



OAS

**VENEZUELA'S INSTITUTIONAL REFORM REINFORCING IMPUNITY:
CAPITALIZING ON THE ICC'S COMPLEMENTARITY TO AVOID ACCOUNTABILITY**

**PUBLIC REPORT WITH CONFIDENTIAL ANNEX
BY THE OAS PANEL OF INDEPENDENT INTERNATIONAL EXPERTS ON THE
POSSIBLE COMMISSION OF CRIMES AGAINST HUMANITY IN VENEZUELA**

Follow-up to the Report of the GSOAS and Panel of Independent International
Experts on the Possible Commission of Crimes Against Humanity in Venezuela.

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Executive Summary

The Panel expresses grave concern that the institutional reforms presented by the State of Venezuela to satisfy the complementarity assessment of the ICC actively shields those most responsible perpetrators from domestic and ultimately international accountability and entrenches impunity for high level perpetrators, demonstrating a clear and systematic lack of genuine political will to seek accountability for crimes against humanity under the ICC jurisdiction allegedly committed by state perpetrators, in particular for high-level perpetrators. The Panel finds that the proposed institutional reforms, enacted without the due diligence or consultation with the stakeholders and members of the National Assembly required by the Venezuelan Constitution, are largely cosmetic in nature, seeks to protect high-level perpetrators and shield them from accountability, while further entrenching impunity.

The Panel is of the view that the measures include several amendments that blatantly violate the Venezuelan Constitution and when assessed holistically: i) further erodes the already insufficient judicial system – plagued by a lack of independence and impartiality and endemic corruption – and undermines its capacity to investigate and prosecute alleged perpetrators, ii) does not create effective and viable accountability mechanisms, to bring alleged perpetrators to justice, both in substance and in practice, and iii) fails to establish accessible and transparent remedies, whether judicial, administrative or quasi-legal for victims. In addition, these proposed reforms deliberately avoid addressing the structural mechanisms which actively shield from investigation and prosecution, the alleged perpetrators in high-level positions, who are at the center of the allegations of direct perpetration and the accused state-policy of indirect perpetration of crimes against humanity that fall under ICC jurisdiction.

The Panel finds that the State of Venezuela has continually failed to demonstrate any willingness to pursue the investigation and prosecution of mid- and high-level perpetrators. While the State of Venezuela has reported the initiation of some cases, the deliberate lack of transparency combined the broader approach of the State of Venezuela not investigating and, in some cases, to promote the high-level officials that are alleged to have committed these crimes, demonstrates a clear intent to perpetuate impunity and shield them from prosecution.

While the Panel recognizes that, under the ICC jurisdiction, determinations about individual responsibility can only be made by competent judicial authorities, it is of the view that the promotion of an individual subjected to clear and compelling evidence of

direct and indirect responsibility for crimes against humanity to high-ranking positions within the State of Venezuela where they benefit from additional levels of protection from investigations and prosecutions is reprehensible and is a clear demonstration of the State's intention to perpetuate impunity for these crimes and those who acted under their command.

In this respect, the Panel highlights two case studies illustrative of a pervasive problem that is systematic in nature. Two individuals who are alleged to have committed crimes against humanity are directly involved in the institutional reform and the management of the relationship of the State of Venezuela with the ICC were namely:

a) Diosdado Cabello, the co-chair of the "Commission of the Judicial Revolution" and current President of the National Constitutional Assembly. He has also served as the Vice-President of the PSUV since December 2011. Through his position as a member of the Venezuelan Armed Forces and his position as the main host of the state-sponsored, weekly TV program "Con el Mazo Dando" on the TV channel Venezolana de Television, he has played a lead role in leveling accusations against the opposition and individuals perceived to be political dissenters who have been attacked as part of the alleged state policy to commit crimes against humanity. As such he is considered to be one of the individuals who could bear responsibility under the ICC jurisdiction as direct and co-perpetrator of crimes against humanity of arbitrary detention, torture, cruel, inhuman, or degrading treatment, and even sexual and gender-based violence, through orders directly given to SEBIN Director General González López, who de facto reported to him;¹ and

b) Callixto Ortega, currently the Ambassador of Venezuela to the Netherlands and the Head of the diplomatic mission of Venezuela before the International Criminal Court and other international organizations and tribunals in the Netherlands, has been a Judge of the Constitutional Chamber and the Plenary Chamber of the Supreme Court since December 2015. In this capacity, he is alleged to have actively aided and abetted the commission of the crimes against humanity of arbitrary detentions through judicial decisions authorizing detention to continue without substantive legal basis including several human rights activists and opposition members, such as Gilber Caro and Juan Requesens.

¹ Fact Finding Mission on the Bolivarian Republic of Venezuela, Crimes against humanity committed through the State's intelligence services: structures and individuals involved in the implementation of the plan to repress opposition to the Government A/HRC/51/CRP.3, 20 September 2022, para 271.

The Panel determines that the scope of the institutional reforms systematically and deliberately avoid addressing the structural mechanisms which actively shield accused high-level perpetrators who are at the center of the allegations of direct perpetration and a policy of indirect perpetration of crimes against humanity from facing investigation and prosecutions. For instance, the preliminary trial of merit – a screening process designed to avoid false and abusive prosecutions- in effect, places: a) the President, b) the Executive Vice President, c) the Ministers, d) the Attorney General, e) the Members of the Military High Command, f) the Governors of the States, g) the Deputies of the National Assembly, h) Magistrates of the Supreme Court of Justice, i) the Comptroller General of the Republic, j) the Attorney General of the Republic, k) the Ombudsman, l) the Rectors of the National Electoral Council, and m) the Heads of Diplomatic Missions beyond the reach of the law as a result of the monopoly of the Attorney General of the Republic (appointed by the National Assembly, which is in turn under the control of the PSUV Executive that currently hold a majority) to trigger or dismiss criminal proceedings against these high-level perpetrators and that of the Supreme Court -itself under the *de facto* control of the Executive- to screen such criminal allegations. It is the view of the Panel that this guarantees that the investigations cannot be initiated by victims and do not proceed due to the dependence of the actors in the process on the Executive.

An analysis of the process of the preliminary trials of merit has found a record of eight such trials against a total of 15 public administration officials that have been carried out in Venezuela between 2013 and 2021². The Panel observes that of the eight preliminary trials, seven were conducted against officials who were members of the opposition,³ and the remaining one was initiated against the eight magistrates of the Constitutional Chamber of the Supreme Court by the Attorney General of the Republic Luisa Ortega after she took a position critical of the actions of the PSUV government. The seven against cases

² Cf. Un Mundo Sin Mordaza, Defiende Venezuela, and the Crimes Against Humanity Observatory, Legal Opinion requested by the ICC Prosecutor on the Preliminary Trial of Merit in Venezuela and its effect on Complementarity. December 2021.

³ 1) Richard Mardo Mardo, Judgment No. 10, file No. 2013-000060. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/abril/7-9413-2013-2013-000060.HTML>; 2) María Mercedes Aranguren, Judgment No. 78, file No. 2013-000123. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/octubre/157693-63-171013-2013-2013-000213.HTML>; 3) Juan Carlos Caldera, Judgment No. 70, file No. 2013-000122. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/noviembre/172065-70-261114-2014-2013-000122.HTML>; 4) Luisa Ortega Díaz, Judgment No. 44, file No. 2017-000073. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/junio/200552-44-28617-2017-2017-000073.HTML>; 5) Freddy Alejandro Guevara, Judgment No. 69, file No. 2017-000112. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/noviembre/204801-69-31117-2017-2017-000112.HTML>; 6) Julio Andrés Borges, Judgment No. 49, file No. 2018-000072. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/agosto/300717-49-8818-2018-2018-000072.HTML>; and 7) Juan Carlos Requesens, Judgment No. 48, file No. 2018-0071. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/agosto/300716-48-8818-2018-2018-0071.HTML>

against opposition members proceeded to full trial⁴ while the one case against the eight magistrates was dismissed.⁵

The Panel is of the opinion that this constitutes a blatant failure on the part of the State of Venezuela to show genuine efforts in addressing accountability for the alleged crimes perpetrated. Put simply, the current legal framework of the State of Venezuela is ensuring that no criminal allegations against these high-level perpetrators will ever be brought.

Despite the judicial reforms, the Venezuelan judicial system also fails entirely to prevent and punish the crime of persecution, an act that is alleged to have been committed on a large scale since 2014, by failing to define and criminalize the offense. As one of the main crimes against humanity under the ICC's jurisdiction that is alleged to have been committed, the absence of provisions criminalizing said act creates an inevitable gap in the ability of the State of Venezuela to effectively engage in accountability as a primary state and displace the ICC jurisdiction.

In the context of the ongoing crimes being perpetrated, the Panel wishes to express grave concern with respect to the existing Venezuelan legal framework which continues enshrine the doctrine of due obedience and to criminalize the non-execution of an order by the military as an offense of strict liability in violation of basic principles of customary international law. As documented in the latest report of the UN Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela (FFMV), when considered in its totality, the institutional reforms also fails to prevent the further commission of crimes by "Venezuela's military and civilian State intelligence agencies (that) function as well-coordinated and effective structures in the implementation of a plan orchestrated at the highest levels of the government to repress dissent through

⁴ 1) Richard Mardo Mardo, Judgment No. 10, file No. 2013-000060. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/abril/7-9413-2013-2013-000060.HTML>; 2) María Mercedes Aranguren, Judgment No. 78, file No. 2013-000123. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/octubre/157693-63-171013-2013-2013-000213.HTML>; 3) Juan Carlos Caldera, Judgment No. 70, file No. 2013-000122. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/noviembre/172065-70-261114-2014-2013-000122.HTML>; 4) Luisa Ortega Díaz, Judgment No. 44, file No. 2017-000073. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/junio/200552-44-28617-2017-2017-000073.HTML>; 5) Freddy Alejandro Guevara, Judgment No. 69, file No. 2017-000112. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/noviembre/204801-69-31117-2017-2017-000112.HTML>; 6) Julio Andrés Borges, Judgment No. 49, file No. 2018-000072. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/agosto/300717-49-8818-2018-2018-000072.HTML>; and 7) Juan Carlos Requesens, Judgment No. 48, file No. 2018-000071. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/agosto/300716-48-8818-2018-2018-000071.HTML>

⁵ Juan José Mendoza Jover, Arcadio Delgado Rosales, Carmen Zuleta de Merchán, Calixto Antonio Ortega Ríos, Luis Fernando Damiani Bustillos, Lourdes Benicia Suárez Anderson, Federico Sebastián Fuenmayor Gallo and René Alberto Degraives Almarza, Judgment No. 45, file No. 2017-000072. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/junio/200605-45-28617-2017-2017-000072.HTML>

crimes against humanity”.⁶

Considering the specific amendments enacted in this reform, the Panel is of the view that:

a) the **Partial Reform Law of the Organic Law of the Supreme Court of Justice**, has had a negative impact on the independence and impartiality of the judiciary, deteriorating rather than improving its ability to address accountability of alleged perpetrators by:

- i. reducing the number of Supreme Court Judges from 32 to 20;
- ii. allowing for the re-appointment of Judges for an additional 12 years in violation of the Constitution; and
- iii. further entrenches control of the Executive over the Judiciary Nomination Committee that appoint Supreme Court Judges.

As stated by an expert witness interviewed by the Panel: “(...) they took out perhaps those (Supreme Court Judges) who were less loyal or somehow were uncomfortable and left those who are purely loyal. (...) In 2024, Venezuela should have Presidential elections (...) the Judges elected now for 12 years, will provide 10 more years of impunity, if they (the current executive) lose the 2024 elections.”

b) the **Law for the Partial Reform of the Organic Code of Military Justice** which terminates the prosecution of civilians by military jurisdictions, falls short of addressing the systemic militarization of justice in Venezuela that has been used by the Government of Maduro as a tool to target political opposition, dissidents, and perceived dissenters for persecution since 2014. The law offers no proposal to address the violations and harm suffered by the hundreds⁷ of individuals since at least 2014. The law also blatantly fails to address the liability of the military officials who previously acted as judges as part of these unconstitutional military trials of civilians. Moreover, the assignment of the ongoing cases relating to civilians to the ordinary criminal courts while maintaining the military charges applied in these cases, generates some significant procedural and substantive irregularities.

⁶ Independent International Fact-finding mission on the Bolivarian Republic of Venezuela, Detailed findings of the independent international fact-finding Mission on the Bolivarian Republic of Venezuela: Crimes against humanity committed through the State’s intelligence services: structures and individuals involved in the implementation of the plan to repress opposition to the Government. A/HRC/51/CRP.3 20 September 2022

⁷ The IACHR cited figures of at least 757 civilians are believed to have been dealt with by military courts over the period April 1–October 31, 2017. The organization Foro Penal has further documented those 848 civilians were tried by military criminal courts over the period January 1, 2014–August 31, 2019. See, IACHR, Press release: IACHR Welcomes Reform of Venezuela’s Military Criminal Court System, Calls for Effective and Immediate Implementation. 14 October 2021. Available at: https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/273.asp

c) the **Organic Law for the Protection of Personal Liberty and Security** which creates specialized amparo (habeas corpus) courts to address the numerous cases of alleged enforced disappearance, displaces the competence of the Constitutional court and seeks to substitute it by specialized judges. Such specialized judges are fewer in numbers in each of the jurisdictional divisions in Venezuela, creating delays, and more intermediate courts of review before the aggrieved party can seek the application of constitutional guarantees before a Constitutional Court. This law also contains a transitory provision which expressly empowers the Supreme Court of Justice in the Plenary Chamber to appoint temporary judges raising concerns of independence and impartiality;

d) the **Law for the Reform of the Law for the Protection of Victims, Witnesses and Other Procedural Subjects**, which seeks to expand the scope of responsibilities of the “Office of Attention to Victims in Human Rights Matters” within the Office of the Attorney General, exercises its mandate in a legal vacuum due to the absence of a provision to establish the victims’ right to reparation, and the absence of measures for the protection and required psychological support to victims. The Panel wishes to express grave concern about the documented pervasive climate of victim intimidation in Venezuela, the policy of censorship and repression of the victims, civil society actors, journalists and legal practitioners as part of a cover up of the information implemented by the military and intelligence apparatus of the State of Venezuela, as reported by the FFM⁸. In particular, the Panel is mindful that the fear of repercussions is to be reasonably expected in a situation where the state officials are the alleged perpetrators as part of a state-wide policy to commit widespread and systematic crimes against humanity. The security concerns of victims in Venezuela are exacerbated by the fact that there has been little to no effort to seek accountability for the alleged perpetrators that serve as high-level state officials either continue to hold or have been promoted to positions of authority since the alleged state-wide policy of representation was first implemented for over 8 years starting in 2014;

e) the **Organic Law for the Reform of the Organic Code of Criminal Procedure**, states that victims are guaranteed access to the case file, even when they are not part of the case, and have as the right to appoint a representative in the trial, either

⁸ Independent International Fact-finding mission on the Bolivarian Republic of Venezuela, Detailed findings of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela. A/HRC/45/CRP.11. 15 September 2020, para. 244.

through a lawyer of their choice or through “associations, foundations and other legal assistance entities”. In addition, the new law amends Article 230, establishing a maximum term of three years for pretrial detention. However, in connection with these reports, one expert interviewed by the Panel explained that in his daily work as a litigation lawyer he has been able to verify that, in practice, in the vast majority of cases pertaining to political prisoners nothing has changed.

f) the **Law on Transparency and Access to Information of Public Interest Several victims**, provides victims with guarantees of access to the information. Civil society actors and victim have confirmed that there is a complete lack of transparency with regards to the files of previous and ongoing judicial proceedings, whether concerning cases in which they were subjected to alleged arbitrary detention, cases in which they have denounced violations of their Constitutional rights, and/or other alleged abuses amounting to crimes against humanity or including in those rare and arbitrary cases where the State of Venezuela initiated criminal prosecutions against alleged perpetrators. There have been consistent reports from victims that state officials working in the justice sector were unlawfully extorting money from victims in exchange for access to court records;

g) the **Law of Partial Reform of the Decree with Range, Value and Force of Law of the Statute of the Police Function** creating a National Human Rights Commission as an administrative unit in charge of receiving, processing disciplinary investigation of complaints of human rights violations committed by the Police, in the view of the Panel, raises concerns around its independence and impartiality, due to its structural dependence on the same authority of the executive branch as the Police – namely the Ministry of Popular Power for Internal Relations, Justice and Peace. This is particularly relevant in this specific situation because some of the violations allegedly perpetrated by the Bolivarian National Police Corps have been ordered by the Executive through the Minister of Popular Power for Internal Relations, Justice and Peace, including the implementation of the Zamora Strategic plan to repress peaceful protests through the use of force. In the same vein, the Panel is concerned that in light of the broader context of the reported inefficiency of judicial recourse to which the National Human Rights Commission defers to for criminal accountability - namely the Public Prosecutor’s Office and the Ombudsman’s Office (which have not been reformed), the National Human Rights Commission is of limited viability and effectiveness and is indicative of a deliberate attempt at shielding the Bolivarian National Police Corps through a toothless administrative mechanism that does not provide for the possibility of the claimed reparations for the victims of the violations;

h) the **Law for the Reform of the Organic Penitentiary Code** failed to address

the overcrowding, the inhumane detention conditions, the torture or the systemic extortion by prison guards or the operational issues caused by the creation of a parallel prison system which include 45 jail facilities under the Ministry of the Penitentiary Service and approximately 500 pretrial detention spaces under various different reporting structures, pursuant to Presidential decree⁹. Even though the law seeks to eliminate the margin of discretion that existed within the penitentiary authorities to postpone the release of detainees, several human rights activists have reported that in the vast majority pertaining to political prisoners, there has been no change since the law entered into force. Numerous detainees remain in detention, in some cases for seven years and counting. Furthermore, the creation of a body for security and custody that would be civil in nature, is considered by the Panel to be cosmetic since the Fact-Finding Mission, in their September 2022 report, documented that “witnesses reported that SEBIN continues holding de facto control over cases concerning people detained due to their real or perceived affiliation to Government opposition or because of their dissent.¹⁰”

Mindful of the fact that the willingness and ability of the State of Venezuela to hold alleged perpetrators accountable should be assessed holistically, and considering the State’s actions beyond the institutional reforms enacted, the Panel has also reviewed the large-scale corruption that impacts the capacity of the State of Venezuela to legislate and implement genuine and comprehensive domestic accountability efforts. In this respect, the **Law for the Reform of the Anti-Corruption Law**¹¹ enacted to fight grand corruption, because it does not provide for an asset recovery mechanism and fails to implement basic standards of compliance against the laundering of assets coming from corruption.

Considering the current stage of the proceedings whereby the investigation of the ICC Prosecutor is suspended pending a final ruling from the ICC’s Pre-Trial Chamber on the Government of Venezuela’s admissibility challenge, the Panel unanimously recommends the following:

⁹ Presidential decree No 4.430 of 4 February 2021, which creates the Sectoral Vice Presidency of Security and Peace which controls the Preventive Detention Centers with the Ministry of Penitentiary Affairs.

¹⁰ Fact-finding Mission on the Bolivarian Republic of Venezuela, Crimes against humanity committed through the State’s intelligence services: structures and individuals involved in the implementation of the plan to repress opposition to the Government. A/HRC/51/CRP.3. 20 September 2022, para. 319.

¹¹ National Assembly, Law for the Amendment of the Decree with Rank, Value and Force of Law against Corruption. Available at: http://spgo.in.imprentanacional.gob.ve/cgi-win/be_alex

1. To the ICC Prosecutor:

a) The Panel urges the ICC Prosecutor to reconsider engaging simultaneously in a policy of positive complementarity with the Government of Venezuela despite its submissions to the Pre-Trial Chamber on 1 November 2022¹², clearly establishing that the Government of Venezuela's actions are not sufficient to displace the ICC's jurisdiction and fail to meet the complementarity test. The Panel considers that while the complementarity requirement as set out in the Rome Statute is a compulsory legal threshold against which a state's activity will be assessed, positive complementarity is a policy of the Office of the Prosecutor ultimately remains at the discretion of the ICC Prosecutor. The Panel is of the view that simultaneously adopting these two competing narratives and ultimately incompatible strategies in engaging with the Government of Venezuela is not conducive to setting out a clear and targeted approach for achieving accountability in Venezuela.

b) 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 the domestic jurisdiction for accountability both due to a lack of willingness and ability to end impunity rather than on the alleged participation of officers of the Bolivarian National Guard, the Bolivarian National Police, the Bolivarian National Intelligence Service, the General Directorate of the Military Counterintelligence and the Scientific Criminal Investigation and Criminalistics Body. In this respect, the Panel emphasizes the importance of the ongoing collection of crime-based evidence by the ICC Prosecutor to identify those individuals who are the most responsible in line with the ICC Policy on the selection of cases in parallel with the complementarity assessment.

c) The Panel, highlighting the critical role that domestic civil society actors have been playing in documenting crimes and exhausting domestic remedies, recommends that the ICC Prosecutor publishes the list of the issues under consideration by the ICC Prosecutor and that is currently being investigated by

¹² International Criminal Court. Pre-Trial Chamber 1: Prosecution request to resume the investigation into the situation in the Bolivarian Republic of Venezuela I pursuant to article 18(2). November 1st of 2022. https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_06554.PDF

the State itself. This would enable the civil society actors to keep monitoring the “targeted repression” by military and intelligence agencies¹³. In this respect, the Panel also recommends that the ICC Prosecutor engages more consistently with the relevant local NGOs, civil society actors and victims, several of which have reported receiving little to no information on the progress of the work of the ICC Prosecutor’s Office.

d) The Panel expresses its concern that, in the course of the complementarity process and the communications between the ICC Prosecutor and the State of Venezuela, the Office of the Prosecutor has shared information relating to alleged victims and the circumstances of the events with the State of Venezuela which may in some cases lead to the identification of the victims. While this process may be appropriate with other circumstances, the Panel highlights that the current Venezuelan legal framework does not provide sufficient guarantees, support, protective measures or incentives for victims or experts to safely present evidence to the Office of the Prosecutor of the ICC in light of the pervasive climate of victim intimidation in Venezuela, the policy of censorship and repression of the victims, civil society actors, journalists and legal practitioners implemented by the military and intelligence apparatus of the State of Venezuela¹⁴.

e) The Panel respectfully recommends that the ICC Prosecutor reconsider the “support and active engagement” of his Office with the State of Venezuela in establishing an effective administration of justice as per the MoU, in light of the findings in this report and the latest report of the FFM which clearly point to the lack of political willingness and genuine efforts on the part of the State of Venezuela to engage in meaningful institutional reforms. While the Panel understands the complementary nature of the ICC’s jurisdiction and the importance of delivering justice at home, the Panel is mindful that crimes against humanity under the ICC jurisdiction continue to be committed on a large scale, that impunity remains

¹³ Independent International Fact-finding mission on the Bolivarian Republic of Venezuela, Detailed findings of the independent international fact-finding Mission on the Bolivarian Republic of Venezuela: Crimes against humanity committed through the State’s intelligence services: structures and individuals involved in the implementation of the plan to repress opposition to the Government. A/HRC/51/CRP.3 20 September 2022

¹⁴ I Independent International Fact-finding mission on the Bolivarian Republic of Venezuela, Detailed findings of the independent international fact-finding Mission on the Bolivarian Republic of Venezuela: Crimes against humanity committed through the State’s intelligence services: structures and individuals involved in the implementation of the plan to repress opposition to the Government. A/HRC/51/CRP.3 20 September 2022

the rule rather than the exception, and that victims remain without remedies in a deteriorating humanitarian situation where repression is implemented by the judiciary, executive and military alike. As a result, the Panel is of the view that, in the absence of decisive steps from the ICC Prosecutor to initiate prosecutions against, at least some of those most responsible, and force the hand of the State to implement effective mechanisms for accountability domestically, the State of Venezuela is likely to maintain the status quo and merely use the positive complementarity process to buy time, and create safeguards to avoid bringing high-level perpetrators to justice within the institutional reform process, while maintaining political dominance through persecution of dissidents.

f) The Panel also considers 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 prosecutors¹⁵, 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 to cover up the crimes in determining whether and against who to trigger prosecutions.

2. 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.

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.

¹⁵ Independent International Fact-finding mission on the Bolivarian Republic of Venezuela, Report of the independent international fact-finding mission on the Bolivarian Republic of Venezuela, A/HRC/48/69, 16 September 2021, Chapter III

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.

3. To the Venezuelan NGOs, civil society actors and victims:

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.

The Panel considers that the Venezuelan NGOs, civil society actors and victims should continue their efforts in engaging with the ICC Prosecutor and increase their advocacy capacity with the ICC state parties supporting accountability in Venezuela to prioritize the situation before the ICC Prosecutor.

4. To the State of Venezuela:

a) The Panel urges the State of Venezuela to immediately cease its acts of repression and commission of further crimes against humanity against the civilian population of Venezuela.

b) The Panel urges 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.

c) The Panel urges the State of Venezuela to engage in meaningful institutional reforms and create effective domestic accountability mechanisms for perpetrators at all the levels of the state apparatus as well as avenues for reparations for victims

to give effect to the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims.

d) The Panel urges the State of Venezuela to initiate investigations and prosecutions of state perpetrators, in particular those most responsible perpetrators of crimes against humanity under the ICC jurisdiction.

e) The Panel urges the State of Venezuela to criminalize the crime against humanity of persecution which has been alleged to have been committed and continue to be committed on a large scale against political opposition, dissidents, and perceived dissenters.

f) The Panel urges the State of Venezuela to engage in meaningful negotiations 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.

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Table of Abbreviations

| ACRONYM | MEANING |
|---------------|--|
| CICPC | Cuerpo de Investigaciones Científicas, Penales y Criminalísticas |
| CNE | National Electoral Council (<i>Consejo Nacional Electoral</i>) |
| COJUMI | Organic Code of Military Justice (<i>Código Orgánico de Justicia Militar</i>) |
| CPP | Organic Code of Criminal Procedure (<i>Código Orgánico Procesal Penal</i>) |
| CRBV | Constitution of the Bolivarian Republic of Venezuela (<i>Constitución de la República Bolivariana de Venezuela</i>) |
| DGCIM | Dirección General de Contrainteligencia Militar |
| ELN | Ejército de Liberación Nacional |
| FARC | Fuerzas Armadas Revolucionarias de Colombia |
| FFMV | United Nations Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela |
| GNB | Bolivarian National Guard (<i>Guardia Nacional Bolivariana</i>) |
| I/A Court H.R | Inter-American Court of Human Rights |
| IACHR | Inter-American Commission on Human Rights |
| ICC | International Criminal Court |
| ICCPR | International Covenant on Civil and Political Rights |
| MoU | Memorandum of Understanding between the Bolivarian Republic of Venezuela and the Office of the Prosecutor |
| NGO | Non-governmental organization |
| OAS | Organization of American States |
| OHCHR | Office of the High Commissioner for Human Rights |
| OTP | Office of the Prosecutor |
| Panel | OAS Panel of Independent International Experts on the Possible Commission of Crimes Against Humanity in Venezuela |
| PNB | Bolivarian National Police Corps (<i>Policía Nacional Bolivariana</i>) |
| PSUV | Partido Socialista Unido de Venezuela |
| RLOTSJ | Partial Reform Law of the Organic Law of the Supreme Court of Justice |
| SEBIN | Servicio Bolivariano de Inteligencia |
| TSJ | Supreme Court of Justice (<i>Tribunal Supremo de Justicia</i>) |
| UN | United Nations |
| UPR | Universal Periodic Review |



Introduction

Following the reports of the Organization of American States (OAS) in May 2018¹⁶ and in December 2020¹⁷ concluding that there were reasonable grounds to believe that crimes against humanity had been committed in Venezuela since 2014 and the subsequent referral to the International Criminal Court (ICC) from a group of state parties to the ICC¹⁸, the State of Venezuela has engaged in international cooperation with the ICC¹⁹, committing to implementing institutional reforms.

Between 17 September 2021 and 19 January 2022, the Government of Venezuela has enacted eleven new legislations to trigger institutional reforms in what has been announced as a “judicial revolution.”²⁰ While these “reforms initiated by the Government, in particular as related to justice, police and detention” have been hailed by the OHCHR as constituting “some progress,”²¹ the latest Report of the Fact Finding Mission has stated its concern “about the legal and institutional reforms (that) have been partially implemented at best, and have failed to address the serious flaws in the justice system that undermine its independence and impartiality.”²²

¹⁶ Organization of American States. General Secretariat. 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

¹⁷ Organization of American States. General Secretariat, Fostering impunity: the impact of the failure of the Prosecutor of the International Criminal Court to open an investigation into the possible commission of crimes against humanity in Venezuela. Available at: <http://www.oas.org/documents/eng/press/Crimes-Against-Humanity-in-Venezuela-II-ENG.pdf>

¹⁸ Available at: https://www.icc-cpi.int/sites/default/files/itemsDocuments/180925-otp-referral-venezuela_ENG.pdf

¹⁹ Available at: <https://www.icc-cpi.int/sites/default/files/itemsDocuments/otp/acuerdo/acuerdo-eng.pdf>

²⁰ VTV, Consejo de Estado: Presidente Maduro anuncia Comisión Especial para conducción de una Revolución en el Sistema de Justicia. 21 June 2021. Available at: <https://www.vtv.gob.ve/consejo-estado-presidente-comision-revolucion-judicial-1/>

²¹ <https://www.ohchr.org/en/statements/2022/06/dialogo-interactivo-sobre-el-informe-de-la-alta-comisionada-sobre-venezuela>

²² <https://reliefweb.int/report/venezuela-bolivarian-republic/report-independent-international-fact-finding-mission-bolivarian-republic-venezuela-ahrc5143-advance-unedited-version>

This report of the Panel of Experts seeks to review in detail and evaluate these legislative amendments enacted by the State of Venezuela from a legal and practical perspective through the contribution of domestic and international legal experts, academics and witnesses to assess whether they constitute genuine efforts on the part of the State of Venezuela to fulfill its obligations to hold alleged perpetrators accountable as a primary state, and avoid the intervention of the ICC pursuant to the principle of complementarity.

It will start by presenting some preliminary issues relating to this report including the methodology, the standard of review applied and the procedural background leading up to this report before analyzing the legislative amendments that are most relevant to accountability in Venezuela by providing an overview of their impact on accountability efforts for past crimes since 2014, the prevention of ongoing crimes and obstruction of justice efforts.

More specifically, this evaluation will focus on five main areas impacted that have landslide consequences on the punishment and prevention of crimes:

- a) The independence and impartiality of the judiciary;
- b) The application of military jurisdiction to civilians;
- c) The creation of specialized amparo (habeas corpus) courts;
- d) The reform of human rights institutions; and
- e) The reform of penitentiaries.

Over and beyond the analyzing the legislative changes enacted as part of the judicial revolution, the Panel will also review the intrinsic practical concerns arising from the operation of the Venezuelan legal system that came to light from the various statements and communications between the Panel and experts witnesses, and civil society actors on the ground including:

- a) the rampant corruption in detention centers and by public officials administering the justice system;
- b) the failure of the State of Venezuela to investigate and prosecute alleged perpetrators and in particular those high-level perpetrators; and
- c) the active shielding of alleged perpetrators.

The Panel's position is that the ICC Prosecutor should assess not only the institutional reforms of the State of Venezuela and its efforts to investigate and prosecute some low and mid-level perpetrators, but consider the State's actions wholistically, in order to evaluate the state's willingness and ability to act as primary state as well as prevent ongoing crimes and obstruction of justice efforts.

Bearing in mind that the ICC's jurisdiction is complementary in nature, the Panel will then present its conclusions on the extent to which this so-called judicial revolution:

- a) impacts the capacity of the state of Venezuela to deliver justice at home,
- b) is illustrative of the State of Venezuela's willingness to deliver justice, and
- c) constitutes a genuine attempt at bringing accountability for past crimes and to prevent ongoing crimes.

In doing so, the Panel will also review the existing risks to the obstruction of the investigation of crimes posed by the current set up of the Venezuelan legal framework and the ongoing large-scale impunity for alleged perpetrators of all levels, and particularly so at the highest level of the Government of Venezuela.

Lastly, the Panel will, based on the collective wealth of experience of its experts as applied to the facts analyzed, provide recommendations aimed at the ICC Prosecutor, local and international civil society stakeholders to support their efforts for accountability for Venezuelan victims of the State of Venezuela.

It is important to note that while the Panel will not engage with individual cases of alleged perpetrators investigated and prosecuted by the State of Venezuela in this report, it will make observations on how the institutional changes impact the delivery of domestic accountability.

1. PRELIMINARY ISSUES

1.1. Methodology

In producing this report, the Panel seeks to apply the same standards of review as the ICC will in the course of determining whether Venezuela's institutional reform constitutes a "genuine" effort for bringing accountability.

In doing so, the Panel has followed established methodologies and best practices for human rights fact-finding and in accordance with the principles of independence, impartiality, objectivity, transparency and integrity, implemented by the international experts sitting on the Panel namely Santiago Canton, former Executive Secretary of the Inter-American Commission on Human Rights; Manuel Ventura Robles, former Judge of the Inter-American Court of Human Rights; and Professor Irwin Cotler, President of the Raoul Wallenberg Centre for Human Rights and former Minister of Justice and Attorney

General of Canada, supported by local, regional and international legal experts, academics and civil society actors that constitute the Secretariat of the Panel of Experts²³.

As part of the investigation for this report, the Panel conducted an extensive document review of the laws enacted by the State of Venezuela, of international reports about the situation in Venezuela before²⁴ and after the co-called judicial revolution²⁵ as well as guidance and case law setting out internationally accepted standards against which to assess the health and viability of a legal system²⁶. The Panel also held 6 interviews with legal academics and legal experts in the Venezuelan domestic legal framework. For security reasons, as a result of the fear of repression that witnesses have expressed about the publicity of their involvement testifying about their first-hand experience of Venezuela's so-called "judicial revolution", their statements will be disclosed to the ICC as a confidential annex to this report.

The Panel wishes to highlight with regards to opensource material, that many digitized documents and videos that previously existed online have disappeared, have been hacked or censored.

²³ Rodrigo Diamanti - General Coordinator; Joanna Frivet - Legal advisor on International Criminal Law; and the rest of the legal team.

²⁴ IACHR, annual report 2018, Chapter IV B Venezuela; IACHR, annual report 2019, Chapter IV B Venezuela; IACHR, annual report 2020, Chapter IV B Venezuela; IACHR, annual report 2021, Chapter IV B Venezuela; OHCHR, Human rights violations in the Bolivarian Republic of Venezuela: a downward spiral with no end in sight - Report by the Office of the United Nations High Commissioner for Human Rights, 1 June 2018; OHCHR, Human rights in the Bolivarian Republic of Venezuela: Report of the United Nations High Commissioner for Human Rights, A/HRC/41/18, 1 October 2019; OHCHR, Independence of the justice system and access to justice in the Bolivarian Republic of Venezuela, including for violations of economic and social rights, and the situation of human rights in the Arco Minero del Orinoco region, A/HRC/44/54, 1 September 2020 ;OHCHR, Outcomes of the investigation into allegations of possible violations of the human rights to life, liberty, and physical and moral integrity in the Bolivarian Republic of Venezuela - Report of the United Nations High Commissioner for Human Rights, A/HRC/44/20, 17 September 2020; OHCHR, Situation of human rights in the Bolivarian Republic of Venezuela - Report of the United Nations High Commissioner for Human Rights, A/HRC/47/55, 16 June 2021; OHCHR, Situation of human rights and technical assistance in the Bolivarian Republic of Venezuela - Report of the United Nations High Commissioner for Human Rights, A/HRC/48/19, 21 October 2021; Independent International Fact-finding mission on the Bolivarian Republic of Venezuela, Detailed findings of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela. A/HRC/45/CRP.11. 15 September 2020; and Independent International Fact-finding mission on the Bolivarian Republic of Venezuela, Report of the independent international fact-finding mission on the Bolivarian Republic of Venezuela, A/HRC/48/69, 16 September 2021.

²⁵ Independent International Fact-finding mission on the Bolivarian Republic of Venezuela, Detailed findings of the independent international fact-finding Mission on the Bolivarian Republic of Venezuela: Crimes against humanity committed through the State's intelligence services: structures and individuals involved in the implementation of the plan to repress opposition to the Government. A/HRC/51/CRP.3 20 September 2022

The Panel notes in this respect that information gathering on the ground has been interfered with by an overall policy of repression of the civil society actors, journalists and legal practitioners as part of a cover up of the information by the State of Venezuela.

With regards to its analysis, the Panel implemented an assessment against internationally recognized legal standards which are referenced throughout this report.

For the purposes of the understanding the impact of the new legislations enacted as presented by the witnesses interviewed, the Panel used “reasonable grounds to believe” as its standard of proof – which is met when factual information has been collected which would satisfy an objective and ordinarily prudent observer that the incident has occurred as described with a reasonable degree of certainty- as is adopted by the United Nations fact-finding bodies.

1.2 Standard of Review

1.2.1 Standard of review during an ICC investigation

In determining whether Venezuela’s institutional reform meets the criteria considered by the ICC Prosecutor at this stage, the Panel will start by considering the standard of review applicable at this stage. In the context of an ICC investigation, the decision of the ICC Prosecutor on whether or not to initiate prosecution rests on the application of Article 53(2) of the Rome Statute.

According to this Article 53(2) the ICC Prosecutor may decide that “there is not a sufficient basis for a prosecution because:

- a) There is not a sufficient legal or factual basis to seek a warrant or summons under Article 58;²⁷
- b) The case is inadmissible under Article 17;²⁸ or
- c) The prosecution is not in the interest of justice taking into account all the circumstances including the gravity of the crime, the interests of victims and the age or infirmity of the alleged perpetrator and his or her role in the alleged crime.”²⁹

²⁶ Among others, 5 Inter-American Court of Human Rights, Case of Apitz Babera et al., (“First Court of Administrative Disputes”) v. Venezuela, “Judgment of August 5, 2008”, (Preliminary Objection, Merits, Reparations and Costs); Inter-American Court of Human Rights, Reverón Trujillo v. Venezuela, “Judgment of June 30, 2009”, (Preliminary Objection, Merits, Reparations and Costs); Inter-American Court of Human Rights, Case of Chocrón Chocrón v. Venezuela, “Judgment of July 1, 2011”, (Preliminary objection, merits, reparations and costs; and IACHR. Democratic institutions, the rule of law and human rights in Venezuela: Country report.

