

DYING BEFORE A JUDGE:

THE ARBITRARY DETENTION,
ENFORCED DISAPPEARANCE,
TORTURE AND DEATH OF
RAFAEL ACOSTA ARÉVALO IN **VENEZUELA**



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INTRODUCTION



Amnesty International has documented and condemned the government of Nicolás Maduro’s policy of repression to silence dissent and exert control over the population of Venezuela.

This policy of repression includes the excessive use of force, extrajudicial executions by various police forces and arbitrary detentions, as well as the use of torture against those arbitrarily detained. In recent years, a number of cases have come to light of prison conditions amounting to cruel, inhuman or degrading treatment and extreme forms of torture to extract confessions.

The United Nations High Commissioner for Human Rights (the High Commissioner) said in her July 2020 report that “such acts aim to intimidate and punish detainees, extract confessions or incriminate others through videos or written statements”.¹ She also highlighted the risk of torture faced by detainees held incommunicado or in solitary confinement.

In addition, in her report specifically on the justice system in Venezuela, the High Commissioner noted having “received credible accounts that persons deprived of their liberty by the Directorate General of Military Counterintelligence (DGCIM) were subjected to sessions of one or more forms of cruel, inhuman or degrading treatment which could amount to torture. [16] Documented cases included severe beatings with boards, suffocation with plastic bags and chemicals, submerging the head of the victim under water, electric shocks to the eyelids, and sexual violence in the form of electric shocks to genitalia. Detainees were also exposed to cold temperatures and/or constant electric light, handcuffed and/or blindfolded for long periods of time, and subjected to death threats against themselves and their relatives.”²

Amnesty International has identified and documented cases of torture in Venezuela which reflect the pattern described and condemned by the High Commissioner. In particular, the organization has had access to an extract from the criminal investigation file against two members of the Bolivarian National Guard (GNB) attached to the DGCIM who were reportedly implicated in the death of Rafael Acosta Arévalo, a retired Venezuelan Navy captain.³

¹ A/HRC/44/20, Outcomes of the investigation into allegations of possible human right violations of the human rights to life, liberty and physical and moral integrity in the Bolivarian Republic of Venezuela, 2 July 2020, www.ohchr.org/Documents/Countries/VE/A_HRC_44_20_AdvanceUneditedVersion.pdf

² A/HRC/44/54, 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 www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session44/Documents/A_HRC_44_54.pdf para. 27.

³ File 36C-19464-19.

This criminal investigation was opened hours after Acosta Arévalo's death. However, after a careful analysis of a section of the criminal file,⁴ Amnesty International believes that there are reasons to believe that the investigation was not carried out in an independent and impartial manner.

The following sets out the evidence that Amnesty International has verified which indicates that on 28 June 2019, Acosta Arévalo was transferred from an unknown place to the Military Criminal Judicial Circuit court building at Fort Tiuna in Caracas, where he lost consciousness and died despite being immediately transferred to the Vicente Salias Military Hospital within the same complex. His death in custody was investigated and an ordinary court convicted two DGCIM officials of involuntary homicide (homicidio preterintencional) but did not investigate the possibility of torture. This document details the questions arising from an analysis of a section of the criminal investigation file that leads the organization to conclude that impunity persists for the arbitrary detention, enforced disappearance, torture and death of Rafael Acosta Arévalo.

⁴ Amnesty International had access to the section of the file of the preliminary proceedings court which contains the reports and investigation documents of the 34th National Prosecutor's Office in charge of the case and the Prosecutor's accusation admitted by the preliminary proceedings court in the preliminary hearing, 551 pages in total. However, some of the documents had pages missing, which is noted in each case when analysing the evidence that emerges from them.



1. THE ARBITRARY DETENTION AND ENFORCED DISAPPEARANCE OF RAFAEL ACOSTA ARÉVALO

On 21 June 2019, reports of the disappearance of Rafael Acosta Arévalo, a retired captain in the Venezuelan Navy, were made public. On 26 June 2019, the Venezuelan authorities announced in the media that he had been detained. Two days later, after he had been missing for seven days, he was taken before a military court in Caracas. His appearance in court was so that the military judge could verify, among other things, his physical integrity and determine whether his detention had been carried out in accordance with his human rights.

In the criminal investigation case file into those allegedly responsible for the death of Rafael Acosta Arévalo, there is only one police report that describes his detention (see below), signed by the two accused. This police report, dated 26 June 2019, mentions an arrest warrant issued by the Third Military Tribunal acting as a preliminary court on 21 June 2019 (Arrest Warrant 056/19), the day on which Rafael Acosta Arevalo's disappearance was reported. Amnesty International has not been able to verify the existence of the arrest warrant dated 21 June 2019 as it was not attached to the criminal investigation file on the death of Acosta Arévalo, despite the fact that the victims' lawyers expressly requested its inclusion in the file.⁵ Nor has it been possible to verify the day of Rafael Acosta Arévalo's detention.

Buenaventura, ubicado en la localidad antes descrita, con la finalidad de darle cumplimiento a la Orden de Aprehensión N°056/19, signada con la nomenclatura alfanumérica N° TM3C-OA- N°056/19, de fecha 21 de junio de 2019, emanada por el Tribunal Militar Tercero de Control, con sede en Caracas, Distrito Capital, en contra del ciudadano: CAPITÁN DE CORBETA (RA) RAFAEL ACOSTA AREVALO, C.I.V-

Police report by the DGCIM officials; Doc. DCIM-DEIPC-AP-431/2019, 26 June 2019, referring to Arrest Warrant No.056/19 dated 21 June; the arrest warrant itself was missing from the criminal investigation file to which Amnesty International had access.

Amnesty International believes that the detention of Rafael Acosta Arévalo was arbitrary because, according to the police report in question, it was based on an arrest warrant issued by a military court; Acosta Arévalo had retired from the Bolivarian National Armed Force (FANB) and, therefore, should have been brought before an ordinary civilian court for any crime he allegedly committed.⁶

⁵ The 34th Prosecutor's Office with national jurisdiction and in charge of investigating the death of Acosta Arévalo explicitly establishes that it is not necessary to inquire into this in order to continue the investigation (Doc. FMP-34NN-0218-2019 of 8 August 2019).

⁶ Military courts should only be used to try military personnel for infractions of military discipline, excluding human rights violations and crimes under international law. Amnesty International, Fair Trial Manual, (POL 30/002/2014), p. 218, www.amnesty.org/en/documents/POL30/002/2014/en/ Article 7 of the Venezuelan Organic Code of Criminal Procedure also includes this principle.

Amnesty International also found that the police record of the detention does not specify where Rafael Acosta Arévalo was transferred to after he was apprehended by DGCIM officials. Amnesty International did not have access to the whole police report because one of the pages was not in the section that the organization was able to review.

