



Special Procedures Branch
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson
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For the attention of:

Working Group on Arbitrary Detention
Special Rapporteur on freedom of opinion and expression
Special Rapporteur on freedom of peaceful assembly and of association
Special Rapporteur on the independence of judges and lawyers
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

RE: Request for joint follow up action on the grave and deteriorating human rights situation in Venezuela

Dear Special Procedure mandate holders,

I am writing on behalf of the International Commission of Jurists to call on the above-listed Special Procedures to take urgent and joint follow up action on the grave and ever deteriorating human rights situation in Venezuela, including by way of follow up to the joint statement of 4 August 2017 issued by those mandate holders.¹ Given the scale, nature and gravity of the on-going human rights violations, as well as our concerns about the seeming abrogation of the rule of law and separation of powers by the Government, we consider that urgent action is not only warranted, but, equally importantly, likely to bring further much needed pressure to bear on the authorities.

The ICJ has identified and documented the following critical areas of concern.

1. Rapidly deteriorating human rights situation

The ICJ's baseline study on Venezuela (see below under ICJ reports heading) concludes that the situation of human rights and fundamental freedoms has deteriorated rapidly in recent years, but particularly since 2014. The effective exercise of fundamental freedoms of expression, association and assembly, among other political rights, as well as the right to strike, have been undermined, *de facto* and *de jure*. Extrajudicial and arbitrary executions, the use of torture and other ill-treatment, arbitrary detention and the criminalization and prosecution of all forms of political and/or social dissent have increased in the last four years, and continue to do so. The situation with regard to events from April to July 2017 is documented in the recent report of the rapid response team established by the UN High Commissioner for Human Rights.² That report documents the Venezuelan authorities' systematic repression of demonstrations held by the opposition and civil society, including through the use of excessive and disproportionate force, e.g., 126 extrajudicial killings; 3,000 instances of arbitrary detentions and several torture cases documented; and the resort to military courts to try more than 500 civilians detained in connection with their participation in the above-mentioned demonstrations.

¹ Venezuela must end systematic detentions and military trials for protesters – UN experts, OHCHR Press Release, 4 August 2017, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21939&LangID=E>.

² Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from 1 April to 31 July 2017, OHCHR, 30 August 2017, available at http://www.ohchr.org/Documents/Countries/VE/HCReportVenezuela_1April-31July2017_EN.pdf.

2. Lack of accountability of perpetrators of human rights violations

As noted in the ICJ's baseline study, the attitude of the Public Prosecution Office has in previous years been tolerant of gross human rights violations and abuses committed by State agents and groups of armed civilians under the control of the Government. However, from the end of 2016, and in particular following the decisions of the Supreme Court of Justice of March 2017 (noted below), the former Attorney General initiated several investigations and brought charges against State officials for the death of persons killed during public demonstrations. As explained in the ICJ's position paper on her dismissal (see below under ICJ reports heading), the former Attorney General reported in March 2017 that 4,667 people had been killed as a result of the action of State security forces in 2016. In July 2017, the Attorney General publicly announced the opening of a criminal investigation against senior Government officials after having verified the existence of what she described as "patterns of systematic violations of human rights" amounting to "crimes against humanity". The hopeful recent change of position of the Public Prosecutor's Office in seeking accountability has now been reversed with the improper dismissal of the Attorney General (see below) and her replacement with a close political ally of President Maduro.

Furthermore, Venezuela's legislative framework fails to provide for the principle of criminal responsibility for superior orders. In its General Comment No. 2, the Committee against Torture has clarified that such a principle underscores the non-derogability of the prohibition of torture.³ Venezuelan authorities have also sought to further entrench the impunity for human rights violations prevalent in the country through the adoption of 'legal' measures. In this respect, we draw attention to the fact that Article 2(7) of Decree No. 2323 of May 2016, declaring a State of Exception and Economic Emergency, provides an impunity clause by establishing the "temporary and exceptional suspension of the execution of sanctions of a political nature against the highest authorities of government and other senior officials, when such sanctions could... undermine the security of the nation". In addition, while the Constitution of the Bolivarian Republic of Venezuela empowers ordinary courts to try individuals charged with crimes against humanity and/or other crimes disclosing evidence of gross human rights violations (Articles 29 and 261), the Organic Code of Military Justice provides for the possibility that soldiers accused of such crimes may instead be tried by military courts.⁴

3. Lack of effective remedies and reparation for victims of human rights violations

Among other things, Venezuela's impunity crisis undermines the rights of the victims to justice, truth and reparation, including guarantees of non-repetition, and compounds the lack of accountability of those responsible for gross human rights violations. Furthermore, as explained in the ICJ's baseline study, while Venezuela's Constitution and

