

**Released but not free:  
The abuse of arbitrary detentions  
and pre-trial measures to  
prosecute dissent in Venezuela**

September 2025

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## Contents

I. Introduction	5
II. International standards applicable to the restriction of liberty during criminal proceedings	6
III. Criminal procedure law and practice in Venezuela: Unlawful Imposition of Restrictive Measures on Liberty	8
IV. Application of non-custodial measures to politically motivated detentions	12
V. Detention after the 2024 presidential election	16
VI. Conclusions	20
VII. Recommendations	22

# I. Introduction

Over the past ten years, the International Commission of Jurists (ICJ) has extensively evaluated the continuous deepening deterioration of the rule of law, human rights, and democracy in Venezuela.<sup>1</sup> Generally, the patterns of widespread and systematic human rights violations presented in reports of the ICJ, UN and OAS experts, and other civil society organizations have worsened.

Among these is the persistence of arbitrary pre-trial detention in violation of the right to liberty. In the vast majority of cases, victims of these practices are denied their right to a fair trial, including the right to legal counsel of their choice. Deprivation of liberty is applied automatically, without individualized assessments as to necessity, in violation of their right to defense and in some instances their right to the presumption of innocence.<sup>2</sup> Even in the absence of detention, those charged for political reasons are subject additional restrictions are imposed on their rights while they remain subject to extremely prolonged judicial proceedings that extend beyond any reasonable time limit.

This briefing paper analyzes the law and practice applied by the Venezuelan authorities in cases of persons arbitrarily detained for the legitimate exercise of the rights to freedom of expression and peaceful assembly. This concerns especially protests that occurred in 2014, 2017, and 2024 and cases of deprivation of liberty that occurred during the days after the 2024 presidential elections. In preparing this briefing paper the ICJ reviewed applicable legislation and rulings from the Venezuela's Supreme Tribunal of Justice. Likewise, lawyers, civil society representatives, and academia were interviewed, and reports from international organizations on Venezuela were reviewed. A total of 80 cases were reviewed (33 cases from 2014; 20 cases from 2017, 10 cases from 2019, and 17 cases from 2024) in eight cities across the country.<sup>3</sup>

This briefing paper has been organized in seven sections. First, it sets out international human rights law and standards applicable to Venezuela particularly in respect of detention and the administration of justice. Second, it describes the domestic law related to deprivation of liberty, particularly preventive detention. Third, it analyzes the situation of releases of arbitrarily detained persons who

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<sup>1</sup> Strengthening the Rule of Law in Venezuela (2014); Venezuela: The Decline of the Rule of Law (2015); The Supreme Tribunal of Justice of Venezuela: An Instrument of Executive Power (2017); Achieving Justice for Grave Human Rights Violations in Venezuela (2017); The Trial of Civilians by Military Courts in Venezuela (2018); No Room for Deliberation: The National Constituent Assembly and the Collapse of the Rule of Law in Venezuela (2019); Judges on the Tightrope: Report on the Independence and Impartiality of the Judiciary in Venezuela (2021); Lawyers Under Attack: Barriers to the Legal Profession in Venezuela (2022); No Will for Justice in Venezuela: A Public Ministry that Fosters Impunity (2024) and Hidden in Plain Sight: The Decline of Public Education in Venezuela (2024).

<sup>2</sup> Human Rights Committee. General Comment No. 35 Article 9 (Liberty and security of person) Paragraph 38. UN Doc. CCPR/C/GC/35 International Covenant on Civil and Political Rights 16 December 2014. Para 37.

<sup>3</sup> A total of 80 cases were reviewed (33 cases from 2014; 20 cases from 2017, 10 cases from 2019, and 17 cases from 2024) in eight cities across the country (Barcelona, Barquisimeto, Caracas, Maracaibo, Mérida, San Cristóbal, Puerto Ordaz, and Valencia) that illustrate the patterns reflected. For the security of the victims, the data appears anonymized, and some elements omitted. 30% of the cases correspond to women, 70% to men, and 3% correspond to young men (under 18 years old). The release data was updated until January 31, 2025

remain subject to non-custodial preventive measures. Fourth, it considers the situation of people subject to detention and release after the presidential election of 28 July 2024. Finally, the ICJ provides conclusions and recommendations.

The ICJ is aware that given the magnitude and complexity of the human rights and rule of law situation in Venezuela, this document does not exhaust the analysis of the different facets related to the use of the justice system as a tool of repression.

## II. International standards applicable to the restriction of liberty during criminal proceedings

Venezuela is a party to most core international human rights treaties, including those that protect the right to liberty and personal security and the right to a fair trial. In particular, the right to liberty and personal security is guaranteed under Article 9 of the International Covenant on Civil and Political Rights (ICCPR)<sup>4</sup> and Article 7 of the American Convention on Human Rights (ACHR).<sup>5</sup> These guarantees include protection of "pre-trial rights" and procedural guarantees before a full trial. The right to a fair trial is equally protected under Article 14 of the ICCPR and Article 8 of the ACHR.

**Article 9(1)** of the ICCPR provides that "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." **Article 9(3)** provides that "anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release." Furthermore, "[i]t shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and should occasion arise, for execution of the judgment". **Article 9(4)** provides that those detained have the right to access the courts through habeas corpus or similar proceedings at any time to challenge the legality or conditions of detention.

Similarly, **Article 7.2** of the ACHR provides that "[n]o one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto". **Article 7.5** provides that "any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial". **Article 7.6** provides that "[a]nyone

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<sup>4</sup> International Covenant on Civil and Political Rights, signed and ratified by Venezuela in 1978.

<sup>5</sup> American Convention on Human Rights, signed and ratified by Venezuela in 2019.

who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful".

Under international law and standards, pre-trial detention, must be the exception and not the rule and may only be applied under strict conditions. The United Nations Human Rights Committee, which the ICCPR's supervisory body providing the authoritative interpretation of the ICCPR, has affirmed that, under Article 9.3 of the ICCPR:

*"It should not be the general practice to subject defendants to pretrial detention. Detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. The relevant factors should be specified in law and should not include vague and expansive standards such as "public security". Pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances. Neither should pretrial detention be ordered for a period based on the potential sentence for the crime charged, rather than on a determination of necessity. Courts must examine whether alternatives to pretrial detention, such as bail, electronic bracelets or other conditions, would render detention unnecessary in the particular case. After an initial determination has been made that pretrial detention is necessary, there should be periodic re-examination of whether it continues to be reasonable and necessary in the light of possible alternatives."*<sup>6</sup>

Alternative measures to pre-trial detention, although permissible under the ICCPR and ACHR, cannot be employed for the purpose of anticipatory punishment and they must but must be necessary and proportionate. For example, with respect to measure that may entail restrictions on the right to free movement, the Inter-American Court of Human Rights has held that "precautionary measures affecting personal freedom and the freedom of movement of the defendant are of an exceptional nature, because they are limited by the right to presumption of innocence and the principles of necessity and proportionality, essential in a democratic society. International case law and comparative criminal legislation agree that, in order to apply such precautionary measures during criminal proceedings (...) and the presence of one of the following situations: danger that the defendant will abscond; danger that the defendant will obstruct the investigation; and danger that the defendant will commit an offense – and the latter is currently under discussion. Also, these precautionary measures may not constitute a substitute for imprisonment or fulfill the purposes of the latter; as can happen, if they continue to be applied, when they have ceased to fulfill the functions mentioned above. Otherwise, the application of a precautionary measure affecting the personal freedom and freedom of movement of the defendant would

