



Venezuela and the International Criminal Court

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Translated into English from the original Spanish version.

Background

Amid Venezuela's profound political, social, economic, and institutional crisis, as well as the country's complex humanitarian emergency, International Criminal Court Prosecutor Fatou Bensouda announced the start of a preliminary examination into a case against Venezuela on February 8, 2018. The investigation covers alleged violations of the right to life, personal integrity, and freedom resulting from excessive use of force by Venezuelan state security during demonstrations dating back to April 2017. Venezuela is not at war, but it is ruled by an authoritarian government with no respect for the democratic standards that serve as a basis for the guarantee of human rights.

The main purpose of the preliminary examination is to determine the credibility of the information uncovered. The process consists of four phases: (1) initial and confidential assessment, (2) verification of jurisdiction, (3) admissibility assessment (principle of complementarity and gravity), and (4) study of the interests of justice. The preliminary examination of the situation in Venezuela is currently in the second phase.

On September 25, 2018, Argentina, Canada, Chile, Colombia, Paraguay, and Peru submitted a referral to the prosecutor of the International Criminal Court (ICC) for alleged crimes against humanity in Venezuela. Although a referral does not automatically trigger an investigation, it may expedite the process, as it eliminates the need for the prosecutor to seek authorization from the pretrial chamber of the court.

The highlights of the Venezuela case before the ICC are:

1. The principle of complementarity: The jurisdiction of the ICC is intended to complement the actions of state parties, meaning the ICC may only step in when national courts are unable or unwilling to prosecute a crime. It is a necessary

prerequisite that the state has not taken any steps to punish those responsible or to provide redress to the victims.

In the case of Venezuela, given the permanent lack of judicial independence and impartiality and the detailed patterns of preventing access to justice for victims, it is essential to utilize the principle of complementarity.

2. Attacks on the civilian population: When discussing the systematic pattern of human rights violations in Venezuela, it is impossible to ignore the prevailing and institutional lethal violence. According to official records, between 2010 and 2019, 25,257 people were slain by law-enforcement officials in presumed extrajudicial killings, most of which took place in low-income areas.¹ This massive, uninterrupted pattern of state-sanctioned killings, coupled with widespread neglect by judicial authorities to prosecute, makes it necessary to promote the reporting of such cases as input to the preliminary examination before the ICC.

Moreover, regarding attacks against the civilian population during nationwide demonstrations between 2014 and 2019, 15,045 people were incarcerated,² approximately 15,000 were wounded,³ and 284 were killed.⁴ Based on our understanding, these fall under the scope of the ongoing preliminary examination before the ICC.

Based on these details, it is our view that the situation has transcended serious human rights violations and are crimes against humanity. These violations go beyond the context of the nationwide demonstrations, including allegations of murder, incarceration, torture, persecution, and others covered under Article 7 of the Rome Statute, which triggers individual liability on the part of perpetrators. A crime against humanity includes any act committed (1) as part of a



widespread or systematic attack directed against any civilian population, with knowledge of the attack and (2) pursuant to or in furtherance of a state or organizational policy.

The attack shall consist of a line of conduct resulting from multiple violent acts directed against the civilian population. To be considered systematic, there must be repeated patterns of events and perpetrators, involving repeated victims and methods, so that there is a common thread connecting the different crimes.

To determine the immediate context of the attack, there must be an estimate of the total number of victims and the resulting damage, including its geographic scope, substantial use of resources, and verification of geographic or temporal similarities.

3. Documentation of the attack: The documentation of the attack has three dimensions: (1) the cases, (2) state policy, and (3) the connection between them.

Cases need to be systematized based on quantitative and qualitative indicators designed to record their similarities and generate patterns in line with the elements of crimes against humanity, and utilize a comprehensive analysis of different aspects, such as the characterization of the events, victims, and perpetrators; domestic criminal proceedings; and the response provided to victims by competent government bodies, among others. This task presents a great challenge for civil society because of the limitations imposed by the social and economic crisis, which forces victims to prioritize their basic needs and gradually abandon follow-up measures for their cases.

The policy represents the planned acts undertaken by the state to carry out the attack against the civilian population, although it does not need to be formally stated. In this regard, meetings, declarations, judgments, and a wide array of resolutions may constitute evidence of such plans. It is imperative to establish a connection between the alleged crimes and state policy.

Recommendations

- Prioritize documenting cases that, in addition to being useful for the ICC, may bring forward the truth, laying the foundation for memory formation and promoting mechanisms for nonrepetition during possible transitional justice processes.
- Strengthen comprehensive support for victims to provide them with greater roles and build trust. As part of the documentation process, provide long-term psychological services, legal assistance, and financial aid to support their cases.
- Improve internal coordination between Venezuelan organizations to promote the design of common indicators for each crime against humanity to ensure consistent outcomes and thus facilitate the work of the ICC's prosecutor.
- Acquire tools to manage expectations about the ICC case, given that it will be a long, uncertain process without legal precedents and should not be regarded as the only way to stop human rights violations. In this regard, relationships could be built with those that have more experience with the ICC, such as Colombia, which has been under a preliminary examination for approximately 20 years.
- Encourage specialized study of ICC case law to create technical experts who understand its scope and application to Latin American reality and have the skills to produce comparative studies and proposals aimed at providing constructive criticism to improve the existing legal instruments available under international criminal law.



Endnotes

- ¹ The figure of 25,257 people slain by law-enforcement officials in presumed extrajudicial killings is the result of adding 23,688 fatal victims in the 2010–2018 period with 1,569 killed for “resisting authority” from January to May 2019, according to the government. K. Ávila, “Una masacre por goteo: Venezuela y la Violencia Institucional,” July 2019, <https://nuso.org/articulo/venezuela-maduro-repression-izquierda/>; Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in the Bolivarian Republic of Venezuela, July 4, 2019, <https://www.ohchr.org/EN/newsevents/pages/DisplayNews.aspx?NewsID=24788&LangID=S.2>.
- ² Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in the Bolivarian Republic of Venezuela (A/HRC/41/18) (Advance Unedited Version)–Venezuela (Bolivarian Republic Of).
- ³ Report of the General Secretariat of the Organization of American States and the Panel of Independent International Experts on the Possible Commission of Crimes Against Humanity in Venezuela, May 29, 2018, <https://reliefweb.int/sites/reliefweb.int/files/resources/Informe-Panel-Independiente-Venezuela-EN.pdf>.
- ⁴ Forty-three people died in 2014, based on official numbers reported by the prosecutor and the Committee Against Torture’s *Concluding Observations on the Combined Third and Fourth Periodic Reports of the Bolivarian Republic of Venezuela*, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/241/72/PDF/G1424172.pdf?OpenElement>; 163 people died in 2017, based on the information provided by Observatorio de Conflictividad Social, <https://www.observatoriodeconflictos.org.ve/sin-categoria/venezuela-6-729-protestas-y-157-fallecidos-desde-el-1-de-abril-de-2017>; and 66 people died in 2019, based on the Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in the Bolivarian Republic of Venezuela.



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