

VENEZUELA

WEAKENED HUMAN RIGHTS COMMITMENTS

*Amnesty International
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**AMNESTY
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EXECUTIVE SUMMARY

This submission was prepared for the Universal Periodic Review (UPR) of the Bolivarian Republic of Venezuela in November 2016. In it, Amnesty International evaluates the implementation of recommendations made in the previous UPR and the situation of human rights on the ground, and makes recommendations to the government of Venezuela on how to address some of the major human rights challenges with which it is faced.

Human rights defenders continue to be subject to intimidation and harassment, including by high-ranking authorities. People deprived of their liberty are held in poor conditions. Women and girl victims of gender-based violence experience difficulties in accessing justice.

Torture and other ill-treatment in pre-trial detention persist, as does excessive use of force by the security forces during protests, and those suspected of criminal responsibility are not brought to justice.

Amnesty International regrets Venezuela's withdrawal of recognition of the jurisdiction of the Inter-American Court of Human Rights, as well as the continued interference by the government in the justice system

FOLLOW UP TO THE PREVIOUS REVIEW

Of the 148 recommendations made by other Member States during its first UPR in 2011, Venezuela accepted 97 recommendations, stating that some of these had already been implemented or were in the process of being implemented.¹

However, little progress has been made with respect to implementing these recommendations. While Venezuela ratified the Convention on the Rights of Persons with Disabilities in September 2013,² progress on most of the accepted recommendations has been disappointing, including as regards the situation of human rights defenders, persons deprived of their liberty and actions to eradicate violence against women.

HUMAN RIGHTS DEFENDERS

Despite accepting three recommendations to protect the rights of human rights defenders,³ the authorities have yet to take action to guarantee that human rights defenders can carry out their work without fear of reprisals. Human rights defenders continue to be the target of intimidation and harassment, including by authorities at the highest level.

¹ Human Rights Council *Report of the Working Group on the Universal Periodic Report - Venezuela*, A/HRC/19/12, 7 December 2011, paragraphs 93-96.

² A/HRC/19/12, recommendations 93.1 (Algeria), 93.2 (Slovenia), 93.3 (Australia), 93.4 (Brazil), 93.6 (Thailand), 95.2 (Uruguay).

³ A/HRC/19/12, recommendations 93.16 (Canada), 93.17 (Brazil) and 94.36 (Uruguay).

SITUATION OF PEOPLE DEPRIVED OF THEIR LIBERTY

Despite some positive measures, such as establishing a Ministry specifically in charge of prisons in 2011, the situation of people deprived of their liberty remains critical. Of particular concern are the large numbers of persons detained in prolonged pre-trial detention; overcrowding and poor sanitation in prisons; lack of access to food, drinking water and medical care; high levels of violence among inmates, in some cases resulting in deaths; and reports of excessive use of force when the authorities have intervened to regain control of the detention centres.⁴

In addition, the increase in the number of people held in police detention is a growing concern. Some of them have been deprived of their liberty for months, or even years, in facilities that were not designed to hold people for more than a couple of days.

WOMEN'S RIGHTS

Despite greater legal protection, women and girl victims of gender-based violence continue to face major obstacles in accessing protection and justice.⁵ The implementation of the 2007 Organic Law on the Right of Women to a Life Free of Violence has been slow and insufficient resources have been allocated to ensure that victims of gender-based violence have access to justice and other effective protection measures, such as establishing refuges for women in all states.⁶ Access to contraceptives, including emergency contraception, is limited and generally available only to those who can afford to pay for it. Abortion continues to be criminalized in all cases except when the life of the woman or girl is at risk. Maternal mortality has increased and is higher than the regional average.⁷

REJECTED RECOMMENDATIONS

Venezuela rejected 51 recommendation made by Member States, including recommendations to guarantee the independence of the judiciary, to end impunity, as well as recommendations to facilitate international human rights monitoring and to protect the rights to freedom of expression and assembly.⁸

In a positive development, a National Human Rights Plan was approved in March 2016, despite the rejection of a recommendation for this in the previous review.⁹

⁴ A/HRC/19/12, recommendations 93.7 (Russian Federation), 93.10 (Thailand), 93.11 (Malaysia), 93.12 (Norway), 93.13 (Switzerland), 93.14 (United Kingdom), 93.15 (Czech Republic), 94.31 (Cuba), 94.32 (Belgium), 94.33 (Holy See), 94.35 (Algeria).

⁵ A/HRC/19/12, recommendation 94.21 (Indonesia).

⁶ A/HRC/19/12, recommendation 94.25 (Sri Lanka).

