[16] In 2013, the Supreme Tribunal of Justice issued a judgment holding that the Code of Ethics did not apply to provisional judges, despite the Code's express provisions to the contrary. As explained by one judicial source, this has resulted in two categories of judges: "those who have rights and those who do not".

24. The General Inspectorate of Courts is responsible for receiving and substantiating complaints filed against judges in the performance of their duties.[17] Although the General Inspectorate is intended to function autonomously, sources with inside knowledge revealed that over time the Plenary Chamber intensified its control over the General Inspectorate. Since 2004, all but one of the Inspectors General simultaneously served on the Supreme Tribunal of Justice, compromising the General Inspectorate's independence.

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

[12] 1999 Constitution, art. 334.
[13] Ibid., art. 255.
[14] Ibid., art. 255.
[15] YouTube video, Inicio del año judicial 2021 en Venezuela: Palabras de Maikel Moreno, Nicolás Maduro y M. Ameliach, minute 26.30, 22 January 2021.
[16] See 1999 Constitution, art. 267 and 2009 Judicial Code of Ethics.
[17] 2010 Organic Law of the Supreme Tribunal of Justice, art. 81.

B. Selection, discipline and removal of public prosecutors

26. Under the Constitution, appropriate measures shall be developed to ensure the suitability, probity and career stability of prosecutors.[18] The 2007 Organic Law of the Public Prosecutor's Office established the career of public prosecutors,[19] accessible via public competition and a competitive examination.[20]

27. According to information received, nearly all public prosecutors working in Venezuela at the time of writing were provisional.[21] In September 2018, the new Chief Prosecutor Tarek William Saab effectively eliminated the prosecutorial career track by passing a resolution that declared that all civil servants within the Public Prosecutor's Office are in "positions of trust" and can be freely appointed and removed.[22] According to former prosecutors consulted, entry to the Public Prosecutor's Office is no longer a meritocracy and depends largely upon partisan personal or political factors or influence.

28. The Mission received consistent information that disciplinary procedures failed to guarantee prosecutors' rights to an objective evaluation and decision in a process determined in accordance with the law. Prosecutors working at all levels were affected, but especially those prosecuting public political or security officials and investigating violations in the context of political protests. The 2015 Statute of the Public Prosecutor's Office[23] outlines disciplinary measures against public prosecutors, but does not apply to non-career public prosecutors.[24]

29. On 20 June 2017, the Plenary Chamber of the Supreme Tribunal lifted Chief Prosecutor Luisa Ortega Díaz's immunity, for "serious misconduct" arising from her failure to investigate deaths resulting from "violent acts generated by opposition political parties".[25] The former Chief Prosecutor was later removed from the position in one of the National Constituent Assembly's first acts,[26] despite legal provisions reserving this decision for the National Assembly.

30. The Mission received credible information from former prosecutors, both tenured and provisional, who described being removed from office for political motives and without any process. Following the change of Chief Prosecutor in August 2017, 196 public prosecutors throughout the country were summarily dismissed, many of whom had publicly demonstrated criticism of government actions, including the election of the National Constituent Assembly.[27]

C. Interference with judicial and prosecutorial independence

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

32. The Mission received information from multiple sources within various judicial institutions that certain individuals were untouchable and as such could not face prosecutions. These are individuals, including political and security officials, sometimes with links to

[18] 1999 Constitution, art. 286.
[19] 2007 Organic Law of the Public Prosecutor's Office, art. 93.
[20] Ibid., art. 94.
[21] See Acceso a la Justicia, Informe sobre el Desempeño del Ministerio Público (2000-2018), pp. 35 and 41.
[22] Public Prosecutor's Office Resolution No. 2703 of 13 September 2018.
[23] 2015 Statute of the Public Prosecutor's Office, Chapter III.
[24] Ibid., art. 87.
[25] Judgment No. 43 of 20 June 2017. The Mission notes having received allegations regarding interference with prosecutorial independence during Luisa Ortega Diaz's tenure as Chief Prosecutor.
[26] Constitutional Decree, Published in Official Gazette No. 6.322 of 5 August 2017.
[27] List of prosecutors on file.

economic and/or criminal interests, who are able to exercise control and influence over judges and prosecutors.

