Distr.: General
16 September 2021

Original: English

**Human Rights Council**
**Forty-eighth session**
13 September–8 October 2021
Agenda item 4
**Human rights situations that require the Council's attention**

# Detailed findings of the independent international factfinding mission on the Bolivarian Republic of Venezuela

# Contents


| | | Page |
|---|---|---|
| I. | Introduction | 5 |
| | A. Background | 5 |
| | B. Methodology | 6 |
| II. | Institutional framework | 8 |
| | A. Historical background | 8 |
| | B. Institutions of the Judicial Branch | 21 |
| | 1. The Supreme Tribunal of Justice | 22 |
| | 2. The Ordinary Criminal Justice Courts | 25 |
| | 3. The Specialized Terrorism Jurisdiction | 26 |
| | 4. Military Tribunals and Prosecutors | 28 |
| | 5. Public Defender's Office | 31 |
| | C. Institutions of the Citizen Branch | 32 |
| | 1. The Public Prosecutor's Office | 32 |
| | 2. Ombudsperson's Office | 34 |
| III. | Independence of the justice system | 35 |
| | A. Selection and tenure of judges | 36 |
| | 1. Supreme Tribunal Justices | 37 |
| | 2. The appointment of first instance and appellate judges | 40 |
| | B. Discipline and removal of judges | 42 |
| | 1. The Code of Ethics and Disciplinary Tribunals | 44 |
| | 2. General Inspectorate of Courts | 45 |
| | C. Selection, discipline and removal of Public Prosecutors | 48 |
| | 1. Selection of public prosecutors | 48 |
| | 2. Discipline and removal of public prosecutors | 50 |
| | D. Interference with judicial and prosecutorial independence | 52 |
| | 1. Interference within the Supreme Tribunal of Justice | 53 |
| | 2. Interference within the Criminal Judicial Circuits | 54 |
| | 3. Interference with prosecutorial independence | 57 |
| | 4. Pressure against individual prosecutors | 58 |
| | 5. Interference with the institution of the Public Prosecutor's Office | 62 |
| | E. Other forms of pressure on judges and prosecutors | 64 |
| | 1. Measures affecting conditions of service | 64 |
| | 2. Harassment and intimidation | 65 |
| | 3. Threats of legal action | 67 |
| | F. Involvement of external actors in criminal prosecutions (*acción penal*) | 71 |
| | 1. Involvement of high-level political actors in criminal prosecution (acción penal) | 72 |
| | 2. Involvement of police and intelligence bodies in the criminal prosecution (accion penal) | 77 |

IV. Acts and Omissions of Judges and Prosecutors ..... 84
A. Background on the Ordinary Criminal Procedure in Venezuela ..... 85
1. Preparatory Phase ..... 86
2. Intermediate Phase ..... 88
3. Trial Phase ..... 90
4. Execution/Enforcement Phase ..... 90
B. Failure to ensure legality of detentions and precautionary measures ..... 91
1. Arrests in flagrante delicto ..... 91
2. Foundation for arrests and pre-trial detention ..... 94
3. Non-custodial precautionary measures ..... 97
4. Discrepancies in arrest warrants and arrest reports ..... 99
5. Failure to act upon other illegalities during arrest and detention, including short term enforced disappearances ..... 106
6. Failure to investigate allegations of torture and cruel inhuman and degrading treatment, including sexual violence ..... 116
C. Sustaining the charges ..... 126
1. Arrests and detentions sustained on insufficient foundation ..... 126
2. Evidence derived from illegal interrogations ..... 132
3. Evidence derived from illegal searches ..... 138
4. Planted, fabricated or manipulated evidence ..... 141
D. The right to defence ..... 144
1. Denial of appointment of counsel of own choosing ..... 145
2. Interference with preparation of a defence ..... 150
3. Harassment and intimidation of defence lawyers ..... 152
E. Undue delays ..... 153
V. Judicial system responses to allegations of human rights violations ..... 160
A. Venezuelan legal framework for human rights violations and crimes against humanity ..... 160
1. Codification of international crimes and violations in Venezuelan law ..... 160
2. Accountability for Human Rights Violations ..... 169
B. Actions by the State to investigate and prosecute crimes involving human rights violations ..... 170
1. Information presented by the Public Prosecutor's Office ..... 170
2. The Ombudsperson's Office ..... 179
C. Investigations in cases documented by the Mission ..... 181
1. The Fernando Albán case ..... 183
2. The Rafael Acosta Arévalo Case ..... 186
3. The Juan Pablo Pernalete case ..... 189
D. Analysis of Information ..... 191
VI. Conclusions and Recommendations ..... 194
A. Conclusions ..... 194
B. Recommendations ..... 197

Recommendations to the Supreme Tribunal of Justice ..... 197
Recommendations to Judges ..... 197
Recommendations to the Public Prosecutor's Office and the Military Prosecutor's Office .... 198
Recommendation to Public Defender's Office ..... 199
Recommendation to The Ombudsperson's Office ..... 199
Recommendations to the National Assembly ..... 199
Recommendations to the Executive Branch ..... 200

# 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 mandate of the Mission for an additional two years, until September 2022, through resolution 45/20.

2. Resolution 45/20 enabled the Mission to continue to investigate 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. Until 11 March 2021, the expert members of the Mission on Venezuela were Marta Valiñas[2] of Portugal (Chairperson), Francisco Cox[3] of Chile and Paul Seils of the United Kingdom.[4] On 11 March 2021, Paul Seils resigned from the Mission and on 1 September 2021, Patricia Tappatá of Argentina was appointed by the Human Rights Council to serve as member.[5] The experts carry out this work *ad honorem*.

3. The Human Rights Council requested that the Mission prepare a written report on its findings to be presented to the Human Rights Council during an interactive dialogue at its forty-eighth session.[6] The Mission has produced two reports, the report presented to the Human Rights Council (A/HRC/48/69) and the present extended conference room paper, which provides a more detailed description and analysis of the findings contained in the report presented to the Human Rights Council. The present conference room paper focuses on an investigation into the responses of the Venezuelan justice system to cases involving human rights violations committed against real or perceived opponents of the Government.

4. In its 2020 report, the Mission concluded with reasonable grounds to believe that acts and conducts described in the 2020 report were in breach of Venezuela's international obligations under international treaty law.[7] It also concluded that some of those were committed as part of a widespread and systematic attack directed against a civilian population, with knowledge of the attack, pursuant to or in furtherance of a State policy.[8] In the present report, 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.

5. The Mission's 2020 report made preliminary findings, with reasonable grounds to believe, that, by either act or omission, members of the justice system have been involved in serious human rights violations.[9] As observed in that report's Chapter VII on Responsibility, the role of prosecutorial and judicial actors in the commission of violations or crimes was twofold. First, these actors played a direct role in cases of arbitrary detentions.[10] Second, the judiciary has failed to act as a check on other State actors, perpetuating impunity for the crimes committed.[11] The Mission noted that specific judges and prosecutors could incur

[1] A/HRC/45/33 and A/HRC/45/CRP.11, available at: https://www.ohchr.org/EN/HRBodies/HRC/FFMV/Pages/Index.aspx
[2] Appointed by the Human Rights Council on 2 December 2019.
[3] Appointed by the Human Rights Council on 2 December 2019.
[4] Appointed by the Human Rights Council on 2 December 2019.
[5] Due to the date on which Ms. Tappatá was appointed, she was not involved in the preparation or the approval of the present report.
[6] A/HRC/RES/45/20, para. 15.
[7] A/HRC/45/CRP.11, para. 2082.
[8] A/HRC/45/CRP.11, para. 2086.
[9] A/HRC/45/CRP.11, para. 165.
[10] A/HRC/45/CRP.11, para. 2009.
[11] A/HRC/45/CRP.11, para. 2010.

individual responsibility for specific violations if shown that they were aware of these violations and acted intentionally.[12]

6. The Mission also concluded with reasonable grounds to believe that high-level political actors had exerted significant influence over certain members of the judiciary, and that this influence increased *de jure* and *de facto* during the Mission's reporting period, directly contributing to the perpetration of violations and crimes.[13] An overview of the *de jure* factors was included in the report's contextual section on the Judicial Branch, which provided an overview of some of the structural issues affecting the independence and impartiality of the judiciary.[14]

7. The present report will focus on the justice 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. 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. The Mission uses the term "political cases" throughout this report to refer to criminal cases in which the defendant is accused by the State of alleged crimes committed against the Government.

8. The Mission continues to investigate other violations falling with its mandate although due to significant delays in recruiting staff members, it has not been able to report on all situations of human rights violations relevant to its mandate in the present reporting cycle. In tandem to the preparation of the present conference room paper, the Mission has been advancing with its inquiries into these violations, with a view towards providing public analysis and conclusions to the Human Rights Council, in March and September 2022. As previously noted, the Mission is also deepening its investigations into criminal structures and chains of command of individual and institutional actors in Venezuela.

## B. Methodology

9. As previously, 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.[15]

10. The Mission continued to base its information gathering on the investigation of cases, which also form the basis of the Mission's qualitative analysis with respect to violations and impunity contained in the present report. As the current report deals with the justice system, the Mission investigated cases involving arbitrary arrests and detentions and the role of justice system actors in contributing to ongoing impunity for the other gross human rights violations that fall within the mandate of the Mission.

11. For the present report, the Mission conducted a detailed analysis of 183 detentions of perceived or real opponents 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. In addition, for the present report, the Mission investigated and analysed 73 additional detentions, including 19 that took place since September 2020. The detentions analysed involved 153 men and 30 women, 92 of whom are civilians and 91 members of the military.

[12] A/HRC/45/CRP.11, para. 2008.
[13] A/HRC/45/CRP.11, para. 2011.
[14] A/HRC/45/CRP.11, paras. 148-165.
[15] A/HRC/45/CRP.11, paras. 9-14.

12. 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 and appeals. These documents are referenced in various sections in the present report. The Mission has included illustrative cases in certain sections throughout the report. The cases are intended to exemplify specific issues raised in the relevant sections, but they also may touch upon irregularities or analysis referenced in other parts of the report.

13. 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 individuals who worked in justice system institutions during the period covered by the Mission's mandate. Those interviewed also included Venezuelan legal experts. In addition, the Mission posted a questionnaire on its website, which was open to any verifiable[16] current or former judge, prosecutor and/or lawyer admitted to practice in Venezuela. It received 86 responses, which are reflected in the relevant substantive sections below (42 men, 36 women and 8 not identified).[17] Of these, 12 were former judges, 15 former prosecutors, 4 former public defenders and 55 former or current defence lawyers. The Mission held in-depth interviews with 14 individuals that responded to the questionnaire and accepted to be contacted by the Mission.

14. Given protection concerns, the Mission has anonymised personal information about the recipients of the questionnaire and interviewees, unless otherwise indicated. The list of identities is safeguarded in the Mission's secure database. The Mission also continued to receive information to its call for submissions, through which anyone can present information in accordance with a template on the Mission's website.

15. Consistent with other Fact-Finding Missions established by the Human Rights Council, and in line with its previous practice, for this report the Mission used "reasonable grounds to believe" as its standard of proof. The reasonable grounds 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 standard of proof is applied to both of the determinations relevant in the identification: (a) that the violation or crime occurred, and (b) that the individual identified was responsible. This standard of proof is lower than that required in criminal proceedings for a criminal conviction (certainty beyond a reasonable doubt) as well as that required to sustain an indictment. It is also lower that the balance of probability test in civil matters (meaning that something is more likely than not to have happened). However, it is sufficiently high to indicate that further investigations are warranted.[18]

16. In its resolution 45/20, the Human Rights Council urged the authorities of Venezuela to cooperate fully with the Mission, to grant it immediate, full and unfettered access to the entire country, and to provide it with all the information necessary to fulfil its mandate.[19] The Mission regrets that two years into its mandate, the Government of Venezuela still has not permitted its members to visit Venezuela in order to undertake in-country fact-finding.

17. Further, Venezuelan officials have not responded to the letters sent by the Mission. Between September 2020 and September 2021, the Mission sent 17 letters addressed to President Nicolás Maduro; Chief Prosecutor Tarek William Saab; Chief Justice Maikel José Moreno Pérez; Minister of the People's Power for Internal Relations, Justice and Peace Carmen Meléndez; Venezuela's Ombudsman Alfredo Ruiz Angulo; and then Minister of Defense Vladimir Padrino López. In the letters, the Mission reaffirmed its willingness to cooperate with the authorities of Venezuela and to initiate a dialogue on the issues related to the Mission's mandate.

[16] The Mission requested their Inpreabogado numbers (similar to a bar association number) and requested information about their current and former places of work.

[17] Responses on file with the Mission.

[18] A/HRC/45/CRP.11, paras. 11, 1977.

[19] A/HRC/RES/45/20, para. 16.

18. Some of the letters further requested, among others, information about: 1) measures taken to implement the recommendations contained in the Mission's September 2020 report; 2) the judiciary in Venezuela, including judges appointed, suspended and dismissed and internal processes within the Supreme Tribunal of Justice; and 3) the number and status of investigations undertaken by the Public Prosecutor's Office into human rights violations perpetrated by State security and intelligence bodies, including information pertaining to the cases documented in the Mission's 2020 report. The Mission regrets not being able to meet with Venezuelan authorities, either within or outside of the country, to discuss issues of relevance to its mandate.

19. The names of all actors within the justice system identified in the report as allegedly responsible for or contributing to violations are preserved in a confidential annex of the Mission. The report refers to their functional titles, but not to their names, with two exceptions. The names of Chief Justice Maikel Moreno and Chief Prosecutor Tarek William Saab appear in the report. The Mission wrote to Chief Justice Moreno on 30 July and to both individuals on 3 September 2021 and afforded them right to reply. Neither had responded at the time of writing.

20. The Mission continued to adhere to the standard of "do no harm" and in in this regard, it has anonymized identities of sources, in particular of witnesses and victims, or specific documents, given that revealing these could place the individual at risk of reprisals. While preserving the confidentiality of the interaction of witnesses and victims with the Mission, it maintains a full database of information and evidence upon which it bases the analysis and conclusions contained in the present report. The Mission would like to express its sincere appreciation to all individuals and organizations that cooperated with it and that provided information for purposes of the present report.

21. The liquidity crisis affecting the Office of the High Commissioner for Human Rights (OHCHR), together with Office's lengthy recruitment processes,[20] significantly delayed the hiring of the Mission's support team. For most of the year since October 2020, the Mission has operated with less than a third of its intended capacity of 14 staff.[21] Due to these limitations, the Mission could not investigate and report in depth on all situations involving violations falling within its mandate. With respect to the issues contained in the present report, the Mission was nevertheless able to gather solid and detailed information which allowed it to establish facts and draw conclusions in accordance with its mandate and based on the standard of proof of reasonable grounds to believe.

# II. Institutional framework

## A. Historical background

22. In August 1999, a National Constituent Assembly was established[22] and tasked to draft a new Constitution with the aim of developing a new national legal order, to guide the country

[20] Among other more general delays related to the recruitment process, the decision by OHCHR to hire the staff of the Mission on non-temporary job appointments for its second mandate significantly prolonged the timeframe for recruitment.

[21] From October 2020-May 2021, it had 4 staff members (1 administrative, 1 coordinator and 2 professional staff members, one of which was deployed to the Mission by Justice Rapid Response and UN Women until 31 May 2021); from May 2021-September 2021, it had 5 staff members (1 administrative, 1 coordinator and 3 professional staff members); and from August 2021-September 2021, it had 6 staff members (1 administrative, 1 coordinator and 4 professional staff members).

[22] The National Constituent Assembly was established on 25 July 1999, following the approval by public referendum held on 25 April 1999 at the request of the then newly elected president Hugo Chávez Frías and the subsequent election of the Assembly members in July of that year. For a detailed analysis of the process by which the National Constituent Assembly was established, see Allan R. Brewer-Carías, Poder Constituyente Originario y Asamblea Nacional Constituyente, Caracas, 1999, available at: https://tinyurl.com/34bjmnx2

through new systems of social, economic and political welfare.[23] In the lead up to the adoption of the Constitution, the newly established National Constituent Assembly passed a decree[24] declaring the judiciary to be in a state of emergency and reorganization.[25] The decree created an Emergency Judicial Commission made up of nine members[26] to carry out a number of functions, including the creation of a plan for the selection process of judges through public competitive examinations.[27]

23. The Emergency Judicial Commission was also mandated to evaluate the performance of judges and to dismiss those who had unjustified judicial delays in the processing of the cases assigned to them, those who had seriously breached their duties, or those showing signs of wealth whose provenance could not be ascertained, and to replace them with alternates or provisional judges.[28]

24. Following the adoption of a new Constitution in December 1999, the National Constituent Assembly continued to adopt decisions affecting institution building in the country, often outside the new constitutional framework and despite the purported end of its mandate following the Constitution's adoption.

25. The National Constituent Assembly adopted a Transitional Decree to "regulate the reconstruction of the Public Power" through the establishment of a transitional regime.[29] The stated objective of the transitional regime was to allow for the Constitution's "immediate application" while the new institutions created under the Constitution could be formed.[30] On this basis, the Transitional Decree established various temporary institutions, both within the Legislative Branch[31] and the Judicial Branch,[32] comprised of members of the National Constituent Assembly or of members appointed by the National Constituent Assembly.[33]

26. With respect to the Judicial Branch, the Transitional Decree created a Commission on the Functioning and Restructuring of the Justice System.[34] The Commission assumed the functions of the former Emergency Judicial Commission, including those relating to the selection of provisional judges through a public competitive process.[35] In addition, under the

[23] Ibid.

[24] National Constituent Assembly, Decree Reorganizing the Judicial Branch, Published in the Official Gazette No. 36.772, 25 August 1999, available at: https://pandectasdigital.blogspot.com/2017/09/gaceta-oficial-de-la-republica-de_949.html

[25] Ibid., art. 1.

[26] Ibid., art. 2. The Commission was made up of four members of the National Constituent Assembly and five members appointed by them.

[27] Ibid., art. 3(5)(a).

[28] Ibid., arts. 7 and 8. The judges who were dismissed were granted the right to appeal the decision on their dismissal by the Emergency Judicial Commission before the National Constituent Assembly, within the next five days following receipt of the notification of the dismissal. Ibid., art. 9.

[29] National Constitutional Assembly, Decree whereby the Transitional Regime of the Public Power is established, Published in the Official Gazette No. 36.857, 29 December 1999, art. 1, available at: https://www.franciscosantana.net/2017/06/decreto-mediante-el-cual-se-dicta-el.html?m=1 (hereinafter "1999 Transitional Decree").

[30] 1999 Transitional Decree, art. 1.

[31] The 1999 Transitional Decree dissolved the former legislative body, the Congress of the Republic (1999 Transitional Decree, art. 4), and stated that "the National Legislative Power, until such time as the members of the National Assembly provided for in the Constitution approved by the people of Venezuela are elected and take office, shall be exercised by a National Legislative Commission" (1999 Transitional Decree, art. 5). The National Legislative Commission was colloquially referred to as "El Congresillo" and was made up of 21 members of the 1999 National Constituent Assembly, and was given full legislative powers (1999 Transitional Decree, arts. 5 and 6).

[32] 1999 Transitional Decree, Chapter IV.

[33] 1999 Transitional Decree, Chapter IV.

[34] 1999 Transitional Decree., art. 21. The Commission was made up of citizens appointed by the National Constituent Assembly. Ibid., art. 27.

[35] 1999 Transitional Decree, arts. 21 and 25. According to the 1999 Transitional Decree, until such time as the relevant legislation was approved, the Coordinating Commission for Evaluation and Competitive Examinations for Admission and Permanence in the Judicial Branch, appointed by the National Constituent Assembly and acting under the supervision of the Commission for the

Transitional Decree, the National Constituent Assembly carried out the appointment of representatives of the Public Power, including appointing the Chief Prosecutor and the Human Rights Ombudsperson.[36]

27. The Commission on the Functioning and Restructuring of the Justice System was also responsible for regulating, administering, inspecting and supervising the courts and public defenders,[37] as well as for carrying out the disciplinary functions previously assigned to the disciplinary courts.[38] These functions were to be in place until such time the legislature enacted the relevant laws establishing disciplinary procedures and tribunals.[39] However, due to serious delays in the development of the relevant legislation, the ad hoc Commission on the Functioning and Restructuring of the Justice System continued to discipline and remove judges until 2009, when the National Assembly adopted the Judicial Code of Ethics.[40]

28. Adding to this temporary institutional regime, in August 2000, the Supreme Tribunal of Justice created two administrative institutions within the judiciary: 1) the Executive Directorate of the Judiciary, with responsibilities to carry out functions of direction, government and administration of the Judicial Branch;[41] and 2) the Judicial Commission,[42] with functions of control and supervision of the Executive Directorate of the Judiciary.[43] Both of these were auxiliary bodies of the Supreme Tribunal of Justice.[44] While not initially created for this purpose,[45] and as will be discussed below in Section III, the Judicial Commission

Functioning and Restructuring of the Justice System, was tasked with providing the principles, rules and procedures for the evaluations of judges, as well as for the admission and permanence in the Judicial Branch. Ibid., art. 25.

36 Javier Elechiguerra was named as the provisional Chief Prosecutor (1999 Transitional Decree, art. 35) and Dilia Parra was named as the provisional Human Rights Ombudsperson. Ibid., art. 34.

37 1999 Transitional Decree, art. 21.

38 1999 Transitional Decree, art. 23. With regards to these functions, the 1999 Transitional Decree provided for the creation of a General Inspectorship for Tribunals, headed by a General Inspector, tasked with assisting the Commission in the inspection and supervision of the tribunals, as well as in the handling of the disciplinary files of judges and other judicial officials, and the initiation of disciplinary proceedings against judges and other judicial officials. Ibid., arts. 28 and 29.

39 1999 Transitional Decree, art. 23.

40 The First Transitory Provision of the 2009 Judicial Code of Ethics stated that, as at the entry into force of the Judicial Code and once the Judicial Disciplinary Tribunal and the Judicial Disciplinary Court have been established, "the Commission for the Restructuring and Functioning of the Justice System will cease to function and, consequently, the cases underway will be interrupted and forward to the Judicial Disciplinary Tribunal". Judicial Code of Ethics, Published in Official Gazette No. 39.326, 6 August 2009, First Transitory Provision, available at: http://www.oas.org/juridico/spanish/mesicic3_ven_anexo4.pdf (hereinafter "2009 Judicial Code of Ethics"). The mandate of the Commission on the Functioning and Restructuring of the Justice System had been previously extended by the 2004 Organic Law of the Supreme Tribunal of Justice. This law stated in its Final and Transitory Derogation Provision that the Commission would be responsible for disciplinary functions until the disciplinary jurisdiction and the corresponding disciplinary tribunals were created. Organic Law of the Supreme Tribunal of Justice in the Bolivarian Republic of Venezuela, Published in the Official Gazette No. 37.942, 20 May 2004, Final and Transitory Derogation Provision, available at: https://www.oas.org/juridico/spanish/mesicic2_ven_anexo_44_sp.pdf (hereinafter "2004 Organic Law of the Supreme Tribunal of Justice").

41 Supreme Tribunal of Justice, Regulations for the Direction, Governance and Administration of the Judiciary, Published in the Official Gazette No. 37,014, 15 August 2000, art. 1, available at: https://www.icj.org/wp-content/uploads/2014/11/Venezuela-Regulations-for-the-Direction-Governance-and-Administration-of-the-Judiciary-ESP.pdf (hereinafter "2000 Regulations on the Judiciary").

42 The 2000 Regulations on the Judiciary specified that the Judicial Commission would be conformed of six justices of the Supreme Tribunal, one from each of its chambers. 2000 Regulations on the Judiciary, art. 26.

43 2000 Regulations on the Judiciary, art. 2.

44 2000 Regulations on the Judiciary, arts. 1 and 2.

45 2000 Regulations on the Judiciary, arts. 2 and 28; Internal Rules of Procedure of the Supreme Tribunal of Justice of Justice of 9 March 2006, art. 73, available at: https://accesoalajusticia.org/reglamento-interno-del-tribunal-supremo-de-justicia/.

eventually took over responsibilities from the Commission on the Restructuring of the Justice System for the appointment of judges.[46]

29. While the National Constituent Assembly created the ad hoc institutions referred to above to evaluate, discipline and dismiss first instance and appellate court judges and to appoint new ones, the National Assembly,[47] which took several months to be established after its creation under the 1999 Constitution, enacted legislation related to the appointment of justices to the Supreme Tribunal of Justice. In November 2000, the National Assembly enacted a Special Law for the Ratification or Appointment of Officials of the Citizen Branch and Justices of the Supreme Tribunal of Justice.[48] The Special Law established a Judicial Evaluations Commission to carry out a pre-selection of judicial candidates,[49] without conforming to the provisions of the recently adopted 1999 Constitution, including by increasing the participation of the National Assembly in the pre-selection of candidates (see Table 1 and Section III, below).[50]

30. Influence of political bodies over the composition of the Supreme Tribunal of Justice tightened following the attempted *coup d'etat* against President Hugo Chávez in April 2002. In the months following the incident, the Supreme Tribunal of Justice ruled that it did not have jurisdiction to initiate an investigation against those allegedly responsible, referring to the event as a "power vacuum" and not as a *coup d'état*.[51]

31. These events led to President Chávez publicly attacking the 11 justices of the Supreme Tribunal of Justice who had voted in favour of that ruling.[52] In May 2004, the National Assembly, aligned with President Chávez, approved amendments to the Organic Law on the Supreme Tribunal of Justice which increased the number of Supreme Tribunal of Justice justices, from 20 to 32.[53] In December 2004, a simple majority of the National Assembly,

[46] See Supreme Tribunal of Justice, Resolution declaring the integral restructuring of the entire Venezuelan Judicial Branch, Resolution No. 2009-0008, 18 March 2009, art. 3, available at: https://accesoalajusticia.org/resolucion-n-2009-008-sala-plena-reestructuracion-integral-poder-judicial-venezolano/ (hereinafter, "2009 Resolution Declaring the Restructuring of the Judicial Branch").

[47] See 1999 Constitution, Title V, Chapter I, arts. 186-224.

[48] Special Law for the Ratification or Appointment of Officials of the Citizen Branch and Justices of the Supreme Tribunal of Justice for the First Constitutional Period, Published in the Official Gazette No. 37.077, 14 November 2000, available at: https://venezuela.justia.com/federales/leyes/ley-especial-para-la-ratificacion-o-designacion-de-los-funcionarios-o-funcionarias-del-poder-ciudadano-y-magistrados-y-magistradas-del-tribunal-supremo-de-justicia-para-su-primer-periodo-constitucional/gdoc/ (hereinafter "2000 Special Law").

[49] 2000 Special Law, art. 3.

[50] 1999 Constitution, art. 264 (Justices of the Supreme Tribunal of Justice shall be elected for a single term of 12 years. The election procedure shall be determined by law. In all cases, candidates may be proposed to the Judicial Nominations Committee either on their own initiative or by organizations involved in the field of law. After hearing the opinion of the community, the Committee shall carry out a preselection to be submitted to the Citizen Branch, which shall carry out a second preselection to be submitted to the National Assembly, which shall carry out the final selection. Citizens may file objections to any of the candidates, for cause, with the Judicial Nominations Committee or the National Assembly).

[51] See Carmona Decree, Act of Constitution of the Government of Democratic Transition and National Unity, 12 April 2002, available at: https://web.archive.org/web/20100102054750/http://www.analitica.com/bitblio/carmona_estanga/decreto1.asp.

[52] See YouTube video, Excerpt of President Hugo Chávez speech on 17 August 2002, available at: https://youtu.be/-JkJekBcPJY. See also Clímax, Guarimba Judicial: Cómo el chavismo dominó el TSJ, 23 June 2017 (referring to President Chávez's public speech on 17 August 2002, where he stated that "What is coming now is a counterattack by the people and the real institutions. Revolutionary counterattack is what is coming now"), available at: https://elestimulo.com/climax/guarimba-judicial-como-el-chavismo-domino-el-tsj/?fb_comment_id=1597581483594576_1599811693371555%22.

[53] 2004 Organic Law of the Supreme Tribunal of Justice, art. 2.

made up of then-President Hugo Chávez's party Movimiento V República, appointed the new justices to the Supreme Tribunal of Justice.[54]

32. Over the following years, the Supreme Tribunal of Justice passed a series of resolutions, issued by its Plenary Chamber, which established control over decision-making within the judiciary, most significantly over the selection of first instance and appellate judges (see Table 1, below, and Section III below, where the issue of appointment and dismissal of judges is discussed in detail). This included the March 2009 Resolution Declaring the Integral restructuring of the Entire Venezuelan Judicial Branch,[55] which authorized the Judicial Commission, an auxiliary body of the Supreme Tribunal of Justice, to suspend judges and appoint provisional judges to fill the vacant posts, taking over responsibilities from the Commission on the Restructuring of the Justice System in this regard.[56]

33. As noted previously by the Mission[57] and described further below, another key moment impacting the independence of the judiciary was the criminal prosecution of Judge María Lourdes Afiuni. Judge Afiuni was arrested in December 2009, within hours of issuing a judgment ordering the pre-trial release under bail of an individual who had been arrested without an arrest warrant.[58] Shortly thereafter, on national television, then President Hugo Chávez called upon the Chief Prosecutor to give Judge Afiuni the "maximum penalty".[59] Following a case that demonstrated numerous procedural and substantive irregularities over almost ten years, Judge Afiuni was convicted by the Seventeenth Criminal Trial Judge of Caracas of "spiritual corruption" in 2019.[60] Her case has created an atmosphere of fear

[54] See Clímax, Guarimba Judicial: Cómo el chavismo dominó el TSJ, 23 June 2017, available at: https://elestimulo.com/climax/guarimba-judicial-como-el-chavismo-domino-el-tsj/?fb_comment_id=1597581483594576_1599811693371555%22. See also Human Rights Watch, Venezuela: Tribunal Supremo copado por partidarios de Chávez, 13 December 2004, available at: https://www.hrw.org/es/news/2004/12/13/venezuela-tribunal-supremo-copado-por-partidarios-de-chavez

[55] 2009 Resolution Declaring the Restructuring of the Judicial Branch.

[56] 2009 Resolution Declaring the Restructuring of the Judicial Branch, arts. 3 and 4.

[57] A/HRC/45/CRP.11, para. 161.

[58] Interview CCIV005, 2 July 2021; Interview CCIV008, 13 August 202; Interview CCIV001, 18 June 2021.

[59] See Aporrea, (AUDIO) Presidente Chávez: "Pido 30 años de prisión para la jueza Afiuni", 11 December 2009, available at: https://www.aporrea.org/actualidad/n146924.html

[60] Seventeenth Criminal Trial Court of First Instance in Caracas, Judgment of 16 May 2019, sentencing Judge Afiuni to five years' imprisonment for corruption under Article 62 of the Law against Corruption, Published in the Official Gazette on 7 April 2003 (Article 62: "Any public official who by delaying or omitting any act of his or her functions, or who by performing any act contrary to the duty imposed by his or her functions, receives or is promised money or any other benefit, either by himself or herself or through another person, for himself or herself or for another, shall be punished with three to seven years' imprisonment and a fine of up to fifty per cent of the benefit received or promised"), available at: https://www.oas.org/juridico/spanish/mesicic3_ven_anexo16.pdf (hereinafter "2003 Law against Corruption"); Interview CCIV005, 2 July 2021; Interview CCIV008, 13 August 2021. See also Acceso a la Justicia, Cronología del caso de María Lourdes Afiuni, 4 November 2020, available at: https://accesoalajusticia.org/cronologia-maria-lourdes-afiuni/; Juan Carlos Goitía Gómez, Lo que sé del Caso Afiuni (II), 23 November 2020, available at: https://impactovenezuela.com/lo-que-se-del-caso-afiuni-ii-corrupcion-espiritual/; Juan Carlos Goitía Gómez, Lo que sé del Caso Afiuni (III), available at: https://impactovenezuela.com/lo-que-se-del-caso-afiuni-iii/.

amongst judges,[61] marking a shift in their independence, commonly referred to as the "Afiuni effect".[62]

34. The following table describes key laws and resolutions related to the justice system, especially those concerning the appointment and dismissal of judges, which impacted the current configuration of the judiciary. Aspects of the instruments that are not in line with the 1999 Constitution are identified in the text or in footnotes. Further discussion of the appointment and dismissal of judges is in Section III.

Table 1
**Key laws and resolutions regarding the justice system**

| | *Name* | *Date* | *Legal Basis* | *Content* |
|---|---|---|---|---|
| 1. | Decree Reorganizing the Judicial Branch | 19 August 1999 | Decree of the National Constituent Assembly[63] | • Declared the judiciary to be in a state of emergency and reorganization.[64]<br>• Created an Emergency Judicial Commission made up of nine members appointed by the National Constituent Assembly.[65]<br>• Tasked the Emergency Judicial Commission to develop the National Plan to select judges and to organize the selection process of judges through public competitive examinations.[66]<br>• Authorized the Emergency Judicial Commission to evaluate and dismiss judges who had unjustified judicial delays in the processing of cases assigned to them, those who had seriously breached their duties, or those showing signs of wealth whose provenance could not be justified[67] and to replace them with alternates or provisional judges.[68] |

[61] For example, in the case of Leopoldo López, Judge Ralenis Tovar, who was handling the case, declared that when signing the arrest warrant for Leopoldo López she was sitting before a large number of officials of the state intelligence services and the Bolivarian National Guard and four national prosecutors, and she was threatened with becoming the "next Judge Afiuni". Testimony of Ralenis Tovar at the Hearing of the OAS General Secretariat to analyse the possible commission of crimes against humanity in Venezuela, 16 October 2017, available at: https://www.youtube.com/watch?v=ca5zYBQYcVE.

[62] Interview AAIV055, 6 November 2020; Interview CCIV008, 13 August 2021; Interview CCIV001, 18 June 2021.

[63] National Constituent Assembly, Decree whereby the Judicial Branch is reorganized, Published in the Official Gazette No. 36.772, 25 August 1999, available at: https://pandectasdigital.blogspot.com/2017/09/gaceta-oficial-de-la-republica-de_949.html (hereinafter "1999 Decree Reorganizing the Judicial Branch").

[64] 1999 Decree Reorganizing the Judicial Branch, art. 1.

[65] 1999 Decree Reorganizing the Judicial Branch, art. 2.

[66] 1999 Decree Reorganizing the Judicial Branch, art. 3(5)(a).

[67] 1999 Decree Reorganizing the Judicial Branch, art. 7.

[68] 1999 Decree Reorganizing the Judicial Branch, art. 8.

| | *Name* | *Date* | *Legal Basis* | *Content* |
|---|---|---|---|---|
| 2. | Decree of Urgent Precautionary Measures for the Protection of the justice system | 9 November 1999 | Decree of the National Constituent Assembly[69] | • Ordered the immediate suspension of judges who had received seven or more complaints or those subject to an ongoing criminal investigation[70] and subjected them to disciplinary proceedings.[71]<br>• Authorized the replacement of dismissed judges with alternates or provisional judges appointed by the Emergency Judicial Commission, through competitive examinations.[72] |
| 3. | Adoption of a transitional government regime | 22 December 1999 | Decree of the National Constituent Assembly[73] | • Created a Commission on the Restructuring of the Justice System, whose members were appointed by the National Constituent Assembly, and which took over functions of the former Judiciary Council of Venezuela.[74]<br>• The Commission on the Restructuring of the Justice System also assumed functions of the Emergency Judicial Commission created in August 1999 with respect to the selection of provisional judges through a public competitive process to be developed.[75]<br>• The transitional regime provided that all positions of judges shall be subject to public competitive examination in accordance with the Constitution. The regime was to last until the respective legislation was developed.[76] |

[69] National Constituent Assembly, Precautionary Decree for the Protection of the Justice system, Published in the Official Gazette No. 36.825, 9 November 1999, available at: http://www.mppp.gob.ve/wp-content/uploads/2018/05/GO-36825-Reglamento-Organico-MPD1.pdf (hereinafter "1999 Precautionary Decree").

[70] 1999 Precautionary Decree, art. 1.

[71] 1999 Precautionary Decree, art. 3.

[72] 1999 Precautionary Decree, art. 2. See 1999 Decree Reorganizing the Judicial Branch, art. 8.

[73] Supreme Tribunal of Justice, Regulations for the Direction, Governance and Administration of the Judiciary, Official Gazette No. 37,014, 15 August 2000, available at: https://www.icj.org/wp-content/uploads/2014/11/Venezuela-Regulations-for-the-Direction-Governance-and-Administration-of-the-Judiciary-ESP.pdf

[74] 1999 Transitional Decree, art. 21. The Judiciary Council was the governing body responsible for "ensuring the independence, autonomy, effectiveness, discipline and decorum of the courts and the judiciary, and to guarantee them the benefits of the judicial career". See Organic Law of the Judiciary Council, Published in Official Gazette No. 36,534 of 8 September 1998, art. 2, available at: https://www.icj.org/wp-content/uploads/2014/11/Venezuela-Ley-Org per centC3 per centA1nica-del-Consejo-de-la-Judicatura-1999-ESP.pdf

[75] 1999 Transitional Decree, art. 25, available at: https://www.franciscosantana.net/2017/06/decreto-mediante-el-cual-se-dicta-el.html?m=1.

[76] 1999 Transitional Decree, art. 25.

| | *Name* | *Date* | *Legal Basis* | *Content* |
|---|---|---|---|---|
| | | | | • The Commission on the Restructuring of the Justice System was also responsible for regulating, administering, inspecting and supervising the courts and public defenders,[77] as well as for carrying out the disciplinary functions previously assigned to the disciplinary courts, and until such time the legislature enacted the relevant laws establishing disciplinary procedures and tribunals.[78] |
| 4. | Regulations for the Direction, Governance and Administration of the Judiciary | 2 August 2000 | Resolution of the Supreme Tribunal of Justice[79] | • Created the Executive Directorate of the Judiciary (Dirección Ejectiva de la Magistratura, DEM, for its acronym in Spanish), an auxiliary body of the Supreme Tribunal of Justice, with responsibilities to carry out functions of direction, government and administration of the Judicial Branch.[80]<br>• Created the Judicial Commission, an auxiliary body of the Supreme Tribunal of Justice, with functions of control and supervision of the Executive Directorate of the Judiciary.[81]<br>• Established that six Supreme Tribunal of Justice justices, one from each of the chambers, would constitute the Tribunal's Judicial Commission.[82] The president of the Supreme Tribunal of Justice would preside over the Commission.[83]<br>• The functions of the Judicial Commission included powers to propose candidates for certain positions within the judiciary and to propose their removal.[84] |

[77] 1999 Transitional Decree, art. 21.
[78] 1999 Transitional Decree, art. 23.
[79] 2000 Regulations on the Judiciary, art. 2. This replaced previous regulations adopted in March 2000, the Regulations of Evaluation and Competitive Examinations for Admission and Permanence in the Judicial Branch, Published in the Official Gazette No. 36.910, 14 March 2000.
[80] 2000 Regulations on the Judiciary, art. 1.
[81] 2000 Regulations on the Judiciary, art. 2.
[82] 2000 Regulations on the Judiciary, art. 26.
[83] 2000 Regulations on the Judiciary, art. 27.
[84] 2000 Regulations on the Judiciary, art. 28.

| | *Name* | *Date* | *Legal Basis* | *Content* |
|---|---|---|---|---|
| 5. | Special Law for the Ratification or Appointment of Officials of the Citizen Branch and Justices of the Supreme Tribunal of Justice | 14 November 2000 | Law of the National Assembly[85] | • Established the Judicial Evaluations Commission made up of a majority of National Assembly deputies,[86] which was to carry out the pre-selection of judicial candidates.[87]<br>• Allowed the Judicial Evaluations Commission to present the shortlisted candidates directly to the plenary of the National Assembly for final vote,[88] bypassing the Citizen Branch.[89] |
| 6. | Organic Law of the Supreme Tribunal of Justice | 20 May 2004 | Law of the National Assembly[90] | • Increased the size of the Supreme Tribunal of Justice from 20 to 32 justices.[91]<br>• Allowed a simple majority of the National Assembly to elect the Supreme Tribunal of Justice justices if four previous attempts to reach a two-thirds vote had failed.[92]<br>• Maintained the Judicial Evaluations Committee (now called the Judicial Nominations Committee), modifying its composition to five National Assembly deputies and six civil society representatives, to be selected by the National Assembly, |

[85] Ley Especial para la Ratificación o Designación de los Funcionarios o Funcionarias del Poder Ciudadano y Magistrados y Magistradas del Tribunal Supremo de Justicia para el Primer Período Constitucional, Published in the Official Gazette No. 37.077, 14 November 2000, available at: https://venezuela.justia.com/federales/leyes/ley-especial-para-la-ratificacion-o-designacion-de-los-funcionarios-o-funcionarias-del-poder-ciudadano-y-magistrados-y-magistradas-del-tribunal-supremo-de-justicia-para-su-primer-periodo-constitucional/gdoc/

[86] 2000 Special Law, art. 3 (15 National Assembly Deputies and 12 representatives from "sectors of society"). The make up of the Judicial Evaluations Commission was contrary to the provisions of the 1999 Constitution with respect to the Judicial Nominations Committee, requiring that it be comprised of representatives of civil society sectors (1999 Constitution, art. 270). The 2000 Special Law did establish that, once conformed, the Judicial Evaluations Commission would choose a list of 12 civil society representatives, out of which six would be selected by the plenary of the National Assembly to sit on the Judicial Evaluations Commission. 2000 Special Law, art. 4.

[87] 2000 Special Law, art. 3.

[88] 2000 Special Law, art. 9.

[89] This was contrary to the provision of the 1999 Constitution, which required that the Citizen Branch shall carry out a second pre-selection of candidates prior to the final vote (1999 Constitution, art. 264).

[90] Organic Law of the Supreme Tribunal of Justice of the Bolivarian Republic of Venezuela, Published in the Official Gazette No. 37.942, 20 May 2004, available at: https://www.oas.org/juridico/spanish/mesicic2_ven_anexo_44_sp.pdf

[91] 2004 Organic Law of the Supreme Tribunal of Justice, art. 2. This decision was justified as necessary to help the Supreme Tribunal of Justice address its backlog of cases, but which was criticized as an effort to pack the court with pro-government justices. See Inter-American Commission of Human Rights, 2009 Report on Venezuela, paras. 196 and197, available at: http://www.cidh.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm

[92] 2004 Organic Law of the Supreme Tribunal of Justice, art. 8. This was partially modified by the 2010 reforms to the Organic Law, which allowed for a simple-majority election only if three attempts to reach a two-thirds vote had failed. See 2010 Organic Law of the Supreme Tribunal of Justice, art. 38.

| | *Name* | *Date* | *Legal Basis* | *Content* |
|---|---|---|---|---|
| | | | | for the appointment of justices of the Supreme Tribunal of Justice.[93]<br>• Authorized the Citizen Branch to carry out a second pre-selection of judicial candidates, but said it could only deviate from the Judicial Nominations Committee's list for "serious cause".[94]<br>• Authorized the National Assembly to temporarily suspend justices of the Supreme Tribunal of Justice if the Citizen Branch unanimously determined that the justice's actions constitute a serious offense.[95]<br>• Allowed the National Assembly, by a simple majority, to nullify appointments of Supreme Tribunal of Justice justices in various circumstances allowing for a wide margin of discretion, including if the judges "public attitude offends […] the prestige" of the Supreme Tribunal of Justice or its members.[96] |
| 7. | Rules for Evaluations and Public Competitions for Entry into and Promotion within the | 6 July 2005 | Resolution of the Supreme Tribunal of Justice[98] | • Declared the National School of the Judiciary as the competent authority to plan, supervise and execute all activities related to public competitive examinations for admission, promotion and permanence in the judicial career.[99]<br>• Defined the background,[100] training,[101] examination[102] and |

[93] The civil society representatives were selected by the National Assembly, thus ensuring the National Assembly's full control over who sat on the Judicial Evaluations Commission. 2004 Organic Law of the Supreme Tribunal of Justice, art. 13.

[94] Ibid., art. 13.

[95] 2004 Organic Law of the Supreme Tribunal of Justice, art. 23.3. That article specified that, the justice was to be suspended from office until a final Judgment is adopted by the National Assembly.

[96] 2004 Organic Law of the Supreme Tribunal of Justice, art. 23.4. This provision was removed in the 2010 reforms to the Organic Law of the Supreme Tribunal of Justice.

[98] Supreme Tribunal of Justice Resolution, Rules for Evaluations and Public Competitions for Entry into and Promotion within the Judicial Career, 6 July 2005, Published in the Official Gazette No. 38.282, 28 September 2005, available at: http://www.oas.org/juridico/spanish/mesicic2_ven_anexo_46_sp.pdf (hereinafter "2005 Rules for Entry to the Judicial Career").

[99] 2005 Rules for Entry to the Judicial Career, art. 2.

[100] 2005 Rules for Entry to the Judicial Career, arts. 7 and 8.

[101] 2005 Rules for Entry to the Judicial Career, arts. 14-16.

[102] 2005 Rules for Entry to the Judicial Career, arts. 23-25.

| | *Name* | *Date* | *Legal Basis* | *Content* |
|---|---|---|---|---|
| | Judicial Career[97] | | | evaluation[103] requirements for entry into the judicial career.<br>• Provided a five-day window for public comment on the list of judicial candidates.[104]<br>• Defined the requirements for the promotion of judges.[105] |
| 8. | Internal Regulations of the Supreme Tribunal of Justice | 8 March 2006 | Resolution of the Supreme Tribunal of Justice[106] | • Established the rules for the internal organization of the Supreme Tribunal of Justice and the sessions to be held in the Plenary and other Chambers.[107]<br>• Established the Plenary Chamber as the highest governing body of the Supreme Tribunal of Justice.[108]<br>• Established the rules for election of the Tribunal's Board of Directors[109] and the attributions of this body.[110]<br>• Confirmed the Judicial Commission as a permanent commission of the Supreme Tribunal of Justice to coordinate the policies, activities and performance of the Executive Directorate of the Judiciary, the National School of the Judiciary, the General Inspectorate of Courts and the Public Defence.[111] |
| 9. | Resolution declaring the integral restructuring of the entire Venezuelan | 18 March 2009 | Resolution of the Supreme | • Announced the comprehensive restructuring of the Venezuelan judiciary.[113]<br>• Established a compulsory process of institutional evaluation for all judges |

[97] These rules were never fully implemented and were replaced by the 2016 Rules for Evaluation and Competitive Examination for Admission and Promotion to the Judicial Career (see below). See Acceso a la Justicia, Análisis de las normas de evaluación y concurso para el ingreso y ascenso a la función judicial, 5 October 2016, available at: https://accesoalajusticia.org/consideraciones-sobre-las-normas-de-evaluacion-y-concurso-de-oposicion-para-el-ingreso-y-ascenso-a-la-funcion-judicial/. See also Inter-American Commission on Human Rights, 2009 Annual Report on Venezuela, paras. 201-206, available at: http://www.cidh.org/pdf per cent20files/VENEZUELA per cent202009 per cent20ENG.pdf

[103] 2005 Rules for Entry to the Judicial Career, arts. 17-19, 21, 26.

[104] 2005 Rules for Entry to the Judicial Career, art. 48.

[105] 2005 Rules for Entry to the Judicial Career, arts. 38-45.

[106] Supreme Tribunal of Justice, Internal Regulations of the Supreme Tribunal of Justice, 9 March 2006, available at: https://accesoalajusticia.org/reglamento-interno-del-tribunal-supremo-de-justicia/ (hereinafter "2006 Internal Regulations of the Supreme Tribunal").

[107] 2006 Internal Regulations of the Supreme Tribunal, art. 1.

[108] 2006 Internal Regulations of the Supreme Tribunal, art. 3.

[109] 2006 Internal Regulations of the Supreme Tribunal, arts. 4-10.

[110] 2006 Internal Regulations of the Supreme Tribunal, art. 11.

[111] 2006 Internal Regulations of the Supreme Tribunal, art. 73.

[113] 2009 Resolution Declaring the Restructuring of the Judicial Branch, art. 1.

| | *Name* | *Date* | *Legal Basis* | *Content* |
|---|---|---|---|---|
| | Judicial Branch | | Tribunal of Justice[112] | and administrative staff within the judiciary,[114] and authorized the Judicial Commission to suspend with or without pay, judges and administrative staff "who do not pass the institutional evaluation".[115]<br>• Declared that the positions left vacant by the judiciary restructuring process shall be filled by the Judicial Commission and thereafter ratified by the Plenary Chamber of the Supreme Tribunal of Justice.[116] |
| 10. | Judicial Code of Ethics | 6 August 2009 | Law of the National Assembly[117] | • Established the ethical principles that guide the conduct of all judges in the Venezuelan judiciary and their disciplinary regime, "in order to guarantee their independence and suitability".[118]<br>• Outlined the sanctions that may be taken against judges, which include, depending on the gravity of the case: 1) written admonishment; 2) suspension for 1 to 6 months; and 3) removal from office and disqualification to perform functions within the justice system for a period of 2 to 15 years.[119]<br>• Established the Judicial Disciplinary Tribunal (first instance) and the Judicial Disciplinary Court (second instance) as the entities responsible for the discipline of judges.[120]<br>• Established the rules governing the disciplinary proceeding for judges both in first and second instances.[121] |

[112] Supreme Tribunal of Justice, Resolution declaring the integral restructuring of the entire Venezuelan Judicial Branch, Resolution No. 2009-0008, 18 March 2009, available at: https://accesoalajusticia.org/resolucion-n-2009-008-sala-plena-reestructuracion-integral-poder-judicial-venezolano/

[114] 2009 Resolution Declaring the Restructuring of the Judicial Branch, art. 2.

[115] 2009 Resolution Declaring the Restructuring of the Judicial Branch, art. 3.

[116] 2009 Resolution Declaring the Restructuring of the Judicial Branch, art. 4.

[117] Judicial Code of Ethics, Published in Official Gazette No. 39.326, 6 August 2009, available at: http://www.oas.org/juridico/spanish/mesicic3_ven_anexo4.pdf. This law was amended in 2015. Judicial Code of Ethics, Published in the Extraordinary Official Gazette, No. 6207, 28 December 2015.

[118] 2009 Judicial Code of Ethics, art. 1.

[119] 2009 Judicial Code of Ethics, art. 28.

[120] 2009 Judicial Code of Ethics, arts. 39, 40, 42.

[121] 2009 Judicial Code of Ethics, arts. 51-90.

| | *Name* | *Date* | *Legal Basis* | *Content* |
|---|---|---|---|---|
| 11. | Reforms to the Organic Law of the Supreme Tribunal of Justice | 1 October 2010 | Law of the National Assembly[122] | • Established the powers, organizations and functions of the Supreme Tribunal of Justice and its various chambers.<br>• Established that the Supreme Tribunal of Justice is the highest governing body of the Judicial Branch, and enjoys functional, financial and administrative autonomy.[123]<br>• Allows the National Assembly to elect Supreme Tribunal of Justice justices by a simple majority if three previous attempts to reach a two-thirds majority have failed.[124]<br>• Maintains the composition of the Judicial Nominating Committee as five members of the National Assembly and representatives of sectors of society, who are also selected by the National Assembly.[125]<br>• Declares the Judicial Nominations Committee to be an "advisory body" of the National Assembly, headquartered in the parliamentary building.[126]<br>• Establishes that Supreme Tribunal of Justice justices may only be removed in accordance with Constitution article 265 and for "grave cause", including lack of independence and impartiality.[127] |
| 12. | Rules for Evaluation and Competitive Examination for Admission | 23 August 2016 | Resolution of the Supreme Tribunal of Justice[128] | • Established the Judicial Commission as a permanent body of the Supreme Tribunal of Justice |

[122] Organic Law of the Supreme Tribunal of Justice (Reprinted in Official Gazette No. 39.483, correction of Articles 6, 9, 13, 70 and 73), Official Gazette No. 39.522, 1 October 2010, available at: https://www.oas.org/juridico/PDFs/mesicic4_ven_ley_org_trib_sup_just.pdf (hereinafter "2010 Organic Law of the Supreme Tribunal of Justice").

[123] 2010 Organic Law of the Supreme Tribunal of Justice, art. 2.

[124] 2010 Organic Law of the Supreme Tribunal of Justice, art. 38.

[125] 2010 Organic Law of the Supreme Tribunal of Justice, art. 65.

[126] 2010 Organic Law of the Supreme Tribunal of Justice, art. 64. In contrast, the 1999 Constitution described the Judicial Nominations Committee as an advisory body of the Judicial Branch. 1999 Constitution, art. 270.

[127] 2010 Organic Law of the Supreme Tribunal of Justice, art. 62.

[128] Resolution of the Supreme Tribunal of Justice of Justice, Rules for Evaluation and Competitive Examination for Admission and Promotion to the Judicial Career, Published in Official Gazette No. 40.972, 23 August 2016, available at: http://www.juris-line.com.ve/data/files/3537.pdf (hereinafter "2016 Rules for Admission to the Judicial Career").

| *Name* | *Date* | *Legal Basis* | *Content* |
|---|---|---|---|
| and Promotion to the Judicial Career | | | tasked with regulating entry to the judicial career.[129]<br>• Affirmed that entry to the judicial career should take place in accordance with a public competitive[130] and merit-based[131] process.<br>• Established that the Judicial Commission would also carry out job performance evaluations of judges and remand cases to the General Inspectorate of Tribunals in the case of irregularities identified in three consecutive periods.[132] |

## B. Institutions of the Judicial Branch

35. As per the 1999 Constitution, the public power in Venezuela is divided in five branches: the Executive Branch, the Legislative Branch, the Judicial Branch, the Electoral Branch, and the Citizen Branch.[133] Chapter III of Title V of the 1999 Constitution contains the provisions that regulate the Judicial Branch and the justice system.

36. The 1999 Constitution guarantees the right of all Venezuelans to access the justice system for enforcing their rights and interests.[134] The State shall guarantee that justice is free of charge, accessible, impartial, suitable, transparent, autonomous, independent, and without undue delays.[135] As defined under the Constitution, the justice system comprises all entities involved at all stages of the criminal justice process, including the Supreme Tribunal of Justice, first instance and appellate courts, the Public Prosecutor's Office, the Public Defender's Office, the criminal investigation bodies, the penitentiary system and lawyers admitted to practice.[136] To help ensure the autonomy of the Judicial Branch, the 1999 Constitution requires that at least two per cent of the national budget be allocated to it.[137]

37. The Constitution required the National Assembly to adopt a law organizing the Judicial Branch within one year of the Constitution's adoption.[138] This included the organization of JudicialCircuits and the creation and competence of regional courts.[139] However, to date, no such law has been adopted. Therefore, the law which was in effect prior to the adoption of the 1999 Constitution, the Organic Law of the Judicial Branch of 1998, remains in effect to date.[140] Under the Organic Law, the Judicial Branch is made up of the

[129] 2016 Rules for Admission to the Judicial Career, art. 3.
[130] 2016 Rules for Admission to the Judicial Career, art. 4.
[131] 2016 Rules for Admission to the Judicial Career, art. 5.
[132] 2016 Rules for Admission to the Judicial Career, arts. 41 and 45.
[133] 1999 Constitution, art. 136.
[134] 1999 Constitution, art. 26.
[135] 1999 Constitution, art. 26.
[136] 1999 Constitution, art. 253.
[137] 1999 Constitution, art. 254. This amount may only be modified with authorization from the National Assembly.
[138] 1999 Constitution, fourth transitory provision.
[139] 1999 Constitution, art. 269.
[140] Organic Law of the Judicial Branch, Published in the Official Gazette No. 5.232, 11 September 1998, available at: http://www.oas.org/juridico/PDFs/mesicic4_ven_ley_org_pod_jud.pdf (hereinafter "1998 Organic Law of the Judicial Branch").

Supreme Tribunal of Justice, the courts of ordinary jurisdiction and the courts of special jurisdiction.[141]

38. The principles of independence and impartiality of both the justice system as a whole and of individual judges in the exercise of their functions are enshrined in a number of constitutional provisions.[142] Specifically, the Constitution requires that judges not engage in political activism[143] and that political interests do not motivate the appointment or removal of judges.[144] Similarly, the Organic Law of the Judicial Branch affirms that, "in the exercise of their functions, judges are autonomous, independent, impartial, accountable, and irremovable and non-transferable".[145] The 2009 Code of Ethics equally establishes that the judge, in the exercise of his functions, is independent and autonomous and that his or her actions must only be bound by the Constitution and the legal system.[146]

### 1. The Supreme Tribunal of Justice

39. The 1999 Constitution makes clear that the Supreme Tribunal of Justice shall carry out both jurisdictional and administrative functions.[147] This represents a change from the previous Constitution, which separated out jurisdictional and administrative functions between the former Supreme Tribunal of Justice and the former Judiciary Council, respectively.[148] Under the 1999 Constitution, the Supreme Tribunal of Justice has the power to submit bills related to judicial procedures and organization[149] and to participate in debates on proposed laws in the National Assembly.[150] The Constitution further makes clear that the Supreme Tribunal of Justice shall enjoy functional, financial and administrative autonomy.[151]

40. The Organic Law of the Supreme Tribunal of Justice establishes the powers, organization and functions of the Supreme Tribunal of Justice, including with respect to the appointment and removal of judges. On 19 May 2004, the National Assembly approved the first Organic Law of the Supreme Tribunal of Justice, repealing the Organic Law of 1976.[152] This Organic Law was the subject of criticism, both due to the way it was passed, namely by a simple majority vote of the National Assembly, and due to its substantive provisions,[153] including in relation to the election of Supreme Tribunal of Justice justices and increasing the membership of the Supreme Tribunal from 20 to 32 judges, as described in the table above.

41. On 29 July 2010, the National Assembly passed a reformed Organic Law of the Supreme Tribunal of Justice, which remained in force at the time of writing.[154] The Organic Law set out the powers, organizations and functions of the Supreme Tribunal of Justice and its various chambers. The Organic Law established that the Supreme Tribunal of Justice is the highest governing body of the Judicial Branch, and affirmed its functional, financial and

141 1998 Organic Law of the Judicial Branch, art. 60.
142 See 1999 Constitution, arts. 145, 254-256.
143 1999 Constitution, art. 256.
144 1999 Constitution, art. 145.
145 1998 Organic Law of the Judicial Branch, art. 3.
146 2009 Judicial Code of Ethics, art. 4. The Judicial Code of Ethics further provides the need for judges to be impartial in the exercise of their duties and to always act with integrity. Ibid., arts. 5 and 24. Judges are also obliged to guarantee the enjoyment and exercise of human rights to all individuals. Ibid., art. 6.
147 1999 Constitution, art. 267.
148 1961 Constitution, arts. 215 and 217.
149 1999 Constitution, art. 204(4).
150 1999 Constitution, art. 211.
151 1999 Constitution, arts. 254 and 256. See also, Criminal Procedure Organic Code, Official Gazette No. 6078 of 15 June 2012, art. 4 (hereinafter "2012 Criminal Procedure Code").
152 2004 Organic Law of the Supreme Tribunal of Justice.
153 See, for example, Inter-American Commission of Human Rights, 2009 Report on Venezuela, paras. 199-201, available at: http://www.cidh.org/pdf per cent20files/VENEZUELA per cent202009 per cent20ENG.pdf
154 2010 Organic Law of the Supreme Tribunal of Justice.

administrative autonomy.[155] The 2010 Organic Law of the Supreme Tribunal of Justice maintained some of the provisions of the 2004 law with respect to the role of the National Assembly in the process of appointment of Supreme Tribunal of Justice justices (see table 1).[156]

42. Pursuant to the 1999 Constitution, the Supreme Tribunal of Justice shall be made up of Constitutional, Administrative, Electoral, Civil Appellate, Criminal Appellate and Social Appellate Chambers.[157] The jurisdictions of each of these divisions are outlined in the 2010 Organic Law of the Supreme Tribunal.[158] Each of the Chambers is comprised of five justices, with the exception of the Constitutional Chamber, which has seven justices, including the president of the Supreme Tribunal of Justice.[159] The justices of all the Supreme Tribunal's Chambers comprise the Plenary Chamber, which shall act as the Supreme Tribunal's governing body with a six-member board of directors.[160]

43. The Constitutional Chamber has expansive powers and has been described as a "supra" body within the Supreme Tribunal of Justice.[161] Under the 1999 Constitution, the Constitutional Chamber has a mandate to review laws for constitutionality upon request by the President.[162] The 1999 Constitution also grants it power to declare the unconstitutionality or nullity of any law or other legal provision,[163] as well as to review first instance court judgments,[164] including at the state or municipal level.[165] Through its own decisions, the Constitutional Chamber has permitted itself to take "corrective action" to remedy legislative omissions, allowing itself to take over key functions of the National Assembly, such as the appointment of electoral authorities.[166]

44. The Supreme Tribunal of Justice has jurisdiction to hear cases involving crimes committed by high-level officials.[167] The high-level officials include the President; the Vice President; Ministers; the Chief Prosecutor; high-level military officials; state Governors; National Assembly members; and Supreme Tribunal of Justice justices, among others.[168] In cases involving the President, if the Supreme Tribunal of Justice considers that there is merit to continue, it shall proceed to consider the case, following authorization by the National Assembly.[169] In cases involving other high-level officials, the Supreme Tribunal of Justice

155 2010 Organic Law of the Supreme Tribunal of Justice, art. 2.

156 For example, it allows the National Assembly to elect Supreme Tribunal of Justice justices by a simple majority if three previous attempts to reach a two-thirds majority have failed (2010 Organic Law of the Supreme Tribunal art. 38). It also maintains the composition of the Judicial Nominating Committee as five members of the National Assembly and six civil society representatives, who are also selected by the National Assembly (2010 Organic Law of the Supreme Tribunal, art. 65).

157 1999 Constitution, art. 262.

158 2010 Organic Law of the Supreme Tribunal of Justice, Title III.

159 2010 Organic Law of the Supreme Tribunal of Justice, art. 8. See also Acceso a la Justicia, Organigram on the Supreme Tribunal of Justice: https://accesoalajusticia.org/organigrama-del-tribunal-supremo-de-justicia/

160 2010 Organic Law of the Supreme Tribunal of Justice, arts. 7 and 24.

161 See Acceso a la Justicia, El Régimen Jurídico del Poder Judicial, pp. 28-30, available at: https://accesoalajusticia.org/wp-content/uploads/2016/11/R%C3%A9gimen-jur%C3%ADdico-del-Poder-Judicial-1-1.pdf

162 1999 Constitution, art. 214. As described in the Mission's 2020 Report, after the opposition's majority win of the National Assembly in December 2015, President Maduro consistently sent legislation adopted by the National Assembly to the Constitutional Chamber for review of its constitutionality, A/HRC/45/CRP.11, para. 73.

163 1999 Constitution, art. 334.

164 1999 Constitution, art. 336(10).

165 1999 Constitution, art. 336(10).

166 Supreme Tribunal of Justice, Constitutional Chamber, Judgment No. 1865 of 26 December 2014; Supreme Tribunal of Justice, Constitutional Chamber, Judgment No. 1086 of 13 December 2014. See Supreme Tribunal of Justice, Constitutional Chamber, Judgment No. 68 of 5 June 2020, available at: http://historico.tsj.gob.ve/decisiones/scon/junio/309870-0068-5620-2020-20-0215.HTML

167 2012 Criminal Procedure Code, art. 376.

168 2012 Criminal Procedure Code, art. 381.

169 2012 Criminal Procedure Code, art. 378.

shall hear the case if it involves "political crimes"[170] and shall remand the case to the ordinary jurisdiction if it involves other crimes.[171] Once a case is admitted, the high-level official shall be suspended from his or her position throughout the legal process.[172]

45. With respect to administrative functions of the Supreme Tribunal of Justice, both the 1999 Constitution and the 2010 Organic Law establish that the Supreme Tribunal of Justice is responsible for the direction, governance and administration of the Judicial Branch.[173] The administrative functions of the Supreme Tribunal of Justice are outlined in its Organic Law.[174] Most of the administrative functions are ascribed exclusively to the Plenary Chamber.[175] These include initiating draft legislation relating to judicial organization;[176] preparing the budget of the Judicial Branch;[177] and electing its board of directors and that of each Chamber.[178]

46. One of the central administrative functions of the Supreme Tribunal of Justice is to "appoint and swear in the judges of the Republic".[179] This includes the appointment of alternate judges in the case of temporary absence of judges[180] and in the case of "absolute absence" of a judge, "until such time as the National Assembly appoints a new judge to fill such absence".[181] As noted above, the Supreme Tribunal of Justice exercises this power through its Judicial Commission, which determines the selection and removal of first instance and appellate court judges, including provisional and alternate judges.[182] See Section III for a detailed discussion of the appointment of first instance and appellate court judges.

47. The Constitution charges the Supreme Tribunal of Justice with the creation of the Executive Directorate of the Judiciary (the *Dirección Ejecutiva de la Magistratura*, DEM, for its acronym in Spanish) to carry out administrative functions.[183] This body was first established in 2000 and is divided in specialized units and committees, conformed of members appointed by the Supreme Tribunal of Justice.[184] The Executive Directorate of the Judiciary responds to the Supreme Tribunal's Plenary Chamber, and its functions are further laid out in the 2010 Organic Law of the Supreme Tribunal of Justice.[185]

48. The Supreme Tribunal of Justice is also responsible for judges' discipline. The 2010 Organic Law of the Supreme Tribunal of Justice creates the Inspectorate General of the Courts and the Inspectorate General of the Public Defender's Office.[186] These entities are "hierarchically, organizationally and functionally dependent" on the Plenary Chamber of the Supreme Tribunal.[187] The General Inspectorate of the Courts is responsible for inspection and

[170] There is no definition under Venezuelan legislation of what constitutes a "political crime". However, there seems to be an agreement that "political crimes" are those committed against the State and its institutions. See https://accesoalajusticia.org/tsj-no-son-delitos-politicos-porque-yo-lo-digo/. In Venezuela, these crimes are included under the title "Crimes against the independence and security of the nation". See Criminal Code, Book Second, Title I.

[171] 2012 Criminal Procedure Code, art. 378. This provision stipulates that in cases involving members of the National Assembly, immunity must first be lifted.

[172] 2012 Criminal Procedure Code, art. 380.

[173] 1999 Constitution, art. 267; 2010 Organic Law of the Supreme Tribunal of Justice, art. 2.

[174] 2010 Organic Law of the Supreme Tribunal of Justice, art. 36.

[175] 2010 Organic Law of the Supreme Tribunal of Justice, art. 36.

[176] 2010 Organic Law of the Supreme Tribunal of Justice, art. 36(2).

[177] 2010 Organic Law of the Supreme Tribunal of Justice, art. 36(4).

[178] 2010 Organic Law of the Supreme Tribunal of Justice, art. 36(5).

[179] 2010 Organic Law of the Supreme Tribunal of Justice, art. 36(6).

[180] 2010 Organic Law of the Supreme Tribunal of Justice, art. 36(17).

[181] 2010 Organic Law of the Supreme Tribunal of Justice, art. 36(18).

[182] 2009 Rules for Admission to Judicial Career, art. 3. See also Acceso a la Justicia, Organigram on the Judicial Commission: https://accesoalajusticia.org/comision-judicial-del-tribunal-supremo-de-justicia/

[183] 1999 Constitution, art. 267.

[184] 2000 Regulations on the Judiciary, arts. 1, 3, 4 and 7.

[185] 2010 Organic Law of the Supreme Tribunal of Justice, arts. 75-79.

[186] 2010 Organic Law of the Supreme Tribunal of Justice, art. 80.

[187] 2010 Organic Law of the Supreme Tribunal of Justice, art. 80.

supervision of the courts and headed by the Inspector General of Courts, who "shall be freely appointed and removed by the Plenary Chamber".[188]

49. The process for appointment and discipline of first instance court judges, both career judges and provisional judges, is discussed in detail in Section III, below. Under the 1999 Constitution, the appointment and swearing in of judges shall be the responsibility of the Supreme Tribunal of Justice.[189] 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,[190] with the rights of citizen participation guaranteed.[191] However, in practice, the Supreme Tribunal of Justice has sidestepped these constitutional requirements through the appointment of provisional judges, as discussed further below.

### 2. The Ordinary Criminal Justice Courts

50. The 1998 Organic Law of the Judicial Branch specifies that, in addition to the Supreme Tribunal of Justice, judicial power is exercised by courts of ordinary jurisdiction and courts of special jurisdiction.[192] Under the 1999 Constitution, ordinary courts have jurisdiction over the commission of common crimes, human rights violations and crimes against humanity.[193] In addition to the provisions on autonomy and independence of the judiciary as a whole, as discussed above, under the Criminal Procedure Code, judges assigned to criminal cases are also autonomous and independent in their functions. The law states that in the case of interference "judges should inform the Supreme Tribunal of Justice about the acts affecting their independence, so it can make it stop".[194]

51. The 1998 Organic Law of the Judicial Branch specifies that there are four levels of courts within the ordinary jurisdiction: Municipal Courts, Courts of First Instance, Higher Tribunals and Courts of Appeal.[195] Municipal Courts, Courts of First Instance and Higher Tribunals shall have one judge and Courts of Appeal shall be composed of three professional judges.[196] The duties and powers of the ordinary courts are distributed by territory and subject-matter jurisdiction (which can be criminal, civil or commercial).[197]

52. The composition of the criminal justice system is further outlined in the 2012 Criminal Procedure Code. Within each judicial district, criminal courts are divided into two instances: a first instance, presided by one judge and an appellate instance, composed of a panel of three judges.[198] There are three types of criminal courts of first instance: 1) Control Courts, which preside over the investigation and intermediate phases of the proceeding; 2) Trial Courts, which oversee the trial phase; and 3) Execution Courts, which intervene in the post-sentencing phase.[199] In the case of the criminal jurisdiction, the first instance and superior courts have specialized jurisdictions for juveniles and terrorism.

53. The criminal courts are organized into Criminal Judicial Circuits, which correspond to administrative divisions in Venezuela, generally by states.[200] In accordance with the 2012 Criminal Procedure Code, the Supreme Tribunal of Justice may create additional Criminal Judicial Circuits by resolution "when necessary".[201] Each Criminal Judicial Circuit has at

188 2010 Organic Law of the Supreme Tribunal of Justice, art. 81.
189 1999 Constitution, art. 255.
190 1999 Constitution, art. 255.
191 1999 Constitution, art. 255.
192 1998 Organic Law of the Judicial Power, art. 60.
193 1999 Constitution, art. 261.
194 2012 Criminal Procedure Code, art. 4.
195 1998 Organic Law of the Judicial Power, art. 61.
196 1998 Organic Law of the Judicial Power, arts. 62, 65, 67 and 70.
197 1998 Organic Law of the Judicial Power, arts. 63, 66, 67-69.
198 2012 Criminal Procedure Code, art. 108.
199 2012 Criminal Procedure Code, art. 109. See also Acceso a la Justicia, Organigram on the Criminal justice system: https://accesoalajusticia.org/organigrama-de-la-justicia-penal-en-venezuela/
200 See for example Acceso a la Justicia, Organigram on the Criminal Judicial Circuits: https://accesoalajusticia.org/organizacion-de-los-tribunales-del-circuito-judicial-penal-en-venezuela/
201 2012 Criminal Procedure Code, art. 504.

least one first instance court, with control, trial and execution judges, and one appellate court.[202] The law requires the Supreme Tribunal of Justice to implement a system so that there is always at least one Control Court on call at all times within the judicial circuit to hear emergency cases.[203]

54. Within each circuit, the Supreme Tribunal of Justice appoints presidents of the Criminal Judicial Circuits.[204] The Judicial Circuit presidents are ascribed administrative functions over first instance courts and also sit on the three-judge appellate court.[205] The 2012 Criminal Procedure Code makes clear that the circuit presidents are not to interfere in the autonomy of judges in their jurisdictions.[206] However, as discussed in more detail below in Section III, the Mission received credible information that the Supreme Tribunal of Justice issues orders through Judicial Circuit Presidents regarding how to decide specific cases, especially in cases involving real or perceived opponents of the Government.

55. With respect to the appointment of first instance and appellate court judges, the 1999 Constitution requires that admission to the judicial career and promotion be determined following a public competitive process, in accordance with the principles of professionalism and suitability of candidates.[207] The selection process is carried out by juries from the Judicial Circuits.[208] In accordance with the 2010 Organic Law of the Supreme Tribunal of Justice, the pre-selection process of candidates shall be public and the names of the candidates are published for at least 30 days to allow for public comment.[209] However, as noted above, this process has been circumvented since the adoption of the 1999 Constitution and the appointment of judges continues to be carried out without a public competitive process, as described further in Section III.[210]

### 3. The Specialized Terrorism Jurisdiction

56. The Constitution states that the competence, organization and functioning of the courts shall be regulated by law; making no exceptions with regard to specialized jurisdictions.[211] In 2012, the Supreme Tribunal of Justice passed a resolution creating the specialized terrorism courts.[212] In doing so, the resolution cited article 267 of the Constitution

202 2012 Criminal Procedure Code, art. 505.

203 2012 Criminal Procedure Code, art. 505.

204 2012 Criminal Procedure Code, art. 507.

205 2012 Criminal Procedure Code, arts. 507 and 508.

206 2012 Criminal Procedure Code, art. 508. This article says that the presiding judge of the Circuit, without interfering with the autonomy and hierarchy of the judges, shall have the following administrative powers: 1. Supervising the administration of the Circuit and propose the appointment of auxiliary staff. 2. Addressing the judges of the Circuit for administrative purposes only. 3. Supervising the functioning of the case distribution system in order to ensure fairness. 4. Coordinating the Circuit's relations with the Executive Directorate of the Judiciary. 5. Representing the Circuit before public institutions. 6. Any others assigned to it in this Code, the laws and by the Supreme Tribunal of Justice.

207 1999 Constitution, art. 255.

208 1999 Constitution, art. 255.

209 2010 Organic Law of the Supreme Tribunal of Justice of Justice, art. 70.

210 1999 Constitution, art. 255 (Appointment to a judicial position and the promotion of judges shall be carried out by means of public competitions to ensure the capability and excellence of the participants, with selection by the juries of the judicial circuits, in such manner and on such terms as may be established by law. The appointment and swearing in of judges shall be the responsibility of the Supreme Tribunal of Justice. Citizen's participation in the process of selecting and designating judges shall be guaranteed by law. Judges shall be removed or suspended from office only through the procedures expressly provided for by law).

211 1999 Constitution, art. 261.

212 Supreme Tribunal of Justice, Resolution No. 2012-0026, Published in Official Gazette No. 40,092 of 17 January 2013 (whereby courts are created and constituted with exclusive competence to hear and decide cases whose charges, for criminal offenses, are related to terrorism), available at: http://ley.tuabogado.com/leyes/resoluciones/tsj-se-crea-y-se-constituye-tribunales-con-competencia-exclusiva-para-conocer-y-decidir-casos-cuyas-imputaciones-por-ilicitos-penales-esten-vinculadas-al-terrorismo-gaceta-40092-2013-texto#gsc.tab=0 (hereinafter "2012 Supreme Tribunal of Justice Resolution No. 2012-0026").

as authority, although that article only refers to the Supreme Tribunal of Justice's powers of oversight of first instance courts.[213] The resolution established two Control Courts, two Trial Courts and one Appellate Court within the specialized jurisdiction.[214] In April 2015, the plenary of the Supreme Tribunal of Justice passed another resolution expanding the number of terrorism courts to four Control Courts, three Trial Courts and two Appellate Courts with exclusive jurisdiction over terrorism-related crimes.[215]

57. Although the terrorism courts operate under the coordination of the president of the Criminal Judicial Circuit of the Judicial Circumscription of the Metropolitan Area of Caracas,[216] their jurisdiction extends throughout the country.[217] Through its resolutions, the Supreme Tribunal of Justice declared that the ordinary tribunals no longer have jurisdiction over cases related to terrorism and affirmed that all such cases would be redistributed to the terrorism courts, in a process coordinated by the circuit president.[218] While the creation of specialized tribunals may be positive, these must be established by law, respect human rights standards and ensure the proper qualification of crimes charged. As discussed further in Section III, below, a high number of cases involving politically motivated arbitrary detentions fall under the jurisdiction of terrorism courts.

58. While the 2012 Supreme Tribunal of Justice's resolution does not make specific mention of the Organic Law against Organized Crime and Financing of Terrorism, nor does that law reference the specialized terrorism jurisdiction, in practice, the specialized terrorism courts have exercised jurisdiction over crimes falling under that law. The Organized Crime and Financing of Terrorism Law was adopted in 2012 with the objective of "preventing, investigating, prosecuting, classifying and punishing crimes related to organized crime and the financing of terrorism".[219]

59. The Law on Terrorism also created an administrative body, the National Office against Organized Crime and Financing of Terrorism,[220] which is responsible to the Ministry of Popular Power for the Interior, Justice and Peace (hereinafter the "Ministry of the Interior"). The law declares 23 groups, purportedly those sectors at risk from corruption and organized criminal activities, as "binding parties" falling under the National Office against Organized Crime's supervisory ambit, including for regulation and sanctioning purposes.[221]

---

213 Article 267 says, in relevant part: "The Supreme Tribunal of Justice is charged with the direction, governance and administration of the Judicial Power and inspection and vigilance of the courts of the Republic and the public defenders' offices. The Supreme Tribunal is also charged with preparing and implementing its own budget and that of the Judicial Power". See Inter-American Court of Human Rights, Case Bareto Leiva vs. Venezuela, Judgment of 17 November 2009, para. 76, stating that "in a State governed by the rule of law, only the Legislative Branch can regulate, through laws, the competence of judges".

214 2012 Supreme Tribunal of Justice Resolution No. 2012-0026, art. 1.

215 Supreme Tribunal of Justice Resolution No. 2015-0007/2015-0008, Resolution partially amending Resolution No. 2012-0026, issued by the Plenary Chamber on October 17, 2012 (Official Gazette No. 40,092 of 17 January 2013), which creates and establishes the special courts with exclusive competence to hear and decide cases involving criminal offenses related to terrorism, 15 April 2015, available at: http://historico.tsj.gob.ve/informacion/resoluciones/sp/resolucionSP_0001846.html (hereinafter "2015 Supreme Tribunal of Justice Resolution No. 2015-0007").

216 2012 Supreme Tribunal of Justice Resolution No. 2012-0026, art. 3; 2015 Supreme Tribunal of Justice Resolution No. 2015-0007, art. 3.

217 2015 Supreme Tribunal of Justice Resolution No. 2015-0007, art. 4.

218 2012 Supreme Tribunal of Justice Resolution No. 2012-0026, art. 8; 2015 Supreme Tribunal of Justice Resolution No. 2015-0007, art. 5.

219 Organic Law against Organized Crime and Financing of Terrorism, Published in Official Gazette No. 39.912, 30 April 2012, art. 1, available at: https://www.saren.gob.ve/wp-content/themes/wordpress_saren_theme/descargas/3042012-3417.pdf (hereinafter "Law on Organized Crime and Financing of Terrorism").

220 Law on Organized Crime and Financing of Terrorism, art. 5.

221 Law on Organized Crime and Financing of Terrorism art. 9. Including persons or entities who work in the following sectors: banking and insurance; securities; bingos and casinos; hotels and tourism; non-profit foundations and civil society; civil or political organizations; public registers and notaries; lawyers and economists when dealing with client money or bank accounts; real estate; commercial

60. In February 2021, the Ministry of the Interior's National Office against Organized Crime issued an ordinance adding non-governmental organizations as "binding parties".[222] The ordinance required non-governmental organizations (NGOs) to register with the Government through a process that involves the submission of a range of internal and sometimes private documentation, including financial documents, lists of high-level members of the organization, and lists of donations and donors in Venezuela and abroad.[223] On 29 April 2021, the same office issued a second version of this ordinance,[224] which eliminated a few of the more controversial aspects of the order, including the requirement that the NGOs share a list of the beneficiaries of its work.[225] In May 2021, a group of over 300 NGOs issued a press release calling for the repeal of the ordinance and the requirements set forth therein.[226]

### 4. Military Tribunals and Prosecutors

61. Under the 1999 Constitution, the military criminal jurisdiction is an integral part of the Judicial Branch and its judges shall be selected by a competitive process.[227] The Constitution makes clear that "the jurisdiction of military courts is limited to crimes of a military nature," and that ordinary crimes, human rights violations and crimes against humanity are subject to ordinary jurisdiction.[228]

62. The Organic Code of Military Justice of 1998 governs the military criminal jurisdiction.[229] The Organic Code of Military Justice establishes the jurisdiction of military courts[230] and criminal procedures,[231] both in times of peace and in times of war. Under the Code, "Military Judges are autonomous in the exercise of their functions and sovereign in the appreciation of the facts they are called upon to judge".[232] However, at the same time, military judges and prosecutors are active members of the armed forces, subjected to military

construction; trade in precious metals and art; marine commerce; investment and financial advising; sale of cars, airplanes and ships; phones and communication.

222 Ministry of the Interior, National Office against Organized Crime, Regulation 001-2021, for the Unified Registry of Obligated Entities before the National Office against Organized Crime and Financing of Terrorism, Published in Official Gazette No. 42.098, 2 February 2021, available at: http://historico.tsj.gob.ve/gaceta/marzo/3032021/3032021-6134.pdf#page=2.

223 Ibid., art. 8.

224 Ministry of the Interior, National Office against Organized Crime, Resolution 002-2021, for the Unified Registry of Obligated Entities before the National Office against Organized Crime and Financing of Terrorism, Published in the Official Gazette No. 42.118, 3 May 2021, available at: https://www.venezuelablog.org/wp-content/uploads/2021/05/Gaceta-Oficial-42.118.pdf

225 For example, it eliminated article 5, which required the NGO's to provide "identification of the beneficiaries of the non-profit organization, these are the natural persons who receive charitable, humanitarian or other assistance, through the services of the non-profit organization, issued by the board of directors of the non-profit organization". It also modified article 16 to eliminate the requirement of sanctions in the case of incompliance with the registration requirements. See COFAVIC, Comparative Table of Providence 001 and 002 of The National Office against Organized Crime and financing of Terrorism (Document on file with the Mission).

226 Red Venezolana de OSC, Organizaciones de la Sociedad Civil reiteran mediante comunicado la exigencia de revocar la Providencia Administrativa 002 y cualquier otra medida dirigida a criminalizar y cerrar el espacio cívico en Venezuela, available at: https://acsinergia.org/2021/05/20/organizaciones-de-la-sociedad-civil-reiteran-mediante-comunicado-la-exigencia-de-revocar-la-providencia-administrativa-002-y-cualquier-otra-medida-dirigida-a-criminalizar-y-cerrar-el-espacio-civico-en/

227 1999 Constitution, art. 261.

228 1999 Constitution, arts. 29 and 261. See Inter-American Court of Human Rights, Case Usón Ramírez vs. Venezuela, Judgment of 20 November 2009, paras. 108, 109, 115 (confirming the exceptional nature of military jurisdiction and stating that military courts shall only have jurisdiction over military personnel for military crimes).

229 Organic Code of Military Justice, Published in the Extraordinary Official Gazette No. 5263, 17 September 1998, available at: https://docs.venezuela.justia.com/federales/codigos/codigo-organico-de-justicia-militar.pdf (hereinafter "1998 Organic Code of Military Justice").

230 1998 Organic Code of Military Justice, First Book, Title V.

231 1998 Organic Code of Military Justice, First Book, Title VII.

232 1998 Organic Code of Military Justice, art. 2.

hierarchy and to the authority of the Executive, specifically the Minister of Defence and the President of the Republic.[233]

63. The jurisdictional and administrative organization of the military courts is further outlined in the 2015 resolution of the Supreme Tribunal of Justice establishing the Military Criminal Judicial Circuit.[234] The 2015 resolution created military courts of control,[235] trial[236] and execution,[237] and an appellate court presided by five judges.[238] That resolution states that the Military Criminal Judicial Circuit shall 1) be under the direction of the President of the Martial Court; 2) depend functionally on the Judicial Commission of the Supreme Tribunal of Justice; and 3) depend administratively on the Ministry of Defence, in particular with respect to its budget.[239]

64. The Supreme Tribunal of Justice, and by extension its Judicial Commission, is responsible for the appointment of military judges. The provisions of the 2010 Organic Law of the Supreme Tribunal of Justice and other resolutions apply to both military and non-military judges.[240] In January 2011, the Ministry of Defence passed the internal administrative resolution of the Judicial Criminal Military Circuit,[241] which stipulates that prior to the appointment of military judges by the Supreme Tribunal of Justice, the Ministry of Defence will submit a list of active military officers who could serve as judges and the Supreme Tribunal shall appoint the military judges on the basis of that list.[242]

65. As noted previously by the Mission,[243] in Venezuela, military jurisdiction was previously limited to crimes of a military nature perpetrated by members of the military on active duty.[244] However, between March[245] and August 2017, military jurisdiction was

[233] 1998 Organic Code of Military Justice, arts. 28, 49, 54 and 55. See also CCPR/C/VEN/CO/R.4, para. 16 and Inter-American Court of Human Rights, Usón Ramírez vs. Venezuela, Judgment of 20 November 2009, Series C No. 207, para. 111.

[234] Supreme Tribunal of Justice, Resolution No. 2014-0020, Resolution Establishing the Military Criminal Judicial Circuit, Published in the Official Gazette No. 418.817, 19 February 2015 (hereinafter "2015 Supreme Tribunal of Justice Resolution No. 2014-0020"). This reformed a previous resolution of 2004. Supreme Tribunal of Justice Resolution No. 2004-0009, Published in the Official Gazette No. 38.021, 18 August 2004.

[235] 2015 Supreme Tribunal of Justice Resolution No. 2014-0020, arts. 3 and 22.

[236] 2015 Supreme Tribunal of Justice Resolution No. 2014-0020, arts. 3 and 23. In practice, the military Trial Courts are presided by three judges, including: 1) a president, 2) a chancellor and 3) a rapporteur. All of the decisions taken are among the three judges. However, the Mission has not been able to locate any legal instrument providing foundation for this division of responsibilities.

[237] 2015 Supreme Tribunal of Justice Resolution No. 2014-0020, arts. 3 and 24.

[238] 2015 Supreme Tribunal of Justice Resolution No. 2014-0020, art. 3.

[239] 2015 Supreme Tribunal of Justice Resolution No. 2014-0020, art. 1.

[240] 2010 Organic Law of the Supreme Tribunal of Justice, art. 36.6.

[241] Ministry of Defence, Resolution No. 017082, Published in the Official Gazette No. 39.595 of 17 January 2011, available at: https://pandectasdigital.blogspot.com/2019/03/gaceta-oficial-de-la-republica_755.html (hereinafter "2011 Internal Resolution of the Ministry of Defence").

[242] 2011 Internal Resolution of the Ministry of Defence, art. 9.

[243] A/HRC/CRP/11, para. 365.

[244] See, e.g., Supreme Tribunal of Justice, Constitutional Chamber Judgment No. 838 of 24 April 2002, in which the Constitutional Chamber observed that "military justice only applies to crimes of a military nature perpetrated by military personnel on active duty". This was confirmed by the Criminal Appellate Chamber of the Supreme Tribunal of Justice in its judgments of 30 July 2020. Supreme Tribunal of Justice, Criminal Appellate Chamber Judgment No. 70 of 30 July 2020; Supreme Tribunal of Justice, Criminal Appellate Chamber Judgment No. 71 of 30 July 2020. See TalCual Digital, TSJ de Maduro reconoce que juicio militar a Rubén González viola sus derechos humanos, available at: https://talcualdigital.com/tsj-de-maduro-reconoce-que-juicio-militar-a-ruben-gonzalez-viola-sus-derechos-humanos/.

[245] In its Judgment No. 155 of 28 March 2017, the Constitutional Chamber of the Supreme Tribunal of Justice called on the President of the Republic to apply the military jurisdiction over political opponents since it said they were committing crimes of a military nature. Supreme Tribunal of Justice, Judgment No. 155 of 28 March 2017, para. 5.1.1 (partially reversed), available at: https://pandectasdigital.blogspot.com/2017/03/sentencia-n-155-de-fecha-28-de-marzo-de.html

increasingly used to prosecute and try civilians.[246] Under the 1998 Organic Code, the military criminal jurisdiction can include all military infractions committed by members of the military or civilians, jointly or separately, as well as ordinary crimes committed by members of the military.[247] The Organic Code establishes a broad catalogue of "military offences" over which the jurisdiction of military tribunals purportedly extends.[248] In December 2020, the Supreme Tribunal of Justice issued a decision holding that the civilian status of a detainee obliges the Military Control Courts to carry out *ex officio*, a prior and reasoned analysis of the limits of their competence.[249]

66. The Constitutional Law of the Bolivarian National Armed Forces was published in the Official Gazette on 30 January 2020[250] and states that military criminal jurisdiction is an integral part of the judiciary in Venezuela.[251] It further states that the scope of competence, organization and modalities of operation of the military criminal jurisdiction shall be governed by the accusatorial system, and that its action shall be limited to crimes of a military nature.[252]

67. The 2020 Constitutional Law of the FANB organizes the Military justice system as follows: 1) the Military Criminal Judicial Circuit (composed of the Martial Court and the Control, Trial and Execution of Sentences Tribunals); 2) the Military General Prosecutor's Office (composed of the Superior Military Prosecutor's Offices and Military Prosecutor's Offices of Process), 3) the Military Public Defence (composed of the Regional Coordinating Offices and Defence Units); 4) the auxiliary and investigation bodies; and 5) the Military Penitentiary Service.[253]

68. The Organic Code of Military Justice states that, in the military criminal jurisdiction, the functions of the Public Prosecutor's Office shall be exercised by the Military Prosecutor's Office.[254] The Military General Prosecutor's Office is composed of the Military Chief Prosecutor and other military prosecutors.[255]

69. According to the 1998 Organic Code of Military Justice, the President of the Republic shall appoint military prosecutors, who shall serve for one year and may be re-elected.[256] The military prosecutors shall be military officers in active service.[257] On 20 December 2017, the Minister of Defence, acting on behalf of President Nicolás Maduro, appointed former Military Chief Prosecutor, General Edgar José Rojas Borges, as President of the Martial Court. Through the same resolution, General Jesús Emilio Vásquez Quintero was appointed as Military Chief Prosecutor, replacing General Rojas Borges.[258]

70. The Organic Code of Military Justice further stipulates that military prosecutors shall exercise military jurisdiction in accordance with the Criminal Procedure Code and the

[246] According to information received from Foro Penal, between 2014 and 2020, 866 civilians were tried by military courts, 773 of whom were in 2017 only.

[247] 1998 Organic Code of Military Justice, art. 123.

[248] 1998 Organic Code of Military Justice, Second Book, Title I and Title III.

[249] Supreme Tribunal of Justice, Constitutional Chamber, Judgment No. 246 of 14 December 2020, available at: http://historico.tsj.gob.ve/decisiones/scon/diciembre/311031-0246-141220-2020-20-0062.HTML

[250] Constitutional Law of the National Bolivarian Armed Forces, Published in the Official Gazette No. 6.508, 30 January 2020, available at: https://www.mindefensa.gob.ve/mindefensa/wp-content/uploads/2020/02/GACETA-OFICIAL-Nr-6.508-Extraordinario-de-fecha-30.01.2020-Ley-Constitucional-de-la-FANB.pdf (hereinafter "2020 Constitutional Law of the FANB").