⁷ A/HRC/19/12, recommendation 94.50 (Malaysia).

⁸ A/HRC/19/12, paragraphs 95 and 96.

⁹ A/HRC/19/12, recommendation 95.7 (Brazil).

THE NATIONAL HUMAN RIGHTS FRAMEWORK

PREVENTION OF TORTURE AND OTHER ILL-TREATMENT

On 22 July 2013, the Special Law to Prevent and Punish Torture and Other Cruel, Inhuman or Degrading Treatment came into force creating an institutional framework for preventing, reporting and punishing such crimes. However, its definition of torture does not comply with that contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Law does not codify as complicity in the crime of torture the acts of public official who instigate or consent to acts of torture by others.

Torture and other ill-treatment remain a concern in Venezuela. For example, in March 2015 Emilio Baduel Cafarelli and Alexander Tirado Lara were sentenced to eight years' imprisonment on charges of incitement, intimidation, using explosives and conspiracy to commit a crime during the 2014 protests, but with no evidence to substantiate the charges. Moreover, the judge disregarded forensic evidence showing that neither of the two men had handled any explosives or inflammable substances. Both claim that they were ill-treated while in pre-trial detention and to date no one has been brought to justice for the ill-treatment they suffered.

Venezuela has yet to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and requests to visit Venezuela by the UN Special Rapporteur on torture have not been accepted.

NATIONAL HUMAN RIGHTS PLAN

Following the grave human rights abuses that took place during the pro- and anti-government demonstrations in 2014, the authorities committed to develop a national human rights plan. In March 2016, the National Human Rights Plan 2016-2019 was approved. The Plan includes proposals to reform the judiciary, the prison system and the security forces and to strengthen the Ombudsperson's Office, as well as to mainstream human rights education. However, the Plan does not include indicators to monitor progress with regard to its implementation and no budget has been allocated.

INTERNATIONAL HUMAN RIGHTS MONITORING

Venezuela's decision in 2012 to denounce the American Convention on Human Rights and to withdraw recognition of the jurisdiction of the Inter-American Court of Human Rights is still in place. This is an affront to victims of human rights violations and their relatives and presents an additional barrier to their right to truth, justice and reparation. For example, justice has yet to be achieved for the killings of 10 members of the Barrios family in Aragua State in 1998 in circumstances that suggested the involvement of the police. The killings took place despite the protection measures granted to the family in 2004 by the Inter-American Commission on Human Rights and more recently by the Inter-American Court of Human Rights.¹⁰

¹⁰ Amnesty International, *Venezuela: Further information: Police threaten and intimidate Barrios family* (Index: AMR 53/019/2014).

Visit to Venezuela requested by the Special Procedures of the UN Human Rights Council, including the UN Special Rapporteurs on the situation of human rights defenders and on freedom of expression, have yet to be agreed.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

HUMAN RIGHTS DEFENDERS

Human rights defenders continue to be harassed and intimidated. Of particular concern are public statements by high-ranking authorities against defenders, especially after they denounced human rights violations, either locally or before international and regional human rights bodies.

A few weeks after Marino Alvarado Betancourt of the Venezuelan Programme for Education and Action on Human Rights (*Provea*) was publicly accused by President Nicolas Maduro of being part of a “right-wing organization”, a “police informant” and of receiving funds from USA, he and his nine-year-old son were attacked and robbed by three armed men in their home,¹¹ amid serious concerns that the assault was linked to the accusations against him by the authorities.

IMPUNITY FOR HUMAN RIGHTS VIOLATIONS

Impunity for violations of human rights is widespread in Venezuela. According to the Attorney General’s own figures, in the majority of cases of human rights violations those suspected of criminal responsibility are not brought to justice. Official statistics covering the 2009-2012 period show that only 3% of formal complaints of human rights violations result in the suspects being charged and brought before a judge.¹²

However, since 2012, the Attorney General’s Office has not provided up-to-date statistics. It is therefore not known if progress has been made in recent years in the fight against impunity. According to local human rights organizations, “of the 8,813 new cases of human rights violations presented in 2012 to the Public Prosecutor’s Office, 97% were dismissed or archived, while charges were brought in the

¹¹ Amnesty International, *Venezuela: Armed assault against human rights defender must be thoroughly investigated*, News story, 2 October 2015.

