



# VENEZUELA'S

**IMPUNITY GAP  
ENABLING  
FURTHER CRIMES:**

**AN ANALYSIS  
OF DOMESTIC  
ACCOUNTABILITY  
EFFORTS  
IN VENEZUELA**

by the OAS Panel of  
Independent International Experts  
on the Possible Commission  
of Crimes Against Humanity  
in Venezuela



**OAS**

More rights for more people

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Rodrigo Diamanti

We want to thank the hundreds  
of victims and survivors who,  
thanks to their testimony,  
the panel was able to once again  
produce a report concerning  
the crimes against humanity since  
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and Mónica Leroy, who thanks  
to their work in 2017 allowed the  
establishment of this panel that  
continues to work for the victims  
and human rights in Venezuela  
today.

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HORACIO SICILIANO

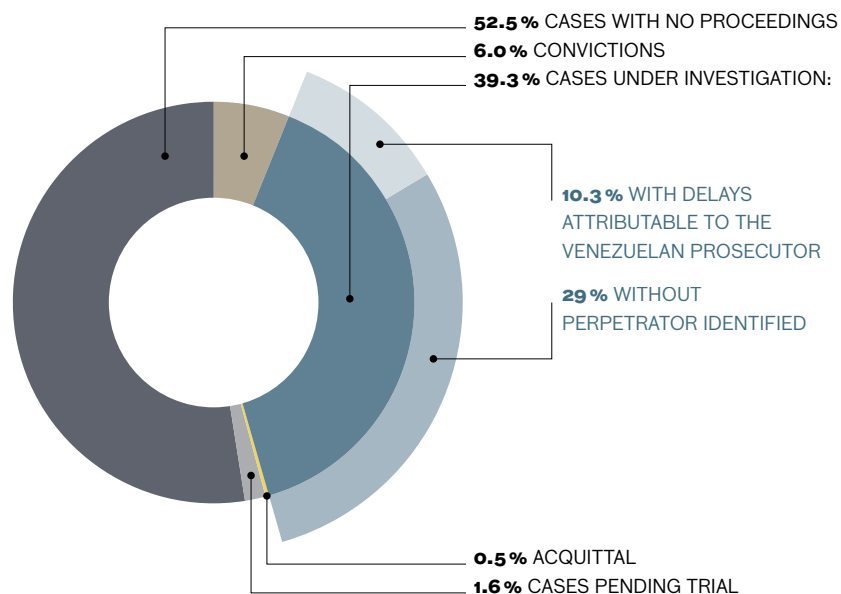
## EXECUTIVE SUMMARY

Having analysed the domestic proceedings conducted in Venezuela, the Panel concludes that the State of Venezuela has neither investigated nor prosecuted any mid- and high-level perpetrators of crimes against humanity committed in Venezuela since 2014 as part of a state policy to commit widespread attacks against the civilian population.

The Panel further notes with grave concern that there have been no domestic investigation and prosecution of perpetrators for the crimes against humanity of: a) sexual and gender based violence as a crime in its own right; b) persecution; and c) arbitrary detention. While acts of sexual violence have been treated merely as an aggravating factor, persecution and imprisonment, which are among the crimes the most reported to have occurred since 2014, including an estimated 1,500 political figures barred from office since 2008,<sup>1</sup> have been ignored by the Venezuelan Prosecutor's Office.

A review of a representative sample of the most notorious cases of crimes against humanity of murder, torture, imprisonment cases, and persecution that occurred in Venezuela since 2014 reveals that the State of Venezuela has only completed 12 domestic trials out of 183 cases with an alarmingly low of 6%, all pertaining to incidents that occurred since 2017. The State of Venezuela has not initiated any form of judicial process in a staggering 52.5% of all the cases reviewed which starkly highlights a significant impunity gap leaving the vast majority of victims of crimes against humanity without any recourse to justice in a context of ongoing systematic violence orchestrated by the state against civilians.

### ACCOUNTABILITY FOR SELECTED REPRESENTATIVE CASES



<sup>1</sup> On this see, <https://www.dw.com/es/venezuela-inhabilitaciones-políticas-como-garrote-contra-la-oposición/a-66115228>



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Of the minority of cases investigated, most have no identified perpetrators, despite the evidence relating to perpetrators being public and available according to the Panel’s investigation. The Panel contends that this de facto impunity gap is not merely a byproduct of legislative neglect but also a reflection of the Venezuelan State’s lack of genuine willingness and capability to bring about domestic accountability.

The Panel notes for instance that the crime against humanity of imprisonment has not formed part of the type of criminal conduct addressed by domestic criminal proceedings initiated by the Venezuelan Public Prosecutor’s Office despite the existence of a legal framework to criminalise these acts. While the Panel acknowledges the complexity of reviewing the existence of due process and the legal basis for arrests, it has identified the lack of independence of the Venezuelan Prosecutor’s Office and the absence of a separation of powers between the judicial and executive branches in Venezuela, which have been denounced on a number of occasions by civil society actors, the IACTHR, the UN Fact Finding Mission, and the previous reports of this Panel as leading causes for these shortfalls in delivering domestic accountability.

The Panel considers that when the judiciary is not truly independent, the legal system is susceptible to influence, weakening its ability to impartially investigate, prosecute, and convict perpetrators domestically. Such lack of independence of the Venezuelan judiciary from the executive compounded with a context where members of the judiciary are alleged to have acted as accomplices to the executive branch of the Venezuelan State by rubberstamping unlawful arrests targeting perceived dissidents and ignoring allegations of torture, points to a deliberate policy for impunity to continue.

In relation to ongoing investigations, the Panel has received information indicating that in a number of cases there have been failures to arrest identified perpetrators, trials were indefinitely postponed and in other cases the Venezuelan Public Prosecutor’s office was unable to obtain information from other state departments, stalling proceedings indefinitely. The Panel is of the view that the underlying causes of the patterns identified of delayed procedure highlights issues with the Venezuelan Public Prosecutor’s Office that go beyond mere lack of capacity to fulfill their obligation and points to deliberate and endemic factors contributing to the failures to hold perpetrators to account. In a large number of cases, for instance, approximately 83.6% of all the torture cases analysed by the Panel, there were no records of ongoing investigative steps or criminal domestic process despite complaints made by the victims to the Venezuela’s Public Prosecutor’s Office, the Ombudsman, or in the context of court proceedings.

The Panel also wishes to express serious concern about the fact that there have been reports of victims and their family members receiving threats. Furthermore, despite the fact that the Organic Code of Criminal Procedure of Venezuela includes mechanisms for restitution, reparation, and compensation, and provides redress in civil court for crimes<sup>2</sup>, in practice, the Panel notes that it has received confirmation from several civil society actors and legal representatives of victims that these mechanisms are systematically not implemented.

The Panel is of the view that the deliberate policy to provide impunity to mid and high level perpetrators for crimes against humanity has directly contributed and enabled the continued perpetration of similar crimes against political opposition candidates, their personnel and family members in the lead-up to the 2024 Venezuelan elections. The State of Venezuela's unequivocal policy to provide impunity to perpetrators of crimes against humanity has also emboldened perpetrators, to continue their systematic attacks against the civil society actors in Venezuela without fear of reprisals.

In light of the above, the Panel considers that the State of Venezuela has failed to meet its complementarity obligations to bring accountability for crimes against humanity as a primary state and reiterated that the intervention of the ICC Prosecutor in investigating and prosecuting crimes is critical to bring accountability for victims in Venezuela and prevent the further commission of crimes.



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<sup>2</sup> On this see, Article 413 yss. of the Law for the Partial Reform of the Organic Code of Criminal Procedure. Available at: <https://www.asambleanacional.gob.ve/storage/documentos/leyes/ley-organica-de-reforma-del-codigo-organico-procesal-penal-20211004180004.pdf>



# TABLE OF CONTENTS

## **EXECUTIVE SUMMARY** PG. 3

### **1. INTRODUCTION** PG. 8

### **2. DOMESTIC ACCOUNTABILITY FOR MURDERS** PG. 8

#### **2.1. TRIALS IN MURDER CASES** PG. 9

#### **2.2. MURDER CASES UNDER INVESTIGATION** PG. 15

##### **2.2.1. Murder Investigations with No perpetrators Identified** PG. 15

##### **2.2.2. Murder Investigations with Failures Attributable to the Prosecutor's Office** PG. 16

### **3. DOMESTIC ACCOUNTABILITY FOR TORTURE** PG. 19

#### **3.1. TRIALS IN TORTURE CASES** PG. 19

#### **3.2. TORTURE CASES UNDER INVESTIGATIONS** PG. 20

##### **3.2.1. Victim Complaints Ignored** PG. 21

##### **3.2.2. Torture Investigations with No Perpetrator Identified** PG. 23

### **4. DOMESTIC ACCOUNTABILITY FOR IMPRISONMENT** PG. 24

### **5. DOMESTIC ACCOUNTABILITY FOR PERSECUTION** PG. 25

### **6. DOMESTIC ACCOUNTABILITY FOR SEXUAL VIOLENCE** PG. 27

### **7. TREATMENT OF VICTIMS AND THEIR FAMILY MEMBERS** PG. 28

#### **7.1. IGNORED COMPLAINTS** 28

#### **7.2. ABSENCE OF PROTECTION MECHANISM** 28

#### **7.3. THREATS TO VICTIMS** 29

#### **7.4. LACK OF JUDICIAL TRANSPARENCY** 30

#### **7.5. LACK OF RESTORATIVE JUSTICE** 31

### **8. ONGOING COMMISSION OF CRIMES AGAINST HUMANITY** PG. 31

### **9. FINDINGS** PG. 34

### **10. RECOMMENDATIONS** PG. 37

#### **10.1. TO THE ICC PROSECUTOR** PG. 37

#### **10.2. TO THE SECRETARY GENERAL OF THE OAS** PG. 37

#### **10.3. TO THE OAS MEMBER STATE** PG. 38

#### **10.4. TO THE ICC STATE PARTIES AND OTHER NON-ICC STATE PARTIES** PG. 38

#### **10.5. TO THE VENEZUELAN NGOS, CIVIL SOCIETY ACTORS AND VICTIMS** PG. 39

#### **10.6. TO THE STATE OF VENEZUELA** PG. 39



## 1. INTRODUCTION

The Panel has diligently carried out a comprehensive examination of publicly available information of the domestic accountability efforts by the State of Venezuela in investigating and prosecuting crimes against humanity that occurred throughout the country since 2014 to assess the number of cases, type, nature and scope of proceedings initiated by the Attorney General Office of Venezuela.

Despite the overall climate of repression and the systemic lack of transparency of the Venezuelan judiciary,<sup>3</sup> the Panel was able to access open-source reports as well as information from victims, their legal representatives, and NGOs, and analyze a representative sample of 183 of the most notorious cases of crimes against humanity including murder, torture, imprisonment, and persecution allegedly perpetrated by Venezuelan State security actors since 2014.<sup>4</sup>

The pattern identified from the data collected by the Panel in relation to each specific crime will be outlined in the first section of the report, with references to cases exemplifying the trend, followed by the overall findings outlining the Panel's critical concerns about the domestic accountability mechanism in Venezuela.

## 2. DOMESTIC ACCOUNTABILITY FOR MURDERS

From 2014 to 2022, a total of 334 people have died in Venezuela in the context of the violent and disproportionate repression of protests both at the hands of state security forces and colectivos<sup>5</sup> acting with and in support of the Venezuelan state security forces.<sup>6</sup> Amongst these fatalities, the Panel had the opportunity to review a total of 76 of the most notorious, representative cases, in Caracas, Carabobo, Lara, Bolívar, and other states including Apure, Aragua, Barinas, Mérida, Monagas, Miranda, Táchira and Zulia.

