



SEMIANNUAL REPORT JULY - DECEMBER 2022

VENEZUELA'S SITUATION BEFORE
THE INTERNATIONAL CRIMINAL
COURT

By

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I. Introduction

From July to December 2022, some events occurred in Venezuela that may be of interest in the context of the investigation of Venezuela by the International Criminal Court. In just six months, officials from security forces, such as the General Directorate of Military Counterintelligence and the Bolivarian National Intelligence Service, detained, persecuted as well as tortured political and human rights activists and others through extrajudicial executions.

Likewise, in regard to governmental measures, the Venezuelan Government appointed a new diplomatic representative before the ICC. He is one of the most prominent politicians within the ruling party and the current Justice on leave from the Supreme Court of Justice. In addition, the Attorney General of the Republic of Venezuela offered the number of defendants that the Public Prosecutor's Office has prosecuted in cases of human rights violations.

Finally, in this context, there have been significant advances in the work of international organizations. For example, the mandate of the Fact-Finding Mission was renewed; the Prosecutor of the International Criminal Court requested the resumption of the investigation into Venezuela; the Pre-Trial Chamber established the process to be followed in the case of Venezuela; and the Victims Participation and Reparations Section opened a form for victims of crimes against humanity to submit their observations and opinions on the resumption of the investigation into Venezuela.

This biannual report is prepared to follow up on the Memorandum of Understanding signed between Venezuela and the Prosecutor of the International Criminal Court, in which the government commits to take measures to ensure the proper administration of justice, in accordance with the principle of complementarity.

II. Methodology

In the preparation of this report, we divided the events into four main categories: the first category dealt with new events that occurred from July 1 to December 31, 2022, which constitute crimes against humanity, especially torture, and persecution. Secondly, we exposed those cases of unjustified procedural delays and cases of evident lack of judicial independence. Thirdly, we pointed out the measures taken by the State in compliance or not

with the Memorandum of Understanding signed with the Office of the Prosecutor of the International Criminal Court.

Finally, we wanted to point out the advances at the international level that we consider significant for the continuation of the investigation of the Office of the Prosecutor of the International Criminal Court in Venezuela.

This information was monitored on a weekly basis and captured in a data matrix. Subsequently, this data matrix was subjected to a monthly analysis, from which relevant information was obtained and published in monthly newsletters. From these monthly reports, a cut is made with conclusions of the most relevant facts of this monitoring for the elaboration of this biannual report.

III. Incidents constituting crimes against humanity occurring from July 1, 2022, to December 31, 2022

A. Persecution in Venezuela

Between July 4 and 6, 2022, officials of the Bolivarian National Intelligence Service and the General Directorate of Military Counterintelligence, perpetrated arbitrary arrests against activists and social and humanitarian fighters, who are also members of the political party Bandera Roja, which is part of the opposition coalition Mesa de la Unidad Democrática (Democratic Unity Roundtable). Among the activists who have been detained are Alcides Bracho, Emilio Negrín, Yenny Pérez, José Castro, Alonso Meléndez, Reynaldo Cortés, Néstor Astudillo, and Gabriel Blanco.

However, none of them were involved in irregular activities, and these arrests were carried out in their residences, which were raided without a warrant. Likewise, their arrests were carried out without a court order; however, this did not prevent them from being taken to the police station of La Quebradita, the headquarters of the Strategic Intelligence Directorate of the Bolivarian National Police.

Then, on July 9, they were presented before the Fourth Control Court with jurisdiction on terrorism, in charge of Judge José Márquez García, and they were given a custodial sentence, despite the fact that Alcides Bracho denounced that he had been tortured during an extrajudicial interrogation. Consequently, the case of the Red Flag members is still under investigation.

Later, on September 20, 2022, the Committee for the Freedom of Social Workers, with the support of the human rights organization PROVEA, held a press conference together with the relatives of Néstor Astudillo, Gabriel Blanco, Emilio Negrín, Alonso Melendez, Reynaldo Cortés and Alcides Bracho.¹

The purpose of the press conference was for the relatives of the accused to publicly request, once again, the release of the activists, who have been detained for more than three months. However, the press conference did not go as expected, since two SEBIN officials showed up at PROVEA's headquarters and indicated that they had "superior" orders to attend, despite not having a court order to enter the organization's headquarters.² One of the officers in question was hooded when he attempted to enter the activity without authorization.

PROVEA activists promptly denounced what was happening on social media, so the officials did not force their way in and insisted for about 40 minutes that they be allowed to enter. Despite not accessing the organization's facilities, they took photos of the coordinator Inti Rodríguez and his personal documents.³

These actions, together with all the other actions covered in this report, represent the continuation of acts of harassment and intimidation by the State security forces against human rights organizations and the relatives of victims of persecution, in order for them to desist in their denunciations and struggle for human rights in the country.

