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**Human rights situations that require the Council's attention****Report of the independent international fact-finding mission  
on the Bolivarian Republic of Venezuela\****Summary*

The present report, submitted to the Human Rights Council pursuant to Council resolution 42/25 of 27 September 2019, contains the findings of the independent international fact-finding mission on the Bolivarian Republic of Venezuela. The mission provides an overview of its findings with respect to extrajudicial executions, enforced disappearances, arbitrary detentions and torture and other cruel, inhumane or degrading treatment, committed in the country since 2014. The Mission concludes the report with its assessment of responsibilities for the violations found.

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\* This report was submitted after the deadline to reflect recent developments.

## I. Introduction

1. In its resolution 42/25 of 27 September 2019, the Human Rights Council established an independent fact-finding mission on the Bolivarian Republic of Venezuela (hereinafter “Venezuela”) “to investigate extrajudicial executions, enforced disappearances, arbitrary detentions and torture and other cruel, inhumane or degrading treatment since 2014 with a view to ensuring full accountability for perpetrators and justice for victims”.
2. The Human Rights Council requested the fact-finding mission (the “Mission”) to present a report on its findings during its forty-fifth session in September 2020. The Mission produced two reports, the present report and an extended conference room paper, providing more detail on incidents, analysis and conclusions.
3. The Human Rights Council urged Venezuelan authorities to cooperate fully with the fact-finding mission, to grant it immediate, full and unfettered access to and throughout the country, including to victims and places of detention, and to provide it with all the information necessary to fulfil its mandate (para. 25).
4. The Mission sent the Government official correspondence on six occasions between January and August 2020 and did not receive any response. The Mission regrets that it was not able to meet with Venezuelan authorities, either within or outside of the country, to discuss the mandate and to obtain relevant information.
5. Lack of access to the country and travel restrictions related to Covid-19 presented challenges for the Mission’s work, and in some respects led to a more restricted focus than would otherwise have been the case. Nonetheless, the Mission was able to gather the information necessary to establish facts and draw conclusions in accordance with its mandate. The investigation has identified patterns and documented specific incidents establishing reasonable grounds to believe that violations of international human rights law have been committed, along with crimes under national and international criminal law.

## II. Methodology and Legal Framework

6. The Mission used the following data collection methods to establish findings: interviews with victims, families, lawyers and witnesses with direct knowledge of incidents; interviews with former Government, police, intelligence and military officials and others with direct knowledge of specific cases or institutions; interviews with current and former members of the judiciary; interviews with currently serving members of security forces; certified digital information (videos, satellite imagery, photos or social media content); publicly available statements by Government representatives; and review of Venezuelan laws, policies and directives.
7. The Mission also referred to secondary information assessed as credible and reliable to corroborate and contextualize information gathered from direct sources, and to discern the extent of patterns of conduct on a wider scale than those revealed by cases investigated in-depth.
8. The Mission investigated 223 individual cases,<sup>1</sup> out of which 48 are included as detailed case studies in the full report. The Mission selected cases for investigation based on substantive and security considerations, including availability and safety of witnesses, legal case files, and digital evidence. This selection in no way suggests that other reported cases are of lesser importance or credibility. In addition, the Mission reviewed an additional 2891 reported human rights violations across its four mandated areas to corroborate patterns. Due to time and resource limitations, the Mission was not able to investigate all contexts involving violations relevant to its mandate, including those within the Arco Minero region, as well as violations against indigenous peoples.
9. Consistent with other fact-finding missions established by the Human Rights Council, the Mission used reasonable grounds to believe as the standard of proof. This standard is met

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<sup>1</sup> A case refers to a particular incident, event or occurrence, which could involve one or more victims.

when factual information has been collected which would satisfy an objective and ordinarily prudent observer that the incident has occurred as described with a reasonable degree of certainty. The standard of proof required does not give rise to a finding of criminal responsibility. It is for the appropriate criminal authorities to investigate the acts and conduct documented in the report and establish criminal responsibility.

10. In line with best practices, the Mission devoted specific attention to gendered issues and the gender impact of violations throughout its investigation and used gender-sensitive methodologies and tools for collecting, organizing and analyzing information.<sup>2</sup>

11. The Mission assessed facts in light of international human rights law and international criminal law, as applicable in Venezuela. The Mission also considered the human rights guarantees under Venezuelan domestic law, as well as other relevant aspects of national legislation.

### III. Structural Factors Contributing to Violations

12. The violations documented in this report took place amid a gradual breakdown of democratic institutions and rule of the law in Venezuela since 2014. The weakening of democratic, judicial and institutional accountability mechanisms resulted in increasing impunity, which exacerbated the violations.

13. Venezuela continues to suffer hyperinflation, severe shortages of food and medicine, and a dire humanitarian crisis, aggravated by Covid-19. This situation has forced over five million Venezuelans, about one sixth of the population, to leave the country by 2020.

14. The National Assembly, the State's legislative branch, has been continuously stymied since the opposition coalition won two-thirds of seats in December 2015. Since the opposition's majority win, the Supreme Court of Justice has continuously struck down laws that the legislature attempted to pass. In September 2016, the Supreme Court held that all National Assembly legislation was null and void (Judgment No. 808).

15. Since August 2017, the National Constituent Assembly, convened by President Maduro in May 2017 and later established by a popular vote,<sup>3</sup> has acted as a de facto legislative branch, supplanting the National Assembly's constitutionally mandated functions.<sup>4</sup> In August 2020, President Maduro announced that the National Constituent Assembly's mandate would end, coinciding with the programmed elections of the National Assembly.

16. As the National Assembly was rendered ineffective, the executive took on increasingly expansive powers. Since 2016, over 25 states of emergency have been declared across the country, authorizing the President to take broad economic, social and security measures. The Supreme Court's constitutional chamber has upheld each of these, despite lack of National Assembly approval, as required under the Constitution.<sup>5</sup>

17. In December 2015, 13 judges were appointed to the Supreme Court in violation of procedures established by law. Since then, the Court's decisions have been aligned with the executive. In March 2017, the Supreme Court assumed legislative functions (Judgement No. 156) and lifted parliamentary immunity of all opposition deputies (Judgment No. 155), decisions that it partially subsequently reversed following public outcry.

18. Compromised judicial independence contributed to the violations documented in this report. Most judges are appointed on a temporary basis following selection procedures not in accordance with law. They can be removed without cause or regard for the process provided by the Constitution. Judges have faced undue pressure to reach certain decisions, as revealed in various cases investigated by the Mission.

<sup>2</sup> The Conference Room Paper, which accompanies this report includes a chapter on gender analysis and sexual and gender-based violence.

<sup>3</sup> Presidential Decree No. 2830 of 1 May 2017.

<sup>4</sup> 1999 Constitution, art. 187.

<sup>5</sup> 1999 Constitution, art. 339.

19. Since 2014, the Government has implemented at least 27 changes to the security framework, adopting laws, plans and policies through executive orders or ad-hoc plans, which bypassed the legislative process. Many of these increased military involvement in citizen security tasks and permitted or encouraged State security forces to coordinate with private citizens in maintaining public order.