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<sup>6</sup> Human Rights Committee. General Comment No. 35 Article 9 (Liberty and security of person) Paragraph 38. UN Doc. CCPR/C/GC/35 International Covenant on Civil and Political Rights 16 December 2014.



be tantamount to anticipating a sentence, which is at odds with universally recognized general principles of law".<sup>7</sup>

The Human Rights Committee has affirmed that under Article 14 of the ICCPR, "[t]he right of the accused to be tried without undue delay...is designed to avoid keeping persons too long in a state of uncertainty about their fate and, if held in detention during the period of the trial, to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice".<sup>8</sup>

### III. Criminal procedure law and practice in Venezuela: Unlawful Imposition of Restrictive Measures on Liberty

Venezuela's international legal obligations regarding the right to liberty and pre-trial rights are, to a large extent, incorporated into the Venezuelan Constitution and national legislation. The Constitution provides individuals may only be deprived of their liberty by judicial order or where they are caught *in flagrante delicto* (in the act) of committing the proscribed conduct.<sup>9</sup> The Constitution also establishes that individuals must remain at liberty before trial, except "for reasons determined by law and evaluated by the judge in each case". The Constitution also recognizes the right to due process, which expressly includes the guarantee of the presumption of innocence and the right of individuals to be heard "fairly and within a reasonable period legally determined".<sup>10</sup>

The Organic Code of Criminal Procedure<sup>11</sup> (hereinafter COPP by its acronym in Spanish) regulates matters related to deprivation of liberty in criminal matters and establishes the rights to due process,<sup>12</sup> the presumption of innocence,<sup>13</sup> and the principle that pre-trial detention may only be taken as an exceptional measure.<sup>14</sup> The legislation establishes that use of "alternative precautionary measures" is preferable to detention.<sup>15</sup>

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<sup>7</sup> Inter-American Court of Human Rights, Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Judgment of August 31, 2004. Par. 129; and Case of Andrade Salmón v. Bolivia. Merits, Reparations and Costs. Judgment of December 1, 2016, Par. 141.

<sup>8</sup> Human Rights Committee. General Comment No. 32 Article 14. The right to a fair trial and to equality before courts and tribunals, Paragraph 35. United Nations UN Doc. [CCPR/C/GC/32](#) International Covenant on Civil and Political Rights August 23, 2007.

<sup>9</sup> Venezuelan Constitution Art. 44

<sup>10</sup> Venezuelan Constitution Art. 49.3

<sup>11</sup> Organic Code of Criminal Procedure

<sup>12</sup> Organic Code of Criminal Procedure Article 1

<sup>13</sup> Organic Code of Criminal Procedure Article 8

<sup>14</sup> Article 9 of the Organic Code of Criminal Procedure calls it "Affirmation of Freedom."

<sup>15</sup> Organic Code of Criminal Procedure Article 242 et seq.

Pre-trial detention in Venezuela has been used extensively for decades, reportedly due to the housing crisis in the penitentiary system.<sup>16</sup> In practice this has meant that individuals held in pre-trial detention may spend a prolonged time in prison before trial.<sup>17</sup>

In an earlier attempt to improve the Venezuelan criminal justice system and guarantee respect for due process, the criminal procedure legislation (Code of Criminal Procedure adopted in 1962) was reformed in 1998. However, subsequent reforms of a regressive character were adopted regarding the rights of prosecuted individuals.

The practices of Venezuelan authorities in matters of pre-trial detention can be divided into three distinct stages, as described below.

### **A. Between 1998 and 2001**

In 1998, the parliament adopted an amendment to Venezuela's criminal procedural legislation, replacing the old inquisitorial system under which the judiciary was responsible for investigating crimes with the support of police investigative bodies and finally deciding on the responsibility of the accused.<sup>18</sup> The new COPP created a mixed accusatory system, whereby investigative and prosecutorial functions were separated from judicial functions.

Since 1998, the Chief Prosecutor's Office has been responsible for criminal prosecution and must, in good faith, investigate all relevant evidence, both that which supports the prosecution's case and that which might benefit the accused.<sup>19</sup> The judiciary must act as guarantor of due process and must arbitrate the adversarial proceedings between the prosecution and the defense.

As Human Rights Watch has documented, prior to the reform:

*"Venezuelan laws, both in their wording and in their application, [did] not comply with these premises. Under the terms of the 1992 Provisional Bail Law, prisoners belonging to broad categories [were] disqualified from obtaining parole. Specifically, those accused of certain crimes, such as drug offenses, vehicle theft, armed robbery, and crimes covered by the Military Justice Code, [were] excluded. Recidivists [were] also specifically excluded, anyone who has been sentenced to prison within ten years prior to the commission of the crime for which they [were] being accused. The consequence [was] that the vast majority of processed detainees[did] not qualify for parole. Moreover, it has been said that many judges [were] not in favor of provisional release, which [led] them to refuse to apply the law even when the accused qualifies."*<sup>20</sup>

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<sup>16</sup> Human Rights Watch. Venezuela 1998 "Castigados sin condena". Available only in Spanish at <https://www.hrw.org/reports/pdfs/v/venezue/venz985s.pdf>

<sup>17</sup> "Estimates of the average time it takes to complete a criminal case vary. In its 1995 annual report, PROVEA cited an average of four and a half to five years. According to Venezuelan law, the process should not exceed one hundred working days from the opening of the case to the issuance of a sentence." See Human Rights Watch. Venezuela 1998 "Castigados sin Condena". Pag. 40.

<sup>18</sup> Venezuela. Code of Criminal Procedure 1962, Art. 72-75

<sup>19</sup> Organic Code of Criminal Procedure Article 263

<sup>20</sup> Human Rights Watch. Venezuela 1998 "Punished without Conviction". Page 44.

The reform also sought to reduce the use of pretrial detention in line with international recommendations on the matter.<sup>21</sup>

From its early years, the procedural reform was subject to criticism. For example, the Chief Prosecutor Officer at the time argued that "an extension was necessary because the infrastructure to carry out the COPP was not complete anywhere in Venezuela."<sup>22</sup> These concerns initiated a series of revisions to the COPP, starting in 2000 when the COPP was reformed to establish that the judge must request the opinion of the Prosecutor's Office before ordering any measure of pretrial detention.

## **B. Between 2001 and 2021**

Between 2001 and 2021, procedural legislation was reformed to introduce restrictions on the use of alternative measures to deprivation of liberty, even though the Constitution provides for the limitation of pretrial detention. In this regard, a reform<sup>23</sup> to the COPP in 2001 established a presumption of "flight risk" for any crime whose penalty was equal to or greater than 10 years,<sup>24</sup> providing that the Prosecutor's Office must request preventive deprivation of liberty in such cases. In addition, the deadline for the Prosecutor's Office to accuse was extended,<sup>25</sup> and stricter requirements were established for granting alternative measures. In practice, these reforms effectively extended pretrial detention.

In 2008, another amendment to the COPP was carried out that modified the principle of proportionality in personal coercion measures to establish mandatory pretrial detention.

In 2009, a new law on the partial reform of the COPP was adopted, which, among other amendments, required judges to take necessary measures, in accordance with the law, to enforce and comply with its decisions in cases of disobedience to authority or non-compliance with a court order. It also raised the penalty limit for crimes where alternative measures to prosecution could be applied from three to four years. In addition, it established the figure of "defense attorney's waiver" in cases where the defense attorney unjustifiably fails to attend two hearings, and the court must immediately appoint a public defender.