[251] 2020 Constitutional Law of the FANB , art. 188.

[252] 2020 Constitutional Law of the FANB , art. 188.

[253] 2020 Constitutional Law of the FANB, art. 188.

[254] 1998 Organic Code of Military Justice, art. 70. See 2020 Constitutional Law of the FANB, art. 188.

[255] 1998 Organic Code of Military Justice, art. 70.

[256] 1998 Organic Code of Military Justice, art. 71.

[257] 1998 Organic Code of Military Justice, art. 71.

[258] Resolution No. 022275 of the Ministry of Defence, Published in the Official Gazette No. 41.305, 21 December 2017, available at: https://pandectasdigital.blogspot.com/2017/12/resolucion-mediante-la-cual-se-nombra_67.html.

Regulatory Law of the Military Prosecutor's Office.[259] Under the Organic Code, the military prosecutors cannot initiate any investigation without an order in advance, from several "competent authorities", including the President of the Republic.[260]

### 5. Public Defender's Office

71. Under its 2007 Organic Law,[261] the Public Defender's Office is an organ of the Judicial Branch whose "fundamental purpose is to guarantee the effective judicial protection of the constitutional right to defence".[262] It is dedicated to providing defence services nationwide, free of charge to those who require it, regardless of socio-economic status.[263] Defence is an inviolable right at every stage of the criminal procedure and it is the responsibility of the judges to guarantee it without preference or inequality.[264]

72. The 2012 Criminal Procedure Code further clarifies that the Public Defender's Office has "complete functional, financial and administrative autonomy".[265] From the date of their appointment until they leave office, public defenders shall not engage in partisan political or professional associations.[266] The Director of the Public Defender's Office is appointed[267] and can be removed[268] by an absolute majority of the National Assembly. The Public Defender's Office has a managerial level, an operative level and decentralized units. In each state, there shall be a Regional Unit of the Public Defender's Office headed by a Regional Coordinator, made up of public defenders.[269]

73. The Constitution stipulates that the Supreme Tribunal of Justice is charged with the inspection and vigilance of the public defenders' offices.[270] Under its Organic Law, the Supreme Tribunal is to verify the credentials of public defenders and their alternates.[271] As noted above, the Organic Law of the Public Defenders also creates the General Inspectorate of Public Defenders.[272] The General Inspectorate of the Plenary Chamber of the Supreme Tribunal of Justice is tasked with the inspection and supervision of the Public Defenders or Regional Public Defence Units.[273]

74. In accordance with the Criminal Procedure Code, the accused has a right to appoint a lawyer of his or her choosing as defence counsel.[274] If he or she does not do so, the judge shall appoint a public defender at the earliest procedural stage.[275] As described further in Section IV, in cases investigated by the Mission, a recurring problem is that defendants have been pressured or required to accept the public defenders assigned to them and to renounce their right to private defence counsel.

---

259 1998 Organic Code of Military Justice, art. 70.

260 1999 Organic Code of Military Justice, art. 163. The competent authorities include: 1. the President of the Republic, 2. the Minister of Defence, 3. the Chiefs of Military Regions, 4. the Garrison Commanders, 5. the Commanders of Theaters of Operations, and 6. the Chiefs of Military Units in Field.

261 Organic Law of the Public Defenders, Published in the Official Gazette No. 351.697, 2 January 2007, available at: http://www.juris-line.com.ve/data/files/1191.pdf (hereinafter "2007 Organic Law of the Public Defenders").

262 2007 Organic Law of the Public Defenders.

263 2007 Organic Law of the Public Defenders.

264 2012 Criminal Procedure Code, art. 12.

265 2012 Criminal Procedure Code, art. 515.

266 1999 Constitution, art. 256.

267 2007 Organic Law of the Public Defenders, art. 11.

268 2007 Organic Law of the Public Defenders, art. 13.

269 2007 Organic Law of the Public Defenders, art. 10.

270 1999 Constitution, art. 267.

271 2010 Organic Law of the Supreme Tribunal of Justice, art. 36(16).

272 2010 Organic Law of the Supreme Tribunal of Justice, art. 80.

273 2010 Organic Law of the Supreme Tribunal of Justice, art. 82.

274 2012 Criminal Procedure Code, art. 139.

275 2012 Criminal Procedure Code, art. 139.

## C. Institutions of the Citizen Branch

75. Under the Constitution, the Citizen Branch consists of the Public Prosecutor's Office, the Ombudsperson's Office and the Comptroller General of the Republic.[276] The Citizen Branch is designed to act as a counterweight to the other branches of the State. The institutions exercising the Citizen Branch are charged with "preventing, investigating and punishing actions that undermine public ethics and administrative morals".[277] This Branch is independent and its organs shall enjoy operating, financial and administrative autonomy.[278] These three institutions form the Republican Moral Council.[279]

### 1. The Public Prosecutor's Office

76. The Public Prosecutor's Office is one of the institutions conforming the Citizen Branch established under the 1999 Constitution.[280] Under the Constitution, the Public Prosecutor's Office orders and directs the criminal investigation, to determine the existence of sanctionable acts and to establish the responsibility of the perpetrators.[281] The Public Prosecutor's Office shall guarantee an expeditious judicial process and due process rights.[282] Under the Criminal Procedure Code, prosecutors shall be designated by subject matter or territorial jurisdiction, but shall not be assigned to any particular court or police unit.[283] Prosecutors shall carry out their work in accordance with the principles of objectivity,[284] transparency,[285] probity and integrity.[286]

77. The Public Prosecutor's Office is under the direction and responsibility of the Chief Prosecutor. The Constitution sets out guidance regarding the election of the Chief Prosecutor,[287] which is further clarified in the Organic Law of the Public Prosecutor's Office as involving a public and merit-based process led by a judicial nominations commission and confirmed by the National Assembly.[288] The Chief Prosecutor is appointed for a seven-year term.[289] The Organic Law of the Public Prosecutor's Office sets out the merit requirements

[276] 1999 Constitution, art. 273.
[277] 1999 Constitution, art. 274.
[278] 1999 Constitution, art. 273.
[279] Organic Law of the Citizen Branch, Published in the Official Gazette No. 3.310, 25 October 2001, arts. 1-2, available at: http://www.oas.org/juridico/PDFs/mesicic4_ven_ley_org_pod_ciud.pdf
[280] 1999 Constitution, art. 273.
[281] 1999 Constitution, art. 285(3). Such investigations include against public officials who have incurred criminal liability in the course of their official duties 1999 Constitution, art. 285(5).
[282] 1999 Constitution, art. 285(2).
[283] 2012 Criminal Procedure Code, art. 514.
[284] Organic Law on the Public Prosecutor's Office, Published in the Official Gazette No. 38647, 19 March 2007, art. 10, available at: https://www.imolin.org/doc/amlid/Venezuela/Venezuela-_Ley_Organica_del_Ministerio_Publico.pdf (hereinafter "2007 Organic Law on the Public Prosecutor's Office").
[285] 2007 Organic Law on the Public Prosecutor's Office, art. 11.
[286] 2007 Organic Law on the Public Prosecutor's Office, art. 12.
[287] 1999 Constitution, art. 249 ("The Chief Prosecutor of the Republic must meet the same conditions required in order to serve as a justice of the Supreme Tribunal of Justice. He or she shall be appointed by the President of the Republic, with the authorization of the National Assembly); 1999 Constitution, art. 187(14) (stating that one of the functions of the National Assembly is to "authorize the appointment of the Chief Prosecutor of the Republic and the Heads of Permanent Diplomatic Missions"); and 1999 Constitution, art. 263 ("[t]o be a justice of the Supreme Tribunal of Justice, a person must: 1. Hold Venezuelan nationality by birth. 2. Be recognized as an honorable citizen. 3. Be a jurist of recognized competence; enjoy a good reputation; have a minimum of 15 years' experience practicing law and have a post graduate degree in law, or have at least 15 years' experience as a university professor of law, having obtained the rank of full professor; or be or have been a superior court judge in the specialty of the division for which he is a candidate, having been a sitting judge for at least 15 years and gained recognized prestige in the performance of his duties. 4. Any other requirements established by law").
[288] 2007 Organic Law of the Public Prosecutor's Office, art. 20.
[289] 1999 Constitution, art. 284.

for candidates to the position.[290] In 2017, the National Constituent Assembly, rather than the National Assembly as required by law, designated the current Chief Prosecutor, Tarek William Saab.[291]

78. The Public Prosecutor's Office is divided into four main directorates and various sub-directorates, including:[292]

- The General Directorate of Procedural Action,[293] to which the Directorate of Common Crimes, the Directorate for the Protection of Human Rights, the Directorate Against Corruption and the Directorate for the Integral Defence of the Environment and Environmental Crimes, are attached
- The General Directorate Against Organized Crime, which includes the Directorate Against Drugs, the Directorate Against Money Laundering, Financial and Economic Crimes, and the Directorate Against Extortion and Kidnapping
- The General Directorate for the Protection of the Family and Women, which is made up of the Directorate for the Integral Protection of the Family and the Directorate for the Defence of Women
- The General Directorate of Support for Criminal Investigation, to which the Directorate of Criminalistic Laboratories and the Directorate of Technical and Scientific Advisory Services are attached

79. The Directorate for the Protection of Human Rights (formerly called the Directorate for the Protection of Fundamental Rights) is responsible for heading up cases involving human rights violations committed by State actors. The Directorate was established "in order to avoid impunity for human rights violations where State security officials are allegedly responsible".[294] This includes cases of torture, cruel, inhuman or degrading treatment, homicide, enforced disappearance, home invasion or unlawful deprivation of liberty.[295] The Directorate is responsible for coordinating, supervising and exercising management control over the actions of public prosecutors with competence in matters of fundamental rights.[296]

80. Within each state, a "Superior Prosecutor", appointed by the Chief Prosecutor, oversees the offices within its jurisdiction,[297] carrying out mainly administrative functions by law.[298] The Mission has received information from former public prosecutors that the Superior Prosecutors have intervened in specific cases, in particular in political cases, instructing prosecutors not to press charges against certain political actors or pressuring them to move forward with unfounded charges against certain defendants. See Section III, below.

81. With respect to the selection of public prosecutors, by law, access to the prosecutorial career is determined via public examination.[299] Nevertheless, the vast majority of prosecutors

[290] 2007 Organic Law of the Public Prosecutor's Officer, art. 28. This includes that candidates be lawyers, preferably with fourth level studies in criminal science or criminal procedure. Further, they must be of recognized competence and have been a university-level law professor, a public prosecutor, a judge or a public defender for at least five years or a lawyer for at least eight years.

[291] See A/HRC/45/CRP.11, para. 90.

[292] See Acceso a la Justicia, Informe sobre el Desempeño del Ministerio Público (2000-2018), available at: https://www.accesoalajusticia.org/wp-content/uploads/2020/04/Informe-sobre-el-desempe%C3%B1o-del-Ministerio-P%C3%BAblico-2000-2018.pdf

[293] Created via Public Prosecutor's Office Resolution No. 482, Published in the Office Gazette No. 37.014, 15 August 2000.

[294] See Public Prosecutor's Office, Criminalística por la Justicia y los Derechos Humanos, available at: http://criminalistica.mp.gob.ve/direccion-de-proteccion-de-derechos-fundamentales/

[295] Ibid.

[296] Ibid. The public information referring to the emblematic cases dealt with by the Directorate concern investigations into crimes alleged to have occurred between 1973 and 2013. See Public Prosecutor's Office, Criminalística por la Justicia y los Derechos Humanos, available at: http://criminalistica.mp.gob.ve/direccion-de-proteccion-de-derechos-fundamentales/

[297] 2007 Organic Law on the Public Prosecutor's Office, art. 27.

[298] 2007 Organic Law on the Public Prosecutor's Office, art. 29; 2012 Criminal Procedure Code, art. 514.

[299] 2007 Organic Law on the Public Prosecutor's Office, arts. 93-94.

are appointed provisionally.[300] Under the Organic Law of the Public Prosecutor's Office, disciplinary proceedings against prosecutors should start with the opening of a case file describing the alleged offence, to which the accused prosecutor may defend himself or herself.[301] As discussed further below, the Mission has received consistent information from former public prosecutors that, in practice, they have been dismissed without this procedure having been followed.

### 2. Ombudsperson's Office

82. The 1999 Constitution established the Ombudsperson's Office, the first ever in Venezuela.[302] Under the Constitution, the Ombudsperson's Office, also an entity of the Citizen Branch is charged with the furtherance, defence and oversight of rights and guarantees established under the Constitution and in human rights treaties.[303] The actions of the Ombudsperson's Office are of a non-coercive nature, and it therefore lacks executive competence to dictate, modify or annul orders, sentences or acts of other branches of the Public Power.[304]

83. The organization and operation of the Ombudsperson's Office is outlined in its 2004 Organic Law[305] and its internal Rules of Operation.[306] The Ombudsperson's Office is independent from other powers of the State, and shall have organizational, functional, financial and administrative autonomy.[307] The Ombudsperson's Office is under the direction and responsibility of the Ombudsperson, who serves a designated seven-year single term,[308] and shall be appointed by a two-thirds vote of the National Assembly.[309]

84. The Ombudsperson's Office shall initiate and pursue, *ex officio* or at the request of the interested party, any investigation leading to the clarification of matters under its competence.[310] Among others, it can file unconstitutionality actions, summary constitutional remedies, *habeas corpus* requests, injunctions, interpretation requests, precautionary measures, and actions for compensation, indemnification and reparation of damages for victims of human rights violations, as necessary, to fulfil its functions.[311]

85. Further, the Ombudsperson shall urge the Public Prosecutor's Office to pursue appropriate actions or motions against public officials responsible for violations or encroachment upon human rights.[312] Under the 2012 Criminal Procedure Code, the Ombudsperson's Office may file complaints against any public officials, public employees or agents of the police forces who have violated human rights in the exercise of their functions.[313] The Office shall watch over the rights and guarantees of persons who for any

[300] According to the NGO Acceso a la Justicia, as of 2017 only approximately 0.2 per cent of prosecutors had security of tenure. See Acceso a la Justicia, Informe sobre el Desempeño del Ministerio Púbico 2000-2018, available at: https://www.accesoalajusticia.org/wp-content/uploads/2020/04/Informe-sobre-el-desempe%C3%B1o-del-Ministerio-P%C3%BAblico-2000-2018.pdf

[301] 2007 Organic law on the Public Prosecutor's Office, art. 119.

[302] 1999 Constitution, art. 280.

[303] Ibid. The Organic Law of the Ombudsperson's Office also echoes this provision. Organic Law of the Ombudsperson's Office, Published in the Official Gazette No. 37.995, 5 August 2004, art. 2, available at: http://www.oas.org/juridico/PDFs/mesicic4_ven_ley_org_def_pueb.pdf ("hereinafter 2004 Organic Law of the Ombudsperson's Office").

[304] 2004 Organic Law of the Ombudsperson's Office, art. 10.

[305] 2004 Organic Law of the Ombudsperson's Office, art. 1.

[306] Internal Regulations for the Organization and Functioning of the Ombudsperson's Office, Published in the Official Gazette No. 38.857, 24 January 2008, available at: https://pandectasdigital.blogspot.com/2017/03/reglamento-interno-de-organizacion-y.html

[307] 2004 Organic Law of the Ombudsperson's Office, art. 5.

[308] 2004 Organic Law of the Ombudsperson's Office, art. 3.

[309] 2004 Organic Law of the Ombudsperson's Office, art. 17.

[310] 2004 Organic Law of the Ombudsperson's Office, art. 15.

[311] 1999 Constitution, art. 281; 2004 Organic Law of the Ombudsperson's Office, art. 15.

[312] 1999 Constitution, art. 281.

[313] 2012 Criminal Procedure Code, art. 123.

reason have been deprived of their liberty and may freely visit and inspect detention centres.[314]

86. Under its Organic Law, the Ombudsperson's Office shall produce an annual report.[315] The Ombudsperson's Office has published annual reports for 2014, 2015, 2016, 2017 and 2020,[316] which the Mission has reviewed. However, as discussed in detail in the "Judicial system responses to allegations of human rights violations" section below, the lack of specific information regarding the work of the Ombudsperson's Office in addressing complaints, makes it difficult to evaluate its performance. On a scale of A-C, the office received a ranking of B (partially compliant with the Paris Principles) during the last review in May 2017.[317]

# III. Independence of the justice system

87. An independent and impartial[318] justice system is essential for upholding the rule of law and ensuring the protection of human rights and is also a necessary component of checks and balances between the branches of government. In Venezuela, the principles of independence and impartiality of both the justice system as a whole and of individual judges and prosecutors in the exercise of their functions are enshrined in a number of constitutional provisions.[319]

88. The Mission understands for independence of the justice system, the ability of all entities involved at all stages of the criminal justice process, to perform their duties free of influence or control by other actors. The Mission considers the independence of the justice system from two distinct but interlinked viewpoints: 1) that with respect to other political powers (notably, the Executive Branch, the Legislative Branch and other entities and agencies of the State), referred to as external independence; and 2) that with respect to other judges and members of the justice system as a whole, referred to as internal independence.[320]

89. According to several sources with inside knowledge of judicial institutions, with whom the Mission spoke, while the deterioration of prosecutorial and judicial independence has been ongoing for several decades, it has accelerated in recent years, including the period

314 2004 Organic Law of the Ombudsperson's Office, art. 15.

315 2004 Organic Law of the Ombudsperson's Office, art. 30.

316 See http://www.defensoria.gob.ve/index.php?option=com_content&view=article&id=401&Itemid=140

317 See Global Alliance of National Human Rights Institution, Chart of the Status of National Institutions, 27 May 2017, available at: https://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf

318 Judicial impartiality implies neutrality or absence of predisposition in favour or against any of the parties in a proceeding. See Carlos Adolfo Picado Vargas, El derecho a ser juzgado por un juez imparcial, 2014, available at: https://www.corteidh.or.cr/tablas/r32673-1.pdf; Wolters Kluwer, Imparcialidad Judicial, available at: https://guiasjuridicas.wolterskluwer.es. The notion of impartiality implies that judges must not harbour preconceptions about the matter put before them (objective impartiality) and that they must not act in ways that promote the interests of one of the parties (subjective impartiality). See OHCHR, Independence and impartiality of judges, prosecutors and lawyers, available at: https://www.ohchr.org/documents/publications/training9chapter4en.pdf

319 See 1999 Constitution, arts. 145, 254-256.

320 See Bangalore Principles of Judicial Conduct, 2006, art. 1.4, available at: https://www.unodc.org/res/ji/import/international_standards/bangalore_principles/bangaloreprinciples.pdf; The CEELI Institute, Judicial Independence: new challenges and judicial governance innovations, available at: https://www.unodc.org/documents/ji/discussion_guides_2020/Judicial_Independence_Guide.pdf; Joost Sillen, The concept of 'internal judicial independence' in the case law of the European Court of Human Rights, 2019, available at: tinyurl.com/xb8jpubu

covered by the Mission's mandate.[321] Today, as one former judge stated, the justice system "is not even a shadow of what it was just 15 years ago".[322]

90. The Mission notes that a significant issue affecting the independence of the justice system are the serious and pervasive allegations of corruption. Numerous sources interviewed by the Mission, including former judges and prosecutors, as well as respondents to the questionnaire, identified that the charging for transactions is a persistent practice among certain judges and prosecutors.[323] This includes both routine and exception transactions, for example, charging for legal benefits in cases, to advance a case in the court docket, or to file documents or receive copies of court decisions.[324] One former judge noted that the situation of corruption has lessened the need for private defence lawyers as people find it simpler to just pay off judges or lawyers than to litigate a case.[325] In the words of one legal expert, "The system itself is so corrupt that the public service of justice cannot be provided to the Venezuelan people".[326]

## A. Selection and tenure of judges

91. The 1999 Constitution established procedures for the selection of Supreme Tribunal justices[327] and first instance and appellate judges,[328] and included safeguards to help ensure the transparent, non-political and merit-based selection of judicial actors.[329] Constitutional provisions require that judges not engage in political activism[330] and that political interests do not motivate the appointment or removal of judges.[331]

92. However, the progressive failure to comply with these standards is at the root of deterioration of prosecutorial and judicial independence, both internal and external to the justice system. In particular, political interference in the selection of Supreme Tribunal justices resulted in a permanent shift in its ideological alignment and had a cascading effect over all institutions within the judiciary, as described below. As one expert on the Venezuelan justice system interviewed by the Mission put it, "it is shocking how the Constitutional

[321] Interview AAIV044, 12 May 2021; Interview AAIV045, 14 May 2021; Interview AAIV046, 14 May 2021; Interview AAIV063, 3 June 2021; Interview AAIV066, 1 July 2021; Interview AAIV069, 5 July 2021; Interview AAIV070, 5 July 2021; Interview AAIV072, 6 July 2021; Interview AAIV073, 5 July 2021; Interview AAIV082, 28 July 2021; Interview AAIV083, 19 July 2021; Interview CCIV003, 29 June 2021; Interview CCIV006, 28 June 2021; Interview CCIV008, 13 August 2021; Questionnaire CCQR017, 16 June 2021.

[322] Interview AAIV046, 14 May 2021.

[323] Interview AAIV044, 12 May 2021; Interview AAIV046, 14 May 2021; Interview AAIV049, 19 May 2021; Interview AAIV061, 18 June 2021; Interview AAIV068, 2 July 2021; Interview AAIV062, 22 June 2021; Interview AAIV064, 23 June 2021; Interview AAIV071, 5 July 2021; Interview AAIV070, 5 July 2021; Interview AAIV083, 29 July 2021; Interview CCIV006, 28 June 2021; Questionnaire CCQR077, 12 July 2021; Questionnaire CCQR078, 12 July 2021; Questionnaire CCQR070, 12 July 2021; Questionnaire CCQR062, 12 July 2021; Questionnaire CCQR050, 12 July 2021; Questionnaire CCQR054, 12 July 2021; Questionnaire CCQR040, 12 July 2021; Questionnaire CCQR042, 12 July 2021; Questionnaire CCQR040, 12 July 2021; Questionnaire CCQR031, 23 June 2021; Questionnaire CCQR030, 22 June 2021; Questionnaire CCQR016, 16 June 2021; Questionnaire CCQR013, 15 June 2021; Questionnaire CCQR012, 15 June 2021.

[324] Interview AAIV044, 12 May 2021; Interview AAIV046, 14 May 2021; Interview AAIV061, 18 June 2021; Interview AAIV062, 22 June 2021; Interview AAIV064, 23 June 2021; Interview AAIV068, 3 May 2021; Interview AAIV083, 20 July 2021; Interview CCIV006, 28 June 2021; Questionnaire CCQR040, 12 July 2021; Questionnaire CCQR012, 15 June 2021.

[325] Interview AAIV070, 5 July 2021

[326] Interview DDIV041, 3 June 2021.

[327] 1999 Constitution, art. 264.

[328] 1999 Constitution, art. 255.

[329] 1999 Constitution, art. 263; 2010 Organic law of the Supreme Tribunal of Justice, art. 37.

[330] 1999 Constitution, art. 256.

[331] 1999 Constitution, art. 145.

Chamber of the Supreme Tribunal of Justice has destabilized the judicial branch. […] It is the judiciary itself that has invalidated judicial independence".[332]

### 1. Supreme Tribunal Justices

93. 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.[333] For this purpose, the Constitution established the Judicial Nominations Committee as the body tasked with advising the Judicial Branch on the selection of candidates,[334] made up of "representatives of the various sectors of society".[335] According to the Constitution, the Judicial Nominations Committee, following a period for public comment, is to carry out a pre-selection of candidates to submit to the Citizen Branch.[336] Based on that list, the Citizen Branch is to make a second pre-selection to submit to the National Assembly for its final determination.[337]

94. However, since the adoption of the 1999 Constitution, the National Assembly has passed laws circumventing this constitutionally mandated process and increasing political influence over the selection of Supreme Tribunal justices. Key legislation in this regard includes:

- The 2000 Special Law for the Ratification or Appointment of Officials of the Citizen Branch and Justices of the Supreme Tribunal of Justice, which established a Judicial Evaluations Commission composed of 15 National Assembly deputies[338] and 12 representatives from sectors of society to carry out the pre-selection of judicial candidates.[339] The Law allowed the Judicial Evaluations Commission to present shortlisted candidates directly to the National Assembly plenary for final vote,[340] bypassing the approval of the Citizen Branch, as required by the Constitution.[341]
- The 2004 Organic Law of the Supreme Tribunal of Justice, which expanded the number of justices from 20 to 32. The 2004 Organic Law also maintained the Judicial Evaluations Committee (now called the Judicial Nominations Committee), modifying its composition to five National Assembly deputies and six representatives from sectors of society.[342] It allowed a simple majority of the National Assembly to elect the Supreme Tribunal justices if four previous attempts to reach a two-thirds vote had failed.[343] Further, the Organic Law authorized the National Assembly to suspend

[332] Interview DDIV041, 3 June 2021. See also Interview CCIV005, 2 July 2021.
[333] 1999 Constitution, art. 264.
[334] 1999 Constitution, arts. 264 and 270.
[335] 1999 Constitution, art. 270 ("The Judicial Nominations Committee shall be made up of representatives of the various sectors of society, in accordance with such provisions as may be established by law").
[336] Under the Constitution, the organs of Citizen Branch are the Public Defender's Office, the Public Prosecutor's Office and the Office of the General Comptroller of the Republic. 1999 Constitution, art. 273.
[337] 1999 Constitution, art. 264.
[338] 2000 Special Law, art. 3. The make-up of the Judicial Evaluations Commission, which was composed of 15 National Assembly Deputies and 12 members from various sectors of society was contrary to the provisions of the 1999 Constitution with respect to the Judicial Nominations Committee, requiring that it be comprised of representatives of society of sectors (1999 Constitution, art. 270). Six out of the twelve representatives of sectors of society would be selected by the plenary of the National Assembly to sit on the Judicial Evaluations Commission. 2000 Special Law, art. 4.
[339] 2000 Special Law, art. 3.
[340] 2000 Special Law, art. 9.
[341] This was contrary to the provision of the 1999 Constitution, which required that the Citizen Branch shall carry out a second pre-selection of candidates prior to the final vote (1999 Constitution, art. 264).
[342] The representatives of sectors of society were selected by the National Assembly. Ibid., art. 13.
[343] 2004 Organic Law of the Supreme Tribunal of Justice, art. 8. This was partially modified by the 2010 reforms to the Organic Law, which allowed for a simple-majority election only if three attempts to reach a two-thirds vote had failed. See 2010 Organic Law of the Supreme Tribunal of Justice, art. 38.

Supreme Tribunal justices if the Citizen Branch unanimously determined that the justice's actions constitute a serious offense.[344]

- The 2010 Organic Law of the Supreme Tribunal of Justice, which maintained the composition of the Judicial Nominations Committee as 11 members, 5 to be elected by the National Assembly and 6 by civil society.[345] It declared the Judicial Nominations Committee to be an advisory body of the National Assembly, headquartered in the parliamentary building.[346] The law also allowed the National Assembly to elect Supreme Tribunal justices by a simple majority should three previous attempts to reach a two-thirds majority fail.[347] In 2014, the National Assembly adopted the internal regulations of the Judicial Nominations Committee, affirming and expanding upon these provisions.[348]

95. The Supreme Tribunal of Justice's current configuration was confirmed in December 2015. Following the opposition's majority win of the National Assembly, in an extraordinary session and by a simple majority vote,[349] the outgoing legislature appointed 13 judges and 21 alternates to the Supreme Tribunal for the period 2015-2027.[350] The appointments were not carried out in accordance with relevant constitutional provisions, including with respect to the timeframes of the process.[351] The Mission interviewed one of the justices elected in December 2015, who acknowledged that that he was selected "because they assumed I would be loyal [to the Government]".[352] He said that of the 32 judges comprising the Supreme Tribunal of Justice, 29 were selected from "Chavist circles".[353]

96. In the lead up to the December 2015 appointment, 13 of the outgoing justices took early retirement,[354] several of whom later testified that Chief Justice Maikel Moreno had pressured them to do so.[355] Their departure via retirement sidestepped constitutional

344 2004 Organic Law of the Supreme Tribunal of Justice, art. 23(3). That article specified that, the justice was to be suspended from office until a final decision is adopted by the National Assembly.

345 2010 Organic Law of the Supreme Tribunal of Justice, art. 65.

346 2010 Organic Law of the Supreme Tribunal of Justice, art. 64. In contrast, the 1999 Constitution described the Judicial Nominations Committee as an advisory body of the Judicial Branch. 1999 Constitution, art. 270.

347 2010 Organic Law of the Supreme Tribunal of Justice, art. 38.

348 National Assembly, Internal Regulations of the Judicial Nominating Committee, Published in the Official Gazette No. 40.535, 6 November 2014, available at: http://www.oas.org/juridico/PDFs/mesicic4_ven_reg_com_pos_gac_ofi_num40535.pdf

349 The National Assembly may only appoint Supreme Tribunal of Justice judges by simple majority if in four previous plenary sessions they have failed to attain at two-thirds majority. 2010 Organic Law of the Supreme Tribunal of Justice, art. 38.

350 Agreement issued by the National Assembly, Published in the Official Gazette of the Bolivarian Republic of Venezuela No. 40.816, 23 December 2015, available at: https://www.finanzasdigital.com/wp-content/uploads/2015/12/GO40816DesignacionMagistradosTSJ.pdf

351 See 2010 Organic Law of the Supreme Tribunal of Justice, arts. 70 and 71. See e.g., Convite, Si Justicia, no Hay Estado de Derecho, November 2016, available at: https://issuu.com/conviteac/docs/informe__definitivo_tsj. See also, Acceso a la Justicia, Informe sobre irregularidades en la designación de magistrados, 1 March 2016, available at: https://accesoalajusticia.org/informe-sobre-irregularidades-en-la-designacion-de-magistrados/

352 Interview AAIV061, 18 June 2021.

353 Interview AAIV061, 18 June 2021.

354 See Supreme Tribunal of Justice, Sala plena del TSJ acordó aprobar solicitud de jubilación de 13 magistrados y magistradas, 14 October 2015, available on archived webpage at: https://web.archive.org/web/20201024023659/http://www.tsj.gob.ve/-/sala-plena-del-tsj-acordo-aprobar-solicitud-de-jubilacion-de-13-magistrados-y-magistradas

355 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, available at: https://supremainjusticia.org/wp-content/uploads/2016/03/INFORME_DEFINITIVO-COMISION-ESPECIAL-ESTUDIAR-DESIGNACION-DE-MAGISTRADOS.pdf. One justice stated, "Maikel told me: 'This is an order' and that it was not a question of 'asking for a retirement' and warned me that he would keep pressuring me, because it was a job I was given". See Acceso a la Justicia, Jubilaciones anticipadas y

requirements regarding the removal of Supreme Tribunal justices, requiring a two-thirds majority vote of the National Assembly to remove them from office,[356] after disciplinary proceedings that are public, oral and expeditious, and in accordance with due process.[357] The 2010 Organic Law reaffirms this constitutional provision and specifies that Supreme Tribunal justices may only be removed for "serious cause".[358] A 2017 study by the organization Acceso a la Justicia found that 59.6 per cent of Supreme Tribunal justices since 1999 had left office by taking early retirement.[359]

97. 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 justices to affirm their own appointments. On 14 July 2016, the opposition-led National Assembly moved to annul the appointments, an effort that was declared unconstitutional by the Constitutional Chamber five days later.[360] On 12 June 2017, then Chief Prosecutor Luisa Ortega Díaz presented a motion to invalidate the justices' appointments, which the Constitutional Chamber rejected that same day arguing *res judicata*.[361] In July 2017, the opposition-led National Assembly initiated a process to elect new Supreme Tribunal justices to replace those elected in December 2015, which the Constitutional Chamber again struck down on 20 July 2017.[362]

98. The significance of the alignment of the Supreme Tribunal of Justice becomes even more evident given the level of almost complete control exercised by this body over the other institutions within the judiciary. Specific functions of the Supreme Tribunal of Justice include the appointment of tenured first instance and appellate court judges;[363] the appointment of provisional judges;[364] the appointment of Presidents of the Judicial Circuits;[365] the discipline of first instance and appellate court judges;[366] the selection and removal of the Director of the

forzadas en el TSJ, 6 April 2017, available at: https://accesoalajusticia.org/jubilaciones-anticipadas-y-forzadas-en-el-tsj/.

356 1999 Constitution, art. 265.

357 Ibid., art. 267.

358 2010 Organic Law of the Supreme Tribunal of Justice, art. 62.

359 Acceso a la Justicia, Jubilaciones anticipadas y forzadas en el TSJ, 6 April 2017, available at: https://accesoalajusticia.org/jubilaciones-anticipadas-y-forzadas-en-el-tsj/. See also Interview CCIV008, 13 August 2021.

360 Supreme Tribunal of Justice, Constitutional Chamber, Judgment No. 614 of 19 July 2016, available at: https://vlexvenezuela.com/vid/gabriela-flores-ynserny-daniel-645380001. The decision held that the Parliamentary Act Passed in the Extraordinary Session of 23 December 2015, in which 34 magistrates and judges were appointed and sworn in to fill vacancies in the Supreme Tribunal of Justice, retains its full validity and, consequently, they shall remain in their positions in the Supreme Tribunal of Justice for the corresponding constitutional period.

361 Supreme Tribunal of Justice, Constitutional Chamber, Judgment No. 454 of 12 June 2017.

362 Supreme Tribunal of Justice, Constitutional Chamber, Judgment No. 545 of 20 July 2017. The Supreme Tribunal declared this action null based on the National Assembly's continued contempt with a previous Supreme Tribunal Decision, resulting in all subsequent decisions as being "manifestly unconstitutional and absolutely null and lacking all validity and legal effect" (Judgment No. 808 of 2 September 2016, see below for further discussion of this). The Judgment also warned the National Assembly and potential Supreme Tribunal candidates that the Usurpation of Functions is a crime under article 213 of the Criminal Code. Following the decision, at least 14 of those judges fled the country due to harassment and fear of criminal persecution. DDIV035, 17 May 2021. See also: Reuters, En bote o a pie, magistrados huyen de Venezuela por temor a ser encarcelados, 11 August 2017, available at: https://www.reuters.com/article/venezuela-magistrados-idLTAKBN1AR1QB-OUSLD. Judge Ángel Zerpa was arbitrarily detained by SEBIN on charges of treason and usurpation of functions. The Mission in 2020 found a reasonable grounds to believe that Mr. Zerpa was detained arbitrarily and subjected to cruel, inhuman or degrading treatment during his detention in El Helicoide. See A/HRC/45/CRP.11, Case 8: Ángel Zerpa.

363 2010 Organic Law of the Supreme Tribunal of Justice, art 36(6).

364 2010 Organic Law of the Supreme Tribunal of Justice, art 36(18).

365 2012 Criminal Procedure Code, art. 507.

366 2016 Norms for the Evaluation of Entry to the Judicial Career, art. 41.

General Inspectorate of Courts;[367] and the selection and removal of the Director of the Inspectorate General of Public Defenders.[368]

99. In addition to functions within the judiciary, the Supreme Tribunal of Justice carries out constitutional review of laws or other legal provisions[369] at all levels of the State,[370] following requests made by the President of the Republic.[371] As the Mission has previously stated, between 2016 and 2020, the Supreme Tribunal's Constitutional Chamber consistently struck down laws passed by the then opposition-led National Assembly, including decisions about the make-up of the judiciary.[372] In this way, the Supreme Tribunal has been able to limit the powers of others branches of State, while concurrently insulating itself from any attempts of interference by other entities.[373]

### 2. The appointment of first instance and appellate judges

100. The 1999 Constitution states that the appointment and swearing in of judges shall be the responsibility of the Supreme Tribunal of Justice.[374] 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,[375] with the right of citizen participation guaranteed.[376] One hundred per cent of respondents to the Mission's questionnaire said that the process of appointment of judges in Venezuela has not been in accordance with the law.[377]

101. In 2000, the Supreme Tribunal of Justice initiated a highly competitive process to select career judges, involving written, oral exams and a practical test,[378] resulting in the selection of more than 200 judges.[379] Those that did not pass the competition remained as provisional judges.[380] In 2003, the Supreme Tribunal suspended this competitive selection process for reasons that are unclear.[381] Competitive selections of judges have not been held since and, as a result, only an estimated 15-20 per cent of judges in Venezuela were career judges by 2019 according to sources consulted by the Mission.[382] Instead, the Supreme

[367] 2010 Organic Law of the Supreme Tribunal of Justice, art. 81.
[368] 2010 Organic Law of the Supreme Tribunal of Justice, art. 82.
[369] 1999 Constitution, art. 334.
[370] 1999 Constitution, art. 336(10).
[371] 1999 Constitution, art. 214.
[372] A/HRC/45/CRP.11, para. 118.
[373] For example, in May 2016, the National Assembly attempted to reform the 2010 Organic Law of the Supreme Tribunal of Justice, among others, to increase the number of justices of the Constitutional Chamber. However, before it could reach its second reading, it was declared unconstitutional by the Supreme Tribunal of Justice. See National Assembly, Draft Law for the Partial Reform of the Organic Law of the Supreme Tribunal of Justice, available at: https://transparencia.org.ve/project/proyecto-de-ley-de-reforma-parcial-de-la-ley-organica-del-tribunal-supremo-de-justicia/. See also Constitutional Chamber, Supreme Tribunal of Justice, Judgment No. 314 of 5 May 2016, available at: https://pandectasdigital.blogspot.com/2016/05/sentencia-que-declara-la.html
[374] 1999 Constitution, art. 255.
[375] 1999 Constitution, art. 255.
[376] 1999 Constitution, art. 255.
[377] Responses on file with the Mission.
[378] Interview AAIV051, 25 May 2021; Interview CCIV005, 2 July 2021.
[379] See Human Rights Watch, Manipulando el Estado de Derecho: Independencia del Poder Judicial amenazada en Venezuela, 16 June 2004, available at: https://www.hrw.org/es/report/2004/06/16/manipulando-el-estado-de-derecho/independencia-del-poder-judicial-amenazada-en#_ftnref25.
[380] Interview CCIV005, 2 July 2021.
[381] See Acceso a la Justicia, El Régimen Jurídico del Poder Judicial, p. 44, available at: https://accesoalajusticia.org/wp-content/uploads/2016/11/R%C3%A9gimen-jur%C3%ADdico-del-Poder-Judicial-1-1.pdf
[382] Interview AAIV046, 14 May 2021; Interview AAIV051, 25 May 2021; Interview AAIV061, 18 June 2021; Interview AAIV062, 22 June 2021; Interview AAIV068, 2 July 2021; Interview AAIV083, 29 July 2021. See also ArmandoInfo, La Ley del Poder Judicial: Mientras más pobre la Provincia, más Chavistas los Jueces, 7 July 2019, available at: https://armando.info/Reportajes/Details/2581.

Tribunal of Justice appoints judges provisionally, meaning that it can both select and remove them without cause or compliance with the constitutional process. As noted, the Organic Law of the Supreme Tribunal of Justice affirms its power to appoint alternate judges in cases of temporary or absolute absence of judges.[383]

102. The Supreme Tribunal of Justice continues to appoint a high number of provisional judges. In January 2021, at the opening of the judicial period, Chief Justice Maikel Moreno reported that 881 judges had been appointed in 2020.[384] The previous Chief Justice, Gladys Gutiérrez, had announced "exponential growth" in the number of judges appointed from 2012-2016.[385] On 30 July 2021, the Mission wrote to the Government formally to request information about the numbers and types of judicial appointments made in the relevant period, but had not received a response at the time of writing.

103. The Supreme Tribunal of Justice appoints provisional judges through its Judicial Commission which, as noted, is a permanent body of the Supreme Tribunal of Justice, composed of six magistrates, one from each Chamber, and presided by the Chief Justice. The Judicial Commission was initially tasked with mostly administrative functions, but a series of Supreme Tribunal of Justice resolutions have progressively granted it farther-reaching powers to select and discipline first instance and appellate court judges, as follows:[386]

- The 2006 Internal Regulations of the Supreme Tribunal of Justice. Under these, the Supreme Tribunal of Justice affirmed that the purpose of the Judicial Commission is to coordinate, by delegation of the Plenary Chamber, the policies, activities and performance of the Executive Directorate of the Judiciary, the National School of the Judiciary, the General Inspectorate of Courts and the Public Defence.[387]
- The 2009 Resolution Declaring the Restructuring of the Judicial Branch, which provided the first reference to Judicial Commission powers to select judges on a provisional basis. The Supreme Tribunal affirmed the powers of the Judicial Commission to suspend judges who do not pass an institutional evaluation[388] and declared that the positions left vacant are to be filled by the Judicial Commission and thereafter ratified by the Plenary Chamber of the Supreme Tribunal of Justice.[389]
- The 2016 Norms for Evaluation and Competition for the Entry to and Promotion within the judicial career.[390] The regulation affirmed that the Judicial Commission shall plan, supervise and execute the activities related to public competitive examinations for admission, promotion and permanence in the judicial career.[391] It outlined 12 steps for the competitive process for the judicial selection of tenured judges.[392]

---

ArmandoInfo has also compiled personal information, including political affiliation about an important number of judges: https://armando.info/AiData/Jueces_Politicos

383 2010 Organic Law of the Supreme Tribunal of Justice, arts. 36(17)-(18).

384 YouTube video, Inicio del año judicial 2021 en Venezuela: Palabras de Maikel Moreno, Nicolás Maduro y M. Ameliach, minute 26.30, 22 January 2021, available at: https://www.youtube.com/watch?v=m6mtCRsQcpY

385 YouTube video, Inicio del Año Judicial 2017 en el TSJ, evento completo, minute 104.55, 8 February 2017, available at: https://www.youtube.com/watch?v=_t1Wj35x2qg

386 2000 Regulations on the Judiciary, art. 26.

387 2006 Internal Regulations of the Supreme Tribunal, art. 73.

388 2009 Resolution Declaring the Restructuring of the Judicial Branch, art. 3.

389 2009 Resolution Declaring the Restructuring of the Judicial Branch, art. 4.

390 Supreme Tribunal of Justice, Rules for Evaluation and Competitive Examination for Admission and Promotion to the Judicial Carreer, Published in the Official Gazette No. 40.972, 23 August 2016, available at: http://www.juris-line.com.ve/data/files/3537.pdf (hereinafter "2016 Rules for Admission and Promotion to the Judicial Career"). See analysis by Acceso a la Justicia, available at: https://www.accesoalajusticia.org/consideraciones-sobre-las-normas-de-evaluacion-y-concurso-de-oposicion-para-el-ingreso-y-ascenso-a-la-funcion-judicial/.

391 2016 Rules for Admission and Promotion to the Judicial Career, art. 2.

392 2016 Rules for Admission and Promotion to the Judicial Career, art. 9. This included: 1) the announcement of the public competitive examination; 2) presentation by candidates of the application form and requirements; 3) appointment of the evaluating jury; 4) evaluation of eligible candidates; 5)

104. Within the Judicial Commission, there is no formal process for the selection of provisional judges established by law or resolution.[393] However, the Mission spoke with former justices and lawyers who worked in the Supreme Tribunal of Justice with knowledge of the Judicial Commission's working practices. According to these sources, the members of the Judicial Commission make nominations based on personal or political considerations.[394] This included checking the candidates' political tendencies, in the past using the Tascón list,[395] or consulting with the presidents of the Criminal Judicial Circuits,[396] to determine whether they have links to the opposition.[397] According to two sources with inside knowledge consulted by the Mission, each justice has a certain quota of judges to appoint.[398]

## B. Discipline and removal of judges

105. Disciplinary proceedings against judges must be based on the rule of law and carried out in accordance with certain basic principles aimed at safeguarding judicial independence. The 1999 Constitution affirms the responsibility of the Supreme Tribunal of Justice for the direction, governance and administration of the Judicial Branch and inspection and vigilance of the courts of the Republic and the Public Defenders' Offices.[399] The Constitution requires that disciplinary proceedings be public, oral and expeditious and in accordance with due process.[400] The Constitution affirms that jurisdiction over judicial discipline shall be vested in such disciplinary courts as may be determined by law.[401]

106. However, the Mission interviewed judges who reported experiencing regular threats of dismissal, pressures to resign or requests for early retirement or to be removed from office for reasons other than those established by law[402] and/or without the procedure provided for

notification of those selected and delivery of the agenda; 6) knowledge and aptitude test; 7) psychological, psycho-technical and general medical test; 8) evaluation by the jury; 9) publication of the list of those selected; 10) popular participation and challenges; 11) probationary period and training program course; and 12) notification of appointment.

393 Interview AAIV044, 12 May 2021; Interview AAIV065, 24 June 2021; Interview AAIV082, 28 July 2021; Interview AAIV089, 22 August 2021, Interview AAIV090, 22 August 2021.

394 Interview AAIV082, 28 July 2021; Interview AAIV062, 22 June 2021; Interview CCIV008, 13 August 2021; Interview AAIV089, 21 August 2021; Interview AAIV090, 22 August 2021. For example, one former clerk with the Criminal Appellate Chamber said, "Each judge arrives on the basis of political support. For example, a justice could say a certain high profile political actor "is campaigning in Lara, so we need to appoint three judges from Lara". Interview AAIV082, 28 July 2021.

395 The Tascón list refers to a 2004 list of signatures of individuals who supported the recall of President Hugo Chávez via referendum. See Inter-American Court of Human Rights, San Miguel Sosa and others v. Venezuela, 8 February 2018, para. 59, available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_348_esp.pdf (finding that Venezuela violated rights to non-discrimination and political participation, among others, enshrined in the Inter-American Convention on Human Rights, of public servants who were dismissed after signing the Tascón list).

396 Interview AAIV061, 18 June 2021; Interview AAIV062, 22 June 2021.

397 Interview AAIV050, 19 May 2021; Interview AAIV061, 18 June 2021; Interview AAIV082, 28 July 2021.

398 Interview AAIV082, 28 July 2021; Interview AAIV062, 22 June 2021.

399 1999 Constitution, art. 267.

400 1999 Constitution, art. 267.

401 1999 Constitution, art. 267. See Inter-American Court of Human Rights, Case Urrutia v. Chile, 27 August 2020, para. 103, available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_409_esp.pdf (stating that due process rights, as envisaged in article 8 of the American Convention on Human Rights, must be respected for a decision not to be considered arbitrary).

402 See 2009 Judicial Code of Ethics, art. 33. This article states that dismissal of career judges may be for the following reasons: 1. Repeated unsatisfactory performance, in accordance with the parameters previously established, published and required by the Supreme Tribunal of Justice. 2. Receiving, soliciting or being promised gifts from persons either for oneself or for others who litigate or appear in court or from persons related to the litigants. 3. Coercing any person to give him or her a benefit, for himself or herself or for another person. 4. Carrying out, either by himself or through the intermediary of any other person, acts the exercise of the profession of lawyer or private gainful

by law.[403] The judges alleged that the presidents of the Criminal Judicial Circuits were responsible for many such threats.[404] By law, the powers of the presidents are limited to mainly administrative functions, but they have assumed hierarchal powers over judges within the respective circuits (see below).[405] As noted further below, arbitrary dismissal was often one of several simultaneous disciplinary measures carried out against judges for retaliatory or coercive purposes.

107. The Inter-American Court of Human Rights has affirmed the responsibility of Venezuela for violations of rights provided for in the American Convention on Human Rights, including due process rights and the right to an effective legal recourse, in cases involving the arbitrary dismissal of judges.[406] Non-tenured judges interviewed by the Mission reported being dismissed via a brief letter, without any process or evaluation.[407] The Mission

activities incompatible with his or her function. 5. Engaging in actions that involve discrimination on the grounds of race, sex, religion, language, political opinion, nationality or any other personal or social condition or circumstance; or belonging to organisations that practise or defend discriminatory conduct. 6. Incurring a new cause for suspension, having already been suspended on two previous occasions within the period of suspension. 7. Being affected by one of the grounds for disqualification or incompatibility that were not disclosed at the time of appointment, in accordance with the provisions of the respective law. 8. Abandoning or absenting oneself from office unjustifiably, compromising the normal normal functioning of the judicial body. 9. Promoting or organising strikes, total or partial suspension of judicial activities, or reducing the daily activities, or reduce the daily performance of work, in accordance with previously established, published and required parameters previously established, published and required by law or the Supreme Tribunal of Justice. 10. Being convicted of an offence against public property; of a fraudulent offence; or of an offence when the commission of the latter has been influenced by the use of narcotic or psychotropic substances. 11. Declaring, drawing up, submitting or endorsing inaccurate or false statistical data, or data which is disproved by inspection of the court, on the performance or performance of the performance of the judge's office. 12. Lack of probity. 13. Serious or repeated improper or inadequate conduct in the exercise of his or her functions. 15. Omitting, altering, or irregularly concluding the distribution of dossiers, or in any way intentionally altering the outcome of the proceedings. 16. Intentionally causing damage, either by himself or through an intermediary, to the premises, material property or documents of the court. 17. Carrying out political-partisan, trade union, trade union or similar activism. 18. Recommending or influencing another judge, of the same or a different instance, or any other public official or other official of the court. 19. Proceeding with inexcusable error and ignorance of the Constitution of the Republic, the law and the legal system, as declared by the Chamber of the Supreme Tribunal of Justice. 20. Causing considerable damage to the health of persons, their property or their honour, through imprudence, negligence or ignorance. The seriousness of the imprudence, negligence or ignorance, committed by the judge, shall be determined by the competent body in disciplinary matters, without prejudice to the corresponding compensation to which the parties concerned may be entitled. 21. Intentionally or through manifest negligence causing serious material damage to the assets of the Republic. 22. Incurring in unjustified delays or neglect in the processing of proceedings or in any of the procedures involved, provided that this undermines the fundamental rights or guarantees of effective judicial protection. 23. Proven negligence in the due preservation of the means of evidence or any other instrument essential for any other fundamental instrument for the exercise of judicial actions.

403 Interview AAIV046, 14 May 2021; Interview CCIV005, 2 July 2021; Interview AAIV070, 5 July 2021; Interview AAIV083, 29 July 2021; CCIV008, 13 August 2021. See also Questionnaire CCQR075, 12 July 2021; Questionnaire CCQR020, 16 June 2021; Questionnaire CCQR025, 17 June 2021; Questionnaire CCQR017, 16 June 2021; Questionnaire CCQR014, 15 June 2021; Questionnaire CCQR005, 15 June 2021.

404 Interview AAIV046, 14 May 2021; Interview CCIV005, 2 July 2021; Interview AAIV070, 5 July 2021; Interview AAIV083, 29 July 2021; CCIV008, 13 August 2021.

405 2012 Criminal Procedure Code, arts. 507 and 508. Interview AAIV046, 14 May 2021; Interview CCIV005, 2 July 2021; Interview CCIV008, 13 August 2021.

406 Inter-American Court of Human Rights, Case Apitz Barbera and others vs. Venezuela, 5 August 2008, available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_182_esp.pdf; Inter-American Court of Human Rights, Case Reverón Trujillo vs. Venezuela, 5 August 2008, available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_197_esp.pdf; Inter-American Court of Human Rights, Case Chocrón Chocrón vs. Venezuela, 1 July 2011, available at: https://corteidh.or.cr/docs/casos/articulos/seriec_227_esp.pdf. See Interview CCIV001, 18 June 2021.

407 Interview AAIV070, 6 July 2021; Interview AAIV046, 9 July 2021.

reviewed one such letter, which read, "You are hereby informed that, under the powers vested in this Judicial Commission, a decision was taken at the meeting held on 6 April 2017, at which it was agreed that your appointment as Provisional Judge [...] is cancelled".[408] The letter stated that he could appeal the decision before the same Judicial Commission of the Supreme Tribunal of Justice within 15 days of receiving the notification.[409]

### 1. The Code of Ethics and Disciplinary Tribunals

108. Under the 1999 Constitution, discipline of judges shall be in accordance with a Judicial Code of Ethics, which was to be adopted by the National Assembly.[410] However, this law was not adopted until 2009, ten years after the Constitution entered into force. Under the Judicial Code of Ethics, judges may be sanctioned for faults committed in the exercise of their office, including with written reprimand; suspension from one to six months, without salary; or removal from office and disqualification for the performance of functions from two to fifteen years, depending upon the gravity of the offence.[411]

109. As noted above, prior to 2009, the discipline of first instance and appellate court judges was carried out by the Commission for the Restructuring and Functioning of the Justice System, which was initially intended to be a temporary body established after the adoption of the 1999 Constitution.[412] During its tenure, that Commission dismissed a large number of judges in a process that, according to information received by the Mission, was subject to political intervention.[413] The Mission interviewed a former member of the Commission for the Restructuring of the Justice System who said that, despite a positive start, regional directors within the Commission started to issue orders to commissioners with respect to which judges to appoint and dismiss, outside the framework of the established competitive process.[414]

110. The Judicial Code of Ethics established Disciplinary Tribunals of first[415] and second instance,[416] each composed of three judges.[417] It affirmed that disciplinary judges are to be elected through judicial electoral colleges also established under the law.[418] However, these electoral colleges had not been formed at the time of writing. Instead, since 2009, disciplinary judges were appointed by the National Assembly, in accordance with the Third Transitory Provision of the 2009 Judicial Code of Ethics, which allowed for the legislature to make such appointments until formation of the electoral colleges.[419] In 2013, the Supreme Tribunal of Justice issued a judgment holding that it would appoint disciplinary judges directly, which remains the situation to date.[420]

---

408 Letter from Chief Justice Mailkel Moreno, President of the Judicial Commission, 6 April 2017.

409 Ibid.

410 1999 Constitution, art. 267.

411 2009 Judicial Code of Ethics, art. 28. The provision was maintained in the 2015 Judicial Code.

412 2009 Judicial Code of Ethics, First Transitory Provision. See also 2004 Organic Law of the Supreme Tribunal, Derogatory, Transitory and Final Provision (e).

413 Interview AAIV038, 3 May 2021; Interview AAIV040, 5 May 2021; Interview AAIV051, 25 May 2021. See also, Inter-American Commission on Human Rights, Annual report on Venezuela 2009, para. 285, available at: http://www.cidh.org/pdf%20files/VENEZUELA%202009%20ENG.pdf

414 Interview AAIV040, 5 May 2021.

415 2009 Judicial Code of Ethics, art. 40. The first instance Disciplinary Tribunal exercise control functions during the investigation phase; issue appropriate precautionary measures; preside over the trial; decide cases and impose corresponding sanctions; and oversee their execution.

416 2009 Judicial Code of Ethics, art. 42. The Judicial Disciplinary Court, as an appellate body, has jurisdiction to hear appeals filed against decisions, whether interlocutory or final.

417 2009 Judicial Code of Ethics, arts. 39-43.

418 2009 Judicial Code of Ethics, arts. 46-49. Under the Code of Ethics, the electoral colleges were composed of one representative of each of the following the judicial branch, the Public Prosecutor's Office; the Public Defender's Office; lawyers admitted to practices and 10 delegates from the Communal Councils organized in each state. Ibid.

419 2009 Judicial Code of Ethics, Third Transitory Provision.

420 Supreme Tribunal of Justice, Constitutional Chamber Judgment No. 516, 7 May 2013. See also Judicial Disciplinary Tribunal, Agreement No. 1, 8 July 2013, available at: http://www.oas.org/juridico/PDFs/mesicic4_ven_acu_tdj.pdf

111. The Judicial Code of Ethics expressly applied to "every judge" in Venezuela, including "permanent, temporary, occasional, accidental or provisional" judges.[421] Nevertheless, in 2013, the Supreme Tribunal of Justice held that the Code of Ethics did not apply to provisional judges.[422] When the National Assembly made another attempt to bring provisional judges within the disciplinary regime with the adoption of a reformed Code of Ethics in December 2015,[423] the Supreme Tribunal of Justice again suspended its application to provisional judges shortly thereafter.[424] As explained by a former Supreme Tribunal of Justice employee, this has resulted in two categories of judges: "those who have rights and those who do not".[425]

112. The Supreme Tribunal of Justice carries out the performance evaluation of judges through its Judicial Commission. The 2016 Rules for Admission to the Judicial Career and Promotion within the judicial career affirm that the Judicial Commission is responsible for evaluating judges' performance,[426] which also affects promotions.[427] The Judicial Commission may remand cases to the General Inspectorate of Tribunals if irregularities are identified for three consecutive periods.[428]

### 2. General Inspectorate of Courts

113. The General Inspectorate of Courts is the entity responsible for receiving and substantiating the complaints filed against judges in the performance of their duties, and presenting, if necessary, the respective accusation before the Judicial Disciplinary Tribunal.[429] In 2016, the Plenary Chamber of the Supreme Tribunal of Justice issued the Regulation on the Functioning of the General Inspectorate of Courts, which described it as a body of the Plenary Chamber.[430]

114. Under the Organic Law of the Supreme Tribunal of Justice, the Plenary Chamber appoints and removes the Inspector General of Courts.[431] In addition, under the Regulation on the General Inspectorate, the Plenary Chamber of the Supreme Tribunal of Justice also appoints the individual inspectors, through its Judicial Commission, following nomination by the Inspector General.[432] Despite this, former inspectors told the Mission that in practice, the justices themselves nominate the inspectors directly.[433]

115. Although the General Inspectorate is intended to function autonomously, its independence has eroded over the past decades.[434] Former inspectors interviewed by the Mission indicated that the shift started in 2004 with the new Organic Law of the Supreme

421 2009 Judicial Code of Ethics, art. 2.

422 Supreme Tribunal of Justice, Constitutional Chamber, Judgment No. 516, 7 May 2013. This was the same Judgment holding that the Disciplinary Tribunal judges are to be elected by the Supreme Tribunal of Justice. See also, Supreme Tribunal of Justice, Constitutional Chamber, Judgment No. 1388, 17 October 2013.

423 See Code of Ethics for the Venezuelan Judge, Published in the Official Gazette No. 6207, 28 December 2015. The code reformed certain provision of the 2009 Judicial Code of Ethics.

424 Supreme Tribunal of Justice Judgment No. 06 of 4 February 2016, available at: https://pandectasdigital.blogspot.com/2016/02/sentencia-n-6-de-fecha-4-de-febrero-de.html

425 Interview AAIV056, 24 June 2021; Interview CCIV005, 2 July 2021.

426 2016 Rules for Admission to the Judicial Career, art. 41.

427 2016 Rules for Admission to the Judicial Career, art. 43.

428 2016 Rules for Admission to the Judicial Career, art. 45.

429 Plenary Chamber, Supreme Tribunal of Justice, Regulation on the Functioning of the General Inspectorate of Courts, Published in the Official Gazette No. 41.092 of 9 February 2017, art. 2, available at: https://www.franciscosantana.net/2017/04/tsj-resolucion-mediante-la-cual-es.html (hereinafter "2016 Regulation on the General Inspectorate"). See also 2010 Organic Law of the Supreme Tribunal of Justice, art. 81.

430 2016 Regulation on the General Inspectorate, art. 1.

431 2010 Organic Law of the Supreme Tribunal of Justice, art. 81.

432 2016 Regulation on the General Inspectorate, art. 6.

433 Interview AAIV062, 22 June 2021; Interview AAIV065, 24 June 2021; Interview AAIV089, 21 August 2021; AAIV090, 22 August 2021.

434 Interview AAIV062, 22 June 2021; Interview AAIV065, 24 June 2021, Interview AAIV089, 21 August 2021; Interview AAIV090, 22 August 2021.

Tribunal of Justice, which increased the number of justices from 20 to 32.[435] According to sources consulted, after this time, the Plenary Chamber, in particular the Judicial Commission, started to intensify its control over the work of the General Inspectorate.[436] Since then, all but one of the Inspectors General were also at the same time serving as Justices of the Supreme Tribunal of Justice,[437] meaning that the head of the Inspectorate is part of the same entity to which it reports, compromising its independence according to sources consulted.[438]

116. The General Inspectorate of Courts can initiate an investigation in one of three ways: *ex officio*, by complaint of the aggrieved or interested party or their legal representatives, or following a request by a body of the Government.[439] The interested party is notified[440] and a case file is opened.[441] Following a period of investigation,[442] the inspector submits its conclusions,[443] and if there are grounds, the accusation is presented before the Disciplinary Tribunal.[444] The defendant can appeal a final judgment of the Disciplinary Tribunal by filing a written appeal.[445] In accordance with the Regulation on the General Inspectorate, there are seven different kinds of inspections that investigators may carry out: ordinary inspections,[446] surveillance inspections,[447] judicial management evaluations,[448] special or extraordinary

[435] Interview AAIV062, 22 June 2021; Interview AAIV090, 22 August 2021.

[436] Interview AAIV062, 22 June 2021; Interview AAIV089, 21 August 2021; Interview AAIV090, 22 August 2021; Interview AAIV090, 22 August 2021.

[437] Interview AAIV065, 24 June 2021; Interview AAIV089, 21 August 2021; Interview AAIV090, 22 August 2021. This includes Iris Peña, Justice of the Civil Appeals Chamber (2005-2011); Juan José Mendoza, Justice of the Constitutional Chamber (2011-2014); Francia Coello, Justice with the Criminal Appellate Chamber (2014-2016); Marileys Valdez, Vice Minister of Educational Training and Social Affairs of the Ministry of Penitentiary Affairs (2016-2017); and Marco Antonio Medina, Justice of the Political-Administrative Chamber (2017 to present).

[438] Interview AAIV065, 24 June 2021: Interview AAIV062, 22 June 2021; Interview AAIV089, 21 August 2021; Interview AAIV090, 22 August 2021.

[439] 2016 Regulation on the General Inspectorate, art. 20; 2009 Judicial Code of Ethics, art. 53.

[440] 2016 Regulation on the General Inspectorate, art. 22.

[441] 2016 Regulation on the General Inspectorate, art. 32.

[442] 2016 Regulation on the General Inspectorate, art. 35.

[443] 2016 Regulation on the General Inspectorate, art. 39.

[444] 2016 Regulation on the General Inspectorate, art. 40.

[445] 2009 Judicial Code of Ethics, art. 83.

[446] 2016 Regulation on the General Inspectorate, art. 11. The ordinary inspection will be carried out by the Court Inspectors on a permanent and rotating basis in the various judicial districts, and includes the review and examination of the judicial management of the Court and of each of the judges during the period inspected.

[447] 2016 Regulation on the General Inspectorate, art. 12. Surveillance is described as the mechanism to verify compliance with any of the guidelines established by the Supreme Tribunal of Justice, as well as the duties of the judges in the fulfilment of their functions and conduct, in accordance with the provisions of the legal system.

[448] 2016 Regulation on the General Inspectorate, art. 13. Judicial management evaluation inspection consists of gathering the elements for the evaluation of the judges, which are required by the competent body in charge of their evaluation for their entry into the Judicial Branch, with the purpose of acquiring tenure, or failing that, to determine their permanence in it.

inspections,[449] integral inspections,[450] inspection in accordance with claims,[451] and inspections of jurisdictional support offices.[452]

117. The Mission interviewed four former court inspectors who explained that the Supreme Tribunal justices often intervened in specific cases.[453] Former inspectors reported that the justices issued requests, either directly or via the Inspector General, to open cases related to specific judges.[454] According to one former inspector, the Inspector General would send orders to the inspectors to "find something" and the inspectors would go through case files one by one to locate irregularities, for example procedural delays, non-compliance with the schedule or abuse of authority.[455] The former inspector told the Mission that inspections targeted tenured judges, purportedly so that they could be replaced with provisional judges selected at will by the Supreme Tribunal.[456] Other former court inspectors said that, given the provisional status of most judges, the Judicial Commission would simply dismiss those that did not follow orders, without the need for a disciplinary file against them.[457]

118. Court inspectors' work was hindered further because some judicial actors were considered "untouchable".[458] Former inspectors said that the case files for politically protected judges would never advance, or inspectors were required to find a way to justify dismissing a case against them, even if there were valid disciplinary infractions.[459] One former court inspector said that in 20 years of experience, despite investigations showing irregularities or illegalities, no disciplinary proceedings were brought against Criminal Judicial Circuit presidents.[460] Sources reported that certain judges would simply refuse to cooperate with the General Inspectorate or deny them access to essential documents or entry to courtrooms.[461] A former court inspector also reported being required to brief the Criminal Judicial Circuit presidents after carrying out inspections of courts falling within their jurisdictions.[462]

[449] 2016 Regulation on the General Inspectorate, art. 14. The special or extraordinary inspection is of a disciplinary nature and will be carried out *ex officio* or by virtue of complaints admitted against a judge, formulated by individuals, or by any organ of the Public Power.

[450] 2016 Regulation on the General Inspectorate, art. 15. The Integral Inspection includes the review and examination of the judicial management and disciplinary control of the judge. It consists of an exhaustive review, without any restriction whatsoever, of the records and controls of the Court and of the judicial files.

[451] 2016 Regulation on the General Inspectorate, art. 16. The inspection by complaint consists of the attention to the user of the justice system, as a mechanism of mediation with the jurisdictional body in order to ensure the prompt resolution of a complaint.

[452] 2016 Regulation on the General Inspectorate, art. 17. The Inspection of Support to the Jurisdictional Activity is aimed at determining the operation of the support offices to the jurisdictional activity, in order to verify its operation, and if it influences the processing of proceedings, the proper distribution of cases and the efficient distribution of documents.

[453] Interview AAIV065, 24 June 2021; Interview AAIV062, 22 June 2021; Interview AAIV089, 21 August 2021; Interview AAIV090, 22 August 2021.

[454] Interview AAIV065, 24 June 2021; Interview AAIV062, 22 June 2021; Interview AAIV089, 21 August 2021; Interview AAIV090, 22 August 2021.

[455] Interview AAIV062, 22 June 2021.

[456] Interview AAIV062, 22 June 2021.

[457] Interview AAIV089, 21 August 2021; Interview AAIV090, 22 August 2021.

[458] Interview AAIV062, 22 June 2021, Interview AAIV065, 24 June 2021; Interview AAIV069, 5 July 2021; Interview AAIV089, 21 August 2021; Interview AAIV090, 22 August 2021.

[459] Interview AAIV089, 21 August 2021; Interview AAIV090, 22 August 2021.

[460] Interview AAIV065, 24 June 2021.

[461] Interview AAIV062, 22 June 2021; Interview AAIV089, 22 August 2021.

[462] Interview AAIV062, 22 June 2021.

***Box 1: Case of dismissal of a judge***

One Control Court judge told the Mission that he was dismissed in July 2017 after he had granted the release of students detained during a political protest, who he considered had been arrested without legal grounds.[463] He had previously received instructions that he needed to inform the president of the Criminal Judicial Circuit of Caracas prior to making any decision related to the case.[464] When he called the president, the first thing she said was that "I had sent you this case so you could get back on good terms with the Chief Justice ("*el magistrado*")".[465] However, given the lack of legal basis, against the president's instructions, he released the detained students.[466]

The following week, a court inspector carried out an ordinary inspection of his court.[467] Upon completion, she told him that she did not have any observations.[468] Shortly thereafter, she returned and asked to speak with the judge in private, warning him to "be careful because the Inspector General asked to speak with me and told me to alter the results of the inspection and to add something so that you can be dismissed".[469] She told him that she had refused.[470] The following week, the judge received a call to go to the office of the Criminal Judicial Circuit president where he received a letter that the Judicial Commission had decided to remove him.[471] As he left, the president told him, "At least you leave with your head held high".[472]

## C. Selection, discipline and removal of Public Prosecutors

### 1. Selection of public prosecutors

119. Under the Constitution, appropriate measures shall be developed to ensure the suitability, probity and career stability of prosecutors.[473] The 2007 Organic Law of the Public Prosecutor's Office established the career of public prosecutors,[474] accessible via public competition and a competitive examination.[475] Under the law, the Chief Prosecutor shall call for the public competition,[476] which is to be evaluated by a jury convened by the Chief Prosecutor,[477] in a process that shall involve the evaluation of credentials, a written test, an oral test and a psychological aptitude evaluation.[478]

120. Despite the above, according to information received, nearly all public prosecutors working in Venezuela at the time of writing were provisional.[479] The last significant public competition to hire auxiliary prosecutors was in 2000.[480] This process involved a written test,

463 Interview AAIV070, 5 July 2021.
464 Interview AAIV070, 5 July 2021.
465 Interview AAIV070, 5 July 2021.
466 Interview AAIV070, 5 July 2021.
467 Interview AAIV070, 5 July 2021.
468 Interview AAIV070, 5 July 2021.
469 Interview AAIV070, 5 July 2021.
470 Interview AAIV070, 5 July 2021.
471 Interview AAIV070, 5 July 2021.
472 Interview AAIV070, 5 July 2021.
473 1999 Constitution, art. 286.
474 2007 Organic Law of the Public Prosecutor's Office, art. 93.
475 2007 Organic Law of the Public Prosecutor's Office, art. 94.
476 2007 Organic Law of the Public Prosecutor's Office, art. 99.
477 2007 Organic Law of the Public Prosecutor's Office, art. 100.
478 2007 Organic Law of the Public Prosecutor's Office, art. 102.
479 See Acceso a la Justicia, Informe sobre el Desempeño del Ministerio Público (2000-2018), pp. 35 and 41, available at: https://www.accesoalajusticia.org/wp-content/uploads/2020/04/Informe-sobre-el-desempe%C3%B1o-del-Ministerio-P%C3%BAblico-2000-2018.pdf
480 Interview AAIV063, 23 June 2021.

an oral exam and panel review, followed by a preparatory course lasting several months.[481] After more than a decade, there were renewed attempts within the Public Prosecutor's Office to regularize the profession. In April 2008, the Public Prosecutor's Office created the National School for Prosecutors, among others, to design education and training policies for the entry into the profession, in accordance with the principle of suitability.[482]

121. In March 2011, the Public Prosecutor's Office passed another resolution[483] setting out the rules to regulate competitive examinations for prosecutors and alternates[484] and affirming that entry to the prosecutorial profession could only be through public competition.[485] One of the requirements for participation was having graduated from the National School for Prosecutors.[486] However, according to one director in the Public Prosecutor's Office, the time-consuming requirements may have contributed to the limited participation of prosecutors in the competitive process.[487] He said that some prosecutors said they did not participate because, given arbitrary application of disciplinary processes, they would have enjoyed no greater protection as career prosecutors than as provisional prosecutors.[488]

122. The Mission received reliable information that, until 2017, the Public Prosecutor's Office applied an ad hoc but competitive process for the selection of provisional prosecutors.[489] Under this process, the Superior Prosecutors compiled a list of candidates to fill vacant positions and sent the list to the respective directorates in Caracas.[490] The directors carried out a first filter of the applications, evaluating experience and carrying out background checks.[491] Subsequently, the pre-selected candidates were subjected to lengthy interviews and testing of substantive knowledge,[492] before the best candidate was chosen.[493] However, the ultimate decision was made by the Chief Prosecutor, who could reject or appoint prosecutors discretionally,[494] including, in some cases, based on the candidate's political affiliation.[495]

123. In September 2018, effectively eliminating the prosecutorial career track, the new Chief Prosecutor Tarek William Saab passed a resolution reforming the 2015 Statute of the Public Prosecutor's Office,[496] which declared that all civil servants within the Public

481 Interview AAIV063, 23 June 2021.

482 Office of the Public Prosecutor, Resolution No. 240 of 7 April 2008, Published in the Official Gazette No. 38.905, art. 1, available at: https://pandectasdigital.blogspot.com/2019/04/gaceta-oficial-de-la-republica_888.html

483 Office of the Public Prosecutor, Resolution No. 328 of 14 March 2011, Published in the Official Gazette No. 39.637 of 18 March 2011, available at: https://pandectasdigital.blogspot.com/2019/03/gaceta-oficial-de-la-republica_206.html

484 Office of the Public Prosecutor, Resolution No. 328 of 14 March 2011, art. 1.

485 Office of the Public Prosecutor, Resolution No. 328 of 14 March 2011, art. 4.

486 Office of the Public Prosecutor, Resolution No. 328 of 14 March 2011, art. 7(d).

487 Interview AAIV063, 23 June 2021.

488 Interview AAIV063, 23 June 2021.

489 Interview CCIV003, 29 June 2021; CCIV006, 28 June 2021.

490 Interview AAIV045, 23 June 2021; Interview CCIV003, 29 June 2021; CCIV006, 28 June 2021.

491 Interview AAIV063, 23 June 2021.

492 Interview CCIV003, 29 June 2021; CCIV006, 28 June 2021.

493 Interview AAIV063, 23 June 2021.

494 Interview AAIV049, 19 May 2021.

495 Interview AAIV063, 23 June 2021. Questionnaire CCQR066, 12 July 2021; Questionnaire CCQR060, 12 July 2021; Questionnaire CCQR036, 12 July 2021; Questionnaire CCQR033, 28 June 2021; Questionnaire CCQR031, 23 June 2021; Questionnaire CCQR011, 15 June 2021; Questionnaire CCQR010, 15 June 2021; Questionnaire CCQR024, 17 June 2021; Questionnaire CCQR009, 15 June 2021; Questionnaire CCQR008, 15 June 2021; Questionnaire CCQR019, 16 June 2021y Questionnaire CCQR004, 15 June 2021.

496 Public Prosecutor's Office Resolution No. 1821, Statute of the Public Prosecutor's Office, Published In the Official Gazette No. 40.785 of 10 November 2015, available at: https://www.franciscosantana.net/2015/12/nuevo-estatuto-del-ministerio-publico.html?m=0 declaring that officials in the service of the Public Prosecutor's Office may be career prosecutors or freely appointed and removed by the Chief Prosecutor. Career civil servants are those who enter the service of the Public Prosecutor's Office, by virtue of the approval of a public competition of credentials and competitive examination. Public Prosecutor's Office Resolution No. 1821, arts. 3-4.

Prosecutor's Office are in "positions of trust" and can be freely appointed and removed.[497] According to sources with inside knowledge, interviewed by the Mission, entry to the Public Prosecutor's Office "is no longer a meritocracy" and depends largely upon partisan personal or political factors or influence.[498] Many new prosecutors are graduates of the Bolivarian University, a public university founded in 2003 with express ideological affiliations, which offers a three-year law degree, rather than the five years required in other Venezuelan universities.[499]

### 2. Discipline and removal of public prosecutors

124. The Mission received consistent information that disciplinary procedures against public prosecutors in Venezuela failed to guarantee the prosecutors' rights to an objective evaluation and decision in a process determined in accordance with the law.[500] Prosecutors working at all levels have been affected, but especially those prosecuting public political or security officials and violations in the context of political protests.

125. The 2001 Organic Law on the Citizen Branch stipulates that the National Assembly may only remove members of the Republican Moral Council, including the Chief Prosecutor, following a Supreme Tribunal of Justice declaration that one or more pre-established reasons for removal have been met.[501] On 20 June 2017, the Plenary Chamber of the Supreme Tribunal lifted Chief Prosecutor Luisa Ortega Díaz's immunity,[502] for "serious misconduct"

---

497 Public Prosecutor's Office Resolution No. 2703 of 13 September 2018, Published in the Official Gazette No. 41.482 of 14 September 2018, art. 3, available at: https://pandectasdigital.blogspot.com/2018/09/resolucion-mediante-la-cual-se-reforma_18.html. This included officials serving in the Directorate and Coordination of the Public Prosecutor's Office, in the Deputy Public Prosecutor's Office, the general directorates, the line directorates, the coordinating offices, the divisions, the departments, the units, the national prosecutors' offices, the Superior Prosecutors' offices, the state prosecutors' offices, the municipal prosecutors' offices and "in any other office of the Public Prosecutor's Office". The Chief Prosecutor supported this reform with reference to the August 2017 resolution of the National Constituent Assembly, which declared the Public Prosecutor's Office to be in a situation of emergency and reorganization. National Constituent Assembly, Constitutional Decree on the Emergency and Restructuring of the Public Prosecutor's Office, Published in the Extraordinary Official Gazette No. 6.322, 5 August 2017, available at: https://www.cpzulia.org/ARCHIVOS/Gaceta_Oficial_05_08_17_num_6322.pdf

498 Interview CCIV003, 29 June 2021; Interview AAIV066, 1 July 2021; Interview CCIV006, 28 June 2021; Questionnaire CCQR023, 17 June 2021; Questionnaire CCQR033, 28 June 2021.

499 See its website at: http://ubv.edu.ve/. Interview CCIV006, 28 June 2021; Questionnaire CCQR008, 15 June 2021; Questionnaire CCQR020, 16 June 2021; Interview CCIV08, 13 August 2021.

500 Interview AAIV045, 14 May 2021; Interview AAIV049, 19 May 2021 ; Questionnaire CCQR019, 16 June 2021; Questionnaire CCQR024, 17 June 2021; Questionnaire CCQR031, 23 June 2021; Questionnaire CCQR033, 28 June 2021; Questionnaire CCQR066, 12 July 2021; Interview CCIV007, 21 July 2021.

501 2001 Organic Law of the Citizen Branch, art. 22. Members of the Republican Moral Council may be removed: 1. For manifest permanent physical or mental incapacity, certified by a medical board appointed by the Supreme Tribunal of Justice, with the approval of the National Assembly. 2. By abandonment of office, declared by the Supreme Tribunal of Justice. 3. For failure to comply with the obligations imposed by articles 274, 275 and 278 of the Constitution of the Bolivarian Republic of Venezuela as members of the Republican Moral Council, and the other obligations imposed by law, by virtue of their condition as such. 4. For breach or manifest negligence in the exercise of their powers and duties. 5. When their public acts attempt against the respectability of the Republican Moral Council and the bodies they represent, and commit serious acts which, without constituting crimes, jeopardize their credibility and impartiality, compromising the dignity of the office. 6. When they exercise direct influence in the appointment of those who perform public functions. 7. When they incur in abuse or excess of authority. 8. When in their administrative decisions they incur in serious and inexcusable error, recognized in a sentence. 9. When in their administrative decisions they record facts that did not occur or fail to relate those that did occur. 10. When they violate any of the prohibitions established in the Constitution of the Bolivarian Republic of Venezuela.

502 Judgment No. 43 of 20 June 2017, available at: https://vlexvenezuela.com/vid/sentencia-n-43-tribunal-825475461. It is important to note that the Mission has received allegations regarding interference with prosecutorial independence during the tenure of Luisa Ortega Díaz as Chief Prosecutor, as reflected throughout Section III of the present report.

arising from her failure to investigate deaths resulting from "violent acts generated by opposition political parties".[503] Although she was not accused of any crime, the Supreme Tribunal issued precautionary measures against her, prohibiting her from leaving the country and freezing her accounts.[504] The former Chief Prosecutor was later removed from the position in one of the first acts of the National Constituent Assembly (rather than the National Assembly as required by law).[505]

126. The Organic Law of the Public Prosecutor's Office provides disciplinary measures against other public prosecutors, outlining various conducts and sanctions,[506] including oral reprimand, written reprimand, suspension up to three months with no pay and dismissal.[507] According to the disciplinary process, the Superior Prosecutor of the respective judicial district initiates a sanctioning procedure by opening an administrative file.[508] The person under investigation shall have the opportunity to respond to the offence accused within 48 hours after the notification of the initiation of the process.[509] The Superior Prosecutor shall decide whether to proceed with the sanction within 72 hours after following the presentation of the written statement by the person under investigation.[510] Any sanction imposed shall be communicated in writing.[511]

127. The 2015 Statute of the Public Prosecutor's Office further outlines the disciplinary process.[512] However, this Statute expressly states that the procedure does not apply to non-

[503] According to news outlets at the time, the Chief Justice personally received the complainant at the Supreme Tribunal of Justice, who had also requested that the court order the medical evaluation of Ms. Ortega Díaz for being "mentally unstable". See El Estímulo, Pedro Carreño solicita al TSJ estudiar antejuicio de mérito contra Luisa Ortega Díaz, 16 June 2017, available at: https://elestimulo.com/pedro-carreno-solicita-al-tsj-estudiar-antejuicio-de-merito-contra-luisa-ortega-Díaz. See also El Nacional, Pedro Carreño solicitó al TSJ una junta médica para evaluar a la fiscal, 13 June 2017, available at: https://www.elnacional.com/gobierno/pedro-carreno-solicito-tsj-una-junta-medica-para-evaluar-fiscal_187467/

[504] Judgment No. 43 of 20 June 2017. See also, El Estímulo, Pedro Carreño solicita al TSJ estudiar antejuicio de mérito contra Luisa Ortega Díaz, 16 June 2017, available at: https://elestimulo.com/pedro-carreno-solicita-al-tsj-estudiar-antejuicio-de-merito-contra-luisa-ortega-Díaz. See also El Nacional, Pedro Carreño solicitó al TSJ una junta médica para evaluar a la fiscal, 13 June 2017, available at: https://www.elnacional.com/gobierno/pedro-carreno-solicito-tsj-una-junta-medica-para-evaluar-fiscal_187467/

[505] Constitutional Decree of 5 August 2017 on the removal of citizen Luisa Marvelia Ortega Díaz as Chief Prosecutor of the Republic, Published in Official Gazette No. 6.322 of 5 August 2017, available at: https://www.cpzulia.org/ARCHIVOS/Gaceta_Oficial_05_08_17_num_6322.pdf

[506] 2007 Organic Law of the Public Prosecutor's Office, art. 117. 1. For offending by word, in writing or in deed their hierarchical superiors, equals or subordinates, for subordinates or to the citizens who come to request the services. 2. When they fail to comply with the established schedule or are absent from the place where they exercise their functions during working hours and in an unjustified manner, without the respective license. 3. When they incur obligations that give rise to legal claims in which they are declared responsible. 4. When they observe a reprehensible conduct that compromises the dignity of the position or public opinion. 5. When they request or receive gifts, loans, presents or any other kind of benefit from any of the parties, lawyers or third parties. 6. When they perform acts proper to the free exercise of the legal profession. 7. When they engage in political-partisan activity of any kind during the exercise of their functions. 8. When they propitiate, sponsor or organize strikes, work stoppages, total or partial suspension of activities or a decrease in the pace of work, or participate in such acts. 9. When they incur in abuse or excess of authority. 10. For non-compliance or negligence in the performance of their duties. 11. Due to complaints from citizens who approve the procedural delay in the trial under their responsibility and it is attributable to the conduct of the Prosecutor of the Public Prosecutor's Office. 12. When the confidentiality or reserve of the documentation and other matters determined as such by articles 115 and 121 is expressly breached. See also 2010 Organic Law of the Supreme Tribunal of Justice, art. 112.

[507] 2007 Organic Law of the Public Prosecutor's Officer, art. 118. See also 2015 Statute of the Public Prosecutor's Office, art. 96.

[508] 2007 Organic Law of the Public Prosecutor's Officer, art. 119.

[509] 2007 Organic Law of the Public Prosecutor's Officer, art. 119.

[510] 2007 Organic Law of the Public Prosecutor's Officer, art. 119.

[511] 2007 Organic Law of the Public Prosecutor's Officer, art. 119.

[512] 2015 Statute of the Public Prosecutor's Office, Chapter III.

career public prosecutors.[513] The Mission received credible information from former public prosecutors, both tenured and provisional, who described being removed from office for political motives and without any process.[514] One hundred and ninety-six public prosecutors throughout the country were summarily dismissed following the change of Chief Prosecutor in August 2017, many of whom had publicly demonstrated criticism over the actions of the Government in the lead up to this dismissal, including the election of the National Constituent Assembly.[515]

128. One former prosecutor from Mérida state explained that following the appointment of Tarek William Saab as Chief Prosecutor in August 2017, he replaced the Superior Prosecutor in the state. At the time, the former prosecutor was investigating a series of cases involving arrests during the political protests of 2017. She had made several requests to close cases due to lack of evidence. After expressing disagreement with the Superior Prosecutor, who requested that the cases stay open, she was one of the first prosecutors dismissed.[516] By error, she was sent a confidential email saying that she was going to be removed. When she requested information and official notification, the Senior Prosecutor refused and the next day, police arrived at the Public Prosecutor's Office to escort her out of the building.[517]

129. Similarly, the Mission spoke with prosecutors from another state who were among over a dozen prosecutors dismissed in one day after signing a letter expressing concern over the constitutionality of the process of election of the National Constituent Assembly.[518] One described the dismissal as "a death foretold" given the wave of such dismissals around the country at that time.[519] In September 2017, they received calls from the secretary of the then recently appointed Superior Prosecutor, who told them to come up to his office.[520] In the waiting room were around 15 prosecutors, all of whom had been with the office for many years.[521] They were called in one by one and requested to hand in their credentials and sign a dismissal notification.[522] In the building at that time, including in the Superior Prosecutor's office, were numerous armed members of the General Directorate of Military Intelligence[523] (hereinafter DGCIM).[524]

## D. Interference with judicial and prosecutorial independence

130. Judicial and prosecutorial actors at all levels told the Mission that they had experienced or witnessed external interference in a case and/or received instructions about how to decide certain cases, especially political ones.[525] These instructions come both from

[513] 2015 Statute of the Public Prosecutor's Office, art. 87. This article says that, "The administrative and professional personnel and the prosecutor who have been admitted by competitive examination shall be subject to the disciplinary procedure provided for in these bylaws. Exceptions are those hired, workers in the service of the Public Prosecutor's Office, and others as determined by law. Those officials who are freely appointed and removed by the Chief Prosecutor of the Republic shall be excluded from the application of the disciplinary rules set forth in this Statute."

[514] Interview AAIV045, 14 May 2021; Interview AAIV049, 19 May 2021; Interview AAIV069, 5 July 2021; Interview AAIV073, 5 July 2021; Interview CCIV006, 28 June 2021; Questionnaire CCQR009, 15 June 2021; Questionnaire CCQR010, 15 June 2021; Questionnaire CCQR011, 15 June 2021; Questionnaire CCQR012, 15 June 2021.

[515] List of prosecutors on file with the Mission.

[516] Interview AAIV045, 14 May 2021.

[517] Interview AAIV045, 14 May 2021.

[518] Interview AAIV069, 5 July 2021; Interview AAIV073, 7 July 2021.

[519] Interview AAIV069, 5 July 2021.

[520] Interview AAIV069, 5 July 2021; Interview AAIV073, 7 July 2021.

[521] Interview AAIV069, 5 July 2021; Interview AAIV073, 7 July 2021.

[522] Interview AAIV069, 5 July 2021; Interview AAIV073, 7 July 2021.

[523] See A/HRC/45/CRP.11, paras. 209-210 for a description of DGCIM.

[524] Interview AAIV069, 5 July 2021; Interview AAIV073, 7 July 2021.

[525] Interview AAIV046, 14 May 2021; Interview AAIV049, 19 May 2021; Interview CCIV003, 29 June 2021; Interview CCIV006, 28 June 2021; Interview AAIV050, 19 May 2021; AAIV066, 1 July 2021; Interview AAIV061, 18 June 2021; Interview AAIV082, 28 July 2021; Interview CCIV005, 2 July 2021; Interview AAIV070, 5 July 2021; Interview AAIV082, 28 July 2021; AAIV083, 29 July 2021;

political actors and from within the judicial or prosecutorial hierarchy, oftentimes acting in coordination. However, the progressive dismissal of independent judges throughout the years has reportedly lessened the need for direct instructions.[526] As one lawyer with inside knowledge told the Mission, "nowadays judges do not always receive specific instructions, but rather the system is structured in a coercive form due to how politicized it is. In a political case, a judge simply knows what decision they have to take, which decision is 'correct' from the lens of the regime."[527]

131. The Mission received information from multiple sources within various judicial institutions that certain public officials are "untouchable" and cannot be subjected to prosecutions.[528] These are individuals, including political and security officials, sometimes with links to economic and/or criminal interests, who are able to exercise control and influence over judges and prosecutors.[529] One former public prosecutor said that he had come to understand from working in the Public Prosecutor's Office that he should only investigate "one level up" from the direct perpetrator since if he investigated deeper "he was going to touch upon interests" and receive calls from superiors to stop.[530] Some specific examples of cases involving "untouchable" defendants are described below.

### 1. Interference within the Supreme Tribunal of Justice

132. Sources consulted by the Mission said that Supreme Tribunal justices routinely receive orders with respect to how to decide judgments.[531] They said that Supreme Tribunal justices started to be noticeably less independent as of around 2014, when the political crisis heightened.[532] As one former clerk put it, "all judgments started to be dictated (todas las sentencias empezaron a ser a dedo)".[533]

133. At least from 2015 to 2018, the Executive Branch transmitted orders to the Supreme Tribunal of Justice in one of three ways. Specifically, 1) via direct messages to the relevant justices; 2) through a liaison appointed as a go-between the Executive and the Supreme Tribunal, who either went to the court or invited justices to Miraflores (the presidential palace);[534] or 3) through the public statements made by President Maduro or Diosdado Cabello, which were sometimes summarized into minutes and circulated among the justices.[535] Former Supreme Tribunal clerks said that a delegation of the Supreme Tribunal of Justice, comprised of presidents of the chambers, used to meet regularly in Miraflores.[536]

---

Interview CCIV008, 13 August 2021; Interview AAIV042, 7 May 2021. See also Questionnaire CCQR028, 20 June 2021; Questionnaire CCQR025, 17 June 2021; Questionnaire CCQR021, 16 June 2021; Questionnaire CCQR020, 16 June 2021; Questionnaire CCQR017, 16 June 2021; Questionnaire CCQR014, 15 June 2021; Questionnaire CCQR011, 15 June 2021; Questionnaire CCQR044, 12 July 2021; Questionnaire CCQR036, 12 July 2021; Questionnaire CCQR058, 12 July 2021; Questionnaire CCQR060, 12 July 2021; Questionnaire CCQR024, 17 June 2021; Questionnaire CCQR009, 15 June 2021; Questionnaire CCQR008, 15 June 2021; Questionnaire CCQR019, 16 June 2021; Questionnaire CCQR006, 15 June 2021; Questionnaire CCQR005, 15 June 2021; Questionnaire CCQR004, 15 June 2021.

526 Interview DDIV041, 3 June 2021; Interview CCIV005, 2 July 2021.

527 Interview DDIV041, 3 June 2021.

528 Interview AAIV036, 5 July 2021; Interview AAIV049, 19 May 2021; Interview AAIV063, 3 June 2021; Interview AAIV069, 5 July 2021; Interview AAIV073, 7 July 2021.

529 Interview AAIV049, 19 May 2021; Interview AAIV069, 5 July 2021; Interview AAIV036, 5 July 2021; Interview AAIV073, 7 July 2021. Ibid.