These criteria expressed in the negative, are alternative in nature, and either one of them may amount to a sufficient justification for the ICC Prosecutor to decline to prosecute in the situation in Venezuela I ³⁰. Accordingly, they will each be considered in turn.

1.2.1.1 When the ICC will intervene to prosecute alleged perpetrators

The Panel notes that the standard of proof to be exercised by the ICC Prosecutor at this stage under Article 58 of the Rome Statute prescribes that the ICC Prosecutor needs to consider not only whether “there are reasonable grounds to believe that the person has

²⁷ Article 58 of the Rome Statute

“Issuance by the Pre-Trial Chamber of a warrant of arrest or a summons to appear

1. At any time after the initiation of an investigation, the Pre-Trial Chamber shall, on the application of the Prosecutor, issue a warrant of arrest of a person if, having examined the application and the evidence or other information submitted by the Prosecutor, it is satisfied that:

(a) There are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and

(b) The arrest of the person appears necessary:

(i) To ensure the person’s appearance at trial;

(ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings; or

(iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances. (...)”

²⁸ Issues of admissibility

1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:

(a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;

(b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;

(c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;

(d) The case is not of sufficient gravity to justify further action by the Court.

2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:

(a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;

(b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;

(c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.

3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

committed a crime within the jurisdiction of the Court” but also needs to exercise these powers “to ensure that the person does not obstruct or endanger the investigation or the court proceedings; or to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances (...).”

As will be further addressed below, the Panel considers that the latter parts of Article 58 are particularly relevant to the assessment of ICC Prosecutor in the context of the investigation of the situation in Venezuela I where crimes are ongoing and high-level state officials alleged to have committed crimes against humanity are still in office.

1.2.1.2 Complementarity

It is critical to highlight that in the context of an investigation, complementarity is to be assessed on a case-by-case basis and not with regards to all the cases presented in the situation concurrently. It may therefore well be that one case is considered admissible and another is not.

In this context, the Panel notes that the ongoing collection of crime-based evidence to identify those individuals who are the most responsible in line with the ICC Policy on the selection of cases ³¹ in parallel with the complementarity assessment is critical.

With regards to admissibility as set out by Article 17 of the Rome Statute, and given effect through the ICC’s assessment of complementarity, the Panel recalls that the Rome Statute considers three distinct circumstances:

- a) where the State has not initiated any investigation, none of the alternatives of Article 17(1)(a)-(c) are satisfied and there is therefore no impediment to admissibility. Thus, there is no need to examine the factors of unwillingness or inability since the case is simply admissible under the terms of Article 17;

²⁹ Article 53(2)

³⁰ On February 8, 2018, The Prosecutor of the International Criminal Court opened a preliminary examination of the situation in Venezuela I to analyze crimes allegedly committed in this State Party since at least April 2017, in the context of demonstrations and related political unrest; in particular, the use of excessive force to disperse and put down demonstrations, and the arrest and detention of thousands of actual or perceived members of the opposition, a number of whom would have been allegedly subjected to serious abuse and ill-treatment in detention.

³¹ OTP, Policy paper on case selection and prioritization. 2016. Available at: https://www.icc-cpi.int/sites/default/files/itemsDocuments/20160915_OTP-Policy_Case-Selection_Eng.pdf

b) where a State is investigating or prosecuting, or has already completed such a proceeding, Articles 17(1)(a)-(c) are engaged. In such circumstances, the case will be inadmissible; and

c) where the state is investigating or prosecuting a case, inadmissibility is displaced where it can be shown that the proceedings are not genuine, because the State is either unwilling or unable to carry out genuine proceedings. Thus, the issues of “unwilling”, “unable” and “genuine” only arise where a State purports to be handling the matter, but there are reasons to believe that a genuine proceeding will not result.³²

With regards to “unwillingness” in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:

(i) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;

(ii) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;

(iii) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.³³

Inability in a particular case, shall be determined on whether, “due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.”³⁴

³² Cfr. Rome Statute of the International Criminal Court, article 17(1)

³³ Cfr. Rome Statute of the International Criminal Court, article 17(2)

³⁴ Cfr. Rome Statute of the International Criminal Court, article 17(3)

The assessment of the genuineness of the proceedings restricts the class of national proceedings that require deference from the ICC “giving the ICC a certain scope to assess the objective quality of a national proceeding”³⁵. While the ICC is not a human rights court, in doing so it will consider some internationally established standards to determine whether the principles of due process recognized by international law are met arguably both to respect the rights of the defense while avoiding impunity.

In practice, the ICC Prosecutor will implement the complementarity policy based both on respect for the primary jurisdiction of States and on considerations of efficiency and effectiveness, in such a way as to “not (...) engage in a competitive attitude”³⁶ with the relevant state but to “help ensure that the most serious international crimes do not go unpunished and thereby to put an end to impunity.”³⁷ As best expressed by the ICC Prosecutor, “justice is best done at home.”³⁸

While the Panel will not engage, in this report, with individual cases investigated and prosecuted by the State of Venezuela, it will make observations on how the institutional changes impact the delivery of domestic accountability.

³⁵ Informal expert paper

³⁶ SECRETARIAT OF THE ASSEMBLY OF STATES PARTIES TO THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT THE HAGUE WORKING GROUP Complementarity 1 October 2021

³⁷ Informal expert paper: The principle of complementarity in practice

³⁸ OTP, “ICC Prosecutor, Karim A.A. Khan QC, outlines renewed approach to investigations in the Situation in Libya to the United Nations Security Council”. Available at: <https://www.icc-cpi.int/news/icc-prosecutor-karim-aa-khan-qc-outlines-renewed-approach-investigations-situation-libya>

1.2.1.3 Interest of Justice

At this particular stage of the ICC investigation, interest of justice intervenes as an exception allowing the ICC Prosecutor to exercise his discretion not to initiate a prosecution considering the following factors cumulatively:

a) the gravity of the crime;

It is noted here that the ICC Prosecutor has to consider gravity as part of case selection first, then again as part of admissibility which is relevant here and that in the first instance the test applied is stricter according to the ICC Policy Paper on selection of cases³⁹. This implies considering both the quantitative and qualitative factors including the scale, nature, manner of commission and impact of the crimes.⁴⁰

b) the interests of victims;

c) the age or infirmity of the alleged perpetrator; and

d) his or her role in the alleged crime.

1.2.1.3 International standards for assessing the administration of Justice

The Panel will, in its evaluation of the Venezuelan legal system, weight the international standards of administration of justice as set out by various leading human rights bodies including the European Court of Human Rights, the InterAmerican Court of Human Rights, InterAmerican Commission of Human Rights, Special Rapporteur of the UN and other international tribunals relating the independence and impartiality of the judiciary and the application of the principles of due process to be considered by the ICC Prosecutor to determine the willingness and ability of the state to conduct proceedings. These will be referred to where relevant throughout this report.

Inability in a particular case, shall be determined on whether, “due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.” ⁴¹

³⁹ Para 36 https://www.icc-cpi.int/sites/default/files/itemsDocuments/20160915_OTP-Policy_Case-Selection_Eng.pdf

⁴⁰ Para 37 https://www.icc-cpi.int/sites/default/files/itemsDocuments/20160915_OTP-Policy_Case-Selection_Eng.pdf

The assessment of the genuineness of the proceedings restricts the class of national proceedings that require deference from the ICC “giving the ICC a certain scope to assess the objective quality of a national proceeding⁴². While the ICC is not a human rights court, in doing so it will consider some internationally established standards to determine whether the principles of due process recognized by international law are met arguably both to respect the rights of the defense while avoiding impunity.

1.3 Procedural Background

Venezuela deposited its instrument of ratification of the Rome Statute on 7 June 2000⁴³. As such, the ICC may exercise its jurisdiction over Rome Statute crimes committed on the territory of Venezuela or by its nationals from 1 July 2002 onwards.

Dozens of UN countries in the UPR⁴⁴, the UN HR Council⁴⁵, the FFMV⁴⁶, the OHCHR⁴⁷, the OAS Panel of Experts⁴⁸, the 6 countries that made the referral of the situation I of Venezuela⁴⁹, various UN rapporteurs⁵⁰, the IACHR Commission⁵¹ and the most important local and international NGOs have documented the crimes against humanity under the

⁴¹ International Criminal Court. Rome Statute. Sanctioned on July 17th of 1998. Article 17(3). [https://www.un.org/spanish/law/icc/statute/spanish/rome_statute\(s\).pdf](https://www.un.org/spanish/law/icc/statute/spanish/rome_statute(s).pdf)

⁴² Informal expert paper

⁴³ <https://asp.icc-cpi.int/states-parties/latin-american-and-caribbean-states/venezuela>

⁴⁴ Access to Justice, Recommendations on Judicial Independence in Venezuela under the UPR 2017-2021. August 1, 2022. Available at: <https://accesoalajusticia.org/recomendaciones-sobre-la-independencia-judicial-en-venezuela-en-el-marco-del-epu-2017-2021/>

⁴⁵ Access to Justice, Lack of judicial independence alarms UN Human Rights Council. October 14, 2020. Available at: <https://accesoalajusticia.org/la-falta-de-independencia-judicial-alarma-al-consejo-de-derechos-humanos-de-la-onu/>

⁴⁶ Human Rights Council, Detailed findings of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela. Available at: https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFMV/A-HRC-48-CRP.5_SP.pdf

⁴⁷ OHCHR, Venezuelan Justice System Plays Important Role in State Repression of Government Opponents. September 16, 2021. Available at: <https://www.ohchr.org/es/press-releases/2021/09/venezuelan-justice-system-plays-significant-role-states-repression>

⁴⁸ 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/spa/press/Informe-Panel-Independiente-Venezuela-ES.pdf>

jurisdiction of the ICC and the grave violation of human rights in Venezuela, committed since at least 2014.

The Panel acknowledges that as part of these crimes against humanity, the allegations of arbitrary detention, torture, sexual and gender based crimes, murder in custody by state officials are rife. In addition, the crime of persecution, has been alleged to have been committed on a large scale through complex patterns of conducts is of particular concern since it has targeted “all those people who either exercise a leadership role in the political opposition, who represent a threat to the political hegemony of the regime or who, in general, they are perceived as dissidents (...).”⁵² Evidence has also emerged of persecution of the indigenous populations including of the Pemón and Wayuu ethnic groups.⁵³

The Panel highlights the dire humanitarian and refugee crisis that has ensued with, in 2018, an estimated “5.1 million Venezuelans (who have left their homes and traveled mainly to Latin America and the Caribbean (...) the largest exodus in the region’s recent history and one of the largest displacement crises in the world. (...) In 2018, an average of 5,000 people left Venezuela every day. Thousands of them cross the Colombian border daily, while others go to Brazil, Chile, Ecuador or Peru, and there are those who make risky trips by boat to the Caribbean islands.”⁵⁴

⁴⁹ Coalition for the International Criminal Court, Venezuela: 6 American States ask the ICC to initiate an investigation. Available at: <https://www.coalitionfortheicc.org/es/news/20180927/venezuela-6-estados-americanos-piden-la-cpi-que-inicie-una-investigacion>

⁵⁰ UN, Venezuela: Special Rapporteur urges State to guarantee judicial independence as government pressure mounts. 08 February 2019. Available at: <https://www.ohchr.org/es/2019/02/venezuela-must-ensure-judicial-independence-governmental-pressure-judges-grows-says-un>

⁵¹ IACHR Commission, 5 years after protests over the suspension of powers of the National Assembly: Venezuela must rebuild judicial independence. Available at: <http://www.oas.org/es/cidh/jsForm/?File=/es/cidh/prensa/comunicados/2022/070.asp>

⁵² CEPAZ: Political Persecution as a Crime Against Humanity in Venezuela (II). Available at: <https://cepaz.org/articulos/la-persecucion-politica-como-crimen-de-lesa-humanidad-en-venezuela-ii/>. Retrieved 10/24/2020 at 07:43 am

⁵³ Cf. Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela, Detailed findings of the independent international fact-finding mission on the Bolivarian Republic of Venezuela: The human rights situation in the Arco Minero del Orinoco region and other areas of the Bolívar state. A/HRC/51/CRP.2. 20 September 2022, para. 281

On 29 May 2018, the Panel of Independent International Experts on the Possible Commission of Crimes Against Humanity in Venezuela presented its report in which it considered that there were reasonable grounds to believe that crimes against humanity have been committed against the civilian population in Venezuela dating back to at least February 12, 2014, including the crimes of murder, imprisonment, torture, rape and other forms of sexual violence, persecution, and enforced disappearances⁵⁵. Based on this conclusion, they recommended that the Secretary General of the OAS submit the report and the evidence to the Office of the Prosecutor of the International Criminal Court and to invite States Parties to the Rome Statute to refer the situation of Venezuela to the Office of the Prosecutor.⁵⁶

On 27 September 2018, the Office of the Prosecutor of the ICC received a referral from a group of States Parties to the Rome Statute namely the Argentine Republic, Canada, the Republic of Colombia, the Republic of Chile, the Republic of Paraguay and the Republic of Peru regarding the situation in the Bolivarian Republic of Venezuela since 12 February 2014⁵⁷. Pursuant to article 14 of the Rome Statute, the referring States requested the Prosecutor to initiate an investigation on crimes against humanity allegedly committed in the territory of Venezuela.

Consequently, on 28 September 2018, the Presidency assigned the Situation in the Bolivarian Republic of Venezuela to Pre-Trial Chamber I ⁵⁸. On 19 February 2020, the

⁵⁴ “Humanitarian crisis of refugees and migrants from Venezuela: “We don’t have a place to live or sleep and we don’t have anything to eat “. Nayebis Carolina Figuera, a 34-year-old Venezuelan who fled to Brazil in 2018. The situation in Venezuela is causing hundreds of Venezuelan women and girls, like her, to arrive hungry at the country’s borders after days on the road. The majority of Venezuelans who have arrived in neighboring countries are families with children, elderly people and people with disabilities. UNHCR: 5.1 million Venezuelan refugees and migrants. Available at: <https://eacnur.org/es/labor/emergencias/venezuela-crisis-de-refugiados-y-migrantes> . Retrieved on 08/10/2020 at 06:10 am.

⁵⁵ Cf. Organization of American States. General Secretariat. 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, 29 May 2018.

⁵⁶ Cf. Organization of American States. General Secretariat. 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, 29 May 2018.

⁵⁷ https://www.icc-cpi.int/sites/default/files/itemsDocuments/180925-otp-referral-venezuela_ENG.pdf

Presidency reassigned the Situation in the Bolivarian Republic of Venezuela I to Pre-Trial Chamber III. ⁵⁹

In 2020, the Office concluded that there is a reasonable basis to believe that crimes against humanity, particularly in the context of detention, have been committed in Venezuela since at least April 2017 ⁶⁰.

On 13 February 2020, the Office of the Prosecutor of the ICC received a referral under Article 14 of the Rome Statute from the Government of Venezuela to initiate an investigation into crimes against humanity allegedly committed on the territory of Venezuela, with the view to determining whether one or more persons should be charged with the commission of such crimes⁶¹. In its referral, the Government of Venezuela states that crimes against humanity are committed “as a result of the application of unlawful coercive measures adopted unilaterally by the government of the United States of America against Venezuela, at least since the year 2014 ⁶²” On 19 February 2020, the Presidency assigned the Situation in the Bolivarian Republic of Venezuela II to Pre-Trial Chamber III ⁶³.

On 2 December 2020, the General Secretariat of the OAS submitted a follow-up report to the Panel of Experts’ report in which it warned that the domestic investigations “are in reality an attempt to cover up the complicity of the Regime’s senior leadership. Delaying the preliminary examination on the basis of these internal processes only contributes to maintaining impunity and frustrating the ends of justice.⁶⁴”

On June 21, 2021, the Government of Venezuela established a commission to implement radical reforms to the judiciary co-chaired by Diosdado Cabello and Ms. Cilia Flores - President Maduro’s wife, both being members of the ruling party, the United Socialist Party (PSUV).

⁵⁸ ICC, Decision assigning the situation in the Bolivarian Republic of Venezuela to Pre-Trial Chamber I. Public with public Annex I. Available at: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2018_04587.PDF

⁵⁹ ICC, Decision assigning the Situation in the Bolivarian Republic of Venezuela II and reassigning the Situation in the Bolivarian Republic of Venezuela I to Pre-Trial Chamber III. Public with public Annex I. Available at: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_00598.PDF

⁶⁰ OTP, Report on Preliminary Examination Activities 2020, 14 December 2020, para. 202. Available at: <https://www.icc-cpi.int/sites/default/files/itemsDocuments/2020-PE/2020-pe-report-eng.pdf>

⁶¹ Available in Spanish: <https://www.icc-cpi.int/sites/default/files/itemsDocuments/200212-venezuela-referral.pdf>

⁶² Available in Spanish: <https://www.icc-cpi.int/sites/default/files/itemsDocuments/200212-venezuela-referral.pdf>

⁶³ ICC, Decision assigning the Situation in the Bolivarian Republic of Venezuela II and reassigning the Situation in the Bolivarian Republic of Venezuela I to Pre-Trial Chamber III. Public with public annex I. Available at: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_00596.PDF

Diosdado Cabello, is the current President of the National Constitutional Assembly, and has served as the Vice-President of the PSUV since December 2011. Through his position as a member of the Venezuelan Armed Forces and his role as the main presenter of the weekly state sponsored TV program *Con el Mazo Dando* on the TV channel *Venezolana de Television*, he has had a lead role in leveling accusation against the opposition and individuals perceived as political dissenters who have allegedly been attacked as part of the state policy to commit crimes against humanity. As such he is considered to be one of the individuals who could bear responsibility under the ICC jurisdiction as direct and co-perpetrator of crimes against humanity of arbitrary detention, torture, cruel, inhuman, or degrading treatment, and even sexual and gender-based violence, through orders given to SEBIN given the fact that he gave orders directly to SEBIN Director General González López, and that the Director de facto reported to him.⁶⁵

His historical position on the existence of crimes against humanity in Venezuela is also notorious. After the six countries presented the referral to the ICC, Diosdado Cabello dismissed the petition⁶⁶. Later, in a demonstration against the report of the UN High Commissioner for Human Rights, Michelle Bachelet, Diosdado Cabello, who led the mobilization, stated: “our people (...) reject in each of its parts this report presented by Mrs. Bachelet and condemns the hypocritical attitude, condemns the submissive attitude, condemns the complicit attitude of Mrs. Bachelet”⁶⁷.

⁶⁴ Organization of American States. General Secretariat. “Fostering Impunity: The Impact of the Failure of the Prosecutor of the International Criminal Court to Open an Investigation Into the Possible Commission of Crimes Against Humanity in Venezuela”. 2 December 2020

⁶⁵ Fact Finding Mission on the Bolivarian Republic of Venezuela, Crimes against humanity committed through the State's intelligence services: structures and individuals involved in the implementation of the plan to repress opposition to the Government A/HRC/51/CRP.3. 20 September 2022, para 271.

⁶⁶ Cfr. Aporrea, Diosdado Cabello acusa a Eva Golinger de ser “agente del imperialismo”. 4 de octubre de 2018. Disponible en: <https://www.aporrea.org/actualidad/n332399.html>

⁶⁷ DW, Miles de chavistas rechazan el informe Bachelet en las calles de Venezuela. 14 julio 2019. Disponible en: <https://www.dw.com/es/miles-de-chavistas-rechazan-el-informe-bachelet-en-las-calles-de-venezuela/a-49583856>

A few days after the publication of the third report of the FFM, he declared: “it is a whole US campaign, these positions, these attacks, it is not that they do not affect us, we would like the country to be left alone, but they believe that by attacking the President, myself or another person, that they point us there, with that we are going to be frightened. Or that these people will believe them.”⁶⁸ He concluded: “The campaign is against Venezuela. What a pity it gives me that they have no arguments: neither legal, nor political, nor of any nature. The only thing they have are interests”⁶⁹.

On 16 September 2021, the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela presented a report in which it considered, among other findings that the Government of Venezuela was not taking tangible, concrete and progressive steps to remedy violations, combat impunity and provide the victims with redress through domestic investigations and prosecutions⁷⁰.

From 31 October 2021 to 3 November 2021, the ICC Prosecutor Karim Khan held discussions with the President, the Vice-President and also with the Minister of Foreign Affairs of the Republic. In addition, he held meetings with the Attorney General, the President of the Supreme Tribunal, the Ombudsman, the President of the National Assembly, senior Venezuelan state officials, members of the diplomatic corps and representatives of civil society in Venezuela.

Concluding these conversations, during which the ICC Prosecutor clarified that: “there are no targets or suspects at this stage of the proceedings.”⁷¹ On 3 November 2021, the ICC Prosecutor announced that the preliminary examination had been concluded with a decision that there was a reasonable basis to proceed with investigations⁷².

⁶⁸ Facebook, Rueda de prensa del PSUV con Diosdado Cabello, 26 de septiembre de 2022. Disponible en: https://www.facebook.com/watch/live/?ref=watch_permalink&v=617672176489724

⁶⁹ Facebook, Rueda de prensa del PSUV con Diosdado Cabello, 26 de septiembre de 2022. Disponible en: https://www.facebook.com/watch/live/?ref=watch_permalink&v=617672176489724

⁷⁰ Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela, Report of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela. (A/HRC/48/69). 16 September 2021, para. 116.

⁷¹ Bolivarian Republic of Venezuela; Office of the Prosecutor of the International Criminal Court. Memorandum of Understanding Between the Bolivarian Republic of Venezuela and the Office of the Prosecutor of the International Criminal Court. November 3rd of 2021. <https://www.icc-cpi.int/sites/default/files/itemsDocuments/otp/acuerdo/acuerdo-eng.pdf>

Although the Government of Venezuela was of the view that the conditions for an investigation have not been met, the ICC Prosecutor and the Government of Venezuela jointly signed a *Memorandum of Understanding* (MoU) on 3 November 2021, setting “the stage for sustained dialogue and cooperation” ⁷³ in the course of the investigation.⁷⁴

In this MoU both parties aimed to “actively engage with each other and support efforts further to the principle of complementarity” and the Venezuelan Government committed to reform and revitalize the justice and penal system in order to enable genuine accountability in Venezuela for the victims of alleged crimes.” ⁷⁵ More specifically, the Government of Venezuela has committed to engage in reforms to:

- a) “adopt all necessary measures to ensure the effective administration of justice in accordance with international standards with the support and active engagement of the Office of the Prosecutor of the International Criminal Court pursuant to the principle of complementarity;”
- b) “establish mechanism to enhance cooperation between the Parties and facilitate the discharge of the Prosecutor’s mandate (...);”
- c) “to strive towards agreeing on the means and mechanisms that will effectively contribute to the efforts of the Bolivarian Republic of Venezuela to carry out genuine national proceedings in accordance to Article 17 of the Rome Statute;” and
- d) “to work to ensure that the principle of complementarity had adequate and meaningful effect.”

⁷² International Criminal Court. ICC Prosecutor, Mr Karim A.A. Khan QC, opens an investigation into the Situation in Venezuela and concludes Memorandum of Understanding with the Government. Office of the Prosecutor.(2021). <https://www.icc-cpi.int/news/icc-prosecutor-mr-karim-aa-khan-qc-opens-investigation-situation-venezuela-and-concludes>

⁷³ Ibidem. pg 38

⁷⁴ Bolivarian Republic of Venezuela; Office of the Prosecutor of the International Criminal Court. Memorandum of Understanding Between the Bolivarian Republic of Venezuela and the Office of the Prosecutor of the International Criminal Court. November 3rd of 2021. <https://www.icc-cpi.int/sites/default/files/itemsDocuments/otp/acuerdo/acuerdo-eng.pdf>

⁷⁵ International Criminal Court. ICC Prosecutor, Mr Karim A.A. Khan QC, opens an investigation into the Situation in Venezuela and concludes Memorandum of Understanding with the Government. Office of the Prosecutor. (2021). <https://www.icc-cpi.int/news/icc-prosecutor-mr-karim-aa-khan-qc-opens-investigation-situation-venezuela-and-concludes>

On 29 to 31 March 2022, the ICC Prosecutor visited Venezuela and agreed with the State of Venezuela to establish an office in Caracas in support of cooperation between the Venezuelan authorities and the Office and for facilitating implementation of the MoU⁷⁶.

It is also critical to note that following its initial decision to open an investigation on 3 November 2021, the ICC Prosecutor extended the delay for the state to apply to the ICC Prosecutor to request a deferral from 30 days under Article 18 (2) of the Rome Statute, to over 5 months⁷⁷.

On 16 April 2022, the State of Venezuela submitted to the ICC Prosecutor, under article 18(1) of the Rome Statute a request for deferral whereby Venezuela “confirms that [it] is investigating or have investigated its nationals or others within its jurisdiction with respect to alleged punishable acts against human rights, in concordance with the information provided in the notification received from the Office of the Prosecutor on December 16, 2021”, and “requests the Office of the Prosecutor to formally refrain from the investigation in favor of the actions carried out by the appropriate national authorities of Venezuela.” ⁷⁸

As noted by the ICC Prosecutor, Venezuela attached no supporting material but instead referred to “a statistical overview of domestic proceedings that have reportedly been initiated” and “a set of regulatory and institutional reforms that it says have been adopted to strengthen national capacity.” The ICC Prosecutor determined that given that no new information appeared that would warrant revisiting the prior determination, the Prosecution’s prior complementarity assessment under article 53(1)(b) remained unaffected by the Deferral Request.

Nonetheless, a closer analysis of this request exposes that the Government of Venezuela confirmed that “the Public Ministry and the Judiciary, is investigating or has investigated its nationals or others within its jurisdiction with respect to alleged punishable acts

⁷⁶ International Criminal Court. Statement of ICC Prosecutor, Karim A.A. Khan QC, on completion of second visit to Venezuela: “Through cooperation we will accelerate our common work towards justice.”. Office of the Prosecutor. March 31st of 2022. <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-completion-second-visit-venezuela-through>

⁷⁷ Ministry of Peoples Power for Foreign Affairs. Request to the Office of Prosecutor of the International Criminal Court. Bolivarian Republic of Venezuela. April 15th of 2022. https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2022_03181.PDF

⁷⁸ International Criminal Court. Pre-Trial Chamber 1: Notification of the Bolivarian Republic of Venezuela’s deferral request under article 18(2) of the Rome Statute. April 20th of 2022. https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_03184.PDF

against human rights in order to determine the truth and establish, should that be the case the corresponding criminal responsibilities (...).” While no clarity is provided as to the specific number of such cases being investigated or prosecuted, the State of Venezuela rather provides guidance in reference to the ICC’s communication of “possible issues that are being investigated” stating that “one hundred twenty four (124) issues (...) have been or are being investigated by the Public Ministry of Venezuela (...)” of which “one hundred and sixteen (116) issues (...) are in the preliminary phase, five (5) are in the trial process and convictions have been decided in three (3) issues.” ⁷⁹

The application of the Government of Venezuela refers specifically to only one case – a conviction adopted in May 2021 (before the ICC’s opening of the investigation and over a year ago) against 8 officers of the Bolivarian National Police for cruel treatment and rape of Javier Dario Campos Amaya where a sentence for 24 years and 3 months was imposed.

The State of Venezuela further clarified that the cases under consideration in these issues “have been oriented mainly towards the investigation of the alleged participation of officers of the Bolivarian National Guard, the Bolivarian National Police, the Bolivarian National Intelligence Service, the General Directorate of the Military Counterintelligence and the Scientific Criminal Investigation and Criminalistics Body, as well as individuals for events that have occurred at least since 2014.” ⁸⁰

In the same notification, the Prosecutor also informed the Pre-Trial Chamber of his intention to apply, as soon as possible, to resume the Office’s investigations. Pending a ruling from the Chamber, he informed the Pre-Trial Chamber that he may also seek authority from the Pre-Trial Chamber to pursue necessary investigative steps for the purpose of preserving evidence where there is a unique opportunity to obtain important evidence or there is a significant risk that such evidence may not be subsequently available, pursuant to article 18(6).⁸¹

⁷⁹ Ministry of People’s Power for Foreign Affairs. Request to the Office of Prosecutor of the International Criminal Court. Bolivarian Republic of Venezuela. April 15th of 2022. https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2022_03181.PDF

⁸⁰ International Criminal Court. Pre-Trial Chamber I: Notification of the Bolivarian Republic of Venezuela’s deferral request under article 18(2) of the Rome Statute. April 20th of 2022. https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_03184.PDF

⁸¹ International Criminal Court. Pre-Trial Chamber I: Notification of the Bolivarian Republic of Venezuela’s deferral request under article 18(2) of the Rome Statute. April 20th of 2022. https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_03184.PDF

On 1 November 2022, the Prosecutor filed an application before Pre-Trial Chamber I seeking authorization to resume the investigation in the situation in the Bolivarian Republic of Venezuela I. ⁸² The Prosecutor considered that “the information available shows that the patterns and policies underlining the contextual elements of crimes against humanity are not being investigated, the domestic proceedings focus on direct perpetrators (and seemingly low level members of the State security forces) and mostly on crimes qualified as being of “minor” gravity, while a substantial part of the relevant criminality is not being investigated at all. Notably, only 7.61% of cases relate to crimes identified by the Prosecution during the PE (preliminary examination).”⁸³

In particular, the Prosecutor stated that the domestic authorities have not sought to ascertain the possible systematic occurrence of the crimes nor the existence of patterns and policies linking the criminal acts; presenting no evidence that this aspect of the investigation has been actually and genuinely pursued at all. Rather, according to the Prosecutor, Venezuela has expressly rejected the existence of any such policy and of a systematic attack against any civilian population, and “has characterised the instances of criminality investigated as isolated incidents constituting ordinary crimes.” The Prosecutor concluded, that “since proof of the existence of a State or organisational policy and of an attack against a civilian population is required to prove any crime against humanity within the parameters of the Venezuela situation [...] the domestic proceedings undertaken do not sufficiently mirror the scope of the Prosecution’s intended investigation such that it should displace ICC jurisdiction.”⁸⁴

Finally, the Prosecutor referred to the institutional reform adopted by Venezuela that appears to be limited in scope and do not address the considerations related to the genuineness of proceedings outlined below; and that there were indicia that the proceedings have not been or are not being conducted independently or impartially, and that they have not been or are not being conducted in a manner which, in the

⁸² International Criminal Court. Pre-Trial Chamber I: Prosecution request to resume the investigation into the situation in the Bolivarian Republic of Venezuela I pursuant to article 18(2). November 1st of 2022. https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_06554.PDF

⁸³ International Criminal Court. Pre-Trial Chamber I: Prosecution request to resume the investigation into the situation in the Bolivarian Republic of Venezuela I pursuant to article 18(2). November 1st of 2022. https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_06554.PDF

⁸⁴ International Criminal Court. Pre-Trial Chamber I: Prosecution request to resume the investigation into the situation in the Bolivarian Republic of Venezuela I pursuant to article 18(2). November 1st of 2022. https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_06554.PDF

circumstances, is consistent with an intent to bring the persons concerned to justice, considering article 17(2)(c).⁸⁵

On 3 November 2022, the Office of Public Counsel for Victims (the ‘OPCV’) submitted an application for the victims who have a personal interest in the proceedings arising from the Deferral Request, to be allowed to file, together with four Venezuelan lawyers, joint submissions presenting the views and concerns of victims on the Prosecution’s Request

On 18 November 2022, Pre-Trial Chamber I issued an Order inviting observations and views and concerns of victims. It instructed the Victims Participation and Reparations Section of the Registry (“VPRS”) to collect victims’ views and concerns and to transmit them to the Chamber, together with a report, by 21 March 2023 at the latest. The Pre-Trial Chamber also considered it appropriate to invite Venezuela to submit any additional observations arising from the Prosecutor’s Request, by no later than 28 February 2023. It instructed the Prosecutor to submit a response, if any, to the observations of Venezuela, within three weeks after the notification of these observations, or by 21 March 2023 at the latest. Finally, the Pre-Trial Chamber denied Venezuela’s request to provide a reply to the Prosecution’s submissions or the report summarizing victims’ views and concerns.⁸⁶

The Government of Venezuela also relies on the institutional reform that it has engaged in to “strengthen national capacities to ensure the effective administration of justice” which allegedly are “in accordance with international standards in this matter.” In support of this argument to defer the ICC investigation, it presents:

- a) the Organic Code of Criminal Procedure to expand the participation of victims and strengthen the guarantees of the defense’s rights;
- b) the Organic Code of Military Justice which terminates the prosecution of civilians by military jurisdictions;

⁸⁵ International Criminal Court. Pre-Trial Chamber I: Prosecution request to resume the investigation into the situation in the Bolivarian Republic of Venezuela I pursuant to article 18(2). November 1st of 2022. https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_06554.PDF

⁸⁶ International Criminal Court. Pre-Trial Chamber I: Order inviting observations and views and concerns of victims. November 18th of 2022. https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_06722.PDF

c) a Special Regularization Plan for Temporary Prosecutors which benefitted 42 prosecutors; and

d) the amendment of the Organic Law of the Supreme Court of Justice, the appointment of Magistrates of the Supreme Court of Justice, the General Inspectorate of Courts and the National School of the Judiciary.

The Panel notes at the outset, with great concern, that the Government of Venezuela:

a) seeks to represent Venezuela's constitutional and legal framework as one that does "not differ from the ordinary models of criminal prosecution in all parts of the world, far from the internationally disseminated media manipulations and pressures that have manifested themselves in recent years in an evidence expression of the foreign political interference external to the Rome Statute"; and

b) expresses that in the course of the complementarity process, and the communications with the ICC Prosecutor, it has received information from the ICC Prosecutor relating to alleged victims and the circumstances of the events. The application for deferral stated that "the information sent by the Office of the Prosecutor **sometimes** lacked sufficient elements to fully identify the alleged victims and the circumstances of the events."

On 27 March 2023, the State of Venezuela submitted its observations to the Pre-Trial Chamber in which it argues that the situation is inadmissible because of the legal basis for the opening of the investigation, the lack of material jurisdiction, the lack of complementarity, gravity, and interest of justice and more generally breaches of due process by the Office of the Prosecutor.^A

On 30 March 2023, the Office of the Prosecutor responded to these observations noting that the State's arguments challenging the legality of jurisdiction and of gravity are not a matter subject to review by the Pre-Trial Chamber. With regards to the substantive challenges, the Office of the Prosecutor submitted that: "the GoV's contention that there was no systematic attack on the civilian population, and that no crimes were committed

^A International Criminal Court. Pre-Trial Chamber I: Request for Leave to Reply. ICC-02/18-34-Conf-Exp-AnxII. March 27th of 2023

in furtherance of any State policy are unsupported and at odds with the Prosecution's determination in its thorough PE (preliminary examination)."^B

Most importantly with regards to the admissibility challenge the Office of the Prosecutor outlined its position as follows:

“the GoV has not demonstrated that it has conducted or is conducting national investigations or prosecutions that sufficiently mirror the scope of the Court's intended investigation (...) While the Prosecution appreciates the updated information submitted by the GoV in its Observations and annexure, after a careful analysis it concludes that this information does not change the Prosecution's conclusions in the Article 18(2) Request,⁸ rather it confirms these conclusions. Although the GoV argues that its criminal justice system generally functions well,⁹ and that its national criminal proceedings are ongoing,¹⁰ it concedes that these proceedings do not relate to crimes and facts that could support charges of crimes against humanity domestically because these have not occurred on its territory. Furthermore, although the GoV has provided updates on a number of criminal proceedings (all of which were already known to the Prosecution and addressed in its Request), these remain 1) very few in number compared to the volume of alleged crimes and the type of harm identified as having been committed in the situation, 2) focused exclusively on low-ranking members of the security forces (and seemingly physical perpetrators), with no apparent investigation of higher-level perpetrators and private individuals or groups, and 3) framed in terms of “isolated instances”¹¹ without inquiry into larger patterns of conduct or underlying policy.

For all of these reasons, the Prosecution submits that deferral is not warranted at this stage, and respectfully asks the Pre-Trial Chamber¹² to authorise the resumption of the Court's investigation.”^C

^B International Criminal Court. Pre-Trial Chamber 1: Public redacted version of “Prosecution's Response to the `Observations of the Government of the Bolivarian Republic of Venezuela's to the Prosecution request to resume the investigation (ICC-02/18-30-Conf-Exp-AnxII)”, 21 March 2023, ICC02/18-31-Conf-Exp. March 30th of 2023, para. 3. <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1804146b9.pdf>

^C International Criminal Court. Pre-Trial Chamber 1: Public redacted version of “Prosecution's Response to the `Observations of the Government of the Bolivarian Republic of Venezuela's to the Prosecution request to resume the investigation (ICC-02/18-30-Conf-Exp-AnxII)”, 21 March 2023, ICC02/18-31-Conf-Exp. March 30th of 2023, paras. 5 and 6. <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1804146b9.pdf>

On 20 April 2023, the Registry submitted a consolidated summary of the victims's views and concerns that overwhelmingly support the Prosecution's position.^D

The Panel wishes to highlight that beyond the basic considerations with regards to the qualification of the type of legal system prevailing in Venezuela, the status of Venezuela's legal framework with regards to upholding international human rights standards has been documented by various reliable sources of both local and international repute. As such the Panel is of the view that the Government of Venezuela rather feeble attempts to misrepresent criticism against the efforts of the Government of Venezuela as fake news and foreign political interference.

Furthermore, the Panel notes the risk that in the current context of an alleged attack against the civilian population of Venezuela that has lasted for over 8 years, with reports of ongoing crimes⁸⁷ in an overall climate of intimidation of victims who have come forward, civil society actors and journalists reporting about the crimes, the suggestion that the ICC Prosecutor shared information with the Government of Venezuela that enabled the identification of victims and of alleged incidents brought to the attention of the ICC Prosecutor, is conducive to creating distrust on the part of victims engaging with the ICC.

2. VENEZUELA'S INSTITUTIONAL REFORM

In order to determine the scope of the legal and practical impact of the institutional reforms initiated by the Government of Venezuela, it is first important to establish what was the state of the legislative framework and judicial system in Venezuela prior to the so-called "judicial revolution."