1. Interference within the Supreme Tribunal of Justice

33. Insider sources revealed that Supreme Tribunal justices routinely receive orders with respect to how to decide judgments. At least from 2015 to 2018, the Executive Branch transmitted orders to the Supreme Tribunal of Justice in one of three ways: via direct messages to the relevant justices, sometimes inviting justices to Miraflores (the presidential palace); through an appointed go-between transmitting messages between the Executive and the Supreme Tribunal; and/or through President Maduro or Diosdado Cabello's public statements, which were sometimes summarized into minutes and circulated among the justices.

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

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

2. Interference within the Criminal Judicial Circuits

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

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

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

39. The cases investigated by the Mission reflect this selective distribution. Of cases involving detentions examined, 23 per cent were heard in one of the four Control Courts in the specialized terrorism circuit. Of concern is that these terrorism courts were not created by

law as the Constitution requires[28] but were created by a 2012 Supreme Tribunal of Justice resolution.[29]

40. The State has also used military jurisdictions to try civilians in political cases.[30] Cases investigated show this practice became most common in 2017, during the conflict between the Executive and the former Chief Prosecutor, Luisa Ortega Díaz. The vast majority of the 85 detention cases the Mission analysed that were processed by military courts, involving both military members and civilians, were assigned to the same two military judges.

3. Interference with prosecutorial independence

41. Prosecutors at all levels reported at times having received instructions about how to handle cases. Such interventions were especially common in cases against actors with links to political, economic and/or criminal interests, as well as in cases related to detentions in the context of political protests. Former Chief Prosecutor Luisa Ortega Díaz told the Mission that from 2015 onwards, she experienced confrontations with the Executive Branch "every day, about everything". She shared several examples of the type of pressure she was subjected to, most often occurring in cases involving high-profile members or associates of the political opposition.

42. The Mission received numerous accounts from public prosecutors regarding instructions received from within the prosecutorial hierarchy in specific cases which were not in line with the facts of the case, specifically from the Superior Prosecutors or Line Directors. Several prosecutors indicated a significant increase following the change in Chief Prosecutor in 2017.

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

44. According to several public prosecutors interviewed, when the former Chief Prosecutor started to speak out publicly against the Government, especially in 2016 and 2017, the Public Prosecutor's Office began facing attacks as an institution. Former prosecutors told the Mission that during this time, prosecutors were refused access to detention centres to observe conditions and judges refused to issue arrest or search warrants.

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

D. Other forms of pressure on judges and prosecutors

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

47. Former judges and prosecutors interviewed reported that they and their family members had been subjected to threats and intimidation, including phone tapping,

[28] 1999 Constitution, art. 261.

[29] Supreme Tribunal of Justice Resolution No. 2012-0026, Published in Official Gazette No. 40,092 of 17 January 2013.

[30] A/HRC/45/CRP.11, paras. 364-367.

surveillance and monitoring. Nearly half of the former judges and prosecutors interviewed left Venezuela due to safety concerns. Some interviewees reported being threatened by members of the *colectivos* or other non-State armed groups, or being harassed due to their real or perceived political affiliation.

48. Former judges and prosecutors told the Mission that they carried out their work under fear that they would be criminally prosecuted under vexatious and spurious lawsuits. Several judges and lawyers interviewed explained a discernible downward turn in judicial independence after the criminal prosecution of Judge María Lourdes Afiuni in 2009. The detention of former prosecutor Luis Sánchez Rangel is a case in point. At the time of writing the former prosecutor had spent four years detained in SEBIN's El Helicoide without a trial, under a criminal process demonstrating numerous procedural irregularities.

49. Numerous people interviewed said the low pay of legal professionals in Venezuela amounts to a form of pressure against them, creating a kind of stronghold on judges and prosecutors, forcing some to leave their positions and making others susceptible to illicit ways of earning money. Many interviewees including insiders confirmed that certain judges and prosecutors charge for transactions, including, for example, for legal benefits in cases, to advance a case in the court docket, or to file documents or receive copies of court decisions.

E. Involvement of external actors in criminal prosecutions

50. Criminal prosecutions (*la acción penal*) consist of accusing an individual of committing a crime and, consequently, requesting enactment of the State's right to punish.[31] The Constitution,[32] the Criminal Procedure Code[33] and the Organic Code of Military Justice[34] clearly establish the competence of the Public Prosecutor's Office or the Military Prosecutor's Office,[35] where appropriate, to order and direct criminal prosecutions. The Mission's investigations reveal a pattern in which external actors carry out key roles in this process, at times exerting undue influence over it. This is in part due to prosecutorial authorities' failure to ensure adequate control.