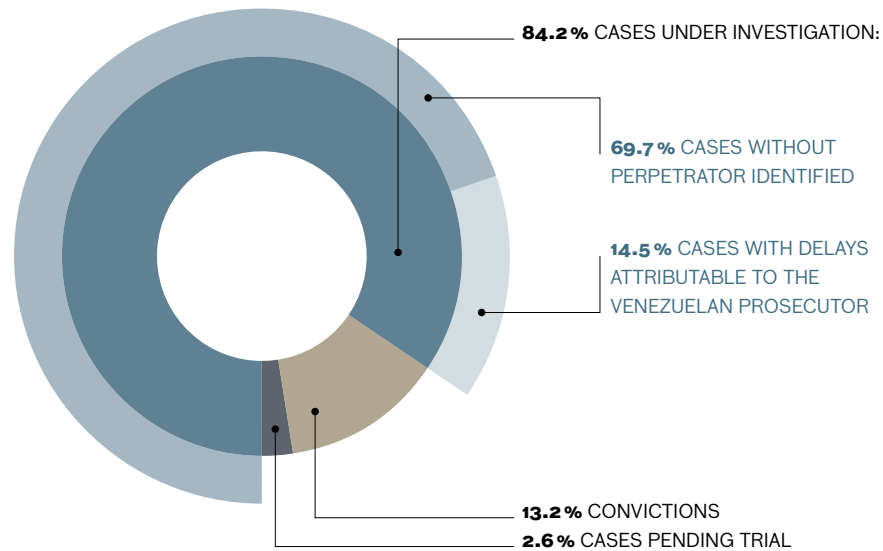
<sup>3</sup> As mentioned by the International Independent Fact-Finding Mission on the Bolivarian Republic of Venezuela, the Public Prosecutor's Office, under Tarek William Saab, stopped issuing annual public reports. Human Rights Council, Report of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela. A/HRC/48/69, dated 16 September 2021, para. 98. Available at: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F48%2F69&Language=E&DeviceType=Desktop&LangRequested=False>

<sup>4</sup> Of the 183 representative cases of crimes against humanity, 76 were murder cases, 67 were torture cases, 22 were arbitrary detention cases, and 18 were allegedly cases of politically motivated persecution.

<sup>5</sup> "Colectivos" are armed citizen security groups, mostly aligned with the Government. See Human Rights Council, Report of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela. A/HRC/45/33, dated 25 September 2020, para. 128. Available at: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F45%2F33&Language=E&DeviceType=Desktop&LangRequested=False>

<sup>6</sup> Justice, Encounter and Forgiveness, Total Indicators of Deaths 2014-2022, available at: <https://www.jepvenezuela.com/indicadores/total-de-casos-2014-2022/>

## MURDER CASES



In an egregious display of judicial negligence and systemic failure, the Panel's analysis of 76 murder cases in Caracas and Carabobo since 2014 reveals a stark reality: 84.2% of the cases remain under investigation and the overwhelming majority of these cases (69.7%) languish in procedural limbo, with investigations either initiated by the victims to provide the perception that steps are being taken or marred by a series of investigative malpractices. Finally, a mere 13.2% of cases culminated in trials and convictions (10 cases), with an appalling 2.6% still pending trial (2 cases). This data unveils a landscape where justice is not only delayed but glaringly denied. Reports from the victims' families, civil society, and local legal practitioners have illuminated a disturbing pattern of negligence during the investigation process, including the mishandling and loss of crucial forensic evidence, the blatant disregard for following up on leads, and a comprehensive failure to interview pertinent witnesses.

### 2.1. TRIALS IN MURDER CASES

A review of these most notorious, representative cases of murders committed by state officials in Caracas and Carabobo including murders both in the context of protests and because of imprisonment and torture, indicated that only 10 cases resulted in convictions and two cases that were pending trial.<sup>7</sup> An analysis of these 10 convictions, including 5 murder cases in Carabobo (namely in the cases of Geraldine Moreno,<sup>8</sup> Daniel

<sup>7</sup> Eloy Pachecho and Augusto Puga.

<sup>8</sup> In April 2017, GNB officers Alvin Bonilla was sentenced to 30 years' imprisonment as perpetrator of aggravated homicide with malice aforethought and for futile and ignoble motives, improper use of an organic weapon, perpetrator of the crime of cruel treatment in degree of complicity and breach of international covenants, and Francisco Caridad, to 16 years and 6 months imprisonment, for non-necessary complicity in the crime of aggravated homicide with malice aforethought and for futile and ignoble motives, cruel treatment in degree of co-conspirator and



HORACIO SICILIANO

Quéliz,<sup>9</sup> Christian Humberto Ochoa<sup>10</sup>, Leonardo González<sup>11</sup> and Guillermo Sánchez<sup>12</sup>) and 5 murder cases in Caracas (namely in the cases of Basil Alejandro Da Costa Frías,<sup>13</sup> Fabián Urbina,<sup>14</sup> David José Vallenilla,<sup>15</sup> Rafael Acosta

breach of international covenants. Double key, Geraldine Moreno's killers convicted, 29 April 2017. Available at: <https://doblellave.com/condenan-a-los-asesinos-de-geraldine-moreno/>

**9** Marcos Antonio Ojeda Arias and Edien Alexander Romero López were convicted of the crimes of aggravated homicide with premeditation as perpetrator and necessary accomplice, respectively, (art. 406.1 of the Criminal Code with the aggravating circumstances of numbers 8 and 12 of article 77), as well as Improper Use of Firearms (article 115

of the Law for Disarmament and Arms Control) to a sentence of 26 years and 3 months imprisonment, sentence handed down by the 7th Trial Court of the Criminal Judicial Circuit of Carabobo state, published on 3/11/21.

**10** Gerson Alberto Quintero and Jhonny José Azocar Gómez, officers of the Carabobo state police, were sentenced to 22 years in prison for the crimes of intentional homicide with malice aforethought for futile motive, and improper use of an organic weapon, as defined in Articles 406 (numeral 2) of the Criminal Code, in relation to Article 77 of the same code, and 115 of the Law for the Disarmament and Control of Arms and Ammunition; and acquitted Miguel Ángel Pacheco, an officer of the Carabobo state police. Judgement handed down by the Fourth Trial Court of Carabobo state, on 10 January 2020. Judgment of the TSJ, declares the appeals manifestly unfounded. Disposable en: <http://historico.tsj.gob.ve/decisiones/scp/noviembre/314412-156-111121-2021-C21-146.HTML>

**11** Ronal Vidal Patermína Ramírez, Joel Lenin Rodríguez Sánchez, Radameth Gerardo Castillo López, Krosslam Josueth Acosta Malpica, Wuibent Alexander Fernández Riera and Johana Orliimar Medina Blanco were convicted of the crimes of aggravated homicide with malice aforethought and futile motives (art. 406.2 of the Criminal Code), 406.2 of the CP), the first as perpetrator and the rest as co-perpetrators, Improper Use of Firearms (art. 115 of the Law for Disarmament and Arms Control), Simulation of a Punishable Act, (art. 239 of the Criminal Code), Agavillamiento (art. 286 of the Criminal Code) and Omisión de Socorro (art. 438 of the Criminal Code) to a sentence of 28 years and 7 months imprisonment. They were also acquitted with respect to the attempted murder of Leonardo's young co-pilot, sentence handed down by the 7th Trial Court of the Criminal Judicial Circuit of Carabobo state, published on 7/2/22.

**12** On this see, <https://www.amnistia.org/ve/blog/2018/03/5238/guillermo-sanchez-tras-ser-asesinado-su-familia-siguio-siendo-amenazada>

**13** On July 1, 2016, José Ramón Perdomo Pacheco, a SEBIN officer, was sentenced to 29 years and 6 months in prison for aggravated homicide with malice aforethought and ignoble motives and improper use of organic weapon; and Andry Yosgua Jaspe López, a PNB officer, was sentenced to 6 years in prison for improper use of organic weapon, by the 27th Court of First Instance in Trial Functions of the Metropolitan Area of Caracas (AMC). The Criminal Cassation Chamber of the Supreme Court of Justice, on June 27, 2019, dismissed as manifestly unfounded the cassation appeal. Available at: <http://historico.tsj.gob.ve/decisiones/scp/junio/305790-130-27619-2019-C19-69.HTML>

**14** Jhoan Eduardo Rojas, GNB officer, was sentenced for the crime of aggravated homicide with malice aforethought for futile motive, improper use of firearm and serious malicious injury in degree of complicity (art. 406.1 of the PC, with generic aggravating circumstance of 217 LOPNNA, art. 115 of the Law of Disarmament and Arms Control and 415 of the PC) to 12 years and 10 months in prison, by the 19th Trial Court of the AMC, on 12/18/2020. The victim's parents appealed the sentence. On this issue see: <https://programatransforma.org/memoria/> Video available at: <https://www.youtube.com/watch?v=n1ZdRKtmeQU>

**15** Arli Cleiwi Méndez Terán, Aviation Sergeant, was acquitted in September 2021. The decision was appealed, a new trial was ordered and on October 22, 2021, he was sentenced to 23 years in prison for the crime of aggravated homicide and improper use of organic weapon. Sentence of October 22, 2021, by the 15th Trial Court of the AMC. In this regard see: <https://talcualdigital.com/tribunal-absuelve-a-militar-acusado-de-asesinar-a-david->

Arévalo, and Fernando Alban), shed light on some of the patterns seen in the conduct of domestic proceedings in Venezuela. The Panel was able to identify the following patterns in the cases tried:

- a. The number of alleged perpetrators investigated, charged, and put on trial was not reflective of the publicly available evidence in the cases.

A poignant illustration of this discrepancy can be found in the tragic case of Geraldine Moreno, a 23-year-old killed by officers of the Bolivarian National Guard who shot her in the face at close range in Naguanagua Municipality, Carabobo state, on 19 February 2014. A mere four members of the Bolivarian National Guard were charged and convicted out of the 25 involved in the incident that led to her death.<sup>16</sup>

In this regard, the Panel also wishes to highlight the case of Rafael Acosta Arévalo, a Lieutenant Commander accused of being part of a subversive group led by opposition leader Juan Guaidó. Arévalo was initially reported as missing by his family members on 21 June 2019. The Venezuelan DGCIM reported having arrested him five days later on 26 June 2019<sup>17</sup> after which he was brought before the military courts on 28 June 2019. The Panel notes that during his court appearance Rafael Acosta Arévalo was unable to stand up, had 16 broken ribs, a broken nasal septum, and a broken ankle. He had been subjected to actions including but not limited to being hung from a beam with his arms tied behind him, electrocution, suffocation with plastic bags, being severely beaten, and being doused repeatedly with acid and cold water<sup>18</sup>. He was taken to an outpatient clinic and died as a result of his wounds. On 24 September 2019, at the preliminary hearing, the 36th Control Court of the Metropolitan Area of Caracas, sentenced, the aforementioned officials

[jose-vallenilla-en-protesta-de-2017/](https://www.infobae.com/america/venezuela/2021/09/28/hablo-el-padre-del-joven-asesinado-por-el-sargento-absuelto-en-venezuela-ahora-el-caso-tendra-mas-fuerza-en-la-corte-penal-internacional/) and <https://www.infobae.com/america/venezuela/2021/09/28/hablo-el-padre-del-joven-asesinado-por-el-sargento-absuelto-en-venezuela-ahora-el-caso-tendra-mas-fuerza-en-la-corte-penal-internacional/> Video available at: <https://www.youtube.com/watch?v=9uplpSn7zc0> and <https://www.rtve.es/noticias/20211023/carcel-para-militar-venezolano-mato-a-manifestante/2200980.shtml>