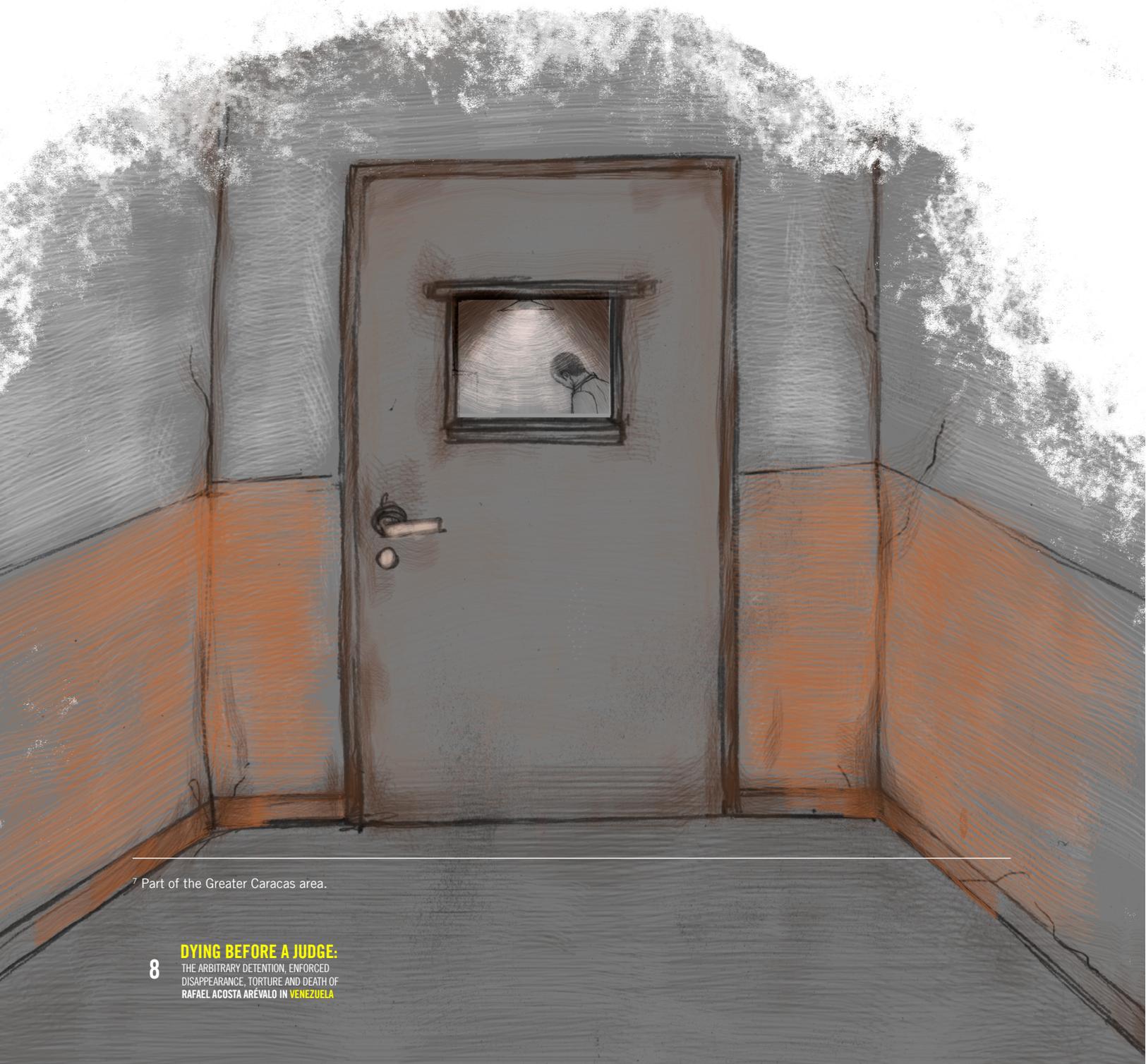
It is clear from other documents in the file that they contain contradictions over the place where Rafael Acosta Arévalo was held; these are analysed below.





2. RAFAEL ACOSTA ARÉVALO'S WHEREABOUTS DURING DETENTION ARE UNKNOWN

The police reports state that Acosta Arévalo was apprehended in the vicinity of a shopping centre in Guatire,⁷ Miranda state. However, there are contradictions in the statements that the officials accused of his death made at the hearing about how the detention occurred and where they went subsequently.



⁷ Part of the Greater Caracas area.

One of the defendants stated at the arraignment hearing that Acosta Arévalo was transferred from Guatire to a “basement”. Although he does not state whether this was in the DGCIM headquarters in Caracas or give further details about the location of the detention centre. It is not until the Prosecutor’s Office questioned him about whether the victim was with other detainees, that the official clarified that he was being held on his own. In addition, in his statement the official says that on 28 June, hours before the arraignment hearing, Acosta Arévalo had said that he did not feel well and had been transferred to the Military Hospital, although he could not specify which of the two hospitals he was taken to. He concludes by saying that after the medical check-up they were informed that he had broken ribs and a “sprain” and that, despite this, they transferred him to the Third Military Court, where he “fainted”, before they finally took him to the Vicente Salias Military Hospital, where he was declared dead on arrival.

On the other hand, the second defendant stated, in the same hearing, that after he was detained, Acosta Arévalo was “transferred to the headquarters and that he said he was feeling a bit tired and asked for some water and then said that he felt unwell and so they transferred him to the Military Hospital”. This suggests that Acosta Arévalo had been at the DGCIM headquarters and later at the Carlos Arvelo Military Hospital on the day he was detained. Later in his statement, this defendant mentions that the doctors assured them that his state of health was not serious, “just a few blows” (“que eran solo unos golpes”) and that they should take him somewhere he could rest. This same official alleged that he was not present, on duty, on 28 June, the day Acosta Arévalo was transferred to the arraignment hearing and died.

montamos en el vehículo por el camino también intento forcejear, lo llevamos a la sede dijo que estaba un poco cansado pidió agua después dijo que si sentía mal, lo llevamos al Hospital Militar nos dijeron que eran unos golpes y preguntamos que si era grave y dijeron que no que lo tuviéramos en un estado que pudiera descansar, el día que se dio la presentación el día 28 y yo no me encontraba en el día de la audiencia en realidad ese día yo no estaba, él se descompensó y llamaron a unos funcionarios y ahí se traslado al hospital militar del fuerte, en el hospitalito y falleció

Arraignment hearing of 1 July 2019 before the Thirty-sixth State Court of First Instance acting as a preliminary proceedings court for the Metropolitan Area of Caracas. The statement made by the DGCIM official referring to Rafael Acosta Arévalo being taken to the Military Hospital and declaring that they were not on duty or present at the hearing on 28 June 2019.

The inconsistencies between the versions of both officials about the fate of Acosta Arévalo once detained increase in Report No. 431/1/2019 in the criminal case file. According to this, on 28 June, that is the day of the hearing itself and before the death of Rafael Acosta, the officials transferred him to the Carlos Arvelo Military Hospital, a few hours before transferring him to the Military Criminal Judicial Circuit court building. Therefore, the file contains a third version of where Rafael Acosta Arévalo was before he was transferred to the Court, and where he was held during the hours between his arrest and being presented before the judge.