There has been extensive analysis and concern for the lack of judicial independence and impartiality in the Venezuelan judicial system cited in reports produced by multiple international human rights advocates, both within the United Nations and the Inter-American system.⁸⁸

^D International Criminal Court. Pre-Trial Chamber I: ICC-02/18-40-Anxl-Red, Annex I to the Final Consolidated Registry Report on Article 18(2) Victims' Views and Concerns Pursuant to Pre-Trial Chamber's Order ICC-02/18-21. <https://www.icc-cpi.int/sites/default/files/RelatedRecords/0902ebd180441579.pdf>

⁸⁷ Independent International Fact-finding mission on the Bolivarian Republic of Venezuela, Detailed findings of the independent international fact-finding Mission on the Bolivarian Republic of Venezuela: Crimes against humanity committed through the State's intelligence services: structures and individuals involved in the implementation of the plan to repress opposition to the Government. A/HRC/51/CRP.3 20 September 2022

The International Commission of Jurists stated, in a September 2017 report: “The judiciary, as the result of judgments that advanced the political interests of the executive branch, has lost its essential and characteristic attributes, such as autonomy, independence, and legitimacy. The executive branch has blatantly used the judiciary, through the Supreme Court, to suppress the NA [Asamblea Nacional (National Assembly)] and the Attorney General’s Office (Fiscalía General de la Nación) by means of a clear power struggle between these branches of the State.”⁸⁹ It next held: “The Supreme Court has been co-opted by the ruling party, becoming an appendage of the executive branch, and has ceased to exercise its constitutional function as the guarantor of the rule of law, human rights, and fundamental freedoms.”⁹⁰

The Panel notes that this reported lack of judicial independence and impartiality remains the status quo according to the IACHR in 2021. The IACHR observed that “democratic institutions in the country are not guided by the principles of the separation of powers and checks and balances. In fact, in 2021, the Commission ascertained that the executive branch holds absolute power, following the virtual takeover of institutions such as the Supreme Court of Justice, the National Constituent Assembly and the Office of the Public Prosecutor.”⁹¹

In its 2020 annual report, the IACHR affirmed that “the lack of independence of the Judicial Branch in Venezuela has contributed to an institutional crisis that shows no sign of slowing. Rather than serving as a guarantor of the conventionality, constitutionality,

⁸⁸ At the United Nations system see, for instance, OHCHR, “Human rights situation in the Bolivarian Republic of Venezuela.” A/HRC/41/18. 9 October 2019, paragraphs 56 and 76. OHCHR, “Independence of the justice system and access to justice in the Bolivarian Republic of Venezuela, including for violations of economic and social rights, and the situation of human rights in the Arco Minero del Orinoco region.” A/HRC/44/54. 29 September 2020, paragraph 6.

The situation of the independence of the judiciary in Venezuela has featured in chapter IV.B, looking at human rights situations that require special attention, of the IACHR annual reports since 2002. See, for instance, Annual Report 2018, Chapter IV.B Venezuela, para. 2. See also, IACHR, Annual Report 2019, Chapter IV.B Venezuela, para. 2; IACHR, Annual Report 2020, Chapter IV.B Venezuela, para 2; and IACHR, Annual Report 2021, Chapter IV.B Venezuela, para. 2.

⁸⁹ International Commission of Jurists, *The Supreme Court of Justice of Venezuela: An Instrument of the Executive Branch*, September 12, 2017, page 51, <https://www.icj.org/wp-content/uploads/2017/09/Venezuela-Suprem-Court-Publications-Reports-Thematic-reports-2017-ENG.pdf>

⁹⁰ International Commission of Jurists, *The Supreme Court of Justice of Venezuela: An Instrument of the Executive Branch*, September 12, 2017, page 51, <https://www.icj.org/wp-content/uploads/2017/09/Venezuela-Suprem-Court-Publications-Reports-Thematic-reports-2017-ENG.pdf>

⁹¹ IACHR, Annual Report 2021, Chapter IV.B Venezuela, para. 2.

and legality of the actions of the other branches of government, the Judicial Branch has created new obstacles to overcoming the crisis facing the country.”⁹²

In their 2020 report, the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela observed that the lack of independence and impartiality of the judiciary in Venezuela began shortly after the adoption of the 1999 Constitution, when the National Constituent Assembly approved a transitional measure⁹³ whereby judges of the Supreme Tribunal of Justice would be appointed outside of the constitutional process, a practice which is still in place⁹⁴. The Fact-Finding Mission identified a series of decisions that, in its opinion, “increased Government powers over selection of Supreme Court judges.”⁹⁵ These decisions include a 2000 law introduced by the National Assembly that enable the election of magistrates by a simple majority, replacing the two-thirds majority that is required under Constitution⁹⁶; a TSJ decision from 2000, which creates exemptions for judicial candidates that allow for their appointment without satisfying the career requirements that are outlined in the Constitution⁹⁷; in addition to the National Assembly’s adoption of the 2004 Organic Law of the Supreme Tribunal of Justice⁹⁸ that increased the size of the Supreme Court from 20 to 32 judges⁹⁹.

The provisional nature of judicial appointments and the manner in which appointments have been made outside pre-established laws and regulations of the Venezuelan State are also among the concerns articulated by international bodies with respect to the lack of independence and impartiality of the judiciary in Venezuela. The IACHR¹⁰⁰, the OHCHR¹⁰¹

⁹² IACHR, Annual Report 2020, Chapter IV.B, Venezuela, para. 5.

⁹³ Restructuring of the judiciary and of the penitentiary system, posted on the Official Gazette N° 36.805, 11 October 1999, available at: https://www.oas.org/juridico/spanish/ven_res51.pdf.

⁹⁴ Cf. Detailed findings of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela. A/HRC/45/CRP.11. 15 September 2020, paragraph 149.

⁹⁵ Cf. Detailed findings of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela. A/HRC/45/CRP.11. 15 September 2020, paragraph 149.

⁹⁶ The reforms of 2010 of the Organic Law partly amended this. The reform provided for the election by simple majority only in the event of failure of three previous attempts at reaching two-thirds of the votes. Special Law for the ratification or designation of the officials of the Citizen’s Power and judges of the Supreme Tribunal of Justice for the first constitutional term, posted on the Official Gazette N° 37,077, 14 November 2000.

⁹⁷ Ruling N° 1562, of 12 December 2000, available at: <https://vlexvenezuela.com/vid/defensoria-pueblo-283506271>

⁹⁸ Organic Law of the Supreme Tribunal of Justice, Bolivarian Republic of Venezuela, posted on the Official Gazette N° 37,942, 20 May 2004, Article 2, available at: https://www.oas.org/juridico/spanish/mesicic2_ven_anexo_44_sp.pdf.

⁹⁹ Cf. Detailed findings of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela. A/HRC/45/CRP.11. 15 September 2020, paragraph 149.

and the Fact-Finding Mission¹⁰² have all expressed concern with the inadequate and lack of transparency in the appointments process, the lack of tenure for judicial appointments, and political interference, including the threats of dismissal, all of which are recognized as contributing to the lack of independence in the judiciary. According to the OHCHR, “[t]his situation prevents the judiciary from exercising its key role as an independent actor in protecting human rights and contributes to impunity and the persistence of human rights violations.”¹⁰³

For its part, the Human Rights Committee of the OHCHR recalled, “the provisional appointment of members of the judiciary cannot exempt a State party from ensuring that the appropriate guarantees relating to the security of tenure of appointees are in place. Regardless of the nature of their appointment, members of the judiciary should be and appear to be independent. Additionally, temporary appointments should be exceptional and limited in time.”¹⁰⁴

The Inter-American Commission on Human Rights maintained that “it is necessary to adopt measures to avoid risks to judicial independence in the selection, appointment, and permanence of the members of the highest judicial body in Venezuela, and the need to ensure that the appointment processes include prior dissemination of the announcements, time periods, and procedures; the guarantee of equal and inclusive access of candidates; the broad participation of civil society, and scoring based on merit and professional capacities, and not political affinities.”¹⁰⁵ At the same time, the

¹⁰⁰ Cfr. IACHR, Annual Report 2018, Chapter IV.B, Special report on Venezuela. OEA/Ser.L/V/II. Doc. 30. 17 March 2019, paragraph 5. IACHR, Annual Report 2019, Chapter IV.B, Special report on Venezuela. OEA/Ser.L/V/II. Doc. 9. 24 February 2020, paragraph 5. IACHR, Annual Report 2020, Chapter IV.B, Special report on Venezuela. OEA/Ser.L/V/II. Doc. 28. 30 March 2021, paragraph 20.

¹⁰¹ Cfr. OHCHR, “Independence of the justice system and access to justice in the Bolivarian Republic of Venezuela, including for violations of economic and social rights, and the situation of human rights in the Arco Minero del Orinoco region.” A/HRC/44/54. 29 September 2020, paragraph 7.

¹⁰² Cfr. Detailed findings of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela. A/HRC/45/CRP.11. 15 September 2021, paragraph 156.

¹⁰³ OHCHR, “Independence of the justice system and access to justice in the Bolivarian Republic of Venezuela, including for violations of economic and social rights, and the situation of human rights in the Arco Minero del Orinoco region.” A/HRC/44/54. 29 September 2020, paragraph 66.

¹⁰⁴ Human Rights Committee. Views approved by the Committee under Article 5, paragraph 4, of the Optional Protocol, concerning communication N° 2203/2012. CCPR/C/121/D/2203/2012. 1 February 2018; paragraph 9.3.

¹⁰⁵ IACHR, Annual Report 2018, Chapter IV.B, Special report on Venezuela. OEA/Ser.L/V/II. Doc. 30. 17 March 2019, paragraph 54. See also, IACHR, Annual Report 2019, Chapter IV.B, Special report on Venezuela. OEA/Ser.L/V/II. Doc. 9. 24 February 2020, paragraph 45. IACHR, Annual Report 2020, Chapter IV.B, Special report on Venezuela. OEA/Ser.L/V/II. Doc. 28. 30 March 2021, paragraph 19.

IACHR deemed it necessary that “the State should adopt urgent and decisive measures to significantly increase the number of full judges and to ensure that judges, even if provisional, are not removed other than by disciplinary proceeding or administrative act, strictly respectful of due process guarantees, especially the duty to be properly motivated and access to judicial review.”¹⁰⁶ Among the actions recommended by the OHCHR, “judges should be selected following international standards, their tenure should be guaranteed, and they should be protected against restrictions, improper influences, threats or interferences, direct or indirect, from any quarter or for any reason.”¹⁰⁷

“The OHCHR is concerned that insecurity of tenure limits the Independence of judges and exposes them to undue interference from their superiors, as well as external sources.”¹⁰⁸ Moreover, the OHCHR reported that information available indicates, “[m]agistrates of the Supreme Court have effective control over lower courts decisions nationwide, in particular in the area of criminal law. Interviewees reported that in cases of political relevance in particular, judges would await instructions from magistrates of the Supreme Court before making a decision, for fear or dismissal or other reprisals.”¹⁰⁹

Observing a decrease in transparency, the IACHR noted their difficulty in follow-up of the latest conditions of judicial independence¹¹⁰ in its 2020 annual report 2020. The IACHR report cited additional sources that indicated that the means of investigative journalism and non-governmental organizations estimated that between 2007-2017 the percentage of provisional judges ranged between 66% to 80% in 2007-2017 ¹¹¹, in 2018 estimates reached above 80% ¹¹², and in 2019, 85.39% ¹¹³. The Commission further noted that no public, competitive hiring processes have been conducted for permanent judicial appointments since 2002.¹¹⁴

¹⁰⁶ IACHR, Annual Report 2018, Chapter IV.B, Special report on Venezuela. OEA/Ser.L/V/II. Doc. 30. 17 March 2019, paragraph 54. See also, IACHR, Annual Report 2019, Chapter IV.B, Special report on Venezuela. OEA/Ser.L/V/II. Doc. 9. 24 February 2020, paragraph 45. IACHR, Annual Report 2020, Chapter IV.B, Special report on Venezuela. OEA/Ser.L/V/II. Doc. 28. 30 March 2021, paragraph 19.

¹⁰⁷ Cfr. OHCHR, “Human rights violations in the Bolivarian Republic of Venezuela: a downward spiral with no end in sight.” 22 June 2018, page 54.

¹⁰⁸ Cfr. OHCHR, “Independence of the justice system and access to justice in the Bolivarian Republic of Venezuela, including for violations of economic and social rights, and the situation of human rights in the Arco Minero del Orinoco region.” A/HRC/44/54. 29 September 2020, paragraph 9.

¹⁰⁹ Cfr. OHCHR, “Independence of the justice system and access to justice in the Bolivarian Republic of Venezuela, including for violations of economic and social rights, and the situation of human rights in the Arco Minero del Orinoco region.” A/HRC/44/54. 29 September 2020, paragraph 9.

¹¹⁰ Cfr. IACHR, Annual Report 2020, Chapter IV.B, Venezuela, para 18.

¹¹¹ Cfr. International Commission of Jurists, Achieving justice for gross human rights violations in Venezuela, 2017, page 25.

¹¹² Cfr. Constitutional Bloc of Venezuela, Report 2018, page 37.

To address the systemic issues of lack of independence of the judiciary¹¹⁵ as part of its commitment in this MoU, the Government of Venezuela has engaged in a wave of legislative amendments passing 11 laws between 17 September 2021 and 19 January 2022 as part of the set of legislations aimed to “act as a single power” by the Council of State. It was qualified by the State of Venezuela as termed the “judicial revolution.”¹¹⁶

This report will focus on 9 of these laws relating to 5 areas of particular relevance to the willingness and ability of the State of Venezuela to fulfill its responsibility to provide accountability for the alleged crimes as the primary state and avoid the intervention of the ICC:

- a) The independence and impartiality of the judiciary;
- b) The application of military jurisdiction to civilians;
- c) The creation of specialized Amparo (Habeas Corpus) courts;
- d) The reform of human rights institutions; and
- e) The penitentiary reform.

2.1 The Legislative Context in which the Institutional Reform was Enacted

Before engaging in this analysis, the Panel wishes, at the outset, to highlight the highly politically contested status of the last elections in Venezuela and of the constitution of the current National Assembly. While the Panel does not intend to delve into matters relating to the electoral legitimacy of the current Government of the Venezuela, it considers that the legality of the constitution of the National Assembly of Venezuela is a relevant factor which informs not only the context in which the institutional reform has been conducted but also the ability and willingness of the individuals acting as part of State of Venezuela

¹¹³ Armandoinfo, La ley del Poder Judicial: mientras más pobre la provincia, más chavistas son los jueces (The judiciary's law: the poorer the province, the more pro-government the judges), 7 July 2019.

¹¹⁴ IACHR, Annual Report 2020, Chapter IV.B, Venezuela, para. 20.

¹¹⁵ See, for instance, IACHR, Annual Report 2020, Chapter IV.B, Venezuela, para. 20; OHCHR, “Independence of the justice system and access to justice in the Bolivarian Republic of Venezuela, including for violations of economic and social rights, and the situation of human rights in the Arco Minero del Orinoco region.” A/HRC/44/54. 29 September 2020, paragraph 7; and Independent International Fact-finding mission on the Bolivarian Republic of Venezuela, Detailed findings of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela. A/HRC/45/CRP.11. 15 September 2022, paragraph 156.

¹¹⁶ VTV, Consejo de Estado: Presidente Maduro anuncia Comisión Especial para conducción de una Revolución en el Sistema de Justicia. 21 June 2021. Available at: <https://www.vtv.gob.ve/consejo-estado-presidente-comision-revolucion-judicial-1/>

to comply with Venezuela's own domestic Constitution and legal framework as well as international standards in exercising its primacy as a state vis-à-vis the ICC to implement accountability. Furthermore, the Panel considers that these concerns over illegitimacy of the National Assembly adds weight and motive to the allegations of mass persecution of political opponents, dissidents and anyone perceived as such.

In November 2020, the IACHR published a press release expressing concern at the absence of appropriate conditions for holding competitive and plural legislative elections in Venezuela, scheduled by the National Electoral Council (CNE) for December 6, 2020. The obstacles identified by the IACHR included: the irregular appointment of members of the National Electoral Council; the TSJ decisions interfering in the leadership committees of political parties; and the harassment that took place on August 9, 2020, at the headquarters of Acción Democrática¹¹⁷. The IACHR considered that “that these types of judgments interfere in the free development of the internal democratic processes of opposition political parties; undermine trust in the country's elections; and, of most concern, create obstacles to addressing the institutional crisis that is having such a severe impact on human rights.”¹¹⁸

On October 21, 2020, the General Assembly of the Organization of American States adopted a resolution on the lack of the minimum democratic conditions needed to guarantee free, fair, and transparent elections in Venezuela ¹¹⁹ and on December 10, 2020, the Permanent Council of the OAS rejected the elections held in Venezuela on December 6, 2020 and not recognized their results, “for not having been free and fair in accordance with the conditions established in international law; for lacking impartiality and transparency; for not having counted with the participation of all political actors and citizens; for not having released political prisoners; for the lack of independence of the electoral authority; and for not having counted with independent and credible international electoral observation.”¹²⁰

¹¹⁷ IACHR, Press release 269/2020, “IACHR Flags Obstacles for Fair Parliamentary Elections in Venezuela,” November 11, 2020.

¹¹⁸ IACHR, Annual Report 2020, Chapter IV.B, Venezuela, para. 36.

¹¹⁹ OAS, General Assembly, Resolution: The Lack of Minimum Democratic Conditions to Guarantee Free, Fair, and Transparent Elections in the Bolivarian Republic of Venezuela, October 21, 2020

¹²⁰ OAS, Permanent Council, CP/RES. 1164 (2309/20), para. 1

With a turnout of only 31% of the electoral roll, the ruling party won more than 3.5 million of the 5.2 million votes to achieve a total of 67.6% of the support, according to data from the National Electoral Council (CNE)¹²¹. Thus, out of a total of 277, the United Socialist Party of Venezuela was left with 222 seats and if the coalition of parties that respond to the ruling party is taken into account, the number rises to 253 seats.¹²²

The overwhelming majority obtained, allowed the government to dissolve the National Constituent Assembly, as it found its reason d'être in replacing the National Assembly legitimately elected in 2015. In this regard, it should be recalled that the now dissolved National Constituent Assembly had been created, according to the IACHR, the problem of impunity and whose objectives included a top-to-bottom review of the justice system.¹²³

Furthermore, the Panel's attention has been drawn to the expeditiousness of the legislative process without meeting the Constitutional requirement of consultation and debate with civil society, victims, or qualified experts¹²⁴ provided for in Article 211 of the Venezuelan Constitution.¹²⁵

The Venezuelan NGO Acceso a la Justicia explained that "none of the approved reforms were presented in advance to civil society, much less were jurists, academics, criminologists and human rights activists given the opportunity to make observations and present recommendations to the deputies. The country only found out about the

¹²¹ BBC News Mundo, Elecciones en Venezuela 2020: el chavismo gana las elecciones parlamentarias marcadas por el boicot de la oposición y una masiva abstención. 7 December 2020. Available at: <https://www.bbc.com/mundo/noticias-america-latina-55212032>

¹²² Cfr. El Mundo, El chavismo se queda con 253 de los 277 escaños del Parlamento. 10 December 2020. Available at: <https://www.elmundo.es/internacional/2020/12/10/5fd170b7fc6c83a6238b4658.html>

¹²³ Cf. IACHR, Situation of Human Rights in Venezuela, para. 266.

¹²⁴ CRBV. Article 211. "The National Assembly or the Permanent Commissions, during the procedure of discussion and approval of the bills, will consult the other organs of the State, the citizens and the organized society to hear their opinion on them. The Ministers in representation of the Executive Power will have the right to speak in the discussion of the laws; the magistrate of the Supreme Court of Justice whom it designates, in representation of the Judicial Power; the representative of the Citizen Power designated by the Republican Moral Council; the members of the Electoral Power; the States through a representative appointed by the Legislative Council and the representatives of organized society, in the terms established by the Regulations of the National Assembly." See also The Rules of Procedure for Debates, Consultations during the formation, discussion, or approval of laws, Article 101. "The National Assembly or the permanent commissions, during the procedure of formation, discussion, and approval of the bills, will consult the other organs of the State, the citizens and the organized communities to hear their opinion on them. All consultations will be of a public nature and prior dissemination of the pertinent material, with full identification of those who participate in them, systematizing all the proposals that are presented."

¹²⁵ Cf. Acceso a la Justicia, El «paquetazo penal» no resuelve los problemas de fondo de la justicia en Venezuela. 14 October 2021. Available at: <https://accesoalajusticia.org/el-paquetazo-penal-no-resuelve-los-problemas-de-fondo-de-la-justicia-en-venezuela/>

modifications during the second discussion of the bill in the Assembly. But if this were not enough, the legislators themselves did not debate the proposed alterations to the first version of the bill; this allowed such a delicate matter, with a direct impact on a fundamental right of the first order as personal freedom, to be dispatched in a matter of hours.”¹²⁶

Referring to the laws being reformed, the expert witness E004, an experienced local human rights defense lawyer and law professor explained that “there are reforms that are one or two articles long and, in addition, they create bodies that have not even been created, they create commissioners with very pompous names and do not really create them, only on paper.”¹²⁷

The lack of proper legislative drafting expertise of the drafters is also clear from the basic procedural irregularities scattered across the new legislations enacted. For instance, the 2021 Amendment of the Organic Code of Criminal Procedure explicitly repels the previous versions of the code of 1998, 2000, 2001, 2006, 2008 and 2009, but fails to repel the latest version of the Code of Criminal Procedure of 2012. The Panel is of the view that such technical errors are likely to result in difficulties in the implementation of the new laws.

For its part, the Fact-Finding Mission reiterated that it is “particularly concerned about legal and institutional reforms related to the justice system.” ¹²⁸ Reforms announced since 2021 have been partially implemented at best, and have failed to address the serious flaws in the justice system that undermine its independence and impartiality.” ¹²⁹

This reform has been qualified by observers as one that strengthens the submission of Venezuela’s judicial system to the Venezuelan Executive since they occur in a context where “the separation of powers does not exist.” ¹³⁰

¹²⁶ Acceso a la Justicia, El «paquetazo penal» no resuelve los problemas de fondo de la justicia en Venezuela. 14 October 2021. Available at: <https://accesoalajusticia.org/el-paquetazo-penal-no-resuelve-los-problemas-de-fondo-de-la-justicia-en-venezuela/>

¹²⁷ Annex V. Interview I004, para. 4.

¹²⁸ Cf. A/HRC/48/69, paras. 14-30, 31-56; A/HRC/48/CRP.5 paras. 37-87.

¹²⁹ Fact-finding mission on the Bolivarian Republic of Venezuela, Report of the independent international fact-finding mission on the Bolivarian Republic of Venezuela. A/HRC/51/43. 20 September 2022, para. 10

¹³⁰ Biografía de Francisco Ameliach. Disponible en: https://www.franciscoameliach.com/biografia/Biografia_de_Francisco_Ameliach. Disponible en: <https://www.franciscoameliach.com/biografia/>

As best explained by the expert witness E005, a prominent human rights expert and activist, the reform of the judicial system is an issue that does not turn around the passing of laws but rather depends on a political transformation.¹³¹

The following sections will address these 5 main areas of relevance impacted by the so-called judicial revolution namely:

- a) The independence and impartiality of the judiciary;
- b) The application of military jurisdiction to civilians;
- c) The creation of specialized Amparo (Habeas Corpus) courts;
- d) The reform of human rights institutions; and
- e) The penitentiary reform.

2.2 The Independence and Impartiality of the Judiciary

The main legislation amended by the Government of Venezuela to address the systemic issues of the lack of independence and impartiality raised by the reports mentioned above ¹³² is the Partial Reform Law of the Organic Law of the Supreme Court of Justice (hereinafter, “RLOTSJ”).¹³³

2.2.1 The Previous Structure of the Supreme Court of Justice

The Supreme Court of Justice (*Tribunal Supremo de Justicia*) (hereinafter, “TSJ”) is at the apex of the Venezuelan court system¹³⁴ and is the court of last resort for all cases appealed in Venezuela. With previously 32 justices (“*magistrados*”) elected by the National Assembly for a single 12-year term,¹³⁵ the Supreme Court is divided into seven chambers: plenary, constitutional, political-administrative, electoral, civil appeals, criminal appeals, and social (mainly agrarian and labor) issues appeals - which all may meet either in

¹³¹ Annex VI, Interview I005, para. 3.

¹³² See, for instance, IACHR, Annual Report 2020, Chapter IV.B, Venezuela, para. 20; OHCHR, “Independence of the justice system and access to justice in the Bolivarian Republic of Venezuela, including for violations of economic and social rights, and the situation of human rights in the Arco Minero del Orinoco region.” A/HRC/44/54. 29 September 2020, paragraph 7; and Independent International Fact-finding mission on the Bolivarian Republic of Venezuela, Detailed findings of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela. A/HRC/45/CRP.11. 15 September 2022, paragraph 156.

¹³³ Organic Law for the Reform of the Organic Law of the Supreme Court of Justice. Available at: <https://www.asambleanacional.gob.ve/storage/documentos/leyes/ley-reform-20220121013420.pdf>

¹³⁴ Constitution of 1999, Article 253

¹³⁵ Constitution of 1999, Article 264

plenary sessions or in groups forming specialized chambers. The plenary chamber being particularly relevant for its capacity to open a pre-trial examination of merit.

Appointments are made following recommendations from the Committee for Judicial Postulations, which consults with organizations dealing with legal issues and the organs of the citizen power.

In addition to its power to review lower court decisions, the Supreme Court of Justice is also empowered to invalidate any laws, regulations or other acts of the other governmental branches conflicting with the constitution.

It is also important to highlight that one of the key functions of the Supreme Court of Justice is also to hear allegations against high public officials, cases involving diplomatic agents, and certain civil actions arising between the State and individuals which is essential to the ICC's examination of complementarity.

This Supreme Court is alleged to have presided over the multiple irregularities and abuse of the judicial system that have occurred in Venezuela since 2014 with arbitrary detention, often legitimized by Court being a regular occurrence including but not limited to the opening of judicial proceedings against politicians and dissident leaders that make up the Venezuelan opposition, civil society actors and journalists as a means of repression in violation of the right to due process enshrined in Article 49 of the CRBV¹³⁶ and various other international human rights instruments. The violations of due process regularly alleged by victims of arbitrary detention comprise violation to the right to defense and legal assistance at all stages of the process, violation of the presumption of innocence, undue delays and non-compliance with procedural lapses and more broadly violations of the principle of *res judicata* and of natural justice.

In this regard, the Panel notes that the Supreme Court has openly rejected international standards, relying on the argument of sovereignty and self-determination¹³⁷. It was the first institution to propose that Venezuela withdraw from the American Convention on Human Rights, which occurred on 10 September 2012 and its entry into force on 10 September 2013.¹³⁸

¹³⁶ Constitution of the Bolivarian Republic of Venezuela. Published in the Official Extraordinary Gazette No. 5.453, of March 24, 2000

¹³⁷ Supreme Court Of Justice, Constitutional Chamber. Judgment 1939/2008, of December 18; File 08-1572 [ref. of 26/01/2009;10:34].

It is first and foremost important to note that on structural level, according to the principle of the unitary State¹³⁹ which has been implemented in Venezuela, the Supreme Court and other courts, as well as the other branches such as the Prosecutor's office and the Ombudsman, only have functional autonomy, and are ultimately subject to the President of the Republic¹⁴⁰. Different international human rights protection bodies have warned about a breach of the constitutionally mandated responsibilities of the Office of the Attorney General and the Ombudsman¹⁴¹. In a 2019 report to the Human Rights Council, the High Commissioner for Human Rights noted that: "[t]he Attorney-General's Office has regularly failed to comply with its obligation to investigate and prosecute perpetrators, and the Ombudsperson has remained silent vis-à-vis human rights violations."¹⁴²

As exposed by the UN Human Rights Council Report, there were also reasonable grounds to believe that high-level Venezuelan political actors have exerted significant influence over the judiciary.

The Supreme Court's alleged bias has been evidenced since 1999 when the first intervention and purge of hundreds of judges was carried out. In 2000, the process of political infiltration of the Judiciary began and a huge number of judges were arbitrarily dismissed.

According to the UN Human Rights Council Report: "Sources from within the judiciary reported that judges at all levels routinely receive orders on how to decide judgements, at times coming directly from senior government figures and channeled via the Supreme Tribunal of Justice leadership. (...) Judges who refused to give in to political pressure have

¹³⁸ Cf. IACHR, IACHR Deeply Concerned over the Result of Venezuela's Denunciation of the American Convention. No. 64/13. 10 September 2013. Available at: https://www.oas.org/en/iachr/media_center/PReleases/2013/064.asp

¹³⁹ Even when there is no official doctrine on the unitary State, the deputy Francisco Ameliach, one of the most important political spokesmen of the PSUV, has been the one who has enunciated that idea. Available at: <https://twitter.com/i/status/1531829314253111296>
<https://twitter.com/i/status/1531829314253111296>
<https://twitter.com/i/status/1531831123474632704>
<https://twitter.com/i/status/1531836290383101952>

¹⁴⁰ Acceso a la Justicia, La toma del poder absoluto en Venezuela. Available at: <https://accesoalajusticia.org/wp-content/uploads/2019/09/Informe-La-toma-absoluta-del-Poder-en-Venezuela.pdf>.

¹⁴¹ Cfr. IACHR, Annual Report 2018, Chapter IV.B, Special report on Venezuela. OEA/Ser.L/V/II. Doc. 30. 17 March 2019, paragraph 41.

¹⁴² OHCHR, "Human rights in the Bolivarian Republic of Venezuela". A/HRC/41/18. 9 October 2019, paragraph 57.

been vilified and intimidated – a prominent example was the 2009 arrest and prosecution of Judge María Lourdes Afiuni. This has resulted in a climate of fear. Nearly half of the former judges and prosecutors interviewed, along with many of their family members, have had to leave Venezuela fearing for their safety; many others declined to speak to the Mission out of fear of reprisals.”

As further evidence of the lack of judicial independence and impartiality in Venezuela, the Fact-Finding Mission established that although constitutional provisions require that judges do not engage in political activities ¹⁴³ and that political interests do not motivate the appointment or removal of judges ¹⁴⁴, over half of the judges are registered with the PSUV political party ¹⁴⁵, according to estimates ¹⁴⁶. The International Commission of Jurists has reported that: “great majority of Supreme Court judges are members of the United Socialist Party of Venezuela (PSUV) and/or former government officials. Many of them hold significant positions on the [Supreme Court of Justice, SCJ]. Thus, gradually but steadily, the government’s party has coopted the SCJ and turned it into an appendage of the Executive branch.” ¹⁴⁷

In September 2021, concerns were also raised concerning the: “stark deterioration in the independence of the Supreme Tribunal of Justice, the body with the power to select and remove judges. The Supreme Tribunal of Justice’s appointment of provisional judges, as opposed to career judges, has allowed it to select and dismiss judges on the basis of improper personal or political considerations.”¹⁴⁸

¹⁴³ Constitution of 1999, Article 256.

¹⁴⁴ Constitution of 1999, Article 145.

¹⁴⁵ See the enquiry of Armando Info, available at: <https://armando.info/Reportajes/Details/2581>.

¹⁴⁶ Cf. Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela, Detailed findings of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela. A/HRC/45/CRP.11. 15 September 2020, paragraph 159.

¹⁴⁷ International Commission of Jurists, The Supreme Court of Justice of Venezuela: an Instrument of the Executive Branch, 2017, page. 5.

¹⁴⁸ Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela, Press release: Venezuelan justice system plays a significant role in the State’s repression of government opponents. 16 September 2021. Available at: <https://www.ohchr.org/en/press-releases/2021/09/venezuelan-justice-system-plays-significant-role-states-repression>

While the Venezuelan judiciary is indeed in urgent need for reforms, the enactment of the Partial Reform Law of the Organic Law of the Supreme Court of Justice has resulted in a number of changes that are in fact, when considered holistically, detrimental to the overall independence and impartiality of the judiciary. The expert witness E001, a local lawyer specialized in human rights and activist considered that, from the beginning, the reform of the law could not guarantee judicial independence and impartiality because, in practice, all judges are followers of the governing party, besides 30% of the elected judges should not have been elected because they are retired.¹⁴⁹

Having analyzed the amendments in this law in its totality, the Panel has identified specific provisions as having drastic negative consequences on the independence and impartiality of the judiciary, worsening rather than improving its ability to address accountability of alleged perpetrators.

2.2.2 The Reduction in the Number of Judges of the Supreme Court

Article 1 of the amended law¹⁵⁰ reduces the number of magistrates from 32 to 20. The Panel is of the view that this legislative amendment, considering the well documented context of the lack of independence and impartiality of this judicial body significantly increases the likelihood of the Executive of the Government of Venezuela and of the PSUV political party exercising greater political control over the judges.

The Panel highlights that the direct impact of second final provision of the new law that establishes a full renovation of the composition of the Supreme Court inevitably results in the summary dismissal of some judges in violation with the Constitution and the international standards prescribed in the International Covenant on Civil and Political Rights and the UN Basic Principles on the Independence of the Judiciary.

¹⁴⁹ Annex II, Interview I001, para. 7.

¹⁵⁰ Article 1 which reads:

Article 8 is amended, being drafted as follows:

Integration

Article 8.

The Constitutional Chamber shall be integrated by five Magistrates and the other Chambers by three Magistrates.

Each of the Chambers shall have one Secretary and one Bailiff.

The expert witness E002, a local human rights defender, lawyer and law professor explained: “By their own reform when it was convenient for them, they changed from 20 magistrates to 32 magistrates. Now it was not convenient for them again they were reduced to 20 magistrates. But it is even worse because they took out perhaps those who were less loyal or somehow were uncomfortable and left those who are purely loyal.” And he concluded: “In the year 2024 Venezuela should have presidential elections [...] the judges elected now for 12 years starting will provide 10 more years of impunity, if they lose the 2024 elections.” ¹⁵¹

The Panel also notes that the plenary chamber of the Supreme Court that is the only body able to initiate a pre-trial examination of merit will under this law be composed of 20 members, an even number of judges which causes obvious issues with regards to the decision-making process. In the event of tie between the judges, it must be highlighted that the previous law ¹⁵² that are still applicable provided that the President of the Supreme Court will be one to vote twice to make a determination, a measure that is considered to be utterly inappropriate by the Panel.

2.2.3 The Re-election of Supreme Court Judges

In addition to the above, the second final provision¹⁵³ allows for the re-election of incumbent magistrates, contrary to Article 264 of the Constitution of Venezuela¹⁵⁴ which establishes for maximum non-renewable period of 12 years of service.

¹⁵¹ Annex III, Interview I002, para. 23.

¹⁵² Organic law of the supreme tribunal of justice, article 103, which reads:

In order for decisions to be valid, the vote of the absolute majority of the members of the respective Chamber is required. In the event of a tie, the deliberation shall be suspended and a second meeting shall be called. If the tie persists, the vote of the President of the respective Chamber shall be considered double.

¹⁵³ Second final provision which reads:

Second. The National Assembly shall proceed to designate the twenty Magistrates and their alternates, in conformity with what this Law establishes. The Supreme Tribunal of Justices' who on the date of this Law coming in force should not have culminated the period for which they were designated, may again be nominated in order to perform those offices.

¹⁵⁴ Constitution of Venezuela: Article 264. The magistrates of the Supreme Court of Justice will be elected for a single period of twelve years. The law shall determine the election procedure. In any case, candidates may apply to the Judicial Nominations Committee, on their own initiative or by organizations linked to legal activity. The Committee, having heard the opinion of the community, will carry out a pre-selection for its presentation to the Citizen Power, which will carry out a second pre-selection that will be presented to the National Assembly, which will carry out a third pre-selection for the final decision. Citizens may exercise well-founded objections to any of the postulates before the Judicial Nominations Committee, or before the National Assembly.

The Panel therefore notes that, as a result of this amendment, several Magistrates were unconstitutionally re-elected to serve as Supreme Court Judges. This rule is unconstitutional because it goes against the provisions of Article 264 of the current Constitution which establishes that magistrates shall be elected “for a single term of twelve years”. Given this serious violation of the Constitution, that only further deteriorates the existing lack of independence and impartiality of the judiciary, the Panel expresses its deep concern about this amendment and the status of the unconstitutionally elected judges as well as the legality of their decisions.

The Fact-Finding Mission, concluded that, “as a result, 12 of the previously serving magistrates were reappointed, and continue to exercise discretionary powers over appointments and removals of provisional judges.”¹⁵⁵ In this sense, the expert witness E002, a local human rights defender, lawyer and law professor held that thanks to this reform “we are going to have magistrates that are going to have 24 years there when the same Constitution forbids it.”¹⁵⁶

The Panel is of the view that this provision significantly furthers the lack of independence and impartiality of the judiciary, entrenching the alleged bias of the judiciary and in the context of the alleged the control of the executive over the judiciary, creates an environment where the lack of independence and impartiality of the Venezuelan judiciary are likely to become endemic. As noted by the Inter-American Commission on Human Rights such “reelection jeopardizes judicial independence, given that magistrates seeking reelection may seek to obtain the support of the authority in charge of these decisions through their actions, or that their behavior may be perceived in this way by those involved in legal proceedings.”¹⁵⁷

¹⁵⁵ Fact-finding mission on the Bolivarian Republic of Venezuela, Report of the independent international fact-finding mission on the Bolivarian Republic of Venezuela. A/HRC/51/43. 20 September 2022, para. 11.

¹⁵⁶ Interview I002

¹⁵⁷ IACHR, Press release: IACHR Expresses Concern Over Reform of Organic Law of Supreme Court of Justice of Venezuela. 17 February 2022. Available at: https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2022/034.asp

2.2.4 The Subjugation of Judicial Nominations Committee to the Executive

The Judiciary Nomination Committee (*Comité de Postulaciones Judiciales*) is an advisory body to the National Assembly made up of five legislators and six civil society representatives for the appointment of Supreme Court justices.¹⁵⁸

The Panel expresses concern at Article 6 of the new law which increases to 11 the number of legislators and to ten the number of representatives of civil society on the committee such that the civil society representatives no longer constitute the majority.

The Panel further notes that the civil society representatives are themselves to be selected by the National Assembly thereby increasing the lack of independence and impartiality of the judicial appointment process in violation of the UN Basic Principles of the Independence of the Judiciary¹⁵⁹. In this regard, the IACHR explained that “what matters most in any selection and appointment procedure is that, substantively speaking, the States ensure that these procedures must not and cannot be perceived by the public as being decided on the basis of politics, which would undermine a defendant’s belief that justice operators perform their functions independently.”¹⁶⁰ In this regard, the Panel highlights that several of the civil society organization members appointed as a result of this amendment have reported ties to the ruling party.