530 Interview AAIV069, 5 July 2021.

531 Interview AAIV050, 19 May 2021; Interview AAIV082, 28 July 2021; Interview AAIV061, 18 June 2021. See also CNN, Entrevista con Eladio Aponte Aponte, 18 April 2012, available at: https://edition.cnn.com/videos/spanish/2012/04/18/venezuela-informe-aponte.cnn

532 Interview AAIV050, 19 May 2021; Interview AAIV061, 18 June 2021; Interview AAIV082, 28 July 2021.

533 Interview AAIV050, 19 May 2021.

534 The name of this person is on file with the Mission.

535 Interview AAIV050, 19 May 2021; Interview AAIV061, 18 June 2021.

536 Interview AAIV050, 19 May 2021; Interview AAIV082, 28 July 2021.

134. The Mission spoke to a former justice with the Electoral Chamber of the Supreme Tribunal of Justice, appointed in December 2015.[537] He said that 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.[538] The former justice said that he received a text message from the then outgoing National Assembly president, Diosdado Cabello, instructing him to decide the case in accordance with what the president of the Electoral Chamber told him to do.[539] The former justice alleges that the Electoral Chamber president told him, "the country was at risk of civil war" and he had to sign the judgment or he "would be responsible for the consequences".[540]

135. The effect of this decision was far-reaching. As described in the Mission's 2020 report, despite the judgment of the Electoral Chamber, the National Assembly proceeded to swear in the parliamentarians from Amazonas.[541] This led to a September 2016 decision by the Constitutional Chamber of the Supreme Tribunal stating that, due to lack of compliance with the court's judgment, the National Assembly was in a permanent state of contempt and all of its acts were "absolutely null and lacking all validity and legal effect".[542] On this basis, the Supreme Tribunal struck down all of the subsequent bills of the opposition-led National Assembly.

136. In addition to instructions received via political actors, the former judge was subjected to pressure, both direct and indirect, from within the Supreme Tribunal of Justice hierarchy. The former Supreme Tribunal justice told the Mission that justices were convened to meetings of the Plenary Chamber where they were presented with pre-prepared judgments for their signature; he said "there was no time to read the judgment, no time to reflect".[543] The justices were required to sign or to reserve their vote.[544] The former justice said that these sessions often occurred when the Plenary Chamber was considering requests to lift the immunity of certain high-profile political actors, in order to avoid press leaks.[545] A former Supreme Tribunal lawyer echoed this, saying that judgments were pre-drafted and that they were printed out for magistrates' signature; she said "we all witnessed it, everyone who worked there".[546]

137. A former Supreme Tribunal clerk reported to the Mission that after drafting a judgment, with which the chamber president did not agree,[547] the president's assistant instructed her to prepare a letter requesting her own retirement. At first, she refused, afraid of losing her retirement benefits and health insurance.[548] However, after significant pressure she eventually agreed, ending a decades-long career.[549]

### 2. Interference within the Criminal Judicial Circuits

138. The Mission received consistent information from former judges and individuals with inside knowledge of judicial institutions that in political cases, which are referred to internally

[537] Interview AAIV061, 18 June 2021.
[538] Interview AAIV061, 18 June 2021.
[539] Interview AAIV061, 18 June 2021.
[540] Interview AAIV061, 18 June 2021.
[541] Supreme Tribunal of Justice, Electoral Chamber, Judgment No. 260 of 30 December 2015. For an overview of these Judgments, see International Commission of Jurists, The Supreme Tribunal of Justice in Venezuela: an Instrument of the Executive Branch, August 2017, Chapter 1, available at: https://www.icj.org/wp-content/uploads/2017/09/Venezuela-Suprem-Court-Publications-Reports-Thematic-reports-2017-ENG.pdf. The super majority in the National Assembly would have allowed the opposition to make important political appointments, including to the National Electoral Council.
[542] Judgment No. 808 of 2 September 2016. See A/HRC/45/CRP.11, para. 74.
[543] Interview AAIV061, 18 June 2021.
[544] Interview AAIV061, 18 June 2021.
[545] Interview AAIV061, 18 June 2021.
[546] Interview AAIV082, 28 July 2021.
[547] Interview AAIV050, 19 May 2021.
[548] Interview AAIV050, 19 May 2021.
[549] Interview AAIV050, 19 May 2021.

as "emblematic cases", they received instructions or pressures about how to decide.[550] Former judges explained that in general, the instructions came from within the judicial hierarchy, via the Criminal Judicial Circuit presidents.[551] According to a former judge, on occasion, high-level political actors would make direct calls to judges or would send implicit instructions via televised statements, including on Diosdado Cabello's programme "Con el Mazo Dando".[552] One judge noted that in 2014, he received certain instructions related mostly to political protests, but by 2017, the instructions were commonplace.[553] He said that such instructions caused a "stress and worry that you cannot even imagine".[554]

139. Judges interviewed said that approximately every 15 days, the Criminal Judicial Circuit president would summon them and tell them how to decide emblematic cases.[555] The president told the judges that the instructions came from the Criminal Appellate Chamber and/or Chief Justice Maikel Moreno.[556] Instructions were along the lines of "if in a protest case, the Public Prosecutor's Office requests pre-trial detention, you have to grant it".[557] The judges assigned were required to deliver regular minutes on the procedural status of emblematic cases to the Criminal Judicial Circuit president and then on to the Supreme Tribunal of Justice.[558] One former judge said he was ordered to issue "a revocation appeal", a legal measure that does not exist, to reverse a decision he had made.[559]

140. Prosecutors and defence lawyers confirmed the above, telling the Mission that they had witnessed judges being instructed about how to decide a case.[560] One defence lawyer said that in political cases he has also observed that, "before making a decision, the judges leave the chamber so that they can receive instructions from superiors".[561] Some examples include the following:

- In the case of three Twitter users detained in 2014, the judge told the defendants that she had to follow the orders of a prosecutor, who she called "she who decides" ("*la manda más"*).[562]
- In one case involving the detention of a protester in 2017, the public prosecutor requested substitute precautionary measures, but the judge denied the request and ordered that the individual be held in pre-trial detention "because it was the instruction of the Judicial Circuit".[563]
- In a case investigated by the Mission, the military judge passed a message via a bailiff to a family member of one of the defendants, who the judge knew personally, that he

[550] Interview AAIV042, 7 May 2021; Interview AAIV046, 14 May 2021; Interview AAIV051, 25 May 2021; Interview AAIV062, 22 June 2021; Interview AAIV070, 5 July 2021; Interview AAIV082, 28 July 2021; AAIV083, 29 July 2021; Interview CCIV005, 2 July 2021; Interview CCIV008, 13 August 2021; Interview AAIV082, 28 July 2021. Questionnaire CCQR006, 15 June 2021; Questionnaire CCQR021, 16 June 2021; Questionnaire CCQR058, 12 July 2021; Questionnaire CCQR012, 15 June 2021.

[551] Interview AAIV046, 14 May 2021; Interview CCIV005, 2 July 2021; Interview AAIV070, 5 July 2021; Interview AAIV082, 28 July 2021 Interview AAIV083, 29 July 2021; Interview CCIV008, 13 August 2021.

[552] Interview CCIV005, 2 July 2021.

[553] Interview AAIV070, 5 July 2021.

[554] Interview AAIV070, 6 July 2021.

[555] Interview AAIV046, 14 May 2021; Interview AAIV070, 6 July 2021.

[556] Interview AAIV070, 6 July 2021; Interview CCIV008, 13 August 2021.

[557] Interview AAIV046, 14 May 2021; Interview AAIV070, 6 July 2021.

[558] Interview AAIV046, 14 May 2021; Interview AAIV070, 6 July 2021.

[559] Interview AAIV046, 14 May 2021.

[560] Interview AAIV042, 7 May 2021; Interview AAIV049, 19 May 2021; Interview AAIV042, 7 May 2021; Interview CCIV006, 28 June 2021; Interview DDIV048, 11 June 2021; Interview DDIV053, 11 June 2021; Interview CCIV006, 28 June 2021.

[561] Questionnaire CCQR018, 16 June 2021.

[562] Interview C2EE13, 30 June 2020.

[563] Interview AAIV042, 7 May 2021.

felt badly about the decision he had to take and that he knew the defendant was innocent, but that the case was "out of his hands".[564]

- During Steyci Escalona's trial in 2017,[565] the Military Trial Judge suspended multiple hearings after placing phone calls to someone she referred to as "my boss", twice referring to then Vice-President Tareck Al Assaimi.[566] The judge also referenced a phone call from Caracas as the reason Ms. Escalona could be released from detention.[567]
- In a 2021 case targeting individuals supposedly engaged in anti-government activities, the Supreme Tribunal of Justice requested to review the case file and removed it from both the court and the Public Prosecutor's Office during approximately two weeks.[568] The judge later told the defence that she had been ordered not to lighten the precautionary measures against the defendants or dismiss the charges.[569]

141. One of the principal ways to ensure judicial compliance in certain cases is through manipulation of the case assignment process.[570] Former judges said that certain judges answered to the Government and they were the ones who handled political cases.[571] Previously, cases were distributed among the Control Courts on duty using a computerized software programme, the Juris 2000, to ensure equitable and randomized distribution.[572] However, the Mission was repeatedly told that in practice, in particular in emblematic cases, the respective presidents of the Criminal Judicial Circuits within each jurisdiction assign the cases manually,[573] based on whether or not they believe the judge would decide a case according to instructions.[574]

142. The cases investigated by the Mission reflect this selective distribution. Twenty-three per cent of the detentions documented by the Mission led to cases heard in one of the four Control Courts in the terrorism circuit.[575] Prosecutors can ensure that a case is assigned to the

[564] Interview DDIV048, 11 June 2021.
[565] See A/HRC/45/CRP.11, Case 4: Steyci Escalona.
[566] Interview with Steyci Escalona, 17 June 2020.
[567] Interview with Steyci Escalona, 17 June 2020.
[568] Interview DDIV053, 11 June 2021.
[569] Interview DDIV053, 11 June 2021.
[570] 92 per cent of respondents to the questionnaire said that political cases are assigned irregularly. As one respondent said, "the more political the case, the less legal [its distribution]". Questionnaire CCQR072, 12 July 2021; Questionnaire CCQR058, 12 July 2021; Questionnaire CCQR066, 12 July 2021; Questionnaire CCQR060, 12 July 2021; Questionnaire CCQR036, 12 July 2021; Questionnaire CCQR035, 29 June 2021; Questionnaire CCQR033, 28 June 2021; Questionnaire CCQR031, 23 June 2021; Questionnaire CCQR028, 20 June 2021; Questionnaire CCQR025, 17 June 2021; Questionnaire CCQR020, 16 June 2021; Questionnaire CCQR017, 16 June 2021; Questionnaire CCQR014, 15 June 2021; Questionnaire CCQR011, 15 June 2021; Questionnaire CCQR010, 15 June 2021; Questionnaire CCQR024, 17 June 2021; Questionnaire CCQR009, 15 June 2021; Questionnaire CCQR008, 15 June 2021; Questionnaire CCQR019, 16 June 2021; Questionnaire CCQR006, 15 June 2021; Questionnaire CCQR005, 15 June 2021; Questionnaire CCQR004, 15 June 2021.
[571] Interview CCIV005, 2 July 2021; Interview AAIV070, 5 July 2021; Interview AAIV083, 29 July 2021; Interview CCIV008, 13 August 2021.
[572] Interview AAIV046, 14 May 2021; Interview AAIV062, 22 June 2021; Interview AAIV070, 6 July 2021; Interview CCIV005, 2 July 2021; Interview CCIV008, 13 August 2021.
[573] Under the Criminal Procedure Code, the presidents of the Criminal Judicial Circuits are to "Monitor the functioning of the case distribution system in order to ensure fairness". 2012 Criminal Procedure Code, art. 508.
[574] Interview AAIV040, 5 May 2021; Interview AAIV070, 5 July 2021; Interview AAIV083, 29 July 2021; Interview CCIV005, 2 July 2021; Interview CCIV008, 13 August 2021.Questionnaire CCQR007, 15 June 2021; Questionnaire CCQR017, 16 June 2021; Questionnaire CCQR020, 16 June 2021; Questionnaire CCQR019, 16 June 2021; Questionnaire CCQR022, 17 June 2021; Questionnaire CCQR025, 17 June 2021; Questionnaire CCQR026, 18 June 2021.
[575] FFMV0057, FFMV0158, FFMV0139, FFMV0123, FFMV0178, FFMV0089, FFMV0015, FFMV0136, FFMV0138, FFMV0010, FFMV0024, FFMV0051, FFMV0064, FFMV0084, FFMV0155, FFMV0098, FFMV0082, FFMV0094, FFMV0025, FFMV0129, FFMV0008,

terrorism circuit simply by adding terrorism related charges to the accusation.[576] Two of the judges from this circuit have been assigned to a number of cases investigated by the Mission,[577] including the Fourth Control Judge[578] and the former First Control Judge (formerly also Judge of the Twentieth Criminal Control Court and currently Judge of the Sixth Appeals Court of the Criminal Judicial Circuit of Caracas).[579]

143. As previously noted by the Mission, the State has also turned to military jurisdictions to try civilians in political cases.[580] Cases investigated by the Mission show this practice was most common starting in 2017, during the conflict between the Executive and the former Chief Prosecutor, Luisa Ortega Díaz.[581] As she told the Mission, the motive for use of military tribunals to try civilians at this time was "to remove control of the cases from the Public Prosecutor's Office".[582] Of 85 detentions reviewed by the Mission leading to hearings before military tribunals, 82 per cent were brought before two specific judges,[583] the First Military Control Judge and the Third Military Control Judge in Caracas.[584]

### 3. Interference with prosecutorial independence

144. Prosecutors at all levels reported at times having received instructions about how to handle cases, though not necessarily in all cases.[585] Such interventions, which came from both

FFMV0174, FFMV0095, FFMV0086, FFMV0065, FFMV0006, FFMV0182, FFMV0060, FFMV0088, FFMV0090, FFMV0170, FFMV0019, FFMV0172, FFMV0144.

576 Interview AAIV040, 5 May 2021; Interview AAIV068, 2 July 2021; Interview CCIV008, 13 August 2021.

577 The names of these judges are on file with the Mission.

578 See profile on Infobae, Quién es José Mascimino Márquez, el juez que detuvo a Freddy Guevara y persigue a los opositores del régimen de Maduro, 15 July 2021, available at: https://www.infobaetinyurl.com/america/venezuela/2021/07/15/de-camarero-a-juez-quien-es-jose-mascimino-marquez-el-magistrado-que-detuvo-a-freddy-guevara-y-persigue-a-los-opositores-del-regimen-de-maduro/4ckcpvh

579 See profile at RunRun.es, 18 April 2019, available at: https://tinyurl.com/2cjywd5u. See also Press Release, Treasury Sanctions Venezuelan Minister of Foreign Affairs, available at: https://home.treasury.gov/news/press-releases/sm670

580 A/HRC/45/CRP.11, paras. 364-367.

581 See Acceso a la Justicia, 7 preguntas sobre la Justicia Militar, February 2018, available at: https://www.accesoalajusticia.org/wp-content/uploads/2018/02/Investigación-sobre-Justicia-Militar.pdf and New York Times, El gobierno venezolano recurre a la justicia militar 'como si estuviera en guerra', 12 May 2017, available at: https://www.nytimes.com/es/2017/05/12/espanol/america-latina/venezuela-tribunales-militares-maduro.html

582 Interview AAIV052, 27 May 2021.

583 The names of these judges are on file with the Mission.

584 Of the 85 detentions leading to cases heard by military tribunals, 23 were heard by the First Military Control Court and 47 were heard by the Third Military Control Court.in Caracas. FFMV0147, FFMV0014, FFMV0079, FFMV0077, FFMV0150, FFMV0116, FFMV0162, FFMV0040, FFMV0096, FFMV0179, FFMV0141, FFMV0058, FFMV0059, FFMV0063, FFMV0068, FFMV0128, FFMV0176, FFMV0106, FFMV0023, FFMV0113, FFMV0003, FFMV0122, FFMV0151, FFMV0099, FFMV0041, FFMV0166, FFMV0071, FFMV0076, FFMV0067, FFMV0173, FFMV0085, FFMV0154, FFMV0022, FFMV0104, FFMV0080, FFMV0130, FFMV0073, FFMV0133, FFMV0117, FFMV0075, FFMV0026, FFMV0149, FFMV0148, FFMV0121, FFMV0031, FFMV0069, FFMV0054, FFMV0034, FFMV0181, FFMV0066, FFMV0118, FFMV0115, FFMV0163, FFMV0048, FFMV0175, FFMV0145, FFMV0038, FFMV0042, FFMV0120, FFMV0011, FFMV0074, FFMV0114, FFMV0097, FFMV0045, FFMV0005, FFMV0083,FFMV0030, FFMV0125, FFMV0159, FFMV0134, FFMV0156, FFMV0101, FFMV0165, FFMV0135, FFMV0103, FFMV0127, FFMV0171, FFMV0001, FFMV0029, FFMV0087, FFMV0043, FFMV0028, FFMV0072, FFMV0143, FFMV0013.

585 Interview AAIV049, 19 May 2021; Interview CCIV003, 29 June 2021; Interview CCIV006, 28 June 2021; Interview AAIV063, 1 July 2021 Interview AAIV069, 5 July 2021; Interview AAIV072, 6 July 2021; Interview AAIV073, 5 July 2021; Interview AAIV074, 5 July 2021; Interview AAIV075, 8 July 2021; Questionnaire CCQR060, 12 July 2021; Questionnaire CCQR036, 12 July 2021; Questionnaire CCQR024, 17 June 2021; Questionnaire CCQR008, 15 June 2021; Questionnaire CCQR019, 16 June 2021; Questionnaire CCQR004, 15 June 2021.

outside and within the prosecutorial hierarchy, were especially common in cases against actors with links to political, security, economic and/or criminal interests, as well as in cases related to detentions in the context of political protests.[586] The Mission notes that often the source of the original instruction was unclear and could involve diverse political, security, judicial and prosecutorial actors working together to interfere in a criminal investigation and limit prosecutorial independence.

145. Former prosecutors reported that political cases were distributed to certain prosecutors. As one former prosecutor put it, "They have a specific group of prosecutors for those".[587] One former prosecutor said that until 2017, within the Public Prosecutor's Office there were two procedures for case assignment; one in which cases were distributed randomly and one in which "the human hand" intervenes.[588] In the first process, complaints were distributed to individual prosecutors by subject matter and then randomly among prosecutors to ensure an equitable caseload distribution.[589] However, directors and Superior Prosecutors had the power to manipulate the process.[590] In certain cases, especially complex or high profile cases there was always "a margin of discretion".[591] In addition, line directors had the power to form commissions of prosecutors in certain complex cases, which generally involved the participation of one or more national prosecutors.[592]

### 4. Pressure against individual prosecutors

146. Former Chief Prosecutor Luisa Ortega Díaz told the Mission especially from 2015, she experienced confrontations with the Executive Branch "every day, about everything".[593] She shared several examples of the type of pressure she was subjected to, which most often occurred in cases involving high-profile members or associates of the political opposition. For example, in January 2016, opposition leader Leopoldo López's wife, Lilian Tintori, requested protective measures after a National Guard colonel allegedly made her strip naked during visits with her detained husband.[594] The Public Prosecutor's Office issued the measures.[595] When President Maduro found out, he called Ms. Ortega Díaz and told her that she was a traitor and said "you stabbed me in the back".[596] Then Diosdado Cabello called her and told her "What a betrayal!"; he requested that the Colonel also be granted protection measures.[597]

147. Luisa Ortega Díaz also reported that following the opposition's efforts to collect signatures in 2016 to recall President Maduro,[598] Chief Justice Maikel Moreno visited her office and told her, "You have to open an investigation against the opposition requesting the recall".[599] When she asked what crime had been committed, he answered, "There is no crime; it is just something we have to do. Maduro ordered it."[600] The former Chief Prosecutor said that, when she refused to comply with the instruction, the former Minister of the Penitentiary Service, Iris Valera, transported some 300 prisoners outside her office in what she believes

[586] Interview AAIV049, 19 May 2021; Interview CCIV003, 29 June 2021; Interview CCIV006, 28 June 2021; Interview AAIV075, 8 July 2021; Interview AAIV072, 6 July 2021; Interview AAIV042, 7 May 2021.
[587] Interview AAIV066, 1 July 2021; Interview CCIV006, 28 June 2021.
[588] Interview AAIV063, 1 July 2021.
[589] Interview AAIV063, 1 July 2021; Interview AAIV066, 1 July 2021.
[590] Interview AAIV063, 1 July 2021; Interview AAIV064, 23 June 2021; Interview AAIV066, 1 July 2021; Interview CCIV006, 28 June 2021.
[591] Interview AAIV066, 1 July 2021.
[592] Interview AAIV063, 1 July 2021.
[593] Interview AAIV052, 27 May 2021.
[594] Interview AAIV060, 17 June 2021.
[595] Interview AAIV060, 17 June 2021.
[596] Interview AAIV060, 17 June 2021.
[597] Interview AAIV060, 17 June 2021.
[598] See A/HRC/45/CRP.11, paras. 76-77.
[599] Interview AAIV052, 27 May 2021.
[600] Interview AAIV052, 27 May 2021.

was an attempt to intimidate her for "disobeying orders".[601] Subsequently, a Control Court initiated the investigation against the opposition, without any action having been taken by the Public Prosecutor's Office.[602]

148. The Mission received numerous accounts from public prosecutors regarding instructions received in specific cases which were not in line with the facts of the cases.[603] Prosecutors received instructions with respect to who to prosecute from within the hierarchy of the Public Prosecutor's Office, generally from the Superior Prosecutors or line directors.[604] One former prosecutor interviewed said that instructions were generally issued in person, often one-on-one, so as not to leave evidence or witnesses.[605] Several prosecutors indicated that the instructions worsened significantly as of 2017 following the change in Chief Prosecutor.[606] Some accounts documented by the Mission include the following:

- During investigations into the 2014 killing of Genesis Carmona in a political protest, the former prosecutor investigating the case told the Mission security camera footage clearly revealed that two young men affiliated with the PSUV political party were responsible.[607] However, shortly after filing the request for the arrest warrant,[608] she received a call from a superior telling her that the Supreme Tribunal of Justice had contacted him and asking her, "Why did you request that order?"[609] Her superior removed her from the case.[610] The same day, the Scientific, Criminal and Criminological Investigator Corps (hereinafter CICPC) team that was providing the technical investigation support was also removed from the file.[611]
- Another former public prosecutor told the Mission that his investigations into the March 2014 death of Gisela Rabinal, a Chilean woman, during a protest, had revealed a *colectivo* member as the likely perpetrator.[612] However, a national prosecutor was then sent from Caracas to review the case file.[613] The national prosecutor requested to re-interview eyewitnesses.[614] He told one witness that she had not been in a vantage point to see the shooting and that her recollection must have been "something psychological".[615] Instead, the national prosecutor identified and charged protestor Steven Ricardo García Sanz, based on a witness statement that he had heard that

601 See La Prensa, Gobierno venezolano saca presos a la calle a protestar contra revocatorio, 18 June 2016, available at: https://www.prensa.com/mundo/Gobierno-venezolano-presos-protestar-revocatorio_0_4508549298.html

602 Interview AAIV052, 27 May 2021.

603 Interview AAIV042, 7 May 2021; Interview AAIV049, 19 May 2021; Interview CCIV003, 29 June 2021; Interview AAIV064, 23 June 2021; Interview AAIV066, 1 July 2021; Interview AAIV073, 5 July 2021; Interview AAIV075; 8 July 2021; Questionnaire CCQR030, 22 June 2021.

604 Interview AAIV042, 7 May 2021; Interview AAIV045, 14 May 2021; Interview AAIV049, 19 May 2021; Interview CCIV003, 29 June 2021; Interview AAIV064, 23 June 2021; Interview AAIV066, 1 July 2021; Interview AAIV073, 5 July 2021; Interview AAIV075; 8 July 2021; Questionnaire CCQR030, 22 June 2021.

605 Interview CCIV003, 29 June 2021.

606 Interview AAIV045, 14 May 2021; Interview AAIV046, 14 May 2021; Interview AAIV049, 19 May 2021; Interview AAIV066, 1 July 2021; Interview AAIV071, 5 July 2021; Interview AAIV074, 7 July 2021; Interview AAIV075, 8 May 2021; Interview CCIV003, 29 June 2021.

607 Interview AAIV066, 1 July 2021.

608 Public Prosecutor's Office Arrest Warrant Request, 19 March 2014.

609 Interview AAIV066, 1 July 2021.

610 Interview AAIV066, 1 July 2021.

611 Interview AAIV066, 1 July 2021.

612 Interview AAIV042, 7 May 2021.

613 Interview AAIV042, 7 May 2021.

614 Interview AAIV042, 7 May 2021.

615 Interview AAIV042, 7 May 2021. See also Sebastiana sin Secretos, Un joven rapero venezolano lleva cinco años preso y sin juicio desde que Diosdado Cabello lo acusó de asesino en su programa: "La fiscal que lo imputó se fue del país", 22 June 2021, available at: http://www.sebastianasinsecretos.com/2021/06/un-joven-rapero-venezolano-lleva-cinco.html?m=1

"Steven" was responsible.[616] Mr. García Sanz remains in detention at the time of writing.[617]

- One former prosecutor interviewed said that the governor of Mérida state used to hold meetings with prosecutors, at which he would criticize them for "not following instructions", specifically, for refusing to close case files in which members of *colectivos* were being investigated for alleged crimes in the context of protests.[618] When a new Superior Prosecutor was appointed in August 2017, he would arrive at internal meetings together with trusted contacts of the governor, including members of collectives who had pending arrest warrants against them.[619]
- A former prosecutor told the Mission that he had advanced with investigations involving incidents of rape, sexual violence and other mistreatment involving over a dozen female military officers abused by male superiors in their detachment.[620] The investigation revealed that the orders for the criminal acts had come from a captain, who happened to be the nephew of a well-known military general. [621] However, upon consulting his line director before requesting the arrest order, the director told him, "We are going to make a deal. You are going to prosecute the two sergeants but not the captain."[622] The prosecutor reluctantly moved forward with the prosecution against the lower ranking officers.[623] However, the victims expressed their concern during the process, asking the prosecutor "Where is the captain?"[624]

149. On occasion, Superior Prosecutors coordinated with judges to override prosecutorial decisions. One prosecutor reported that at an initial appearance, after he informed the judge that he would not request pre-trial detention,[625] the judge telephoned the Superior Prosecutor for a second opinion and subsequently told the prosecutor that if he did not request deprivation of liberty, the judge would order it on his own.[626] Another former prosecutor from Lara state said that in 2014, when she was investigating a case involving a homicide by a National Guard member, she received a call from the Superior Prosecutor who summoned her to his office with the case file, where he told her to close the case.[627] When she protested given the strength of the evidence, he told her, "Then we will have to seek solution with the court". Shortly thereafter, the court ordered the case's closure.[628]

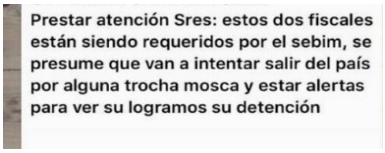
[616] Interview AAIV042, 7 May 2021.
[617] Interview AAIV042, 7 May 2021.
[618] Interview AAIV045, 14 May 2021.
[619] Interview AAIV045, 14 May 2021.
[620] Interview AAIV073, 7 July 2021.
[621] Interview AAIV073, 7 July 2021.
[622] Interview AAIV073, 7 July 2021.
[623] Interview AAIV073, 7 July 2021.
[624] Interview AAIV073, 7 July 2021.
[625] Interview CCIV003, 29 June 2021. See also AAIV049, 19 May 2021.
[626] Interview CCIV003, 29 June 2021.
[627] Interview AAIV049, 19 May 2021.
[628] Interview AAIV049, 19 May 2021.

***Box 2: Interference in high profile corruption cases***

The Mission observes the pressures were especially marked against prosecutors investigating high-profile corruption cases. Former prosecutors said that a number of such cases languished in the Public Prosecutor's Office for years without advancement.[629] However, investigations gained momentum in late 2016 and early 2017 and were allegedly revealing the participation of numerous high level political officials in illicit schemes involving many millions of dollars.[630] As of early January 2017, the pressures against prosecutors carrying out these investigations started to intensify. One former prosecutor compared this period to "a horror movie".[631]

On one occasion in May 2017, a former national prosecutor interviewed said that after leaving the tribunal with another prosecutor in his car, a motorbike with uniformed National Guard members approached his vehicle, peered through the window and pulled out a gun.[632] By chance, a bus ahead of him stopped short in front of a group of police officers and the motorcycle sped off.[633]

According to information received by the Mission, on 27 July 2017, two prosecutors investigating the Odebrecht corruption case left for Brazil to interview witnesses related to the case.[634] Aware of sensitivities, they decided to travel overland to Colombia first.[635] At the border, the migration official took their passports and then headed towards the National Guard post.[636] The prosecutors called colleagues in Caracas and were able to obtain information that there was a "migration alert" on them and that a commission of the Bolivarian National Intelligence Service[637] (hereinafter SEBIN), was on its way to "interrogate them".[638] Fearing for their safety, the prosecutors managed to flee. They have not returned to Venezuela since.[639]




***Pay attention Sirs: These two prosecutors are being requested by the sebim [sic], it is presumed that they are going to try to leave the country by some trail and be alert to see if [sic] we achieve their arrest.***

Another former prosecutor working on the PDVSA corruption investigations said that, shortly following the change in Chief Prosecutor in August 2017, SEBIN officials came to his and his family's houses in search of him. They said to the prosecutor's family members, "tell him he has to report to El Helicoide".[640] The prosecutor said that he moved houses every two to three days, but that the SEBIN officials were always shortly behind him, which he attributes to them intercepting and tracking his cell phone.[641] Shortly thereafter, he left the country.[642] His fears were corroborated on 16 August 2017, when his colleague Luis Sánchez Rangel was detained by SEBIN and remains in El Helicoide at the time of writing (see Box 3, below).

The Mission spoke to another prosecutor who stayed with the Public Prosecutor's Office in the months following the change in Chief Prosecutor in 2017.[643] She said that, as of 21 September 2017, the new directors started to request minutes on high-profile cases,[644] describing the facts, victims, person investigated and procedural phase of such cases.[645] She prepared such minutes on six cases she was investigating that involved corruption by then president of the National Constituent Assembly Diosdado Cabello.[646]

In early January 2018, the Line Director called the prosecutor to her office, telling her she "was being summoned upon instructions of the Chief Prosecutor for cases she was investigating against Diosdado Cabello".[647] The Director told her that she

had to send the cases to a Control Court for dismissal.[648] When the prosecutor insisted that she could not do so, the Director slammed her hand on the desk saying, "It is the boss's instructions! If you do not want to do it, you will have to accept the consequences".[649] Within weeks, during which she received continued harassment from superiors, the prosecutor resigned and left the country.[650]

In November 2018, the Public Prosecutor's Office requested dismissal (*sobreseimiento*) and judicial archiving (*archivo judicial*) of a case in which the Chief Prosecutor himself was implicated.[651] The Chief Prosecutor was under investigation for illegal enrichment and misuse of public funds related to his alleged signing of numerous public contracts with Conkor, Inc, a company in which he himself allegedly had economic interests, when he was governor of Anzoátegui state in 2008.[652] In the request for dismissal filed before the Plenary Chamber of the Supreme Tribunal of Justice, to which the Mission had access and reviewed, the Public Prosecutor's Office argued that, "There is no reasonable possibility of contributing new elements to the investigation and with those that exist, there is not enough to request the prosecution of Tarek William Saab".[653]

### 5. Interference with the institution of the Public Prosecutor's Office

150. According to several public prosecutors interviewed, when former Chief Prosecutor Luisa Ortega Díaz started to speak out publicly against the Government, especially in 2016 and 2017, the Public Prosecutor's Office started to face attacks as an institution.[654] The Mission received information from former public prosecutors that, during this time, other government institutions stopped cooperating with investigations of the Public Prosecutor's Office, including with requests for police support, criminalistics support, access to phone records and access to bank records.[655] In addition, security officials would refuse to allow prosecutors into detention centres to observe conditions, including during the 2017 political

629 Interview AAIV066, 1 July 2021.
630 Interview AAIV074, 7 July 2021.
631 Interview AAIV072, 6 July 2021.
632 Interview AAIV074, 7 July 2021.
633 Interview AAIV074, 7 July 2021.
634 Interview AAIV066, 1 July 2021.
635 Interview AAIV066, 1 July 2021.
636 Interview AAIV066, 1 July 2021.
637 See A/HRC/25/CRP.11, paras. 211-213, for a description of SEBIN.
638 Interview AAIV066, 1 July 2021.
639 Interview AAIV066, 1 July 2021.
640 Interview AAIV071, 6 July 2021.
641 Interview AAIV071, 6 July 2021.
642 Interview AAIV071, 6 July 2021.
643 Interview AAIV072, 6 July 2021.
644 Interview AAIV072, 6 July 2021.
645 Interview AAIV072, 6 July 2021.
646 Interview AAIV072, 6 July 2021.
647 Interview AAIV072, 6 July 2021.
648 Interview AAIV072, 6 July 2021.
649 Interview AAIV072, 6 July 2021.
650 Interview AAIV072, 6 July 2021.
651 Public Prosecutor's Office Request for dismissal to the Plenary Chamber of the Supreme Tribunal of Justice, on file with the Mission.
652 Interview AAIV074, 7 July 2021.
653 Public Prosecutor's Office Request for dismissal to the Plenary Chamber of the Supreme Tribunal of Justice, on file with the Mission.
654 Interview AAIV052, 27 May 2021; Interview AAIV064, 23 June 2021; Interview AAIV066, 1 July 2021; Interview AAIV072, 6 July 2021; Interview AAIV074, 7 July 2021.
655 Interview AAIV072, 6 July 2021; Interview AAIV052, 27 May 2021; Interview AAIV074, 7 July 2021.

protests.[656] Some judges did not issue arrest or search warrants requested,[657] would override prosecutors' decisions,[658] and prosecutors were forced to wait in long lines to get into the courts.[659]

151. On 3 July 2017, the Constitutional Chamber of the Supreme Tribunal of Justice annulled the appointment by the National Assembly of Rafael González Díaz as Vice Chief Prosecutor and appointed Prosecutor Katherine Nayarith Harrington Padrón in his place.[660] Fearing that new authorities would destroy important files and evidence would be lost, former Chief Prosecutor Luisa Ortega Díaz closed the Public Prosecutor's Office and over the next couple of weeks, prosecutors worked around the clock scanning and photocopying key case files to preserve them.[661]

152. On 5 August 2017, the National Constituent Assembly ordered the National Guard be deployed to the headquarters of the Public Prosecutor's Office.[662] Luisa Ortega Díaz tried to re-enter the headquarters, managing to go through a military cordon, only to be stopped by the forces deployed. After speaking to the press and denouncing the events, she left on a motorcycle.[663] That same day, the National Constituent Assembly removed Luisa Ortega Díaz and appointed Tarek William Saab as Chief Prosecutor.[664] According to one former prosecutor, in the following days, groups of 10-15 armed men wearing balaclavas were permitted to enter the Public Prosecutor's Office.[665] According to former prosecutors, they took photos, set up cordons, entered offices and removed documents.[666]

153. The Mission was informed that upon assumption of his duties as Chief Prosecutor in August 2017, Tarek William Saab swiftly dismantled various specialized units within the Public Prosecutor's Office.[667] This included the Criminalistics Unit against Human Rights Violations within the Public Prosecutor's Office.[668] This specialized unit had been established in 2008 to investigate cases of human rights violations by State officials,[669] acting independently of police given that these forces were often themselves perpetrators in the

656 Interview AAIV052, 27 May 2021.
657 Interview AAIV066, 1 July 2021; Interview AAIV074, 7 July 2021.
658 Interview AAIV064; 23 June 2021; Interview AAIV052, 27 May 2021.
659 Interview with AAIV072, 6 July 2021.
660 Supreme Tribunal of Justice, Constitutional Chamber, Judgment No. 532 of 3 July 2017, available at: http://historico.tsj.gob.ve/decisiones/scon/julio/200783-532-3717-2017-17-0665.HTML.
661 Interview AAIV066, 1 July 2021; Interview AAIV072, 6 July 2021.
662 Interview AAIV060, 16 June 2021; CCIV006, 28 June 2021. According to Luisa Ortega Díaz, these case files were related to the Odebrecht case. See press conference of Luisa Ortega Díaz, at YouTube video, GNB Impide paso de la Fiscal Luisa Ortega Díaz al Ministerio Publico, 5 August 2017, available at: https://www.youtube.com/watch?v=z0v4Ewdfkbc&ab_channel=VPItv
663 YouTube video, GNB Impide paso de la Fiscal Luisa Ortega Díaz al Ministerio Publico, 5 August 2017, available at: https://www.youtube.com/watch?v=z0v4Ewdfkbc&ab_channel=VPItv
664 Constitutional Decree of 17 August 2017, ratifying in the exercise of their constitutional functions the citizens Tarek William Saab, Chief Prosecutor of the Republic and President of the Moral Republican Council; Manuel Galindo Ballesteros, Comptroller General of the Republic and Alfredo Ruiz Angulo, Ombudsperson, Published in the Official Gazette No. 41.216 of 17 August 2017, available at: https://pandectasdigital.blogspot.com/2017/08/decreto-constituyente-mediante-el-cual_21.html.
665 Interview AAIV072, 6 July 2021.
666 Interview AAIV066, 1 July 2021; Interview AAIV072, 6 July 2021; CCIV006, 28 June 2021.
667 Interview AAIV052, 27 May 2021; Interview AAIV053, 3 June 2021; Interview AAIV063, 3 June 2021; Interview AAIV073, 5 July 2021; Interview CCIV006, 28 June 2021.
668 Interview AAIV052, 27 May 2021; Interview AAIV053, 3 June 2021; Interview AAIV063, 3 June 2021; Interview CCIV006, 28 June 2021; Interview AAIV072, 6 July 2021.
669 For a detailed analysis of the criminalistics units within the Public Prosecutor's Office, see "Unidad Criminalística contra la Vulneración de Derechos Fundamentales" in Revista Ministerio Público Nr. 4, December 2014. It was composed of several sub-units and formed of experts in their respective fields.

cases under investigation.[670] Among others, the unit had staff specialized in forensics, ballistics, and blood splatter analysis.[671]

154. Other units were also effectively eliminated, including the Field Criminalistics Unit, the Technical-Scientific Unit for Environmental Crimes and the Financial and Accounting Unit, which produced expert reports in investigations related to corruption and financial crimes.[672] According to former prosecutors interviewed, the elimination of these units has diminished the independence of Public Prosecutor's Office to investigate crimes committed by State institutions, including law enforcement.[673]

## E. Other forms of pressure on judges and prosecutors

155. Judges and prosecutors also faced other pressures including harassment and punishments, which interfered with the legitimate exercise of their professional activities. Unlike the penalties imposed at the outcome of formal proceedings, which can result in written admonishment, suspension or dismissal, these implicit sanctions were not provided for by law or in accordance with a regulated procedure. The former judges and prosecutors interviewed observed that these measures have both a punishment and a deterrent purpose and effect.

### 1. Measures affecting conditions of service

156. The Mission received reports of various forms of pressure and harassment related to their conditions of service, which affected their financial or personal security and/or the ability to carry out their work. A number of judges and prosecutors said that they had experienced disciplinary actions that they considered unfair.[674] Within the judiciary, the Executive Directorate of the Judiciary is responsible for carrying out administrative functions.[675] As stated above, this body is composed of members appointed by the Supreme Tribunal of Justice.[676] The Executive Directorate of the Judiciary responds to the Supreme Tribunal's Plenary Chamber.[677]

157. Numerous people interviewed said the low pay of legal professionals in Venezuela amounts to a form of pressure against them.[678] According to sources consulted, the current

[670] Interview AAIV052, 27 May 2021.

[671] For a detailed analysis of the criminalistics units within the Public Prosecutor's Office, see "Unidad Criminalística contra la Vulneración de Derechos Fundamentales" in Revista Ministerio Público Nr. 4, December 2014. It was composed of several sub-units and formed of experts in their respective fields.

[672] Interview AAIV063, 9 July 2021.

[673] Interview AAIV053, 27 May 2021; Interview AAIV063, 3 July 2021; Interview CCIV006, 28 June 2021; Interview AAIV073, 5 July 2021.

[674] Interview CCIV003, 29 June 2021; Questionnaire CCQR072, 12 July 2021; Questionnaire CCQR058, 12 July 2021; Questionnaire CCQR066, 12 July 2021; Questionnaire CCQR033, 28 June 2021; Questionnaire CCQR031, 23 June 2021; Questionnaire CCQR028, 20 June 2021; Questionnaire CCQR021, 16 June 2021; Questionnaire CCQR020, 16 June 2021; Questionnaire CCQR017, 16 June 2021; Questionnaire CCQR014, 15 June 2021; Questionnaire CCQR010, 15 June 2021; Questionnaire CCQR024, 17 June 2021; Questionnaire CCQR019, 16 June 2021; Questionnaire CCQR006, 15 June 2021; Questionnaire CCQR005, 15 June 2021; Questionnaire CCQR004, 15 June 2021.

[675] 1999 Constitution, art. 267.

[676] 2000 Regulations on the Judiciary, arts. 1, 3, 4 and 7.

[677] 2010 Organic Law of the Supreme Tribunal of Justice, arts. 75-79.

[678] The Executive Directorate of the Judiciary, which responds to the Plenary Chamber of Supreme Tribunal of Justice, is responsible for paying judges. Interview CCIV003, 29 June 2021; Interview AAIV061, 16 June 2021; Interview AAIV046, 14 May 2021; Interview AAIV069, 5 July 2021; Interview AAIV083, 29 July 2021; Interview CCIV08, 13 August 2021; Interview CCIV007, 21 July 2021; Interview AAIV064, 23 June 2021; Questionnaire CCQR075, 12 July 2021; Questionnaire CCQR017, 16 June 2021.

pay of judges is around USD $40/month,[679] without benefits or entitlements. As one former judge put it, the low salaries create a kind of "stronghold" on judges and prosecutors, so that the honest ones leave and those who decide to stay have to survive through dishonest means.[680] Multiple sources reported that it is common for judges to charge for transactions, and as noted, allegations of corruption in the justice system were commonplace.[681]

158. Overall, judicial actors lacked sufficient human, financial, material and technical resources to work effectively.[682] Sources interviewed said that non-compliant judges and prosecutors also faced additional administrative retaliation, such as withholding availability of courtrooms, administrative support, basic supplies or even air conditioning.[683] One prosecutor investigating politically sensitive cases said that administrative staff would not pay him travel expenses or provide him with secretarial support, telling him there were orders from above not to do so.[684] Other such pressures or retaliatory methods related to the distribution of workload. Some former prosecutors or clerks reported that they were purposely overloaded with more cases than they could handle,[685] and others said that they were purposely assigned insignificant cases involving minor crimes.[686]

159. Both former judges and prosecutors reported that, in order to pressure them to resign or as sanction, independent tenured judges and prosecutors were transferred to other jurisdictions, including to the Venezuelan interior.[687] Justices of the Supreme Tribunal of Justice who come from outside of Caracas were housed in an apartment complex in the military Fort Tiuna.[688] As one former justice explained, if you made a decision against the Government, you would have to return to Fort Tiuna to sleep "in the mouth of the wolf".[689] The justices buy these apartments and purportedly own them.[690] However, after one justice left the country and spoke out against the Government, his neighbours informed him that the locks had been changed and the apartment was given to another person.[691]

### 2. Harassment and intimidation

160. Judges and prosecutors interviewed also reported that they and family members have been subjected to threats and intimidation, including phone tapping, surveillance and monitoring.[692] Those interviewed still within the country repeatedly expressed significant fear

679 Interview AAIV046, 14 May 2021; Interview AAIV070, 5 July 2021; Interview AAIV083, 29 July 2021.

680 Interview AAIV061, 16 June 2021.

681 Interview AAIV049, 19 May 2021; Interview DDIV034, 17 May 2021; Interview AAIV068, 2 July 2021; Interview AAIV062, 22 June 2021; Interview AAIV061, 16 June 2021; Interview AAIV046, 14 May 2021; Interview CCIV008, 13 August 2021.

682 Interview CCIV008, 13 August 2021; Interview AAIV073, 5 July 2021; Interview AAIV083, 29 July 2021. In the questionnaire circulated by the Mission, 97.67 per cent per cent of respondents said that judicial actors do not have sufficient resources. Of those, former judges and prosecutors included: Questionnaire CCQR075, 12 July 2021; Questionnaire CCQR017, 16 June 2021; Questionnaire CCQR031, 23 June 2021; Questionnaire CCQR025, 17 June 2021; Questionnaire CCQR020, 16 June 2021; Questionnaire CCQR014, 15 June 2021; Questionnaire CCQR011, 15 June 2021; Questionnaire CCQR009, 15 June 2021; Questionnaire CCQR005, 15 June 2021; Questionnaire CCQR004, 15 June 2021; Interview CCIV008, 13 August 2021; Interview CCIV006, 28 June 2021.

683 Interview AAIV050, 19 May 2021; Interview AAIV062, 22 June 2021; Interview AAIV073, 7 July 2021.

684 Interview AAIV073, 7 July 2021.

685 Interview AAIV082, 28 July 2021; Interview AAIV074, 7 July 2021.

686 Interview AAIV073, 7 July 2021; Questionnaire CCQR021, 16 June 2021.

687 Interview CCIV005, 2 July 2021; Interview AAIV064, 23 June 2021; Interview CCIV08, 13 August 2021.

688 Interview AAIV061, 16 June 2021.

689 Interview AAIV061, 16 June 2021.

690 Interview AAIV061, 16 June 2021.

691 Interview AAIV061, 16 June 2021.

692 Interview CCIV003, 29 June 2021; Interview AAIV071, 5 July 2021; Interview AAIV072, 6 July 2021; Interview AAIV073, 5 July 2021; Interview AAIV074, 7 July 2021; Interview AAIV075, 8 July 2021; Interview AAIV082, 28 July 2021; Questionnaire CCQR075, 12 July 2021; Questionnaire CCQR072, 12 July 2021; Questionnaire CCQR058, 12 July 2021; Questionnaire CCQR066, 12 July

over possible reprisals for their cooperation with the Mission; many others told the Mission that due to this fear, they could not be interviewed for the present report.

161. Nearly half of former judges and prosecutors interviewed as well as many of their family members, have had to leave Venezuela for fear of their safety.[693] Several have left Venezuela overland, for fear of raising alerts at airports and being detained.[694] In 2017, at least 50 public prosecutors, learned that they had alerts placed on them prohibiting them from leaving the country, after having been informed extra-officially and then running their passport numbers in the State Migration Service (SAIME) website.[695] This included prosecutors who had worked on corruption files or those that had been filmed in demonstrations against the formation of the National Constituent Assembly or in favour of Chief Prosecutor Luisa Ortega Díaz.[696] The alerts would have purportedly required a court order in the context of a criminal investigation, although the prosecutors were unaware of any investigations against them.[697]

162. More than one interviewee reported being threatened by members of the *colectivos* or other non-State armed groups.[698] One former prosecutor in Mérida told the Mission that, after she and other prosecutors had participated in protests during the 2017 political crisis, a police officer she knew told her, "be careful, they have you on file".[699] Referring to the *colectivos*, he warned, "Watch out when you go to your house because they are armed and can harm you".[700] Many prosecutors began altering their daily routines to protect themselves.[701] Eventually they stopped participating in the demonstrations out of fear.[702]

163. Those interviewed also reported harassment due to their real or perceived political affiliation.[703] Two former inspectors with the General Inspectorate of Courts said that they and other inspectors were forced by superiors to dress in red, carry pro-government propaganda and participate in pro-government marches.[704] One of the inspectors interviewed said she resigned from her position after a military officer came to their office and went desk by desk requesting that the employees sign a petition against the so-called "Obama Decree",

2021; Questionnaire CCQR036, 12 July 2021; Questionnaire CCQR033, 28 June 2021; Questionnaire CCQR031, 23 June 2021; Questionnaire CCQR028, 20 June 2021; Questionnaire CCQR025, 17 June 2021; Questionnaire CCQR020, 16 June 2021; Questionnaire CCQR017, 16 June 2021; Questionnaire CCQR010, 15 June 2021; Questionnaire CCQR044, 12 July 2021; Questionnaire CCQR024, 17 June 2021; Questionnaire CCQR008, 15 June 2021; Questionnaire CCQR019, 16 June 2021; Questionnaire CCQR006, 15 June 2021; Questionnaire CCQR005, 15 June 2021; Questionnaire CCQR004, 15 June 2021.

693 Interview AAIV075, 8 July 2021; Interview AAIV072, 6 July 2021; Interview AAIV044, 12 May 2021; Interview AAIV071, 5 July 2021; Interview AAIV063, 3 June 2021; Interview AAIV090, 22 August 2021; Interview AAIV089, 21 August 2021; Interview AAIV066, 1 July 2021; Interview AAIV074, 7 July 2021; Interview AAIV045, 14 May 2021; Interview DDIV035, 17 May 2021; Interview AAIV062, 22 June 2021; Interview AAIV050, 19 May 2021; Interview AAIV046, 14 May 2021; Questionnaire CCQR021, 16 June 2021.

694 Interview AAIV066, 1 July 2021; Interview AAIV071, 5 July 2021; Interview AAIV072, 6 July 2021; Interview AAIV074, 7 July 2021.

695 Interview AAIV072, 6 July 2021.

696 Interview AAIV072, 6 July 2021.

697 Interview AAIV072, 6 July 2021.

698 Interview CCIV003, 29 June 2021; Interview AAIV045, 14 May 2021; Interview AAIV073, 5 July 2021; Interview AAIV075, 8 July 2021.

699 Interview AAIV045, 14 May 2021.

700 Interview AAIV045, 14 May 2021.

701 Interview AAIV045, 14 May 2021.

702 Interview AAIV045, 14 May 2021.

703 Interview AAIV075, 9 July 2021; AAIV045, 14 May 2021; Interview AAIV062, 22 June 2021; Interview AAIV069, 5 July 2021; Interview AAIV072, 6 July 2021; Interview AAIV073, 5 July 2021; Interview AAIV090, 22 August 2021.

704 Interview AAIV062, 22 June 2021; Interview AAIV090, 22 August 2021.

a United States Executive Order issuing sanctions against individuals in Venezuela for human rights violations.[705]

164. Other prosecutors told the Mission that following the change in Chief Prosecutor on 5 August 2017, in the first meeting with the new Superior Prosecutor, he told the public prosecutors that he had "a Chavista heart" and that those in the room who did not feel the same way could not remain in the office.[706] He said he was going to punish the prosecutors who had participated in protests against the formation of the National Constituent Assembly.[707] One prosecutor interviewed said that, following her dismissal from the Public Prosecutor's Office, she started to receive harassing phone calls from anonymous callers who told her that they had seen pictures of her in protests against the National Constituent Assembly.[708] The calls continued until she changed her phone number.[709]

165. One former Supreme Tribunal clerk told the Mission that after she had refused to follow instructions in several cases, she started to suffer gradual and increasing workplace harassment.[710] While previously case files had been distributed evenly among clerks, she started to be handed a disproportionate number of cases at one time, in what she thought was an attempt to wear her down so she would commit an error to justify her removal. During this period, she felt extremely anxious and stressed.[711] During this time, she became pregnant and feeling pressure from work, she did not want to take leave or medical rest. One day, she left the court building bleeding, having miscarried the baby. She had to leave work for a period and receive treatment for anxiety and depression. When she returned to the office, her superiors did not give her any work for one year, having her clock in and out of work and sit in an empty office all day, until she resigned.[712]

### 3. Threats of legal action

166. 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.[713] Referring to Judge María Lourdes Afiuni (see above), one former judge said, "She was an example for all of us".[714] Several judges and prosecutors interviewed said that there was a clear before and after the Judge Afiuni case, with judges becoming more obedient out of fear of legal retaliation.[715]

167. The Mission heard from multiple sources that they have been threatened with accusations of participation in corruption schemes.[716] One former Supreme Tribunal judge interviewed said that the Government has cases prepared and waiting to be released publicly against certain judges as a form of blackmail to keep them in line.[717] As a former court inspector put it: "Most judges request money for their decisions. As long as you comply, you

[705] Interview AAIV062, 22 June 2021. See e.g., BBC News, Así recolectaron en Venezuela 10 millones de firmas contra Obama, 8 April 2015, available at: https://www.bbc.com/mundo/noticias/2015/04/150408_venezuela_firmas_obama_dp; El País, Las firmas contra el decreto de Obama no viajaron a Panamá, 10 April 2015, available at: https://elpais.com/internacional/2015/04/10/actualidad/1428686730_115882.html

[706] Interview AAIV075, 8 July 2021; Interview AAIV045, 14 May 2021.

[707] Interview AAIV045, 14 May 2021.

[708] Interview AAIV075, 8 July 2021; Interview AAIV045, 14 May 2021.

[709] Interview AAIV075, 8 July 2021; Interview AAIV045, 14 May 2021.

[710] Interview AAIV082, 28 July 2021.

[711] Interview AAIV082, 28 July 2021.

[712] Interview AAIV082, 28 July 2021.

[713] Interview CCIV003, 29 June 2021; Interview CCIV006, 28 June 2021; Interview AAIV044, 12 May 2021; Interview AAIV045, 14 May 2021; Interview AAIV046, 14 May 2021; Interview AAIV069, 5 July 2021; Interview AAIV071, 5 July 2021; Interview AAIV083, 29 July 2021; Questionnaire CCQR033, 28 June 2021.

[714] Interview AAIV046, 14 May 2021.

[715] Interview AAIV068, 2 July 2021; Interview AAIV055, 6 November 2021; Interview AAIV046, 14 May 2021.

[716] Interview CCIV006, 28 June 2021; CCIV003, 29 June 2021; Interview AAIV074, 7 July 2021; Interview AAIV075, 8 July 2021.

[717] Interview AAIV061, 16 June 2021.

are protected; but if you start to distance yourself from [the Government], they will take out [the incriminating information]. They always have something they can use against you."[718]

168. Prosecutors reported fearing that they themselves could be indicted for "breach of duty" or similar crimes if the judges did not agree with the prosecutor's decision in a certain case.[719] One prosecutor interviewed observed that some judges would put a reference in the hearing records stating that they could notify the Superior Prosecutors about the prosecutor's work ; she said "they leave it open like that, as a threat".[720] Another former prosecutor said that the governor in the state where he worked threated to arrest him "for receiving money from the opposition" after he requested the release of arbitrarily detained protesters in 2017.[721] Yet another said that, following the change of Chief Prosecutor in 2017, prosecutors reported being threatened by superiors in meetings that "we were going to be handcuffed".[722]

169. A former prosecutor told the Mission that he resigned after the Comptroller General of the Republic ordered a review of Public Prosecutors Offices at the state level. When he refused to speak with the state comptroller because he did not handle public funds, she told him "I will send the guards to you".[723] Immediately after his resignation, an administrative proceeding was opened against him for obstruction for not allowing the comptroller to enter, which alleged that "his lifestyle was not in accordance with his salary.[724]

***Box 3: The case of Luis Sánchez Rangel***

Luis Javier Sánchez Rangel is a Venezuelan lawyer who began working in the Public Prosecutor's Office in 2012 as an Auxiliary Prosecutor in the 118th Prosecutor's Office in Caracas Metropolitan Area, with competence in anti-drug matters. On 17 November 2016, he was transferred to the Fifty-Fifth National Prosecutor's Office with competence in anti-corruption cases, also as an Auxiliary Prosecutor.

In the months prior to Mr. Sánchez's arrest, the Fifty-Fifth National Prosecutor's Office had been investigating corruption-related crimes involving the PDVSA and Odebrecht companies, among others,[725] which had quietly initiated in 2015 and started to move forward as of late 2016.[726] Investigations in the PDVSA case had allegedly revealed that the State oil company had awarded public contracts totalling hundreds of millions of dollars to shell companies.[727]

One of these was Constructora Conkor, in which former governor of Anzoátegui state and then Human Rights Ombudsperson, Tarek William Saab, allegedly had economic interests.[728] On 14 February 2017, Mr. Sánchez, together with DGCIM, carried out a search of the Conkor Company's offices. Following the 5 August 2017 appointment of Tarek William Saab as Chief Prosecutor, he allegedly requested that the case file be delivered to him.[729]

[718] Interview AAIV062, 22 June 2021.
[719] Interview AAIV042, 7 May 2021; Interview AAIV045, 14 May 2021.
[720] Interview AAIV045, 14 May 2021.
[721] Interview CCIV006, 28 June 2021.
[722] Interview AAIV075, 8 July 2021.
[723] Interview CCIV006, 28 June 2021.
[724] Interview CCIV006, 28 June 2021.
[725] Interview AAIV074, 7 July 2021.
[726] Interview AAIV074, 7 July 2021.
[727] Interview AAIV053, 3 June 2021; Interview AAIV066, 1 July 2021; Interview AAIV071, 6 July 2021; Interview AAIV074, 7 July 2021.
[728] Interview AAIV053, 3 June 2021.
[729] Interview AAIV053, 3 June 2021; Interview AAIV066, 1 July 2021; Interview AAIV071, 6 July 2021; Interview AAIV072, 6 July 2021; Interview AAIV074, 7 July 2021.

On 16 August 2017, Diosdado Cabello, then president of the National Constituent Assembly, held a press conference accusing Luisa Ortega Díaz's husband, German Ferrer,[730] of running an extortion ring involving Luis Sánchez and Pedro Lupera of the Fifty-Fifth Prosecutor's Office, among others.[731] Mr. Cabello showed what he claimed were copies of open accounts from a UBS Bahamas bank, apparently set up by Mr. Sánchez and other co-accused.[732] During the press conference, Diosdado Cabello said that he and other members of the National Constituent Assembly had presented a complaint to the Public Prosecutor's Office.[733] Mr. Cabello informed his audience that Chief Prosecutor Tarek William Saab had already ordered the arrest of the members of the alleged extortion ring.[734]

That same day, on 16 August 2017, Chief Prosecutor Tarek William Saab also held a press conference announcing that the Public Prosecutor's Office had requested the immediate capture of Luis Sánchez.[735] The Chief Prosecutor referred to a complaint filed by Diosdado Cabello and other National Constituent Assembly members as the basis for the request,[736] citing UBS Bahamas bank accounts as supporting evidence.[737] The Chief Prosecutor said that "according to what we have investigated in just these minutes" the alleged crimes involved were individual corruption, extortion, criminal association and money laundering.[738]

730 German Ferrer was also a National Assembly deputy at that time.

731 See YouTube video, Diosdado Cabello da más detalles sobre red de extorsión de German Ferrer, 16 August 2017, available at: https://www.youtube.com/watch?v=jkpTh1JfZ3A

732 YouTube video, Diosdado Cabello da más detalles sobre red de extorsión de German Ferrer, 16 August 2017, minute 6.55, available at: https://www.youtube.com/watch?v=jkpTh1JfZ3A Diosdado Cabello cited as the source "a cooperating patriot" who reportedly informed him of a March 2017 investigation by an NGO revealing the existence of an extortion ring in the Public Prosecutor's Office. YouTube video, Diosdado Cabello da más detalles sobre red de extorsión de German Ferrer, 16 August 2017, minute 14.20, available at: https://www.youtube.com/watch?v=jkpTh1JfZ3A. The NGO was the Centre for Investigation against Crime in the Americas" (*Centro de Investigación contra Crimen en la Américas, CICAM*). The Mission has not been able to locate any indication of the existence of this organization. Diosdado Cabello said that one needs a "special password" to enter the organization's website. Ibid., minute 6.55.

733 Letter to Chief Prosecutor Tarek William Saab, signed by Diosdado Cabello Rondón, Pedro Carreño, Julio Chávez, Tania Díaz, María Iris Valera and Gerardo Márquez, 16 August 2017.

734 See YouTube video, Diosdado Cabello da más detalles sobre red de extorsión de Germán Ferrer, 16 August 2017, minute 15.45, available at: https://www.youtube.com/watch?v=jkpTh1JfZ3A

735 YouTube video, Fiscal Tarek William Saab, Rueda de prensa sobre red de extorsión de Germán Ferrer, 16 August 2017, minute 8.00, available at: https://www.youtube.com/watch?v=II2GBXdq_Do. See also Tweet by the Public Prosecutor's Office, 16 August 2017, available at: https://twitter.com/MinpublicoVE/status/897864534647599104

736 YouTube video, Fiscal Tarek William Saab, Rueda de prensa sobre red de extorsión de Germán Ferrer, 16 August 2017, minute 0.30.

737 YouTube video, Fiscal Tarek William Saab, Rueda de prensa sobre red de extorsión de Germán Ferrer, 16 August 2017, minute 9.15.

738 YouTube video, Fiscal Tarek William Saab, Rueda de prensa sobre red de extorsión de Germán Ferrer, 16 August 2017, minute 4.15.

Also on 16 August 2017, the Public Prosecutor's Office filed the request for the arrest of Mr. Sánchez, which then Twentieth Criminal Control Judge granted that day against Pedro Lupera and Luis Sánchez.[739] The Mission reviewed the request and the arrest order, which was based on the complaint by the National Constituent Assembly, setting forth the same criminal charges alleged in the complaint.[740] That day, police raided the Fifty-Fifth National Prosecutor's Office,[741] seizing 300 folders related to two case files on corruption investigations in the Orinoco Oil Belt, and other items.[742]

On 16 August 2017, Mr. Sánchez was at his house, together with his wife, who was over four months pregnant at the time and was very ill.[743] Mr. Sánchez was also at home on medical rest, having been hospitalized a few days prior due to complications related to chronic high blood pressure.[744] As Diosdado Cabello was giving his press conference at around 10 or 11 a.m., Mr. Sánchez received a call from a colleague telling him to come into the office urgently because members of SEBIN were looking for him.[745] Concerned for his safety, Mr. Sánchez and his wife turned off their cell phones so that they could not be traced.[746] They drove to her mother's house.[747]

At around 6.30 or 7 p.m., as Mr. Sánchez's mother-in-law left her house, about 30 members of SEBIN appeared.[748] They had balaclavas covering their faces and pointed long guns at her.[749] According to two witness present, they did not present search and arrest orders and had to wait for several hours before two public prosecutors, also wearing balaclavas, showed up with warrants.[750] SEBIN carried out the search and arrested Mr. Sánchez, taking him to SEBIN Plaza Venezuela and then to El Helicoide.[751] Only Mr. Sánchez was arrested, as Pedro Lupera managed to leave the country.[752]

At the initial appearance held on 18 August 2017, ending at 3 a.m. on 19 August 2017,[753] then Twentieth Criminal Control Judge ordered Mr. Sánchez's pre-trial detention under the charges of self-corruption, extortion, criminal association and money laundering.[754] However, she did not issue the initial appearance record until several days later, despite the fact that the record bore the date of 18 August 2017.[755] These delays resulted in an interference with the defence's ability to prepare an appeal, which was subsequently dismissed for untimeliness by the Appellate Court. Subsequently, however, the Appellate Court's dismissal was overturned by the Supreme Tribunal of Justice on appeal over two years later.[756]

739 Twentieth Control Court Arrest Order, 16 August 2017.
740 Twentieth Control Court Arrest Order, 16 August 2017. YouTube video, Fiscal Tarek William Saab, Rueda de prensa sobre red de extorsión de Germán Ferrer, 16 August 2017, minute 4.15.
741 Anti-Corruption Police Investigation Record, 16 August 2017.
742 The police also seized 52 diskettes, 2 personal agendas (from Pedro Lupera and Luis Sánchez), a monitor, a laptop, 2 keyboards and a rifle magazine and bullets.
743 Interview AAIV051, 25 May 2021; Interview AAIV081, 23 July 2021.
744 Interview AAIV081, 23 July 2021.
745 Interview AAIV081, 23 July 2021.
746 Interview AAIV081, 23 July 2021.
747 Interview AAIV081, 23 July 2021.
748 Interview AAIV051, 25 May 2021.
749 Interview AAIV051, 25 May 2021.
750 Interview AAIV051, 25 May 2021; Interview AAIV081, 23 July 2021.
751 Interview AAIV081, 23 July 2021.
752 Interview AAIV074, 7 July 2021.
753 Interview AAIV051, 25 May 2021.
754 Interview AAIV051, 25 May 2021.
755 Supreme Tribunal of Justice, Constitutional Chamber, Judgment No. 0170 of 24 November 2019.
756 Supreme Tribunal of Justice, Constitutional Chamber, Judgment No. 0170 of 24 November 2019.

Following a request made by the defence, on 4 September 2017, the State Bank Supervision Department of the Bahamas returned a certified letter in which it said that the UBS Bank was inactive in the country as of 1 April 2015.[757] The alleged closure of the bank was a year before the National Constituent Assembly members' complaint alleged that Mr. Sánchez opened the bank accounts (March and April 2016), and upon which the order for the pre-trial deprivation of liberty was based.[758]

Following a request by the Public Prosecutor's Office, on 2 October 2017, the CICPC Documentation Department issued a report on the technical inspection into the UBS bank contracts, which were being held in the Central Bank of Venezuela vault. At the initial appearance the Public Prosecutor had described those contracts as originals.[759] However, the CICPC report concluded that the UBS bank account contracts were colour photocopies without original signatures.[760]

On 2 October 2017 the Public Prosecutor's Office presented the indictment.[761] The indictment only provided evidence with respect to the crimes of extortion, theft of seals, use of confidential data and criminal association. It made no mention of the charge of self-corruption, despite the fact that it had been charged in the initial appearance.[762] It did not present any evidence with respect to the charges of money laundering or illicit enrichment.[763] The alleged UBS Bahamas Bank accounts documents were not among the 37 pieces of evidence tendered in the indictment, though the National Constituent Assembly's complaint was.[764]

As noted further in Section IV the case demonstrated significant procedural irregularities, including: 1) over 22 deferrals of the preliminary hearing, which was finally held on 16 March 2021, and other procedural delays; 2) detention of Mr. Sánchez well beyond the two-year legal limit permitted under the Criminal Procedure Code;[765] and 3) repeated failure to share the case file and other key information with the defence. As at the time of writing, over four years since his arrest, Luis Sánchez remains detained in SEBIN El Helicoide without having had a trial.

## F. Involvement of external actors in criminal prosecutions (*acción penal*)

170. The criminal prosecution (*la acción penal*) consists of accusing an individual of committing a crime and, consequently, requesting enactment of the State's right to punish, or *ius puniendi*.[766] Under the inquisitorial system in place until 1999, judges exercised

[757] Letter from Sherrece L. Saunders, Investigator V, Bank Supervision Department to Sr. L Ryan Pinder, Partner, Graham Thompson, Ref. 402-270, 4 September 2017. Specifically, the letter read, "With reference to your email dated 1 September 2017, seeking confirmation on the status of the captioned licensee, kindly note that the Central Bank issued a non-active licence to UBS (Bahamas) Ltd. on 24 November 2015, which downgraded its unrestricted bank and trust category to a non-active category, with effect from 1 April 2015".

[758] Letter from Sherrece L. Saunders. See also Funds Society, UBS Private Banking Dismantles its Operations in Bahamas, 9 April 2014, available at: https://www.fundssociety.com/en/news/private-banking/ubs-private-banking-dismantles-its-operations-in-bahamas

[759] Interview AAIV051, 25 May 2021.

[760] CICPC Record, 2 October 2017.

[761] Public Prosecutor's Office Indictment, 2 October 2017.

[762] Public Prosecutor's Office Indictment, 2 October 2017.

[763] Public Prosecutor's Office Indictment, 2 October 2017.

[764] Public Prosecutor's Office Indictment, 2 October 2017.

[765] 2012 Criminal Procedure Code, art. 230. The defence team representing Luis Sánchez filed over ten requests for revision of the precautionary measure of deprivation of liberty as at the time of writing. On 16 August 2019, the defence filed a writ for dismissal (*descaimiento*) of the pre-trial detention measures because the two-year limit had expired. The Twentieth Control Court denied the request (see below). Twentieth Control Court Decision, 28 August 2019, p. 21.

[766] Vásquez González, Magaly, Derecho Procesal Penal Venezolano, 2019, p. 52.

criminal action, functioning as accusers and arbiters at the same time.[767] In accordance with the current Constitution and the Criminal Procedure Code, the State exercises the criminal prosecution through the Public Prosecutor's Office.[768] With respect to military jurisdiction, the Organic Code of Military Justice states that the functions of the Public Prosecutor's Office shall be exercised by the Military Prosecutor's Office.[769] The Mission refers to both bodies generally as the prosecution.

171. The investigation of public crimes can be initiated *ex officio* by the criminal prosecution bodies, without prejudice to the victim or any citizen filing a complaint.[770] The Criminal Procedure Code outlines a sequencing of procedural steps in the criminal process, starting with the formal opening of an investigation.[771] During the preparatory phase, the prosecution conducts an investigation of the facts and collects evidence to support an indictment, as well as exculpatory evidence, in order to confirm or rule out the commission of a crime and to identify the possible perpetrators.[772] This process is to ensure that criminal investigations are guided by facts, not based upon premature beliefs or conclusions as to guilt or innocence or upon improper political or other bias.

172. The Constitution,[773] the Criminal Procedure Code[774] and the Organic Code of Military Justice[775] clearly establish the competence of the Public Prosecutor's Office or the Military Prosecutor's Office, where appropriate, to order and direct the criminal prosecution. Nevertheless, the Mission's investigations reveal, on the one hand, that high-level political actors make statements interfering with ongoing criminal investigations, and on the other, that intelligence bodies take on a prominent role in criminal investigations, often as a result of failure of the Public Prosecutor's Office and the Military Prosecutor's Office to ensure adequate control over the criminal prosecution.

### 1. Involvement of high-level political actors in criminal prosecution (acción penal)

173. In 102 out of the 183 detentions of real or perceived opponents occurring between 2014 and 2021 reviewed by the Mission, high-level public officials made public statements about the case, prior to or within hours or days of a detention carried out by security or intelligence forces.[776] These public statements often present the theory of the case and identify

[767] The same official thus would direct both the investigation and the prosecution of the alleged perpetrator of the crime. Vásquez González, Magaly, Derecho Procesal Penal Venezolano, 2019, p. 52. See Acceso a la Justicia, Informe sobre el Desempeño del Ministerio Público (2000-2018), p. 10, available at: https://www.accesoalajusticia.org/wp-content/uploads/2020/04/Informe-sobre-el-desempe%C3%B1o-del-Ministerio-P%C3%BAblico-2000-2018.pdf

[768] 1999 Constitution, art. 285(4); 2012 Criminal Procedure Code, arts. 11, 24.

[769] 2020 Constitutional Law of the FANB, art. 188; 1998 Organic Code of Military Justice, art. 70.

[770] 2012 Criminal Procedure Code, art. 24. In these cases, given that the criminal action rests in the hands of the State, the pardon or waiver does not generate the effect of extinguishing the action or putting an early end to the process. Vásquez González, Magaly, Derecho Procesal Penal Venezolano, 2019, p. 53.

[771] Public Prosecutor's Office Circular No. DFGR-VFGR-DGAP-DGAJ-DGCDO-DCJ-DFSDRD-003-2012, Orden de Inicio de la Investigación Penal, 10 September 2012.

[772] 2012 Criminal Procedure Code, art. 262; Supreme Tribunal of Justice, Criminal Appellate Chamber, Judgment No. 701 of 15 December 2008.

[773] 1999 Constitution, art. 285(3). Such investigations include those against public officials who have incurred criminal liability in the course of their official duties. 1999 Constitution, art. 285(5).

[774] 2012 Criminal Procedure Code, arts. 11, 111.

[775] 1998 Organic Code of Military Justice, art. 70. See 2020 Constitutional Law of the FANB, art. 188.

[776] FFMV0091, FFMV0124, FFMV0116, FFMV0037, FFMV0044, FFMV0040, FFMV0004, FFMV0096, FFMV0179, FFMV0141, FFMV0057, FFMV0059, FFMV0158, FFMV0068, FFMV0012, FFMV0128, FFMV0139, FFMV0176, FFMV0055, FFMV0106, FFMV0023, FFMV0003, FFMV0119, FFMV0041, FFMV0178, FFMV0089,FFMV0015, FFMV0071, FFMV0009, FFMV0076, FFMV0136, FFMV0138, FFMV0067, FFMV0010, FFMV0070, FFMV0157, FFMV0173, FFMV0085, FFMV0154, FFMV0022, FFMV0024, FFMV0051, FFMV0061, FFMV0080, FFMV0062, FFMV0084, FFMV0130, FFMV0133, FFMV0017, FFMV0117, FFMV0108, FFMV0026, FFMV0148, FFMV0121, FFMV0161, FFMV0109, FFMV0155, FFMV0054, FFMV0034, FFMV0082, FFMV0118, FFMV0094, FFMV0175, FFMV0137, FFMV0145, FFMV0168, FFMV0025, FFMV0120, FFMV0129, FFMV0105,

specific individuals and allegations regarding their participation in criminal acts not yet proven in a court of law. The statements routinely express conclusions about the guilt or innocence, the character or the reputation of the subjects of the investigation, potentially prejudicing their rights.[777] For example:

- On 7 August 2018, three days after the drone attack on 4 August 2018 (see Box 9, below), President Maduro presented an interrogation video featuring Juan Carlos Monasterios, whom the President called the "head of the assassins and hitmen",[778] which Mr. Monasterios later claimed had been filmed after he had been tortured, and the DGCIM officials threatened to kill him and his family.[779]
- On 9 March 2019, Diosdado Cabello circulated an edited video of a radio programme of journalist Luis Carlos Díaz (Box 6, below) with the message "This is how the local right wing and the rancid gringo right wing prepared what they called 'operation blackout', which seeks to collapse the country by sabotaging the National Electricity System's management operations centre, on which most of the public services depend".[780]
- On 26 April 2021, the day after the arrest of Foro Penal Coordinator Orlando Moreno, the governor of the state of Delta Amacuro stated publicly that Mr. Moreno had been detained for inciting hate and that "it was not a little lamb who was detained: this citizen was detained years ago in Caracas for the same acts".[781] At the time the statement was made, Mr. Moreno had yet to appear before a judge.
- On 12 July 2021, the day of former National Assembly member Freddy Guevara's arrest, National Assembly president Jorge Rodríguez held a press conference in which he claimed that Mr. Guevara and other Voluntad Popular party members had collaborated with a notorious gang member to orchestrate violence and destabilize the country. He presented photographs of what he claimed were WhatsApp conversations between Mr. Guevara and opposition figures.[782]

174. The public statements also made public what high level officials claimed to be admissions, confessions, or other statements purportedly made by persons under investigation, including those made without a lawyer present, under duress or while being held incommunicado. For example, on 27 October 2020, almost 24 hours following Roland Carreño's detention, during which time his whereabouts were unknown, Communications Minister Freddy Ñañez tweeted that Mr. Carreño was in custody, had been detained *in flagrante delicto* and had confessed to "actions against the peace of the nation".[783] On 30 October 2020, Jorge Rodríguez, at the time campaign manager for the PSUV,[784] held a press

FFMV0011, FFMV0114, FFMV0008, FFMV0174, FFMV0005, FFMV0095, FFMV0083, FFMV0086, FFMV0065, FFMV0030, FFMV0125, FFMV0159, FFMV0156, FFMV0101, FFMV0165, FFMV0006, FFMV0182, FFMV0135, FFMV0110, FFMV0112, FFMV0127, FFMV0001, FFMV0088, FFMV0090, FFMV0169, FFMV0019, FFMV0087, FFMV0052, FFMV0172, FFMV0028, FFMV0144, FFMV0013, FFMV0183.

777 1999 Constitution, art. 49(2); 2012 Criminal Procedure Code, art. 8.

778 YouTubeVideo, Luigino Bracci Roa, Testimonio de Juan Carlos Monasterios, presunto involucrado en atentado con drones contra Maduro, available at: https://www.youtube.com/watch?v=-RjRVirP91k

779 Preliminary Hearing Record, 29 April and 2 May 2019; DDDOC022, 9 March 2021.

780 See Tweet from Con el Mazo Dando, 9 March 2019, available at: https://twitter.com/ConElMazoDando/status/1104089583850012674

781 Audio file, 26 April 2021, on file with the Mission; See: El Pitazo, Delta Amacuro | Gobernadora: "Orlando Moreno fue detenido por instigación al odio", 26 April 2021, available at: https://elpitazo.net/guayana/delta-amacuro-gobernadora-orlando-moreno-fue-detenido-por-instigacion-al-odio/

782 YouTube video, Luigino Bracci Roa desde Venezuela, Jorge Rodríguez, rueda de prensa completa: Cota 905, Freddy Guevara y nuevo atentado contra Maduro, 13 July 2021, available at: https://www.youtube.com/watch?v=YwmdZNzW-_A

783 See tweet by Freddy Ñañez, 27 October 2020, available at: https://twitter.com/luchaalmada/status/1321261218364116993

784 On 5 January 2021, Jorge Rodríguez was named president of the National Assembly elected in the disputed elections of 6 December 2020.

conference and played the video, which was filmed without a lawyer present, concluding that the "confession clearly showed" that Mr. Carreño received funds from the Simon Bolívar Foundation,[785] a charity arm of the CITGO oil company.[786]

175. Similarly, in the Drone Case (see Box 9, below),[787] then Communications Minister Jorge Rodríguez played a series of purported confession videos from August to October 2018, as the arrest of individuals was ongoing. Representatives of former National Assembly member Juan Requesens told the Mission that the video played of him in August 2018 had been filmed under duress and possibly following the administration of psychotropic drugs.[788] Minister Rodríguez played similar confessions[789] by other male and female detainees in the same case, which they alleged were filmed without the presence of their lawyers, under coercion, duress or torture.[790] On 17 October 2018, Minister Rodríguez made a public statement concluding that, "the intellectual and material perpetration is perfectly established […] thanks to the voluntary confessions made by the individuals implicated as material perpetrators".[791]

176. The public statements also reveal sensitive or confidential information related to investigations, including specific evidence, some that could only have come from prosecutorial, law enforcement or intelligence officials.[792] For example, on 2 July 2021, Javier Tarazona, director of the NGO Fundaredes, was detained by SEBIN with two other members of that organization. On 14 July 2021, Diosdado Cabello claimed on his television program "Con el Mazo Dando" that authorities found WhatsApp messages on Mr.

785 The webpage of the Simón Bolívar Foundation is here: https://www.simonbolivarfoundation.org/

786 See YouTube video, Luigini Bracci Roa, Jorge Rodríguez muestra confesión de Roland Carreño por uso de dinero de Citgo para Voluntad Popular, 30 October 2021, minute 9.20, available at: https://www.youtube.com/watch?v=fJaHjt0Brxc.

787 The "Drone Case" refers to events that occurred on 4 August 2018 on the Avenida Bolivar in Caracas, during a military parade took place to commemorate the 81st anniversary of the Bolivarian National Guard. President Maduro and other high-ranking officials participated in the celebration. Two remote-controlled drones flew overhead, one exploding in the Avenida Bolivar, and the other near the building Residencias Don Eduardo. The Venezuelan Government has characterized the event as an assassination attempt. At least nineteen individuals (15 men and 4 women) have been charged in relation to the events, in two on-going criminal cases described below. See, for example: The New York Times, Venezuelan President Targeted by Drone Attack, Officials Say, 4 August 2018, available at: https://www.nytimes.com/2018/08/04/world/americas/venezuelan-president-targeted-in-attack-attempt-minister-says.html; BBC, Venezuelan President Maduro survives 'drone assassination attempt', 5 August 2018, available at: https://www.bbc.com/news/world-latin-america-45073385

788 See A/HRC/45/CRP.11, Case 9: Juan Carlos Requesens. See also YouTube video, Rueda de prensa de Jorge Rodríguez, 10 agosto 2018, donde da a conocer confesión de Juan Requesens, 10 August 2018, minute 19.00, available at: https://www.youtube.com/watch?v=nE24po4N2t8.

789 See, for example, El Universal, Rodríguez: Capturado el cabecilla del magnicidio frustrado contra el Presidente , 23 September 2018, available at: https://www.eluniversal.com/politica/21360/rodriguez-detenidos-tres-involucrados-en-el-intento-de-magnicidio-contra-el-presidente; YouTube video, Jorge Rodríguez, rueda de prensa 24 septiembre 2018, available at: https://www.youtube.com/watch?v=vooCXI6CS60; YouTube video, Jorge Rodríguez: Implicados en hechos de la avenida Bolívar participaron en "guarimbas" de 2014, 17 October 2018, available at: https://www.youtube.com/watch?v=DtWdWjohFeE

790 Preliminary Hearing Record, 29 April 2019; Statement DDDOC022, 9 March 2021; Statement DDDOC030, 20 May 2021; Statement DDDOC005, 9 March 2021.

791 YouTube video, Jorge Rodríguez: Implicados en hechos de la avenida Bolívar participaron en "guarimbas" de 2014, 17 October 2018, available at: https://www.youtube.com/watch?v=DtWdWjohFeE

792 See 2012 Criminal Procedure Code, art. 286, which states "All acts of the investigation shall be closed to third parties. The proceedings may only be examined by the accused, by his or her defence counsel and by the victim, whether or not he or she has filed a complaint, or by his or her lawyers with special powers of attorney. Notwithstanding this, the officials who participate in the investigation and the persons who for any reason have knowledge of the proceedings carried out during the course of the investigation are obliged to maintain confidentiality". See also 2012 Criminal Procedure Code, art. 117, which states that police are prohibited from giving information to third parties about the actions they carry out, their results and the orders they are required to carry out.

Tarazona's telephone proving he had been planning to kidnap a Colombian senator,[793] noting "it took five days to download the material off of one [of the telephones]".[794]

177. Similarly, on 26 June 2018 in the Vuelvan Caras case, then Communications Minister Jorge Rodríguez held a televised press conference in which he played what he alleged to be a videoconference between Captain Acosta Arévalo and others speaking of plans to overthrow the Government.[795] He also presented what he claimed were confession videos, which the Mission found reasonable grounds to believe had been filmed under torture.[796] This press conference occurred two days before Captain Acosta Arévalo and his co-accused first appeared in court and while the whereabouts of seven of the eight detainees remained unknown. On 28 June 2018, the day of his initial appearance, Captain Acosta Arévalo died from his torture injuries.[797]

178. In some cases, the high-level government officials have presented evidence related to the cases, potentially resulting in contamination or interference with the chain of custody.[798]

---

793 YouTube video, Transmisión en vivo, Con El Mazo Dando – Programa 248, 14 July 2021, minute 52.06, available at: https://www.youtube.com/watch?v=DsMHNNUGV0Y

794 Ibid.

795 YouTube video, ¿Quién era Rafael Acosta Arévalo y por qué fue detenido? Videos mostrados por Jorge Rodríguez presenta pruebas de nuevo golpe de Estado en Venezuela para el 23 y 24 de junio 2019, 26 June 2019, available at: https://www.youtube.com/watch?v=pAu00wv9_oU https://www.youtube.com/watch?v=QhUPlRf-ElM.

796 See A/HRC/45/CRP.11, Case 17: Captain Rafael Acosta Arévalo.

797 Interview AAIV041, 10 May 2021; Interview DDIV050, 17 June 2021; Interview DDIV051, 20 June 2021. See A/HRC/45/CRP.11, Case 17: Captain Rafael Acosta Arévalo.

798 See 2012 Criminal Procedure Code, arts. 187-188. Article 187. Chain of custody. Any official who collects physical evidence must comply with the chain of custody, which is understood as the legal guarantee that allows for the appropriate handling of digital, physical or material evidence, with the aim of avoiding its modification, alteration or contamination from the moment of its location at the site of the event or place of the finding, its trajectory through the different criminal, criminalistic and forensic investigation units, the consignment of the results to the competent authority, until the culmination of the process. The chain of custody includes the procedure used in the technical inspection of the site of the event and of the corpse, if applicable, and the steps of protection, fixation, collection, packaging, labelling, preservation and transfer of the evidence to the respective criminal investigation, criminalistics and forensic science units, or jurisdictional bodies, must be progressively complied with. Officials who collect physical evidence must register it in the form designed for the chain of custody, in order to guarantee the integrity, authenticity, originality and security of the evidence, from the moment of its collection, its journey within the different criminal investigation, criminalistics and forensic science units, during its presentation in the oral and public trial debate, until the end of the process. The physical evidence record sheet shall contain an indication, in each of its parts, of the officials or persons who intervened in the safeguarding, photographic or other fixation, collection, packaging, labelling, transfer, preservation, analysis, storage and custody of physical evidence, in order to avoid and detect any modification, alteration, contamination or loss of these evidentiary elements. The general and specific procedures, based on the basic principles of the chain of custody of physical evidence, will be regulated by a single procedural manual, of mandatory use for all police institutions in the national territory, which practice among their tasks, the safeguarding, photographic or other fixation, collection, packaging, labelling, transfer, preservation, analysis, storage and custody of physical evidence, in order to maintain a unified criterion of criminalistic patterns. The aforementioned manual of procedures for the chain of custody of physical evidence is the responsibility of the Ministry of People's Power for the Interior and Justice in coordination with the Public Prosecutor's Office. Article 188. Areas for the safekeeping of evidence. In each criminal investigation body, an area will be set aside for the safekeeping of evidence collected during criminal investigations carried out by these bodies, defined in accordance with the specifications of the manual of procedures for the chain of custody of evidence. The Supreme Tribunal of Justice, through the organ of the Judiciary it designates, shall be responsible for the installation and operation in each criminal judicial circuit of an area duly equipped for the safekeeping of evidence related to cases in which the accusation has been admitted. The storage areas must be duly equipped with the infrastructure, consumable materials, technology, security and maintenance necessary to contain and preserve biological and non-biological evidence until the completion of the process. Evidence of biological origin which by its nature is susceptible to degradation, whose by-products or derivatives may be highly toxic, contaminating and harmful to health, must be disposed of with prior judicial authorisation, at the request of the representative of the

On 4 May 2020, videos depicting the capture of various individuals allegedly involved in Operation Gedeón in the coastal town of Chuao, Aragua state, were broadcast on State television and appeared on social media networks.[799] On 5 May 2020, then president of the National Constituent Assembly Diosdado Cabello appeared on television displaying and handling what he said was the arsenal seized from the arrestees as participants in Operation Gedeón. This included short and long range weapons, munitions, transmission equipment, communications, uniforms and identification documents of the detainees.[800]

**Screenshots from the Con el Mazo Dando programme of 5 May 2020**

179. When high-level political officials make such statements, they are communicating that they have privileged access to the criminal investigation and that prosecutoral or judicial actors are acting on their behalf.[801] In the case of former prosecutor Luis Sánchez Rangel

Public Prosecutor's Office in charge of the case, taking the necessary precautions to leave samples in safekeeping for future analysis.

[799] Operation Gedeón refers to an alleged 4 May 2020 maritime invasion of Venezuelan territory against the Government of Nicolás Maduro, with the participation of the Governments of the United States and Colombia.

[800] YouTube video, Con El Mazo Dando - Programa Especial | 05/05/2020, 5 May 2020, from minute 35.00, available at: https://www.youtube.com/watch?v=PgZbe-6TLoo

[801] See, for example, A/HRC/45/CRP.11, Case 8: Angel Zerpa. In that case, Mr. Zerpa was detained by officers wearing civilian clothes, who did not identify themselves, but were wearing bulletproof vests. They were later revealed to be members of SEBIN. When Mr. Zerpa asked what was happening they replied, "Didn't you see the TV? Maduro ordered your detention?" Written statement submitted by Angel Zerpa to the Mission, 7 June 2020. See videos at: TeleMadrid, Maduro amenaza con meter en la cárcel a todos los jueces nombrados por el Parlamento, 24 July 2017, available at:

(Box 3, above), Diosdado Cabello announced in a 16 August 2017 press conference that he and other National Constituent Assembly members had asked the Public Prosecutor's Office to order detentions and initiate criminal investigations into persons he accused of forming an extortion network within the Public Prosecutor's Office.[802] Shortly thereafter, Chief Prosecutor Tarek William Saab held a press conference announcing that he had requested the immediate capture of prosecutor Luis Sánchez[803] referring to the complaint filed by the National Constituent Assembly members "just minutes ago".[804]

### 2. Involvement of police and intelligence bodies in the criminal prosecution (accion penal)

180. 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.[805] During investigations, police investigative bodies must work under the direction of prosecutors.[806] If police authorities receive information about the commission of a crime, they shall communicate it to the Public Prosecutor's Office within 12 hours and shall only carry out the necessary and urgent proceedings,[807] which include identifying and locating perpetrators and securing potential evidence.[808]

181. The Criminal Procedure Code defines the criminal police investigative bodies as "the officials to whom the law grants such status and any other official who must carry out the investigative functions established by this Code".[809] The roles of police investigative bodies are further outlined in the Organic Law for the Scientific, Criminal and Criminological Investigator Corps (CICPC).[810] In addition to the ordinary police investigative bodies, that law defines specialized investigative bodies, which include the National Bolivarian Armed Forces (FANB) and other specific bodies enumerated under the law.[811]

---

http://www.telemadrid.es/noticias/internacional/Maduro-amenaza-carcel-nombrados-Parlamento-0-1924007605--20170724030235.html; El País, Maduro anuncia que detendrá "uno a uno" a los 33 magistrados de la oposición, 24 July 2017, available at: https://elpais.com/internacional/2017/07/23/america/1500838660_930864.html

802 See YouTube video, Diosdado Cabello da más detalles sobre red de extorsión de Germán Ferrer, 16 August 2017, available at: https://www.youtube.com/watch?v=jkpTh1JfZ3A

803 YouTube video, Fiscal Tarek William Saab, rueda de prensa sobre red de extorsión de Germán Ferrer, 16 August 2017, minute 8.00, available at: https://www.youtube.com/watch?v=II2GBXdq_Do. See also Tweet by the Public Prosecutor's Office, 16 August 2017, available at: https://twitter.com/MinpublicoVE/status/897864534647599104

804 YouTube video, Fiscal Tarek William Saab, rueda de prensa sobre red de extorsión de Germán Ferrer, 16 August 2017, minute 0.30.

805 2012 Criminal Procedure Code, art. 514.

806 2012 Criminal Procedure Code, art. 114.

807 2012 Criminal Procedure Code, art. 266.

808 2012 Criminal Procedure Code, art. 266.

809 2012 Criminal Procedure Code, art. 113. In the case of SEBIN, see also Decreto No. 2.524, 1 November 2016, art. 20, available at: https://www.franciscosantana.net/2016/11/nueva-reforma-del-reglamento-organico.html. This decree authorizes the participation of SEBIN in criminal investigations. However, this instrument is a Presidential Decree, not a law. In the case of DGCIM, see also 1999 Constitution, art. 329; Organic Law of the National Bolivarian Armed Forces, Presidential Decree No. 1439, art. 4(21), Published in the Official Gazette No. 6156 of 17 November 2014, art. 65, available at: https://pandectasdigital.blogspot.com/2016/07/ley-organica-de-la-fuerza-armada.html; and 2012 Organic Law for the Scientific, Criminal and Criminological Investigator Corps, Published in the Official Gazette No. 351.789 of 5 January 2007, art. 12(1).

810 2012 Organic Law of the Scientific, Criminal and Criminological Investigator Corps (CICPC), Published in the Official Gazette No. 351.789 of 5 January 2007, arts. 24 and 25.

