

## RENEWAL OF THE MANDATE OF THE INDEPENDENT INTERNATIONAL FACT-FINDING MISSION (FFM) ON VENEZUELA

March 2022

In 2019, the HRC adopted resolution [42/25](#), which established a fact-finding mission (FFM) on Venezuela, to investigate “extrajudicial killings, enforced disappearances, arbitrary detentions and torture and other cruel, inhuman or degrading treatment since 2014” with a view to “ensuring full accountability for perpetrators and justice for victims”.

In 2020, the FFM presented its [first report](#), in which it found there were sufficient grounds to believe that crimes against humanity had been committed in Venezuela, including “murder; imprisonment and other severe deprivations of physical liberty; torture; rape and other forms of sexual violence; enforced disappearance of persons (...) and other inhumane acts of a similar character.” The report concluded that “high-level authorities had knowledge of those crimes” and that “commanders and superiors knew or should have known about those crimes and (...) did not take measures to prevent or repress them.”

In 2020, the FFM’s mandate was extended for another 2 years ([45/20](#)).

In a [second report](#), presented in September 2021, the FFM documented a lack of judicial independence, impunity for human rights violations, and a justice system serving as a mechanism of repression instead of a guarantor of rights, emboldening state agents to continue perpetrating possible crimes against humanity.

The third report is due in September 2022, at which time the FFM’s mandate will need to be renewed.

Signatory civil society organizations consider it essential to renew the mandate of the FFM in full, given the impunity that still prevails in Venezuela and the persisting systematic human rights violations and abuses which require maximum international scrutiny. The FFM mechanism has advanced a search for truth, justice, and reparation for victims and survivors of human rights violations, and it has outlined the structural reforms needed to prevent further violations and abuses. At this time, the FFM remains the only independent UN monitoring body with the mandate to investigate systematic violations and abuses and ensure accountability for perpetrators. As such, the FFM also plays a crucial role in prevention of atrocity crimes.

Questions and answers about the continued need for the FFM mandate:

### 1. Why should the mandate be renewed?

As civil society organizations documenting human rights violations and assisting victims and survivors in Venezuela, we believe that **the problems that prompted the creation of the FFM remain**: structural impunity for human rights violations; a lack of domestic avenues for redress; and the government’s continued attempts to evade international scrutiny, notwithstanding its appearance of cooperating with those efforts.

The FFM was established to **unify efforts in the fight for justice for victims and to serve as a deterrent to further human rights violations and possible atrocity crimes**. Renewing its mandate would allow the FFM to continue gathering evidence of serious, ongoing human rights violations. It would be a further step towards establishing accountability for the terrible suffering of the Venezuelan people since 2014. It would also send a clear message to perpetrators that, sooner or later, they will have to answer for the crimes they are committing.

As long as justice cannot be obtained internally in Venezuela, due to obstacles carefully documented by the FFM in its [report on the lack of judicial independence](#), and as long as perpetrators, at all levels, continue to evade investigation and accountability, the FFM remains a unique and critical tool in laying the foundations for truth, justice, reparations, and protection for victims, survivors and their families, as well as the general population.

The FFM has documented hundreds of cases, identified patterns of crimes under international law, and established a list of people whose participation should be investigated by credible judicial authorities.

Current and former human rights violations remain to be documented on this matter. The human rights violations reported by the FFM are a reflection of how the human rights crisis persists in Venezuela.

It is worth noting that resolution 42/25, which created the first mandate, opened the door to the establishment of a commission of inquiry, in the event that the situation deteriorated, or Venezuela failed to cooperate. This prerogative must be maintained.

The FFM is also an essential tool in deterring the commission of new crimes under international law.

With presidential elections scheduled for 2024 and legislative and regional elections in 2025, Venezuela faces an electoral period which in the past has led to peaks in the government's policy of repression. In preparation for such increase in human rights violations, and in the hope of deterring them, the FFM can perform a crucial early warning role, monitoring and documenting patterns of government repression and any intensification of the crackdown on civic space. Such monitoring and reporting could mitigate the risk of a deterioration of the human rights situation and alert the international community if such deterioration takes place.

It is clear both that the next couple of years will be marked by key events in Venezuela and that the FFM's work has had impact so far. It has more work to do, however, and it will continue to be key to press for accountability in the country in the short and medium term.