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<sup>21</sup> United Nation. Commission on Human Rights. Report of the Visit by the Special Rapporteur on torture to Venezuela. December 13, 1996 U.N. Doc E/CN.4/1997/7/Add.3 available at [https://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=940](https://ap.ohchr.org/documents/alldocs.aspx?doc_id=940)

<sup>22</sup> Press release "Iván Darío Badell entregó informe anual a la Corte Suprema de Justicia extender periodo de vacatio legis del COPP Propondrá el Fiscal General de la Republica al Congreso Nacional" dated February 24, 1999. Available at <https://historico.tsj.gob.ve/informacion/notasdeprensa/notasdeprensa.asp?codigo=9603>

<sup>23</sup> The COPP has been reformed a total of 12 times. This section only discusses the reforms that have impacted the regime of preventive detention and those that affect alternative measures to preventive imprisonment.

<sup>24</sup> Organic Code of Criminal Procedure (2001 repealed) Articles 250 and 251 Official Gazette Extraordinary No.: 5.552 dated November 12, 2001.

<sup>25</sup> According to Venezuelan criminal legislation, the Public Ministry has the possibility of concluding the criminal investigation through formal accusation, the request for dismissal, or the archiving of the case (fiscal archive). See in this regard. International Commission of Jurists "Without the Will for Justice in Venezuela: A Public Ministry that Fosters Impunity" Page 15, available at: Un Ministerio Público que fomenta la impunidad" Pág. 15, disponible en <https://www.icj.org/wp-content/uploads/2024/11/No-will-for-Justice-in-Venezuela.-A-Prosecutors-Office-that-fosters-impunity.pdf>

In 2012, another reform to the COPP was adopted, eliminating the provision according to which the duration of a personal coercive measure could not exceed the minimum penalty provided for the crime. In 2021, the COPP was amended again, nullifying the restrictive procedural rules for alternative measures. However, in practice the Prosecutor's Office and the courts continued to make indiscriminate use of such measures.

The Constitutional Chamber of the Supreme Court of Justice had held in 2007 that, although the legislation established a formal limit of two years for preventive detention, in cases where there are "delays inherent to the complexity of the matter debated"<sup>26</sup>, this time could be extended for the duration of the process and that courts were not obliged to order the release of the person.

The Constitutional Chamber continues applying these restrictive criteria that fail to recognize the procedural guarantees established in the Constitution and the COPP through unfounded and discretionary interpretations, especially against individuals prosecuted for political reasons, violating their right to effective judicial protection, personal liberty, and due process.

The Constitutional Chamber's has ruled allowing the continuation of preventive measures beyond the two-year limit, citing procedural developments as justifications for delays.<sup>27</sup>

Currently, the Constitutional Chamber has maintained this reasoning that the end of the preventive detention does not operate automatically, as there are multiple circumstances in the development of the criminal process that must be analyzed by the judge, such as the severity of the crime, the complexity of the matter, and the causes of the delay of the trial.<sup>28</sup> According to this criterion civil society organization such as Espacio Público has documented cases of related to journalists prosecuted where "coercive measures may last more than two years, depending on the time the Court needs to decide on the case. This decision exposes individuals in judicial proceedings to the risk of having precautionary measures for an indefinite period, as it does not establish a limit for their removal".<sup>29</sup>

The Chair of the Criminal Chamber of the Supreme Court of Justice (Magistrate Elsa Janeth Gómez Moreno) had stated that "However, repeated jurisprudence from the Supreme Court of Justice establishes that the expiration of the deprivation of liberty measure does not operate automatically, as the judge must evaluate the severity of the crime, the risk of flight, and the possibility of obstruction of justice, since there is a variety of circumstances in the development of the criminal process that must

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<sup>26</sup> Venezuela's Supreme Court, Constitutional Chamber. Ruling N°. 626 dated April 11<sup>th</sup>, 2007.

<sup>27</sup> Venezuela's Supreme Court, Constitutional Chamber. Ruling N°. 1308 dated August 16<sup>th</sup>, 2023.

<sup>28</sup> Venezuela's Supreme Court, Constitutional Chamber. Ruling N° 626 dated March 10<sup>th</sup>, 2023.

<sup>29</sup> See Espacio Público "Sala Constitucional viola el derecho a juicio en libertad y presunción de inocencia" October 26th, 2023. Available only in Spanish at

<https://espaciopublico.org/sala-constitucional-viola-el-derecho-a-juicio-en-libertad-y-presuncion-de-inocencia/>

be analyzed and taken into consideration so as not to affect the search for truth as a principle of law, analyzing in particular each specific case".<sup>30</sup>

As a result of these reforms, a practice was consolidated in Venezuela in which pretrial detention was unduly prolonged, while alternative measures were rarely considered by judges, in open contradiction with international standards.

As observed by the civil society organization Acceso a la Justicia "in the courts, regardless of the instance, a legal norm is violated that indicates the principle of proportionality by which the decay of the coercive measure is requested, clearly established in the Organic Criminal Procedure Code (...) which stipulated that a person could not remain deprived of liberty for more than two years"<sup>31</sup> Currently, Article 230 indicates the maximum deprivation of liberty at two years, with a possible extension of one year as long as it is justified and requested by the prosecutor.

## IV. Application of non-custodial measures to politically motivated detentions

According to Venezuelan criminal procedural law, all personal coercive measures, including preventive detention, can be substituted by less burdensome measures at the request of a party. These included restrictions on freedom of movement, such the prohibition of leaving the country or periodic presentations before the court. In addition, courts have a duty to review the necessity of maintaining precautionary measures every three months.<sup>32</sup> In any event, the law establishes that deprivation of liberty must not exceed two years,<sup>33</sup> except for an exceptional extension of up to one year or up to the minimum applicable penalty.

However, in practice, these legal guarantees are systematically ignored. In numerous cases, less burdensome measures are not executed because police or intelligence authorities have refused to release the beneficiaries. There are also situations in which judicial decisions granting release are not complied with. In some instances, previously released persons have been re-detained for the same factual conduct,<sup>34</sup> in flagrant violation of the principle of legality and due process.

In many cases, particularly of people detained for political reasons a wide range of guarantees are not complied with. These include well-established guarantees in the

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<sup>30</sup> Statement by Magistrate Elsa Janeth Gómez Moreno, Chair of Venezuela's Supreme Court the Criminal Chamber on February 18<sup>th</sup> 2025 Available at <https://www.instagram.com/reel/DGN14Tyupd2/>

<sup>31</sup> Available in Spanish at <https://accesoalajusticia.org/decaimiento-de-la-medida-de-privativa-de-la-libertad/>

<sup>32</sup> Organic Code of Criminal Procedure Art. 250

<sup>33</sup> Organic Code of Criminal Procedure Art. 230

<sup>34</sup> U. N. Doc A/HRC/WGAD/2021/55 Working Group on Arbitrary Detention Opinion No. 55/2021 Available at <https://www.ohchr.org/sites/default/files/2022-02/A-HRC-WGAD-2021-55-Venezuela-AEV.pdf>; also see U. N. Doc CCPR/C/VEN/CO/5 Human Rights Committee. Concluding observations on the fifth periodic report of the Bolivarian Republic of Venezuela, 28 November 2023 Available at <https://docs.un.org/en/CCPR/C/VEN/CO/5> Para 29.

