

**No will for Justice in Venezuela:
A Prosecutor's Office that fosters impunity**

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I. Introduction

The Venezuelan Constitution, under article 285, establishes that a core function of the Public Prosecutor's Office is to guarantee respect for both Constitutional and international human rights obligations, as well as responsibility for advancing due process and fair trials in the administration of criminal justice.¹ These functions are necessarily prerequisites to ensuring accountability for human rights violations that engender criminal liability.

The Constitutional mandate is one thing; its effective implementation is another. As documented extensively by the International Commission of Jurists² (ICJ) and other independent sources,³ Venezuela has been in a rule of law crisis for more than a decade, with the institutions and mechanisms that conduct core governance and the administration of justice severely compromised.

Despite its strong Constitutional mandate, the Public Prosecutor's Office lacks the independence and objectivity that is necessary to conduct effective criminal investigations and prosecutions needed to combat impunity, with due diligence, fairness, and respect for human rights. The Office has participated in validating arbitrary arrests conducted by security forces for political reasons, violations of freedom of expression and other fundamental freedoms, torture and ill-treatment, and extrajudicial executions.

This ICJ report identifies key obstacles to investigating and prosecuting human rights violations that amount to crimes under international law, in particular related to the role of the Public Prosecutor. This analysis is the latest part of a series of reports on Venezuela that the ICJ has produced on Venezuela over the past decade, aimed at promoting the restoration of the rule of law and protection of human rights, including accountability for gross human rights violations. While the report focuses on some patterns that contribute to impunity in Venezuela due to the actions of the Public Prosecutor's Office, it does not cover all aspects of impunity, as there are other authorities responsible for practices and policies that contribute to the lack of accountability.

¹ Venezuelan Constitution Art. 285

² The International Commission of Jurists has been following the human rights situation in Venezuela and documenting the deterioration of the rule of law in the country in different reports: [Strengthening the Rule of Law](#) (2014), [Venezuela: The Sunset of the Rule of Law](#) (2015), [Achieving Justice for Gross Human Rights Violations in Venezuela](#) (2017), [The Supreme Court of Justice of Venezuela: an Instrument of the Executive Branch](#) (2017), [The Trial of Civilians by Military Courts in Venezuela \(only available in Spanish\)](#) (2018), [No Room for Debate: The National Constituent Assembly and the Crumbling of the Rule of Law in Venezuela](#) (2019), [Judges on the Tightrope: Report on the Independence of the Judiciary in Venezuela](#) (2021), and [Lawyers under Attack](#) (2022).

³ United Nations. Office of the High Commissioner for Human Rights, *Situation of human rights in the Bolivarian Republic of Venezuela* UN Doc (2022) [A/HRC/50/59](#); *Situation of human rights and technical assistance in the Bolivarian Republic of Venezuela* UN Doc (2022) [A/HRC/48/19](#); *Situation of human rights in the Bolivarian Republic of Venezuela* UN Doc (2021) [A/HRC/47/55](#); *Outcomes of the investigation into allegations of possible violations of the human rights to life, liberty, and physical and moral integrity in the Bolivarian Republic of Venezuela* UN Doc (2021) [A/HRC/44/20](#); *Independence of the justice system and access to justice in the Bolivarian Republic of Venezuela, including for violations of economic and social rights, and the situation of human rights in the Arco Minero del Orinoco region* UN Doc (2020) [A/HRC/44/54](#); *Human rights in the Bolivarian Republic of Venezuela: Report of the United Nations High Commissioner for Human Rights* UN Doc (2019) [A/HRC/41/18](#).

The ICJ's research reveals a persistence of structural problems in Venezuela's legal framework and its failure to conduct prompt, independent, thorough, and effective investigations of gross human rights violations in the country. Responsible domestic authorities are unable or unwilling to investigate and prosecute these types of crimes, especially when they implicate high-ranking officials. It is therefore imperative that international actors work to strengthen the capacities of international accountability mechanisms in contributing to provide justice, including the investigation at the International Criminal Court.

The report is organized in five sections and one annex. The first outlines the international law and standards applicable to accountability for gross human rights violations and the role of prosecutors in this matter. The second section describes the operation and responsibilities of the Venezuelan Public Prosecutor's Office in accordance with domestic law, particularly in relation to the investigation of gross human rights violations. The third section describes some of the challenges and barriers identified in seeking accountability for gross human rights violations and their effects on victims. The fourth section contains conclusions. The fifth part presents a set of recommendations. Finally, there is an annex that summarizes the previous recommendations made by the ICJ for the Public Prosecutor's Office of Venezuela.

Methodology of the Report

This report was prepared by reviewing publicly available information from various sources including the Venezuelan Public Prosecutor's Office and other public/State institutions;⁴ the UN Human Rights Council and its Special Procedures and Universal Periodic Review mechanisms and UN treaty bodies; the Organization of American States, including the Inter-American Commission on Human Rights and Inter-American Court of Human Rights; as well as reports and other publications from national and international non-governmental organizations.

The analysis considered international and domestic law, standards and jurisprudence related to the activities of the Public Prosecutor's Office, as well as the official gazettes containing resolutions of appointments, transfers, movements of prosecutors, the creation of new prosecutorial positions and changes in their competencies. Additionally, the analysis examined approximately one hundred cases of gross human rights violations constituting crimes under international law, specifically extrajudicial executions and torture and ill-treatment, which occurred between 2014-2021. This was done through the direct review of case files and interviews, as well as copies provided by the victims, their lawyers or human rights organizations that documented or represented these cases.

⁴ Older Reports by the Prosecutor's Office (Available until 2017), Rulings from the Supreme Court's, Laws related to the Justice System, Venezuela's 2023 Public Budget project, Internal instructions and rules by Chief Prosecutor, Internal memo appointing new provisory prosecutors or moving them to another office or region (2017 - 2022), National School of Prosecutors, academic programs by 2017 (no recent information was available), Records from 1999's National Constituent Assembly, and records from the Chief prosecutor's appointing process in 2007 and 2014, National constituent assembly's decisions (2017) such as removing and appointing the Chief Prosecutor.

In addition, the ICJ interviewed 50 individuals, including academic experts, practicing lawyers, human rights defenders, and former prosecutors, whose professional practice was concentrated in Caracas, Bolívar, Lara, Táchira and Zulia. The purpose of the interviews was to assess the performance of Public Prosecutor's Office officials in investigating and prosecuting serious human rights violations.

Likewise, the ICJ formally requested an interview⁵ with authorities of the Public Prosecutor's Office to consider their views on the research and findings. As of the date of publication of this report, the ICJ had not received a response to that request.

This report deepens and updates the findings, conclusions, and recommendations of previous ICJ reports that have reviewed certain aspects related to the Public Prosecution's Office,⁶ as well as the legal framework applicable to accountability for gross human rights violations.⁷ It is important to clarify that the report does not revisit aspects that have been previously assessed by the ICJ in other reports related to the independence of the judiciary,⁸ or the obstacles that exist for the independent exercise of the legal profession.⁹

One significant challenge in preparing this document was the opacity and persistent lack of access to public information by various public authorities. This lack of transparency extends to the operations of the Public Prosecution's Office, which has not released any management reports since 2017 and has failed to provide standardized and detailed information in the few reports that have been published.

I. Venezuela's international legal obligations on accountability for gross human rights violations

1) The obligation to investigate and prosecute gross human rights violations.

Venezuela, like all States, has a general obligation to respect, protect and fulfil human rights that are guaranteed under international law. Specific rights guarantees are provided for under universal and regional human rights treaties and customary international law.

Under the International Covenant on Civil and Political Rights (ICCPR), to which Venezuela is party, a State must "respect and... ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the ...Covenant, without distinction of any kind...".¹⁰ This includes the obligation to adopt legislative, administrative, judicial or any other measures that are necessary to guarantee the

⁵ Communication dated 15 December 2022, received at the Public Prosecutor's Office on 20 December 2022.

⁶ ICJ, [Strengthening the Rule of Law in Venezuela](#) and [Venezuela: The Sunset of the Rule of Law](#).

⁷ ICJ, [Achieving Justice for Gross Human Rights Violations in Venezuela](#).

⁸ ICJ, [Judges on the Tightrope Report on the Independence and Impartiality of the Judiciary in Venezuela](#)

⁹ ICJ, [Lawyers under Attack](#).

¹⁰ [International Covenant on Civil and Political Rights](#), (here in after ICCPR) articles 2.1 See also [American Convention on Human Rights](#), (here in after ACHR) articles 1.1 and 2.

enjoyment of human rights.¹¹ “The obligationsare binding on every State Party as a whole. All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional, or local - are in a position to engage the responsibility of the State Party.”¹² This includes, among other public authorities, the public prosecutors.

The obligation to ensure human rights includes the obligation to provide for effective remedies and reparation in case of violations.¹³ Reparation includes prosecution of individuals accountable for gross human rights violations. For certain types of violations, there is also a separate obligation on States to conduct a prompt, thorough investigation and to prosecute those identified to be responsible. Specific violations that carry criminal responsibility are identified as crimes under international law. These include:

- Violations of the prohibition against torture and ill-treatment, protected under the International Covenant on Civil and Political Rights (ICCPR) article 7;¹⁴ the UN Convention against Torture (UNCAT);¹⁵ article 5 of the American Convention on Human Rights¹⁶ (ACHR); and the Inter-American Convention to Prevent and Punish Torture.
- Violations constituting arbitrary deprivation of the right to life, including summary, extrajudicial or arbitrary executions, protected under article 6 ICCPR¹⁷ and article 4 ACHR.
- Violations of the prohibition against enforced disappearance, protected under the International Convention for the Protection of All Persons from Enforced Disappearance¹⁸; the UNCAT; articles 6,7,9 and 16 ICCPR;¹⁹ articles 4, 5, 7 and 3 ACHR; and the Inter-American Convention on Forced Disappearance of Persons.
- Prohibition against slavery, protected under article 8 ICCPR and article 6 ACHR.
- War crimes, prohibited as grave breaches of the 1949 Geneva Conventions²⁰ and Additional Protocol I of 1977,²¹ and the Rome Statute of the International Criminal Court (article 8).
- Crimes against Humanity, under the Rome Statute (article 7).
- Genocide, under the Rome Statute (article 6) and under the Convention on the Prevention and Punishment of the Crime of Genocide (Article 2).²²

¹¹ ICCPR article 2.2, ACHR article 2.

¹² UN Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. [CCPR/C/21/Rev.1/Add.13](#) (2004), para. 4.

¹³ ICCPR, article 2(3); UN Convention against Torture, article 14; [International Convention on the Protection of all Persons from Enforced Disappearance](#), article 2 8(2), 20(2) ACHR, article 25. See ICJ Practitioners Guide 2, 2018 edition, [Right to Remedy and Reparation for Gross Human Rights Violations](#).

¹⁴ UN Human Rights Committee, General Comment No. 31, the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. [CCPR/C/21/Rev.1/Add.13](#) (2004), paras. 15 and 18.

¹⁵ Articles 4-15.

¹⁶ As reported by the secretariat of the Organization of American States, the American Convention on Human Rights “Pacto de San José” was signed in 1977, and [ratified in 2019](#).

¹⁷ Human Rights Committee, General Comment 31, Op. Cit. paras. 15 and 18; General Comment 36, Article 6; the Right to Life, UN Doc [CCPR/C/GC/36](#), 2019, para.. 27.

¹⁸ Signed by Venezuela in 2008, not yet ratified.

¹⁹ UN Human Rights Committee, General Comment 31, Op. Cit. paras. 15 and 18.

²⁰ Geneva Convention I, article 50; Geneva Convention II, article 51; Geneva Convention III, article 130 ; Geneva Convention IV, article 147.

²¹ Article 11 and 85.

²² Ratified in July 1948.

In relation to these crimes, States must undertake “prompt, thorough, independent and impartial investigations into violations of human rights and international humanitarian law and shall adopt appropriate measures with respect to their perpetrators, especially in the area of criminal justice, so that they are duly prosecuted, tried and sentenced”.²³

The obligation to investigate requires that the responsible authorities act independently, and this includes independence from the military, police or other institutions to which suspects may belong. Likewise, the authorities must be impartial, acting without prejudice, bias or discrimination.²⁴

Investigations should be conducted effectively,²⁵ meaning they should be carried out diligently and not merely as a formality. They must also be exhaustive, and therefore the investigating authorities must have adequate and necessary resources and capacities to investigate all elements and individuals allegedly responsible for the violations, including senior officials who may be held accountable for their own actions or failure to fulfil their duties in a commanding or superior position. Moreover, investigations should be carried out expeditiously²⁶ and without undue delay, as soon as the authorities become aware of the facts, either by a direct complaint from the victims or on the State’s own initiative where there are reasonable grounds to believe that a crime has been committed.²⁷

The alleged perpetrators of these gross human rights violations, including the superiors whose responsibility has been engaged, must enjoy the right to fair and public hearing by a competent, independent, and impartial tribunal established by law, as provided under the ICCPR and ACHR.²⁸ The sentences imposed on those convicted must be proportionate to the seriousness of the crimes committed.²⁹

These violations constituting crimes under international law must be tried by ordinary, not military, courts. Under international law, as expressed in the UN Updated Set of Principles on Impunity: “The jurisdiction of military tribunals must be restricted solely to specifically military offences committed by military personnel, to the exclusion of human rights violations, which shall come under the jurisdiction of the ordinary domestic

²³ UN *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, UN Doc [E/CN.4/2005/102/add.1](#), recommended by the UN Human Rights Commission in Resolution 2005/81 of 21 April 2005, UN Doc E/CN.4/2005/L.10/Add.17.

²⁴ ICJ, Practitioners Guide 9, [Enforced Disappearance and Extrajudicial Execution: Investigation and Sanction](#), (2015); Practitioners Guide 7, [International Law and the Fight Against Impunity](#) (2015); Practitioners Guide 14, [The Investigation and Prosecution of Potentially Unlawful Death](#) (2019) and [Guarantees for the independence of justice operators](#) Inter-American Commission on Human Rights, OEA/Ser.L/V/II. Doc.44 (2013), para. 36.

²⁵ *The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol)* (2016) and *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)* (2004). See also ICJ [Enforced Disappearance and Extrajudicial Execution; International Law and the Fight Against Impunity; The Investigation and Prosecution of Potentially Unlawful Death](#).

²⁶ *Set of updated principles for the protection and promotion of human rights through the fight against impunity*.

²⁷ ICJ [The Investigation and Prosecution of Potentially Unlawful Death](#).

²⁸ ICCPR, article 14; ACHR, article 8 Human Rights Committee, General Comment 32; General Comment No. 36, para. 27. See also *Judgment of 17 April 2015*, Inter-American Court of Human Rights [Cruz Sánchez et al. V. Peru](#), para. 348 et seq.