20. The State security institutions include the Bolivarian National Armed Forces (FANB), including the Bolivarian National Guard (GNB), as well as police institutions, including the National Bolivarian Police (PNB) and its Special Action Forces (FAES), and the Scientific, Criminal and Criminological Investigator Corps (CICPC). State intelligence services are mainly the General Directorate of Military Intelligence and Counter-Intelligence (DGCIM) and the Bolivarian National Intelligence Service (SEBIN).

## **IV. Findings**

### **A. Targeted Political Repression**

21. In 2014, the Venezuelan opposition movement intensified efforts to change the Government. Opposition has taken many forms since then, within political, civil and diplomatic circles. It has also involved elements within the Venezuelan military, who attempted forcefully to topple the Government. Facing threats of destabilization, the Venezuelan State apparatus responded with repressive tactics and measures. In accordance with its methodology, the Mission investigated 110 cases involving these violations, identifying core patterns. Of these, 21 are included in detailed case studies in the full report.

#### **1. Victim Profiles**

22. The Mission found that principal targets of violations were often government critics with high public profiles or people who achieved prominence or represented a perceived threat due to their actions. They mainly include social activists and political leaders at the forefront of protests, opposition politicians and military dissidents accused of rebellion, plotting coups or other conspiracies.

23. Intelligence agencies also targeted other profiles seen to challenge official narratives, including selected civil servants, judges, prosecutors, defence lawyers, human rights defenders, journalists, and bloggers and social media users. In 2020, health workers and social media users critical of the Government's response to the Covid-19 pandemic were also detained.

24. People associated with principle targets were also targeted, including families, friends and colleagues or human rights defenders. The questions authorities asked these people under interrogation appeared to suggest that they were detained to extract information about or apply pressure on the main targets. This includes organizations that may have provided funding to opposition movements or received international funding.

25. From 1 January 2014 to 15 July 2020, the NGO Foro Penal registered 3,479 cases of politically motivated detention of which 902 (26 per cent) were selective detentions (with the remainder taking place in the context of protests).<sup>6</sup> Foro Penal describes a "revolving door" phenomenon in cases, in which as some people are detained, other people are released, so that the number of detainees remains somewhat fixed over time.<sup>7</sup>

26. Starting in 2014, a first wave of targets included people affiliated with the La Salida protests and associates. This included leaders of opposition parties, opposition mayors, human rights activists, social media users, student leaders and people perceived to be on the

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<sup>6</sup> Foro Penal, *Detenciones de Presos políticos por circunstancias distintas a manifestaciones y protestas, sobre la base de "Presos Políticos"*, p. 1, document on file with the Mission.

<sup>7</sup> See, e.g., Foro Penal, *La Puerta Giratoria de los Presos Políticos en Venezuela*, available at: <https://foropenal.com/la-puerta-giratoria-de-los-presos-politicos-en-venezuela/>.

front line of demonstrations. The repression extended to political leaders and others taking critical stances against the Government during the 2017 and 2019 political crises.

27. Six opposition mayors were detained between April 2014 and December 2017, for periods ranging from 72 hours to over four years, under charges including rebellion, conspiracy and omission of acts to prevent public disorder. The families of opposition mayors have also faced attacks.

28. In December 2015, after the opposition won a majority of seats in the National Assembly, opposition parliamentarians became a focus of repression. Targeting opposition parliamentarians continued at the time of writing. Since 2014, the Supreme Court has requested that the immunity of 32 National Assembly parliamentarians be lifted, allowing them to be criminally prosecuted. The Supreme Court made the vast majority of these requests to the National Constituent Assembly, although under the Constitution, the National Assembly is the body responsible for lifting parliamentary immunity.<sup>8</sup>

29. In 28 of these decisions, the Supreme Court accused parliamentarians of being in a “permanent state” of committing crimes *in flagrante delicto* of treason of the homeland, conspiracy, instigation of insurrection, civil rebellion, contempt of court and hate crimes. Six National Assembly members were then arrested and detained, with all but one held for over two years.

30. People associated with National Assembly members and/or with opposition parties were also detained. During interrogations, they were questioned about deputies, in particular about their involvement in alleged conspiracies or other crimes against the Government.

31. Since 2017, there have been a series of arrests of current and former military officials allegedly involved in rebellions or coup attempts to oust the Maduro Government. As alleged conspiracies increased, the number of acts of counter-intelligence operations against them also increased. The number of operations/coup d'états planned, or that high-level Government officials alleged had been planned, grew from 3 between 2014 and 2016, to at least 16 between 2017 and 2020.

32. As of 2018, civilians linked to the military targets, such as family, friends and associates, also increasingly became victims of repression. This includes those who might know the whereabouts of those accused and relatives of military members.

33. On 31 August 2020, President Maduro pardoned 110 people, mainly members of the political opposition, who had been accused of committing criminal acts.<sup>9</sup>

## 2. Violations

34. The Mission finds reasonable grounds to believe that arbitrary detentions were used to target individuals based on their political affiliation, participation, views, opinions or expression, throughout the period under review. In the cases investigated, a number of detainees were also victims of short term enforced disappearances and acts of torture and cruel, inhuman or degrading treatment, including sexual and gender based violence, at the hands of intelligence agencies SEBIN and DGCIM.

35. The violations involved individuals at different institutional and hierarchical levels. Key institutional actors, within the executive, law-enforcement/intelligence services and the judiciary, played a role.

36. State intelligence services have played an integral part in the patterns of violations committed. The intelligence agencies identified targets, carried out arrests, detentions and interrogations, and tortured or inhumanely treated detainees. Detainees were held mainly in intelligence services' headquarters in Caracas, outside the purview of the penitentiary system.

<sup>8</sup> 1999 Constitution, art. 200.

<sup>9</sup> YouTube Video, TeleSurTV, Gobierno de Venezuela emite decreto de indulto a políticos opositores, 31 August 2020, available at: <https://www.youtube.com/watch?v=FUzrg5DeJ3U>.

a. *SEBIN*

37. SEBIN conducts civilian intelligence and counter-intelligence activities against perceived or potential threats to the State, whether internal or external. It advises the executive on security and defence matters.

38. The Mission investigated 33 cases (where the victims were 21 men and 12 women) in which it found reasonable grounds to believe that SEBIN arbitrarily arrested, detained and/or tortured or ill-treated people for political motives. Of these 13 are detailed as cases studies in the full report.

39. Most of the arrests followed a period of surveillance and investigation. The arrests took place in a range of circumstances - in the arrestee's home, at public places or while arrestees were driving along the road. SEBIN searched arrestees' homes and seized items without presenting a search warrant.

40. A former SEBIN employee told the Mission that the orders determining who would be investigated often came from President Maduro and Diosdado Cabello.<sup>10</sup> The orders were issued to the SEBIN Director General, who passed instructions to the operational directorates.

41. SEBIN frequently made arrests without warrants, particularly prior to 2019. Many political dissidents were purportedly arrested *in flagrante delicto*, despite the fact that no crime was actually underway or had just been committed.

42. In several cases investigated, SEBIN officials used force or violence during arrests, despite witnesses saying or video footage showing that the arrestees were not violent or resisting arrest. SEBIN officials forcibly entered homes, breaking down doors or entering through windows.