According to the expert witness E005, a prominent human rights expert and activist, the appointment of the magistrates of the Supreme Court of Justice by the National Assembly has an impact on the whole system of judicial independence since it is from the Supreme Court of Justice that the judges of lower instances are appointed.¹⁶¹

In his opinion, “the basic issue is that there has not been established a system of competition to elect judges of different instances. Judges continue to be appointed in a discretionary manner, without any type of procedure and by hand, without even knowing where the judges come from and, evidently, these are appointments that come from

¹⁵⁷ IACHR, Press release: IACHR Expresses Concern Over Reform of Organic Law of Supreme Court of Justice of Venezuela. 17 February 2022. Available at: https://www.oas.org/en/IACHR/jsForm/?File=en/iachr/media_center/PReleases/2022/034.asp

¹⁵⁸ Constitution of 1999, Article 270

¹⁵⁹ General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. Basic Principles on the Independence of the Judiciary, principle 10.

¹⁶⁰ IACHR, Guarantees for the Independence of Justice Operators, para. 106.

¹⁶¹ Annex VI, Interview I005, para. 3.

the Supreme Court of Justice without any type of competition, which affects judicial independence because judges can be appointed in a discretionary manner by hand, without knowing where they come from, and they can also be dismissed by hand in a discretionary or arbitrary manner” ¹⁶².

Overall, the Panel is of the opinion that the amendments of the Partial Reform Law of the Organic Law of the Supreme Court of Justice considered above further erodes the existing endemic lack of independence and impartiality rooted in the structure of the Venezuelan judiciary, enabling the Executive branch of the Government of Venezuela to exercise undue and unlawful influence over the Judges of the Supreme Court, both de facto and de jure. In the context of the overall human rights crisis, this centralization of the influence and control inevitably exacerbates the challenges to the past and current civilian victims of the Government of Venezuela, leaving little room for genuine efforts of domestic accountability.

In the view of the Panel, the amendments of the Partial Reform Law of the Organic Law of the Supreme Court of Justice raise serious doubts with regards to the willingness of the Government of Venezuela to engage in meaningful reform to improve their capacity to deliver genuine domestic accountability efforts.

2.3 The Application of Military Jurisdiction to Civilians

The reform of the Organic Code of Military Justice enacted as part of the so-called “judicial revolution” ¹⁶³ on 17 September, 2021 ¹⁶⁴, puts into place a number of amendments including firstly, as announced in the letter of the Venezuelan state to the ICC Prosecutor the termination of the prosecution of civilians by military jurisdictions in the form of Article 1 which reads:

¹⁶² Annex VI, Interview I005, para. 3.

¹⁶³ VTV, Council of State: President Maduro announces Special Commission for the Conduct of a Revolution in the Justice System Caracas, June 21, 2021. Available at: <https://www.vtv.gob.ve/consejo-estado-presidente-comision-revolucion-judicial-1/>

¹⁶⁴ Maduro in Council of State calls for a “Judicial Revolution” to be headed by Diosdado Cabello. Available at: <https://www.youtube.com/watch?v=UE87v2VAzfi>

Article 1. Article 6 is modified, being drafted under the following terms:

Article 6. One may only trye before the courts being competent in military criminal matters, the militaries under facts classified and punished under this Code, or military misdemeanors in conformity with what the laws governing the matter provide. It is not admitted to classify and punish under analogy or parity with the military crimes and misdemeanors.

No civilian may be tried before the courts with competence over military criminal matters. In the event of incurring into facts being provided, and sanctioned, by this Code, they shall be tried by ordinary courts.

In Venezuela, the military courts are part of the Judiciary¹⁶⁵ and have been subjected to claims of being politicized and used as a tool of intimidation and persecution against the civilians who are opposition members, dissidents or persons perceived as such by the Venezuelan State¹⁶⁶. The Fact-Finding Mission criticized¹⁶⁷ the ruling of the Supreme Court of Justice of 9 December 2021, which allows military courts to still exercise jurisdiction over civilians, with the sole requirement of a reasoned order by a military judge.¹⁶⁸

While the Panel welcomes the termination of prosecution of civilians by military jurisdictions, it expresses concern with regards to a number of issues posed by this longstanding and widely used unconstitutional practice clearly in violation of Article 261 of the CRBV which categorically states that: “The competence of the military courts is limited to crimes of a military nature.” The expert witness E002, a local human rights defender, lawyer and law professor concluded that this reform was an “absurdity”, given that the Constitution already foresaw this prohibition.¹⁶⁹

¹⁶⁵ TSJ, Military Judicial Circuit. Available at: http://corte-marcial.tsj.gob.ve/decisiones/decisiones_tribunal.asp?id=027&id2=CORTEMARCIA

¹⁶⁶ International Commission of Jurists, Judges on a Tightrope - Report on the Independence and Impartiality of the Judiciary in Venezuela. Available at: <https://www.icj.org/wp-content/uploads/2021/06/Venezuela-Judges-on-the-tightrope-Publications-Reports-Thematic-reports-2021-SPA.pdf> FERNANDEZ, Fernando M., Militarization and politicization of the police in Venezuela. Sus efectos sobre la represión y el crimen de persecución en Venezuela a la luz de la Situación I bajo examen preliminar de la Fiscalía ante la CPI. Academy of Political and Social Sciences. Book Homage to Pedro Nikken, Volume II, pp. 1047-1095

¹⁶⁷ Cf. Fact-finding mission on the Bolivarian Republic of Venezuela, Report of the independent international fact-finding mission on the Bolivarian Republic of Venezuela. A/HRC/51/43. 20 September 2022, para. 13.

¹⁶⁸ Cf. Supreme Court of Justice of Venezuela, Case No. 0735, Dkt. No. 19-479, 9 December 2021.

¹⁶⁹ Annex III, Interview I002, para. 15.

Firstly, like most of the other legislations enacted in the course of the so-called “judicial revolution” there have been reports, that the legislative process was rushed and failed to be subjected to legislative debate and to meet the Constitutional requirements of consultations with stakeholders such as civil society, victims, or qualified experts in violation of provisions of Article 211 of the Constitution.

Secondly, it is important to note that this amendment offers no proposal to address the violations and harm suffered by the hundreds¹⁷⁰ of individuals who, since at least 2014, have been convicted, and have served or are still serving sentences, as a result of cases initiated and tried by the military jurisdiction in violation of the prohibition of prohibition of civilians to be tried in military courts¹⁷¹ and, in general, the right to fair trial and due process¹⁷² as provided for in the Venezuelan Constitution and the international standards of human rights.

¹⁷⁰ The IACHR cited figures of at least 757 civilians are believed to have been dealt with by military courts over the period April 1–October 31, 2017. The organization Foro Penal has further documented that 848 civilians were tried by military criminal courts over the period January 1, 2014–August 31, 2019. See, IACHR, Press release: IACHR Welcomes Reform of Venezuela’s Military Criminal Court System, Calls for Effective and Immediate Implementation. 14 October 2021. Available at: https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/273.asp

¹⁷¹ Constitution of 1999, Article 261.

Article 261 reads:

Military criminal jurisdiction is an integral part of the Judicial Power, and its judges shall be selected by a competitive process. Its sphere of competence, organization and modes of operation shall be governed by the accusatory system and in accordance with the Organic Code of Military Justice. The commission of common crimes, human rights violations and violations of humanity rights shall be judged by the courts of the ordinary jurisdiction. Military courts jurisdiction is limited to offenses of a military nature

¹⁷² Constitution of 1999, Article 49

Article 49 reads:

All judicial and administrative actions shall be subject to due process, therefore:

- 1. Legal assistance and defense are inviolable rights at all stages and levels during the investigation and proceeding. Every person has the right to be notified of the charges for which he or she is being investigated, to have access to the evidence and to be afforded the necessary time and means to conduct his or her defense. Any evidence obtained in violation of due process shall be null and void. Any person declared guilty shall have the right to appeal, except in the cases established by this Constitution and by the law.*
- 2. Any person shall be presumed innocent until proven otherwise.*
- 3. Every person has the right to be heard in proceedings of any kind, with all due guarantees and within such a reasonable time limit as may be legally detained, by a competent, independent and impartial court established in advance. Anyone who does not speak Spanish or is unable to communicate verbally is entitled to an interpreter.*
- 4. Every person has the right to be judged by his or her natural judges of ordinary or special competence, with the guarantees established in this Constitution and by law. No person shall be put on trial without knowing the identity of the party judging him or her, nor be adjudged by exceptional courts or commissions created for such purpose.*

In this regard, the Inter-American Court of Human Rights held that “in a democratic Government of Laws the penal military jurisdiction shall have a restrictive and exceptional scope and shall lead to the protection of special juridical interests, related to the functions assigned by law to the military forces.”¹⁷³ It concluded that: “Transferring jurisdiction from civilian courts to military courts, thus allowing military courts to try civilians accused of treason, means that the competent, independent and impartial tribunal previously established by law is precluded from hearing these cases. In effect, military tribunals are not the tribunals previously established by law for civilians. Having no military functions or duties, civilians cannot engage in behaviors that violate military duties. When a military court takes jurisdiction over a matter that regular courts should hear, the individual’s right to a hearing by a competent, independent and impartial tribunal previously established by law and, *fortiori*, his right to due process are violated. That right to due process, in turn, is intimately linked to the very right of access to the courts.”¹⁷⁴

The convictions of civilians issued by the military courts remain standing. It is the view of the Panel that the rectification of an unconstitutional state policy would also require that previous convictions of civilians by military courts be annulled.

Thirdly, the Panel’s attention has been drawn to the fact that according to Article 6 of this amendment, “The military criminal proceedings followed against civilians that are in progress for the date of entry into force of this Code shall be referred to the ordinary criminal courts, maintaining the validity of the procedural acts carried out up to that opportunity.” The assignment of the ongoing cases relating to civilians to the ordinary

5. No person shall be required to confess guilt or testify against himself or herself or his or her spouse or partner, or any other relative within the fourth degree of consanguinity or the second degree of affinity. A confession shall be valid only if given without coercion of any kind.

6. No person shall be punished for acts or omissions not defined under preexisting laws as a crime, offense or infraction

7. No person shall be placed on trial based on the same facts for which such person has been judged previously.

8. Every person shall request from the State the restoration or remediation of a legal situation adversely affected by unwarranted judicial errors, and unjustified delay or omissions. The foregoing is without prejudice to the right of the individual to seek to hold the magistrate or judge personally liable, and that of the State to take action against the same

¹⁷³ I/A Court H.R., Case of Durand and Ugarte v. Peru. Merits. Judgment of August 16, 2000. Series C No. 68, para. 117.

¹⁷⁴ I/A Court H.R., Case of Castillo Petruzzi et al. v. Peru. Merits, Reparations and Costs. Judgment of May 30, 1999. Series C No. 52, para. 128.

criminal courts while maintaining the military charges applied in these cases generates some significant procedural and substantive irregularities.

The expert witness E006, a human rights defender and law professor with significant experience in supporting civilians victims of such military trials explained, in the first place, that what the law modifies is the competence of the court. However, there is, in principle, no modification of the crimes charged as military offenses. Therefore, civilians can now be tried before ordinary courts for military crimes. In the scope of his work, he has been monitoring the impact of the reform of the Organic Code of Military Justice. What is observed is a situation of procedural collapse from the point of view of who has the file, where the file goes, who receives the file and who is competent. Military courts were declining jurisdiction to civil jurisdiction, but without clarity as to which ordinary court, civil or criminal, should hear the case.¹⁷⁵

As a result, the cases relating to civilians that were before the military courts for alleged military crimes were passed to ordinary criminal judges.¹⁷⁶

However, as a factor compounding the problem, despite the existence of these decisions transferring the cases to ordinary criminal judges, a previous case law of December 14, 2020, the Constitutional Chamber of the Supreme Court of Justice which predates the Organic Code of Military Justice of September 17, 2021, provides a conflicting ruling. According to this jurisprudence that military courts may try civilians, simply on the condition that the military courts themselves give reasons for their jurisdiction.¹⁷⁷ This ruling is in outright conflict with the scope of the amended text and will have to be addressed in due course by the Venezuelan Courts.

According to the expert witness E001, a local lawyer specializing in human rights, not only is it the case that nothing has changed in the way in which prisoners are treated following the change to ordinary justice, but in fact “it is better as we were in the Military Courts”. As E001 explained “currently we find ourselves with the same crimes with the

¹⁷⁵ Interview I006

¹⁷⁶ See, for example, TSJ, Criminal Cassation Chamber, sentences 70 and 71 of 2020. See also, Access to Justice, Criminal Cassation Chamber recognizes that military justice should not be applied to civilians July 30, 2020. Available at: <https://accesoalajusticia.org/sala-de-casacion-penal-reafirma-que-la-jurisdccion-militar-no-se-le-debe-aplicar-a-civiles/>

¹⁷⁷ TSJ, Constitutional Chamber, sentence 264 of 2020. 14 December 2020. Available (in Spanish) at: <https://accesoalajusticia.org/wp-content/uploads/2021/02/SC-nro-0246-14-12-2020.pdf>

aggravating factor because we have an ordinary criminal judge, since the military judges were more respectful with the judicial processes, since they allowed you access to the file, they complied with the stipulated schedule, among others. Ordinary judges do not know what to do with the cases transferred from the judicial courts, thus bringing judicial delay.”¹⁷⁸

In this regard, the Panel is of the view that the appropriate civil courts should be assigned on a case-by-case basis and that the punishable acts of a military nature typified in the COJUMI should be reviewed and charged under the corresponding provisions of the Penal Code or other corresponding criminal laws. Where no corresponding criminal offense exists under the Penal Code in the cases transferred from the military jurisdiction, the Panel takes the position that the reviewing authority should have the authority to dismiss the cases.

On a procedural level, it is of note that the reform of the COJUMI fails to expressly repeal the COMUMI of 1998 and contains no derogatory provision, to specify that the new text is the one applicable for all cases.

Lastly and in the same line, the Panel considers that this amendment rather blatantly fails to address the liability of the military officials acting as judges as part of these military trials of civilians. These abuses of due process that occurred openly in violation of the Venezuela Constitutional provisions including but not limited to Article 25 of the CRBV inevitably trigger liability and should be addressed:

Article 25.

Any act on the part of the Public Power that violates or encroaches upon the rights guaranteed by this Constitution and by law is null and void, and the public employees ordering or implementing the same shall incur criminal, civil and administrative liability, as applicable in each case, with no defense on grounds of having followed the orders of a superior.

As the expert witness E005, an activist and human rights lawyer explained, although the cases were transferred to ordinary courts, that now handle the cases that were previously handled by military courts, are courts that have been created to handle cases

¹⁷⁸ Interview I001

¹⁷⁹ Annex VI, Interview I005, para. 2.

of a political nature called “Terrorist Courts”, these are, according to the expert, “basically 4 judges appointed by hand, because they are totally tied or totally loyal to the regime, who are the ones who handle all these cases of a political nature”.¹⁷⁹

In light of the above, the Panel is of the view that the amendments in the Organic Code of Military Justice fall short of addressing the systemic militarization of the justice in Venezuela that has been used by the Government of Venezuela as a tool to target political opposition, dissidents, and perceived dissenters for persecution since 2014. It further raises some serious concerns with regards to the capacity and willingness of the Government of Venezuela to address the ongoing alleged large scale persecution of civilians whose rights have been violated as a result of this militarization of justice, to provide for legal consequences to punish those military judges involved in the commission of such crimes against humanity against civilians and to provide for appropriate remedies for the victims who previously suffered from such judicially orchestrated types of victimization. The Panel is also mindful that the suffering of these victims have often been compounded by abhorrent detention conditions in Venezuelan prisons, and torture, sexual and gender based violence as well as inhumane and degrading treatment that often resulted from this pattern of criminal behavior.

2.4 The Creation of Specialized Amparo (Habeas Corpus) Courts

The Panel, considering that “habeas corpus is, in itself, a human right, (...) an indispensable guarantee in a State governed by the rule of law against arbitrary detention”¹⁸⁰, and not merely an element of fair trial, in line with the findings of the UN Working Group on Arbitrary Detention¹⁸¹ and other international instruments and bodies¹⁸² is concerned by the Organic Law for the protection of personal freedom and safety which creates specialized amparo (habeas corpus) courts to address the numerous cases of alleged enforced disappearance since 2014.

¹⁸⁰ Working Group on Arbitrary Detention, E/CN.4/1994/27, para. 36.

¹⁸¹ Working Group on Arbitrary Detention, E/CN.4/2004/3, para. 62.

¹⁸² See Working Group reports, documents E/CN.4/1993/24, para. 43 (c); E/CN.4/1994/27, para. 36; E/CN.4/1995/31, para. 45; E/CN.4/1996/40, paras. 110 and 124 (5); E/CN.4/2004/3, para. 62. /2004/3, paras. 62, 85 and 87; E/CN.4/2005/6, paras. 47, 61, 63, 64, 75 and 78; A/HRC/7/4, paras. 64, 68 and 82 (a); A/HRC/10/21, paras. 53, 54 and 73; A/HRC/13/30, paras. 71, 76-80, 92 and 96. Human Rights Committee. General comment No. 8, para. 1. Working Group on Arbitrary Detention, A/HRC/19/57, para. 61. Cf. I/A Court H.R.. Habeas Corpus under Suspension of Guarantees (arts. 27.2, 25.1 and 7.6 American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 33.

As the Inter American Court clearly explained, in order to fulfill its purpose of judicial verification of the legality of the deprivation of liberty, habeas corpus “requires the presentation of the detainee before the competent judge or court under whose disposition the affected person is placed to control the respect for the life and integrity of the person, to prevent his disappearance or the indetermination of his place of detention, as well as to protect him against torture or other cruel, inhuman or degrading treatment or punishment”¹⁸³.

In spite of some laudable declarations of principles, the two reforms of transcendence from this legislation are found in articles 9 and 11 of the law ¹⁸⁴. While Article 11 broadens the scope of who can file an amparo by providing that: “The action for protection of personal liberty and security may be filed directly by the aggrieved party or by any person, without the assistance of a lawyer being necessary. It may also be filed by the Ombudsman’s Office, the Public Prosecutor’s Office and human rights organizations,” Article 9 creates a new court functioning in each judicial district where the crimes were committed.

Article 9 of the law states:

Specialized and competent Courts

Article 9.

First instance Specialized Courts with competence on protection of freedom and personal safety are being created, which shall operate at each judicial circuit.

The First instance Specialized Courts of the Judicial Circuit where the action or omission motivating the plea for protection of freedom and personal safety takes place are those being competent to hear about them. The decisions denying the protection of freedom and personal safety shall have obligatory consultation, being bound to deliver what is set in the record within the following twenty-four hours.

The Courts of Appeal having competence in criminal matters shall hear at a second level the bound consultation and the impugnments against the First instance Specialized Courts. The consultation or appeal shall not prevent the decision’s immediate enforcement, and the Court of Appeals shall decide within the seventy-two hours following the record’s item’s reception.

¹⁸³ I/A Court H.R.. Habeas Corpus under Suspension of Guarantees (arts. 27.2, 25.1 and 7.6 American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 35.

¹⁸⁴ Available at: <https://www.asambleanacional.gob.ve/storage/documentos/leyes/ley-organica-de-amparo-a-la-libertad-y-seguridad-personal-20211006185220.pdf>

Considering that the difficulties in using the habeas corpus process in Venezuela prior to the so-called judicial revolution was reported by civil society actors as being de facto rather than structural, such as the lack of independence of judges, the Panel is of the view that the new institutional competence of the special courts will not at the outset address the challenges that victims face in using this judicial recourse.

In this sense, this provision was criticized by Venezuelan civil society as regressive.¹⁸⁵ Access to Justice concludes: “what is worrying is the attempt to make it appear (...) like the violations of human rights, in particular personal liberty, will cease with the entry into force of this or other laws. In the end, what matters is that the court acts diligently, that it demands a rapid response from the security agencies that fail to produce detainees within the legal time limit or that they disappear them, and that in the case of human rights violations, they are punished in accordance with the law. As long as this does not happen, there is no rule that can make up for arbitrariness”¹⁸⁶. According to Acceso a la Justicia, this modification is regressive “by not following the constitutional mandate according to which any court can serve as an instrument for the diffuse control of constitutional rights, that is to say, any court can disapply norms that violate rights in the specific case it is hearing”.¹⁸⁷

The Panel further notes that this new jurisdictional avenue created to enforce a basic constitutional right ¹⁸⁸ rather removes the matter from the competence of the Constitutional court, places it within the competence of specialised judges which there are fewer of in each of the jurisdictional divisions in Venezuela and creates more intermediate courts of review before the aggrieved party can enforce the application of constitutional guarantees before a Constitutional Court. Rather than improving an already existing issue, this provision in fact compounds the difficulties faced the family members of the victims of disappearance subjecting them to a potentially longer judicial process in cases where time is of the essence.

¹⁸⁵ See, for example, Acceso a la Justicia, La nueva y regresiva Ley Orgánica de Amparo a la Libertad y Seguridad Personal. September 30, 2021. Available at: <https://accesoalajusticia.org/la-nueva-y-regresiva-ley-organica-de-amparo-a-la-libertad-y-seguridad-personal/>

¹⁸⁶ Access to Justice, La nueva y regresiva Ley Orgánica de Amparo a la Libertad y Seguridad Personal. September 30, 2021. Available at: <https://accesoalajusticia.org/la-nueva-y-regresiva-ley-organica-de-amparo-a-la-libertad-y-seguridad-personal/>

¹⁸⁷ Access to Justice, La nueva y regresiva Ley Orgánica de Amparo a la Libertad y Seguridad Personal. September 30, 2021. Available at: <https://accesoalajusticia.org/la-nueva-y-regresiva-ley-organica-de-amparo-a-la-libertad-y-seguridad-personal/>

¹⁸⁸ Constitution of 1999, Article 27

Considered together with the Organic Law of Amendment of the Organic Law of The Supreme Tribunal of Justice which reduces the number of judges that enforce Constitutional guarantees from 32 to 20, the Panel is of the view that this law further restricts the accessibility of remedies for the victims. The Panel's attention has been focused in particular on victims from larger states who would have to face more delays and difficulties in order to have their petitions brought to the Constitutional court if required.

The Panel also maintains that a judicial recourse that is geographically removed from the area where the crimes happened would be better suited to address judicial protection considering the tight-knit relationship that exists between the local judges, the local members of the executive and the local law enforcement units in Venezuela.

Lastly, the Panel observes that this legislation contains a transitory provision "in order to achieve the most effective administration of justice in matters of protection of personal freedom and security" which expressly empowers the Supreme Court of Justice in the Plenary Chamber to appoint temporary judges, something that was widely criticized by human rights organizations in the past¹⁸⁹ due to the issues it raises with regards to judicial independence and impartiality.

Despite the aforementioned reforms, the expert witness E002, who is a human rights lawyer and professor explained that the specialized courts to hear Habeas Corpus matters have in fact not been put into practice yet. E002 personally reports having filed two habeas corpus against two individuals who are deprived of their liberty, in cases where judges had previously ordered their release and the penitentiary has refused to free them to this day.¹⁹⁰

2.5 The Reform of Human Rights Institutions

There have been two main aspects to the reform of human rights institutions in Venezuela: one relating to the expansion of the scope of responsibilities of the "Office of Attention to Victims in Human Rights Matters" and the second with regards to the creation of an administrative National Human Rights Commission. Both will be considered in turn.

¹⁸⁹ See, for example, IACHR, Democratic Institutionalism, Rule of Law and Human Rights in Venezuela, para. 84 et seq.

¹⁹⁰ Interview I002

2.5.1 The Expansion of the Scope of Responsibilities of the Victims' Office

This section will evaluate the legislative reform of the Law for the Protection of Victims, Witnesses and Other Subjects which seeks to establish an “Office of Attention to Victims in Human Rights Matters” to replace the Public Prosecutor’s Office and the Law of Partial Reform of the Decree with Range, Value and Force of Law of the Statute of the Police Function which creates a “National Human Rights Commission”.

Article 44 of the Law to Reform the Law for the Protection of Victims, Witnesses and Other Procedural Subjects reads:

Office of attention to the victims in the matter of Human Rights

Article 44

The Office of the Public Prosecution’s Attention to the Victim in the matter of Human Rights shall have the following attributions:

- 1. To warrant protection and integral assistance to direct and indirect victims, witnesses and other procedural subjects, in cases of infringement of human rights, in conformity with the principles of interdependence, indivisibility and progressivity of human rights*
- 2. To offer integral attention’s services with multidisciplinary teams in the legal, psychological and social to direct and indirect victims in cases of human rights infringements.*
- 3. To receive petitions of protective measures related to this law, from the victims, witnesses and other procedural subjects, in cases of human rights’ infringement.*
- 4. To make the evaluation with regard to the risks’ factors that the applying persons are facing in each case.*
- 5. To process the protective measures requested by victims, witnesses and other procedural subjects before the jurisdictional bodies, in conformity with the corresponding set of rules*
- 6. To make the corresponding follow-up before the body designated by the Court, for the implementation of the granted protective measures.*
- 7. To handle what concerns the granted measures’ updating, as to the benefitted persons’ data, the designated implementation body, the criminal process’ phases and any other information being relevant for the case.*
- 8. To perform all the activities of integral training of the bodies designated for the protective measures as to the advances that, in the matter of human rights and the victims’ rights, in general, are being produced.*
- 9. The other ones established in the Regulations and Resolutions.*

In considering the present reform, the Panel's attention was drawn to the fact that this new Office of Attention to Victims in Human Rights Matters was not created by this legislative reform in September 2021, but it had already been created within the Prosecutor's Office on December 30, 2020 by means of Resolution No. 1803 issued by the Attorney General of the Republic which provided that it would ensure "comprehensive attention to the victims", including the duty to inform the victims about their condition, their rights and the possibility of requesting protection measures.¹⁹¹

This reform does however introduce new language to expand the existing responsibilities of this Office of Attention to Victims in Human Rights Matters namely:

- a) guaranteeing protection and assistance to victims, witnesses and other parties to proceedings;
- b) providing comprehensive care services with multidisciplinary victim support teams; receiving requests and evaluating the risk factors of the persons requesting protection;
- c) processing before the jurisdictional bodies the protection measures required and carrying out the corresponding follow-up; and
- d) updating for the materialization of the agreed protection measures; and carrying out training activities for the bodies responsible for executing the protection measures.

2.5.1.1 The Failure to Provide for a Victim's Right to Reparation

The Panel notes that, in and of itself, this legislation does not provide for a right of victims of crimes against humanity to seek reparations. In effect, the legal framework in Venezuela includes no framework that allows the enforcement of a right to reparation including the possibility of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition in the terms of the United Nations Principles¹⁹² and in line with Article 30 of the Constitution of the Bolivarian Republic of Venezuela.

¹⁹¹ Official Gazette of the Bolivarian Republic of Venezuela, No. 42.058, January 29, 2021. Available at: http://spgoin.imprentanacional.gob.ve/cgi-win/be_alex.cgi?Documento=T028700035089/0&Nombrebd=spgoin&CodAsocDoc=2438&Sesion=660880407 Acceso a la Justicia affirms that for "several years" there has been an office called "de Atención a la Víctima" (Victim Attention Office) Acceso a la Justicia, Law on the Reform of the Law on the Protection of Victims, Witnesses and Other Procedural Subjects, October 6, 2021. Available at: <https://accesoalajusticia.org/ley-de-reforma-de-la-ley-de-proteccion-de-victimas-testigos-y-demas-sujetos-procesales/>

¹⁹² Cf. GA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, March 21, 2006, Principle 18.

Principle 18 of the United Nations General Assembly Basic Principles and Guidelines on the Right to a Remedy and Reparation reads:

18. In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹⁹³

The Inter-American Court of Human Rights has considered since its first case of Velásquez Rodríguez, that “it is a principle of international law¹⁹⁴, which jurisprudence has considered ‘even a general conception of law’, that any violation of an international obligation that has produced a damage entails the duty to adequately repair it”¹⁹⁵. It went on to clarify that “reparation of harm brought about by the violation of an international obligation consists in full restitution (*restitutio in integrum*), which includes the restoration of the prior situation, the reparation of the consequences of the violation, and indemnification for patrimonial and non-patrimonial damages, including emotional harm.”¹⁹⁶ Finally, in another decision the Court ruled: “the obligation to redress, which is regulated in all its aspects (scope, nature, modes, and determination of beneficiaries) by international law, cannot be modified by the State nor can it avoid compliance with it by invoking domestic legal provisions.”¹⁹⁷

In the interpretation of Article 13 of the European Commission of Human Rights stated that to be effective, a remedy must be capable of directly providing redress for the impugned situation¹⁹⁸. Similarly, the “Santiago Guidelines on Victim and Witness Protection” prepared by the Ibero-American Association of Public Prosecutors consider

¹⁹³ GA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, March 21, 2006, Principle 18.

¹⁹⁴ Cf. Permanent Court of International Justice, *Factory at Chorzów*, Jurisdiction, Judgment N° 8, 1927

¹⁹⁵ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25.

¹⁹⁶ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 26.

¹⁹⁷ I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras. Preliminary Objection, Merits, Reparations and Costs*. Judgment of June 7, 2003. Series C No. 99, para. 149.

that victims of State and institutional violence shall be considered as victims in conditions of special vulnerability, which generates the obligation for States of reinforced duties of protection.¹⁹⁹

In this regard, the State of Venezuela is in the process of enacting a bill that was presented on October 27, 2021 but is still pending approval²⁰⁰. According to its Article 1, the “Law for the Integral Attention and Reparation of Victims of Human Rights Violations”, which is currently in parliamentary process, “aims to guarantee integral attention and reparation for victims of serious human rights violations, including rehabilitation, compensation and integral indemnification of the damages suffered.”²⁰¹

2.5.1.2 The Victim’s Participation in the Judicial Process

While the Panel recognizes the positive amendment of Articles 122 and 124 of the Organic Code of Criminal Procedure, which entitled victims to access to the case file, even when they are not part of the case, as well as the right to appoint a representative in the course of trial (either through a lawyer of their choice or through “associations, foundations and other legal assistance entities”), it wishes to express concern with regards to the reported lack of implementation of this provision.

Several victims, civil society actors and indeed individuals victim of persecution have communicated the complete lack of transparency with regards to the files of previous and ongoing judicial proceedings, whether concerning cases in which they were subjected to alleged arbitrary detention, in cases in which they have denounced violations of their Constitutional rights and/or other alleged abuses amounting to crimes against humanity or indeed in cases where the State of Venezuela initiated criminal prosecutions against alleged perpetrators.

¹⁹⁸ Cf. European Commission of Human Rights, *Pine Valley Developments Ltd and Others v. Ireland*, 1989

¹⁹⁹ Ibero-American Association of Public Prosecutors. “Santiago Guidelines on Victim and Witness Protection,” November 2020, art. 31. <https://www.aiamp.info/images/AInformes/guias-santiago-ingls--pdf.pdf>

²⁰⁰ National Assembly. Bill of attention and repair for victims of human rights violations. Bolivarian Republic of Venezuela. Non-public project. (revised August 20th of 2022). [https://www.asambleanacional.gob.ve/leyes/proyecto/proyecto-de-ley-para-la-atencion-y-reparacion-integral-de-las-victimas-de-violaciones-a-los-derechos-humanos%20\(revised%2031%20August%202022\)](https://www.asambleanacional.gob.ve/leyes/proyecto/proyecto-de-ley-para-la-atencion-y-reparacion-integral-de-las-victimas-de-violaciones-a-los-derechos-humanos%20(revised%2031%20August%202022))

²⁰¹ National Assembly. Bill of attention and repair for victims of human rights violations. Bolivarian Republic of Venezuela. Non-public project. (revised August 20th of 2022). [https://www.asambleanacional.gob.ve/leyes/proyecto/proyecto-de-ley-para-la-atencion-y-reparacion-integral-de-las-victimas-de-violaciones-a-los-derechos-humanos%20\(revised%2031%20August%202022\)](https://www.asambleanacional.gob.ve/leyes/proyecto/proyecto-de-ley-para-la-atencion-y-reparacion-integral-de-las-victimas-de-violaciones-a-los-derechos-humanos%20(revised%2031%20August%202022))

The NGO Acceso a la Justicia considered that “although such acknowledgements are undoubtedly improvements, they are nevertheless no more than a simple statement without any backing in reality, and they highlight the general problem of all the changes made: that they be applied in concrete cases.”²⁰²

Several civil society actors reported that there was no legal or administrative way for them to access such judicial files although several of them reported that some state officials working in the justice sector were unlawfully extorting money from victims in exchange for court records.

Even though on September 17, 2021, the National Assembly approved the Law on Transparency and Access to Information of Public Interest²⁰³, the Panel notes that Article 7 of this act provides that “the regulated entities may, by means of a reasoned decision, exempt themselves from providing the information when access to it could violate human rights, compromise the defense or integral security, generate a threat to the normal socioeconomic development of the Republic, affect public health or public order”. This broad exception to disclosure for public order does not meet the requirements of the principle of maximum disclosure set out by the IACHR²⁰⁴ according to which, “all information held by the State is presumed to be public and accessible, subject to a limited regime of exceptions”²⁰⁵ assessed in light of legitimate objectives, necessity and strict proportionality²⁰⁶ such that these exceptions do not become the general rule.

Furthermore, it is worth recalling that the Inter-American Commission has already warned the State of Venezuela that in order to invoke secrecy for reasons of national

²⁰² Acceso a la Justicia, Status and analysis of the legislative reforms Government of Venezuela related to the with the justice system, page 8. Available at: <https://accesoalajusticia.org/wp-content/uploads/securepdfs/2022/06/Situacion-y-analisis-de-las-reformas-legislativas-realizadas-por-el-Gobierno-de-Venezuela-vinculadas-con-e.pdf>

²⁰³ Available at: <https://www.asambleanacional.gob.ve/storage/documentos/leyes/ley-de-transparencia-y-acceso-a-la-informacion-de-interes-publico-20211006172420.pdf>

²⁰⁴ IACHR, The Right of Access to Information in the Americas. Inter-American Standards and Comparison of Legal Frameworks, para. 13.

²⁰⁵ I/A Court H.R., Case of Gomes Lund et al. Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 230.

²⁰⁵ I/A Court H.R., Case of Gomes Lund et al. Case of Gomes Lund et al (Guerrilha do Araguaia) v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 230.

²⁰⁶ IACHR, The Right of Access to Information in the Americas. Inter-American Standards and Comparison of Legal Frameworks, para. 21.

security, “the laws regulating secrecy must accurately define the concept of national security and clearly specify the criteria to be used to determine whether or not certain information can be declared secret, in order to prevent the abuse of the ‘secret’ classification to avoid the disclosure of information that is of public interest [...] The mere assertion by the government that there is a risk to national security is not enough. This risk must be proven”²⁰⁷. Thus, a restriction on access to public information that claims to be justified in the defense of national security should not be based on an idea of national security incompatible with a democratic society.²⁰⁸

The Panel also wishes to highlight that Article 9 of the law requires that the request for information of public interest must contain, among others: the identity of the applicant, with expression of his names, surnames and identity card, and the reasons that justify the request for information of public interest violating the right anonymous requests ²⁰⁹ without having to justify the reasons for the request²¹⁰. The Inter-American Court has previously held that it is not necessary to prove a direct interest or personal harm to obtain information held by the State.²¹¹

Finally, the Panel notes that the Inter-American Commission has stated that “a fundamental aspect of the proper implementation of the regulatory frameworks on access to information of the OAS Member States lies in the establishment of a specialized administrative body to supervise and satisfy compliance with the legislation and the resolution of disputes arising between the right of access to public information and the State’s interest in protecting certain information, based on the legally established limitations” ²¹². The law passed does not provide for the creation of any oversight body therefore leaving no way for the victims to enforce their right.

The Panel finds the lack of access of victims to judicial documents reprehensible and condemns such absence of transparency as a key failure to bring accountability for victims in Venezuela.

²⁰⁷ IACHR, Democratic Institutionalality, Rule of Law and Human Rights in Venezuela, para. 330.

²⁰⁸ IACHR, Annual Report 2010, Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter III (Access to Information on Human Rights Violations).

²⁰⁹ Cf. OAS General Assembly, AG/RES. 2607 (XL-O/10). Adopted at the fourth plenary session, held on June 8, 2010, para. 5.d).

²¹⁰ Cf. OAS General Assembly, AG/RES. 2607 (XL-O/10). Adopted at the fourth plenary session, held on June 8, 2010, para. 5.e).

²¹¹ I/A Court H.R., Case of Claude Reyes et al. Case of Claude Reyes et al. Judgment of September 19, 2006. Series C No. 151, para. 77.

²¹² IACHR, Los órganos de supervisión del derecho de acceso a la información pública, para. 7.

2.5.1.3 The Absence of Protective Measures and Support for Victims

The Panel notes that the fear of repercussions as experienced by victims is to be reasonably expected in a situation where the state officials are the alleged perpetrators as part of a state-wide policy to commit widespread and systematic crimes against humanity. These security concerns of victims are exacerbated by the fact that there have been little to no accountability efforts against the alleged high level state perpetrators who are still in the same positions of authority since the alleged state-wide policy has been implemented for over 8 years starting in 2014.

While the Panel notes that the complementarity assessment under the Rome Statute Article 17 does not include a consideration of whether victims are provided reparations or how, but rather whether alleged perpetrators who would otherwise be under the ICC jurisdiction are being brought to justice, justice for crimes against humanity cannot be achieved without the participation of victims, either in their own right or through the prosecution.

As such the Panel considers that the ability of victims to engage in and contribute to the accountability process is critical to the viability of the justice efforts in Venezuela. As a result, the Panel is concerned, in light of the climate of victim intimidation, in Venezuela, that this law does not substantively include any support or protective measures for victims or experts who would be presenting evidence or collaborating with the Office of the Prosecutor of the ICC.