²⁹ ICJ [The Investigation and Prosecution of Potentially Unlawful Death](#). See also IACHR “[Guarantees for the independence of justice operators](#)”, para 37.

courts or, where appropriate, in the case of serious crimes under international law, of an international or internationalized criminal court.”³⁰ In addition, the UN Draft Principles Governing the Administration of Justice Through Military Justice (Decaux Principles) state that “[I]n all circumstances, the jurisdiction of military courts should be set aside in favor of the jurisdiction of the ordinary courts to conduct inquiries into serious humanrights violations such as extrajudicial executions, enforced disappearances and torture, and to prosecute and try persons accused of such crimes.”³¹

More generally, in matters of criminal investigation of human rights violations, States must guarantee an independent and objective investigation and the bodies in charge of the investigation must “enjoy independence, *de jure* and *de facto*”, which requires “not only hierarchical or institutional independence, but also real independence”.³²

States must also guarantee the right of victims to an effective remedy and reparation,³³ including compensation, guarantees of non-repetition, satisfaction, restitution, and rehabilitation.³⁴ Elements of satisfaction include the conduct of effective investigations and prosecutions and the determination of the truth of the events that occurred, and the public disclosure of the truth.³⁵

2) The role of prosecutors in the investigation of gross human rights violations

Prosecutors necessarily play a fundamental role in the administration of justice,³⁶ which includes the investigation and prosecution of gross human rights violations constituting crimes under international law.

Prosecutors, as agents of the State, are responsible for discharging their functions in accordance with international human rights law, including, for example, articles 9 and 14 of the ICCPR. There are also particularized standards governing the role and responsibilities of prosecutors. These include the UN Guidelines on the Role of Prosecutors³⁷ and the International Association of Prosecutors Standards of Professional Responsibility (IAP Standards) and Statement of the Essential Duties and Rights of

³⁰ UN Updated Set of principles for the protection and promotion of human rights through action to combat impunity 2/8/2005 [E/CN.4/2005/102/Add.1](#) Principle 29, recommended by the UN Human Rights Commission in Resolution 2005/81 of 21 April 2005, UN Doc E/CN.4/2005/L.10/Add.17.

³¹ Principle 9, Draft Principles Governing the Administration of Justice Through Military Justice, UN Doc [E/CN.4/2006/58](#) (2006).

³² *Judgment of 24 November 2020*, Inter-American Court of Human Rights, [Casa Nina v. Peru](#), para 70 and *Judgment of 6 October 2020*, Inter-American Court of Human Rights [Martinez Esquivia v. Colombia](#), para 95.

³³ [American Declaration of the Rights and Duties of Man](#), article XVIII; [Universal Declaration of Human Rights](#), article 8; [International Covenant on Civil and Political Rights](#), article 2.3 and [American Convention on Human Rights](#), article 25. [ICJ Practitioner’s Guide No.2](#) On the right to a remedy and reparation for gross human rights violations. (2018).

³⁴ Human Rights Committee, General Comment No. 31, The nature of the general legal obligation imposed on States Parties to the Covenant, [CCPR/C/21/REV.1/ADD.13](#), paras 15 and 16. See also UN Res. No. [60/147](#) *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.

³⁵ United Nations, Res. No. [60/147](#) “Basic Principles and Guidelines” Op. Cit.

³⁶ IACHR, [Guarantees for the independence of justice operators](#), Op. Cit., para. 37.

³⁷ United Nations, Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, held in Havana (Cuba), from 27 August to 7 September 1990, UN Doc. A/CONF.144/28/Rev. 1 p. 189 (1990).

Prosecutors.³⁸ Additional authoritative guidance includes *The Status and Role of Prosecutors*, issued by the UN Office on Drugs and Crime (UNODC).³⁹

Independence

Prosecutors are required to maintain independence. Although they may be administratively housed within the executive branch of government, they must operate with functional autonomy from other executive authorities in their operations. As stated by the IAP Standards, this entails: “[t]he use of prosecutorial discretion, when permitted in a particular jurisdiction, should be exercised independently and be free from political interference.”⁴⁰

The UNODC has characterized the underlying rationale for the independence principle as follows:

“Independence of prosecutorial decision-making is recognized as being necessary as prosecutors play an important role and functions in relation to the executive branch. An independent prosecution service helps ensure that the Government and the administration are held to account for their actions. In order to fulfil this role and ensure the completely free and unfettered exercise of its independent prosecutorial judgement, a prosecution service cannot be party to inappropriate connections with other branches of government, as that can lead to the prosecution service being subject to inappropriate influences from those other branches. Prosecutorial independence thus serves as the guarantee of impartiality, which in turn leads to a transparent and robust prosecution service with strong ethics and integrity based on the rule of law. This independence must also be maintained in the face of inappropriate pressure that may arise from the media and individuals or interest groups in the community or even the public as a whole. When described in this manner, prosecutorial independence can be viewed as a fundamental component of the administration of justice.”⁴¹

The UN Guidelines on the Role of Prosecutors therefore provide that States must guarantee that prosecutors can carry out their functions without intimidation, interference, harassment, undue interference, or unjustified risk of incurring civil, criminal or other types of liability.⁴²

In this sense, the laws and regulations must establish criteria aimed at promoting fairness and coherence in the actions of prosecutors, especially in the prosecution

³⁸ [Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors](#), International Association of Prosecutors, (1999).

³⁹ United Nations Office on Drugs and Crime and International Association of Prosecutors, [The Status and Role of Prosecutors](#) Publishing and Library Section, United Nations Office at Vienna. 2014.

⁴⁰ [Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors](#), International Association of Prosecutors, (1999). Principle 2.1.

⁴¹ United Nations Office on Drugs and Crime and International Association of Prosecutors, [The Status and Role of Prosecutors](#) Publishing and Library Section, United Nations Office at Vienna. 2014. P. 8.

⁴² UN [Guidelines on the Role of Prosecutors](#), Op. Cit.. See also Standards of the International Association of Prosecutors.

process.⁴³ In addition, when discretionary powers are granted to prosecutors, they must be exercised independently and free from political interference.

The UN Guidelines state that the selection and admission processes for the prosecutor's career should be tailored for appointing "individuals of integrity and ability, with appropriate training and qualifications". The selection mechanisms⁴⁴ should guarantee that appointments are not made based on discriminatory grounds or with bias or favouritism.⁴⁵

Prosecutors should receive fair compensation and, when necessary, be provided with security.⁴⁶ In addition, promotions should be determined by objective criteria and carried out according through impartial procedures.⁴⁷ Lastly, disciplinary procedures against prosecutors must ensure due process and follow prompt and fair procedures based on standards related to the right to a fair hearing.⁴⁸

Regarding the responsibilities of prosecutors themselves, UN Guideline 12 provides that "[p]rosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and **uphold human rights**, thus contributing to ensuring due process and the smooth functioning of the criminal justice system;" and they must also carry out their duties impartially without discrimination.⁴⁹ Prosecutors, must exercise their function independently and objectively, without undue interference, and ensure the protection of the public interest.⁵⁰

The services of the prosecutors should be available and accessible, in accordance with Articles 2 and 14 of the International Covenant on Civil and Political Rights.⁵¹

⁴³ UN [Guidelines on the Role of Prosecutors](#), Op. Cit, Standards of the International Association of Prosecutors, Op. Cit. IACHR [Guarantees for the independence of justice operators](#) Op. Cit., para. 228.

⁴⁴ Inter-American Court of Human Rights [Casa Nina v. Peru](#), Op. Cit., para. 79 and [Martinez Esquivia v. Colombia](#). Op. Cit., para. 95.

⁴⁵ UN [Guidelines on the Role of Prosecutors](#), Op. Cit.

⁴⁶ IACHR, [Guarantees for the independence of justice operators](#), Op. Cit., paras 189-191.

⁴⁷ UN [Guidelines on the Role of Prosecutors](#), Op. Cit. Standards of the International Association of Prosecutors, Op. Cit. Inter-American Court of Human Rights [Casa Nina v. Peru](#). Op. Cit., paras. 97-99 and [Martinez Esquivia v. Colombia](#). Op. Cit., para. 115.

⁴⁸ [Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors](#).

⁴⁹ UN [Guidelines on the Role of Prosecutors](#), Op. Cit. Guidelines 12 and 13(a), emphasis added.

⁵⁰ UN [Guidelines on the Role of Prosecutors](#) Op. Cit., [Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors](#), Op. Cit.; Inter-American Court of Human Rights [Casa Nina v. Peru](#), Op. Cit. paras. 69-74 and [Martinez Esquivia v. Colombia](#), Op. Cit., paras 90-93.

⁵¹ Human Rights Committee. *Concluding observations on the third periodic report of the Plurinational State of Bolivia*, UN Doc [CCPR/C/BOL/CO/4](#) (2022), paras. 26 - 27.

II. The Public Prosecutor's Office and the investigation of gross human rights violations in Venezuelan domestic law

1) The obligation to investigate gross human rights violations in domestic law.

The Venezuelan Constitution expressly establishes the obligation of the State to investigate and prosecute human rights violations constituting crimes alleged to have been committed by State authorities. Article 29 of the Constitution provides:

The State is obliged to investigate and legally punish offenses against human rights committed by its authorities.

Actions to punish the offense of violating humanity rights, serious violations of human rights and war crimes, shall not be subject to statute of limitation. Human rights violations and the offense of violating humanity rights shall be investigated and adjudicated by the courts of ordinary competence. These offenses are excluded from any benefit that might render the offenders immune from punishment, including pardons and amnesty.⁵²

Article 25 establishes the civil, administrative, and criminal responsibility of officials who "violate or encroach upon the human rights guaranteed by [the] Constitution", with no defence available to them for having followed the orders from superiors. In addition, article 30 of the Constitution provides for the obligation to make full reparation to victims of human rights violations, and to their "legal successors", including compensation.

The general duty to guarantee human rights without discrimination is provided for in article 19. These include rights recognized expressly in the Constitution and in treaties to which Venezuela is party.⁵³ These include, among others, the rights to life, to liberty

⁵² Venezuelan Constitution, unofficial translation.

⁵³ Venezuela has ratified or acceded to the following treaties: Convention on the Prevention and Punishment of the Crime of Genocide (1960); International Convention on the Elimination of All Forms of Racial Discrimination (1967); International Covenant on Economic, Social and Cultural Rights (1978); International Covenant on Civil and Political Rights (1978); Convention on the Elimination of All Forms of Discrimination against Women (1983); Convention on the Rights of the Child (1990); Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1991); Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty (1993); Rome Statute of the International Criminal Court (2000); Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (2002); Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography (2002); Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2003); United Nations Convention against Corruption (2009); Convention on the Rights of Persons with Disabilities (2013); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (2016); Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. See [United Nations Treaty Body Database](#). Venezuela has ratified or acceded to the following treaties: Inter-American Convention to Prevent and Punish Torture (1991); Protocol to the American Convention on Human Rights to Abolish the Death Penalty (1994); Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women "Convention of Belem do Para" (1995); Inter-American Convention Against Corruption (1997); Inter-American Convention on the Forced Disappearance of Persons (1999); Inter-American Convention on the Elimination of all Forms of Discrimination Against Persons with Disabilities (2006); American Convention on Human Rights "Pact of San Jose de Costa Rica" (1977 and 2019); Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador (2020). See [Organization of American States' Inter-American Treaties Database](#). Venezuela has ratified or acceded to the following treaties on International Humanitarian Law: Geneva Conventions (1956); Additional Protocol (I) and (II) to the Geneva Conventions (1998). See [International Committee of the Red Cross Database](#).

and freedom from arbitrary detention; to physical, moral, and mental integrity; to due process and fair trial, to an effective judicial remedy,⁵⁴ and to freedom from torture or cruel, inhuman or degrading treatment and freedom from enforced disappearance. The Constitution also establishes the duty to investigate and prosecute these violations.⁵⁵ The Constitution itself provides that the application of international treaties takes precedence when they provide more favourable rules on the enjoyment and exercise of human rights than those established in the Constitution itself or in domestic legislation⁵⁶.

2) The legal regime of the Venezuelan Public Prosecutor's Office and the role of the Chief Prosecutor

As provided in the Constitution, the State of Venezuela is made up of five branches: the Executive, Legislative, Judicial, Citizen and Electoral branches, which work together to achieve the State's objectives.⁵⁷ The country has a federal structure consisting of states, each of which is divided into municipalities.

The Citizen Branch comprises the heads of the Prosecution Office (Fiscal General de la República), as well as the Ombudsman Office (Defensor del Pueblo) and the General Controller (Contralor General de la República), all of whom are guaranteed independence and autonomous management of their financial and administrative affairs by the Constitution.⁵⁸ The Public Prosecutor's Office (Ministerio Público), which is headed by the Chief Prosecutor, who is the highest authority of the Office. The Constitution and the Organic Law of the Public Prosecutor's Office regulates the functioning of the prosecutorial service. The Organic Law guarantees the independence and functional autonomy of the Public Prosecutor's Office, defines the office's organic structure, and sets the principles for fulfilling its duties.

The Public Prosecutor's Office has the following powers:⁵⁹

1. Guarantee in judicial proceedings respect for constitutional rights and guarantees, as well as international treaties, conventions and agreements signed by the Republic.
2. Guarantee the speed and proper functioning of the administration of justice, prior trial and due process.
3. Order and direct the criminal investigation of the perpetration of punishable acts in order to record their commission with regard to all circumstances that may influence the qualification and responsibility of the perpetrators and other participants.
4. Exercise criminal action on behalf of the State in cases in which it is not necessary to bring or pursue it at the request of a party, except for the exceptions set forth in the law.
5. Bring actions as may be necessary to enforce civil, labour, military, criminal, administrative or disciplinary liability incurred by public sector officials in the performance of their duties.

⁵⁴ Venezuelan Constitution, Articles 26 and 27.

⁵⁵ Venezuelan Constitution, Articles 45 and 46.

⁵⁶ Venezuelan Constitution, Article 23.

⁵⁷ ICJ's Country Profile Venezuela, [Constitutional structure](#),(2014).

⁵⁸ Venezuelan Constitution, Article 273.

⁵⁹ Venezuelan Constitution, Article 285 unofficial translation.

Under the Constitution, the Public Prosecution Office integrates the justice system.⁶⁰

The appointment of the Chief Prosecutor requires a Nominations Evaluation Committee⁶¹ to make preliminary list of candidates. The Committee evaluates the candidates' background and merits and presents a list to the Parliament, who finally appoints the Chief Prosecutor by a two-thirds majority vote.⁶² The Chief Prosecutor, like the other members of the Citizen Branch, is appointed for a seven-year term.

The Public Prosecution Office has a hierarchical structure, with the Chief Prosecutor as the highest authority. The principles of unity of operation and indivisibility are applied to guarantee consistency and fairness of the decisions. Under this hierarchical structure, prosecutors must comply with the instructions and orders given to them by the Chief Prosecutor in criminal investigations, although they can make such observations if they deem appropriate. The Chief Prosecutor has legal representation, direction, control and disciplinary powers over all prosecutors and other officials.⁶³

In practice, these provisions have been applied in a manner contrary to their intended purposes. The Chief Prosecutor has interpreted these principles to require the Chief's prior permission for decisions in every criminal proceeding, diminishing the autonomy of public prosecutors as provided in the Organic Law of the Public Prosecution's Office.⁶⁴

The Chief Prosecutor must establish a unique legal criteria for all prosecutors,⁶⁵ in accordance with their mandatory written or oral instructions. Failure to comply may result in dismissal.⁶⁶ Therefore, an individual prosecutor must not apply any individual discretionary criteria in whether to prosecute, but rather must follow the criteria defined by the Chief Prosecutor. Consequently, all decisions and actions, even those of a wholly procedural character, must be authorized by the Chief Prosecutor. In practice, the Chief Prosecutor has increasingly resorted to issuing these kinds of instructions.⁶⁷

3) The Public Prosecution Office's specialized with competence on human rights

⁶⁰ Venezuelan Constitution, Article 253.