³ Committee against Torture, General Comment No 2: Implementation of Article 2 by States Parties, UN Doc CAT/C/GC/2 (2008), para. 26, which reads: "The non-derogability of the prohibition of torture is underscored by the long-standing principle embodied in article 2, paragraph 3, that an order of a superior or public authority can never be invoked as a justification of torture. Thus, subordinates may not seek refuge in superior authority and should be held to account individually. At the same time, those exercising superior authority - including public officials - cannot avoid accountability or escape criminal responsibility for torture or ill-treatment committed by subordinates where they knew or should have known that such impermissible conduct was occurring, or was likely to occur, and they failed to take reasonable and necessary preventive measures. The Committee considers it essential that the responsibility of any superior officials, whether for direct instigation or encouragement of torture or ill-treatment or for consent or acquiescence therein, be fully investigated through competent, independent and impartial prosecutorial and judicial authorities. Persons who resist what they view as unlawful orders or who cooperate in the investigation of torture or ill-treatment, including by superior officials, should be protected against retaliation of any kind."

⁴ The Organic Code of Military Justice (COJM) states that military courts are empowered to try cases concerning crimes 'related' to a military criminal offense (Article 123). The COJM defines as "military crimes": "the [unnecessary] use of weapons or violence against anyone" (Article 573). Thus, it is conceivable that instances of extrajudicial execution and torture may well be considered as falling within the jurisdiction of military courts, along with attacks on and/or appropriation of private property (Article 574).

legislative framework provide for judicial recourse and reparation for victims of gross human rights violations, the law only conceives of two kinds of reparation: restitution and compensation. Other forms of reparation such as rehabilitation, satisfaction and guarantees of non-repetition prescribed by international standards are not contemplated. In 2015, the Venezuelan Government adopted the National Human Rights Plan 2015-2019 which, among its long-term programme actions, proposes to “[a]dvance in the approval and enactment of laws on the subject of... [r]eparation and rehabilitation for the victims of human rights violations”. However, no legislation has as yet been developed in this area.

4. Lack of independence of the judiciary

Venezuela’s judiciary is characterized by its shaky independence from the executive branch. As explained in the ICJ’s baseline study, although the Constitution and laws formally guarantee judicial independence, these guarantees are not applied in practice, since the legislation and subsequent case law have established a transitional regime that has been in place for more than 17 years, causing legal uncertainty. This has been a subject of concern for the Human Rights Committee, the Committee against Torture, the Special Rapporteur on the independence of judges and lawyers, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.⁵ In 2017, of the 2,000 judges in Venezuela, only 700 are tenured judges. Currently, the great majority of Supreme Court judges, many of whom hold significant positions in the Court, are members of the United Socialist Party of Venezuela and/or are former Government officials. As explained in the ICJ’s baseline study and its report on the Supreme Court (see below under ICJ reports heading), the Government’s party has gradually but steadily co-opted the Supreme Court and turned it into an appendage of the executive branch.

5. Institutional crisis arising from decisions of the Supreme Court of Justice

In March 2017, after a series of decisions since December 2015 undermining the constitutional powers of the National Assembly, the Constitutional Chamber of the Supreme Court of Justice issued two judgments suspending the constitutional powers of the National Assembly (Case No. 17-0323, Judgment of 27 March 2017; and Case No. 17-0325, Judgment of 28 March 2017). Legislative power was abrogated and sweeping powers were granted to the executive branch over social, political, military, criminal, legal, economic and civil issues. Parliamentary immunity was abolished and it was declared that the opposition deputies, who make up the majority in the National Assembly, had committed a ‘crime against the Homeland’ for having passed, on 21 March 2017, the Agreement on the Reactivation of the Enforcement Process of the Inter-American Democratic Charter of the OAS, as the mechanism for peaceful conflict resolution to restore constitutional order in Venezuela. As explained in the ICJ’s report on the Supreme Court, the judgments of the SCJ constituted an unwarranted intrusion of the judiciary into the legislative branch and amounted to a severe breach of the principle of separation of powers and a collapse of the rule of law. The ICJ’s baseline study also notes the unfair dismissal, and in some cases imprisonment, by the Supreme Court’s Constitutional Chamber of mayors who are close to the opposition and who refused to comply with improper judicial orders to prevent demonstrations and protest marches against the Government (in respect of which the Human Rights Committee has issued views in an individual communication).⁶

6. Unconstitutional elections for new National Constituent Assembly

On 31 July 2017, National Constituent Assembly (NCA) elections were held, accompanied by widespread demonstrations and a response by authorities that left a number of people killed, injured or arbitrarily detained. As noted in the ICJ’s baseline study, among allegations of electoral fraud, the elections appear to have taken place in violation of Article 347 of the Constitution of the Bolivarian Republic of Venezuela. Whereas a significant portion of the

⁵ See footnotes 104 to 108 in the ICJ’s baseline study.