43. The Mission has reasonable grounds to believe that in several cases, SEBIN falsified evidence, including planting evidence on the victims, especially firearms, and/or distorting results of home or car raids.

44. A common pattern was that high-level government officials made public statements referring to detentions either shortly before or shortly after they took place and commenting on the criminal responsibility of the accused. In some cases, Government officials announced that they had taken place as part of the Tun Tun Operation announced by Diosdado Cabello in his television programme "Con el Mazo Dando".

45. Those arrested were brought either to the SEBIN headquarters in Plaza Venezuela or to the SEBIN El Helicoide building, both in Caracas. Once there, SEBIN officials interrogated the detainees without the presence of a lawyer and/or refused to allow them to contact their lawyers when requested.

46. The Mission has reasonable grounds to believe that some political opponents and persons associated with them were subject to short term enforced disappearance during the period under review. The Mission documented cases in which SEBIN officials and other authorities either denied having the person in detention or told family members and lawyers trying to locate the detainees that they did not have any information. The whereabouts of the detainees remained unknown for periods ranging from a few days (the majority of cases), to several weeks.

47. The Mission found reasonable grounds to believe that SEBIN agents tortured or subjected detainees to cruel, inhuman and degrading treatment. The torture and ill-treatment were usually carried out within the first few days of detention, prior to initial court appearances, while detainees remained incommunicado. Many former detainees also witnessed the torture of other, non-political detainees in SEBIN facilities.

48. The acts were usually committed during interrogations to extract confessions or information, including phone and social media passwords, or to coerce detainees to incriminate themselves or others, particularly high-profile opposition leaders, in the

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<sup>10</sup> Mission Interview C2HH03 in June 2020.

commission of crimes. In the case of National Assembly deputy Juan Requesens, SEBIN officials allegedly administered psychotropic drugs to induce a confession.

49. Cases reviewed by the Mission occurred primarily between 2014 and 2018. Among the torture techniques the Mission documented were stress positions; asphyxiation with plastic bags, chemical substances or water; beatings; electric shocks; death threats; rape threats against either the victim and/or relatives; psychological torture including sensorial deprivation, constant lighting and extreme cold; and forced nudity.

50. In seven cases investigated, SEBIN agents perpetrated acts of sexual or gender-based violence against detainees in an attempt to elicit confessions or information implicating others, or to degrade, humiliate or punish them.

51. The Mission investigated the case of Fernando Albán, who died while in SEBIN custody. High-level officials publicly deemed the death of Fernando Albán a suicide, although forensic evidence raises doubts about this conclusion. This examination did not apply the standards required by Minnesota or Istanbul Protocols. His family was unable to undertake an independent autopsy or to bury his corpse, despite numerous requests.

52. The Mission's analysis of accounts from former detainees indicates that from 2014 to 2018 torture was committed in the presence or under the supervision of more senior officials, including the Chief of the Strategic Investigations Directorate and other high-ranking commissioners in this unit.

53. Political detainees spent long periods in pre-trial SEBIN detention, ranging from months to years, and in one case over four years. In several cases investigated, SEBIN failed to release detainees despite court orders approving their release while they awaited trial.

54. Political detainees were held in one of two SEBIN buildings, SEBIN Headquarters at Plaza Venezuela or El Helicoide, often with long periods in isolation. Detention conditions in these buildings were inadequate, in some cases rising to the level of torture or cruel, inhuman or degrading treatment. The Mission describes these in detail in the full report.

*b. DGCIM*

55. DGCIM has broad powers to “conduct, coordinate and execute activities aimed at the discovery, prevention and shutdown of enemy activity”.<sup>11</sup> It is also tasked with preventing subversive activities against the FANB and protecting the President of the Republic.

56. The Mission investigated 77 cases in which DGCIM arrested, detained and tortured current and former military officials and civilians associated with them. Of these, eight are detailed as case studies in the full report. Arrests of military personnel and associated civilians increased in 2017 as the number of operations against the Government grew more frequent.

57. The Mission has also reviewed information received from Foro Penal about 339 arrests of military personnel and associated civilians. Of these, 187 continue to be detained (two having served their sentences fully), 61 have substitute measures and 41 have been released (the status of the remainder varies).

58. DGCIM arrests took place during the day either at the arrestee's workplace/military base or upon convening the arrestee to a meeting at which they were detained. In some cases, DGCIM officials did not identify themselves and often covered their faces and/or used aliases. The arrests took place in different points around the country. Arrestees were brought to Caracas, either directly to DGCIM Boleíta or first passing through one of several unofficial or clandestine “safe houses” for hours or days.

59. DGCIM has used unofficial or clandestine facilities increasingly since 2018. The Mission documented 24 cases of torture taking place within these facilities between 2018 and 2019. The Mission was able to identify six such sites based on information of victims, lawyers, family members and organizations, the details of which appear in the long report.

<sup>11</sup> Presidential Decree No. 1605 of 10 February 2015, art. 2.

60. DGCIM officials failed to present arrest warrants and/or failed to explain the reason for detention. In a number of cases, there was a discrepancy between the date of the victim's last known whereabouts and the official date of detention or the official date on the arrest warrant. The official record usually placed the date of detention within 48 hours of the initial appearance, purportedly to appear in compliance with the period established by law.

61. In each of the cases investigated, within hours or days of arrests, high-level government authorities made public declarations related to the arrest, damaging the detainees' right to the presumption of innocence.

62. Once detained, arrestees' whereabouts were unknown for periods ranging from a few days to over a week. They were not permitted to call family members or lawyers to inform them about their detention or whereabouts. When relatives approached authorities at DGCIM offices to inquire about their whereabouts, in some cases, they were not provided with information, and in others, the whereabouts of the victim were denied. The Mission has reasonable grounds to believe that these amount to short term enforced disappearances.

63. The Mission examined 77 cases in which military personnel and associates were tortured in DGCIM custody. Acts of torture usually occurred during interrogations, shortly after arrest while detainees were held incommunicado and before the initial court appearance. Some were also tortured during later periods of detention in Boleíta.

64. Questions put to detainees suggest that the acts were carried out to extract a confession, to obtain information regarding the participation of others in alleged conspiracies and/or to punish the detainee. Cases reviewed by the Mission suggest that methods used by DGCIM agents to inflict pain have evolved between 2014 and 2020, with a marked increase in levels of violence since 2017.

65. The Mission found numerous acts of torture and other ill-treatment, including heavy beatings; asphyxiation with toxic substances and water; stress positions; prolonged solitary confinement in harsh conditions; sexual and gender-based violence including forced nudity, and rape; cuts and mutilations; electric shocks; use of drugs to induce confession; and psychological torture.

66. Some of these acts resulted in serious and/or permanent physical injury. This included loss of sensory or motor functions, reproductive injuries, miscarriage, blood in urine and broken ribs. These acts also resulted in severe psychological trauma and depression. Former captain Rafael Acosta Arévalo died in DGCIM custody. The Mission has reasonable grounds to believe his death was a result of torture.

67. In three cases investigated by the Mission, DGCIM perpetrated acts of sexual or gender-based violence against military detainees during interrogation to degrade, humiliate or punish them. DGCIM female and male officials subjected individuals to forced nudity, sometimes for days. Male custodians threatened to rape male detainees with pointed objects, mainly sticks and bats, and in one case raped a detainee. Electric shocks and blows were administered, including to the testicles.