However, PROVEA has not been the only organization harassed, because on August 24, 2022, the director of the Coalition for Human Rights, Alonso Medina Roa, was detained at the International Airport of Maiquetía by Venezuelan immigration officials, who did not allow him to board his flight,⁴ under the indication that he had an order of prohibition to leave the

¹Georgette, S. (September 20, 2022). "Provea denunció que funcionarios del SEBIN intentaron entrar a su sede". EL DIARIO. Available at: <https://eldiario.com/2022/09/20/provea-denuncio-funcionarios-sebin-intentaron-entrar-sede/>

² Marra, Y. (September 20, 2022). "Con "visita" del SEBIN a PROVEA Gobierno de Maduro confirma hostigamiento a víctimas de violaciones de derechos humanos". CRÓNICA UNO. Available at: <https://cronica.uno/con-visita-del-sebin-a-provea-gobierno-de-maduro-confirma-hostigamiento-a-victimas-de-violaciones-de-derechos-humanos/>

³ Redacción Runrunes (September 21, 2022). "Sebin alegó que tenía "órdenes superiores" para hostigar en rueda de prensa en Provea". RUNRUNES. Available in: <https://runrun.es/noticias/483877/sebin-alego-que-tenia-ordenes-superiores-para-hostigar-en-rueda-de-prensa-en-provea/>

⁴El Nacional (August 24, 2022). "Prohíben salida del país del abogado Alonso Medina Roa" (Lawyer Alonso Medina Roa forbidden to leave the country). EL NACIONAL. Available at: <https://www.elnacional.com/venezuela/prohiben-salida-del-pais-al-abogado-alonso-medina-roa/>

country issued by the Anti-Terrorism Division of the Scientific, Criminal and Criminal Investigations Corps. As a result, he was detained for three and a half hours at the International Criminal Police Organization (Interpol) office at the airport.⁵

Alonso Medina Roa has not been the only defender of the organization to have a prohibition order to leave the country, since lawyers Ana Leonor Acosta and Kelvi Zambrano were also subjected to this coercive measure, precisely one month after having published a report in which they denounced the recent tortures employed by the Bolivarian National Intelligence Service and the Military Counterintelligence Directorate.⁶

B. Torture in Venezuela

In parallel, on July 4, 2022, the General Directorate of Military Counterintelligence (DGCIM) arrested Ángel Juan Pantoja Carreño in Apure, who was an official of the Scientific, Criminal, and Criminal Investigations Corps (CICPC), for allegedly committing the crime of aggravated corruption. However, when he was presented at the CICPC for his examination, he denounced that the DGCIM was torturing him.⁷

Two days later, Angel Pantoja died of submersion, drowned in a drum full of water, while in DGCIM custody. Likewise, the autopsy showed the torture to which he had been subjected in the previous days. For this reason, the Public Prosecutor's Office issued an arrest warrant for aggravated homicide, torture, and violation of the duty of custody of the detainee against the officers who were guarding him and the head of the DGCIM of Apure.⁸

C. Extrajudicial executions

Likewise, at the beginning of September, by orders of the Ministry of Defense of the Republic, Operation Trueno III was launched, with the objective of combating the criminal acts of the Tren del Llano, an organized crime group operating in the state of Guárico, which

⁵Quintero, L. (August 24, 2022). "Investigan a tres abogados de la Coalición por los DDHH por denuncias sobre torturas". TAL CUAL DIGITAL. Available at: <https://talcualdigital.com/retienen-en-maiquetia-a-alonso-medina-roa-abogado-del-capitan-acosta-arevalo/>

⁶ *Idem*.

⁷Medina, A. (July 22, 2022). "Privan de libertad a director de la DGCIM Apure por la muerte de un Cicpc". TAL CUAL DIGITAL. Available at: <https://talcualdigital.com/privan-de-libertad-a-director-de-la-dgcim-apure-por-la-muerte-de-un-cicpc/>

⁸García, S. (July 11, 2022). "MP imputó homicidio calificado a dos funcionarios de la DGCIM por asesinato de CICPC detenido en Apure". CRÓNICA UNO. Available at: <https://cronica.uno/imputan-a-dos-funcionarios-del-dgcim-por-muerte-de-cicpc-en-apure/>

is extorting and attacking the civilian population. This is a situation that has been occurring for years in the plains region, but which the State had ignored until now.⁹

Operation Trueno III was executed in the municipalities of Valle de la Pascua, Leonardo Infante, José Felix Ribas, José Tadeo Monagas, Pedro Zaraza, Tucupido, and Francisco de Miranda, in Calabozo, Guárico State, and was mainly carried out by mixed commissions integrated by officers of the Bolivarian National Police, the Bolivarian National Intelligence Service, the Military Counterintelligence Directorate, the Bolivarian National Guard, the Criminal and Criminalistic Scientific Investigations Corps, the National Anti-Extortion and Kidnapping Command and the Directorate against Organized Crime.¹⁰

The result of this police operation was the death of 14 people, members of the armed group, and the arrest of another 180, suspected of criminal activities.¹¹ However, inhabitants of the entity denounced that officers belonging to this police operation have perpetrated abuses of power in the area, committing extrajudicial executions, since some of the people who were killed were not linked to the criminal gang. They also denounced that officers of the Bolivarian National Intelligence Service and the Military Counterintelligence Directorate raided homes and arrested residents without warrants.¹²