51. High-level public officials made public statements commenting on criminal cases involving real or perceived opponents in 102 of the 183 detentions examined. When making such statements, high-level political actors send the message that they have privileged access to criminal investigations or that prosecutorial and judicial actors are acting on their behalf. Public statements from these actors routinely express conclusions about the guilt or innocence, the character or the reputation of defendants, potentially prejudicing the defendants' rights.[36]

52. In some cases, the statements revealed sensitive or confidential information related to investigations, including evidence that could only have come from prosecutorial, law enforcement or intelligence officials.[37] Some made public what high-level officials claimed to be admissions or confessions made by persons under investigation, including without a lawyer present, under duress or torture, or while being held incommunicado. In others, the high-level government officials presented physical evidence related to the cases, potentially contaminating or interfering with the chain of custody.

53. The Criminal Procedure Code makes clear that all bodies with criminal investigation powers are direct assistants to the Public Prosecutor's Office in the exercise of its functions and shall follow its instructions.[38]

[31] Vásquez González, Magaly, Derecho Procesal Penal Venezolano, 2019, p. 52.
[32] 1999 Constitution, art. 285(3).
[33] 2012 Criminal Procedure Code, arts. 11, 111.
[34] 1998 Organic Code of Military Justice, art. 70. See 2020 Constitutional Law of the FANB, art. 188.
[35] The Mission refers to both bodies generally as the prosecution.
[36] 1999 Constitution, art. 49(2); 2012 Criminal Procedure Code, art. 8.
[37] See 2012 Criminal Procedure Code, art. 286.
[38] 2012 Criminal Procedure Code, art. 514.

54. In cases involving real or perceived opponents of the Government, the civilian intelligence agency SEBIN and the military intelligence agency DGCIM play significant roles in directing investigations.[39] A former public prosecutor informed the Mission that in certain cases, intelligence agencies had carte blanche to carry out the investigations, with prosecutors ratifying their actions and decisions. In the cases investigated by the Mission, the intelligence agencies carried out surveillance, evidence collection, preparation of expert reports, forensic analysis, arrests, interrogations and detentions, as well as provided testimony in court.

55. Intelligence bodies' failure to release detainees after courts have ordered their release or once they have served their sentences demonstrates their willingness to operate outside judicial control. Intelligence bodies have held individuals detained for prolonged periods without charges, such as in the case of Doctor Leonard Hinojosa, who was detained in Zulia on 26 October 2020 and then held in DGCIM La Boleíta in Caracas until 12 March 2021 without being presented before a judge or informed of the reason for his detention.

56. On 12 May 2021, President Maduro adopted Decree 4.601 ordering the transfer within 30 days of detainees in DGCIM and SEBIN custody to detention centres of the Ministry of Penitentiary Services.[40] According to the organization Foro Penal, at time of writing, 18 individuals had been transferred since the decree came into force on 12 May 2021 and 16 had been transferred the week prior. Nineteen political prisoners remained in DGCIM facilities.[41] No transfers from SEBIN were documented after 12 May 2021. Even after the adoption of the decree, real and perceived political opponents continued to be detained in these facilities, as in the case of Javier Tarazona and two others sent to SEBIN El Helicoide following their arrest on 2 July 2021.

III. Acts and omissions of judges and prosecutors

57. The 1999 Constitution[42] and the Criminal Procedure Code[43] enshrine a series of principles which must be respected during the criminal procedure. These include the presumption of innocence, right to defence, procedural guarantees and the obligation to ensure reparations to victims.

58. The Mission's investigations revealed criminal proceedings beset with irregularities committed by prosecutorial and judicial actors at all stages of the process, amounting to arbitrary detentions.[44] Judicial and prosecutorial actors also failed to prevent or fully address violations and crimes committed by other State actors against real or perceived opponents, despite legal obligations of Prosecutors,[45] Control Judges[46] and Trial Judges[47] to do so. These failures directly contributed to impunity for human rights violations and crimes and prevented victims of violations perpetuated by State security and intelligence bodies from accessing effective legal recourse and judicial remedies.

A. Failure to ensure legality of detentions and act upon violations

59. The Criminal Procedure Code makes Control Judges responsible for ensuring compliance with the principles and guarantees established in the 1999 Constitution,

[39] See A/HRC/45/CRP.11, para. 267.
[40] Presidential Resolution No. 4.601, Published in the Official Gazette of 12 May 2021; Prolonged for a period of 30 days via Presidential Resolution No. 4.528, Published in the Official Gazette of 11 June 2021.
[41] Information received from Foro Penal, 27 August 2021.
[42] 1999 Constitution, arts. 30, 49.
[43] Criminal Procedure Code, Preliminary Title, arts. 1, 2-23.
[44] See A/HRC/45/CRP.11, para. 348.
[45] 1999 Constitution, art. 285(1).
[46] 2012 Criminal Procedure Code, art. 264.
[47] Ibid., arts. 324, 328, 345.

international treaties, conventions or agreements signed and ratified by Venezuela and in the Criminal Procedure Code.