<sup>16</sup> In April 2017, GNB officer, Alvin Bonilla, was sentenced to 30 years in prison as perpetrator of aggravated homicide with malice aforethought and futile and ignoble motives, improper use of organic weapon, correlative complicity in the crime of cruel treatment and breach of international covenants, and Francisco Caridad, was sentenced to 16 years and 6 months in prison, for non-necessary complicity in the crime of aggravated homicide with malice aforethought and for futile and ignoble motives, cruel treatment in the degree of co-conspirator and breach of international covenants. *Doble llave, Condenan a los asesinos de Geraldine Moreno*, April 29, 2017. Available at: <https://doblellave.com/condenan-a-los-asesinos-de-geraldine-moreno/> *Foro Penal, Relación de casos de asesinatos y estatus de las causas*, 2016, p. 8. Available at: <https://foropenal.com/relacion-de-los-casos-de-asesinatos-y-estatus-de-las-causas-reportadas-al-foro-penal-venezolano/>

<sup>17</sup> On this subject, see <https://provea.org/actualidad/caso-capitan-rafael-acosta-arevalo-informe-mision-de-determinacion-de-hechos/>

<sup>18</sup> On this subject, see <https://www.infobae.com/america/venezuela/2020/06/28/a-un-ano-del-asesinato-de-rafael-acosta-arevalo-la-esposa-del-capitan-detallo-la-brutal-tortura-que-sufrio-el-militar-por-parte-de-la-dictadura-chavista/>

to 6 years and 8 months imprisonment.<sup>19</sup> The Supreme Court of Justice acted *ex officio*, and in October 2020, annulled the indictment made by the Public Prosecutor's Office against the DGCIM officials<sup>20</sup>. On 4 February 2022, the 12th Trial Court of the Metropolitan Area of Caracas sentenced Lieutenant Ascanio Antonio Tarascio and Second Sergeant Estiben Zárate, the officers who apprehended him, to 30 years in prison for the direct perpetration of the crimes of aggravated homicide and torture.<sup>21</sup> The Panel considers in light of the chain of incidents, the period of time over which they unfolded and the elaborate means by which Rafael Acosta Arévalo was tortured that his death in custody resulted from the broader cover up of crimes by various individuals including those at high-level positions within the Venezuelan state authorities.

The Panel is of the view that such proceedings against a small number of alleged low-level perpetrators as acting in isolation is therefore grossly inappropriate and fails to accurately reflect the nature of the crimes, the gravity of the crimes, and the ongoing cover up of crimes by Venezuelan authorities as a whole.

- b.** In all the cases, the mode of liability that prosecutors chose to charge perpetrators with was direct perpetration and, in most of the cases, only low-level perpetrators were investigated, charged, and put on trial, thus ignoring the systematic involvement of high-level perpetrators in the commission of the crimes.

In spite of the evident presence of fundamental elements indicative of crimes against humanity and the repetitive pattern of perpetration within specific units of the state security forces, notably the Bolivarian National Guard — alleged to account for 58% of the murders in Carabobo and Caracas that we analyzed (6 out of 10 in Carabobo and 12 out of 21 in Caracas), the Panel observed that there were no criminal proceedings implicating the leadership of the Bolivarian National Guard pertaining to their failure to prevent and punish these alleged acts perpetrated by their officers against Venezuelan civilians throughout a period of nine years, beginning in 2014.

The Panel, therefore, establishes that these cases, which treat all incidents as isolated cases, in the backdrop of a state policy to commit widespread and systematic

<sup>19</sup> In this regard, see: <https://provea.org/actualidad/caso-capitan-rafael-acosta-arevalo-informe-mision-de-determinacion-de-hechos/> Decision of the Criminal Cassation Chamber of the Supreme Court of Justice, dated 9 October 2020, available at: <http://historico.tsj.gob.ve/decisiones/scp/octubre/310137-85-91020-2020-a20-86.html>

<sup>20</sup> *Idem*.

<sup>21</sup> In this regard, see: <http://www.tsj.gob.ve/-/tribunal-de-juicio-condeno-a-30-anos-de-prision-a-dos-efectivos-de-la-gnb-por-la-muerte-del-c-c-rafael-acosta-arevalo> Tal Cual, available at: <https://talcualdigital.com/alonso-medina-roa-sentencia-del-caso-acosta-arevalo-no-es-suficiente/>

attacks against the civilian population, fail to meet the Venezuelan State's obligation to hold accountable those most responsible for these heinous acts.

Moreover, in the absence of the acknowledgement of discernible patterns in these murders, such as the fact that in the vast majority of cases victims were shot at short range by the officers' firearms<sup>22</sup> in vital areas of the body such as the face or the torso<sup>23</sup> and that victims were subsequently denied medical assistance,<sup>24</sup> the Panel is of the view that the State of Venezuela is unable to provide for punitive or restorative justice that is reflective of the gravity of the scope of these cases.

Furthermore, accessorial modes of liability are used as a recourse to mitigate liability for state perpetrators. An example of a case presenting such a pattern includes the case of Geraldine Moreno in which the evidence indicates the involvement of several state security officers. In April 2017, while Bolivarian National Guard (GNB) officer Alvin Bonilla was sentenced to 30 years in prison as principal perpetrator of aggravated homicide with malice aforethought, the only other co-perpetrator tried and convicted was Francisco Caridad, who was sentenced to 16 years and 6 months imprisonment,<sup>25</sup> when the facts clearly indicated the direct participation of several additional members of the GNB.<sup>26</sup>

- c. The sentences failed to attribute appropriate weight to the context in which the incidents happened.

The Panel wishes to highlight the case of Fernando Alberto Albán Salazar, a politician of the opposition political party Primero Justicia, who was detained on October 5, 2018 and charged with the attempted murder of President Maduro. Albán allegedly threw himself out of a bathroom window on the 10th floor of a SEBIN prison. The Panel notes the contradictory statements made by the Attorney General<sup>27</sup>

<sup>22</sup> Such as in the case of Fabián Urbina, Daniel Quéliz, Leonardo González, Eduardo Orozco, Augusto Puga, Yaneth Angulo and Manuel Sosa.

<sup>23</sup> For example in the cases of Eduardo Orozco, Miguel Castillo, Roberto Duran and Manuel Sosa, Augusto Puga and Yaneth Angulo, Daniel Quéliz, Fabián Urbina, Leonardo González, Diego Arellano, Neomar Lander, Yoinier Peña.

<sup>24</sup> Such as in the cases of Daniel Quéliz, Leonardo González, Augusto Puga, Yaneth Angulo, Roberto Durán, Manuel Sosa.

<sup>25</sup> Appeal in cassation, available at: <http://historico.tsj.gob.ve/decisiones/scp/agosto/306909-175-7819-2019-c18-150.html>

<sup>26</sup> Human Rights Council, Report of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela. A/HRC/48/CRP.5, dated 16 September 2021, para. 383. Available at: [https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFMV/A-HRC-48-CRP.5\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFMV/A-HRC-48-CRP.5_EN.pdf)

<sup>27</sup> Attorney General, Tarek William Saab, said that Albán "asked to go to the bathroom and while there he threw himself into the void from the tenth floor".

and the Minister of Interior, Justice, and Peace<sup>28</sup> pertaining to the circumstances of the death. Furthermore, the legal representative of Albán stated that the bathroom from which he allegedly jumped has no windows and that the SEBIN windows are always locked<sup>29</sup> The Panel also wishes to express its concern that only 2 low-level SEBIN officials, namely

Miguel David Dos Santos Rodríguez and Keiberth José Cirelli Moreno, were sentenced to 5 years and 10 months on 3 December 2021,<sup>30</sup> a sentence that fails to reflect the level of gravity of the crime committed, relating to a death in state custody in the context of a pattern of widespread and systematic attacks against perceived dissidents orchestrated by the state.



RAYNER PEÑA

In the only case where the Panel found that proceedings had been concluded, the trial resulted in an acquittal. In the case of Yaneth Angulo, a 56-year-old who was shot in the head on her doorstep by officers of the Lara State Police and the Bolivarian National Guard on 11 July 2017, in Morán, Lara state, the 6th Trial Court of the Criminal Judicial Circuit of Lara State acquitted Eduardo José Monserrat García, officer of the Police of Lara State, on September 3, 2021. A new trial was ordered by the Appeal Court on 31 March 2022, but the Panel has not been able to identify any procedural steps taken since then.

The Panel wishes to express its concern regarding the temporal distribution of the convictions for alleged crimes against humanity. It is noteworthy that among the cases culminating in convictions, only one pertains to an incident that occurred before 2017, specifically the case involving Basil Da Costa from 2014.<sup>31</sup> This observation is particularly concerning given that the majority of the alleged incidents took place prior to 2017.

<sup>28</sup> The Minister of Interior, Justice and Peace, Néstor Reverol, said that at the time Albán was being transferred to the court, “being in the waiting room of the SEBIN, he threw himself out of a window of the facility, falling into the void, causing his death. On this subject, see: <https://accesoalajusticia.org/cronologia-del-caso-de-fernando-alban/>

<sup>29</sup> On this subject, see <https://www.bbc.com/mundo/noticias-america-latina-45817059>

<sup>30</sup> In this regard, see: <https://supremainjusticia.org/caso-alban-una-condena-con-sabor-a-impunidad/>

<sup>31</sup> In this regard, the Criminal Cassation Chamber of the Supreme Court of Justice, on June 27, 2019. Available at: <http://historico.tsj.gob.ve/decisiones/scp/junio/305790-130-27619-2019-C19-69.HTML>

## 2.2. MURDER CASES UNDER INVESTIGATION

### 2.2.1. MURDER INVESTIGATIONS WITH NO PERPETRATORS IDENTIFIED

The Panel also found that the Venezuelan Public Prosecutor was conducting investigations into 64 of the cases but of these cases, no individual perpetrators had been identified or charged in 53 of the investigations (i.e 69.7%) including but not limited to the following cases:

- a. the case of Hecder Lugo Pérez, who was allegedly shot in the head at close range by a Bolivarian National Guard during a demonstration on 4 May 2017 in the San Diego, Carabobo state.<sup>32</sup> In July 2018, the Panel found no information indicating the existence of any charges or arrest warrants in the case.<sup>33</sup>
- b. the case of Andrés José Uzcátegui Ávila, a 23-year-old who was shot in the chest by an officer of the Bolivarian National Guard on 20 July 2017 in La Isabelica, Carabobo state, in which no suspect has been identified,<sup>34</sup> even though the investigation began on 20 July 2017.<sup>35</sup>
- c. the case of Javier Alexander, who was shot four times, twice in the abdomen, once in the leg, and once on the wrist on 30 April 2017, in Naguanagua municipality, Carabobo state.<sup>36</sup> No charges have been brought in this case.
- d. the case of Mervins Fernando Guitián Díaz, a 26-year-old who was shot in the abdomen by officers of the Bolivarian National Guard on 20 April 2017 in Petare, Caracas. The Panel found that no charges have been brought against the six officers

<sup>32</sup> Video, available at: <https://www.youtube.com/watch?v=qA6n0264lP8>. In the same vein, The Stimulus, available at: [https://elestimulo.com/venezuela/2017-05-05/acusan-a-guardia-nacional-de-asesinar-a-un-joven-manifestante-en-carabobo/?utm\\_content=buffer9896f&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](https://elestimulo.com/venezuela/2017-05-05/acusan-a-guardia-nacional-de-asesinar-a-un-joven-manifestante-en-carabobo/?utm_content=buffer9896f&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer)

<sup>33</sup> Runrunes, available at: <https://runrun.es/investigacion/347014/protestas-2017-mama-de-hecder-lugo-el-fiscal-que-lleva-el-caso-de-mi-hijo-se-fue-del-pais/> Similarly, Prodavinci, available at: <https://prodavinci.com/estoy-llorando-seco/>

<sup>34</sup> Justice, encounter and forgiveness, available at: <https://www.jepvenezuela.com/museo-de-la-memoria-y-la-represion/caidos/andres-jose-uzcategui-avila/>. In the same vein: <https://www.jepvenezuela.com/2020/02/05/madre-de-andres-uzcategui-no-podemos-permitir-que-el-antivalor-de-la-muerte-se-instale-en-nuestra-sociedad/>