The inhabitants of the affected areas have expressed fear that the officials "are coming to kill". This situation has also occurred in Valles del Tuy, Miranda state, Guárico state, and in Colonia Tovar, Aragua state.¹³

⁹ Unidad de Investigación (June 23, 2022). "Why is the Venezuelan government pursuing the Tren del Llano?" INSIGHT CRIME. Available at: <https://es.insightcrime.org/noticias/por-que-el-gobierno-de-venezuela-persigue-al-tren-del-llano/>

¹⁰ Redacción. (September 6, 2022). "Operación Trueno III retumba en municipios de Guárico garantizando seguridad ciudadana". GOBERNACIÓN DE GUÁRICO. Available in: http://guarico.gob.ve/pagina_oficial/?p=46337

¹¹ Rojas, E. (September 6, 2022) "Atraparon a cuatro del Tren del Llano denunciados por una extorsión". ÚLTIMAS NOTICIAS. Available at; <https://ultimasnoticias.com.ve/noticias/general/atraparon-a-cuatro-del-tren-del-llano-denunciados-por-una-extorsion/>

¹² Arias, B. (September 6, 2022). ""Vienen a matar" denuncian ejecuciones extrajudiciales por parte de los cuerpos de seguridad en Guárico". EL NACIONAL. Available at: <https://www.elnacional.com/venezuela/vienen-a-matar-denuncian-ejecuciones-extrajudiciales-por-part-e-de-los-cuerpos-de-seguridad-en-guarico/>

¹³ Tal Cual. (September 14, 2022). "Familiares denuncian ejecuciones durante operativo policial en los Valles del Tuy" (Relatives denounce executions during police operation in Valles del Tuy). CORREO DEL CARONÍ. Available in Spanish at: <https://correodelcaroni.com/region/sucesos/familiares-denuncian-ejecuciones-durante-operativo-policial-en-los-valles-del-tuy/>

These facts show the continuation in Venezuela of a generalized and systematic policy of attack on the civilian population consisting of the murder of inhabitants of popular areas in State security operations, apparently directed against organized crime gangs.

IV. Procedural delays and lack of judicial independence

A. Case: Drone

On August 4, 2018, the Act of Commemoration of the 81st Anniversary of the Bolivarian National Guard was held. Nicolás Maduro was present to give a speech. At the moment of his intervention, 100 meters away, a drone detonated in the air, and a second explosion took place seconds later, a few blocks away from the venue of the event, causing the president's security team to immediately take him away, and he appeared on national chain hours later denouncing an attempted assassination and accusing right-wing movements in Venezuela, the United States and Colombia of being behind the alleged thwarted assassination.¹⁴

This led to a wave of arbitrary arrests against members of the military, civilians as well as politicians, including Juan Carlos Monasterios, Argenis Valera, José Miguel Estrada, Oswaldo Castillo, Alberto Bracho, Brayan Oropeza, Henribert Rivas, Yolmer Escalona, Emirlendri Benítez, Emirlendri Benítez and Emirlendri Benítez, among others, Emirlendri Benítez, Yanin Pernia, Alejandro Pérez Gamez, Pedro Zambrano, Angela Expósito, José Eloy Rivas, Héctor Hernández Da Costa, Wilder Vásquez, Deputy Juan Requesens and Councilman Fernando Albán, who died in the custody of the Bolivarian National Intelligence Service. All of them were charged with conspiracy, terrorism, treason, frustrated homicide, and assassination.¹⁵

From the beginning, the process has been riddled with irregularities, among them, it is alleged that Requesens was drugged to record an illegal video, where he accepts his participation in the attack and is observed half-naked and disoriented, with what appears to be feces on himself, a video that was presented by the State as evidence in the criminal proceedings against the victim.¹⁶

¹⁴ Delgado, A.M. (August 4, 2022). "Sentencian en Venezuela a 17 implicados en atentado contra Maduro en caso de drones bomba". EL NUEVO HERALD. Available at: <https://www.elnuevoherald.com/noticias/america-latina/venezuela-es/article264062241.html#storylink=cpy>

¹⁵ Redacción de El Pitazo (August 4, 2022) "List: These are the 17 convicted for the drone case against Maduro". EL PITAZO. Available at: <https://elpitazo.net/politica/lista-estos-son-los-17-condenados-por-el-caso-del-dron-contra-maduro/>

¹⁶ Moleiro, A. (August 4, 2022) "Venezuela sentences opposition member Juan Requesens to eight years for drone attack against Maduro". EL PAÍS. Available at:

The final judgment came four years after the alleged attack, at the hands of the first trial court with jurisdiction in terrorism, in charge of Judge Hennis Carolina López Mesa, after a process full of vices and four years of violent torture and cruel treatment of the accused, with a sentence that condemns each one with sentences between 30 to 5 years, depending on the profile of each one, and orders the arrest and extradition of Julio Borges and Osman Delgado for also being linked to the case.