1. Arrests in flagrante delicto

60. The Constitution states that no person shall be arrested or detained except by virtue of a court order, unless caught *in flagrante delicto*.[48] The Mission's investigation of cases revealed that illegal detentions occur with regularity. Of concern is Judgment No. 526 of 2001 in which the Constitutional Chamber of the Supreme Tribunal of Justice held that neither Control Courts nor Appellate Courts are required to review the constitutionality of police arrests without a warrant.[49]

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

2. Foundation for arrests and pre-trial detention

62. The Control Judge, at the request of the prosecution, may only order pre-trial deprivation or restriction of liberty exceptionally[50] and when other precautionary measures are insufficient.[51] Despite this, in cases investigated involving real or perceived opponents, such orders for detention occurred regularly, dealt with as a matter of routine. Of the 170 cases involving initial appearances documented by the Mission, 146 resulted in pre-trial detention for the accused.

63. The Mission's review of initial appearance records revealed that Control Judges often did not provide reasoning for their decisions regarding the existence of well-founded evidence of risk of flight or obstruction of the investigation, as required under the Criminal Procedure Code.[52]

64. Cases investigated also revealed a pattern of refusal by Control Judges to reconsider or lift the pre-trial detention measures, even after the expiration of the two-year time limit established under the law and without application of one of the legal exceptions to this limit.[53] At the date of writing, of the 170 initial appearances reviewed by the Mission, 80 (47 per cent) resulted in preventive detention for more than two years.

3. Non-custodial precautionary measures

65. Even in cases in which pre-trial detention was not ordered, disproportionally restrictive or extended substitute precautionary measures were often imposed upon defendants. The Criminal Procedure Code aims to restrict the imposition of preventive deprivation of liberty as a precautionary measure, by providing eight substitute measures which may be imposed instead.[54] The application of precautionary measures must be proportional to the penalty of the crime charged.[55]

66. In some cases reviewed by the Mission, the precautionary measures reached a similar duration as the penalty for the underlying crime. In addition, the substitute precautionary measures at times appeared to restrict rights to freedom of expression or assembly, or other

[48] 1999 Constitution, art. 44.
[49] Supreme Tribunal of Justice, Constitutional Chamber, Judgment No. 526 of 9 April 2001.
[50] 2012 Criminal Procedure Code, art. 229.
[51] Ibid., arts. 67, 229.
[52] Ibid., art. 236.
[53] Ibid., art. 230.
[54] Ibid., arts. 242-245.
[55] Ibid., art. 9.

constitutional rights, in ways not necessary to ensure the presence of the defendant at trial or non-interference with the investigation. Court closures resulting from the Covid-19 pandemic caused further procedural delays, extending the duration of precautionary measures.[56]

4. Discrepancies in arrest warrants and arrest reports

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

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

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

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

70. Like other State actors, should police investigative bodies commit acts contravening the individual rights guaranteed by the Constitution, these acts shall be null and void. Public employees ordering or implementing these acts shall incur criminal, civil and administrative liability, whether they acted under superior orders or not.[57] Despite Control Judges' legal responsibilities in this regard,[58] according to the Mission's investigation, they did not take effective action when faced with information presented to them regarding irregularities or illegalities in detentions carried out by police or intelligence bodies.

71. In some of the cases investigated, defendants raised these irregularities before Control Courts, without receiving a response. This includes the case of Franklin Caldera who, as reported to the Fourth Terrorism Control Court during his initial appearance, was allegedly taken from Colombia on 11 February 2021 by DGCIM members and was subsequently interrogated and tortured for some 12 days, during which time his whereabouts were officially unconfirmed.

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

73. In some cases documented, security or intelligence personnel allegedly lured real or perceived opponents to their arrest using criminal tactics, including the kidnapping or detention of family members. One defendant accused of participating in Operation Gedeón in May 2020, told the Control Court at his preliminary hearing that DGCIM members tortured him and told him that they would apply "*Sippenhaft*" (a collective punishment tactic used by

[56] Supreme Tribunal of Justice, Resolution 001 of 2020. This resolution was subsequently extended six times, over seven months (Resolution 002 0f 2020, Resolution 003 of 2020, Resolution 004, Resolution 005 of 2020, Resolution 006 of 2020 and Resolution 007 of 2020).