⁶ *Vicencio Scarano Spisso v. Venezuela*, Human Rights Committee Communication 2481/2014, UN Doc CCPR/C/119/D/2481/2014 (2017).

members of the NCA should be chosen through open and universal election, they have been selected from restricted social sectors.⁷

7. Dismissal of former Attorney General

On 5 August 2017, Venezuela's National Constituent Assembly dismissed the Attorney General of the Republic, Dr. Luisa Ortega Díaz. For the reasons set out in the ICJ's position paper on the Attorney General's dismissal, her dismissal was undertaken by a body not competent or empowered by Venezuelan law to do so, nor in observance of the established procedure and grounds defined in the law. The dismissal appears to have been politically motivated, in retaliation for her critical positions regarding various governmental initiatives and decisions of the Supreme Court of Justice, as well as for her decision to investigate gross violations of human rights allegedly committed by State agents, including senior officials, and armed groups of civilians under the control of the Government. Her dismissal not only violates international standards regarding the independence of justice actors, it also removes one of the last remaining institutional checks on executive authority.

8. New 'Truth Commission'

The new National Constituent Assembly has created a Commission for Truth, Justice and Public Legitimacy. The establishing law, passed unanimously by the NCA on 8 August 2017, was described by the head of the NCA as a "powerful instrument to stifle violence, hatred and intolerance". However, when considered alongside the stripping of legal immunity from National Assembly members that opposed President Maduro, there are reasonable grounds to believe that the Commission will be used to silence Government opposition rather than to discharge the State's duty to promptly, independently and effectively investigate allegations of gross human rights violations and act as a mechanism for a peaceful and sustainable transition.

9. Intended revision of the Constitution

The new National Constituent Assembly is tasked with revision of the Constitution, the outcome of which may significantly impact the rule of law and the enjoyment of human rights and fundamental freedoms in Venezuela. The ICJ has in this regard recalled that, until the new Constitution is approved by proper means, the current Constitution of 1999 must be respected. Revision of the Constitution must: fully guarantee the basic principles of the rule of law, including the separation of powers, legislative autonomy, the independence of the judiciary, the subordination of military forces to the civil authority and the principle of legality and judicial control of executive action; and also fully guarantee the protection of human rights and fundamental freedoms.⁸

10. Non-notification of state of emergency under the ICCPR

Finally, we wish to draw attention to the fact that, as noted in the August 2017 report of the rapid response team established by the UN High Commissioner for Human Rights, the Bolivarian Republic of Venezuela has not notified the UN Secretary-General of the declaration of a state of public emergency in the country, as required by Article 4(3) of the International Covenant on Civil and Political Rights, notwithstanding the fact that a state of emergency has been in place since January 2016.

⁷ ICJ Press Release, 'Venezuela: the ICJ deeply concerned by the National Constituent Assembly process', 3 August 2017, at URL <https://www.icj.org/venezuela-the-icj-deeply-concerned-by-the-national-constituent-assembly-process/>.

⁸ ICJ Press Release, 'Venezuela: the ICJ deeply concerned by the National Constituent Assembly process', 3 August 2017, at URL <https://www.icj.org/venezuela-the-icj-deeply-concerned-by-the-national-constituent-assembly-process/>.

ICJ recent reports on Venezuela

- ICJ Position Paper on the Dismissal of the Attorney General of Venezuela, 16 August 2017, available at URL <https://www.icj.org/venezuela-dismissal-of-attorney-general-a-further-blow-to-the-rule-of-law-and-accountability/>;
- ICJ Baseline Study, 'Achieving Justice for Gross Human Rights Violations in Venezuela', July 2017, available at URL <https://www.icj.org/venezuela-rule-of-law-and-impunity-crisis-deepens/> (English) and <https://www.icj.org/es/venezuela-la-ruptura-del-estado-de-derecho-y-la-crisis-de-impunidad-se-profundizan/> (Spanish);
- ICJ Report, 'The Supreme Court of Justice of Venezuela: An instrument of the executive branch', 12 September 2017, available at URL <https://www.icj.org/wp-content/uploads/2017/09/Venezuela-Suprem-Court-Publications-Reports-Thematic-reports-2017-ENG.pdf> (English) and <https://www.icj.org/es/venezuela-el-tribunal-supremo-de-justicia-un-instrumento-politico-del-poder-ejecutivo/> (Spanish).

In light of the concerns summarized above, and documented and described in much greater detail in the afore-mentioned publications, as well as in the recent report of the rapid response team established by the UN High Commissioner for Human Rights, the ICJ calls on the above-listed Special Procedures to take urgent and joint follow up action on the grave and ever deteriorating human rights situation in Venezuela.

We thank you in advance for your detailed consideration of the above-mentioned concerns.

Yours faithfully,



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