811 Such special organs are listed as: 1. The Office of the Comptroller General of the Republic; 2. The competent body for identification and foreigners; 3. The bodies dependent on the national executive in charge of civil protection and disaster management; 4. The fire brigades and emergency management; 5. The police intelligence bodies; 6. The heads and officers of tax shelters; 7. The bodies and entities of environmental protection; 8. The bodies and entities with competence in the financial system, environmental protection and socio-productive matters; 9. The captains or commanders of aircraft registered in the Bolivarian Republic of Venezuela, with respect to crimes

182. Under the Organic Law of the CICPC, the police investigative bodies are responsible for defining and executing the "police scientific investigation plan" for the discovery and verification of a crime, its characteristics, and the identification of its perpetrators, participants and victims.[812] The CICPC and other police are to notify the Public Prosecutor's Office "in a permanent and timely manner" of the development and execution of the police scientific investigation plan.[813] The police investigative bodies shall also carry out any other action required by the Public Prosecutor's Office, even if it is not reflected in the investigation plan, for the detection and verification of a crime, the identification of its perpetrators, participants and victims, and the securing of active and passive objects.[814]

183. The Mission has received information about irregularities in the way that the CICPC prepares its reports, with a view to shielding some of its members from accountability A former CICPC detective told the Mission that there are certain names that will never appear in a criminal investigation record. He said that police officers know this; in his words "it is a code that you learn on the job".[815] He said that in particular, chiefs would not allow their names to appear in investigation reports.[816] The former CICPC detective explained that within each police bureau, there is a number one (the Bureau Chief), a number two (a Supervisor) and a number three (the Chief of Investigations).[817] All police officers under the Chief of Investigations have to pass their investigation reports through him or her. The Chief of Investigations "has to know everything" and will delete names as necessary to protect himself or herself and superiors.[818]

184. As the Mission has noted previously, the civilian intelligence agency SEBIN and the military intelligence agency DGCIM carry out investigations into real or perceived political opponents.[819] One former CICPC detective told the Mission that in political or otherwise sensitive high profile cases, the Public Prosecutor's Office would take the case from CICPC and assign it to SEBIN or DGCIM.[820] In these cases, the Superior Prosecutor would call the CICPC Director asking for a specific case file and would send a prosecutor to come and pick it up.[821] Former public prosecutors with whom the Mission spoke informed that in certain cases, intelligence agencies have more or less "carte blanche" to carry out the investigations and the Public Prosecutor's Office steps in as necessary to "ratify" the decisions.[822]

185. A former prosecutor told the Mission that, following the appointment of Tarek William Saab as Chief Prosecutor, members of DGCIM and SEBIN told prosecutors that they would be carrying out the investigations into sensitive cases involving high-profile actors, "effectively saying that they were in charge of the criminal action".[823] In the cases investigated by the Mission, the actions carried out by the intelligence agencies include surveillance, collecting evidence, preparing expert reports, forensic analysis, carrying out arrests, interrogating suspects, holding defendants in pre-trial detention and testifying in court. The sister of one defendant summed it up like this: "We have the bizarre circumstance

committed on such aircraft during flight. 10. The captains of vessels flying the flag of the Bolivarian Republic of Venezuela, with respect to crimes committed on them during their voyage. 11. Autonomous service units, sections, departments and other units of universities and university technological and scientific institutes of a public and private nature, dedicated to scientific research and development. 12. The units responsible for the security of railway and underground transport systems, with respect to offences committed on their premises. 13. The Bolivarian National Armed Forces. 14. Others who have been granted this competence by special law.

812 2012 Organic Law of the CICPC, art. 35(1).
813 2012 Organic Law of the CICPC, art. 35(2).
814 2012 Organic Law of the CICPC, art. 35(3).
815 Interview AAIV036, 5 July 2021.
816 Interview AAIV036, 5 July 2021.
817 Interview AAIV036, 5 July 2021.
818 Interview AAIV036, 5 July 2021.
819 See A/HRC/45/CRP.11, para. 267.
820 Interview AAIV036, 12 April 2021.
821 Interview AAIV036, 12 April 2021.
822 Interview AAIV071, 6 July 2021; Interview AAIV042, 7 May 2021. See also Interview AAIV085, 6 August 2021.
823 Interview AAIV071, 6 July 2021.

that DGCIM, (acting as) the investigative body of the Public Prosecutor's Office, is simultaneously the torturer, the jailer, the one that transports you to the tribunal, and also the body of evidence, as its officials are often the only witnesses offered by the Public Prosecutor's Office."[824]

186. The failure of intelligence bodies to release detainees who have been granted substitute precautionary measures or have served their sentence, despite repeated court orders, is indicative of these bodies' willingness to operate outside judicial control.[825] As noted in the Mission's 2020 report, a former SEBIN employee confirmed to the Mission that, "there were people in El Helicoide with release orders and they wouldn't let them out".[826] In another case, a defence lawyer claimed to have been told by a SEBIN member that, "We are like a parallel court here. The orders that come from the tribunal first have to go to Plaza Venezuela,[827] and that is where they decide if they are released or not. Headquarters will call the El Helicoide Director."[828]

187. In other cases, the intelligence bodies have held individuals for prolonged periods without charges. Juan Pedro Lares, son of opposition mayor Omar Lares, was held in SEBIN's El Helicoide between 30 July 2017 and 11 June 2018 without charges.[829] In another example, Doctor Leonard Hinojosa was detained in Zulia on 26 October 2020 and then held in La Boleíta in Caracas until 12 March 2021 without being presented before a judge or informed of the reason for his detention.[830] On 10 November 2020, two weeks after his arrest, a *habeas corpus* request was filed before the Criminal Judicial Circuit of the Caracas Metropolitan Area. The court requested information from DGCIM but it failed to respond; nonetheless, the judge did not notify the complainants. The Mission reported these facts in its 10 March 2021 Oral Update to the Human Rights Council, while Doctor Hinojosa remained in detention.[831] Doctor Leonard Hinojosa was released on 12 March 2021, nearly five months after his arrest, never having been charged.[832]

188. On 12 May 2021, President Maduro adopted Decree 4.601 ordering the transfer, within 30 days, of detainees under DGCIM and SEBIN custody to detention centres of the Ministry of Penitentiary Services.[833] The time period was extended an additional 30 days via

824 Statement DDDOC032, received 11 January 2021.

825 For example: Antonia Turbay (release ordered 26 July 2019, released via political pardon on 1 August 2020); Gregory Hinds (release ordered 2 April 2018, released via political pardon on 1 June 2018); Geraldine Chacon (release ordered 2 April 2018, released via political pardon on 1 June 2018); Luis Hernando Lugo Calderón (sentence completed 20 October 2019, released November 2020); Petter Alexander Moreno Guevara (sentence completed 20 October 2019, released November 2020); María Auxiliadora Delgado (release ordered 7 June 2019, released on 2 October 2019 and rearrested on same day); Juan Carlos Marrufo (release ordered 7 June 2019, released on 2 October 2019 and rearrested on same day); Inés González (release ordered on 20 November 2014, not released, substitute judge revoked order on 25 November 2014); Lessi Marcano (release ordered on 26 November 2015, released on 26 February 2016); Karen Palacios (release ordered on 18 June 2019, released on 16 July 2019).

826 Interview C2HH03, 10 June 2020.

827 A/HRC/45/CRP.11, para. 292. Plaza Venezuela is the SEBIN headquarters. As described in the Mission's 2020 report, it has an extensive detention area, referred to as La Tumba (the Tomb). It is a basement located five floors below ground initially designed as offices for the Caracas Metro. La Tumba has approximately seven cells.

828 A/HRC/45/CRP.11, para. 559.

829 See Provea, Juan Pedro Lares: Ciudadano colombiano secuestrado por el SEBIN desde el 30 de julio, 11 August 2017, available at: https://provea.org/actualidad/juan-pedro-lares-ciudadano-colombiano-detenido-por-el-sebin-se-encuentra-desaparecido-desde-el-30-de-julio/ ; Provea, Entrevista Provea a Juan Pedro Lares, 15 June 2018, available at: https://provea.org/entrevistas/entrevista-provea-juan-pedro-lares-me-rociaron-con-gasolina-y-me-decian-que-iban-a-prenderla-si-no-les-decia-donde-estaba-mi-padre/

830 Interview DDIV019, 23 February 2021; Interview DDIV023, 3 March 2021.

831 Statement by Marta Valiñas, Chairperson of the Independent International Mission on the Bolivarian Republic of Venezuela, at the 46th session of the Human Rights Council, 10 March 2021.

832 Interview DDIV023, 3 March 2021; Interview DDIV019, 23 February 2021.

833 Presidential Resolution No. 4.601, Published in the Official Gazette of 12 May 2021, available at: https://fr.scribd.com/document/508240552/Gaceta-Oficial-42-125-Sumario; Prolonged for a period of

a second presidential decree.[834] According to information from the organization Foro Penal, prior to the adoption of the decree, detainees were already being moved out of DGCIM detention centres, including Boleíta.

189. They registered 16 detainees transferred from DGCIM between 30 April and 1 May 2021 and an additional 18 transferred after the decree came into force on 12 May 2021.[835] From DGCIM, some defendants were transferred to Ramo Verde and some to Fuerte Tiuna, which is also under DGCIM custody.[836] As of the time of writing, 19 detainees remain in DGCIM facilities (16 in Caracas and 3 in Bolivar).[837] Foro Penal did not document any transfers of detainees from SEBIN after 12 May 2021. As at the time of writing, 17 detainees remain in SEBIN facilities (15 in Caracas and 2 in Cojedes).[838]

190. Even after the decree's adoption, individuals arrested continued to be taken to SEBIN El Helicoide, such as in the case of the three detainees from the Fundaredes organization and to DGCIM Boelíta, as in the case of an individual detained on 19 July 2021.[839]

***Box 4: The case of Carlos Marrón***

Carlos Marrón had been living in Florida in the United States for around seven years when a family member from his native Venezuela telephoned him on 10 April 2018 and informed him that his father had been kidnapped.[840] A video purporting to show DGCIM members carrying out the kidnapping was posted to the internet on 13 April 2018.[841] According to information later recounted by Mr. Marrón's father, a group of unknown individuals held him in a concrete cell for four days and told him that if his son did not arrive to Venezuela, they were going to kill him.[842]

Intent upon securing his father's release, Mr. Marrón arrived at Simon Bolivar International Airport near Caracas the following day, 11 April 2018. Initially the Marrón Colmenares family believed the kidnapping to be an ordinary criminal act, resolvable with a ransom payment. Mr. Marrón later told the Mission that DGCIM members had informed him that government officials had orchestrated the kidnapping to induce his return to Venezuela.[843]

30 additional days via Presidential Resolution No. 4.528, Published in the Official Gazette of 11 June 2021, available at: https://www.ojdt.com.ve/gaceta-oficial/42147-11-06-2021.

834 Presidential Resolution No. 4.528, Published in the Official Gazette of 11 June 2021, available at: https://www.ojdt.com.ve/gaceta-oficial/42147-11-06-2021.

835 Information received from Foro Penal, 27 August 2021.

836 Information received from Foro Penal, 27 August 2021. See also, Cima360news, A la prisión de Ramo Verde en los últimos días habrían sido llevados al menos 14 hombres y dos mujeres, 5 June 2021, available at: https://www.cima360news.com/lista-militares-enviados-ramo-verde/

837 Information received from Foro Penal, 27 August 2021.

838 Information received from Foro Penal, 27 August 2021.

839 Information received from Foro Penal, 27 August 2021 (name on file with the Mission).

840 Interview AAIV079, 16 June 2021.

841 See Tweet by AlbertoRodNews, 13 April 2018, available at: https://twitter.com/AlbertoRodNews/status/984808307767562241

842 Tweet by AlbertoRodNews, 13 April 2018.

843 Interview AAIV079, 16 June 2021. Interview AAIV079, 16 June 2021. On the day after Mr. Marrón's arrest, 12 April 2018, the Chief Prosecutor spoke on national television identifying him as the owner of DolarPro.com website ("a page on the margin of the law") and referring to him as "a real delinquent". See YouTube video, Fiscal Tarek William Saab: Detienen a dueño de portal Dolar Pro (DolarPro), 12 April 2018, available at: https://www.youtube.com/watch?v=XWRik9MK88Y

Upon his arrival to the airport, DGCIM agents arrested him.[844] Despite the fact that no arrest warrant was presented to Mr. Marrón, a warrant for his arrest issued by the Third Criminal Control Court[845] and the corresponding request from the prosecution,[846] dated 10 and 9 April 2018, respectively, are part of the case file. The warrant was for the charges of publication of false information about the exchange rate,[847] criminal association,[848] and money laundering.[849]

The Mission observed inconsistencies in the dates of the arrest warrant and supporting documents, suggesting that they were altered to appear to have been issued prior to Mr. Marrón's arrest. The date of the arrest order was 10 April 2018, although letters transmitting supporting documents from both the Public Prosecutor's Office and from DGCIM, attached to the alleged 10 April warrant, were dated 12 April 2018. In addition, a timestamp dated 12 April 2019 acknowledging the Third Criminal Control Court's receipt of the investigation record was drawn over with a "09", to appear as if it was received on 9 April, rather than on 12 April.[850]

The only supporting evidence referred to in the arrest request was a DGCIM criminal investigation record, dated 2 April 2018.[851] DGCIM's investigation record had three supporting attachments totalling three and a half pages.[852] This included 1) information from GoDaddy.com indicating that the DolarPro website domain was registered to Carlos Marrón; 2) a photograph of Carlos Marrón and handles to his Facebook, Instagram and Twitter accounts; and 3) a photograph of Mr. Marrón's badge from his participation at the Miami Bitcoin Miner's Meetup in January 2018.

The DGCIM investigation record concluded that Mr. Marrón was the owner of the website DolarPro.com "in charge of destabilizing the economy with unreal prices of the dollar's paper economy".[853] There was no information presented in the DGCIM criminal investigation record to support the conclusion that the website had this purpose or effect. The DGCIM report made the legal conclusion that Mr. Marrón was violating the Law against Foreign Exchange Crimes.[854]

DGCIM brought Mr. Marrón to their headquarters in Boleíta. After several hours, at around midnight, DGCIM's Director of Special Operations started to question him.[855] Mr. Marrón told the Mission that DGCIM members began torturing him, while he was blindfolded, including punches and kicks, beatings with wooden boards, asphyxiation with a plastic bag and water, being sprayed with teargas and cutting the bottom of his feet.[856] The beatings to his head were so severe that Mr. Marrón lost consciousness at several points.[857]

[844] DGCIM Police Report, 11 April 2018. The DGCIM agents seized his credit and debit cards and his personal belongings. No record of the cards appeared in the chain of custody reflected in the case files. This information was brought to the attention of the courts on several occasions. See Initial Appearance Record, 13 April 2018.

[845] Third Criminal Control Court of Caracas, Arrest Order, No. C-19.563.18, 9 April 2018.

[846] Public Prosecutor's Office Arrest Warrant request, 9 April 2018.

[847] Presidential Decree No. 2167, Foreign Exchange and Illegal Practices Regime, Published in Official Gazette No. 6210 of 30 December 2015, art. 24.

[848] Law on Organized Crime and Financing of Terrorism, arts. 27 and 37.

[849] Law on Organized Crime and Financing of Terrorism, art. 35.

[850] Public Prosecutor's Office Arrest Warrant Request, 12 April 2018.

[851] DGCIM Criminal Investigation Record, 2 April 2019.

[852] DGCIM Criminal Investigation Record, 2 April 2019.

[853] DGCIM Criminal Investigation Record, 2 April 2019.

[854] DGCIM Criminal Investigation Record, 2 April 2019.

[855] AADOC016, 2 February 2020.

[856] Interview AAIV033, 31 March 2021.

[857] AADOC016, 2 February 2020.

After detaining him in a cell for several hours, the following day, DGCIM members again called Mr. Marrón to the interrogation room where the torture continued.[858] After several hours, Carlos Marrón relented and agreed to sign a document accepting responsibility for the accusations put to him.[859] DGCIM members also forced Mr. Marrón to reveal the passwords to his computer, phone and bank accounts, and over the next several days over USD $100,000 was withdrawn from several accounts.[860]

Following the interrogation, Mr. Marrón was transferred to a cell known as "the crazy room" (*el cuarto de los locos*)[861] and held in a space with no bathroom access measuring less than 2 x 2 meters with two other prisoners. After over a month, he was moved again within Boleíta and held incommunicado for around two months, without access to lawyers or family.[862]

The day after Mr. Marrón's arrest, the evening of 12 April 2018, Chief Prosecutor Tarek William Saab provided an address on national television identifying Mr. Marrón as the owner of DolarPro.com website, which he described as "a page on the margin of the law", and referring to him as "a real delinquent".[863] The Chief Prosecutor said the "central objective" of the website was to promote "financial terrorism" and "economic speculation" in order to "destroy the Venezuelan Bolívar".[864]

On 13 April 2018, Carlos Marrón was presented before the judge of the Third Criminal Control Court in Caracas for the initial appearance.[865] He said that, before leaving Boleíta, DGCIM members forced him to sign a document saying that he had received no physical, verbal or psychological mistreatment.[866] At the initial appearance, the prosecution[867] charged Mr. Marrón with three crimes, all of which are non-military crimes: publication of false information about the exchange rate,[868] criminal association,[869] and money laundering.[870] At the hearing, the prosecutors referred to the same arguments and evidence from the DGCIM investigation report of 2 April 2018.[871] The judge ordered the continued pre-trial detention of Mr. Marrón[872] and the continued embargo of his bank accounts and assets.[873]

858 Interview AAIV033, 31 March 2021.
859 Interview AAIV033, 31 March 2021.
860 Interview AAIV033, 31 March 2021. The Mission has reviewed a statement from Coinbase (a crypto currency exchange platform) confirming that withdrawals were made to Mr. Marrón's account from within Venezuela between 11 April and 18 April 2018, resulting in a negative balance to the account and money owed to the company. Email from CoinBase support to Carlos Marrón, 22 October 2020, document on file with the Mission.
861 See A/HRC/45/CRP.11, para. 333.
862 A/HRC/45/CRP.11, para. 333.
863 See YouTube video, Fiscal Tarek William Saab: Detienen a dueño de portal Dolar Pro (DolarPro), 12 April 2018, available at: https://www.youtube.com/watch?v=XWRik9MK88Y
864 YouTube video, Fiscal Tarek William Saab: Detienen a dueño de portal Dolar Pro (DolarPro), 12 April 2018.
865 Interview AAIV058, 15 June 2021.
866 Statement AADOC016, 2 February 2020.
867 Seventy-Third and Seventy-Fourth Prosecutors from the National Anti-Money Laundering and Financial Crime Unit of the Public Prosecutor's Office.
868 Presidential Decree No. 2167, Foreign Exchange and Illegal Practices Regime, Published in Official Gazette No. 6210 of 30 December 2015, art. 24.
869 Law on Organized Crime and Financing of Terrorism, arts. 27 and 37.
870 Law on Organized Crime and Financing of Terrorism, art. 35.
871 Initial Appearance Record, 13 April 2018. See also Third Criminal Control Court of Caracas, Judicial Resolution, 13 April 2018.
872 Third Criminal Control Court of Caracas, Judicial Resolution, 13 April 2018, Third Point of Resolution.
873 Third Criminal Control Court of Caracas, Judicial Resolution, 13 April 2018, Fourth Point of Resolution.

The prosecution's indictment[874] of 28 May 2018 requested the Third Control Court to admit the charge of dissemination of false information on the exchange rate, offering seven pieces of evidence, five of which were from DGCIM.[875] The indictment failed to submit evidence with respect to the charges of money laundering and criminal association. The preliminary hearing was cancelled 22 times and never held.[876]

A few months after the presentation of the indictment, on 2 August 2018, the National Constituent Assembly repealed the Foreign Exchange Regime and Illegal Practices Decree, which typified the crime of dissemination of false information on the exchange rate.[877] On 17 August 2018, Mr. Marrón's legal team submitted a request to the Third Criminal Control Court for his immediate release, arguing that the legal basis for his detention had ceased to exist.[878]

Following a denial of the request[879] and a subsequent appeal, on 22 January 2019, the Sixth Appeals Court of the Criminal Judicial Circuit of Caracas dismissed the charges of money laundering and criminal association due to lack of foundation and maintained the charges of publication of false information about the exchange rate.[880] The Appeals Court maintained the order for pre-trial detention.[881] The court noted that the DGCIM investigation report provided sufficient evidence to sustain that charge.

[874] Public Prosecutor's Office Indictment, Document No. MP-124678-2018, 28 May 2018 (presented by the Seventy-Third and Seventy-Fourth Prosecutors from the National Anti-Money Laundering and Financial Crime Unit).

[875] Public Prosecutor's Office Indictment, 28 May 2018. 1. DGCIM criminal investigation file of 2 April 2018 indicating that the DolarPro domain name was registered to Carlos Marrón. 2. DGCIM police report dated 8 April 2018, in which the DGCIM investigator said he had confirmed Mr. Marrón's identity by crossing the email address registered to GoDaddy.com with tax records. 3. DGCIM police file dated 11 April 2018 describing the arrest of Mr. Marrón and the items seized from him. 4. National Financial Intelligence Unit document dated 13 April 2018 submitting a financial report on behalf of Carlos Marrón listing his different financial accounts (illegible and not explained in the indictment). 5. DGCIM document entitled "expert report" of 23 May 2018 describing the purpose of the DolarPro website; the report noted that that the site was out of service as of 25 April 2018 and that site had been registered to another person following Mr. Marrón's arrest. The other evidence included information from the State migration authority (SAIME) confirming the email address Mr. Marrón had used in his application for a new passport and a print out from the Central Bank of Venezuela dated 23 March 2018 listing the exchange rates of different currencies.

[876] Including on the following dates for the following reasons: 1. 26 June 2018, Lack of courtroom availability. 2. 26 July 2018, Lack of courtroom availability. 3.16 August 2018, Lack of courtroom availability. 4. 17 September 2018, Lack of courtroom availability. 5. 17 October 2018, Failure to transport defendant. 6. 19 November 2018, Failure to transport defendant. 7. 4 December 2018, Failure to transport defendant. 8. 10 January 2019, Public Prosecutor's Office did not appear. 9. 12 February 2019, Failure to transport defendant. 10. 20 March 2019, Failure to transport defendant. 11. 23 April 2019, Failure to transport defendant. 12. 30 April 2019, Failure to transport defendant. 13. 31 May 2019, Failure to transport defendant. 14. 2 July 2019, Failure to transport defendant. 15. 5 August 2019, Failure to transport defendant. 16. 27 August 2019, Lack of courtroom availability. 17. 2 October 2019, Failure to notify the defendant. 18. 11 November 2019, Failure to notify the defendant. 19. 5 December 2020, Lack of courtroom availability. 20. 16 January 2020, Public Prosecutor's Office did not appear. 21. 6 February 2020, Public Prosecutor's Office did not appear. 22. 12 March 2020, Public Prosecutor's Office did not appear.

[877] National Constituent Assembly, Constituent Decree, Published in the Official Gazette No. 41452 of 2 August 2018, available at: https://www.cpzulia.org/ARCHIVOS/Gaceta_Oficial_02_08_18_num_41452.pdf

[878] Request by the Defence to lift the pre-trial detention measures, 17 August 2018. The defence cited article 49(6) of the 1999 Constitution, affirming the principle of legality, which states that no one may be punished for acts or omissions that are not defined in existing law.

[879] Third Criminal Control Court Decision, 31 October 2018.

[880] Sixth Appeals Court Decision, 22 January 2019.

[881] Sixth Appeals Court Decision, 22 January 2019.

> At the initial appearance, the judge had ordered Mr. Marrón's detention at the "Simon Bolívar Centre for Foreigners under Trial", but DGCIM officials brought him back to DGCIM Boleíta.[882] Mr. Marrón spent the last year and a half in detention in an underground cell there, until his release under precautionary measures on 6 January 2020. The basement had artificial lighting 24 hours a day, with no ventilation or windows.[883] In almost 21 months' detention, Mr. Marrón was allowed outside only twice. His weight dropped from 90 to 58 kilograms.[884]

# IV. Acts and Omissions of Judges and Prosecutors

191. The 1999 Constitution, as the supreme law in Venezuela, enshrines a series of principles which guide the interpretation of criminal procedural rules.[885] These include the presumption of innocence, right to a defence, procedural guarantees and the obligation to ensure reparations to victims.[886] Similarly, the Criminal Procedure Code incorporates rights and procedural guarantees, which apply to parties involved in proceedings, particularly the accused.[887] This includes the right of due process and that no one may be convicted without a prior, oral and public trial, conducted before an impartial judge or tribunal without undue delay or unnecessary formalities.[888]

192. The Mission's investigations during the period under review revealed that, in practice, the implementation of the Criminal Procedure Code was marred with irregularities. More specifically, in cases of arbitrary detentions, the Mission's investigations have shown various and compounding irregularities committed by prosecutorial and judicial actors at all stages of the criminal process.[889] The Mission investigated cases involving 183 detentions (153 men and 30 women) from 2014 to the time of writing, which revealed, based on reasonable grounds to believe, patterns of human rights violations in criminal cases against real or perceived opponents.[890] In 122 cases, individuals remained subject to judicial proceedings at the time of writing this report, with 95 still in detention and 27 with continued non-custodial substitute measures.[891]

---

882 Interview AAIV058, 15 June 2021; Interview AAIV034, 8 April 2021.

883 Statement AADOC016, 2 February 2020.

884 Statement AADOC016, 2 February 2020.

885 See Vásquez González, Magaly, Derecho Procesal Penal Venezolano, 2019, pp. 16, 23. Some of the principles enshrined in the 1999 Constitution had already been formulated in the Criminal Procedure Code which had come into effect a few months earlier, in June 1999. See Vásquez González, Magaly, Derecho Procesal Penal Venezolano, 2019, pp. 15-16; Acceso a la Justicia, Informe sobre el Desempeño del Ministerio Público (2000-2018), p. 10, available at: https://www.accesoalajusticia.org/wp-content/uploads/2020/04/Informe-sobre-el-desempe%C3%B1o-del-Ministerio-P%C3%BAblico-2000-2018.pdf

886 See 1999 Constitution, arts. 30, 49.

887 See Criminal Procedure Code, Preliminary Title.

888 The trial must safeguard all the rights and guarantees of due process enshrined in the Constitution and the laws, treaties, conventions and international agreements signed and ratified by Venezuela. 2012 Criminal Procedure Code, art. 1. See also 2012 Criminal Procedure Code, arts. 2-23.

889 See A/HRC/45/CRP.11, para. 348.

890 See A/HRC/45/CRP.11, paras. 243-245 for a detailed analysis on the profiles of groups of individuals targeted.

891 Further, of the 86 judges, prosecutors and defence lawyers who responded to the Mission's questionnaire, 98.2 per cent said that, in their experience, cases were not investigated and/or prosecuted in accordance with the law. Questionnaire, CCQR085, 13 July 2021; Questionnaire CCQR081, 13 July 2021; Questionnaire CCQR079, 12 July 2021; Questionnaire CCQR080, 12 July 2021; Questionnaire CCQR077, 12 July 2021; Questionnaire CCQR075, 12 July 2021; Questionnaire CCQR074, 12 July 2021; Questionnaire CCQR072, 12 July 2021; Questionnaire CCQR073, 12 July 2021; Questionnaire CCQR078, 12 July 2021; Questionnaire CCQR070, 12 July 2021; Questionnaire CCQR041, 12 July 2021; Questionnaire CCQR069, 12 July 2021; Questionnaire CCQR071, 12 July 2021; Questionnaire CCQR068, 12 July 2021; Questionnaire CCQR064, 12 July 2021; Questionnaire CCQR061, 12 July 2021; Questionnaire CCQR058, 12 July 2021; Questionnaire CCQR066, 12 July 2021; Questionnaire CCQR062, 12 July 2021; Questionnaire CCQR059, 12 July 2021; Questionnaire

193. The Mission has reasonable grounds to believe that, in addition to playing an active role in cases of arbitrary detentions, certain prosecutorial and judicial actors failed to prevent violations and crimes committed by other State actors against real or perceived opponents, in the context of criminal procedures. In accordance with Venezuelan law, public prosecutors,[892] Control Judges[893] and Trial Judges[894] have obligations to ensure that the rights of defendants are preserved throughout the various stages of the criminal process. Failure of these actors to fulfil these responsibilities directly contributed to impunity for human rights violations and crimes. This prevented victims of arbitrary detentions, enforced disappearances, torture and cruel, inhuman or degrading treatment, and sexual and gender-based violence perpetuated especially by State security and intelligence bodies from accessing effective legal recourse and judicial remedies.

194. It is important to recall at this stage that the findings made by the Mission are based on the standard of proof of "reasonable grounds to believe".[895] The Mission also recalls that while it has a mandate to investigate and document human rights violations, including the individuals and institutions involved in their commission, it is not a judicial body. Any determination of the individual responsibility for the violations documented – be it of a criminal, civil or administrative nature – must be made by the competent authorities, on the basis of proceedings which ensure the right to defence and all due process guarantees.

## A. Background on the Ordinary Criminal Procedure in Venezuela

195. The first instance of the ordinary criminal procedure is composed of four main phases, the preparatory phase, the intermediate phase, the trial phase and the execution phase, which occur in consecutive and chronological order. There is also a second instance or appellate

CCQR063, 12 July 2021; Questionnaire CCQR048, 12 July 2021; Questionnaire CCQR065, 12 July 2021; Questionnaire CCQR060, 12 July 2021; Questionnaire CCQR053, 12 July 2021; Questionnaire CCQR057, 12 July 2021; Questionnaire CCQR056, 12 July 2021; Questionnaire CCQR045, 12 July 2021; Questionnaire CCQR048, 12 July 2021; Questionnaire CCQR049, 12 July 2021; Questionnaire CCQR043, 12 July 2021; Questionnaire CCQR038, 12 July 2021; Questionnaire CCQR041, 12 July 2021; Questionnaire CCQR054, 12 July 2021; Questionnaire CCQR017, 16 June 2021; Questionnaire CCQR047, 12 July 2021; Questionnaire CCQR052, 12 July 2021; Questionnaire CCQR076, 12 July 2021; Questionnaire CCQR042, 12 July 2021; Questionnaire CCQR036, 12 July 2021; Questionnaire CCQR040, 12 July 2021; Questionnaire CCQR039, 12 July 2021; Questionnaire CCQR042, 12 July 2021; Questionnaire CCQR084, 12 July 2021; Questionnaire, CCQR086, 12 July 2021; Questionnaire CCQR083, 12 July 2021; Questionnaire CCQR035, 29 June 2021; Questionnaire CCQR034, 29 June 2021; Questionnaire CCQR033, 28 June 2021; Questionnaire CCQR032, 26 June 2021; Questionnaire CCQR031, 23 June 2021; Questionnaire CCQR030, 22 June 2021; Questionnaire CCQR029, 22 June 2021; Questionnaire CCQR028, 20 June 2021; Questionnaire CCQR027, 20 June 2021; Questionnaire CCQR025, 17 June 2021; Questionnaire CCQR023, 17 June 2021; Questionnaire CCQR022, 17 June 2021; Questionnaire CCQR021, 16 June 2021; Questionnaire CCQR020, 16 June 2021; Questionnaire CCQR018, 16 June 2021; Questionnaire CCQR017, 16 June 2021; Questionnaire CCQR016, 16 June 2021; Questionnaire CCQR015, 16 June 2021; Questionnaire CCQR014, 15 June 2021; Questionnaire CCQR013, 15 June 2021; Questionnaire CCQR012, 15 June 2021; Questionnaire CCQR011, 15 June 2021; Questionnaire CCQR010, 15 June 2021; Questionnaire CCQR044, 12 July 2021; Questionnaire CCQR024, 17 June 2021; Questionnaire CCQR009, 15 June 2021; Questionnaire CCQR008, 15 June 2021; Questionnaire CCQR007, 15 June 2021; Questionnaire CCQR019, 16 June 2021; Questionnaire CCQR006, 15 June 2021; Questionnaire CCQR005, 15 June 2021; Questionnaire CCQR003, 15 June 2021; Questionnaire CCQR002, 15 June 2021; Questionnaire CCQR004, 15 June 2021; and Questionnaire CCQR001, 6 June 2021.

892 1999 Constitution, art. 285(1), which states as one of the roles of the Public Prosecutor's Office "in judicial proceedings, to guarantee respect for constitutional rights and guarantees, as well as those deriving from international treaties, agreements and conventions signed by the Republic". In addition, art. 285(2) states that it is also required "to guarantee the speedy trail of the judicial process, the right to previous trial and due process".

893 2012 Criminal Procedure Code, art. 264.

894 See 2012 Criminal Procedure Code, arts. 324, 328, 345.

895 See para. 15 above.

phase to lodge a series of legal remedies against the first instance judgment on the merits, or against interlocutory decisions issued by any first instance court.

### 1. Preparatory Phase

196. This phase, also referred to as investigation phase, initiates the criminal procedure and aims to establish the truth and to collect all elements of conviction that will allow the prosecution to support an indictment, as well as exculpatory evidence which may assist the defence.[896] The Public Prosecutor's Office directs the investigation[897] and Control Judges must ensure compliance with the principles and guarantees established in the 1999 Constitution, in the Criminal Procedure Code, and in international treaties, conventions or agreements signed and ratified by Venezuela.[898]

197. There are three main ways in which criminal proceedings can be initiated: through an *ex officio* investigation; through the filing of a criminal complaint (*denuncia*); or through the filing of a complaint by the victim of a crime (*querella*).[899] The Public Prosecutor's Office is required to open investigations *ex officio* into crimes of public action.[900]

198. In accordance with the Criminal Procedure Code, reports on the investigative steps taken during the preparatory phase shall be kept under seal with respect to third parties, but not with respect to the accused and his or her defence lawyer (or the Public Defender's Office, where appropriate). Similarly, the victim or his or her lawyer with special power of attorney shall have access to the documents.[901] The Public Prosecutor's Office may order the total or partial confidentiality of the reports, for up to 15 days, if publicity would hinder the investigation.[902]

199. At the request of the Public Prosecutor's Office, the Control Judge may order personal precautionary measures, including pre-trial detention.[903] Should the arrest result in detention, then the accused shall be brought before the Control Judge within 48 hours of arrest for the initial appearance.[904] An individual arrested *in flagrante delicto* must also be brought before the judge within 48 hours after his or her apprehension.[905] When the Public Prosecutor's Office investigates an individual not in pre-trial detention, the prosecutor must request an initial appearance before the corresponding Control Judge once the preliminary investigation has been completed. The hearing shall take place within 48 hours after the suspect receives a summons to attend the hearing.[906]

200. At the initial appearance (*audiencia de presentación o imputación*),[907] the Public Prosecutor's Office informs the accused of the crime attributed to her or him and explains the circumstances under which the crime was suspected to have been committed.[908] An

---

[896] 2012 Criminal Procedure Code, arts. 262 and 263. This phase is aimed at gathering the elements to confirm or rule out commission of a crime and the possible perpetrators. See Supreme Tribunal of Justice, Criminal Appellate Chamber, Judgment No. 701, 15 December 2008, available at: http://historico.tsj.gob.ve/decisiones/scp/diciembre/701-151208-2008-A08-219.HTML ("hereinafter "Judgment No. 701").

[897] 2012 Criminal Procedure Code, art. 265. The Public Prosecutor's Office has an obligation to perform its duties in good faith, which is one of the ruling principles of the criminal procedure. See 2012 Criminal Procedure Code, art. 105; Interview CCIV004, 2 July 2021.

[898] 2012 Criminal Procedure Code, art. 264.

[899] 2012 Criminal Procedure Code, arts. 265 and 282.

[900] The Public Prosecutor's Office shall also ensure that objects related to the commission of the crime are secured. 2012 Criminal Procedure Code, art. 265.

[901] 2012 Criminal Procedure Code, art. 286.

[902] 2012 Criminal Procedure Code, art. 286.

[903] 2012 Criminal Procedure Code, art. 236.

[904] 2012 Criminal Procedure Code, art. 236.

[905] 2012 Criminal Procedure Code, art. 356, para. 4.

[906] 2012 Criminal Procedure Code, art. 356, para. 1.

[907] Also referred to as arraignment hearing or presentation hearing.

[908] With this, the Public Prosecutor's Office makes the legal prequalification of the facts. 2012 Criminal Procedure Code, art. 356, para. 2. The accused is also entitled to address the judge at any time during

accused person in pre-trial detention will be brought for the initial appearance, along with the prosecutor and the victim, where the judge will decide whether the accused will continue in pre-trial detention during the investigation phase or will be subject to a lighter measure.[909] If the accused remains at liberty, the judge shall decide whether to issue an order for pre-trial detention or, alternately, non-custodial precautionary measures, before proceeding to the preparatory phase.[910]

201. The time within which the Public Prosecutor's Office must conclude the preparatory phase depends on whether the accused is in pre-trial detention or has been granted substitute precautionary measures. If the accused is in pre-trial detention, the Public Prosecutor's Office must present its decision on proceedings (*acto conclusivo*) within 45 days of the judge's decision ordering or confirming the detention (at the initial appearance).[911]

202. If the accused is subject to non-custodial precautionary measures, the accused and/or the victim may request the Control Judge to set a reasonable timeframe for the Public Prosecutor's Office to conclude the investigation, once eight months have passed since the initial appearance.[912] Within 24 hours of receiving this request, the Control Judge shall convene a hearing, which shall be held within the next ten days, at which the judge shall set the date for the Public Prosecutor's Office to present its decision on the proceedings (*acto conclusivo*).[913] This period shall not be less than 30 days or more than 45 days following the request by the accused and/or victim.[914] In certain cases,[915] including those involving human rights violations and crimes against humanity, the reasonable period shall not be less than one year or more than two years.[916]

203. If upon expiration of the term set by the Control Judge, the Public Prosecutor's Office does not present a decision on the proceedings (*acto conclusivo*), the judge shall decree the judicial archiving (*archivo judicial*) of the proceedings. This entails the immediate cessation of all personal precautionary and security measures imposed, and the status of "accused" in the proceedings.[917] The investigation may only be reopened when new elements that justify it arise, upon prior request by the Public Prosecutor's Office and authorization of the judge.[918]

204. Once it has the necessary elements to conclude an investigation, the Public Prosecutor's Office must present its decision on the proceedings (*acto conclusivo*). When the accused is detained, it has 45 days to do this. When the accused is not detained, it has either 30 to 45 days from the initial appearance, or one to two years, as described above.

205. The options available to the Public Prosecutor's Officer when presenting its decision on the proceedings (*acto conclusivo*) are threefold as it can request: the opening of the

---

the investigation phase but shall always do it in the presence of his defence lawyer. Otherwise, the statement of the accused shall be null and void. 2012 Criminal Procedure Code, art. 132.

909 2012 Criminal Procedure Code, art. 236.

910 2012 Criminal Procedure Code, art. 236.

911 If the prosecution fails to file the indictment within this period, the Control Judge shall order the release of the detainee and may impose substitute precautionary measures. 2012 Criminal Procedure Code, art. 236.

912 2012 Criminal Procedure Code, art. 295. The Criminal Procedure Code refers to eight months after the date of the "individualization" of the accused (this is, the date when the individual acquired the status of accused by having been brought before the Control Judge during the initial appearance and informed of the charges against her or him).

913 2012 Criminal Procedure Code, art. 295.

914 2012 Criminal Procedure Code, art. 295.

915 Involving the investigation of crimes of intentional homicide; rape; crimes against the freedom, integrity and sexual indemnity of children and adolescents; kidnapping; corruption; crimes that cause damage to public property and the public administration; drug trafficking; money laundering; crimes against the financial system and related crimes; crimes with multiple victims; organized crime; human rights violations; crimes against humanity; crimes against the independence and security of the nation; and war crimes.

916 2012 Criminal Procedure Code, art. 295.

917 2012 Criminal Procedure Code, art. 296.

918 2012 Criminal Procedure Code, art. 296.

criminal trial through an indictment (*acusación*), a provisional dismissal (*archivo fiscal*), or to close or dismiss the case (*sobreseimiento*).[919]

- Indictments (*acusación*) are filed before the Control Judge when the Public Prosecutor's Office considers that the investigation provides serious grounds for the prosecution of the accused and there is a high probability of conviction at trial.[920] It transmits the case from the preparatory phase to the preliminary hearing/intermediate phase.
- Dismissals (*sobreseimiento*) end the proceedings and prevent new prosecutions against the accused (*res judicata)*, causing all previously issued precautionary measures to cease.[921] The Control Judge must decree the dismissal of the case within 45 days of the Public Prosecutor's Office request.[922] Should the Control Judge reject the request for dismissal, he or she will send the case file back to the Superior Prosecutor to ratify or rectify the prosecutor's request by means of a reasoned statement. If the Superior Prosecutor ratifies the request for dismissal, the judge will issue the dismissal; if the Superior Prosecutor does not agree with the request, he or she will order another prosecutor to continue with the investigation or to present a different decision on the proceedings (*acto conclusivo*).[923]
- Provisional dismissals (*archivo fiscal*) close the proceedings, without prejudice to the reopening of the case when new elements of conviction appear.[924] This decision ceases any precautionary measure ordered against the defendant.[925] The Public Prosecutor's Office can request this when results of investigations are insufficient to prosecute.

### 2. Intermediate Phase

206. This phase constitutes the procedural stage between the investigation phase and the oral and public trial phase. Its purpose is to determine whether there will be a trial, serving

[919] 2012 Criminal Procedure Code, arts. 297-308; Judgment N° 701; Supreme Tribunal of Justice, Criminal Appellate Chamber, Judgment N° 388, 6 November 2013, available at: http://historico.tsj.gob.ve/decisiones/scp/noviembre/158482-388-61113-2013-C12-116.HTML.

[920] The indictment must contain several formal requirements: 1) information that allows for the full identification and location of the accused and, if appropriate, the victim; 2) a clear, precise and substantiated account of the crime attributed to the accused; 3) the grounds for the indictment, with an indication of the evidence that supports it; 4) the applicable legal provisions; 5) a list of the evidence that will be tendered during trial, and 6) the request for the prosecution of the accused. 2012 Criminal Procedure Code, art. 308.

[921] 2012 Criminal Procedure Code, art. 301. The only exception is if the criminal prosecution was brought before an incompetent court or was dismissed due to defects. 2012 Criminal Procedure Code, art. 20. A case may be dismissed when: 1) the crime that is the object of the proceedings was not carried out; 2) the crime object of the proceeding cannot be attributed to the accused; 3) the acts or conduct charged are not typified; 4) although the crime charged is typified, there is cause for justification, innocence or lack of punishment; 5) the criminal action has been extinguished; 6) *res judicata* has been proven; or 7) there is no reasonable possibility of incorporating new data to the investigation, and there are no grounds to request the prosecution of the accused. 2012 Criminal Procedure Code, art. 300.

[922] 2012 Criminal Procedure Code, arts. 303 and 305. The order declaring the dismissal of the case must state: 1) the name and surname of the accused; 2) the description of the fact that is the object of the investigation; 3) the reasons of fact and law on which the decision is based, with indication of the legal provisions applied; and 4) the terms of the decision. Criminal Procedure Code, art. 306.

[923] 2012 Criminal Procedure Code, art. 305.

[924] 2012 Criminal Procedure Code, art. 297.

[925] 2012 Criminal Procedure Code, art. 297. The provisional dismissal shall be notified to the victim who may at any point address the Control Judge to request reconsideration of the decision. 2012 Criminal Procedure Code, art. 298. If the Control Judge considers that the victim's request is well founded, he or she must declare this and forward the case file to the Superior Prosecutor who shall then order another prosecutor to analyze the request and to order other investigative acts in order to present another decision on the proceedings (*acto conclusivo*). 2012 Criminal Procedure Code, art. 299.

as a filter to prevent the filing of unfounded and arbitrary indictments.[926] It involves informing the accused of the indictment filed against her or him and allowing the Control Judge to exercise control over the indictment, through an analysis of the factual and legal grounds that support the indictment brief.[927]

207. The proceeding enters this phase once the Public Prosecutor's Office files the indictment. Once this occurs, a preliminary hearing must be held within no less than 15 days and no more than 20 days after the filing, with the exact date set by the Control Judge.[928] The preliminary hearing may be deferred, in which case it shall be rescheduled within a period not exceeding 20 days.[929] The Control Judge is obliged to take all necessary steps to ensure that the hearing is held within the established time limit; if this is not done, the parties may seek disciplinary action against the person responsible for the failure to hold the hearing.[930]

208. Up to five days before the date set for the preliminary hearing, the prosecutor, the accused and, if applicable, the victim can file motions in order to present the evidence to be produced in the oral trial. The parties can also raise exceptions that have not been raised previously or are based on new facts; request the imposition or revocation of precautionary measures; and request the conditional suspension of the proceedings.[931] On the day of the hearing, the parties may present the grounds for their motions, either orally or in writing.[932] The parties will also offer the evidence that they will incorporate into the oral debate.[933]

209. After the hearing, the Control Judge analyzes the indictment and thearguments of the parties in order to decide on the parties' motions.[934] The judge shall determine the procedural viability of the indictment and the viability of the oral trial.[935] The Control Judge also rules on the admissibility of the presented evidence.[936] The Control Judge may also order the dismissal of the case, if the prosecution's indictment is rejected in full.[937]

210. If the indictment is admitted, the Control Judge must order the referral of the case to the trial phase by means of the order to open the case for trial *(auto de apertura a juicio*).

---

926 Supreme Tribunal of Justice, Constitutional Chamber, Judgment N° 1303 of 20 June 2005, available at: https://web.archive.org/web/20200801113823/http://historico.tsj.gob.ve:80/decisiones/scon/junio/1303-200605-04-2599.HTM (hereinafter "Judgment N° 1303").

927 Judgment N° 1303.

928 2012 Criminal Procedure Code, art. 309.

929 2012 Criminal Procedure Code, art. 309. The Criminal Procedure Code does not set a limit on how many times can the preliminary hearing be deferred.

930 Vásquez González, Magaly, Derecho Procesal Penal Venezolano, 2019, p. 218. The Code contains a set of rules dealing with any party's failure to appear at the preliminary hearing. 2012 Criminal Procedure Code, art. 310.

931 2012 Criminal Procedure Code, art. 311.

932 2012 Criminal Procedure Code, art. 312. See 2012 Criminal Procedure Code, art. 132.

933 Vásquez González, Magaly, Derecho Procesal Penal Venezolano, 2019, p. 224.

934 2012 Criminal Procedure Code, art. 313.

935 Supreme Tribunal of Justice, Constitutional Chamber, Judgment No. 452 of 24 March 2004, available at: http://historico.tsj.gob.ve/decisiones/scon/marzo/452-240304-02-1883.HTM. The Control Judge acts as the director of the process and can purge or decant the indictment or the criminal complaint. The judge shall exercise the effective control of the indictment through the examination of the substantive requirements on which it is based (including the elements of investigation gathered in the preparatory phase). Supreme Tribunal of Justice, Criminal Appellate Chamber, Judgment No. 538, 27 July 2015; available at: http://historico.tsj.gob.ve/decisiones/scp/julio/180113-538-27715-2015-C14-477.HTML. According to criteria established in a binding decision of the Constitutional Chamber of the Supreme Tribunal of Justice, the control of the indictment that the judge must exercise comprises both a formal (by verifying that the formal requirements for the admissibility of the indictment have been met) and a material/substantial aspect (by examining substantive requirements on which the Public Prosecutor's Office bases its indictment). If the prognosis of conviction is not evident, the Control Judge should abstain from issuing the order to open the case for trial. Judgment N° 1303.

936 This ensures that the Trial Judge has no prior knowledge of evidence when deciding the case in order to guarantee impartiality. Vásquez González, Magaly, Derecho Procesal Penal Venezolano, 2019, p. 224.

937 2012 Criminal Procedure Code, art. 313.

The order serves as a summary of proceedings for the Trial Judge and an account of the facts and legal qualifications that form the basis of the indictment.[938] This order puts an end to the intermediate phase and marks the start of the trial phase of the criminal procedure.

### 3. Trial Phase

211. Once the Control Judge sends the case file for trial, the Trial Judge must set a date for the opening hearing to take place, not earlier than ten nor later than fifteen working days, from receipt of the file.[939] During this stage, the parties may tender any additional evidence which may have arisen since the preliminary hearing.[940] The presentation of evidence[941] and the oral and public debate[942] take place in a certain order established by law. The trial is adversarial in accordance with the principle of contradiction, in which the parties exercise control and contradiction of the evidence to support their theory of the case.[943]

212. Once the evidence has been presented and the debate has taken place, the Trial Judge must deliberate and issue a judgment on the same day.[944] If it is necessary to defer the drafting of the judgment, due to the complexity of the matter or the late hours, only the operative part will be read in the courtroom and the Trial Judge will summarize the factual and legal grounds for the decision. The publication of the judgment shall be carried out no more than ten days after the delivery of the operative part.[945] The record of the debate shall contain all the details of the hearing and shall be issued by the court's secretary/clerk.[946]

213. The judgment may acquit the accused, convict him or her or dismiss the case. In the event of an acquittal, the Trial Judge must order the immediate release of the accused and suspend any other measures restricting personal liberty that may have been ordered against him or her.[947] In the event of a conviction, the Trial Judge must establish the corresponding penalty.[948] This puts an end to the third phase of the ordinary procedure. An appeal against the judgment issued triggers the beginning of the appeal phase.[949] Otherwise, the implementation or execution phase takes place.

### 4. Execution/Enforcement Phase

214. The purpose of this phase is to enforce the judgment issued at trial. In the event of a conviction, the accused is placed in the hands of the Execution Court, which is responsible for enforcing the penalty and imposing the measures provided by the Trial Court in its final judgment.[950] The Execution Court shall have competence to conduct and deal with: 1) all matters concerning the freedom of the convicted person, alternative formulas to the penalty imposed, redemption of the penalty for work and study, commutation and extinction of the penalty; 2) the accumulation of penalties in the event of several convictions handed down in different proceedings against the same person; and 3) periodic inspections of penitentiary establishments or surveillance and control of convicts summoned before the court.[951]

---

[938] 2012 Criminal Procedure Code, art. 314.
[939] 2012 Criminal Procedure Code, art. 325.
[940] 2012 Criminal Procedure Code, art. 326.
[941] 2012 Criminal Procedure Code, arts. 336-339, 341-342.
[942] 2012 Criminal Procedure Code, arts. 316 and 321.
[943] 2012 Criminal Procedure Code, arts. 18, 19. For this reason, the accused also has the right to testify during the trial. 2012 Criminal Procedure Code, arts. 132, 330.
[944] 2012 Criminal Procedure Code, arts. 344 and 347. The Criminal Procedure Code establishes a set of requirements with which the judgment must comply. 2012 Criminal Procedure Code, art. 346.
[945] 2012 Criminal Procedure Code, arts. 344 and 347.
[946] See 2012 Criminal Procedure Code, art. 350.
[947] 2012 Criminal Procedure Code, art. 348.
[948] 2012 Criminal Procedure Code, art. 349.
[949] The four legal remedies according to the Criminal Procedure Code are: 1) revocation or reversal (*revocación*) (arts. 436-438); 2) appeals (*apelación*) (arts. 439-450); 3) cassation (*casación*) (arts. 451-459); and 4) revision (*revisión*) (arts. 462-467).
[950] 2012 Criminal Procedure Code, art. 471.
[951] 2012 Criminal Procedure Code, art. 471. The Execution Court should deduct from the penalty the time already served, in order to determine exactly the date on which the sentence should end and, if

215. When deprivation of liberty is ordered, the Execution Court shall make the final calculation of the penalty.[952] The Execution Court shall then send the final calculation to the penitentiary establishment where the prisoner is held. If the person convicted is not deprived of liberty and the conditional suspension of the enforcement of the sentence is not applicable, the Court shall immediately order confinement in a penitentiary center.[953]

## B. Failure to ensure legality of detentions and precautionary measures

216. In accordance with the Criminal Procedure Code, at the initial appearance, the Control Judges are responsible for ensuring compliance with the principles and guarantees established in the 1999 Constitution, international treaties, conventions or agreements signed and ratified by Venezuela and in the Criminal Procedure Code. One of these is the right to personal liberty, which under the 1999 Constitution is inviolable.

### 1. Arrests in flagrante delicto

217. The Constitution states that no person shall be arrested or detained except by virtue of a court order, unless caught *in flagrante delicto*.[954] However, the Mission's investigation of cases revealed that illegal detentions occur with regularity. In addition, 71 per cent of respondents to the questionnaire said that they had been involved in a case in which a detention was made without an arrest warrant and the individual had not been caught *in flagrante delicto*.[955]

218. An *in flagrante delicto* arrest is one carried out while a suspected crime is in progress or has just been committed, or while a suspect is under police pursuit. These also include arrests in which the individual is apprehended shortly after the commission of the crime, in the same place or near the place of commission, or with weapons, instruments or other objects that give rise to a reasonable presumption that he or she is the perpetrator.[956] In these cases, any authority shall, and any private individual may, apprehend the suspect, provided the

---

applicable, the date from which the convicted person may request the conditional suspension of the execution of the sentence. 2012 Criminal Procedure Code, art. 474.

952 2012 Criminal Procedure Code, arts. 474 and 476.

953 2012 Criminal Procedure Code, art. 472.

954 1999 Constitution, art. 44.

955 Questionnaire CCQR081, 13 July 2021; Questionnaire CCQR079, 12 July 2021; Questionnaire CCQR080, 12 July 2021; Questionnaire CCQR077, 12 July 2021; Questionnaire CCQR078, 12 July 2021; Questionnaire CCQR070, 12 July 2021; Questionnaire CCQR041, 12 July 2021; Questionnaire CCQR069, 12 July 2021; Questionnaire CCQR071, 12 July 2021; Questionnaire CCQR068, 12 July 2021; Questionnaire CCQR064, 12 July 2021; Questionnaire CCQR061, 12 July 2021; Questionnaire CCQR058, 12 July 2021; Questionnaire CCQR066, 12 July 2021; Questionnaire CCQR059, 12 July 2021; Questionnaire CCQR063, 12 July 2021; Questionnaire CCQR048, 12 July 2021; Questionnaire CCQR053, 12 July 2021; Questionnaire CCQR057, 12 July 2021; Questionnaire CCQR056, 12 July 2021; Questionnaire CCQR045, 12 July 2021; Questionnaire CCQR048, 12 July 2021; Questionnaire CCQR043, 12 July 2021; Questionnaire CCQR038, 12 July 2021; Questionnaire CCQR054, 12 July 2021; Questionnaire CCQR017, 16 June 2021; Questionnaire CCQR047, 12 July 2021; Questionnaire CCQR052, 12 July 2021; Questionnaire CCQR042, 12 July 2021; Questionnaire CCQR036, 12 July 2021; Questionnaire CCQR040, 12 July 2021; Questionnaire CCQR039, 12 July 2021; Questionnaire CCQR042, 12 July 2021; Questionnaire CCQR083, 12 July 2021; Questionnaire CCQR035, 29 June 2021; Questionnaire CCQR034, 29 June 2021; Questionnaire CCQR032, 26 June 2021; Questionnaire CCQR031, 23 June 2021; Questionnaire CCQR030, 22 June 2021; Questionnaire CCQR029, 22 June 2021; Questionnaire CCQR028, 20 June 2021; Questionnaire CCQR027, 20 June 2021; Questionnaire CCQR022, 17 June 2021; Questionnaire CCQR020, 16 June 2021; Questionnaire CCQR018, 16 June 2021; Questionnaire CCQR017, 16 June 2021; Questionnaire CCQR016, 16 June 2021; Questionnaire CCQR015, 16 June 2021; Questionnaire CCQR012, 15 June 2021; Questionnaire CCQR044, 12 July 2021; Questionnaire CCQR009, 15 June 2021; Questionnaire CCQR008, 15 June 2021; Questionnaire CCQR007, 15 June 2021; Questionnaire CCQR019, 16 June 2021; Questionnaire CCQR005, 15 June 2021; Questionnaire CCQR003, 15 June 2021; Questionnaire CCQR004, 15 June 2021; Questionnaire CCQR001, 6 June 2021.

956 2012 Criminal Procedure Code, art. 234.

crime warrants a penalty of imprisonment.[957] Once apprehended, the suspect must be handed to the nearest authority, who shall make her or him available to the Public Prosecutor's Office within a period not exceeding 12 hours.[958] Prosecutors must decide whether to open a case within 48 hours of the arrest *in flagrante delicto.*

219. In its 2020 report, the Mission established a pattern in which members of State security and intelligence agencies used the figure of *in flagrante delicto* 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.[959] The Mission has documented numerous cases involving alleged misuse of *in flagrante delicto* arrests after which civilian detainees are presented before either ordinary or military tribunals.[960] This included, for example, the arrests of former opposition-led National Assembly members, who were declared by the Supreme Tribunal of Justice to be in a "permanent state" of committing crimes *in flagrante delicto* of treason of the homeland, conspiracy, instigation, rebellion, contempt of court and hate crimes, among others.

220. In one case investigated, SEBIN detained Voluntad Popular staff member and LGBTQI rights activist Rosmit Mantilla on 6 May 2014, deploying scores of officials to surround his parents' apartment building at 4 a.m. They presented a search warrant, but did not have an arrest warrant. Mr. Mantilla claims that they planted envelopes containing money labelled with the names of protest sites around the city.[961] The members of SEBIN arrested Mr. Mantilla and took him to SEBIN El Helicoide where he remained for two years.[962] Prosecutors later claimed that Mr. Mantilla had been arrested *in flagrante delicto* perpetrating the crimes of public incitement, arson, damage to public property, public intimidation, blocking public roadways and criminal association.[963]

221. Women's rights advocate Vannesa Rosales was arrested on 12 October 2020. The day before, she had assisted a 13-year-old girl to terminate a high-risk pregnancy resulting from rape, on the request of the girl and her mother. The following day, the mother approached the CICPC to report the rape. CICPC officers proceeded to arrest the alleged rapist, the girl's mother and Ms. Rosales, without warrants, and to search Ms. Rosales' house, seizing items belonging to Ms. Rosales and her partner without a warrant.[964] Although all three of these individuals were arrested well after the commission of the alleged crimes, only the alleged rapist was released on the grounds that he had not been arrested *in flagrante delicto*. When Ms. Rosales and the girl's mother were presented in court, the Control Judge sustained the manner of their arrest as *in flagrante delicto* and accepted the search without a warrant.[965]

222. In some of the cases documented, the reason provided for the arrest *in flagrante delicto* stands in contrast to the charges later filed before a judge at the detainee's initial court appearance, raising questions with respect to the prosecution's ability to investigate properly

[957] 2012 Criminal Procedure Code, art. 234.

[958] 2012 Criminal Procedure Code, arts. 234 and 373.

[959] See A/HRC/45/CRP.11, paras. 268. Cases documented include those of José Rommel Acevedo Montañez, Melanie Álvarez, Adolfo Baduel Josnars, Yordy Bermúdez, Diannet Blanco, Roland Carreño, Geraldine Chacón, Luis Ferrebuz, Oswaldo García Palomo, Alejandro Gómez, Layners Gutiérrez, Gregory Hinds, José Antonio Iabichuela, Yohana Carolina Izarra, Johny Mejías Laya, Víctor Navarro, Miguel Ambrosio Palacio Salcedo, Juan Carlos Requesens, Johan Reyes, Merino Rojas, Vannesa Yubisay Rosales Gautier, Stephanie Salazar, and Alberto José Salazar Cabañas. See A/HRC/45/CRP.11, para. 268.

[960] FFMV0124, FFMV0180, FFMV0040, FFMV0004, FFMV0059, FFMV0055, FFMV0166, FFMV0111, FFMV0007, FFMV0107, FFMV0062, FFMV0084, FFMV0177, FFMV0142, FFMV0073, FFMV0002, FFMV0161, FFMV0168, FFMV0152, FFMV0095, FFMV0081, FFMV0125, FFMV0167, FFMV0165, FFMV0016, FFMV0032.

[961] Interview C2EE14, 2 July 2020.

[962] Interview C2EE14, 2 July 2020.

[963] Interview DDIV064, 10 August 2021.

[964] Interview DDIV025, 11 March 2021; Interview DDIV061, 18 July 2021; CICPC Mérida Municipal Delegation, Criminal Investigation Record, 12 October 2020; CICPC Search Record, 12 October 2020.

[965] Initial Appearance Record, 16 October 2020.

the new charges in the 48-hour period between the arrest and the initial appearance. In the Azul Positivo case, following the search of the NGO's headquarters in January 2021 for evidence that "could affect the Armed Forces" related to a "punishable act of a military nature", which was not further explained,[966] Azul Positivo members were arrested by DGCIM and Zulia State intelligence officials *in flagrante delicto*.[967] At the initial appearance on 14 January 2021, civilian prosecutors charged them with the crimes of money laundering, undue use of smart cards, and criminal association.[968] The Control Judge sustained that the arrests had occurred *in flagrante delicto*.[969]

223. 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 unconstitutionality of detentions by police without a warrant.[970] The Constitutional Chamber reasoned that, given that the alleged violation of constitutional rights "derived from acts carried out by police agencies" ends once an arrest warrant is issued by the Control Court, such violation also ceases with that order.[971] It concluded that the violation "is not transferred to the judicial bodies which are responsible for determining the appropriateness of the provisional detention of the accused for the duration of the trial".[972]

224. The Mission documented several cases in which Control Courts invoked this decision to justify failure to exercise control over the legality of an *in flagrante delicto* arrest.[973] This, despite the fact that Judgment No. 526 is not binding on other courts, as it does not provide an interpretation on the content or scope of a constitutional norm or principle.[974] In the case of the detention of Geraldine Chacón and Gregory Hinds,[975] the Thirty-First Control Court ruled that the arrests had been illegal as Ms. Chacón and Mr. Hinds had not been apprehended *in flagrante delicto*, nor were they presented with arrest warrants.[976] Nevertheless, the Control Judge then cited Judgment No. 526 to hold that, as the illegalities were no longer ongoing, the case could proceed under the court's judicial orders, ordering the prosecutor to continue with its investigation, accepting the public incitement and conspiracy charges, and ordering the defendants' pre-trial detention.[977]

225. Then First Terrorism Control Judge relied upon the same judgment in the Drone Case (see Box 9, below) to justify the continued judicial proceedings and order continued pre-trial detention against a number of the defendants, despite their prior arbitrary arrest, which the Judge recognized as lacking a warrant or having involved an *in flagrante delicto* arrest.[978] The Mission considers that it is debatable whether the declaration of illegality of the detention prevents the prosecution from requesting that the initial appearance proceeds to give an opportunity to the judge to decide on the merits of the pre-trial detention. However, the

966 Twenty-Second Military Prosecutor, Request for Search Authorization relative to Case File: FM22-001-2021. Record DDDOC060, 12 January 2021.

967 Three members approached the office after learning of the search, while intelligence officials went to the other two members' houses to apprehend them hours later.

968 DDDOC062, 14 January 2021.

969 DDDOC062, 14 January 2021.

970 Supreme Tribunal of Justice, Constitutional Chamber, Judgment No. 526 of 9 April 2001, available at: http://historico.tsj.gob.ve/decisiones/scon/abril/526-090401-00-2294.HTM (hereinafter "Judgment No. 526").

971 Judgment No. 526 ("[…] *la presunta violación a los derechos constitucionales derivada de los actos realizados por los organismos policiales tienen límite en la detención judicial ordenada por el juzgado de control, de modo tal que la presunta violación de los derechos constitucionales cesó con esa orden, y no se transfiere a los organismos judiciales a los que corresponde determinar la procedencia de la detención provisional del procesado mientras dure el juicio*.").

972 Judgment No. 526.

973 FFMV0124; FFMV0055; FFMV0062; FFMV0168; FFMV0095; FFMV0172.

974 See 1999 Constitution, art. 335.

975 A/HRC/45/CRP.11, Case 7: Geraldine Chacón and Gregory Hinds (Community Ambassadors Foundation).

976 See Judgment No. 526.

977 A/HRC/45/CRP.11, Case 7: Geraldine Chacón and Gregory Hinds (Community Ambassadors Foundation).

978 First Special Tribunal for Terrorism, Preliminary Hearing Record, 1 June 2019.

Mission considers that the public officials responsible for the illegal arrests should be investigated and that any evidence obtained in connection with the illegal arrest or detention should also be considered illegal and not be used to sustain the pre-trial detention. This evidence shall also be precluded from being used at any stage of the proceedings, as discussed below.

### 2. Foundation for arrests and pre-trial detention

226. The Control Judge, at the request of the Public Prosecutor's Office, may only order pre-trial deprivation or restriction of liberty exceptionally[979] and when other precautionary measures are insufficient.[980] Despite this, in cases investigated involving real or perceived opponents, such orders for detention occurred regularly. Of the 170 cases involving initial appearances documented by the Mission, 146 resulted in pre-trial detention for the accused.[981]

227. The judge's decision to order pre-trial detention must be duly substantiated.[982] The requirements for determining the pre-trial detention of a suspect include: 1) the existence of a crime that warrants deprivation of liberty; 2) well-founded evidence that the accused was the author or participant in the crime; and 3) a reasonable presumption of risk of flight or obstruction of the investigation.[983] Nevertheless, the Mission reviewed the records of initial appearances in the cases investigated and noted that Control Judges often did not provide reasoning for their decisions regarding the existence of well-founded evidence or risk of flight or obstruction of the investigation.

228. For example, on the night of 12 September 2018, members of DGCIM arrested Carlos Julio Varón and Ricardo Prieto Parra, two firefighters from the Apartaderos, Mérida State

[979] 2012 Criminal Procedure Code, art. 229.

[980] 2012 Criminal Procedure Code, arts. 67 and 229.

[981] FFMV0091, FFMV0014, FFMV0079, FFMV0124, FFMV0033, FFMV0077, FFMV0092, FFMV0150, FFMV0116, FFMV0044, FFMV0180, FFMV0162, FFMV0040, FFMV0004, FFMV0096, FFMV0179, FFMV0141, FFMV0057, FFMV0059, FFMV0158, FFMV0056, FFMV0063, FFMV0068, FFMV0128, FFMV0139, FFMV0176, FFMV0036, FFMV0106, FFMV0023, FFMV0113, FFMV0003, FFMV0122, FFMV0123, FFMV0151, FFMV0099, FFMV0041, FFMV0166, FFMV0178, FFMV0089, FFMV0015, FFMV0071, FFMV0111, FFMV0076, FFMV0136, FFMV0138, FFMV0067, FFMV0007, FFMV0010, FFMV0070, FFMV0146, FFMV0157, FFMV0160, FFMV0173, FFMV0085, FFMV0154, FFMV0024, FFMV0051, FFMV0104, FFMV0107, FFMV0131, FFMV0061, FFMV0064, FFMV0080, FFMV0084, FFMV0130, FFMV0142, FFMV0073, FFMV0132, FFMV0133, FFMV0017, FFMV0117, FFMV0108, FFMV0075, FFMV0026, FFMV0149, FFMV0148, FFMV0002, FFMV0031, FFMV0161, FFMV0109, FFMV0069, FFMV0155, FFMV0027, FFMV0098, FFMV0054, FFMV0034, FFMV0078, FFMV0066, FFMV0082, FFMV0118, FFMV0115, FFMV0163, FFMV0094, FFMV0048, FFMV0175, FFMV0038, FFMV0042, FFMV0025, FFMV0120, FFMV0129, FFMV0011, FFMV0074, FFMV0114, FFMV0097, FFMV0045, FFMV0008, FFMV0174, FFMV0005, FFMV0152, FFMV0095, FFMV0081, FFMV0083, FFMV0086, FFMV0065, FFMV0030, FFMV0125, FFMV0159, FFMV0134, FFMV0156, FFMV0167, FFMV0101, FFMV0165, FFMV0006, FFMV0182, FFMV0135, FFMV0110, FFMV0112, FFMV0103, FFMV0127, FFMV0060, FFMV0171, FFMV0001, FFMV0088, FFMV0090, FFMV0169, FFMV0170, FFMV0019, FFMV0087, FFMV0052, FFMV0032, FFMV0043, FFMV0172, FFMV0072, FFMV0143, FFMV0144, FFMV0013

[982] 2012 Criminal Procedure Code, art. 240. The Control Judge must decide on the prosecutor's request within 24 hours and, if the requirements are met, shall issue an arrest warrant for the accused. 2012 Criminal Procedure Code, art. 236.

[983] 2012 Criminal Procedure Code, art. 236. In deciding on the danger of obstruction in the ascertainment of the truth, special consideration shall be given to the serious suspicion that the defendant: 1) will destroy, modify, conceal or falsify elements of conviction; and 2) will influence co-defendants, witnesses, victims, or experts to give false information or behave in a disloyal or reticent manner, or induce others to perform such behaviors, endangering the investigation, the truth of the facts and the realization of justice. 2012 Criminal Procedure Code, art. 238. Only substitute precautionary measures (different than deprivation of liberty) may be imposed when the crime in question entails a prison sentence that does not exceed three years and the accused has had a good pre-criminal conduct. 2012 Criminal Procedure Code, art. 239.

Fire Department.[984] The day before, a satirical video had been shared to a private WhatsApp group, in which an individual led a donkey through the fire station, pretending it were President Maduro conducting an inspection.[985] By the next day, the video had circulated more widely on social media. Members of DGCIM downloaded the video, then proceeded to arrest Mr. Varón and Mr. Prieto from the fire station sometime after 9 p.m. that night.[986]

229. Four days later, on 16 September 2018, Mr. Varón and Mr. Prieto were presented for their initial appearance before the Second Control Judge in Mérida state.[987] The prosecutor charged them with the aggravated crime of promotion and incitement to hate, with a maximum sentence of 20 years' imprisonment, and claimed they had been arrested *in flagrante delicto*.[988] There was no indication in the hearing record that the Control Judge undertook an analysis of risk of flight or interference with the investigation. The seriousness of the legal characterization chosen, along with a general reference to the set of provisions in the Criminal Procedure Code that govern pre-trial detention, were the foundation for the Control Judge to accept the arrest as *in flagrante delicto* and order pre-trial detention.[989]

230. In general, the precautionary measure may not exceed the minimum penalty established for each offence, nor exceed two years.[990] Exceptionally, the Public Prosecutor's Office may request an extension if there are serious reasons to justify the continuance of the precautionary measure beyond two years, so long as this extension does not exceed the minimum penalty established for the offence.[991] The accused may request the revocation or substitution of the precautionary measure of preventive deprivation of liberty as often as it sees fit.[992] Additionally, the judge must review *proprio motu* every three months the need to maintain precautionary measures and, when appropriate, replace them with less burdensome measures.[993]

231. Despite this, cases investigated revealed a pattern of refusal to reconsider or lift the pre-trial detention measures, even after the expiration of the two-year time limit. At the date of writing, of the 170 initial appearances reviewed by the Mission, 80 (47 per cent) resulted in the application of the precautionary measure of preventive detention for more than two years.

232. The defence team representing Luis Sánchez (Box 3, above) filed over ten requests for revision of the precautionary measure of deprivation of liberty as at the date of writing.[994]

---

984 DGCIM, Criminal Investigation Record, 12 September 2018.

985 The initially uploaded version of the video has since been removed. It was later shared widely in the media and can be seen reproduced on various sites. See, for example: YouTube video, El País, Hasta 20 años de prisión por burlarse de MADURO en las redes sociales, 18 September 2018, available at: https://www.youtube.com/watch?v=sa6qKpPWnAQ

986 DGCIM Criminal Investigation Record, 12 September 2018.

987 Second Control Court of Mérida, Initial Appearance Record (*Flagrancia*), 16 September 2018.

988 Articles 20 and 21 of the Law against Hate state, "Anyone who publicly or by any means suitable for public dissemination encourages, promotes or incites hatred, discrimination or violence against a person or group of persons, because of their real or presumed belonging to a certain social, ethnic, religious, political, sexual orientation, gender identity, gender expression or any other discriminatory motive, shall be punished with ten to twenty years' imprisonment, without prejudice to civil and disciplinary liability for damages caused." and "It shall be considered as an aggravating circumstance of any crime that is executed or increased by reason of the real or presumed membership of the victim to a certain racial, ethnic, religious or political group, as well as for reasons of gender, sexual orientation, gender identity, gender expression or any other discriminatory motive. In these cases, the applicable sanction shall be the maximum limit of the penalty established for the corresponding crime."

989 2012 Criminal Procedure Code, arts. 236-238. Second Control Court of Mérida, Initial Appearance (*Flagrancia*), 16 September 2018.

990 2012 Criminal Procedure Code, art. 230.

991 2012 Criminal Procedure Code, art. 230.

992 2012 Criminal Procedure Code, art. 250.

993 2012 Criminal Procedure Code, art. 250.

994 Initial requests filed to the Twentieth Control Court on 12 December 2017, 16 April 2018 and 8 January 2019. The defence made another request, to which the Control Court responded that same day, declaring that the pre-trial detention measure be maintained as it was "the most suitable measure

On 16 August 2019, the defence filed a writ for dismissal (*descaimiento*) of the pre-trial detention measures because the two-year limit had expired. The Twentieth Control Court denied the request.[995] The court held that, while it is true that the accused cannot be subjected to a personal precautionary measure exceeding two years absent a preliminary hearing, in Mr. Sánchez's case, "the circumstances in which the crime was committed" and "the magnitude of the damage caused" should be taken into consideration and the measures should be maintained.[996] The court did not specify what was the damage caused and since the case had still not gone to trial, no such damage had been shown in a court of law.

***Box 5: The case of General Raul Baduel***

Having been convicted on corruption charges in 2009, General Raul Baduel was serving the final months of his sentence on parole, with the prohibition to leave his state, when on 10 January 2017,[997] less than three months before his sentence was set to expire, members of DGCIM and SEBIN searched his house.[998] Two days later, on 12 January 2017, General Baduel went to the military tribunal as per his precautionary measure of regular presentation before the court, but the tribunal officials did not allow him to sign in the standard record book, according to an eye witness.[999] Upon leaving the tribunal, around 30 DGCIM officials detained General Baduel, and took him to an unknown location.[1000] His lawyer immediately approached the tribunal, but was told the tribunal had no notification of his arrest.[1001]

to ensure the appearance of the accused" at trial. On 6 February 2019, the defence filed an appeal of the 8 January 2019 decision by the Twentieth Control Court. On 11 February 2019, the Court declared the appeal inadmissible, holding that under Article 250 of the Criminal Procedure Code "the measure of personal coercion must be kept in force during the course of the proceedings […] provided that the conditions for justifying its decree remain unchanged". Three subsequent requests on 20 May 2019, 11 July 2019 and 8 August 2019 were also rejected. Twentieth Criminal Control Court Decision, 28 August 2019.

995 Twentieth Criminal Control Court Decision, 28 August 2019.

996 Twentieth Criminal Control Court Decision, 28 August 2019. On 28 August 2020, the defence again filed a constitutional action before the Court of Appeal of the Criminal Judicial Circuit of Caracas due to the Control Court's failure to respond to requests to revise the precautionary measure of deprivation of liberty made on 20 July 2020, 29 July 2020 and 29 August 2020. Defence's Constitutional Injunction to the Appellate Court of the Criminal Judicial Circuit of the Metropolitan Area of Caracas, File No. 20ºC-S-763-17, 18 August 2020.

997 That same day, President Maduro swore in an "Anti-Coup Command", established to "bring justice and punish all coup attempts to destabilize Venezuela" in reference to the National Assembly's 9 January 2017 decision that Maduro had abandoned his post (*abandono del cargo*). The Command was led by then Vice President Tareck El Aissami and comprised of then Vice President of "Political Sovereignty, Security and Peace" Carmen Meléndez, chancellor Delcy Rodríguez, Minister of Defense Vladimir Padrino López and then Minister of the Interior, Justice and Peace, Néstor Reverol. See: TeleSur, Presidente de Venezuela juramenta el Comando Antigolpe, 10 January 2017, available at: https://www.telesurtv.net/news/Presidente-de-Venezuela-juramenta-el-Comando-Antigolpe-20170110-0040.html.

998 Interview DDIV057, 21 June 2021. The incident was widely reported in the media. See, for example: RunRun.es, Reportan que comisión del DIM allana la residencia de Raúl Isaías Baduel, 10 January 2017, available at: https://runrun.es/nacional/292753/rportan-que-comision-del-dim-allana-la-residencia-de-raul-isaias-baduel/

999 Interview DDIV057, 21 June 2021.

1000 Interview DDIV057, 21 June 2021; DDIV045, 8 June 2021.

1001 Interview DDIV057, 21 June 2021.

General Baduel's family learned a few days later that he was being held in CENAPROMIL Ramo Verde. General Baduel was subsequently notified that his substitute measures for serving his sentence had been revoked, purportedly for non-compliance with his presentation regime.[1002] On 2 March 2017, the day before his scheduled release from Ramo Verde and the expiration of his sentence, General Baduel received a notification that he would be charged with a new set of military crimes.[1003] His case was linked to the case of General Ramón Lozada, arrested on 24 January 2017, and nine others,[1004] before the First Military Control Judge in Caracas.[1005] The Second Military Prosecutor's Office with national jurisdiction charged the accused with treason[1006] and incitement to rebellion.[1007] That investigation had been opened on 13 January 2017, the day after General Baduel was re-arrested.

The order to open the military investigation was based on: 1) a DGCIM intelligence report alleging clandestine meetings to destabilize the Government[1008] and 2) a letter from the Director General of DGCIM, dated 10 January 2017, the day of the raid on General Baduel's house, stating that General Baduel was holding insurrectionist meetings and stocking weapons in his house, both of which served as evidence that prompted the investigation.[1009] According to a witness with direct knowledge of the search, no weapons were seized at General Baduel's home.[1010]

General Baduel's preliminary hearing was held on 28 February 2018,[1011] and the other defendants' preliminary hearing was held on 22 March 2018.[1012] The trial was ordered on 9 March 2018, but the decision was not published until 11 December 2019.[1013] The First Military Trial Tribunal assigned to the case has not set a date to open the trial as of the writing of this report, over three years later.

From 2017 to 2021, General Baduel was held in different detention sites, including military prison Ramo Verde, SEBIN's Plaza Venezuela and DGCIM's Fuerte Tiuna. On 9 February 2020, General Baduel was removed from Fuerte Tiuna without any judicial order or notification to his lawyers; his whereabouts were unknown to his family and lawyers for 23 days.[1014] His representatives filed complaints about his disappearance, but received no response from the judiciary. After this period, his lawyers were informed he was being held in Plaza Venezuela; however, General Baduel was denied visits from his lawyer or family members for the following eight months, until October 2020.[1015] He remains in pre-trial detention.

1002 Interview DDIV057, 21 June 2021; DDIV045, 8 June 2021.
1003 Interview DDIV045, 8 June 2021; Interview DDIV057, 21 June 2021.
1004 Case CJPM-TM1C-002-2017 involving the following defendants: General-in-Chief Raul Isaias Baduel, Brigade General Ramón Antonio Lozada Saavedra, Lieutenant Colonel Carlos Enrique Viana Sosa, Second Major Sergeant Noe Ricardo Romero Lugo, Second Major Sergeant Jairón Ely Villegas Moreno, First Sergeant Javier Rafael Peña, First Sergeant Feydi Rafael Montero, First Sergeant Juan Francisco Díaz Castillo, First Sergeant Yecson Enrique Lozada Matute, First Sergeant Rubén Augusto Bermudez Oviedo and Mr. Santiago José Guevara García.
1005 Case File CJPM-TM1C-002-2017.
1006 Organic Code of Military Justice, arts. 464(25) and 465.
1007 Organic Code of Military Justice, art. 481.
1008 Order to open a military criminal investigation No. ZODIC/2017/001, referenced in Second National Military Prosecutor's Office, Indictment in Case No. FGM2N-001-2017.
1009 DGCIM Investigation Record, 10 January 2021, referenced in Public Prosecutor's Office Indictment.
1010 Interview DDIV057, 21 June 2021.
1011 Preliminary Hearing Record, 28 February 2018.
1012 Preliminary Hearing Record, 22 March 2018.
1013 Record of order to open the case for trial, 11 December 2019.
1014 Interview DDIV045, 8 June 2021.
1015 Interview DDIV045, 8 June 2021; Interview DDIV050, 17 June 2021.

### 3. Non-custodial precautionary measures

233. In cases in which pre-trial detention was not ordered, substitute precautionary measures were 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 instead may be imposed.[1016] The judge may also order any other measure deemed appropriate or necessary.[1017]

234. Under the Criminal Procedure Code, the application of precautionary measures must be proportional to the penalty of the crime charged.[1018] However, in some cases reviewed by the Mission, they have reached a similar duration as the penalty for the underlying crime. One defence lawyer provided information to the Mission about the case of José Dacre, who had regularly accompanied student protests beginning in 2007 with his vehicle that carried a sound system. Following a 2009 protest, a Chacao Municipal Police commissioner accused Mr. Dacre of carrying Molotov cocktails in his sound truck, with orders from Leopoldo López to commit "destabilizing acts".[1019] He was charged with public intimidation[1020] and remanded to preventive detention.[1021] After nine months he was released on humanitarian grounds, with substitute precautionary measures requiring regular court appearances. Mr. Dacre passed away on 1 August 2021 following chronic health problems,[1022] having been subject to these measures for more than 11 years, despite facing a possible sentence of only three to six years.[1023] His trial, which started in 2011, was never finalized.

235. In addition, the measure imposed must be proportional to the seriousness of the crime, the circumstances of its commission and the probable sanction[1024] and must ensure the presence of the accused at trial.[1025] The measures must also not contravene Constitutional rights.[1026] In some cases reviewed, the measures appear to restrict rights to freedom of expression or assembly, or other Constitutional rights, beyond what would appear necessary to ensure presence of the defendant at trial or non-interference with the investigation. For example, Judge María Lourdes Afiuni told the Mission that she remains subject to precautionary measures imposed since before her trial began in 2017,[1027] which include the prohibition from leaving the country, using social networks, speaking to the media and

1016 2012 Criminal Procedure Code, arts. 242-245. These measures include house arrest; the obligation to submit to the care or supervision of a certain person or institution; periodic presentation before the court or other designated authority. Travel from Venezuela or a locality within it may also be prohibited without authorization, as well as communication with specific individuals.

1017 2012 Criminal Procedure Code, art. 242(9).

1018 2012 Criminal Procedure Code, art. 9.

1019 See details of the case at: Runrun.es, Falleció José Dacre «Maraco», expreso político del chavismo criminalizado por apoyar al movimiento estudiantil, 2 August 2021, available at: https://runrun.es/noticias/450680/fallecio-jose-dacre-maraco-preso-politico-del-chavismo-por-apoyar-al-movimiento-estudiantil/; Analítica, El caso de Maraco, 8 March 2009, available at: https://www.analitica.com/opinion/opinion-nacional/el-caso-de-maraco/

1020 Criminal Code, art 296.

1021 Interview DDIV039, 24 May 2021.

1022 See Impacto Venezuela, Falleció el primer preso del movimiento estudiantil José Dacre Maraco, 2 August 2021, available at: https://impactovenezuela.com/fallecio-el-primer-preso-del-movimiento-estudiantil-jose-dacre-maraco/

1023 Request to review measures, Case File No. T1J-001-2013, 3 March 2020, on file with the Mission; Interview DDIV039, 24 May 2021.

1024 See 2012 Criminal Procedure Code, art. 230.

1025 See 2012 Criminal Procedure Code, art. 236; Vásquez González, Magaly, Derecho Procesal Penal Venezolano, 2019, pp. 179-180, 184-185.

1026 2012 Criminal Procedure Code, art. 9, which states: "The provisions of this Code that preventively authorize the deprivation or restriction of liberty or other rights of the accused, or the exercise thereof, are of an exceptional nature, may only be interpreted restrictively, and their application must be proportional to the penalty or security measure that may be imposed. The only preventive measures against the accused are those authorized by this Code in accordance with the Constitution of the Bolivarian Republic of Venezuela." See 2012 Criminal Procedure Code, arts. 230 and 233.

1027 Interview CCIV008, 11 August 2021.

attending demonstrations.[1028] She is also not permitted to have a passport or allowed to work.[1029]

236. Court closures resulting from the Covid-19 pandemic caused further procedural delays, extending precautionary measures. Starting on 16 March 2020, the Supreme Tribunal of Justice passed a series of resolutions, which were renewed monthly for seven months, ordering courts to suspend sessions. According to these measures, "During this period, cases will be held in abeyance and procedural time limits will not run".[1030] In the case of journalist Luis Carlos Díaz (Box 6, below), his substitute precautionary measures had been in place at the time of writing for over two and a half years, well beyond the two-year legal limit[1031] and the period authorized by law for the Public Prosecutor's Office to finalize its investigations.[1032] During this time, he had not been able to leave the country and had lost a number of professional opportunities and scholarships.[1033]

237. Those under substitute precautionary measures have expressed that there is always a latent fear of being re-arrested for incompliance with the measures ordered. During the Covid-19 pandemic, this concern heightened given that courts were often closed when defendants were required to present themselves periodically under a substitute precautionary measures regime.[1034] In the case of former National Assembly member Gilberto Sojo, after being detained in November 2014, he had been released in 2016 with substitute precautionary measures, including the order to present himself periodically before the court.[1035] However, due to his alleged failure to comply with the periodic court appearances, the court ordered that he be re-detained.[1036] Following this re-detention order, on 21 February 2021, over six years after his original arrest, Mr. Sojo was re-arrested by the Special Action Forces of the National Bolivarian Police[1037] (hereinafter FAES) while walking down the street, and he remains detained as of the writing of this report.[1038]

### 4. Discrepancies in arrest warrants and arrest reports

238. The Mission also documented discrepancies in the issuance of arrest warrants, including discrepancies between the arrest records issued by intelligence or law enforcement bodies and documents prepared by the Public Prosecutor's Office. Prosecutorial and judicial actors either played a direct role in the discrepancies noted in the cases reviewed, such as by backdating arrest warrants, or an indirect role, by routinely including the inaccurate or

1028 Interview CCIV008, 11 August 2021.
1029 Interview CCIV008, 11 August 2021.
1030 Supreme Tribunal of Justice, Resolution 001 of 2020, available at: http://ley.tuabogado.com/leyes/resoluciones/tsj-resolucion-001-2020-ningun-lapso-procesal-correra-desde-el-16-marzo-hasta-13-abril-2020-ambas-fechas-inclusive#gsc.tab=0. This resolution was subsequently extended six times, over seven months (Resolution 002 0f 2020, Resolution 003 of 2020, Resolution 004 of 2020, Resolution 005 of 2020, Resolution 006 of 2020 and Resolution 007 of 2020).
1031 2012 Criminal Procedure Code, art. 230.
1032 Under the Criminal Procedure Code, if the accused is subject to non-custodial precautionary measures, he or she may request the Control Court to set a reasonable timeframe for the Public Prosecutor's Office to conclude the investigation, once eight months have passed since the initial appearance. Within 24 hours of receiving this request, the Control Court shall convene a hearing, to be held within the next 10 days, at which the judge sets a date for the Public Prosecutor's Office to present its decision on proceedings (*acto conclusivo*). Article 295 of the Criminal Procedure Code, which stipulates that the investigation period may be extended for no less than 30 days and no more than 45 days, except in cases involving certain categories of gross human rights violations and complex crimes, for which the period may be extended for one to two years. 2012 Criminal Procedure Code, art. 295.
1033 Information provided by the defence, 15 March 2021.
1034 Interview AAIV039, 4 May 2021.
1035 Interview AAIV021, 5 March 2021.
1036 Interview AAIV021, 5 March 2021.
1037 See A/HRC/CRP.11, paras. 202-204 for a description of the FAES.
1038 Interview AAIV021, 5 March 2021.

deceptive arrest records in the legal case file, despite the discrepancies being raised in filings by the defence.

239. The Mission's review of case file documents revealed discrepancies appearing to: 1) cover up failures to obtain arrest warrants at the time of arrest or failure to present the detainee before a judge within legal timeframes; 2) give the impression that the detainee was not under the control of the State during a certain timeframe (especially when the detainee was allegedly being held incommunicado, disappeared or tortured); and/or 3) provide a record portraying compliance with detainees' rights, which ran contrary to the versions of events recounted by detainees.

***Box 6: The case of Luis Carlos Díaz***

Luis Carlos Díaz is a journalist and social media expert. On 9 March 2019, then-president of the National Constituent Assembly Diosdado Cabello played a clip on Con el Mazo Dando[1039] of an edited video montage of spliced excerpts from a 26 February 2019 program on Luis Carlos Díaz's YouTube Channel.[1040] In the original 22-minute program, Mr. Díaz, together with his journalist wife Naibet Nakarina (Naky) Soto Parra, responded to 16 questions received from their followers on an array of topics.[1041]

[1039] See Tweet from Con el Mazo Dando, 9 March 2019, available at: https://twitter.com/ConElMazoDando/status/1104089583850012674; See also See Tweet from PSUV Political Party, 9 March 2019, available at: https://twitter.com/PartidoPSUV/status/1104591456575008768

[1040] See YouTube video, #EnSerio con Naky Soto: preguntas y respuestas, 26 February 2019, available at: https://www.youtube.com/watch?v=EWBt-1yo_c4

[1041] The questions included the following: 1. Have social networks played an important role in the Government's debacle? 2. Are you team Friends or team How I Met Your Mother? 3. Is it possible that the scenario of these days was bet on to make the Usurper even more evident? 4. What could happen to the offspring of chavismo-madurismo? Offshoots like the children of powerful people. How to trace all the money they have stolen, to return it to the country? Is it possible to return them or trace the resources diluted in money laundering companies? 5. Why don't they have decorations on the table? 6. If a military man who is not on the border wants to recognize Guaidó, where should he go? We have seen those in Ureña, because they are safe past the border, but what can those in the rest of the country do? Is this just for Patreon, or if they plan to upload similar content to YouTube? 8. How many military personnel have to cross the border and put themselves at Guaidó's command to balance things out? What is that magic number, five thousand? How do we know they are not infiltrators? 9. What short-term ideas are there to overcome the informational and narrative domination over the country? 10. What strategies can those of us on the inside, and especially on the outside, adopt to counteract the pro-government propaganda of characters like the trolls? 11. How do you think this blackout will be executed? How long do you think they will leave us incommunicado? What do you recommend we do? How do you think we should inform ourselves during this time? 12. What could be a real option for the Government to finally hand over power? 13. How should the opposition handle its communication strategy in the future? 14. How can we help dismantle the economic misconceptions left by the Chavista era? How difficult will it be for politicians to abandon the idea of a petro-state in favour of a smaller one, considering that the vast majority are leftists? 15. What do we need to reverse the effect that hunger and malnutrition will have on our children? How should doctors inside and outside the country prepare? What will public health need to attend to these cases? 16. ¿Cómo motivar a la gente para que no pierdan la esperanza?