[57] 1999 Constitution, art. 25.

[58] 2012 Criminal Procedure Code, art. 264.

the Nazis), subsequently arresting his two sisters and his brother-in-law, who were held in La Boleíta for 32 days.

74. Defendants repeatedly denounced being held incommunicado, especially during the first days of detention, without being allowed contact with family or lawyers. Under the Criminal Procedure Code, defendants have a right to communicate with their relatives or lawyer to inform them about their detention.[59] In some cases, the incommunicado detention occurred in secret or unofficial detention facilities, especially in the first hours or days of detention.[60] In several cases examined detainees raised the incommunicado detention before court authorities, without response.

75. Some opponents or perceived opponents and persons associated with them were subject to short term enforced disappearance.[61] Any person whose liberty is deprived or restricted in violation of constitutional guarantees has the right to file a *habeas corpus* writ.[62] The cases reveal that, after being made aware of arbitrary detentions, courts systematically failed to review and address irregular arrests and detentions, including cases involving short term enforced disappearances, even after *habeas corpus* requests had been filed.

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

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

77. In some cases, court records do not include a response from the judge in respect of these allegations. In others, records reveal that Control Judges responded to torture allegations by ordering the Public Prosecutor's office to verify the complaints made or to conduct medical examinations. The same court records also reveal that, while doing this, the judges ordered the accused to remain in pre-trial detention, under the custody of the alleged torturers, namely DGCIM and SEBIN.

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

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

B. Sustaining the charges

1. Arrests and detentions sustained on insufficient foundation

80. In the cases investigated, defendants were charged with a number of serious crimes carrying high penalties. The Mission's review of case files revealed several instances in

[59] 2012 Criminal Procedure Code, art. 127.
[60] See A/HRC/45/CRP.11, para. 315.
[61] A/HRC/45/CRP.11, paras. 278, 313.
[62] Organic Law of Injunctions on Constitutional Rights and Guarantees, Published in the Official Gazette No. 34060 of 28 September 1988, art. 39.

which Control Courts detained and charged individuals based on facts and supporting documents that did not refer to criminal acts or individualize the defendant's participation in the crimes alleged. Lengthy procedural delays subsequently delayed the opportunity to challenge this evidence at preliminary hearings or at trial within a reasonable timeframe, while defendants spent extended periods in pre-trial detention or were subjected to substitute precautionary measures, which often amounted to years.

2. Evidence derived from illegal interrogations

81. The Criminal Procedure Code only allows for the admission of evidence obtained by lawful means. Information obtained by means of torture, mistreatment, coercion, threat, deceit, undue intrusion to privacy (of the home, correspondence, communications and private files), or information obtained by any other means that undermines the will or violates the fundamental rights of individuals, shall not be admitted.[63]

82. The Mission identified cases in which confessions, incriminating statements or other information, including phone and social media passwords, were obtained under duress or during interrogations without lawyers present. The Constitution stipulates that a confession shall only be valid if made without coercion of any kind[64] and in the presence of a lawyer.[65] The Mission also documented cases in which the judiciary failed in its duty to guard against arrests based on information illegally obtained from third parties.

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

3. Evidence derived from illegal searches

84. Despite legal provisions requiring that searches of residences, businesses or public offices take place with prior authorization from a Control Court[66] and that other conditions are met,[67] the Mission investigated cases demonstrating a failure to comply with legal requirements for searches. In 73 cases documented, officers searched detainees' homes and/or offices and seized items without presenting search warrants, including in the case of the 12 January 2021 search of the organization Azul Positivo. In a number of cases investigated, evidence was seized, during a search without a warrant, from computers or telephones, sometimes after the passwords had been obtained from the owner under duress or torture.

4. Planted, fabricated or manipulated evidence

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

[63] 2012 Criminal Procedure Code, art. 181.
[64] 1999 Constitution, art. 49(5).
[65] 2012 Criminal Procedure Code, art. 132.
[66] Ibid., art. 196.
[67] Ibid., art. 197.

C. The right to defence

86. The Mission found that interference with the right to defence was one of the most commonly cited violations. Under the Constitution, the right to legal assistance and defence are inviolable.[68] The defendant has a right to be assisted, from the initial stages of the investigation, by a defence counsel designated by her or him or by relatives, and, failing that, by a public defender.[69] Of 170 cases examined in which the defendant was charged, judges denied the accused the right to counsel of their choice at the initial appearance or subsequent investigation phase in 54 cases (32 per cent).