The Panel acknowledges that the situation in Venezuela has been earmarked repeatedly over the last 8 years as being one where as one where “victims of human rights violations continue to face legal, political and socio economic obstacles in accessing effective justice”²¹³. The United Nations High Commissioner for Human Rights stated in 2020 that interviewees reported that “authorities sometimes discouraged them from reporting human rights violations by admitting their powerlessness to investigate such cases or by acknowledging that they had received orders from their superiors not to investigate, especially when it came to alleged violations committed by the security forces. Those interviewed indicated that the main reasons for not going to the authorities were fear of

²¹³ United Nations High Commissioner for Human Rights, Independence of the judicial system and access to justice in the Bolivarian Republic of Venezuela, also with regard to violations of economic and social rights, and the human rights situation in the region of the Orinoco Mining Arc, A/HRC/44/54, 29 September 2020, para. 17.

revictimization and lack of confidence in the judicial system.”²¹⁴ In the same sense, the High Commissioner had previously in 2019 concluded that the institutions responsible for the protection of human rights did not protect victims and witnesses, which contributes to impunity and the reiteration of violations.²¹⁵

The High Commissioner not only showed her concern for the Integrity of the victims, but also warned about the lack of witness protection. In the same sense, the Inter-American Court has stated that “in order to ensure due process, the State must take all necessary measures to protect justice operators, investigators, witnesses and family members of victims from harassment and threats aimed at hindering the proceedings, preventing the elucidation of the facts and concealing those responsible. Otherwise, those who investigate and those who could be witnesses would feel intimidated and frightened, and this would have a significant impact on the effectiveness of the investigation. Indeed, the threats and intimidation suffered by witnesses in the domestic proceedings cannot be examined in isolation, but should be analyzed in the context of obstructions to the investigation of the case. Consequently, such acts become another means of perpetuating impunity and preventing the truth of what happened from being known.”²¹⁶

Specifically with regards to witness protection, Recommendation No. 97 of the Committee of Ministers of the Council of Europe took into consideration “that it is unacceptable that the criminal justice system fails to bring defendants to trial and obtain a sentence because witnesses are effectively discouraged from testifying freely and truthful”²¹⁷, especially if one takes into account the fact that “the criminal justice system is not able to bring defendants to trial and obtain a sentence because witnesses are effectively discouraged from testifying freely and truthfully”.

In particular, with regard to the “Law on the Protection of Victims, Witnesses and Other Subjects of Proceeding”, the High Commissioner noted in 2020 that, although the

²¹⁴ United Nations High Commissioner for Human Rights, Independence of the judicial system and access to justice in the Bolivarian Republic of Venezuela, also with regard to violations of economic and social rights, and the human rights situation in the region of the Orinoco Mining Arc, A/HRC/44/54, 29 September 2020, para. 24

²¹⁵ Cf. United Nations High Commissioner for Human Rights, Human rights in the Bolivarian Republic of Venezuela, A/HRC/41/18, 9 October 2019, para. 33.

²¹⁶ I/A Court H.R., Case of Human Rights Defender et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 283, para. 227.

²¹⁷ Committee of Ministers of the Council of Europe, Recommendation No. 97, September 10, 1997, fourth recital. Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804c4a0f

law may provide a comprehensive legal framework, in practice, “victims did not receive any psychosocial support during, before and after the judicial process, and protection measures were often not effectively implemented”.²¹⁸

The Panel also recalls that the “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” adopted by the United Nations General Assembly on 16 December 2005 recognizes the obligation of States to take measures to provide appropriate assistance to victims seeking access to justice²¹⁹. It specifies that these legal and administrative procedures should not result in re-traumatization²²⁰. In this regard, support and protective measures for victims at risk should be implemented. It also enshrines the right of victims to “be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as that of their families”²²¹. On the other hand, it recalls that States should adopt measures to protect victims from acts of intimidation and retaliation.²²²

The obligation of States further includes the requirement to design and implement policies to identify and combat “repeat victimization”.²²³

²¹⁸ U.N. High Commissioner for Human Rights, Independence of the judicial system and access to justice in the Bolivarian Republic of Venezuela, also with respect to violations of economic and social rights, and human rights situation in the region of the Orinoco Mining Arc, A/HRC/44/54, September 29, 2020, para. 29.

²¹⁹ Cf. GA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, 21 March 2006, Principle 12(c).

²²⁰ Cf. GA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, 21 March 2006, principle 10.

²²¹ Article 10 speaks of the treatment that victims should receive in general, including the obligation to guarantee their safety, physical and psychological well-being and privacy. Article 12 establishes that as a guarantee of access to justice, victims must not suffer acts of third parties, such as intimidation or reprisals, which may affect their interests. GA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, 21 March 2006, principle 10.

²²² Cf. GA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, 21 March 2006, principle 12(b).

²²³ Cf. Committee of Ministers of the Council of Europe, Recommendation Rec (2006)8 on assistance to victims of crimes, 14 June 2006, para. 10.5.

Overall, the Panel is of the view that this law merely reiterates and details the mandate of an institution already created by the Attorney General and that has already been in existence for almost two years. In fact, the Attorney General of the Republic published on 15 December 2021, almost a year after the creation of the Office, that it had attended 887 citizens, of which 425 denounced alleged human rights violations.²²⁴ In the opinion of the Panel, it is lacking in creating a basic framework enabling victims to exercise their rights to accountability domestically in Venezuela as well as to receive appropriate support in doing so. In the current context of crimes perpetrated by the Government of Venezuela, this amounts to a fundamental lacuna that cripples victims and annihilates the prospects for genuine accountability efforts, casting considerable doubts about the genuineness of the attempt of the Government of the Venezuela to engage in meaningful institutional reforms.

2.5.2 The Creation of a National Human Rights Commission

On September 17, 2021 the National Assembly approved the Law of Partial Reform of the Decree with Range, Value and Force of Law of the Statute of the Police Function²²⁵ composed of 6 articles that create a “National Human Rights Commission” to as part of the current Law of the Statute of the Police Function.

According to the report “La Verdad de Venezuela contra la infamia. Data and testimonies of a country under siege” prepared by the People’s Ministry of Foreign Affairs, of the six hundred and three (603) State security officers pointed out as allegedly responsible of human rights violations, 146 were members of the state police and 143 of the Bolivarian National Police, which represents more than 44% of the accused.²²⁶

Article 2 of the law replaces Article 88 of the Law of the Statute of the Police Function and establishes a National Human Rights Commission as an administrative unit in charge of receiving, and processing disciplinary investigation of complaints of human rights violations committed by officials who are part of the integrated police system and who exercise public security functions. This National Human Rights Commission

²²⁴ VTV, MP imputa a 820 funcionarios de seguridad por presuntas vulneraciones a los DD.HH, December 15, 2021. Available at: <https://www.vtv.gob.ve/mp-imputa-820funcionarios-seguridad-presuntas-vulneraciones-ddhh/>

²²⁵ Available at: <https://www.asambleanacional.gob.ve/storage/documentos/leyes/ley-de-reforma-del-decreto-con-rangovalor-y-fuerza-de-ley-del-estatuto-de-la-funcion-policial-20211007001454.pdf>

²²⁶ Cf. Bolivarian Republic of Venezuela Ministry of Popular Power for Foreign Affairs. Report on “Venezuela’s truth against infamy. Data and testimonies of a country under siege”, 2020, page 99.

is hierarchically under the Ministry of Popular Power for Internal Relations, Justice and Peace, which is also in charge of the Bolivarian National Police Corps.

While the Panel applauds the creation of a mechanism to address the complaints about the alleged endemic police violations of human rights, constitutional rights and crimes against humanity, which seeks to deal with the reported lack of tangible, concrete and progressive accountability measures against state perpetrators²²⁷, the Panel is of the view that this structural dependence of the National Human Rights Commission on the same authority of the executive branch as the Police – namely the Ministry of Popular Power for Internal Relations, Justice and Peace, will inevitably raise issues with regards to their independence and impartiality. This is particularly relevant in this specific situation since some of the alleged violations perpetrated by the Bolivarian National Police Corps have been alleged to have been ordered by the executive branch of the State of Venezuela through the Minister of Popular Power for Internal Relations, Justice and Peace. In its report of 2018, this Panel found that “On April 18, 2017, the President announced the implementation of the Zamora Strategic Plan ²²⁸ – “a security mechanism calling for the deployment of civilians alongside police and military forces to “preserve public order” (...) calling on civilians to engage in the illegitimate use of force.” ²²⁹ Plan Zamora not only implies the participation of the national armed forces in security deployments decided and ordered by the Executive, it also provides that all autonomous police forces of the states and municipalities take orders from the GNB, which assumes the militarization of the activities of all security forces under the overall and sole command of the National Executive.”²³⁰ According to Major General Hebert García Plaza “the Plan Zamora is the military plan for integral defense of the nation. A military order, in military language, distinguishes ‘friendly ‘and enemy’ forces. Military plans are not conceived of in any other way.”²³¹

²²⁷ Cf. Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela, Detailed Findings of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela. A/HRC/48/CRP.5. 16 September 2021, para. 484.

²²⁸ Testimony of Major General Hebert García Plaza at the Hearing of the OAS General Secretariat to analyze the possible commission of crimes against humanity in Venezuela, September 15, 2017, <https://www.youtube.com/watch?v=cKmTJ79prKE>

²²⁹ the State of Venezuela

²³⁰ Organization of American States. General Secretariat. 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

²³¹ Major General Hebert García Plaza explained that “the Plan Zamora is the military plan for integral defense of the nation. A military order, in military language, distinguishes ‘friendly and enemy’ forces.682 Military plans are not conceived of in any other way.

In addition, the Panel is concerned that the administrative nature of this investigation mechanism unit, with limited disciplinary investigation capabilities - whereby it can only open an administrative investigation and to follow it up, send reports to the minister with jurisdiction on the cases or forward cases to the Public Prosecutor's Office and the Ombudsman's Office - as opposed to being judicial in nature with criminal implications, further limits the scope of the accountability that the alleged perpetrators within the police ranks will face. Even though the Public Prosecutor's Office and the Ombudsman's Office could in theory take judicial actions as a result of the complaints forwarded, the Panel remains convinced that the endemic issues with regards to accountability which have previously prevented such complaints from being addressed remain and are likely to maintain the status quo with regards to the pervasive impunity for violations by the Bolivarian National Police Corps.

In this sense, and considering the broader context of the reported inefficiency of the judicial recourses to which the National Human Rights Commission defers to for criminal accountability - which has not been addressed directly as part of this judicial reform - the Panel's analysis is that the National Human Rights Commission is of limited viability and effectiveness and is indicative of a deliberate attempt at shielding the Bolivarian National Police Corps.

In the same vein, this administrative mechanism does not provide for the possibility of reparations for the victims of the violations and can therefore not amount to an effective mechanism guaranteeing the right to truth of the victims. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law establish that "the victim of a gross violation of international human rights law or a serious violation of international humanitarian law shall have equal access to an effective judicial remedy, as provided for in international law"²³² and not an administrative remedy.

When asked about this legal reform, the expert witness E002, a human rights defender and law professor explained that he has personally witnessed a case where a detainee who arrived at a presentation hearing visibly with marks of having been tortured and reports the same to the judge, specifically naming the perpetrators and their ranks in

²³² UN General Assembly, Resolution 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, December 16, 2005, para. 12 (emphasis added).

the Police, the judge just said: “take note of what you have just heard” and took no other measures. The expert witness E002 compared this reform with the creation of the Ombudsman Office which according to him, is ineffective since despite efforts to involve them, they never participated in hearings related to complaints.²³³

2.6 The Penitentiary Reform

Over the past years, the IACHR has paid close attention to the situation of persons deprived of liberty in Venezuela, which is one of the most dire situations in the region²³⁴. According to the IACHR, the penitentiary system is characterized by overcrowding, excessive use of pretrial detention; lamentable conditions in the detention centers; generalized violence; lack of effective oversight by the State; and corruption in the form of extortion in return for “vaccinations” (the quotas detainees have to pay to stay safe in detention centers)²³⁵

Although the IACHR was unable to access any official data on the population deprived of liberty in 2021, it explained that “one of the biggest obstacles to the respect for and guarantee of the rights of persons deprived of liberty is the existence of a dual prison system. One official system, which in 2019 held more than 40 thousand people in 45 jail facilities under the Ministry of the Penitentiary Service, approximately 500 pretrial detention spaces which in 2019 held more than 60 thousand people²³⁶ under various different reporting structures pursuant to a Presidential decree²³⁷. The conditions of detention at police detention facilities are inhuman, mostly because they are not outfitted to hold people for prolonged periods of time.²³⁸

The Panel is mindful that the judicial reform seeks to rename some military facilities that are notorious for arbitrary detention, torture and abusive treatment of prisoners including the SEBIN establishments in El Helicoide and the DGCIM in Boleíta, without any other changes to their operating procedures.²³⁹

²³³ Interview I002

²³⁴ Cf. IACHR, Annual Report 2016, Chapter IV.B, Venezuela, para. 202.

²³⁵ Cf. IACHR, Annual Report 2016, Chapter IV.B, Venezuela, para. 203 and IACHR, Democracy and Human Rights in Venezuela, 30 December 2009, para. 44.

²³⁶ IACHR, Annual Report 2021, Chapter IV.B, Venezuela, para. 202.

²³⁷ Presidential decree No 4.430 of 4 February 2021, which creates the Sectoral Vice Presidency of Security and Peace which controls the Preventive Detention Centers with the Ministry of Penitentiary Affairs.

²³⁸ Cf. IACHR, Annual Report 2021, Chapter IV.B, Venezuela, para. 203.

²³⁹ Cf. Independent International Fact-finding mission on the Bolivarian Republic of Venezuela, Detailed findings of the independent international fact-finding Mission on the Bolivarian Republic of Venezuela: Crimes against humanity committed through the State’s intelligence services: structures and individuals involved in the implementation of the plan to repress opposition to the Government. A/HRC/51/CRP.3 20 September 2022, para.

According to the FFM, “El Helicoide is a 1950s-era spiral-shaped building originally built as a shopping center in central Caracas. It now houses SEBIN administrative offices, dormitories for SEBIN officers and a detention area. It was not built to function as a prison and lacks the basic installations required for adequate hygiene, sanitation and recreation. The detention areas are composed of both formal cells and areas including stairwells and bathrooms adapted to hold additional prisoners. Individuals are segregated by sex, but not on the severity of the crime committed. Women make up around 10 percent of the detainee population and most are held together in one cell. [...] Former detainees described severe overcrowding. El Helicoide suffered from a lack of water, inadequate plumbing and infestations (rats and cockroaches). The detainees did not have access to clean water for drinking, bathing or cleaning clothes and other items. Detainees’ relatives brought them water, or they purchased it on the prison black market. Former detainees have accused guards of withholding of food and medicine delivered by family members.”²⁴⁰

DGCIM Headquarters in Boleíta is a former textile factory that was transformed into administrative offices with detention cells. According to the FFM, “the cells in DGCIM Boleíta are in the basement, referred to as Basement 1, without natural light or ventilation. Cells are around 2.75 x 2 meters, often with two or three occupants. Former detainees told the Mission that artificial lighting was on 24 hours a day, affecting the notion of time. Cells were without bathrooms and detainees had to relieve themselves in bags [...] Detainees slept on a cement platform with a very thin mattress. There was no access to drinking water and detainees suffered from stomach illnesses. DGCIM officers also restricted sunlight and showering [...] Detainees described a punishment cell known as “El Cuarto de los Locos” (the Crazy Room). It was lined with padded walls and detainees slept on the floor.”²⁴¹

The reform of the Organic Penitentiary Code was passed on 16 September 2021 and includes 6 main amendments in the form of:

a) Article 37

²⁴⁰ Independent International Fact-finding mission on the Bolivarian Republic of Venezuela, Detailed findings of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela. A/HRC/45/CRP.11. 15 September 2020, paras. 295 and 296.

²⁴¹ Independent International Fact-finding mission on the Bolivarian Republic of Venezuela, Detailed findings of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela. A/HRC/45/CRP.11. 15 September 2020, paras. 330, 332 and 333.

The reform to Article 37²⁴² that regulates the discharge of detainees eliminates the last paragraph of its previous version which provides for the power of the penitentiary authorities to review the suitability of the act by which the judicial decision of discharge was notified.

Despite the modification introduced, which supposes the elimination of the margin of discretion that existed at the head of the penitentiary authorities that could result in a postponement of the release of a person deprived of liberty, in his presentation before the Human Rights Council of the United Nations on March 17, 2022, the High Commissioner for Human Rights, Michelle Bachelet, conveyed her concern at the finding that six months after its publication in the Official Gazette, at least 6 people remained deprived of liberty when they should have been released.²⁴³ Therefore, despite the reform of Article 37, cases of arbitrary detention due to extension of the term of compliance continue to be reported.

Similarly, the amendment of the Organic Code of Criminal Procedure (“CCP”) published on 17 September 2021 which seeks to review the Code of Criminal Procedure raises some significant concerns due to the fact that the reform of Article 230 established a maximum term of 3 years of pretrial detention, two years, plus a 1 year extension period. Put simply, a detainee should be released at the end of 3 years in custody. In its previous wording, Article 230 empowered the Public Prosecutor’s Office or the plaintiff to request the extension of the pretrial detention, which could not “exceed the minimum penalty

²⁴² Article 37.

The exit of persons deprived of freedom shall be preceded by a decree issued by the competent authority ordering the interned subject’s personal freedom, by virtue of the criminal action’s extinction or that of the penalty, or of any other circumstance provided by the law. In case of a judicial decision, the decree ordering it is required:

- 1. Cautionary measure substituting that of freedom’s deprivation.*
- 2. Conditional suspension of process, the penalty’s execution suspension, work outside the establishment, open regime and conditional freedom.*
- 3. Granting of a humanitarian measure.*
- 4. The person deprived of freedom’s extradition.*
- 5. Total completion of the penalty requiring deprivation of freedom.*
- 6. Absolving decision.*
- 7. The cause’s dismissal.*
- 8. The file sent to archive by prosecution.*

This documentation shall be immediately inserted into the person deprived of freedom’s file having to return from the establishment.

²⁴³ High Commissioner for Human Rights, 49th session of the Human Rights Council, March 17, 2022. Available at: <https://www.ohchr.org/es/statements-and-speeches/2022/03/high-commissioner-updates-human-rights-council-venezuela>

foreseen for the crime". In the current wording post-reform, this maximum was extended to one year, regardless of the minimum penalty foreseen for the offense.

However, commenting on the reform of the Organic Code of Criminal Procedure, the expert witness E005, a human rights activist and lawyer explained that in his daily work as a litigation lawyer he has been able to personally verify that, in practice, in the great majority of cases of political prisoners nothing has changed, and that there are detainees who have remained, in detention in some cases for up to 7 years and counting deprived of liberty.²⁴⁴ This information is corroborated by the statement that the expert witness E001, a human rights lawyer and professor, provided to the Panel about his experience with political prisoners.²⁴⁵

E005 also indicated that after being personally involved in cases impacted by the reforms of the Organic Code of Criminal Procedure, detainees who requested to be freed at the end of their sentence have had their requests summarily dismissed by the courts, without any justification, in violation of the Venezuelan Constitution.²⁴⁶

Another expert witness E002 confirmed having faced similar responses from the courts.²⁴⁷

b) Articles 85 and 87,

The reforms of Articles 85 and 87 refer to the characteristics of the security and custody bodies, both internal and external, of the penitentiary facilities. Article 85 provides that:

Security and Custody Corps

Article 85. A security and custody body is created, one of a civil nature, ascribed to the Ministry of Popular Power having competence in penitentiary matter, who shall take care of the internal vigilance, security and custody of the persons deprived of freedom, family members, visitor and public officers during their stay at the penitentiary systems sites.

It proposes the creation of a security and custody body that will be civil in nature. The aforementioned modification comes to comply with a reparation measure ordered by the

²⁴⁴ Anne VI, Interview I005, para. 1.

²⁴⁵ Anne II, Interview I001, para. 1.

²⁴⁶ Anne VI, Interview I005, para. 3.

²⁴⁷ Anne III, Interview I002, para. 13.

Inter-American Court of Human Rights in 2006 in the case of *Montero Aranguren et al. (Retén de Catia)*²⁴⁸ and with the standard established by the Inter-American Commission. In this sense, the IACHR stated that “States must guarantee that penitentiary centers are managed and guarded by specialized prison personnel, of a civilian nature and with the character of public officials. In other words, these functions must be entrusted to a security establishment independent of the military and police forces.”²⁴⁹

Article 87 provides that:

External Security

Article 87. The National Bolivarian Police Body is in charge of the penitentiary sites' external security and assumes the following obligations:

- 1. Watching for and custody the penitentiary establishment's perimetral areas.*
- 2. Avoiding the escape or evasion of persons deprived of freedom.*
- 3. Avoiding the entry into the establishment of substances and objects of prohibited holding or non-authorized ones into the areas being under their control.*
- 4. Making the search of all persons and vehicles entering and leaving the penitentiary establishment in order to prevent the traffic of substances of prohibited holding or non-authorized ones.*
- 5. Rendering assistance in the control of massive alterations of order within the establishments, following the rules for the entry and use of firearms contained in this Code, upon request from the Ministry of Popular Power with competence in penitentiary matter.*
- 6. Watching for and having custody of the transitory transfers, an those between penitentiary establishments, done by the Ministry of Popular Power with competence in penitentiary matter.*
- 7. The others that may be indicated by the laws and regulations*

However, in spite of the legislative reform, the Fact-Finding Mission described that “witnesses reported that SEBIN continues holding de facto control over cases concerning people detained due to their real or perceived affiliation to Government opposition or

²⁴⁸ I/A Court HR, Case of *Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Judgment of July 5, 2006. Series C No. 150, para. 144

²⁴⁹ IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, para. 193.

because of their dissent.”²⁵⁰ Similarly, expert witness E002 explained that he has been personally involved in several trials of politicians, where individuals who claimed to be from the Bolivarian National Police were in fact proven to be from the SEBIN, having used changes of names in the intelligence centers and used police uniforms with the name of the Ministry of Popular Power for the Penitentiary Service in the maximum security centers.²⁵¹

Similarly, the reform to Article 87 entrusts the Bolivarian National Police Corps with the control of the external security of the penitentiary facilities, a responsibility that was previously under the responsibility of the Bolivarian National Guard to align the penitentiary practices with the decision of the Inter-American Commission in the aforementioned Montero Aranguren case where the Commission found that the State of Venezuela devolved the responsibility to control of internal disturbances to a military force with training aimed at defeating the enemy, and not at the protection and control of civilians, as is the case of police entities.²⁵²

c) Articles 122 and 125;

The reforms introduced to Articles 122 and 125 relate to the transfer of persons deprived of liberty.

Articles 122 provides that:

Those deprived of freedom may be transferred to other reclusion penitentiary facilities, under the corresponding judge of instruction's previous authorization. They may be also transferred by the penitentiary authority, for participation in sport, educational or cultural activities, having to return to the penalty's compliance's center, once such activities should have concluded. When the transfer may be for motives of health, the execution judge shall be immediately notified, in order that the corresponding jurisdictional decisions may be adopted.

²⁵⁰ Fact-finding Mission on the Bolivarian Republic of Venezuela, Crimes against humanity committed through the State's intelligence services: structures and individuals involved in the implementation of the plan to repress opposition to the Government. A/HRC/51/CRP.3. 20 September 2022, para. 319.

²⁵¹ Interview I002A

²⁵² Cf. I/A Court HR, Case of Montero Aranguren et al. (Detention Center of Catia) Vs. Venezuela. Judgment of July 5, 2006. Series C No. 150, para. 78.

Exceptionally, when it should be necessary to proceed with the person deprived of freedom's transfer for reasons of order, security or urgency, the execution judge shall be immediately notified, for the purpose of the remittance of the corresponding file to the corresponding judge.

Those deprived of freedom, both when exiting as in entry shall be searched individually.

Articles 125 provides that:

Transfers shall be authorized by:

1. In cases of those charged by the cause's judge, save when there should exist an Act of God situation, in accordance with provisions by the Code of Criminal Procedure and this Code.

2. In cases of those punished by the execution judge, save when there should exist an Act of God situation, in accordance with provisions by the Code of Criminal Procedure and this Code.

Regarding the transfers, the Inter-American Commission has stated that “in practice, both the transfer (of detainees) itself and the conditions in which it is carried out can have a significant impact on the situation of the inmate himself and on that of his family. Likewise, when the transfers are carried out arbitrarily or in conditions contrary to respect for the human rights of the inmates, they can become inconspicuous spaces or gray areas for the commission of abuses by the authorities.²⁵³”

The first amended paragraph of Article 122 expressly provides that the judge seized with the execution of the sentence as well as guaranteeing the rights of those deprived of their liberty in penitentiary establishments can authorize the transfer of detainees to other penitentiary establishments, which was previously missing from the law.

For its part, the third and fourth paragraphs of Article 122 provide for the possibility for the prison authorities to authorize the transfer of a detainee in cases of health emergencies, for reasons relating to the order, security, necessity and urgency with the notification of the execution judge.

²⁵³ IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, para. 485.

In this sense, the Panel notes that the new legislation meets the requirements of the IACHR that “regardless of which authority is competent to authorize and/or carry out the transfers, said authority must inform the judge or court whose charge is the person deprived of liberty about the transfer, before carrying it out or immediately after it.” ²⁵⁴

Nonetheless, the Panel is of the opinion that the law does not provide for any “adequate and effective judicial remedies to challenge said transfers when it is considered that they affect the human rights of inmates” ²⁵⁵ as reasonably suggested by the Inter-American Commission.

The reform to Article 125 recognizes the jurisdiction of the execution judge to authorize transfers between penitentiary establishments where there is no health emergency or other grounds listed under Article 122, replacing the power that was allocated to the penitentiary authority to do so in the previous wording. It also provides for the requirement to notify the judge ²⁵⁶, depending on the condition of the prisoner. Unlike the provisions of Article 122 for transfers to other penitentiary establishments, Article 125 does not provide for the notification of the judge for situations of force majeure in inter-prison transfers.

d) Articles 138 and 154.

Finally, the modifications introduced to Articles 138 and 154 refer to the disciplinary measures of detainees. In reference to this, the IACHR has established that “the disciplinary regime or system is one of the mechanisms available to the administration to ensure order in the centers of deprivation of liberty, which must be maintained taking into account the imperatives of effectiveness, security and discipline, but always respecting the human dignity of persons deprived of liberty” ²⁵⁷.

Article 138 provides that:

The disciplinary infractions shall be sanctioned by the penitentiary authorities, in conformity with this Code's provisions, without prejudice of the criminal procedure that there could be.

Said decisions may be reviewed by the execution judge having competence at the penitentiary center, upon the sanctioned person's petition.

²⁵⁴ IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, para. 500.

²⁵⁵ IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, para. 500.

²⁵⁶ Judge of the case” refers to the judge or court that intervenes for the duration of the trial. Once the person has a final sentence, he or she is placed under the supervision of the enforcement judge.

²⁵⁷ IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, para. 371.

In accordance with the modifications introduced, Article 138 continues to recognize the sanctioning power of the penitentiary authorities, but incorporates the guarantee of review by the executing judge with jurisdiction in the penitentiary center, at the request of the detainee subject to the sanction. This provision is reinforced by the modification introduced in Article 154 which provides that:

The person deprived of freedom may request from the Execution Judge having competence at the penitentiary center, the review of the decision adopted by the Disciplinary Board within the forty-eight hours following his notification. The Judge shall hear the parties and adopt his decision on the same hearing. The review's plea suspends the execution's decision.

These are in accordance with principle XXII of the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, which establish: "The disciplinary sanctions that are adopted in places of deprivation of liberty, as well as disciplinary procedures, must be subject to judicial control"²⁵⁸ and rule 41.4 of the Mandela Rules.²⁵⁹

3. The Lack of Ability to Hold Perpetrators Accountable

Over and beyond the issues addressed above relating to the legislative changes enacted as part of the judicial revolution, the Panel also wishes to reiterate its concerns with the intrinsic practical concerns arising from the operation of the Venezuelan legal system that came to light from the various statements and communications between the Panel and experts witnesses, and civil society actors on the ground.

There have been numerous consistent reports in substance and frequency of a gap between the legal provisions in place and their practical implementation leaving victims in a legal vacuum without appropriate legal recourse.

Mindful of the importance of aligning the reality of legal implementation with the provisions enacted, the Panel considers that addressing the practical challenges that the victims face as part of the enforcement of their rights is of paramount importance in particular in the context of Venezuela where there has been rampant corruption and racketeering in detention centers and by public officials administering the justice system.

²⁵⁸ IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Resolution 1/08, Principle XXII.

²⁵⁹ UNODC, United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), Rule 41.4

Furthermore, the Panel is also concerned about the failure of the State of Venezuela to investigate and prosecute alleged perpetrators and in particular those high-level perpetrators and efforts to actively shield alleged perpetrators.

These three issues will be addressed in turn in the section below.

3.1 The Rampant Corruption

The expert witness E001 a human rights lawyer, activist and professor considered that the situation with regards to corruption is currently worse than before the reforms to the Organic Code of Criminal Procedure or the reform of the Penitentiary Code: prisoners must collect money based on their socioeconomic status in order to be able to hand over the money ²⁶⁰. E001 explained that prison officials blackmail detainees to restart their trials if they don't hand over \$10 and a ream of paper. ²⁶¹

E001 informed the Panel about a recent case in which an individual had to sneak out of prison because the prison custody wanted to take her back to prison, even when it had been acquitted. E001 explained that there are cases in which release was implemented up to 3 years after the issuance of the initial order, where the detainees have had to make a payment to the Penitentiary Ministry to get released, in a case that can only be defined as corruption.²⁶²

The Panel, mindful of the fact that large scale corruption is a huge factor in the inability of the state of Venezuela to legislate and implement genuine and comprehensive domestic accountability efforts, the Panel also considered it useful to assess the most recent efforts of the state in tackling corruption.

Transparency International has documented the existence of 9 large criminal blocs and some 13,000 criminal organizations within Venezuela the acquiescence of the military and police: ²⁶³ "At least 9 organized crime blocs have been identified (...) in which more than 13,000 criminal organizations participate and, in some cases, have ties to power

²⁶⁰ Interview I001

²⁶¹ Interview I001

²⁶² Interview I001

²⁶³ International Transparency: Organized Crime and Corruption in Venezuela: A State Problem. Page 7. Available at: <https://transparencia.org.ve/wp-content/uploads/2020/07/Crimen-organizado-y-corrupcio%CC%81n-en-Venezuela-Un-problema-de-Estado-completo.pdf> . Retrieved 11/05/2020 at 07:15 am.

politician and public officials ²⁶⁴ namely: a) the criminal mega gangs; b) the pseudo-unions of construction, oil and miners; c) the armed and violent “collectives”; d) the “pranes” and their prison organizations; e) Bolivarian Liberation Forces or “Boliches”; f) holding of corruption; g) drug traffickers; h) FARC, ELN. i) Criminal gangs (Bacrim).”

On May 2, 2022, the Law for the Reform of the Anti-Corruption Law²⁶⁵ was enacted, according to the State of Venezuela, to contribute to the fight against grand corruption in all its manifestations.

While some of the provisions are welcomed by the Panel including educational against corruption ²⁶⁶, the simplification of the process of the Sworn Statement of Assets ²⁶⁷, a change in the calculation of fines and the codification of crimes ²⁶⁸ (which is ordered in a forthcoming reform of the Criminal Code), the law shockingly fails to provide for asset recovery mechanisms and to implement basic standards of compliance against the laundering of assets coming from corruption as recommended by international organizations such as the Financial Action Task Force. ²⁶⁹

As such the Panel considers that the amendments brought by this legislative instrument are merely cosmetic in nature and are not viable to addressing corruption effectively further demonstrating the lack of genuine political will to address corruption at all levels within the state.

3.2 The Active Shielding of Alleged Perpetrators

In addition to the legislative amendments raised above, the Panel wishes to highlight that the judicial reform has failed to tackle existing procedural barriers to domestic

²⁶⁴ International Transparency: Organized Crime and Corruption in Venezuela: A State Problem. Page 4. Available at: <https://transparencia.org.ve/wp-content/uploads/2020/07/Crimen-organizado-y-corrupcio%CC%81n-en-Venezuela-Un-problema-de-Estado-complete.pdf> . Retrieved 11/05/2020 at 07:15 am.

²⁶⁵ National Assembly, Law for the Amendment of the Decree with Rank, Value and Force of Law against Corruption. Available at: http://spgoin.imprentanacional.gob.ve/cgi-win/be_alex

²⁶⁶ Law for the Amendment of the Decree with Rank, Value and Force of Law against Corruption, Article

²⁶⁷ Law for the Amendment of the Decree with Rank, Value and Force of Law against Corruption, Article 10.

²⁶⁸ Law for the Amendment of the Decree with Rank, Value and Force of Law against Corruption, Article 20.

²⁶⁹ GAFI FTAFT: INTERNATIONAL STANDARDS ON THE FIGHT AGAINST MONEY LAUNDERING, FINANCING OF TERRORISM, AND FINANCING OF THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION. Available at: <https://www.cfatf-gafic.org/home-test/documentos-en-espanol/recursos-del-gafic/14971-recomendaciones-del-gafi-2012-actualizadas-a-octubre-de-2020-1/file>

accountability which the Panel considers actively shields alleged perpetrators from facing justice including:

- a) The Preliminary Trial of Merit;
- b) The failure to define and criminalize the crime of persecution;
- c) The doctrine of due obedience by the military
- d) The criminalization of disobedience; and

3.2.1 The Preliminary Trial of Merit

Beyond the above, the Panel wishes to express its concern with regards to the fact that the procedural barrier to the prosecution of the President and other high-level alleged perpetrators that is established in the Code of Criminal Procedure in the form of the preliminary hearing of merit before the Supreme Court has not been addressed.

The preliminary trial of merit is a mandatory pre-trial procedure provided for in Article 266 of the Constitution and articles 376-381 of the Organic Criminal Code of Procedure that is applicable exclusively in the case of any criminal prosecution against the President of the Republic, or whoever acts on his behalf, as well as of the high officials determined in the Constitution including the Vice President, the ministers and to the generals and admirals of the National Armed Forces considered as senior officials ²⁷⁰. This pre-trial process is required to be held in the plenary division of the Supreme Court.

The Panel also notes that the beyond the monopoly of the Supreme Court to review the criminal allegations against the President and other high-level perpetrators, the Attorney General of the Republic, who is himself appointed by the National Assembly, is the only public official who has the capacity to file or dismiss a complaint against the high-ranking official according to Article 377 of the Organic Criminal Code of Procedure. The victims are prevented from doing so.

If the preliminary hearing request made by the Attorney General is admitted, the Plenary Chamber of the Supreme Court will convene a public hearing within the following 30 days according to article 379.

²⁷⁰ The President of the Republic, the Executive Vice President of the Republic, Ministers of the Office, Attorney General of the Republic, Members of the Military High Command, Governors of the States, Deputies of the National Assembly, Magistrates of the Supreme Court of Justice, Comptroller General of the Republic, Attorney General of the Republic, Ombudsman, Rectors of the National Electoral Council, and Heads of Diplomatic Missions of the Republic.

The special pretrial merit procedure must establish whether there is probable cause, for the investigation and possible criminal prosecution of a high-ranking official and does not result in a determination of guilt.

If the case is dismissed at the stage of the preliminary trial of merit, the investigation can no longer continue according to Article 378. It is only in the case of a finding on the merits for prosecution, that the case will proceed to go before the National Assembly composed of the very people who are the subjects of the allegations namely President and other officials which may or may not authorize the trial to proceed by a decision of 2/3rd of its members. Another consequence of the authorization to proceed is that the individual in question is suspended or debarred from his position

The Panel is of the view that this pre-trial procedure, which in effect creates a higher threshold for the prosecution of high-level perpetrators is, in and of itself, not an absolute obstacle to accountability of high level perpetrators, it fails to give effect to the following articles of the Constitution:

a) Article 27 (1) of the Constitution which provides that: This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence

b) Article 27(1) of the Constitution which provides that: "Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person."

c) Article 29. The State shall be obliged to legally investigate and punish crimes against human rights committed by its authorities. Actions to punish crimes against humanity, serious violations of human rights and war crimes are imprescriptible. Human rights violations and crimes against humanity will be investigated and tried by ordinary courts. Such crimes are excluded from the benefits that impunity may bring, including pardon and amnesty.

Furthermore, the Panel is of the opinion that the triggering mechanism for the preliminary trial of merit, through the decision-making process of the Attorney General, himself an appointee of the National Assembly creates an insurmountable obstacle to the triggering of such proceedings.

The Panel considers that, when assessed holistically in the current context of the absence of the judicial independence and impartiality of the judiciary in Venezuela – and of the Supreme Court more specifically a discussed above- , the requirement for the approval of the very person being prosecuted as part of the National Assembly and the numerous allegations of the commission of widespread and systematic crimes against humanity by and under the command of the President, the Vice President, the ministers and the generals and admirals of the National Armed Forces, the preliminary trial of merit of high-level perpetrators amounts to a barrier guaranteeing the impunity of high-level state officials including the President Maduro. ²⁷¹

As such the Panel is of the view that the failure of the State of Venezuela to address these obstacles to the accountability enshrined in the Code of Criminal Procedure in the form of the preliminary trial of merit for the criminal prosecution of high-level officials is an unequivocal indication of the unwillingness of the State of Venezuela to allow fulfill its obligations to bring accountability to the victims for the alleged crimes against humanity.

Furthermore, in addition to the amendments above the Panel wishes to highlight that since the Supreme Court is the relevant judicial body to address the accountability of the high-level officials of the state alleged to have committed crimes, its ability to put them on trial is critical to determining the willingness and ability of the Venezuelan State to try these individuals.