SUBJECT 1 IN THE HEARING:

We transferred him from Guatire to a basement On 28 June we took him to the hospital because he was not feeling well, they say it's just some broken ribs, we took him to court and again take him to the other hospital "with a weak pulse" ("con un poco de pulso")



REPORT NO. 431/1/2019:

On 28 June 2019, at 7:00, it does not state from where, the official and his his partner transferred Acosta Arevalo to the Carlos Arvelo Military Hospital to be examined. At 13:15 they took him to the Military Criminal Judicial Circuit building, after the medical examination had been completed. At approximately 21:00 Acosta Arévalo lost consciousness and was taken to the Vicente Salias Military Hospital ("hospitalito").

SUBJECT 2 IN THE HEARING:

We transferred him to "headquarters" to a lockable office, he told us that "he didn't feel well" we took him to the hospital and they told us that it was not serious that he just had to rest. On the 27 we took him to the hospital, and when he was taken to court on the 28 I was on leave, I was outside the Vicente Salias Military Hospital when he died.

Amnesty International has received multiple reports, in this and other cases of arbitrary detention and initial periods of incommunicado detention, of the existence of unofficial or clandestine detention centres run by the Bolivarian National Intelligence Service (SEBIN) and the DGCIM. The inconsistencies between both accounts and the alleged police report of the transfer to court on the day of the hearing, raise many questions about the place of detention where Rafael Acosta Arévalo was held and, therefore, about the reliability of the investigation, including the testimonies of the two accused officials.

Consequently, Amnesty International urges that an impartial and independent investigation be carried out by a civilian authority into the possibility that Rafael Acosta Arévalo was transferred to a clandestine detention centre, where he may have been tortured, with the deliberate intention of ensuring ongoing impunity for these actions.



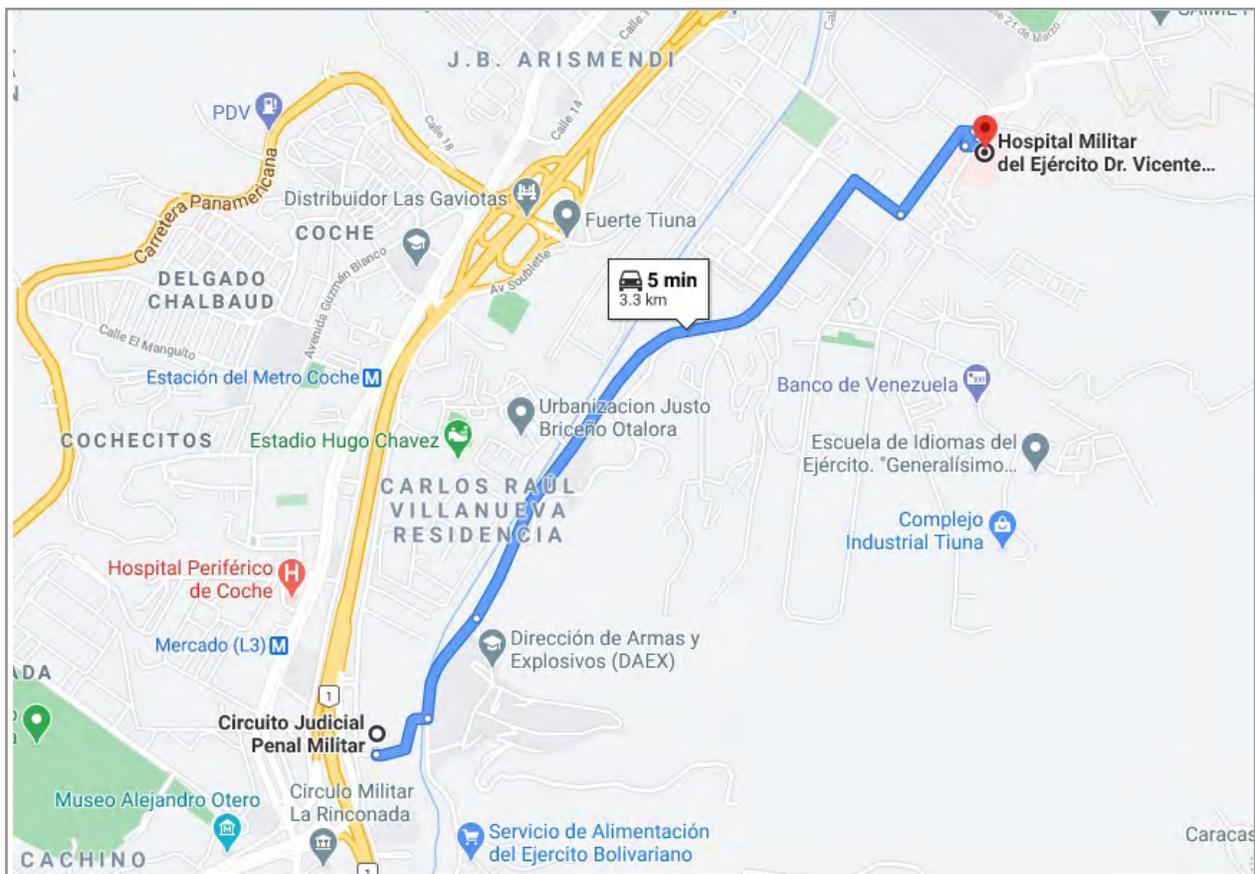
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3. HE DIDN'T DIE IN HOSPITAL, HE DIED IN COURT

Amnesty International has collected sufficient evidence to confirm that Rafael Acosta Arévalo did not die at the Vicente Salias Military Hospital, as has been officially stated. According to different sources, including the report in the criminal case file on his death, Acosta Arévalo died minutes before his arraignment hearing on 28 June 2019 at the court building of the Military Court in Fort Tiuna, Caracas.

The reconstruction of the events indicates that Rafael Acosta Arévalo was transferred to the courtroom of the Military Judicial Circuit Court in the Fort Tiuna military base, Caracas, Venezuela, but where he was transferred from is unknown. Here, he had a brief and difficult exchange with his defence attorney because of the precarious state of his health, which only allowed him to exchange a few words with his defence lawyer. Minutes later – and when he had been led away from his lawyer – Rafael Acosta Arévalo died in the same court building. When he lost consciousness, the judge ordered his emergency transfer to the Vicente Salias Military Hospital, just five minutes away from the Military Criminal Circuit Court building and also within the Fort Tiuna complex. At the Hospital he was declared dead on arrival.



Distance between the Military Criminal Judicial Circuit building in Fort Tiuna and the Vicente Salias Military Hospital. Google Maps screenshot.

quien falleciera en el Depósito de cadáveres del Hospital Militar Doctor Vicente Salias Sanoja (Hospitalito Fuerte Tiuna), procedente de la siguiente

Doc. No. 9700-017-250 93, National Civil Registration Service of Medicine and Forensic Sciences, stating that Rafael Acosta Arévalo died in the morgue of the Vicente Salias Military Hospital.

Likewise, the press release issued by the Ministry of Defence on the investigation into the death of Rafael Acosta Arévalo also states that he died at the Vicente Salias Military Hospital after he had received medical attention.



LA FUERZA ARMADA NACIONAL BOLIVARIANA INFORMA A LA COLECTIVIDAD NACIONAL EL LAMENTABLE FALLECIMIENTO DEL CAPITÁN DE CORBETA RAFAEL RAMÓN ACOSTA ARÉVALO, CI 9.661.191, EN SITUACIÓN DE RESERVA ACTIVA; QUIEN PERMANECÍA DETENIDO POR INVESTIGACIÓN PENAL MILITAR.