⁶¹ Venezuelan Constitution Article 279.

⁶² Venezuelan Constitution Article 279.

⁶³ Organic Law of the Public Prosecutor's Office, Articles 6-8.

⁶⁴ ICJ's Country Profile Venezuela, [Functioning of the prosecutorial services](#) (2014)

⁶⁵ "Accordingly, then, the reference of this circular dated July 10, 2001 is to refrain from issuing copies of the records of the criminal proceedings, and it is mandatory for the Prosecutor of the Public Prosecutor's Office to respect and abide by the instructions. Subsequently, in 2006, another circular was issued in which this was made more flexible and it is possible to issue copies." Transcription of the statement of the witness Mercedes Prieto Serra, Director of Legal Support of the Public Prosecutor's Office of the Bolivarian Republic of Venezuela, in the *Case of Allan Brewer Carías vs. Venezuela* in the [Case of Allan Brewer Carías vs. Venezuela](#), to the *Inter-American Court of Human Rights*, Judgment of May 26, 2014.

⁶⁶ Audience Report, [situación de las fiscalías en la protección de los derechos humanos en la región](#), [Situation of prosecutors' offices in the protection of human rights in the region] (*only available in Spanish*) Inter-American Commission on Human Rights, 4 December 2020.

⁶⁷ For example, Chief Prosecutor Tarek William Saab indicated that he had issued 50 circulars giving instructions "on how the institution should be managed" in which he ratifies its mandatory nature and whose non-observance may imply the dismissal of the official. See Tarek William Saab "[Rueda de Prensa](#)" [Press Conference] (*only available in Spanish*), 24 November 2022.

Under the Organic Law of the Public Prosecution Office (2007), specialized prosecutors, acting with authorization by the Chief Prosecutor, may act specifically for the protection and guarantee of constitutional rights. This includes the power to request judicial review in relation to the protection constitutional rights and to intervene in the judicial review proceedings, protect due process of law, enforce the civil and criminal liability of public officials for human rights violations in courts, and request judicial review of unconstitutional or illegal acts or omissions of government officials.⁶⁸

Recently, the Chief Prosecutor, Tarek William Saab, ordered a change in the name of these prosecutor to "Human Rights Protection Prosecutors".⁶⁹ They are supervised by the Director of Human Rights Protection, directly appointed by the Chief Prosecutor.⁷⁰

4) The appointment of the prosecutors

The Organic Law of the Public Prosecutor's Office states that individuals aspiring to become prosecutors must pass a public competitive examination. Conditions for appointment, promotion, transfer, suspension, security of tenure and retirement are regulated in that law and in the Public Prosecution Office Personnel Statute (*Estatuto de Personal del Ministerio Público*).⁷¹ However, in practice, these public competitive examinations have not been conducted, and the Chief Prosecutor has appointed and removed prosecutors with absolute discretion on a provisory basis,⁷² despite the formal establishment of the examinations by the 2007 Law and specific regulations issued in 2011. Only seven competitions have been held between 2011 and 2023, resulting in the selection and appointment of only 13 prosecutors.

5) Duties and powers of prosecutors during criminal investigations

Generally, the Public Prosecutor's Office has the responsibility to order and direct criminal investigations and to exercise prosecutorial action.⁷³ Upon receipt of a police or victim report of the alleged perpetration of a punishable act, the prosecutor must take the necessary steps to investigate the situation with due diligence, including "all circumstances that may influence its qualification and the responsibility of the authors or authors and other participants, and protect all evidence related to the crime".⁷⁴

The Public Prosecution's Office is assisted by "criminal investigation police bodies", but the prosecutors instruct and supervise⁷⁵ their actions. The main police body is the

⁶⁸ Organic Law of the Public Prosecutor's Office, Articles 31, 40 and 41.

⁶⁹ Resolution of Chief Prosecutor, Tarek William Saab, published on the Official Gazette Nº 41.970, 22 September 2020.

⁷⁰ Organic Law of the Public Prosecutor's Office, Article 6, Article 25.1 and 25.3.

⁷¹ Organic Law of the Public Prosecutor's Office, Article 93 - 94.

⁷² Resolution No. 60 of the Chief Prosecutor through which the Personnel Statute of the Public Prosecutor's Office is issued, published in the Official Gazette of the Republic of Venezuela No. 36,654, 4 March 1999, Article 116.

⁷³ Venezuelan Constitution, Article 285 and Organic Code of Criminal Procedure articles 11 and 24; Organic Law of the Public Prosecutor's Office, Article 17.11. However, other laws establish specific functions.

⁷⁴ Organic Code of Criminal Procedure article 265. (Only Available in Spanish, non-official translation).

⁷⁵ Organic Code of Criminal Procedure article 111 and 114. See also Decree with Rank, Value and Force of Organic Law of the CICPC and the National Institute of Medicine and Forensic Sciences, published in

Scientific, Penal and Criminal Investigation Corps (CICPC). However, the law also prescribes this function to other bodies, such as the police intelligence agencies.⁷⁶

During the investigation of each punishable act, the CICPC is required to create and implement a “scientific investigation plan for the discovery and verification of a punishable act”, identify perpetrators and victims, and collect and secure all evidence.⁷⁷ The CICPC must consistently inform to the Public Prosecution Office about the progress and implementation of the investigation plan in a timely manner. Additionally, it is obligated to carry out any further actions required by the Office, even if they were not initially part of the original investigation plan.

This investigation phase, also known as the preliminary phase of the criminal proceeding, should conclude within six months after the person allegedly responsible has been charged,⁷⁸ with one of the following actions (“*actos conclusivos*”):

- a) **Prosecutor’s archive:** when the result of the investigation does not provide sufficient evidence to charge a suspect the prosecutor retains the possibility of reopening the investigation if new elements are manifest.
- b) **Dismissal:** when the investigation shows that the accused did not participate in the commission of the crime, or when the criminal action has been extinguished or judge matter.
- c) **Accusation:** when the investigation finds sufficient elements to prosecute the individual to an oral and public trial.

The Chief Prosecutor has issued mandatory instructions whereby prosecutors must consult with their superiors on any action involving the issuance of a conclusive act.⁷⁹ In addition, prosecutors are required to send a copy of the conclusive acts document to the Legal Support Department, which reviews the content of these acts,⁸⁰ establishing additional internal controls over prosecutors' actions.

6) Formal barriers to the investigation of gross human rights violations amounting to crimes under international law.

As indicated above, there is a general obligation under international human rights law, including under the ICCPR, for States to adopt legislative, judicial, administrative, educative and other appropriate measures in order to ensure human rights.⁸¹ This may require not only measures of implementation, but also action to remove obstacles to implementation. In this connection, the Inter-American Court of Human Rights has

Extraordinary Official Gazette No. 6,079, 15 June 2012, Article 34. (Hereinafter Organic Law of the Investigative Police Service).

⁷⁶ Organic Law of the Investigative Police Service. Articles 24 and 25.

⁷⁷ Organic Law of the Investigative Police Service, Op. Cit. Article 35.

⁷⁸ Organic Code of Criminal Procedure article 295.

⁷⁹ Audience Report, [situación de las fiscalías en la protección de los derechos humanos en la región](#), [Situation of prosecutors' offices in the protection of human rights in the region] (*only available in Spanish*) Inter-American Commission on Human Rights, 4 December 2020. P.131 and 132.

⁸⁰ Statement by Mercedes Prieto Serra Director of Legal Support of the Public Prosecutor’s Office of the Bolivarian Republic of Venezuela, Inter-American Court of Human Rights [Brewer Carías v. Venezuela](#),. Op. Cit. Note 45.

⁸¹ Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. [CCPR/C/21/Rev.1/Add.13](#) (2004), Para. 7, ACHR, articles 1.1 and 2.

recalled that “the Convention [and other treaties] obliges the States Parties to adopt, pursuant to their constitutional procedures and the provisions of the Convention, all legislative or other measures necessary to make effective the rights and freedoms protected by the Convention. This obligation entails the adoption of two types of measures. On the one hand, the elimination of laws and practices of any nature that result in a violation of the guarantees established in the Convention either because they fail to acknowledge those rights and freedoms or because they hinder their exercise. On the other, the enactment of laws and the implementation of practices conducive to the effective observance of those guarantees”.⁸²

The Venezuelan Constitution and domestic legislation⁸³ contain certain provisions which may serve to hinder the effective investigation of crimes under international law. These include:

- a) **Privilege of pretrial hearings for senior public officials and trial in front of the Supreme court.** Although the Constitution prohibits the prosecution of crimes concerning human rights by military courts,⁸⁴ it does provide for a pretrial hearing⁸⁵ in criminal proceedings involving high-ranking public officials and high-ranking military officials. The Supreme Court of Justice is the competent court for such hearings and if the Court find grounds for a criminal prosecution, it will continue hearing the merits of the criminal trial. If no grounds are found, the case is dismissed and close.

- b) **Failure to adopt domestic law provisions which incorporate obligations in relation to crimes under international law.** Some international law obligations related to crimes under international law have not been included in the Venezuelan domestic law. These include grave breaches of four 1949 Geneva Conventions and the 1977 Additional Protocol to those Conventions; crimes against humanity, war crimes and genocide provisions of the Rome Statute for the ICC; and the Genocide Convention.⁸⁶ Venezuela’s domestic legislation does not fully comply its international legal obligations and international standards⁸⁷ regarding the prevention and punishment of torture and enforced disappearance. In practice, this

⁸² Inter-American Court of Human Rights *Casa Nina v. Peru* Op. Cit., paras. 100-101 and *Martinez Esquivia v. Colombia*, Op. Cit., para 118.

⁸³ ICJ “*Achieving Justice for Gross Human Rights Violations in Venezuela*” Baseline Study, July 2017.

⁸⁴ Venezuelan Constitution, Article 261.

⁸⁵ Venezuelan Constitution, Article 266.2 and 266.3; Organic Code of Criminal Procedure article 376. The Constitution provides that these proceedings are taken pursuant to a prior evaluation by the Supreme Court on whether or not there are grounds to begin criminal prosecution against high-ranking public officers, including military personnel. At least since 2000 the Supreme Court has not authorized any proceedings against senior government officials; in recent years, prosecution only been authorized against officials of opposition political parties and against the former Chief prosecutor Ms. Luisa Ortega Díaz. See ICJ, *ICJ Position Paper on the Dismissal of the Attorney General of Venezuela (Only available in Spanish)*; and ICJ, *No Room for Debate: The National Constituent Assembly and the Crumbling of the Rule of Law in Venezuela* (2019),

⁸⁶ See Amnesty International, *Venezuela end impunity through universal jurisdiction*, 10 December 2009.

⁸⁷ These include the International Covenant on Civil and Political Rights; the UN Convention against Torture; the American Convention on Human Rights; and the Inter-American Convention to Prevent and Punish Torture; the International Convention for the Protection of All Persons from Enforced Disappearance; the Inter-American Convention on Forced Disappearance of Persons; the Geneva Conventions and Protocols and the Rome Statute of the International Criminal Court and under the Convention on the Prevention and Punishment of the Crime of Genocide.

situation has allowed interpretations by domestic courts that prevent the proper investigation and punishment of these crimes.

III. Challenges in the search for accountability for gross human rights violations

1) Impunity as a persistent problem

The World Justice Project's 2023 *Global Rule of Law Index*⁸⁸ ranks Venezuela last out of 142 countries evaluated. While this assessment may not be precisely definitive in empirical terms, it is certainly indicative of poor state of rule of law in the country. The indicators for which the country had the weakest performance were those related to the guarantees of due process, the fairness of trials, the effectiveness of criminal investigations and the extent of undue government interference in the justice system. These indicators show the poor performance of the Public Prosecutor's Office and other institutions of the justice system.

This dismal performance is not new. In 2011, the Parliament under control of the *Partido Socialista Unido de Venezuela* (or PSUV) adopted the "Law for the Punishment of Crimes, Disappearances, Torture and Other Violations of Human Rights that took place due Political Reasons in the Period 1958-1998."⁸⁹ However the authorities conducted few if any effective investigations pursuant to this legislation, a departure from the approach of other countries in the region addressing gross human rights violation during periods of prior authoritarian rule.⁹⁰

The law established a Commission for Truth and Justice⁹¹ (CTJ), which determined that 1,425 people had been unlawfully killed and 459 made victims of enforced disappearances between 1958-1998. However, in only 14 cases were the remains of disappeared persons delivered to their relatives.⁹² The CTJ operated from 2013 to 2017. Despite significant resources and support of the national authorities, including the Public Prosecutor's Office, the CTJ reported substantial obstacles in conducting an effective investigation. Such obstacles included, for example, the fact that victims buried in areas that were very difficult to access; the lack of staff to conduct the investigations; the lack of access to or absence of relevant information in the archives containing information of interest for the investigation; and police or intelligence files lacking the minimum classification or necessary information to locate the victims. The CTJ also asserted that no direct access to the archives was provided and that it always remained dependent on an official to provide information. The CTJ also received no technological support "in addition to the fact that many files [had] deteriorated and the information contained in

⁸⁸ World Justice Project, [Rule of Law Index 2023](#).

⁸⁹ Law for the Punishment of Crimes, Disappearances, Torture and Other Violations of Human Rights that took place due Political Reasons in the Period 1958-1998, published in the Official Gazette No. 39,808, 25 November 2011.

⁹⁰ See Institute of Public Policies in Human Rights of Mercosur, [A 40 años del cóndor. De las coordinaciones represivas a la construcción de las políticas públicas regionales en derechos humanos](#) [40 years from the condor. From repressive coordination to the construction of regional public policies on human rights] (only available in Spanish).

⁹¹ Law for the Punishment of Crimes, Disappearances (...), Op. Cit. Article 8.

⁹² Comisión por la Justicia y la Verdad [Commission for Justice and Truth] (2017) [Informe de la Comisión](#) (only available in Spanish).

them was not available or was partial".⁹³ When analysing the data from their report on cases of enforced disappearance, they reportedly only achieved results in some four percent of the cases. Therefore, more than 95 percent of cases of enforced disappearances credibly alleged went unaddressed.