68. In most cases investigated, the victims were not brought to a medical professional prior to their initial court appearance. In some cases, medical professionals provided medical evidence that detainees were in good health or had not suffered mistreatment, despite visible evidence to the contrary.

69. After initial court appearances, detainees were held in pre-trial detention at one of several facilities, although most often in DGCIM Boleíta or Ramo Verde military prison. In the full report, the Mission describes detention conditions in detail. In many cases, especially in DGCIM Boleíta, conditions were poor enough to amount to torture or cruel, inhuman and degrading treatment.

70. In some cases reviewed, individuals were also subjected to torture while detained awaiting trial in one of several detention centres. This mainly included harsh disciplinary regimes and severe punishments during their reclusion, including reprisals in case of complaints.

c. *The Justice System*

71. The Mission found that some public prosecutors and judges played a direct role in cases amounting to arbitrary detention. In many cases, it is difficult to determine whether actors in the justice system willingly participated in the arbitrary detention or whether they did so under pressure.

72. The cases investigated did not provide indications that the legality of detentions was subject to judicial review. At various procedural stages, the State did not provide sound evidence to sustain defendants' participation in the commission of punishable acts. Accusations against defendants were later revealed to be false or based upon manipulated evidence. Confessions were extracted without a lawyer present or under duress. Civilians were also charged with military crimes and contained within the Organic Code on Military Justice, treason against the fatherland,<sup>12</sup> theft of military belongings,<sup>13</sup> rebellion<sup>14</sup> or outrage against the sentinel.<sup>15</sup>

73. Non-compliance with procedural timeframes established in the Criminal Procedure Code was systematic. These delays resulted in extended periods of pre-trial detention,<sup>16</sup> over two years in many cases. Courts failed to respond to habeas corpus or other judicial review requests filed by the detainees or their lawyers questioning these delays. Some detainees remained detained despite having served their sentences. The vast majority of cases the Mission reviewed remained in the preparatory or intermediary phases, despite the time limits for those phases having expired in most cases.

74. All cases reviewed revealed recurrent violations of due process guarantees under domestic and international standards. Political and military detainees also faced interference with the right to adequate defence and a lawyer of their choosing. In addition, in many of the cases documented, courts ignored defendants' requests of privately hired representation and assigned public defenders instead.

75. When defendants were able to secure representation by private lawyers, the lawyer's ability to prepare an adequate defence was hindered. Sometimes lawyers were not provided with essential documents. At other times, lawyers were not informed of court dates. Lawyers also complained that they faced limitation on visits with their clients and/or suffered various forms of harassment and intimidation against them or their families.

76. The Mission found that processes for distribution of cases in many cases were circumvented in order to ensure that cases were assigned to specific prosecutors and judges. Judges and prosecutors have also said that they have been improperly pressured. Franklin Nieves, public prosecutor in the case of Leopoldo López, later described the trial as a sham, and that he remained silent because of fear, due to pressure exerted by his superiors.

77. Under the Constitution, "the jurisdiction of military courts is limited to crimes of a military nature" and ordinary crimes, human rights violations and crimes against humanity are subject to ordinary jurisdiction.<sup>17</sup> Traditionally, there has been a restrictive interpretation of military jurisdiction.<sup>18</sup> However, especially since April 2017, the Mission's analysis of cases revealed an increasingly frequent use of military jurisdiction to prosecute and try civilians.

78. Judicial authorities refused to order investigations into allegations of torture, even in cases in which victims either appeared in court with clear marks of mistreatment or stated during hearings that they had been tortured. In several cases, the judges ordered that the accused be returned to the place where they claimed to have been tortured, usually DGCIM Boleíta.

<sup>12</sup> Organic Code of Military Justice, article 464. Treason is also contemplated in articles 128 ff of the Criminal Code.

<sup>13</sup> *Ibid.*, art. 570.

<sup>14</sup> *Ibid.*, art. 476.

<sup>15</sup> *Ibid.*, arts. 501 ff.

<sup>16</sup> Criminal Procedure Code, art. 236.

<sup>17</sup> 1999 Constitution, art. 261. See also art. 29.

<sup>18</sup> See Judgment 883 of 24 April 2002, Case file No. 01-2721.

## B. Violations in a Social Control or Security Context

### 1. Background

79. The human rights violations that the Mission was mandated to investigate, particularly extra-judicial executions, also took place within the context of security operations. These were police and/or military operations aimed at combatting crime, which resulted in high numbers of extrajudicial executions against people perceived as criminals.

80. According to the Constitution “[t]he right to life is inviolable” and the death penalty is prohibited.<sup>19</sup> The organic laws of the various police forces, including the PNB<sup>20</sup> (and its bylaw<sup>21</sup>) and the CICPC<sup>22</sup> permit the use of lethal force if necessary to protect the life of a police officer or a third party.

81. Official information about killings by State security forces is not generally available. In the full report, the Mission provides an extensive overview of the data collected by others, including from the Ministry of Popular Power of Interior Relations, Justice and Peace (hereinafter Ministry of the Interior), the Former Attorney General and the NGOs Venezuelan Observatory of Violence and Cofavic. Even the lowest estimates suggest that killings by State agents in Venezuela are among the highest rates in Latin America. While not all of these killings were necessarily unlawful, these estimates provide relevant background to the violations documented by the Mission.

82. The Mission requested information from the Government on the progress of investigations into killings by State security forces. As at the writing of this report, it has not received a response. The vast majority of cases of killings by security forces have not been subject to prosecution. The principal exceptions are the Public Prosecutor’s Office investigation into 43 Operations for Peoples Liberation (OLP)/Operations for People’s Humane Liberation (OLHP), and into the Barlovento case.

### 2. The Operations for People’s Liberation (OLP) and the Operations for People’s Humane Liberation (OLHP)

#### *Strategy and Objectives*

83. The Mission investigated and reviewed 140 OLPs/OLHPs, five of which are detailed in the full report as case studies. It also investigated the military operation in Barlovento, which differed in some ways from other operations, having been carried out in accordance with a military plan, Plan Rondón.

84. Government representatives presented OLPs as a series of joint military and police operations, which began in July 2015 and continued until July 2017, aimed at liberating territories from criminal activity. Initially implemented five months before the National Assembly elections in December 2015, there are indications that the OLPs were an effort to gain electoral popularity by showing results in combating crime.

85. A first phase of operations took place from July 2015 to May 2016 and in May 2016, a new phase was officially launched. On 13 July 2016, one year after the first operation, the Minister of the Interior announced that 143 operations had been carried out during the first half of 2016.

86. In January 2017, the Government relaunched the OLPs as Operations for People’s Humane Liberation – OLHP. In a televised statement, President Maduro said that OLPs “have had a good experience, but have also faced criticism”. The Government published a Protocol of Action for the OLHPs, containing information about organization and operational design.<sup>23</sup>

<sup>19</sup> 1999 Constitution, art. 43.

<sup>20</sup> Decree No. 5.895, arts. 68-72.

<sup>21</sup> Decree No. 2765 of 21 March 2017, arts. 60-90, available at: <https://pandectasdigital.blogspot.com/2017/03/reglamento-general-de-la-ley-organica.html>.