EL PRECITADO OFICIAL SUPERIOR, EL DÍA VIERNES 28 DE JUNIO DEL 2019, COMO PARTE DEL DEBIDO PROCESO, FUE PRESENTADO ANTE EL JUEZ MILITAR TERCERO DE CONTROL DEL CIRCUITO JUDICIAL PENAL MILITAR, CON SEDE EN FUERTE TIUNA, Y ANTES DE INICIAR LA RESPECTIVA AUDIENCIA DE PRESENTACIÓN, SE DESMAYÓ, RAZÓN POR LA CUAL EL JUEZ ORDENÓ SU TRASLADO INMEDIATO AL HOSPITAL MILITAR "DR. VICENTE SALIAS", DONDE A PESAR DE BRINDÁRSELE LA DEBIDA ATENCIÓN MÉDICA, FALLECIÓ. ACTO SEGUIDO, SE ACTIVARON LOS PROTOCOLOS CORRESPONDIENTES POR PARTE DEL CICPC Y LA DIRECCIÓN TÉCNICO-CIENTÍFICA DEL MINISTERIO PÚBLICO, A FIN DE PRACTICAR LA AUTOPSIA DE LEY CON EL OBJETO DE DETERMINAR LAS POSIBLES CAUSALES DEL DECESO.

EL CIUDADANO NICOLÁS MADURO MOROS, PRESIDENTE CONSTITUCIONAL DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA, COMANDANTE EN JEFE DE LA FANB, HA SOLICITADO AL MINISTERIO PÚBLICO Y DEMÁS ORGANISMOS COMPETENTES, INICIAR UNA PROFUNDA INVESTIGACIÓN PARA DETERMINAR LAS CIRCUNSTANCIAS EN LAS CUALES SE PRODUJO EL DECESO, RATIFICANDO DE ESTE MODO LA POLÍTICA DEL ESTADO VENEZOLANO DE INDEFECTIBLE RESPETO A LOS DERECHOS HUMANOS, MUY ESPECIALMENTE DEL DERECHO A LA VIDA CONSAGRADO EN EL ARTÍCULO 43 DE NUESTRA CONSTITUCIÓN.

LA FANB EXPRESA SUS MÁS SINCERAS PALABRAS DE CONDOLENCIAS A LOS FAMILIARES Y ALLEGADOS DEL CAPITÁN DE CORBETA RAFAEL RAMÓN ACOSTA ARÉVALO, A QUIENES OFRECEMOS NUESTRO APOYO Y SOLIDARIDAD.

"CHÁVEZ VIVE... LA PATRIA SIGUE"

"INDEPENDENCIA Y PATRIA SOCIALISTA...

VIVIREMOS Y VENCEREMOS"

¡LEALES SIEMPRE TRAIADORES NUNCA!

VLADIMIR PADRINO LÓPEZ

GENERALEN JEFE

Official statement of the Ministry of People's Power for the Defence of Venezuela, 29 June 2019, stating that Rafael Acosta Arévalo lost consciousness during the hearing before the Military Court on 28 June 2019 and was taken to the Vicente Salias Military Hospital, where he died. www.mindefensa.gob.ve/mindefensa/2019/06/29/comunicado-oficial-de-la-fuerza-armada-nacional-bolivariana-3/

The file states that the cause of Acosta Arévalo's death was the result of multiple injuries that compromised his lungs to the point of causing severe cerebral oedema. However, Rafael Acosta Arévalo lost his life shortly after arriving at the Third Military Court building and, although the judge in charge of the case should have immediately initiated an investigation into his death and visible injuries that Acosta Arévalo presented, possibly ordering an investigation into possible torture, the judge limited himself to requesting that he be transferred to the Vicente Salias Hospital, and then continued with the hearing for the rest of the accused.⁸



⁸ Report of an Public Prosecutor's Office interview, 6 August 2019. Interview with an official of the Third Preliminary Proceedings Court of the military judicial circuit; their identity was withheld.

4. AN INVESTIGATION INTO THE VICTIM

The investigation into the death of Rafael Acosta Arévalo, as detailed in the case file, far from ensuring justice in an impartial manner, focuses on submitting the victim – and not the alleged perpetrators – to the scrutiny of the court. Thus, the file contains countless inquiries requesting information from the authorities and public and private entities regarding the background of Rafael Acosta Arévalo. These include requests for telephone records, bank records, records of his career in the military and travels abroad, among other things.

The Prosecutor's Office in charge of the case does not give any justification for proceeding in this way, nor indicate what this was intended to prove. However, surprising as it may seem, no such proceedings were undertaken in the investigation of the defendants, not even their criminal or disciplinary records were requested.⁹

It is particularly striking that while the Prosecutor's Office dealing with the case requested information on the ongoing criminal case against Acosta Arévalo that was the reason for his arrest, the only document that was not requested was the arrest warrant, which would have enabled the prosecution to clarify the day it was issued and the date on which he was in fact detained. Despite the fact that this arrest warrant is mentioned at various points in the file, Amnesty International was unable to verify its content, because the section of the file that the organization was able to access did not contain this document, reflecting the express refusal of the Prosecutor to request the inclusion of this document in the file.¹⁰

1. Delito por el cual se apertura la investigación
2. Representación Fiscal Militar de la Fuerza Armada Nacional Bolivariana , que realiza la investigación / Número de causa
3. Fase que se encuentra la causa
4. Número de Juris y Tribunal que conoce la causa
5. Medidas Cautelares solicitadas por la Fiscal Militar de la Fuerza Armada Nacional Bolivariana y decretadas por el Tribunal.