This confirms the existence of a pattern of arrests for political purposes as part of a State strategy to stifle dissidence. It also shows the lack of judicial independence and the involvement of justice system operators in the perpetration and cover-up of crimes against humanity.

B. Case: Juan Pablo Pernaleté

Juan Pablo Pernaleté Llovera was an accounting student at the Universidad Metropolitana, who was killed on April 26, 2017, during his participation in a peaceful protest in Altamira, at the height of the British Tower, by officers of the Bolivarian National Guard, who as soon as they made an appearance at the site of the demonstration, began firing tear gas against the demonstrators, who were mostly students.¹⁷

Juan Pablo was shot with a tear gas bomb at point-blank range, which hit him in the chest and caused him to fall on the spot. His companions immediately took him to the nearest medical facility. However, despite the doctors' efforts to revive his heart, Juan Pablo was admitted with no signs of life. Doctors indicated that his death had been caused by thoracic trauma.

The Attorney General of the Republic at that time, Luisa Ortega Díaz, pointed out as responsible for Juan Pablo's death the officer who fired the tear gas bomb to his chest, but Tarek William Saab, who was then the Ombudsman and is now the Attorney General, counter-argued that the person who had fired was not a public officer, but a person infiltrated by armed groups, to generate disturbances among the demonstrators.¹⁸

<https://elpais.com/internacional/2022-08-04/venezuela-sentencia-al-opositor-juan-requesens-a-ocho-a-nos-por-el-ataque-con-drones-contra-maduro.html>

¹⁷ Justicia, Encuentro y Perdón. "Juan Pablo Pernaleté Llovera." Available at: <https://www.jepvenezuela.com/museo-de-la-memoria-y-la-represion/caidos/juan-pablo-pernalete-llovera/>

¹⁸ *Ídem*.

On August 8, 2022, the preliminary hearing against the officials who killed Juan Pablo was to be held. However, it was postponed due to the failure of the accused to appear and rescheduled for August 31, 2022; however, the hearing was not held on that day either and was again postponed.¹⁹

This case is a significant example of the State's willful negligence in the prosecution of the Crimes against Humanity that occurred in Venezuela during the period of protests in 2017, as well as in the investigations of those who bear the greatest responsibility for such events.

C. Case: Moisés Guanchez

On March 5, 2014, in the context of protests linked to the political instability in Venezuela, Moisés Guanchez was assaulted by officers of the Bolivarian National Guard when he was leaving his work at La Cascada Shopping Center, located in the municipality of El Carrizal, Miranda State.²⁰ That day, there were military troops repressing the demonstrators who had raised barricades, forcing the main gate of the shopping mall to enter and attack the people who were there.²¹

Upon entering the premises, the officers forcibly took Moisés Guanchez, who later had to be taken to the Victorino Santaella Hospital in Los Teques, presenting blows all over his body, as well as injuries caused by more than five pellet wounds in his arms, legs, buttocks, and testicles, caused by the agents who were controlling the demonstrations. In view of this situation, the victim's mother turned to a human rights organization for help, which in turn referred him to the Ombudsman's Office, and filed a complaint with the Public Prosecutor's Office.²²

¹⁹ Medina, A. (August 31, 2022). "Nuevamente fue diferida audiencia de los GNB responsables de la muerte de Juan Pernalet" (GNB responsible for the death of Juan Pernalet). RADIO NOTICIAS VENEZUELA. Available at: <https://www.radiofeyalegrianoticias.com/nuevamente-fue-diferida-audiencia-de-los-gnb-responsables-de-la-muerte-de-juan-pernalete/>

²⁰ Redacción (November 22, 2022). "Tribunal dictó libertad plena a guardia acusado de torturar a manifestante en 2014". RUNRUNES. Available at: <https://runrun.es/noticias/489671/maria-gabriela-chavez-se-distancia-de-lacava-y-rafael-ramirez-en-un-solo-hilo/>.

²¹ Redacción (April 22, 2014). "Madre de Moisés Guanchez, joven agredido por la GNB en Carrizal, recibió donación para gastos médicos". PROVEA. Available at: <https://archivo.provea.org/actualidad/madre-de-mois-es-guanchez-joven-agredido-por-la-gnb-recibe-donacion-para-gastos-medicos/>

²² Ídem.

The injuries suffered by Moisés Guanchez required him to undergo surgery on two occasions. In addition, the victim suffered acts of harassment by officers of the Bolivarian National Guard, who went to his university, questioned one of his professors about him, inspected his vehicle, and took photographs of him.²³

An investigation and subsequent trial were opened by the Second Trial Court of the Criminal Judicial District of Miranda State, against one of the officers, on charges of torture and ill-treatment for the aforementioned facts. However, on November 21, 2022, the court issued an acquittal sentence in favor of the accused.²⁴

This demonstrates, once again, that there is no independent justice system capable of prosecuting those responsible for serious human rights violations in Venezuela, and that impunity for crimes against humanity is a State policy.