<sup>22</sup> Decree No. 9.045 of 15 June 2012, arts. 84 and 85.

<sup>23</sup> Protocolo de Actuación de los CSE en las OLHP Enero 2017.

87. By mid-2017, Government representatives had largely stopped referring to OLPs/OLHPs in statements, indicating a change of strategy. This shift coincided with a 14 July 2017 public announcement that a specialized tactical force, the FAES, established within the PNB, would take the lead in the fight against crime and terrorism.

88. The operations involved the deployment of considerable human and logistical resources. In July 2016, the Minister of the Interior said that 95,021 police and military officials had participated in operations up to that date. OLPs were implemented in 19 out of 24 states. Of the 140 cases reviewed by the Mission, most took place in the Caracas metropolitan area and in Miranda and Carabobo states.

89. A common pattern is that the OLPs began during the earlier hours of the morning, often before dawn, and that security forces blocked off neighbourhood streets so that people were unable to enter or leave. OLPs took place primarily in urban, low-income neighbourhoods. Both female and male security officials participated in the operations.

90. Several of the operations were announced as having specific criminal targets. In some cases security forces carried out prior intelligence work to identify the targets, including infiltrating community activities; recruiting sex workers; using drones; reviewing pictures and profiles on social media; and reviewing contacts and photos in cell phones seized from known criminals. Most people killed in the cases investigated did not have criminal records or outstanding arrest warrants against them.

#### *Killings in OLPs/OLHPs*

91. There are reasonable grounds to believe that security forces committed extrajudicial executions, as well as arbitrary arrests and detentions during OLPs and OLHPs.

92. In its investigations, the Public Prosecutor's Office identified 505 people killed during the OLPs (502 men and 3 women, including 27 adolescents). In the 140 cases<sup>24</sup> reviewed by the Mission, 413 people were killed (306 men, among them 16 minors, and 3 women. There was no information available on the sex of 104 victims). In 52 cases, between one and three deaths were registered and in 36 cases between four and nine deaths were registered in a single operation. In eight cases, there were ten or more deaths in a single operation.

93. There is a clear pattern of Government claiming that deaths occurred as a result of confrontations or that victims were resisting authority at the time of their death. In most of the cases, victims' family members, usually women, older persons and children, were removed from the houses by the security forces, limiting witnesses at the scene to security forces only.

94. These claims stand in contrast to accounts from family members and other witnesses who last saw the victim alive under the control of armed security officials. Furthermore, victims received fatal shots to vital areas, sometimes at point blank range. The fatal shots suggest that security forces did not attempt to employ non-lethal methods of control, de-escalation or restraint prior to use of lethal force. In the cases investigated, no security forces were reported killed in the OLPs, making armed confrontations seem unlikely.

95. There are reasonable grounds to believe that during OLP/OLHPs, security forces planted evidence or simulated confrontations. Allegations of cover-ups documented included planting weapons or contraband, shooting walls of the house to make it look like a gunfight had taken place and firing shots in the air while shouting that the victims were attempting to escape.

96. While official numbers vary, the Public Prosecutor's Office said that, between July 2015 and March 2017, security forces detained 2,911 individuals.<sup>25</sup> One year after the official launch of OLPs, the Minister of the Interior referred to 2,399 people detained for different

<sup>24</sup> A "case" refers to one operation, often involving numerous victims, rather than the human rights violations faced by one person.

<sup>25</sup> Public Prosecutor's Office, actuaciones del Ministerio Público relacionadas con los OLP (julio 2015-marzo 2017).

crimes. The NGO PROVEA has documented even more, reporting an estimated 15,946 arrests in the context of OLPs in 2015 alone.<sup>26</sup>

97. The Mission analysed data from the Public Prosecutor's Office of 329 cases of detentions in more than 160 operations, involving 877 people who were allegedly detained *in flagrante delicto*, during OLPs carried out between 12 July 2015 to 13 October 2016. The most common crimes charged were: (1) resistance to authority (26.8 per cent); (2) illegal possession of firearms (7 per cent); (3) smuggling (8.2 per cent); and/or (4) drug trafficking (7.6 per cent). There is no information available regarding the outcome of these cases

98. Some common patterns in the modus operandi of the detentions emerged. Security forces neither presented arrest warrants, nor informed detainees of the reasons for their arrest. Security forces used violence during arrests. The Mission also documented temporary detentions of family members of victims who were killed, in particular women, children, and older persons, who were removed by force or detained for short periods.

99. The security officers entered homes and seized items without a search warrant. The Mission also documented consistent allegations by witnesses and victims that security forces destroyed furniture and installations, and stole items including food and household goods, as well as cash, cell phones, computers and other valuables.

100. Victims of executions and detentions carried out by security forces were overwhelmingly young men. Officers involved in the operations also perpetrated acts of violence against women, most often during the process of removing relatives from their homes.

101. Female relatives were generally the ones to file complaints about the murder of their family members, or to seek information about their whereabouts. Surviving family members also faced the additional social and economic hardship resulting from the executions, detentions and raids.

### 3. Other Extrajudicial Executions by Police Forces

102. There are reasonable grounds to believe that officers from two branches of the police – the PNB/FAES and the CICPC – committed extrajudicial executions during security operations outside the context of OLP/OLHPs.

103. The FAES was created in April 2016 as an “elite” tactical force within the PNB. Sources with inside knowledge of the force described it to the Mission as unprofessional and lacking training.

104. The Mission investigated 11 cases involving 18 extrajudicial executions by State security forces, which are included in case studies in the full report. The Mission also conducted an extensive review of cases reported by local press from January 2014 to December 2019 in order to corroborate patterns and changes over time. In total, the Mission reviewed 2417 incidents involving 4681 deaths by security forces outside of the context of the OLP/OLHP.

105. Investigations revealed that two security forces, the CICPC and the PNB/FAES were responsible for 59% of killings in the years under review. Both of these institutions depend administratively and functionally on the Ministry of the Interior. Between 2014 and 2018, the CICPC was the security force most commonly involved in cases (45.4%). Subsequently, in 2019, the PNB/FAES was identified as the perpetrator in the majority of cases (64.5% of cases).

106. In the cases reviewed, the victims were overwhelmingly young males. The male victims fell between the following age ranges: under 18 years old (6 per cent), between 18 and 25 years old (51 per cent), between 26 and 35 years old (31 per cent) and over 35 years old (11 per cent). Only 27 cases reviewed involved women as victims of killings.

107. Although women were not primary targets of physical violence in the operations, in at least 4 of the 11 cases documented, female family members reported being physically

<sup>26</sup> <http://www.derechos.org/ve/pw/wp-content/uploads/Derecho-a-la-Libertad-Personal.pdf>.

assaulted by security forces. In almost all of the cases documented, surviving female relatives reported suffering significant economic hardship following the executions of their sons, brothers or husbands.

108. In the cases investigated, the police approached houses directly, suggesting that they had prior intelligence to identify and locate the victims. According to the investigations, the PNB/FAES kept files with information about targets, including photos, names, nicknames and suspected crimes. Interviewees also confirmed that information was gathered from community-based informants, including the Community Councils.