The preliminary trial of merit is a special criminal procedure established in the Constitution as a prerequisite for the admissibility of investigation and prosecution of public servants, exclusively for the highest public officials, to filter through unfounded or reckless accusations that may disturb the exercise of their functions. The aim of the preliminary trial is to determine expeditiously whether there are merits to initiate the procedure leading to a trial. ²⁷²

Taking into account an analysis of the preliminary trials of merit carried out in Venezuela from 2013 to 2021 by Un Mundo Sin Mordaza, Defiende Venezuela, and the Crimes Against Humanity Observatory which included the 8 preliminary trials of merit

²⁷¹ According to Article 381 of the of the Organic Criminal Code of Procedure, “For the purposes of this Title, high-ranking officials are: The President of the Republic, the Executive Vice President of the Republic, Ministers of the Office, Attorney General of the Republic, Members of the Military High Command, Governors of the States, Deputies of the National Assembly, Magistrates of the Supreme Court of Justice, Comptroller General of the Republic, Attorney General of the Republic, Ombudsman, Rectors of the National Electoral Council, and Heads of Diplomatic Missions of the Republic.

against a total of 15 public administration officials recorded, the Panel observes that of the 8 preliminary trials, 7 were against officials who were part of the opposition to the government,²⁷³ and the remaining one was initiated against the 8 magistrates of the Constitutional Chamber of the TSJ by the General Prosecutor of the Republic Luisa Ortega after she took a position against the government. The cases against 7 opposition members proceeded to full trial²⁷⁴ while the one case against the 8 magistrates was dismissed.²⁷⁵

3.2.2 The Failure to Define and Criminalize Persecution

As raised above the crimes of persecution of political opposition leaders, dissidents and perceived opponents to the regime have been alleged to have been committed on a large scale in Venezuela since 2014 and according to the latest report of the Fact Finding²⁷⁶ continue to happen. The Panel notes that during the COVID 19 Pandemic,

²⁷² 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>

²⁷³ 1) Richard Mardo Mardo, Judgment No. 10, file No. 2013-000060. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/abril/7-9413-2013-2013-000060.HTML>; 2) María Mercedes Aranguren, Judgment No. 78, file No. 2013-000123. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/octubre/157693-63-171013-2013-2013-000213.HTML>; 3) Juan Carlos Caldera, Judgment No. 70, file No. 2013-000122. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/noviembre/172065-70-261114-2014-2013-000122.HTML>; 4) Luisa Ortega Díaz, Judgment No. 44, file No. 2017-000073. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/junio/200552-44-28617-2017-2017-000073.HTML>; 5) Freddy Alejandro Guevara, Judgment No. 69, file No. 2017-000112. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/noviembre/204801-69-31117-2017-2017-000112.HTML>; 6) Julio Andrés Borges, Judgment No. 49, file No. 2018-000072. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/agosto/300717-49-8818-2018-2018-000072.HTML>; and 7) Juan Carlos Requesens, Judgment No. 48, file No. 2018-0071. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/agosto/300716-48-8818-2018-2018-0071.HTML>

²⁷⁴ 1) Richard Mardo Mardo, Judgment No. 10, file No. 2013-000060. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/abril/7-9413-2013-2013-000060.HTML>; 2) María Mercedes Aranguren, Judgment No. 78, file No. 2013-000123. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/octubre/157693-63-171013-2013-2013-000213.HTML>; 3) Juan Carlos Caldera, Judgment No. 70, file No. 2013-000122. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/noviembre/172065-70-261114-2014-2013-000122.HTML>; 4) Luisa Ortega Díaz, Judgment No. 44, file No. 2017-000073. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/junio/200552-44-28617-2017-2017-000073.HTML>; 5) Freddy Alejandro Guevara, Judgment No. 69, file No. 2017-000112. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/noviembre/204801-69-31117-2017-2017-000112.HTML>; 6) Julio Andrés Borges, Judgment No. 49, file No. 2018-000072. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/agosto/300717-49-8818-2018-2018-000072.HTML>; and 7) Juan Carlos Requesens, Judgment No. 48, file No. 2018-0071. Available at: <http://historico.tsj.gob.ve/decisiones/tplen/agosto/300716-48-8818-2018-2018-0071.HTML>

²⁷⁵ Juan José Mendoza Jover, Arcadio Delgado Rosales, Carmen Zuleta de Merchán, Calixto Antonio Ortega Ríos, Luis Fernando Damiani Bustillos, Lourdes Benicia Suárez Anderson, Federico Sebastián Fuenmayor Gallo and René Alberto Degraives Almarza, Judgment No. 45, file No. 2017-000072. Available at : <http://historico.tsj.gob.ve/decisiones/tplen/junio/200605-45-28617-2017-2017-000072.HTML>

new patterns of repression have emerged²⁷⁷ including the preventing the entry of humanitarian aid²⁷⁸ thereby creating a complex humanitarian emergency.

The patterns of systematic and generalized persecution as a crime against humanity identified in the previous OAS report include: a) threats and intimidation; b) the politicization of justice and the judicialization of politics; c) illegal and arbitrary dismissal of mayors; d) the disqualifications to be elected to public office; e) attacks on free expression; f) illegal searches; g) violent repression and excessive use of force; h) the persecution of children and adolescents; i) the cancellation of passports; j) the persecuted who were forced into exile; and k) the political asylum.²⁷⁹

Likewise, the Panel determined that “(...) the magnitude of political persecution has increased dramatically in recent years (from February 2014 to date). The crime of persecution for political reasons has been present in all the crimes against humanity reflected in this Report, and invoking the violations of the rights to life, personal liberty and personal integrity. The Panel also examined the violations of fundamental rights that were not analyzed as part of these crimes, namely: injuries, intimidation and detriment of the right to health and food due to the use of the humanitarian crisis as a weapon for political ends. The Panel considers that there is a reasonable basis to affirm that in Venezuela there are elements of the crime against humanity of persecution based on political motives, in accordance with the provisions of Article 7(1)(h) of the Rome Statute(...)”.

The Panel notes that the State of Venezuela including high level officials have used the arguments of an economic war to justify the differential treatment of those

²⁷⁶ Independent International Fact-finding mission on the Bolivarian Republic of Venezuela, Detailed findings of the independent international fact-finding Mission on the Bolivarian Republic of Venezuela: Crimes against humanity committed through the State’s intelligence services: structures and individuals involved in the implementation of the plan to repress opposition to the Government. A/HRC/51/CRP.3 20 September 2022

²⁷⁷ CEPAZ documented patterns of persecution in Venezuela. Available at: <https://www.youtube.com/watch?v=Ca3clLtkj7c> Accessed on 10/26/2020 at 06:10 pm. See also : CEPAZ: Political Persecution in times of Pandemic. <https://www.civilisac.org/informes/cepaz-persecucion-politica-en-tiempos-de-pandemia>

²⁷⁸ Human Rights Watch: Venezuela needs urgent humanitarian aid to combat Covid-19. The scarcity of water in hospitals aggravates the risk for the country and the region. Available at: <https://www.hrw.org/es/news/2020/05/26/venezuela-necesita-ayuda-humanitaria-urgente-para-combat-la-covid-19> . Retrieved 10/31/2020 at 12:15 pm.

²⁷⁹ 1) Organization of American States. General Secretariat. 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

persecuted referring to them as “squalid”, “fascists”, “class enemies”, “enemies of the state”, “bourgeois”, “rich”, “traitors”, “conspirators”, “ultra-rightists”, “stateless”, “oligarchs”, “sifrinós”, “pelucones” going as far as using denigrating terms and insults such as “stupid”, “imbeciles”, “hypocrites”, “demons”, “worms”, “parasites”, etc.

On the basis of the current legal framework available for accountability in Venezuela, the Panel considers that achieving domestic justice for the crime of persecution is not possible since persecution is neither defined as an offense in the Venezuelan Penal Code, nor is it in any of the existing special criminal laws²⁸⁰. While the absence of the same qualification of the crime is not in and of itself a barrier to justice, failing to criminalize the course of conduct at all in any form, that is alleged to have occurred on such a scale, points to both an unwillingness to punish the previous crimes and prevent ongoing criminal conduct of this nature.

3.2.3 The Due Obedience Doctrine

The Panel wishes to highlight that a key hurdle to accountability for crimes against humanity alleged to have been committed on such a scale by state actors on instruction of high-level state officials including members of the military remains the existing law exempting members of the military for following orders. In this regard, the Panel refers to the Article 397 (1) of the COJUMI which reads:

Exemption from penalty:

1. Whoever acts in compliance with obedience due to a superior or in legitimate exercise of a right, authority, office or position.

This law which stems from the previous version of the COJUMI was not amended as part of judicial reform and remains a critical issue shielding alleged perpetrators in the context of manifestly unlawful orders to commit crimes against humanity against civilians.

As historically recognized by customary international law, the doctrine of due obedience does create a legal basis for exoneration from liability but rather generates liability for jus cogens crimes including crimes against humanity. Accordingly, the Panel considers that this provision attempts to shield perpetrators from liability and indicates a lack of

²⁸⁰ FERNANDEZ, Fernando M.: Crimes, felonies and misdemeanors in force in Venezuela. Editorial LIVROSCA. Caracas, 2003.

genuine willingness to investigate and prosecute alleged perpetrators from the military.

3.2.4 The Criminalization of Military Disobedience

The Panel wishes to express grave concern, in the context of the ongoing crimes alleged to have been perpetrated by members of the military with regards to the current Venezuelan legal framework which criminalizes the non-execution of an order by the military as an offense of strict liability, which does not require the technical assessment of the intent or context of the refusal. Article 519 of the COJUMI reads:

A person commits the crime of disobedience who, without expressly refusing to comply with an order of the service, fails to execute it.

Military disobedience is punishable by penalties ranging from 3 months to 16 years in prison according to COJUMI.²⁸¹

4. The Lack of Willingness to Hold Perpetrators Accountable

The Inter-American Commission warned in 2017 that in Venezuela there was “a situation of inaction and lack of diligence of justice operators regarding human rights violations.”²⁸² It further stated that “crucial that the excesses committed by agents of the security forces not go unpunished.”²⁸³

In this regard, the Panel condemns the systematic failure of the State of Venezuela to investigate and prosecute alleged high and mid-level perpetrators denounced by victims

²⁸¹ Thus, the COJUMI typifies disobedience as a crime and punishes it with severe penalties of up to 16 years in prison at its maximum limit and with aggravating circumstances. SECTION III. Of Disobedience. Articles 519 to 522. ARTICLE 519: A crime of disobedience is committed by anyone who, without expressly refusing to comply with a service order, fails to execute it. ARTICLE 520: If the disobedience had caused damage or disturbance in the service, it will be punished with imprisonment from one to two years; and if this crime is committed in front of the enemy, it will be punished with imprisonment from two to six years. When the disobedience has not caused damage or disturbance in the service, it will be punished with three to six months of arrest. ARTICLE 521: The prison sentence of eight to sixteen years will be applied when the disobedience has been the cause: 1.- Of having failed a war operation. 2.- Of the loss or defeat of forces of the Armed Forces. 3.- Of the delivery of a stronghold. 4.- Of the apprehension, destruction or loss in time of war of ships, boats, convoys of wounded, weapons, ammunition or provisions and other elements and supplies of war, or any other analogous asset. If the destruction or loss referred to in this ordinal occurs in peacetime, the same penalty will be applied, reduced by up to half.

²⁸² IACHR, Democratic Institutionalism, Rule of Law and Human Rights in Venezuela, para. 262.

²⁸³ IACHR Democratic Institutionalism, Rule of Law and Human Rights in Venezuela. para. 264.

and civil society who are state actors and who continue to occupy leading positions in the executive, legislative and judicial branch. While the Panel has received limited information about the investigations and prosecutions of alleged perpetrators initiated by the State of Venezuela, it has not been able to fully analyse these cases due to the absence of supporting material as pointed out by the ICC Prosecutor in his submission to the chamber in response to the 16 April 2022 letter from the State of Venezuela.²⁸⁴

Nonetheless, in the view of the Panel, considering that the alleged crimes have been committed since 2014, over 8 years ago, and that they are alleged to be ongoing ²⁸⁵ the State of Venezuela has failed to fulfill its obligations as a primary state exercising jurisdiction with regards to alleged high level perpetrators.

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, including the right to defence, the Panel wishes to refer to two examples of relevance to this legal analysis, which help to inform its findings and recommendations about the willingness and ability of the State of Venezuela to bring accountability to alleged perpetrators:

a) Diosdado Cabello, the co-chair of the committee to implement the judicial revolution, is the current President of the National Constitutional Assembly, and has served as the Vice-President of the PSUV since December 2011. Through his position as a member of the Venezuelan Armed Forces and his role as the main presentator of the weekly state sponsored TV program *Con el Mazo Dando* on the TV channel *Venezolana de Television*, he has had a lead role in levelling accusation against the opposition and individuals perceived as political dissenters who have allegedly been attacked as part of the state policy to commit crimes against humanity. As such he is considered to be one of the individuals who could bear responsibility under the ICC jurisdiction as direct and co-perpetrator of crimes against humanity of arbitrary detention, torture, cruel, inhuman, or degrading treatment, and even sexual and gender-based violence, through orders given to SEBIN given the fact that he gave

²⁸⁴ Cf. OTP, Notification of the Bolivarian Republic of Venezuela's deferral request under article 18(2) of the Rome Statute. 20 April 2022, para. 7

²⁸⁵ Independent International Fact-finding mission on the Bolivarian Republic of Venezuela, Detailed findings of the independent international fact-finding Mission on the Bolivarian Republic of Venezuela: Crimes against humanity committed through the State's intelligence services: structures and individuals involved in the implementation of the plan to repress opposition to the Government. A/HRC/51/CRP.3 20 September 2022

orders directly to SEBIN Director General González López, and that the Director de facto reported to him;²⁸⁶ and

b) Callixto Ortega, the current head of the diplomatic mission of Venezuela before the International Criminal Court and other international organizations and tribunals in the Netherlands, has been since December 2015 a Judge of the Constitutional Chamber and the Plenary Chamber of the Supreme Court and in this capacity is alleged to have legitimized the crimes against humanity of arbitrary detentions through judicial means including several human rights activist and opposition members, such as Gilber Caro and Juan Requesens. In those cases, the absolute absence of due motivation for the denial of requests for pre-trial of merit that is accompanied by the continuation of criminal proceedings against public officials stands out. On the other hand, there is no evidence of a previous analysis of preliminary trial of merit for cases such as those of Vicencio Scarano, Daniel Ceballos and David Smolansky, who at the time were governors of different localities in Venezuela, which allowed them to enjoy this constitutional guarantee, a situation that also ended their exile; which amounts to clear political persecution in favor of the PSUV.

The Panel considers that the promotion of an individual who bore command responsibility as a high-ranking member of the Venezuelan armed forces such as Diosdado Cabello, who was at the center of several allegations of arbitrary detention, torture, cruel, inhuman, or degrading treatment, and even sexual and gender-based violence, through orders given to SEBIN given the fact that he passed orders directly to SEBIN Director General González López, and that the Director unofficially reported to him to the center of the enforcement of an institutional reform aimed at bringing accountability is a clear indication of the lack of political will to investigate and prosecute, if necessary, such individuals as well as the absence of a willingness to prevent the ongoing commission of the crimes.

Similarly, placing an individual accused of legitimizing arbitrary detentions through judicial means such as Callixto Ortega, in a prestigious and protected position pursuant to diplomatic immunity at the center of the State of Venezuela's relationship with the ICC, also sets the tone for continued impunity for Venezuelan victims.

²⁸⁶ Fact Finding Mission on the Bolivarian Republic of Venezuela, Crimes against humanity committed through the State's intelligence services: structures and individuals involved in the implementation of the plan to repress opposition to the Government A/HRC/51/CRP.3. 20 September 2022, para 271.

The Panel's position is that the ICC Prosecutor should assess not only the institutional reforms of the State of Venezuela and its efforts to investigate and prosecute some low and mid-level perpetrators, but consider its actions wholistically, in order to evaluate the state's willingness and ability to act as primary state as well as prevent ongoing crimes and obstruction of justice efforts.

5. Findings and Recommendations

The Panel finds, on the facts analyzed, that the so-called judicial reform, that was enacted in haste, without appropriate due diligence, drafting expertise and consultation with the stakeholders and members of the National Assembly as required by the Constitution of Venezuela, is largely cosmetic in nature, in a number of instances includes amendments blatantly in violation of the Constitution and fails to: i) reinforce the capacity of the existing judicial system to investigate and prosecute alleged perpetrators, ii) create effective and viable accountability mechanisms to bring alleged perpetrators to justice, and iii) establish appropriate remedies for victims, demonstrating the lack of genuine political will to address accountability at all levels within the state.

When considered in its totality, the institutional reform also fails to effectively prevent the further commission of crimes by "Venezuela's military and civilian State intelligence agencies (that) function as well-coordinated and effective structures in the implementation of a plan orchestrated at the highest levels of the government to repress dissent through crimes against humanity" as reported by the latest report of the UN Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela (FFMV). The Panel wishes to express grave concern, in the context of the ongoing crimes, with regards to the current Venezuelan legal framework which continues enshrine the doctrine of due obedience and to criminalize the non-execution of an order by the military as an offence of strict liability in violation of basic principles of customary international law.

The Panel concluded that the scope of the judicial reform which avoids addressing the structural mechanism of the preliminary trial of merit – a screening process to avoid false and abusive prosecutions - actively shields alleged high-level perpetrators who are at the center of the allegations of direct perpetration and a policy of indirect perpetration of crimes against humanity from facing investigation and prosecutions. This law, in effect, places the President of the Republic, the Executive Vice President of the Republic, Ministers, Attorney General, Members of the Military High Command, Governors of the States, Deputies of the National Assembly, Magistrates of the Supreme Court of Justice,

Comptroller General of the Republic, Attorney General of the Republic, Ombudsman, Rectors of the National Electoral Council, and Heads of Diplomatic Missions of the Republic beyond the reach of the law as a result of the monopoly of the Attorney General of the Republic (appointed by the National Assembly, in turn under the control of the Executive that currently holds the majority) to trigger or dismiss criminal proceedings against these high-level perpetrators and the monopoly of the Supreme Court – itself under the de facto control of the Executive- to screen such criminal allegations. The Panel is of the opinion that this constitutes a blatant failure on the part of the State of Venezuela to show genuine efforts in addressing accountability for the alleged crimes perpetrated. Put simply, the current legal framework of the State of Venezuela is ensuring that no criminal allegations against these high level -perpetrators will ever be brought thereby ensuring that, even in the best-case scenario, only mid and low level perpetrators will face justice before domestic courts.

The institutional reform also entirely fails to prevent and punish the crime of persecution, alleged to have been committed on a large scale since 2014 by simply failing to define and criminalize the offence. As one of the main crimes against humanity under the ICC's jurisdiction alleged to have been committed, the absence of criminalizing provision creates an inevitable gap in the ability of the State of Venezuela to effectively engage in accountability as a primary state.

Considering the specific amendments enacted in this reform, the Panel is of the view that the **Partial Reform Law of the Organic Law of the Supreme Court of Justice**, has had a negative impact on the independence and impartiality of the judiciary, deteriorating rather than improving its ability to address accountability of alleged perpetrators by:

- a) reducing the number of Supreme Court Judges from 32 to 20;
- b) allowing their re-election for the re-appointment of Judges for another 12 years in violation of the Constitution; and
- c) further entrenches the control of the executive over the Judiciary Nomination Committee that appoint Supreme Court Judges.

As put simply by an expert witness interviewed by the Panel: "(...) they took out perhaps those (Supreme Court Judges) who were less loyal or somehow were uncomfortable and left those who are purely loyal. (...) In the 2024, Venezuela should have Presidential elections [...] the Judges elected now for 12 years, will provide 10 more years of impunity, if they (the current executive) lose the 2024 elections."

With regards, the **reform of the Organic Code of Military Justice** which terminates

the prosecution of civilians by military jurisdictions, the Panel has found that the law falls short of addressing the systemic militarization of the justice in Venezuela that has been used by the Government of Venezuela as a tool to target political opposition, dissidents, and perceived dissenters for persecution since 2014. The law offers no proposal to address the violations and harm suffered by the hundreds²⁸⁷ of individuals who, since at least 2014, have been convicted, and have served or are still serving sentences, as a result of cases initiated and tried by the military jurisdiction in violation of the prohibition of prohibition of civilians to be tried in military courts²⁸⁸ and, in general, the right to fair trial and due process²⁸⁹ as provided for in the Venezuelan Constitution and the international standards of human rights. The law also blatantly fails to address the liability of the military officials who previously acted as judges as part of these military trials of civilians that were conducted in violation of the Constitution of Venezuela. Moreover, the assignment of the ongoing cases relating to civilians to the ordinary criminal courts while maintaining the military charges applied in these cases generates some significant procedural and substantive irregularities such as the failure to amend the military charges that are now as a result being tried by judges from civil jurisdiction.

The Panel considers that the **Organic Law for the Protection of Personal Freedom and Safety** which creates specialized amparo (habeas corpus) courts to address the numerous cases of alleged enforced disappearance since 2014 removes the competence of the Constitutional court seeks to substitute it by specialized judges which are fewer in numbers in each of the jurisdictional divisions in Venezuela, creating more intermediate courts of review before the aggrieved party can enforce the application of constitutional guarantees before a Constitutional Court and additional delays on matters in which time is of the essence. This law also contains a transitory provision which expressly empowers

²⁸⁷ The IACHR cited figures of at least 757 civilians are believed to have been dealt with by military courts over the period April 1–October 31, 2017. The organization Foro Penal has further documented that 848 civilians were tried by military criminal courts over the period January 1, 2014–August 31, 2019. See, IACHR, Press release: IACHR Welcomes Reform of Venezuela’s Military Criminal Court System, Calls for Effective and Immediate Implementation. 14 October 2021. Available at: https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/273.asp

²⁸⁸ Constitution of 1999, Article 261.

Article 261 reads:

Military criminal jurisdiction is an integral part of the Judicial Power, and its judges shall be selected by a competitive process. Its sphere of competence, organization and modes of operation shall be governed by the accusatory system and in accordance with the Organic Code of Military Justice. The commission of common crimes, human rights violations and violations of humanity rights shall be judged by the courts of the ordinary jurisdiction. Military courts jurisdiction is limited to offenses of a military nature

the Supreme Court of Justice in the Plenary Chamber to appoint temporary judges raising concerns of independence and impartiality.

While the Panel takes a positive view of the **Law for the Protection of Victims, Witnesses and Other Subjects** which seeks to expand the scope of responsibilities of the “Office of Attention to Victims in Human Rights Matters” to replace the Public Prosecutor’s Office, this office exercises its mandate in the legal vacuum of the absence of a provision to establish the victims’ right to reparation, and the absence of measures for the security and required psychological support to victims. The Panel notes in this regard that the fear of repercussions as experienced by victims is to be reasonably expected in a situation where the state officials are the alleged perpetrators as part of a state-wide policy to commit widespread and systematic crimes against humanity. These security concerns of victims are exacerbated by the fact that there have been little to no accountability efforts against the alleged high level state perpetrators who are still in the same positions of authority since the alleged state-wide policy has been implemented for over 8 years starting in 2014.

289 Constitution of 1999, Article 49

Article 49 reads:

All judicial and administrative actions shall be subject to due process, therefore:

- 1. Legal assistance and defense are inviolable rights at all stages and levels during the investigation and proceeding. Every person has the right to be notified of the charges for which he or she is being investigated, to have access to the evidence and to be afforded the necessary time and means to conduct his or her defense. Any evidence obtained in violation of due process shall be null and void. Any person declared guilty shall have the right to appeal, except in the cases established by this Constitution and by the law.*
- 2. Any person shall be presumed innocent until proven otherwise.*
- 3. Every person has the right to be heard in proceedings of any kind, with all due guarantees and within such reasonable time limit as may be legally detained, by a competent, independent and impartial court established in advance. Anyone who does not speak Spanish or is unable to communicate verbally is entitled to an interpreter.*
- 4. Every person has the right to be judged by his or her natural judges of ordinary or special competence, with the guarantees established in this Constitution and by law. No person shall be put on trial without knowing the identity of the party judging him or her, nor be adjudged by exceptional courts or commissions created for such purpose.*
- 5. No person shall be required to confess guilt or testify against himself or herself or his or her spouse or partner, or any other relative within the fourth degree of consanguinity or the second degree of affinity. A confession shall be valid only if given without coercion of any kind.*
- 6. No person shall be punished for acts or omissions not defined under preexisting laws as a crime, offense or infraction*
- 7. No person shall be placed on trial based on the same facts for which such person has been judged previously.*
- 8. Every person shall request from the State the restoration or remediation of a legal situation adversely affected by unwarranted judicial errors, and unjustified delay or omissions. The foregoing is without prejudice to the right of the individual to seek to hold the magistrate or judge personally liable, and that of the State to take action against the same*

While the Panel recognizes the positive amendment of **the Organic Code of Criminal Procedure**, which entitled victims to access to the case file, even when they are not part of the case, as well as the right to appoint a representative in the course of trial, it wishes to express concern with regards to the reported lack of implementation of this provision. Despite the newly enacted **Law on Transparency and Access to Information of Public Interest** **Several victims**, civil society actors and victim have confirmed the complete lack of transparency with regards to the files of previous and ongoing judicial proceedings, whether concerning cases in which they were subjected to alleged arbitrary detention, in cases in which they have denounced violations of their Constitutional rights and/or other alleged abuses amounting to crimes against humanity or indeed in cases where the State of Venezuela initiated criminal prosecutions against alleged perpetrators. Some victims have consistently reported that state officials working in the justice sector were unlawfully extorting money from victims in exchange for court records.

The **Law of Partial Reform of the Decree with Range, Value and Force of Law of the Statute of the Police Function** which creates a National Human Rights Commission as an administrative unit with limited mandate in charge of receiving, processing disciplinary investigation of complaints of human rights violations committed by the Police, raises issues of independence and impartiality in the view of the Panel, due to its structural dependence on the same authority of the executive branch as the Police – namely the Ministry of Popular Power for Internal Relations, Justice and Peace. This is particularly relevant in this specific situation since some of the alleged violations perpetrated by the Bolivarian National Police Corps have been alleged to have been ordered by the executive branch of the State of Venezuela through the Minister of Popular Power for Internal Relations, Justice and Peace including in the course of the Zamora Strategic plan to repress peaceful protests through the use of force.

In the same vein, the Panel is concerned that in light of the broader context of the reported inefficiency of the judicial recourses to which the National Human Rights Commission defers to for criminal accountability - namely the Public Prosecutor's Office and the Ombudsman's Office (which have not been reformed), the National Human Rights Commission is of limited viability and effectiveness and is indicative of a deliberate attempt at shielding the Bolivarian National Police Corps through a toothless administrative mechanism that does not provide for the possibility of reparations for the victims of the violations.

The **Reform of the Organic Penitentiary Code** which renames some of the prisons most notorious for being locations where thousands of arbitrary detentions, tortures, sexual and gender based violence and persecution occurred, notably the SEBIN establishments in El Helicoide and the DGCIM in Boleíta, fails to address the overcrowding, the detention conditions, the torture or the systemic extortion by prison guards or the operating issues

resulting from the parallel dual prison system including 45 jail facilities under the Ministry of the Penitentiary Service, approximately 500 pretrial detention spaces under various different reporting structures pursuant to a Presidential decree²⁹¹. Even though the law seeks to eliminate the margin of discretion that existed at the head of the penitentiary authorities that could result in a postponement of the release of a person deprived of liberty and establishes a maximum term of 3 years of pretrial detention, an expert witness E005, a human rights activist and lawyer who was interviewed by the Panel stated that explained that in his daily work as a litigation lawyer he has been able to personally verify that, in practice, in the great majority of cases of political prisoners nothing has changed, and that there are detainees who have remained, in detention in some cases for up to 7 years and counting deprived of liberty. E005 corroborated by other overview expert witnesses also confirmed that detainees who requested to be freed at the end of their sentence have had their requests summarily dismissed by the courts, without any justification, in violation of the Venezuelan Constitution²⁹². Furthermore, the creation of a security and custody body that will be civil in nature, is considered by the Panel to be cosmetic since the Fact-Finding Mission described as at September 2022 that “witnesses reported that SEBIN continues holding de facto control over cases concerning people detained due to their real or perceived affiliation to Government opposition or because of their dissent.”²⁹³

Mindful of the fact that the willingness and ability of the State of Venezuela to hold alleged perpetrators accountable should be assessed wholistically considering the State’s actions beyond the institutional reforms enacted, the Panel has also reviewed the large scale corruption that impacts the capacity of the State of Venezuela to legislate and implement genuine and comprehensive domestic accountability efforts. In this respect, the Law for the Reform of the Anti-Corruption Law enacted, according to the fight grand corruption falls short since it does not provide for an asset recovery mechanisms and fails to implement basic standards of compliance against the laundering of assets coming from corruption.

²⁹¹ Presidential decree No 4.430 of 4 February 2021, which creates the Sectoral Vice Presidency of Security and Peace which controls the Preventive Detention Centers with the Ministry of Penitentiary Affairs.

²⁹² Interview I005

²⁹³ Fact-finding Mission on the Bolivarian Republic of Venezuela, Crimes against humanity committed through the State’s intelligence services: structures and individuals involved in the implementation of the plan to repress opposition to the Government. A/HRC/51/CRP.3. 20 September 2022, para. 319.

Over and beyond the so-called judicial revolution, the Panel has also found that the State of Venezuela has systematically failed to demonstrate a willingness to engage in the investigation and prosecution of mid and high-level perpetrators. While some cases are reported by the State of Venezuela to have been initiated against some alleged perpetrators, the deliberate lack of transparency about these cases as well as the decisive approach of the State of Venezuela not to investigate and in some cases to promote high level individuals alleged to have committed crimes demonstrates a clear intent to perpetuate impunity and shield them from prosecution.

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 and the right to defense, it is of the view that the promotion of an individual who potentially bears direct and indirect responsibility under the ICC jurisdiction for crimes against humanity to high-ranking positions within the State of Venezuela where they benefit from additional levels of protection from investigations and prosecutions is reprehensible and demonstrates the willingness of the State to perpetuate impunity for these crimes and those who acted under their command.

The Panel in this respect refers to merely two individuals who are directly involved in the institutional reform and the management of the relationship of the State of Venezuela with the ICC namely:

a) Diosdado Cabello, the co-chair of the committee to implement the judicial revolution, is the current President of the National Constitutional Assembly, and has served as the Vice-President of the PSUV since December 2011. Through his position as a member of the Venezuelan Armed Forces and his role as the main presentator of the weekly state sponsored TV program *Con el Mazo Dando* on the TV channel *Venezolana de Television*, he has had a lead role in levelling accusation against the opposition and individuals perceived as political dissenters who have allegedly been attacked as part of the state policy to commit crimes against humanity. As such he is considered to be one of the individuals who could bear responsibility under the ICC jurisdiction as direct and co-perpetrator of crimes against humanity of arbitrary detention, torture, cruel, inhuman, or degrading treatment, and even sexual and gender-based violence, through orders given to SEBIN given the fact that he gave orders directly to SEBIN Director General González López, and that the Director de facto reported to him²⁹⁵; and

b) Callixto Ortega, currently head of the diplomatic mission of Venezuela before the International Criminal Court and other international organizations and tribunals in the Netherlands, has been since December 2015 a Judge of the Constitutional Chamber and the Plenary Chamber of the Supreme Court. In this capacity is alleged to have legitimized the crimes against humanity of arbitrary detentions through judicial means including several human rights activist and opposition members, such as Gilber Caro and Juan Requesens.

Considering the above, the Panel unanimously recommends the following:

1. To the ICC Prosecutor:

a) The Panel urges the ICC Prosecutor to not focus “mainly towards the investigation of the alleged participation of officers of the Bolivarian National Guard, the Bolivarian National Police, the Bolivarian National Intelligence Service, the General Directorate of the Military Counterintelligence and the Scientific Criminal Investigation and Criminalistics Body”²⁹⁶ but also on high level perpetrators, who according to the scope of this report are beyond the purview of the domestic jurisdiction for accountability both due to a lack of willingness and ability to end impunity. In this respect, the Panel emphasizes the importance of the ongoing collection of crime-based evidence by the ICC Prosecutor to identify those individuals who are the most responsible in line with the ICC Policy on the selection of cases in parallel with the complementarity assessment.

b) The Panel, highlighting the critical role that domestic civil society actors have been playing in documenting crimes and exhausting domestic remedies, recommends that the ICC Prosecutor publishes the list of the issues under consideration by the ICC Prosecutor and that is now, following communication with the State of Venezuela, being investigated by the State itself to enable the civil society actors to keep monitoring the ‘targeted repression’ by military and intelligence agencies²⁹⁷. In this respect, the Panel also recommends that the ICC Prosecutor engages more consistently with the relevant local NGOs, civil society actors and victims, several of

²⁹⁵ Fact Finding Mission on the Bolivarian Republic of Venezuela, Crimes against humanity committed through the State’s intelligence services: structures and individuals involved in the implementation of the plan to repress opposition to the Government A/HRC/51/CRP.3. 20 September 2022, para 271.

²⁹⁶ https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_03184.PDF

which have reported receiving little to no information on the progress of the work of the ICC Prosecutor's Office.

c) The Panel expresses its concern that, in the course of the complementarity process and the communications between the ICC Prosecutor and the State of Venezuela, the Office of the Prosecutor has shared information relating to alleged victims and the circumstances of the events with the State of Venezuela which may in some cases lead to the identification of the victims. While this process may be appropriate with other circumstances, the Panel highlights that, in light of the pervasive climate of victim intimidation in Venezuela, the policy of censorship and repression of the victims, civil society actors, journalists and legal practitioners as part of a cover up of the information implemented by the military and intelligence apparatus of the State of Venezuela²⁹⁸, the current Venezuelan legal framework does not provide sufficient guarantees, support, protective measures or incentives for victims or experts to safely present evidence to the Office of the Prosecutor of the ICC.

d) The Panel respectfully recommends that the ICC Prosecutor reconsider the "support and active engagement" of his Office with the State of Venezuela in establishing an effective administration of justice as per the MoU, in light of the findings in this report and the latest report of the FFM which clearly point to the lack of political willingness and genuine efforts on the part of the State of Venezuela to engage in meaningful institutional reforms. While the Panel understands the complementary nature of the ICC's jurisdiction and the importance of delivering justice at home, the Panel is mindful that crimes against humanity under the ICC jurisdiction continue to be committed on a large scale, that impunity remains the rule rather than the exception, and that victims remain without remedies in a deteriorating humanitarian situation where repression is implemented by the judiciary, executive and military alike. As a result, the Panel is of the view that, in the absence of decisive steps from the ICC Prosecutor to initiate prosecutions against, at least some of those most responsible,

²⁹⁷ Independent International Fact-finding mission on the Bolivarian Republic of Venezuela, Detailed findings of the independent international fact-finding Mission on the Bolivarian Republic of Venezuela: Crimes against humanity committed through the State's intelligence services: structures and individuals involved in the implementation of the plan to repress opposition to the Government. A/HRC/51/CRP.3 20 September 2022

²⁹⁸ Independent International Fact-finding mission on the Bolivarian Republic of Venezuela, Detailed findings of the independent international fact-finding Mission on the Bolivarian Republic of Venezuela: Crimes against humanity committed through the State's intelligence services: structures and individuals involved in the implementation of the plan to repress opposition to the Government. A/HRC/51/CRP.3 20 September 2022

and force the hand of the State to implement effective mechanisms for accountability domestically, the State of Venezuela is likely to maintain the *status quo* and merely use the positive complementarity process to buy time, and create safeguards to avoid bringing high-level perpetrators to justice within the institutional reform process, while maintaining political dominance through persecution of dissidents.

e) The Panel also considers 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,²⁹⁹ 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 to cover up the crimes in determining whether and against who to trigger prosecutions.

2. 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.

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;

²⁹⁹ Independent International Fact-finding mission on the Bolivarian Republic of Venezuela, Report of the independent international fact-finding mission on the Bolivarian Republic of Venezuela, A/HRC/48/69, 16 September 2021, Chapter III

d) The Panel is of the view that the UN member states should table and 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.

3. 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 considers that the Venezuelan NGOs, civil society actors and victims should continue their efforts in engaging with the ICC Prosecutor and increase their lobbying capacity with the ICC state parties supporting accountability in Venezuela to prioritise the situation before the ICC Prosecutor.

4. To the State of Venezuela:

a) The Panel urges the State of Venezuela to immediately cease its acts of repression and commission of further crimes against humanity against the civilian population of Venezuela.

b) The Panel urges 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.

c) The Panel urges the State of Venezuela to engage in meaningful institutional reforms and create effective domestic accountability mechanisms for perpetrators at all the levels of the state apparatus as well as avenues for reparations for victims to give effect to the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims.

d) The Panel urges the State of Venezuela to initiate investigations and prosecutions of state perpetrators, in particular mid and high-level perpetrators of crimes against

humanity under the ICC jurisdiction.

e) The Panel urges the State of Venezuela to criminalize the crime against humanity of persecution which has been alleged to have been committed and continue to be committed on a large scale against political opposition, dissidents, and perceived dissenters.

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



Annex I

Official translation of reformed laws

1. ORGANIC LAW OF AMENDMENT OF THE ORGANIC LAW OF THE SUPREME TRIBUNAL OF JUSTICE

THE NATIONAL ASSEMBLY OF THE BOLIVARIAN REPUBLIC OF VENEZUELA
Decrees the following,
ORGANIC LAW OF AMENDMENT OF THE ORGANIC LAW OF
THE SUPREME TRIBUNAL OF JUSTICE

Article 1. Article 8 is amended, being drafted as follows:

Integration

Article 8. The Constitutional Chamber shall be integrated by five Magistrates and the other Chambers by three Magistrates.

Each of the Chambers shall have one Secretary and one Bailiff.

Article 2. A paragraph is incorporated to article 25, being drafted as follows

Article 25. Are competences of the Supreme Tribunal of Justice (...)

The Constitutional Chamber's power in its activity of knowing of and deciding its competence's issues does not comprise the modification of the laws' contents. In all events, in safekeeping legal security, if the judicial interpretation arises a legislative modification, the Chamber shall so refer it, in order that the National Assembly, using its constitutional powers, does make the modifications or reforms being required.

Article 3. Number 6 of article 36 is reformed, being drafted as follows:

Administrative attributions

Article 36. The Supreme Tribunal of Justice has the following attributions:

6. Appointing the judges of the Republic and taking their oaths, in conformity with provisions of article 255 of the Constitution of the Bolivarian Republic of Venezuela.

Article 4. Article 38 is reformed, being drafted as follows:

Designation period and procedure

Article 38. The Supreme Tribunal of Justice's Magistrates shall be designated by the National Assembly, for a sole period of twelve years, by means of the following procedure: When the second presentation introduced by the Citizen Power, in conformity with article 264 of the Constitution of the Bolivarian Republic of Venezuela and with this Law, the National Assembly shall make the definite selection with the favorable vote of two thirds (2/3) of its members, in plenary session having been called, at least, with three business days of anticipation. In the event that during three consecutive sessions there should not have been an agreement for the Magistrates' designation, a fourth session shall be called, at which they shall be designated by a simple majority of the National Assembly's members.