At around 5.30 p.m. on 11 March 2019, Mr. Díaz was cycling home from work at the Radio Unión station,[1042] when two vehicles blocked the road and several armed men alighted.[1043] According to Mr. Díaz, the vehicles did not have licence plates[1044] and the men were not uniformed and presented no documentation.[1045] One officer said, "Don't worry, we are from SEBIN. We have to take you for an interview".[1046]

On 11 March 2019, the Public Prosecutor's Office requested an arrest warrant on the basis of a SEBIN inspector's Criminal Investigation Report also dated 11 March 2019. Also that same day, 11 March 2019, the Thirty-First Criminal Control Judge ordered Mr. Díaz's arrest. The Control Judge referred to the arguments made by the Public Prosecutor's Office, based on the SEBIN investigation report.[1047]

Defence lawyers informed that, according to the two-and-a-half page SEBIN investigation report,[1048] on 7 March 2019, the inspector initiated an investigation on "different social networks",[1049] as the country experienced electrical power shortages. The inspector said the investigations led him to the 26 February video, published on Mr. Díaz's YouTube channel.[1050]

The report did not include direct quotes from the 26 February 2019 program or other references to when and how the specific statements were allegedly made.[1051] Nonetheless, it concluded that the video was aimed at "calling on state officials, specifically active military personnel, to disavow their natural command and join a rebellion, fomenting extreme violence in order to overthrow the government".[1052] It also alleged that the video provided "suggestions for the dissemination of violent events that would possibly occur during the blackout".[1053]

The version of events described in SEBIN's record of the arrest[1054] differs significantly from the version described by Mr. Díaz, including the account he gave to the Thirty-First Criminal Control Judge at the initial appearance the day after his capture.[1055] According to the SEBIN report, at 4.30 p.m. on 11 March 2019, six SEBIN officers carried out "a strategic tour" in the La Castellana neighbourhood, around the San Ignacio shopping centre.[1056] At around 5.45 p.m. "they spotted a subject who had the physical characteristics" of Mr. Díaz.[1057]

[1042] Information provided by the defence, 15 March 2021. All interview information was provided via Mr. Díaz's lawyers.
[1043] Information provided by the defence, 15 March 2021.
[1044] Information provided by the defence, 15 March 2021.
[1045] Defence's Complaint to the Public Prosecutor's Office, Unit on Fundamental Rights, 18 March 2019, on file with the Mission; Record AADOC007, 12 March 2019.
[1046] Information provided by the defence, 15 March 2021.
[1047] Record AADOC012, 11 March 2019.
[1048] As recounted by Mr. Díaz's defence.
[1049] Record AADOC008, 11 March 2019.
[1050] Record AADOC008, 11 March 2019.
[1051] Record AADOC008, 11 March 2019.
[1052] Record AADOC008, 11 March 2019.
[1053] Record AADOC008, 11 March 2019.
[1054] As recounted by Mr. Díaz's defence. Record AADOC008, 11 March 2019.
[1055] Record AADOC007, 12 March 2019.
[1056] Record AADOC008, 11 March 2019.
[1057] Record AADOC008, 11 March 2019.

The SEBIN record claims the detective approached Mr. Díaz, informed him he was the subject of an arrest warrant and read him his rights,[1058] before transferring him to SEBIN headquarters.[1059] Once there, the officers said they notified the Prosecutor of the Sixty-Seventh National Prosecutor's Office assigned to the case of the arrest.[1060] They also called a SEBIN Commissioner who then told them to transfer Mr. Díaz to the SEBIN Directorate of Strategic Investigations for holding, until he could be presented to the Control Court.[1061]

However, the facts as recounted by Mr. Díaz differ significantly. According to Luis Carlos Díaz, upon capture, the SEBIN officers forced him into a van and covered his face with a leather jacket.[1062] They told him they were taking him somewhere they could not reveal.[1063] Former SEBIN Director later publicly confirmed that the SEBIN officials had taken Luis Carlos Díaz to one of "SEBIN's safe houses".[1064] Once inside, they took all of his belongings.[1065] They threatened him and demanded his computer and cell phone passwords.[1066] They did not start interrogating him, telling him "the boss has not arrived".[1067]

At around 9 p.m., the superior officer arrived and the SEBIN officials forced Mr. Díaz into a room.[1068] He announced, "Now you are in the hands of DGCIM".[1069] According to Mr. Díaz, the DGCIM members interrogated and mistreated him for around three hours. He described being suffocated, having his head beaten while wearing a bicycle helmet, having his genitals squeezed and having his hands bound. He also alleges that they threatened to break his fingers and to use a drill on his body.[1070]

During the interrogation, the DGCIM members tried to force him to record a video saying that he caused the blackout,[1071] attempting to get him to confess to the following:

- That he had received money to sabotage the electrical system, a claim they threatened to support by planting USD $100,000 on him.[1072]

[1058] Record AADOC008, 11 March 2019.
[1059] Record AADOC008, 11 March 2019.
[1060] Record AADOC008, 11 March 2019.
[1061] Record AADOC008, 11 March 2019. In July 2019, the former SEBIN Director publicly stated that he had received orders directly from President Maduro to capture Luis Carlos Díaz, who the President had identified as the person responsible for the electrical blackout based on the 26 February video. He said, "Right away I contacted the Public Prosecutor's Office so that it take action in the case". He said that he had given an order that the public prosecutor "accompany the [SEBIN] commission", so that he could explain the reasons for the arrest, noting "With what elements is SEBIN going to say 'you are the person responsible,' when we know that the story is different?" YouTube video, En Conexión, Figuera revela detalles de la detención de Luis Carlos Díaz, 11 June 2019, minute 0:15, available at: https://www.youtube.com/watch?v=B9Fl0qlTwmI
[1062] Defence's Complaint to the Public Prosecutor's Office, Unit on Fundamental Rights, 18 March 2019.
[1063] Information provided by the defence, 15 March 2021.
[1064] YouTube video, En Conexión, Figuera revela detalles de la detención de Luis Carlos Díaz, 11 June 2019, minute 1.50, available at: https://www.youtube.com/watch?v=B9Fl0qlTwmI
[1065] Information provided by the defence, 15 March 2021.
[1066] Information provided by the defence, 15 March 2021.
[1067] Information provided by the defence, 15 March 2021.
[1068] Defence's Complaint to the Public Prosecutor's Office, Unit on Fundamental Rights, 18 March 2019.
[1069] Information provided by the defence, 15 March 2021.
[1070] Information provided by the defence, 15 March 2021; Record AADOC007, 12 March 2019.
[1071] Information provided by the defence, 15 March 2021; Record AADOC007, 12 March 2019.
[1072] AAIV055, 15 March 2021. They placed a stack of dollars on the top of his leg and lifted his hood so that he could see the money, telling him, "With this, we've got you!"

- That he had travelled to Mexico the previous week to meet with and received money from the Mexican government to cause electrical blackouts.[1073]
- That they would charge him and his wife with homicide, saying that they planted a dead body in their apartment. They said that they had fired the shots from his wife's hands to leave powder traces on her.[1074]

At around 11 or 11.30 p.m., the DGCIM members played him a voice recording of a speech by President Maduro taken that same evening announcing the arrest of two individuals for attempting to sabotage the communications system.[1075] He stated, "They were caught *in flagrante delicto*, they are in jail, they are talking".[1076]

According to Mr. Díaz, at around 12 a.m. the DGCIM members announced, "We're tired of you, we are going to kill you. We're going to hang you from the ceiling and kill you, and we're going to send the video to your wife."[1077] They put him in a corner for around two hours.[1078] Mr. Díaz said, "Those were the longest two hours of my life because I thought I was going to die".[1079]

After about two hours, his hood was lifted.[1080] In front of him were the SEBIN officials who had arrested him.[1081] One of them said, "I hope they treated you very well. Everything they did, it wasn't us."[1082] The SEBIN officials forced Mr. Díaz to sign a document saying that he had been well treated.[1083]

The SEBIN officials took Mr. Díaz to accompany the search of his house. During the interrogation session, the DGCIM members had asked Mr. Díaz if he had money at home.[1084] He told them that he had savings of around USD $6,000, to pay for a surgical operation for his wife.[1085] Following the search, Ms. Soto went back in the apartment and realized that the SEBIN officials took the money.[1086] That money did not appear in the SEBIN investigation report or in the chain of custody.

[1073] Information provided by the defence, 15Interview AAIV02515 March 2021; Record AADOC007, 12 March 2019.
[1074] Defence's Complaint to the Public Prosecutor's Office, Unit on Fundamental Rights, 18 March 2019.
[1075] Information provided by the defence, 15 March 2021; See YouTube video, Presidente Nicolás Maduro, cadena completa el 11 marzo 2019 sobre apagón eléctrico en Venezuela, 11 March 2019, minute 21:00, available at: https://www.youtube.com/watch?v=2YZMmPg1eyI. See also Aristegui Noticias, Maduro anuncia detención de dos personas presuntamente vinculadas con apagón, 11 March 2019, available at: https://aristeguinoticias.com/1103/mexico/maduro-anuncia-detencion-de-dos-personas-presuntamente-vinculadas-con-apagon/
[1076] YouTube video, Presidente Nicolás Maduro, cadena completa el 11 marzo 2019 sobre apagón eléctrico en Venezuela, 11 March 2019, minute 21:00, available at: https://www.youtube.com/watch?v=2YZMmPg1eyI
[1077] Information provided by the defence, 15 March 2021.
[1078] Information provided by the defence, 15 March 2021.
[1079] Information provided by the defence, 15 March 2021.
[1080] Information provided by the defence, 15 March 2021.
[1081] Information provided by the defence, 15 March 2021.
[1082] Information provided by the defence, 15 March 2021; Record AADOC007, 12 March 2019.
[1083] Defence's Complaint to the Public Prosecutor's Office, Unit on Fundamental Rights, 18 March 2019.
[1084] Information provided by the defence, 15 March 2021.
[1085] Information provided by the defence, 15 March 2021.
[1086] Information provided by the defence Interview AAIV025, 15 March 2021; Interview AAIV078, 19 July 2021.

After the search, the SEBIN officials brought Mr. Díaz to El Helicoide.[1087] At 10.30 a.m.[1088] on Tuesday, 12 March 2019, a prosecutor from the Public Prosecutor's Office came to El Helicoide.[1089] She said she was from the Human Rights Unit and told him, "I am here to see that your rights are respected".[1090] She noted, "I see that you are very well",[1091] to which Mr. Díaz responded that he was not well at all, that he was doing very badly.[1092]

Mr. Díaz began describing his arrest and blindfolding, as well as the beatings, suffocation and threats he suffered in a clandestine detention centre.[1093] The prosecutor intervened, saying her role was limited to verifying his detention conditions.[1094] Mr. Díaz told her he was held incommunicado in an unclean cell with a thin and dirty mattress, without bathroom access or any information about his detention or the legal process.[1095] The prosecutor took notes of Mr. Díaz's statements, but when she presented them to Mr. Díaz for his signature, they did not reflect the alleged violations he had described.[1096]

At his initial appearance on 12 March 2019 before the Thirty-First Criminal Control Court, Mr. Díaz spent one-and-a-half hours recounting everything that had happened to him the previous night (see below). The Thirty-First Control Judge held that the elements exist to indicate a crime of public instigation,[1097] and ordered the precautionary measures of prohibition on leaving the country without prior authorization of the court, prohibition on disseminating information about his case in the media or on social networks, and periodic court appearance.[1098] The measures remain in effect as at time of writing.

240. Several cases investigated indicated a deliberate backdating of arrest warrants or falsification of the dates of arrest, appearing to place retroactively the date of detention within 48 hours of the initial appearance, as required by law.[1099] These actions would seemingly require both prosecutorial and judicial actors to work together to ensure that dates of the arrest requests and the dates of the arrest warrant orders coincide, such as in the case of Carlos Marrón (Box 4, above).[1100]

1087 Information provided by the defence, 15 March 2021.

1088 He saw a digital clock reading 10.34 a.m. in the office to which he was taken.

1089 Information provided by the defence, 15 March 2021.

1090 Information provided by the defence, 15 March 2021.

1091 Information provided by the defence, 15 March 2021.

1092 Information provided by the defence, 15 March 2021.

1093 Information provided by the defence, 12 July 2021; Defence's Complaint to the Public Prosecutor's Office, Unit on Fundamental Rights, 18 March 2019.

1094 Information provided by the defence, 12 July 2021.

1095 Information provided by the defence, 12 July 2021.

1096 Information provided by the defence, 12 July 2021.

1097 Record AADOC007, 12 March 2019.

1098 Record AADOC007, 12 March 2019. The periodic court appearance was every eight days.

1099 1999 Constitution, art. 44. For example, in the case of Gregory Hinds and Geraldine Chacón included in the Mission's 2020 report, there were inconsistencies between the date of detention contained in SEBIN's criminal investigation report and the recollections of witnesses contacted by the Mission. Regarding Mr. Hinds, SEBIN's arrest record stated that arrest was on 1 February 2018, while according to witnesses the operation occurred on 31 January 2018. Similarly, according to the SEBIN record, Geraldine Chacón was arrested during the night of 2 February 2018, though witnesses and other official SEBIN documents place the detention at around 1.30 a.m. on 1 February 2018, which was eight hours after Mr. Hinds' detention. A/HRC/45/CRP.11, Case 7: Geraldine Chacón and Gregory Hinds (Community Ambassadors Foundation). In addition, in the case of the July 2017 arrest of Ángel Zerpa, documented in the Mission's 2020 report, SEBIN agents did not present a warrant at the time of his apprehension, but rather brought it to his cell in SEBIN's Plaza Venezuela facility the following day. A/HRC/45/CRP.11, Case 8: Ángel Zerpa.

1100 Notification from the Judicial Branch, Unit of Reception and Distribution of documents, confirming receipt of the Public Prosecutor's Office request regarding the issuing of arrest warrant for Carlos

241. On 21 November 2017 at 10 a.m., Tomeu Vadell Recalde was detained by DGCIM after having been convened to a meeting with other CITGO executives at the PDVSA MinPetróleo headquarters in Caracas.[1101] The DGCIM official in charge of the arrest later testified at the trial that the arrest warrant had been issued after Tomeu Vadell Recalde had been arrested.[1102] Other discrepancies included that a DGCIM criminal investigation record prepared at 8 a.m. on 20 November 2021,[1103] was timestamped as having been received by the Public Prosecutor's Office 50 minutes earlier, at 7.11 a.m. on that same date.[1104] The DGCIM record was used to sustain the Public Prosecutor's Office's arrest warrant request, which was received by the Criminal Control Court 20 minutes later, at 7.30 a.m., a half-hour earlier than the DGCIM record was supposedly written.[1105]

242. 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 either tortured or subjected to cruel, inhuman and degrading treatment, including sexual violence. For example, the Mission investigated the case of two women detained by SEBIN without warrants in 2015 due to their alleged involvement in a plot to murder a relative of a key figure in the Maduro administration.[1106] According to the defendants, they were held incommunicado for over a week prior to their initial appearance in El Helicoide. During this incommunicado detention, *ex post facto* arrest warrants were issued against them.[1107] The Control Judge allegedly did not rectify the illegal arrest and *ex post facto* issuance of the warrants, but rather ordered continued pre-trial detention.[1108] They remained in El Helicoide for more than two years before being released with precautionary measures.[1109]

243. In total, 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.[1110] The majority of these warrants were issued by two military judges. Each case involved DGCIM holding detainees outside legal supervision for a period of around one week during which time officials allegedly perpetrated serious acts of psychological, physical and sexual torture during interrogations at La Boleíta or in clandestine locations. The cases include the following:

- General Héctor Hernández Da Costa was detained by DGCIM on 13 August 2018, in relation to the Drone Case.[1111] He filmed a live video that was circulated on social

Marrón. This document is dated 9 April but refers to a document from the Public Prosecutor's Office dated 12 April 2018. Third Criminal Control Court, 9 April 2018.

1101 DGCIM Criminal Investigation Record, 21 November 2017.

1102 First Trial Court of Caracas Record of Opening of Oral and Public Trial, 11 August 2020. Specifically, he testified under oath that: "We did not have the arrest warrant at this time, that is to say, the prosecutor was waiting because they, I remember that they came for a meeting […] and I think they were going to leave in the afternoon, if I remember correctly, so as there were already sufficient elements, there was a risk that they would leave the country if we did not act in time, so what was done was that they were held preventively, without going as far as the unlawful deprivation of liberty." First Trial Court of Caracas Record of Opening of Oral and Public Trial, 11 August 2020.

1103 DGCIM Criminal Investigation Record, 20 November 2017 (text reflects that it was prepared at 8 a.m.).

1104 Receipt of DGCIM Criminal Investigation record, 20 November 2017 (timestamped at 7.11 a.m.).

1105 Public Prosecutor's Office Arrest Warrant Request, 20 November 2027 (timestamped at 7.30 a.m.).

1106 FFMV0010, FFMV0024.

1107 Interview C2EE15, 9 July 2020; Interview C2EE10, 23 June 2020; Statement DDDOC053, 2 July 2020. Also during this time, public officials accused them of contacts with opposition politicians and United States government officials. Public statements verified by the Mission.

1108 Interview C2EE15, 9 July 2020; Interview C2EE10, 23 June 2020.

1109 Interview C2EE10, 23 June 2020; Interview C2EE15, 9 July 2020.

1110 FFMV0179, FFMV0063, FFMV0113, FFMV0122, FFMV0151, FFMV0071, FFMV0064, FFMV0148, FFMV0031, FFMV0069, FFMV0115, FFMV0163, FFMV0042, FFMV0097, FFMV0103, FFMV0001.

1111 Statement DDDOC016, 14 October 2020; Statement DDDOC017, 9 March 2021.

media in the moments DGCIM arrived to search his house and arrest him.[1112] A warrant for his arrest was issued *ex post facto* on 17 August 2018. His initial appearance was held on 19 August 2018, six days after his arrest, before the First Terrorism Control Judge.[1113] At his preliminary hearing, he stated "the Public Prosecutor's office and DGCIM are lying about the manner, time and location in which I was detained".[1114] The Government later admitted that the Sixty-Seventh and Eighty-Third Prosecutors had requested the warrant on 16 August 2018 and that the First Terrorism Control Court issued it on 17 August 2018.[1115]

- DGCIM arrested Lieutenant Colonels Igbert José Marín Chaparro, Juan Carlos Peña Palmentieri, Víctor Eduardo Soto Méndez, Erik Fernando Peña Romero, and Deibis Esteban Mota Marrero, as well as four others, on 2 March 2018.[1116] However, the Seventh Military Prosecutor's Office requested arrest warrants for the already-detained individuals *ex post facto* on 7 March 2018,[1117] which the Third Military Control Judge issued that same day.[1118]
- In the Vuelvan Caras case, General Miguel Carmelo Sisco Mora, Colonel Miguel Castillo Cedeño, Major Pedro Caraballo Lira, José Gregorio Valladares Mejías, Miguel Ángel Ibarreto Sabino, First Lieutenant Carlos Lozada Saavedra and Captain Rafael Acosta Arévalo were all detained on 21 June 2019,[1119] five days prior to the date indicated by DGCIM records.[1120] Captain Rafael Acosta Arévalo died on 28 June 2019 as a result of acts of torture inflicted by DGCIM members during this period of short-term enforced disappearance outside legal supervision.[1121] Defence lawyers at the initial appearance raised the issue of falsification of the warrant.[1122]
- DGCIM arrested Major Isaias Falcón as part of a string of arrests targeting military officers between 17 and 21 May 2018, according to witness accounts.[1123] According to DGCIM's investigation record however, the First Military Control Judge of Caracas issued the arrest warrant on 20 May 2018 and the arrest was made on 25 May 2018.[1124]

[1112] Video circulated by journalist Roman Camacho on 13 August 2018, available at: https://twitter.com/RCamachoVzla/status/1029212162710011904. A second video of the moments before his arrest were circulated the following day. Video circulated by journalist Roman Camacho on 14 August 2018, available at: https://twitter.com/RCamachoVzla/status/1029329169665142784

[1113] A/HRC/WGAD/2020/20, 18 June 2020, available at: https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session87/A_HRC_WGAD__2020_20_Advance_Edited_Version.pdf

[1114] Preliminary Hearing Record, 23 May 2019, p. 307 on file with the Mission.

[1115] A/HRC/WGAD/2020/20, 18 June 2020, available at: https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session87/A_HRC_WGAD__2020_20_Advance_Edited_Version.pdf

[1116] Interview DDIV048, 11 June 2021; Interview DDIV043, 27 May 2021; Individual Complaint to the Working Group on Arbitrary Detentions, 7 November 2019, on file with the Mission.

[1117] Public Prosecutor's Office Arrest Warrant Request, 7 March 2018.

[1118] Third Military Control Court Arrest Warrant 7 March 2018.

[1119] Their detention and subsequent disappearance was widely denounced by family members. The Mission found reasonable grounds to believe that Captain Acosta Arévalo had been forcibly disappeared for a period of one week. See A/HRC/45/CRP.11, Case 17: Captain Rafael Acosta Arévalo.

[1120] Police Record and Initial Appearance Record, 1 July 2019, Thirty-Sixth Control Court Criminal Case File.

[1121] Interview DDIV050, 17 June 2021. See HRC/45/CRP.11, Case 17: Captain Rafael Acosta Arévalo.

[1122] Third Military Control Court Initial Appearance Record, 28 June 2019.

[1123] A/HRC/45/CRP.11, Case 14: Major Isaias Lenin Falcón Juárez.

[1124] DGCIM Investigation Record; First Military Control Court Arrest Warrant.

- Captain Luis de la Sotta[1125] was arrested on 18 May 2018. A warrant for his arrest was issued on 20 May 2018.[1126] In addition, a DGCIM police report was filed on 20 May 2018 stating the arrest had been carried out.[1127]

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

244. 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, as the case may be, whether they acted under superior orders or not.[1128] The police investigative bodies are also bound under the Criminal Procedure Code to ensure compliance with specific principles of action during detentions.[1129] Despite Control Judges' legal responsibilities in this regard,[1130] according to the Mission's investigation, they have not taken effective action when faced with credible information presented directly to them regarding irregularities or illegalities in detentions carried out by police or intelligence bodies.

245. In its 2020 report,[1131] the Mission documented various irregularities carried out by law enforcement or intelligence bodies during arrests, which continue to be reflected in cases examined in the present report. This included the failure of arresting authorities to present arrest warrants or explain the reasons for the charges;[1132] the failure to identify themselves at the time of the arrest, including covering their faces or using aliases;[1133] the transfer of detainees hooded or blindfolded or brought along indirect routes, purportedly to confuse them

[1125] A/HRC/45/CRP.11, Case 13: Captain Luis de la Sotta and Others.
[1126] First Military Control Court Arrest Warrant, 20 May 2018.
[1127] DGCIM Investigation Record, 20 May 2018.
[1128] 1999 Constitution, art. 25.
[1129] 2012 Criminal Procedure Code, art. 119. The criminal investigation police authorities shall detain the accused in the cases ordered by this Code, in compliance with the following principles of action: 1. To use force only when strictly necessary and in the proportion required for the execution of the arrest. 2. Not to use weapons, except when there is resistance that endangers the life or physical integrity of persons, within the limitations referred to in the previous paragraph. 3. Not to inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment. 4. Not to present detainees to any media, when this could affect the development of the investigation. 5. Identify themselves, at the time of arrest, as agents of the authority and ascertain the identity of the person or persons against whom they are proceeding, and shall not be authorized to arrest a person other than the one to whom the corresponding arrest warrant refers to. The identification of the person to be arrested shall not be required in cases of arrests *in flagrante delicto*. 6. Inform the detainee of his or her rights. 7. Inform relatives or other persons related to the accused of the establishment where he or she is being detained. 8. Record the place, day and time of detention in an unalterable record.
[1130] 2012 Criminal Procedure Code, art. 264, which states that Control Judges "are responsible for controlling compliance with the principles and guarantees established in the Constitution of the Bolivarian Republic of Venezuela, international treaties, conventions or agreements signed and ratified by the Republic and in this Code; and for taking evidence in advance, resolving exceptions, petitions from the parties and granting authorizations".
[1131] See A/HRC/45/CRP.11, for example: Case 2: Antonio Ledezma; Case 4: Steyci Escalona; Case 8: Ángel Zerpa; Case 18: Ariana Granadillo and Family; Case 19: Karen Palacios. Additional cases exemplifying this pattern include the detentions of Carlos Marrón and Luis Sánchez. For example, in the arrest of clarinettist Karen Palacios, plain-clothed DGCIM members posed as music instructors in order to apprehend her. A/HRC/45/CRP.11, Case 19: Karen Palacios.
[1132] A/HRC/45/CRP.11, paras. 270, 309. See 1999 Constitution, art. 44.
[1133] A/HRC/45/CRP.11, para. 307. See 2012 Criminal Procedure Code, art. 119.

about their whereabouts;[1134] and the excessive use of force or violence during arrests,[1135] even as arrestees did not appear to have been violent or to have resisted arrest.[1136]

246. In some cases examined, these irregularities were recounted to Control Court judges as reflected in hearing records. For example, in the Operation Gedeón case, two defendants testified before the Fourth Terrorism Control Judge at the Preliminary Hearing, about violence used by DGCIM during their arrests.[1137] One defendant stated that he was in a hotel when he heard a knock at the door and upon opening, the arresting officers "pointed a rifle at his head and threw him to the floor, beating him and asking him to identify himself".[1138] The defendants testified that they were subsequently transferred to DGCIM, where they were tortured.[1139] There is no indication in the preliminary hearing record that the Terrorism Control Judge took any action with respect to these allegations.

247. In the case of Luis Carlos Díaz (see Box 6), at his initial appearance on 12 March 2019, he gave a one–and-a-half-hour account of his treatment the previous night stating, "I want to leave a record that I was subjected to ill-treatment last night".[1140] He described before the Thirty-First Control Court the mistreatment to which he was subjected, including that he had not been shown any kind of arrest warrant; that he had been hooded and taken to a clandestine detention centre; that he had been beaten, suffocated and mistreated by DGCIM members; that DGCIM members attempted to plant evidence and have him make false confessions; that SEBIN officials had taken thousands of dollars for his wife's cancer operation from his home during the search; and that he was not permitted to contact his lawyers or family members.[1141] The judge of the Thirty-First Criminal Control Court did not make any mention of the mistreatment or violations alleged nor is there information about any order of investigations into them in the court hearing records.[1142]

248. In addition, in some cases documented, the security or intelligence officials allegedly used luring tactics involving criminal acts to ensure the arrest of the real or perceived opponents targeted. As noted, in the case of Carlos Marrón (see Box 4), DGCIM members allegedly orchestrated the kidnapping of his father to induce Mr. Marrón's return to Venezuela, holding his father for four days. Similarly, in the case of the arrest of Ariana Granadillo reflected in the Mission's 2020 report, DGCIM members also allegedly twice kidnapped several relatives of Colonel Oswaldo García Palomo in an attempt to lure him from hiding.[1143] Also, the 2017 detention of Juan Pedro Lares, who was held for ten months with no charges, was allegedly perpetrated in an effort to bring forward his father, former opposition mayor Omar Lares, for whom an arrest warrant had been issued.[1144]

---

1134 A/HRC/45/CRP.11, para. 307. Including the cases of Case 15: Colonel Oswaldo Valentín García Palomo, Case 15: Colonel José Rommel Acevedo Montañez, Case 15: Antonio José Iabichuela, Case 18: Ariana Granadillo, Sorbay Padilla, Mission interview with Jameson Marcial Jiménez Maza in March 2020, Argenis Granadillo, C3EE03, C3EE06, C3EE08.

1135 Including in the cases of Case 1: Leopoldo López, Case 2: Antonio Ledezma, Lorent Saleh, Gabriel Valles, Rodolfo Pedro González, Daniel Ceballos, Case 8: Ángel Zerpa, Juan Pedro Lares, C2EE01 (female), C2EE22 (female), C2EE23 (male), Case 6: Víctor Navarro, Case 12: Pedro Jaimes Criollo, Case 9: Juan Carlos Requesens, Jesús Medina Ezaine.

1136 A/HRC/45/CRP.11, para. 269.

1137 Name of the defendants on file with the Mission. Preliminary Hearing Record, 7 August 2020.

1138 Name of the defendants on file with the Mission. Preliminary Hearing Record, 7 August 2020.

1139 Name of the defendants on file with the Mission. Preliminary Hearing Record, 7 August 2020.

1140 Record AADOC007, 12 March 2019.

1141 Record AADOC007, 12 March 2019.

1142 Record AADOC007, 12 March 2019.

1143 A/HRC/45/CRP.11, Case 18: Ariana Granadillo and Family.

1144 Document DDDOC054, 18 January 2018; Document DDDOC055, 5 May 2020. See also Provea, Juan Pedro Lares: Ciudadano colombiano secuestrado por el SEBIN desde el 30 de julio, 11 August 2017, available at: https://provea.org/actualidad/juan-pedro-lares-ciudadano-colombiano-detenido-por-el-sebin-se-encuentra-desaparecido-desde-el-30-de-julio/ ; Provea, Entrevista Provea a Juan Pedro Lares, 15 June 2018, available at: https://provea.org/entrevistas/entrevista-provea-juan-pedro-lares-me-rociaron-con-gasolina-y-me-decian-que-iban-a-prenderla-si-no-les-decia-donde-estaba-mi-padre/

249. On 7 August 2020, one defendant in the Gedeón case testified before the Fourth Terrorism Control Court at the preliminary hearing that between the date of his arrest on 20 April 2020 and the date of his initial appearance on 8 May 2020, DGCIM members allegedly interrogated him under torture,[1145] including asphyxiating him with a bag, on one occasion having to be taken to a military hospital to be revived.[1146] He told the Control Court that after refusing to make declarations posed to him during the interrogation session, the DGCIM members told him they would apply "*Sippenhaft*" (a collective punishment tactic used by the Nazis), involving the imprisonment of his relatives as a form of pressure.[1147] He told the court that the DGCIM members subsequently went to his house and arrested his two sisters and his brother in law, who were held in DGCIM Boleíta for 32 days.[1148] There is no indication in the initial appearance record that the Terrorism Control Court took any action after receiving this information.

***Box 7: The case of First Lieutenant Franklin Caldera***

First Lieutenant Franklin Caldera was charged by the Public Prosecutor's Office for participating in an attack on a military operation known as Operation Aurora,[1149] which took place on 22 December 2019.[1150] On 11 February 2021, Franklin Caldera was going to a meeting in the Herrán sector of Cúcuta, Colombia, with a friend named "Brayan" purportedly to discuss a food delivery business they wanted to start.[1151]

When Mr. Caldera arrived at the location, a group of around 15 armed men were waiting.[1152] Among the group was a man who identified himself as "Captain Soto".[1153] One man identified Mr. Caldera, announcing "it's him!"[1154] Mr. Caldera later told sources interviewed by the Mission that among the men were individuals appearing to belong to the ELN guerrilla group.[1155]

The men allegedly forced Mr. Caldera into a van, tied his hands, covered his head with a hood,[1156] and drove him over the border into Venezuela, in an area called Delicias.[1157] They allegedly beat Mr. Caldera and threatened to kill him if he resisted.[1158]

[1145] Name of the defendant on file with the Mission. Preliminary Hearing Record, 7 August 2020.
[1146] Name of the defendant on file with the Mission. Preliminary Hearing Record, 7 August 2020.
[1147] Name of the defendant on file with the Mission. Preliminary Hearing Record, 7 August 2020.
[1148] Name of the defendant on file with the Mission. Preliminary Hearing Record, 7 August 2020. The Mission can confirm that they were in fact detained.
[1149] Operation Aurora took place on 22 December 2019 and involved an assault on a GNB detachment in the fort of Santa Elena, and alleged theft of weapons in Batallón 513 in Bolívar (Gran Sabana, Bolívar). See A/HRC/45/CRP.11, Table 4.
[1150] Record AADOC015.
[1151] Interview AAIV055, 14 June 2021; Statement AADOC006, 8 July 2021.
[1152] Interview AAIV047, 17 May 2021; Statement AADOC006, 8 July 2021.
[1153] Interview AAIV047, 17 May 2021; Statement AADOC006, 8 July 2021; Interview AAIV055, 14 June 2021.
[1154] Interview AAIV047, 17 May 2021; Statement AADOC006, 8 July 2021.
[1155] Interview AAIV055, 14 June 2021, who told the Mission that "Franklin knew they were guerrillas because we are trained to recognize them". See also Interview AAIV057, 15 June 2021, who told the Mission Mr. Caldera would have been able to identify them because the military is trained to do so ("we know because we operate on these borders").
[1156] Interview AAIV055, 14 June 2021.
[1157] Interview AAIV047, 17 May 2021.
[1158] Statement AADOC006, 8 July 2021.

Once across the border, Captain Soto handed Mr. Caldera over to DGCIM's, Director of Special Operations.[1159] According to sources interviewed, the Director told Mr. Caldera, "My order is to kill you, but if you cooperate, I'll spare your life".[1160] The DGCIM members brought Mr. Caldera to a house in San Cristóbal, Táchira state.[1161] They told him he was in "the first phase", explaining, "The first phase is when you are alive, but if you don't talk, we will move you to the second phase, when we kill you, your mom, dad and sister".[1162] The agents interrogated him about Operation Aurora.[1163]

After a few hours, the DGCIM members put Mr. Caldera on a small plane from a private airport in San Cristóbal[1164] and flew him to La Carlota military base in Caracas.[1165] After arriving to Caracas, DGCIM members hooded Mr. Caldera and transferred him to an unknown location, which Mr. Caldera estimated was about 40 minutes by car from the airport.[1166] He later heard DGCIM members refer to the location as "La Cueva" (the cave).[1167]

Mr. Caldera was held in this DGCIM house over the next 11 or 12 days. He alleged that during this time, he was tortured severely.[1168] Sources told the Mission that the torture included needling and cuts under his fingernails, asphyxiation with a bucket or plastic bag, electric shocks to his scrotum, hanging him and hitting him in the ribs, and twisting a knife into his leg.[1169]

On 23 February 2021, Mr. Caldera, a trained military commando, managed to escape[1170] after removing his handcuffs by wetting his hands with a bar of soap.[1171] Once out of DGCIM custody, Mr. Caldera telephoned several contacts, three of whom told the Mission that Mr. Caldera had recounted the events described above.[1172] He called them either by video or sent them photos in which they could see bruising on his face.[1173]

[1159] Interview with AAIV047, 17 May 2021; Statement AADOC006, 8 July 2021; Interview AAIV057, 15 June 2021; Interview AAIV055, 14 June 2021. According to a source interviewed, the DGCIM Director of Special Operations is widely recognized in Venezuela given his televised participation in the operation to capture Oscar Pérez and subsequent notoriety. Interview with AAIV047, 17 May 2021.

[1160] Interview AAIV057, 15 June 2021.

[1161] Interview AAIV047, 17 May 2021.

[1162] Interview AAIV047, 17 May 2021.

[1163] Interview AAIV047, 17 May 2021.

[1164] Interview AAIV057, 15 June 2021; Statement AADOC006, 8 July 2021.

[1165] See El Nacional, Operación Aurora, las secuelas: un mes de la desaparición forzosa del teniente Franklin Caldera, 17 March 2021, available at: https://www.elnacional.com/venezuela/operacion-aurora-las-secuelas-un-mes-de-la-desaparicion-forzosa-del-teniente-franklin-caldera/. See also Tweet by the Latam Post of 16 May 2021, available at: https://twitter.com/thelatampost/status/1371980937655955464

[1166] Interview AAIV055, 14 June 2021.

[1167] Statement AADOC006, 8 July 2021.

[1168] Statement AADOC006, 8 July 2021; Interview AAIV055, 14 June 2021; Interview AAIV057, 15 June 2021.

[1169] Interview AAIV057, 15 June 2021; Statement AADOC006, 8 July 2021.

[1170] Interview AAIV055, 14 June 2021; Interview AAIV047, 17 May 2021.

[1171] Interview AAIV055, 14 June 2021; Interview AAIV047, 17 May 2021.

[1172] Interview AAIV055, 14 June 2021; Interview AAIV056, 14 June 2021; Interview AAIV057, 15 June 2021. See Noticias Caracol, El conspirador desaparecido: ¿dónde está uno de los oficiales más buscados por el régimen Maduro?, 7 March 2021, available at: https://noticias.caracoltv.com/informes-especiales/el-conspirador-desaparecido-donde-esta-uno-de-los-oficiales-mas-buscados-por-el-regimen-maduro

[1173] Interview AAIV057, 15 June 2021. Copies of the photos are on file with the Mission.

The following day, during the afternoon of 24 February, DGCIM members located Mr. Caldera and recaptured him.[1174] The officers shot him in the leg at point blank range,[1175] telling him "this is so you don't escape again".[1176] Mr. Caldera says he was unarmed at the time. The DGCIM members took Mr. Caldera to Dr. Carlos Arvelo Military Hospital.[1177]

A few days later, the Judge of the Fourth Terrorism Control Court arrived to Mr. Caldera's hospital room, accompanied by a prosecutor and a public defender, to conduct the initial appearance.[1178] Captain Soto, the DGCIM official who had captured him in Colombia was also present.[1179] While in his hospital bed, Mr. Caldera was questioned about whether he had participated in Operation Aurora.[1180] Mr. Caldera was not in the presence of a lawyer of his choosing at this time.[1181]

When the Control Judge offered Mr. Caldera the opportunity to make a statement, he told the judge that DGCIM and ELN groups had kidnapped him from Colombia.[1182] He said that DGCIM Director of Special Operations had received him at the Colombia-Venezuela border.[1183] Mr. Caldera told the Control Judge that DGCIM officers beat him and threatened to kill him and his family, should he fail to provide information.[1184]

Mr. Caldera asked the Control Judge not to send him to DGCIM Boleíta on account of the treatment he had received from DGCIM.[1185] Nevertheless, the Terrorism Control Judge responded that he would "rot in DGCIM's Casa de los Sueños".[1186] On 7 March 2021, Mr. Caldera was transferred from the military hospital to DGCIM Boleíta's Casa de los Sueños, as the judge had told him he would.[1187]

On 4 June 2021, Mr. Caldera was transferred to the Ramo Verde military prison.[1188] As at the time of writing, he has not been adequately treated for his gunshot wound and continues to suffer from complications, including limited mobility and chronic pain.[1189] He has still not had a preliminary hearing and suffered numerous delays in the appointment of his private defence (see below).

[1174] Interview AAIV047, 17 May 2021.
[1175] Interview AAIV047, 17 May 2021. See also El Nacional, Operación Aurora, las secuelas: un mes de la desaparición forzosa del teniente Franklin Caldera, 17 March 2017, available at: https://www.elnacional.com/venezuela/operacion-aurora-las-secuelas-un-mes-de-la-desaparicion-forzosa-del-teniente-franklin-caldera/
[1176] Interview with AAIV047, 17 May 2021.
[1177] Interview with AAIV047, 17 May 2021. See also PDCTV, ¿Dónde está el teniente Franklin Caldera? (+Detalles del caso), 18 March 2021, available at: https://pdctv.info/teniente-franklin-caldera-desaparecido/. See also Tweet by Cima 360, 25 February 2021, available at: https://twitter.com/cimanewsdigital/status/1365060220016357385?lang=en
[1178] Statement AADOC006, 8 July 2021.
[1179] Statement AADOC006, 8 July 2021.
[1180] Interview AAIV047, 17 May 2021.
[1181] Statement AADOC006, 8 July 2021.
[1182] Statement AADOC006, 8 July 2021.
[1183] Statement AADOC006, 8 July 2021.
[1184] Statement AADOC006, 8 July 2021.
[1185] Statement AADOC006, 8 July 2021.
[1186] Statement AADOC006, 8 July 2021.
[1187] See A/HRC/45/CRP.11, paras. 336 and 337 for a description of Casa de los Sueños.
[1188] Statement AADOC006, 8 July 2021.
[1189] Statement AADOC006, 8 July 2021.

> From 11 February to 22 March 2021, Mr. Caldera's family had no official confirmation of his whereabouts. His parents filed a *habeas corpus* request before the Criminal Judicial Circuit of Caracas,[1190] as well as complaints before the Public Prosecutor's Office[1191] and the Ombudsperson's Office.[1192] They posted a video online imploring for information about his whereabouts.[1193] At no stage did they receive a response. They finally learned that Mr. Caldera was in DGCIM Boleíta through a third party.[1194]

250. Defendants have repeatedly denounced being held incommunicado, especially during the first days of detention, without being allowed contact with family or lawyers, interfering with their right to defence. This pattern was described in the Mission's 2020 report as occurring regularly following arrests conducted by SEBIN and DGCIM.[1195] Under the Criminal Procedure Code, defendants have a right to communicate with their relatives or lawyer to inform them about their detention.[1196] Further, the arresting authority shall inform relatives or other persons related to the accused of the establishment where he or she is being detained.[1197] In some cases, the incommunicado detention occurred in secret or unofficial detention facilities, sometimes referred to as "safe houses", especially in the first hours or days of detention.[1198]

251. In some cases examined, detainees have raised the incommunicado detention before court authorities, without response. For example, in the case of Tomeu Vadell Recalde, for 28 days following his arrest, while being held in DGCIM Boleíta, he had no contact with his lawyers or any other person, a fact that was raised by the defence to the Court of Appeals, without answer.[1199] In the Gedeón case, one of the defendants testified before the Fourth Terrorism Control Court at his Preliminary Hearing on 7 August 2020, held in SEBIN El Helicoide, that he was held incommunicado for two months in DGCIM Boleíta: after having been arrested on 19 April 2020, the first call he was permitted to make to a lawyer or family

1190 Complaint to the Criminal Judicial Circuit of Caracas, signed by Franklin Alfredo Caldera Cordero and Yoraima Josefina Martínez, 3 March 2021, on file with the Mission.

1191 Complaint to the Director of the Human Rights directorate of the Public Prosecutor's Office, signed by Franklin Alfredo Caldera Cordero and Yoraima Josefina Martínez, 3 March 2021, on file with the Mission.

1192 Complaint to the Human Rights Ombudsperson, signed by Franklin Alfredo Caldera Cordero and Yoraima Josefina Martínez, 3 March 2021, on file with the Mission.

1193 See YouTube video, Entrevista exclusiva a los padres del primer teniente Franklin Caldera, 28 February 2021, available at: https://www.youtube.com/watch?v=D_BzNgjlTtI

1194 Interview AAIV047, 17 May 2021.

1195 A/HRC/45/CRP.11 para. 279 (in relation to arrests conducted by SEBIN) and para. 317 (in relation to arrests conducted by DGCIM). See additionally, for example, the following in-depth cases involving incommunicado detentions: Case 1: Leopoldo López; Case 2: Antonio Ledezma; Case 3: Gilber Caro; Case 4: Steyci Escalona; Case 5: Detention of Three Individuals – "Operation Tun Tun"; Case 6: Víctor Navarro, C2EE091023 and eight others; Case 7: Geraldine Chacón and Gregory Hinds (Community Ambassadors Foundation); Case 8: Ángel Zerpa; Case 9: Juan Carlos Requesens; Case 10: Fernando Albán; Case 11: Roberto Marrero; Case 12: Detentions of private citizens for statements on social media perceived as critical of the Government; Case 13: Captain Luis de la Sotta and others. Case 14: Major Isaias Lenin Falcón Juárez; Case 15: Operation Constitution: illustrated by cases of Colonel Oswaldo Valentín García Palomo, Colonel José Rommel Acevedo Montañez, and Antonio José Iabichuela; Case 16: Cotiza uprising, Sargent Luis Alexander Bandres Figueroa; Case 17: Captain Rafael Acosta Arévalo; Case 18: Ariana Granadillo and Family. These tactics have also been documented in the cases of, *inter alia*, Lorent Saleh, Gabriel Valles, Rodolfo Pedro González, C2EE14, C2EE10, C2EE22, C2EE23, Jesús Medina Ezaine, Víctor Ugas, Lt. Col. Igbert Marín Chaparro and co-defendants, and others.

1196 2012 Criminal Procedure Code, art. 127.

1197 2012 Criminal Procedure Code, art. 119.

1198 This occurred in cases of arrests conducted by DGCIM, as documented in the Mission's 2020 report, in which the Mission documented at least six clandestine or unofficial detention places. See A/HRC/45/CRP.11, para. 315.

1199 Defence's Request to the Court of Appeals of the Criminal Judicial Circuit of Caracas, 29 November 2017; Document AADOC020, 12 August 2021.

member was on 19 June 2020.[1200] The Preliminary Hearing record does not reflect any indication of a response by the Fourth Terrorism Control Judge.

252. As concluded in the Mission's 2020 report, some opponents or perceived opponents and persons associated with them have been subject to short term enforced disappearance during the period under review.[1201] The Mission found that once detained, arrestees were held without any contact with the outside world, for periods ranging from days to weeks, while detention facilities, including in SEBIN and DGCIM, denied family members information about their whereabouts.[1202] Enforced disappearance involves the deprivation of liberty against the will of the person and the involvement of State agents, whether by commission, tolerance or acquiescence, and the concealment of the fate or whereabouts of the disappeared person.[1203] There is no minimum length of time under international human rights standards for which a detainee must be subjected to enforced disappearance in order for the violation to have occurred.[1204]

253. Any person whose liberty is deprived or restricted in violation of constitutional guarantees has the right to file an injunction (*amparo*) of *habeas corpus*.[1205] Upon receipt of the request, the judge is supposed to open a summary investigation, immediately ordering the authority with custody over the defendant to report within 24 hours on the reasons for the deprivation or restriction of liberty of the defendant.[1206] The judge shall decide within 96 hours upon receipt of the request, and immediately release the defendant if the judge finds that the legal formalities for the deprivation or restriction of liberty have not been complied with.[1207] The cases reviewed by the Mission 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 were filed.[1208]

254. In one case investigated by the Mission, following the 4 May 2020 detention of Josnars Adolfo Baduel Oyoque (see Box 13) in relation to Operation Gedeón, on 8 May 2020, his sister, Andreina Baduel, filed a *habeas corpus* writ with the Constitutional Chamber of the Supreme Tribunal of Justice.[1209] The *habeas corpus* writ detailed Ms. Baduel's repeated visits to Caracas Criminal Circuit and SEBIN and DGCIM headquarters as she tried unsuccessfully to locate her brother, after having seen his capture on video.[1210] On 15 May 2020, the Constitutional Chamber of the Supreme Tribunal of Justice issued its response denying the *habeas corpus* request.[1211]

---

1200 Name of the defendant on file with the Mission. Preliminary Hearing Record, 7 August 2020.

1201 A/HRC/45/CRP.11, paras. 278 and 313.

1202 A/HRC/45/CRP.11, paras. 278 and 314.

1203 See articles 2 of ICED and of the Inter-American Convention on Forced Disappearance of Persons.

1204 In the Yrusta v. Argentina case, the Committee on Enforced Disappearance recalled that "[…] in order to constitute an enforced disappearance, the deprivation of liberty must be followed by a refusal to acknowledge such deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law, regardless of the duration of the said deprivation of liberty or concealment", CED/C/10/D/1/2013, para. 10.3. In this case, the period in question was 'more than seven days'. See paras. 2.3 and 10.4 to 10.6.

1205 Organic Law of Injunctions on Constitutional Rights and Guarantees, Published in the Official Gazette No. 34060 on 28 September 1988, art. 39, available at: https://www.excubitusdhe.org/marco-legal/ley-de-amparo-y-garantias-constitucionales (hereinafter "Organic Law of Injunctions").

1206 Organic Law of Injunctions. art. 41.

1207 If deemed necessary, the judge shall impose a personal bond or a prohibition of the defendant to leave the country, for a term not exceeding thirty days. Organic Law of Injunctions, art. 42.

1208 The Mission was able to document 18 such instances; FFMV0079; FFMV0092; FFMV0096; FFMV0058; FFMV0055; FFMV0123; FFMV0010; FFMV0024; FFMV0062; FFMV0093; FFMV0142; FFMV0102; FFMV0027; FFMV0098; FFMV0095; FFMV0016; FFMV0035; FFMV0183.

1209 *Habeas Corpus* Filing to the Constitutional Chamber of the Supreme Tribunal of Justice, 8 May 2020, on file with the Mission.

1210 *Habeas Corpus* Filing to the Constitutional Chamber of the Supreme Tribunal of Justice, 8 May 2020, on file with the Mission.

1211 Supreme Tribunal of Justice, Constitutional Chamber Decision, 14 May 2020.

255. Instead, it ordered that the Public Prosecutor's Office initiate a criminal investigation against Ms. Baduel and fined her 50 tax units payable to the National Treasury for "indiscriminate and excessive litigiousness".[1212] The Supreme Tribunal of Justice cited a news report of 8 May 2020, after the *habeas corpus* had been filed, in which Ms. Baduel stated that she had received confirmation that her brother was being held in El Helicoide.[1213] The Supreme Tribunal of Justice considered that Ms. Baduel had failed to inform the court of this update, resulting in the court's unnecessarily having to continue processing the *habeas corpus* request.[1214]

***Box 8: The case of Lieutenant Colonel Juan Antonio Hurtado Campos***

In 2018, 49 year-old Lieutenant Colonel Juan Antonio Hurtado Campos was the head of the Armoury of the Special Brigade for Presidential Protection of the Presidential Honour Guard, based at the Miraflores Presidential Palace in Caracas.

Lt. Col. Hurtado was on leave[1215] on 4 August 2018, when the drone attack against President Maduro and other officials occurred, during the National Guard anniversary commemoration in Caracas (see Box 9).[1216] Lt. Col. Hurtado telephoned his superiors offering to report for duty, but was told it was unnecessary.[1217] Lt. Col. Hurtado returned to his barracks in Caracas on 3 September 2018.[1218] The following morning, Lt. Col. Hurtado attended a medical appointment, [1219] leaving around 11.20 a.m.; his family did not hear from him again.

Having repeatedly tried to contact him, Lt. Col. Hurtado's family called the Presidential Guard on 6 September to ask for his whereabouts and were told he was "out on duty".[1220] Officials repeated this message on 10 September and on or around 15 September when a Presidential Guard officer visited the family's home.[1221] On 17 September 2018, the family filed a missing person's report with the CICPC, which notified the Public Prosecutor's Office[1222] and began an investigation.[1223] The Fifty-Fourth Prosecutor's Office for the Caracas Metropolitan Area opened a missing person's file on 20 September 2018.[1224]

[1212] Supreme Tribunal of Justice, Constitutional Chamber Decision, 14 May 2020.
[1213] Supreme Tribunal of Justice, Constitutional Chamber Decision, 14 May 2020.
[1214] Supreme Tribunal of Justice, Constitutional Chamber Decision, 14 May 2020.
[1215] Record DDDOC040, 6 February 2021.
[1216] The "Drone Case" refers to events that occurred on 4 August 2018 on Avenida Bolívar in Caracas, during a military parade that took place to commemorate the 81st anniversary of the Bolivarian National Guard (GNB). President Maduro and other high-ranking officials participated in the celebration. Two remote-controlled drones flew overhead, one exploding in Avenida Bolívar, and the other near the building Residencias Don Eduardo. The Venezuelan government has characterized the event as an assassination attempt. Nineteen individuals (15 men and four women) have been charged in relation to the events. See, for example: The New York Times, Venezuelan President Targeted by Drone Attack, Officials Say, 4 August 2018, available at: https://www.nytimes.com/2018/08/04/world/americas/venezuelan-president-targeted-in-attack-attempt-minister-says.html; BBC, Venezuelan President Maduro survives 'drone assassination attempt', 5 August 2018, available at: https://www.bbc.com/news/world-latin-america-45073385
[1217] Interview DDIV040, 25 May 2021.
[1218] Record DDDOC040, 6 February 2021; Record DDDOC043, 3 September 2018.
[1219] Interview DDIV040, 25 May 2021; Record DDDOC044, 24 September 2018; Cuban Medical Mission, Rehabilitation Treatment Card.
[1220] Interview DDIV040, 25 May 2021; Record DDDOC044, 24 September 2018.
[1221] Interview DDIV040, 25 May 2021; Complaint DDDOC042, 17 September 2018.
[1222] Record DDDOC045, 17 September 2018; Interview DDIV040, 25 May 2021.
[1223] Complaint DDDOC042, 17 September 2018.
[1224] Record DDDOC046, 20 September 2018.

The CICPC located Lt. Col. Hurtado's weapons, personal items, identification card and passport in his barracks.[1225] They identified the last recorded location of his cellular phone near Los Salias municipality in Miranda State on the Mariposa highway, during the evening of 4 September 2018, around six hours after his last known whereabouts. The Mariposa highway runs through a military zone. DGCIM runs a secret detention centre there, as the Mission confirmed in its September 2020 Report.[1226] The CICPC investigation revealed information that ran contrary to the information the Presidential Guard provided to the family. The CICPC investigation team was then split up and reassigned, for unexplained reasons.[1227]

Lt. Col. Hurtado's family continued seeking information about his whereabouts, including from the Chief Military Prosecutor, who told them on 24 September 2018 that an investigation into his possible desertion from service had not been opened, as the Presidential Guard had not informed his office about Lt. Col. Hurtado's absence from service.[1228] The same day, a Presidential Guard officer told representatives of the family that DGCIM had opened an investigation on grounds of desertion. The same officer then sent a request to the Chief Military Prosecutor to open the investigation,[1229] but a 5 October 2018 Ministry of Defence communication to the CICPC indicated that no investigation related to Lt. Col. Hurtado had been initiated.[1230]

On 20 January 2019, the Fifty-Fourth Prosecutor of the Caracas Metropolitan area requested CICPC to transfer the investigation file to their offices.[1231] Victims' representatives later requested information on the investigation from the Fifty-Fourth Public Prosecutor's Office, but were told that the file had been misplaced.[1232] The representatives did not gain access to the file until early 2021.

On 10 July 2019, Lt. Col. Hurtado's representatives filed a *habeas corpus* writ before the Thirty-Sixth Control Court in Caracas.[1233] The Thirty-Sixth Control Judge did not act on this within the 96 hours required by law, nor in the following months. On 25 November 2019, the presiding judge told Lt. Col. Hurtado's representatives that the writ had been lost and suggested they file another one.[1234] The representatives submitted a fresh writ on 27 November 2019, highlighting their "state of absolute defencelessness facing the lack of institutional response".[1235]

[1225] Interview DDIV040, 25 May 2021; Record DDDOC047, 20 September 2018.
[1226] The Mission noted that these unofficial facilities had been used increasingly by DGCIM since 2018. See para 315 in A/HRC/45/CRP.11, 15 September 2020.
[1227] Interview DDIV040, 25 May 2021.
[1228] Interview DDIV040, 25 May 2021.
[1229] Presidential Honour Guard, Special Brigade for Presidential Protection, Record no. 268, 24 September 2018.
[1230] Record DDDOC049, 5 October 2018.
[1231] Record DDDOC048, 20 January 2019.
[1232] Interview DDIV040, 25 May 2021; Submission to the Working Group on Enforced or Involuntary Disappearances, on file with the Mission.
[1233] *Habeas Corpus* Filing to Thirty-Sixth Control Court of the Caracas Metropolitan Area Judicial Circuit, 10 July 2019, on file with the Mission.
[1234] Interview DDIV040, 25 May 2021.
[1235] *Habeas Corpus* Filing to Thirty-Sixth Control Court of the Caracas Metropolitan Area Judicial Circuit, 27 November 2019, on file with the Mission.

On 30 July 2019, the Fifth Military Prosecutor requested information from CICPC about its investigation into Lt. Col. Hurtado's whereabouts.[1236] The following day, before CICPC responded, a Military Tribunal issued a warrant for Lt. Col. Hurtado's arrest for the crimes of desertion, disobedience, service abandonment and crimes against military decorum.[1237] The Chief Military Prosecutor informed the CICPC of this warrant on 3 September 2019, upon which the CICPC wrote to inform the Fifth Military Prosecutor's Office that an investigation into Lt. Col. Hurtado's disappearance had been opened nearly a year earlier, with Lt. Col. Hurtado as a *victim*.[1238]

On 4 October 2019, the UN Working Group on Enforced and Involuntary Disappearances requested that the Venezuelan Government take further investigative actions to clarify the whereabouts of Lt. Col. Hurtado and to protect his rights.[1239]

On 22 July 2020, the General Commander of the Army issued a statement on behalf of the Ministry of Defence in which it announced that 302 military officers had been dismissed, including Lt. Col. Hurtado.[1240] This left Lt. Col. Hurtado's family unable to access the benefits he had accumulated during his decades of service.[1241]

Lt. Col. Hurtado's family and representatives had not received any response regarding their *habeas corpus* filings at the time of writing,[1242] nor had the Prosecutor's Office contacted them regarding any further investigative steps.[1243] Lt. Col. Hurtado remained missing, three years after his disappearance.

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

256. The Mission continued to document serious allegations of torture, sexual violence and/or other cruel, inhuman or degrading treatment perpetrated during arrests and detentions. As the focus of this report is on judicial protection, the Mission paid particular attention to instances in which these allegations were raised with judicial authorities without effective response. According to the Law on Torture, all public officials with knowledge about or who witness the possible commission of torture or cruel, inhuman or degrading treatment are required to report it immediately to the competent authorities, on penalty of one to three years' imprisonment.[1244] Additionally, when police officers, prison officials, prosecutors, public defenders, military officials or judges become aware of such acts, they must notify the Ombudsperson's Office within 48 hours, on penalty of fines, community service or dismissal from their positions, according to the gravity of the case.[1245]

257. In 113 of the 183 cases of detentions reviewed by the Mission, detainees or their representatives have made allegations of torture, sexual violence and/or other cruel, inhuman or degrading treatment perpetrated.[1246] In 67 of these, the detainees appeared in court with

[1236] Record DDDOC050, 30 July 2019.
[1237] Record DDDOC051, 3 September 2019.
[1238] Record DDDOC052, 3 September 2019.
[1239] Working Group on Enforced and Arbitrary Detentions, Letter referencing: G/SO 217/1/ Venezuela, 1 November 2019.
[1240] See public information about the dismissals available here: Infobae, El jefe del Ejército de Venezuela ordenó el despido de 302 oficiales sin juicio previo, 29 July 2020, available at: https://www.infobae.com/america/venezuela/2020/07/29/el-jefe-del-ejercito-de-venezuela-ordeno-el-despido-de-302-oficiales-sin-juicio-previo/
[1241] Interview DDIV040, 25 May 2021.
[1242] Interview DDIV040, 25 May 2021.
[1243] Interview DDIV040, 25 May 2021.
[1244] 2013 Law on Torture, art. 31.
[1245] 2013 Law on Torture, arts. 15 and 24.
[1246] FFMV0091, FFMV0147, FFMV0079, FFMV0047, FFMV0124, FFMV0039, FFMV0077, FFMV0092, FFMV0150, FFMV0116, FFMV0180, FFMV0040, FFMV0004, FFMV0096, FFMV0179, FFMV0141, FFMV0068, FFMV0128, FFMV0139, FFMV0176, FFMV0055, FFMV0106, FFMV0023, FFMV0113, FFMV0122, FFMV0119, FFMV0041, FFMV0178, FFMV0089, FFMV0015, FFMV0071, FFMV0111, FFMV0076, FFMV0140, FFMV0138,

clear marks of mistreatment or raised allegations of torture, sexual violence and/or other cruel, inhuman or degrading treatment during court proceedings.[1247] Such allegations have also been raised by family members and legal representatives in written submissions to the Control Courts, the Public Prosecutor's Office or the Ombudsperson's Office. In some cases investigated, there is no indication of any action having been taken in records of judicial hearings during which they were raised.

258. The Mission received credible information that Captain Juan Carlos Caguaripano, arrested on 11 August 2017 for the attack on Fort Paramacay was presented before the Third Military Control Judge for his initial appearance with severe injuries: he had difficulty walking due to injuries to his feet, legs, knees, ribs, hands, face, and genitals, and had difficulty breathing due to fractured ribs.[1248] He had received severe blows to his testicles, and at the time of his initial hearing, the wound was still open and visibly bleeding.[1249] He requested inclusion of a forensic medical examination in his case file, despite DGCIM members having warned him against revealing the torture he had suffered to the court, as well as warning him not to appoint a lawyer of his choosing.[1250] The record of a forensic medical exam conducted on the day of the initial appearance confirms serious injury to Captain Caguaripano's genitals, as well as wounds and bruising to his face, neck, shoulders, back, buttocks, thighs, feet, arms and hands.[1251]

259. At the preliminary hearing, having succeeded in appointing his own counsel, Captain Caguaripano described in detail his detention conditions and the torture and sexual violence to which he had been subjected, as well as acts of violence that he heard other detainees suffer. When presented with the transcript of the hearing for signature, he found that although it did include some information about the acts of torture and sexual violence committed against him, it was incomplete and erroneous as it did not capture his full account, including some information about those responsible. The judge refused the request to rectify the transcript. He ultimately signed it, noting "errors in transcription".[1252]

FFMV0049, FFMV0067, FFMV0007, FFMV0070, FFMV0160, FFMV0173, FFMV0085, FFMV0046, FFMV0020, FFMV0021, FFMV0104, FFMV0107, FFMV0064, FFMV0080, FFMV0062, FFMV0084, FFMV0130, FFMV0142, FFMV0073, FFMV0102, FFMV0132, FFMV0133, FFMV0117, FFMV0026, FFMV0149, FFMV0148, FFMV0002, FFMV0109, FFMV0069, FFMV0027, FFMV0054, FFMV0034, FFMV0078, FFMV0181, FFMV0066, FFMV0082, FFMV0118, FFMV0115, FFMV0094, FFMV0175, FFMV0137, FFMV0038, FFMV0168, FFMV0025, FFMV0120, FFMV0164, FFMV0129, FFMV0105, FFMV0011, FFMV0114, FFMV0097, FFMV0045,FFMV0174, FFMV0005, FFMV0095, FFMV0081, FFMV0083, FFMV0086, FFMV0030, FFMV0053, FFMV0159, FFMV0156, FFMV0006, FFMV0135, FFMV0110, FFMV0112, FFMV0103, FFMV0127, FFMV0171, FFMV0001, FFMV0019, FFMV0087, FFMV0052, FFMV0043, FFMV0028, FFMV0035, FFMV0143, FFMV0144.

[1247] FFMV0091, FFMV0147, FFMV0092, FFMV0116, FFMV0004, FFMV0096, FFMV0179, FFMV0141, FFMV0068, FFMV0128, FFMV0139, FFMV0176, FFMV0055, FFMV0106, FFMV0023, FFMV0113, FFMV0122, FFMV0119,FFMV0041, FFMV0178, FFMV0089, FFMV0015, FFMV0071, FFMV0138, FFMV0067, FFMV0173, FFMV0085, FFMV0064, FFMV0080, FFMV0062, FFMV0084, FFMV0130, FFMV0073, FFMV0117, FFMV0026, FFMV0148, FFMV0002, FFMV0069, FFMV0054, FFMV0034, FFMV0082, FFMV0118, FFMV0094, FFMV0175, FFMV0025, FFMV0120, FFMV0129, FFMV0011, FFMV0114, FFMV0097, FFMV0174, FFMV0005, FFMV0095, FFMV0083, FFMV0086, FFMV0030, FFMV0159, FFMV0156, FFMV0006, FFMV0135, FFMV0103, FFMV0127, FFMV0001, FFMV0019, FFMV0087, FFMV0143, FFMV0144.

[1248] Interview DDIV062, 16 July 2021; Statement DDDOC034, March 2020, on file with the Mission.

[1249] Interview DDIV062, 16 July 2021; Statement DDDOC034, March 2020, on file with the Mission.

[1250] The record of a forensic medical exam conducted on the day of the initial appearance confirms serious injury to Captain Caguaripano's genitals, as well as wounds and bruising to his face, neck, shoulders, back, buttocks, thighs, feet, arms and hands. SENAMECF, No. 129 DET-12723-17, 15 August 2017, on file with the Mission. Interview DDIV062, 16 July 2021; Statement DDDOC034, March 2020, on file with the Mission.

[1251] SENAMECF Record, 15 August 2017.

[1252] Preliminary Hearing Record, 16 November 2018.

260. The co-accused, along with Captain Acosta Arévalo, in the Vuelvan Caras case were presented in court in the hours following Captain Acosta Arévalo's death on 28 June 2019. The seven surviving detainees were brought before the Third Military Tribunal of Control with visible physical signs of severe torture and soiled clothing.[1253] Defence counsel told the Third Military Control Judge that the defendants had been physically and psychologically tortured, including through sexual violence, and that the video confessions presented by the prosecution had been filmed illegally after torture, under duress, and without the presence of legal representation.[1254] The judge, who had witnessed the state of Captain Acosta Arévalo just hours earlier, ordered medical examinations. One witness told the Mission that DGCIM members took the detainees to a hospital where a doctor met the group in a reception area and took down their basic information without conducting physical examinations.[1255]

261. The Mission reviewed court records of cases in which Control Judges responded to torture allegations made in court by ordering the Public Prosecutor's office to verify the complaints made or to conduct medical examinations. However, 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. The Mission noted in its previous report that military defendants were particularly vulnerable to this.[1256]

262. For example, on 10 August 2021, at the conclusion of the preliminary hearing in the "Operation Armageddon" case,[1257] the First Military Control Judge rejected the defence's request for Captain Luis de la Sotta to be transferred to CENAPROMIL detention centre (Ramo Verde). He ordered him to remain under DGCIM custody in Fuerte Tiuna to await trial, despite the 12 May 2021 executive decree,[1258] referenced above, ordering transfer of detainees out of DGCIM custody.[1259] The judge took this decision despite repeated complaints about torture and cruel, inhuman and degrading treatment perpetrated by DGCIM members against Captain de la Sotta since his arrest in May 2018.[1260] Captain de la Sotta's legal representatives were unaware of investigations into the complaints at the time of writing. One of Captain de la Sotta's lawyers said that the same judge had issued an order to transfer him on 2 June 2021, according to a record within the case file; the order was never implemented. The judge did not provide any reasoning for the change in order two months later.[1261]

263. Allegations of sexual and gender-based violence against women detainees have also been raised in court hearings. For example, one of the women detained on 5 August 2018 in the Drone Case (see Box 9) and held in SEBIN El Helicoide described in detail to the First Terrorism Control Judge on 29 April 2019 that, during her interrogation, officials beat her, threatened her with a knife, threatened to rape her and forced her to remove clothing, telling

[1253] Interview DDIV050, 17 June 2021; Interview DDIV038, 20 May 2021. See also: Case 17: Captain Rafael Acosta Arévalo in A/HRC/45/CRP.11, 15 September 2020.

[1254] Third Military Tribunal of Control, Initial Appearance Record, 28 June 2019

[1255] DDDOC035, 17 June 2021. The witness indicated that the doctor appeared to be intoxicated and smelled of alcohol.

[1256] Including, *inter alia*, A/HRC/45/CRP.11, Case 13: Captain Luis de la Sotta; Case 15: Operation Constitution: illustrated by cases of Colonel Oswaldo Valentín García Palomo, Colonel José Rommel Acevedo Montañez, and Antonio José Iabichuela; the Franklin Caldera case, the "Vuelvan Caras" case, the "Drone" case, the "Operación Gedeón" case, the "Paramacay" case, among others.

[1257] On 23 December 2018, the Military Court of Appeals annulled the original preliminary hearing held on 12 December 2018. On 27 May 2021 a new preliminary hearing began before the First Military Court of Control in Caracas. For background on the case, see A/HRC/45/CRP.11, Case 13: Captain Luis de la Sotta and others.

[1258] Presidential Resolution No. 4.601, Published in the Official Gazette of 12 May 2021, available at: https://fr.scribd.com/document/508240552/Gaceta-Oficial-42-125-Sumario; Prolonged for a period of 30 additional days via Presidential Resolution No. 4.528, Published in the Official Gazette of 11 June 2021, available at: https://www.ojdt.com.ve/gaceta-oficial/42147-11-06-2021.

[1259] Interview DDIV063, 10 August 2021.

[1260] The most recent complaint, dated 6 August 2021, was filed directly to the First Military Court of Control in Caracas, requesting that Captain de la Sotta be transferred, that complaints of torture be investigated, and that he receive medical attention. On file with the Mission.

[1261] Interview DDIV063, 10 August 2021.

her they wanted to see if her body was good enough to provoke them.[1262] She stated before the court that this sexual violence occurred in the presence of superior officers, and that she was then taken to DGCIM Boleíta, where torture continued.[1263]

264. As with the other declarations of torture in this case, in the Control Judge's closing remarks on the final day of the Preliminary Hearing on 1 July 2019, she ordered a letter to be sent to the Fundamental Rights Office of the Public Prosecutor's Office ordering that they visit DGCIM Boleíta and SEBIN's headquarters to verify allegations of "human rights violations and cruel, inhuman and degrading treatment".[1264] However, the Control Judge also ordered that she remain in pre-trial detention, at that time in DGCIM Boleíta.[1265] As at the time of writing, the defence counsel has been unable to verify what investigative steps had been taken or follow-up information had been requested by or provided to the Control Judge.[1266]

265. In other cases investigated, DGCIM did not execute judicial orders to transfer detainees to non-DGCIM facilities. For example, both the Military Control Court and the Military Trial Tribunal ordered Lieutenant Colonel Igbert Marín Chaparro to be transferred from DGCIM Boleíta to other facilities, beginning on the day of his initial appearance on 9 March 2018.[1267] Despite these orders, Lieutenant Colonel Marín Chaparro remained in Boleíta at the time of writing, where he has been subjected to continued mistreatment including lack of access to regular visitation, periods of solitary confinement in inadequate locations, and inadequate access to medical care.[1268] The Mission received credible information that a military prosecutor had communicated to Lieutenant Colonel Marín Chaparro's family that he would not comply with any transfer order.[1269]

---

1262 Preliminary Hearing Record, 29 April 2019.

1263 Preliminary Hearing Record, 29 April 2019.

1264 Preliminary Hearing Record, 29 April 2019.

1265 The victim was transferred along with nine other female detainees out of DGCIM Boleíta to the National Feminine Orientation Institute (INOF) on 8 July 2019, 11 months after her arrest. This transfer did not respond to a judicial order, however, and the women's families and legal representatives were not informed of their transfer or whereabouts for multiple days. Interview C2EE17, 24 June 2020; Interview C2EE1, 25 June 2020. See social media posts https://twitter.com/TAMARA_SUJU/status/1148422038538739718; https://twitter.com/TAMARA_SUJU/status/1148422039495032834; https://twitter.com/SebastianaSin/status/1148587973291761664; https://twitter.com/SebastianaSin/status/1148587992413593600; https://twitter.com/SebastianaSin/status/1149008491006353409. See also El Nacional, Denuncian que presas de la Dgcim siguen desaparecidas, 10 July 2019, available at: https://www.elnacional.com/venezuela/politica/denuncian-que-presas-dgcim-siguendesaparecidas_288040/.

1266 Information Request to Director of Fundamental Rights Office of the Public Prosecutor, File Number 000462, 22 April 2021; Request for Certified Copies to First Control Tribunal on Terrorism, 29 January 2021; Information Request to First Control Tribunal on Terrorism, 11 January 2021; Request for Certified Copies to First Control Tribunal on Terrorism, 15 April 2021.

1267 On 9 March 2018, his transfer was ordered to the Santa Ana Military Prison in Táchira State. On 25 July and 6 August 2018, his transfer was ordered to CENAPROMIL Ramo Verde. On 22 December 2020, his transfer was again ordered to CENAPROMIL Ramo Verde to serve his sentence. On 28 July 2021, the Military Appeals Court ordered his transfer to the Thirty-Fifth Brigade of the Military Police "Libertador José de San Martín" in Fuerte Tiuna to await his retrial following a successful appeal.

1268 Interview DDIV036, 18 May 2021; Interview DDIV043, 27 May 2021; Interview DDIV048, 11 June 2021.

1269 Document DDDOC036, on file with the Mission.

***Box 9: The Drone Case***

On 4 August 2018, a military parade took place on the Avenida Bolívar in Caracas to commemorate the eighty-first anniversary of the Bolivarian National Guard (GNB). President Maduro and other high-ranking officials participated in the celebration. During President Maduro's speech, two remote-controlled drones flew overhead, one detonating explosives in the Avenida Bolívar, and the other near the building Residencias Don Eduardo.[1270] The Venezuelan Government characterized the event as an assassination attempt.[1271]

In the immediate aftermath, two men were arrested *in flagrante delicto*.[1272] In the following 48 hours, seven more men and two women were arrested in Caracas, Barinas State and Portuguesa State; only one of them (a military general) was presented with a warrant.[1273] On 7 August 2018, National Assembly deputy Juan Carlos Requesens was also arrested without a warrant.[1274] On 13 August 2018, DGCIM arrested another military general, without presenting a warrant.[1275] In September and October 2018, SEBIN arrested three more men and one more woman; the woman was not presented with a warrant for her arrest or the search of her home.[1276]

The arrests were carried out by different authorities including DGCIM, SEBIN and the PNB. Post arrest, all arrestees were transferred to DGCIM Boleíta or SEBIN's El Helicoide facility in Caracas. At least three of the individuals (two men and one woman) were moved back and forth between Boleíta and El Helicoide.[1277]

[1270] See, for example: The New York Times, Venezuelan President Targeted by Drone Attack, Officials Say, 4 August 2018, available at: https://www.nytimes.com/2018/08/04/world/americas/venezuelan-president-targeted-in-attack-attempt-minister-says.html; BBC, Venezuelan President Maduro survives 'drone assassination attempt', 5 August 2018, available at: https://www.bbc.com/news/world-latin-america-45073385

[1271] See TeleSur, Venezuela: cronología y responsables del atentado contra Maduro, available at: https://videos.telesurtv.net/video/734215/venezuela-cronologia-y-responsables-del-atentado-contra-maduro/

[1272] Preliminary Hearing Records, 29 April through 11 June 2019; DDDOC021, no date; DDDOC022, 9 March 2021; DDDOC007, 9 March 2021.

[1273] Preliminary Hearing Records, 29 April through 11 June 2019; DDDOC029, 9 March 2021; DDDOC030, 9 March 2021; DDDOC015, 20 May 2021; DDDO14, 9 March 2021; DDDIC019, 9 March 2021.

[1274] See Case 9: Juan Carlos Requesens in A/HRC/45/CRP.11, 15 September 2020.

[1275] Preliminary Hearing Record, 23 May 2019.

[1276] Preliminary Hearing Records, 29 April through 11 June 2019; DDDOC27, no date; DDDOC005, 9 March 2021; DDDOC006, 20 May 2021.

[1277] Preliminary Hearing Records, 29 April through 11 June 2019.

The Sixty-Seventh Provisional Prosecutor with national jurisdiction and the Eighty-Third Provisional Prosecutor with national jurisdiction on money laundering, financial and economic crimes charged 17 individuals (14 men and three women) with a combination of crimes, including treason,[1278] attempted intentional homicide,[1279] launching of explosive objects at a public event,[1280] violent property damage,[1281] terrorism,[1282] criminal association,[1283] concealing terrorism,[1284] financing terrorism,[1285] public incitement,[1286] and illegal possession of arms and ammunition.[1287] The charges were made before the former First Terrorism Control Judge (now judge of the Seventh Appeals Court of the Criminal Judicial Circuit of Caracas).

The detainees were held incommunicado between two and 14 days before their initial appearances. At least two of the defendants declared in court that the police records stating the dates of their arrest had been falsified to reflect dates of detention after they had actually been detained.[1288] One defendant told the court, "The Public Prosecutor's Office and DGCIM are lying about the manner, time and place of the circumstances in which I was detained."[1289] He and his family had filmed the moments before his arrest, and the videos were circulated on social media prior to the date officials claimed to have detained him.[1290]

The Mission received consistent and credible information that DGCIM and SEBIN officials tortured at least 12 of the male detainees and all three of the female detainees, including through acts of sexual and gender-based violence.[1291]

At the initial appearances, at least seven of the defendants declared that they had been tortured, and at least five appeared in court with visible injuries.[1292] A female defendant told the court that at her initial appearance she could not stand straight. Patches on her scalp could be seen in court as her hair was missing, having been ripped out.[1293] A male defendant stated to the Control Judge, "On 14 August when they brought me to this same courtroom for my initial appearance, what is strange to me is that my face was totally destroyed and my body more so, and I do not know why you allowed them to present me in this manner, in that state […]."[1294] Despite this, the Control Judge ordered that all detainees return to DGCIM Boleíta and SEBIN Helicoide for pre-trial detention.

[1278] Criminal Code, art. 128.
[1279] Criminal Code, arts. 405 and 406.
[1280] Criminal Code, arts. 296 and 297.
[1281] Criminal Code, art. 473.
[1282] Law against Organized Crime and Financing Terrorism, art. 52.
[1283] Law against Organized Crime and Financing Terrorism, art. 37.
[1284] Law against Organized Crime and Financing Terrorism, art. 52 and Criminal Code, art. 254.
[1285] Law against Organized Crime and Financing Terrorism, art. 53.
[1286] Criminal Code, art. 285.
[1287] Law for Disarmament and Arms and Munitions Control, art. 112.
[1288] Preliminary Hearing Record, 23 May 2018, p. 307.
[1289] Preliminary Hearing Record, 23 May 2018, p. 307.
[1290] The videos were circulated on Twitter by photojournalist Roman Camacho. https://twitter.com/RCamachoVzla/status/1029212162710011904; https://twitter.com/RCamachoVzla/status/1029329169665142784.
[1291] Preliminary Hearing Records, 29 April through 11 June 2019; DDDOC022, 9 March 2021; DDDOC007, 9 March 2021; DDDOC012, 9 March 2021; DDDOC002, 9 March 2021; DDDOC014, 9 March 2021; DDDOC31, 9 March 2021; DDDOC019, 9 March 2021; DDOC029, 9 March 2021; DDDOC030; 20 May 2021; DDDOC009, 18 November 2020; DDDOC010, 9 March 2021; DDDOC016, 14 October 202; DDDOC017, 9 March 2021; DDDOC028, no date; DDDOC005, 9 March 2021.
[1292] Preliminary Hearing Records, 29 April through 11 June 2019.
[1293] Preliminary Hearing Record, 29 April 2019.
[1294] Preliminary Hearing Record, 29 April 2019.

It was not until the preliminary hearing almost nine months later that the consequences of the judge's decisions were revealed in court. The preliminary hearing for the entire group of 17 opened on 22 February 2019 and following 11 hearings, concluded on 1 July 2019.[1295] One of the male defendants informed the First Terrorism Control Judge of this directly, telling her 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. Our hands were cuffed behind our backs for 15 days straight."[1296]

The mission has reasonable grounds to believe that During the initial days and weeks of detention, DGCIM and SEBIN used torture and sexual violence during interrogations to elicit passwords and incriminating statements. One male detainee later told the court how, "the day they got my Facebook password was the day they gave it to me hardest. They gave me electric shocks. […] They took that password under torture."[1297] He went on to describe how DGCIM officials asphyxiated him, whipped his back at least 100 times, and hit his toes with a hammer. When the prosecution presented the contents of the defendant's Facebook account as one of their elements of proof, the Control Judge admitted it as evidence, despite defence counsel highlighting that it had been obtained under torture.[1298]

Similarly, the PNB and then DGCIM tortured one of the defendants arrested on 5 August 2018 and gained access to his telephone after arresting him without a warrant.[1299] The Sixty-Seventh Provisional Prosecutor later told the court that audio material extracted from that telephone allowed prosecutors to identify four of the other defendants.[1300] The defendant stated in court, "everything they made me say at the time of the torture was under coercion".[1301] Other evidence presented included reports filed by DGCIM and SEBIN officials, including those specifically named as perpetrators of torture by the detainees.[1302]

Thirteen of the defendants described their torture in detail during four of the hearings. Acts of torture they described in court included beatings with fists, kicks, weapons, boards, metal objects, cables and belts, electric shocks to the body and genitals, asphyxiation with plastic bags containing chemical irritants, death threats against the individuals and their mothers, ripping out hair, and the denial of water to a renal patient for six days.

Acts of sexual and gender-based violence perpetrated by DGCIM and SEBIN described in court included attempted rape of a man, threats of rape against a woman, forced removal of clothing of men and women, and forcing multiple male detainees to take baths together.[1303] One male detainee described in court how SEBIN officials in El Helicoide "threw talcum powder in my face, they attempted to rape me, they even tried to get me to commit suicide. They told me my mother was dead, they told me they would cut off all my fingers, they pulled out a toenail, they gave me electric shocks, they squeezed my testicles with plyers causing me to bleed, they even hit my knee with a hammer."[1304]

[1295] Hearings held on 22 February, 25 March, 5 April, 9 April, 11 April, 24 April, 29 April, 22 May, 23 May, 11 June and 1 July 2019.
[1296] Preliminary Hearing Record, 22 May 2019.
[1297] Preliminary Hearing Record, 29 April 2019.
[1298] Preliminary Hearing Record, 11 June 2019.
[1299] Preliminary Hearing Record. 29 April 2018.
[1300] Preliminary Hearing Record, 25 March 2019.
[1301] Preliminary Hearing Record, 29 April 2019.
[1302] For example, *inter alia,* DGCIM Criminal Investigation Record, 4 August 2018; DGCIM Criminal Investigation Record, 23 August 2018; DGCIM Police Record, 10 August 2018; DGCIM Criminal Investigation Record, 14 August 2018.
[1303] Preliminary Hearing Records, 29 April through 11 June 2019.
[1304] Preliminary Hearing Record, 29 April 2019.

DGCIM officials also repeatedly beat and asphyxiated a female detainee despite the fact that she told them she was pregnant. These beatings and pleas were overheard by other detainees, including the woman's partner. In October 2018, she began to suffer sharp abdominal pains, and was taken to the military hospital, where she was sedated. When she awoke, no one provided her with information about her pregnancy. However, the following day when officials took her back to Boleíta she began to bleed and realized she had miscarried.[1305] The miscarriage occurred two months after her initial appearance. Despite her lawyers' repeated requests for additional medical assistance following the miscarriage, a forensic medical exam was not ordered until two years later, on 18 September 2020.[1306] She continued to suffer serious physical and psychological consequences from the torture, the miscarriage and her lack of treatment at the time of writing.[1307]

Some of the defendants told the court that DGCIM or SEBIN officers had threatened their female family members. One defendant told the Control Judge that his mother had been arrested and was being held in El Helicoide for having shared a video asking for proof of life of her son, during the time he had been held incommunicado.[1308] Another defendant told the court that his daughter had been subjected to cruel and humiliating harassment.[1309] When the defendant's daughter followed DGCIM officials outside during his arrest, they threatened her, asking her if she had ever had sex with more than one man at once, because she was old enough for it.[1310]

Seven of the defendants described in court how DGCIM and SEBIN officials forced them to film videos incriminating themselves and others, including political figures or recent detainees, following these acts of torture, and on the threat of continued torture.[1311] One male detainee described how DGCIM officials tortured him, then said "there came a moment when [an official] said to stop beating me because I was about to lose consciousness. They put an acrylic board with a kind of mental map on it, giving me instructions about how I had to read it. There were times I made mistakes, and they beat me again […]."[1312]

Another female detainee described how SEBIN officials forced her to film a video: "Several officers grab you, they quickly put a big, transparent bag [over your head]. I do not know what is in it, because it causes my face to itch. They leave you a while like that, and when they see you are not moving much, they take it off and hit you, and they ask you if you are going to film or not."[1313]

[1305] Interview C3EE12, 19 July 2020; DDDOC014, 9 March 2021; DDDOC031, 9 March 2021; DDDOC002, 9 March 2021; DDDOC019, 9 March 2021.
[1306] DDDOC014, 9 March 2021; DDDOC015, 20 May 2021; Interview C2EE11, 25 June 2020.
[1307] DDDOC014, 9 March 2021; DDDOC015, 20 May 2021; Interview C2EE11, 25 June 2020.
[1308] Preliminary Hearing Record, 22 May 2019.
[1309] Preliminary Hearing Record, 23 May 2018.
[1310] Statement DDDOC017, 9 March 2021.
[1311] Preliminary Hearing Records, 29 April through 11 June 2019.
[1312] Preliminary Hearing Record, 22 May 2019.
[1313] Preliminary Hearing Record, 29 April 2019.

Six of the defendants described in court how that they had seen the Sixty-Seventh and Eighty-Third Prosecutors in Boleíta or Helicoide during their interrogations, and that the prosecutors were aware of the acts of torture perpetrated against them.[1314] One male detainee stated, "The day that they tortured me to get my WhatsApp and Facebook passwords, I want to say that the prosecutors were present when they tortured us, so that you [the Control Judge] take that into account. They were there from earlier, when they were interrogating the other guys, when they interrogated me. I saw them coming through the door. They were there."[1315] After describing his torture, another male detainee stated, "I want to highlight that [the Sixty-Seventh Provisional Prosecutor] was present. When I realized this, I notified him that the officials were torturing us."[1316]

One of the detainees described in court how on 20 August 2018, he was waiting for transport to the tribunal for the continuation of his initial appearance when he saw the Sixty-Seventh Provisional Prosecutor arrive at Boleíta. He stated that he heard the prosecutor tell the DGCIM officials that there would be no transfer to court that day. According to the defendant, "immediately thereafter, they took me to the area with the elevator that is used for torture. I received another beating […] and [the Sixty-Seventh Provisional Prosecutor] knows, because he heard my shouts."[1317]

Although the prosecutors and the judge questioned some of the defendants after their statements, they ignored the issue of torture, asking no questions about it. The preliminary hearings took place over a period lasting more than four months and after each hearing, The First Terrorism Control Judge sent the detainees back to DGCIM or SEBIN custody, despite the allegations made in court. On 1 July 2019, the final day of the preliminary hearing, the judge told court officials to write to the Fundamental Rights Department of the Public Prosecutor's Office, in order to "verify the complaints made by the accused citizens in relation to the violation of their human rights, cruel, inhuman and degrading treatment".[1318]

The Control Judge rejected motions from multiple defence lawyers to annul the proceedings based on constitutional violations linked to illegal arrests and due process violations (including the acts of torture described by defendants).[1319] She admitted the indictment in its entirety for 16 of the 17 defendants, and reduced the charges for one defendant.[1320] She also admitted all evidence submitted by the Public Prosecutor's Office, with no reservations, and sent the case to trial.[1321]

[1314] Document DDDOCO29, 9 March 2021; Document DDDOC09, 18 November 2020; Document DDDOC010, 9 March 2021; Document DDDOC017, 9 March 2021.
[1315] Preliminary Hearing Record, 29 April 2019.
[1316] The defendant mentioned the prosecutor by name. Preliminary Hearing Record, 22 May 2019.
[1317] The defendant mentioned the prosecutor by name. Preliminary Hearing Record, 23 May 2018.
[1318] Preliminary Hearing Record, 1 July 2019.
[1319] Preliminary Hearing Record, 1 July 2019, p. 351
[1320] Preliminary Hearing Record, 1 July 2019, p. 353-54
[1321] Preliminary Hearing Record, 1 July 2019, p. 355.

Victims' representatives have filed requests to the Fundamental Rights Office of the Public Prosecutor asking if they have received any communications from the First Terrorism Control Court Judge, the First Terrorism Trial Court Judge or the Sixty-Seventh and Eighty-Third Provisional Prosecutors about complaints of torture in the case.[1322] They have also filed requests directly to the First Terrorism Control Court Judge and the First Terrorism Trial Judge requesting certified copies of the letters they ordered sent regarding complaints of torture raised at hearings.[1323] In August 2021, Trial Court officials told victim's representatives that the Trial Court had recently sent the order to the Public Prosecutor's Office to verify the complaints.[1324]

At the time of writing this report, three years after most of the arrests, the victims' representatives had received no official information about whether the complaints had been filed, whether a prosecutor had been assigned or whether an investigation had been opened.[1325] The Mission is unaware of any investigative steps taken, including to interview victims or witnesses. Meanwhile, the trial of the 17 accused opened on 2 December 2019, before the First Terrorism Trial Court. Hearings were ongoing at the time of writing.

266. The Mission reviewed cases in which medical examiners have been accused of covering up torture.[1326] For example, Carlos Marrón (Box 4) was allegedly brought blindfolded and handcuffed to a forensic doctor in Boleíta during his first days of detention for a report about his physical condition.[1327] According to Mr. Marrón, the forensic doctor asked him whether he had been tortured and Mr. Marrón confirmed that he had.[1328] Mr. Marrón told the Mission that the doctor replied, "It is a pity that you were not tortured more because you deserved it".[1329] According to Mr. Marrón, the forensic doctor told him to sign and fingerprint a statement indicating that he was "in perfect condition".[1330] The legal case file reviewed by the Mission contained the doctor's report, which claimed that Mr. Marrón had shown no external injuries and that he was in good health.[1331]

267. 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.[1332] This was especially the case during the initial court appearances, given that the torture, cruel inhuman or degrading treatment, including sexual violence, had recently occurred. For example, the Mission received credible information from a male member of the military describing how DGCIM officials tortured and raped him with an unknown object during interrogations.[1333] The victim did not mention this during the initial appearance for fear of reprisals. DGCIM officers took him for a forensic medical examination at SENAMECF prior to his initial appearance, but ensured doctors only included information

1322 Information Request to Director of Fundamental Rights Office of the Public Prosecutor, File Number 000462, 22 April 2021, on file with the Mission.

1323 Request for Certified Copies to First Control Tribunal on Terrorism Control Court, 29 January 2021, on file with the Mission, Information Request to First Terrorism Control Court, 11 January 2021, on file with the Mission; Request for Certified Copies to First Terrorism Control Court, 15 April 2021, on file with the Mission.

1324 Interview DDIV068, 25 August 2021.

1325 Interview DDIV068, 25 August 2021.

1326 See also the Vuelvan Caras case and the Drone case.

1327 Statement AADOC016, 2 February 2020.

1328 Ibid.

1329 Ibid.

1330 Ibid. At several times during his detention in DGCIM, Mr. Marrón was evaluated by the same medical forensic doctor of the National Service of Medicine and Forensic Science. The name of the medical forensic doctor is on file with the Mission.

1331 National Service of Medicine and Forensic Science, Letter to DGCIM Director of Special Investigations, 13 April 2018.

1332 Cases of Carlos Marrón, Luis Sánchez and A/HRC/45/CRP.11, Case 5: Detention of Three Individuals – "Operation Tun Tun," for example.

1333 Document DDDOC033, on file with the Mission.

they approved in the forensic medical report.[1334] The victim later reported the rape and other acts of torture during his preliminary hearing.[1335] However, as of the writing of the report, his legal representatives are unaware of any effective steps to investigate the allegation. He remains in pre-trial detention.