¹² See Public Prosecution Service of the Bolivarian Republic of Venezuela: Annual Report 2009, Area Operations Section, p. 21, available at http://www.mp.gob.ve/c/document_library/get_file?p_l_id=48590&folderId=48616&name=D_LFE-1403.pdf; Public Prosecution Service of the Bolivarian Republic of Venezuela: Annual Report 2010, p. 20, available at http://www.mp.gob.ve/c/document_library/get_file?uuid=cd583d88-cf06-4b6a-830d-d540a56772ca&groupId=10136 and Public Prosecution Service of the Bolivarian Republic of Venezuela: Annual Report 2011, p. 41 available at http://www.mp.gob.ve/c/document_library/get_file?uuid=c9efb1a0-93db-4320-8c9f-be4d1a49397b&groupId=10136

remaining 3% of cases".¹³

Progress continues to be slow in bringing to justice those suspected of criminal responsibility for the killing of 43 people, including security force personnel, and the ill-treatment of hundreds of protesters during protests in 2014. The majority of the victims and their relatives are still awaiting truth, justice and reparation.¹⁴

EXCESSIVE USE OF FORCE BY THE SECURITY FORCES

Excessive use of force by the security forces during protests continues to be reported, including killings of protestors by fire arms. For example, on 24 February 2015, 14-year-old Kluiverth Roa Núñez was killed during a protest in the vicinity of the Táchira Catholic University in San Cristóbal, Táchira State, amid reports of excessive use of force by the security forces.¹⁵

In January 2015, the Ministry of Defence issued Resolution 008610 allowing all sections of the armed forces to be deployed in public order operations. The Resolution also authorizes the use of firearms during policing of public protests, but without clearly stating that excessive use of force in such operations will not be tolerated.

In response to high crime rates in Venezuela, *Operation Liberation and Protection of the People* was implemented in July 2015. According to the Ministry of Justice, a month after the Operation commenced, 52 civilians had died in armed clashes with the security forces.¹⁶ The high number of civilian casualties, in contrast to the absence of any police injuries or fatalities, suggests that the security forces may have used excessive force or carried out extrajudicial executions.

INDEPENDENCE OF THE JUDICIARY

The justice system is regularly subject to interference by the government, especially in cases involving people who have openly criticized the government or where the government believes that the individuals have acted in a way that is contrary to its interests.

This is the case for prisoners of conscience Leopoldo López, the leader of the *Voluntad Popular* opposition party, and Rosmit Mantilla, a member of *Voluntad Popular* and an activist for the rights of the gay, lesbian, bisexual, transsexual or intersex (LGBTI) community:

¹³ See 2012 Annual Report of the Inter-American Commission of Human Rights, para. 378, available at <http://www.oas.org/en/iachr/docs/annual/2012/TOC.asp>.

¹⁴ Amnesty International, *Venezuela; Two years after the protests, the victims are still waiting for justice* (Index: AMR 53/3429/2016); Amnesty International, *Venezuela: The faces of Impunity: a year after the protests, victims still await Justice* (Index: AMR 53/1239/2015); and Amnesty International, *Venezuela: Human rights at risk amid protests* (Index: AMR 53/009/ 2014).

¹⁵ Amnesty International, *Venezuela: Boy killed during anti-government protest: Kluiverth Roa Núñez* (Index: AMR 53/1071/2015).

¹⁶ El Universal, *52 delincuentes abatidos y 931 detenidos destacan en balance oficial*, See <http://www.eluniversal.com/nacional-y-politica/150813/52-delincuentes-abatidos-y-931-detenidos-destacan-en-balance-oficial-d>

- Leopoldo López was sentenced to over 13 years' imprisonment in September 2015 for conspiracy to commit a crime, incitement, arson and causing damage to public property during the 2014 protests. However, the prosecution did not present any credible evidence to support the charges. Moreover, calls by the authorities, including by the President himself, to imprison Leopoldo López, seriously undermined his right to a fair trial.
- Rosmit Mantilla has been in pre-trial detention since May 2014 on charges of incitement, arson and conspiracy to commit a crime during the 2014 protests; however, there is no credible evidence against him.

According to the Inter-American Commission on Human Rights, most judges are appointed on a temporary basis, leaving them open to political pressure.¹⁷

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The current economic crisis in Venezuela, the high inflation rate and the lack of basic commodities have had an impact on people's ability to enjoy their economic, social and cultural rights. In June 2015, the UN Committee on Economic, Social and Cultural Rights expressed concern over shortages of housing, food and basic necessities, as well as medicines and surgical and medical equipment, and called for measures to be implemented as part of its Concluding Observations.¹⁸

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Venezuela to:

Human rights defenders

- Explicitly and publicly recognize the legitimacy of the work of human rights defenders, including by making public statements recognizing their contribution to the promotion and protection of human rights and the rule of law;
- Halt ongoing attacks and smear campaigns against human rights defenders by high ranking officials.