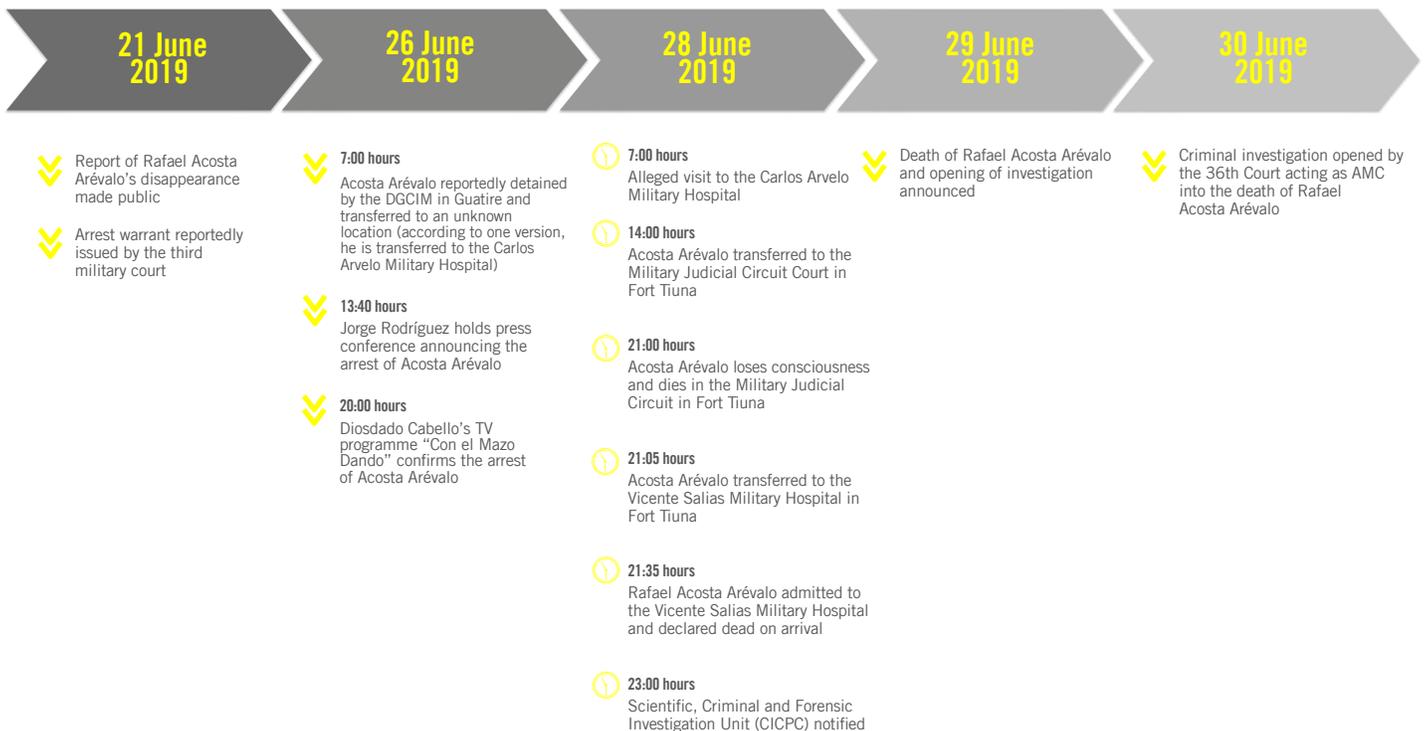
Doc. FMP-34NN-0184-2019 from the 34 NN Prosecutor's Office addressed to the FANB's Military Prosecutor General, 8 July 2019. The document lists information that the Prosecutor is requesting regarding the crime for which Rafael Acosta Arévalo was being investigated and details about the progress of the case and pre-trial detention measures granted by the court.

⁹ The only two actions taken by the Prosecutor's Office to obtain information on the accused were 1) Doc. FMP 34 NN 0187-2019 of 9 July 2019 to the Ministry of Defence requesting resolutions on the appointment of the two accused and 2) the CICPC Criminal Investigation Report, which states that the defendants do not have open arrest warrants against them, of 29 June 2019.

¹⁰ The prosecutor in charge of the case of Acosta Arévalo's death dismissed the need to include the arrest warrant in the file in view of the fact that the police report of the arrest was already known (431/2019 of 26 June 2019) and the officers who carried out the arrest had been interviewed (Doc. FMP-34NN-0218-2019, Reply from the 34th NN Prosecutor's Office to the victim's lawyers, regarding their requests for procedural inquiries, 8 August 2019).

Likewise, the file contains inquiries by the Prosecutor’s Office requesting the inclusion of actions taken by the Third Military Prosecutor establishing that an alleged explosive device had been seized from Acosta Arévalo during detention. However, it is not clear what link or justification there could be as to how this procedural action could contribute to clarifying the circumstances of his death on 28 June in the Military Court building.

The above would appear to show how the lack of impartiality of the Prosecutor’s Office profoundly affected the investigation and also suggests that the case file was not opened to find out the truth about the death of Acosta Arévalo and, where appropriate, to determine individual criminal responsibility for it, but rather was one more tool to justify, in some way, his death in custody.





5. TWO “SCAPEGOATS” AND AN ORDINARY CRIMINAL OFFENCE

On the day of Rafael Acosta Arévalo’s disappearance, the United Nations High Commissioner for Human Rights, Michelle Bachelet, was in Venezuela on an in loco visit.

When the death in custody of Acosta Arévalo was made public, this sparked considerable social unrest and numerous entities called publicly for an effective, thorough and impartial investigation into his death and reports of torture.¹¹

The media outcry about the case nationally and internationally led the government of Nicolás Maduro to announce a criminal investigation to determine who was responsible for the death of Acosta Arévalo. Subsequently, the Office of the Public Prosecutor of the Republic announced the arrest of two young GNB officials attached to the DGCIM, who had admitted to being “indirectly” responsible for the death of Acosta Arévalo.¹² Both officials were convicted by an ordinary court, which dismissed inquiries and requests from the victims and their representatives. An appeal against the convictions is currently before the Court of Appeals. However, Amnesty International has not been able to verify that the officials found guilty in the first instance have actually been deprived of their liberty or which detention centre they are held in.

Amnesty International has analysed a section of the criminal investigation case file in depth and has found serious inconsistencies that suggest, as has already been stated, that the investigation was not independent, impartial and thorough.

The first and most serious inconsistency in the investigation is in the classification of the offence and the charges brought. The accusation against the two DGCIM officials, and their subsequent conviction, assigns responsibility for the death of Acosta Arévalo on charges of “involuntary homicide.”

This is an ordinary crime and consists of attributing individual criminal responsibility for harm that was greater than the perpetrator had planned to cause the victim.¹³ That is to say, it captures the assumption that a person wants to cause “some kind of harm” to the victim, but that they unintentionally cause greater harm, in this case, death.

Although it sets out the category of offence, the indictment presented at arraignment does mention the specific charge, nor does the charge sheet contain a description of the conduct of these officials or the actions that they carried out that led to their being charged with the crime of “involuntary homicide”. Thus, the statements of the two officials only narrate how the alleged detention was carried out, but the action that caused harm to (and the subsequent death of) Rafael Acosta Arévalo is not recorded.

¹¹ Among others: www.oas.org/en/iachr/media_center/PReleases/2019/167.asp and www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24770

¹² BBC News Mundo, ‘Rafael Acosta Arévalo: Prosecution calls for the arrest of two officers for the death of captain accused of conspiring against Maduro’, 1 July 2019, at: www.bbc.com/mundo/noticias-america-latina-48834750 [Spanish only].

¹³ Article 410 of the Venezuelan Criminal Code.

According to the criminal investigation case file, the officials who detained Acosta Arévalo apprehended him on 26 June (rather than 21 June, the day his disappearance was reported). According to the accused's account – supported by two “protected” witnesses – Rafael Acosta Arévalo fell down a steep slope, resulting in serious injuries that, although they did not prevent him resisting arrest, two days later would cause his death. It is worth noting that the report does not indicate that the conduct of the officials was linked to the fall described. In fact, the actions of the officers are not questioned at any point.

Evidently, the omission of this logical link between the death of Acosta Arévalo and the conduct of DGCIM officials suggests the absence of a genuine desire to clarify the circumstances of his death.

In addition, in the criminal offence of involuntary homicide the perpetrator intends to cause some harm and, in carrying out the action, the consequences for the victim were greater than those desired. However, in this investigation the file does not contain any explanation as to what the initial harm was that the officials intended to cause, nor why and how two officials wanting to cause harm to a person in their custody could be justified in any way. In other words: the criminal case file does not reveal what the nature of “minor” harm that the agents intended to cause was that would actually end up causing the death of a detainee, nor what could have legitimized it.