109. Overall however, PNB/FAES officers interviewed were consistent that intelligence work was deficient, lacked adequate resources and was frequently incorrect.

110. The killings most often took place in the victims' house or the neighbourhood. In several cases, the police carried out the operations in the early morning or late at night, at times when the persons targeted would likely be at home. Police entered homes without presenting a warrant. To ensure there were no witnesses, police removed the victim's family members, primarily women, older persons and children, from their homes or isolated them from the target in separate locations in the house.

111. In several cases, neighbourhoods were cordoned off and neighbours were told to stay inside their homes. Some were still able to see or hear certain relevant events, such as shouts or shots fired. In some cases, the police told family members that they were radioing headquarters to check the fatal victim's criminal record before the killings were committed.

112. A source with inside knowledge of PNB/FAES operations told the Mission that, after the background check, the head of the operation in direct communication with superiors could request and receive a "green light to kill". To kill is referred to by the code "Eighty (80)".

113. The Mission documented a pattern of shootings at point blank range in vital areas, including the head and thorax with one or two shots. One former PNB/FAES officer interviewed said he and his colleagues refer to killings as "squaring people". This interviewee said that there is a "triangle" from the chest of the victim upwards "where shooting people is allowed".

114. The official version of the events in many cases was that the victims were killed while resisting arrest, in a confrontation and/or during an exchange of fire. However, the Mission received direct evidence contradicting the official version. Witnesses interviewed stated that the victims were last seen or heard under the control of the police officers, including on a bed, on the ground, with a hood over the victim's head or with his hands raised. Despite efforts to remove them from the scene, in some cases witnesses saw the officers firing the fatal shot.

115. The Mission identified a pattern of allegations that police attempted to cover up killings by simulating confrontations. This includes altering the crime scene and/or destroying forensic evidence; simulating a shootout or escape of the victim; firing a shot from the hand of the victim to leave traces of gunpowder; planting weapons or contraband and transferring victims to hospitals even if the person is dead.

116. PNB/FAES officials corroborated these allegations, confirming practices of simulation of apparent confrontation. A former FAES officer said that the officials usually fire shots to mimic a shoot-out "or they take an illegal weapon they have [...] and then leave it there". Another source told the Mission that the police routinely planted a gun or a grenade (called in the jargon "agricultural missions" to plant "seeds") and then alleged that there was an armed confrontation.

117. The police forces themselves have published or confirmed information to news sites regarding the killings, in some cases accompanied by social media posts containing information about victims' criminal records, their gang nicknames or photos of them wielding guns.

118. In 723 of the cases the Mission reviewed, victims' families said that the victim had no criminal history. In 67 cases reviewed by the Mission, media reports said that the police had gone to a neighbourhood to look for a certain wanted person or criminal, but had killed another person by mistake.

119. An allegation appearing in almost all of the cases investigated was that the police officers took basic goods (food, clothing) and valuables (cash, jewellery, electronics) from the houses of the fatal victims. Several sources said that financial benefits and/or control over criminal markets provided an incentive for killings, especially in light of low police salaries, or related to retribution or power dynamics within criminal relationships.

### C. Violations in the Context of Protests

120. Since 2014, a series of events have taken place in Venezuela challenging Government decisions and denouncing the political, economic and social situation. According to the non-governmental organization Observatory of Social Conflict, 61,295 protests took place between January 2014 and December 2019.

121. The demonstrations peaked at certain times. A review of available data indicates that human rights violations were higher in the months and years when protests related to the political crisis. The periods of particular intensity were February to April 2014, April to July 2017 and January to February 2019. The Mission prioritized investigating violations occurring during these periods.

122. The Mission reviewed 97 cases in which human rights violations occurred. Of these, 14 appear in the full report as detailed case studies. The demonstrations were both planned and spontaneous, involving students, political parties, neighbourhood associations, NGOs, unions and professional associations, denouncing concerns related to the political situation and economic and social rights.

123. Many protests caused transport disruption, either by volume of marchers, or by sit-in or roadblocks, including “guarimbas” made of different type of items.

124. Of the protests the Mission reviewed, 13 involved some form of confrontation between security forces and protesters. Security forces fired tear gas canisters, anti-riot pellet guns and used hydrant trucks. The Mission reviewed over 70 videos shot at demonstrations, none of which gave any indication that security forces attempted non-violent measures, such as dialogue or warnings, before taking these measures.

125. Some individuals involved in protests also committed violent acts, including throwing rocks or Molotov cocktails at the security forces, which could be criminal acts. On occasion, protesters used improvised mortar devices to fire low-grade explosive material.

126. Under the 1999 Constitution, the police are responsible for maintaining public order.<sup>27</sup> The Constitution also grants the GNB a “basic responsibility for conducting operations as required to maintain internal order within the country”.<sup>28</sup>

127. Since 2014, the command structure responding to protests became increasingly militarized. With Resolution No. 8610 of January 2015, the Minister of Defence authorized the FANB to intervene in public meetings and demonstrations. In April 2017, the President enacted Plan Zamora describing a military response in protests and against different categories of perceived enemies. Other targeted military plans were derived from that matrix plan, for example Plan Guaicaipuro and Plan Zamora Fragmentada in Mérida state.

128. Several plans and policies applied to demonstrations provided scope for military and paramilitary intervention in protests and sometime for the participation of colectivos, or armed citizen groups, in security tasks.

#### 1. Arbitrary Detentions and Due Process Concerns

129. The Mission has reasonable grounds to believe that during the protests in the periods reviewed (February to April 2014, April to July 2017 and January to February 2019),

<sup>27</sup> 1999 Constitution, art. 332.

<sup>28</sup> 1999 Constitution, art. 329.

recurring arbitrary detentions of demonstrators occurred in violation of their right to liberty and security.

130. Official statistics are not available publicly but civil society organizations have attempted to track numbers of arrests in the context of protests, identifying between 3459<sup>29</sup> and 3696<sup>30</sup> in 2014, between 2553<sup>31</sup> and 5549<sup>32</sup> in 2017 and an estimated 2252<sup>33</sup> in 2019.

131. In April 2014, the Supreme Court issued a judgment interpreting the right to peaceful assembly under the Constitution<sup>34</sup> and the 2010 Law on Political Parties, Public Meetings and Protests as requiring prior permission from local authorities.<sup>35</sup> The Court held that failure to obtain authorization “absolutely limits the right to peaceful demonstration, preventing any kind of meeting or demonstration from being held” and that those holding protests without authorization could incur in criminal responsibility for disobeying authority.

132. The Mission observes that the Supreme Court decision appears at variance with Venezuela’s international obligations related to the right of peaceful assembly, under the International Covenant on Civil and Political Rights (ICCPR). Human rights standards obligate States to allow peaceful assemblies without unwarranted interference and to facilitate the exercise of the right. Notification systems are permissible to facilitate peaceful assemblies but must not be misused to repress them.