268. A recent investigation by the non-governmental organization Foro Penal looked into 470 cases of complaints for acts of torture and/or inhuman, cruel or degrading treatment which occurred in Venezuela from 2013 until 2020.[1336] In each case from a sample of 148 of the 470 cases, a complaint was made before the Public Prosecutor's Office, a judge during a hearing, and/or the Ombudsperson's Office. According to Foro Penal, in each of the cases where the complaint was made before a judge, a prosecutor was present; however, neither the Public Prosecutor's Office initiated an investigation, nor the judge ordered that one took place.[1337] Similarly, the Ombudsperson's Office did not investigate any of the cases where complaints were filed directly with the office.[1338]

## C. Sustaining the charges

### 1. Arrests and detentions sustained on insufficient foundation

269. The Criminal Procedure Code requires prosecutors to litigate in good faith[1339] and judges to ensure the correct exercise of prosecutorial powers.[1340] The Public Prosecutor's Office is required to record facts and circumstances that may incriminate the accused and also those which may exculpate him or her.[1341] Under the Criminal Procedure Code, "In order to be admissible, a means of evidence must relate directly or indirectly to the subject matter of the investigation and be useful for the discovery of the truth".[1342]

270. Evidence requirements at different stages of criminal procedures include the following:

- The prosecution presents evidence as part of the request for the precautionary measure of deprivation of liberty of an individual,[1343] which is reviewed by the Control Court in the arrest order and at the initial appearance. Among others, the prosecution must show "well-founded evidence", which should be "serious and convincing" and based on more than one source,[1344] that the accused was the author or participated in the crime.[1345]
- The prosecution also presents evidence as part of the indictment,[1346] which must be reviewed by the Control Court at the preliminary hearing.[1347] The prosecution must

[1334] Document DDDOC033, on file with the Mission.
[1335] Preliminary Hearing Record, date concealed, on file with the Mission.
[1336] Foro Penal, Reporte Especial IMPUNDAD: Falta de investigación y sanción de detenciones arbitrarias y torturas con fines políticos en Venezuela, 15 February 2021, p. 17 (hereinafter "2021 Foro Penal Impunity Report"), on file with the Mission.
[1337] 2021 Foro Penal Impunity Report, p. 17.
[1338] 2021 Foro Penal Impunity Report, p. 18.
[1339] 2012 Criminal Procedure Code, art. 105.
[1340] 2012 Criminal Procedure Code, art. 107.
[1341] 2012 Criminal Procedure Code, art. 263.
[1342] 2012 Criminal Procedure Code, art. 182.
[1343] 2012 Criminal Procedure Code, art. 236.
[1344] See *inter alia* Superior Court of Adolescents, Criminal Judicial Circuit of the Caracas Metropolitan Zone, Resolution No. 1102, 12 March 2010; See also, *inter alia* Appellate Chamber, Criminal Judicial Circuit of Zulia state, Decision No. 650-15, 23 September 2015.
[1345] 2012 Criminal Procedure Code, art. 236. See below for a discussion of the other requirements for issuing pre-trial detention.
[1346] 2012 Criminal Procedure Code, art. 308.
[1347] 2012 Criminal Procedure Code, art. 263. See also 2012 Criminal Procedure Code, art. 314. The committal order shall contain: 1. The identification of the accused person. 2. A clear, precise and detailed account of the facts, their provisional legal qualification and a succinct statement of the grounds on which it is based and, if applicable, the reasons for departing from the legal qualification

have "serious grounds" for the indictment of the accused, that is, a high probability of conviction at trial given the existence of sufficient incriminating evidence.[1348] Among other requirements, the indictment must contain a clear, precise and substantiated account of the crime attributed to the accused, the evidence that supports the grounds for indictment, and a list of the evidence that will be tendered during trial.[1349]

271. The Mission's review of case files revealed several instances in which Control Courts detained and charged individuals based on facts and supporting documents that do not refer to criminal acts or individualize the defendant's participation in the crimes alleged.[1350] Of the judges and defence lawyers that responded to the Mission's questionnaire, 81 per cent said that they had observed cases in which the facts did not match the charges filed[1351] and 78 per cent said that they had observed an unjustified aggravation of charges.[1352] Lengthy procedural

---

of the indictment. 3. The evidence admitted and the stipulations made between the parties. 4. The order to open the oral and public trial. 5. The summons of the parties to appear before the trial judge within a common time limit of five days. 6. The instruction to the clerk to send the documentation of the proceedings and the objects seized to the competent court. This order shall not be subject to appeal, unless the appeal concerns inadmissible evidence or illegally admitted evidence.

1348 2012 Criminal Procedure Code, art. 308.

1349 2012 Criminal Procedure Code, art. 308. A 2002 internal circular of the Public Prosecutor's Office further stipulates that the indictment must "disclose the salient aspects of each act […] which constitutes motive or circumstances that makes it relevant to the charges being brought". It further clarifies that the elements must be linked together, so that their coherence can be clearly appreciated, establishing the relationship between the evidence and the facts narrated. Circular No. DFGR-DVFGR-DGAJ-DRD-3-2001-004, Requisitos de Acusación, 28 November 2002, available at: http://escueladefiscales.mp.gob.ve/userfiles/file/circulares/Circulares%20del%20Ministerio%20P%C3%BAblico%20web.pdf

1350 The Mission first noted these concerns in its 2020 Conference Room Paper. See A/HRC/45/CRP.11, para. 350. For example, the July 2017 treason charge case against Ángel Zerpa was sustained during initial court appearance solely on the basis of two photos of his swearing in as a judge following his appointment by the National Assembly, one from a newspaper and one retrieved from his cell phone. A/HRC/45/CRP.11, Case 8: Ángel Zerpa. In addition, in the case of the January 2018 arrest of Geraldine Chacón and Gregory Hinds, the prosecutor presented as evidence photographs of the defendants' cellular telephones, a SEBIN intelligence report dated 30 January 2018 and SEBIN arrest reports. No criminal actions were detailed.

1351 Questionnaire CCQR081, 13 July 2021; Questionnaire CCQR079, 12 July 2021; Questionnaire CCQR077, 12 July 2021; Questionnaire CCQR074, 12 July 2021; Questionnaire CCQR078, 12 July 2021; Questionnaire CCQR070, 12 July 2021; Questionnaire CCQR041, 12 July 2021; Questionnaire CCQR069, 12 July 2021; Questionnaire CCQR071, 12 July 2021; Questionnaire CCQR068, 12 July 2021; Questionnaire CCQR064, 12 July 2021; Questionnaire CCQR058, 12 July 2021; Questionnaire CCQR066, 12 July 2021; Questionnaire CCQR059, 12 July 2021; Questionnaire CCQR063, 12 July 2021; Questionnaire CCQR048, 12 July 2021; Questionnaire CCQR065, 12 July 2021; Questionnaire CCQR053, 12 July 2021; Questionnaire CCQR050, 12 July 2021; Questionnaire CCQR057, 12 July 2021; Questionnaire CCQR045, 12 July 2021; Questionnaire CCQR049, 12 July 2021; Questionnaire CCQR043, 12 July 2021; Questionnaire CCQR041, 12 July 2021; Questionnaire CCQR054, 12 July 2021; Questionnaire CCQR047, 12 July 2021; Questionnaire CCQR052, 12 July 2021; Questionnaire CCQR076, 12 July 2021; Questionnaire CCQR042, 12 July 2021; Questionnaire CCQR036, 12 July 2021; Questionnaire CCQR040, 12 July 2021; Questionnaire CCQR039, 12 July 2021; Questionnaire CCQR042, 12 July 2021; Questionnaire, CCQR086, 12 July 2021; Questionnaire CCQR083, 12 July 2021; Questionnaire CCQR034, 29 June 2021; Questionnaire CCQR033, 28 June 2021; Questionnaire CCQR032, 26 June 2021; Questionnaire CCQR031, 23 June 2021; Questionnaire CCQR030, 22 June 2021; Questionnaire CCQR029, 22 June 2021; Questionnaire CCQR028, 20 June 2021; Questionnaire CCQR027, 20 June 2021; Questionnaire CCQR023, 17 June 2021; Questionnaire CCQR022, 17 June 2021; Questionnaire CCQR021, 16 June 2021; Questionnaire CCQR020, 16 June 2021; Questionnaire CCQR018, 16 June 2021; Questionnaire CCQR017, 16 June 2021; Questionnaire CCQR016, 16 June 2021; Questionnaire CCQR015, 16 June 2021; Questionnaire CCQR012, 15 June 2021Questionnaire CCQR008, 15 June 2021Questionnaire CCQR007, 15 June 2021; Questionnaire CCQR019, 16 June 2021; Questionnaire CCQR005, 15 June 2021; Questionnaire CCQR004, 15 June 2021 ; Questionnaire CCQR001, 6 June 2021.

1352 Questionnaire CCQR050, 12 July 2021; Questionnaire CCQR057, 12 July 2021; Questionnaire CCQR056, 12 July 2021; Questionnaire CCQR045, 12 July 2021; Questionnaire CCQR048, 12 July 2021; Questionnaire CCQR049, 12 July 2021; Questionnaire CCQR043, 12 July 2021; Questionnaire

delays subsequently restrict the opportunity to challenge this evidence at preliminary hearings or at trial within a reasonable timeframe, while they spend extended periods in pre-trial detention or subjected to substitute precautionary measures, which often amount to years.

272. In the cases investigated by the Mission, the defendants are charged with a number of serious crimes carrying high penalties. As noted in Section III above, the charging of specific crimes, especially military and terrorism crimes, helps ensure that cases are heard before specific jurisdictions and judges. The Mission's investigations revealed that real or perceived opponents were most commonly charged with the following crimes, often in combination, resulting in high cumulative penalties:

- Ordinary crimes under the Criminal Code, including arson,[1353] conspiracy,[1354] damage to public property,[1355] detonation of incendiary objects,[1356] homicide,[1357] illegal possession of arms and ammunition,[1358] incitement,[1359] resistance to authority,[1360] treason[1361] and usurpation.[1362] Defendants are also charged with committing crimes under a criminal association (*agavillamiento*).[1363]
- Both military and civilian defendants have been charged with various military crimes under the Organic Code of Military Justice, which allows military criminal jurisdiction over all military infractions committed by military or civilians, jointly or separately.[1364] This includes outrage against the sentinel,[1365] rebellion,[1366] theft of military belongings[1367] and treason against the homeland.[1368]

CCQR041, 12 July 2021; Questionnaire CCQR054, 12 July 2021; Questionnaire CCQR047, 12 July 2021; Questionnaire CCQR052, 12 July 2021; Questionnaire CCQR076, 12 July 2021; Questionnaire CCQR042, 12 July 2021; Questionnaire CCQR040, 12 July 2021; Questionnaire CCQR042, 12 July 2021; Questionnaire, CCQR086, 12 July 2021; Questionnaire CCQR083, 12 July 2021; Questionnaire CCQR034, 29 June 2021; Questionnaire CCQR033, 28 June 2021; Questionnaire CCQR031, 23 June 2021; Questionnaire CCQR030, 22 June 2021; Questionnaire CCQR029, 22 June 2021; Questionnaire CCQR028, 20 June 2021; Questionnaire CCQR027, 20 June 2021; Questionnaire CCQR023, 17 June 2021; Questionnaire CCQR022, 17 June 2021; Questionnaire CCQR021, 16 June 2021; Questionnaire CCQR020, 16 June 2021; Questionnaire CCQR017, 16 June 2021; Questionnaire CCQR016, 16 June 2021; Questionnaire CCQR015, 16 June 2021; Questionnaire CCQR014, 15 June 2021; Questionnaire CCQR012, 15 June 2021; Questionnaire CCQR011, 15 June 2021; Questionnaire CCQR009, 15 June 2021; Questionnaire CCQR008, 15 June 2021; Questionnaire CCQR019, 16 June 2021; Questionnaire CCQR005, 15 June 2021; Questionnaire CCQR004, 15 June 2021; Questionnaire CCQR001, 6 June 2021.

1353 Criminal Code, art. 343.
1354 Criminal Code, art. 132.
1355 Criminal Code, art. 473 ff.
1356 Criminal Code, art. 296.
1357 Criminal Code, art. 405 ff.
1358 Law for the Disarmament and Control of Weapons, art. 111.
1359 Criminal Code, art. 283 ff.
1360 Criminal Code, art. 215.
1361 Criminal Code, art. 128.
1362 Criminal Code, art. 213.
1363 Criminal Code, Chapter III.
1364 1998 Organic Code of Military Justice, art. 123.
1365 Organic Code of Military Justice, art. 501.
1366 Organic Code of Military Justice, art. 476.
1367 Organic Code of Military Justice, art. 570.
1368 Organic Code of Military Justice, art. 464.

- Crimes under the Terrorism Law, including organized crime,[1369] financing of terrorism,[1370] illegal arms trafficking, [1371] money laundering[1372] and terrorism.[1373] Association, defined as forming part of an organized criminal group, is an especially common charge and is punishable with imprisonment for six to ten years".[1374]
- Crimes under the Law against Hate, for Peaceful Coexistence and Tolerance,[1375] adopted by the National Constituent Assembly on 8 November 2017. The decree provides 10 to 20 years imprisonment for anyone who publicly "encourages, promotes or incites hatred, discrimination or violence against a person or group of people," with a discriminatory motive, "due to their real or presumed membership in a determined group", including political groups.[1376] As noted in the Mission's 2020 report, since its formation in August 2017 until the end of its mandate in December 2020,[1377] the National Constituent Assembly acted as the *de facto* legislative branch, taking over the National Assembly's functions,[1378] the constitutionality of which has been questioned and is subject to debate.[1379]

[1369] Law on Organized Crime and Financing of Terrorism, art. 4(9). Organized Crime is defined under the law as "The act or omission of three or more persons associated for a period of time with the intention of committing crimes enumerated in this Law and of obtaining, directly or indirectly, an economic or other benefit for themselves or third parties". An act by only one person acting at the behest of a legal or associative person can also be considered an act of organized crime under this definition. See also Law on Organized Crime and Financing of Terrorism, art. 37.

[1370] Law on Organized Crime and Financing of Terrorism, art. 53.

[1371] Law on Organized Crime and Financing of Terrorism, art. 38.

[1372] Law on Organized Crime and Financing of Terrorism, art. 35.

[1373] Law on Organized Crime and Financing of Terrorism, art. 52. See also Criminal Code, art. 132.

[1374] Law on Organized Crime and Financing of Terrorism, art. 37.

[1375] See Law against Hate, Published in the Official Gazette 41.274 of 8 November 2017; See also Inter-American Commission on Human Rights, Relatoría especial para la libertad de expresión manifiesta su grave preocupación por la aprobación de "la ley contra el odio" en Venezuela y sus efectos en la libertad de expresión y de prensa, 10 November 2017, available at: https://www.oas.org/es/cidh/expresion/showarticle.asp?artID=1082&lID=2

[1376] 2017 Law against Hate, art. 20.

[1377] Constitutional Decree of 20 May 2019, Published in the Official Gazette No. 41.636.

[1378] 1999 Constitution, art. 187. See A/HRC/45/CRP.11, paras. 125-130.

[1379] 1999 Constitution, art. 347, which states that the purpose of the National Constituent Assembly is "to transform the State, creating a new juridical order and drafting a new Constitution".

***Box 10: The Case of María Auxiliadora Delgado Tabosky and Juan Carlos Marrufo Capozzi***

On 26 February 2019, the Sixty-Seventh and Eighty-Third Provisional Prosecutors of the Public Prosecutor's Office requested a warrant from the First Terrorism Control Court for the arrest of Ms. Delgado and Mr. Marrufo,[1380] a married couple with a medical laboratory in Valencia, Carabobo state. The grounds were treason,[1381] conspiracy against the nation,[1382] financing terrorism[1383] and criminal association,[1384] in relation to the 4 August 2018 case involving drone explosions.[1385] The then First Terrorism Control Judge (now judge of the Seventh Appeals Court of the Criminal Judicial Circuit of Caracas) issued the arrest warrant.[1386] DGCIM officers carried out the arrest on 19 March 2019, detaining the couple in DGCIM Boleíta.

On 22 March 2019, Ms. Delgado and Mr. Marrufo appeared before the First Terrorism Control Judge for their initial appearance. The Control Judge accepted the charges of financing terrorism and criminal association and ordered preventive detention in DGCIM Boleíta as she considered the accused to be at flight risk based on the gravity of the crimes and possible sentences to be incurred.[1387]

On 6 May 2019, the prosecution requested that the First Terrorism Control Judge release Ms. Delgado and Mr. Marrufo with substitute precautionary measures, as the time limit had passed for the prosecutors to present their decision on how to proceed with the case (*acto conclusivo*).[1388] The prosecution stated that it "did not have the elements of conviction to permit the well-founded presentation" of an indictment at that time.[1389] The Mission notes that the Criminal Procedure Code provides three courses of action to the prosecution, once the time limit for presenting its decision (*acto conclusivo*) is reached: it can indict the accused, it can request the court to dismiss the charges, or it can archive the case.[1390] In this case, the prosecution took none of these actions.

Instead, the prosecution requested that the court issue precautionary measures, consisting of bimonthly presentation and two guarantors.[1391] The Control Judge agreed. On 7 June 2019, the tribunal approved the two required guarantors and issued orders to DGCIM to release Ms. Delgado and Mr. Marrufo.[1392] On 10 June 2019, DGCIM received the orders[1393] but did not release Ms. Delgado and Mr. Marrufo.

On 3 July 2019, the defence counsel requested that the Control Judge order DGCIM to transfer the detainees to court in order to process their release, but received no response.[1394] On 13 August 2019, the defence presented a *habeas corpus* writ, which was distributed to the Tenth Control Court of the Caracas Metropolitan Area in relation to their continued detention, to no response.[1395] On 21 August 2019, the defence counsel again requested a hearing about the detainees' release.[1396] On 5 September 2019, the defence counsel wrote to the Tenth Control Court requesting a decision on the *habeas corpus* writ. It again received no response.[1397]

On 30 September 2019, the Sixty-Seventh and Eighty-Third Prosecutors requested new arrest warrants against Ms. Delgado and Mr. Marrufo from the First Terrorism Control Court[1398] for treason,[1399] eight counts of aggravated attempted homicide (including against the President),[1400] terrorism[1401] and criminal association.[1402] The prosecutors did not reference the fact that Ms. Delgado and Mr. Marrufo remained in Boleíta,[1403] despite court orders to the contrary.[1404]

As Ms. Delgado and Mr. Marrufo later told the court, on 2 October 2019, DGCIM told Ms. Delgado and Mr. Marrufo they would release them, put them into a vehicle and drove them to Palo Negro in Aragua State. The DGCIM officers placed Ms. Delgado and Mr. Marrufo in a taxi, in which they expected to continue their journey home to Valencia. A FAES unit intercepted the taxi and, without seeking their identification, informed Ms. Delgado and Mr. Marrufo that they had warrants for their arrest, issued by the First Terrorism Control Judge, the same court that had ordered their release.[1405]

On 3 October 2019, Ms. Delgado and Mr. Marrufo were presented before the First Terrorism Control Court, now before a substitute Control Judge, usually acting as Third Terrorism Control Judge, for a second initial appearance. Ms. Delgado told the Control Judge she believed that the release and re-arrest had been orchestrated.[1406] The prosecution told the Judge it had previously requested their release due to lack of evidence, which had been accepted by the court, but it did not acknowledge the failure to release them.[1407] The prosecution presented DGCIM records of objects allegedly seized during the search of Ms. Delgado and Mr. Marrufo's house the day of their arrest, six months earlier,[1408] which had not been presented at the first initial appearance.

The Control Judge accepted the charges against Ms. Delgado and Mr. Marrufo, revoked the release orders that had never been executed, and ordered pre-trial detention in DGCIM Boleíta for the expanded set of crimes.[1409] Defence counsel's request for Mr. Marrufo and Ms. Delgado's transfer from DGCIM Boleíta to sex-segregated facilities was ignored, despite Ms. Delgado's attestation to having to relieve herself in buckets and in the presence of male detainees.[1410]

1380 Request for Arrest Warrant, 26 February 2019, mentioned in First Special Control Court on Terrorism, Justification of Deprivation of Liberty, 22 March 2019.
1381 Criminal Code, art. 128.
1382 Criminal Code, art 132.
1383 Law on Organized Crime and Financing Terrorism, art. 53.
1384 Law on Organized Crime and Financing Terrorism, art. 37.
1385 The Drone Case refers to events that occurred on 4 August 2018 in Caracas, during a military parade to commemorate the 81st anniversary of the Bolivarian National Guard (GNB). As President Maduro and other high-ranking officials participated in the event, two remote-controlled drones flew overhead, one exploding in Avenida Bolívar, and the other near the building Residencias Don Eduardo. The Venezuelan government has characterized the event as an assassination attempt. See, for example: The New York Times, Venezuelan President Targeted by Drone Attack, Officials Say, 4 August 2018, available at: https://www.nytimes.com/2018/08/04/world/americas/venezuelan-president-targeted-in-attack-attempt-minister-says.html; BBC, Venezuelan President Maduro survives 'drone assassination attempt', 5 August 2018, available at: https://www.bbc.com/news/world-latin-america-45073385
1386 Initial Appearance Record, 22 March 2019.
1387 Initial Appearance Record, 22 March 2019.
1388 Orders referenced by the Control Judge in the Initial Appearance Record, 3 October 2019.
1389 Initial Appearance Record, 3 October 2019.
1390 Criminal Procedure Code, art 236.3.
1391 Interview DDIV067, 29 July 2021; Orders referenced by the Control Judge in the Initial Appearance Record, 3 October 2019.
1392 Orders No. 184-19 and 185-19; Interview DDIV067, 29 July 2021.
1393 Interview DDIV067, 29 July 2021.
1394 Interview DDIV067, 29 July 2021.
1395 Interview DDIV067, 29 July 2021.
1396 Interview DDIV067, 29 July 2021.
1397 Interview DDIV067, 29 July 2021.
1398 Public Prosecutor's Arrest Warrant Request, 30 September 2019.
1399 Criminal Code, art. 128.
1400 Criminal Code, art. 405 with art. 406(3)(a) and art. 80.
1401 Law on Organized Crime and Financing Terrorism, art. 52.
1402 Law on Organized Crime and Financing Terrorism, art. 37.
1403 Public Prosecutor's Arrest Warrant Request, 30 September 2019.
1404 Interview DDIV067, 29 July 2021; Initial Appearance Record, 3 October 2019.
1405 Initial Appearance Record, 3 October 2019.
1406 Interview DDIV067, 29 July 2021.
1407 Initial Appearance Record, 3 October 2019.
1408 Request for arrest warrant, MP-26895-2018, 30 September 2019.
1409 Initial Appearance Record, 3 October 2019.
1410 Initial Appearance Record, 3 October 2019.

The prosecution submitted the indictment on 16 November 2019[1411] and the preliminary hearing was held on 9 February 2021, nearly two years after the initial arrest.[1412] The Control Judge partially admitted the indictment, dismissing the charges of attempted homicide, and proceeding with charges of treason, terrorism, and criminal association. The First Terrorism Control Judgewho had issued the arrest warrant in March 2019, ordered that the case proceed to trial.

The case file was sent to the First Terrorism Trial Court. At the time of writing, the Trial Judge was yet to open trial and Ms. Delgado and Mr. Marrufo remain in DGCIM Boleíta. The Mission has been informed all other women detainees at DGCIM Boleíta were transferred to a women's prison,[1413] with the exception of Ms. Delgado.

### 2. Evidence derived from illegal interrogations

273. 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.[1414] It follows that both the evidence that was illegally obtained and the information derived from that illegally obtained evidence are inadmissible.

*Evidence from interrogations under coercion, duress or without a lawyer present*

274. Under the Constitution, a confession shall only be valid if made without coercion of any kind.[1415] The Criminal Procedure Code guarantees the right of the defendant to refrain from testifying or to do so while not under oath.[1416] Defendants must also not be subjected to techniques or methods that may affect their free will, even with their consent.[1417] The Criminal Procedure Code also affirms that declarations made not in the presence of a defence lawyer are inadmissible.[1418] The Mission has reasonable grounds to believe that it has identified cases of confessions, incriminating statements or other supposed information, including phone and social media passwords, obtained in violation of the protection against self-incrimination, during interrogations made under duress or in violation of the defendant's right to counsel.

275. For example, in October 2020, PNB officers arrested Roland Carreño and brought him to a sound studio in SEBIN El Helicoide where they forced him, without a lawyer present, to film confession statements.[1419] The videos were played during a press conference of the former Communications Minister and then PSUV party leader Jorge Rodríguez.[1420] The confession video itself was not included in the prosecution's indictment, but the indictment cited as evidence various other reports issued by SEBIN inspectors, including a SEBIN technical inspection report of the contents of Mr. Carreño's telephone, following Mr. Carreño's interrogation under duress.[1421] The preliminary hearing was held on 9 July 2021,

1411 Public Prosecutor's Indictment, 16 November 2019.
1412 Preliminary Hearing Record, 9 February 2021.
1413 Interview DDIV067, 29 July 2021. The women's prison is the National Institute of Female Orientation (INOF).
1414 2012 Criminal Procedure Code, art. 181.
1415 1999 Constitution, art. 49(5).
1416 2012 Criminal Procedure Code, art. 127.
1417 2012 Criminal Procedure Code, art. 127.
1418 2012 Criminal Procedure Code, art. 132.
1419 Interview AAIV004, 12 January 2021.
1420 See YouTube video, Luigini Bracci Roa, Jorge Rodríguez muestra confesión de Roland Carreño por uso de dinero de Citgo para Voluntad Popular, 30 October 2021, minute 12.20, available at: https://www.youtube.com/watch?v=fJaHjt0Brxc
1421 Interview AAIV004, 12 January 2021.

at which the Fourth Terrorism Control Court admitted the prosecution's indictment. The case is awaiting the oral and public trial.

276. In addition, the Mission has documented cases in which the judiciary failed in its duty to guard against arrests based on information illegally obtained from third parties. On 16 October 2020, a judge upheld the arrest of Vannesa Rosales, based on information acquired through an illegal interrogation of a child. As noted before, Ms. Rosales had assisted a 13-year-old girl and her mother in the medical termination of the girl's high-risk pregnancy, which resulted from her repeated rape.[1422]

277. While the girl was in hospital for examination after the termination, her mother went to CICPC to report her daughter's rape.[1423] CICPC officers went to the hospital where they interrogated the girl, alone and against her will. The girl later told adults that a female CICPC officer covered her mouth when she tried to scream for help and told her that they could detain her for not cooperating.[1424] In these conditions, the girl told the police the name of the man who raped her and said that her mother and Ms. Rosales had given her the medication. CICPC officers proceeded to arrest the girl's mother and Ms. Rosales, an arrest that was not questioned by prosecutors or at the initial appearance.[1425]

[1422] Interview DDIV061, 18 July 2021; Interview DDIV025, 11 March 2021.
[1423] Interview DDIV061, 18 July 2021; Interview DDIV025, 11 March 2021.
[1424] Interview DDIV061, 18 July 2021; Interview DDIV025, 11 March 2021.
[1425] Interview DDIV025, 11 March 2021; Interview DDIV061, 18 July 2021; CICPC Criminal Investigation Record, 12 October 2020; Initial Appearance Record, 16 October 2020.

***Box 11: The Case of Ada Macuare***

Members of the Bolivarian National Police (PNB) arrested nurse Ada Macuare on 21 July 2021, *in flagrante delicto*, from the Dr. Alí Romero Briceño medical centre in Barcelona, Anzoátegui State, her place of work.[1426] Ms. Macuare had previously made public statements on behalf of her health workers union, urging for better salaries and an effective Covid-19 vaccination plan.[1427] She said that at the time of her arrest, the police officers accused her of stealing medicines.[1428]

According to Ms. Macuare, she told the Control Court during her initial appearance that PNB officers had forced her to record 20 audio tapes to incriminate herself.[1429] She explained to the court that a PNB officer told her she would never see her family again, should she refuse to make the recordings.[1430] She also told the court that PNB officers made her repeat the recording numerous times because they did not like her statements, and one officer slapped her twice, telling her "you will either do it the easy way or you will do it with tears".[1431]

Ms. Macuare remained in the PNB station for 96 hours without access to a lawyer or to her family, until her initial court appearance on 26 July 2021.[1432] The hearing was held at the same PNB headquarters where Ms. Macuare had been detained. The Seventh Control Judge of Anzoátegui State[1433] said the hearing could not be held in the courthouse because the computer was damaged.[1434] According to her lawyer, Ms. Macuare was afraid to speak in front of a judge in the same place where she had been interrogated.[1435]

At the initial appearance, the prosecutor played audio recordings of Ms. Macuare, which allegedly included those recorded during the interrogation, without the presence of a lawyer and while under duress.[1436] The prosecution filed the charge of incitement to hate under article 20 of the Law against Hate, for Peaceful Coexistence and Tolerance.[1437]

The Control Judge upheld the charge of incitement to hate based on the evidence submitted, which included audio recordings and a complaint filed by an individual alleging that Ms. Macuare "[…] was sending audios, messages through social networks via WhatsApp inviting people to hold demonstrations against the Venezuelan Government, inciting the Venezuelan people to hatred".[1438] The Control Judge confirmed that the arrest had been *in flagrante delicto* and ordered pre-trial detention at the Municipal Police headquarters in Diego Bautista Urbaneja.[1439] After 18 days in detention, on 5 August 2021, Ms. Macuare was granted the substitute precautionary measure of house arrest.[1440]

1426 Interview AAIV084, 30 July 2021.
1427 See El Nacional, Régimen dictó privativa de libertad para la enfermera que exigió mejoras salariales, 27 July 2021, available at: https://www.elnacional.com/venezuela/regimen-dicto-privativa-de-libertad-para-la-enfermera-que-exigio-mejoras-salariales/
1428 Document AADOC005, 26 July 2021.
1429 Interview AAIV084, 30 July 2021.
1430 Document AADOC005, 26 July 2021.
1431 Document AADOC005, 26 July 2021.
1432 Interview AAIV084, 30 July 2021.
1433 Interview AAIV084, 30 July 2021.
1434 Interview AAIV084, 30 July 2021.
1435 Interview AAIV084, 30 July 2021.
1436 Interview AAIV084, 30 July 2021.
1437 Document AADOC005, 26 July 2021.
1438 Document AADOC005, 26 July 2021.

*Evidence from interrogations under torture*

278. According to the Law on Torture, no confession or information obtained by means of torture or other cruel, inhuman or degrading treatment may be introduced as evidence.[1441] Further, the act of submitting such evidence is considered legal fraud and entails criminal and administrative responsibility.[1442] Additionally, any public official who witnesses or has knowledge of the commission of the crime of torture or other cruel, inhuman or degrading treatment, or is given an order to execute any of them, even if the crimes do not materialize, is obliged to report this fact immediately to the competent authorities.[1443]

279. In its 2020 report, the Mission found reasonable grounds to believe that torture and sexual violence had been perpetrated against detainees during interrogations, usually shortly after arrest and before the initial appearance.[1444] Of the 183 detentions of real or perceived opponents occurring between 2014 and 2021 documented by the Mission, 82 detainees who were allegedly subjected to torture continued to be charged with crimes by prosecutorial and judicial authorities.[1445] Review of legal case files reveals that even post-illegal interrogations, prosecutorial and judicial actors continued to allow DGCIM and SEBIN to carry out criminal investigations and to rely on evidence obtained by these intelligence bodies, including, potentially, evidence derived from the improperly obtained statements.

280. For example, First Lieutenant Carlos Eduardo Lozada, arrested by DGCIM on 21 June 2019 and held incommunicado in a clandestine site, was forced to film videos with statements incriminating himself and his uncle, General Ramon Lozada, after being subjected to torture and without his lawyer present.[1446] His uncle was then arrested on 26 June 2019.[1447] During the preliminary hearing, and again during the trial,[1448] the defendants declared they had been tortured,[1449] including acts of sexual violence,[1450] by DGCIM from 21 June 2019 onwards, and forced to film confession videos.[1451] According to one defence lawyer present,

1439 Document AADOC005, 26 July 2021.
1440 Document AADOC005, 26 July 2021.
1441 National Assembly, Special Law to Prevent and Sanction Torture and other Cruel, Inhuman or Degrading Treatment, Official Gazette No. 40.212, 22 July 2013, art. 33, available at: http://www.derechos.org.ve/pw/wp-content/uploads/LEY-ESPECIAL-PARA-PREVENIR-Y-SANCIONAR-LA-TORTURA.pdf (hereinafter "2013 Law on Torture").
1442 2013 Law on Torture, art. 33.
1443 2013 Law on Torture, art. 31.
1444 A/HRC/45/CRP.11, para. 317. The interrogations were conducted to extract confessions or information or to force an individual to incriminate him or herself, or others. Ibid.
1445 FFMV0091, FFMV0124, FFMV0077, FFMV0092, FFMV0116, FFMV0040, FFMV0004, FFMV0096, FFMV0179, FFMV0141, FFMV0068, FFMV0128, FFMV0139, FFMV0176, FFMV0106, FFMV0023, FFMV0113, FFMV0122, FFMV0119, FFMV0041, FFMV0178, FFMV0089, FFMV0015, FFMV0071, FFMV0076, FFMV0138, FFMV0067, FFMV0173, FFMV0085, FFMV0104, FFMV0064, FFMV0080, FFMV0084, FFMV0130, FFMV0142, FFMV0073, FFMV0132, FFMV0133, FFMV0117, FFMV0026, FFMV0149, FFMV0069, FFMV0027, FFMV0054, FFMV0034, FFMV0078, FFMV0066, FFMV0082, FFMV0118, FFMV0115, FFMV0094, FFMV0175, FFMV0038, FFMV0168, FFMV0025, FFMV0120, FFMV0129, FFMV0011, FFMV0114, FFMV0097, FFMV0045, FFMV0174, FFMV0005, FFMV0095, FFMV0083, FFMV0086, FFMV0030, FFMV0159, FFMV0156, FFMV0006, FFMV0135, FFMV0112, FFMV0103, FFMV0127, FFMV0171, FFMV0001, FFMV0019, FFMV0087, FFMV0043, FFMV0028, FFMV0143, FFMV0144.
1446 Confidential submission DDDOC037, 26 June 2021.
1447 DGCIM Police Record No. DGCIM-DEIPC-AP-438-2019; Confidential submission DDDOC037, 26 June 2021.
1448 Military Court Trial Record, 12 March 2021.
1449 Including asphyxiation, beatings, burning with acidic liquid, hanging by the ankles and wrists, beatings to the feet, threats of execution including by forcing putting a gun into detainee's mouth, and being urinated upon by guards, among other acts.
1450 Including acts of forced nudity, attempted rape with a stick, and threats to rape one of the detainee's daughters.
1451 Preliminary Hearing Record, 31 October 2019.

while the court records of the hearings do contain descriptions of torture and other due process violations,[1452] some statements were altered or not included in their entirety.[1453]

281. On 7 August 2018, three days after the drone attack on 4 August 2018 (see Box 9), President Maduro presented on national television an interrogation video featuring Juan Carlos Monasterios, whom the President called the "head of the assassins and hitmen".[1454] The video included incriminating statements against National Assembly member Juan Carlos Requesens.[1455] SEBIN arrested Mr. Requesens that same day, holding him incommunicado for the following week. During that week, Jorge Rodríguez, then Communications Minister, presented another interrogation video, this time from Mr. Requesens. Mr. Monasterios later claimed he had been brutally tortured prior to filming, and that DGCIM members threatened to kill him and his family if he did not read the confession prepared for him.[1456]

282. As noted in the Mission's 2020 report, his family and lawyers suspect Mr. Requesens had been drugged prior to filming the video, possibly with scopolamine or a derivative to induce a testimony.[1457] Throughout the following two months, Jorge Rodríguez[1458] and President Maduro[1459] presented additional interrogation recordings of recently arrested men and women in DGCIM and SEBIN custody whom they said participated in the planning and implementation of the attack, prior to their initial appearances. None of the tapes were recorded in the presence of legal counsel, and all recorded individuals have alleged they were tortured or otherwise coerced into making incriminating statements.[1460] Angela Expósito requested a toxicology exam to be performed, but was denied.[1461]

283. The prosecution did not present the interrogation videos as evidence; however, they relied on evidence subsequently procured by SEBIN and DGCIM as a result of the interrogations to substantiate charges against the defendants.[1462] The First Terrorism Control Judge did not question whether the evidence collected by SEBIN and DGCIM and presented by the prosecution was procured on the basis of information obtained via torture or coercion. The defence counsel requested that the illegal interrogation videos be entered into the record as evidence of mistreatment and illegally-conducted interrogations. The Control Judge rejected the request, stating that the inclusion of those recordings was the prerogative of the Public Prosecutor's Office.[1463]

284. In another case, following the 4 May 2020 capture of alleged participants in Operation Gedeón, the then president of the National Constituent Assembly, Diosdado Cabello, published a video on Twitter which showed one of the detainees, Josnars Adolfo Baduel (Box 13), answering potentially self-incriminating questions posed to him off-camera

1452 Preliminary Hearing Record, 31 October 2019.
1453 Confidential submission DDDOC037, 26 June 2021.
1454 YouTube video, Luigino Bracci Roa, Testimonio de Juan Carlos Monasterios, presunto involucrado en atentado con drones contra Maduro, 7 August 2018, available at: https://www.youtube.com/watch?v=-RjRVirP91k
1455 DDDOC021, on file with the Mission.
1456 Preliminary Hearing Record, 29 April and 2 May 2019; DDDOC022, 9 March 2021.
1457 A/HRC/45/CRP.11, para. 620.
1458 Additional videos include those involving Oswaldo Castillo, Henribert Emmanuel Rivas Vivas, and Angela Expósito Carrillo. See Daily Motion Video, teleSUR tv, "Detienen a 3 implicados en el magnicidio fallido contra Nicolás Maduro", 23 September 2018, available at: https://www.dailymotion.com/video/x6u5nze ; YouTube video, teleSUR tv, "Gobierno de Venezuela da mas pruebas del magnicidio fallido a Maduro", 17 October 2018, available at: https://www.youtube.com/watch?v=wl4kfAZp4-0
1459 See: Con el Mazo Dando, ¡Descorazonada! De esta forma "La perrera" Angela Expósito lanzó al pajón al alcahueta Alfredo Romero (+videos), 25 September 2018, available at: https://mazo4f.com/descorazonada-de-esta-forma-la-perrera-angela-exposito-lanzo-al-pajon-al-alcahueta-alfredo-romero-videos
1460 Preliminary Hearing Record, 29 April and 2 May 2019.
1461 The Mission noted in its 2020 Report that Cristopher Figuera, former Director General of both DGCIM and SEBIN, confirmed that intelligence officials used the tactic of administering psychotropic drugs to elicit confessions. See: A/HRC/45/CRP.11 para. 283.
1462 Preliminary Hearing Record, 22 February 2019 through 1 June 2019.
1463 A/HRC/45/CRP.11, para. 620.

while in custody and without a lawyer present.[1464] Mr. Baduel later told his private defence lawyer that SEBIN Director Gustavo González López was the person asking the questions.[1465] Mr. Baduel alleges having been subjected to torture, including asphyxia by immersion underwater and with plastic bags, causing him to lose consciousness on four occasions; electric shocks to his genitals with continued effects; suspension from his arms, including using the "el pulpo"[1466] (octopus) torture device, resulting in the dislocation of his shoulder; and blows with boards on his feet and ankles.[1467]

285. The Mission received reliable information that following the initial appearance, the judge in the Operation Gedeón case, the Fourth Terrorism Control Judge, made regular visits to SEBIN, during which he pressured Mr. Baduel, without a defence lawyer present, to sign a confession.[1468] The Fourth Terrorism Control Judge allegedly made various different threats against Mr. Baduel to compel him to sign, including that he would transfer him to DGCIM Boleíta where he would be tortured.[1469] One of these visits was after the 7 August 2020 preliminary hearing, during which Mr. Baduel had refused to sign an admission of the facts.[1470]

286. Another defendant in the Gedeón case testified before the Fourth Terrorism Control Court at the preliminary hearing on 7 August 2020, held in SEBIN El Helicoide, that DGCIM officers had forced him to film a video in which he was required to incriminate people unknown to him and "they told me that if I didn't name them they would beat me again".[1471] The defendant said that they forced him to admit to a false story that he had handed over weapons to alias "La Puma" in Ramo Verde.[1472] He told the court that the interrogation lasted about 15 days and "they took off my boots and hit me with a board on my heels and knees and they suffocated me with a bag until I fainted".[1473]

287. In January 2019, a Spanish court rejected an extradition request based on the fact that SEBIN had carried out the criminal investigation. Luis Mariano Rodríguez was accused in the same case as José Enrique Luongo and Diego Salazar Carreño, who were detained in December 2017 on corruption-related charges and were still held in SEBIN's La Tumba cell at the time of writing.[1474] The extradition court denied the request filed by Venezuela to extradite Mr. Luis Mariano Rodríguez, holding that to do so would result in a violation of the accused's rights.[1475] The Spanish court expressed specific concern over the fact that the investigation was carried out "almost entirely" by SEBIN, noting that the intelligence agency continues to detain the defendants and has been accused of torture.[1476]

---

1464 See Tweet by Diosdado Cabello, 4 May 2020, available at: https://twitter.com/dcabellor/status/1257412588046032898?lang=en

1465 Interview AAIV092, 25 August 2021.

1466 See A/HRC/45/CRP.11, para. 285.

1467 Written information from the defence, 7 June 2021, on file with the Mission; Interview AAIV092, 25 August 2021.

1468 Letter from Nayeska Baduel Oyoque, Andreina Baduel Oyoque and Margareth Baduel Oyoque, to the Human Rights Ombudsperson, 15 October 2020, on file with the Mission; Interview AAIV092, 25 August 2021; Interview AAIV092, 25 August 2021.

1469 Letter from Nayeska Baduel Oyoque, Andreina Baduel Oyoque and Margareth Baduel Oyoque, to the Human Rights Ombudsperson, 15 October 2020, on file with the Mission; Interview AAIV092, 25 August 2021; Interview AAIV092, 25 August 2021.

1470 AAIV019, 7 June 2021.

1471 Name of the defendant on file with the Mission. Preliminary Hearing Record, 7 August 2020.

1472 Name of the defendant on file with the Mission. Preliminary Hearing Record, 7 August 2020.

1473 Name of the defendant on file with the Mission. Preliminary Hearing Record, 7 August 2020.

1474 Sixth Criminal Control Court Arrest Order, 1 December 2017.

1475 Rollo de Sala Extradición: Ext 61/2018, Procedimiento de Origen: Ext 38/2018, Juzgado Central Instrucción No. 1 de Madrid, Auto No. 8/2019, 18 January 2019, cerified copy of the Judgment on file with the Mission.

1476 In its decision, the Spanish Court provided the following reasoning: "These are crimes that have no direct political connotation, but one must take into account the defendant's opposition to the Hugo Chávez regime and the current Maduro regime, the positioning of the defendant against the current system, the fact that the investigation is initiated by the military counter-intelligence service and is almost entirely carried out by the SEBIN (National Intelligence Service), which determines that if he

### 3. Evidence derived from illegal searches

288. The Public Prosecutor's Office may order police to carry out inspections of persons, places and objects while investigating crimes.[1477] Should this involve searches of residences, businesses or public offices then prior authorization from a Control Court is required.[1478] The Criminal Procedure Code contains a list of specific information that must be included in every search warrant, including the specific places to be searched and the exact description of the objects or persons targeted by the warrant.[1479] The law requires that a copy of the warrant be handed to whoever is present at the location of the search and that the search be conducted in the presence of two witnesses.[1480]

289. The Mission investigated cases demonstrating a failure to comply with legal requirements for searches, documenting 73 cases in which officers searched detainees' homes or offices and seized items without presenting search warrants at the time.[1481] In a number of cases, 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.

***Box 12: The case of Azul Positivo***

On 12 January 2021, five members of the humanitarian NGO Azul Positivo were detained by Zulia State Intelligence (SIPEZ) and DGCIM members in Maracaibo, Zulia State, following the search of their offices[1482] and two of their residences.

By 9.30 a.m. on 12 January, a large group of heavily armed officers had surrounded the Azul Positivo office.[1483] No one from Azul Positivo was in the office when the officers arrived, but two employees of another organization sharing their office space were there.[1484] SIPEZ officers threatened to shoot one of the witnesses on the scene in the legs when they saw him making a phone call.[1485]

---

were extradited, this would be the service that would be in charge of the continuation of the investigation. This service has been the subject of numerous international complaints about its torture practices [...]".

1477 See 2012 Criminal Procedure Code, art. 186.

1478 See 2012 Criminal Procedure Code, art. 196.

1479 See 2012 Criminal Procedure Code, art. 197.

1480 See 2012 Criminal Procedure Code, arts. 186, 196, 198.

1481 See A/HRC/45/CRP.11. Including in the cases of Rodolfo Pedro González, Case 12: Inés González, Case 12: Lessi Marcano, C2EE24 (female), C2EE25 (female), Juan Pedro Lares, C2EE01 (female), C2EE22 (female), C2EE23 (male), Case 7: Geraldine Chacón, Case 7: Gregory Hinds, Case 6: Víctor Navarro, Case 6: C2EE09 (female), Jesús Medina Ezaine. FFMV0091, FFMV0079, FFMV0124, FFMV0039, FFMV0033, FFMV0092, FFMV0037, FFMV0044, FFMV0180, FFMV0040, FFMV0004, FFMV0096, FFMV0050, FFMV0057, FFMV0059, FFMV0158, FFMV0036, FFMV0055, FFMV0166, FFMV0089, FFMV0015, FFMV0071, FFMV0111, FFMV0076, FFMV0140, FFMV0138, FFMV0049, FFMV0007, FFMV0010, FFMV0070, FFMV0157, FFMV0160, FFMV0046, FFMV0020, FFMV0021, FFMV0024, FFMV0107, FFMV0061, FFMV0064, FFMV0062, FFMV0093, FFMV0084, FFMV0177, FFMV0102, FFMV0002, FFMV0109, FFMV0027, FFMV0078, FFMV0082, FFMV0115, FFMV0094, FFMV0137, FFMV0168, FFMV0164, FFMV0129, FFMV0105, FFMV0008, FFMV0174, FFMV0095, FFMV0081, FFMV0086, FFMV0053, FFMV0125, FFMV0167, FFMV0165, FFMV0006, FFMV0016, FFMV0170, FFMV0019, FFMV0035, FFMV0143, FFMV0144, FFMV0183.

1482 Azul Positivo's offices are funded with the support of the UN Refugee Agency (UNHCR). Interview DDIV021, 25 February 2021; See UNHCR, Hoja de datos, October 2018 and October 2018 available at: https://www.acnur.org/5c083ae34.pdf and https://www.acnur.org/5e0629f84.pdf

1483 Interview DDIV012, 22 January 2021; Interview DDIV018, 18 February 2021; Interview DDIV021, 25 February 2021; Interview DDIV024, 9 March 2021.

1484 Interview DDIV018, 18 February 2021; Interview DDIV024, 9 March 2021.

1485 Interview DDIV018, 18 February 2021.

When two Azul Positivo members arrived at the office, the officers took their identification documents and cellular phones.[1486] When a witness asked an officer if a lawyer had been permitted to enter the site during the search, the officer replied that it was not necessary, as they were conducting an administrative procedure and had not detained anyone.[1487] When asked if he had a search warrant, the SIPEZ Director, who was leading the operation, said, "I don't need a search warrant because my order comes from above".[1488]

The military prosecutor later told the Azul Positivo members that a military tribunal had ordered the search,[1489] although no search warrant was presented at the time.[1490] the SIPEZ Director took a group of officials to arrest another Azul Positivo member from his home.[1491] When they arrived they searched the house without presenting a warrant.[1492] Upon finding photographs of the Azul Positivo member and his male partner (also part of Azul Positivo), an official stated, "ah, everyone in the organization are *marisquitos* (faggots)".[1493]

The Azul Positivo member told him: "Educate yourself. The word *marisquitos* is pejorative, we do not use it. The word is gay or homosexual." The official retorted, "ah, the poor detainees are *marisquitos*, but you homosexuals, you're the ones who launder money!"[1494] They seized personal devices and other equipment from the house, and took the Azul Positivo member back to the office to join the other three.[1495]

Objects seized from the residence were not photographed or registered *in situ*. Instead, officers brought them to the office and photographed and logged them as if seized there.[1496] Azul Positivo members witnessed the SIPEZ Director verbally reprimand the officers for not photographing and logging the items at the residence, but allowed the process to continue despite the broken chain of custody. Chain of custody documents reviewed by the Mission only indicate the office address as place of seizure.[1497] Another member of Azul Positivo arrived on site, and officials proceeded to seize his telephone and documents as well.[1498] None of the Azul Positivo members were permitted to leave or make phone calls.[1499]

[1486] Interview DDIV018, 18 February 2021; Interview DDIV024, 9 March 2021.
[1487] Interview DDIV012, 22 January 2021.
[1488] Interview DDIV018, 18 February 2021.
[1489] Interview DDIV018, 18 February 2021.
[1490] Interview DDIV018, 18 February 2021; Interview DDIV021, 25 February 2021.
[1491] Interview DDIV018, 18 February 2021; Interview DDIV021, 15 February 2021; Interview DDIV062, 29 July 2021.
[1492] Interview DDIV018, 18 February 2021; Interview DDIV021, 15 February 2021; Interview DDIV021, 25 February 2021.
[1493] Interview DDIV018, 18 February 2021; Interview DDIV062, 29 July 2021.
[1494] Interview DDIV062, 29 July 2021; Interview DDIV018, 18 February 2021; Interview DDIV062, 29 July 2021.
[1495] Interview DDIV018, 18 February 2021; Interview DDIV021, 25 February 2021; DDIV062, 29 July 2021.
[1496] Interview DDIV018, 18 February 2021; Interview DDIV021, 25 February 2021; Interview DDIV062, 29 July 2021.
[1497] Record DDDOC056, 12 January 2021.
[1498] Interview DDIV018, 18 February 2021; Interview DDIV066, 31 July 2021.
[1499] Interview DDIV018, 18 February 2021; Interview DDIV066, 31 July 2021; Interview DDIV062, 29 July 2021; Interview DDIV021, 25 February 2021; Interview DDIV024, 9 March 2021; Interview DDIV012, 22 January 2021.

The officials became more aggressive, wanting to know where Azul Positivo got their funds, but not accepting the answers about their grants and projects. They demanded to know the organization's relationship with Juan Guaidó, and if they were incentivizing sanctions by sharing information outside the country.[1500] When Azul Positivo members reported they received funding from UNHCR, an official said that $400 per month was more than any Venezuelan could legitimately earn.[1501]

The office search and concurrent interrogation lasted from around 9.30 a.m. to 5.30 or 6 p.m.,[1502] after which the four on-site Azul Positivo members were arrested and taken to DGCIM's Maracaibo headquarters at the Integral Defence Operation Zone #11 (ZODI – las Zonas Operativas de Defensa Integral). They were made to sign declarations that they had been read their rights,[1503] amid threats of violence and after one member was hit in the head and face.[1504] DGCIM and SIPEZ officers then searched the house of a fifth Azul Positivo member, without a warrant, looking for cards, dollars and weapons.[1505] He was also arrested and brought to DGCIM headquarters.[1506]

The official account of the search and arrest is notably different. According to judicial records, at 10 a.m. on 12 January 2021, the Twenty-Second National Assistant Military Prosecutor telephoned the Eighteenth Military Control Court Judge of Zulia, urgently requesting a search warrant for the Azul Positivo office.[1507] Witnesses to the search of the office indicate that the search had already begun by 9.30 a.m. According to official records, a DGCIM Sub-inspector and the SIPEZ Director accompanied the Assistant Military Prosecutor in the search of the Azul Positivo offices at around 11 a.m.[1508]

The search warrant only permitted a search of the office. The military prosecutor requested the search warrant on the basis of a phone call in which DGCIM claimed to have a single anonymous intelligence source that alleged crimes of a military nature were in the course of commission, without providing further information.[1509] The warrant as reviewed by the Mission did not include precise information about the reason for the search or the objects sought. It also failed to define the authorities authorized to undertake the search.

On 14 January 2021, the Azul Positivo members were transferred from ZODI #11 to a military tribunal. At the initial appearance, the military prosecutor filed a recusal, stating that no evidence of crimes within military jurisdiction had been demonstrated.[1510] The Seventy-Seventh Provisional and Assistant Auxiliary Prosecutors with national jurisdiction over money laundering, financial and economic crimes took the case over that evening and the defendants were transferred to a civilian court.

[1500] Interview DDIV024, 9 March 2021; Interview DDIV062, 29 July 2021; Interview DDIV021, 25 February 2021.
[1501] Interview DDIV024, 9 March 2021.
[1502] Interview DDIV018, 18 February 2021; Interview DDIV066, 31 July 2021; Interview DDIV062, 29 July 2021; Interview DDIV021, 25 February 2021; Interview DDIV024, 9 March 2021; Interview DDIV012, 22 January 2021.
[1503] Interview DDIV018, 18 February 2021; Interview DDIV066, 31 July 2021; Interview DDIV062, 29 July 2021; Interview DDIV024, 9 March 2021.
[1504] Interview DDIV018, 18 February 2021; Interview DDIV024, 9 March 2021; Interview DDIV021, 25 February 2021; Interview DDIV062, 29 July 2021.
[1505] Interview DDIV065, 30 July 2021.
[1506] DDIV021, 25 February 2021; DDIV065, 30 July 2021.
[1507] The Military Control Judge submitted the request for the arrest warrant on behalf of the military prosecutor based on the phone call. Record DDDOC057, 12 January 2021.
[1508] Record DDDOC058, 12 January 2021.
[1509] Record DDDOC059, 12 January 2021; Record DDDOC058, 12 January 2021; Record DDDOC060, 12 January 2021.
[1510] Record DDDOC061, 14 January 2021.

The prosecution did not present information linking the seized evidence to any illegal acts, nor did they attribute specific criminal conduct to individual defendants. Instead, the prosecutor alleged that "illicit acts were presumably conducted by a violence generating group called Acción Zuliana Por La Vida, comprised of a non-profit foundation 'Azul Positivo', conducting the uncontrolled distribution of blue cards with foreign currency (dollars), presumably received from an organization called "Oxfam" without authorization by the National Executive Branch".[1511]

The Fourth Control Judge of Zulia did not convene the initial appearance hearing as required. The defendants were not permitted into the room with the judge, the prosecutors and the defence. The defence was asked to submit written statements, and then they were given the written record with the decision regarding the charges and the pre-trial detention of the detainees.[1512] At no time did the prosecution present the charges to the accused.[1513]

The Control Judge accepted the prosecution's assertion that the members of Azul Positivo had been arrested *in flagrante delicto* for the crimes of money laundering, criminal association and fraudulent use of smart cards.[1514] The case file reveals that this decision was substantiated by DGCIM interviews with vendors working with Azul Positivo and their signed agreements, in which no criminal activity was alleged, as well as records of the arrest and chain of custody documentation. The defence presented documents attesting to the legality of the organization and its programming, which were not taken into account by the judge.[1515]

The Control Judge also ordered that the five men remain in pre-trial detention at ZODI #11, stating that she believed it "reasonable to think that [the accused] would try to evade the process or interfere in witness, victim, or official statements", without providing justification for that conclusion.[1516]

Two days after the arrest, the same DGCIM intelligence officials who carried out the search and arrest told the detainees that it had been "*un gallo*", a tremendous mistake.[1517] The Azul Positivo members remained in pre-trial detention for almost a month, until 10 February 2021, when they were granted a substitute precautionary measure. During their detention at ZODI #11, and during their three days under DGCIM custody at the San Francisco Polyclinic, DGCIM members threatened to rape, kill, or otherwise harm them.[1518] The Azul Positivo members remained under substitute precautionary measures including periodic presentation at the time of writing, awaiting the prosecution's decision whether or not to indict.

### 4. Planted, fabricated or manipulated evidence

290. The Mission has reasonable ground to believe a pattern exists in which prosecutorial or judicial actors relied on fabricated, manipulated or planted of 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 has identified and documented 24 detentions that involved falsified, manipulated or planted evidence.[1519] In addition, 78.82 per cent of the respondents to the Mission's questionnaire, who were all defence lawyers, prosecutors or

[1511] Record DDDOC062, 14 January 2021.
[1512] Record DDDOC062, 14 January 2021.
[1513] Record DDDOC062, 14 January 2021.
[1514] Record DDDOC062, 14 January 2021.
[1515] Record DDDOC062, 14 January 2021.
[1516] Interview DDIV054, 19 July 2021.
[1517] Interview DDIV018, 18 February 2021.
[1518] Interview DDIV054, 19 July 2021; Interview DDIV066, 31 July 2021; Interview DDIV062, 29 July 2021; Interview DDIV024, 9 March 2021, Interview DDIV018, 18 February 2021.
[1519] FFMV0091, FFMV0124, FFMV0040, FFMV0058, FFMV0059, FFMV0158, FFMV0119, FFMV0166, FFMV0138, FFMV0010, FFMV0024, FFMV0064, FFMV0084, FFMV0108, FFMV0161, FFMV0155, FFMV0082, FFMV0137, FFMV0168, FFMV0008, FFMV0125, FFMV0165, FFMV0112, FFMV0144.

judges, indicated that they had observed such evidence tampering in cases to support charges.[1520]

291. One former prosecutor said that in cases involving the detention of protesters in 2014, prosecutors worked with law enforcement to construct case files, including planting evidence if none had been found on the detainees. He told the Mission that "most of those cases were lies".[1521] Under the Criminal Procedure Code, the complainant or accuser that makes a false or bad faith complaint is legally liable.[1522] A conviction may be reversed if the evidence upon which it was based proves to be false.[1523]

292. Examples from cases the Mission documented include the following:

- During the 2 May 2014 search of Voluntad Popular member Rosmit Mantilla's residence, Mr. Mantilla claims that armed SEBIN officials planted envelopes containing money labelled with the names of protest sites around the city.[1524] They proceeded to arrest him. Prosecutors alleged that he used that money to pay protesters, despite Mr. Mantilla's allegations. The Control Judge ratified his arrest on this basis and ordered his pre-trial detention.[1525] Mr. Mantilla subsequently spent two and a half years in pre-trial detention, before being released with substitute measures. His case never went to trial.
- In the January 2017 case of Steyci Escalona,[1526] the defence alleged that SEBIN officials had planted an automatic rifle in her car, and that the chain of custody had been broken, as the pictures of the rifle presented as evidence were taken at the SEBIN premises in Naguanagua, rather than at the moment it was supposedly found. Nevertheless, the Control Judge upheld the detention and the charges against Ms. Escalona.
- In the case of the August 2017 detention of anti-corruption prosecutor Luis Sánchez (see Box 3), the alleged original UBS Bahamas bank account documents relied upon to sustain his detention were revealed to be colour photocopies whose provenance was

[1520] Questionnaire CCQR059, 12 July 2021; Questionnaire CCQR063, 12 July 2021; Questionnaire CCQR048, 12 July 2021; Questionnaire CCQR065, 12 July 2021; Questionnaire CCQR053, 12 July 2021; Questionnaire CCQR050, 12 July 2021; Questionnaire CCQR057, 12 July 2021; Questionnaire CCQR056, 12 July 2021; Questionnaire CCQR045, 12 July 2021; Questionnaire CCQR048, 12 July 2021; Questionnaire CCQR049, 12 July 2021; Questionnaire CCQR043, 12 July 2021; Questionnaire CCQR041, 12 July 2021; Questionnaire CCQR054, 12 July 2021; Questionnaire CCQR047, 12 July 2021; Questionnaire CCQR052, 12 July 2021; Questionnaire CCQR076, 12 July 2021; Questionnaire CCQR042, 12 July 2021; Questionnaire CCQR036, 12 July 2021; Questionnaire CCQR040, 12 July 2021; Questionnaire CCQR039, 12 July 2021; Questionnaire CCQR042, 12 July 2021; Questionnaire, CCQR086, 12 July 2021; Questionnaire CCQR083, 12 July 2021; Questionnaire CCQR034, 29 June 2021; Questionnaire CCQR033, 28 June 2021; Questionnaire CCQR032, 26 June 2021; Questionnaire CCQR031, 23 June 2021; Questionnaire CCQR030, 22 June 2021; Questionnaire CCQR029, 22 June 2021; Questionnaire CCQR028, 20 June 2021; Questionnaire CCQR027, 20 June 2021; Questionnaire CCQR023, 17 June 2021; Questionnaire CCQR022, 17 June 2021; Questionnaire CCQR021, 16 June 2021; Questionnaire CCQR020, 16 June 2021; Questionnaire CCQR018, 16 June 2021; Questionnaire CCQR017, 16 June 2021; Questionnaire CCQR016, 16 June 2021; Questionnaire CCQR015, 16 June 2021; Questionnaire CCQR014, 15 June 2021; Questionnaire CCQR012, 15 June 2021; Questionnaire CCQR011, 15 June 2021; Questionnaire CCQR010, 15 June 2021; Questionnaire CCQR009, 15 June 2021; Questionnaire CCQR008, 15 June 2021; Questionnaire CCQR007, 15 June 2021; Questionnaire CCQR019, 16 June 2021; Questionnaire CCQR005, 15 June 2021; Questionnaire CCQR004, 15 June 2021; Questionnaire CCQR001, 6 June 2021.

[1521] Interview AAIV053, 3 June 2021.

[1522] 2012 Criminal Procedure Code, arts. 273 and 281.

[1523] 2012 Criminal Procedure Code, art. 462(3).

[1524] Interview C2EE14, 2 July 2020.

[1525] Interview C2EE14, 2 July 2020.

[1526] A/HRC/45/CRP.11, Case 3: Gilber Caro.

unclear, given that the UBS Bahamas bank from which they were allegedly issued did not exist at the time.[1527]

- In the March 2019 case of Roberto Marrero, the SEBIN inspector later allegedly testified that no investigation had actually been carried out, but that his supervisor had told him what he should write down as "investigation" results.[1528] Former SEBIN director Cristopher Figuera also later said that he had received orders directly from President Maduro to plant weapons in Mr. Marrero's apartment.[1529]
- In 2017, a military prosecutor charged three activists with theft of military belongings[1530] based on SEBIN's claim they had recovered a rifle during the search of their residence without warrant and subsequent arrest.[1531] During the five to six hours that SEBIN officials searched the apartment, the officials presented to the defendants all the materials seized in the search, as they were being found. SEBIN allegedly later found a rifle in the apartment building's trash chute. The defendants claimed SEBIN planted the rifle. The same trash chute system is shared among the approximately 18 apartments in the building. Nonetheless, the Military Control Judge sustained the charges and the *in flagrante delicto* arrest.[1532]
- In the case of C2EE09 included in the Mission's 2020 report,[1533] she alleged that FAES officers planted evidence in the apartment after her arrest in 2017 and photographed her and her friends with weapons that did not belong to them.[1534] She told the Mission that FAES officers had taken a kitchen knife from the apartment, which later appeared in photographs on the Ministry of the Interior's webpage, as items seized from people committing acts of terrorism.[1535]
- In the March 2018 arrest of Luis Carlos Díaz (see Box 6), SEBIN records of the search of his house referred to items that he allegedly did not have in his house, specifically

[1527] Letter from Sherrece L. Saunders, Investigator V, Department of Supervision of Banks to Sr. L Ryan Pinder, Partner, Graham Thompson, Ref. 402-270, 4 September 2017, copy on file with the Mission. Specifically, the letter read, "With reference to your email dated 1 September 2017, seeking confirmation on the status of the captioned licensee, kindly note that the Central Bank issued a non-active licence to UBS (Bahamas) Ltd. oonOn 24 November 2015, which downgraded its unrestricted bank and trust category to a non-active category, with effect from 1 April 2015".

[1528] A/HRC/45/CRP.11, Case 11: Roberto Marrero.

[1529] See #DeFrenteConLaPacheco, Acábenlo, ordenó Maduro, 14 Feburary 2020, minute 16:40, available at: https://www.youtube.com/watch?v=A7vNVArAHJU&feature=youtu.be. See also #HablaFiguera Maduro solo levanta el teléfono y ordena torturar - Aló BN EVTV - 06/12/19 SEG 1, 12 July 2019, available at: https://www.youtube.com/watch?time_continue=525&v=L6EqQ8cGaQE&feature=emb_title, minute 3:30 and América Digital Noticias, El exjefe del Servicio Bolivariano de Inteligencia (Sebin), conversó con César Miguel Rondón sobre el poder de Maduro y su círculo, la tortura en el Sebin y su papel (y el de otros funcionarios aún en el gobierno) en la Operación Libertad, 11 July 2019, minute 6:30, available at: https://www.youtube.com/watch?v=GjtuUlQpNoI&feature=youtu.be.

[1530] Article 570.1 of the Organic Code of Military Justice states that "Those who steal, embezzle or degrade funds, securities or effects belonging to the Armed Forces shall be punished with imprisonment from two to eight years".

[1531] A/HRC/45/CRP.11, Case 5: Detention of Three Individuals – "Operation Tun Tun".

[1532] Interview C2EE01, 5 May 2020; Interview C2EE02, 15 May 2020.

[1533] A/HRC/45/CRP.11, Case 6: Víctor Navarro, C2EE091023 and eight others.

[1534] News of the arrest was published on the website of the Ministry of Internal Relations, Justice and Peace. Though the news item has since been deleted, photographs of the detainees can still be found on the site's archives. See, for example, http://www.mpprijp.gob.ve/wp-content/uploads/2017/06/FAES-detuvo-a-siete-personas-por-actos-terroristas-en-Los-Palos-Grandes-5.jpg The Minister of Internal Relations, Justice and Peace, Néstor Reverol, also tweeted images of the group from his personal account, available here: https://twitter.com/NestorLReverol/status/878933289167343616/photo/1

[1535] Ministry of Internal Relations, Justice and Peace, http://www.mpprijp.gob.ve/wp-content/uploads/2017/06/FAES-detuvo-a-siete-personas-por-actos-terroristas-en-Los-Palos-Grandes-4-600x300.jpg

a map of the electric grid of Caracas.[1536] Mr. Díaz presented this information before the Control Judge at his initial appearance, however the judge upheld the charges against Mr. Díaz, which were based on a SEBIN investigation report, and did not order an investigation into the alleged illegal acts.

## D. The right to defence

293. Under the Constitution, the right to legal assistance and defence are inviolable.[1537] The accused has a right to defence at every stage of the criminal process.[1538] Despite this, the Mission found that interference with the right to defence was one of the most commonly cited violations. Of the 183 detentions the Mission reviewed, 129 (70 per cent) reveal clear signs of interference with the right to defence, falling within the categories detailed below.[1539] This is supported by the defence lawyers, prosecutors and judges that responded to the Mission's questionnaire, 85 per cent of whom indicated that they had observed interference with this right.[1540]

[1536] Document AADOC009, 12 March 2021.

[1537] 1999 Constitution, art. 49(1).

[1538] See 2012 Criminal Procedure Code, arts. 10, 12.

[1539] This includes cases where detainees were unable to appoint defence counsel of their choosing, defence counsel was denied access to their clients, or defence counsel was denied access to information crucial to the preparation of the defence. Additional violations to the right of defence may have occurred concurrently, and in additional cases. FFMV0091, FFMV0147, FFMV0014, FFMV0079, FFMV0047, FFMV0124, FFMV0039, FFMV0077, FFMV0092, FFMV0150, FFMV0116, FFMV0044, FFMV0180, FFMV0004, FFMV0096, FFMV0179, FFMV0141, FFMV0057, FFMV0058, FFMV0059, FFMV0063, FFMV0068, FFMV0128, FFMV0139, FFMV0176, FFMV0036, FFMV0055, FFMV0106, FFMV0023, FFMV0113, FFMV0122, FFMV0123, FFMV0119, FFMV0151, FFMV0041, FFMV0166, FFMV0178, FFMV0089, FFMV0015, FFMV0071, FFMV0076, FFMV0136, FFMV0140, FFMV0138, FFMV0049, FFMV0067, FFMV0010, FFMV0160, FFMV0173, FFMV0085, FFMV0046, FFMV0020, FFMV0021, FFMV0024, FFMV0051, FFMV0061, FFMV0064, FFMV0080, FFMV0062, FFMV0084, FFMV0130, FFMV0177, FFMV0142, FFMV0073, FFMV0102, FFMV0132, FFMV0133, FFMV0017, FFMV0117, FFMV0108, FFMV0026, FFMV0149, FFMV0148, FFMV0031, FFMV0155, FFMV0054, FFMV0118, FFMV0115, FFMV0163, FFMV0094, FFMV0175, FFMV0168, FFMV0042, FFMV0025, FFMV0120, FFMV0164, FFMV0129, FFMV0105, FFMV0011, FFMV0114, FFMV0097, FFMV0045, FFMV0174, FFMV0005, FFMV0095, FFMV0081, FFMV0083, FFMV0086, FFMV0065, FFMV0030, FFMV0053, FFMV0125, FFMV0159, FFMV0134, FFMV0156, FFMV0165, FFMV0006, FFMV0182, FFMV0135, FFMV0110, FFMV0103, FFMV0127, FFMV0171, FFMV0001, FFMV0088, FFMV0090, FFMV0016, FFMV0170, FFMV0019, FFMV0087, FFMV0043, FFMV0172, FFMV0028, FFMV0035, FFMV0143, FFMV0144, FFMV0013, FFMV0183.

[1540] Questionnaire CCQR081, 13 July 2021; Questionnaire CCQR079, 12 July 2021; Questionnaire CCQR077, 12 July 2021; Questionnaire CCQR075, 12 July 2021; Questionnaire CCQR074, 12 July 2021; Questionnaire CCQR041, 12 July 2021; Questionnaire CCQR069, 12 July 2021; Questionnaire CCQR068, 12 July 2021; Questionnaire CCQR061, 12 July 2021; Questionnaire CCQR058, 12 July 2021; Questionnaire CCQR066, 12 July 2021; Questionnaire CCQR048, 12 July 2021; Questionnaire CCQR053, 12 July 2021; Questionnaire CCQR056, 12 July 2021; Questionnaire CCQR045, 12 July 2021; Questionnaire CCQR048, 12 July 2021; Questionnaire CCQR043, 12 July 2021; Questionnaire CCQR038, 12 July 2021; Questionnaire CCQR054, 12 July 2021; Questionnaire CCQR047, 12 July 2021; Questionnaire CCQR052, 12 July 2021; Questionnaire CCQR076, 12 July 2021; Questionnaire CCQR042, 12 July 2021; Questionnaire CCQR036, 12 July 2021; Questionnaire CCQR042, 12 July 2021; Questionnaire CCQR084, 12 July 2021; Questionnaire, CCQR086, 12 July 2021; Questionnaire CCQR032, 26 June 2021; Questionnaire CCQR031, 23 June 2021; Questionnaire CCQR029, 22 June 2021; Questionnaire CCQR028, 20 June 2021; Questionnaire CCQR027, 20 June 2021; Questionnaire CCQR022, 17 June 2021; Questionnaire CCQR020, 16 June 2021; Questionnaire CCQR017, 16 June 2021; Questionnaire CCQR016, 16 June 2021; Questionnaire CCQR044, 12 July 2021; Questionnaire CCQR024, 17 June 2021; Questionnaire CCQR008, 15 June 2021; Questionnaire CCQR007, 15 June 2021; Questionnaire CCQR019, 16 June 2021; Questionnaire CCQR006, 15 June 2021; Questionnaire CCQR005, 15 June 2021; Questionnaire CCQR003, 15 June 2021; Questionnaire CCQR002, 15 June 2021; Questionnaire CCQR004, 15 June 2021.

### 1. Denial of appointment of counsel of own choosing

294. Under Venezuelan law, 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.[1541] The Criminal Procedure Code states that appointment of defence counsel must be in accordance with the wishes of the accused (or in certain cases, her or his relatives), to ensure trust and suitability of the defence and technical advice. Public defence counsel must only be appointed as a last resort.[1542] At any stage of the proceedings, the accused may revoke the appointment of his or her defence counsel.[1543] In the event of such revocation of appointment, a new appointment must be made by the accused within 24 hours, or a public defender shall be appointed.[1544] The judge may also appoint a public defender if the accused does not appoint one herself or himself.[1545]

295. The Criminal Procedure Code requires that appointment of defence counsel should not be subject to formalities,[1546] as long as the person appointed is a lawyer with no impediment to exercise the profession and is able to exercise his or her civil and political rights fully.[1547] Once the defence counsel has accepted the position, the judge shall take the oath within 24 hours following receipt of the defence counsel's request.[1548]

296. Nevertheless, interference with the right to appoint private defence counsel was a routine occurrence in the cases investigated. Out of 170 cases examined in which the defendant was charged, the right to counsel of choice was denied at the initial appearance or subsequent investigation phase in 54 cases (32 per cent).[1549] In all but three of those cases, the Control Judge ordered pre-trial detention. Defence lawyers interviewed and responding to the Mission's questionnaire also reported that judges had not permitted them to represent their clients in certain cases, forcing their clients to accept public defenders.[1550] One defence lawyer told the Mission that often the only way to ensure the appointment of private defence was by denouncing the case in the media.[1551]

297. Angela Expósito, detained on 22 September 2018, told SEBIN officials that she wanted to appoint her own lawyer from the moment of her arrest, but was denied this right.[1552] On 24 September 2018, representatives from her legal team publicly stated they had not been granted access to Ms. Expósito.[1553] Her initial appearance was held on 27 September 2018 at

---

1541 2012 Criminal Procedure Code, arts. 127, 139.
1542 See 2012 Criminal Procedure Code, art. 139.
1543 Criminal Procedure Code, art. 144.
1544 Criminal Procedure Code, art. 145.
1545 2012 Criminal Procedure Code, arts. 127, 139.
1546 2012 Criminal Procedure Code, art. 141.
1547 2012 Criminal Procedure Code, art. 140.
1548 2012 Criminal Procedure Code, art. 141.
1549 FFMV0014, FFMV0092, FFMV0116, FFMV0096, FFMV0179, FFMV0057, FFMV0063, FFMV0068, FFMV0176, FFMV0106, FFMV0023, FFMV0113, FFMV0122, FFMV0119, FFMV0151, FFMV0041, FFMV0089, FFMV0015, FFMV0076, FFMV0136, FFMV0067, FFMV0160, FFMV0173, FFMV0085, FFMV0051, FFMV0080, FFMV0142, FFMV0117, FFMV0031, FFMV0054, FFMV0118, FFMV0115, FFMV0163, FFMV0175, FFMV0042, FFMV0025, FFMV0120, FFMV0105, FFMV0011, FFMV0114, FFMV0005, FFMV0083, FFMV0030, FFMV0159, FFMV0134, FFMV0156, FFMV0182, FFMV0135, FFMV0103, FFMV0088, FFMV0090, FFMV0170, FFMV0035, FFMV0013.
1550 Interview CCIV007, 21 July 20211; Questionnaire CCQR077, 12 July 2021; Questionnaire CCQR074, 12 July 2021; Questionnaire CCQR070, 12 July 2021; Questionnaire CCQR069, 12 July 2021; Questionnaire CCQR068, 12 July 2021; Questionnaire CCQR048, 12 July 2021; Questionnaire CCQR065, 12 July 2021; Questionnaire CCQR053, 12 July 2021; Questionnaire CCQR048, 12 July 2021; Questionnaire CCQR076, 12 July 2021; Questionnaire CCQR042, 12 July 2021; Questionnaire CCQR042, 12 July 2021; Questionnaire CCQR022, 17 June 2021 ; Questionnaire CCQR018, 16 June 2021 ; Questionnaire CCQR015, 16 June 2021; Questionnaire CCQR008, 15 June 2021; Questionnaire CCQR007, 15 June 2021; Questionnaire CCQR019, 16 June 2021.
1551 Questionnaire CCQR069, 12 July 2021.
1552 Document DDDOC007, 9 March 2021.
1553 https://twitter.com/GabyGabyGG/status/1044244987121201152; https://twitter.com/alfredoromero/status/1043696720130007040

the First Terrorism Control Court, where she was represented by a public defender against her wishes.[1554] She raised this again with the First Terrorism Control Judge at her preliminary hearing on 22 February 2019, making clear that her human and constitutional rights had been violated.[1555]

298. Defence lawyers have reported to the Mission that they have been prevented access to certain detention facilities, especially those of SEBIN and DGCIM, to contact clients in order to sign the power of attorney documents. For example, despite numerous requests, at the time of writing, First Lieutenant Franklin Caldera (see Box 7) had not able to appoint a private defence lawyer. The Mission received information that DGCIM had refused his lawyer access to Boleíta to sign the relevant documents.[1556] A DGCIM officer allegedly said that private defence lawyers were "forbidden to enter Boleíta", stating "Look for another lawyer who has nothing to do with these organizations".[1557]

299. Once Mr. Caldera was transferred from Boleíta to the Ramo Verde detention facility, access was granted to sign the power of attorney. On 31 August 2021, Franklin Caldera was called for his preliminary hearing. His private defence was not notified and he was represented by a public defender.[1558] The Fourth Terrorism Control Judge offered Mr. Caldera to accept the charges against him.[1559] Mr. Caldera did not declare his guilt and the judge ordered a trial.[1560]

300. Even after having been granted power of attorney by their clients, private defence lawyers have faced delays in swearing in before the judge. In the case related to Operation Aurora, the defendants had been denied confirmation of their private defence lawyers during the initial appearance, meaning that the defendants were assigned public defenders.[1561] A private defence lawyer told the Mission that, at the subsequent preliminary hearing in October 2020, one defendant again requested to the Control Judge that she be able to represent him.[1562] The defendant told the defence lawyer that the Fourth Terrorism Control Judge insisted the request be made in writing.[1563] He then asked the defendant, "Why do you want her to be your lawyer?" and referred to her and her co-counsel as "terrorists", noting, "That lawyer could be sitting on the bench next to you".[1564]

301. Defence lawyers also told the Mission that they were regularly prevented from accessing tribunals to represent their clients, especially at initial appearances, sometimes as court officials told their clients that they had not arrived.[1565] A defence lawyer arriving to represent Javier Tarazona, Rafael Tarazona and Omar García of the NGO Fundaredes during their initial appearance on 3 July 2021 before the Third Terrorism Control Court, was turned away by the court secretary who told her that no hearing was taking place.[1566] When she told the secretary that she was a private defence lawyer the secretary responded that the defendants had requested a public defender.[1567] The private defence lawyer stood outside the courtroom door and as Javier Tarazona was led out, he told her "they did not let us appoint our lawyers of trust!"[1568] At the initial appearance, the defendants were charged with crimes

1554 Document DDDOC007, 9 March 2021.
1555 Preliminary Hearing Record, 29 April 2019.
1556 Interview AAIV047, 17 May 2021.
1557 Interview AAIV047, 17 May 2021.
1558 Interview AAIV093, 1 September 2021.
1559 Interview AAIV093, 1 September 2021.
1560 Interview AAIV093, 1 September 2021.
1561 Interview AAIV043, 7 May 2021.
1562 Interview AAIV043, 7 May 2021.
1563 Interview AAIV043, 7 May 2021.
1564 Interview AAIV043, 7 May 2021.
1565 Questionnaire CCQR066, 12 July 2021; Questionnaire CCQR062, 12 July 2021; Questionnaire CCQR056, 12 July 2021; Questionnaire CCQR062, 12 July 2021.
1566 Interview AAIV080, 28 July 2021; Interview AAIV088, 20 August 2021.
1567 Interview AAIV080, 28 July 2021; Interview AAIV088, 20 August 2021.
1568 Interview AAIV080, 28 July 2021; Interview AAIV088, 20 August 2021.

of incitement to hate,[1569] treason[1570] and terrorism.[1571] Despite the court's ordering the defendants' pre-trial detention in the Hombre Nuevo Libertador detention centre, SEBIN brought them to El Helicoide.[1572] At the time of writing, the private defence lawyers have gone over 10 times to El Helicoide with the power of attorney and each time were denied access to the three defendants.[1573]

302. The failure to allow the appointment of private defence lawyers at initial appearances has resulted in notable impacts on their cases. Captain Juan Carlos Caguaripano, arrested on 11 August 2017 for the attack on Fort Paramacay, was denied the right to appoint a lawyer of his choosing at his initial appearance, under threat that DGCIM would hurt his family, and was represented by a public military defender.[1574] As he did not trust the public military counsel assigned to him, he did not declare he had been tortured, despite the fact he was visibly battered.[1575] After that hearing, he did not see the public military defender again. He was only permitted to appoint his defence of choice at his preliminary hearing held on 16 November 2018, over one year later.[1576]

303. In the case of Luis Carlos Díaz (see Box 6), he asked the Thirty-First Control Judge at his initial appearance on 12 March 2019 if he could speak to his private defence lawyer,[1577] but the Control Judge refused, saying that Mr. Díaz's lawyer had not yet arrived.[1578] The judge told him that he had to accept the public defender or the judge would return him to SEBIN El Helicoide.[1579] When the appointed public defender entered the courtroom, Mr. Díaz told him that he did not authorize him to take his case.[1580] The defender persisted and encouraged Mr. Díaz to talk.[1581] Mr. Díaz began to explain what had happened and the public defender offered him a phone to call his wife.[1582] While Mr. Díaz was speaking with his wife, the judge's secretary entered the courtroom and reported the call. Shortly thereafter, a bailiff came in and detained the public defender.[1583] This incident does not appear in the official record of the initial appearance.[1584]

304. The Mission also identified and documented a pattern of holding initial court appearances in places of detention, which further impeded access to defence lawyers.[1585] One former prosecutor told the Mission that during the protests of 2017, it was common to hold initial appearance hearings in the GNB military commands, which affected the right of the defendants to testify freely and without coercion, particularly given the absence of a defence counsel of trust. In the words of one legal professional who responded to the Mission's questionnaire, the defendants "would have to declare the human rights violations in the same headquarters of the officials who caused them".[1586]

1569 Law against Hate, art. 20.
1570 Criminal Code, art. 129.
1571 Law on Organized Crime and Financing of Terrorism, art. 52.
1572 Interview AAIV088, 20 August 2021.
1573 Interview AAIV080, 28 July 2021; Interview AAIV088, 20 August 2021.
1574 Interview DDIV062, 16 July 2021; Document DDDOC036, on file with the Mission.
1575 Interview DDIV062, 16 July 2021; Document DDDOC034, on file with the Mission; SENAMEF Record, 15 August 2017.
1576 Document DDDOC036, on file with the Mission.
1577 2012 Criminal Procedure Code, art. 141. See also Interview on W Radio with Naky Soto, Soto habla sobre la captura de su esposo acusado de sabotaje a red eléctrica de Venezuela, 12 March 2021, available at: https://www.wradio.com.co/noticias/internacional/soto-habla-sobre-la-captura-de-su-esposo-acusado-de-sabotaje-a-red-electrica-de-venezuela/20190312/nota/3875509.aspx
1578 Interview AAIV039, 4 May 2021.
1579 Interview AAIV039, 4 May 2021.
1580 Information provided by the defence, 15 March 2021.
1581 Information provided by the defence, 15 March 2021.
1582 Information provided by the defence, 15 March 2021.
1583 Information provided by the defence, 15 March 2021.
1584 Record AADOC007, 12 March 2019.
1585 Questionnaire CCQR031, 23 June 2021; Interview CCIV003, 29 June 2021.
1586 Questionnaire CCQR031, 23 June 2021.

***Box 13: The case of Josnars Adolfo Baduel Oyoque and Operation Gedeón***

On 4 May 2020, State television networks and social media circulated videos of Josnars Adolfo Baduel Oyoque and other individuals being captured by State security officials in the coastal town of Chuao, Aragua State. Over the next four days, his family members searched for him in Caracas tribunals and in the headquarters of SEBIN and DGCIM. They were unable to confirm his whereabouts until 8 May 2020.[1587]

That day, 8 May 2020, the Chief Prosecutor held a televised press conference describing Operation Gedeón and the crimes allegedly committed by Mr. Baduel and 30 other defendants.[1588] The Chief Prosecutor announced that the initial appearance would be held that evening before the Fourth Terrorism Control Court.[1589] The initial appearance was held in SEBIN's headquarters, within El Helicoide, the defendants' place of detention, interrogation and alleged torture.[1590] The court later justified holding the initial appearance in SEBIN and failure to meet the 48-hour limit established by law[1591] as necessary in order to comply with Covid-19 measures.[1592]

Mr. Baduel's private defence lawyer arrived at El Helicoide for the initial appearance, along with other private lawyers representing other defendants, but SEBIN officers refused them access, saying that only State-assigned public defenders would be admitted to the facility, as per the SEBIN Director's instructions.[1593] As a result, Mr. Baduel and the other detainees were required to accept public defenders.

In a subsequent written communication,[1594] the Fourth Terrorism Court stated, "no legal professional appeared before this jurisdictional body to defend the arrested persons, since the court checked outside the courthouse to see if there were any legal professionals" and none were there.[1595] Mr. Baduel was charged with treason,[1596] conspiracy with a foreign government,[1597] rebellion,[1598] criminal association,[1599] illegal trafficking in weapons of war[1600] and terrorism.[1601]

1587 Writ of *habeas corpus* filed by Andreina Baduel to the Constitutional Chamber of the Supreme Tribunal of Justice, 8 May 2020, on file with the Mission; Letter from Nayeska Baduel Oyoque, Andreina Baduel Oyoque and Margareth Baduel Oyoque, to the Human Rights Ombudsperson, 15 October 2020, on file with the Mission.

1588 See YouTube video, Fiscal General Tarek William Saab, rueda de prensa el 8 mayo 2020 sobre incursión de paramilitares, 8 May 2020, minute 26:40 available at: https://www.youtube.com/watch?v=1LEyYufYWnE

1589 See YouTube video, Fiscal General Tarek William Saab, rueda de prensa el 8 mayo 2020 sobre incursión de paramilitares, 8 May 2020, minute 26:40 available at: https://www.youtube.com/watch?v=1LEyYufYWnE

1590 See YouTube video, Fiscal General Tarek William Saab, rueda de prensa el 8 mayo 2020 sobre incursión de paramilitares, 8 May 2020, minute 13:20, available at: https://www.youtube.com/watch?v=1LEyYufYWnE

1591 1999 Constitution, art. 44, Criminal Procedure Code, art. 236.

1592 Supreme Tribunal of Justice, Constitutional Chamber Decision, 14 May 2020, citing letter from the Fourth Terrorism Control Court, 12 May 2020.

1593 Letter from Nayeska Baduel Oyoque, Andreina Baduel Oyoque and Margareth Baduel Oyoque, to the Human Rights Ombudsperson, 15 October 2020, on file with the Mission; Interview AAIV034, 7 May 2021; Interview DDIV057, 26 June 2021.

1594 This letter was cited in the *habeas corpus* request presented by Mr. Baduel's sister on 8 May 2020.

1595 Supreme Tribunal of Justice, Constitutional Chamber Decision, 14 May 2020, citing letter from the Fourth Terrorism Control Court, 12 May 2020.

1596 Criminal Code, art. 128.

1597 Criminal Code, art. 132.

1598 Criminal Code, art. 143.

1599 Law on Organized Crime and Financing of Terrorism, art. 37.

1600 Law on Organized Crime and Financing of Terrorism, art. 38.

1601 Law on Organized Crime and Financing of Terrorism, art. 52.

For several months, including during the prosecution's entire 45-day investigation period,[1602] Mr. Baduel was denied appointment of and access to his private defence lawyer.[1603] On 14 May 2020, Mr. Baduel's family members sent the first of 21 eventual requests to the Criminal Judicial Circuit of the Metropolitan Area of Caracas requesting the public defence lawyer be replaced by Mr. Baduel's private defence lawyer.[1604]

On 22 June 2020, the prosecution presented its indictment.[1605] On 7 August 2020, Mr. Baduel's preliminary hearing was held, also in El Helicoide. Neither Mr. Baduel's family members nor his private defence lawyers were notified of the preliminary hearing, having learned of it through unofficial channels.[1606] Outside El Helicoide, Mr. Baduel's defence lawyer made a statement, posted on social media, denouncing the Control Court's continued failure to allow her to represent her client.[1607] According to public information later provided by the Chief Prosecutor, out of the 85 defendants arrested in relation to Operation Gedeón, 54 admitted to the charges made against them at their preliminary hearings, and were sentenced to between 12 and 24 years' imprisonment.[1608]

Several days after the preliminary hearing, Mr. Baduel's defence lawyer had a meeting with the Fourth Terrorism Control Judge to again request that she be allowed to represent Mr. Baduel, during which he reproached her for having filmed the statement outside the preliminary hearing.[1609] He reportedly threatened her by saying that "if she was such a tough lawyer, he was going to send SEBIN to raid her house to see how tough she really was".[1610]

On 20 May 2021, the oral and public trial opened in the case of Operation Gedeón for the remaining defendants who did not admit the charges at the preliminary hearings, including Josnars Adolfo Baduel.[1611] The trial was held before the First Terrorism Trial Court. On 25 May 2021, several days into the trial and after the Public Prosecutor's Office presented its indictment and oral intervention, Mr. Baduel's private defence lawyer was finally permitted by the First Terrorism Trial Judge to be sworn in.[1612] Until then, Mr. Baduel's private defence lawyer had been unable to access the case file.[1613] As at time of writing, she still had not been able to access the full case file at the tribunal.[1614]

1602 2012 Criminal Procedure Code, art. 236.
1603 Interview AAIV092, 25 August 2021.
1604 Letter from Andreina Baduel Oyoque and Margareth Baduel to the Unit on Reception and Distribution of Documents of the Criminal Judicial Circuit of the Metropolitan Area of Caracas, 14 May 2020, on file with the Mission. The letter stated that that previous day, 13 May 2020, the defence lawyer had gone to SEBIN El Helicoide with the power of attorney documents, but after several hours of waiting, was refused access to the defendant by SEBIN officers.
1605 Document AADOC017, 7 June 2021.
1606 See Tweet of Andreina Baduel, 7 August 2020, available at: https://twitter.com/andreinabaduel/status/1291858634662699009
1607 See Tweet of Andreina Baduel, 7 August 2020, available at: https://twitter.com/andreinabaduel/status/1291858634662699009
1608 See Tweet of Tarek William Saab, 7 August 2020, available at: https://twitter.com/TarekWiliamSaab/status/1389286273546924035; See also Tweet of Tarek William Saab, 7 August 2020, available at: https://twitter.com/TarekWiliamSaab/status/1291920177328775169
1609 Interview AAIV092, 24 August 2021.
1610 Interview AAIV092, 24 August 2021.
1611 Document AADOC017, 7 June 2021.
1612 Document AADOC017, 7 June 2021.
1613 Document AADOC017, 7 June 2021.
1614 Interview AAIV092, 25 August 2021.

> Mr. Baduel's defence lawyer had not been able to meet with her client in private, as at the time of writing, in El Helicoide or in the tribunal. Instead, the defence lawyer has had to resort to communicating with him only as the trial is taking place.[1615] The trial was ongoing as at time of writing.

### 2. Interference with preparation of a defence

305. Even when defendants were able to secure representation of their own choosing, the lawyers' abilities to prepare an adequate defence were hindered in various ways.[1616] Defence lawyers the Mission spoke to expressed feeling frustrated, exhausted and defeated in the face of the repeated and often arbitrary roadblocks in the cases.