In addition, during questioning, one of the officials involved in the case emphasizes that he did not participate in the transfer of Acosta Arévalo to the Military Court. However, neither the Prosecutor's Office nor the judge questioned him about what conduct would have linked him to the death of Acosta Arévalo.

From its analysis of the criminal case file, Amnesty International concludes that the criminal offence used in the investigation and punishment of these officers is not consistent with the account of the events and that there is no logical link that enables the conduct that is being punished to be identified. This failure to substantiate the criminal investigation suggests – at the very least – that the people who were prosecuted for the death of Acosta Arévalo were indicted, *ex professo*, for a less serious criminal offence, while criminal responsibility for torture – a crime under international law – may be being concealed by the authorities.

As a result, impunity prevails for the torture and subsequent death of Rafael Acosta Arévalo which should be investigated, prosecuted and punished not as an ordinary crime, such as involuntary homicide, but as a crime under international law that entails legal consequences set out in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Venezuela is a state party.



6. THE ELEPHANT IN THE ROOM: THE TORTURE OF ACOSTA ARÉVALO

As already explained, the section of the criminal case file to which Amnesty International had access does not contain the arrest warrant issued on 21 June by a military court (No. TM3C-OA-No. 036/19). Although Amnesty International was able to access the police report of the arrest (No. 431/2019 of 26 June) issued by DGCIM officials, this was incomplete, in particular omitting information about the circumstances of Rafael Acosta Arévalo's detention and what happened afterwards (where he was transferred to, his state of health, etc).

The file contains a report whose reference number is practically identical to that of the police report of the detention, but this time inserting a number one in its numbering, that is, Report No. 431/1/2019 of 28 June. In addition to the questions raised by the numbering of the report, which would suggest that it was added afterwards, it is important to compare its content with the testimony given by one of the defendants at his arraignment hearing.

In report No. 431/1/2019, the DGCIM officials who detained Acosta Arévalo describe making two transfers. The first, to the Carlos Arvelo Military Hospital, for a medical check-up, and the second - after Acosta Arévalo was discharged by the outpatients department - at 13:15 on 28 June, when Acosta Arévalo was transferred to the Military Judicial Circuit Court building in Fort Tiuna, Caracas. In contrast, at the arraignment hearing, one of the defendants vehemently affirms that he was not on duty the day of the transfer to the Military Judicial Circuit building and implies that the alleged transfer for a medical examination at the Carlos Arvelo Military Hospital occurred on the day of the detention, thereby refuting the content of Report No. 431/1/2019.

*de la orden de Contrainteligencia de que ese ciudadano se encontraba en la zona del Centro Comercial Buenaventura, empezamos a hacer un recorrido como a las 8 y 30, lo logramos ver descendimos del vehículo él salió huyendo, corriendo y se cayó, le pusimos unos tirras, él siguió forcejeando yo me quede ahí con el mi compañero fue a buscar los testigos cuando él se va el oficial de la armada siguió forcejeando conmigo prácticamente estábamos peleando; llega mi compañero con los testigos me ayudo lo montamos en el vehículo por el camino también intento forcejear, lo llevamos a la sede dijo que estaba un poco cansado pidió agua después dijo que si sentía mal, lo llevamos al Hospital Militar nos dijeron que eran unos golpes y preguntamos que si era grave y dijeron que no que lo tuviéramos en un estado que pudiera descansar, el día que se dio la presentación el día 28 y yo no me encontraba en el día de la audiencia en realidad ese día yo no estaba, él se descompensó y llamaron a unos funcionarios y ahí se traslado al hospital militar del fuerte, en el hospitalito y falleció en hospital, cabe destacar que mi intención nunca fue lastimar a ese ciudadano hacer su aprehensión y en el momento que lo aprehendimos yo estaba alterado y se presume que era un terrorista y mi compañero es especial en eso y dice que era un explosivo y bueno salió hasta en la televisión que era un delincuente de alto calibre. Es todo". **SEGUIDAMENTE EL MINISTERIO PUBLICO PASA A INTERROGAR AL***

Record of arraignment hearing of the detainees, Case No. 36 C-19.464-19, Thirty-sixth State Court of First Instance for the Metropolitan Area of Caracas, 1 July 2019. Description of Rafael Acosta Arévalo's attempt to evade arrest, his fall and the injuries he sustained, after which he was taken straight to the Military Hospital and then to court, all on 28 June 2020.



Although the case file includes a medical report issued by the Carlos Arvelo Hospital dated 28 June 2019 in which it is stated that Rafael Acosta Arévalo had multiple injuries and was experiencing respiratory distress, Report No. 431/1/2019 states that the doctors discharged him and he was transferred to the Military Judicial Circuit building for his arraignment hearing.

Acosta Arévalo was transferred to Court No. 2 at the Military Judicial Circuit court building of Forte Tiuna, in a wheelchair, possibly with a fractured foot and suffering from multiple and serious physical injuries.

Of particular importance is the medical report issued by the Vicente Salias Military Hospital, which records the multiple injuries he had at the time he was admitted to hospital, without vital signs. They included: ecchymotic bruising of the nasal passage, bruising with abrasions to the right shoulder, an ecchymotic bruise on the lower lip of the mouth, a bruise at the level of the right elbow, two linear abrasions to the right wrist, an abrasion and burn to the right wrist and multiple abrasions to the right elbow.¹⁴

CONCLUSIONES

FIRMA DEL MEDICO: Muneca izquierda en sustrato
ESPECIALIDAD: Excarcación múltiple en grado bilateral y
C.I. Nº: Se evidencia hemorragia de zona x i g e
Injuria: Se evidencia hemorragia de zona x i g e

Acta de audiencia de presentación de detenidos, Causa N° 36 C-19.464-19. Juzgado Trigésimo Sexto de primera instancia estatal en funciones de control del Área Metropolitana de Caracas, 1 de julio de 2019.

¹⁴ This medical report is incomplete in the criminal case file on the death of Rafael Acosta Arévalo to which Amnesty International had access.

In addition, examination of Acosta Arévalo's body carried out by the CICPC lists most of the bodily injuries, such as abrasions, haematomas and burns in at least 50 different places on the body.