<sup>35</sup> Noticias Diarias, available at: <https://www.noticiasdiarias.informe25.com/2017/07/carabobo-ministerio-publico-investigara.html>

<sup>36</sup> El Estímulo, Confirman la muerte de Javier Rosales, herido en Carabobo por la Guardia Nacional, May 8, 2019, available at: <https://elestimulo.com/venezuela/2019-05-08/confirman-la-muerte-de-javier-rosales-herido-en-carabobo-por-la-guardia-nacional/> and <https://www.jepvenezuela.com/museo-de-la-memoria-y-la-represion/caidos/javier-alexander-rosales/>



of the Bolivarian National Guard (GNB) who have been named in the case file as allegedly involved in Mervins' murder.<sup>37</sup>

- e. the case of Jean Carlos Aponte, a 16-year-old who was shot and killed in Barrio 5 de Julio in Petare, Sucre, Caracas on 26 July 2017 by the Bolivarian National Guard (GNB).<sup>38</sup> The case is under investigation, but no charges have been brought.
- f. the case of Alixon Osorio Dos Santos Pisani, a 19-year-old who was shot and killed on 22 January 2019 in Catia, Caracas where Bolivarian National Police Corps (Policía Nacional Bolivariana), Anti-Extortion and Kidnapping Command (Comando Antiextorsión y Secuestro), Bolivarian National Guard (Guardia Nacional Bolivariana) and Special Action Forces (Fuerzas de Acciones Especiales) were involved in the incident. The case is currently under investigation, but no charges have been brought.<sup>39</sup>

### 2.2.2. MURDER INVESTIGATIONS WITH FAILURES ATTRIBUTABLE TO THE PROSECUTOR'S OFFICE

In remaining murder cases still under investigation, the Panel found delays can be directly attributed to the Venezuelan Prosecutor's Office's egregious negligence and/or its stark unwillingness to advance criminal proceedings. Such inaction has led to trials being indefinitely postponed, leaving families in a perpetual state of despair and uncertainty.

The Panel must underscore instances where the Venezuelan Prosecutor's Office has exhibited a blatant disregard for justice. Notably, in the case of Juan Pablo Pernaleté Llovera, a 20-year-old fatally injured by a tear gas canister in Caracas, and in the case of Rubén Darío González, a 16-year-old mercilessly shot by the Bolivarian National Guard in Carabobo, the failure to execute arrest warrants against identified state actors underscores a chilling complicity. Despite charges being levelled against 12 officers of the Bolivarian National Guard in 2021 for Pernaleté Llovera's death, not one has been apprehended. Similarly, judicial proceedings for González's death have been stymied by the failure to arrest the implicated National Guard member.

Moreover, the Panel has been confronted with a number of cases in which severe investigative failures were reported including but not limited to:

<sup>37</sup> On this subject, see <https://cronica.uno/fiscalia-pelotea-caso-de-asesinato-de-mervins-guitian-en-protesta-y-iv/>

<sup>38</sup> On this subject, see <https://www.infobae.com/america/venezuela/2017/07/27/un-joven-de-16-anos-es-la-segunda-victima-mortal-en-la-huelga-general-en-venezuela/> and <https://twitter.com/jepvzla/status/1287409936625000451>

<sup>39</sup> On this see: <https://www.jepvenezuela.com/museo-de-la-memoria-y-la-represion/caidos/alixon-osorio-dos-santos-pisani/>

- a. failure to analyse the murder in the appropriate context of the widespread and systematic attack against the civilian population in which it happened;
- b. failure to exhaustively consider all leads and interview all relevant witnesses;
- c. failure to conduct timely collection of evidence, including forensic evidence, which in some cases resulted in the loss of relevant evidence collected; and
- d. investigations at the outset failed to consider any suspects besides low-level perpetrators.

Given the public nature of these incidents, where in most instances, family members of the victims and civil society actors have managed to maintain records of the specific state security forces involved, the Panel is of the view that the inability to identify perpetrators points to significant gaps in the investigative process, particularly in the

effective identification, securing, and timely collection of evidence and/or the lack of willingness to take action against alleged perpetrators. In this regard, the Panel refers to the specific example of the case of Luis Guillermo Espinoza, a 16-year-old shot in the head by an officer of the Bolivarian National Guard on 5 June 2017 in San Diego, Carabobo state. The projectile that had been lodged in the victim's head and was retrieved, has reportedly disappeared from the custody of the Venezuelan authorities.<sup>40</sup>



RAYNER PEÑA

The Panel has also identified significant cause for concern with regards to the other cases

under investigation where delays and postponements in the domestic accountability process is attributable to the Venezuelan Police and Prosecutorial authorities, including but not limited to:

- a. Cases where arrests have not been made, even though perpetrators have been identified and, in some instances, charged such as:
  - i. The case of Juan Pablo Pernaleta Llovera, a 20-year-old hit by a tear gas bomb in the chest on 26 April 2017 in Altamira, Miranda state, Caracas. In 2021, Tarek William Saab stated that the Public Prosecutor's Office charged 12

<sup>40</sup> Defiende Venezuela, Programme Transforma, available at: <https://programatransforma.org/casos/luis-guillermo-espinoza/>

officers of the Bolivarian National Guard (GNB) with premeditated homicide. However, the Panel found that none of them have been arrested.<sup>41</sup>

- ii. The case of Rubén Darío González, a 16-year-old shot by the Bolivarian National Guard in Valencia, Carabobo state on 10 July 2017. A preliminary hearing scheduled to be held on the 10 November 2022 could not proceed since one of the seven alleged perpetrators did not show up, namely Lieutenant of the Bolivarian National Guard Gregori Adolfo Casanova Méndez. A warrant of arrest was issued against him, but there has been no enforcement of this warrant to this day.<sup>42</sup>
- iii. Manuel Sosa, a 33-year-old man shot in the chest on 25 May 2017 by the Bolivarian National Guards in the Palavecino municipality, Lara state. That day the GNB used firearms against peaceful protestors and there were several wounded. Manuel was hit in the abdomen by a firearm projectile. The Panel found that even though an arrest warrant was issued by the 5th Court of the Criminal Judicial Circuit of Lara on 5 June 2017 against Johnnuar José Pastor Arenas Castillo, a First Lieutenant of the Bolivarian National Guard, five years later, the arrest has still not been executed.

- b. Cases delayed due to failure to enforce requests for information from other state authorities. The Panel noted that in some cases the Venezuelan Attorney General Officer failed to successfully honor and enforce requests for information pertaining to ongoing investigations from other state authorities, such as the Bolivarian National Guard in the case of Miguel Fernando Castillo Bracho, a 27-year-old who was shot in the torso by officers of the Bolivarian National Guard on 10 May 2017 in Las Mercedes, Capital District. Even though the investigation has been initiated and video evidence was available to identify the perpetrator, the proceedings have stalled due to the failure by the Public Prosecutor's Office to enforce a request for information from the GNB.<sup>43</sup>

In addition to the above, the Panel found that in a number of cases, no charges were brought even though the investigation has been ongoing for a number of years including but not limited to the cases of:

<sup>41</sup> On this subject, see <https://cronica.uno/familia-de-juan-pablo-pernalete-sigue-en-la-busqueda-de-justicia-despues-de-seis-anos-desde-su-asesinato/>

<sup>42</sup> Defiende Venezuela, available at: <https://defiendevenezuela.org/guardia-nacional-bolivariana-acusado-del-asesinato-de-ruben-dario-gonzalez-durante-las-protestas-de-2017-no-se-presenta-ante-el-tribunal/>

<sup>43</sup> On this subject, see <https://programatransforma.org/casos/miguel-fernando-castillo-bracho/>

- a. Yoinier Peña, a 28-year-old young man, disabled since birth due to cerebral palsy, who was shot in the spine by firearm on 10 April 2017 on Florencio Jiménez Avenue, in Lara state. The Panel found that even though an investigation has been opened, no charges were brought against alleged perpetrators.
- b. Roberto Durán, a 24-year-old young man who was shot in the chest by the GNB on 28 June 2017 in Barquisimeto, Lara state. Roberto was hit in the chest and died. The Panel found that even though an investigation has been opened, no charges were brought against alleged perpetrators.
- c. Eduardo Orozco, a 19-year-old young man who was shot first in the leg and then in the head on 7 August 2017, in Palavecino municipality, Lara state, by Anti-Extortion and Kidnapping Command officers while he was lying on the floor. The Panel found that even though an investigation has been opened, no charges were brought against alleged perpetrators.

### **3. DOMESTIC ACCOUNTABILITY FOR TORTURE**

The Panel found that at least 1,521 cases of torture have been reported between 2014 and 2022 with the highest number of violations reported in Carabobo, with a total of 201 cases of torture occurring in Carabobo alone.<sup>44</sup> In addition, an alarming statistic came to light concerning instances of murder due to acts of torture. A total of 68 individuals succumbed to injuries sustained as a result of torture during the period from 2014 to 2022.<sup>45</sup>

#### **3.1. TRIALS IN TORTURE CASES**

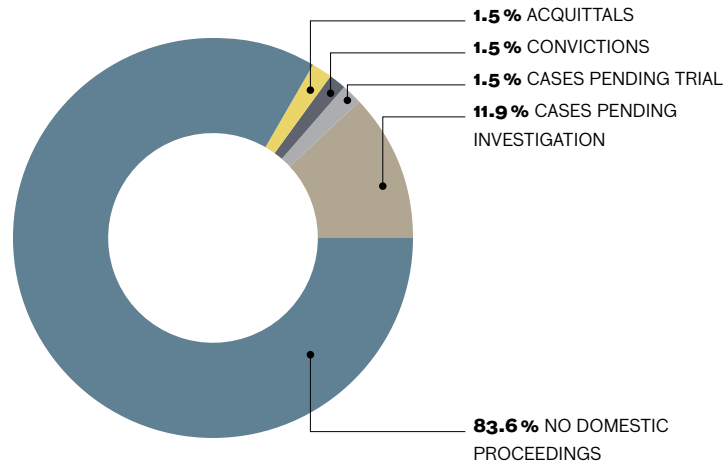
The Panel found that domestic criminal proceedings against alleged perpetrators were successfully concluded in merely 2 of the cases, resulting in 1 conviction and 1 acquittal. Only 8 cases are under investigation and 1 case is pending trial.

Relating to the acquittal in the case of Moisés Guánchez, who was arbitrarily detained by the Bolivarian National Guard in Los Teques, Miranda state on 5 March 2014, the Panel notes that while in custody, Guánchez was transferred to Victorino Santaella hospital where he had to undergo surgery as a result of being shot with pellets in his arm, buttocks, and crotch, and subsequently beaten. The allegations of torture were reported by his

<sup>44</sup> In this respect, see: PROVEA, Informe anual 2022 de PROVEA, Capítulo Derecho a la integridad personal, p.8. Available at: <https://provea.org/wp-content/uploads/2021/05/14-IntegridadPersonal-2022-2.pdf> In the same vein: <https://provea.org/actualidad/informe-anual-2019-terrorismo-de-estado-genero-574-victimas-y-23-asesinados-bajo-torturas/>

<sup>45</sup> PROVEA, Annual Report PROVEA 2020, Capítulo Derecho a la Integridad Personal, p. 6. Available at: <https://provea.org/wp-content/uploads/2021/08/14IntegridadPersonal-1.pdf>

## ACCOUNTABILITY FOR TORTURE CASES



relatives and an investigation was initiated.<sup>46</sup> However, in November 2022, an acquittal was handed down in favour of a GNB officer who had been accused of the torture and ill-treatment suffered by Moisés.<sup>47</sup>

While the Panel recalls that determinations about individual responsibility for documented violations can only be made by competent judicial authorities while respecting the accused's right to due process, the Panel is of the view that given the fact that Guánchez was in the custody of the GNB, critical aspects concerning his confinement, treatment by officers, and prison guards are events that warranted official documentation and should be available for review by the Venezuelan State Prosecutor and the Judges. In light of these considerations, the Panel asserts that a failure to hold perpetrators accountable under these circumstances perpetuates impunity for those alleged state perpetrators who caused the death of detainees while in state custody.