The Venezuelan human rights NGO "Programa de Educación-Acción en Derechos Humanos" (PROVEA),⁹⁴ has pointed out that those responsible for gross human rights violations committed during the late 1980s and early 1990s continue to enjoy in impunity. This situation persists despite the fact that the State accepted its international responsibility through the acceptance of the facts in cases presented at the Inter-American Court of Human Rights.⁹⁵ Rampant impunity has continued since 1999.⁹⁶

The ICJ previously concluded, in a report on the rule of law of 2014, that the extremely high rates of impunity in cases of human rights violations resulted from the confluence of various factors. These included: budget insufficiency, the excessive hierarchy in the Public Prosecutor's Office, the lack of autonomy of the prosecutors and the control by the Chief Prosecutor of the work of the prosecutors, and the provisional status of almost all of the prosecutors.⁹⁷

Similarly, investigations by Venezuelan human rights organizations affirm that since the early 2000s, more than 90 percent of gross human rights violations went unprosecuted,⁹⁸ with 2017 figures reaching 98 percent.⁹⁹

The United Nations Committee Against Torture indicated that of complaints received "between 2011 and 2014, only 3.1% resulted in accusations by the Public Prosecutor's Office (...) only 12 officials were sanctioned for committing acts of torture. The Committee is deeply concerned about reports that prosecutors are often failing to initiate investigations ex officio, despite clear signs of injury to detained persons".¹⁰⁰

This widespread impunity contrasts with the speed with which the Public Prosecutor's Office has acted in cases with a high politically profile, especially in investigations against

⁹³ Comisión por la Justicia y la Verdad [Commission for Justice and Truth] (2017) *Informe de la Comisión* (only available in Spanish). Pag 369-371. Luisa Ortega Díaz "Press Conference *Presentación del Informe Final de la Comisión por la Justicia y la Verdad*" [Presentation of the Final Report of the Commission for Truth and Justice] (only available in Spanish).

⁹⁴ PROVEA *Annual Report*, chapter on the right to justice of 1997-98 and subsequent years.

⁹⁵ Rules Of Procedure of the Inter-American Court of Human Rights, [Article 62 Acquiescence](#). Judgment of 18 January 1995, Inter-American Court of Human Rights *El Amparo v. Venezuela*; Judgment of 29 August 2002, Inter-American Court of Human Rights *El Caracazo v. Venezuela* and Judgment of 5 July 2006, Inter-American Court of Human Rights *Montero-Aranguren et al (Detention Center of Catia) v. Venezuela*.

⁹⁶ A review of [Cases about Venezuela](#) decided by the Inter-American Court of Human Rights, confirms this trend.

⁹⁷ ICJ [Strengthening the rule of law](#), p. 27.

⁹⁸ Quoted in COFAVIC, *Informe sobre violaciones a los derechos humanos cometidas por grupos parapoliciales en Venezuela (2000-2009)* [Report on human rights violations committed by parapolice groups in Venezuela (2000-2009)] (only available in Spanish). [Report on the situation of human rights in Venezuela](#) Inter-American Commission on Human Rights OEA/Ser.L/V/II.118doc. 4 rev. 2 (2003).

⁹⁹ PROVEA Annual Report 2021, special report, *Venezuela: Crecen los abusos y se consolida el terrorismo de Estado* [Venezuela: Abuses Grow and State Terrorism Consolidates] (only available in Spanish). Also see Amnesty International, *This is no way to live: Public Security and Right to Life in Venezuela*, 20 September, (2018).

¹⁰⁰ UN Committee against Torture, Concluding observations on the combined third and fourth periodic reports of the Bolivarian Republic of Venezuela, UN Doc [CAT/C/VEN/CO/3-4](#) (December 2014),

people identified as opponents or critics of the government. In this regard, the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela (FFM), established by the United Nations Human Rights Council in 2019,¹⁰¹ concluded that some “judges and prosecutors (...) have denied, as opposed to guaranteed, some rights to real or perceived government opponents, in response to interference from political actors or from within the judicial or prosecutorial hierarchy”.¹⁰²

Recently, during the fifth periodic review by the Human Rights Committee,¹⁰³ Chief Prosecutor Saab acknowledged that between 2015 and 2022 “455 alleged cases of enforced disappearance had been registered; investigations into 402 of those cases were ongoing, 10 cases had gone to trial, 40 others had been concluded and, in just 16, the cases had been closed”.¹⁰⁴ This means that only 12% of the cases the investigations have been concluded. In this regard, the Committee concluded that: “it is concerned about the alarming impunity in relation to the reported cases and deeply regrets that the delegation has denied these allegations and criticized the sources of the allegations of enforced disappearances and extrajudicial executions in its dialogue with the Committee”.¹⁰⁵

Finally, the Committee recommended that all allegations and complaints of serious human rights violations be promptly, impartially and thoroughly investigated; ensure that victims and their families are regularly informed of the progress and results of the investigations; and expedite the validation and implementation of the Minnesota Protocol on the Investigation of Potentially Unlawful Deaths.¹⁰⁶

In Venezuela, impunity has persisted regardless of the government in power, dating back to the latter half of the 20th century and spanning multiple administrations. Although a few cases have been effectively investigated and sanctioned, the majority of gross human rights violations that have occurred in Venezuela since have remained unpunished. Impunity necessarily carries highly adverse effects for victims, the most visible being re-victimization.¹⁰⁷ Back in 2017, the ICJ remarked that “the biggest problem in terms of impunity has been the absence of political will by the Public Prosecution to investigate gross human rights violations and bring perpetrators to justice”¹⁰⁸ Effectively, the Public Prosecutor’s Office does not investigate the vast majority of allegations of gross human rights violations.

¹⁰¹ UN Human Rights Council, Resolutions [42/25](#); [45/20](#) y [51/29](#).

¹⁰² Report of the independent international fact-finding mission on the Bolivarian Republic of Venezuela, UN Doc [A/HRC/48/69](#) (16 September 2021), para. 110.

¹⁰³ UN Human Rights Committee. Summary record of the 4040th meeting. UN Doc [CCPR/C/SR.4040](#) (26 October 2023).

¹⁰⁴ *Idem*.

¹⁰⁵ Concluding observations on the fifth periodic report of the Bolivarian Republic of Venezuela. UN Doc [CCPR/C/VEN/CO/5](#) (28 November 2023). Para. 23.

¹⁰⁶ *Idem*, Para 24.

¹⁰⁷ COFAVIC, [Informe sobre violaciones a los derechos humanos cometidas por grupos parapoliciales en Venezuela \(2000-2009\)](#) [Report on human rights violations committed by parapolice groups in Venezuela (2000-2009) (only available in Spanish).

¹⁰⁸ ICJ “[Achieving Justice for Gross Human Rights Violations in Venezuela](#)” Baseline Study, July 2017 Page.17

2) Lack of impartiality and independence of Chief Prosecutors

With the entry into force of the 1999 Constitution,¹⁰⁹ the appointed Chief Prosecutors have shown a lack of impartiality and independence.¹¹⁰ In 1999 the National Constituent Assembly provisionally appointed as Chief Prosecutor¹¹¹ Javier Elechiguerra Naranjo,¹¹² who had been serving at the time as Attorney General appointed by President Chávez. The National Constituent Assembly made this appointment in contravention of the requirements established in the recently approved Constitution.¹¹³

In 2000, when definitive appointments had to be made, the National Assembly approved a "Special Law"¹¹⁴ which failed to comply with the procedure for calling a Nominations Committee in accordance with the provisions of the Constitution.¹¹⁵ On that occasion, Julián Isaías Rodríguez Díaz was appointed as Chief Prosecutor.¹¹⁶ At the time he was serving as Vice President of the Republic during the administration of President Chávez.¹¹⁷

In 2007 the Constitutional process for appointments was nominally complied with. However, the parliament at the time was controlled mostly by the ruling party. Civil society organizations, including PROVEA, expressed reservations concerning alleged lack of impartiality of the Nominations Evaluation Committee. On that occasion, Luisa Ortega Díaz was appointed Chief Prosecutor. She had been serving as prosecutor and Director of Procedural Action of the Public Prosecutor's Office under the tenures of Isaías Rodríguez.¹¹⁸ During those years, Luisa Ortega Díaz was directly in charge of investigations of cases of high "relevance to public opinion".¹¹⁹

In 2014, when the PSUV lacked a qualified two-thirds majority in the Parliament, the Nomination Evaluation Committee failed to be convened for the appointment of the Chief Prosecutor. In addition, the Constitutional Chamber of the Supreme Court of Justice (TSJ) adopted a contested interpretation of the Constitution and authorized the

¹⁰⁹ ICJ, [Judges on the Tightrope Report on the Independence and Impartiality of the Judiciary in Venezuela](#), p. 19.

¹¹⁰ [Guarantees for the independence of justice operators](#), Inter-American Commission on Human Rights, paras. 36-37. Also, Inter-American Court of Human Rights [Casa Nina v. Peru](#) Op. Cit., paras 70-71.

¹¹¹ Asamblea Nacional Constituyente, Decreto mediante el cual se dicta el Régimen de Transición del Poder Público [National Constituent Assembly. Decree whereby the Transition Regime of the Public Power is enacted] Official Gazette No. 36,859 dated 29 December 1999, Article 35.

¹¹² Hugo Chávez Presidente de la República. Decreto Nro. 5 de fecha 02 de febrero de 1999 (Hugo Chávez President. Decree No. 5 dated 2 February 1999, published in Official Gazette No. 36,634 dated February 2, 1999) (Only Available in Spanish). Under Venezuelan Constitution the Chief Prosecutor and the Attorney general are two different offices. The Attorney General's office its part of the executive branch, for represents and defends the State's property interests in and out of court. See Venezuelan Constitution, Article 247.

¹¹³ See Section II herein.

¹¹⁴ Ley Especial para la Ratificación o Designación de los funcionarios y funcionarias del Poder Ciudadano y Magistrados y Magistradas del Tribunal Supremo de Justicia para su Primer Período Constitucional, [Special Law for the Ratification or Appointment of Officials of the Citizen Branch and Magistrates of the Supreme Court of Justice for their First Constitutional Term] Official Gazette No. 37,077 dated November 14th, 2000.

¹¹⁵ International Commission of Jurists, [Attacks on Justice \(2002\)](#); PROVEA [Informe Anual. Octubre 2000 – septiembre 2001](#); Inter-American Commission on Human Rights, Report on the Human Right Situation in Venezuela (2003), para. 178.

¹¹⁶ Official Gazette No. 37.105, 22 December 2000.

¹¹⁷ Official Gazette No. 36.876,24 January 2000.

¹¹⁸ Official Gazette No. 38,836, 20 December 2007.

¹¹⁹ PROVEA [Informe Anual Oct 2007 – Sept. 2008](#) [Annual Report Oct 2007 – Sept. 2008] (only available in Spanish) for example: Allan Brewer-Carías v. Venezuela, Human Rights Committee, communication no. 3003/2017 Views of 25 January 2022, UN Doc [CCPR/C/133/D/3003/2017](#).

Parliament to appoint the Chief Prosecutor and the rest of the members of the "Citizen Branch" by a simple majority, instead of the two-thirds majority required by the Constitution. Through this process, Luisa Ortega Díaz was re-appointed as Chief Prosecutor¹²⁰ for the term 2014-2021 with the votes of the simple majority.

On 5 August 2017, the Constituent Assembly, whose "primary purpose was not the elaboration of a new constitutional text, but to assume parliamentary functions",¹²¹ unlawfully dismissed Luisa Ortega Díaz. The Constituent Assembly alleged that the Chief Prosecutor's "actions [were] contrary to the Constitution of the Bolivarian Republic of Venezuela, carried out with default, discrimination and partiality, [and] taking the margins of impunity in the country to levels never seen before ...they promoted criminal violence and with political purposes, seriously altering the peace and tranquillity of the Republic".¹²² The ICJ at the time pointed out that her dismissal appeared to be unlawful and politically motivated, in retaliation for her critical positions regarding various government initiatives and decisions of the Supreme Court of Justice, and that her dismissal therefore violated international standards on the independence of the Public Prosecutor's Office.¹²³

The Constituent Assembly provisionally appointed at that time the current Ombudsman, Tarek William Saab, as Chief Prosecutor, Tarek William Saab,¹²⁴ who had been Governor of Anzoátegui state in eastern Venezuela (2004 to 2012), and deputy to the National Assembly (2000 to 2004) for the MVR/PSUV.¹²⁵ According to information from PROVEA, during his tenure as Governor there were some 134,333 cases of arbitrary arrests, an unprecedented number.¹²⁶ The organization alleged that the Ombudsman's Office lacked independence during his tenure in that role.¹²⁷

Tarek Saab presently continues to serve as Chief Prosecutor, even though his appointment in 2017 was officially announced as a provisional measure taken to fill the gap left by the dismissal of Luisa Ortega Díaz, whose term as Chief Prosecutor should have ended in 2021. In January 2024, the president of the parliament announced that

¹²⁰ The Carter Center, [Informe de seguimiento político electoral](#) [Electoral political follow-up report] (*only available in Spanish*) December 1st to 29th, 2014.

¹²¹ ICJ, [No Room for Debate: The National Constituent Assembly and the Crumbling of the Rule of Law in Venezuela](#), p. 35.

¹²² Constituent Decree for the removal of the citizen Luisa Marvelia Ortega Díaz as Attorney General of the Republic, 5 August, 2017, published in Extraordinary Official Gazette No. 6,322.

¹²³ ICJ, "[ICJ Position Paper on the Dismissal of the Attorney General of Venezuela](#)"

¹²⁴ Constituent Decree of the Provisional Designation of the position of Attorney General of the Republic Tarek Willians Saab, 5 August 2017, and Constituent Decree on the Emergency and Restructuring of the public prosecutor's office dated 5 August 2017, published in Extraordinary Official Gazette No. 6,322.

¹²⁵ Mr. Saab was elected member of the parliament as member of the Fifth Republic Movement [Movimiento Quinta República] the ruling party during 1999-2007; In 2007 the Fifth Republic Movement, was turned into the PSUV, see *Supra* section III.

¹²⁶ PROVEA: [Informe Anual 2011](#) [Annual Report 2011] (*only available in Spanish*) Pages. 321-322.

¹²⁷ Global Alliance of National Human Rights Institutions (GANHRI) [GANHRI Sub-Committee on Accreditation Report](#) (May, 2016) P. 62. Also See Solidarity Action; Human Rights Center of the Andrés Bello Catholic University; Civilis Human Rights (CDH-UCAB); Public space; Venezuelan Education Program - Human Rights Action (PROVEA). "[¿Y a ti quién te defiende?](#)" Segundo informe de balance de gestión de la Defensoría del Pueblo" [And who defends you? Second management balance report of the Ombudsman's Office] August 2016. (Only available in Spanish)

the appointment of the Chief Prosecutor (and the other offices in the Citizen Branch) will take place during this year.¹²⁸

The ICJ considers that the Chief Prosecutor's performance has lacked competence, independence, and objectivity. He often publicly advances opinions prejudging cases under criminal investigation and has published photos and videos of suspects prior to presenting charges against them, in both social networks and media,¹²⁹ thereby undermining due process and fair trial rights. For example, in cases related to allegedly sexual offenders, Saab frequently uses the hashtag "#aberrado" [aberrated],¹³⁰ or labels individuals that have not been charged with such terms as "delinquents"¹³¹ or "rats."¹³² In the present politically charged of context in Venezuela, the Chief Prosecutor's expression may well be interpreted by prosecutors and judges as "instructions" to proceed with prosecutions and/or convictions, whereby they may risk reprisals if they do not act consistently with the Prosecutor's views.