Constitution and legislation that protect the rights of defense and due process;<sup>35</sup> the prohibition of incommunicado detention, which also protects against torture and ill-treatment and enforced disappearance;<sup>36</sup> the duty to present the detained person before a court within 48 hours of detention and to allow communication with lawyers of choosing and family members;<sup>37</sup> and the prohibition of enforced disappearance itself.<sup>38</sup>

There is widespread practice of disregard for these guarantees. As the Independent International Fact-Finding Mission established by the UN Human Rights Council has indicated, these practices are part of a "deliberate plan by the State's repressive apparatus to silence opposition figures."<sup>39</sup> In this sense, in many cases of both individual cases of detention<sup>40</sup> and mass detentions in the context of public protest contexts,<sup>41</sup> information about the whereabouts of detained persons has been systematically denied to family members and lawyers. This constitutes enforced disappearances, even if they may be short term.<sup>42</sup>

People detained faced vague and overbroad charges such as conspiracy, "terrorism or treason". The cases are brought by prosecutors, before courts lacking independence and impartiality, often without the possibility of receiving assistance from private lawyers, with the correlative imposition of public defenders not chosen by the detained, who may equally lack independence.<sup>43</sup> Similarly, both during that period of "disappearance" and during the confinement already formally ordered by the courts, individuals are at risk of being subjected to torture and other forms of cruel, inhuman, or degrading treatment.<sup>44</sup>

The organization Foro Penal has estimated that, by July 22<sup>nd</sup> 2024 some 305 people<sup>45</sup> were deprived of their liberty for political reasons, with 90 percent of them in the process of being prosecuted and awaiting a final sentence. Foro Penal has documented that the number of people detained for political reasons has remained at around 300 people throughout the years. The number was greater in years

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<sup>35</sup> Venezuelan Constitution Art. 49

<sup>36</sup> Venezuelan Constitution Art 44.1

<sup>37</sup> Venezuelan Constitution Art 44.2

<sup>38</sup> Venezuelan Constitution Art 45

<sup>39</sup> See Press Release. "Venezuela Fact-Finding Mission urges end to State use of isolation against detained opponents and warns about lack of effective judicial protection" dated May 14, 2025 available at <https://www.ohchr.org/en/press-releases/2025/05/venezuela-fact-finding-mission-urges-end-state-use-isolation-against>

<sup>40</sup> See, among others, Inter-American Commission on Human Rights. Precautionary Measures No. 928-24 Perkins Rocha Contreras regarding Venezuela dated September 2, 2024 available at [https://www.oas.org/en/iachr/decisions/mc/2024/res\\_61-24\\_mc\\_928-24\\_ve\\_en.pdf](https://www.oas.org/en/iachr/decisions/mc/2024/res_61-24_mc_928-24_ve_en.pdf) Américo de Grazia regarding Venezuela dated August 17, 2024 available at [https://www.oas.org/es/cidh/decisiones/mc/2024/res\\_51-24\\_mc\\_359-16\\_ve\\_es.pdf](https://www.oas.org/es/cidh/decisiones/mc/2024/res_51-24_mc_359-16_ve_es.pdf)

<sup>41</sup> Amnesty International. Detentions without a trace: The crime of enforced disappearance in Venezuela. July 15, 2025 available at <https://www.amnesty.org/en/documents/amr53/0083/2025/en/> American Commission on Human Rights "Venezuela: serious human rights violations in the electoral context" January 2025, available at <https://www.oas.org/en/iachr/reports/pdfs/2025/Report-Venezuela-seriousHHRR-violations-connections-elections.pdf>

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> See Committee for the Freedom of Political Prisoners "Unjust Imprisonment, Inhuman Cells" dated December 2024. Available at <https://provea.org/publicaciones/investigaciones/prision-injusta-celdas-inhumanas-informe-clippve/>

<sup>45</sup> Foro Penal. Political Prisoners in Venezuela <https://x.com/ForoPenalENG/status/1816121198838751354>

where mass arrests occurred in the context of protests, such as in 2014 or 2017. The organization has described this phenomenon as a "revolving door effect," meaning that when a group of people detained for political reasons are released, others are detained immediately or in the following days.<sup>46</sup> Releases occurred between 2014 and 2023 that resulted from agreements and negotiations to resolve the political crisis between the Maduro government and the Unitary Platform opposition,<sup>47</sup> among other opposition parties, as well as agreements with the government of the United States.<sup>48</sup> These releases included arbitrarily detained individuals.<sup>49</sup>

Within the framework of the 2017 Constituent Assembly,<sup>50</sup> a Commission for Truth, Justice, Peace, and Public Tranquility was established, with the aim of "(...) strengthening justice and national democratic understanding, through the establishment of truth, the search for and improvement of justice, the guarantee of rights and comprehensive attention to victims of politically motivated and related acts of violence, occurring within the jurisdiction of the Republic, during the period between 1999 and 2017 (...)"<sup>51</sup> Its mandate was later expanded "to include acts of violence illegitimately covered by political reasons, occurring in Venezuela during 2018 and 2019."<sup>52</sup>

This Commission operated until 31 December 2020,<sup>53</sup> and was the setting through which a series of releases occurred between 2017<sup>54</sup> and 2019.<sup>55</sup> The Commission was presided over by the President of the Constituent Assembly<sup>56</sup> and then by the Chief Prosecutor<sup>57</sup> appointed by the Constituent Assembly. In the latter case, the actions of President of the Commission result in a conflict of interest considering that his office has the constitutional and legal powers to prevent the use of pre-trial

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<sup>46</sup> Foro Penal. Report on repression in Venezuela, various reports between 2014 and 2020 available at <https://foropenal.com/category/publicaciones/foro-penal/reportes-de-represion/>

<sup>47</sup> Government of Norway. October 17, 2023 "Partial Agreement on the Promotion of Political Rights and Electoral Guarantees for All" and "Partial Agreement for the Protection of the Nation's Vital Interests"

<sup>48</sup> Signing of Electoral Roadmap Between the Unitary Platform and Representatives of Maduro. Press Statement. Antony J. Blinken, Secretary of State October 18, 2023 available at <https://www.state.gov/signing-of-electoral-roadmap-between-the-unitary-platform-and-representatives-of-maduro/>

<sup>49</sup> Signing of Electoral Roadmap Between the Unitary Platform and Representatives of Maduro. Press Statement. Antony J. Blinken, Secretary of State October 18, 2023 available at <https://www.state.gov/signing-of-electoral-roadmap-between-the-unitary-platform-and-representatives-of-maduro/>

<sup>50</sup> See International Commission of Jurists. "No room for deliberation - The National Constituent Assembly and the collapse of the Rule of Law in Venezuela". Available at <https://www.icj.org/wp-content/uploads/2019/07/Venezuela-No-room-for-debate-Publications-Reports-Fact-finding-mission-reports-2019-ENG.pdf>

<sup>51</sup> Constitutional Law of the Commission for Truth, Justice, Peace and Public Tranquility, Official Gazette N° 6,323 Extraordinary of August 8, 2017. Art. 1

<sup>52</sup> Constituent Decree modifying the Constitutional Law of the Commission for Truth, Justice, Peace and Tranquility (Official Gazette N° 41,667 of July 3, 2019). Art. 4.