### 3.2. TORTURE CASES UNDER INVESTIGATIONS

Of these cases, the Panel was able to access public information and data from victims and civil society actors relating to 67 cases of torture. Among these cases, an alarming 83.6% (56 cases) saw no recorded efforts by the State to initiate investigations. It is noteworthy that, out of the cases under investigation, 8 are currently under active investigation

<sup>46</sup> PROVEA, available at: <https://archivo.provea.org/actualidad/provea-remitio-a-defensoria-del-pueblo-nueva-denuncia-de-presunta-agresion-de-funcionarios-de-la-gnb-contra-ciudadano-en-carrizal-estado-miranda/> Also see: <https://www.justiciayverdad.org/activismo/moises-guanchez/> In the same vein, Tal Cual, available at: <https://talcualdigital.com/tribunal-declaro-inocente-a-guardia-nacional-acusado-por-torturas-durante-protestas-2014/>

<sup>47</sup> Centro de Derechos Humanos de la Universidad Católica Andrés Bello, available at: [https://twitter.com/CDH\\_UCAB/status/1594785606600691716](https://twitter.com/CDH_UCAB/status/1594785606600691716)

(11.9%), 1 has progressed to the trial phase (1.5%), 1 has received a verdict of guilt (1.5%), and 1 has resulted in an acquittal (1.5%).

### 3.2.1. VICTIM COMPLAINTS IGNORED

Following an examination of data from victims and representative victim groups pertaining to 67 of the most infamous torture cases, which encompass instances of sexual violence and torture resulting in death in custody, across 11 provinces,<sup>48</sup> the Panel was able to identify a discernible pattern. In approximately 83.6% of these cases (56 cases), the Panel found no records of ongoing investigative steps or criminal domestic process from NGOs, the victims themselves, or from public records of the judiciary, suggesting that no investigation was initiated.

The Panel observes that in many of these cases, complaints were submitted by victims, their families, or legal representatives to the Public Prosecutor's Office, to the Ombudsman's Office, or to the Courts before which they appeared, including but not limited to the cases of:

- a. Marco Coello, a 18-year-old who was arrested in February 2014, by plainclothes officers who brought him to the Scientific, Criminal and Forensic Investigation Corps headquarters<sup>49</sup>. There he was beaten, threatened with a gun put to his head, and subjected to torture with electrical shocks over a period of 7 months.<sup>50</sup> His family members reportedly submitted a complaint about the incidents, but the Panel found no evidence of an ongoing investigation, charges brought forward, arrests, or trials against alleged perpetrators.<sup>51</sup>
- b. Raúl Ayala Álvarez who was arrested in Caracas by SEBIN officials in February 2014<sup>52</sup>. Following his arrest, he was tortured, repeatedly electrocuted and suffocated using plastic bags. The facts were detailed in a hearing before the Public

<sup>48</sup> Apure, Aragua, Barinas, Bolívar, Caracas, Carabobo, Mérida, Monagas, Miranda, Táchira and Zulia.

<sup>49</sup> Univision, available at: <https://www.univision.com/noticias/inmigracion/no-me-pueden-devolver-a-venezuela-ruega-marco-coello-simbolo-de-la-tortura-del-gobierno-de-maduro-al-ser-detenido-por-ice>

<sup>50</sup> The New York Times, Marco Coello a tortured Venezuelan, 2017. Available at: <https://www.nytimes.com/es/2017/06/18/espanol/america-latina/marco-coello-detencion-estados-unidos.html>

<sup>51</sup> Centro de Derechos Humanos de la Universidad Católica Andrés Bello, De aquella impunidad vienen estas torturas. Informe de seguimiento a la implementación de las observaciones finales del Comité contra la Tortura sobre Venezuela, p. 3. Available at: <https://ln5.sync.com/dl/2853e35e0/wdghshjk-56a8b3g5-c3wbsne2-fanrswbj/view/doc/7914417480014>

<sup>52</sup> In this respect, see: <https://www.venezuelaawareness.com/2014/02/lista-parcial-de-detenedos-por-manifestar-pacificamente-el-12f/>

Prosecutor's Office<sup>53</sup>, but the Panel found no evidence of an ongoing investigation, charges brought forward, arrests, or trials against alleged perpetrators.

c. Gerardo Carrero, who was arrested on 8 May 2014 by officers of the Bolivarian National Guard. He was detained by the SEBIN and was tortured, beaten with wooden boards, handcuffed, and



RAYNER PEÑA

hung from a ceiling pipe. The facts were reported to the Public Prosecutor's Office<sup>54</sup>, but the Panel found no evidence of an ongoing investigation, charges being brought forward, arrests, or trials against alleged perpetrators.

d. Efraín Ortega Hurtado, who was arrested by Cuerpo de Investigaciones Científicas, Penales y Criminalísticas officers in Caracas on 24 July 2014. At the time of his arrest nothing was seized from him. However, he was charged with terrorism, supplying explosive devices, and association to commit a crime.<sup>55</sup> He was tortured, severely beaten, subjected to stress positions, and electrocuted.<sup>56</sup> He was released in October 2017. The facts were reported to the Ombudsman's Office and the UN<sup>57</sup>, but the Panel found no evidence of an ongoing investigation, charges being brought forward, arrests, or trials against alleged perpetrators.

e. Luis de la Sotta, who was arrested on 18 May 2018 and accused of instigating rebellion and treason. He was held in isolation, with food restrictions and without facilities for personal hygiene, in the basement of the DGCIM for 32 days. During

<sup>53</sup> Foro Penal, *Protestas y derechos humanos*, 2014, p. 40. Available at: <https://foropenal.com/informe-protestas-y-derechos-humanos-en-venezuela-febrero-a-mayo-2014/>

<sup>54</sup> *A todo momento*, available at: <https://atodomomento.com/gerardo-carrero-pionero-de-la-no-violencia/>. Similarly, Foro Penal, *Reporte sobre la represión del Estado Venezolano*, January 2014-May 2016, pp. 3-4, available at: <https://foropenal.com/reportesobre-larepresion-del-estado-venezolano-enero-2014-junio-2016/>

<sup>55</sup> On this subject see: <https://www.infobae.com/america/america-latina/2016/10/09/efrain-ortega-el-presopolitico-que-agoniza-en-una-carcel-del-chavismo/>

<sup>56</sup> Foro Penal, *Report on Venezuelan State Repression*, January 2014-May 2016, pp. 4-5, available at: <https://foropenal.com/reportesobre-larepresion-del-estado-venezolano-enero-2014-junio-2016/>.

<sup>57</sup> On this subject see: <https://www.infobae.com/america/america-latina/2016/10/09/efrain-ortega-el-presopolitico-que-agoniza-en-una-carcel-del-chavismo/>

this time, he was beaten with wooden sticks, asphyxiated with a plastic bag, electrocuted, and had tear powder thrown into his eyes. He spent 3 months in a cell on his knees, without access to the sun, without physical activity, with only artificial light.<sup>58</sup> After 5 years in detention, he has seen all the torture cells that exist in the basements of the DGCIM: the “Tigrito”, the “Cuarto de los locos”, the “Ataúd”, and the “Casa de los sueños”.<sup>59</sup> The Panel found no evidence of an ongoing investigation, charges being brought forward, arrests, or trials relating to the allegations of violence by Luís de la Sotta, despite the fact that he detailed his allegations at a court hearing. On the contrary, the Panel found that the Venezuelan authorities were complicit in a cover up even extending to a state-appointed forensic doctor who ruled that he was in good health, despite apparent signs of torture.<sup>60</sup>

### 3.2.2. TORTURE INVESTIGATIONS WITH NO PERPETRATOR IDENTIFIED

The failure of the Public Prosecutor to successfully conduct effective investigations identifying alleged perpetrators with a sufficient degree of certainty in a significant number of cases can be seen in the following cases:

- a. Juan Manuel Carrasco González, who was arrested by officers of the Bolivarian National Guard in February 2014<sup>61</sup>, tortured, severely beaten, subjected to stress positions, and brutally sodomized. Despite the existence of two forensic medical examinations which corroborated that he was raped in custody,<sup>62</sup> the investigation has not led to any alleged perpetrators being charged.
- b. Oscar Pimentel, who was arrested in Caracas by CICPC officers in February 2014,<sup>63</sup> following which he was tortured, beaten, doused with gasoline, and suffocated. The Panel found that even though an investigation was opened<sup>64</sup>, the Public Prosecutor has been unable to identify any of the alleged perpetrators.

<sup>58</sup> On this subject, see: <https://defiendevenezuela.org/a-casi-4-anos-de-su-detencion-el-capitan-de-la-sotta-sigue-siendo-torturado-a-manos-del-regimen/>

<sup>59</sup> On this subject, see <https://runrun.es/tag/luis-de-la-sotta/>

<sup>60</sup> In this regard, <https://runrun.es/tag/luis-de-la-sotta/>

<sup>61</sup> In this respect, see: <https://www.venezuelaawareness.com/2014/02/lista-parcial-de-detenedos-por-manifestar-pacificamente-el-12f/>

<sup>62</sup> Foro Penal, Protestas y derechos humanos, 2014, p. 42. Available at: <https://foropenal.com/informe-protestas-y-derechos-humanos-en-venezuela-febrero-a-mayo-2014/>

<sup>63</sup> In this respect, see: <https://www.venezuelaawareness.com/2014/02/lista-parcial-de-detenedos-por-manifestar-pacificamente-el-12f/>

<sup>64</sup> Foro Penal, Protestas y derechos humanos, 2014, p. 40. Available at: <https://foropenal.com/informe-protestas-y-derechos-humanos-en-venezuela-febrero-a-mayo-2014/>



## 4. DOMESTIC ACCOUNTABILITY FOR IMPRISONMENT

In its 2018 report, the Panel already reported more than 12,000 cases of arbitrary detentions.<sup>65</sup> Based on reports from non-governmental organizations in Venezuela, the number of politically motivated imprisonments since the year 2014, exceeds 15,700 cases.<sup>66</sup> Furthermore, it is currently believed that approximately 300 individuals remain incarcerated due to political affiliations or political activities in Venezuela.

The Panel was able to access and analyse 22 cases of imprisonment across Venezuela and has found no indication of domestic investigations and prosecutions of alleged perpetrators of the crime against humanity of imprisonment either through public records, or victim or civil society data. The various local Venezuelan legal experts have confirmed that the Venezuelan State continues to implement a policy of blanket impunity for all the crimes against humanity of imprisonment since 2014.

The Panel notes that even though Article 7 (1) (e) of the Rome Statute includes “Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law” as a crime against humanity, the Venezuelan State has until now disputed the context in which the alleged crimes against humanity have happened and has failed to acknowledge that since 2014, civilians have been arrested and detained without due process or legitimate legal basis, in violation of the right to a fair trial, and

domestic and international human rights provisions.

The crime against humanity of imprisonment has not formed part of the type of criminal conduct addressed by domestic criminal proceedings initiated by the Venezuelan Public Prosecutor’s Office. While the Panel acknowledges the complexity of reviewing the existence of due process and the legal basis for arrests, it notes that the legal framework that exists to criminalise imprisonment is systematically not enforced.