## **2. What additional work could the FFM do?**

Based on the mandate already established, the FFM could deepen its investigation, (i) with an emphasis on various groups in situations of vulnerability, including women, children, and Indigenous peoples, and (ii) taking into consideration the specific conditions and circumstances of certain geographic regions heavily affected by violence. The FFM could further be mandated to raise early warnings of further deterioration of the human rights situation, in particular ahead of

the elections scheduled for 2024 and 2025. Similar HRC-investigative bodies, including for [Burundi](#), [South Sudan](#) and [Myanmar](#), have conducted similar assessments to provide early warning information about the recurrence of atrocity crimes.

**3. How does the work of the FFM relate to: (i) the Office of the United Nations High Commissioner for Human Rights (OHCHR); and (ii) the investigation before the International Criminal Court?**

**OHCHR**

The HRC gave the OHCHR the mandate to both report on human rights violations in Venezuela, and also to technically cooperate with Venezuelan authorities to improve the human rights situation in the field. On the other hand, the FFM was created with a view to “ensuring full accountability for perpetrators and justice for victims” of “extrajudicial killings, enforced disappearances, arbitrary detentions and torture and other cruel, inhuman or degrading treatment since 2014.”

The OHCHR signed a memorandum of understanding (MOU) with the government, based on the High Commissioner’s mandate for technical cooperation and monitoring of the situation of human rights in the country. The MOU apparently established an OHCHR team in Venezuela, which has reported on human rights violations and has been given access to certain detention centers. But the OHCHR team has been subject to [attacks and reprisals](#) from the government when it has denounced serious human rights situations.

There is, however, little transparency regarding the memorandum of understanding. Given the uncertainty about the term of their presence in the country, there is a risk that the invitation to stay in the country will be revoked, conditioning the OHCHR labour in the field, which could have an impact, in turn, on the real possibility of the team influencing structural improvements regarding issues such as impunity.

While the OHCHR can and should continue efforts to engage and provide technical assistance, in coordination with civil society organizations, the FFM's mandate is to document and publicly report on human rights violations and lack of accountability, with a view to ensuring that those responsible are eventually brought to justice and that victims have access to reparations. These two mandates complement each other since the OHCHR is not collecting and preserving evidence for future accountability processes. The FFM remains the only independent UN monitoring body on Venezuela with the mandate to investigate systematic violations and abuses and ensure accountability for perpetrators.

**International Criminal Court (ICC)**

The investigation by the International Criminal Court (ICC), [announced](#) by the ICC’s Office of the Prosecutor in November 2021, differs from and complements the mandate of the FFM in several ways.

The ICC is governed by the Rome Statute and its prosecutor's office investigates serious international crimes, including crimes against humanity. The FFM found sufficient evidence to conclude that crimes against humanity had been committed in Venezuela and indicated that the mission had collected evidence showing that "most of the violations and crimes...were committed in the framework of a generalized and systematic attack directed against a civilian population...pursuant to state policy." The FFM's evidence could be useful to the ICC prosecutor in the context of his investigation.

The ICC prosecutor is mandated to investigate individuals and the chain of command. FFM reports have identified commanders and superiors who knew or should have known of the abuses documented by the mission, and it has collected evidence of the individual responsibility of those implicated. While the Office of the Prosecutor of the ICC conducts its own investigations, the FFM's findings can serve the ICC in its investigations of individual criminal responsibility.

The ICC serves as a court of last resort, stepping in only when national courts lack the capacity or willingness to investigate and prosecute the most serious international crimes. The FFM's second report has shown the lack of independence and complicity in abuses of Venezuela's judicial system, which demonstrates Venezuela's lack of interest in investigating and prosecuting the atrocities. Continuing to monitor the levels of impunity in the country will be relevant to the ICC Prosecutor's evaluation of the principle of complementarity.

- a. While the ICC will focus on building concrete cases against specific individuals, the FFM will continue to document and make visible structural problems. Its mandate also embraces a broader range of human rights violations and abuses.
- b. Short-term impact: the opening of the investigation by the ICC Prosecutor does not guarantee that justice, truth and reparations will be forthcoming in the next few months, or even years, so other accountability and anti-impunity efforts are needed to complement the ICC investigation.
- c. Usefulness of the investigation: the evidence the FFM has gathered and its findings can serve as an input for the ICC's investigation.
- d. Different coverage: for the time being, the ICC investigation does not include events classified as extrajudicial executions, which fall within the mandate of the FFM and which are undoubtedly one of the most frequent and serious crimes under international law in Venezuela.