D. Case: Igber Marín Chaparro and Jerrel Lloyd Kenemore

Igber Marín Chaparro is a lieutenant colonel of the Bolivarian National Armed Forces who was arrested on March 2, 2018, for allegedly leading an operation whose purpose was to overthrow Nicolás Maduro. He was charged with the crimes of treason against the homeland, instigation to rebellion, and actions against military decorum; he was sentenced to seven years in prison. He is currently one of the political prisoners detained in the Military Counterintelligence Directorate in Boleita, Caracas, in spite of having a transfer order to a penitentiary center, which has not been complied with by the officials in custody.²⁵

December 21 marked the one-month anniversary of the beginning of Igber Marín Chaparro's hunger strike, as a protest measure against the torture suffered in the Military Counterintelligence Directorate, as well as a means to demand the release of political prisoners who are unjustly detained. However, this is not the first time that Igber Marín Chaparro has taken this measure; at the beginning of 2022, he also began a hunger strike

²³ Redacción. (November 21, 2022). "Court found National Guard accused of torture during 2014 protests not guilty". TAL CUAL DIGITAL. Available at: <https://talcualdigital.com/tribunal-declaro-inocente-a-guardia-nacional-acusado-por-torturas-durante-protestas-2014/>

²⁴ Ídem.

²⁵ (December 21, 2022). "Preso político Igber Marín Chaparro cumple 30 días en huelga de hambre" (Political prisoner Igber Marín Chaparro completes 30 days on hunger strike). EFECTO COCUYO. Available at: <https://efectococuyo.com/la-humanidad/preso-politico-igber-marin-chaparro-cumple-30-dias-en-huelga-de-hambre/>

so that international organizations would visit the headquarters of the Military Counterintelligence Directorate.²⁶

Additionally, on December 2, the American Jerrel Lloyd Kenemore, who is also being held at the Military Counterintelligence Directorate, joined the hunger strike initiated by Lieutenant Colonel Igber Marín Chaparro, also to protest against the cruel treatment and torture perpetrated by the guards of said organization. This shows, once again, that torture is an accepted action by the Government, which does not take action against the officials who subject prisoners to this type of humiliation.²⁷

V. State policies

A. Appointment of a new Venezuelan representative to the International Criminal Court

On July 28, 2022, the National Assembly elected in December 2020, which has a majority of deputies belonging to the ruling party, appointed Calixto Ortega Ríos as Venezuela's representative before the International Criminal Court, replacing Haifa El Aissami, sister of Tareck El Aissami.

Surprisingly, the appointment of Calixto Ortega Ríos takes place barely 3 months after his re-election as judge of the Constitutional Chamber of the Supreme Court of Justice.

Calixto Ortega Ríos was not only a magistrate of the Constitutional Chamber, but was also a deputy to the National Assembly for the United Socialist Party of Venezuela, deputy minister for Europe, and chargé d'affaires to the United States until he was expelled from the said country and sanctioned by Panama for the crime of money laundering.²⁸ With this appointment, the Venezuelan government maintains its relations with the ICC in the hands of officials within the inner circle of trust of President Maduro and his allies.

²⁶ Ídem.

²⁷ TalCual Editorial Office (December 2, 2022). "U.S. prisoner Jerrel Lloyd Kenemore began hunger strike at the Dgcim". TALCUAL DIGITAL. Available at: <https://talcualdigital.com/preso-estadounidense-jerrel-lloyd-kenemore-inicio-huelga-de-hambre-en-la-dgcim/>

²⁸ Figuera, R. (July 28, 2022). "AN de Maduro aprueba designación de Calixto Ortega como representante en la CPI". TAL CUAL DIGITAL. Available at: <https://talcualdigital.com/an-de-maduro-aprueba-designacion-de-calixto-ortega-como-representante-en-la-cpi/>

B. Attorney General of the Republic offered figures on the number of people charged in Venezuela

On October 14, 2022, the Attorney General of the Republic, Tarek William Saab, offered a balance on the performance of the Public Prosecutor's Office in the indictment of persons who have violated human rights in the country. According to the Prosecutor, the total number, only in 2022, is 555 people charged, divided into 535 officials and 20 collaborators.²⁹

On the other hand, he indicated that since the protests began in 2017, to date, the Public Prosecutor's Office has charged 1,627 people, divided into 1,546 officials and 81 civilians. Likewise, the Prosecutor emphasized that the Public Prosecutor's Office has made efforts so that the cases of human rights violations related to the 2017 protests do not go unpunished, which is why the Office of Attention to Victims in Human Rights matters was created, which, according to the balance presented by the Prosecutor, has attended 2,619 citizens, of which 1,294 received legal guidance and referrals to other entities.³⁰

However, in one of its reports, the Fact-Finding Mission noted a continuity in the lack of judicial independence and participation of judges and prosecutors in the crimes investigated, suggesting the inability and unwillingness of the State to conduct genuine investigations.