CARLOS HERNÁNDEZ

<sup>65</sup> OAS Panel of Independent International Experts, Report of the General Secretariat of the Organization of American States and the Panel of Independent International Experts on the possible commission of crimes against humanity in Venezuela / General Secretariat of the Organization of American States. Available at: <https://www.oas.org/documents/eng/press/Informe-Panel-Independiente-Venezuela-EN.pdf>

<sup>66</sup> Foro penal, available at: <https://foropenal.com/15-mil-800-presos-politicos-durante-el-gobierno-de-maduro-en-venezuela/>

## 5. DOMESTIC ACCOUNTABILITY FOR PERSECUTION

The ongoing policy of repression in Venezuela since 2014, which has received extensive international condemnation from various entities, stems from a systematic, widespread, and ongoing practice of stigmatizing dissent. In its 2018 report, the Panel estimated that victims of persecution could reach thousands or hundreds of thousands.<sup>67</sup> This policy manifests through a range of measures designed to deprive perceived dissidents of their fundamental human rights, employing methods as varied as imprisonment, torture, sexual violence, and other acts of inhumanity.

The Panel has had the opportunity to review and analyze 18 cases of politically motivated persecution and has reached the conclusion that no investigations and/or prosecutions have been triggered with respect to these crimes.

The Panel wishes to highlight that despite the explicit categorization of persecution as a crime against humanity under Article 7(1)(h) of the Rome Statute, the Venezuelan State has failed to enact corresponding domestic legislation to fully criminalize such conduct,<sup>68</sup> relying instead on the Law against Hate, for Peaceful Coexistence and Tolerance, which provides for persecutory intent as only an aggravating circumstance in cases relating to incidents after November 2017.<sup>69</sup>

The Panel notes that since at least June 2023, the Venezuelan State has engaged in a renewed campaign of persecution of opposition members and perceived dissidents in the lead-up to the upcoming elections in 2024. A disturbing pattern of aggression against opposition candidates has emerged, escalating in both frequency and severity as the 2024 presidential elections draw near. The Panel wishes to highlight the following examples:

<sup>67</sup> OAS Panel of Independent International Experts, Report of the General Secretariat of the Organization of American States and the Panel of Independent International Experts on the possible commission of crimes against humanity in Venezuela / General Secretariat of the Organization of American States. Available at: <https://www.oas.org/documents/eng/press/Informe-Panel-Independiente-Venezuela-EN.pdf>

<sup>68</sup> Ley contra el odio, por la convivencia pacífica y la tolerancia, Published in Official Gazette No. 41,274 on November 8, 2017. Available at: [https://albaciudad.org/wp-content/uploads/2017/11/GO-41.274-\\_081117.pdf](https://albaciudad.org/wp-content/uploads/2017/11/GO-41.274-_081117.pdf) It will be considered as an aggravating circumstance of any punishable act 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 by reason of gender, sexual orientation, gender identity, gender expression or any other discriminatory motive. In these cases, the applicable sanction will be the maximum limit of the penalty established for the corresponding punishable act.

<sup>69</sup> ICC-02/18-18, OTP, Prosecution request to resume the investigation into the situation in the Bolivarian Republic of Venezuela pursuant to article 18(2), 1 November 2022. Para 111. Available at: [https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022\\_06554.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_06554.PDF) “The Prosecution notes that the 2017 Law against Hate, for Peaceful Coexistence and Tolerance acknowledges that any criminal act that is committed due to the victim’s membership of a particular ethnic, racial, religious or political group shall be considered as an aggravating circumstance in determining the appropriate sentence. There is, however, no indication that the Venezuelan authorities have reflected the discriminatory nature of the facts in the reported proceedings.”

- a. Henrique Capriles, the former Governor of Miranda State and a candidate for the opposition party Primero Justicia (PJ), found himself the target of a violent mob in the State of Carabobo on 3 June 2023, an attack he attributed to state actors since it was not an isolated incident but rather part of a broader strategy to silence dissent. Capriles again became a target in August, this time at a rally in Apure state, marking the seventh such attack against him since late May 2023. An estimated 1,500 political figures have been barred from office since 2008, a tactic that has effectively sidelined key opposition leaders, including Capriles, Machado, and others, from the electoral process.<sup>70</sup>
- b. María Corina Machado, the leading Presidential candidate from the Opposition faced armed paramilitary supporters acting for and on behalf of state security forces (colectivos) in July 2023 in La Guaira and Petare. The Inter-American Commission on Human Rights (IACHR) swiftly condemned these actions, recognizing them as severe infringements on political participation and freedom of association.

Amidst this climate of hostility, death threats have emerged as another tool of coercion. The Vente Venezuela opposition party campaign headquarters in La Fria, Tachira state, was defaced with graffiti calling for Machado's death, a threat she attributed to the Colombian ELN guerrilla organization, highlighting the transnational dimensions of this campaign of intimidation.

The primary elections held on 22 October 2023, were marred by violence and chaos, orchestrated to disrupt the voting process. Armed colectivos engaged in theft of ballots, gunfire, and the use of tear gas to prevent the efficient functioning of voting centers, a clear attempt to undermine the electoral process. The violence was widespread, affecting multiple locations across Caracas and extending to the Regional Board of Monagas state, where threats and expletives were hurled at voters. The culmination of these efforts to derail the primaries was a targeted cyberattack on the state-owned internet service provider, further delaying the vote counting process.

The Venezuelan Public Prosecutor's Office, led by Tarek William Saab, has compounded these challenges by summoning members of the National Primary Commission and Regional Primary Boards for interrogation on charges ranging from usurpation of electoral functions to money laundering. This move, condemned by Amnesty International, serves as a stark reminder of the official apparatus's role in intimidating and silencing opposition voices.

<sup>70</sup> In this regard: <https://www.dw.com/es/venezuela-inhabilitaciones-políticas-como-garrote-contra-la-oposición/a-66115228>

These events, unfolding in the lead-up to the 2024 elections, reveal a concerted effort by the Venezuelan government and its allies to persecute and clamp down on opposition members and perceived dissidents, employing a range of tactics from physical violence to legal harassment.

The Panel is of the view that these incidents are politically motivated, constitute further crimes against humanity, and are the direct result of the failure to bring to justice alleged mid- and high-level perpetrators of crimes against humanity committed since 2014.



RAYNER PEÑA

## 6. DOMESTIC ACCOUNTABILITY FOR SEXUAL VIOLENCE

The Panel notes with great concern the Venezuelan State's position on sexual crimes. Despite the fact that in its 2018 report the Panel had already warned of at least 192 cases of sexual violence,<sup>71</sup> during the hearings held before the Appeals Chamber of the International Criminal Court, Venezuela reiterated that it considers sufficient that rape and other sexual assaults be considered an aggravating factor in cruel treatment or torture<sup>72</sup>. This is clearly an abhorrent position because the criminal offense of rape is autonomous and considering it only a subsidiary aspect of another crime implies a disregard for the trauma, affectation, and legal rights that are violated with sexual assaults.

The Venezuelan State is unwilling to investigate and prosecute the sexual crimes committed as a crime in their own right, so there can be no expectation of obtaining true justice at the domestic level for victims of sexual and gender-based violence. The Panel considers that the Venezuelan State fails to recognize the distinct severity and impact of sexual crimes, showing a troubling disregard for the victims' trauma and rights, and signaling a lack of commitment to properly investigate and prosecute these crimes within the country.

<sup>71</sup> OAS Panel of Independent International Experts, Report of the General Secretariat of the Organization of American States and the Panel of Independent International Experts on the possible commission of crimes against humanity in Venezuela / General Secretariat of the Organization of American States. Available at: <https://www.oas.org/documents/eng/press/Informe-Panel-Independiente-Venezuela-EN.pdf>

<sup>72</sup> In this regard: <https://www.infobae.com/venezuela/2023/11/08/segunda-jornada-de-apelaciones-en-la-corte-penal-internacional-contra-la-investigacion-por-crime-nes-de-lesa-humanidad-en-venezuela/>

## 7. TREATMENT OF VICTIMS AND THEIR FAMILY MEMBERS

### 7.1. IGNORED COMPLAINTS

The Panel also wishes to express serious concern about the fact that a significant number of complaints, raised by victims, their families, and legal representatives, that have been officially submitted to both the Public Prosecutor's Office and the Office of the Ombudsman, have been ignored and disregarded. This is particularly relevant to those cases relating to allegations of crimes against humanity that occurred from 2014 onwards.

This consistent lack of responsiveness to the concerns voiced by those victims directly highlights the lack of willingness on the part of the State of Venezuela to conduct timely and thorough investigations into these complaints.

### 7.2. ABSENCE OF PROTECTION MECHANISM

Despite the existence of the Partial Reform Law of the Law on the Protection of Victims, Witnesses, and Other Procedural Subjects,<sup>73</sup> which provides for certain protection mechanisms such as anonymity, in practice, these measures are not applied. On the contrary, victims and witnesses often feel unprotected within a justice system that, instead of providing them with protection, excludes and mistreats them, responding solely to government interests.

The Fact-Finding Mission in its recent 2023 report, highlighted obstacles in its investigation due to the fear of those wishing to cooperate with the Mission.<sup>74</sup> According to the Mission, this fear “is undoubtedly a reflection of a broader dynamic of internalization of repression by Venezuelan society and, in general, inhibition of civil society actors, as reflected in this session document” and is compounded by widespread impunity and the authorities' lack of response to reports of human rights violations or crimes.<sup>75</sup>

Due to the lack of protection mechanisms, victims have chosen not to report the human rights violations against them, not to share details, and not to make facts public for fear of reprisals against them or against their relatives.<sup>76</sup>

<sup>73</sup> Published in Official Gazette No. 6,645 Extraordinary on September 17, 2021, available at: <https://www.asambleanacional.gob.ve/storage/documentos/leyes/ley-de-reforma-parcial-de-la-ley-de-proteccion-de-victimas-testigos-y-demas-sujetos-procesales-20210929231506.pdf>

<sup>74</sup> Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela. A/HRC/CRP.8. 20 September 2023, para. 37. Available at: [https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session54/advance-versions/A\\_HRC\\_54\\_CRP.8\\_EN\\_0.pdf](https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session54/advance-versions/A_HRC_54_CRP.8_EN_0.pdf)

<sup>75</sup> Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela. A/HRC/CRP.8. 20 September 2023, para. 37. Available at: [https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session54/advance-versions/A\\_HRC\\_54\\_CRP.8\\_EN\\_0.pdf](https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session54/advance-versions/A_HRC_54_CRP.8_EN_0.pdf)

<sup>76</sup> Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela. A/HRC/CRP.8. 20

Victims are not only deprived of protection mechanisms at the internal level. Venezuela has been systematically closing the victims' possibilities of recourse at the interna-

tional level: first, it denounced several human rights instruments and, recently, decided to suspend the activities of the Technical Advisory Office of the United Nations High Commissioner for Human Rights in Venezuela. This scenario leaves the ICC as the only hope for thousands or hundreds of thousands of victims.



LEONARDO RODRÍGUEZ

### 7.3. THREATS TO VICTIMS

The Panel also wishes to express serious concern about the fact that there have been reports of victims and their family members

receiving threats, that criminal complaints submitted to the Venezuela's Public Prosecutor's Office, the Ombudsman, or made in court proceedings have been ignored, subjected to undue influence and that victims have not been notified of hearing dates and court appearances. The Fact-Finding Mission has expressed the same concern in its report.<sup>77</sup>

In a case involving the attempted murder of a victim who also suffered from arbitrary detention, enforced disappearance, serious acts of torture and persecution that was reported to the United Nations, the Ombudsman, and the Public Prosecutor's Office, the Panel was informed that the Public Prosecutor's Office refused to accurately register the complaint of the victim. The victim was advised in no uncertain terms by an officer of Public Prosecutor's office that he was neither allowed to implicate a Representative to the National Assembly of Venezuela nor President Maduro in his criminal complaint, even though they both publicly made statements against him and ordered his arbitrary arrest by Venezuelan State forces and armed civilians acting with and in support of the Venezuelan State forces.