The conduct of the Chief Prosecutor evinces lack of impartiality and poses a threat of the right of suspects and defendants to due process and fair trial guarantees under Venezuelan and international law. The Criminal Proceedings Code states that the Public Prosecutor's Office must impartially investigate and should seek evidence to uphold an indictment or to exonerate.¹³³ This Code also prohibits presenting suspects and detainees to any social communication media, when this could affect the development of the investigation.¹³⁴ To meet obligations under the ICCPR, the UN Human Rights Committee has affirmed generally that "[i]t is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused."¹³⁵ In specific regard to Venezuela, the Committee underscored this duty and concluded that "it is not necessary for the authorities to be directly involved in the proceedings in question for their actions to give rise to a rights violation, nor is it necessary for their comments to be presented as elements in the indictment of the defendant".¹³⁶

In addition, Chief Prosecutor Saab has dramatically undermined the individual independence of prosecutors, by declaring his authority to freely appointment and remove prosecutors and by modifying requirements of the public competitive

¹²⁸ See Rodriguez Jorge "[Asamblea Nacional renovará integrantes del Poder Ciudadano este 2024](#)" [National Assembly will renew members of the Citizen Branch this 2024] (only available in Spanish). Press Release by Venezuela's Parliament. Dated January 8, 2024.

¹²⁹ Community Learning Centers (CECODAP) "[Comunicado. 5 de mayo de 2022](#)" [Release of 5 May 2022] (only available in Spanish). Also, in Access to Justice. "[Con Tarek William Saab el Ministerio Público ha renunciado a ser «parte de buena fe» en el proceso penal](#)" [With Tarek William Saab, the Public Prosecutor's Office has renounced being a "part of good faith" in the criminal process] (*Only available in Spanish*) May 17th, 2022.

¹³⁰ See Tarek William Saab's personal Twitter account (@tarekwiliamsaab) posts dated [February 23rd 2022](#) and [July 25th 2020](#).

¹³¹ See Tarek William Saab's personal Twitter account (@tarekwiliamsaab) post dated [June 19th, 2023](#).

¹³² See Tarek William Saab's personal Twitter account (@tarekwiliamsaab) post dated [June 17th, 2023](#).

¹³³ Venezuela's Criminal Proceedings Code Article 263.

¹³⁴ Venezuela's Criminal Proceedings Code Article 119.4

¹³⁵ Human Rights Committee, [General comment no. 32](#), Article 14, Right to equality before courts and tribunals and to fair trial, UN Doc CCPR/C/GC/32, para 30.

¹³⁶ Human Rights Committee. Communication No. 3003/2017. Allan Brewer Carías V. Venezuela [CCPR/C/133/D/3003/2017](#), para. 9.4.

examination to entry the Office.¹³⁷ PROVEA in its analysis has concluded that the Chief Prosecutor "continues to act with partiality in defence of the Maduro government, favouring serious human rights violations and impunity for officials".¹³⁸ The implications will be considered below.

3) Factors on criminal investigations that have engendered impunity for human rights violations constituting crimes under international law.

The research carried out by the ICJ has revealed some patterns that foster impunity in Venezuela, including the ill-functioning of criminal proceedings, which do not comply with international standards on accountability.

a. Lack of due diligence in criminal investigations

Around 87 percent of the cases reviewed in this investigation which relate to alleged extrajudicial executions are in the initial phase of the criminal process, awaiting one or more expert opinion that should have been carried out in the earlier stages of the investigation.

There are also shortcomings in the collection and preservation of case evidence, and victims are frequently burdened with the responsibility of proof.¹³⁹ The prolonged passage of time makes it difficult for investigations to be effective.

Even in the most serious cases there seems to be a reluctance to carry out effective investigations. For example, regarding the International Criminal Court's (ICC) investigation of Venezuela, the official position of the Venezuelan government is that these are isolated cases, and, in any event, they do not fall under the jurisdiction of the ICC.¹⁴⁰

The investigation by the Prosecutor of the ICC intends to investigate the crimes against humanity of imprisonment or other severe deprivation of physical liberty pursuant to article 7(1)(e); torture pursuant to article 7(1)(f); rape and/or other forms of sexual violence of comparable gravity pursuant to article 7(1)(g); and persecution on political grounds against persons held in detention pursuant to article 7(1)(h) for which the Prosecutor determined that there was a reasonable basis to believe that, since at least April 2017, may have been committed by members of the State security forces, civilian authorities and pro-government individuals.¹⁴¹

¹³⁷ Acceso a la Justicia [Access to Justice] "[Tras fomentarla, Tarek William Saab decide combatir la provisionalidad en el Ministerio Público](#)" [After promoting it, Tarek William Saab decides to combat provisional status in the Public Prosecutor's Office] (*Only available in Spanish*) October 26th, 2021.

¹³⁸ PROVEA, [Informe Anual enero a diciembre 2020](#) [Annual Report January to December 2020] (*only available in Spanish*).

¹³⁹ COFAVIC "[Venezuela Ejecuciones Extrajudiciales 40 Historias de 6.385 Vidas Ignoradas 2012 - 2017](#)". [Venezuela Extrajudicial Executions 40 Stories of 6,385 Lives Ignored 2012 - 2017] (*Only available in Spanish*)

¹⁴⁰ [Decision authorising the ICC Prosecution to resume its investigation in the situation in the Bolivarian Republic of Venezuela I](#) Pre-Trial Chamber I of the International Criminal Court, para 97-98.

¹⁴¹ Idem.

The Office of the Prosecutor of the International Criminal Court (OTP)¹⁴² has indicated that the investigative procedures carried out by the Venezuelan Public Prosecution Office in cases subject to preliminary examination and investigation by the ICC, are typically inadequate to clarify the facts and to establish the criminal responsibility of the perpetrators. In addition, it has found unjustified delays in the proceedings, since, according to the OTP, in some 86 percent of the cases no suspect has been identified and in 78 percent of the reported cases there has been no substantial progress in investigations.¹⁴³

The OTP has considered that the mere initiation of investigations or the adoption of very limited investigative measures during a prolonged period of inactivity, does not amount to a real and effective investigation. In addition, the lengthy delays in the proceedings support the conclusion that the proceedings have conducted in a manner intended to protect rather than punish the perpetrators. Also, as Venezuela acknowledges in its Observations, "it has not transposed this criminal offence into its domestic criminal law due to its alleged 'lack of specificity'".¹⁴⁴

b. Unduly selecting the elements to investigate in crimes.

Prosecutors are responsible for overseeing criminal investigations,¹⁴⁵ which includes instructing the police to carry out investigative activities, like interviewing witnesses and gathering documentation. They also have a duty to ensure these activities are conducted lawfully.¹⁴⁶

However, in many cases, the focus of the investigative proceedings has been the victims' situations, in a manner that undermines the case against the perpetrators and may be intentional. Specifically, the investigations concentrate on aspects such as the victim's previous "problematic" activities, such as their association with certain student or youth social groups, their involvement in certain suspicious events, or their real or imputed political views. This is especially common in cases with high public visibility.

In cases related to alleged extrajudicial executions, the investigations typically take as a starting the police account of events, which will often describe the underlying facts as a "confrontation" or "resistance to authority". This description, where the victim is effectively held responsible, is treated as the only or central hypothesis, which ends up obscuring or justifying for the abusive conduct of the alleged perpetrators. Impunity is the unsurprising result.

PROIURIS, a Venezuelan civil society organization has analysed several cases of alleged "resistance to authority" and found that:

¹⁴² International Criminal Court Prosecutor, "[Opens an investigation into the Situation in Venezuela](#)", Press release dated November 5th, 2021.

¹⁴³ Office of the Prosecutor of the International Criminal Court, brief requesting the Preliminary Questions Chamber to restart the investigation of the Venezuela case No.: [ICC-02/18](#) dated November 1st, 2022.

¹⁴⁴ See Venezuela's Observations, para. 104, in Pre-Trial Chamber I of the International Criminal Court Op. Cit., case No.: [ICC-02/18](#)

¹⁴⁵ Organic Code of Criminal Procedure (2021) Articles 114 and 115.

¹⁴⁶ Organic Law of the Public Prosecutor's Office Article 37.9.

"[d]eficiencies in the registry of homicides in the context of alleged confrontations with the police are subject to impunity. In 85 of the 100 reports analysed by PROIURIS, there is no evidence that public prosecutors have been notified of the procedures or their results. In this way, the cases of 139 deceased are not in the hands of the Prosecutor's Office and probably are not investigated. In case of having committed any excess in the use of public force, it will surely go unpunished."¹⁴⁷

The official versions of these cases publicly presented through the media often deploys the euphemistic characterizations of the situations resulting in a killing as "confrontations" between victims and police and security services. According to the civil society organization "Comité de Familiares de las Víctimas de los Sucesos de Febrero - Marzo de 1989" (COFAVIC): "the thesis of confrontation is the line of investigation generally considered, at least in a first instance, by the criminal investigation bodies, which causes the victim's testimony to sometimes be discarded and that the different procedures or expertise are carried out under this premise, causing great impunity".¹⁴⁸ A 2019 report by UN High Commissioner on Human Rights indicated that "[t]he authorities classify the killings resulting from security operations as "resistance to authority". The number of these deaths is unusually high (...) Information analysed by OHCHR suggests many of these killings may constitute extrajudicial executions."¹⁴⁹

In the cases of alleged extrajudicial executions reviewed by the ICJ involving allegations of unlawful use of lethal force by the police, public statements by senior officials reveal that many of these killings occurred in the context of officially planned operations, such as "Operación para la Liberación y Protección del Pueblo" or OLP (Operation Liberation and Protection of the People").¹⁵⁰ Government officials have described the objective of these operatives as "combatting criminal gangs that contributed to the extremely high levels of violence in Venezuela". They have characterized the operation in political terms as "an effort to rid the country from armed groups that the government has alleged has links to Colombian "paramilitaries" and right-wing politicians".¹⁵¹ Human Rights Watch and PROVEA has found "considerable evidence that the security forces conducting them have committed serious abuses."¹⁵²

As explained in the summary of international law and standards above,¹⁵³ allegations of human rights violations, including those related to unlawful deaths, require prompt,

¹⁴⁷ PROIURIS "[100 death sentences](#)"

¹⁴⁸ COFAVIC "[Venezuela Ejecuciones Extrajudiciales 40 Historias de 6.385 Vidas Ignoradas 2012 - 2017](#)" [Venezuela Extrajudicial Executions...] Op. Cit.

¹⁴⁹ Report of the United Nations High Commissioner for Human Rights on the situation of Human rights in the Bolivarian Republic of Venezuela, UN Doc [A/HRC/41/18](#), (2019), para. 50.

¹⁵⁰ PROVEA and Human Rights Watch: "[Unchecked Power: Police and Military Raids in Low-Income and Immigrant Communities in Venezuela](#)" Likewise PROVEA Annual Report 2021, "Venezuela: Abuses grow and State terrorism is consolidated" Op. Cit.; Amnesty International, "[This is no way to live: Public Security and Right to Life in Venezuela](#)" Op. Cit., and International Commission of Jurists "[Venezuela: The sunset of the Rule of Law](#)" Op. Cit.

¹⁵¹ PROVEA and Human Rights Watch: "[Unchecked Power: Police and Military Raids in Low-Income and Immigrant Communities in Venezuela](#)" Op. Cit.

¹⁵² PROVEA and Human Rights Watch Op. Cit.

¹⁵³ See above in this report's section I "Venezuela's international legal obligations on accountability for gross human rights violations".

thorough, independent, impartial, and transparent investigations. The 2016 revised *Minnesota Protocol on the investigation of potentially unlawful death*,¹⁵⁴ encapsulates what this means specifically for instances of suspected extrajudicial killings:

“Investigators and investigative mechanisms must be, and must be seen to be, independent of undue influence. They must be independent institutionally and formally, as well as in practice and perception, at all stages. Investigations must be independent of any suspected perpetrators and the units, institutions, or agencies to which they belong. Investigations of law enforcement killings, for example, must be capable of being carried out free from undue influence that may arise from institutional hierarchies and chains of command.”¹⁵⁵

In respect of the element of thoroughness, the Inter-American Court on Human Rights has established that the effective investigation of human rights violations must avoid omissions in the collection of evidence. In this connection, “when the facts refer to the violent death of a person, the initiated investigation must be conducted in such a way that it could guarantee the due analysis of the hypotheses of authorship that arose as a result of it”.¹⁵⁶

The International Criminal Court’s OTP has also concluded that the Public Prosecutor’s Office has failed to extend the investigations to persons in positions of authority, on the grounds that the violations are “common crimes” instead of human rights violations or international crimes. It has therefore focused investigations only on the direct perpetrators, usually low-level officials of the security forces.¹⁵⁷ Likewise, the OTP has identified insufficiencies and discrepancies in the legal classification and in the assessment of the facts that do not adequately reflect their seriousness.¹⁵⁸ For example, in cases where the testimonies describe alleged acts of torture, including acts of rape or other forms of sexual violence, the Public Prosecutor’s Office has omitted to classify these cases as investigations into alleged torture, without legal explanation.¹⁵⁹

However, according to the information provided by the Venezuelan authorities to the ICC, only 12 investigations related to crimes of torture and two concerning rapes have been initiated. There has been no investigation on other sexual and gender-based crimes, which represent less than five percent of the more than 300 complaints that were analysed by the OTP during the preliminary examination and that could constitute a generalized situation of torture, including sexual and gender-based violence.¹⁶⁰

¹⁵⁴ United Nations. “[Minnesota Protocol](#)” (2016) Op. Cit. Para. 22.

¹⁵⁵ United Nations. “[Minnesota Protocol](#)” Op. Cit. Para. 28.

¹⁵⁶ *Judgment of August 28, 2014*, Inter-American Court of Human Rights, [Human Rights Defender et al. v. Guatemala](#), and *Judgment of November 28, 2018* Inter-American Court of Human Rights, [Alvarado Espinoza et al. v. Mexico](#), paras. 214 and 301.

¹⁵⁷ Office of the Prosecutor of the International Criminal Court, Op. Cit.

¹⁵⁸ Idem.

¹⁵⁹ Idem.

¹⁶⁰ Idem.

In light of the above, it is clear that investigative procedures have been inadequate or non-existent in making factual determination that would lead to establishing the criminal responsibility of perpetrators.

c. Obstacles for victims during criminal investigation

Victims of gross human rights violations face difficulties in accessing case files, contributing to a situation of impunity. Limited access to information limits the ability of victims and other witnesses to provide critical input and to ensure effective and diligent investigations.

Although domestic legislation formally guarantees access of victims to files in most cases,¹⁶¹ in practice the victims are only able to access it several weeks after the investigation has begun and once the Scientific, Penal and Criminal Investigation Corps (CICPC) forwards it to the Public Prosecutor's Office. Therefore, there is little victims can do during the initial phase of the investigation where evidence is collected, which makes it difficult for them to participate in the criminal investigation. Victims frequently remain unaware of the course of investigations and the results during the first steps of the process. The victims can request information or make complaints to the prosecutor, but the prosecutor's response to these complaints made by the victims is that they should make a request the file of the case to the investigative police.¹⁶²

The local non-governmental organization COFAVIC has indicated that the lack of access to the file, especially in cases where the investigation involves CICPC officials "the same agency allegedly involved in the facts, which causes as a consequence a struggle on the part of the victims' relatives to have all these expert reports evaluated and most of them repeated because they contain serious errors for the investigation".¹⁶³

Additionally, the 2012 reform to the Organic Code of Criminal Procedure has limited legal assistance for victims by human rights organizations.¹⁶⁴ The lack of capacity and resources adds an additional barrier for victims, since many lack the economic resources to hire private lawyers. This reform to the Code was repealed in 2021, but the effects of this prohibition have already adversely affected the guarantee of the rights of several victims during recent years.¹⁶⁵

d. The police and intelligence agencies that carry out the investigations

As underscored by the UN Special Rapporteur on the independence of judges and lawyers, the "relationship between police and prosecutors is essential to ensure smooth criminal prosecutions."¹⁶⁶ Therefore, arrangements must be in place "so that prosecutors

¹⁶¹ Organic Code of Criminal Procedure. Article 122.