133. Detainees were held incommunicado before being brought to a judge for their initial court appearance, unable to contact families and lawyers. In most cases, the detainees were not informed of the reasons for their arrest until they were brought before a judge for the initial court appearance, which often took place beyond the 48 hours after detention required by the Constitution.<sup>36</sup>

134. In the cases investigated, 403 persons were arrested. Of these, 312 were charged with a criminal offence during the initial appearance. In 66 cases, the judge ordered detainees’ continued pre-trial detention. The Mission’s review of the cases did not reveal a basis for a reasonable presumption of risk of flight or obstruction with the investigation, as required to sustain custodial measures.<sup>37</sup>

135. The most common crimes charged under civilian jurisdiction were public incitement,<sup>38</sup> instigation to commit a crime,<sup>39</sup> criminal association<sup>40</sup> and obstruction of a public thoroughfare.<sup>41</sup> To a lesser extent, detainees were charged with damages or arson,<sup>42</sup> use of minor to commit a crime<sup>43</sup> and possession of an incendiary substance.<sup>44</sup>

136. The Mission has reasonable grounds to believe that in some cases charges were based on information planted or fabricated by security forces. Such acts included forging police reports or taking pictures of protestors posing next to Molotov cocktails. The Mission interviewed a witness who worked for over ten years in intelligence services in Venezuela, who stated that “there were times when there were interventions against students, but there was no merit to do so, so [the GNB] had to plant information”.

137. In 2017, many protesters arrested were prosecuted under military jurisdiction, contrary to the “natural judge” principle in article 49(4) of the Constitution. The most

<sup>29</sup> [https://www.derechos.org/ve/pw/wp-content/uploads/16libertad\\_personal1.pdf](https://www.derechos.org/ve/pw/wp-content/uploads/16libertad_personal1.pdf).

<sup>30</sup> Foro Penal: Gráfica de arrestos por año 2014-2019, on file with the Mission.

<sup>31</sup> [https://www.derechos.org/ve/web/wp-content/uploads/16libertad\\_personal-3.pdf](https://www.derechos.org/ve/web/wp-content/uploads/16libertad_personal-3.pdf).

<sup>32</sup> Foro Penal: Gráfica de arrestos por año 2014-2019, on file with the Mission.

<sup>33</sup> Ibid.

<sup>34</sup> Art. 68.

<sup>35</sup> Judgment No. 276 of 24 April 2014.

<sup>36</sup> Article 44.1.

<sup>37</sup> 2012 Criminal Procedure Code, art. 236.

<sup>38</sup> Criminal Code, art. 285.

<sup>39</sup> Criminal Code, art. 285.

<sup>40</sup> Criminal Code, art. 286.

<sup>41</sup> Criminal Code, art. 357.

<sup>42</sup> Criminal Code, arts. 343 and 473.

<sup>43</sup> Organic Law for the Protection of Children and Adolescents, art. 264.

<sup>44</sup> Criminal Code, art. 296.

common charges were the crimes of attacking the sentry (a military crime involving the attack on a military guard, which carries a penalty of 14 to 20 years in prison), rebellion and damage to the facilities of the armed forces.

138. The Mission found that compromised judicial independence and the executive interference in judicial processes contributed to arbitrary detentions of protesters. One former judge said that “The pressure was tremendous during those days [2014] and so was the fear of reprisals”. He said that the executive ordered judges to grant arrest and search warrants against certain people. The former judge said the president of the judicial circuit visited him more than once and asked why he had released protesters “when the order was to leave them in detention”.

## **2. Torture and Cruel, Inhuman or Degrading Treatment**

139. The Mission has reasonable grounds to believe that security forces including the GNB, PNB and SEBIN subjected demonstrators to torture and cruel, inhuman or degrading treatment during the periods under review.

140. The detainees remained in detention between three days and almost three years. In almost all cases reviewed, the detainees were denied contact with their families or lawyers before initial court appearances. Detainees were held with numerous other people who had been arrested in the context of the protests who experienced similar situations as those described in the cases investigated.

141. Detainees suffered ill-treatment and torture during arrest and transfer to detention facilities, as well as during detention. The facilities used to hold detainees before initial court appearances were not equipped as detention centres, lacking sleeping space, bathroom facilities, or food and water. Overcrowding was common.

142. The Mission found that acts of torture or ill-treatment inflicted upon those arrested and detained at protests included beatings, electric shocks, being forced into stress positions, exposure to tear gas in closed areas, sexual and gender-based violence and/or psychological torture and ill-treatment.

143. The torture and/or ill-treatment against demonstrators appeared to be for punishment purposes, as revealed by the language used by security forces to humiliate or insult them. In other cases, the torture and/or ill-treatment was to extract of information. In many cases, interviewees recounted that security officers made them sign documents saying that their rights had been respected and that they had not been mistreated during detention.

144. Some people arrested during demonstrations, in particular, those identified as leaders, were transferred to SEBIN facilities. They were detained there for long period, during which they were subjected to various forms of torture and ill-treatment.

## **3. Killings in Protests**

145. The Mission has reasonable grounds to believe that in cases investigated, international and national standards on the use of force were not respected, causing arbitrary deprivation of life. Security forces used lethal force against the victim when it was not strictly unavoidable to protect lives. Security forces also used less-lethal weapons in a lethal manner, which resulted in the death of the demonstrators.

146. The Mission investigated 36 cases of killings in protests (32 men and 4 women) on the basis of information collected from direct sources and published by government sources and NGOs. The Public Prosecutor’s Office reported 43 deaths in the protests of 2014<sup>45</sup> and

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<sup>45</sup> Gobierno de Venezuela, Ministerio Público, Despacho de la Fiscal General de la República, Informe Anual 2014 a la Asamblea Nacional.

124 (between April and July) in 2017.<sup>46</sup> According to NGOs, between 41<sup>47</sup> and 61<sup>48</sup> people were killed in protests in January and February 2019.

147. Different security forces were responsible for the killings, most often the GNB, followed by the PNB, local police, other members of the FANB and the SEBIN. The Mission examined seven cases in which colectivos, armed citizen groups, were responsible for using lethal weapons that killed demonstrators. In each case investigated, State security forces failed to intervene.

148. The Public Prosecutor's Office has taken some steps to investigate killings, particularly prior to the change of the Attorney General in 2017. However, of 165 cases of killings in protests for 2014, 2017 and 2019, only 5 have resulted in conviction and sentencing (4 in 2014 and 1 in 2017).

149. ALFAVIC2017, an organisation formed by the parents and relatives of 14 victims of killings in protests, reports having faced barriers when attempting to clarify the circumstances surrounding the deaths.<sup>49</sup> These include public prosecutors not sharing case files with private lawyers, the high turnover of public prosecutors assigned to cases and the GNB's refusal to provide information relevant to the investigations.

150. The right to life under the ICCPR imposes positive obligations upon the State to investigate and prosecute all allegations of arbitrary deprivation of life, whether committed by state agents or private individuals, including allegations of excessive use of force.<sup>50</sup>

## V. Responsibilities

151. The Mission has reasonable grounds to believe that the acts and conducts described in this report amount to arbitrary killings, including extrajudicial executions, torture and other cruel, inhuman or degrading treatment or punishment – including sexual and gender-based violence – enforced disappearances (often short term) and arbitrary detentions, in violation of Venezuela's national law and international obligations.

152. The human rights violations and crimes investigated by the Mission and outlined in this report give rise both to State responsibility and to individual criminal responsibility, either under domestic or international criminal law, or under both.