87. Defence lawyers have reported having been prevented access to certain detention facilities, especially those run by SEBIN and DGCIM, denying them contact with clients to sign power of attorney documents. Even once power of attorney was granted, the swearing in of private defence lawyers before the judge was delayed. Defence lawyers also complained that court officials regularly prevented them from accessing tribunals to represent their clients, especially at initial appearances.

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

89. Even when defendants were able to secure representation of their choosing, the lawyers' abilities to prepare an adequate defence were hindered in various ways. Defence lawyers who spoke to the Mission expressed feeling frustrated, exhausted and defeated in the face of the repeated and often arbitrary obstacles in the cases. Under the Criminal Procedure Code, the defendant has a right to be informed of the contents of the investigation.[70] In 92 of the 170 detentions examined by the Mission that resulted in judicial proceedings, the prosecutor or judge failed to provide defence lawyers with important case file information, including police records, indictments or records of hearings.

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

D. Undue delays

91. Under the Criminal Procedure Code, judges must not abstain from rendering a decision and must ensure that judgments are issued without undue delay.[71] The cases investigated or reviewed displayed systematic incompliance with the timeframes established by law for the various procedural steps under the Criminal Procedure Code. Many of these extended beyond the procedural term limits. In 2020, the delays were exacerbated due to the seven-month period in which courts were ordered to suspend sessions due to the Covid-19 pandemic.[72]

92. The Mission was able to review the procedural timeframe in 144 of the 183 detentions reviewed[73] and found significant disparities between the time periods permitted by law and the practice. Seventy-seven per cent of the initial appearances examined occurred outside the 48-hour period permitted by law, with 18 per cent of detainees held for more than a week

[68] 1999 Constitution, art. 49(1).
[69] 2012 Criminal Procedure Code, arts. 127, 139.
[70] Ibid., art. 127.
[71] Ibid., art. 6.
[72] Supreme Tribunal of Justice, Resolution 001 of 2020.
[73] Cases were excluded if detainees were never presented before a judge, or if any relevant arrest or hearing dates could not be established with precision.

before their initial appearances. Detainees were often held incommunicado and without oversight during this period and vulnerable to torture, sexual violence and other cruel, inhuman or degrading treatment.

93. The most egregious delays occurred between initial appearances and preliminary hearings. The average time between arrest and preliminary hearing was 243 days (around eight months).[74] In 102 detentions documented, the preliminary hearings were deferred more than once and usually many times. The Mission documented 16 detention cases in which the preliminary hearing was deferred for more than two years, during which time the detainees remained either in pre-trial detention or with substitute precautionary measures.

94. The cases investigated also demonstrated delays in setting trial dates, in resolving appeals and in responding to defence motions. In some cases, despite an appearance of progress in the criminal procedure, the defendants remained in pre-trial detention, thus in effect, resulting in no change in their situations. The Mission reviewed 55 detentions in which the proceedings had advanced to trial, noting an average of 523 days (over 17 months) between the date of the preliminary hearing and the start of the trial. Only 19 of these proceedings had reached a verdict at time of writing, with an average time lapse of 759 days (more than two years) after the arrest.

IV. Judicial system responses to allegations of human rights violations

95. The Venezuelan State is under a constitutionally mandated obligation to investigate and, when applicable, to punish public officials for crimes involving human rights violations.[75] According to the Constitution, crimes against humanity, gross human rights violations and war crimes are excluded from pardons and amnesties and may not be subject to any statute of limitations.[76]

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

97. Under the 1999 Constitution, every citizen has a right to be informed of the status of proceedings in which they have a direct interest.[77] By law, the Public Prosecutor's Office shall exercise its functions with transparency.[78] The Chief Prosecutor must present an annual public report before the National Assembly on the work of its Office, including efforts to investigate and punish human rights violations.[79]

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

[74] The minimum length of time documented was 82 days between arrest and preliminary hearing, while the maximum length of time was 1,308 days (43.6 months).

[75] 1999 Constitution, art. 29.

[76] 1999 Constitution, arts. 29, 271.

[77] See 1999 Constitution, arts. 51, 143.

[78] See 2007 Organic Law of the Public Prosecutor's Office, art. 11.

[79] 1999 Constitution, art. 276.