<sup>53</sup> Constituent Decree extending the mandate granted to the Commission for Truth, Justice, Peace and Public Tranquility. Gazette N°: 6,562, Gazette Date: 14-Aug-2020

<sup>54</sup> Saab, Tarek granted "judicial measures in favor of 69 citizens" dated December 23, 2017. <https://x.com/TarekWilliamSaab/status/944614983287140352>

<sup>55</sup> Saab, Tarek granted "judicial measures in favor of 69 citizens" dated December 23, 2017. <https://x.com/TarekWilliamSaab/status/944614983287140352>

<sup>56</sup> Constituent Decree by which the citizens mentioned therein are designated as members of the Commission for Truth, Justice, Peace and Public Tranquility, Official Gazette N° 41,214 of August 15, 2017.

<sup>57</sup> Constituent Decree by which citizen Tarek William Saab Halabi, Attorney General of the Republic, is designated as President of the Commission for Truth, Justice, Peace and Public Tranquility.



detention, request less restrictive measures of personal liberty during the criminal process, provisionally end the investigation process, and request the court to dismiss the criminal charges.<sup>58</sup> However, the Venezuelan Prosecutor's Office, far from exercising these functions, has omitted them or has used its powers for politically charged prosecution. The ICJ has previously documented this lack of impartiality and independence in detail.<sup>59</sup>

These releases, however, did not restore the rights of the accused. Indeed, in most cases, deprivation of liberty was replaced by other measures, such as the requirement for the accused to report to the court every eight days, prohibition on leaving the country, prohibition on speaking to the media about the case, and prohibition from participating in protests.

These measures are often maintained for unreasonably prolonged periods exceeding a reasonable time. For example, the ICJ heard cases of persons deprived of liberty between 2014 and 2017 who were subjected to non-custodial measures after their release, extending for more than eight years, in violation of international law.

The Human Rights Committee has also indicated that the reasonableness of the period "has to be assessed in the circumstances of each case, taking into account mainly the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities."<sup>60</sup> These elements must be evaluated considering "not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgement on appeal. All stages, whether in first instance or on appeal must take place "without undue delay."<sup>61</sup>

In light of Venezuela's international legal obligations, criminal proceedings that have been open for years, even when individuals are not deprived of liberty, are in clear violation of the right to a fair trial and equality before courts of justice, as provided for in Article 14 of the Covenant.

These violations of the right to liberty and fair trial must be considered in the light of wider deficiencies regarding the independence of the judiciary in the country. The ICJ has treated this issue extensively in previous reports.<sup>62</sup>

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<sup>58</sup> Organic Code of Criminal Procedure, Article 295.

<sup>59</sup> See International Commission of Jurists. "No will for Justice in Venezuela: A Prosecutor's Office that fosters impunity". Available at <https://www.icj.org/wp-content/uploads/2024/11/No-will-for-Justice-in-Venezuela.-A-Prosecutors-Office-that-fosters-impunity.pdf>

<sup>60</sup> Human Rights Committee. General Comment No. 32 Article 14. The right to a fair trial and to equality before courts and tribunals, Paragraph 35. United Nations UN Doc. CCPR/C/GC/32

<sup>61</sup> Ibid

<sup>62</sup> See International Commission of Jurists. Strengthening the Rule of Law in Venezuela (2014); Venezuela: The Decline of the Rule of Law (2015); The Supreme Tribunal of Justice of Venezuela: An Instrument of Executive Power (2017); Achieving Justice for Grave Human Rights Violations in Venezuela (2017); The Trial of Civilians by Military Courts in Venezuela (2018); No Room for Deliberation: The National Constituent Assembly and the Collapse of the Rule of Law in Venezuela (2019); Judges on the Tightrope: Report on the Independence and Impartiality of the Judiciary in Venezuela (2021); Lawyers Under Attack: Barriers to the Legal Profession in Venezuela (2022); No Will for Justice in Venezuela: A Public Ministry that Fosters Impunity (2024).



Finally, the measures adopted by the Constituent Assembly through the Commission for Truth, Justice, Peace and Public Tranquility constituted an unlawful and arbitrary interference in the functions of the judiciary. As the ICJ has previously reported, the 2017 National Constituent Assembly was unconstitutional, and “a servile body, designed to cater to the desires of whoever holds executive power. The National Constituent Assembly has destroyed the fundamental pillars of the rule of law, including the separation of powers, citizen control over the public administration and political power, the independence of the Judicial Branch, and respect for human rights and democracy.”<sup>63</sup>

Therefore, the decisions of the Commission practice deepened the vulnerability of the judiciary to political pressures<sup>64</sup>. In this sense, if the measures had not been taken in accordance with the provisions of the Venezuelan Constitution<sup>65</sup> the measures were not taken with objective criteria. For example, the time the person had been deprived of liberty, a health condition, or the imputed crime, but rather for political opportunity, which added an element of discrimination in the decision compared to other people deprived of liberty for political reasons. In some cases, the beneficiaries had already served their sentences and consequently should have been fully released.<sup>66</sup>

## V. Detention after the 2024 presidential election

There were numerous reported irregularities during and after the presidential election held on 28 July 2024, including allegations of fraud, the failure to publish electoral results, and the alleged threats against electoral witnesses and opposition leaders. In the following days through the first days of August, a series of mass protests took place in several areas of the country, during which there were large number of detentions, allegations of unlawful use of force by security forces were reported; as well as acts of violence by armed groups that resulted in several deaths and injuries.<sup>67</sup>

In the context of these demonstrations, dozens of people were arrested and criminally prosecuted. The Chief Prosecutor Officer Tarek William Saab announced during a press conference that: “We warn that acts of violence and calls to

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<sup>63</sup> See International Commission of Jurists. “No room for Debate: The National Constituent Assembly and the Crumbling of the Rule of Law in Venezuela”. <https://www.icj.org/wp-content/uploads/2019/07/Venezuela-No-room-for-debate-Publications-Reports-Fact-finding-mission-reports-2019-ENG.pdf>

<sup>64</sup> See International Commission of Jurists. “Judges on the Tightrope, report on the Independence and Impartiality of the Judiciary in Venezuela”. Available at <https://www.icj.org/wp-content/uploads/2021/06/Venezuela-Judges-on-the-tightrope-Publications-Reports-Thematic-reports-2021-ENG.pdf>

<sup>65</sup> Venezuelan Constitution, articles 29 and 187.5

<sup>66</sup> See for example Foro Penal. Report on repression in Venezuela: May, June, July 2018, available at <https://foropenal.com/wp-content/uploads/2018/08/REPORTE-MAYJUNJUL-2018.pdf>

<sup>67</sup> Venezuelan Program for Education-Action in Human Rights (PROVEA) “Special Report | Maduro's government breaks historical repression figures in Venezuela”. <https://provea.org/actualidad/informe-especial-gobierno-de-maduro-rompe-cifras-historicas-de-represion-en-venezuela/>

disregard the results may fall under the crimes of: public instigation, obstruction of public roads, incitement to hatred, resistance to authority."<sup>68</sup> The next day it was reported that "...we are pre-qualifying several of these detainees for crimes such as public incitement, obstruction of public roads, incitement to hatred, which is severely punished in this country, resistance to authority, and in the most serious cases, terrorism, and all of them are obviously being ordered to be deprived of liberty. I want a preliminary figure that may grow during the day, so far there are 749 of these criminals...."<sup>69</sup> On 3 August, President Nicolas Maduro reported that "2000 have been captured and from there they are going to [the prisons of] Tocarón and Tucuyito... maximum punishment! justice! This time there will be no forgiveness! This time there will be no forgiveness! This time there will be Tocarón!"<sup>70</sup>

Local civil society organization PROVEA<sup>71</sup> reported that detainees were generally held for 45 days. By the time of the publication of this report<sup>72</sup> most detainees had been released with alternative measures.<sup>73</sup> Those arrested were typically held in police stations, often incommunicado, before being transferred to common prisons. In many cases, this involved their transfer to cities far from their homes, which in turn made it more difficult for their relatives to visit and access vital materials, including nutritious food, hygienic items, and clothing that are not adequately provided in penitentiary centers.