C. Release of U.S. Political Prisoners Detained in Venezuela

On October 1, 2022, the Venezuelan State released seven U.S. political prisoners in exchange for two relatives of Nicolás Maduro, the nephews of his wife, Cilia Flores, who had been detained in the United States since 2015 for drug trafficking. Among the released prisoners are Tomeu Vadell, José Luis Zambrano, Alirio Zambrano, Jorge Toledo, José Pereira, officials of the oil company CITGO; and Osman Khan and Matthew Heath, who committed a suicide attempt in 2020 due to the torture suffered during his imprisonment.³¹

²⁹Piña, J. (October 14, 2022). "Tarek William Saab afirmó que suman 555 los imputados por violaciones en materia de DDHH en 2022" (Tarek William Saab afirmó que suman 555 los imputados por violaciones en materia de DDHH en 2022). VENEZUELA NEWS. Available at: <https://venezuela-news.com/tarek-william-saab-afirmo-que-suman-555-los-imputados-por-violaciones/>

³⁰Ídem.

³¹Pamuk, H. (October 1, 2022). "Venezuela releases seven imprisoned Americans in swap for two of Maduro's relatives". REUTERS. Available at: <https://www.reuters.com/world/americas/venezuela-has-released-7-jailed-americans-biden-2022-10-01/>

With this exchange, the Maduro administration demonstrates once again that it operates according to the personal interests of high-ranking State officials, does not respect the separation of powers, and uses political prisoners as bargaining chips.

VI. Significant progress

A. The mandate of the Fact-Finding Mission in Venezuela was renewed.

On September 26, 2022, the Fact-Finding Mission on Venezuela published its third report, which it presented to the United Nations Human Rights Council, accusing the Military Counterintelligence Directorate (DGCIM) and the Bolivarian National Intelligence Service (SEBIN) of carrying out acts constituting crimes against humanity, with the aim of repressing political dissidence. Such acts were allegedly ordered by officers at different levels of the chain of command.³²

In 122 of the cases documented by the Mission, it observed a pattern of torture, gender-based sexual violence, forced disappearances, and arbitrary detentions. However, one of the most important aspects pointed out by Marta Valiñas, head of the Mission, is that those who committed these acts were not isolated individuals within a hierarchy; on the contrary, they followed a superior order and a chain of command.³³

Among the responsible persons indicated within that chain of command, Nicolás Maduro is the last responsible, together with Diosdado Cabello. In turn, the report points out Gustavo Enrique González, Carlos Alberto Calderón, and Ronny González as perpetrators of torture in the SEBIN headquarters known as "El Helicoide". Likewise, it points out as perpetrators of the DGCIM to Iván Rafael Hernández, Rafael Antonio Franco, Hannover Esteban Guerrero and Alexander Enrique Granko, Christopher Figuera, Carlos Ramón Enrique Carvallo, among many others.³⁴

³² Efe. (September 26, 2022). "Misión de la ONU ratifica ante el Consejo de DDHH de la ONU denuncias contra Sebin y Dgcim". EFECTO COCUYO. Available in Spanish at: <https://efectococuyo.com/la-humanidad/onu-consejo-ddhh-sebin-y-dgcim/>

³³ Pérez, L. (October 23, 2022). "La ONU confirma las denuncias: en Venezuela se tortura por órdenes de una cadena de mando". NIUS DIARIO. Available at: https://www.niusdiario.es/internacional/latinoamerica/20221023/onu-confirma-denuncias-venezuela-tortura_18_07737517.html

³⁴ Efecto Cocuyo (September 20, 2022). "Chain of command allegedly involved in crimes against humanity, according to UN report". EFECTO COCUYO. Available at: <https://efectococuyo.com/politica/cadena-de-mando-crimenes-de-lesa-humanidad-onu/>

Finally, another of the most important aspects established by the Mission and its Chief, is that it makes it clear that, to this day, these acts constituting crimes against humanity continue to be committed.³⁵

B. ICC Prosecutor requested the resumption of the investigation on Venezuela

On November 3, 2020, Prosecutor Karim Khan informed that the "Venezuela I" situation would formally move to the investigation phase regarding the events that occurred during 2017.³⁶ Accordingly, based on Article 18(2) of the Rome Statute, Prosecutor Khan granted a period of one month for the Venezuelan authorities to inform the Office of the Prosecutor what actions and measures they had taken in order to punish the perpetrators of the crimes against humanity that the Office of the Prosecutor had been able to establish. In January 2022, the OTP, at the request of the State, granted a three-month extension, to end on April 16, 2022.³⁷

One day before the deadline, on April 15, 2022, the Government of Nicolas Maduro made a request to the Office of the Prosecutor, asking for a deferral of the investigation, since the State was taking its own steps to convict those responsible for crimes against humanity.³⁸ On April 16, the Pre-Trial Chamber notified the Office of the Prosecutor of this request from the Venezuelan State, which in turn informed the Chamber, having reviewed the basis on which the State was requesting the deferral, that it wanted to resume the investigations as soon as possible.³⁹

³⁵Tomillo, M. (September 27, 2022). "Misión de la ONU: lo que se ha documentado son crímenes de lesa humanidad y no pueden tomarse livianamente". COCUYO EFFECT. Available at: <https://efectococuyo.com/la-humanidad/mision-de-determinacion-de-los-hechos-conlaluz/>