¹⁶² COFAVIC "[Venezuela Ejecuciones Extrajudiciales 40 Historias de 6.385 Vidas Ignoradas 2012 - 2017](#)" [Venezuela Extrajudicial Executions...] Op. Cit., p.

¹⁶³ Idem, p. 76.

¹⁶⁴ See Human Rights Center of the Andrés Bello Catholic University. "[Reforma del Código Orgánico Procesal Penal 2012](#)" [Reform of the Organic Code of Criminal Procedure 2012] (*only available in Spanish*)

¹⁶⁵ ICJ Op-ed "[Venezuela: Civil society under continuous siege](#)" dated June 30th, 2022.

¹⁶⁶ Human Rights Council. Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc [A/HRC/20/19](#) (June 7, 2012), para. 41.

and the police collaborate as appropriate in order to obtain the best and fairest results, especially for the victims."¹⁶⁷

The collaboration between police agencies and the Public Prosecutor's Office is highly problematic in Venezuela.¹⁶⁸ The Prosecution Office has frequently acted to validate what is improper and unlawful conduct by the police, pursuant, for example, to unlawful and arbitrary arrests. National legislation establishes that a person may only be deprived of liberty by means of an arrest warrant issued by a competent judge¹⁶⁹ or in cases of *flagrante delicto*.¹⁷⁰ However, in many instances the police or intelligence agencies fail to comply with the legal provisions for arrest and prosecutors confirm their arbitrary actions and do not initiate investigations into police misconduct or abuse.¹⁷¹ A frequently incurring practice of such dereliction of duty is the failure of police to ensure that detained people are brought before a judge within the 48-hour period established in the Constitution and international law.¹⁷² Another is the holding of detainees in incommunicado detention, refusing them access to lawyers or family members, refusal to reveal to family members information about their fate or whereabouts for days. These practices may constitute enforced disappearances contrary to international law and are rarely if ever investigated or punished by the authorities.¹⁷³

The investigations themselves are usually carried out by the Scientific, Penal and Criminal Investigation Corps (CICPC). They are assistants to the Public Prosecutor's Office, but the CICPC remains under the authority of the Ministry of Interior and Justice¹⁷⁴ which has authority to appoint and remove members.¹⁷⁵ In addition, the CICPC officials do not have external controls since the powers of disciplinary supervision by the Chief Prosecutor were eliminated.¹⁷⁶

The UN FFM has observed that when officials of the CICPC are involved in cases of alleged extrajudicial executions, there tends to be superior control over the officials who carry out investigative work to monitor the evidence collected, the lines of investigation, and

¹⁶⁷ Idem, para. 43.

¹⁶⁸ On 2 July 2021 four members of two civil society organizations (Mayday Confaviddt and FundaREDES) were arbitrary detained by Bolivarian National Intelligence Service's (SEBIN) when the victims were leaving the Public Prosecutor's Office in the city of Coro (western Venezuela) where they were submitting a formal complaint of harassment by alleged intelligence service and local police agents, one of the victims (Mr. Javier Tarazona) remains detained and is currently under indictment for "incitement to hatred" and "terrorism". Civil society local and international has called this as arbitrary detention and as an example of the policy by Venezuelan authorities to criminalized and target independent civil society organizations. See DPLF "[Venezuela: Authorities should immediately release human rights defenders Javier Tarazona, Rafael Tarazona, and Omar García of Fundaredes](#)". Amnesty International "[Free Venezuelan prisoner of conscience](#)" and Foro Penal. [Reporte especial](#): "Trato a abogados defensores en el sistema de justicia venezolano" [Special Report: "Treatment of defense attorneys in the Venezuelan justice system"] (Only available in Spanish). Mayo 2022.

¹⁶⁹ Venezuelan Constitution. Article 44.

¹⁷⁰ Organic Code of Criminal Procedure. Article 234.

¹⁷¹ CDH-UCAB "[Que no quede rastro. El ocultamiento de evidencia médica y legal en el marco de manifestaciones y detenciones](#)". [Let there be no trace. The concealment of medical and legal evidence in the context of demonstrations and arrests] (only available in Spanish) May 2015. Likewise, Committee against Torture. Final remarks. UN Doc [CAT/C/VEN/CO/3-4](#) Op. Cit.

¹⁷² Venezuelan Constitution, Article 44.

¹⁷³ [Inter-American Convention on Forced Disappearance of Persons](#) Article 2 and [International Convention for the Protection of All Persons from Enforced Disappearance](#) Article 2.

¹⁷⁴ Organic Law of the Investigative Police Service. Article 48.

¹⁷⁵ Organic Law of the Investigative Police Service. Article 54.

¹⁷⁶ Acceso a la Justicia. "[Informe sobre el desempeño del Ministerio Público 2000-2018](#)" [Report on the performance of the public prosecutor's office 2000-2018] (only available in Spanish)

the work of police officers that may implicate the police officers involved. This may result in an unwarranted interference on the impartiality of criminal investigations.¹⁷⁷

The FFM has also found that in addition to the CICPC, civil and military intelligence agencies have inappropriately intervened in or controlled investigations, especially those involving politically disfavoured persons.¹⁷⁸ The FFM recently determined that civilian and military intelligence agencies had been involved in cases of arbitrary detention and torture of political opponents.¹⁷⁹ The intelligence agencies have essentially acted as investigative police with the consent of the Public Prosecutor's Office in cases where personnel from their institutions may bear responsibilities for the violations.¹⁸⁰

It is critical that the police and intelligence agencies alleged to be involved in gross human rights violations are not themselves the authorities charged with carrying out the investigations, since this practice necessarily compromises the impartiality of the investigation. For instance, for the effective investigation of extrajudicial executions, the investigative bodies must be "independent of any institution, agency or person that may be the subject of the inquiry".¹⁸¹ This principle should be respected for all cases of gross human rights violations, where the officials allegedly responsible are part of the same body with the authority to investigate.¹⁸²

4) Relationship with the judiciary

As the UN Special Rapporteur on the independence of judges and lawyers has made clear, the position of Chief Prosecutor should be strictly separated from judicial functions, since the functions of judges and prosecutors are distinct, although complementary.¹⁸³ However, this functional separation does not mean that there can be no interface or cooperation between the two institutions. The Inter-American Commission on Human Rights has affirmed that there are certain functions that require a degree of collaboration between prosecutors and judges for their effective performance, such as requests for the arrest or release of captured persons, and States must ensure cooperation channels.¹⁸⁴

¹⁷⁷ United Nations Human Rights Council Conclusions UN Doc [A/HRC/48/CRP.5](#) (2021), para. 183

¹⁷⁸ United Nations Human Rights Council Conclusions UN Doc [A/HRC/48/CRP.5](#), para. 184.

¹⁷⁹ United Nations Human Rights Council Conclusions. Report of the independent international fact-finding mission on the Bolivarian Republic of Venezuela, third report UN Doc [A/HRC/51/43](#) (September 20th, 2022), para. 119.

¹⁸⁰ United Nations Human Rights Council Detailed Findings of the Independent International Fact-Finding Mission UN Doc [A/HRC/48/CRP.5](#), para. 185.

¹⁸¹ United Nations. [Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions](#). Resolution 1989/65 of the Economic and Social Council of May 24th, 1989. Principle 11 and 14.

¹⁸² United Nations. [Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions](#). Op. Cit. Principles 9 and 11. Also in the United Nations. Manual on the Effective Prevention and Investigation of Extralegal, Arbitrary or Summary Executions "[Minnesota Protocol](#)" (2016) Para.s 38 and 44 and Manual for the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment "[Istanbul Protocol](#)" (2004) para. 75, 82 and 85 and also [Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) Principles 2 and 5. General Assembly in its resolution 55/89 Annex, of December 4th, 2000. Specifically on the case of Venezuela see Inter-American Commission on Human Rights Report [Democracy and Human Rights in Venezuela](#) OEA/Ser.L/V/II. Doc. 54 (2009), para. 794-795.

¹⁸³ Human Rights Council. Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc [A/HRC/20/19](#) (June 7th, 2012), para. 37.

¹⁸⁴ Inter-American Commission on Human Rights "Guarantees for independence..." Op. Cit. Para. 139.

In Venezuela, prosecutors and judges have often interacted inappropriately,¹⁸⁵ in dereliction of their responsibilities against abuses of security forces. On the other hand, the FFM has documented collusion between prosecutors and the courts in the unwarranted prosecution of people identified or perceived as political opponents and to act without independence in such cases.¹⁸⁶ Cases have been identified where prosecutors have based accusations on false evidence or fabricated by the security forces and in which judges have validated such actions without exercising meaningful judicial control.

The Constitutional Chamber of the Supreme Court has acted to limit¹⁸⁷ certain powers of the Public Prosecutor's Office. Thus, in 2017 it authorized the Ombudsperson's Office to intervene in criminal cases¹⁸⁸ replacing the Public Prosecutor's Office, when the latter decided not to prosecute cases of arbitrary arrests during the protests that year. It also limited¹⁸⁹ the power of the Chief Prosecutor to appoint the Deputy Chief Prosecutor,¹⁹⁰ annulling the appointment made in 2017 and appointing a different Deputy Chief Prosecutor.¹⁹¹ Likewise, it prohibited prosecutors from making charges without judicial review at the headquarters of the Public Prosecutor's Office, as provided by the Organic Code of Criminal Procedure in force at the time. The Court ordered¹⁹² these cases to be carried out under the supervision of the judiciary and authorized the judges to continue the investigations even where the prosecutors decided to close the cases for lack of sufficient evidence. The jurisprudence of the Supreme Court binds all lower court judges.¹⁹³

5) Governance deficiencies in the Prosecutor's Office facilitating impunity for gross human rights violations.

The Prosecutorial system in its mandate and operation is not fit for purpose in administering justice over cases of gross human rights violations constituting criminal conduct. Some of the main deficiencies in this respect are outlined below.

a. Insufficient budget and resources

¹⁸⁵ Foro Penal. [Reporte especial](#): "Trato a abogados defensores en el sistema de justicia venezolano" [Special Report: "Treatment of defense attorneys in the Venezuelan justice system"] (Only available in Spanish). Mayo 2022.

¹⁸⁶ Human Rights Council. Detailed Mission Findings, UN Doc [A/HRC/48/CRP.5](#), para. 113.

¹⁸⁷ Acceso a la Justicia "[El Ministerio Público ha sido desmantelado por el chavismo](#)" [The public prosecutor's office has been dismantled by Chavismo] (Only available in Spanish) dated August 3rd, 2020.

¹⁸⁸ Constitutional Chamber of the Supreme Court of Justice, [Sentencia Nro. 469, de fecha 27 de Junio de 2017](#). [Judgment No. 469, dated June 27th, 2017.] (Only available in Spanish)

¹⁸⁹ Constitutional Chamber of the Supreme Court of Justice, [Sentencia Nro. 470 de fecha 27 de Junio de 2017](#) [Judgment No. 470, dated June 27th, 2017.] (Only available in Spanish).

¹⁹⁰ Organic Law of the public prosecutor's office. Article 25.3.

¹⁹¹ EFE Agency "[TSJ de Venezuela designa a Katherine Harrington Nueva vice fiscal general](#)" (video Only available in Spanish) July 4th, 2017.

¹⁹² Constitutional Chamber of the Supreme Court of Justice, [Sentencia Nro. 537 de fecha 12 de Julio de 2017](#). [Judgment No. 537, dated June 27th, 2017.] (Only available in Spanish).

¹⁹³ ICJ, [Judges on the Tightrope Report on the Independence and Impartiality of the Judiciary in Venezuela](#) Page 15.

The Constitution establishes the functional, financial and administrative autonomy of the Public Prosecutor's Office. The State is under an obligation to ensure it receives a variable annual allowance.¹⁹⁴ The Inter-American Commission on Human Rights has affirmed that, in order to strengthen institutional independence, prosecutors must have stable and adequate resources that are sufficient to fulfil the function of protecting and guaranteeing the right of access to justice, and that they must be increased progressively.¹⁹⁵

These legal requirements do not appear to have been fulfilled in practice.¹⁹⁶ For one thing, the budget allocation to the Public Prosecutor's Office seems insufficient. The 2023 budget¹⁹⁷ assigned 397,525,419 bolivars (approximately 26.1 million US dollars), to the Public Prosecutor's Office. The 2024 budget¹⁹⁸ assigned is 2.935.644.390 bolivars (approximately 82.4 million US dollars).¹⁹⁹ The budget must be distributed among the 1,241 prosecutor's offices and administrative dependencies and must be administered in an inflationary context.²⁰⁰ Due to the lack of transparency, it is not certain if these figures accurately reflects the approved budgets. However, media reports indicate that the 2024 budget draft was discussed in the National Assembly and ultimately passed.²⁰¹

Taking as accurate the 2024 budget allocation of 82.4 million dollars and distributing it among the 1,241 prosecutors' offices,²⁰² it means an average allocation of 66,400 dollars for each individual prosecutor office per year. This seems insufficient considering all necessary expenses that would fall under the budget, such as human resources, general services (e.g. security, technology, mail, electricity, communications, travel expenses for national prosecutors (mostly based in Caracas) who must investigate cases or attend trials and hearings in remote regions.

The Prosecutor's Office does not publish information related to the execution of the budget, expenditures, financial audits or contracting processes, as reported by Transparencia Venezuela, a local civil society organization. In the annual report, the Office only mentions the number of contracting processes carried out.²⁰³

¹⁹⁴ Venezuelan Constitution, article 273.

¹⁹⁵ Inter-American Commission on Human Rights, "[Guarantees for the independence of justice operators](#)" Op. Cit. Para. 55.

¹⁹⁶ Acceso a la Justicia. "[Informe sobre el desempeño del Ministerio Público 2000-2018](#)" [Report on the performance of the Public Prosecutor's Office 2000-2018] (Only available in Spanish)

¹⁹⁷ Approved by the National Assembly on December 15th, 2022.

¹⁹⁸ Bloomberg. "[Venezuela Nearly Doubles Budget as Maduro Prepares for Election](#)" December 13th, 2023.

¹⁹⁹ Tal Cual. "[EXCLUSIVA | Ministerios de Economía e Interior se embolsillan 50% del presupuesto 2024](#)" [EXCLUSIVE | Ministries of Economy and Interior pockets 50% of 2024 budget] (Only available in Spanish)

²⁰⁰ See DW. "[Venezuela cerró 2022 con una inflación del 305.7%](#)", [Venezuela closed 2022 with an inflation rate of 305.7%,] (only available in Spanish) El País "[Venezuela: The inflationary fire in Venezuela is slowly extinguished](#)" December 19th, 2023. According to Inflation figures from the Venezuela' Central Bank, accumulated inflation until November 2023 was 182.9% See Efecto Cocuyo: "[Venezuela acumuló una inflación del 182.9% entre enero y noviembre, dice el Banco Central](#)" [Venezuela accumulated 182.9% inflation between January and November, says Central Bank"] (only available in Spanish) December 8th, 2023. Independent studies located inflation at the end of 2023 at 314%. See "[Venezuela cerrará este año con una inflación del 314%](#)" [Venezuela will close this year with an inflation rate of 314 %.] (Only available in Spanish) October, 18th 2023.