Additionally, a number of detainees were reportedly subjected to extortion at checkpoints for amounts ranging from 3,000 to 5,000 US dollars with the promise of regaining their freedom. This conduct was blatantly unlawful and corrupt. In addition, this occurred in the context of severe economic conditions prevailing since 2013, in which these amounts paid represent between 23 and 48 times the monthly minimum income of most of the population.<sup>74</sup>

The Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela has noticed that "[f]ollowing the election of 28 July 2024, the authorities

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<sup>68</sup> Saab, Tarek William. Press conference dated 29 July 2024 available at <https://www.youtube.com/watch?v=uxbpyqPydw>

<sup>69</sup> Saab, Tarek William. Press conference dated 30 July 2024 available at <https://www.youtube.com/watch?v=I93sdPErteE> and also Press conference dated July 31, 2024 available at <https://www.youtube.com/watch?v=xxzkItzRjJc&rco=1>

<sup>70</sup> Maduro Moros, Nicolás. Address dated 3 August, 2024, available at <https://www.youtube.com/watch?v=OuAP0RZx21c>

<sup>71</sup> Venezuelan Program for Education and Action in Human Rights (PROVEA) "Special Report | Maduro's Government Breaks Historical Repression Records in Venezuela". Available at <https://provea.org/actualidad/informe-especial-gobierno-de-maduro-rompe-cifras-historicas-de-represion-en-venezuela/>

<sup>72</sup> This includes 80 cases of individuals released through negotiation and exchange of Venezuelan nationals who had been detained in the United States and deported to El Salvador in 2025, remaining deprived of liberty in CECOT (Center for Confinement against Terrorism) available at <https://www.youtube.com/watch?v=c6WtcBR1a10>. Statements by the Minister of Interior and Justice of Venezuela. Cabello, Diosdado July 18, 2025 "The 80 Venezuelans would have been released anyway. 80 for now, but surely more will be released." "None of those who are being released are innocent. None. They know what they were accused of and why they were accused. It is a measure to seek peace and tranquility."

<sup>73</sup> Information provided by NGOs that accompany cases

<sup>74</sup> For 2024, the average income in Venezuela was 130 dollars per month, see CNN en español "New 'comprehensive minimum income' in Venezuela will be US\$ 130" dated May 2, 2024" available at <https://cnnespanol.cnn.com/2024/05/02/nuevo-ingreso-minimo-integral-en-venezuela-se-ubicara-en-us-130-el-gobierno-no-precisa-en-cuanto-quedara-el-salario-minimo-trax>

launched an unprecedented campaign of mass and indiscriminate arrests, while targeted arrests of opposition and civil society actors also continued”.<sup>75</sup> The Mission also considered that “arbitrary detentions, followed by or resulting from serious violations of due process, short-term enforced disappearances, as well as acts of torture, inhuman, cruel or degrading treatment and sexual and gender-based violence”.<sup>76</sup>

The Fact-Finding Mission also noted that serious violations of due process have escalated, particularly following the post-election crisis. The criminal proceedings against detainees lack fundamental guarantees, with arrests made without warrants and delays in court appearances, and detainees are denied the right to choose their lawyers and are instead assigned public defenders, who provide inadequate representation due to fear of reprisals.<sup>77</sup> Most of the hearings were held in private, often at night, or using telematic tool without proper legal oversight.

Most of the people were charged with “serious crimes such as “treason”, “conspiracy to destroy the form of government”, “terrorism”, “association” and – particularly for persons detained for expressing criticism or opinions – “incitement to hatred” (...) all those offences are ambiguously defined and often prosecuted concurrently. The accumulation of charges can lead to the imposition of the constitutional maximum sentence of 30 years’ imprisonment without the right to alternative sentencing measures and other procedural benefits”.<sup>78</sup>

Comparing the figures for detention in the context of demonstrations (Table No. 1) from 2014-2019 with those of 2024 (over a three-day period the daily detention rate increased by 1,493 percent compared to previous periods. According to information reported by the Chief Prosecutor during the protests after the electoral process, there were 28 deaths and 195 injured.<sup>79</sup> About the deaths the Fact-Finding Mission observed that based on “a wide array of independent and credible sources, including testimonies from family members and public officials, as well as a substantial collection of audiovisual material. As a result of that investigation, the mission was able to document 25 deaths in the context of the protests” and “(...) that 24 of the 25 deaths were caused by gunshot wounds, mostly to the neck or the front or back of the chest”.<sup>80</sup>

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<sup>75</sup> See U.N. Doc A/HRC/57/57 Report of the independent international fact-finding mission on the Bolivarian Republic of Venezuela 17 September 2024 available at <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session57/advance-versions/a-hrc-57-57-en.pdf> Para 34-35.

<sup>76</sup> Idem

<sup>77</sup> See International Commission of Jurists. “Lawyers under attack: Barriers to the legal profession in Venezuela”. Available at [Venezuela-Lawyers-under-attack-publications-briefing-paper-2022-ENG.pdf](https://www.venezuela-lawyers-under-attack-publications-briefing-paper-2022-ENG.pdf)

<sup>78</sup> See U.N. Doc A/HRC/57/57 Report of the independent international fact-finding mission on the Bolivarian Republic of Venezuela 17 September 2024 available at <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session57/advance-versions/a-hrc-57-57-en.pdf> Para 36-41.

<sup>79</sup> Saab, Tarek William. Press conference dated December 2, 2024, available at <https://www.youtube.com/watch?v=1G54J35hjzI>

<sup>80</sup> See U.N. Doc A/HRC/57/57 Report of the independent international fact-finding mission on the Bolivarian Republic of Venezuela 17 September 2024 available at <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session57/advance-versions/a-hrc-57-57-en.pdf> Para 36-41.

The Mission documented that armed civilians were present and shooting during several protests, either interacting with the security forces such as Bolivarian National Guard or the Bolivarian National Police or acting alone, using arms to repress protesters however concluded that “[further investigations are needed to reach conclusions in that regard”.<sup>81</sup>

**Table Number 1**

<b>Year</b>	<b>Protests Dates</b>	<b>Duration</b>	<b>Detentions</b>	<b>Daily average</b>
2014	12 February to 30 June	139 days	3306 <sup>82</sup>	23,7
2017	1° April to 31 July	121 days	5051 <sup>83</sup>	42,7
2019	10 January to 31 May	140 days	3600 <sup>84</sup>	27,8
2024	29 July al 31 July	3 days	1062 <sup>85</sup>	354

Many detainees have since been released. On 15 November 2024, the Chief Prosecutor Tarek William Saab reported that it would request a review of 225 cases of people deprived of liberty in the context of the post-electoral demonstrations and indicated that "we will continue to review, we will continue to look at the cases where appropriate (...) whoever has been responsible for criminal actions subject to a link as a direct participant in them will be punished, will be sanctioned; whoever has not had such responsibility in the midst of an investigation will be subject to a review of measures, we have said this from the beginning, we have carried out some of these actions during these months and this important announcement is part of that same task".<sup>86</sup> This statement reflects the policy in fact applied by the Prosecutor's Office, the courts, and the security forces after the elections, where people were arbitrarily deprived of liberty en masse, and without individualized consideration.