Article 5. Article 45 is reformed, being drafted as follows:

Designation of alternates

Article 45. The Supreme Tribunal of Justices Magistrates alternates shall be designated by the National Assembly for a sole period of twelve years, by means of the following procedure: When the second presentation introduced by the Citizen Power, in conformity with article 264 of the Constitution of the Bolivarian Republic of Venezuela and with this Law, the National Assembly shall make the definite selection with the favorable vote of two thirds (2/3) of its members, in plenary session having been called, at least, with three business days of anticipation. In the event that during three consecutive sessions there should not have been an agreement for the Magistrates alternates' designation, a fourth session shall be called, at which they shall be designated by a simple majority of the National Assembly's members. The alternate Magistrates shall comply with the eligibility requirements set by article 263 of the Constitution of the Bolivarian Republic of Venezuela and this Law

The alternates shall render oath before the National Assembly in accordance with what this Law provides.

Under no circumstances co-judges may be appointed to shape the Chambers, nor to cover the Magistrates; accidental absences.

Nature, seat, internal regulations

Article 64. The Committee of Judicial Nominations is and advisory body for the selection of candidates to become Magistrates of the Supreme Tribunal of Justice, Inspectors of General Inspectors of Courts and Director of the National School of Magistrature. It shall also advise the judicial electoral colleges for the selection of disciplinary competence. Its seat shall be at the National Assembly.

The Judicial Nominations Committee shall adopt its internal organization and operation regulations.

Article 7. Article 66 is reformed, drafted as follows:

The Judicial Nominations Committees' Operation

Article 65. The Judicial Nominations Committee is integrated by twenty-one (21) members designated by the National Assembly's plenary session with two third (2/3) parts of its members, and of which eleven (11) are Deputies and ten (10) shall be nominated by the other sectors of society. To such effect, the National Assembly shall appoint the Preliminary Commission integrated by the eleven (11) Deputies, which shall have to make a call of those nominated by society, one that will be subject to wide divulgation by all available means, including its publication at the National Assembly's web page, and, at least, three (3) newspapers with national circulation.

The Preliminary Commission shall take care of receiving, pre-selecting and sending to the National Assembly's plenary, by means of a public and transparent process, those nominated by the society's different sectors in order to integrate the Judicial Nominations Committee, trying to ensure parity of gender and participation of groups who could be discriminated, marginalized or being vulnerable. Once said Committee should have been integrated, the members of the Preliminary become Commission part of it.

The Judicial Nominations Committee shall operate during a two year's period.

Article 8. Article 69 is reformed, being drafted as follows:

Quorum, deliberations and decisions

Article 69. The Judicial Nominations Committee shall install itself on the date following its members' designation. It shall elect, by absolute majority of its integration, the President and Vice President, and out of it the Secretary. For its deliberations it shall require the presence of its members' absolute majority, and it shall adopt its decisions with the favorable vote of the majority of those present.

Article 9. Article 81 is reformed, being drafted as follows:

Inspector General of Tribunals Office

Article 81. Inspector General of Tribunals shall have as its essential function the inspection and vigilance of the Republic's courts, in conformity with the law, in accordance with the policies that may be adopted by the Full Chamber.

Inspector General of Tribunals shall comply with the requirements of eligibility set in order to designate the Supreme Tribunal of Justice, for a period of seven (7) years. The Supreme Tribunal of Justice's Magistrates, under no circumstance may not hold such Office.

The Inspector General of Tribunals shall comply with the requirements of eligibility established for the designation of the Supreme Tribunal of Justice's Magistrates, in conformity with what is provided by article 263 of the Constitution of the Bolivarian Republic of Venezuela and by this Law.

Article 10. Article 83 is reformed, being drafted as follows:

National School of Magistrature

Article 83. The National School of Magistrature is the center of formation of judges, as well as of the other servers of Judicial Power, in accordance with the policies that may be adopted in the Full Chamber.

The National School of the Magistrature shall comply with the essential and in-delegable of the judges' professionalization, for which reason it shall keep close relations with the universities and other centers of national and international academic formation.

The National School of the Magistrate's Director shall comply with the requirements of eligibility established for the designation of the Supreme Tribunal of Justice's Magistrates, in conformity with what is provided by article 263 of the Constitution of the Bolivarian Republic of Venezuela and by this Law

The destitution of the National School of the Magistrature shall be made with the same procedure established for the Supreme Tribunal of Justice's Magistrates.

Article 11. Article 126 is reformed, being drafted as follows:

Article 126. The Official Gazette of the Bolivarian Republic of Venezuela is created as an official body divulging the accords and resolutions of the Supreme Tribunal of Justice, as well as the notifications and postings in the processes before the Tribunal, of which publication is ordered by this Law.

The publications included in the Official Gazette of the Bolivarian Republic of Venezuela shall have the force of a public document, without prejudice to the fact that the therein contained may enjoy authenticity as from their publication in the Supreme Tribunal of Justice's web page or in the file by the correspondent Chamber's Secretariat.

The Official Gazette of the Bolivarian Republic of Venezuela shall prioritize its electronic format and the Supreme Tribunal of Justice shall warrant its distribution throughout all the national territory.

Article 12. The first final provision is reformed, being drafted as follows:

First. The Supreme Tribunal of Justice, within the one hundred-twenty days following this Law's coming into force, shall proceed to the reorganization and restructuring of its structure and internal operating rules, in conformity with what this instrument provides.

Article 13. A second final provision is incorporated, reading as follows:

Second. The National Assembly shall proceed to designate the twenty Magistrates and their alternates, in conformity with what this Law establishes. The Supreme Tribunal of Justices' who on the date of this Law coming in force should not have culminated the period for which they were designated, may a again be nominated in order to perform those offices.

Article 14. The Tax Unit, as value of reference for the determination of the competence and fines provided by 26, 86, 121, 122 and 123, is being substituted by the official rate of exchange of the greater value currency, established by the Central Bank of Venezuela.

Article 15. This Law shall become in force as from its publication in the Official Gazette of the Bolivarian Republic of Venezuela.

Article 16. Be this law printed with the approved reform and in a single text, the gender language is to be applied in the corresponding articles, epigraphs are to be added to articles not having them and the numbering of articles and chapters, where corresponding, with the data of adoption and promulgation, in conformity with what is established by article 5 of the Law of Official Communications.

2. ORGANIC LAW OF PARTIAL REFORM OF THE ORGANIC CODE OF MILITARY JUSTICE

THE NATIONAL ASSEMBLY OF THE BOLIVARIAN REPUBLIC OF VENEZUELA

Decreases the following:

ORGANIC LAW OF PARTIAL REFORM OF THE ORGANIC CODE OF MILITARY JUSTICE

Article 1. Article 6 is modified, being drafted under the following terms:

Article 6. One may only true before the courts being competent in military criminal matters, the militaries under facts classified and punished under this Code, or military misdemeanors in conformity with what the laws governing the matter provide. It is not admitted to classify and punish under analogy or parity with the military crimes and misdemeanors.

No civilian may be tried before the courts with competence over military criminal matters. In the event of incurring into facts being provided, and sanctioned, by this Code, they shall be tried by ordinary courts.

Article 2. Article 7 is modified, being drafted under the following terms:

Article 7. The militaries incurring into military criminal liability, at wherever place where the infringement was committed, shall be tried and sanctioned in conformity with this Code

Article 3. Article 21 is modified, being drafted under the following terms:

Article 21. The National Bolivarian Armed Forces civil staff, in the event of incurring into. Article 4. Article 124 modified, being drafted under the following terms:

Article 124. They are subject to military jurisdiction:

1. Officers, specialists, individuals of troops or seamen, whatever their hierarchy, and the situation in which they find themselves.

2. Students of the military and naval schools of the Republic, for infractions not foreseen or punished in the regulations of said schools and punishable by the present Code and other military laws and regulations.

3. Those who are part of the Bolivarian National Armed Forces with military assimilation.

4. Those deprived of military liberty serving sentences in establishments subject to military authority.

Article 5. Article 128 is modified, being drafted under the following terms:

Article 128. When a punishable act has been committed by military personnel and civilians, as participating authors, they shall be tried in the ordinary criminal courts.

Article 6. A new transitory provision is added, being the wording as follows: The military criminal proceedings followed against civilians that are in progress for the date of entry into force of this Code shall be referred to the ordinary criminal courts, maintaining the validity of the procedural acts carried out up to that opportunity.

Article 7. This Law shall become in force as from its publication in the Official Gazette of the Bolivarian Republic of Venezuela.

Article 8. Be this law printed with the approved reform and in a single text, correct the numbering of articles and chapters where appropriate, with the data of sanction and promulgation, in conformity with the provisions of Article 5 of the Law of Official Publications.

3. ORGANIC LAW OF PROTECTION AND PERSONAL SAFETY

THE NATIONAL ASSEMBLY
OF THE BOLIVARIAN REPUBLIC OF VENEZUELA
211th 162nd 22nd

Decreases the following,

ORGANIC LAW OF PROTECTION AND PERSONAL SAFETY

Object

Article 1. This Law's object is that of warrant every person, without any discrimination, the protection, respect, enjoyment and practice of human rights and constitutional guarantees of freedom and personal safety, by means of constitutional protection plea, in accordance with the human rights' principles of inalienability, indivisibility, interdependence and progressiveness.

Right to protection of freedom and personal safety

Article 2. Every person has the right to be protected by the Courts as to its rights for freedom and personal safety, facing any fact, action or omission from the bodies and entities of National, State, Municipal Public Power, as well as from those of natural or legal persons, which imply a serious and imminent or violation of these rights.

The filing of the plea for protection of freedom and personal safety may not be affected, in any way, by the declaration of statement of exception or by the restriction of constitutional guaranties.

Principles

Article 3. The plea for protection of freedom and personal safety's procedure shall be governed by the principles of orality, publicity, free of charge, celerity and lack of formality, in conformity with provisions of the Bolivarian Republic of Venezuela's Constitution and of international treaties signed and ratified by the Republic.

Preeminence

Article 4. In forwarding the plea for protection of freedom and personal safety shall be skillful and the Court shall handle it preferable to any other issue. In no case, the plea for protection of freedom and personal safety shall be extended beyond ninety-six hours as from the date of the plea's filing.

Article 5. The process of protection to freedom and personal safety, both in the main and incidental issues, and all therefrom resulting, until the respective decision's execution, is something of imminent public order. The judge shall forward the procedure ex officio. In case of doubt about this Law's interpretation, that more favoring the guarantee of the rights of freedom and personal safety shall be adopted.

Publicity

Article 6. The process of protection to freedom and personal safety is public, save for the exceptions provided by the Law, or if it should be so established by the judge under motivated decision under reasons of guaranteeing the aggravated person's human rights or public order's circumstances.

Free of Charge

Article 7. Processes of protection of freedom and personal safety are free of charge. As a consequence of no payment, fee or charge may be requested.

The same applies to the execution of the power of attorney instrument in order to enter the aggrieved person's plea for protection of freedom and personal safety.

Provenance

Article 8. The plea for protection of freedom and personal safety proceeds when the serious and imminent threat or the deprivation or restriction of freedom and personal safety may be arbitrary or contrary to the legal system.

Specialized and competent Courts

Article 9. First instance Specialized Courts with competence on protection of freedom and personal safety are being created, which shall operate at each judicial circuit.

The First instance Specialized Courts of the Judicial Circuit where the action or omission motivating the plea for protection of freedom and personal safety takes place are those being competent to hear about them. The decisions denying the protection of freedom and personal safety shall have obligatory consultation, being bound to deliver what is set in the record within the following twenty-four hours.

The Courts of Appeal having competence in criminal matters shall hear at a second level the bound consultation and the impugnments against the First instance Specialized Courts. The consultation or appeal shall not prevent the decision's immediate enforcement, and the Court of Appeals shall decide within the seventy-two hours following the record's item's reception.

Competence in the event that there is not any Specialized Court.

Article 10. At those places at which Specialized Courts with competence on protection of freedom and personal safety do not operate, or even when they exist, exceptional circumstances may arise preventing their operation, the plea for protection may be entered before any judge of the location, whose decision shall be adopted in accordance with what this Law sets.

Legitimation

Article 11. The plea for protection of freedom and personal safety may be filed directly by the aggravated person, or by any person, without needing the assistance of an attorney.

The plea's filing

Article 12. The plea for protection of freedom and personal safety may be filed orally or in writing, or by any means of information and communication technology

Initial handling

Article 13. Once the plea for protection of freedom and personal safety should have been received, the Court shall immediately order the aggrieved subject to inform within a twelve hour's term, on the motives for the deprivation or restriction of freedom, being able to directly constitute itself at the place where the aggrieved person may be.

In the same act, it shall notify the Public Defender's Office of the jurisdiction and may decree the preventive measures that should be required in order to protect the aggrieved person's safety and integrity, including the order of immediately moving the aggrieved person to the court's seat.

Requirements

Article 14. The public officers, as well as individuals are bound to comply with the requirements made by the judge of protection of freedom and personal safety, especially regarding the reestablishment of the infringed legal situation or having ceased the serious and imminent threats.

Localized person

Article 15. Once the aggrieved or disappeared person should have been localized, the judge of protection shall decide, within a term not being longer than twenty-four hours, on aggrieved person's freedom or on the ceasing of the restrictions which should have been imposed, when finding that the deprivation or restriction of freedom and personal safety is arbitrary or contrary to the legal system.

Non-localized person

Article 16. When the presumed aggrieving party should deny the detention, or whenever it was not possible to localize the aggrieved person, the judge shall order forty-eight hours' probative hearing and pronounce itself, within the following forty-eight hours, on the approval of decree ordering protection of freedom and personal safety. The judge shall have the widest evidence gathering powers.

In the same manner it shall send the proceedings to the Public Prosecutor's Office in order to initiate the corresponding criminal investigation.

The Constitutional Chamber's Competence

Article 17. The following is competence of the Supreme Tribunal of Justice at Constitutional Chamber in the matter of protection of freedom and personal safety:

1. Knowing of, in sole instance, pleas of protection of freedom and personal safety having been entered against the national high officers of constitutional rank, as well as against those who may act under the formers' delegation of attributions.
2. Knowing of the appeals against judgments adopted in processes of protection of freedom and personal safety adopted by Courts of Appeal in the first instance.
3. The others are established by the Constitution or by law.

The protection order's non compliance

Article 18. Whoever should fail to comply with the order of protection of freedom and personal safety issued by the judge, shall be punished by prison of one to three years.

TRANSITORY PROVISION

Unique. In order to achieve the most effective administration of justice in the matter of protection of freedom and personal safety, the Supreme Tribunal of Justice, in Full Chamber, may create one or more offices of temporary or permanent Judges of Protection of Freedom and Personal Safety. Said offices must be performed by lawyers, who, during their functions' performance, shall be subject to the same incompatibilities and to the same duties provided for judges under the Law.

ABROGATIVE PROVISION

Unique. Title V of the Organic Law of Protection of Constitutional Rights and Guarantees, published in Official Gazette of the Republic of Venezuela number 34060 of August 27, 1988, and all the provisions being contrary to this Law are abrogated.

4. LAW REFORMING THE LAW OF PROTECTION OF VICTIMS, WITNESSES AND OTHER PROCEDURAL SUBJECTS

THE NATIONAL ASSEMBLY OF THE BOLIVARIAN REPUBLIC OF VENEZUELA

Decreases the following

LAW REFORMING THE LAW OF PROTECTION OF VICTIMS, WITNESSES AND OTHER PROCEDURAL SUBJECTS

Article 1. Title of Chapter V is reformed. Being drafted as follows:

Chapter V

Office of attention to the Victim in the matter of Human Rights and Unit Administering Funds for the Protection of, and Assistance to, the Victims, Witnesses and other Procedural Subjects

Article 1. A new article is added after the title of Chapter V being drafted as follows:

Chapter V

Office of Attention to the Victim in the matter of Human Rights and Unit Administering Funds for the Protection of, and Assistance to, the Victims, Witnesses and other Procedural Subjects

Article 2. A new article is added after the Chapter V title, being drafted as follows:

Office of attention to the victims in the matter of Human Rights

Article 44. The Office of the Public Prosecution's Attention to the Victim in the matter of Human Rights shall have the following attributions:

1. To warrant protection and integral assistance to direct and indirect victims, witnesses and other procedural subjects, in cases of infringement of human rights, in conformity with the principles of interdependence, indivisibility and progressivity of human rights

2. To offer integral attention's services with multidisciplinary teams in the legal, psychological and social to direct and indirect victims in cases of human rights infringements.

3. To receive petitions of protective measures related to this law, from the victims, witnesses and other procedural subjects, in cases of human rights' infringement.

4. To make the evaluation with regard to the risks' factors that the applying persons are facing in each case.

5. To process the protective measures requested by victims, witnesses and other procedural subjects before the jurisdictional bodies, in conformity with the corresponding set of rules

6. To make the corresponding follow-up before the body designated by the Court, for the implementation of the granted protective measures.

7. To handle what concerns the granted measures' updating, as to the benefitted persons' data, the designated implementation body, the criminal process' phases and any other information being relevant for the case.

8. To perform all the activities of integral training of the bodies designated for the protective measures as to the advances that, in the matter of human rights and the victims' rights, in general, are being produced.

9. The other ones established in the Regulations and Resolutions.

Article 3. This Law shall become in force as from its publication in the Official Gazette of the Bolivarian Republic of Venezuela.

Article 4. This law is to be printed with the approved reforms and in an unique text, the gender language is to be applied in the correspondent articles, epigraphs are to be added to articles not having them, and the numbering of articles and chapters must be corrected where it corresponds, with the sanction and promulgation data, in conformity with provisions in article 5 of the Law of Official Publications.

5. LAW REFORMING THE LORGANIC PENITENTIARY CODE

THE NATIONAL ASSEMBLY OF THE BOLIVARIAN REPUBLIC OF VENEZUELA

Decreases the following:

LAW REFORMING THE ORGANIC PENITENTIARY CODE

Article 1. Article 37 is reformed, being drafted as follows:

Exit requirements

Article 37. The exit of persons deprived of freedom shall be preceded by a decree issued by the competent authority ordering the interned subject's personal freedom, by virtue of the criminal action's extinction or that of the penalty, or of any other circumstance provided by the law. In case of a judicial decision, the decree ordering it is required:

1. Cautionary measure substituting that of freedom's deprivation.
2. Conditional suspension of process, the penalty's execution suspension, work outside the establishment, open regime and conditional freedom.
3. Granting of a humanitarian measure.
4. The person deprived of freedom's extradition.
5. Total completion of the penalty requiring deprivation of freedom.
6. Absolving decision.
7. The cause's dismissal.
8. The file was sent to the archive by the prosecution .

This documentation shall be immediately inserted into the person deprived of freedom's file having to return from the establishment.

Article 2. Article 85 is reformed, being drafted as follows:

Security and custody body.

Article 85. A security and custody body is created, one of a civil nature, ascribed to the Ministry of Popular Power having competence in penitentiary matter, who shall take care of the internal vigilance, security and custody of the persons deprived

of freedom, family members, visitor and public officers during their stay at the penitentiary systems sites

Article 3. Article 87 is reformed, being drafted as follows:

External security

Article 87. The National Bolivarian Police Body is in charge of the penitentiary sites' external security and assumes the following obligations:

1. Watching for and custody the penitentiary establishment's perimetral areas.
2. Avoiding the escape or evasion of persons deprived of freedom.
3. Avoiding the entry into the establishment of substances and objects of prohibited holding or non-authorized ones into the areas being under their control.
4. Making the search of all persons and vehicles entering and leaving the penitentiary establishment in order to prevent the traffic of substances of prohibited holding or non-authorized ones.
5. Rendering assistance in the control of massive alterations of order within the establishments, following the rules for the entry and use of firearms contained in this Code, upon request from the Ministry of Popular Power with competence in penitentiary matter.
6. Watching for and having custody of the transitory transfers, and those between penitentiary establishments, done by the Ministry of Popular Power with competence in penitentiary matter.
7. The others that may be indicated by the laws and regulations

Article 4. Article 122 is reformed, being drafted as follows:

Transfers to other penitentiary facilities.

Article 122. Those deprived of freedom may be transferred to other reclusive penitentiary facilities, under the corresponding judge of instruction's previous authorization.

They may be also transferred by the penitentiary authority, for participation in sport, educational or cultural activities, having to return to the penalty's compliance's center, once such activities should have concluded.

When the transfer may be for motives of health, the execution judge shall be immediately notified, in order that the corresponding jurisdictional decisions may be adopted.

Exceptionally, when it should be necessary to proceed with the person deprived of freedom's transfer for reasons of order, security or urgency, the execution judge shall be immediately notified, for the purpose of the remittance of the corresponding file to the corresponding judge.

Those deprived of freedom, both when exiting as in entry, shall be searched individually.

Article 5. Article 155 is reformed, being drafted as follows:

The transfers' authorization between penitentiary facilities.

Article 155. The transfers are authorized by:

1. In cases of those charged by the cause's judge, safe when there should exist an Act of God situation, in accordance with provisions by the Code of Criminal Procedure and this Code.
2. In cases of those punished by the execution judge, safe when there should exist an Act of God situation, in accordance with provisions of the Code of Criminal Procedure and this Code.

Article 6. Article 138 is reformed, being drafted as follows:

Competence for sanctioning

Article 138. The disciplinary infractions shall be sanctioned by the penitentiary authorities, in conformity with this Code's provisions, without prejudice of the criminal procedure that there could be.

Said decisions may be reviewed by the execution judge having competence at the penitentiary center, upon the sanctioned person's petition.

Article 7. Article 154 is reformed, being drafted as follows:

Judicial review

Article 154. The person deprived of freedom may request from the Execution Judge having competence at the penitentiary center, the review of the decision adopted by the Disciplinary Board within the forty-eight hours following his notification. The Judge shall hear the parties and adopt his decision on the same hearing. The review's plea suspends the executive's decision.

Article 8. Article 161 is reformed, being drafted as follows:

Trusteeship Regime

Article 161. The trusteeship regime consists in the punished person's placement at a production center or at a penitentiary regime's special area, to be granted by the execution judge, while some alternative formula for serving the penalty may be granted.

Article 9. The second transitory provision is reformed, being drafted as follows:

The Bolivarian National Police Body shall assume performance of the external custody of the penitentiary establishments, in conformity with provisions by this Code's article 87, during the two years' term as from its publication in the Official Gazette of the Bolivarian Republic of Venezuela.

Article 8. This Law shall become in force as from its publication in the Official Gazette of the Bolivarian Republic of Venezuela.

Article 9. This law is to be printed with the approved reforms and in a unique text, the gender language is to be applied in the correspondent articles, epigraphs are to be added to articles not having them, and the numbering of articles and chapters must be corrected where it corresponds, with the sanction and promulgation data, in conformity with provisions in article 5 of the Law of Official Publications.

[Translator's Note: The text published in the Official Gazette has an error: After Article 9, it numbers the two following articles Article 8 and Article 9. Normally, when such errors occur the Law is republished in a new Gazette but, until now it has not been done so].

6. ORGANIC LAW REFORMING THE ORGANIC LAW OF CRIMINAL PROCEDURE

THE NATIONAL ASSEMBLY OF THE BOLIVARIAN REPUBLIC OF VENEZUELA

Decrees The following,

ORGANIC LAW REFORMING THE ORGANIC LAW OF CRIMINAL PROCEDURE

Article 1. Article 30 is modified, being drafted under the following terms:

The Exceptions' treatment during the Preparatory Phase

Article 30. The exceptions filed during the preparatory phase shall be treated by way of incidence, without interrupting the investigation, and shall be proposed by means of duly founded writing before the Control Judge, offering the evidence and joining the corresponding documentation, with express indication of the parties' identification's data, and address and location of the other parties.

Once the exception should have been entered, the judge shall notify the other parties in order that within the five days following their notification, they answer and offer evidence. The victim shall be deemed as being a party for the exception's purposes, even though it may not have been a plaintiff, or if its admission as a plaintiff should have been discussed.

If the exception were one of mere law, the judge, with no further handling, shall adopt a resolution within the three days following the conclusion of the five days' term.

The proceeding shall be the same if no other evidence should have been produced.

If evidence should have been produced, the judge, if the issue were not of mere law, shall call all the parties, without notice's need, for an oral hearing, to be held within the eight days following the respective decree's publication. At such a hearing, each of the parties shall orally expose its allegations and produce its evidence. Upon the hearing's conclusion, the judge shall resolve the exception in a reasonable manner. The resolution being adopted may be appealed by the parties within the five days following the hearing's holding.

Article 2. Article 69 is modified, being drafted as follows:

First Instance Courts of Execution's Functions

Article 69. It is for the execution court to enforce, or have enforced, the penalties and security measures, as well as to warrant the rights of those having been deprived of freedom at the penitentiary establishments, assigning at least one judge for each penitentiary center for such purposes', in conformity with this Code's and the law's provisions.

Article 3. Article 122 is modified, being drafted as follows:

The Victim's Rights

Article 122. Whoever, in accordance with this Code, should be deemed as being a victim, in spite of the fact of not having been constituted as a plaintiff, during the criminal procedure may make use of the following rights:

1. Entering complaints and intervening at the process, in conformity with what this Code establishes.
2. Applying for investigation's proceedings for the facts' clarification. The prosecutor shall pronounce himself regarding such a petition within a three days term. In absence of the prosecutor's pronouncement within said term, the victim may appear to a competent court, in order that it decides on the requested proceedings' pertinence and necessity and may grant it if it were sustainable.
3. Being informed of the process advances and results whenever requested, even though it had not been a plaintiff.
4. Expressly delegating representation by a trusted attorney, by Public Prosecutor's Office or by other legal assistance's associations, foundations and other entities of legal assistance, and being represented by all the same in all procedural actions, including the trial, in conformity with what this Code establishes.
5. Applying for protective measures against probable attempts against it or its family.
6. Adhering to the prosecutor's accusation or formulating a private accusation in crimes depending on the party's instance.
7. Entering civil actions seeking to claim civil liability arising from the punishable fact.
8. Being notified of the prosecutor's resolution ordering the file to be archived.
9. Impugning the absolving judgment's stay.

10. Requesting the Prosecuting Representative, in cases in which the Prosecutor does not produce the concluding act within legal time.

11. In cases of victims of presumed human rights' violations found outside the national territory, the complaints may be entered, rendering interviews to the Public Prosecutor's Office or testimony before the judge, from the Republic's diplomatic representation, making use of the information and communication technology.

Article 4. Article 124 is modified, being drafted as follows:

Special Attention in Human Rights

Article 124. The person directly harmed by presumed human rights' violations may delegate the exercise of its human rights into the People Defender's Office, or into associations of human rights' defense, whenever it could be convenient for its human rights' defense. In such a case, a special power of attorney will not be necessary, and the fact that the delegation of rights were recorded in an instrument signed by the victim and the Office of the Public Defender's or the human rights defense association's representative shall suffice.

Article 5 Article 126 is modified, being drafted as follows:

Person being indicted

Article 126. Any person being shown as author of, or participating in a punishable fact, shall be known as "indicted", by a procedural action of the authorities in charge of criminal persecution, in conformity with what this Code provides.

In the same manner, the investigated person to whom the commission of a punishable fact shall be called "indicted" during the act of filing charges by the prosecutor.

With the accusation's admission, the indicted person will acquire the accused's condition.

The name of "indicted" may be indistinctly used at any phase of the process.

Article 6. A new article is added after article 126, being drafted as follows

Indicting act

Article 126-A. The formal indictment act is a Public Prosecutor's Office's exclusive faculty in public action's crimes. It shall be held before the Public Prosecutor's Office's prosecutor, once there could be an objective probability of liability in the charging's basis, with the exceptions provided by the Constitution of the Bolivarian Republic of Venezuela and by this Code.

In order to hold the indicting act, the Public Prosecutor's Office shall notify the indicted person in writing, indicating the date, time, place and condition for it to appear, and the subpoena warning for the appearance at the court of the corresponding jurisdiction, in order to appoint, and taking oath to, the public defender, the attorney assisting such person, or, failing that, to appoint a public defender. Such act shall be forwarded the formalities of the indicted person's deposition at the preparatory phase.

Article 7. Article 230 is modified, being drafted under the following terms:

Absolute Nullities

Article 175. Absolute nullities shall be considered to be those concerning the intervention, assistance and representation of the accused, in the cases and forms established by this Code, or those that imply non-observance or violation of fundamental rights and guarantees provided in the Constitution of the Bolivarian Republic of Venezuela, this Code, the laws and the international treaties, conventions or agreements signed and ratified by the Bolivarian Republic of Venezuela.

In cases of arrests made in contravention of the provisions of the Constitution of the Bolivarian Republic of Venezuela, this Code, the laws and international treaties, conventions or agreements signed and ratified by the Bolivarian Republic of Venezuela, shall be considered absolute nullities, and consequently the Judge shall order unrestricted freedom, and the immediate referral to the Public Prosecutor's Office for the purpose of initiating the corresponding investigation for the annulled arrest.

Article 8. Article 230 is modified, being drafted under the following terms:

Proportionality

Article 230. No coercive personal measure may be adopted, whenever it appears as being disproportionate with relation to the crime's seriousness, and to its commission's circumstances and probable punishment.

Under no case may it exceed the minimum penalty provided for each crime, nor exceed the two year's term.

Exceptionally and when there should be serious causes so justifying it for the maintenance, being close to their expiry coercive personal measures' maintenance, the judge may extend such term for up to a year, provided that the minimum penalty for the indicted crime, and when several crimes were object of indictment, the minimum penalty provided for the most serious crime shall be taken into account.

The same extension may be requested when said extinction may be due to delays attributable to the indicted or accused persons, or to their defenders.

Those circumstances should be motivated by the prosecutor or by the plaintiff.

If the case is found at the Court of Appeals, the petition shall be received and shall immediately be sent to the First Instance Court knowing of, or who knew of, who shall decide on said petition.

Article 9. Article 237 is modified, being drafted as follows

Scape Hazard

Article 237. In order to decide on the scape hazard, the following circumstances shall be taken into account:

1. Rootage in the country, determined by domicile, usual residence, seat of family, business and work, and the facilities to permanently leave the country or to remain hidden.
2. The penalty that could be imposed in the case.
3. The caused damage's magnitude.
4. The indicted person's behavior during the process, or during another previous one, inasmuch as indicates its willingness of being subjected to criminal prosecution
5. The indicted person's pre-criminal behavior.

Paragraph First. The indicted subject's misrepresentation, lack of information or of its domicile's updating will constitute escape hazard, and shall motivate the ex officio, or at party's revoking of the alternative protective measure having been granted to the indicted subject.

Article 10. Article 287 is modified, being drafted under the following terms:

Powers

Article 287. Any person having knowledge of a criminal fact's commission may denounce it to the Public Prosecutor's Office's prosecutor, a criminal investigation police. The victims of presumed human rights' violations being found outside the territory of the Bolivarian Republic of Venezuela may apply to the diplomatic representation office, in order to formulate their denunciation before the Public Prosecutor's Office, making use of the information and communication technology.

Article 11. Article 295 is modified, being drafted under the following terms:

The investigation's duration

Article 295. The Public Prosecutor's Office shall do its best to put an end to the preparatory phase with the diligence required by the case, within a sixty days' term as from the indicted subject's individualization or as from the indictment act.

Once such term should have elapsed, the indicted subject or the victim may ask the Control Judge to set a prudential thirty days' term for the investigation's conclusion.

In causes referring to crimes of intentional homicide, rape, crimes against freedom, sexual integrity and indemnity of boys, girls and adolescents, kidnapping, corruption, crimes causing damage to public patrimony and public administration, drugs' trafficking, money laundering, against the financial system and attached crimes, crimes with multiple victims, organized crime, human rights' violations, crimes against humanity, crimes against the nation's independence and security and war crimes, the prudential term referred to by this article's first paragraph, such term may be for up to six months.

Article 12. Article 309 is modified, being drafted under the following terms:

Preliminary hearing

Article 309. Once the accusation should have been entered, the Judge shall call the parties to an oral hearing, to be held during a term of no less than fifteen days and no longer than 20.

In the event that the hearing was to be deferred, the same shall be set within a term that must not exceed five days, it being understood that the parties are in good legal standing.

The victim, within a five days' term, counted from the call's notice, may adhere to the prosecutor's accusation or enter its own accusation, meeting the former article's requirements.

The admission of the particular accusation proper to the victim, upon the preliminary hearing's conclusion, shall confer it the quality of plaintiff party, if it had not been previously held during the preparatory phase. If it had so been done, it may not enter the complaint's own particular should have been declared dropped.

Article 13. Article 318 is modified, being drafted under the following terms:

Concentration and Continuity

Article 318. The court shall forward the debate without interruptions, during the lowest number of consecutive days being necessary until its conclusion. It may be suspended during a maximum ten days' term, continuously counted only in the following cases:

1. In order to resolve an incidental issue, or to take some action out of the hearing hall, provided that it should not be possible to resolve or take it in the interval between two sessions.
2. Whenever no witnesses, experts or interpreters, whose intervention were inevitable, save if it could be followed with the reception of other items of evidence, until the absent subject were brought by public force.
3. When some judge, the accused subject, its defender or the Public Prosecutor's

Office's prosecutor were ill to the extreme of not being able to keep intervening at the debate, unless the two latter might be immediately replaced. The rule shall govern also in the event of a judge's, prosecutor's or defender's death.

4. If the Public Prosecutor's Office requires it in order to widen the accusation, or if the defender asks it because of the accusation's widening, provided that, due to the case's characteristics, it may not be possible to go on immediately.

Article 14. Article 320 is modified, being drafted under the following terms:

Interruption

Article 320. If the debate is not resumed at the latest on the eleventh day after the suspension, it shall be deemed as interrupted, and shall be again resumed, from its beginning.

Article 15. Article 325 is modified, being drafted under the following terms:

The debate's setting

Article 325. The Judge shall indicate the date for the trial hearing's holding, one that shall take place not before five days nor after ten business days, ordering notice of all those who must be present at the debate.

The information on the location of all the evidence bodies who must be at the debate shall be recorded in the cause. The parties shall adjuvate in producing the evidence bodies,

Article 16. Article 430 is modified, being drafted under the following terms:

Suspensive Effect

Article 430. A recourse's filing shall suspend the decision's execution, save if the opposite were expressly provided.

When dealing with decision granting the indicted subject's freedom, shall not suspend the decision's execution, save when adopted at the preliminary hearing and dealt with intentional homicide, rape, crimes against freedom, sexual integrity and indemnity of boys, girls and adolescents, kidnapping, corruption, crimes causing damage to public patrimony and public administration, drugs' trafficking, money

laundering, against the financial system and attached crimes, crimes with multiple victims, organized crime, human rights' violations, crimes against humanity, crimes against the nation's independence and security and war crimes and the Public Prosecutor's Office should orally enter appeal recourse at the hearing and in which case the defense shall be heard, with the Judge having to remit it to the court of appeals within the following 24 hours.

In such a case, the court of appeals shall consider the parties' allegations and resolve within the following 48 hours as from the proceeding's reception. If answers to the appeal recourse were not produced within the terms set, the measure of deprivation of freedom lapses and the recourse continues its forwarding.

Article 17. Article 473 is modified, being drafted under the following terms:

Different Place

Article 473. If the punished subject were to serve its penalty at a place being different from the location where the decision was adopted, the ministry with Penitentiary competence shall notify the Judge in order that it sends the file to the execution judge with competence at the servicing's place.

The Ministry with penitentiary competence may not order the punished subject's transfer to another reclusion center, without the corresponding execution court's authorization, save for the exceptions provided by the law.

Article 18. Article 516 is modified, being drafted under the following terms:

Competences for the penitentiary service

Article 516. The following are competences attributable to the Penitentiary Service:

1. Designing, formulating and evaluating policies, strategies, plans. governed by ethical principles and values, meant to warrant full enjoyment and use of those being processed and punished, as well as to see for their rehabilitation and their social improvement.
2. Regulating the penitentiary system's organization and operation, in conformity with the rules, principles and values provided by the Constitution of the Bolivarian Republic of Venezuela and by the international treaties and agreements on the matter signed and ratified by the Republic.
3. Warranting the efficient and efficacious penitentiary service's rendering, in

order to comply with the execution of the penalties and preventive measures depriving freedom imposed by the judicial authority.

4. Offering a penitentiary service in an efficient and efficacious way warranting those being processed and punished, the conditions and tools being necessary for their potentialities and capacities, in order to improve their reinsertion into society's possibilities, with strict attachment to the human rights' observance.

5. Promoting the construction, adequation, maintenance and furnishing of penitentiary facilities being apt, both in amount and quality, having dignified spaces for the lodging and cohabitation of those being processed, punished, as well as for the recreation, education, arts, sport, work and medical and sanitary facilities, applying with preferable the existing scientific and technological advances existing in each of these areas.

6. Adopting, formulating, supervising and evaluating policies warranting the processed and punished subjects' security and custody, with strict attachment to Human Rights.

7. Promoting effective compliance of the set of rules and procedures governing cohabitation, the good order and the activities being proper to the processed and punished subjects, within the penitentiary facilities.

8. Designing, formulating, supervising and evaluating policies warranting integral attention to processed and punished subjects in the areas of education, health, culture, sport, work, technical productivity and food, as part of the integral attention programs, ensuring their progressivity and Human Rights' protection

9. Seeing effective participation of the population deprived of freedom in productive and work activities.

10. Warranting the implementation of penitentiary policies based on principles of cooperation, celerity and procedural economy, ensuring effective judicial protection's compliance.

11. Designing regulating projects related to penitentiary matter and all those measures having a necessary legal nature, in the articulation and integration of the penitentiary system's actors, in order to adjuvate to the reaching of the governing body's objectives, in consonance with the Constitution of the Bolivarian Republic of Venezuela and with the Simón Bolívar National Project.

12. Handling pardons and seeing to the compliance of all benefits corresponding to the penitentiary population.

13. Seeing the participation of family members, communal councils, social organizations and any other form of organization, whose labor may be pertinent to penitentiary matters.

14. Warranting the recruiting, formation and retention of the body's human talent,

especially of the core staff in charge of providing adequate integral attention to persons being deprived of freedom, at each of the penitentiary service's spheres.
15. The other attributions to it conferred by the laws, regulations, resolutions and other normative acts.

The Ministry with competence in penitentiary matter must count, at each Criminal Judicial Circuit and its extensions, with a liaison office for the reception and handling of the entries, exits and transfers of those being deprived of freedom.