²⁰¹ National Assembly of Venezuela. "[AN sanciona Presupuesto Nacional y Ley Especial de Endeudamiento 2024](#)" (Only available in Spanish) press release dated December 14th, 2023.

²⁰² According to the number of prosecutors' offices available in 2023.

²⁰³ Transparencia Venezuela [CRIM Just 2018](#) report. (Only available in Spanish).

The lack of sufficient resources necessarily obstructs the objective of advancing criminal prosecutions in an adequate and timely manner in the country. In addition, the Public Prosecutor's Office must request additional resources, which requires approval from the Executive (Ministry of Finance and the President) and the Parliament. There is therefore a substantial degree of involvement and potential for undue and influence by the political authorities in the work of the Prosecutor's Office.²⁰⁴

b. Barriers to access to reliable information

Under the Organic Law of the Public Prosecutor's Office,²⁰⁵ the Chief Prosecutor must submit a detailed and accurate annual management report to the National Assembly. However, since August 2017, the Office has failed to discharge this obligation.²⁰⁶ According to *Acceso la Justicia*, it has "been offering information in an inconsistent and changing manner, which makes it difficult to obtain solid results, and, therefore, the evaluation and comparisons of the actions year to year".²⁰⁷ There has been "opacity and contradiction regarding the registration of admissions and discharges of the cases, as well as the criteria to define these indicators".²⁰⁸

Chief Prosecutor Saab has sometimes held press conferences where he has delivered selective information about the management of the Public Prosecutor's Office. In one such event held in November 2022,²⁰⁹ the Prosecutor indicated that over the preceding five years, some 1,617 officials and 81 private persons had been accused of human rights violations, but it is unclear which particular kind of violations were included in these figures. He also said that 771 "State agents" had been deprived of liberty and that 362 convictions had been obtained. In addition, he reported that, since August 2017, the Public Prosecutor's Office had carried out 3,679,000 proceedings and 1,045,246 conclusive acts²¹⁰ were carried out, including 295,913 accusations. However, this data is not disaggregated and there is no way to evaluate the information provided, making them unreliable for analytical purposes.

Since the current Chief Prosecutor assumed office, the Public Prosecutor's Office has failed to release annual reports. The UN FFM has determined that the information presented is biased due to the absence of accessible management report and the

²⁰⁴ Audience Report, [situación de las fiscalías en la protección de los derechos humanos en la región](#), [Situation of prosecutors' offices in the protection of human rights in the region] (only available in Spanish) Inter-American Commission on Human Rights, 4 December 2020.

²⁰⁵ Organic Law of the Public Prosecutor's Office Art. 25.9

²⁰⁶ Defiende Venezuela "[Segundo informe de seguimiento al plan nacional de derechos humanos 2016-2019](#)" [Second follow-up report on the national human rights plan 2016-2019] (only available in Spanish).

²⁰⁷ Acceso a la Justicia. "[El Ministerio Público: una caja negra difícil de evaluar](#)" [The Public Prosecutor's Office: a black box difficult to evaluate] (Only available in Spanish). August 10th, 2020, also available at PROVEA Annual Reports.

²⁰⁸ Acceso a la Justicia. "[El fracaso del sistema acusatorio en Venezuela. La opacidad, ineficacia y falta de independencia del Ministerio Público](#)" [The failure of the accusatory system in Venezuela. The opacity, ineffectiveness and lack of independence of the Public Prosecutor's Office] (only available in Spanish) June 19th, 2019.

²⁰⁹ Tarek William Saab "[Rueda de Prensa](#)" [Press conference] (video Only available in Spanish) November 24th, 2022.

²¹⁰ See in this Briefing paper supra section II.

incomplete and unverifiable nature of the verbally provided information.²¹¹ In addition, the FFM has pointed out discrepancies in the figures.²¹² For instance, according to the data presented, 28.31 percent of the conclusive acts²¹³ were accusations. However, it remains unclear how many individuals were ultimately sentenced to prison or the specific crimes to which these figures refer.

The lack of transparency and accountability by the Public Prosecutor's Office prevents an adequate evaluation of the Office's performance and management and creates a perverse incentive for corruption within it. Some reports and experts consulted by the ICJ during this research highlighted the existence of corrosive effects of corruption on the domestic judicial system, including the Prosecution Office and the investigative police agencies.²¹⁴

c. High turnover of prosecutors

The Public Prosecutor's Office maintains an unstable pool of prosecutors who lack security of tenure, leading to deficiencies in the effectiveness of prosecutorial performance. Every time there is a turnover of prosecutor in a particular case, progress is necessarily delayed, as the new prosecutor must become familiar with the case file. It may also become necessary to repeat or reassess certain actions, including requestion for investigation or information requests to the police. In 79 percent of the cases reviewed by the ICJ, the victims reported that it had been necessary to inform a new prosecutor about the details of a case, which typically had a negative impact on the investigation.²¹⁵

While a case may remain in the same prosecutor office throughout an investigation, there is no guarantee that the individual prosecutor assigned to the case will be the same. In all the cases reviewed, the prosecutors were provisional, and in some 80 percent, there were changes of prosecutor.

The reason that international standards call for security of tenure is to be afforded to prosecutors²¹⁶ is not just for to protect the career of individual prosecutors, but also critically to also to establish continuity and integrity in the administration of justice.

Given the lack of transparency by the Public Prosecutor's Office as to their operations, it is difficult to determine the reasons for these frequent changes of personnel. It is clear, however, that the changes are not generally the result of requests from the victims of crimes.

²¹¹ Human Rights Council. Independent international fact-finding mission on the Bolivarian Republic of Venezuela detailed conclusions, UN Doc [A/HRC/48/CRP.5](#), para. 286.

²¹² Idem, para. 396.

²¹³ See above Section II.

²¹⁴ Transparencia Venezuela [CRIM Just 2018](#) report. (Only available in Spanish). Previous reports by the ICJ had documented some of these trends such as ICJ [Strengthening the Rule of Law](#) (2014), [Venezuela: The Sunset of the Rule of Law](#) (2015) and [Judges on the Tightrope Report on the Independence and Impartiality of the Judiciary in Venezuela](#) (2021).

²¹⁵ Inter-American Commission on Human Rights "[Guarantees for the independence of justice operators](#)", para. 117-118.

²¹⁶ Inter-American Commission on Human Rights "[Guarantees for the independence of justice operators](#)" para. 115. Similarly, Inter-American Court of Human Rights [Casa Nina v. Peru](#). Op. Cit., para 81-86 and [Martinez Esquivia v. Colombia](#). Op. Cit., para 96-99.

In addition to the instability in prosecutorial staffing, there has been very limited opportunity for legal professionals to enter the career of the Public Prosecution. Rather, the policy has been one of appointment of provisional, interim, or temporary prosecutors, and many prosecutors are transferred to other assignments, sometimes seemingly arbitrarily by decision of the Chief Prosecutor.

Competitive procedures for entering the prosecutorial service have been limited, and only a small number of tenured prosecutors have been appointed.²¹⁷ These appointments constitute less than 1% of the more than 1,241 prosecutorial offices existing in 2023. In addition, the Chief Prosecutor's broad authority to create, organize and abolish prosecutor positions has enabled them to move prosecutors at their discretion.²¹⁸

As noted earlier, the high turnover of prosecutors is due, in part, to the high rate of dismissals or transfers. For instance, in 2022, at least 313 prosecutors were transferred, representing approximately 25 % of the prosecutor's offices. During 2023 at least 302 prosecutors were transferred or appointed, representing approximately 24% of the prosecutor's offices.

Regarding the dismissal of prosecutors, including provisional ones, the lawyers and former prosecutors interviewed for this report indicated that reasons given for the dismissals and transfers did not always reflect the real reasons or meet international standards on legitimacy.²¹⁹ They alleged that dismissals often had to do with retaliation for criminally investigating certain public officials. While it is impossible to quantify numerically the proportion of dismissals and transfers that were made for improper purposes, there is no doubt the number is not trivial.

Recently, the Human Rights Committee expressed its concern that "most of the positions [of judges and prosecutors] are still provisional"²²⁰. In this regard, it recommended to continue efforts "to correct as soon as possible the situation of provisional status in which most judges and prosecutors find themselves, ensuring transparent and merit-based competitive examinations for their admission and career progression, and defining precise rules on their dismissal".²²¹

d. Insufficient geographical converge of prosecutors

Prosecutorial services face a shortage of human resources in all regions of the country. According to the information published on the website of the Public Prosecutor's Office's,²²² as of April 2023, there were 867 prosecutorial offices with only 39 titular prosecutors. The offices are mainly based in Caracas and the rest are situated in the 24

²¹⁷ Results of the VII Public Examinations published in the Official Gazette No. 42,441 dated August 16th, 2022.

²¹⁸ Organic Law of the public prosecutor's office. Article 25.4

²¹⁹ Inter-American Court of Human Rights *Casa Nina v. Peru* Op. Cit., para 81-88 and *Martinez Esquivia v. Colombia* Op. Cit., para 96-99.

²²⁰ Concluding observations on the fifth periodic report of the Bolivarian Republic of Venezuela. UN Doc [CCPR/C/VEN/CO/5](#) (28 November 2023), Para. 35.

²²¹ Idem. Para. 36.

²²² Available in the Public Prosecutor's Office website at <http://act2.mp.gob.ve/>

state capitals. There are 39 municipal prosecutor's Offices, but they do not cover all 336 municipalities of the country. Recently Chief Prosecutor Saab indicated that in "...most remote municipalities (...), for obvious topographical reasons, there are no prosecutor offices."²²³

There is insufficient staffing among specialized human rights prosecutorial offices. There are 38 such offices to cover the entire country, but most of them are based in Caracas. In addition, there are 94 national prosecutors, mostly in Caracas, with jurisdiction over cases throughout country, and eight of these have special jurisdiction over human rights cases.

The regions with high population concentrations, such as Zulia, and states where the UN FFM and the Office of the UN High Commissioner for Human Rights had documented significant intent of gross human rights violations,²²⁴ such as Amazonas and Bolívar, have only a single specialized prosecutor's office.

On average, there are three prosecutors assigned to each special office. These typically consist of a main prosecutor and two or three auxiliary prosecutors, usually appointed on a provisory basis. However, some offices only have a single prosecutor²²⁵ or no prosecutor.²²⁶

In August 2022, Chief Prosecutor Saab at press conference presented the plan "the Public Prosecutor's Office goes to your community."²²⁷ The Chief Prosecutor announced the plan had the purpose of: "(...) receiv[ing] and process[ing] complaints from victims of crimes or misdemeanours, provid[ing] comprehensive care to victims of crimes, coordinat[ing] with public entities, agencies and agencies, and process[ing] requests for protection measures on behalf of victims, witnesses and other parties involved in the proceedings".²²⁸ In June 2023, the Chief Prosecutor announced that the Office has received 2,388 complaints and offered 15,755 recommendations after 11 months of the deployment. The most common complaints were about unspecified injuries, scams, psychological violence, land invasions, misappropriations, and threats.²²⁹

²²³ "[Press conference](#) by Chief Prosecutor Tarek William Saab" available at in Spanish dated April 5, 2022.

²²⁴ Human Rights Council. Independent international fact-finding mission on the Bolivarian Republic of Venezuela "the human rights situation in the Orinoco Mining Arc and other areas of the State of Bolívar" UN Doc [A/HRC/51/CRP.2](#) (September 20, 2022). Likewise, "Independence of the justice system and access to justice in the Bolivarian Republic of Venezuela, including for violations of economic and social rights, and the situation of human rights in the Arco Minero del Orinoco region" UN Doc [A/HRC/44/54](#).

²²⁵ According to the review of the database available on the website of the Venezuelan Public Prosecutor's Office (April 2023) at least 84 offices in the states of Amazonas, Anzoátegui, Apure, Aragua, B́arinas, Bolívar, Carabobo, Delta, Falcón, Caracas, Guarico, Lara, Mérida, Miranda, Monagas, Nueva Esparta, Portuguesa, Sucre, Táchira, Trujillo, Zulia would only appear with a single designated prosecutor.

²²⁶ According to the review of the database available on the website of the Venezuelan Public Prosecutor's Office (April 2023) at least 18 offices, in the states of Anzoátegui, Apure, Aragua, Caracas, B́arinas, Bolívar, Falcón, La Guaira, Mérida, Monagas, Nueva Esparta, Portuguesa, Zulia would appear without designated prosecutors.

²²⁷ "Press Conference by Chief Prosecutor Tarek William Saab" available at in Spanish <https://youtu.be/3xNN1xh0j2Y> dated August 11, 2022.

²²⁸ Press release by the Public Prosecutor's Office dated August 11th, 2022. "[Fiscal General Tarek William Saab lanzó plan "El Ministerio Público va a tu Comunidad"](#) [Chief Prosecutor Tarek William Saab launched plan Public Prosecutor Office goes to your Community] (Only Available in Spanish, non-official translation).

²²⁹ Press release by the Public Prosecutor's Office dated June 7th, 2023. "[Fiscal General Tarek William Saab reportó 2.388 denuncias en 11 meses de "El Ministerio Público Va a tu Comunidad"](#) [Chief Prosecutor Tarek William Saab reported 2.388 during 11 months of the deployment of "Public Prosecutor Office goes to your Community"] (Only Available in Spanish).

IV. Conclusions

This report has considered a number of obstacles and challenges which serve to limit the conduct by Venezuelan prosecutors of effective investigations of human rights violations constituting crimes under international law. Various factors contribute to entrench impunity arising from the role of the prosecutors. These include:

- a deficit of independence and objectivity in the Public Prosecutor's Office and, in particular, its Chief Prosecutor;
- the lack of security in the tenure of prosecutors, and consistency and stability in the operations of prosecutorial offices;
- failure to implement adequate supervision and control over the conduct of police and security agents allegedly involved in gross human rights violations;
- the lack of judicial control aimed at protecting the rights of the victims and monitoring official conduct during the investigation;
- lack of transparency and accountability in respect of the operations of the Public Prosecutor's Office and police agencies; and
- shortage of budget and human and material resources.