306. Under the Criminal Procedure Code, the defendant has a right to be informed of the contents of the investigation.[1617] According to the Mission's interviews with private defence lawyers, prosecutors and judges refused them access to essential information.[1618] In 92 of the 170 detentions examined by the Mission that resulted in judicial proceedings, the prosecutor's office or judge failed to provide defence lawyers with important case file information,[1619] including police records, indictments or records of hearings. Eighty-two per cent of defence lawyers that responded to the Mission's questionnaire indicated that the Public Prosecutor's Office or judge had not provided necessary information or timely access to legal case files.[1620]

307. In the case of Captain Luis de la Sotta and co-accused in the Operation Armageddon case, on 14 December 2020, the Martial Court ordered the annulment of the preliminary hearing held on 20 December 2018, returning the judicial process to the investigation

---

1615 Interview AAIV092, 25 August 2021.

1616 A/HRC/45/CRP.11, Case 3: Gilber Caro; Case 4: Steyci Escalona; Case 12; Pedro Jaimes Criollo.

1617 2012 Criminal Procedure Code, art. 127.

1618 Interview AAIV043, 7 May 2021.

1619 FFMV0092, FFMV0150, FFMV0116, FFMV0044, FFMV0040, FFMV0004, FFMV0096, FFMV0179, FFMV0141, FFMV0057, FFMV0058, FFMV0059, FFMV0063, FFMV0068, FFMV0128, FFMV0139, FFMV0176, FFMV0036, FFMV0106, FFMV0023, FFMV0113, FFMV0122, FFMV0151, FFMV0041, FFMV0166, FFMV0178, FFMV0089, FFMV0015, FFMV0071, FFMV0076, FFMV0136, FFMV0138, FFMV0067, FFMV0010, FFMV0173, FFMV0085, FFMV0024, FFMV0051, FFMV0064, FFMV0080, FFMV0084, FFMV0130, FFMV0177, FFMV0142, FFMV0017, FFMV0117, FFMV0026, FFMV0149, FFMV0148, FFMV0031, FFMV0155, FFMV0054, FFMV0118, FFMV0115, FFMV0163, FFMV0094, FFMV0175, FFMV0042, FFMV0025, FFMV0120, FFMV0105, FFMV0011, FFMV0114, FFMV0174, FFMV0005, FFMV0095, FFMV0083, FFMV0086, FFMV0065, FFMV0030, FFMV0125, FFMV0159, FFMV0134, FFMV0156, FMV0165, FFMV0182, FFMV0135, FFMV0103, FFMV0127, FFMV0001, FFMV0088, FFMV0090, FFMV0016, FFMV0170, FFMV0019, FFMV0087, FFMV0043, FFMV0172, FFMV0035, FFMV0144.

1620 Questionnaire CCQR081, 13 July 2021; Questionnaire CCQR079, 12 July 2021; Questionnaire CCQR077, 12 July 2021; Questionnaire CCQR074, 12 July 2021; Questionnaire CCQR070, 12 July 2021; Questionnaire CCQR041, 12 July 2021; Questionnaire CCQR069, 12 July 2021; Questionnaire CCQR068, 12 July 2021; Questionnaire CCQR064, 12 July 2021; Questionnaire CCQR061, 12 July 2021; Questionnaire CCQR059, 12 July 2021; Questionnaire CCQR063, 12 July 2021; Questionnaire CCQR048, 12 July 2021; Questionnaire CCQR065, 12 July 2021; Questionnaire CCQR053, 12 July 2021; Questionnaire CCQR056, 12 July 2021; Questionnaire CCQR045, 12 July 2021; Questionnaire CCQR048, 12 July 2021; Questionnaire CCQR043, 12 July 2021; Questionnaire CCQR038, 12 July 2021; Questionnaire CCQR054, 12 July 2021; Questionnaire CCQR017, 16 June 2021; Questionnaire CCQR047, 12 July 2021; Questionnaire CCQR052, 12 July 2021; Questionnaire CCQR076, 12 July 2021; Questionnaire CCQR042, 12 July 2021; Questionnaire CCQR042, 12 July 2021; Questionnaire CCQR084, 12 July 2021; Questionnaire CCQR083, 12 July 2021; Questionnaire CCQR034, 29 June 2021; Questionnaire CCQR032, 26 June 2021; Questionnaire CCQR030, 22 June 2021; Questionnaire CCQR029, 22 June 2021; Questionnaire CCQR027, 20 June 2021; Questionnaire CCQR023, 17 June 2021; Questionnaire CCQR022, 17 June 2021; Questionnaire CCQR018, 16 June 2021; Questionnaire CCQR016, 16 June 2021; Questionnaire CCQR015, 16 June 2021; Questionnaire CCQR007, 15 June 2021; Questionnaire CCQR003, 15 June 2021; Questionnaire CCQR001, 6 June 2021.

stage.[1621] A new preliminary hearing began on 27 May 2021, but the judge permitted the defence team only 15 minutes to access the voluminous case file, just prior to the hearing.[1622] After a series of adjournments, the preliminary hearing concluded on 10 August 2021. The judge accepted the indictment and issued the order for the case to proceed to trial.[1623]

308. The second trial against Judge María Lourdes Afiuni began in April 2015 before the Seventeenth Criminal Trial Court of Caracas.[1624] Hearings were held over three years; however, in January 2018, the Seventeenth Trial Judge interrupted the trial, without explanation, delaying it over a year in violation of the principle of concentration.[1625] While her trial was interrupted, Judge Afiuni's previous defence lawyers left the country due to safety concerns.[1626] When the Trial Judge convened a hearing on 22 February 2019,[1627] the tribunal did not permit her newly appointed lawyer to access the records of previous hearings and only allowed him five minutes to review the case file before presenting his conclusions. At the end of the hearing, the judge sentenced Judge Afiuni to five years' imprisonment.[1628]

309. In the case of Luis Sánchez Rangel (Box 3, above), according to his defence lawyers, Mr. Sánchez Rangel's defence was denied access to his case file 20 times by the Twentieth Control Court over an eight-month period from September 2017 until May 2018.[1629] On 24 April 2018, the defence filed a writ before the Twentieth Control Court in which it alleged that the systematic prevention of access to the case file resulted in a violation of Mr. Sánchez's due process rights.[1630] The defence set forth that, as a result, it had not been possible to verify the correct processing of the appeals or the response to the various requests made by the defence.[1631] At the time of writing, no response to this writ had been received by the defence.

310. The Mission reviewed the case of José Enrique Luongo and Diego Salazar Carreño, who were detained on 1 December 2017 by order of the Sixth Criminal Control Court of Caracas.[1632] On 20 January 2019, the Public Prosecutor's Office filed its indictment for the crimes of simple passive corruption,[1633] money laundering[1634] and criminal association,[1635] referring to over 200 pieces of evidence.[1636] As per request of the prosecution, the case file was under confidentiality until January 2018 and was not able to be reviewed by the defence.[1637] Since then, according to filings made before the Control Court, the defence has not been permitted access to the case file, despite dozens of visits to the court for that

1621 Military Court, Notification Record, 14 December 2020.

1622 Interview DDIV006; 12 January 2021; Interview DDIV055, 13 July 2021. The defence has repeatedly requested full access to the case file, including prior to the 18 December 2020 hearing. For example, Request for certified copy of case file, 23 November 2020, on file with the Mission; Request for simple copy of case file, 5 March 2021, on file with the Mission; Request for copy of case file, 24 February 2021, on file with the Mission; Request to the Presidency of the Military Tribunal for copy of case file, 25 February 2021, on file with the Mission.

1623 Interview DDIV063, 10 August 2021.

1624 Interview CCIV005, 2 July 2021; Interview CCIV008, 11 August 2021; Interview CCIV009, 12 August 2021.

1625 See Criminal Procedure Code, arts. 17 and 318. Interview CCIV005, 2 July 2021; Interview CCIV008, 11 August 2021; Interview CCIV009, 12 August 2021. The principle of concentration states that hearings must be held without interruption and may only be suspended for a maximum period of 15 days in certain enumerated circumstances.

1626 Interview CCIV005, 2 July 2021.

1627 Interview CCIV009, 12 August 2021.

1628 Interview CCIV005, 2 July 2021; Interview CCIV009, 12 August 2021.

1629 Document AADOC011.

1630 Document AADOC011.

1631 Document AADOC011.

1632 Sixth Criminal Control Court of Caracas, Arrest Order, 1 December 2017.

1633 2003 Law against Corruption, art. 61.

1634 Law on Organized Crime and Financing of Terrorism, art. 35.

1635 Law on Organized Crime and Financing of Terrorism, art. 37.

1636 Public Prosecutor's Office Indictment, 20 January 2019.

1637 Defence's Judicial Control Writ to the Sixth Criminal Control Court, 18 January 2018, on file with the Mission. The reservation was extended on 15 January 2018 and 29 December 2018.

purpose.[1638] As at the time of writing, the defendants had been held in pre-trial detention in SEBIN's La Tumba for over three and a half years, well beyond the two-year legal limit, and despite a request for review of the measures filed by the defence.[1639]

311. Defence lawyers are routinely prevented from visiting with or speaking to their clients.[1640] One lawyer representing a military detainee told the Mission that, despite defendants normally passing from police to judicial custody once they entered tribunal facilities, DGCIM maintained the custody of defendants inside the military tribunal in Caracas. She had to request permission from DGCIM to speak with her client, but it was denied.[1641] One DGCIM member made a phone call, then told her that "my boss told me not to let the detainee speak to you".[1642] The lawyer filed a complaint before the judge, who asked the DGCIM member to let the lawyer speak to her client. The DGCIM member held his automatic rifle between them to prevent them from speaking closely and in confidence.[1643] The judge took no further action, despite the lawyer making him aware of the situation.[1644]

312. Women's rights activist Vannesa Rosales, arrested on 12 October 2020, was denied visits from her legal team during the three months she was detained in CICPC facilities in Mérida. The tribunal denied her lawyers access to the case file for over a month, and refused to provide the lawyers with a copy until January 2021, preventing their full review of the record of the initial appearance and the information sustaining the charges against her.[1645]

### 3. Harassment and intimidation of defence lawyers

313. 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.[1646] The threats they claim came from military, police or intelligence officials[1647] and in one case, from members of *colectivos*.[1648] Such harassment included surveillance, receiving intimidating phone calls or being blocked from entering tribunals. One defence lawyer told the Mission that an acquaintance inside SEBIN had told him that the intelligence agency was monitoring him and the rest of his legal team.[1649]

---

1638 Document AADOC019, 11 August 2021.

1639 2012 Criminal Procedure Code, art. 230. See Defence's Request for Revision of the Pre-Trial Detention Measures, 19 December 2019.

1640 See also Questionnaire CCQR029, 22 June 2021.

1641 Interview DDIV038, 20 May 2021.

1642 Interview DDIV038, 20 May 2021.

1643 Complaint filed to Human Rights Ombudsperson's Office, 13 July 2017, on file with the Mission.

1644 Interview DDIV038, 20 May 2021. Complaint raised verbally to Second Military Control Tribunal, and to the President of the Military Judicial Circuit.

1645 Interview DDIV025, 11 March 2021.

1646 Questionnaire CCQR081, 13 July 2021; ; Questionnaire CCQR079, 12 July 2021; Questionnaire CCQR077, 12 July 2021; Questionnaire CCQR074, 12 July 2021; Questionnaire CCQR041, 12 July 2021; Questionnaire CCQR069, 12 July 2021; Questionnaire CCQR068, 12 July 2021; Questionnaire CCQR061, 12 July 2021; Questionnaire CCQR048, 12 July 2021; Questionnaire CCQR053, 12 July 2021; Questionnaire CCQR056, 12 July 2021; Questionnaire CCQR045, 12 July 2021; Questionnaire CCQR048, 12 July 2021; Questionnaire CCQR043, 12 July 2021; Questionnaire CCQR038, 12 July 2021; Questionnaire CCQR054, 12 July 2021; Questionnaire CCQR047, 12 July 2021; Questionnaire CCQR052, 12 July 2021; Questionnaire CCQR076, 12 July 2021; Questionnaire CCQR042, 12 July 2021; Questionnaire CCQR042, 12 July 2021; Questionnaire CCQR084, 12 July 2021; Questionnaire CCQR032, 26 June 2021; Questionnaire CCQR029, 22 June 2021; Questionnaire CCQR027, 20 June 2021; Questionnaire CCQR022, 17 June 2021; Questionnaire CCQR016, 16 June 2021; Questionnaire CCQR007, 15 June 2021; Questionnaire CCQR003, 15 June 2021.

1647 Questionnaire CCQR077, 12 July 2021; Questionnaire CCQR076, 12 July 2021; Questionnaire CCQR042, 12 July 2021; Questionnaire CCQR068, 12 July 2021; Questionnaire CCQR042, 12 July 2021; Questionnaire CCQR007, 15 June 2021.

1648 Questionnaire CCQR054, 12 July 2021

1649 Interview DDIV059, 21 June 2021.

314. Another defence lawyer described how she and her family had been followed and monitored by individuals who appeared to be intelligence officials. During a client visit in DGCIM Boleíta in 2018 she became embroiled in a conversation with the Director of Special Investigations during which she was surrounded by around 12 armed DGCIM members and accused of committing criminal acts by speaking with opposition figures.[1650] As she drove away from Boleíta following this threatening conversation, an unmarked vehicle with individuals resembling military intelligence personnel followed her car, bumping it and attempting to push her off the road.[1651] Despite filing several complaints about this incident and others, no investigations have been opened to her knowledge.[1652]

315. One defence lawyer described the effect of threats and intimidations against lawyers, detainees and family members on the ability to arm an adequate defence on behalf of the client: "coercion, threats, it is like a cyclone. If the detainee informs the lawyer [about abuses], the lawyer files a complaint, there are reprisals to the detainee, mistreatment of the lawyer, she files another complaint, the problem gets bigger, until it has become so exacerbated that neither the detainee nor the family can handle it, and the lawyer has to stop."[1653]

## E. Undue delays

316. Under the Criminal Procedure Code, judges must not abstain from rendering a decision and must ensure that judgments are issued without undue delay.[1654] In the cases investigated or reviewed, the Mission verified 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.[1655] In 2020, the delays were exacerbated due to the seven-month period in which courts were ordered to suspend sessions.[1656]

317. The Mission reviewed the procedural timeframe in cases involving 144 of the detentions reviewed[1657] and found significant disparities between the time periods permitted by law and the practice. Seventy-seven per cent of the initial appearances reviewed by the Mission occurred outside the 48-hour period permitted by law, with 18 per cent of detainees being held for more than a week before their initial appearances. Detained members of the military were over five times more likely than civilians to be held longer than 48 hours before seeing a judge. As noted in the previous sections, detainees were usually held incommunicado during this period, and the extended time frame outside the control of the justice system and recourse to legal support allowed for acts of torture, sexual violence and other cruel, inhuman or degrading treatment to take place without oversight.

318. The most egregious delays were following the initial appearance and before the preliminary hearing. The average time between arrest and preliminary hearing was 243 days (around eight months).[1658] In 102 detentions documented, the preliminary hearings were

1650 Interview DDIV038, 20 May 2021; DDDOC039, 14 June 2021.
1651 Interview DDIV038, 20 May 2021; DDDOC039, 14 June 2021.
1652 Complaint filed to the Fundamental Rights Division of the Public Prosecutor's Office, 4 September 2019, on file with the Mission; DDDOC039, 14 June 2021.
1653 Interview DDIV038, 20 May 2021.
1654 2012 Criminal Procedure Code, art. 6.
1655 A/HRC/45/CRP.11, para. 354.
1656 Supreme Tribunal of Justice, Resolution 001 of 2020, available at: http://ley.tuabogado.com/leyes/resoluciones/tsj-resolucion-001-2020-ningun-lapso-procesal-correra-desde-el-16-marzo-hasta-13-abril-2020-ambas-fechas-inclusive#gsc.tab=0. This resolution was subsequently extended six times, over seven months (Resolution 002 0f 2020, Resolution 003 of 2020, Resolution 004 of 2020, Resolution 005 of 2020, Resolution 006 of 2020 and Resolution 007 of 2020).
1657 Cases were excluded from this analysis if detainees were never presented before a judge, or if any relevant arrest or hearing dates could not be established with precision.
1658 The minimum length of time documented was 82 days between arrest and preliminary hearing, while the maximum length of time was 1,308 days, or 43.6 months.

deferred numerous times.[1659] 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. While the delays were nearly universal at this stage of proceedings, the following cases exemplify:

- In the case of Carlos Marrón (see Box 4), the preliminary hearing was cancelled 22 times and never held, while Mr. Marrón remained in pre-trial detention for nearly two years before his release.[1660]
- In the case of Luis Sánchez (see Box 3), his preliminary hearing was deferred over 22 times, and over four years since his detention in August 2017. At time of writing, he still had not had a trial.[1661]
- The preliminary hearing for José Enrique Luongo and Diego Salazar Carreño was deferred at least 22 times, 21 of which were due to failure to transport of the defendants; meanwhile, as at the time of writing, they have been detained for over three and a half years in SEBIN's La Tumba without a trial.[1662] Diego Salazar Carreño's wife, Rosycela Díaz Gil, was also arrested in conjunction with his case, and on 14 February 2018 was granted the precautionary measures of periodic appearance and prohibition to leave the country, which remain in force, over three and a half years

[1659] FFMV0091, FFMV0014, FFMV0124, FFMV0077, FFMV0150, FFMV0037, FFMV0044, FFMV0162, FFMV0040, FFMV0004, FFMV0096, FFMV0141, FFMV0059, FFMV0158, FFMV0063, FFMV0012, FFMV0128, FFMV0139, FFMV0036, FFMV0113, FFMV0122, FFMV0123, FFMV0119, FFMV0151, FFMV0099, FFMV0166, FFMV0178, FFMV0089, FFMV0015, FFMV0009, FFMV0076, FFMV0138, FFMV0010, FFMV0070, FFMV0157, FFMV0160, FFMV0024, FFMV0104, FFMV0061, FFMV0064, FFMV0084, FFMV0130, FFMV0142, FFMV0073, FFMV0132, FFMV0133, FFMV0017, FFMV0075, FFMV0026, FFMV0149, FFMV0148, FFMV0121, FFMV0031, FFMV0161, FFMV0109, FFMV0069, FFMV0027, FFMV0098, FFMV0078, FFMV0181, FFMV0066, FFMV0082, FFMV0115, FFMV0163, FFMV0094, FFMV0048, FFMV0145, FFMV0038, FFMV0168, FFMV0042, FFMV0025, FFMV0129, FFMV0105, FFMV0074, FFMV0097, FFMV0045, FFMV0008, FFMV0174, FFMV0152, FFMV0095, FFMV0086, FFMV0065, FFMV0125, FFMV0134, FFMV0165, FFMV0006, FFMV0110, , FFMV0112, FFMV0103, FFMV0127, FFMV0060, FFMV0171, FFMV0019, FFMV0087, FFMV0052, FFMV0032, FFMV0043, FFMV0172, FFMV0072, FFMV0143, FFMV0144, FFMV0013.

[1660] This includes on the following dates for the following reasons: 1. 26 June 2018, Lack of courtroom availability; 2. 26 July 2018, Lack of courtroom availability; 3.16 August 2018, Lack of courtroom availability; 4. 17 September 2018, Lack of courtroom availability; 5. 17 October 2018, Failure to transport defendant; 6. 19 November 2018, Failure to transport defendant; 7. 4 December 2018, Failure to transport defendant; 8. 10 January 2019, Public Prosecutor's Office did not appear; 9. 12 February 2019, Failure to transport defendant; 10. 20 March 2019, Failure to transport defendant; 11. 23 April 2019, Failure to transport defendant; 12. 30 April 2019, Failure to transport defendant; 13. 31 May 2019, Failure to transport defendant; 14. 2 July 2019, Failure to transport defendant; 15. 5 August 2019, Failure to transport defendant; 16. 27 August 2019, Lack of courtroom availability; 17. 2 October 2019, Failure to notify the defendant; 18. 11 November 2019, Failure to notify the defendant; 19. 5 December 2020, Lack of courtroom availability; 20. 16 January 2020, Public Prosecutor's Office did not appear; 21. 6 February 2020, Public Prosecutor's Office did not appear; 22. 12 March 2020, Public Prosecutor's Office did not appear. All acts on file with the Mission.

[1661] This includes on the following dates for the following reasons: 1. 26 June 2018, Lack of courtroom availability; 2. 26 July 2018, Lack of courtroom availability; 3. 16 August 2018, Lack of courtroom availability; 4. 17 September 2018, Lack of courtroom availability; 5. 17 October 2018, Failure to transport defendant; 19 November 2018, 6. Failure to transport defendant; 4 December 2018, 7. Failure to transport defendant; 8. 10 January 2019, Public Prosecutor's Office did not appear; 9. 12 February 2019, Failure to transport defendant; 10. 20 March 2019, Failure to transport defendant; 11. 23 April 2019, Failure to transport defendant, 12. 30 April 2019, Failure to transport defendant; 13. 31 May 2019, Failure to transport defendant; 14. 2 July 2019, Failure to transport defendant; 15. 5 August 2019, Failure to transport defendant; 16. 27 August 2019, Lack of courtroom availability; 17. 2 October 2019, Failure to notify the defendant; 18. 11 November 2019, Failure to notify the defendant; 19. 5 December 2020, Lack of courtroom availability; 20. 16 January 2020, Public Prosecutor's Office did not appear; 21. 6 February 2020; Public Prosecutor's Office did not appear; 22. 12 March 2020, Public Prosecutor's Office did not appear.

[1662] See Defence's Request for Revision of the Pre-Trial Detention Measures, 19 December 2019.

later as at time of writing, without the Public Prosecutor's Office having requested an extension.[1663]

- A case covered by the Mission's 2020 report related to three individuals detained in relation to Operation Tun Tun.[1664] Their preliminary hearing was deferred more than 20 times over more than three years.[1665] The detainees spent over a year in pre-trial detention and nearly two and a half years with substitute precautionary measures, including bimonthly presentation, a prohibition to leave Caracas, and a prohibition on making statements to the media or on social media.[1666]
- In the Drone Case, involving 17 defendants (see Box 9),[1667] the preliminary hearing was suspended 11 times, either at the court's request, or because DGCIM or SEBIN failed to bring defendants to the court to comply with the summons.[1668] The trial opened on 2 January 2019, and had not concluded at the time of writing this report.
- Carlos Varón and Ricardo Prieto, the firefighters charged with inciting hate for a satirical video as described above, had still not had a preliminary hearing at the time of the writing of this report, almost three years after their initial court appearance.[1669]

319. The cases investigated also demonstrated delays in setting trial dates, in resolving appeals and in responding to motions filed by the defence. 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.[1670]

320. In the case of prosecutor Luis Sánchez Rangel (see Box 3), after over three years of filings and appeals, the Constitutional Chamber of the Supreme Tribunal of Justice issued a decision[1671] overturning a 4 December 2018 Appellate Court judgment, which had dismissed the defence's appeal of the 18 August 2017 initial appearance order for purported untimeliness. In its judgment, the Supreme Tribunal of Justice found that the date of the initial appearance record had been altered to appear as if it had been issued on 18 August 2017, the date of the initial appearance, but that it had in fact been issued later. This meant that the defence's appeal had been properly filed within the required five-day timeframe under the Criminal Procedure Code. [1672] The Constitutional Chamber decision annulled the 4 December 2018 decision and ordered that the Ninth Chamber of the Court of Appeals issue a new judgment.[1673] However, as at time of writing, no new judgment had been issued and Luis Sánchez remained detained in SEBIN's El Helicoide.

321. The Mission examined the case of Captain Jesús Alarcón Camacho, who was detained on 20 November 2015 and charged with incitement to rebellion.[1674] The initial

[1663] See Defence's Request for Revision of the Precautionary Measures, 14 July 2021; Document AADOC019, 11 August 2021.
[1664] A/HRC/45/CRP.11, Case 5: Detention of Three Individuals – "Operation Tun Tun".
[1665] Mission Interview C2EE01 in May 2020; Mission Interview C2EE02 in May 2020.
[1666] Interview C2EE03, 11 May 2020.
[1667] A/HRC/45/CRP.11, Case 9: Juan Carlos Requesens.
[1668] A/HRC/45/CRP.11, para. 628.
[1669] Interview AAIV035, 8 April 2021.
[1670] According to a recent report by Foro Penal, from January 2014 until February 2021, 15,677 individuals were arbitrarily arrested or detained for political reasons: 11,673 were charged, while the remaining 4,004 were eventually released without having ever been brought before a judge, after spending months or even years in detention. Of the 15,677 arrested or detained, only 156 had been sentenced as at February 2021 (less than one per cent). 2021 Foro Penal Impunity Report, pp. 6-7.
[1671] Supreme Tribunal of Justice, Constitutional Chamber, Judgment No. 0170 of 24 November 2019, Case 19-0137.
[1672] 2012 Criminal Procedure Code, art. 440.
[1673] 2012 Criminal Procedure Code, p. 22.
[1674] Initial Appearance Record, 30 November 2015.

appearance before the Military Control Judge was not conducted until 30 November 2015, 10 days after his detention,[1675] and the Preliminary Hearing was held on 2 March 2016.[1676] After numerous delays, the trial of Captain Alarcón started almost two and a half years later, on 17 April 2018 and concluded on 8 November 2018, almost six months from the date it had started.[1677] Captain Alarcón was found guilty of instigating a military rebellion and sentenced to over seven years' imprisonment.[1678] The full judgment against him was published on 25 March 2019,[1679] four months after the operative part of the judgment was read in the courtroom, contravening the 10-day limit established in the Criminal Procedure Code.[1680]

322. In Mr. Alarcón's case, the defence appealed the judgment and on 18 November 2019 the military court annulled the prior judgment, including all evidence previously admitted, ordering a retrial. The Martial Court dismissed all of the evidence presented by the prosecution due to various irregularities identified, including failure to maintain the chain of custody; evidence obtained from private telephone communications without a warrant; and the Control Judge's failure to order an investigation into the defence's claim of false testimony, despite obligations under the Criminal Procedure Code.[1681] The defence argued that this false testimony came from the prosecution's only witness providing incriminating evidence against Captain Alarcón, another National Guard officer.[1682] However, the court maintained Captain Alarcón's detention, and as at the time of writing, he has been detained for almost six years, without any evidence against him and well beyond the two year time limit for pre-trial detention. He has nearly completed his sentence which was overturned and has remained in detention for longer than the minimum penalty applicable to the crime.[1683]

323. Throughout 2021 until the time of writing, the Supreme Tribunal of Justice had passed several resolutions with the stated purposed of addressing the judicial backlog of pending criminal cases. On 29 April 2021, the Supreme Tribunal of Justice adopted the Plan for Streamlining (*Plan de Agilización*),[1684] which applies to detainees in police detention centres, and identifies 18 steps to speed up hearings in these cases, including through a process of classification and establishing timetables and limits to carry out the hearings. Other resolutions of the Supreme Tribunal of Justice included one to allow for videoconference hearings,[1685] to accelerate processing of cases in the execution phase[1686] and to publish digital versions of hearing records.[1687]

324. On 21 June 2021, President Maduro announced the formation of a special commission for the "judicial revolution" in Venezuela to address problems of procedural

1675 Initial Appearance Record, 30 November 2015.
1676 Interview EEIV003, 2 March 2016.
1677 Interview AAIV027, 18 March 2021.
1678 Interview AAIV027, 18 March 2021.
1679 Martial Court Decision, 30 November 2015.
1680 See 2012 Criminal Procedure Code, art. 347.
1681 Martial Court Judgment, 18 November 2019. The court cited Criminal Procedure Code, art. 328, which states, "If an offence is committed during the hearing, the court shall order the arrest of the perpetrator and the drawing up of a record with the relevant indications; he or she shall be placed at the disposal of the appropriate official of the Public Prosecutor's Office, and a copy of the necessary background information shall be sent to him or her so that he or she may proceed with the investigation".
1682 The witness was identified in the Mission's 2020 report as having been involved in acts of torture in DGCIM Boleíta. See A/HRC/45/CRP.11, para. 816.
1683 Organic Code of Military Justice, art. 481. Interview AAIV027, 18 March 2021.
1684 Supreme Tribunal of Justice, Resolution No. 2021-002, 29 April 2021, available at: https://accesoalajusticia.org/resolucion-n-2021-002-pautas-plan-agilizacion-audiencias-del-juicio-oral/
1685 Supreme Tribunal of Justice, Resolution No. 2020-031, 9 December 2020.
1686 Supreme Tribunal of Justice, Resolution No. 2021-001, 29 April 2021.
1687 Supreme Tribunal of Justice, Resolution No. 2021-011, 5 June 2021.

delays, prison overcrowding and "the functioning of the entire justice system".[1688] According to the Government, the Special Commission for the Reform of the justice system, headed by deputies of the National Assembly Diosdado Cabello and Cecilia Flores and intended to last 60 days,[1689] was to "focus on resolving, in principle, the problem of overcrowding and confinement in the country's remand prisons" throughout the country.[1690] The Mission will continue to monitor the implementation of these efforts.

***Box 14: The case of Erickvaldo Márquez***

On 24 April 2017, a series of sit-in protests were held around Venezuela. During the protests in the state of Mérida, a worker with the Mérida governor's office was shot and killed.[1691] The following day, the Mérida state Governor blamed the political opposition for the death and requested that the Public Prosecutor's Office ensure that those responsible "pay with imprisonment".[1692]

A former public prosecutor who had been assigned to the case at the time told the Mission that initial investigations and ballistics evidence had not resulted in the identification of any suspect in the killing as of late August 2017.[1693]

Following the change of the Chief Prosecutor in August 2017, a new Superior Prosecutor was appointed in Mérida. The new Superior Prosecutor assigned a new prosecutor to the case, who located an anonymous witness who declared on 9 September having seen an individual shoot firearms along with six other people at the demonstration.[1694] Following questioning by the prosecution, the witness identified Erickvaldo Márquez by a nickname, referring to his mother's place of work, but used physical descriptions that did not match him.[1695]

Erickvaldo Márquez was a student leader and community organizer who had previously participated in the protests, but according to information received, was not present on 24 April 2017 since he was celebrating a relative's birthday.[1696]

On 13 September 2017, around 15 Mérida state CICPC officers arrived at Mr. Márquez's mother's place of business and searched it, allegedly without presenting a search warrant.[1697] A search warrant was later referenced in the case file, but mentioned only the mother's place of business.[1698] The CICPC officers then asked Mr. Márquez to take them to his residence and searched it.[1699]

[1688] See VTV, Presidente Nicolás Maduro encabeza este lunes reunión del Consejo de Estado en Miraflores, 21 August 2021, available at: https://www.vtv.gob.ve/en-desarrollo-presidente-nicolas-maduro-encabeza-reunion-consejo-de-estado-miraflores/

[1689] See El Nacional, Carlos Nieto Palma, A 60 días de revolución judicial, 27 August 2021, available at: https://www.elnacional.com/opinion/a-60-dias-de-revolucion-judicial/

[1690] See Press Release of the National Assembly, 25 June 2021, Instalada Comisión Especial para la Reforma del Sistema Judicial, available at: http://www.asambleanacional.gob.ve/noticias/instalada-comision-especial-para-la-reforma-del-sistema-judicial

[1691] Interview AAIV091, 24 August 2021.El Nacional: Jesús Sulbarán died during demonstration in Mérida this 24-A, available at: https://www.elnacional.com/sociedad/protestas/jesus-sulbaran-murio-durante-manifestacion-merida-este-24-a_178851/;

[1692] Qué Pasa: Governor of Merida blamed opponents for the murder of Jesus Sulbaran, 25 April 2017, available at: https://www.quepasa.com.ve/sucesos/gobernador-merida-responsabilizo-opositores-del-asesinato-jesus-sulbaran/

[1693] Interview AAIV042, 7 May 2021; Interview AAIV091, 24 August 2021.

[1694] Public Prosecutor's Office Witness Record, 9 September 2017.

[1695] The witness said the suspect was "robust and dark-skinned", which Mr. Márquez is not. Public Prosecutor's Office Witness Record, 9 September 2017. Interview AAIV091, 24 August 2021.

[1696] Interview AAIV087, 20 August 2021; Interview AAIV091, 24 August 2021.

[1697] Interview AAIV087, 20 August 2021; Interview AAIV091, 24 August 2021

[1698] Mérida CICPC Search Record, 13 September 2017; Interview with AAIV087, 20 August 2021.

[1699] Interview AAIV087, 20 August 2021.

Subsequently, the CICPC officers asked Mr. Márquez to accompany them to the CICPC headquarters to sign a document stating that no evidence had been found implicating him in the homicide.[1700] While Mr. Márquez was being transported to the police station, a CICPC officer handcuffed him and informed him he was under arrest for the murder of a government worker.[1701] They brought him to CICPC headquarters and interrogated him for about five hours.[1702]

The CICPC arrest record of 13 September 2017 states that at 1 p.m. that day, while Mr. Márquez was in CICPC headquarters, a CICPC officer received a call from the prosecutor informing him that, 20 minutes prior, the Control Judge had agreed to Mr. Márquez's pre-trial detention.[1703] The CICPC officer informed the prosecutor that Mr. Márquez was already in the CICPC headquarters.[1704] The CICPC arrest record reviewed by the Mission said that "given the arrest warrant against him", Mr. Márquez "was notified that from the present moment he would be detained" and was read his rights.[1705]

On 15 September 2017, Mr. Márquez was presented before the Second Control Court of Mérida for his initial appearance.[1706] Mr. Márquez's private defence lawyers argued that the Public Prosecutor's Office had only provided one witness statement, which was insufficient to support a homicide charge.[1707] Mr. Márquez told the Second Control Judge that numerous witnesses could attest to his presence at the birthday party elsewhere at the time the killing took place.[1708] The Control Judge ordered pre-trial detention for intentional homicide[1709] in the headquarters of the Homicide Division of the CICPC.[1710]

On 30 October 2017, the prosecution filed its indictment,[1711] but the preliminary hearing was subsequently deferred six times, either because court authorities failed to notify the parties, or because the court failed to issue transfer slips to CICPC to bring Mr. Márquez to court.[1712] The preliminary hearing took place on 11 April 2018 before the Fifth Criminal Control Court of Mérida state.

At the preliminary hearing, the defence argued that the prosecution had failed to interview the witnesses providing Erickvaldo Márquez's alibi, in violation of the Criminal Procedure Code, which requires that the prosecution collect both incriminating and exculpatory evidence.[1713] The Control Judge, a different judge than the one who had presided over the initial appearance, annulled the prosecutor's indictment and requested that it remedy the failure to interview the witnesses, while ordering that Mr. Márquez remain detained.[1714]

The Public Prosecutor's Office filed a new indictment on 11 May 2018.[1715] It contained the same evidence presented in the first indictment and did not include information about the interviews requested by the Control Judge.[1716] The preliminary

[1700] Mérida CICPC Search Record, 13 September 2017; Interview with AAIV087, 20 August 2021.
[1701] Interview AAIV087, 20 August 2021.
[1702] Interview AAIV087, 20 August 2021.
[1703] Mérida CICPC Investigation Record, 13 September 2017.
[1704] Mérida CICPC Investigation Record, 13 September 2017.
[1705] Mérida CICPC Investigation Record, 13 September 2017.
[1706] Initial Appearance Record, 15 September 2021.
[1707] Initial Appearance Record, 15 September 2021.
[1708] Interview AAIV091, 24 August 2021.
[1709] Criminal Code, art. 406(2); Interview AAIV091, 24 August 2021.
[1710] Initial Appearance Record, 15 September 2021.
[1711] Public Prosecutor's Office Indictment, 30 October 2017.
[1712] This included on 1) 27 November 2017; 2) 6 December 2017, 3) 21 December 2017; 4) 18 January 2018; 5) 7 March 2018; and 6) 11 June 2018. Records of Deferrals of Preliminary Hearings on file with the Mission.
[1713] See 2012 Criminal Procedure Code, art. 263; Interview AAIV091, 24 August 2021.
[1714] Written Statement AADOC018.
[1715] Public Prosecutor's Office Indictment, 11 May 2018.
[1716] Interview AAIV091, 24 August 2021.

hearing was again postponed three times, finally taking place on 22 August 2018, at which the Control Judge admitted the prosecution's indictment.[1717]

The Control Judge ordered a trial, which was postponed 10 times,[1718] before finally commencing on 20 January 2020 before the Fifth Trial Court in Mérida. Hearings for the trial were held with various interruptions until 9 March 2020. On 13 March 2020, the Supreme Tribunal of Justice suspended all court hearings due to the Covid-19 measures, a suspension that lasted for seven months,[1719] with the trial recommencing on 7 October 2020.

After three years and three months detained, on 15 December 2020, Mr. Márquez was acquitted.[1720] The Trial Judge held that there was no evidence to incriminate Mr. Márquez for the crimes of which he had been accused.[1721] The witness presented by the prosecution, who claimed to have seen Mr. Márquez fire the shots, did not appear at trial.[1722] The acquittal did not result in Mr. Márquez's release;[1723] he remained in detention following an appeal by the Public Prosecutor's Office, resulting in a suspension of the enforcement of the decision (*efecto suspensivo*), without providing an explanation of its reasoning.[1724]

The Trial Court admitted the prosecutorial suspension, publishing its decision on 23 February 2021.[1725] The Appellate Court issued its decision on 29 June 2021, declaring a lack of evidence[1726] and ordering Mr. Márquez's release, after he had spent almost four years detained.[1727]

1717 Written Statement AADOC018.

1718 Records of Deferrals of Trial on file with the Mission; See also Observatorio de Derechos Humanos de la Universidad de Los Andes, Caso de Erickvaldo Márquez Moreno revela corrupción del sistema de justicia, 3 July 2021, available at: https://www.uladdhh.org.ve/index.php/2021/07/03/caso-de-erickvaldo-marquez-moreno-revela-corrupcion-del-sistema-de-justicia/ Minutes of deferral of hearings.

1719 Interview AAIV091, 24 August 2021. Supreme Tribunal of Justice, Resolution 001 of 2020, available at: http://ley.tuabogado.com/leyes/resoluciones/tsj-resolucion-001-2020-ningun-lapso-procesal-correra-desde-el-16-marzo-hasta-13-abril-2020-ambas-fechas-inclusive#gsc.tab=0. This resolution was subsequently extended six times, totally seven months (Resolution 002 of 2020, Resolution 003 of 2020, Resolution 004 of 2020, Resolution 005 of 2020, Resolution 006 of 2020 and Resolution 007 of 2020).

1720 Mérida state Trial Court Trial Record, 15 December 2020

1721 Interview AAIV087, 20 August 2021; Mérida state Trial Court Trial Record, 15 December 2020.

1722 Written Statement AADOC018.

1723 Mérida state Trial Court Trial Record, 15 December 2020.

1724 2012 Criminal Procedure Code, art. 430, which states: The lodging of an appeal shall suspend the enforcement of the decision, unless expressly provided otherwise. Sole Paragraph: Exception: In the case of a decision granting the release of the accused, the lodging of an appeal shall not suspend the execution of the decision, except in the case of the following offences: intentional homicide, rape; crimes against the freedom, integrity and sexual indemnity of children and adolescents; kidnapping, crimes of corruption, crimes that cause serious damage to public assets and public administration; major drug trafficking, money laundering, crimes against the financial system and related crimes, crimes with multiple victims, organised crime, serious violations of human rights, crimes against humanity, serious crimes against the independence and security of the nation and war crimes and the Public Prosecutor's Office appeals in the hearing orally and the defence will be heard. The grounds for and response to the appeal shall be made within the time limits established for appeals against orders or sentences, as the case may be.

1725 See 2012 Criminal Procedure Code, art. 441.

1726 Interview AAIV091, 24 August 2021.

1727 Interview AAIV087, 20 August 2021.

# V. Judicial system responses to allegations of human rights violations

325. In the present section, the Mission provides information on and an analysis of the steps taken to investigate and prosecute alleged perpetrators of violations and crimes identified in the Mission's 2020 report and the present report. First, it provides an analysis of the Venezuelan legal framework to evaluate whether it is sufficient to ensure accountability for the violations and crimes against humanity identified, and to ensure justice for the victims. Second, it provides information and analysis on investigations and prosecutions underway, including in relation to specific cases included in the Mission's 2020 report.

326. While this report focuses on the responses of the justice system in cases involving opponents or perceived opponents of the Government, the data referred to and analyzed in this section has a broader scope, touching upon human rights violations in other contexts. The present analysis focuses on actions taken by the justice system to investigate, prosecute and convict the individuals, including public officials, identified in the Mission's September 2020 report in relation to the specific crimes identified in that 2020 report, including extrajudicial executions, enforced disappearances, arbitrary detentions and torture and cruel, inhuman or degrading treatment, including sexual violence.

327. The Mission's September 2020 report provided clear findings regarding responsibilities for human rights violations at various levels of different command chains. The Mission found reasonable grounds to believe that the PNB and municipal and state police, CICPC, SEBIN, DGCIM and the FANB consisted of functioning and organized entities, operating generally in accordance with established chains of command or authority and with established communication and reporting procedures. The available information indicated that the leadership of these entities exercised effective control over their subordinates, in accordance with a functioning disciplinary system.[1728]

328. The Mission found reasonable grounds to believe that both the President and the Ministers of Interior and of Defence, ordered or contributed to the commission of the crimes documented in the September 2020 report, and having the effective ability to do so failed to take preventive and repressive measures.[1729] It also found reasonable grounds to believe that the Directors of the security and intelligence entities involved in the commission of the crimes documented in the report ordered or contributed to the commission of these crimes, and, having the effective ability to do so, failed to take preventive and repressive measures.[1730]

## A. Venezuelan legal framework for human rights violations and crimes against humanity

### 1. Codification of international crimes and violations in Venezuelan law

329. In its 2020 report, the Mission found reasonable grounds to believe that the violations and crimes documented therein corresponded to acts and conduct that may be legally qualified as crimes against humanity, under Article 7 of the Rome Statute.[1731] The Mission also found reasonable grounds to believe that the violations and crimes documented in the 2020 report give rise to individual criminal responsibility, either under domestic criminal law or international criminal law, or under both.[1732]

330. The Mission's 2020 report provides a detailed analysis of the legal framework applicable to extrajudicial executions, enforced disappearances, arbitrary detentions, and torture and other cruel, inhuman or degrading treatment as human rights violations,[1733] and

[1728] A/HRC/45/CRP.11, para. 2097.
[1729] A/HRC/45/CRP.11, para. 2103.
[1730] A/HRC/45/CRP.11, para. 2104.
[1731] A/HRC/45/CRP.11, paras. 2084, 2085.
[1732] A/HRC/45/CRP.11, para. 2083.
[1733] A/HRC/45/CRP.11, paras. 26-53.

of Venezuela's duties and obligations under international human rights law.[1734] The Mission has conducted an additional analysis of the Venezuelan legal framework to evaluate whether it is adequate to ensure individual accountability, at all levels of the chain of command, for the violations and crimes against humanity identified, and to ensure justice for the victims.

331. The 1999 Constitution establishes the State's obligation to investigate and to punish crimes impacting human rights committed by authorities.[1735] The Constitution further states that actions to punish crimes against humanity, gross human rights violations and war crimes are not subject to statutory limitations and are excluded from benefits that may lead to impunity, including pardon and amnesty.[1736] The 1999 Constitution[1737] and the Criminal Code[1738] affirm the legality principle in criminal matters. Respectively, they establish that, "no person shall be punished for acts or omissions not defined under preexisting laws as a crime, offense or infraction" and that "no person shall be punished for an act not expressly provided for as punishable by law, nor with penalties not previously established by law".

332. Venezuela is a State Party to the Rome Statute of the International Criminal Court, having signed this instrument on 14 October 1998 and deposited its instrument of ratification on 7 June 2000. The International Criminal Court is governed by the principle of complementarity whereby primary responsibility for investigating and prosecuting international crimes falling within the Court's jurisdiction is with the State. The International Criminal Court only intervenes in cases where States are unwilling or unable to do so genuinely.[1739] The Rome Statute does not contain an obligation to adopt in national legislation the crimes set out in Article 5 of the Statute. However, domestic laws must allow national courts to exercise jurisdiction over the relevant conduct.

333. Pursuant to the 1999 Constitution,[1740] human rights treaties, covenants and conventions, signed and ratified by Venezuela, have constitutional hierarchy, prevail in the internal order, and are of immediate and direct application by the courts and other organs of the Public Power. Despite this provision, Venezuela's ratification of the Rome Statute cannot be interpreted as Venezuela automatically incorporating the instrument into its domestic law, given that the Rome Statute is of a non-self-executing criminal nature.

334. The Law Approving the Rome Statute of the International Criminal Court was published in the Official Gazette on 13 December 2000, following Venezuela's ratification of the instrument. The law did not contain a comprehensive body of provisions; it consisted of a single article, which approves the Rome Statute "so that it may have international effects as far as Venezuela is concerned".[1741] With this law, Venezuela accepted the complementary jurisdiction of the International Criminal Court. Venezuela chose not to provide for the possibility of direct application of the provisions of the Rome Statute by Venezuelan courts.

335. In 2020, the Constitutional Chamber of the Supreme Tribunal of Justice stated that: "criminal responsibility in cases involving crimes against humanity (common crimes) will be determined according to the provisions of the Constitution […] and the Rome Statute of the International Criminal Court signed by Venezuela, as it pertains to the substantive part; and the Criminal Procedure Code as it pertains to the procedural part.[1742] The amendments to the Venezuelan Criminal Procedure Code and to the Criminal Code, as implemented over the

1734 A/HRC/45/CRP.11, paras. 22-25, 54-55.

1735 1999 Constitution, art. 29.

1736 1999 Constitution, art. 29. See also art. 271 establishing that "judicial actions aimed at punishing crimes against human rights shall not be subject to any statute of limitations [...]."

1737 1999 Constitution, art. 49.

1738 Criminal Code, art. 1.

1739 This principle is embodied in Article 1 of the Rome Statute, as well as in the tenth preambular paragraph of the Rome Statute. It is also reflected in other articles concerning admissibility issues. See Rome Statute, preamble para. 10; arts. 1, 17-19.

1740 1999 Constitution, art. 23.

1741 Law Approving the Rome Statute of the International Criminal Court, Official Gazette N° 37.098 and Extraordinary Official Gazette No 5.507, December 13, 2000, single article.

1742 See Supreme Tribunal of Justice, Constitutional Chamber, Judgment No. 3167 of 9 December 2002, available at: http://www.tsj.gob.ve/decisiones#

years since the Rome Statute entered into force in Venezuela, did not introduce changes aimed at harmonizing the legislation with the provisions of the Rome Statute.[1743]

336. The following sections provide a summary of the legal framework in place in Venezuela in relation to the crimes relevant to the present report, to assess whether it is consistent with the relevant international standards.

*Extrajudicial Executions*

337. The Mission recalls that, under international human rights law, the right to life is the supreme right from which no derogation is permitted, even in situations of armed conflict and other public emergencies that threaten the life of the nation.[1744] There is no specific provision in the Rome Statute for extrajudicial executions. Rather, in its article on crimes against humanity, the Statute criminalizes murder as killing or causing of the death of one or more persons in the context of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.[1745]

338. Extrajudicial execution is not a specific crime provided for in Venezuelan law. However, killing is criminalized under article 405 of the Criminal Code, which establishes that: "[w]hoever has intentionally killed any person shall be punished with imprisonment from twelve to eighteen years". The Mission notes that the Criminal Code does not incorporate a specific qualified or aggravated form of murder, perpetrated by State agents or collaborators, including security forces, in abuse of their functions.[1746] Nonetheless, the Criminal Code includes premeditation (acting treacherously or with certainty) and abuse of authority, as aggravating factors for any crime, including murder.[1747]

339. Human rights standards affirm that protection of the right to life imposes the positive obligation upon States to ensure that no one is arbitrarily deprived of their life. Law enforcement and public officials can use lethal force as a last resort measure, only when strictly necessary and to protect life or prevent serious injury from an imminent threat.[1748] These standards are reflected in the Venezuelan legal framework.[1749]

340. The Mission notes that, despite the lack of a specific provision for extrajudicial execution in Venezuelan legislation, the proper investigation into allegations of the crime[1750]

[1743] See Ávila Rincón, "Las reformas penales y procesales durante el gobierno bolivariano – cuadros comparativos" in Colección Aportes Comunes. Punto de Partida, 2012, available at: http://biblioteca.clacso.edu.ar/Venezuela/vrcivs-unes/20170104053747/pdf_137.pdf; Vásquez González, Magaly, Derecho Procesal Penal Venezolano, 2019, Introduction. To the contrary, amendments to the Criminal Code in 2005 included crimes against public officials as an aggravating circumstance (but not for crimes committed by public officials) and introduced increased penalties for common crimes. Official Gazette, Extraordinary No. 5.763, dated 16 March 2005. Similarly, partial amendments to the Criminal Procedure Code in 2000 and 2001 as well as in 2012, have restricted some of the rights of the accused contained in the 1999 Constitution. Vásquez González, Magaly, Derecho Procesal Penal Venezolano, 2019, p. 16.

[1744] A/HRC/45/CRP.11, para. 26.

[1745] Rome Statute, art. 7(1)(a). See A/HRC/45/CRP.11, para. 31.

[1746] The Criminal Code considers the crime aggravated when a private individual kills any of a number of public officials (including the President, the Vice-President, justices of the Supreme Tribunal of Justice, State Ministers, members of the National Assembly, the Chief Prosecutor, and any members of the military or the police) and punishes it with a maximum penalty of 30 years' imprisonment. Criminal Code, arts. 406, 406(3)(b), 407(2).

[1747] See Criminal Code, art. 77(1) and (8).

[1748] See A/HRC/45/CRP.11, para. 27-28. According to the Inter-American Court of Human Rights, use of force, including, under some circumstances, use of lethal force, is allowed, as long as it is in compliance with the principles of legality, legitimate aim, necessity and proportionality. See, Case Díaz Loreto and others vs. Venezuela, 19 November 2019, para. 63, available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_392_esp.pdf

[1749] See A/HRC/45/CRP.11, para. 1007.

[1750] See Inter-American Court of Human Rights, Case Díaz Loreto and others vs. Venezuela, 19 November 2019, para. 88 (confirming the duty of the State to investigate and establish individual responsibility in cases of use of force by state agents resulting in the death or injury of one or more persons).

and, where relevant, the proper application of the Criminal Code in relation to killings committed with abuse of authority and premeditation, could be valuable to ensuring accountability for unjustified use of lethal force by State security forces.

*Enforced disappearances*

341. Enforced disappearances are proscribed in the 1999 Constitution.[1751] This prohibition may not be suspended during states of emergency.[1752] Likewise, the Venezuelan Criminal Code states that the prosecution and punishment of the crime of enforced disappearance may not be subject to any statute of limitations, and those responsible for the commission of the crime shall not enjoy any benefit, including pardon and amnesty.[1753]

342. The elements of the crime, according to the Venezuelan Criminal Code, are as follows: 1) a public authority, whether civil or military, or any person in the service of the State; 2) who illegitimately deprives a person of her or his liberty, and refuses to acknowledge the detention or to provide information on the fate or situation of the disappeared person; and 3) in doing so, is preventing the exercise of the disappeared person's constitutional and legal rights and guarantees.[1754] The punishment for the crime of enforced disappearance is 15 to 25 years' imprisonment.[1755] The Criminal Code further states that any person who acts as an accomplice or concealer (*encubridor*) to the crime of enforced disappearance shall be punished with 12 to 18 years' imprisonment.[1756]

343. Enforced disappearance of persons is defined in the Rome Statute 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."[1757]

344. The Inter-American Convention on Forced Disappearance of Persons defines forced disappearance as "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 guarantee." [1758]

345. The Mission notes that the definition of enforced disappearance under the Criminal Code applies only to State actors, and does not contemplate criminal responsibility for persons or groups of persons acting with the authorization, support, or acquiescence of the State.[1759] Similarly, by limiting protection against enforced disappeance to illegitimate deprivation of liberty, the Criminal Code does not currently ensure protection against all

1751 1999 Constitution, art. 45.

1752 1999 Constitution, art. 337. See also 2001 Organic Law on the States of Exceptions, art. 7.

1753 Criminal Code, art. 180-A.

1754 Criminal Code, art. 180-A.

1755 The same penalty shall be imposed on members of terrorist, insurgent or subversive groups or associations who, acting as members or collaborators of such groups or associations, forcibly disappear a person by means of kidnapping or abduction. Criminal Code, art. 180-A.

1756 Criminal Code, art. 180-A.

1757 Rome Statute, art. 7(2)(i). The Mission notes that the Rome Statute envisages an additional constitutive element for the crime of enforced disappearance as a crime against humanity, notably the intention of the perpetrator(s) to place the disappeared person outside the protection of the law for a prolonged period of time. The fact that this element is not contemplated in the Venezuelan legislation, extends the scope of application of the law. See Rome Statute, art. 7(2)(i); ICC, Elements of the Crimes, 2002, art. 7(1)(i), available at: https://www.icc-cpi.int/nr/rdonlyres/336923d8-a6ad-40ec-ad7b-45bf9de73d56/0/elementsofcrimeseng.pdf (hereinafter "Elements of the Crime").

1758 Inter-American Convention on Forced Disappearance of Persons (1994) (to which Venezuela is a party), art. 2. available at: https://www.oas.org/juridico/english/treaties/a-60.html. See A/HRC/45/CRP.11, paras. 34, 36, 39.

1759 Criminal Code, art. 180-A.

potential forms of deprivation of libery, as stated in the Inter-American Convention.[1760] Since 2005, the Inter-American Court of Human Rights has requested that Venezuela take all necessary measures to amend its legislation in this regard, which Venezuela has yet to do.[1761]

*Arbitrary detentions*

346. Arbitrary detentions are proscribed in the 1999 Constitution.[1762] The Venezuelan Criminal Procedure Code enshrines a number of procedural guarantees aimed at protecting the rights of the accused in criminal proceedings, in accordance with international human rights law, including the right to due process. Further, the Organic Police Law has a list of the "common attributions" of the police forces which include making arrests pursuant to a court order, or when the person is caught *in flagrante delicto*, in accordance with the 1999 Constitution and applicable laws.[1763]

347. Pursuant to the Criminal Code, the crime of unlawful deprivation of liberty is punishable by 15 days to 30 months' imprisonment.[1764] The Criminal Code also has a specific provision for unlawful deprivation of liberty by public officials and punishes the crime with 45 days to 3.5 years' imprisonment.[1765] This penalty can be increased to between three and five years' imprisonment under certain circumstances, including if the crime is committed by means of threats, violence or other unlawful coercion, or if the crime is committed with abuse of authority.[1766]

348. Imprisonment or other severe deprivation of physical liberty constitutes a crime against humanity, when committed as part of a widespread or systematic attack against any civilian population.[1767] Further, under human rights law, the prohibition of arbitrary deprivation of liberty is part of treaty law and customary international law.[1768] The Mission considers that, depending on the facts of the specific case, the penalties contemplated in the Criminal Code may be too low to ensure adequate punishment for this crime.

*Torture and other cruel, inhuman and degrading treatment*

349. The Venezuelan Constitution prohibits acts of torture and other cruel, inhuman or degrading treatment,[1769] in accordance with international human rights standards.[1770] In July 2013, the National Assembly adopted the Special Law to Prevent and Punish Torture and Other Cruel, Inhumane or Degrading Treatment, providing additional elements to ensure that constitutional guarantees and those established under international human rights standards are respected.[1771] The 1999 Constitution and the Law on Torture stipulate that the prohibition

1760 Ibid.

1761 See Inter-American Court of Human Rights, Case Blanco Romero and others vs. Venezuela, 28 November 2005, para. 105, available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_138_esp.pdf

1762 1999 Constitution, art. 44.

1763 Organic Police Law, art. 34(14).

1764 Under some limited circumstances, this penalty can be increased to 2 to 4 years' imprisonment (including if the perpetrator, in order to commit the crime or during its commission, made use of threats, cruelty or deceit, or if he or she committed the crime for the spirit of revenge or profit) or to 30 months to 7 years' imprisonment (if the crime is committed against specific individuals, such as an ascendant or spouse, or against certain public officials, such as a member of the National Assembly or a magistrate, by reason of their functions). Criminal Code, art. 174.

1765 Criminal Code, art. 176.

1766 Criminal Code, arts. 175 and 176. However, if the perpetrator spontaneously releases the detained person before any proceedings have been initiated against her or him, and without having achieved her or his intended purpose or caused the detained person any harm, the penalty can be reduced to a period going from fifteen months to three and a half years' imprisonment. Criminal Code, art. 174.

1767 Rome Statute, art. 7(1)(e) Elements of the Crimes, art. 7(1)(e). See A/HRC/45/CRP.11, para. 43.

1768 See A/HRC/45/CRP.11, paras. 40-41. See UN Working Group on Arbitrary Detentions, 17 October 2013, Compilation of Deliberations, para. 51, available at: https://www.ohchr.org/Documents/Issues/Detention/CompilationWGADDeliberation.pdf

1769 1999 Constitution, art. 46.

1770 See A/HRC/45/CRP.11, paras. 45-46, 48.

1771 2013 Law on Torture, art. 3.

of torture and other cruel, inhuman or degrading treatment may not be suspended during states of emergency.[1772]

350. The Law on Torture defines torture as "acts by which pain or suffering, whether physical or mental, are intentionally inflicted on a person for the purpose of obtaining from her/him or a third person information or a confession, of punishing her or him for an act he or she has committed, or of intimidating or coercing her/him or others, or for any reason based on discrimination of any kind, when such suffering is inflicted by or at the instigation of or with the consent of a public official or other person acting in an official capacity".[1773] The Law provides a penalty between 15 and 25 years' imprisonment for the commission of the crime of torture.[1774] The Law on Torture also typifies the crime of cruel treatment[1775] and the crime of inhuman or degrading treatment.[1776] The first is punishable by 13 to 23 years' imprisonment[1777] and the second by 3 to 6 years' imprisonment.[1778]

351. The Law on Torture establishes that, any public official who collaborates with or covers up for those who commit the crimes of torture or cruel treatment (but not inhuman or degrading treatment), or hinders the investigations of the Public Prosecutor's Office, shall be punished with a penalty equivalent to that applicable to the perpetrator of the crime.[1779] Likewise, for the three crimes described above, the public official committing the crime, in addition to receiving the prison sentence specified for each case, shall be punished with disqualification from the exercise of public and political functions for a period equivalent to the sentence imposed, without the possibility of any reduction.[1780]

352. Individuals who participate in any way as material or intellectual authors together with the direct perpetrators of the crimes of torture and other cruel, inhuman or degrading treatment shall be punished with a penalty equivalent to three quarters of the primary penalty imposed on these active agents.[1781] Similarly, any person who collaborates in any way with the direct perpetrators, shall be punished with a penalty of half of the main penalty imposed.[1782] In both cases, the individuals are also sanctioned with disqualification from the exercise of public and political functions for a period equivalent to the sentence imposed, without the possibility of reduction.[1783]

353. Additionally, any public official who witnesses or has knowledge of the commission of these crimes, or is given an order to execute them, even if the crimes do not materialize, is obliged to report this fact immediately to the competent authorities; otherwise he or she will be punished with one to three years' imprisonment.[1784] Furthermore, public officials who are responsible of the detention centers where certain spaces or instruments are used to commit torture, shall be punished with one to five years' imprisonment.[1785]

354. Although the Law on Torture also establishes that public officials may not invoke superior orders as justification for committing the crimes,[1786] it does not contain any provisions that would allow superior officers to be held accountable for the crimes committed

1772 1999 Constitution, art. 337; 2013 Law on Torture, art. 29. See A/HRC/45/CRP.11, para. 135.
1773 Moreover, torture shall be understood as the application on a person of methods tending to annul the personality of the victim or to diminish her or his physical or mental capacity, even if they do not cause physical pain or psychological distress. 2013 Law on Torture, art. 5(2).
1774 2013 Law on Torture, art. 17.
1775 2013 Law on Torture, arts. 5(3) and 18. The Mission notes that, according to the Law on Torture, the progressive, differentiated and proportionate use of potentially lethal force by State security agencies shall not be considered cruel treatment. 2013 Law on Torture, art. 21.
1776 2013 Law on Torture, arts. 5(4) and 21.
1777 2013 Law on Torture, art. 18.
1778 2013 Law on Torture, art. 21.
1779 2013 Law on Torture, art. 19.
1780 2013 Law on Torture, arts. 17-18, 21.
1781 2013 Law on Torture, art. 20.
1782 2013 Law on Torture, art. 20.
1783 2013 Law on Torture, art. 20.
1784 2013 Law on Torture, art. 31.
1785 2013 Law on Torture, art. 23.
1786 2013 Law on Torture, art. 30.

by their subordinates, either through alternatives modes of individual criminal responsibility (such as ordering, soliciting, inducing or aiding and abetting) or by failing to exercise control over the subordinates committing the criminal acts (superior responsibility).

355. In compliance with international human rights law,[1787] the Law on Torture establishes that the Public Prosecutor's Office shall be responsible for investigating the crime and identifying the perpetrator(s) and/or participants of the crimes of torture and other cruel, inhuman or degrading treatment, in accordance with the special procedures provided for such purposes.[1788] No confession or information obtained by means of torture or other cruel, inhuman or degrading treatment shall be introduced as evidence, and the document containing it shall be null and void.[1789]

356. In following the definition of torture contained in the Convention against Torture,[1790] under the Law on Torture, the suffering must be inflicted by or at the instigation of or with the consent of a public official or other person acting in an official capacity.[1791] On the other hand, the definition of torture under the Rome Statute does not contain any reference to the status of the perpetrator as a public official; what is required is that the victim is in the custody or under the control of the accused.[1792] The narrower definition of the Law on Torture could leave private individuals not acting at the behest or with the consent of public officials, outside of the scope of the law.

357. The Mission recognizes the efforts made by Venezuela to align its legislation to relevant international standards and principles on torture,[1793] through the adoption of its special law. Subject to amendments aimed at ensuring the prosecution of superiors and private individuals, the proper application of this law could be valuable to ensuring accountability for crimes committed and to lower impunity rates.

*Sexual violence*

358. In Venezuela, the Criminal Code and the Organic Law on the Rights of Women to a Life Free from Violence prohibit acts of sexual violence.[1794] The 2007 Law on the Rights of Women defines sexual violence as "any conduct that threatens or infringes on a woman's right to decide voluntarily and freely her sexuality, including not only sexual intercourse, but any form of sexual contact or access, genital or non-genital, such as lewd acts, violent lewd acts, violent carnal access or rape itself."[1795]

359. In relation to rape, the Criminal Code states that: "[a]nyone who by means of violence or threats has forced any person, of either sex, to a carnal act by vaginal, anal or oral means, or the introduction of an object by any of the first two means, or by oral means an object that simulates sexual objects is introduced, shall be punished, as a rape offender, with a prison sentence of ten years to fifteen years".[1796]

360. The Criminal Code provides for a penalty of 15 to 20 years' imprisonment when the rape was committed against a child or adolescent and in cases in which the individual, even without violence or threats, has a carnal act with a person of either sex, when this person,

[1787] See A/HRC/45/CRP.11, para. 48.
[1788] 2013 Law on Torture, art. 32.
[1789] Submitting this piece of evidence in trial shall be considered fraud against the law and consequently entails criminal and administrative responsibility. 2013 Law on Torture, art. 33.
[1790] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 29 July 1991, art. 1, available at: https://www.ohchr.org/en/professionalinterest/pages/cat.aspx
[1791] See 2013 Law on Torture, art. 5(2).
[1792] Rome Statute, art. 7(1)(f), 7(2)(e); Elements of the Crimes, 2002, art. 7(1)(f).
[1793] See A/HRC/45/CRP.11, paras. 45-46, 48-49
[1794] Criminal Code, arts. 374-375; Organic Law on the Rights of Women to a Life Free from Violence; Official Gazette No. 38.668, 23 April 2007, arts. 43-44, available at: https://www.acnur.org/fileadmin/Documentos/BDL/2008/6604.pdf43-44 (hereinafter "2007 Law on the Rights of Women").
[1795] 2007 Law on the Rights of Women, art. 15(6).
[1796] If the crime is committed against a child or adolescent, the penalty shall be imprisonment for a term of 15 to 20 years. Criminal Code, art. 374.

having been detained or convicted, has been entrusted to the custody of the offender; or when the victim is particularly vulnerable (by reason of age or situation), and in any case when the victim is under 13 years of age; or when the victim is under 16 years of age and the offender has taken advantage of his or her position of superiority or kinship; or when the victim is incapable of resisting due to physical or mental illness or for any other reason.[1797]

361. In cases in which the victim is especially vulnerable and in those cases in which the victim is incapable of resisting (as mentioned above), the Criminal Code provides for a reduced penalty of 10 to 16 years' imprisonment when the rape is committed with abuse of authority.[1798] In all other cases, when the rape is also committed with abuse of authority, the Criminal Code also provides for a reduced penalty of 8 to 14 years' imprisonment.[1799]

362. Similarly, the 2007 Law on the Rights of Women states that "[a]ny person who, by means of violence or threats, coerces a woman into unwanted sexual contact involving vaginal, anal or oral penetration, including the introduction of objects of any kind through any of these means, shall be punished with ten to fifteen years' imprisonment."[1800] This penalty is increased to 15 to 20 years' imprisonment, if the crime is committed against a victim who is detained or has been convicted and who has been entrusted to the aggressor's custody.[1801]

363. Both the Criminal Code and the 2007 Law on the Rights of Women also criminalize lewd acts. The Criminal Code states that anyone committing lewd acts not amounting to rape shall be punished with 6 to 30 months' imprisonment.[1802] If the act was committed with abuse of authority or trust, the penalty shall be that of one to five years' imprisonment, provided that violence and threats occurred; and from two to six years when the victim is especially vulnerable (by reason of age or situation) or is incapable of resisting due to physical or mental illness or for any other reason.[1803] The 2007 Law on the Rights of Women provides that anyone coercing a woman into unwanted sexual contact affecting her right to decide her sexuality and using violence or threats shall be punished with one to five years' imprisonment.[1804]

364. The 2007 Law on the Rights of Women also defines other forms of sexual violence,[1805] including forced prostitution,[1806] sexual slavery,[1807] sexual harassment,[1808] obstetric violence,[1809] and forced sterilization.[1810] The Law further establishes a special procedure for crimes against women,[1811] and creates specialized courts (violence against women courts) to prosecute the crimes under the law.[1812]

365. The Mission recognizes that Venezuela has made significant advances in the legal framework for the protection of women's rights, including the codification of specific crimes of sexual or gender-based violence against women and girls, in line with international standards, with the exception of forced pregnancy, as established in article 7(1)(g) of the Rome Statute of the International Criminal Court.[1813]

---

1797 Criminal Code, art. 374.
1798 Criminal Code, art. 375. The Mission fails to understand the reasoning for this reduced penalty.
1799 Criminal Code, art. 375. The Mission also fails to understand the reasoning for this reduced penalty.
1800 2007 Law on the Rights of Women, art. 43.
1801 2007 Law on the Rights of Women, art. 44(3).
1802 Criminal Code, art. 376. See Ibid., art. 374.
1803 Criminal Code, art. 376.
1804 2007 Law on the Rights of Women, art. 45.
1805 As its title indicates, this law applies to women and girls, but not to men and boys.
1806 2007 Law on the Rights of Women, art. 46.
1807 2007 Law on the Rights of Women, art. 47.
1808 2007 Law on the Rights of Women, art. 48.
1809 2007 Law on the Rights of Women, arts. 15, paras. 13, 51.
1810 2007 Law on the Rights of Women, art. 52.
1811 2007 Law on the Rights of Women, arts. 94-113.
1812 2007 Law on the Rights of Women, arts. 115-123. See also 2007 Law on the Rights of Women, arts. 76, 79.
1813 Rome Statute, art. 7(1)(g). See Elements of the Crimes, arts. 7(1)(g)-1 to 7(1)(g)-6.

*Persecution*

366. In its 2020 report, the Mission found reasonable grounds to believe that some of the violations and crimes documented therein may also constitute the crime against humanity of persecution, while also consisting of the distinct crimes against humanity under its mandate.[1814]

367. The Rome Statute defines persecution as "the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity".[1815] The Mission notes that persecution, being a complex criminal offence, is not typified in Venezuelan law as a separate criminal act as it is in the Rome Statute. The appropriate use of aggravating factors under the Criminal Code could in some cases serve to ensure accountability for the conduct underlying the crime of persecution. Other discriminatory grounds foreseen in the legal definition of persecution under the Rome Statute are only reflected, within the Venezuelan legal framework, in the Law against Hate.[1816]

368. This would be the case, for example, with respect to the severe deprivation of fundamental rights on racial, ethnic, religious or political grounds as well as for reasons of gender, sexual orientation, gender identity, gender expression or any other discriminatory motive. Where these grounds are established, said law sets out that the maximum limit of the penalty foreseen for the relevant crime must be applied.[1817] However, this law was enacted by the National Constituent Assembly performing as the *de facto* legislative branch, a function that it took over from the National Assembly.[1818] As noted above and in the Missions' 2020 report, the constitutionality of this has been questioned and is subject to debate.[1819]

*Contextual Element of Crimes against Humanity*

369. Article 7 of the Rome Statute of the International Criminal Court defines crimes against humanity. What makes a series of acts listed in article 7 crimes against humanity, is the so called contextual element, which is made out when the acts are committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.[1820] Under Venezuelan law, there is no definition of crimes against humanity nor a reference to the contextual elements of the crime.[1821]

---

1814 See A/HRC/45/CRP.11, para. 2085.

1815 Rome Statute, art. 7(2)(g). Under the Rome Statute, persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law, constitutes a crime against humanity when committed as part of a widespread or systematic attack against any civilian population, when performed in connection with any act referred to in Article 7(1) or any crime within the jurisdiction of the International Criminal Court. Rome Statute, art. 7(1)(h); Elements of the Crimes, art. 7(1)(h).

1816 Law against Hate, Published in the Official Gazette 41.274 of 8 November 2017.

1817 Law against Hate, Article 21, "It shall be considered as an aggravating circumstance of any crime that it is executed or increased by reason of the real or presumed membership of the victim to a certain racial, ethnic, religious or political group, as well as for reasons of gender, sexual orientation, gender identity, gender expression or any other discriminatory motive. In these cases, the applicable sanction shall be the maximum limit of the penalty established for the corresponding crime." The Mission notes that in 2008, the Supreme Tribunal of Justice issued a decision stating that the Constitution's prohibition on discrimination also applies to discrimination against sexual orientation. See Supreme Tribunal of Justice, Constitutional Chamber, Judgment No. 190 of 2008, available at: https://web.archive.org/web/20120804185146/http://www.tsj.gov.ve/decisiones/scon/Noviembre/1739-121108-2008-03-2630.html. However, there is no provision in the Criminal Code or in the 2007 Law on the Rights of Women which would ensure accountability for persecutory acts committed on the grounds of sexual orientation, gender orientation or gender expression.

1818 1999 Constitution, art. 187. See A/HRC/45/CRP.11, paras. 125-130.

1819 See above para. 270; A./HRC/45/CRP.11, paras.129-130. The 1999 Constitution, art. 347, states that "the purpose of the National Constituent Assembly is 'to transform the State, creating a new juridical order and drafting a new Constitution'".

1820 Rome Statute, art. 7(1) and 7(2)(a).

1821 Rome Statute, art. 7(1). Notably, an interpretation made by the Criminal Appellate Chamber of the Supreme Tribunal of Justice to article 7 h) of the Rome Statute, which was later confirmed by the Constitutional Chamber, considered drug-related crimes as crimes against humanity. Whether or not

370. This however is not necessarily an obstacle to the proper investigation and prosecution of crimes against humanity in Venezuela. As noted in the jurisprudence of the International Criminal Court, lack of legislation criminalizing crimes against humanity in any given jurisdiction does not *per se* render cases admissible before the court. What matters is whether the domestic legislation can reflect those aspects of the relevant conduct that would fall under the contextual element of crimes against humanity. According to this jurisprudence, the *chapeau* elements may be properly covered by aggravating factors addressing the large-scale commission of the crimes, the number of victims and the organized nature of acts of violence.[1822]

371. The Mission has conducted an analysis of the Venezuelan legislation and found that it does not contain rules which may sufficiently capture the aforementioned aspects of the relevant conduct. As noted, the contextual element of the crime against humanity is not set out in Venezuelan legislation. Although the Criminal Code contains a list of aggravating factors applicable to all crimes,[1823] no reference is made to factors reflecting the scale, nature, manner of commission or impact of the crimes so as to properly reflect their commission as part of a widespread or systematic attack directed against any civilian population. Therefore, the Mission considers that the legal framework could be an obstacle for investigations and prosecutions of crimes against humanity in Venezuela. However, it notes that a full determination regarding the sufficiency and adequacy of the national legislative framework for the prosecution of crimes against humanity for the purpose of the exercise of jurisdiction by judicial authorities shall be made by the competent authorities.

### 2. Accountability for Human Rights Violations

372. States are the primary duty holders of international human rights obligations and can be held responsible for human rights violations committed by their organs or by their agents, whether at national, regional or local level.[1824] The State may also be held responsible for the wrongful conduct of non-State individuals or groups when the latter are acting with the consent or acquiescence of the State or in complete dependence on the State, and under its direction or its effective control.[1825]

373. The State is also under an obligation to ensure that individuals have accessible and effective remedies when human rights violations occur, and to investigate and prosecute them thoroughly and independently.[1826] The Mission recognizes that Venezuela has ratified most core United Nations human rights treaties, except the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention Against Torture, and that it is party to a number of relevant regional instruments.[1827] The Mission is concerned that Venezuela's denunciation of the American Convention on Human Rights and the jurisdiction of the Inter-American Court of Human Rights, effective 10 September 2013,[1828] could present a barrier to access to justice for victims of human rights violations, including those identified in the Mission's reports.

---

drug-related crimes may properly be considered crimes against humanity under said provision, this jurisprudence confirms that crimes against humanity are not foreign to Venezuelan jurisprudence. See Supreme Tribunal of Justice, Criminal Appellate Chamber, Judgment N° 359, 28 March 2000, available at: http://www.tsj.gob.ve/decisiones#.

1822 Pre-Trial Chamber I, Decision on the admissibility of the case against Saif Al-Islam Gaddafi, 31 May 2013, Case Nr. ICC-01/11-01/11, paras. 88, 108-113, available at: https://www.icc-cpi.int/CourtRecords/CR2013_04031.PDF

1823 Criminal Code, art. 77.

1824 See A/HRC/45/CRP.11, paras. 54, 2080.

1825 A/HRC/45/CRP.11, paras. 54, 2080.

1826 A/HRC/45/CRP.11, para. 2081.

1827 See A/HRC/45/CRP.11, para. 24.

1828 See Ministry of the People's Power for Foreign Affairs of the Bolivarian Republic of Venezuela, Official diplomatic note No. 000125 addressed to the General Secretariat of the Organization of American States (OAS), dated 6 September 2012. The formal note of denunciation was received by the Secretary General of the OAS on 10 September 2013. In accordance with Article 78(1) of the American Convention, the denunciation became effective as of 10 September 2013, upon the

## B. Actions by the State to investigate and prosecute crimes involving human rights violations

374. Under the 1999 Constitution, every individual has the right to access the justice system for the purpose of enforcing his or her rights and interests, and ensuring the effective protection of such rights.[1829] To this end, the State is under an obligation to guarantee that justice is free of charge, accessible, impartial, suitable, transparent, autonomous, independent, responsible, equitable and expeditious, without undue delays or superfluous formalities.[1830]

375. The Venezuelan State is under a constitutionally mandated obligation to investigate and to punish public officials for crimes involving human rights violations.[1831] As noted earlier, according to the 1999 Constitution, actions to punish crimes against humanity, gross human rights violations and war crimes are excluded from pardons and amnesties, which may lead to impunity, and may not be subject to any statute of limitations.[1832]

376. Venezuela's ordinary court system adjudicates crimes involving human rights violations and crimes against humanity, as well as ordinary crimes.[1833] The Public Prosecutor's Office is the body responsible for overseeing investigations and ensuring prosecutions.[1834] Further, the Ombudsperson's Office shall prompt the Public Prosecutor's Office to pursue appropriate actions or motions against public officials responsible for violations of human rights and shall initiate and pursue, either *ex officio* or at the request of the interested party, any investigations into violations.[1835]

377. Between January and August 2021, the Mission sent four letters[1836] addressed to the Chief Prosecutor of Venezuela reiterating its disposition to initiate a dialogue with the Public Prosecutor's Office. The letters also requested specific information regarding the number and status of investigations undertaken by the Public Prosecutor's Office into human rights violations perpetrated by State security and intelligence bodies, including information pertaining to the cases documented in the Mission's 2020 report. In addition, the letters asked for information regarding submissions made to the International Criminal Court, which the Chief Prosecutor had announced publicly in a series of press conferences, as noted below. At the time of writing, no response to any these letters had been received.

### 1. Information presented by the Public Prosecutor's Office

378. Under the 1999 Constitution, every citizen has a right to be informed by the Public Administration of the status of proceedings in which they have a direct interest.[1837] Under its Organic Law, the Public Prosecutor's Office shall exercise its functions with transparency, in order to promote publicity and to ensure public knowledge of proceedings and actions

expiration of the one-year notice period provided for in said article. OAS, Press Release No. 064, 10 September 2013, available at: http://www.oas.org/es/cidh/prensa/comunicados/2013/064.asp See also Supreme Tribunal of Justice, Constitutional Chamber, Judgment N° 1939 of 18 December 2008, declaring judgments of the Inter-American Court of Human Rights unenforceable and urging the Executive Branch to denounce the American Convention on Human Rights "in view of the evident usurpation of functions in which the Inter-American Court of Human Rights has incurred …"

1829 1999 Constitution, art. 26. See 1999 Constitution, art. 2.

1830 1999 Constitution, art. 26.

1831 1999 Constitution, art. 29.

1832 1999 Constitution, art. 29. See also 1999 Constitution, art. 271 establishing that "judicial actions aimed at punishing crimes against human rights shall not be subject to any statute of limitations [...]."

1833 1999 Constitution, art. 261.

1834 See 1999 Constitution, art. 285(4) (*Ejercer en nombre del Estado la acción penal*); 2012 Criminal Procedure Code, art. 11 (*La acción penal corresponde al Estado a través del Ministerio Público*).

1835 1999 Constitution, art. 281; 2004 Organic Law of the Ombudsperson's Office, art. 15.

1836 Letter REF: FFMV/CG/2021-002 dated 18 January 2021, Letter REF: FFMV/CG/2021-010 dated 26 February 2021, Letter REF: FFMV/CG/2021-011 dated 18 June 2021, Letter REF: FFMV/CG/2021-014 dated 12 August 2021.

1837 See 1999 Constitution, art. 143.

carried out by the office.[1838] The Chief Prosecutor must present an annual public report before the National Assembly on the work of the Public Prosecutor's Office, including its efforts to investigate and punish human rights violations.[1839] Additionally, as a member of the Republican Moral Council, the Chief Prosecutor is under an obligation to present before the National Assembly, within the first 90 days of each calendar year, a reasoned summary on the work carried out by the office during the preceding year.[1840]

379. The Public Prosecutor's Office presented written reports in 2014, 2015 and 2016 to the National Assembly in compliance with the constitutional mandate,[1841] while under former Chief Prosecutor Luisa Ortega Díaz.[1842] The Chief Prosecutor appeared before the National Assembly on 10 March 2015 to present the 2014 annual report[1843] and on 2 February 2016 to present the 2015 annual report.[1844] On 31 March 2017, she made an oral presentation to the press about the 2016 annual report.[1845] In March 2017, still under Chief Prosecutor Ortega Díaz, the Public Prosecutor's Office also published a report on the work of the office in relation to largescale, multi-force security operations, known as the Operations for People's Liberation (OLP).[1846]

380. The Public Prosecutor's Office's 2014 annual report stated that the Directorate for the Protection of Fundamental Rights had admitted 8,049 cases related to human rights violations, representing 1.4 per cent of the total of cases admitted by the Public Prosecutor's Office in 2014.[1847] Prosecutors appointed to this directorate presented 11,317 decisions on proceedings (*actos conclusivos*), but the report does not provide further information about them.[1848] The 2014 annual report referred to charges against 30 police officers that year for alleged human rights violations, including murder and cruel treatment.[1849]

381. The 2014 annual report made specific reference to the following cases involving prosecution of those allegedly responsible for killings during the 2014 political protests:

- For the 12 February 2014 death of Bassil Alejandro Da Costa Fría in a protest, eight police officers were charged with aggravated murder, illegal deprivation of liberty, misuse of a weapon and cruel treatment.

---

1838 See 2007 Organic Law of the Public Prosecutor's Office, art. 11.

1839 He or she shall likewise submit reports whenever requested to do so by the National Assembly. 1999 Constitution, art. 276.

1840 2001 Organic Law of the Citizen Branch, art. 65.

1841 See Public Prosecutor's Office, Office of the Chief Prosecutor, 2014 Annual Report to the National Assembly, available at: https://transparencia.org.ve/wp-content/uploads/2016/07/Informe-Anual-2014-MP.pdf (hereinafter "Public Prosecutor's Office 2014 Annual Report"); Public Prosecutor's Office, Office of the Chief Prosecutor, 2015 Annual Report to the National Assembly, available at: https://transparencia.org.ve/wp-content/uploads/2016/07/Informe-Anual-2015-fiscalia.pdf (hereinafter "Public Prosecutor's Office 2015 Annual Report"); Public Prosecutor's Office, Office of the Chief Prosecutor, 2016 Annual Report to the National Assembly, available at: https://transparencia.org.ve/wp-content/uploads/2016/07/Informe-anual-2016-MP.pdf (hereinafter "Public Prosecutor's Office 2016 Annual Report").

1842 Luisa Ortega Díaz was replaced as Chief Prosecutor by Tarek William Saab on 5 August 2017.

1843 See YouTube video, speech of Chief Prosecutor Luisa Ortega Díaz before the National Assembly, 10 March 2015, available at: https://youtu.be/VnWptJ7dfkc.

1844 See YouTube video, speech of Chief Prosecutor Luisa Ortega Díaz before the National Assembly, 2 February 2016, available at: https://youtu.be/ictmn-NeMUw

1845 See YouTube video, Press conference of Chief Prosecutor Luisa Ortega Díaz, 31 March 2017, available at: https://youtu.be/DBblOpsXWGY.

1846 The report stated that a total of 505 people were killed at the hands of police and/or military officials between July 2015 and March 2017, adding that 1,074 officials (mostly from CICPC and the PNB) were under investigation for various crimes in the framework of these operations (including 357 investigations for murder). The report did not specify, however, the number of public officials charged and/or indicted. Public Prosecutor's Office, "Actuaciones del Ministerio Público relacionadas con las OLP en Venezuela (julio 2015-marzo 2017)", p. 7, available at: http://pazactiva.org.ve/wp-content/uploads/2017/10/INFORME-OLP-MP-2017-Folleto-OLP-2017-min.pdf

1847 Public Prosecutor's Office 2014 Annual Report, p. 7.

1848 Public Prosecutor's Office 2014 Annual Report, p. 37.

1849 Public Prosecutor's Office 2014 Annual Report, p. 5.

- For the 19 February 2014 death of Asdrúbal Jesús Rodríguez Araguayán, two police officers were charged with aggravated murder, illegal deprivation of liberty, misuse of a weapon and cruel treatment.
- For the 7 March 2014 death of Glidis Karelis Chacón Benítez, one police officer was charged with aggravated murder and misuse of a weapon and two others were charged with attempted murder and misuse of a weapon.
- For the 22 February 2014 death of Geraldín Moreno Orozco, four members of the National Guard were charged with aggravated murder and misuse of a weapon.
- For the 12 March 2014 murder of Jesús Enrique Acosta Matute, a CICPC member was charged with aggravated murder and misuse of a weapon.[1850]

382. In its 2015 annual report, the Public Prosecutor's Office reported that it had charged 1,312 and indicted 959 public officials from different State security agencies for alleged human rights violations.[1851] The report referred to perpetrators being sentenced in two cases involving human rights violations in the context of protests,[1852] without disaggregating the perpetrators by sex or rank. Also in 2015, the Public Prosecutor's Office issued a separate report related to human rights violations in the context of the 2014 protests, noting that it had initiated 236 investigations and that, up to 23 March 2015, it had issued 14 indictments against 30 public security officials, including 21 police officers indicted for cruel treatment and 9 indicted for murder.[1853]

383. According to the Public Prosecutor's Office's 2016 annual report, during the course of that year, 2,441 public officials were charged for alleged human rights violations, 225 of which were subjected to pre-trial detention.[1854] Additionally, the Public Prosecutor's Office indicted 635 officials and convicted 266 officials.[1855] The report did not disaggregate the perpetrators or the victims by sex. The report contained a section on specific cases, which mentioned:

- The charging of 12 members of the armed forces for the crimes of enforced disappearance, torture, illegal deprivation of liberty, misuse of a weapon, and aggravated murder of 12 victims in Barlovento in October 2016. The Mission recalls that this is one of the cases it investigated in the 2020 report, as discussed below.[1856]
- The arrest and charging of seven members of the armed forces for aggravated murder, torture and illegal deprivation of liberty of an adolescent in Barlovento in November 2016.
- The indictment of three GNB members for aggravated murder and misuse of weapon, following the killing of three men in February 2016 in Barinas.

[1850] Public Prosecutor's Office 2014 Annual Report, pp. 5-6 and 38-39.
[1851] Public Prosecutor's Office 2015 Annual Report, pp. 55 and 56.
[1852] In the first case, two members of the PNB were sentenced for the crime of cruel treatment against a victim transiting near a demonstration in Los Ruices, Sucre in March 2014. In the second case, a member of the PNB was sentenced to 18 years' imprisonment for aggravated intentional murder, after confessing to having killed a victim during a demonstration in Táchira in February 2015. Public Prosecutor's Office 2015 Annual Report, p. 60.
[1853] This included indictments against two members of the Chacao police for murder; three members of the Aragua police for cruel treatment; six members of the PNB AMC for cruel treatment; seven members of the GNB for murder; three members of the PNB Anzoátegui for cruel treatment; five members of the Mérida police for cruel treatment; three members of the Monagas police for cruel treatment; and one member of the Falcón police for cruel treatment. Public Prosecutor's Office, "Informe hechos de violencia 2014", 23 March 2015, p. 30, available at: https://www.aiamp.info/images/noticias/2015/Informe_%20Hechos%20Violentos_Venezuela2014.pdf
[1854] Public Prosecutor's Office 2016 Annual Report, pp. 7, 20-21.
[1855] Public Prosecutor's Office 2016 Annual Report, pp. 7 and 21.
[1856] A/HRC/45/CRP.11, paras. 1165-1220.

- The indictment of three SEBIN members for the illegal deprivation of liberty of a woman in November 2015.
- The sentencing of two GNB sergeants (one to 30 years' and the other to 16 years' imprisonment) for the killing of Geraldine Moreno during a demonstration in 2014 (no information was provided about the charges).
- The indictment of a member of the Táchira police for aggravated murder and misuse of weapon, following the killing of Jenny Ortiz Gómez during a demonstration in San Cristóbal in June 2016.
- The holding of the trial phase in the case against a GNB sergeant, accused of aggravated murder and misuse of weapon, following the killing of a man in June 2016 in Sucre.[1857]

384. Since 2017, following the appointment of Tarek William Saab as Chief Prosecutor, public information about the work of the Public Prosecutor's Office has been increasingly difficult to obtain. The official website of the Public Prosecutor's Office was not in operation at the time of writing; the last publicly available capture of the site was archived in 2019.[1858] Instead, the Public Prosecutor's Office relied mainly on social media platforms, primarily Instagram,[1859] Twitter[1860] and Facebook,[1861] to publish official information. Chief Prosecutor Tarek William Saab also used his personal Twitter platform to share official information on the work of the Public Prosecutor's Office, including case details.[1862] In 2017, the Public Prosecutor's Office also stopped issuing publicly available written annual reports and has only provided oral updates, including via interviews, press conferences and social media to provide the public with selected information about the work of the Public Prosecutor's Office.[1863]

385. The National Constituent Assembly was in operation from 4 August 2017 until 31 December 2020. During this time, with the exception of his speech to the National Constituent Assembly in February 2018 as discussed below, the Chief Prosecutor's oral updates coincided with the anniversary of his appointment in August. Each of the updates took place before the National Constituent Assembly, rather than the National Assembly. However, in February 2021, after the dissolution of the National Constituent Assembly in December 2020, the Chief Prosecutor provided his update to the Government-aligned National Assembly.[1864] The rest of the Chief Prosecutor's public appearances occur

[1857] Public Prosecutor's Office 2016 Annual Report, pp. 7, 21-23.

[1858] The site www.mp.gob.ve was stored in the Internet Archive 48 times since December 2007, the last archive occurring on 13 June 2019. The Internet Archive is a digital library of internet sites and other cultural artifacts in digital form which gets updated on a constant basis. See https://archive.org/about/ Although this does not identify with precision the last date the site was operational, it does provide an indication that the site has not functioned for a significant time period. Last archived version available at: https://web.archive.org/web/20190613083040/http://www.mp.gob.ve/web/guest;jsessionid=69EB4730BFCBC02705A56FF2385F4CD4#https://web.archive.org/web/20190613083040if_/http://www.mp.gob.ve/banner_rotar/https://web.archive.org/web/20190613083040if_/http://www.mp.gob.ve/banner_rotar/rotar_364.html

[1859] Available at: https://www.instagram.com/mp.venezolano/

[1860] Available at: https://twitter.com/MinpublicoVE

[1861] Available at: https://www.facebook.com/Ministerio-P%C3%BAblico-100239468147493

[1862] See, for example, his Twitter account, available at: https://twitter.com/tarekwiliamsaab

[1863] See Efecto Cocuyo, "Cifras presentadas por Tarek William Saab son inchequeables", 4 January 2020, available at: https://efectococuyo.com/cocuyo-chequea/cifras-william-saab-inchequeables/, providing an example of the information provided by the Public Prosecutor's Office through its Twitter account; Provea, Derecho a la Justicia. Informe 2020. Situación de los Derechos Humanos en Venezuela, 2020, p. 7, available at: https://provea.org/wp-content/uploads/securepdfs/2021/08/15Justicia.pdf (stating that it made a formal request to obtain, among others, the Public Prosecutor's Office annual reports, without having received a response).

[1864] See YouTube video, speech of Chief Prosecutor Tarek William Saab before the National Assembly, 25 February 2021, available at: https://www.youtube.com/watch?v=nd2UPDsBsJ8&t=54s (hereinafter "Public Prosecutor's Office 2020 Oral Update").

sporadically and do not appear to follow any kind of formal schedule but are often a reaction to specific events.