1,78 mts, (Ver Gráficas 01, 02, 03 y 04). Seguidamente se procede a practicarle un **EXAMEN EXTERNO** con la finalidad de dejar constancia de las posibles heridas, lesiones y características individualizantes, que pueda presentar, observando lo siguiente: 1.-) escoriaciones en la región nasal (Ver gráfica 05 y 06); hematoma en la región lateral derecha del cuello, (Ver gráfica 07 y 08); escoriaciones en la región acromial del brazo izquierdo (Ver gráfica 09 y 10); escoriaciones en la región acromial y deltoidea del brazo derecho (Ver gráfica 11); escoriaciones en la región del borde externo brazo izquierdo (Ver gráfica 12); escoriaciones con hematoma en la región pectoral izquierda (Ver gráfica 13 y 14); escoriaciones en la región infra pectoral e hipocondria izquierda (Ver gráfica 15); escoriaciones en la región posterior del brazo derecho (Ver gráfica 16); escoriaciones en la región posterior del antebrazo derecho (Ver gráfica 17); escoriaciones en la región posterior del brazo y región olecraneana del codo ambas del brazo izquierdo (Ver gráfica 18); escoriaciones en la región interna del antebrazo izquierdo (Ver gráfica 19); hematoma y escoriación en la región interna del brazo y antebrazo izquierdo (Ver gráfica 20); escoriaciones en la región dorsal de la mano izquierda (Ver gráfica 21); hematoma en la región hipocondria derecha (Ver gráfica 22 y 23); escoriaciones en la región externa del antebrazo derecho (Ver gráfica 24); escoriaciones en la región anterior del antebrazo derecho (Ver gráfica 25); escoriaciones en la región dorsal del dedo auricular de la mano derecha (Ver gráfica 26); escoriaciones en la región de la cadera lado izquierdo (Ver gráfica 27); escoriaciones en la región del flanco izquierdo (Ver gráfica 28); hematoma en la región externa del muslo izquierdo (Ver gráfica 29); hematoma en la región anterior del muslo izquierdo (Ver gráfica 30); hematoma en la región interna del muslo izquierdo (Ver gráfica 31); hematoma en la región interna del muslo derecho (Ver gráfica 32); escoriaciones en la región rotular, anterior de la rodilla y externa de la pierna izquierda (Ver gráfica 33); escoriaciones en la región rotular, anterior de la rodilla y externa de la pierna derecha (Ver gráfica 34); hematoma en la región dorsal del pie derecho

(Ver gráfica 35 y 36); escoriaciones y hematoma en la región externa de la pierna izquierda (Ver gráfica 37 y 38); escoriación en la región anterior de la pierna izquierda (Ver gráfica 39); Posteriormente se procede a mover a dicho cadáver en posición cubito ventral (Ver gráfica 40); donde se aprecia lo siguiente: escoriaciones en la región supraescapular derecha (Ver gráfica 41); escoriaciones en la región escapular derecha (Ver gráfica 42); escoriaciones en la región interescapular media (Ver gráfica 43); escoriación en la región olecraneana del codo derecho (Ver gráfica 44); escoriaciones y hematomas que comprenden las regiones glútea, posterior del muslo y poplíteo de la pierna derecha (Ver gráfica 45); hematoma en las región poplíteo de la pierna izquierda (Ver gráfica 46); hematoma y escoriación en las región poplíteo de la pierna derecha (Ver gráfica 47); hematoma en las región poplíteo y región posterior del muslo de la pierna izquierda derecha (Ver gráfica 48); escoriación en la región gemelar de la pierna derecha (Ver gráfica 49); escoriación lineal y quemadura en la región dorsal y planta del pie derecho (Ver gráfica 50); Posteriormente se procede a verificar la **IDENTIDAD DEL CADÁVER**, quedando este registrado

Technical inspection of the Directorate of Homicides of the Scientific, Criminal and Forensic Investigation Unit (CICPC) of 29 June 2019, listing at least 50 injuries on Rafael Acosta Arévalo's body.

Despite this, the military judge before whom Acosta Arévalo appeared for his arraignment hearing did not order an investigation into his injuries. The criminal case file on his death does not mention the word torture once in the more than 500 pages that Amnesty International had access to and the hypothesis according to which these injuries were the result of a fall at the time of his arrest is, at the very least, improbable.



7. EXHAUSTING OF ALL LINES OF INQUIRY

The torture and subsequent death of Rafael Acosta Arévalo has been treated by the Venezuelan justice system as an ordinary and isolated crime, ascribing involuntary responsibility – that is to say with diminished intention – to two DGCIM officials, whose stories and testimonies the available evidence calls into question.

However, the Prosecutor’s Office did not propose in any part of its investigation to exhaust the line of inquiry into the possible torture of the victim by DGCIM officials. The military judge leading the investigation into Rafael Acosta Arévalo, and in front of whom he died, did not order ex officio that an investigation be opened immediately, despite witnessing the physical deterioration of the victim. Similarly, the civilian judge in charge of the case admitted and confirmed the classification of this as an ordinary crime and did not order an investigation into *primaefacia* evidence of torture of the detainee.¹⁵

The jurisprudence of the Inter-American Court of Human Rights states:

“That in order to comply with the duty to investigate cases such as this, it is not sufficient to have knowledge of the crime scene and material circumstances of the crime; rather it is essential to analyze the information concerning the power structures that permitted, planned and executed it, both intellectually and directly, and concerning the individuals or groups that were interested in or would benefit from the crime (beneficiaries). This, in turn, would lead to theories and lines of inquiry and to an examination of the crime scene, witnesses and other probative elements. Hence, in cases such as this, it is not a question of examining the crime in isolation, but rather of inserting it in a context that will provide the necessary elements to understand its operational structure.”¹⁶

In particular, there are lines of inquiry that have not been explored and that, in the case of a death in custody of someone bearing evident and serious physical injuries, should as a minimum be exhausted under national jurisdiction. Thus, those officials cited in the arrest warrants, transfer orders and in other proceedings carried out by the DGCIM, as well as those identifiable in the hierarchical chain of command of the two officials who were tried, should be investigated regarding these events, if possible before a national court or, failing that, under a competent international criminal jurisdiction, and - if their involvement and responsibility is proven – punished.

It should be borne in mind that on 26 June 2019, Jorge Rodríguez, the then Sectorial Vice President for Communications, Tourism and Culture in Nicolás Maduro’ government, held a press conference in which he confirmed that retired Lieutenant Commander Rafael Acosta Arévalo [had been detained and was in the custody of the authorities](#), linking him to a plan to attack various places in Caracas.

¹⁵ Article 8 of the Inter-American Convention to Prevent and Punish Torture states: “Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.”

¹⁶ Inter-American Court of Human Rights, Case of Uzcátegui et al. v. Venezuela, Merits and Reparations, Judgment of 3 September 2012, Series C No. 249, para. 222.

Hours later, the President of the National Constituent Assembly, Diosdado Cabello, in his weekly programme on national television, “Con el Mazo Dando”, confirmed the arrest of Acosta Arévalo and said that [he was “being kept safe” \(“a buen resguardo”\)](#). However, Rafael Acosta Arévalo’s disappearance had been reported on 21 June.

Likewise, in his statement, one of the officials charged in the case stated during his arraignment hearing that at the time of the arrest he was upset because Rafael Acosta Arévalo was a “terrorist” and that he had seen on television that he was a “high calibre criminal” (“delincuente de alto calibre”).

*hacer su aprehensión y en el momento que lo aprehendimos yo estaba alterado y se presume que era un terrorista y mi compañero es especial en eso y dice que era un explosivo y bueno salió hasta en la televisión que era un delincuente de alto calibre. Es todo”. **SEGUIDAMENTE EL MINISTERIO PÚBLICO BASA A INTERROGAR***

Record of arraignment hearing for the detainees, Case No. 36 C-19.464-19. Thirty-sixth State Court of First Instance for the Metropolitan Area of Caracas, 1 July 2019. The DGCIM official explains that he was upset because he thought he was dealing with someone described on television as a serious criminal, a “terrorist”.