99. The Mission prepared the following chart based on the information provided by the Chief Prosecutor since 2014 and reported in a 28 September 2020 written public report ("the State's 2020 report") which in part addressed aspects of the Mission's 2020 report.[80] The State disaggregated information based on the number of officials charged, indicted, arrested and convicted, specifying the source and the period covered. However, it did not disaggregate by year, sex or age of the perpetrator, crimes charged, type and severity of penalties or rank of the individuals investigated, charged, indicted or convicted.

Table 1
Investigations and prosecutions of crimes connected to human rights violations reported by the Public Prosecutor's Office

Sources of information and period covered	*Officials charged*	*Officials indicted*	*Officials arrested*	*Officials convicted*
Published 2014 annual report (January-December 2014)	30	n/a	n/a	n/a
Published 2015 annual report (January-December 2015)	1,312	959	n/a	n/a
Published 2016 annual report (January-December 2016)	2,441	635	225	226
February 2018 address to NCA[81] (August 2017-February 2018)[82]	n/a	28	n/a	n/a
August 2019 press conference (August 2017-August 2019)[83]	406	695	353	109
November 2019 press conference (August 2017-November 2019)[84]	505	766	390	127
August 2020 press conference (August 2017-August 2020)[85]	584	925	450	140
Venezuela State's 2020 report (August 2017-August 2020)[86]	603 (+35 civilians)	811 (+129 civilians)	452 (+29 civilians)	127 (+13 civilians)
25 February 2021 address to NA[87] (August 2017-December 2020)[88]	677 (+39 civilians)	1,119	519	171 (+13 civilians)

[80] Bolivarian Republic of Venezuela, La verdad de Venezuela contra la infamia. Datos y testimonios de un país bajo asedio, 28 September 2020.
[81] National Constituent Assembly.
[82] YouTube video, speech of Chief Prosecutor Tarek William Saab before the National Constituent Assembly, 21 February 2018.
[83] YouTube video, Press conference of Chief Prosecutor Tarek William Saab, 9 August 2019.
[84] YouTube video, Statement of Chief Prosecutor Tarek William Saab on the 50th anniversary of the Public Prosecutor's Office, 27 November 2019.
[85] YouTube video, Press conference of Chief Prosecutor Tarek William Saab, 20 August 2020.
[86] State's 2020 Report.
[87] National Assembly.
[88] YouTube video, Speech of Chief Prosecutor Tarek William Saab before the National Assembly, 25 February 2021.

Sources of information and period covered	*Officials charged*	*Officials indicted*	*Officials arrested*	*Officials convicted*
1 May 2021 press conference (August 2017- May 2021)[89]	716	1,064	540	153

100. The Mission notes some discrepancies in the numbers provided by the State, in particular between the numbers reported in the August 2020 press conference and in the Venezuela State's 2020 report, although both sets of numbers were said to have covered the same period (August 2017 to August 2020);[90] and between the numbers reported in the 25 February 2021 address to the National Assembly and the Chief Prosecutor's 1 May 2021 press conference.

101. The Ombudsperson's Office has a mandate to assist in providing accountability for human rights violations.[91] It is under an obligation to produce an annual report on its work.[92] At the time of writing, annual reports were publicly available for 2014, 2015, 2016, 2017 and 2020, but not for 2018 and 2019. This information provided insights into its work. It would appear, nonetheless, that the activities reported by the Ombudsman's Office in relation to the large numbers of complaints it received fall short of fulfilling its constitutional role to further, defend and oversee rights and guarantees established under the Constitution and in human rights treaties.

102. In a 1 May 2021 press conference, the Chief Prosecutor reported progress in what he called emblematic cases,[93] having received questions about the Preliminary Examination of the Office of the Prosecutor of the International Criminal Court. The Preliminary Examination concerns the treatment of Government opponents or persons perceived as such in detention since at least April 2017.[94] The Chief Prosecutor referred specifically to three cases investigated by the Mission: Fernando Alberto Albán, Rafael Acosta Arévalo and Juan Pablo Pernalete. The Mission observes that in all three cases, the scope of investigations is either limited to less serious crimes or only the lowest-level perpetrators face criminal prosecution, or both.

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

104. The Mission contacted victims, families and lawyers in connection with all 19 cases. With the exception of the three cases mentioned, all reported that they had not been contacted by prosecutorial or judicial actors for witness statements nor notified about any procedural steps or other measures taken. At time of writing, Venezuela had not responded to the Mission's requests for further information about these cases.