153. The State, as primary duty holder of international human rights obligations, is responsible for all acts that are attributable to it and constitute a violation of international obligations. In addition to the State's obligation to prevent human rights violations and ensure accessible and effective remedies to individuals when they occur, the State's failure to investigate and to bring to justice perpetrators of such violations itself gives rise to a separate breach of the international human rights obligations.

### Findings by Context

154. With respect to violations against targeted political and military dissidents by intelligence services, the Mission has recorded in its database the names of officers identified by victims as those directly responsible for the violations and crimes committed. The Mission also has reasonable grounds to believe that high-level authorities within SEBIN and DGCIM either committed, ordered or contributed to violations, or knew that subordinates were committing them and, having the authority to do so, failed to prevent and repress them.

<sup>46</sup> Public Prosecutor's Office, Balance de víctimas fallecidas y lesionadas durante manifestaciones en Abril-Junio de 2017, on file with the Mission.

<sup>47</sup> <https://www.derechos.org.ve/informe-anual/informe-anual-enero-diciembre-2019>.

<sup>48</sup> <http://www.observatoriodeconflictos.org.ve/oc/wp-content/uploads/2020/01/INFORMEANUAL-OVCS2019-1.pdf>.

<sup>49</sup> See Alfavic2017, Note to Journalists/Press, 10 December 2019, document on file with the Mission.

<sup>50</sup> CCPR/C/GC/36, paras. 27-29.

155. The individual responsibility of specific prosecutors or judges for violations or crimes, by acts or omissions, merits additional investigation. In certain cases, prosecutors and judges have played a direct role in cases that amount to arbitrary detentions. In addition, the judiciary has failed to act as a check on the other State actors, perpetuating impunity for the violations and crimes committed.

156. In relation to violations and crimes committed during OLPs/OLHPs, the Mission found that extrajudicial executions were committed by officers belonging to the military, police and intelligence, who acted jointly. The Mission has reasonable grounds to believe that high-level officials in those institutions contributed to the commission of the documented crimes. In addition, the Mission has reasonable grounds to believe that police and military superiors and commanders knew or should have known about the violations committed during operations and, having had effective command and control, failed to take adequate measures to prevent and repress them.

157. With relation to the Barlovento case, the Mission has reasonable grounds to believe that the responsibility for the violations and crimes committed extends beyond those identified as responsible and charged by the Public Prosecutor's Office.

158. Regarding extrajudicial executions committed by PNB/FAES and the CICPC, the Mission has reasonable grounds to believe that certain high-level authorities had knowledge of and contributed to the commission of these crimes, while others, in their role as commanders and superiors, knew or should have known about them, and having effective command and control, did not take measures to prevent or repress them. The responsibility of regional and state level authorities within these forces correspond to the areas where they exercised effective authority and control.

159. Regarding human rights violations in the context of protests, in the cases investigated, the Mission has collected information regarding individuals and units allegedly involved in the perpetration of arbitrary detentions, torture and cruel, inhuman and degrading treatment, and arbitrary deprivation of life, at various levels of the chain of command, including at the tactical, operational, strategic and political levels. The Mission observes that more investigations would be necessary to identify specific individual responsibilities, especially at low and mid-levels of authority and control.

### **Individual Criminal Responsibility**

160. The Mission has reasonable grounds to believe that most of the violations and crimes documented in this report were committed as part of a widespread and systematic attack directed against a civilian population, with knowledge of the attack, pursuant to or in furtherance of two distinct State policies: Firstly, there was a policy to silence, discourage and quash opposition to the Government of President Maduro, including by targeting individuals who, through various means, demonstrated their disagreement with the Government, or were perceived as being against the Government, as well as their relatives and friends who were targeted for being associated with them. Secondly, there was a policy to combat crime, including by eliminating individuals perceived as "criminals" through extrajudicial execution.

161. The Mission has reasonable grounds to believe that the following crimes against humanity were committed in Venezuela in the period under review: murder, imprisonment and other severe deprivations of physical liberty, torture, rape and other forms of sexual violence, enforced disappearance of persons in the Barlovento case, and other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health. Some of the same conduct may also constitute the crime against humanity of persecution, as defined by the Rome Statute.

162. All the violations and crimes documented in this report give rise to individual criminal responsibility, either as crimes against humanity or as distinct crimes established in national law, or both. The Mission does not attempt to determine the modes of criminal responsibility in which different individuals mentioned throughout this report may incur. However, the report presents ample information that demonstrates that, in the period of review, State

authorities – both at the Presidential and the Ministerial level – held and exercised their power and oversight over the civilian and military security forces and agencies identified in the report as perpetrators of violations and crimes documented: the FANB (including the GNB), the PNB (including the PNB/FAES), the CICPC, municipal and state police forces, SEBIN and DGCIM.

163. The information available suggests that the measures taken by State authorities to prevent or repress these crimes, or afford an effective remedy to victims, were largely insufficient. At the same time, there are multiple indications that, despite having knowledge of the crimes documented in this report, the authorities not only failed to change their course of action, but in fact, continued to adopt policies and plans and contributed to their implementation, which resulted in the commission of those crimes. Authorities provided essential contributions including the material, logistical and human resources necessary for the security and intelligence operations that, as documented in this report, resulted in the commission of crimes.

164. The Mission has reasonable grounds to believe that both the President and the Ministers of People's Power for Interior Relations, Justice and Peace and for Defence, ordered or contributed to the commission of the crimes documented in this report, and having the effective ability to do so, failed to take preventive and repressive measures. The exact contours and extent of these contributions must be duly investigated and a determination of their individual criminal responsibility – either in a national or international jurisdiction – must be made by the competent judicial authorities.

165. The Mission also has reasonable grounds to believe that the Directors of the security and intelligence entities involved in the commission of the crimes documented in this report ordered or contributed to the commission of these crimes, and having the effective ability to do so, failed to take preventive and repressive measures. The exact contours and extent of these contributions must be duly investigated and a determination of their individual criminal responsibility – either in a national or international jurisdiction – must be made by the competent judicial authorities.

166. The direct perpetrators of the crimes documented in this report are responsible for their actions. Their immediate supervisors and others in the chain of command who had knowledge or should have had knowledge about the crimes, had effective control over their subordinates, and failed to take adequate measures to prevent or repress the crimes are also liable for their criminal conduct. Their acts must be duly investigated and a determination of their individual criminal responsibility made by the competent judicial authorities.

## **Recommendations**

167. In the full report, the Mission makes 65 detailed recommendations regarding measures that should be taken to address the violations and crimes documented, including structural factors contributing to violations. The Mission recommends that the Bolivarian Republic of Venezuela immediately carry out prompt, effective, thorough, independent, impartial and transparent investigations into the human rights violations and crimes described in the present report, bringing perpetrators to account in line with international human rights norms and standards, and providing justice and reparations for victims. The State should ensure that investigations include those at higher levels of responsibility, with respect to all violations and crimes documented.

168. The Mission also addresses recommendations to the international community, including that States should consider initiating legal actions against individuals responsible for the violations and crimes identified in the report, in accordance with their relevant domestic legislation. The report recommends that, in its consideration of cases, the Office of the Prosecutor of the International Criminal Court takes into account the victims' needs to have justice served in a timely fashion.