The penitentiary centers must provide adequate space in order that execution judges perform their functions of warranting the persons deprived of freedom's human rights.

Article 19. Article 517 is modified, being drafted under the following terms:

The Military Criminal Jurisdiction's Specialty

Article 517. The military criminal jurisdiction's specialty shall be governed by the rules provided by its special legislation and by this Code's provisions, as much as being applicable.

No civil citizen may be tried by the military criminal jurisdiction's courts.

Article 20. This Law shall become in force as from its publication in the Official Gazette of the Bolivarian Republic of Venezuela.

Article 21. This law is to be printed with the approved reforms and in an unique text, the gender language is to be applied in the correspondent articles, epigraphs are to be added to articles not having them, and the numbering of articles and chapters must be corrected where it corresponds, with the sanction and promulgation data, in conformity with provisions in article 5 of the Law of Official Publications.

[Official Gazette of the Bolivarian Republic of Venezuela # 6,649 Extraordinary of September 20, 2022]

7. LAW OF TRANSPARENCE AND ACCESS TO PUBLIC INTEREST INFORMATION

THE NATIONAL ASSEMBLY
OF THE BOLIVARIAN REPUBLIC OF VENEZUELA
211th 16nd and 22nd

Decrees the following,

LAW OF TRANSPARENCE AND ACCESS TO PUBLIC INTEREST
INFORMATION

CHAPTER I'
GENERAL PROVISIONS

Object

Article 1 This Law's object is to warrant the use of the right to access information of public interest as means of favoring the people's protagonist participation in the design, formulation and following-up of public gestion and strengthening the democratic State's social rule of Law and Justice.

Purpose

Article 2. This Law has the following purpose:

1. Warranting the right of access to public interest's information, as recognized by the Constitution of the Bolivarian Republic of Venezuela.'
2. Contributing to the compliance of the constitutional principles of honesty, participation, celerity, efficacy, efficiency, transparency, account rendering and responsibility in performing public gestion.
3. Favoring the people's protagonist participation in the design, formulation and follow-up of public function.
4. Strengthening the democratic State's social rule of Law and Justice.

Right of access to information

Article 3. The natural persons, under conditions of equality and without any discrimination are entitled to the access public interest's information, in accordance

with values and principles consecrated by the Constitution of the Bolivarian Republic of Venezuela and by the treaties, covenants and conventions related to this matter duly signed and ratified by the Republic.

For this Law's effects, public interest's information is understood as every datum and document, independently from their format, being found or recorded under the bound subjects' responsibility, turning-out as being necessary for the people's protagonist participation in the design, formulation and follow-up of public gestion.

Bound subjects

Article 4, The bodies and entities of National, State and Municipal Public Power, as well as the Popular Power's organization, when acting under administrative functions, or when rendering a public service are bound to warrant access to public interest's information to interested persons, in conformity with the Constitution of the Bolivarian Republic of Venezuela and the law.

To such effect, they shall adopt the measures warranting and promoting the organization, classification and handling of public interest's information they may have. In the same manner, they shall facilitate the search of, and access to, public interest's information, in a clear, ordered and comprehensible manner for those being interested.

Interpretation's principle

Article 5. In case of doubt as to this Law's interpretation or application, whichever guarantees the greater effectiveness of the right of access to public interest's information shall prevail.

The right's scope

Article 6. The use of the right of access to public interest's information comprises:

1. Knowing if the requested information is available to the bound subject to whom the request is made.
2. Receiving the information in a full, timely and free of charge manner or with

a cost not exceeding that of the documentation's search and reproduction, provided that the information is available to the bound subject.

3. Having access to the effective administrative and judicial resources warranting the rights' protection.

Available information

Article 7. For this Law's effects, one deems available information the whole of the public interest's information held by the bound subjects, without impairment of the exceptions provided by the Constitution of the Bolivarian Republic of Venezuela and by the law.

The bound subjects, by means of motivated decision, may exempt themselves from providing the information whenever access to it could harm human rights, compromise the integral defense or security, generate a threat to the Republic's social and economic development, and affect public health or public order.

The bound subjects' duties

Article 8. The bound subjects shall:

1. Collect and diffuse the information referred to by this Law.
2. Receive and handle the requests of access to public interest's information.
3. Take the internal steps necessary to give access to the requested public interest's information.
4. Do follow-up and control of the requested access to the public interest's information.
5. Keep record of the requests for access to public interest's information.
6. Adopt the necessary measures to ensure a correct application of this Law's provisions.

Information's request

Article 9. The request for public interest's information shall contain the following data:

1. The applicant's identity, or failing it, that of the person acting as representative, mentioning its names, surnames and identity card.
2. Contact information in order to receive notices as well as of the requested information.

3. A sufficiently precise description of the requested information, in order to allow its search.
4. The motives justifying the public interest's information

In the event that the bound subject may have doubts regarding the requested information's scope or contents, it shall contact the applicant with the purpose of clarifying the petition. The requested public interest's information shall be delivered in the most efficient manner and supposing the lowest possible cost for the bound subjects.

Answer's time

Article 10. The bound subjects shall answer the public interest's information request within twenty business days counted from the petition's reception, complying with the requirements provided by this Law.

Whenever a request should require a search or revision of a large number of documents at physically separated offices from the office that received the request, or consulting with other bound subject prior to reaching an answer regarding the information's divulging, the bound subject handling the request may extend the term for a period of up to twenty additional business days.

Express negative answer

Article 11, The decision by means of which the requested information is denied must be sufficiently motivated. An express negative response is understood to mean when the decision totally or partially denies the requested information. requested.

Administrative and judicial recourse

Article 12. The omission of answer within the established term or the public interest's information denial shall give rise to the filing of the administrative appeals established by the Organic Law of Administrative Procedures.

It is also possible to file an action before the courts having competence in the field of the Administrative Contentious, in conformity with the law.

Article 13. The Public Defender's Office shall perform the promotion, defense and vigilance of the right of access to the public interest's information, in conformity with what is established by the Constitution of the Bolivarian Republic of Venezuela and by the law,

FINAL PROVISIONS

Unique. This Law shall become in force at the time of its publication in the *Official Gazette of the Bolivarian Republic of Venezuela*.

Given, signed and sealed at the Federal Legislative Palace of the Bolivarian Republic of Venezuela, at Caracas, on the sixteenth day of the month of September, 2021. Years 211th of Independence, 162nd of Federation and 22nd of the Bolivarian Revolution.

8. LAW REFORMING THE DECREE WITH RANK, VALUE AND FORCE OF LAW OF THE POLICE FUNCTION STATUTE

THE NATIONAL ASSEMBLY OF THE BOLIVARIAN REPUBLIC OF VENEZUELA 211th 162nd and 222nd

Decrees the following:

LAW REFORMING THE DECREE WITH RANK, VALUE AND FORCE OF LAW OF THE POLICE FUNCTION STATUTE

Article 1 A new chapter is created after article 87, drafted as follows:

CHAPTER VIII' NATIONAL COMMISSION OF HUMAN RIGHTS

Article 2. A new article is added after chapter VIII, which is drafted as follows

National Commission of Human Rights

Article 88. The National Commission of Human Rights is an administrative unit, hierarchically a dependence of the ministry of popular power with competence in the matter of citizen's security, in charge of receiving, handling and disciplinary investigating the denunciations of human rights' violations committed by the officers being part of the integrated police body and performing citizen's security functions, as well as following-up, recommending and implementing the corresponding measures facing such cases in conformity with the human rights' principles of indivisibility, interdependence and progressivity.

The Commission shall be present at all the national territory, bearing in mind the organizational scheme established by the ministry of popular power with competence in the matter of citizen's security, and shall count with the human teams and working materials being necessary for its functions' compliance.

Article 3. A new article is added after article 88 which is being drafted as follows:

Inter-institutional collaboration

Article 89. The National Human Rights Commission shall count with the collaboration

and advice of the People's Defender Office, of the Office of Public Prosecution, law and criminology professionals, as well as of human rights organizations and human rights specialists, all of which shall facilitate their functions' compliance regarding presumed human rights' violations.

Article 4. A new article is added after article 89 which is being drafted as follows:

Attributions

Article 90. The following are attributions of the National Human Rights Commission:

1. Receiving, by any means available, denunciations about presumed human rights' violations, committed by officers of the bodies shaping the integrated police system and performing citizen security's functions.
2. Remitting to the Office of Public Prosecution and to the People Defender's Office the denunciations regarding human rights' violations.
3. Applying for the necessary and pertinent information in cases submitted to its knowledge, in which violation of human rights is presumed.
4. With discipline, investigate the denunciations related to presumed facts of human rights' violations, within its competence's scope.
5. Instruct its correspondent inspector's offices, as the case may be, about the opening of the administrative investigation, against the involved officers.
6. Perform follow-up, supervision and control of the administrative procedures, carried on at the different bodies and entities of citizen security, against officers involved in cases of human rights' violations.
7. Apply for avocation of the dependencies in charge of the disciplinary regime of the ministry with competence over the matter of citizen security, whenever the case so justifies it.
8. Recommend to the governing body in police matters the applying of technical assistance procedures, intervention or suspension, at those police bodies where the situation of human rights' violation having been detected so requires it.

9. Send to the minister with competence in the matter of citizen security and police service, the respective reports on cases being followed, generated statistics and recommendations resulting from the performed work.

10. The other attributions to it given by the applicable legal system

Article 5. This law shall become in force with the approved reforms and a sole text as from its publication in the Official Gazette of the Bolivarian Republic of Venezuela.

Article 6. This law is to be printed with the approved reforms and in an unique text, the gender language is to be applied in the correspondent articles, epigraphs are to be added to articles not having them, and the numbering of articles and chapters must be corrected where it corresponds, with the sanction and promulgation data, in conformity with provisions in article 5 o the Law of Official Publications.

9. LAW OF PARTIAL REFORM WITH RANK, VALUE AND FORCE OF LAW AGAINST CORRUPTION

THE NATIONAL ASSEMBLY OF THE BOLIVARIAN REPUBLIC OF VENEZUELA

Decreases the following,

LAW OF PARTIAL REFORM WITH RANK, VALUE AND FORCE OF LAW AGAINST CORRUPTION

Article 1. Article 1 is modified, being drafted as follows:

Article 1. This Law's object is establishing the principles, duties and rights allowing to prevent administrative corruption and promote education both to citizens and public officers, making it possible to warrant the public patrimony's safeguard, as to regulate the attributions and duties of the bodies in charge of performing control in the matter of corruption and to typify the administrative sanctions and the crimes committed against public patrimony and the administration of justice, including the procedures and the preventive measures that must be applied.

Article 2, Article 3 is modified, being drafted as follows:

Public officers or employees

Article 3. Without prejudice to what provides the Law establishing the Public Function's Statute or other laws, for effects of this Law, one deems the following as officers or employees:

1. The persons being invested with permanent or transitory public functions, being remunerated or free, originated by election, by appointment or contract executed by the competent authority, at the service of the Republic, of the states, of the federal territories or entities, of the districts, of the metropolitan districts or of the municipalities, of the national, states, district and municipal autonomous institutes, of the public universities, of the Central Bank of Venezuela or of any of the bodies or entities performing Public Power.
2. The directors, administrators of civil and business associations, foundations, civil associations and other institutions created with public resources or managed by some of the persons referred to by this Law's article 4, or when the whole of

the budgetary endowments or contributions in a fiscal year coming from one or several of these persons represents fifty percent (50%) or more of their budget or net worth; and the directors appointed in said bodies' or entities' *representation, even when the participation were lower than fifty percent (50%) of the capital or net worth.*

3. Any other person in the cases provided by this Law. In the same manner, for this Law's purposes, one must deem as directors, and administrators, those who perform functions such as:

- 1. Directives, managerial, supervisory, controlling and auditing.*
- 2. Participating with voice and vote in committees of: purchases, bidding, contracts, negotiations, donations or of any other nature, whose acting might compromise the public patrimony.*
- 3. Managing, or in custody of, warehouses, workshops, deposits and, generally, decide on the reception provision and delivery of the body's or entity's personal property, for their consumption.*
- 4. Mobilizing, or having custody of, the body's or entity's funds deposited in bank accounts.*
- 5. Representing the body or entity with authority to commit the entity.*
- 6. Making commitments on behalf of the body or entity or authorizing the correspondent payments.*
- 7. Taking actions having incidence in the sphere of the individuals or in the State's attributions and duties.*

This Law's provisions apply to persons indicated in this article, even though they may fulfill functions or realize activities outside the territory of the Bolivarian Republic of Venezuela.

Article 3. Article 4 is modified, being drafted as follows:

Public patrimony

Article 4. The following is deemed as public patrimony: all the property, rights, resources and legal and economic instruments that, under any title, correspond to:

1. The bodies and entities being responsible for the National Public Power's exercise.
2. The bodies and entities being responsible for the States' Public Power's exercise.
3. The bodies and entities being responsible for the Public Power's exercise at districts and metropolitan districts.
4. The bodies are responsible for Municipal Public Power and for the other local entities provided by the Organic Law of the Public Power.
5. The bodies and entities being responsible for the Public Power's exercise at federal territories and entities.
6. The state, district and municipal autonomous institutes.
7. The Central Bank of Venezuela.
8. The public universities.
9. The other Public Law's persons being national, state, district and municipal.
10. The associations of any nature in which the persons referred to by the former numbers have participation in their corporate capital, as well as those being constituted with the former's participation.
11. The civil foundations and associations, the institutions and other associative forms, being of public or private law, including the Popular Public Power's base Instances and organizations, being constituted with public funds or being managed by the persons referred to by the former numbers, or in which such persons designate their authorities, or when the budgetary endowments or contributions made during a budgetary fiscal year by one or several of the

persons referred to by the former numbers represent fifty percent (5%) or more of their budget.

One shall also deem as public patrimony: the resources given to individuals, by the public sector's entities mentioned in the former article, by means of transfers, endowments, subsidies, contributions, or any similar modality, for the fulfillment of public interest or benefit, until achievement of said purposes may be proven. The individuals administering such resources shall be subject to the sanctions and other actions and measures provided by this Law and by the Organic Law of the Office of the Comptroller General of the Republic and of the National Fiscal Control System.

Article 4. Article 6 is modified, being drafted as follows:

Governing principles

Article 6. The following are governing principles for the administration, handling, custody and safeguard of public patrimony: honesty, probity, decorum, trustworthiness, transparency, citizen participation, efficacy, efficiency, legality, collaboration, accounts' rendering, responsibility and co-responsibility.

Article 5. A new article is being added after article 7, being drafted s follows:

Public policies

Article 8. The State must design, implement and evaluate public, educational, economic, legal and of any other nature, as it may deem proper and convenient, in order to ensure the prevention, combat and eradication of the corruption resulting from activities linked to the public patrimony's administration, handling and custody.

For such effects, the Public Power's different bodies and entities, at their different levels, must develop plans of educational formation of prevention against corruption, addressed to public servants and to the population in general.

Article 6. Article 8 is modified and become article 9, as follows:

The information's public character

Article 9. All the information related to public patrimony's administration, handling and custody corresponding to the persons being subject to this Law, shall have public

character, save for the exceptions that this Law may expressly establish for reasons of security.

Article 7. Article 12 is modified, becoming article 13 as follows:

Citizen participation at the budgetary formulation, supervision and control

Article 13. The individuals, communal councils, communes and other Popular Power's basic instances and organizations are entitled to participate in the formulation, supervision, control of the budgetary execution and its expenses' administration, in accordance with corresponding territorial ambit, in conformity with what the Constitution of the Bolivarian Republic of Venezuela and the law provide.

To such effect, the National Budget Office shall periodically submit to public consultation the managing indicators' designs referred to by the Seventh Section of the Organic Law of Public Administration, Title II, Chapter II, in conformity with what is established by Title IV of the Organic Law of Public Administration.

Article 8. Article 17 is modified, becoming article 18, as follows:

The public patrimony's administration

Article 18. The public officers, public employees must administer, process and custody the public patrimony with rationality and efficiency criteria, seeking the expense's reduction and optimal use and investment of available resources, attending to public purposes.

Article 9. A First Section is added in the law's Chapter II Title I, with the following drafting:

CHAPTER II

Sworn Statement of Patrimony

First section: Automated system

Article 10, A new article is added after article 23, being drafted as follows:

Electronic system for the preparation and registration of the Sworn of Patrimony

Article 24. The filing of the Sworn Statement of Patrimony must be prepared and registered in electronic format, or by means of an automated system which, for such effect, shall be under the govern and conditions established by the Office of the Comptroller General of the Republic.

Article 11. A new article is added after article 24, being drafted as follows:

Incorporation into the Automated System

Article 25. Those being responsible of the Human Resources of the bodies and entities indicated in numbers 1 through 11 of the Organic Law of the Office of the Comptroller General and the National Fiscal Control System, are bound to incorporate at the Automated System of Registration of the Public Sector's bodies and entities

Article 12. A new Second Section is added at the law's Chapter II of Title I, being drafted as follows:

CHAPTER II Second Section Presentation

Article 13. A new article is added after article 26, being drafted as follows:

Patrimony's sworn statement's fidelity

Article 27. The patrimony's Sworn Statement must be a faithful and exact expression of the data corresponding the public server's having the duty to prepare and present it, truth,

Article 14. A new article is added after article 29, being drafted as follows:

The Patrimony's Sworn Statement's Annual Updating

Article 30. The highest authorities, public officers performing high-level and trustworthy offices of the bodies and entities indicated at articles 1 through 11 of article 9 of the Organic Law of the Office of the Comptroller General of the Republic and of the National System of Fiscal Control, must annually update the patrimony's worn statement.

The term to comply with such obligation shall be set by means of a resolution that,

for such effect, be adopted by the Office of the Comptroller General of the Republic.

The Comptroller General of the Republic, by means of resolution, may extend the set term for the patrimony's sworn statement's presentation. The extension's application must be filed prior to said term's expiry.

Article 15. A Section Third at the law's Section Third in Chapter II of Title I, is added, being drafted as follows:

CHAPTER II'
Section Third:
Verification

Article 16. *Article 26 is modified, becoming article 31, as follows:*

Requirement of the Electronic Certificate of the Sworn Statement of Patrimony

Article 31. Those being responsible for the area of human resources of the formerly bodies and entities indicated in numbers 1 through 11 of the Organic Law of the Office of the Comptroller General of the Republic and in the National Fiscal Control System must require from the officers and employees a copy of the Electronic Reception's Certificate of the Patrimony's Sworn Statement, certifying the obligation's compliance. Said copy must be incorporated in the deponent's file at the human resources unit or at the dependence having competence in the matter.

Article 17. Article 27 is modified, becoming article 32, as follows:

***Cooperation with the procedures for verification of
the Sworn Statement of Patrimony***

Article 32. The persons being bound to file sworn statements of patrimony must cooperate making available the facilities being necessary to verify the sincerity. For such effect, they shall allow the competent officers to verify the statement's contents.

A same obligation shall bind the public officers or employees and the individuals or legal persons holding such documents, who shall be bound to send them to the Office of the Comptroller General of the Republic, within the ten (10) business days following their requirement by the body, and being subject to the sanction provided by this Law.

The Office of the Comptroller General of the Republic may order any public sector's body or entity to take specific actions, with the purpose of verifying the sworn statement of patrimony's contents.

The data, registrations, reports or documents must be provided under the terms and conditions required by the Office of the Comptroller General of the Republic, duly certified and joined by the supports or backing justifying the information therein contained, under truthful, complete and exact form, demonstrating the economic, financial and other kind of nature's operations.

Article 18. Article 29 is modified, becoming article 34, as follows:

Verification of the sworn statement of patrimony

Article 34. The Office the Comptroller General of the Republic, once it may have received the sworn statement of patrimony under electronic format, shall proceed within the patrimonial audit's frame, to verify the same veracity, and to compare it, if it should be the case, with the former statement.

The Office the Comptroller General of the Republic may directly ask the respective embassies, relying on the international agreements and treaties signed and ratified by the Bolivarian Republic of Venezuela on the matter, the supply of those elements of evidence being required, under motive of the sworn statements of patrimony's verification procedure.

It may also ask, on the occasion of the sworn statement of patrimony, to the person, public officer having ceased or terminated the performance of its works, employments or functions, that it produces a new patrimonial statement, in spite of the fact of not be active in the public function or employment within the year following the end of its performance in office.

The patrimonial audit's reports, as well as the evidence gathered by the Office the Comptroller General of the Republic, in order to verify and compare the sworn statements of patrimony, shall evidence force, as long of not having been invalidated at the judicial debate.

The Office the Comptroller General of the Republic may ex officio verify the patrimonial situation of those who, being bound to produce their sworn statement, did not do so.

Article 19. Article 32 is modified, becoming article 37, as follows:

The file's formation

Article 37. A file shall be created for the actions realized under the motive of the patrimonial verification procedure provided by this Law and by the resolutions issued by the Office the Comptroller General of the Republic, and certification shall be made in a report, based on which the Office the Comptroller General of the Republic, under motivated decree, shall decide whether it admits or not the sworn statement of patrimony and patrimonial situation, for such effect proceeding as follows:

1. If from the analysis made it were determined that the data in the sworn statement of patrimony or patrimonial situation are true, they shall be admitted and sending the file to archives shall be ordered.
2. If, on the contrary, it should be determined that the sworn statement of patrimony is not true, due to disparity between what is declared and the patrimonial audit's result, or that there exists administered funds not having been justified, the Office the Comptroller General of the Republic shall send the findings to Public Prosecution, in order that the pertinent action may be taken.
3. If the Public Prosecution deems that other additional proceedings additional, additional to those of the Office the Comptroller General of the Republic should be followed, it may commission the latter in other that it does so, in which case it shall act governed by, and under the direction of, the Public Prosecution.

Article 20. Article 33 is modified, becoming article 38, as follows:

Sanctions

Article 38. Independently from the civil, criminal, administrative or disciplinary responsibilities that might take place, they shall be sanctioned, with fine being the equivalent of one hundred (100) one thousand (1,000) units of the official rate of exchange with higher value published by the Central Bank of Venezuela, in force at the moment of payment

1. Those who omit production of the sworn patrimony statement within the term provided, therefore.

2. Those omitting to produce, within the term, the documents requested in accordance with the patrimonial verification procedure.
3. Those who have been requested, by means of resolution, to produce the sworn statement of patrimony and did not do so.
4. Those who do not participate the appointments, designations, takings in charge, removals or destitutions.
5. Those responsible of the human rights' area, when they do no request from the public officer the certificate proving fulfillment of the duty of having produced the sworn statement of patrimony'
6. The highest authorities had been requested to apply preventive measures but did not do so, as well as neither did those who they had charged by them to apply the same.
7. The public officers who order the cancellation of social benefits or other concepts under patrimonial audit motive.
8. Whoever that, in some manner, obstructs or hinders the practice of some proceeding to be followed under patrimonial audit motive.
9. Any person who misrepresented or concealed the data included at, or should be included in, its sworn statement of patrimony, or data being required in its verification request.
10. The holders of the bodies and entities referred to by this Law's articles 4 and 5, who do not publish and make available the report referred to by this Law's article 10.

Those who should have been ordered by the Office of the Comptroller General of the Republic to take specific actions, with the purpose of verifying the sworn statement of patrimony's contents and did not do so.

Article 21. Article 37 is modified, becoming article 42, as follows.

Preventive measures request

Article 42. The Office of the Comptroller of the Republic shall request from the involved highest authority of the body and entity, the application of preventive measures, with the purpose of ensuring the production of preventive measures, with the object of ensuring production of the sworn statement of patrimony and of documents being requested in the patrimonial verification's procedure or in any other administrative procedure carried on for such effect, in matter of sworn statement of patrimony.

Article 22. Article 38 is modified, becoming article 43, as follows:

Suspension without pay

Article 43. Without prejudice to the other sanctions that may be applicable, the following shall be suspended without pay for up to eighteen (18) months.

1. The public officer or public official who fails to submit the sworn statement of net worth, until such time as he/she demonstrates that he/she has complied with the obligation.

2. The public official who does not provide the documents required by the Office of the Comptroller General of the Republic, in the audit of assets or in any other administrative procedure carried out for such purpose in the matter of sworn statement of assets.

3. The public official who does not execute the suspension granted by the Comptroller General of the Republic.

4. The public official who in any way hinders or obstructs the practice of any procedure to be carried out in connection with the audit of assets or in any other administrative procedure carried out for such purpose in connection with the sworn statement of net worth.

Article 23. Article 41 is hereby amended to become Article 46 as follows::

Duties and powers of the Office of the Comptroller General of the Republic in matters of corruption

Article 46. Without prejudice to the provisions of the law governing its functions, the Office of the Comptroller General of the Republic shall have the following duties and powers in matters of corruption:

1. Establish and maintain automated information systems to receive, store and process the sworn statement of net worth in electronic format.

2. To require the formulation and presentation of the sworn statement of net worth to the persons who must do so, in the opportunity and conditions it deems necessary, in accordance with the law.

3. Send to the Attorney General of the Republic or to the competent courts all the documents or elements that they require, as well as the results of the investigations it carries out, on any action or omission that produces a damage to public assets or could compromise the civil or criminal liability of the persons subject to this Law.

4. To investigate the legal persons that contract with any of the organs and entities indicated in Articles 4 and 5 of this Law, when in their capital participates, directly or through an intermediary, any official or civil servant in contravention of the provisions of Article 145 of the Constitution of the Bolivarian Republic of Venezuela.

5. To carry out the pertinent investigations when it is reasonably presumed that any of the persons subject to this Law, even through interposed persons, has made remittances of funds abroad for the purpose of concealing his or her illicit enrichment.

Article 24. Article 44 is hereby amended to become Article 49 as follows:

Referral to the Public Prosecutor's Office

Article 49. When the Office of the Comptroller General of the Republic determines the administrative responsibility of a public official in accordance with this Law and the Organic Law of the Office of the Comptroller General of the Republic and of the National System of Fiscal Control, it shall refer the result of its actions to the Public Prosecutor's Office so that it may exercise the corresponding actions.

Article 25. Article 82 is amended to become Article 87 as follows:

Profit, advantage or economic benefit

Article 87. The following shall be punished with imprisonment from three (3) to six (6) years for public officers or public officials who:

1. By themselves or through an interposed person procure any profit, advantage or economic benefit on the occasion of the assumptions generating administrative

liability provided for in Articles 91 and 92 of the Organic Law of the Office of the Comptroller General of the Republic and of the National Fiscal Control System.

2. Order payments for works or services not performed or defectively performed.

3. Certify completion of works or rendering of non-existent services or of qualities or quantities inferior to those contracted, without leaving a record of these facts.

Article 26. The first and second Transitory Provisions are deleted and a Sole Transitory Provision is added, to read as follows:

Transitory Provision

UNIQUE. The criminal types contained in this Law shall be subject to codification, without this implying the alteration of the spirit, purpose and reason of this Law, and shall remain in force upon the enactment of the new Venezuelan Organic Criminal Code.

Article 27. This Law shall enter into force as of its publication in the Official Gazette of the Bolivarian Republic of Venezuela.

Article 28. Print this Law with the approved amendments and in a single text, apply the gender language in the corresponding articles, add epigraphs to the articles that do not have them, and correct the numbering of articles and chapters where applicable, with the data of sanction and promulgation, in accordance with the provisions of Article 11 of the Law of Official Publications.

10. LAW FOR THE COMMISSION FOR THE GUARANTEE OF JUSTICE AND COMPENSATION OF VICTIMS OF CRIMES AGAINST HUMAN RIGHTS

THE NATIONAL ASSEMBLY OF THE BOLIVARIAN REPUBLIC OF VENEZUELA

Decreases the following:

LAW FOR THE COMMISSION FOR THE GUARANTEE OF JUSTICE AND COMPENSATION OF VICTIMS OF CRIMES AGAINST HUMAN RIGHTS

CHAPTER I GENERAL PROVISIONS

Object

Article 1. This Law's object is to create the Commission for the Guarantee of Justice and Compensation of Victims of Crimes against Human Rights, with the purpose of generating recommendation and facilitating mechanisms of study, follow-up and verification in this matter, in conformity with provisions of the Constitution of the Bolivarian Republic of Venezuela and the international treaties on human rights signed and ratified by the Republic.

Purpose

Article 2. This law's purpose is:

1. To promote, guaranty and protection of all persons' human rights, under conditions of equality and without discrimination.
2. To contribute to ensure the right to effective judicial protection of persons being victims of crimes against human rights.
3. To procure integral attention to, and reparation for, the victims of crimes against human rights
4. To see to the establishment of the responsibilities arising from crimes against human rights.
5. To realize studies and evaluations allowing its object's better compliance.
6. To adjuvate in order that the performance by the system of justice's bodies be developed with strict attachment to the values, principles and human rights

recognized by the Constitution of the Bolivarian Republic of Venezuela and the international treaties signed and ratified by the Republic

Principles

Article 3. This law is based on the principles of universality, equality, indivisibility, interdependence, progressivity, non-waiver, intercultural nature, and co-responsibility of human rights. To such effect, the Commission for the Guarantee of Justice and Compensation of Victims of Crimes against Human Rights shall comply with its functions, being guided by the principles of transparency, gratuitous nature, brevity, impartiality, independence and rendering of accounts, avoiding revictimization at all times.

Public order and interpretation

Article 4. This Law's provisions are of strict public order and general interest. In case of doubts in interpretation of this Law's provisions, that most favoring the respect, guarantee and protection of human rights shall prevail.

No statute of limitation

Article 5. The legal actions to establish criminal liability for crimes against humans are not subject to statute of limitation. The crimes against shall be investigated and judged by regular courts and are excluded from any form of hindering or obstruction facilitating impunity, including pardon and amnesty.

CHAPTER II

COMMISSION FOR THE GUARANTEE OF JUSTICE AND COMPENSATION OF VICTIMS OF CRIMES AGAINST HUMAN RIGHTS

Article 6. A Commission for the Guarantee of Justice and Compensation of Victims of Crimes against Human Rights is being created as an entity with its own legal personality, functional, administrative and budgetary autonomy, ascribed to the Republican Moral Council, the Citizen Power's constitutional body. The Commission shall begin its operation as from its date of installation and shall have a two years' being in force term, that may be extended by the National Assembly.

The Commission for the Guarantee of Justice and Compensation of Victims of Crimes against Human Rights may be alternatively called Commission of Justice and Repair.

Article 7. The Commission for the Guarantee of Justice and Compensation of Victims of Crimes against Human Rights has the following attributions:

1. Realizing raising of the processes developed at the justice system's bodies for the investigation, sanction and repair of crimes against human rights, with the object of making the studies and recommendations'
2. Doing follow-up of the justice system's investigations being related to the crimes against human rights and formulating the pertinent recommendation in order to warrant the right to justice.
3. See to the granting of integral attention measures to the victims of crimes against human rights. In conformity with the special law governing the matter.
4. Doing studies aimed at the identification and scientific knowledge of the causes, conditioning and dynamics involved with the system of justice's operation, related to the investigation and sanction of crimes against human rights.
5. Recommending reforms and measures aimed at the human rights' respect and guarantee, following up their implementation.
6. Formulating proposals of normative instruments in its area of competence for consideration of the National Assembly, in conformity with the Constitution of the Bolivarian Republic of Venezuela and the law.
7. Developing spaces of dialog and exchange with the victims and their representatives, as well as with national and international experts, as related to their mandate's fulfillment
8. Establishing technical communication and cooperation with public international organizations, having multilateral nature.
9. Adopting its internal Regulations and taking other legal actions, being necessary for its mandate's fulfillment

Mandate

Article 8. The Commission for the Guarantee of Justice and Compensation of Victims of Crimes against Human Rights shall circumscribe its mandate to presumed crimes against human rights implying affectation to human dignity, life, personal,

physical, psychic and moral integrity, and freedom of conscience, thought and opinion, in conformity with the Constitution of the Bolivarian Republic of Venezuela, the International Covenant of Civil and Political Rights, the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment and other international treaties ratified by the Republic.

The recommendations' scope

Article 9. The Commission for the Guarantee of Justice and Compensation of Victims of Crimes against Human Rights has a follow-up, study, evaluation. Verification and recommendation function in order to reinforce the guarantee of justice and repair, without substituting the attributions and competences being proper to the system of justice.

The adoption of the Commission's recommendations by the system of justice's bodies, does not exempt the necessary compliance of due process and of the full enjoyment of the right of defense assisting any person, in conformity with the Constitution of the Bolivarian Republic of Venezuela and the laws.

Composition

Article 10. The Commission for the Guarantee of Justice and Compensation of Victims of Crimes against Human Rights shall be integrated by seven Commissioners, designated by the National Assembly, with the vote of two thirds of its members, in accordance with the following criteria:

1. Three persons designated in view of their outstanding trajectory in the matter of human rights and their accredited professional, ethical and with integrity capacity.
2. Two members of organizations and movements of human rights' defense, with trajectory in the matter.
3. Two deputies of the National Assembly.

The President of the Commission for the Guarantee of Justice and Compensation of Victims of Crimes against Human Rights shall be elected by the National Assembly among the persons designated in this article's number one.

The Commissioners' nature

Article 11. The Commission for the Guarantee of Justice and Compensation of Victims of Crimes against Human Rights' members shall enjoy immunity and other prerogatives in performing their functions since being sworn and until the six months following their mandate's conclusion. In the same manner, they are not bound to depose both at judicial processes as in the administrative procedures, with regard to actions performed in compliance of their functions.

The Executive Secretariat shall be at the charge of an Executive Secretary to be designated by the Commission's president.

The Executive Secretary and all the staff of the Commission for the Guarantee of Justice and Compensation of Victims of Crimes against Human Rights shall enjoy the same prerogatives as the Commission's members.

Binding character

Article 12. The Commission for the Guarantee of Justice and Compensation of Victims of Crimes against Human Rights' shall count with an Executive Secretary to be designated by the Commission's president.

The Executive Secretary and all the staff of the Commission for the Guarantee of Justice and Compensation of Victims of Crimes against Human Rights' shall enjoy the same prerogatives as the Commission's members.

The Executive Secretariat's Attributions

Article 13. The Executive Secretariat of the Commission for the Guarantee of Justice and Compensation of Victims of Crimes against Human Rights has the following attributions:

1. Complying with, and have complied, the Commission's and its President's decisions.
2. Having access to actions developed by the police or security bodies, of Public Prosecution of the Judicial Power or of the justice system, containing information related to the Commission's mandate, or if it should have been expressly indicated to the Executive Secretariat, warranting protection to the victims' rights. It may also collect the documents' simple or certified copies, even confidential or secret ones. As far as possible, use shall be made of verifiable technological media.

3. Making visits and inspections at places indicated by the Commission or its President. In the same manner, it may take the steps turning out to be necessary and urgent for its mandate's fulfillment, in which case it shall be the President or the Commission. The authorities shall support such purposes.
4. Studying and analyzing the processes developed at the bodies of justice, particularly the criminal investigation's bodies. Public Prosecution and Judicial Power in order to investigate and establish the possible responsibilities on the commission of crimes against human rights, with the object of making the pertinent recommendations.
5. Requesting, and having access to, studies ordered by the Commission or its President, related to their functions.
6. Planning, coordinating, controlling and directing the Commission's administrative, budgetary and staff's management.

International advice and cooperation

Article 14. The Commission for the Guarantee of Justice and Compensation of Victims of Crimes against Human Rights shall count with the support of national and international organizations, advisory services, advisers, experts designated by the Commission's President, in order to offer specialized advice as a function of the objectives and purposes having been established. Only experts with recognized prestige and pertinent academic credentials, as well as renown international figures with experience and link to these issues, may be advisers.

The Commission for the Guarantee of Justice and Compensation of Victims of Crimes against Human Rights may count with the technical cooperation of public international organizations, of multilateral nature.

Article 15. The Commission for the Guarantee of Justice and Compensation of Victims of Crimes against Human Rights may count with the technical cooperation of public international organizations, of multilateral nature, shall be constituted by:

1. The budgetary resources being assigned for the corresponding Fiscal Year and the extraordinary resources that may be granted by the National Executive.
2. The property that, for its purposes of fulfillment may be granted by the Republic or its entities.

3. The donations made in its favor.

4. Any other income allowed by the law.

Citizen participation

Article 16. The Commission for the Guarantee of Justice and Compensation of Victims of Crimes against Human Rights shall implement mechanisms aimed at facilitating the participation of all the society's sectors, including the victims, their representatives and organizations, in its mandate's fulfillment.

Collaboration's duty

Article 17. The Commission for the Guarantee of Justice and Compensation of Victims of Crimes against Human Rights shall implement the mechanisms aimed at facilitating the participation of all the society's sectors, including the victims, their representatives and organizations, in its mandate's fulfillment.

The noncompliance of the collaboration's duty by the public servants shall be deemed as a ground for destitution.

Access to the information

Article 18. The Commission for the Guarantee of Justice and Compensation of Victims of Crimes against Human Rights and its Executive Secretariat may have access to all information and documents included in reports and documents, being required in its functions' frame, without prejudice to the parties' rights at the process. The public servants are bound to give access to all the information and documentation contained in reports, files and documents being required in the frame of their functions, without prejudice to the parties in the process. The public servants are bound to give access and to provide, preferably and urgently, the copies of each document being requested by the Commission and its Executive Secretariat. Whenever, under legal provision, the requested information should be kept as reserved, the Commission and its Executive Secretariat shall be bound to maintain the reserved nature, not being able to diffuse the information or making it public, with it being used only as an element to fulfill their mandate.

The public servant's refusal to have access to, and providing, the information requested by the Commission for the Guarantee of Justice and Compensation of Victims of Crimes against Human Rights, shall be deemed as a ground for destitution.

The actions' reserved nature

Article 19. With the object of warranting the sources' confidentiality, as well as the victims' possibly responsible subjects', and witnesses' safety. The actions and documents of the Commission for the Guarantee of Justice and Compensation of Victims of Crimes against Human Rights shall have the nature of being reserved facing third parties.

TRANSITORY PROVISION

Unique. Within the thirty days following this Law's coming into force, the Republican Moral Council and the National Executive shall have the resources necessary for the installation and operation of the Commission for the Guarantee of Justice and Compensation of Victims of Crimes against Human Rights.

FINAL PROVISION

UNIQUE. This Law shall become in force as from its publication in the Official Gazette of the Bolivarian Republic of Venezuela.





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