On 3 March 2025, the Prosecutor's Office reported that they had requested the review of a total of 2006 instances of deprivation of liberty in relation to events that occurred in the days following 28 July.<sup>87</sup> In all these cases, releases were granted, but the criminal processes against them continue.

<sup>81</sup> Idem.

<sup>82</sup> Concluding observations on the combined third and fourth periodic reports of the Bolivarian Republic of Venezuela, UN Doc. CAT/C/VEN/CO/3-4, para. 9.

<sup>83</sup> Estimates by the NGO Foro Penal cited by the Office of the United Nations High Commissioner for Human Rights.

<sup>84</sup> Foro Penal. Report on repression in Venezuela, year 2019. Available at <https://foropenal.com/reporte-sobre-la-represion-en-venezuela-ano-2019/>

<sup>85</sup> Saab, Tarek William. Press conference dated July 30, 2024, available at <https://www.youtube.com/watch?v=I93sdPerteE> and also Press conference dated 31 July 2024, available at <https://www.youtube.com/watch?v=xxzkItzRjJc&rco=1>

<sup>86</sup> See Saab, Tarek William Statements dated November 15, 2024, available at <https://www.youtube.com/watch?v=I93sdPerteE>. Press conference dated July 30, 2024, available at <https://www.youtube.com/watch?v=I93sdPerteE>

<sup>87</sup> Venezuela. Prosecutor's Office, Press release dated March 3, 2025, available at <https://www.instagram.com/p/DGvRr3YpYOb/?igsh=eXcxjVjaWRoanZm> Also Saab, Tarek William. Press conference dated July 30, 2024, available at <https://www.youtube.com/watch?v=I93sdPerteE>

In many of these cases, civil society organizations<sup>88</sup> that have accompanied persons whose detentions have been have reported that, as in previous cases, people were released but with the imposition of alternative measures not involving deprivation of liberty. These include: a) reporting to the courts, which especially affects adversely those living outside Caracas, as the “anti-terrorism” courts used for these cases are based in Caracas, requiring expensive travel; b) prohibition from leaving the country; and c) prohibition from making statements to the media.

Some civil society organizations consulted during the preparation of this report indicated that in many cases, released individuals did not announce their release. They also indicated that these individuals and their families prefer not to talk about it, for fear that the release might be revoked. However, even if they are free, they remain subject to the criminal process, and without the possibility of exercising their right to defense by appointing a lawyer of their choice.

## VI. Conclusions

In Venezuela, people have been arbitrarily detained for political reasons particularly over the past decade, and this practice has worsened. In the terms set forth by the United Nations Working Group on Arbitrary Detention, the “...systematic practice of depriving people of their liberty without respecting the rights enshrined in international law. Widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.”<sup>89</sup> Given the events stemming from the 2024 presidential election, the practices constitute a widespread and systematic violation of the right to liberty that may constitute crimes against humanity. The practice is part of widely documented deficiencies in the administration of justice in Venezuela, including the lack of independence of the Prosecutor Office and the Judiciary. Overall there is a lack of respect for core rule of law principles, including human rights guarantees for those detained and subjected to criminal proceedings.

The selection of cases of detentions for political reasons analyzed by the ICJ for this briefing paper that occurred in 2014, 2017, 2019, and 2024 demonstrates that the pattern of judicial persecution against protesters and political dissidents has worsened. This is evidenced by the increase in the number of such detentions and

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<sup>88</sup> See Espacio Público “Sala Constitucional viola el derecho a juicio en libertad y presunción de inocencia” October 26th, 2023. Available only in Spanish at <https://espaciopublico.org/sala-constitucional-viola-el-derecho-a-juicio-en-libertad-y-presuncion-de-inocencia/>. Also Observatorio Venezolano de Prisiones Annual Report 2024, August 11th 2025 “Sin separación ni autonomía de poderes: cárceles y calabozos como herramientas de tortura” available in Spanish at <https://oveprisiones.com/149-muertos-bajo-custodia-del-estado-en-2024-el-sistema-penitenciario-se-consolida-como-herramienta-de-represion-tortura-y-muerte/> Justicia, Encuentro y Perdón, August 3rd, 2025 <https://x.com/JEPvzla/status/1952113998565904769> ; Foro Penal, November 17th, 2024 <https://x.com/ForoPenal/status/1858160634115813576>

<sup>89</sup> See Opinions adopted by the Working Group on Arbitrary Detention at its ninety-second session, 15–19 November 2021. Opinion No. 74/2021 concerning Emirlendris Benítez (Bolivarian Republic of Venezuela) UN Doc. A/HRC/WGAD/2021/74 2 February 2022 Parr. 3 Available at <https://www.ohchr.org/sites/default/files/2022-02/A-HRC-WGAD-2021-74-Venezuela-AEV.pdf>

their concentration in time, the lack of due process, violations of the presumption of innocence, and rights to defense within the framework of the imposition of administrative measures in criminal proceedings. The authorities routinely fail to present detained individuals to the courts within 48 hours of detention as required under the Constitution and Venezuela's international legal obligations. Such practices may, constituting enforced disappearances of a short-term,<sup>90</sup> given that are prevented from contacting family members and lawyers, and authorities systematically deny information about their whereabouts.<sup>91</sup> In these cases, the detainee has heightened vulnerability as incommunicado detention creates conditions conducive to torture and other cruel, inhuman or degrading treatment.

In addition, the right of detained persons to have access to legal counsel of their own choosing is routinely violated, and access to private defense attorneys has been restricted during the process. As a consequence, detainees have been forced to rely on public defenders who often lack independence and, in some instances, detained persons have been deceived or coerced into waiving private defense, and defense access to trial documents have been limited.

Additionally, in these types of cases, pre-trial deprivation of liberty is almost automatic, whereas under international law any such deprivation of liberty must be exceptional after an individualized assessment to determine whether the person is at risk of flight, of committing a serious offence, or of interfering with the course of an investigation and that no alternative measures would address these risks.

In practice, instructions to indiscriminately prosecute certain crimes and the lack of institutional independence of judges and prosecutors have meant that persons are not subject to pre-trial release or subject to alternative or substitute measures. Although, in some cases, arbitrarily detained individuals have been released, this has not been the result of fair judicial processes, but rather for political reasons, such as the actions of the Truth Commission established within the framework of the discredited Constituent Assembly.