In light of these considerations, the ICJ reaches the following conclusions:

- a) The national legal framework does not align with international law and standards regarding the independence and autonomy of prosecutors. This deficiency serves to inconsistency undermines effective criminal investigations aimed at prosecuting those responsible for gross human rights violations. Furthermore, the jurisprudence of the Supreme Court of Justice, in particular cases 469/2017 and 470/2017 of the Constitutional Chamber, has contributed to weakening the autonomy of the Public Prosecutor's Office and the independent prosecution of crimes allegedly committed by public officials. Previous assessments by the ICJ have demonstrated that the Supreme Court itself lacks independence and impartiality.²³⁰
- b) The selection processes for the Chief Prosecutor have lacked transparency and have failed to comply with the requirements set forth in the Constitution, including articles 279 y 284. The appointments have typically been guided by political considerations rather than by objective criteria and professional merits of the selected person. Thus, even though the Public Prosecutor's Office formally enjoys institutional independence in accordance with the Constitution and legislation, in practice, the exercise of such independence remains illusory.
- c) Prosecutors frequently serve with provisional status and the lack of security of tenure in their position places them in a situation of vulnerability and at risk of threats, harassment, and undue pressure, which undermines the conduct of criminal prosecution with objectivity and fair trial and due process guarantees. This has led to the participation of prosecutors in actions that undermine human

²³⁰ See specially ICJ [Strengthening the Rule of Law](#) (2014), [Venezuela: The Sunset of the Rule of Law](#) (2015), [The Supreme Court of Justice of Venezuela: an Instrument of the Executive Branch](#) (2017), [Judges on the Tightrope Report on the Independence and Impartiality of the Judiciary in Venezuela](#) (2021).

rights protections, by validating illegal and arbitrary actions carried out by the police and intelligence agencies during the investigation. In some instances, prosecutors themselves may bear a degree of responsibility, by action or omission, for serious human rights violations.

- d) The high degree of turnover of prosecutors and the negative impact that this has on the investigation of human rights violations constituting crimes contributes to re-victimization and unjustified delay in the investigation. In addition, the professional qualifications of the prosecutors appointed to perform the functions are unknown to the public, as the appointments and their process lack transparency.
- e) The lack of transparency and accountability of the Public Prosecutor's Office is evidenced by the fact that its administrative reports are not published, nor is there disaggregated data on the work of prosecutors. The absence of systematized information and the multiple obstacles to access information contribute to the lack of external control of the work of prosecutors and, thereby render criminal investigations opaque.
- f) The Public Prosecutor's Office evidently lacks adequate resources to carry out its work properly, which constitutes a barrier to access justice insofar as it hinders the possibility of carrying out investigations effectively and exacerbates the already rampant instances of the undue influence or control exercised by executive authorities about prosecutors.
- g) The dependence of police forces in charge of the criminal investigation on executive branch, in particular the Ministry of Interior, and fact that the investigatory actions are necessarily compromised adversely affects the conduct of independent investigations aimed at identifying and prosecuting those responsible for gross violations of rights, especially when the police and other State agents are the alleged perpetrators of the violations.

IV. Recommendations

The ICJ considers the Venezuelan authorities must take urgent measures to address the situation, with a view to removing the variety of obstacles that prevent the effective investigation and prosecution of gross human rights violations constituting crimes under international law. Such measures should be aimed at improving the effectiveness of the Public Prosecutor's Office and other engaged institutional actors to ensure prompt, thorough, independent, and impartial investigations, safeguarding due process and fair trial rights, aimed at discovering the truth and holding accountable those responsible for the violations.

Taking into consideration the findings and conclusions in this report, the ICJ considers that most of the recommendations formulated in reports issued since 2014, reproduced in the annex below, remain valid, especially those related to the rule of law and the fair administration of justice and strengthening independence and autonomy of the Public Prosecutor's Office. The ICJ urges the responsible authorities to implement these.

The ICJ recommends that the Venezuelan authorities ensure that domestic legislation and administrative rules and measures are harmonized with international law related to investigating and prosecuting gross human rights violations consisting in crimes under international law, and in particular the obligations to hold perpetrators accountable for such violations. This will involve taking measures with a view to eliminating the serious obstacles to have effective criminal investigations by police and prosecutors. What is required is the adoption of laws and practices that allow investigations to effectively establish the responsibilities of not only the direct authors of gross human rights violations, but also their civil and military superiors, as well as any third parties who may participate in the violations, with the complicity, collaboration, tolerance or acquiescence of the authorities.

In particular, the ICJ calls on **Parliament** to adopt legislation in accordance with international standards on the prevention, suppression, prosecution, and redress in respect of the crimes of enforced disappearance, extrajudicial executions and similar unlawful killings, torture and other cruel, inhuman or degrading treatment, including sexual violence. Venezuela should also adopt legislation and tools to investigate crimes under the Rome Statute of the ICC, including genocide, crimes against the humanity and war crimes. This regulatory adaptation should include the investigative tools established in the Istanbul Protocol and the Minnesota Protocol.

The constitutional and legislative provisions that establish the privilege of pretrial hearings for high-ranking State officials and especially high-ranking officers of the military, that are held before the Supreme Court, should be modified, with the aim to facilitate investigation processes for human rights violations constituting crimes under international law in which they might be involved. The use of anti-terrorism courts should be repealed, with a view to ensuring that people who may be accused of terrorist-related offences enjoy the right to fair trial by a competent, independent, and impartial tribunal, with all fair trial rights and due process guarantees established both in the Venezuelan Constitution and in international law.

The ICJ recommends taking specific measures aimed at restoring the independence of the Public Prosecutor's Office so that it is fit to conduct criminal prosecution effectively, objectively and at the highest levels of professional standards. To this end, the ICJ urges the political authorities, particularly senior officials of the **Executive Branch**, to refrain from undue interference in investigations and legal proceedings, or in the work of prosecutors, investigators, judges and experts. This includes desisting from public statements, comments on social networks, public speaking in any way that could be interpreted as an order or support or opposition to a party in a case.

The ICJ recommends that the **Chief Prosecutor** undertakes reforms in relation to the selection of prosecutorial personnel by adopting a fair process of public, meritocratic, transparent, and non-discriminatory competitive examinations. The reforms should include a general ban on provisional appointments, save in the most exceptional situations, and provision of the ordinary guarantees of security of tenure for those who are exceptionally appointed provisionally. Likewise, the Personnel Statute of the Public Prosecutor's Office and the classification of freely appointed and removed positions should be reviewed by the Parliament and the Chief Prosecutor to determine, according to formal, consistent, empirical, and objective criteria, whether, given the nature and

functions of the position, they should be career positions or *ad hoc* appointment subject to removal. It is also necessary that by the Parliament and the Chief Prosecutor review and revise through legislation, the rules on entry, promotion, transfer, discipline, suspension, stability, and retirement from the Public Prosecutor's Office career.

The ICJ recommends that **Parliament** adopt regulatory measures to restrict the Chief Prosecutor's discretionary authority, in order to prevent undue influence in specific cases and maintain internal independence among individual prosecutors. Competent prosecutors should retain autonomy in carrying out criminal prosecutions. While it be appropriate for the Chief Prosecutor to issue guidelines for handling certain types of cases in order to promote consistency and predictability in the administration of justice, this should not entail instructions directly targeting ongoing cases. If justified, these guidelines should not undermine the individual autonomy of prosecutors. Instructions regarding any such measure by the Chief Prosecutor should be published and accessible. There should be no reprisals for prosecutors on grounds of not following them in conducting the criminal prosecution. General irregular measures aimed at the organization of the prosecution services, such as the appointment of provisional prosecutors without administration of competitive and public examinations and the transfer or dismissal prosecutors, should generally be avoided.

The ICJ recommends that the **Public Prosecutor's Office** develop and implement a specialized and effective criminal prosecution strategy regarding the prosecution of gross human rights violations constituting crimes under international law. The strategy should prioritize gross violations constituting crimes, such as torture and ill-treatment, unlawful killings and enforced disappearances, considering the rights of the victims and the State's obligations to combat impunity, including through effective investigation and prosecutions. The **Parliament** should adopt legislation that establishes the obligation to adopt and publicly disclose this strategic policy and any subsequent revisions, with a requirement that the preparation and evaluation of the policy be undertaken following consultations with independent legal experts and civil society, including human rights defenders and victim's groups.

The ICJ recommends that **prosecutors, police officers**, and other public officials who participate in criminal investigations and the administration of justice receive necessary training in the prevention and prosecution of gross human rights violations constituting crimes, including on such international instruments as the Minnesota Protocol and the Istanbul Protocol. Training should address the individual responsibility of State agents in case of torture and ill-treatment, including sexual and gender-based violence, unlawful killings, enforced disappearance, and arbitrary deprivation of liberty, as well as war crimes and crimes against humanity. They should also include to address the prohibition on the acquisition and use as evidence of information obtained through torture or other cruel, inhuman, and degrading treatment. The ICJ considers that such training programs should be subject to periodic review and updating, to include the most contemporary developments in international law, standards, and jurisprudence. Training should include the participation of external experts, such as academicians, independent legal practitioners and members of civil society organizations.

The ICJ recommends that the **Public Prosecutor's Office** adopt policies, procedures, and practices of accountability for its management and administration, which are public,

transparent and periodic, and that guarantee to the public the right of access to information. For example, the Public Prosecutor's Office should annually record and publish data on the total number of cases in process and their procedural postures, i.e. investigation, charge, trial, sentencing. It should also include such information as the criteria for joining cases and processing them together in the same file. The periodic management reports must have information disaggregated by crimes, procedural phases, place of occurrence of the events, types of decisions adopted, number and title and rank of State officials investigated and institution to which they belong.

The ICJ recommends that the **Public Prosecutor's Office** adopt effective measures to ensure the rights of the victims of human rights violations. To this end, it is necessary to provide and strengthen opportunities for the participation of victims and their representatives in procedures and avoid re-victimization, to protect evidence of the cases, strengthen protection measures for victims and witnesses, and to develop policies to prevent repetition of violations in which prosecutors and other agents in charge of criminal investigation may have been involved. It is important for the Public Prosecutor's Office to have a policy focused on preserving memory and promoting the right to truth, incorporating the voices of the victims.

The ICJ also recommends the engagement of the **international community**, including concerned States, intergovernmental bodies and officials, independent experts and academicians, bar and judges' associations and civil society maintain and strengthen constant monitoring of Venezuela and support the efforts of victim's groups, domestic civil society organizations and human rights defenders in advocating for justice. The UN OHCHR should strengthen, and extend its presence in the country, and transparently and comprehensively exercises its protection and promotion mandates, with the participation and cooperation of representatives of civil society. Similarly, the ICJ urges the engaged international actors to provide support and cooperation to the Venezuelan authorities with a view to advancing effective investigation, documentation, prosecutions and access to effective remedies and reparation for gross human rights violations, including the renewal of the Fact-Finding Mission on Venezuela, by the Human Rights Council.

Finally, the ICJ urges the **Venezuelan authorities** to cooperate in good faith with the OHCHR, the Prosecutor's Office of the International Criminal Court, the Human Rights Council's International Fact-Finding Mission and the protection bodies of the UN and Inter-American human rights system, which includes implementing the recommendations that authorities within these institutions have provided.

***Annex Previous Recommendations of the International
Commission of Jurists regarding the Venezuelan Public
Prosecutor's Office***

In the Report "Strengthening the Rule of Law in Venezuela", it was recommended:

- a. To comply with the constitution and admit public prosecutors to the Public Prosecutor's Office only through public tenders, designed objectively to select the most qualified candidates, and ensuring security of tenure of public prosecutors (almost 100% of whom do not currently enjoy security of tenure).
- b. To cease the regular practice of appointing or removing public prosecutors through resolutions of the Public Prosecutor's Office issued without providing reasons.
- c. To repeal the provision of the Statute of the Personnel of the Public Prosecutor's Office, by effect of which the guarantees of the disciplinary jurisdiction provided in the Organic Law of the Public Prosecutor's Office have not been applied to the vast majority of public prosecutors.
- d. To ensure that the provision of initial training and capacity building for public prosecutors by means of courses delivered in a specialized Academy does not become a bottleneck, limiting the possibility of equal participation in public competitions for admission to the Public Prosecutor's Office, or slowing the process of tenure for the position of Public Prosecutor, or distorting the objectivity of the selection process.
- e. To ensure public prosecutors have decisional and operational autonomy, including by reversing the practice of centralizing decision-making in the Office of the Chief Prosecutor or in centres of political power.
- f. To systematize efforts to enhance the efficiency and effectiveness of the work of the Public Prosecutor's Office in its capacity as a governing body for criminal investigations in Venezuela, in order to combat the growing rate of impunity for violations of human rights. Any reform initiative should start by reconsidering internal procedures and regulations of the Public Prosecutor's Offices that have a direct impact on effectiveness and efficiency, such as: addressing the high rate of rotation of prosecutors; ending the practice of assigning cases without considering technical expertise and workload; bringing greater transparency to prosecutions and ensuring an orientation towards public service; and ending the politicization of the function of the public prosecutor.
- g. To ensure the impartiality of the work of public prosecutors in all cases, including those that could be considered politically sensitive.

In the Report "The Sunset of the Rule of Law" (2015), it was recommended:

- Venezuela must carry out an ongoing training program for judges and public prosecutors to improve skills.

- While the open competitive bid process is carried out for the appointment of judges and public prosecutors, temporary appointments must also be carried out in an open, competitive, and transparent manner to guarantee suitability and independence of candidates.
- The Public Prosecutor's Office must guarantee the stability of the public prosecutors and begin an open competitive bid process to fill the positions of those public prosecutors who face a precarious situation.
- The Judiciary and Public Prosecutor's Office must maintain and strengthen their autonomy in relation to other State branches, to re-establish the trust of judicial operators and the population in general.

In the Report "Lawyers Under Attack" (2022), it was recommended:

1. Ensure that prosecutors, judges, police officers and intelligence personnel cease and desist from all actions aimed at limiting the free, independent, and safe exercise of the legal profession, including the undue criminalization of lawyers. In addition, the national government and the judicial actors must take effective measures to protect lawyers against any threat, retaliation, harassment, pressure, harassment, or any other arbitrary action that comes from State agents or third parties.

2. Executive officers, prosecutors and judges should guarantee that lawyers can exercise all the rights and prerogatives contemplated in Venezuelan Constitution and domestic legislation and Venezuela's international legal obligations. This includes access to competent, independent, and impartial judges, access to case files and means of evidence, and the use of legal remedies and actions provided by legislation, without any of undue hindrances, harassment, or threats.

In addition, judges, prosecutors, police officials, intelligence personnel and prison personnel should receive comprehensive training on international law and standards relating to human rights and the administration of justice, including those related to the right to a fair trial and the right to an effective remedy and reparation.

3. Executive officers, prosecutors and judges should refrain from persecuting, arresting, harassing, and attacking in any way the lawyers who represent victims of human rights violations or people who are critical of the government authorities or are actual or perceived as a supporter of the political opposition.

4. The Office of the Chief Prosecutor should carry out effective, impartial, and independent investigations of the threats, attacks and harassment committed against lawyers. These investigations should be aimed at prosecuting and convicting all those responsible for the crimes, including high-profile officials. Similarly, the investigations must consider the possible existence of patterns and practices committed by officials or individuals who have perpetrated these attacks or who have tolerated them.

7. The Office of the Chief Prosecutor should act to guarantee the lawyers can enjoy the civil and criminal immunity in respect of the statements made in the professional practice and the information received from their clients.

10. Executive officers and lawmakers should ensure that the processes for appointing judges, prosecutors, public defenders, and other officials of the justice system are carried out through public competitions that are open to all persons who meet the requirements, without any discrimination. These provide for the conditions essential for lawyers to function in the justice system.

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January 2024

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