³⁶ Redacción. (November 3, 2021) "Venezuela: la Corte Penal Internacional abre una investigación formal sobre posibles crímenes contra la humanidad en el país". *BBC MUNDO*. Retrieved from: <https://www.bbc.com/mundo/noticias-america-latina-59158582>

³⁷ Nuñez, A. (January 20, 2022). "Estado venezolano tiene hasta el 16 de abril para demostrar que investiga crímenes de lesa humanidad". *VOZ DE AMÉRICA*. Retrieved from: <https://www.vozdeamerica.com/a/estado-venezolano-tiene-hasta-el-16-de-abril-para-demostrar-que-investiga-cr%C3%ADmenes-de-lesa-humanidad-/6405353.html>

³⁸ Comunicación del Gobierno venezolano dirigida a la Oficina de la Fiscalía de la Corte Penal Internacional. (april 15, 2022). Retrieved from: https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2022_03181.PDF

³⁹ ICC. Notification of the request for deferral of the investigation made by the Bolivarian Republic of Venezuela based on article 18(2) of the Rome Statute. Retrieved from: chrome-extension://efaidnbmninnibpcjpcglclefindmkaj/https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_03184.PDF

For this reason, the investigation by the Office of the Prosecutor was temporarily paralyzed, since this bureau had to analyze issues of complementarity in order to request the continuation of the investigation.⁴⁰

However, on November 1, 2022, Karim Khan requested the continuation of the investigations, since the Venezuelan State has not complied with its duty to investigate and convict those responsible for crimes against humanity committed in Venezuela. In particular, for the Prosecutor's Office, the State has not conducted genuine proceedings that sufficiently reflect the scope of its investigations. Consequently, it is now up to the Pre-Trial Chamber to decide on the procedure to be followed, in accordance with Article 55(1) of the Rules of Procedure and Evidence, and ultimately on the continuation of the investigation.

In his application, Khan determined that of the 893 cases reported by the State, only 265 of them contain information regarding the existence of judicial proceedings, so 628 cases remain unaddressed, demonstrating not only the State's inability to prosecute these crimes, but also the lack of will to do so.⁴¹

Likewise, Prosecutor Khan pointed out that the investigations carried out by the Venezuelan State are insufficient and the judicial reforms are ineffective, due to the lack of impartiality and independence of the entire Venezuelan justice system. For example, he indicated that judges and prosecutors are assigned under criteria of political convenience and that there is a pattern of threats and harassment against officials critical of the interests of the executive branch.⁴²

Venezuelan Foreign Minister Carlos Faría expressed his dismay that the Prosecutor's Office insists on continuing with an investigation based on secondary sources and influenced by political interests and also pointed out that despite the prejudiced vision of the Prosecutor, they will continue to collaborate in good faith.⁴³

⁴⁰ Redacción. (April 22, 2022). "Venezuela: el gobierno de Maduro busca retrasar la investigación de la CPI". *HUMAN RIGHTS WATCH*. Retrieved from: <https://www.hrw.org/es/news/2022/04/22/venezuela-el-gobierno-de-maduro-busca-retrasar-la-investigacion-de-la-cpi>

⁴¹ ICC. November 1, 2022. Request by the Office of the Prosecutor to resume the investigation into the situation in the Bolivarian Republic of Venezuela I in accordance with Article 18(2), paragraph 19.

⁴² *Ibíd*, paragraph 141.

⁴³ Ocando, G. (November 7, 2022). "Maduro acusa a Fiscal de la CPI de tener "visión prejuiciada" sobre Venezuela". *LA GRAN ALDEA*. Available at: <https://lagranaldea.com/2022/11/07/maduro-acusa-a-fiscal-de-la-cpi-de-tener-vision-prejuiciada-sobre-venezuela/>

C. The Public Defender's Office for Victims and the Venezuelan State submitted observations on the request for the resumption of the investigation.

On November 3, 2022, the Public Defender's Office for Victims requested permission to submit, together with four Venezuelan lawyers, joint observations on the views and concerns of the victims, on the application made by the Office of the Prosecutor on November 1, 2022. In addition, the Office of Victims maintains that victims have a personal interest in the ongoing proceedings, and therefore requests that their observations be delivered directly to the Pre-Trial Chamber, in order to protect the identity of the victims.⁴⁴

Subsequently, on November 11, the Venezuelan State submitted observations to the requests of both offices of the International Criminal Court, proposing that, in accordance with rule 55(1) of the Rules of Procedure and Evidence, the Pre-Trial Chamber should decide on the procedure to be followed. However, it requested the Chamber to consider allowing the participation of victims to be limited to those who arrive through the Office of Participation and Representation of Victims, and that the State may in turn respond to those observations.⁴⁵

Likewise, the Venezuelan State requested that the States that referred the situation of Venezuela to the International Criminal Court not participate in the process, since they lack standing. Finally, it requested that the Chamber set a period of three months for Venezuela to present its observations on the request made by the Prosecutor, as well as on any other request it may make at a later date.⁴⁶

D. Pre-Trial Chamber determined the procedure to be followed

On November 18, 2022, Pre-Trial Chamber I determined the procedure by which the incidence would be conducted, in accordance with Rule 55(1) of the Rules of Procedure and Evidence. First, the Chamber invited the Venezuelan State to submit observations, if deemed necessary, by February 28, 2023.