For its part, the Fact-Finding Mission explained that in some cases, lawyers and relatives of victims reported having received explicit or veiled threats from the Venezuelan Prosecutor's Office staff members.<sup>78</sup>

September 2023, para. 234. Available at: [https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session54/advance-versions/A\\_HRC\\_54\\_CRP.8\\_EN\\_0.pdf](https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session54/advance-versions/A_HRC_54_CRP.8_EN_0.pdf)

<sup>77</sup> Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela. A/HRC/CRP.8. 20 September 2023, paras. 1488-1489. Available at: [https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session54/advance-versions/A\\_HRC\\_54\\_CRP.8\\_EN\\_0.pdf](https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session54/advance-versions/A_HRC_54_CRP.8_EN_0.pdf)

<sup>78</sup> Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela. A/HRC/CRP.8. 20

The Panel has received confirmation from several human rights advocates that this is a widespread practice and illustrates the poor treatment provided by the Venezuelan State and the national justice system to victims and their families.

#### **7.4. LACK OF JUDICIAL TRANSPARENCY**

In a number of other cases, the Panel found that there was a systematic lack of transparency by the judiciary where the judiciary is not only failing to make court records available to the public but is also deliberately refusing victims access to court records.

The Panel found it extremely difficult to access figures, statistics, and official records relating to the Venezuelan judiciary. The Public Prosecutor's Office, under the leadership of Tarek William Saab, stopped issuing annual public reports.<sup>79</sup> Despite the fact that the website of the Supreme Court of Justice, in the Judicial Power section, TSJ-Regions, offers the possibility to view decisions made by criminal courts in the country, the information is significantly outdated.<sup>80</sup>

With regard to the Ombudsman's Office, the most recent annual report found was from the year 2021. In that report, it is reflected that the Ombudsman's Office, in its capacity as the President of the Technical Secretariat of the National Commission for the Prevention of Torture and other Cruel, Inhuman, or Degrading Treatment, analyzed and reviewed cases of torture and other cruel, inhuman, or degrading treatment that were received and processed by the State and Municipal Delegated Ombudsman's Offices during the year 2021. According to the report, there were 34 cases of torture, 143 cases of cruel treatment, and 8 cases of inhuman treatment<sup>81</sup>. However, this figure can only be taken as a reference, as the institution responsible for prosecuting such cases is the Public Ministry, for which there is no public official report or document available.

The opacity and difficulty in accessing records, figures, and official documents was confirmed directly by the Panel. NGOs, the victims themselves, and the lawyers who represent them, expressed that being obstructed from accessing case files and proceedings,

September 2023, para. 1489. Available at: [https://www.ohchr.org/sites/default/files/documents/hrbodies/hr-council/sessions-regular/session54/advance-versions/A\\_HRC\\_54\\_CRP.8\\_EN\\_0.pdf](https://www.ohchr.org/sites/default/files/documents/hrbodies/hr-council/sessions-regular/session54/advance-versions/A_HRC_54_CRP.8_EN_0.pdf)

<sup>79</sup> Human Rights Council, Report of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela, A/HRC/48/69, dated September 16, 2021, para. 98. Available at: [https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFMV/A.HRC.48.69\\_ES.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFMV/A.HRC.48.69_ES.pdf)

<sup>80</sup> To cite a few random examples, when checking the seventh trial court of Carabobo State, the information only goes up to February 2012, see: <http://carabobo.tsj.gob.ve/decisiones/instituciones.asp?instituto=705&id=007>; meanwhile, the third trial court in Ciudad Bolívar has information only up to August 2007, see: <http://bolivar.tsj.gob.ve/decisiones/instituciones.asp?instituto=2165&id=006&ano=2007>.

<sup>81</sup> Ombudsman's Office, Annual Report 2021, pp. 173-177. Available at: <http://www.defensoria.gob.ve/index.php/zona-informativa/informes/anales/>

in general, is a constant feature of the Venezuelan criminal justice system. Therefore, obtaining access to judicial records and documents is an uphill battle.

The Panel notes that even though the Organic Code of Criminal Procedure establishes that victims have the right to be informed about the progress and results of the case when requested and to have access to the case file even if they have not filed a complaint<sup>82</sup>, in Venezuela, this rule is violated by the organs of the justice administration system. They arbitrarily deny victims, their family members, and/or their representatives access to case files.

## **7.5. LACK OF RESTORATIVE JUSTICE**

Even though the Organic Code of Criminal Procedure of Venezuela includes mechanisms for restitution, reparation, and compensation, and provides redress in civil court for crimes<sup>83</sup>, in practice, the Panel notes that it has received confirmation from several civil society actors and legal representatives of victims that these mechanisms are not applied.

In 2022, the Fact-Finding Mission reported not having received information indicating whether the victims of crimes and violations in SEBIN's "El Helicoide" and DGCIM's Boleíta detention centers documented in its previous reports had been provided with reparations for the harms they suffered, including compensation, restitution, or rehabilitation.<sup>84</sup> The Panel has received corroborating information from human rights advocates confirming that there was no implementation of restorative justice mechanisms in Venezuela for these victims.

## **8. ONGOING COMMISSION OF CRIMES AGAINST HUMANITY**

The Panel notes with concern that this impunity gap has facilitated the continued commission of these crimes against humanity overall, and in particular the crimes of

<sup>82</sup> Article 122, numeral 3 of the Partial Reform Law of the Organic Code of Criminal Procedure. Available at: <https://www.asambleanacional.gob.ve/storage/documentos/leyes/ley-organica-de-reforma-del-codigo-organico-procesal-penal-20211004180004.pdf>.

<sup>83</sup> On this see, Article 413 yss. of the Law for the Partial Reform of the Organic Code of Criminal Procedure. Available at: <https://www.asambleanacional.gob.ve/storage/documentos/leyes/ley-organica-de-reforma-del-codigo-organico-procesal-penal-20211004180004.pdf>

<sup>84</sup> Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela. A/HRC/51/CRP.3. 20 September 2022, para. 11. Available at: <https://www.ohchr.org/sites/default/files/documents/hrbodies/hr-council/ffmv/2022-09-20/FFMV-CRP-3-English.docx>



persecution and imprisonment, particularly against perceived dissidents, thereby intensifying electoral interference and repression in the lead-up to the 2024 Venezuelan elections.

Notable incidents include violent attacks against Henrique Capriles and María Corina Machado, death threats, and disruptions to primary elections through violence and state-coordinated cyberattacks which underscore a concerted effort to suppress opposition.

The Panel notes that the attacks against by María Corina Machado and her team, present indisputable similarities with the pattern of systematic politically motivated repression used by Venezuelan State officials in the past previous opposition leaders.<sup>85</sup>

The Venezuelan authorities have also issued a series of arrest warrants targeting prominent opposition figures, journalists, and human rights activists. Among the prominent individuals targeted are:

- a. Juan Guaidó, the Former Interim President of Venezuela and current leader of the opposition-controlled National Assembly,
- b. Leopoldo López, an Opposition leader, former Mayor of Chacao, and National Coordinator of Voluntad Popular.
- c. Carlos Vecchio, the National Political Coordinator of the Voluntad Popular party and Venezuelan Ambassador to the United States during Guaidó's interim presidency,
- d. Antonio Ledezma, the Former Mayor of Caracas and current coordinator of the International Political Council of María Corina Machado,
- e. Julio Borges, the Former Deputy of the National Assembly and founder of the opposition Primero Justicia party,
- f. Tamara Sulay Sujú, a prominent human rights lawyer,
- g. David Smolanski, a political leader of the Voluntad Popular party,

**85** Some of the acts of persecution committed against Juan Guaidó were: (i) violent attacks against him; (ii) intimidation by the Special Action Forces (FAES); (iii) members of his team and family members were arbitrarily detained (Roberto Marrero, who served as Director of his Office; his cousin Juan Planchart; his bodyguards Erick Sánchez and Jason Parisi; his uncle Juan José Márquez; members of his work team, Víctor Silio and Rómulo García; as well as Andrea Bianchi, girlfriend of Guaidó's assistant and Demóstenes Quijada, his advisor); (iv) the Public Prosecutor's Office announced investigations against Juan Guaidó and his team for alleged conspiracy plans. (v) Juan Guaidó's offices were raided by SEBIN officials; (vi) arrest warrants were issued against members of his team such as Yon Goicochea and José Gregorio Guerra; and (vii) he was politically disqualified.

- h.** Lester Toledo, the Former deputy of the Legislative Council of the state of Zulia and co-founder of the Voluntad Popular party,
- i.** Rocío San Miguel, a prominent human rights lawyer, who is currently detained,
- j.** Víctor Venegas, President of the National Federation of Venezuelan Education Workers in Barinas,
- k.** Henry Alviárez, National Coordinator of Vente Venezuela, who is currently detained,
- l.** María Sebastiana Barráez, journalist known for her critical reporting,
- m.** Nelson Piñero, an activist associated with Delsa Solórzano’s opposition party, who is currently detained, and
- n.** Roberto Abdul, President of the nongovernmental organization Súmate and collaborator of Vente Venezuela

The Panel also wishes to highlight the situation of 8 leaders of the Vente Venezuela party — Juan Freitas, Luis Camacaro, Guillermo López, Tomás Sequera, Emil Brandt, Joe Villamizar, Henry Alviárez and Dignora Hernández — detained by Venezuelan authorities.

The Panel notes that the patterns relating to this campaign of persecution suggest that these individuals are victims of politically motivated repression, specifically considering:

- a.** the profile of the individuals indicted and/or arrested;
- b.** the nature of the accusations of money laundering, conspiracy and even treason against these individuals,
- c.** the timing of the issuance of the warrants of the arrests close to the 2024 elections and
- d.** the lack of concrete evidence. These actions raise stark concerns about the suppression of dissent and the silencing of any critical voice. The international community and human rights organizations have been swift to condemn these developments, highlighting the precarious state of due process and the rule of law within Venezuela.

The Panel is of the view that these alarming developments that stem from the de facto lack of accountability for alleged perpetrators of persecution and imprisonment result in a climate of fear and intimidation that is permeating the upcoming elections in Venezuela, discouraging any form of public dissent or criticism of the government.

## 9. FINDINGS

In light of the comprehensive analysis conducted, the Panel has reached the following conclusions:

- a. There have been no investigations opened nor prosecutions triggered against mid or high-level perpetrators for any of the alleged crimes against humanity committed since 2014. In fact, the Panel noted with grave concern that the State of Venezuela has instituted procedural roadblocks to prevent investigations against high level perpetrators from happening for the foreseeable future in the form of a combination of the preliminary trial of merit procedure<sup>86</sup> and the enactment of the Partial Reform Law of the Organic Law of the Supreme Court of Justice which allowed the re-appointment of Judges of the Supreme Court for another 12 years in violation of Article 264 of the Venezuelan Constitution in a context of systemic lack of independence of the judiciary.
- b. The State of Venezuela continues to treat domestic cases as isolated incidents, in the presence of a backdrop of a state policy of widespread and systematic persecution of the civilian population and is therefore unable to provide for punitive or restorative justice that is reflective of the gravity of the scope of criminality.
- c. There is a blanket de facto impunity for all crimes against humanity of imprisonment, persecution and sexual violence that occurred in Venezuela since 2014.
- d. No investigative steps had been taken in 83.6% of all the torture cases analysed by the Panel.
- e. The Panel has recorded reports of deliberate attempts by the Venezuelan Public Prosecutor's office to cover up crimes by refusing to register victims' complaints against the President Maduro himself, and other high-level officials, even where they were alleged to have been personally involved in the commission of crimes against humanity targeting the victim.<sup>87</sup>
- f. The number of alleged state perpetrators investigated, charged and put on trial in the individual cases was not reflective of the scope and gravity of the incriminating evidence publicly available in the cases analysed.