386. The Mission has carried out a review of various public statements made by the Chief Prosecutor, in which he provided selected information about his office's activities:

- On 21 February 2018,[1865] the Chief Prosecutor presented his annual report for 2017 to the National Constituent Assembly. He reported that between August 2017 and February 2018, the Public Prosecutor's Office issued 13 indictments against 28 public officials for alleged human right violations.[1866] The Chief Prosecutor also referred to the Barlovento case investigated by the Mission and included in its 2020 report, stating that the preliminary hearing had taken place after he took office.[1867]
- On 9 August 2019, on the second anniversary of his appointment, the Chief Prosecutor provided an oral update about the work of the Public Prosecutor's Office.[1868] He reported that, in the previous two years, 406 public security officials had been charged with offences, 353 public officials had been arrested, 695 had been indicted and 109 had been convicted, in relation to alleged human rights violations and crimes (including murder, torture, cruel, inhuman or degrading treatment, and illegal deprivation of liberty).[1869]
- In a press conference held on 27 November 2019, the Chief Prosecutor reported that in the previous 27 months, the Public Prosecutor's Office had charged 766 and indicted 505 State security officials, 390 of whom had been arrested for offences in relation to alleged human rights violations. The Chief Prosecutor also reported that 127 officials had been convicted for the crimes of murder, torture, cruel, inhuman or degrading treatment, and unlawful deprivation of liberty.[1870]
- On 7 August 2020, on the third anniversary of his appointment, the Chief Prosecutor again provided an oral update on the work of the Public Prosecutor's Office.[1871] He reported that, in the previous three years, 584 public security officials had been charged with offences, 450 public officials had been arrested, 925 had been indicted, and 140 had been convicted in relation to alleged human rights violations and crimes (including extrajudicial executions, torture, cruel, inhuman or degrading treatment, and illegal deprivation of liberty).[1872]
- On 25 February 2021, the Chief Prosecutor appeared before the National Assembly to present the Public Prosecutor's Office annual report for 2020.[1873] The Chief Prosecutor said that, between August 2017 and the end of 2020, 677 security officials had been charged by the Directorate for the Protection of Human Rights, 1,119 had been indicted, 519 had been arrested and 171 had been convicted in relation to human rights violations.[1874]

387. On 28 September 2020, Venezuela made public a report which in part addressed aspects of the Mission's 2020 report (which is referred to hereinafter as "the Venezuela

[1865] See YouTube video, speech of Chief Prosecutor Tarek William Saab before the National Constituent Assembly, 21 February 2018, available at: https://youtu.be/jNi7HLwO7YA (hereinafter "Public Prosecutor's Office 2017 Oral Update").
[1866] Public Prosecutor's Office 2017 Oral Update.
[1867] Public Prosecutor's Office 2017 Oral Update.
[1868] See YouTube video, press conference of Chief Prosecutor Tarek William Saab, 9 August 2019, available at: https://youtu.be/Vt7u-WlZlHw (hereinafter "Chief Prosecutor's August 2019 press conference").
[1869] August 2019 press conference.
[1870] See YouTube video, statement of Chief Prosecutor Tarek William Saab on the 50th anniversary of the Public Prosecutor's Office, 27 November 2019, available at: https://youtu.be/l5u80m2zfu4 (hereinafter "Chief Prosecutor's November 2019 press conference").
[1871] See YouTube video, press conference of Chief Prosecutor Tarek William Saab, 7 August 2020, available at: https://youtu.be/W_eQc8J_X9Y (hereinafter " August 2020 press conference").
[1872] August 2020 press conference.
[1873] See Public Prosecutor's Office 2020 Oral Update.
[1874] Ibid.

State's 2020 report").[1875] The Venezuela State's 2020 report stated that, from August 2017 until August 2020, 603 public officials from various State security agencies and 35 civilian collaborators had been charged with offences related to human rights violations, 811 officials and 129 civilians (referred to as "collaborators") were indicted, 452 officials and 24 collaborators arrested, and 127 officials and 13 collaborators convicted, involving various different police, military and intelligence bodies, as follows:[1876]

Table 2
**Information provided by the State disaggregated by security force (August 2017-August 2020)**

| *State Security Agency* | *Officials Charged/ Investigated*[1877] | *Officials Indicted* | *Officials Arrested* | *Officials Convicted* |
|---|---|---|---|---|
| PNB | 143 | 154 | 114 | 36 |
| State police | 146 | 237 | 117 | 39 |
| Municipal police | 61 | 143 | 72 | 5 |
| DGCIM | 38 | 2 | 2 | 2 |
| SEBIN | 0 | 1 | 0 | 2 |
| CICPC | 144 | 159 | 67 | 4 |
| Armed forces[1878] | 11 | 20 | 15 | 12 |
| GNB | 59 | 94 | 64 | 26 |
| Public Prosecutor's Office | 1 | 1 | 1 | 0 |
| INTT | 0 | 0 | 0 | 1 |
| Civilians (collaborators) | 35 | 129 | 24 | 13 |
| **TOTAL** | **603** | **811**[1879] | **452** | **127** |
| | **(+35 civilians)** | **(+129 civilians)** | **(+24 civilians)** | **(+13 civilians)** |

388. The Venezuela State's 2020 report disaggregated information by the State agency to which the alleged perpetrator belonged. However, the numbers provided were not disaggregated by year, by the sex or age of the perpetrator, the crimes charged, or the rank of the individuals investigated, charged or indicted.[1880] The Venezuela State's 2020 report also failed to provide information on the type and severity of the penalties imposed on those convicted, and whether the penalties were enforced.[1881] The lack of disaggregated

[1875] TeleSUR.tv.net, "Venezuela entrega a ONU informe "La verdad contra la infamia", 28 September 2021, available at: https://www.telesurtv.net/news/venezuela-entrega-onu-informe-verdad-contra-infamia-20200928-0041.html. See Bolivarian Republic of Venezuela, "La verdad de Venezuela contra la infamia. Datos y testimonios de un país bajo asedio", available at: http://www.minpet.gob.ve/images/iconos/redes_sociales/La_verdad_de_Venezuela_contra_la_infamia.pdf

[1876] Venezuela State's 2020 report, p. 99.

[1877] This was the categorization use by the State, although these are separate stages under the Criminal Procedure Code.

[1878] Army, Navy and Air Force.

[1879] While these were the numbers reported by the State, the Mission notes that is seems counterintuitive that there are more individuals indicated than investigated/charged.

[1880] Venezuela State's 2020 report, pp. 98-101. The report stated that 811 officials were indicted through the filing of 382 indictments in relation to the crimes of murder, torture, cruel treatment, inhuman or degrading treatment, illegal deprivation of liberty, and other crimes. It did not specify the percentage of indictments per each of these crimes. Venezuela State's 2020 report, p. 99. Only with respect to the FAES, the Venezuela State's 2020 report referred to 4,489 investigations conducted from 2017 to 2020, including: 3390 for murder, 884 for breach of domicile, for 438 for cruel treatment, 249 for illegal deprivation of liberty, 207 for threats, and 205 for illegal use of a weapon. Venezuela State's 2020 report, p. 101.

[1881] Venezuela State's 2020 report, pp. 98-101.

information presents a limited picture and makes the numbers difficult to analyse, as described in more detail below.

389. The Venezuela State's 2020 report referred to four cases in which the "swift and effective actions of the Public Prosecutor's Office" led to the apprehension of those guilty of the respective crimes and incidents:

- The death in May 2020 of 47 inmates at Los Llanos Penitentiary Center. According to the Venezuela State's 2020 report, six public officials, including the director of the center, and four inmates, were charged (though the charges were not specified).
- The killing of five civilians in June 2020 by FAES personnel. According to the 2020 Venezuela report five officials were charged with aggravated murder, misuse of weapon and simulation of a punishable act.
- The death of two members of the Guacamaya TV in Zulia on 21 August 2020. According to the 2020 Venezuela report, eight FAES personnel and a former prosecutor were arrested.
- An incident in July 2019 in which three adolescents and two adults suffered injuries in a highway in Táchira. According to the Venezuela State's 2020 report, two officials were arrested and charged with aggravated attempted murder, misuse of weapon and cruel treatment.[1882]

390. The Venezuela State's 2020 report also contained information on specific cases related to the 2017 protests in Venezuela and stated that:

- In the case of Fabián Urbina, who was shot dead at the Altamira overpass system in Caracas, three GNB officials had been indicted, one of whom (the direct perpetrator) was in detention. According to the 2020 Venezuela report, at the time it was written the case against them was in the trial phase.
- In the case of Daniel Alejandro Queliz, who died during the protests of 2017 in Carabobo, two members of the Carabobo state police had been arrested and detained and, according to the 2020 Venezuela report, at the time it was written, the case against them was in the trial phase.
- In the case of Leonardo González Barreto, who died during the protests of 2017 in Carabobo, five members of the Carabobo state police were indicted and detained and, according to the Venezuela State's 2020 report, at the time it was written, the case against them was in the trial phase.
- In the case of the death of Luis José Álvarez, in Táchira in 2017, two members of the PNB had been indicted, detained and were, at the time of writing of the Venezuela State's 2020 report, on trial. The Venezuela State's 2020 report does not provide more information as to the circumstances surrounding the death or the crimes charged.[1883]

391. On 2 October 2020, the Office of the Prosecutor of the International Criminal Court requested information from Venezuela on the status of domestic investigations and proceedings.[1884] The State submitted information to the Office of the Prosecutor on 20

[1882] Venezuela State's 2020 report, pp. 96-97.

[1883] Venezuela State's 2020 report, p. 97.

[1884] Venezuela, "Public redacted version of Request for judicial control submitted to the Pre-Trial Chamber I of the International Criminal Court by the Bolivarian Republic of Venezuela pursuant to Articles 15 and 21.3 of the Statute and Regulation 46.2 of the Regulations of the Court", 25 May 2021 (public redacted version filed on 13 July 2021), para. 3, available at: https://www.icc-cpi.int/RelatedRecords/CR2021_06224.PDF (hereinafter "Request for Judicial Review").

November 2020,[1885] 31 January 2021,[1886] 30 April 2021,[1887] 5 May 2021[1888] and 18 May 2021.[1889]

392. On 25 May 2021, Venezuela filed before Pre-Trial Chamber I of the International Criminal Court, a Request for Judicial Review, annexing the information submitted to the Office of the Prosecutor and providing additional information.[1890] It stated that the information submitted was drawn from the domestic databases of the Public Prosecutor's Office, the Supreme Tribunal of Justice and the Military Justice/Military Courts.[1891] Although the Request for Judicial Review is a public document, the specific information provided in the form of annexes was not made public. As stated above, on 12 August 2021 the Mission sent a letter addressed to the Chief Prosecutor requesting a copy of the reports sent by Venezuela to the International Criminal Court, in order to analyse the information contained therein, but had not received a response by the time of writing (see below).

393. On 1 May 2021, the Chief Prosecutor gave a press conference in which he stated that, in the 3 years and 8 months since he took office, the Public Prosecutor's Office charged 716 and arrested 540 State security officials for alleged human rights violations.[1892] He also announced that 1,064 State officials had been indicted for alleged human rights violations and 153 State officials had been convicted of crimes related to human rights violations.[1893] The Chief Prosecutor repeated these figures on 11 May 2021, during a speech in Anzoátegui state,[1894] and on 27 May 2021 at a press conference.[1895]

394. At the 1 May 2021 press conference, the Chief Prosecutor provided an update on progress in what he called "emblematic cases" that "have captured the attention of the national and the international community".[1896] He referred specifically to the following cases, the first three of which were included as in-depth case studies in the Mission's 2020 report: 1) Fernando Alberto Albán; 2) Rafael Acosta Arévalo; 3) Juan Pablo Pernalete Llovera; 4) Guaira; and 5) the killing of two men -in the Guacamaya TV case.[1897] See below for a discussion of these.

395. On 5 August 2021, the Chief Prosecutor tweeted that proceedings had been initiated against 241 prosecutors and that 31 prosecutors were under investigation. Of those, 137 had been indicted, 9 had been detained and 26 had been convicted.[1898] The Chief Prosecutor, however, did not provide any information on the period covered or on the crimes of which those indicted had been accused.

396. The Mission has prepared the following chart based on the information provided by the Chief Prosecutor over the years and in the Venezuela State's 2020 report, on

[1885] Request for Judicial Review, para. 7.
[1886] Request for Judicial Review., para. 8.
[1887] Request for Judicial Review., para. 9. On 5 May 2021 and on 18 May 2021, Venezuela filed additional reports. Ibid., paras. 10 and 11.
[1888] Request for Judicial Review., para. 10.
[1889] Request for Judicial Review., para. 11.
[1890] Request for Judicial Review, para. 203.
[1891] See Request for Judicial Review, paras. 3-4 and 200-205.
[1892] See YouTube video, press conference of Chief Prosecutor Tarek William Saab, 1 May 2021, available at: https://youtu.be/JO2UG0JO3R8 (hereinafter "1 May 2021 press conference"). See Public Prosecutor's Office, press statement dated 1 May 2021, available at: https://mobile.twitter.com/minpublicove/status/1388522454272913411?lang=en
[1893] 1 May 2021 press conference.
[1894] See Bolivarian Republic of Venezuela press release, "MP ha imputado 716 funcionarios de seguridad del Estado por presuntas vulneraciones a los DDHH", 11 May 2021, available at: http://www.radiomundial.com.ve/article/mp-ha-imputado-716-funcionarios-de-seguridad-del-estado-por-presuntas-vulneraciones-los-ddhh
[1895] YouTube video, press conference of Chief Prosecutor Tarek William Saab, 27 May 2021, available at: https://youtu.be/mufDZcZXk1M.
[1896] See 1 May 2021 press conference.
[1897] See 1 May 2021 press conference.
[1898] See Tweet by the Public Prosecutor's Office, 5 August 2021, available at: https://twitter.com/MinpublicoVE/status/1423302550246264835

investigations and prosecutions of crimes connected to human rights violations. It disaggregates the information based on the number of officials charged, indicted, arrested and convicted, specifying the source of the numbers and the period covered. 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)[1899]
- Between the numbers reported in the 25 February 2021 address to the National Assembly and the 1 May 2021 press conference, given that the 25 February 2021 address (covering August 2017 to December 2020) provided higher numbers of convictions than those reported on 1 May 2021 (covering August 2017 to May 2021), despite that the period covered was shorter.

Table 3
**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** (August 2017-February 2018) | n/a | 28 | n/a | n/a |
| **August 2019 press conference** (August 2017-August 2019) | 406 | 695 | 353 | 109 |
| **November 2019 press conference** (August 2017-November 2019) | 505 | 766 | 390 | 127 |
| **August 2020 press conference** (August 2017-August 2020) | 584 | 925 | 450 | 140 |
| **Venezuela State's 2020 report** (August 2017-August 2020) | 603 (+35 civilians) | 811 (+129 civilians) | 452 (+29 civilians) | 127 (+13 civilians) |

[1899] In the August 2020 press conference, the Chief Prosecutor reported that 925 officials had been indicted, while the Venezuela State's 2020 report said that 811. The August 2020 press conference also reported 584 officials charged, while in the Venezuela State's 2020 report, he cited 603 officials charged. Similarly, in the August 2020 press conference, the Chief Prosecutor said 450 officials had been arrested, although that number in the Venezuela State's 2020 report was 452.

| *Sources of information and period covered* | *Officials charged* | *Officials indicted* | *Officials arrested* | *Officials convicted* |
|---|---|---|---|---|
| **25 February 2021 address to NA** (August 2017- December 2020) | 677 (+39 civilians) | 1,119 | 519 | 171 (+13 civilians) |
| **1 May 2021 press conference** (August 2017- May 2021) | 716 | 1,064 | 540 | 153 |

## 2. The Ombudsperson's Office

397. The Ombudsperson's Office has a role in assisting in providing accountability for human rights violations.[1900] Its website contains general information on activities performed by the various units within the office, as well as official reports.[1901] Similar to the Public Prosecutor's Office, the Ombudsperson's Office is under an obligation to produce an annual report on its work.[1902] Annual reports are publicly available for 2014, 2015, 2016, 2017 and 2020,[1903] but not for 2018 and 2019.

398. According to its 2014 annual report, the Ombudsperson's Office received that year 5,717 complaints for human rights violations by members of the police (1010), the GNB (647), the CICPC (567), the PNB (210), the Public Prosecutor's Office (149), the armed forces (61), among others.[1904] These complaints included 2017 for violations to the right to personal integrity, 1,257 for violations to due process rights, 135 for violations to personal freedom, 66 for violations to the right to justice and 34 for violations to the right to equality of arms.[1905] Of the 5,717 civil rights-related complaints received by the Ombudsperson's Office, 3,200 victims were men and 1,497 were women; in 1,020 of the cases, the gender of the victims was not specified [1906]

399. The 2014 report contained a detailed section describing the scope of the duties of the Ombudsperson's Office in relation to the right to personal integrity (this is, the prohibition against torture and other cruel, inhuman or degrading treatment) and included reference to some actions carried out by the office in its efforts to protect such right.[1907] Similarly, the

[1900] 1999 Constitution, arts. 280, 281. See Ombudsperson's Office, "Contribution to the Human Rights Committee in the context of the Presentation and Defense of the Fourth Periodic Report of the Venezuelan State under Article 40 of the International Covenant on Civil and Political Rights", para. 7, on file with the Mission.

[1901] See http://www.defensoria.gob.ve/ The Mission notes that the section devoted to "complaints" within the website of the Ombudsperson's Office could not be accessed at the time of writing of this report.

[1902] See 1999 Constitution, art. 276; 2004 Organic Law of the Ombudsperson's Office, art. 30; 2001 Organic Law of the Citizen Branch, art. 65.

[1903] Ombudsperson's Office, 2014 Annual Report, available at: http://www.defensoria.gob.ve/images/informes_anuales/IA2014DP.pdf (hereinafter "Ombudsperson's Office 2014 Annual Report"); Ombudsperson's Office, 2015 Annual Report, available at: http://www.defensoria.gob.ve/images/informes_anuales/INFORME_ANUAL_2015.pdf (hereinafter "Ombudsperson's Office 2015 Annual Report"); Ombudsperson's Office, 2016 Annual Report, available at: http://www.defensoria.gob.ve/images/informes_anuales/INFORME_ANUAL_2016_Final.pdf (hereinafter "Ombudsperson's Office 2016 Annual Report"); Ombudsperson's Office, 2017 Annual Report, available at: http://www.defensoria.gob.ve/images/pdfs/Informe_Protestas_Abril_Julio_2017_170707_DEF.pdf (hereinafter "Ombudsperson's Office 2017 Annual Report"); Ombudsperson's Office, 2020 Annual Report, p. 123, available at: http://www.defensoria.gob.ve/images/informes_anuales/Informe-Anual-2020.pdf (hereinafter "Ombudsperson's Office 2020 Annual Report").

[1904] Ombudsperson's Office 2014 Annual Report, pp. 49 and 53.

[1905] Ombudsperson's Office 2014 Annual Report, p. 50.

[1906] Ombudsperson's Office 2014 Annual Report, p. 51.

[1907] Ombudsperson's Office 2014 Annual Report, pp. 94-109.

report contained a detailed section on the right not to be deprived of liberty which outlined, among other things, the actions to be taken by the office when this right is being affected (including through investigation and filing of legal recourses).[1908] The report did not provide, however, specific information on the status of the complaints filed, nor the specific actions taken by the Ombudsperson's Office in relation to these complaints.

400. The 2015 annual report contained a detailed section describing the scope of duties of the Ombudsperson's Office in relation to the right to personal integrity.[1909] The Office reported having received 625 complaints for cruel, inhuman or degrading treatment, 99 for torture, 1,436 for abuse of authority and 27 for death threats.[1910] It noted that, of these complaints, 49 per cent involved male, 37 per cent involved female and 13 per cent involved a non-specified gender of alleged victims.[1911] The security organs mostly involved were state police (460 complaints), GNB (423 complaints) and CICPC (383 complaints).[1912] Similarly, the report contained a section on violations to the right of prohibition to deprivation of liberty which indicated that the Ombudsperson's Office received 223 complaints for arbitrary detentions, 22 complaints for enforced disappearances and 21 complaints for incommunicado detentions, 74.4 per cent concerning male and 25.6 per cent concerning female alleged victims.[1913] The organs mostly involved in these violations were state police (52 complaints), CICPC (51 complaints), SEBIN (28) and others (91 complaints).[1914]

401. According to the 2016 annual report of the Ombudsperson's Office, from January to September 2016, it received 8,801 civil rights-related complaints, involving violations by members of the police (1,396), the GNB (820), the CICPC (1,017), the PNB (299), the Public Prosecutor's Office (189), the armed forces (171), courts (654), among others.[1915] Of these complaints, 2,534 related to violations to the right to personal integrity, 2,266 for due process violations, 331 for violations to the right of prohibition to deprivation of liberty, 107 for violations to the right to equality of arms and 101 for violations to the right to justice.[1916] Of the 8,801 civil rights-related complaints received by the Ombudsperson's Office, 5,205 victims were men (59.14 per cent) and 2,550 were women (28.97 per cent); in 1,046 of the cases (11.89 per cent), the gender of the victims was not specified.[1917]

402. The 2016 report contained a section on actions carried out by the office in relation to individuals deprived of their liberty, including proposed penitentiary system reforms, policies to improve conditions for inmates, and "Plan Cayapa Judicial" aimed at identifying the reasons for procedural delays affecting those deprived of their liberty.[1918] The Ombudsperson's Office also reported that it had carried out a series of activities to support, advise and intervene in legal matters related to the protection of human rights in Venezuela. This included preparing submissions to the Constitutional Chamber of the Supreme Tribunal of Justice, drafting legal opinions on various topics and filing a *habeas corpus* request for violations to the right of defence and other due process rights.[1919]

403. The 2017 annual report of the Ombudsperson's Office focused on the demonstrations and related political unrest in Venezuela from April to June 2017 and provided detailed information about those events.[1920] The report concluded that, in the context of these demonstrations, there were 16 cases of homicide, involving 46 public security officials (including members of the GNB and the police).[1921] The report specifically referred to the

1908 Ombudsperson's Office 2014 Annual Report, pp. 109-117, 380-388.
1909 Ombudsperson's Office 2015 Annual Report, p. 134-147.
1910 Ombudsperson's Office 2015 Annual Report, p. 102.
1911 Ombudsperson's Office 2015 Annual Report, p. 103.
1912 Ombudsperson's Office 2015 Annual Report, p. 105.
1913 Ombudsperson's Office 2015 Annual Report, p. 106.
1914 Ombudsperson's Office 2015 Annual Report, p. 107.
1915 Ombudsperson's Office 2016 Annual Report, pp. 152, 222-223, 236.
1916 Ombudsperson's Office 2016 Annual Report, pp. 155, 158, 160-161, 232.
1917 Ombudsperson's Office 2016 Annual Report, p. 234.
1918 Ombudsperson's Office 2016 Annual Report, pp. 133-138.
1919 Ombudsperson's Office 2016 Annual Report, p. 50.
1920 Ombudsperson's Office 2017 Annual Report.
1921 Ombudsperson's Office 2017 Annual Report, pp. 69-73.

case of Juan Pablo Pernalete and made a demand that the justice system carry out an objective, independent and impartial preliminary investigation to determine those responsible for his death, in a timely manner.[1922]

404. The 2017 annual report included a chart with number of open cases within the Ombudsperson's Office, based on complaints received for human rights violations in the context of the demonstrations. These included 358 violations of civil rights, 134 of which related to the right to personal integrity, 11 to due process rights, and 5 to right to freedom.[1923] It does not include information on the status of the cases or the actions being taken by the office to address these complaints. The report also fails to disaggregate data by the victims' sex.

405. In its 2020 annual report, the Ombudsperson's Office claimed to have carried out 37,452 human rights defence-related actions, including submission of filings, participation in hearings and working groups, and provision of comments to proposed laws.[1924] The report further stated that the Ombudsperson's Office followed up twice with the Constitutional Chamber of the Supreme Tribunal of Justice, seven times with the courts of the criminal jurisdictional circuit of Caracas and 14 times with the Public Prosecutor's Office in Caracas, in relation to complaints it had received about due process violations and procedural delays, among others.[1925] The report only provided specific information as to five cases involving due process violations in which the Ombudsperson's Office was involved.[1926] It does not contain information on the complaints received by the office, including on the total number of complaints, the specific human-rights violations concerning those complaints, or the sex of the victims.

406. The information provided by the Ombudsperson's Office 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.[1927] In 2016, for example, the Ombudsperson's Office reported receiving 8,801 civil rights-related complaints (including due process violations) and only identified one specific legal recourse filed, a single *habeas corpus* request for violations to the right of defence and other due process rights.

## C. Investigations in cases documented by the Mission

407. As noted above, in the 1 May 2021 press conference, Chief Prosecutor Tarek William Saab provided an update on the number of arrests, charges, indictments and convictions of State officials in connection with allegations of human rights violations in the previous three years and eight months, since he became the Chief Prosecutor.[1928] He also spoke about a presentation made by the Government of Venezuela before the Office of the Prosecutor of the International Criminal Court.

408. The Preliminary Examination that the Office of the Prosecutor of the International Criminal Court was conducting at the time of writing focussed on a particular sub-set of allegations within a wider range of the crimes alleged to the Office of the Prosecutor: the

[1922] Ombudsperson's Office 2017 Annual Report, p. 70.
[1923] Ombudsperson's Office 2017 Annual Report, pp. 112-113.
[1924] Ombudsperson's Office 2020 Annual Report, p. 123.
[1925] Ombudsperson's Office 2020 Annual Report, p. 126.
[1926] Ombudsperson's Office 2020 Annual Report, pp. 128 and 129 (see case 8, relating to a female victim detained In Zulia; case 13, relating to the detention of a lawyer in Lara; case 15, relating to the arbitrary detention and cruel treatment of a family by CICPC officials in Caracas; case 19, relating to a breach to the right to defence in Mérida; and case 21, relating to procedural delays in a case in Carabobo).
[1927] Ombudsperson's Office 2020 Annual Report, pp. 128 and 129 The Organic Law of the Ombudsperson's Office echoes this provision. Organic Law of the Ombudsperson's Office, art. 2.
[1928] See 1 May 2021 press conference; see above for a reference to the numbers reported.

treatment of persons in detention since at least April 2017.[1929] In December 2020, the Office of the Prosecutor concluded that the information available provided a reasonable basis to believe that several crimes against humanity had been committed in Venezuela since at least April 2017.[1930] In June 2021 the Office of the Prosecutor indicated that the cases that would likely arise from an investigation would be admissible in terms of "inaction", given the limited number of relevant domestic proceedings; their highly limited scope; and the lack of concrete, progressive steps in those cases to ascertain the criminal responsibility of suspected persons.[1931] The Prosecutor indicated that the authorities are unwilling genuinely to investigate and/or prosecute such cases, as domestic proceedings had been undertaken for the purpose of shielding persons from criminal responsibility and/or have not been conducted independently or impartially. [1932]

409. The Mission was unable to assess the information presented by the Government of Venezuela to the Office of the Prosecutor of the International Criminal Court, despite requesting access to it.[1933] It has been made public that the information includes the five specific case-examples presented in the 1 May 2021 press conference [1934] and the cases discussed in the Mission's 2020 report.[1935] Of the examples referred to in the 1 May 2021 press conference, three cases were documented in detail in the Mission's 2020 Report. The Mission has conducted additional inquiries into these cases, reflected below.[1936] It also notes that only the Fernando Alberto Albán and Rafael Acosta Arévalo cases would fall under the aforementioned sub-set of allegations which are being examined by the International Criminal Court.

410. The Mission reviewed the status of domestic investigations and proceedings concerning all 19 cases included in Chapter III of its 2020 report involving targeted

[1929] ICC-OTP, Report on Preliminary Examination Activities 2020, 14 December 2020, paras. 202-203. Available at: https://www.icc-cpi.int/itemsDocuments/2020-PE/2020-pe-report-eng.pdf. See also Prosecution's observations following the Pre-Trial Chamber's 14 June 2021 Decision, 15 June 2021 (reclassified as public on 10 August 2021), ICC-02/18-10, para. 4. Available at: https://www.icc-cpi.int/CourtRecords/CR2021_05505.PDF

[1930] The Office of the Prosecutor stated that "specifically, and without prejudice to other crimes that the Office might determine at a later stage the Office has concluded that the information available at this stage provides a reasonable basis to believe that since at least April 2017, civilian authorities, members of the armed forces and pro-government individuals have committed the crimes against humanity of imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law pursuant to article 7(1)(e); torture pursuant to article 7(1)(f); rape and/or other forms of sexual violence of comparable gravity pursuant to article 7(1)(g); and persecution against any identifiable group or collectivity on political grounds pursuant to article 7(1)(h) of the Rome Statute". ICC-OTP, Report on Preliminary Examination Activities 2020, 14 December 2020, para. 204. Available, available at: https://www.icc-cpi.int/itemsDocuments/2020-PE/2020-pe-report-eng.pdf

[1931] See Prosecution's observations following the Pre-Trial Chamber's 14 June 2021 Decision, 15 June 2021 (reclassified as public on 10 August 2021), ICC-02/18-10, para. 8. Available at: https://www.icc-cpi.int/CourtRecords/CR2021_05505.PDF; see also ICC-OTP 2013 Policy Paper on Preliminary Examinations, paras. 47-55.

[1932] See Prosecution's observations following the Pre-Trial Chamber's 14 June 2021 Decision, 15 June 2021 (reclassified as public on 10 August 2021), ICC-02/18-10, para. 8. Available at: https://www.icc-cpi.int/CourtRecords/CR2021_05505.PDF; see also ICC-OTP 2013 Policy Paper on Preliminary Examinations, paras. 47-55.

[1933] The relevant information was contained in various reports filed by the Government of Venezuela, see "Public redacted version of Request for judicial control submitted to the Pre-Trial Chamber I of the International Criminal Court by the Bolivarian Republic of Venezuela pursuant to Articles 15 and 21.3 of the Statute and Regulation 46.2 of the Regulations of the Court", 25 May 2021 (public redacted version filed on 13 July 2021), paras. 3, 7-11 available at: https://www.icc-cpi.int/RelatedRecords/CR2021_06224.PDF (hereinafter "Request for Judicial Review"). See supra, para. 366.

[1934] See 1 May 2021 press conference.

[1935] Request for Judicial Review, paras. 3-4 and 200-205, see in particular para. 201(e).

[1936] A/HRC/45/CRP.11, Case Fernando Albán, paras. 631-671. Case Rafael Acosta Arévalo, paras 900-926. Case Juan Pablo Pernalete, paras. 1764-1781.

repression against real or perceived opponents of the Government.[1937] Other than the cases mentioned in the Chief Prosecutor's 1 May 2021 press conference, the Mission was unable to obtain information about tangible, concrete and progressive investigative steps undertaken. There is no information suggesting the existence of any such procedural steps in the public domain.

411. The Mission contacted persons in connection with all 19 cases, including victims, families and lawyers.[1938] In the cases other than those referenced below, save for one exception,[1939] they consistently indicated that they had not been called to provide a witness statement, contacted by authorities nor notified of any procedural steps taken.[1940] Lawyers told the Mission that the taking of statements from victims and witnesses, usually including victims' family members, should be one of the first early steps when investigating allegations of violations.[1941] At the time of writing, Venezuela had not responded to the Mission's requests for further information about the cases it has documented.

### 1. The Fernando Albán case

412. Fernando Albán was an opposition politician[1942] detained on 5 October 2018 by a SEBIN member at Simón Bolivar Airport upon return from a visit to the United States of America.[1943] While held at the SEBIN's Plaza Venezuela awaiting his initial appearance, scheduled 8 October 2018 before the First Terrorism Control Court, he fell to his death through a window from the tenth floor of the building.[1944] Immediately following his death,

[1937] See A/HRC/45/CRP.11, Case 1: Leopoldo López; Case 2: Antonio Ledezma; Case 3: Gliber Caro; Case 4: Steyci Escalona; Case 5: Detention of Three Individuals – "Operation Tun Tun"; Case 6: Víctor Navarro, C2EE09 and eight others; Case 7: Geraldine Chacón and Gregory Hinds (Community Ambassadors Foundation); Case 8: Angel Zerpa; Case 9: Juan Carlos Requesens; Case 10: Fernando Alberto Albán; Case 11: Roberto Marrero; Case 12: Detentions of private citizens for statements on social media perceived as critical of the Government; Case 13: Captain Luis de la Sotta and others; Case 14: Major Isaias Lenin Falcón Juárez; Case 15: Operation Constitution: illustrated by cases of Colonel Oswaldo Valentín García Palomo, Colonel José Rommel Acevedo Montañez, and Antonio José Iabichuela; Case 16: Cotiza uprising, Sargent Luis Alexander Bandres Figueroa; Case 17: Captain Rafael Acosta Arévalo; Case 18: Ariana Granadillo and Family; and Case 19: Karen Palacios (2019).

[1938] Interview EEIV001, 9 August 2021; Interview EEIV002, 10 August 2021; Interview EEIV004, 10 August 2021; Interview EEIV005, 10 August 2021; Interview EEIV006, 13 August 2021; Interview EEIV007, 16 August 2021; Interview EEIV008, 16 August 2021; Interview EEIV009, 16 August 2021; Interview EEIV010, 17 August 2021; Interview EEIV011, 17 August 2021; Interview EEIV012, 18 August 2021; Interview EEIV013, 27 August 2021; Interview EEIV014, 27 August 2021; Interview EEIV015, 28 August 2021; Interview EEIV016, 28 August 2021; Interview EEIV017, 28 August 2021; Interview EEIV018, 27 August 2021; Interview EEIV019, 30 August 2021.

[1939] Interview EEIV019, 30 August 2021. In August 2020, over three years after the complaint was filed, the victim was called to provide a statement and evidence, and to undergo a medical examination. Since then, no other procedural developments have taken place with regard to this particular case.

[1940] Interview EEIV001, 9 August 2021; Interview EEIV002, 10 August 2021; Interview EEIV004, 10 August 2021; Interview EEIV005, 10 August 2021; Interview EEIV006, 13 August 2021; Interview EEIV007, 16 August 2021; Interview EEIV013, 27 August 2021; Interview EEIV014, 27 August 2021; Interview EEIV015, 28 August 2021; Interview EEIV016, 28 August 2021; Interview EEIV017, 28 August 2021; Interview EEIV018, 27 August 2021.

[1941] Interview EEIV006, 13 August 2021. Interview EEIV001, 9 August 2021; Interview EEIV007, 16 August 2021.

[1942] As noted in the Mission's report of September 2020, Case 10: Fernando Albán. Mr. Albán "was a council representative for Libertador Municipality of Capital District, elected on 8 December 2013. He was also a Primero Justicia party board member and participated in the protests of 2014, 2017 and 2019 as coordinator of the 'PJ Gremial Nacional' organisation. He campaigned for opposition candidates for the National Assembly during the December 2015 election". See A/HRC/45/CRP.11, para. 635.

[1943] A/HRC/45/CRP.11, Case 10: Fernando Albán, paras. 635-638.

[1944] A/HRC/45/CRP.11, para. 642.

both the Chief Prosecutor and the Minister of the Interior made public announcements that the cause of death was suicide.[1945]

413. On 8 October 2018, the Public Prosecutor's Office opened an investigation into Mr. Albán's death. On 4 January 2019, the Fifty-Ninth Provisional Prosecutor charged Miguel David Do Santos Rodríguez and Keiberth José Cibelli Moreno, two SEBIN members, with breach of custodial obligations.[1946] On 2 September 2019, the prosecution presented an indictment against them, for breach of custodial obligations.[1947]

414. Mr. Albán's lawyers were not allowed to participate in the proceedings against SEBIN members.[1948] In December 2018, the legal team filed a complaint before the Public Prosecutor's Office alleging unlawful deprivation of liberty; enforced disappearance; concealment of enforced disappearance; torture, cruel, inhuman, and degrading treatment; aggravated homicide (extrajudicial execution); concealment of all the above-mentioned crimes; and conspiracy to commit a crime.[1949] Between December 2018 and July 2019, Mr. Albán's lawyers made over 30 unanswered official filings before different authorities, requesting access to the investigation file concerning Mr. Albán's death, as well as information about the status of the investigation.[1950]

415. The Mission found in its 2020 report that there were reasonable grounds to believe that Mr. Albán had been a victim of arbitrary arrest and detention. The Mission also indicated strong reservations that the death be qualified as suicide and found reasonable grounds to believe that SEBIN officials were involved in Mr. Albán's death, amounting to an arbitrary deprivation of life.[1951]

416. On 8 October 2020, the Twenty-Ninth Control Court of Caracas ruled that the accusation be considered null and void, based on due process violations and lack of compliance with articles 262[1952] and 263[1953] of the Criminal Procedure Code. As a result, proceedings returned to the investigation phase.[1954] At the time of writing, Mr. Albán's family's legal representatives had not been provided access to that judgment.[1955] On 12 January 2021, the Twenty-Fourth Control Judge scheduled the preliminary hearing for 29 January 2021,[1956] but the hearing was deferred without explanation. At the time of writing, the victims' lawyers had not been notified about other procedural developments.[1957]

417. Chief Prosecutor Tarek William Saab confirmed in his 1 May 2021 press conference that the SEBIN members involved in Mr. Albán's death had initially been charged with

1945 A/HRC/45/CRP.1, paras. 644-646.
1946 A/HRC/45/CRP.1, para. 654.
1947 A/HRC/45/CRP.1, para. 654
1948 A/HRC/45/CRP.1, para. 665.
1949 A/HRC/45/CRP.1, para. 657.
1950 A/HRC/45/CRP.1, para. 658.
1951 A/HRC/45/CRP.1, para. 670.
1952 2012 Criminal Procedure Code, art. 262. Objective of the Preparatory Phase. This phase has as purpose the preparation of the public and oral trial, though the investigation of the truth and the gathering of all evidence that would support the prosecution's accusation and the defence of the defendant.
1953 2012 Criminal Procedure Code, art. 263. Scope of the Preparatory Phase. The Office of the Prosecutor will record, during the course of the investigation, not only the facts and circumstances that support the defendant's liability but also those supporting his or her innocence. With respect to the latter, it is under the obligation to provide defendant the information that would benefit him or her.
1954 Supreme Tribunal of Justice, Tribunal de Caracas anuló acto conclusivo a dos ciudadanos por muerte de Fernando Albán, 8 October 2020, available at: http://www.tsj.gob.ve/-/tribunal-de-caracas-anulo-acto-conclusivo-a-dos-ciudadanos-por-muerte-de-fernando-alban. See also, El Pitazo, Tribunal anula sentencia contra funcionarios acusados por el caso Fernando Albán, 8 October 2019, available at: https://efectococuyo.com/politica/tribunal-anula-sentencia-contra-funcionarios-acusados-por-el-caso-fernando-alban/
1955 Interview EEIV011, 17 August 2021.
1956 Notification Report, on file with the Mission.
1957 Interview EEIV011, 17 August 2021.

breach of custodial obligations. He then announced that his office had requested the Twenty-Ninth First Instance Criminal Court of Caracas to rule various procedural acts null and void. According to the Chief Prosecutor, the Control Court granted the request, returning the case to the investigation phase.[1958] He reported that the Public Prosecutor's Office also requested arrest warrants for the two SEBIN officials originally charged with custodial breaches, and that additional charges, namely negligent manslaughter (*homicidio imprudente)*, conspiracy (*agavillamiento*) and facilitating the escape of a detainee, were added against the two men. The Chief Prosecutor added that the request had been granted.[1959]

418. At the time of writing, Mr. Albán's legal team was still unable to access the case file.[1960] Two members of the team left Venezuela following claims of intimidation and persecution.[1961] The team told the Mission that the prosecution's hypothesis is that Mr. Albán escaped his guards and that, during the attempted escape, his death occurred, albeit without intention. The legal team pointed out that charging the two officials with a crime involving negligence effectively shields individuals higher up in the chain of command from investigations.

419. The legal team also indicated the authorities' failure to investigate other potential crimes, including unlawful deprivation of liberty (arbitrary detention), enforced disappearance, torture and extrajudicial execution. Moreover, it indicated that other officials within the chain of command did not appear to be under investigation.[1962] According to the legal team, despite multiple requests for a forensic autopsy in compliance with the requirements of the Minnesota and Istanbul Protocols (to determine whether Mr. Albán was tortured prior to the fall) and in the presence of experts appointed by Mr. Albán's family, this procedural measure had not been ordered.[1963]

420. The Mission contacted Venezuela requesting an update in this case on 18 June 2020 and on 12 August 2021. At the time of writing, it had not received a response.

421. The Mission notes that, according to the information provided by the Chief Prosecutor, the investigations that are being conducted in Venezuela with respect to the crimes allegedly committed against Mr. Albán do not include the circumstances of his arbitrary arrest and detention, which the Mission found was established on reasonable grounds to believe in its 2020 report.[1964] The Mission also notes the introduction of new charges but has reservations about the charges chosen and about the rationale behind the choice. The Venezuelan Criminal Code foresees a penalty of six months to five years' imprisonment for anyone who "causes the death of a person acting recklessly or negligently, or with lack of skills in his profession, art or industry, or without observance of regulations, orders, or instructions".[1965]

---

1958 See 1 May 2021 press conference; Supreme Tribunal of Justice, Tribunal de Caracas anuló acto conclusivo a dos ciudadanos por muerte de Fernando Albán, 8 October 2020, available at: http://www.tsj.gob.ve/-/tribunal-de-caracas-anulo-acto-conclusivo-a-dos-ciudadanos-por-muerte-de-fernando-alban. See also, El Pitazo, Tribunal anula sentencia contra funcionarios acusados por el caso Fernando Albán, 8 October 2019, available at: https://efectococuyo.com/politica/tribunal-anula-sentencia-contra-funcionarios-acusados-por-el-caso-fernando-alban/

1959 See 1 May 2021 press conference; see also Interview EEIV011, 17 August 2021.

1960 Interview EEIV011, 17 August 2021.

1961 A/HRC/45/CRP.11, Case 10: Fernando Albán, para. 667, which indicates that on 7 March 2019, Mr. Albán's lawyer requested precautionary measures from the Inter-American Commission on Human Rights for himself, other members of the legal team and his family members, after feeling intimidated by the close attention of DGCIM officials, following his involvement in the case. He sought asylum in Colombia.

1962 A/HRC/45/CRP.11, Case 10: Fernando Albán. The legal team referred to two complaints filed on behalf of family members which, to their knowledge, have not even been assigned registration numbers: (i) a complaint filed on behalf of the family on 4 December 2018 with the Public Prosecutor's Office; and (ii) a complaint, filed with the Ombudsperson's Office on 6 February 2019.

1963 Interview EEIV011, 17 August 2021. According to A/HRC/45/CRP.11, para. 664, Dr. Ozkalipci indicated upon review of photographs that the autopsy was far behind international standards.

1964 A/HRC/45/CRP.11, para. 669.

1965 Criminal Code, art. 409.

422. The theory of the Public Prosecutor's Office appears to be that Mr. Albán died as a result of an accident while the two SEBIN officials were helping him in, or not taking measures to prevent, an escape attempt. According to the Mission's finding in September 2020, there were reasonable grounds to believe that SEBIN officials had arbitrarily deprived Mr. Albán of his life.[1966] The prosecution's theory forecloses an investigation and prosecution of the officials who participated in the death of Mr. Albán with regard to an intentional deprivation of life. Furthermore, the Mission notes that, as with the initial 4 January 2019 charges, the charges in place at the time of writing are brought against two lower-level perpetrators, the two officials that had been guarding Mr. Albán at the relevant time. Mr. Albán was in the custody of the Coordination of Special Operations, dependent on the Counter-Intelligence Directorate of SEBIN when he died.[1967]

423. The Mission acknowledges that domestic proceedings were ongoing with respect to Mr. Albán's death at the time of writing, but considers the scope of such proceedings to be highly limited. Furthermore, no explanation has been provided for the limited scope of charges initially pleaded, namely breach of custodial duties, which were eventually rejected by the institutions that had initially proposed and accepted them.

### 2. The Rafael Acosta Arévalo Case

424. Former navy captain Rafael Acosta Arévalo was discharged from the FANB in 2006. On 21 June 2019, his wife, Waleska Pérez, lost contact with him when he had been heading to a meeting in Guatire, Miranda state.[1968] His family did not know his whereabouts until 28 June 2019, when he appeared before a military court under arrest.[1969]

425. On the morning of 28 June 2019, DGCIM members brought Captain Acosta Arévalo to a military hospital where the doctor certified that he had trauma to the thorax, nose, finger and ankle, moderate dehydration, and a skin infection. During the evening of 28 June 2019, DGCIM members brought Captain Acosta Arévalo in a wheelchair to the military tribunal for his initial appearance.[1970] Prior to the hearing, Captain Acosta Arévalo's lawyer had a brief interaction with his client, despite the presence of DGGIM members, who refused them to have a private conversation. According to his lawyer, Captain Acosta Arévalo requested help, was unable to articulate most basic words and move his hands or legs. He was also bruised and bleeding and his eyes were wide. Captain Acosta Arévalo's lawyer asked him if he had been tortured and he nodded.[1971]

426. The Mission received new and credible information that Captain Acosta Arévalo either lost consciousness,[1972] or died in the courtroom.[1973] The Mission has spoken to two additional eyewitnesses who reported that a person with some medical training in the court at the time had stated loudly that Captain Acosta Arévalo had died, after losing consciousness, stopped breathing and not presenting a pulse.[1974] No first aid was provided on site. DGCIM members carried Captain Arévalo by the arms and legs out of the tribunal[1975] in compliance with the Third Military Control Judge's order to transfer him to a military hospital.[1976]

---

1966 A/HRC/45/CRP.11, para. 670.

1967 A/HRC/45/CRP.11, para. 761. The chain of command has been spelled out by the Mission. A/HRC/45/CRP.11, paras. 1978-1991.

1968 A/HRC/45/CRP.11, Case 17: Captain Rafael Acosta Arévalo, para. 900. The following day, she published a video on social media expressing concerns.

1969 A/HRC/45/CRP.11, Case 17: Captain Rafael Acosta Arévalo, para. 900.

1970 A/HRC/45/CRP.11, Case 17: Captain Rafael Acosta Arévalo, para. 908.

1971 A/HRC/45/CRP.11, Case 17: Captain Rafael Acosta Arévalo, paras. 906-908.

1972 Supreme Tribunal of Justice, Criminal Appellate Chamber, Judgment No. 2020-0866, 6 October 2020, available at: http://historico.tsj.gob.ve/decisiones/scp/octubre/310137-85-91020-2020-A20-86.HTML

1973 Interview DDIV050, 17 June 2021; Interview AAIV041, 10 May 2021.

1974 Interview DDIV050, 17 June 2021; Interview AAIV041, 10 May 2021.

1975 Interview DDIV050, 17 June 2021.

1976 A/HRC/45/CRP.11, Case 17: Captain Rafael Acosta Arévalo, para. 909.

427. DGCIM members drove Captain Acosta Arévalo to the hospital, which lasted around five minutes. Captain Acosta Arévalo reached the hospital showing no signs of life.[1977] Pursuant to a SENAMECF Forensic report, dated 28 June 2019, he presented 38 injuries, a broken nasal septum, abrasions on the shoulder, elbows and knees, and bruises on various parts of his body, including thigh, buttocks and back. Captain Acosta Arévalo's body also showed a fracture in one foot and signs of burns on his foot and on his wrist.

428. Official records of the proceeding reveal that Captain Acosta Arévalo's co-detainees were also brought to court with clear signs of torture at their initial appearance before the Third Military Control Judge later that night. One of the co-detainees' lawyers indicated that they had been subject to enforced disappearances during the period following their arrest up until the hearing, and had been tortured, including through sexual violence.[1978] The co-defendants chose not to make statements at their initial appearance, but did speak at their preliminary hearing about the disappearance, torture and sexual violence perpetrated against them during their period of disappearance prior to 28 June 2019.[1979]

429. On 30 June 2019, the Public Prosecutor's Office charged two low-ranking DGCIM members– Lieutenant Ascanio Antonio Tarascio Mejía and Second Sergeant Estiben José Zárate Soto, 23 and 22 years old respectively – with the murder of Captain Acosta Arévalo.[1980] They were charged with involuntary homicide (*homicidio preterintencional*).[1981] The Public Prosecutor's Office did not carry out investigations into allegations of torture.[1982] On 1 July 2019, the DGCIM members' preliminary hearing took place resulting in their detention at DGCIM Boleíta.[1983] Captain Acosta Arévalo's legal representatives were not notified about the hearing, so could not make representations.[1984] On 24 September 2019, the court issued its judgment, finding the two DGCIM officials, who admitted the facts, guilty of involuntary homicide and sentencing them each to six years and eight months' imprisonment.[1985]

430. The Mission found in its September 2020 report, that there were reasonable grounds to believe that arbitrary arrest and detention and short-term enforced disappearance had been committed against Captain Acosta Arévalo.[1986] The Mission also found reasonable grounds to believe that torture and other cruel, inhuman and degrading treatment was committed against Captain Acosta Arévalo to the extent that it resulted in his death[1987] and indicated that responsibilities may attach beyond the direct perpetrators of the crimes.[1988]

431. In October 2020, the Supreme Tribunal of Justice vacated the judgment against the two alleged perpetrators.[1989] It questioned the indictment's lack of clarity and lack of reasoning concerning the supporting evidence and the applicable law.[1990] It held that the legal representatives of the family members of the victim were not properly notified about the trial hearing, and as a result, they were unable to exercise their right to join the indictment or present a separate accusation.[1991] The Supreme Tribunal of Justice remanded the case to the

1977 A/HRC/45/CRP.11, Case 17: Captain Rafael Acosta Arévalo, para. 909
1978 Initial Appearance Record, 28 June 2019.
1979 Preliminary Hearing Record, 31 October 2019.
1980 A/HRC/45/CRP.11, Case 17: Captain Rafael Acosta Arévalo, para. 917.
1981 A/HRC/45/CRP.11, Case 17: Captain Rafael Acosta Arévalo, para. 918.
1982 A/HRC/45/CRP.11, Case 17: Captain Rafael Acosta Arévalo, para. 919.
1983 A/HRC/45/CRP.11, Case 17: Captain Rafael Acosta Arévalo, para. 920; Supreme Tribunal of Justice, Criminal Apellate Chamber, Judgment No. 2020-0866, October 2020.
1984 A/HRC/45/CRP.11, Case Acosta Arévalo, para. 921.
1985 A/HRC/45/CRP.11, Case Acosta Arévalo, para. 923; Supreme Tribunal of Justice, Criminal Appellate Chamber, Judgment No. 2020-0866, October 2020.
1986 A/HRC/45/CRP.11, Case Acosta Arévalo, para. 925.
1987 A/HRC/45/CRP.11, Case Acosta Arévalo, para. 925.
1988 A/HRC/45/CRP.11, Case Acosta Arévalo, para. 926.
1989 Supreme Tribunal of Justice, Criminal Appellate Chamber, Judgment No. 2020-0866, October 2020.
1990 Supreme Tribunal of Justice, Criminal Appellate Chamber, Judgment No. 2020-0866, October 2020.
1991 Supreme Tribunal of Justice, Criminal Appellate Chamber, Judgment No. 2020-0866, October 2020.

Public Prosecutor's Office, directing the Chief Prosecutor to designate a new prosecutor in order to prepare a new indictment.[1992]

432. On 13 November 2020, the new indictment which included the more serious crimes of murder and torture, was presented by the Public Prosecutor's Office.[1993] However, as the Mission noted in its 10 March 2021 Oral Update to the Human Rights Council, the State continued to limit prosecution to low-ranking officials.[1994]

433. In his 1 May 2021 press conference, Chief Prosecutor Tarek William Saab stated that in October 2020, the Supreme Tribunal of Justice ordered a new investigation into the circumstances of Acosta Arévalo's death. The Chief Prosecutor said that on 22 October 2020, a new preliminary hearing had begun, in which the two officials involved were charged with intentional murder aggravated by torture and treachery, and on 13 November 2020, the Public Prosecutor's Office filed the indictment.[1995] On 10 June 2021, the Control Judge ordered that the case continue to trial for the crimes of aggravated homicide and torture.[1996]

434. The Mission contacted Venezuela requesting a status update in this case on 7 August 2020. At the time of writing, it had not received a response.

435. As noted above, victims have not been able to participate meaningfully in the proceedings. They were unable to participate at crucial stages, including the trial hearings, resulting in the Supreme Tribunal of Justice's decision that the indictment was null and void.[1997] Since then, they continue to request proper access to the case file including the autopsy report, to no avail.[1998]

436. The Mission notes that, at the time of writing, the investigations underway in Venezuela into the crimes allegedly committed against Mr. Acosta Arévalo did not include the circumstances of his arbitrary arrest and detention and short-term enforced disappearance.[1999] The Mission observes that the new charges in the indictment include intentional aggravated murder and torture.

437. In addition to the direct perpetrators, other persons may bear responsibility under the various modes of liability set out in Chapter VII of Venezuela's Criminal Code. In its 2020 report, the Mission set out that the Special Directorate of Penal and Criminalistic Investigations is the main unit responsible for the violations and crimes committed against the military personnel and that members of the Special Affairs unit were identified as direct perpetrators of torture.[2000] The Mission specified in its 2020 report that authorities in the Executive Power, on reasonable grounds to believe, exercised effective control over DGCIM, had knowledge of violations and failed to take necessary measures to prevent these acts from occurring, or to repress them.[2001]

438. Similarly, high-level authorities within DGCIM were found to have had knowledge of, and contributed to the commission of the relevant acts, including the Director General, the Deputy Director General, as well as the Director of the Special Directorate of Penal and Criminalistic Investigations and the Head of the Special Affairs Unit. These high-level DGCIM members, having effective command and control, have been found on reasonable grounds to believe to have failed to take measures to prevent violations or to repress them.[2002] At the time of writing, investigations did not appear to connect the crimes allegedly

1992 Supreme Tribunal of Justice, Criminal Appellate Chamber, Judgment No. 2020-0866, October 2020.
1993 Statement by Marta Valiñas, Chairperson of the Independent International Mission on the Bolivarian Republic of Venezuela, at the 46th session of the Human Rights Council, 10 March 2021.
1994 Statement by Marta Valiñas, Chairperson of the Independent International Mission on the Bolivarian Republic of Venezuela, at the 46th session of the Human Rights Council, 10 March 2021.
1995 1 May 2021 press conference.
1996 Legal representative of the family shared this information the day of the decision. See: https://twitter.com/medinaroaalonso/status/1403096596150112264
1997 Information shared by the Albán family's legal representative, see previous footnote.
1998 Interview EEIV012, 87 August 2021.
1999 A/HRC/45/CRP.11, Case 17: Captain Rafael Acosta Arévalo, para. 925.
2000 A/HRC/45/CRP.11, para. 1997.
2001 A/HRC/45/CRP.11, para. 2005.
2002 A/HRC/45/CRP.11, para. 2006.

committed against Captain Acosta Arévalo with the torture allegedly suffered by his co-detainees.

439. Based on the information available, the Mission considers that, although there were domestic proceedings ongoing with respect to Captain Acosta Arévalo's death, the scope of such proceedings was highly limited. These proceedings fail to focus on those most responsible. They seemingly failed to take into account allegations recorded in judicial documents indicating that Captain Acosta Arévalo's co-defendants also suffered enforced disappearances, torture and sexual violence.

### 3. The Juan Pablo Pernalete case

440. In April 2017, Caracas was the scene of opposition and pro-Government demonstrations, some of which included violence. On 26 April 2017, 20-year-old basketball player Juan Pablo Pernalete participated in a march with some friends. The GNB fired teargas at demonstrators and a small groups of protesters responded, throwing stones and Molotov cocktails at the GNB. Sources told the Mission that Juan Pablo Pernalete ran towards the GNB line, apparently to throw a bottle at the GNB.[2003] A GNB member fired a teargas canister at Mr. Pernalete from 15-20 meters and it struck him in the chest. He fell backwards, had trouble breathing and talking and ran to a nearby pharmacy. He was transported by motorcycle to Chacao Health Centre and arrived at the emergency room with no signs of life.[2004]

441. On 26 April 2017, a Prosecutor was appointed to investigate Mr. Pernalete's death. Investigative actions including an autopsy, a forensic analysis of Mr. Pernalete's t-shirt and the teargas canister fired were conducted. Witnesses' statements were collected, including from witnesses who saw when the GNB member fired the teargas canister at Juan Pablo Pernalete at short range. The then Chief Prosecutor Ms. Luisa Ortega Díaz announced that the GNB unit responsible had been identified and that the individual officer responsible would also be identified in the following days.[2005]

442. On 25 May 2017, the Minister of Defence issued a press release criticizing the Chief Prosecutor's statement, calling her conclusions a "prequalification of facts".[2006] When the Public Prosecutor's Office requested information on the GNB deployment at the scene, the relevant Commander responded that there had been no military officials in the area at the time.[2007] On 5 August 2017, the National Constituent Assembly dismissed Chief Prosecutor Luisa Ortega Díaz and appointed Tarek William Saab in her place.

443. On 8 September 2017, the new Chief Prosecutor announced that he would reopen the investigation and accused his predecessor's criminalistics unit of having tampered with evidence. The prosecutor in charge of the case was changed at least 14 times since the investigations started.[2008] A reliable source told the Mission that this is an unusually high number of changes, and shows an intention to interfere with the investigation or at least delay its results.[2009]

444. In its 2020 report, the Mission found reasonable grounds to believe that Juan Pablo Pernalete Llovera was victim of an arbitrary killing and that the GNB - REDI Capital was involved.[2010]

---

2003 A/HRC/45/CRP.11, Case 41: Death in protest of Juan Pablo Pernalete Llovera, Altamira Caracas (26 April 2017), para. 1767-1768. According to the submissions of the Prosecution at the initial appearance hearing, Mr. Pernalete threw a Molotov cocktail at the GNB; Initial Appearance Record, 27 January 2021 and 29 January 2021.

2004 A/HRC/45/CRP.11, Case 41, paras. 1764-1770.

2005 A/HRC/45/CRP.11, Case 41, paras. 1775-1777.

2006 A/HRC/45/CRP.11, Case 41, para. 1777.

2007 A/HRC/45/CRP.11, Case 41, para. 1778.

2008 A/HRC/45/CRP.11, Case 41, para. 1779.

2009 Interview EEIV010, 17 August 2021.

2010 A/HRC/45/CRP.11, Case 41: Death in protest of Juan Pablo Pernalete Llovera, Altamira Caracas (26 April 2017), para. 1781.

445. On 27 January 2021 and on 29 January 2021, the Forty-Second Control Judge of Caracas conducted the initial appearance where eight active GNB members (on 27 January 2021) and an additional active GNB member (on 29 January 2021) were charged with complicity in involuntary manslaughter (*homicidio preterintencional*).[2011] The Prosecution submitted that Mr. Pernalete was participating in the 26 April 2017 violent protests in or around Caracas, where Molotov cocktails were thrown at security forces.[2012] It also submitted that at the relevant time, Mr. Pernalete headed towards a GNB unit that was guarding the place, using tear gas to disperse the demonstration, and threw a Molotov cocktail in their direction.[2013] The tear gas canister hit him simultaneously, having been fired directly towards his chest, with an intention to injure Mr. Pernalete by impacting his body.[2014]

446. The prosecution submitted that firing tear gas canisters "is not a suitable means" to cause death and pleaded that while there had been an intention to injure Mr. Pernalete, his death occurred "beyond the limits" of what was intended.[2015] The prosecution was unable to identify the GNB member who pulled the trigger, so all nine members of the unit were charged on 27 January 2021 and on 29 January 2021 as accomplices and requested prohibition on foreign travel as a precautionary measure in place of preventive detention.[2016] The Mission received information that three additional GNB members had been subsequently charged with respect to this incident.[2017]

447. In the press conference on 1 May 2021, the Chief Prosecutor announced that 12 GNB members had been charged with complicity in an involuntary homicide (*homicidio preterintencional*).[2018] The Mission contacted Venezuela requesting a status update in this case on 7 August 2020. At the time of writing, it had not received a response. The Pernalete family and their legal representatives had not had access to copies of the case file since 1 May 2021.[2019]

448. The Mission notes that the crime charged by the Public Prosecutor's Office for the death of Mr. Pernalete, complicity in involuntary homicide (*homicidio preterintencional*), does not reflect the seriousness of the relevant conduct which the Mission found reasonable grounds to believe was an arbitrary killing. The Mission notes that the prosecution's argument that a tear gas canister shot in straight line towards Mr. Pernalete's chest from 15-20 meters distance could not cause death stands in contradiction to the UNODC guidelines on use of force, which set out: "[n]ever fire riot control agents from handheld launchers directly towards a person. Many persons have died or been seriously injured from the impact of a riot control agent container".[2020]

449. Relatedly, there is binding jurisprudence in Venezuela to the effect that the crime of murder may be committed even where the perpetrator did not wish for or did not act with the purpose of killing (*dolus eventualis*).[2021] If the perpetrator/s had foreseen and accepted the possibility that killing could be a consequence of these actions, even without wishing to cause death, this would be sufficient to charge the accused with voluntary, as opposed to involuntary, homicide.[2022]

450. Based on the information available, the Mission considers the domestic proceedings that were underway at the time of writing in relation to Mr. Pernalete's death to be limited.

2011 Initial Appearance Record, 27 January 2021 and 29 January 2021.
2012 Initial Appearance Record, 27 January 2021 and 29 January 2021.
2013 Initial Appearance Record, 27 January 2021 and 29 January 2021.
2014 Initial Appearance Record, 27 January 2021 and 29 January 2021.
2015 Initial Appearance Record, 27 January 2021 and 29 January 2021.
2016 Initial Appearance Record, 27 January 2021 and 29 January 2021.
2017 1 May 2021 press conference.
2018 1 May 2021 press conference.
2019 Interview EEIV008, 16 August 2021; Interview EEIV009, 16 August 2021; Interview EEIV010, 17 August 2021.
2020 See UNODC, Resource Book on the use of force and firearms in law enforcement, 2017, p. 88, available at: https://www.unodc.org/documents/justice-and-prison-reform/17-03483_ebook.pdf
2021 Supreme Tribunal of Justice, Constitutional Chamber, Judgment No. 490 of 12 April 2011.
2022 Supreme Tribunal of Justice, Constitutional Chamber, Judgment No. 490 of 12 April 2011.

The proceedings failed to focus on the most serious crime potentially committed, the voluntary homicide.

451. There were also indications that the proceedings were not being conducted independently and impartially and that significant delays have occurred, calling into question whether investigations reveal "progressive steps". These aspects of the domestic proceedings merit further inquiries.

## D. Analysis of Information

452. In total, the State reported that between 379 and 397 State officials were convicted for human rights violations in the period between 2014 and May 2021.[2023] While this number may be significant, the limited availability of public information regarding prosecutions against public officials for human rights violations, and in particular the lack of disaggregated data and other key information, creates significant challenges in assessing the Government's efforts to investigate and prosecute human rights violations. The Mission was nevertheless able to make some observations, based on the available information.

453. By the State's own account, the vast majority of human rights complaints had not been subject to prosecution. In the Venezuela State's 2020 report, the Government stated that between August 2017 and August 2020, the Directorate for the Protection of Human Rights of the Public Prosecutor's Office had issued 9,214 decisions about proceedings (*actos conclusivos*) and 74 summary dismissals (*desestimación*).[2024] Of the prosecutorial decisions, 382 had resulted in indictments (4.1 per cent), 869 in provisional dismissals (*archivo fiscal*) (9.4 per cent) and 7,963 (86.4 per cent) in dismissals (*sobreseimientos*).[2025]

454. Thus, by the State's account, only 4.1 per cent of prosecutorial decisions about proceedings (*actos conclusivos*) had resulted in prosecution and 95.8 per cent of the cases were suspended or dismissed, during this period.[2026] If 127 State officials were convicted during that period, as the report claims, then the rate of conviction as compared to the number of prosecutorial decisions on proceedings (*actos conclusivos*) was about 1.3 per cent.[2027] Even looking solely at cases the prosecution chose to indict, the conviction rate did not surpass 33%.

455. Other information provided by the State indicates low levels of convictions for human rights violations. In the Venezuela State's 2020 report, it stated that from 2017 to 2020, the Public Prosecutor's Office carried out 4,489 investigations related to violations by the FAES, out of which 3,390 were investigations into crimes of homicide.[2028] The Venezuela State's 2020 report said that in the period from August 2017 to August 2020, 154 members of PNB had been indicted, 114 arrested and 36 convicted for crimes involving human rights violations.[2029] The report did not disaggregate the FAES from the broader PNB category to which it belongs. Despite acknowledging the high number of violations, the convictions reported of PNB members make up less than one per cent (0.8 per cent) of the total investigations into FAES.

456. The 2020 report of the High Commissioner for Human Rights cited information from the Government of Venezuela that by May 2020,[2030] the Public Prosecutor's Office had

[2023] This range refers to the number presented by State officials on 25 February 2021 and on 1 May 2021, as described above.

[2024] Venezuela State's 2020 report, p. 98.

[2025] More information would be needed to determine whether the decisions of the prosecutor's decision on proceedings (*acto conclusivo*) were justified based on the circumstances of the case.

[2026] More information would be needed to determine whether the prosecutor's decision on proceedings (*acto conclusivo*) were justified based on the circumstances of the case.

[2027] Venezuelan State's 2020 Report, p. 100. The Mission assumes that the number of prosecutorial decisions on proceedings (*actos conclusivos*) corresponds to the number of cases file, but it cannot be sure of this, given that some cases might not be properly registered or followed up upon.

[2028] Venezuelan State's 2020 Report, pp. 100-101, 111.

[2029] Venezuelan State's 2020 Report, p. 99.

[2030] The start date of the period covered was not specified.

carried out 361 investigations into cases of torture and 9,951 investigations into cases of ill-treatment.[2031] According to the information provided in the report, this resulted in 517 State agents charged, 401 indicted, 167 deprived of their liberty and 26 convicted for torture and ill-treatment. The Mission notes that, according to this set of numbers, the conviction rate of public officials investigated for allegation of torture and ill-treatment was 0.2 per cent.[2032]

457. The Venezuela State's 2020 report, covering the period August 2017 to August 2020, provided a clear indication of the security or intelligence bodies to which the alleged perpetrators investigated and prosecuted belong. The majority of those convicted (60 per cent) belonged to police bodies (PNB, PNB/FAES state police, municipal police or CICPC), followed by the GNB (18.57 per cent) and the armed forces (8.57 per cent). DGCIM and SEBIN, which were identified in the Mission's 2020 report as the institutions primarily involved in the targeted repression of real and perceived political opponents, made up less than 1.5 per cent each of the perpetrators' institutional affiliation, according to the official information provided by Venezuela (2.86 per cent of total convictions).

458. The number of convictions from DGCIM and SEBIN is not necessarily disproportionate to the total numbers of violations by these institutions, in comparison to those committed by other institutions, although more information would be needed to draw clear conclusions. As noted, the Mission's 2020 report identified between 21,828 and 24,431 killings attributable to State security forces between 2014 and 2019, mostly by PNB/FAES and CICPC, as announced by the Ministry of the Interior (amounting to an average of between 3,638 and 4,071 per year).[2033] Meanwhile, the Mission's 2020 report cited numbers from the NGO Foro Penal indicating that between January 2014 and July 2020, there were 902 cases of arbitrary detentions of political prisoners, in which DGCIM and SEBIN would have been the primary perpetrators (an average of 128 per year).[2034]

459. According to the Venezuela State's 2020 report, 9.29 per cent of those subjected to criminal proceedings for human rights violations during the relevant period were civilians, identified as "collaborators in crimes".[2035] The Government stated that 129 civilians had been indicted, 24 deprived of their liberty and 13 convicted for human rights violations from August 2017-August 2020.[2036] The report did not identify the civilians it referred to or mention their profile, but it accepted that they acted in coordination with or with the acquiescence of the State in committing the human rights violations.

460. 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, noted above, including those of Fernando Albán, Rafael Acosta Arévalo and Juan Pernalete, indicate that it is lower level perpetrators who faced criminal prosecution. The Barlovento case, in which various members of the armed forces at different levels of the chain of command faced criminal proceedings, provides a positive exception.[2037]

461. As noted in the Mission's 2020 report, the immediate supervisors and others in the chain of command who had knowledge or should have had knowledge about the crimes, had

2031 See Office of the High Commissioner for Human Rights, "Outcomes of the investigation into allegations of possible human right violations of the human rights to life, liberty and physical and moral integrity in the Bolivarian Republic of Venezuela", 1 July 2020, para. 53, available at: https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session44/Documents/A_HRC_44_20_AUV.docx, citing to a response from Venezuela to OHCHR questionnaire.

2032 One of the indicators of the Sustainable Development Goals on the right not to be subject to torture, cruel, inhuman or degrading treatment is: Proportion of received complaints on the right not to be tortured investigated and adjudicated by the national human rights institution, human rights ombudsperson or other mechanisms and the proportion of these responded to effectively by the Government. https://www.ohchr.org/Documents/Issues/HRIndicators/SDG_Indicators_Tables.pdf

2033 A/HRC/45/CRP.11, Table 5: Numbers regarding deaths attributable to security forces, according to source.

2034 A/HRC/45/CRP.11, para. 246.

2035 Venezuela State's 2020 report, p. 99.

2036 Venezuela State's 2020 report, p. 99.

2037 See A/HRC/45/CRP.11, paras. 1212-1216.

effective control over their subordinates, and failed to take adequate measures to prevent or repress the crimes could also be liable for their criminal conduct.[2038]

462. Holding high level perpetrators to account is essential to ensuring accountability and combating impunity within the respective institutions. However, there are indications that high-level perpetrators, including those identified in the Mission's 2020 report, were not included among the cases reported by the Public Prosecutor's Office as being under investigation. Pursuant to the 1999 Constitution, in order for high-level officials to be criminally investigated and prosecuted, the Supreme Tribunal of Justice must carry out a merit-based process to lift their immunity (*antejuicio de mérito*).[2039]

463. While in recent years, immunity of individuals considered to be in opposition to the Government has been lifted, including against 32 members of the opposition-led National Assembly[2040] and the former Chief Prosecutor,[2041] for non-human rights related crimes,[2042] there is no other known case in which the immunity of a high-ranking official has been lifted in the period under review. The Directors of SEBIN and DGCIM are not specifically included as among the high-level officials enjoying prosecutorial immunity under article 266 of the constitution; however, given that the Directors of those institutions are command level military officers, they may fall under the purview of the immunity lifting process.[2043]

464. Available information about crimes committed is also scarce. The State reported that prosecutions and convictions of State officials included prosecutions and convictions for serious crimes, as noted in the individual cases reported by the Public Prosecutor's Office referenced above. In a November 2019 public statement, the Chief Prosecutor reported that 127 officials had been convicted for the crimes of murder, torture, cruel, inhuman or degrading treatment, and/or unlawful deprivation of liberty, within the previous 27 months.[2044] The following year, citing information received from the Government of Venezuela, the High Commissioner for Human Rights in her 2020 report noted that 26 State officials had been convicted for torture and ill-treatment, without mentioning the time period that these numbers referred to.[2045]

465. In response to questions arising from the International Criminal Court's Preliminary Examination, which was underway at the time of writing, Venezuela stated it had submitted information concerning *inter alia* the cases discussed in the Mission's 2020 report. The Mission has taken steps to review the status of domestic investigations and proceedings in all cases documented in its 2020 report. In the cases of Fernando Albán and Rafael Acosta Arévalo, the scope of the investigations being conducted were limited, as not all serious crimes are the subject matter of investigations and only lowest level perpetrators were facing criminal prosecution.

---

2038 A/HRC/45/CRP.11, para. 2105.

2039 1999 Constitution, arts. 200 and 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, among others. 2012 Criminal Procedure Code, art. 381. As part of these proceedings there is a mandatory hearing envisaged, which shall be conducted publicly. The Supreme Tribunal of Justice decides upon merit of investigations or dismiss the proceedings See Supreme Tribunal of Justice, Constitutional Chamber, Judgment No. 3167, 9 December 2002, for a discussion on the process to lift immunity of high-level officials (*antejuicio de mérito*) *vis-à-vis* gross human rights violations and crimes against humanity.

2040 See A/HRC/45/CRP.11, para. 254.

2041 See A/HRC/45/CRP.11, para. 123.

2042 Including for crimes of treason of the homeland, conspiracy, instigation of insurrection, civil rebellion, contempt of court and hate crimes, among others. See A/HRC/45/CRP.11, para. 255.

2043 See A/HRC/45/CRP.11, paras. 1990 and 2007.

2044 See Chief Prosecutor's 27 November 2019 public statement.

2045 See OHCHR, "Outcomes of the investigation into allegations of possible human right violations of the human rights to life, liberty and physical and moral integrity in the Bolivarian Republic of Venezuela", 1 July 2020, para. 53, available at: https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session44/Documents/A_HRC_44_20_AUV.docx, citing to a response from Venezuela to OHCHR questionnaire.

466. Save for one exception, in all other cases, victims and their families have not been called to provide statements as witnesses, nor have they been contacted by authorities nor notified of any procedural steps made or procedural measures undertaken. These measures would have had to be undertaken if the State was carrying out investigations ensuring adequate, tangible and progressive investigative steps to shed light on the relevant events.

467. 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 and, in the event of death or disappearance, the victims' fate. They have the right to (a) equal and effective access to justice; (b) adequate, effective and prompt reparation for harm suffered; and (c) access to relevant information concerning violations and reparation mechanisms.[2046] In the cases discussed above, family members and lawyers consistently indicated that, despite multiple requests, they were denied meaningful access to the case file and other essential case information. Essential pieces of evidence remained undisclosed, preventing family members and lawyers from making relevant submissions. They were not properly notified of hearings or, when they were, such hearings were repeatedly postponed and rescheduled, making their participation theoretical. Although there was an appearance of concrete procedural steps taken as from late 2020,[2047] obstacles to the victims' right to know the truth about the events and attempts to bring those involved to justice continued at the time of writing.

# VI. Conclusions and Recommendations

## A. Conclusions

468. In September 2020, the Mission found reasonable grounds to believe that serious human rights violations and crimes were committed in Venezuela since 2014. The Mission also found reasonable grounds to believe that some of these violations and crimes were committed as part of a widespread and systematic attack directed against a civilian population, with knowledge of the attack, pursuant to or in furtherance of two distinct State policies, including a policy to silence, discourage and quash opposition to the Government.

469. The Mission stated in September 2020 that there were preliminary indications that prosecutorial and judicial actors had played a direct role in cases of arbitrary detentions documented by the Mission, and had also failed to act as a check on other State actors, perpetuating impunity for crimes committed. Based on the current investigation, the Mission has reasonable grounds to believe that prosecutorial and judicial actors played a significant role in the commission of violations and crimes against male and female opponents of the Government, whether real or perceived, as documented in the September 2020 and the present report.

470. The Mission recalls that any determination of the individual responsibility of members of the justice system must be established by the competent authorities through proceedings which ensure the right to defence and due process guarantees.

471. The erosion of the justice system's ability to protect human rights and prevent State sponsored crimes perpetrated against sectors of Venezuela's population has been gradual and incremental. Its roots lie in laws passed and decisions taken following the adoption of the 1999 Constitution, including those which increased political influence over the appointment of Supreme Tribunal of Justice judges. Although many of the structural changes which reduced the justice system to its current condition predated the Mission's mandate for

[2046] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

[2047] Mostly around the time the Chief Prosecutor and the Venezuelan Ombudsperson met the ICC Prosecutor; ICC Press release, ICC Prosecutor, Mrs Fatou Bensouda, receives high-level delegation from the Bolivarian Republic of Venezuela in the context of its ongoing preliminary examinations, 5 November 2020; available at: https://www.icc-cpi.int/Pages/item.aspx?name=pr1544. ICC-OTP, Report on Preliminary Examination Activities 2020, 14 December 2020, para. 208. Available at: https://www.icc-cpi.int/itemsDocuments/2020-PE/2020-pe-report-eng.pdf

reporting, which begins in 2014, changes continued apace since then, as the Government continued to build upon and take advantage of the system already in place.

472. The appointment and discipline of judges and prosecutors outside of the requirements of the 1999 Constitution and subsequent laws has been especially detrimental to the independence of the justice system. In particular, the Supreme Tribunal of Justice's appointment of provisional judges, as opposed to career judges, has allowed it to select and dismiss judges on the basis of improper personal or political considerations, depriving the justice system of those likely to make independent decisions, guided only by force of law. The provisional appointment of public prosecutors has had a similar effect within the Public Prosecutor's Office.

473. In some cases, judges and prosecutors experienced additional disciplinary measures carried out for, what the Mission has reasonable grounds to believe, were retaliatory or coercive purposes, including harassment, intimidation and threats of vexatious or spurious legal action against them.

474. As a result, the Mission has reasonable grounds to believe that there are judges and prosecutors working within the justice system who have denied, as opposed to guaranteed, some rights to real or perceived opponents of the Government, in response to pressure and interference from political actors or from within the judicial or prosecutorial hierarchy. In some cases, judicial and prosecutorial actors receive direct instructions about how to investigate, decide or prosecute a case, which were not in line with the facts of the case. Some judges and prosecutors knowingly participated in the violations. Irregularities in cases before the judges of the specialized terrorism jurisdiction were especially prevalent.

475. In the cases analysed, the Mission has reasonable grounds to believe that prosecutors and judges failed regularly 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. First instance and appellate judges have had backing for this since 2001, when the Constitutional Chamber of the Supreme Tribunal of Justice ruled that they were not obligated to review the unconstitutionality of arrests made without a warrant.

476. The Mission has also reasonable grounds to believe that judicial and prosecutorial actors' request and issuing of *ex post facto* arrest warrants has been used to cover periods of incommunicado detention or enforced disappearance, during which men and women in custody faced torture, including sexual violence, and could not contact family members and lawyers, placing them outside the protection of the law.

477. The Mission has reasonable grounds to believe that prosecutors and judges played a key role in arbitrary arrests by sustaining arrest warrants, pre-trial detention orders and serious criminal charges based on facts and supporting evidence that did not refer to criminal acts or individualize the defendant's participation in the crimes alleged. In some cases, prosecutors and judges sustained detentions or charges on the basis of manipulated or fabricated evidence.

478. Furthermore, the Mission has reasonable grounds to believe that in the cases analyzed, judges ordered pre-trial detention at initial court appearances as a routine, as opposed to an exceptional measure and without providing sufficient or appropriate justification about the circumstances that required it. At times, judges made such rulings despite having information about the risk of or the actual commission of torture in both SEBIN and DGCIM facilities. The appearance of detainees displaying signs consistent with torture in courtrooms did not prevent either prosecutors from requesting their continued pre-trial detention, or judges from ordering it, by the same custodial authorities and often in the same facilities in which the torture or mistreatment had occurred.

479. The role played by prosecutorial and judicial actors in cases involving torture committed by state security actors extends beyond failure to protect women and men in pre-trial detention. Prosecutors' continued submission of information tainted by torture or coercion, along with judges' continued admission of such information as evidence, incentivises intelligence services to continue using torture as an information gathering

technique of legal value. The information from torture is used to justify further arrests and the cycle repeats itself.

480. Procedural delays beyond legal timeframes have resulted in the harmful effect of extended periods of pre-trial detention and other precautionary measures. Failure to comply with the timeframes established by law may be deliberate, or the result of incompetence or lack of care, compounded by certain logistical difficulties. In any case, it is a problem of systemic proportions ad denies defendants their rights to an expeditious process.

481. In the cases analysed by the Mission, in which real or perceived opponents were routinely deprived of their liberty following arrest, procedural delays often meant that they spent years confined in detention facilities unfit for that purpose, with devastating effects on their lives, including their physical and mental health, and those of their families. These effects often place a disproportionate burden on female relatives who struggle to make ends meet without the income of those in detention, and to provide them with food, clean water and healthcare.

482. The Mission has reasonable grounds to believe that justice system actors are also responsible for depriving detainees of their right to an effective legal defence, which could otherwise examine and challenge the basis for spurious charges, in order to secure their clients' liberty. The problem persists throughout the process, as judges at times refuse to appoint private defence lawyers, insisting instead that defendants be represented by public defenders.

483. Even once appointed, at times, court officials turn lawyers away from clients' court appearances and refuse to provide them with access to crucial legal documents necessary to construct their defence. Detainees held in SEBIN and DGCIM facilities after their initial appearance continue to be denied this right as both bodies routinely frustrate defence lawyers' attempts to meet with their clients in private.

484. Despite not including specific legislation for crimes against humanity, the Venezuelan State possesses, for the most part, a legislative framework capable of providing accountability for the violations and crimes the Mission outlined in its September 2020 and the current report. Despite this, the State is not taking tangible, concrete and progressive steps to remedy violations, combat impunity and redress the victims through domestic investigations and prosecutions.

485. There is a scarcity of official information about investigations and prosecutions, particularly since 2017, but all available indications are that numbers of domestic prosecutions for crimes connected to human rights violations are both extremely low and limited to the lowest level actors. This extends to the cases of Alban, Acosta Arévalo and Pernalete recently held up by the Chief Prosecutor as positive examples. Upon further analysis, the Mission found domestic investigations to be highly limited in scope or seemingly focused upon isolating low-level perpetrators, as opposed to tackling systemic problems by seeking accountability further up the chain of command. The Mission is unaware of adequate, tangible, progressive steps to investigate the relevant cases it documented in its September 2020 report, with one possible exception.

486. The importance and centrality of the justice system to the Venezuelan crisis cannot be overstated. 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.

487. 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 implications are understood by all Venezuelans not explicitly aligned with the Government, many of whom either refrain from public positions which may diverge from official narratives, or risk losing years of their lives to State sponsored, judicially approved arbitrary arrest and detention while also often subjected to torture.

488. Many have left the country to avoid this choice, at great personal cost and to wider society. The effects extend beyond those directly affected and impact society as a whole as rule of law cannot be upheld in a country in which the justice system is lacking trust. This report goes on to present recommendations for urgent reform.

## B. Recommendations

**Recommendations to the Supreme Tribunal of Justice**

489. Ensure that all first instance and appellate court judges are appointed only in accordance with a public competitive process, in strict compliance with Constitutional and legal requirements, and abiding by the principles of suitability, probity and transparency. Abstain completely from appointing provisional judges.

490. Ensure the security of tenure of all first instance and appellate court judges and that they are dismissed only in accordance with the requirements of the disciplinary regime established by law. Reverse the Supreme Tribunal of Justice's decision holding that the Judicial Code of Ethics does not apply to provisional judges.

491. Conduct impartial inquiries and, when applicable, adopt proper disciplinary measures, in accordance with the process established by law and ensuring procedural guarantees, to sanction judges who demonstrate a failure to carry out their duties in accordance with guarantees of due process, fair trial and the right to defence. This includes those that fail to act when faced with allegations of human rights violations in the context of arrests, detentions and interrogations, including torture and cruel, inhuman or degrading treatment, and sexual violence.

492. Ensure absolute respect for the principle of judicial independence and abstain from instructing or pressuring judges, directly by or via the presidents of the Criminal Judicial Circuits, regarding decisions in specific cases, including in cases involving the criminal prosecution of real or perceived opponents of the Government.

493. Guarantee that its own work is carried out independently, respecting the separation of powers *vis à vis* other branches of the State, and abstaining from making any decisions that are guided by improper influence or political or other bias, rather than by the law.

494. Adopt effective measures and oversight to guarantee the distribution of cases to judges based on objective criteria and an adequate system of random distribution, which avoids forum shopping or helps securing certain outcomes in criminal proceedings.

**Recommendations to Judges**

495. Ensure that Control Judges guarantee compliance with the principles and guarantees established in the Constitution, international treaties, conventions or agreements signed and ratified by Venezuela and in the Criminal Procedure Code.

496. Carry out systematic judicial scrutiny of the lawfulness of arrests and guarantee proper application of arrests made *in flagrante delicto*, declaring the nullity of detentions made in abuse of this principle by arresting authorities.

497. Cease and abstain from issuing *ex post facto* arrest warrants and ensure proper verification of information presented by the Public Prosecutor's Office and arresting authorities regarding the date and time of detentions.

498. Guarantee the foundation for pre-trial detention, by ordering such detention only in strict accordance with the Criminal Procedures Code, i.e. only where there is a crime that warrants deprivation of liberty, well-founded evidence that the accused was the author or participant in the crime and a reasonable presumption of risk of flight or obstruction of the investigation.

499. Carry out a regular review of precautionary measures to ensure that they are in accordance with legal requirements and that they do not extend beyond the maximum time authorized under the Criminal Procedure Code.

500. Ensure proper review and consideration of *habeas corpus* requests filed by family members and legal representatives, including in situations in which they allege that the whereabouts of the detainee are unknown.

501. Ensure each and every accused person presented in court the chance to appoint a defence lawyer of their choice and abstain from the practice of imposing public defenders as representatives, against the stated wishes of the defendants or their family members.

502. Guarantee that court officials take every necessary step to facilitate the right to defence, informing defence lawyers about proceedings, allowing them access to courtrooms and handing over legal case files without onerous conditions.

503. Cease ordering pre-trial detention in SEBIN Helicoide and Plaza Venezuela and DGCIM Boleíta and Fuerte Tiuna and ensure proper application of orders regarding the place of detention by law enforcement and intelligence bodies.

504. When ordering pre-trial detention, ensure detainees are sent to facilities with gender-appropriate facilities and adequate sex segregation.

505. Dismiss evidence and charges based on investigations undertaken by SEBIN and DGCIM, whenever there are indications that information was obtained via torture or coercion.

506. Act immediately upon allegations of torture, including sexual violence, raised in court, including by:

- Ordering the detainee's immediate removal from the detention facility in which the torture was alleged to have taken place and transfer into the care of another hold authority
- Ordering that the investigation into such allegations is conducted as a matter of urgency by the proper authorities, and that it is not conducted by the agency accused of the underlying conduct
- Imposing time limits within which the investigation must progress and be completed
- Acting upon the results of the investigations

507. Report knowledge of torture immediately to all other competent authorities, as required by article 31 of the Law on Torture. Notify the Ombudsperson's Office about acts of torture within 48 hours of becoming aware of them, as required by articles 15 and 24 of the Law on Torture.

508. Ensure compliance with all legally established procedural time limits by dismissing cases in which the time limits have not been met, unless exceptional circumstances permitted by law demand otherwise.

509. Carry out a judicial analysis of the legality of detentions in the cases referenced in the Mission's 2020 report and in the present report and immediately release all detainees that have been detained arbitrarily, or for whom substitute precautionary measures or release orders have been issued.

510. Notify competent bodies in cases in which their orders for release of detainees have not been complied with by custodial authorities.

**Recommendations to the Public Prosecutor's Office and the Military Prosecutor's Office**

511. Ensure compliance with its legal obligation to direct criminal prosecutions (*acción penal*) and conduct thorough reviews of information presented to them by investigating bodies, in accordance with the requirement to establish the truth, which includes exculpatory information.

512. Ensure that criminal charges are based on sound and valid evidence, sufficient to substantiate the charges, and guarantee that evidence collected is not derived from illegal acts, including through coercion, duress, interrogations without a lawyer present, or torture or other cruel, inhuman or degrading treatment.

513. As SEBIN and DGCIM are associated with acts of torture, coercion and tampering with evidence, exercise utmost care before reliance on these institutions in the criminal investigation, including in using any evidence gathered by these agencies, even as springboard or lead evidence.

514. Ensure that arrested individuals are presented with well-founded charges at initial appearances before competent courts within the 48 hours established by law. Cease the practice of requesting arrest warrants after arrests have been made, and safeguard the rights of detainees to be free from acts of torture and sexual violence in the sensitive period between their arrest and presentation before the court.

515. Issue detailed annual reports containing statistics on prosecutions, disaggregated by criminal charges, gender and age of the victims, location, accused person's affiliation and rank. The reports should include all prosecutions in human rights cases and should provide yearly updated information on resolution of cases or progress otherwise made.

516. Conduct a case review of the cases detailed in the current report, as well as those in the Mission's 2020 report and investigate allegations of torture, including sexual violence by SEBIN and DGCIM, during arrests and detentions. Consider alternative charges in the Albán, Acosta Arévalo and Pernalete cases which reflect the severity of the offences committed, and conduct case reviews to consider the possibility of charges against people higher up in the chains of command of the structures involved.

517. Ensure that investigations are not limited to the lowest level perpetrators but rather comprehensively examine multi-level responsibility for such crimes, including through the allocation of logistics and resources, issuance of orders, and other forms of participation in and/or knowledge of or wilful blindness to such acts.

518. Ensure that the investigations address whether these alleged crimes were committed as part of a widespread or systematic attack against a civilian population, with knowledge of the attack.

519. Report knowledge of torture immediately to the "competent authorities", as required by article 31 of the Law on Torture. Notify the Ombudsperson's Office about acts of torture within 48 hours of becoming aware of them, as required by articles 15 and 24 of the Law on Torture.

**Recommendation to Public Defender's Office**

520. Issue instruction to all public defenders to pro-actively verify all clients' acceptance of their services, to refuse to act on behalf of clients that do not accept and to notify the court of this immediately.

521. Issue instructions that public defenders must follow clients' instructions, including when they instruct them that allegations of torture should be mentioned to the judges reviewing their cases.

**Recommendation to the Ombudsperson's Office**

522. Take concrete, measurable and timely action to follow up on human rights violations *ex officio* or following complaints received, including, where appropriate, filing legal complaints against public officials who have violated human rights in the exercise of their functions. Follow up with the complainants and include in publicly-available annual reports quantitative and qualitative information on actions taken and results achieved.

**Recommendations to the National Assembly**

523. Ensure that the selection of justices of the Supreme Tribunal of Justice is carried out via a competitive process, in accordance with the requirements set out under the Constitution, including with respect to the formation of the Judicial Nominations Committee.

524. Ensure that members of the National Assembly refrain from issuing orders or exerting implicit or explicit pressure, including through public or private communications, on members of the justice system, including judges and prosecutors, in relation to investigations and judicial proceedings, including those pertaining to real or perceived opponents.

525. Amend the 1998 Organic Code of Military Justice to remove in express terms military courts' jurisdiction over civilians, in line with the 1999 Constitution, in order to guarantee that military jurisdiction is limited to military offences committed by active members of the military.

526. Amend the 2015 Organic Law of the General Directorate for Military Intelligence (DGCIM) to ensure its role is limited to internal military affairs and its powers of investigation and detention are limited to active military personnel.

527. Introduce legislation to include specific provisions regulating crimes against humanity, as provided for in the 1998 Rome Statute of the International Criminal Court.

528. Approve the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention against Torture, for subsequent ratification by the President of Venezuela.

529. Consider lifting the immunity of high-level State officials implicated in human rights violations and crimes, to allow for prosecution when a well-founded request is submitted, and in full respect of due process.

**Recommendations to the Executive Branch**

530. Implement the recommendations published by the Mission in its 2020 Report. Those of particular relevance to the current report are the recommendations made under Accountability and Justice to Victims, Due Process Guarantees, Judicial and Prosecutorial Independence, Use of Military Tribunals, Torture and Cruel, Inhuman or Degrading Treatment and Public Institutions.[2048]

531. Cease and abstain from issuing orders or exerting implicit or explicit pressure, including through public or private communications, over authorities within the justice system, including judges and prosecutors, in relation to investigations and judicial proceedings, including those pertaining to real or perceived opponents.

532. Continue to cooperate with the Office of the High Commissioner for Human Rights, allowing full, unimpeded access to all detention facilities and access to courtrooms and trials for observation purposes.

533. Cooperate with the Mission, engage in dialogue and grant its Members and personnel access to Venezuela to conduct investigations *in situ.*

[2048] A/HRC/45/CRP.11, pp. 407-410 (recommendations 1-5, 13-24, 29-33 and 56-57).