⁴⁴ICC. (November 3, 2022). OPCV Request to Submit Observations on the Prosecutor's Request to Resume the Investigation under Article 18(2) of the Statute, pp. 13 y 25.

⁴⁵ICC. (November 10, 2022). "Proposals on the procedure before the Pre-Trial Chamber I - Venezuela I". P. 13.

⁴⁶ *Idem*.

Likewise, the Prosecutor will have until March 21, 2023, to also submit observations to those submitted by Venezuela, as long as they refer to arguments on whether Venezuela is conducting judicial investigations or not.⁴⁷

On the other hand, given that the decision of the Pre-Trial Chamber as to whether or not to resume the investigation on Venezuela may affect the interests of victims, as contemplated in article 68(3) of the Rome Statute, the Office of Victims Participation and Representation shall, by 21 March 2023, submit directly to the Chamber, together with four Venezuelan counsel and through a brief report, the views and concerns expressed by victims, including those whose interests are not represented by the Office of Public Counsel for Victims or the four Venezuelan counsel.⁴⁸

Finally, the Chamber notes that there is no request and/or observations from a State that has referred the situation of Venezuela. Therefore, it concludes that the Venezuelan State may respond to the Prosecutor's request to resume the investigation by February 28, 2023, and the Office of Participation and Representation of Victims, as well as those not represented by the Office, may do so by March 21, 2023.⁴⁹

E. International Criminal Court activated form for victims to submit their observations

Following the procedure established by the Pre-Trial Chamber, which decided that the Office of Victims Participation and Representation shall, by 21 March 2023, submit directly to the Chamber the views and concerns expressed by victims, including those whose interests are not represented by the Office of Public Counsel for Victims;⁵⁰ on December 5, the International Criminal Court activated a form to collect the observations and opinions of possible victims of crimes against humanity perpetrated in Venezuela, to be taken into consideration in the decision of the Pre-Trial Chamber.

The form consists of several fields to be filled out with information about the victim, opinions, and information that may help document the case, and a section for questions about the facts.

⁴⁷International Criminal Court (November 18, 2022). "Order inviting observations and views and concerns of victims". pp. 9.

⁴⁸International Criminal Court (November 18, 2022)"Order inviting observations and views and concerns of victims". pp. 12.

⁴⁹International Criminal Court (November 18, 2022)"Order inviting observations and views and concerns of victims". pp.7.

⁵⁰International Criminal Court (November 18, 2022). "Order inviting observations and views and concerns of victims". pp. 12.

The form is available in two formats: an online version that can be filled out directly on the ICC website without downloading the form to a computer, or a downloadable version available on the ICC website that can be filled out by hand or electronically and sent by an alternative means, such as postal mail.⁵¹

This mechanism of victims' participation implemented by the Court in the Venezuelan case, also used in the the situation of Afghanistan,⁵² is important, not only because it recognizes the importance of their interests for the process, but also because it is a direct channel between them and the Court to express their opinions and observations.

VIII. Conclusions and recommendations

In conclusion, as observed in recent months, it is notorious how the persecution by State security and intelligence forces against human rights activists and organizations has intensified, making their work increasingly risky and creating uncertainty and indecision among those who seek to denounce and seek help in the face of human rights violations.

This highlights the continuity in Venezuela of a context of a systematic and widespread attack against the civilian population, constituting politically motivated persecution, which can be qualified as long as there is a serious deprivation of fundamental rights with a discriminatory purpose and in connection with another crime within the jurisdiction of the Court.⁵³

Additionally, the Venezuelan State has maintained political repression through arbitrary detentions and acts of torture as part of a State strategy to stifle dissent. Likewise, there has been a noticeable continuity in the lack of judicial independence and participation of judges and prosecutors in the perpetration and cover-up of the crimes against humanity under investigation, suggesting the State's inability and unwillingness to conduct genuine investigations in the investigation conducted by the Office of the Prosecutor of the International Criminal Court.

⁵¹Redacción. (December 5, 2022). "CPI activó formulario para recoger opiniones de víctimas de crímenes de lesa humanidad" RUNRUNES. Available in: <https://runrun.es/noticias/490142/cpi-activo-formulario-para-recoger-opiniones-de-victimas-de-crimen-es-de-lesa-humanidad-en-venezuela/>

⁵²ICC. November 8, 2021. Status of Afghanistan. Decision on allegations received and order to the Secretariat regarding the submission of documents in the proceeding pursuant to Articles 18(2) and 68(3) of the Statute, paragraph 14.

⁵³ Public Redacted Version of "Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi", ICC-01/17-X-9-US-Exp, 25 October 2017.

Therefore, it is important for civil society to keep under observation the actions of the State in the framework of its compliance or non-compliance with the Memorandum of Understanding between Venezuela and the International Criminal Court, in order to ensure that the necessary measures are taken in the proper administration of justice, under the principle of complementarity.