<sup>86</sup> Marie Picard de Orsini and Judith Useche, "The preliminary trial of merit and the due process of law". pp.14 Available at: <https://bit.ly/3DHP0Et>

<sup>87</sup> Youtube, Maduro llama a los militares a combatir frente a los golpistas. 2 May 2019. Available in Spanish at: <https://www.youtube.com/watch?v=RH8fCPxmGx8> Unofficial translation: and YouTube Video, Noticias 24, Con el Mazo Dando 17/05/2017, live streamed 17 May 2017, minute 22:00, available at: <https://www.youtube.com/watch?v=p9uBb8fPyQI>

- g.** Co-perpetration was repeatedly used as a mode of liability where the evidence available pointed to direct modes of liability suggesting flawed prosecutorial decisions which systematically mitigate liability by understating the alleged degree of involvement and culpability of state actors. A critical examination of this approach reveals a significant disparity between the application of the mode of liability and the underlying nature and magnitude of the conduct substantiated by the existing body of evidence.
- h.** The sentences in the cases of convictions failed to reflect the appropriate level of gravity, to attribute appropriate weight to the broader context within which these offenses transpired, neglecting to account for the pervasive involvement of state entities and state actors, and the gravity of the offenses, the nature of the violence inflicted including the level of cruelty and the broader impact on the community or society at large.
- i.** Where investigations were triggered, a significant number of serious irregularities by the Venezuelan Police and Public Prosecutor in the criminal process were reported including negligence in various respects in the conduct of the investigation, including the timely collection and securing of evidence as well as the pursuit of leads. In this regard, the Panel refers to the specific example of the case of Luis Guillermo Espinoza, a 16-year-old shot in the head by an officer of the Bolivarian National Guard on 5 June 2017 in San Diego, Carabobo state. The projectile that was retrieved from the victim's head, has reportedly disappeared from the custody of the Venezuelan authorities.<sup>88</sup>
- j.** In a significant number of cases, investigations were delayed due to the failures of the Venezuelan Police and Prosecutorial authorities, in instances including but not limited to:

  - i.** cases which resulted in no arrest, despite the fact that perpetrators have been identified and, in some instances, charged such as the case of Juan Pablo Pernalet Llovera, where none of the 12 officers of the Bolivarian National Guard charged were arrested.
  - ii.** cases delayed due to a failure to enforce requests for information from other state authorities such as in the case of Miguel Fernando Castillo Bracho, a 27-year-old shot in the torso by officers of the Bolivarian National Guard on 10 May 2017 in Las Mercedes, Capital District. Even though the investigation has been triggered and video evidence is available to identify the perpetrator,

<sup>88</sup> In this regard see, Defiende Venezuela, Transforma Programme, available at: <https://programatransforma.org/casos/luis-guillermo-espinoza/>

the proceedings have stalled due to a failure by the Public Prosecutor's Office to enforce a request for information from the Bolivarian National Guard.<sup>89</sup>

- k. No perpetrators were identified in a significant number of cases despite the public availability of evidence. Given the public nature of some of these incidents, where family members of the victims and civil society actors have managed to maintain records of the specific state security forces involved, the Panel is of the view that the inability to identify perpetrators points to significant gaps in the investigative process.
- l. Most of the cases in which proceedings have been triggered relate to incidents since 2017 disproportionately neglecting the victims from the period 2014 to 2016.
- m. Victims reported being coerced into signing complaints that did not accurately reflect the facts of the case, and the Public Prosecutor's office has refused to accurately register their complaints.
- n. Victim representatives reported a failure to implement victim protection mechanisms and to provide access to restorative justice. The Panel notes that there is an absence of protection mechanisms available to victims to ensure their unfettered participation in the domestic proceedings. Due to the lack of a domestic protection mechanism, victims have chosen not to report the human rights violations committed against them, they have chosen not to share details, and they have chosen not to make facts public for fear of reprisals against them or against their relatives.<sup>90</sup> Victims and legal representatives of victims and civil society actors have also reported that domestic accountability was being used as a means to threaten and persecute victims who have reported crimes.
- o. There is a marked a pervasive lack of transparency within the Venezuelan judiciary, characterized by a failure to make court records publicly available and a deliberate obstruction of victims' access to these records. This opacity extends across various branches of the Venezuelan legal system, including the Public Prosecutor's Office, which has stopped issuing annual public reports. The Panel's findings are corroborated by NGOs, victims, and their legal representatives, who report consistent barriers to accessing case files and proceedings, highlighting a systemic issue within the Venezuelan criminal justice system.

<sup>89</sup> On this subject, see <https://programatransforma.org/casos/miguel-fernando-castillo-bracho/>

<sup>90</sup> Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela. A/HRC/54/CRP.8. 20 September 2023, para. 234. Available at: [https://www.ohchr.org/sites/default/files/documents/hrbodies/hr-council/sessions-regular/session54/advance-versions/A\\_HRC\\_54\\_CRP.8\\_EN.pdf](https://www.ohchr.org/sites/default/files/documents/hrbodies/hr-council/sessions-regular/session54/advance-versions/A_HRC_54_CRP.8_EN.pdf)

- p. Victims are not only deprived of protection mechanisms at the internal level. Venezuela has been systematically closing the victims' possibilities of recourse at the international level: first, it denounced several human rights instruments and, recently, decided to suspend the activities of the Technical Advisory Office of the United Nations High Commissioner for Human Rights in Venezuela. This scenario leaves the ICC as the only hope for thousands or hundreds of thousands of victims.

## **10. RECOMMENDATIONS**

Considering the above, the Panel unanimously recommends the following:

### **10.1. TO THE ICC PROSECUTOR:**

- a. Taking into consideration the recent authorization of the Appeals Chamber of the ICC to resume the investigation, the Panel urges the ICC Prosecutor to focus on high level perpetrators, who according to the scope of this report, are beyond the purview of domestic jurisdiction for accountability both due to a lack of willingness and ability to provide accountability and prioritise judicial actions in the situation in Venezuela I.
- b. The Panel recommends that the ICC Prosecutor publishes the list of the issues under consideration by the ICC Prosecutor and currently being investigated by the State itself as well as the content of the last memorandum it signed with the Venezuelan State. This would enable the civil society actors to keep monitoring the targeted repression by military and intelligence agencies and to have full transparency with regards to the current and anticipated evolution of the domestic proceedings and of the ICC's involvement in the situation.
- c. The Panel also recommends that the ICC Prosecutor should be mindful of the ongoing commission of crimes and of the obstruction of justice including by the executive, the judges, and prosecutors that arises from the delays in accountability and should carry out a rolling assessment of the alleged ongoing criminal activity by the military, intelligence agencies, prosecutors, judges, and high-level state officials in determining whether and against who to initiate prosecutions.

### **10.2. TO THE SECRETARY GENERAL OF THE OAS:**

- a. The Panel recommends the Secretary General of the OAS to present this Report and the evidence collected to the Office of the ICC Prosecutor so that it can be considered as part of the investigation.

- b. The Panel requests the Secretary General of the OAS to continue to monitor the ongoing commission of crimes against humanity and gross human rights violations committed in Venezuela.
- c. The Panel encourages the Secretary General of the OAS to engage with the OAS member States that are ICC State Parties to actively provide cooperation and support to the ICC Prosecutor in order to advance with the investigation and the ICC Trust Fund for Victims to support reparations to Venezuelan Victims.

### **10.3. TO THE OAS MEMBER STATE:**

- a. The Panel fully supports the need to maintain pressure on the State of Venezuela to comply with its international human rights obligations under the regional instruments of human rights.
- b. The Panel encourages OAS member States that are ICC State Parties to actively provide cooperation and support to the ICC Prosecutor in order to advance with the investigation and the ICC Trust Fund for Victims to support reparations to Venezuelan Victims.
- c. The Panel reminds OAS member States that, according to international law, States must prevent and punish crimes under international law, which includes the duty of States to apply the principle of universal jurisdiction with regard to such conducts when those allegedly responsible are present in their territory.<sup>91</sup>

### **10.4. TO THE ICC STATE PARTIES AND OTHER NON-ICC STATE PARTIES:**

- a. The Panel fully supports the need to maintain pressure on the State of Venezuela to comply with its international human rights obligations under the UN Charter, the Universal Declaration of Human Rights, the ICCPR, the UN Convention against Torture, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities and the American Convention on Human Rights and the Rome Statute, including through sanctions and other instruments of economic leverage as well as targeted measures against those most responsible for the crimes against humanity.

<sup>91</sup> See, I/A Court H.R., Case of Herzog et al. v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 15, 2018. Series C No. 353.

- b. The Panel encourages the states to give effect to the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims in providing a forum for victims to seek reparations either through civil or criminal universal jurisdiction, since they are unable to do so in Venezuela.
- c. The Panel considers that both the ICC member States and the non-ICC member states should voluntarily support the proactive involvement of the ICC Prosecutor's Office in promoting accountability efforts in Venezuela through the ongoing investigation and, if required, prosecution of alleged perpetrators at the ICC to streamline domestic justice efforts.
- d. The Panel is of the view that the UN member states should continue to be briefed about the situation in the State of Venezuela since the situation has continued to deteriorate since the last briefing in April 2020. The crimes against humanity are ongoing and impunity remains.

#### **10.5. TO THE VENEZUELAN NGOS, CIVIL SOCIETY ACTORS AND VICTIMS:**

- a. The Panel applauds the courage and efforts of the Venezuelan NGOs, civil society actors, and victims in leading evidence documentation despite the significant security risks to themselves, their families, and their teams and recommends that they focus on the collection and submission of information relating to the liability of mid and high-level state perpetrators to the ICC.
- b. The Panel encourages the Venezuelan NGOs, civil society actors and victims should continue their efforts in engaging with the ICC Prosecutor, demand transparency, and increase their advocacy capacity with the ICC state parties supporting accountability in Venezuela to prioritise the situation before the ICC Prosecutor.

#### **10.6. TO THE STATE OF VENEZUELA:**

- a. The Panel urges the State of Venezuela to immediately cease its acts of repression, the cover up of crimes, and the commission of acts of interference with the opposition leaders, their personnel and family members upcoming elections and further crimes against humanity against the civilian population and civil society members in Venezuela.
- b. The Panel urges the State of Venezuela to initiate criminal investigations and/or prosecutions with regards to the crimes against humanity of persecution, and sexual violence as stand-alone crimes and to implement the existing legislation



relating to the crime against humanity of imprisonment in the context of the widespread and systematic attack against the civilian population in Venezuela.

- c. The Panel urges the State of Venezuela to engage in meaningful institutional reforms and create effective domestic accountability mechanisms for perpetrators at all levels of the state apparatus, in particular mid and high-level perpetrators.
- d. The Panel urges the State of Venezuela to comply with its international human rights obligations under the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims in providing a forum for victims to seek reparations in Venezuela.
- e. The Venezuelan State must adopt concrete measures to guarantee transparency and access to justice as a fundamental pillar of the rule of law. In this regard, it is imperative that the Venezuelan State adopt the necessary measures to guarantee the systematic publication, at least in the public trial phase, of the judgments issued by the Supreme Court of Justice (TSJ), thus generating an impartial and reliable justice system.

Similarly, in order to promote transparency and access to information, it is essential that state agencies establish formal accountability mechanisms for the publication of reports and relevant documents that guarantee the veracity of information in the reports using real figures.

- f. The Panel urges the State of Venezuela to engage in meaningful dialogue with the ICC Prosecutor, Venezuelan NGOs, civil society actors, victims, and the international community at large relating to the realistic prospects of viable domestic accountability.



RAYNER PEÑA



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ORLANDO MONTILOUS



DEFIENDE VENEZUELA

We want to thank the hundreds of victims and survivors without whose testimony the Panel would not have been able to produce this report on the crimes against humanity committed since 2014 in Venezuela.

Likewise, we want to thank Luis Moreno Ocampo, Special Advisor for Crimes Against Humanity to the Secretary General of the OAS; Christopher Hernández Roy and Mónica Leroy, who with their talent and dedication made possible the establishment of the Panel.

**Secretariat of the OAS Panel  
of Independent International  
Experts on the Possible  
Commission of Crimes Against  
Humanity in Venezuela**



OAS

More rights  
for more people