Finally, although the substitution of pre-trial deprivation of liberty measures with other measures represents an improvement in the conditions of victims, judicial processes and these measures remain open and in force beyond any reasonable period, becoming a form of disproportionate punishment. Released individuals never obtain justice, including access to effective remedies and reparation, for the torture or other cruel, inhuman, and degrading treatment or punishment they suffered during detention or enforced disappearance. Victims remain at risk of being re-imprisoned, which generates a chilling effect on the exercise of their

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<sup>90</sup> Committee on Enforced Disappearances and the Working Group on Enforced or Involuntary Disappearances, Joint statement on so-called "short-term enforced disappearances" U.N. Doc. [CED/C/11](#) 31 October 2024

<sup>91</sup> This pattern has also been documented by the United Nations Working Group on Enforced or Involuntary Disappearances. See UN Doc. [A/HRC/57/54/Add.4](#) "Enforced disappearances and elections". Also by the Report of the independent international fact-finding mission on the Bolivarian Republic of Venezuela UN Doc. [A/HRC/48/69A/HRC/48/69](#) December 28, 2021 paragraphs 68 et seq.; UN Doc. [A/HRC-48-CRP.5](#) September 16, 2021 para. 242 et seq. UN Doc. [A/HRC/45/33](#) September 25, 2020, para. 34 et seq.; UN Doc. [A/HRC/45/CRP.11](#) September 15, 2020 Para. 276 et seq. UN Doc. [A/HRC/57/57](#) September 17, 2024 Para. 74 et seq.; UN Doc. [A/HRC/54/57](#) December 15, 2023, Para. 31 et seq.; UN Doc. [A/HRC/54/CRP.8](#) 18 September 2023 Paras. 180 et seq. UN Doc. [A/HRC/51/43](#) 17 November 2022 Para. 41.



human rights, including the right to political participation, freedom of peaceful assembly, and freedom of expression.

## VII. Recommendations

The International Commission of Jurists reminds responsible authorities of Venezuela of the State's obligation to respect and ensure the human rights of all individuals under its jurisdiction, including the rights to peaceful assembly, freedom of expression, freedom of association, public participation, liberty and security of the person and fair trial which include due process, the presumption of innocence, and the rights of defense. To this end, the ICJ reiterates that it is essential to restore the rule of law and the independence of the judiciary and functional independence of the prosecutorial authorities of the justice system in the country. The ICJ recalls recommendations it has made in its previous reports<sup>92</sup> and considers that these reports remain valid.

In addition, the ICJ offers the following recommendations:

To the Chief prosecutor's Officer and prosecutors

- End the practice of arbitrary detention, including by ensuring no person is detained for the exercise of human rights and fundamental freedoms, including freedom of expression, peaceful assembly, and public participation in political affairs;
- Ensure that any person arrested is brought before a judicial authority within 48 hours to review the basis for their detention and any charges, and released or charged with a recognizable crime;
- For those charged with a crime, they should generally be released pending trial, unless there are substantial reasons, based on clear evidence, to believe that they are at risk of flight, committing a serious offence, or interfering with the course of an investigation and that no alternative measures would address these risks.
- Where strictly necessary, adopt proportionate alternative measures to detention, which may include posting bail and requirements to periodically present oneself to the responsible authorities;
- Ensure any person detained and/or charged has access to a lawyer of their choosing at all times;

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<sup>92</sup> Strengthening the Rule of Law in Venezuela (2014); Venezuela: The Decline of the Rule of Law (2015); The Supreme Tribunal of Justice of Venezuela: An Instrument of Executive Power (2017); Achieving Justice for Grave Human Rights Violations in Venezuela (2017); The Trial of Civilians by Military Courts in Venezuela (2018); No Room for Deliberation: The National Constituent Assembly and the Collapse of the Rule of Law in Venezuela (2019); Judges on the Tightrope: Report on the Independence and Impartiality of the Judiciary in Venezuela (2021); Lawyers Under Attack: Barriers to the Legal Profession in Venezuela (2022); No Will for Justice in Venezuela: A Public Ministry that Fosters Impunity (2024)

- Promptly review internal instructions and directives and provide for the necessary measures to request dismissals, filings, or less severe measures in appropriate cases, acting with independence and autonomy.
- Independently, impartially, promptly and thoroughly investigate all allegations of torture and other forms of cruel, inhuman, or degrading treatment, including sexual violence during detention, with a view to holding criminally accountable any individuals responsible.
- Ensure that all persons detained have access to appropriate doctors and other medical personnel able to provide care of victims and to conduct independent evaluations, including those necessary in respect of allegations of torture or other ill-treatment
- Ensure that victims and survivors have access to effective remedies and reparation, such as compensation and rehabilitation for victims and survivors torture and other cruel, inhuman, or degrading treatment, including sexual and gender-based violence.

To the courts:

- Independently and impartially review and immediately cease any precautionary measures amounting deprivation of liberty that are disproportionate in terms of time or costs for individuals subjected to criminal proceedings
- Where there is indicia of torture or ill-treatment of any individual coming before the courts, order an independent and impartial, and thorough investigation.

To the Ministry of Prisons:

- Ensure that the right to health is fulfilled in premises where persons are deprived of their liberty, which includes access to doctors and other medical personnel, as well as the right to food, water, and sanitation.

To the Ministry of Interior, Justice and Peace:

- Review and revise the protocols for rules of engagement by police and security forces in the course of demonstrations, to ensure that no person is subject to arrest and imprisonment for exercising their rights to peaceful protest or freedom of expression, and to ensure that any use of force is necessary and proportionate.



- Ensure that these rules communicate a prohibition on practice of arbitrary detention, including incommunicado detentions, as well as enforced disappearance, even of short duration:
- Ensure compliance with judicial release orders granted to detained persons, including pursuant to the *habeas corpus* or amparo remedy for personal liberty, as well as acquittal judgments or release orders due to completion of sentence;
- Ensure that officials who refuse to obey such release orders must be investigated and sanctioned.
- Take measure to comply with the recommendations made by the treaty bodies, and the Human Rights Council, including under the Universal Periodical Review and by the various special procedures (including the Independent International Fact-Finding Mission, etc.) and the Inter-American Commission Human Rights Such as:
  - o Strengthen national efforts arbitrary detentions and investigate allegations of excessive force by security forces and enhance capabilities for thorough, impartial investigations of human rights violations, as noted by Venezuela in its 2022 Universal Periodic Review.<sup>93</sup>
  - o Comply with the recommendation made by the Human rights Committee, in its concluding observations on the fifth periodic report of Venezuela<sup>94</sup>, specifically:
    - Ensure the effective enforcement of the amendments to the Code of Criminal Procedure aimed at reducing the duration of pretrial detention;
    - Unconditionally release all persons illegally or arbitrarily deprived of their liberty;
    - Develop a comprehensive policy on the timely execution of release orders, sentence reduction programmes and the calculation of sentence reductions;
    - Ensure that, in law and in practice, all persons deprived of their liberty enjoy all fundamental legal safeguards from the outset of their detention;

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<sup>93</sup> U. N. Doc A/HRC/50/8 Human Rights Council. Universal periodic review, 11 April 2022 Available at <https://docs.un.org/en/A/HRC/50/8> and Addendum on Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review [Bolivarian Republic of Venezuela] available at <https://docs.un.org/en/A/HRC/50/8/Add.1>

<sup>94</sup> U. N. Doc CCPR/C/VEN/CO/5 Human Rights Committee. Concluding observations on the fifth periodic report of the Bolivarian Republic of Venezuela, 28 November 2023 Available at <https://docs.un.org/en/CCPR/C/VEN/CO/5>

- o Comply with the recommendation made by the Independent International Fact-finding Mission on the Bolivarian Republic of Venezuela<sup>95</sup> specially the “end the practice of arbitrary detentions” as described in its 2024 report and “immediately release all persons who are arbitrarily detained.”<sup>96</sup>
- Cooperate, in good faith, with both the Independent International Fact-Finding Mission and the Office of the United Nations High Commissioner for Human Rights, allowing both to enter the country.

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<sup>95</sup> U.N. Doc A/HRC/57/57 Report of the independent international fact-finding mission on the Bolivarian Republic of Venezuela 17 September 2024 available at <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session57/advance-versions/a-hrc-57-57-en.pdf>

<sup>96</sup> Idem

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September 2025

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