Impunity for human rights violations

- Undertake independent, thorough and prompt investigations into all cases of human rights violations, bring those suspected of criminal responsibility to justice, and ensure that those convicted receive a punishment appropriate to the seriousness of the crime;

¹⁷ See Inter-American Commission on Human Rights, Annual report 2012, Chapter on Venezuela, para 476, available at <http://www.oas.org/en/iachr/docs/annual/2012/TOC.asp> and Annual report 2014, Chapter on Venezuela, paras 541-54, available at <http://www.oas.org/en/iachr/docs/annual/2014/docs-en/Annual2014-chap4Venezuela.pdf>

¹⁸ UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the third periodic report of the Bolivarian Republic of Venezuela*, E/C.12/NEN/CO/3, 7 July 2015.

- Ensure that those who suffered violations of their human rights and who consider that they did not receive justice in the national courts, have access, without risk of reprisals, to the Inter-American human rights system as well as to UN human rights mechanisms;
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

Independence of judiciary

- Guarantee the independence and impartiality of the judiciary, in accordance with international human rights law and standards;
- Strengthen and give the necessary resources to the Public Prosecutor's Office and the judiciary to enable them to carry out their work effectively and without interference from other branches of government;
- End the misuse of the justice system to harass those who are critical of government policies and drop any politically motivated charges against them;
- Release immediately and unconditionally prisoners of conscience Leopoldo Lopez and Rosmit Mantilla.

Prison conditions

- Ensure that prisons and detention centres meet international human rights standards, including the UN Standard Minimum Rules for the Treatment of Prisoners;
- Ensure that the wellbeing, security and physical integrity of those deprived of their liberty are protected and monitored by prison staff, including by allocating sufficient human and other resources to prisons to ensure these duties are fulfilled;
- Implement the provisional measures issued by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights to protect the rights to life and security of inmates in several prisons in the country.

Violence against women

- Ensure that the Organic Law on the Right of Women to a Life Free of Violence is effectively implemented and the necessary resources allocated, including to establish women's refuges in every state;
- Promptly issue the regulatory framework for the Organic Law on the Right of Women to a Life Free of Violence.

Torture and other ill-treatment

- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Ensure the definition of torture and other ill-treatment in the Special Law to Prevent and Punish Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is in accordance with the definition in Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Make a punishable offence the acts of public officials who instigate or consent to acts of torture by others, and disseminate widely the content of

the Special Law and the National Plan for the Prevention of Torture, including to civil society, Public Prosecution Service officials, law enforcement officials, and officials responsible for the custody of people deprived of their liberty;

- Ensure that the National Plan for the Prevention of Torture includes a timetable for its full implementation and indicators to monitor and evaluate its impact, and allocate sufficient resources for its prompt implementation;
- Promptly recognize the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of victims or other state parties to the International Convention for the Protection of All Persons from Enforced Disappearance.

National Human Rights Plan

- Develop and make public clear indicators to monitor progress in the implementation of the National Human Rights Plan and allocate the necessary resources;
- Ensure that the implementation of the National Human Rights Plan involves the participation of a wide range of stakeholders, including civil society representatives.

International monitoring

- Extend a standing invitation to the Special Procedures of the UN Human Rights Council, and in particular agree to visits by the UN Special Rapporteurs on torture, on the situation of human rights defenders, on the promotion and protection of the right to freedom of opinion and expression, and on the rights to freedom of peaceful assembly and of association;
- Reverse the decision to denounce the American Convention on Human Rights and return to the jurisdiction of the Inter-American Court of Human Rights and comply with its rulings.

Police and security forces

- Ensure that the police and security forces comply fully and at all times with international standards, including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, when carrying out their duties, including when policing protests;
- Refrain from deploying the armed forces in public order operations and, if in exceptional circumstances this does occur, ensure that the armed forces act solely in support of and under the control of the civilian authorities and are subject to the same training, accountability mechanisms and sanctions as other sections of the security forces;
- Carry out independent, comprehensive and prompt investigations into allegations of extrajudicial executions, excessive use of force, arbitrary arrests and forced evictions in the context of *Operation Liberation and Protection of the People* and make public the result of such investigations.

Economic, social and cultural rights

- Ensure the full implementation of the recommendations by the UN Committee on Economic, Social and Cultural Rights, in particular in relation to shortages of housing, food and basic necessities, as well as medicines and surgical and medical equipment.