105. In total, in the period between 2014 and May 2021, the State reported that between 379 and 397 State officials were convicted for human rights violations. The limited availability of public information regarding prosecutions in such cases, and in particular the

[89] See YouTube video, Press conference of Chief Prosecutor Tarek William Saab, 1 May 2021. Public Prosecutor's Office, press statement dated 1 May 2021.

[90] In the August 2020 press conference, the Chief Prosecutor reported that 925 officials had been indicted, while the State's 2020 report cited 811 officials indicted. The August 2020 press conference reported 584 officials charged, while the State's 2020 report cited 603 officials charged. The August 2020 press conference reported 450 officials arrested, although that number in the State's 2020 report was 452.

[91] 1999 Constitution, arts. 280-281.

[92] See 1999 Constitution, art. 276; 2004 Organic Law of the Ombudsperson's Office, art. 30; Organic Law of the Citizen Branch, Published in the Official Gazette No. 3.310, 25 October 2021, art. 65.

[93] See 1 May 2021 press conference.

[94] ICC-OTP, Report on Preliminary Examination Activities 2020, 14 December 2020, paras. 202-203, 206.

lack of disaggregated data, creates significant challenges in assessing the Government's efforts to investigate and prosecute human rights violations.

106. The public information reviewed by the Mission did not provide any suggestion that the State was carrying out investigations into responsibility for violations further up the chains of command. Instead, the cases referenced in the Government's reports suggest that only lower-level perpetrators faced criminal prosecution. If high-level officials, including those identified in the Mission's 2020 report, were subject to criminal prosecutions, they would have been subjected to a process to lift their immunity (*antejuicio de mérito*), as required by law.[95]

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

V. Conclusions and Recommendations

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

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

110. **The Mission has reasonable grounds to believe that judges and prosecutors in the cases examined have denied, as opposed to guaranteed, some rights to real or perceived government opponents, in response to interference from political actors or from within the judicial or prosecutorial hierarchy. Irregularities in cases before specialized terrorism courts were especially prevalent.**

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

112. **Judges ordered pre-trial detention as a routine, rather than an exceptional measure and without providing sufficient or appropriate justification. At times, judges ordered pre-trial detention in SEBIN or DGCIM facilities, despite the risk of or commission of torture, even when detainees denounced or displayed signs consistent with torture in courtrooms.**

113. **The Mission has reasonable grounds to believe that prosecutors and judges at times played key roles in arbitrary detentions by sustaining arrest warrants, pre-trial detention orders and criminal charges based on facts and supporting evidence that did not involve criminal acts or individualize the defendant's participation. In some cases, prosecutors and judges sustained detentions or charges on the basis of illegally-**

[95] 1999 Constitution, arts. 200, 266 (1)-(2). The high-level officials include the President; the Vice President; Ministers; the Chief Prosecutor; high-command military officials; state Governors; National Assembly members; and Supreme Tribunal of Justice justices. 2012 Criminal Procedure Code, art. 381.

obtained, manipulated or fabricated evidence, including evidence obtained via torture or coercion.

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

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

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

117. **The Mission acknowledges some recent developments announced by the Government. This includes the 12 May 2021 order to transfer detainees under DGCIM and SEBIN custody to detention centres of the Ministry of Penitentiary Services;[96] the 29 April 2021 adoption by the Supreme Tribunal of a Streamlining Plan (*Plan de Agilización*)[97] to speed up judicial processes of detainees in police detention centres; and the 21 June 2021 announcement of the formation of a special commission to address procedural delays and prison overcrowding, among others.[98] More time is needed to evaluate implementation of the announced measures.**

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

119. **The Mission has reasonable grounds to believe that instead of providing protection to victims of human rights violations and crimes, the justice system has played a significant role in the State's repression of Government opponents. The effects of the deterioration of the rule of law extend beyond those directly affected and impact society as a whole.**

120. **The detailed findings contain 45 recommendations for urgent action, addressed to the Supreme Tribunal of Justice; Criminal Judges; the Public Prosecutor's Office; the Military Prosecutor's Office; the Public Defender's Office; the Ombudsperson's Office; the National Assembly and the Executive.**

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[96] Presidential Resolution No. 4.601, Published in the Official Gazette of 12 May 2021 and Presidential Resolution No. 4.528, Published in the Official Gazette of 11 June 2021.

[97] Supreme Tribunal of Justice, Resolution No. 2021-002, 29 April 2021.

[98] See VTV, Presidente Nicolás Maduro encabeza este lunes reunión del Consejo de Estado en Miraflores, 21 August 2021.