#### **4. The government of Venezuela is cooperating with international mechanisms such as the OHCHR and the ICC Prosecutor's Office: Does this not make the FFM unnecessary?**

Ahead of the establishment and renewal of the FFM, in 2019 and 2020 respectively, Venezuelan authorities undertook significant efforts to block UN investigations by signaling willingness to cooperate with the HRC and its mechanisms and procedures, including OHCHR and Special Procedures. A similar strategy of apparent -but not genuine- engagement is to be expected for September 2022. Previous commitments to genuinely cooperate with the wider UN human rights system aimed to avoid international scrutiny and have not resulted in tangible improvements of the human rights situation on the ground.

The Venezuelan government has attempted to appear cooperative and receptive of international scrutiny by allowing OHCHR representatives in Caracas. However, this cooperation cannot be considered genuine because it has not translated into the implementation of dozens of recommendations made by various UN human rights mechanisms. The recommendations of the OHCHR itself, for example, remain unimplemented, despite the technical cooperation that the team offers the government. On the contrary, the government limits cooperation while avoiding the scrutiny of international mandates such as that of the FFM, which aims to document the situation exhaustively, identifying and categorizing patterns of abuse, and offering concrete paths to accountability.

The alleged cooperation with the ICC Prosecutors' Office seeks to demonstrate that authorities have initiated criminal investigations domestically, under the principle of complementarity. To determine whether this principle is complied with, authorities would need to demonstrate a true willingness and capacity to conduct such investigations, which they have not done to date. Fair and independent investigations should include investigations of individuals and of behaviours subject to analysis by the ICC, including other more complex aspects such as the investigation of individual cases, the establishment of chain-of-command responsibilities and, possibly, the issuing of arrest warrants for Venezuelan perpetrators.

Reforms adopted by Venezuelan authorities in recent time do not reflect a genuine effort to reverse the serious damage to judicial independence—or to guarantee proper investigations of human rights violations. Previous FFM reports, as well as continuing documentation, are essential to monitor progress—or lack thereof—and provide recommendations for genuine and transparent reforms.

In any case, the possible cooperation of the Venezuelan government with the ICC Prosecutor's Office and the OHCHR is not incompatible with the work of the FFM. If the government truly intended to cooperate with international organizations to promote accountability, it would allow the FFM access to Venezuela; extend invitations to all special procedural bodies that have not been able to enter the country, despite repeated requests; and submit the reports it owes to various treaty bodies. Selective cooperation does not demonstrate a genuine commitment to addressing Venezuela's structural deficits.

#### **5. What relationship does the mandate of the FFM have with other United Nations bodies and the regional system?**

As long as the government of Nicolás Maduro refuses to participate at the Organization of American States, monitoring must be achieved through the international human rights system, in particular, the HRC. The reports of the FFM can inform the HRC and other international human rights bodies, as well as the wider UN system, contributing to a consistent monitoring of the human rights crisis in Venezuela from various angles and helping outline the structural reforms needed to prevent further systematic violations and potential heinous crimes.

The special procedures and treaty bodies often have issue- or rights-limited mandates and only review states periodically. The FFM has an on-going, broad rights mandate and is required to report on its progress at least annually. It furthermore possesses the mandate to investigate ongoing patterns of systematic violations and abuses and identify individual perpetrators.

**6. What relationship does the FFM have with negotiations toward a peaceful solution to the crisis in Venezuela?**

In March 2022, Maduro announced the resumption of negotiations, which had previously been suspended, toward a peaceful solution to the crisis in Venezuela. Negotiations should include a human rights agenda. Such an agenda should advance the adoption of measures that end censorship and repression; free those arbitrarily detained; guarantee fair political participation; ensure entry and distribution of humanitarian aid; and allow victims and survivors of abuses to obtain truth, justice and reparations.

The mandate of the FFM does not impede but can rather strengthen political agreements that open the door to improving the human rights situation in Venezuela. Its reports and recommendations are essential to identifying problems that must be addressed at the negotiating table, to advance restitution and protection of human rights.

**7. What resources and operability does the FFM need?**

To operate, the FFM requires the support and cooperation of the UN member states, including through the renewal of its mandate and full, sufficient and timely resourcing.

To date, the work of the FFM has been hindered by administrative obstacles that delayed allocation of resources needed for effective contracting processes—and for implementation of the mandate in general. The HRC and the Fifth Committee of the General Assembly should guarantee prompt delivery of adequate resources to the FFM.