These senior members of Nicolás Maduro’s government could provide valuable information about the investigations related to the capture and custody of Rafael Acosta Arévalo, taking into account the information they had and the public statements that both made.



8. THE ONLY POSSIBLE WAY TO OBTAIN TRUTH AND JUSTICE: THE INTERNATIONAL ROUTE

Following the conviction of two officials for involuntary homicide, the attorneys representing the victims appealed the conviction as insufficient. This appeal had been pending for more than six months at the time this document was being written.

After analysing the evidence described, Amnesty International believes that there are sufficient grounds to open a new criminal investigation into individual criminal responsibility for the arbitrary detention, enforced disappearance, torture and death of Rafael Acosta Arévalo. That is, taking into account factors indicating that these acts of torture could reasonably have led to his death.

Finally, Amnesty International notes that the practice of arbitrary detention, with people often being held incommunicado or in solitary confinement in clandestine or unofficial detention centres; torture and other ill-treatment; and enforced disappearance, form part of a what appears to be a generalized and systematic pattern in Venezuela.

In this case, the aims of justice can hardly be considered to have been satisfied, when two people have been convicted as material authors of the act, without investigations been pursued about the possible intellectual authors of the crime or those who consented or acquiesced to it. Moreover, the two officials who were accused faced a lesser criminal charge that does not seem to reflect the true gravity of what happened.¹⁷ The flawed and lax investigation by the Prosecutor's Office, shielded by a superficial judicial process that does not reveal the truth about the facts of the case, gives credence to suspicion of impunity.

For this reason, Amnesty International considers that this case – as well as other more recent ones, where people in the custody of state authorities are subjected to torture and other cruel, inhuman or degrading treatment, or to enforced disappearance or death – could be the subject of investigation by bodies tasked with ensuring scrutiny and justice at the international level. Such bodies include the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, United Nations bodies and possibly the International Criminal Court. Likewise, Amnesty International recalls that all states are empowered and, in some specific cases, obliged to exercise universal jurisdiction over people suspected of individual criminal responsibility for crimes under international law, such as torture or enforced disappearance.

In particular, the mandate currently held by the Fact-Finding Mission on Venezuela, established by the Human Rights Council in September 2019, is precisely one of the mechanisms that can clarify Rafael Acosta Arévalo's torture and death. Amnesty International has already provided detailed information on the case so that the Fact-Finding Mission can exhaust all lines of inquiry, especially that relating to the responsibility of superiors and other officials in this case.

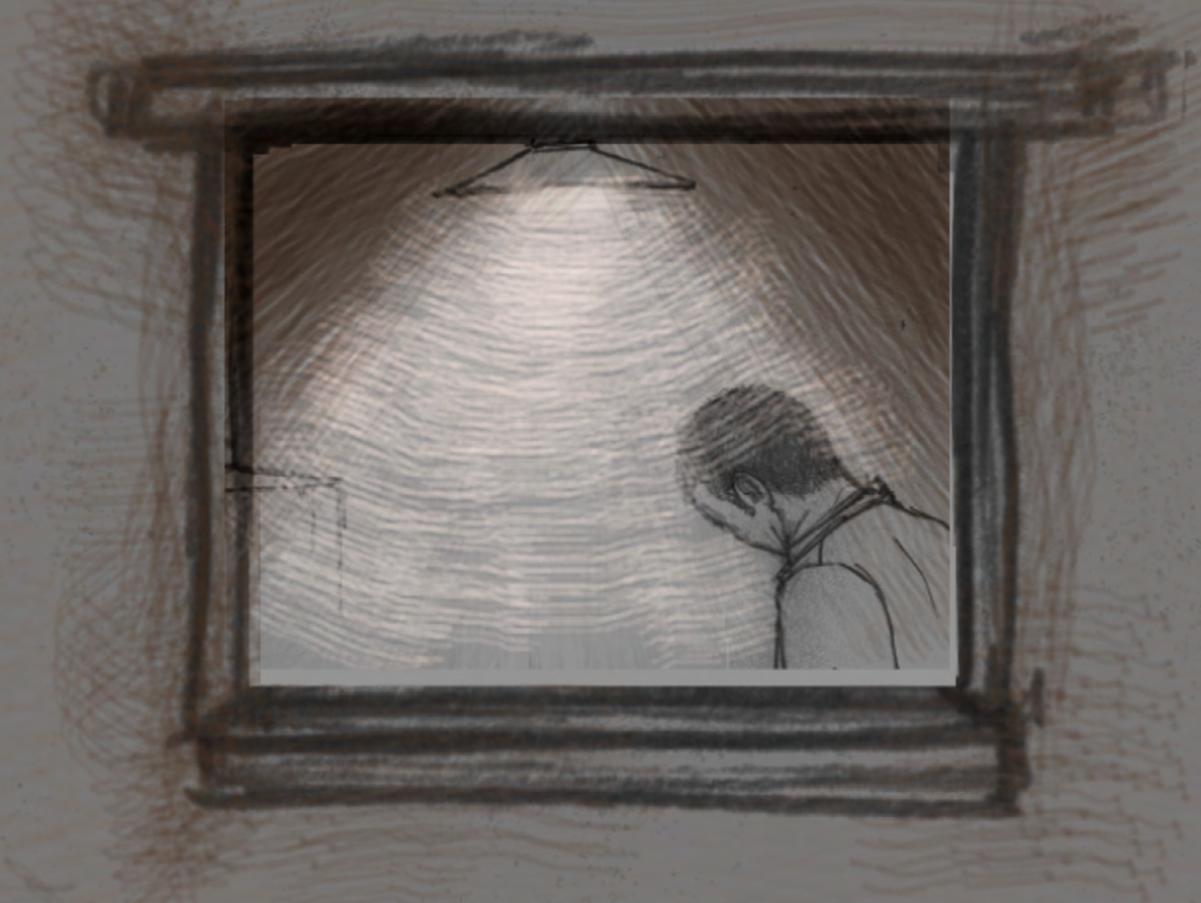
¹⁷ Involuntary homicide (homicidio preterintencional concausal) carries a maximum penalty of 10 years in prison, while homicide carries a maximum penalty of 18 years in prison and torture up to 23 years' imprisonment.

This information and the report that the Fact-Finding Mission will eventually issue will serve as a first step towards obtaining justice, truth, and reparation for the victims and Venezuelan society. These reports, and the other information available on cases of torture and violations of the right to life of people in the custody of state agents, must be incorporated into the preliminary examination being undertaken by the Prosecutor's Office of the International Criminal Court.¹⁸

In conclusion, today more than ever, for this and many other crimes under international law that remain unpunished in Venezuela, it is urgent that the international community does not turn its back on the victims. It is essential that the mandate of the Fact-Finding Mission in Venezuela be renewed and strengthened, giving it the power to collect and preserve evidence for possible criminal investigations that may take place in the future before judicial bodies in Venezuela, in third countries in the exercise of universal jurisdiction or before international criminal courts.

¹⁸ At the time this report was written, two preliminary examination files on Venezuela were before the Office of the Prosecutor of the International Criminal Court. Amnesty International is referring to the preliminary examination known as "Venezuela I".





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