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Human rights situations that require the Council's attention

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

Report of the United Nations High Commissioner for Human Rights*

Summary

Pursuant to Human Rights Council resolution 42/25, the present report focuses on the independence of the justice system and access to justice, including for violations of economic and social rights, in the Bolivarian Republic of Venezuela, and the situation of human rights in the Arco Minero del Orinoco region.

* The present report was submitted after the deadline in order to reflect recent developments.

I. Introduction

1. This report is submitted pursuant to resolution 42/25 of the Human Rights Council, which requested the High Commissioner for Human Rights to prepare for its forty-fourth session “a comprehensive written report on the situation of human rights in the Bolivarian Republic of Venezuela, with a special focus on the independence of the justice system and access to justice, including for violations of economic and social rights and the situation of human rights in the Arco Minero del Orinoco region”.¹
2. A report of the High Commissioner for Human Rights (A/HRC/44/20), submitted to the forty-fourth session of the Human Rights Council pursuant to resolution 42/4, describes the general human rights situation in Venezuela between June 2019 and May 2020.²
3. This report is based on information gathered and analyzed by the Office of the United Nations High Commissioner for Human Rights (OHCHR), including on the basis of interviews with victims and witnesses and other sources. For the chapters on the independence of the justice system and access to justice, OHCHR examined legislation, judicial documents, official Government documents, and reports of civil society organizations. OHCHR also interviewed active and former prosecutors and judges, lawyers, scholars, human rights defenders, victims and their relatives. For the chapter on the situation of human rights in the Arco Minero del Orinoco region, OHCHR conducted interviews with miners, indigenous peoples, health and environmental experts, journalists, civil society and other local actors. Whenever possible, OHCHR refers to official information and data.
4. The findings presented in this report have been documented and corroborated in line with OHCHR methodology. OHCHR exercised due diligence to assess the credibility and reliability of all sources and crosschecked the information gathered to verify its validity. OHCHR sought informed consent from the sources it interviewed, ensuring confidentiality when requested, and took all appropriate measures to protect their identity.
5. OHCHR assessed the information it collected in the light of international human rights law as applicable to Venezuela, and pertinent domestic legislation.

II. Independence of the justice system

6. OHCHR remains concerned about the lack of independence of the justice system in Venezuela, as expressed in previous reports of OHCHR,³ by United Nations treaty bodies and special procedures,⁴ during the universal periodic review of Venezuela,⁵ and by the Inter-American Court⁶ and Inter-American Commission on Human Rights.⁷
7. The independence of the justice system is enshrined domestically in the Constitution of Venezuela,⁸ the Supreme Court of Justice Organic Law,⁹ and the Code of Ethics for

¹ A/HRC/RES/42/25, 8 October 2019.

² A/HRC/44/20, 2 July 2020.

³ A/HRC/41/18, 5 July 2019, par. 76. Human Rights Violations in the Bolivarian Republic of Venezuela, 22 June 2018. See: https://www.ohchr.org/Documents/Countries/VE/VenezuelaReport2018_EN.pdf.

⁴ Human Rights Committee (CCPR/C/VEN/CO/4); *Osio Zamora v. Venezuela* (CCPR/C/121/D/2203/2012), para 9.3; *Cedeño v. Venezuela* (CCPR/C/106/D/1940/2010) para 7.2; Committee against Torture (CAT/C/VEN/CO/3-4); Working Group on Arbitrary Detention (CCPR/C/106/D/1940/2010), A/HRC/WGAD/2019/39, A/HRC/WGAD/2019/75, A/HRC/WGAD/2019/13; AL VEN 4/2017, UA VEN 6/2018; AL VEN 4/2018, UA VEN 1/2020.

⁵ A/HRC/34/6, 16 March 2017. See: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/441/42/PDF/G1644142.pdf?OpenElement>.

⁶ Inter-American Court on Human Rights; *Chocron Chocron vs. Venezuela*, 1 July 2011.

⁷ Human Rights Situation in Venezuela, 31 December 2017. <https://www.oas.org/en/iachr/reports/pdfs/Venezuela2018-en.pdf>.

⁸ Articles 254, 256 and 263 of the Constitution of Venezuela.

⁹ Official Gazette No. 39.522, 1 October 2010.

Venezuelan Judges,¹⁰ which establishes rules on the selection of judges, disciplinary procedures and grounds for their removal. OHCHR identified several factors that considerably undermine the independence of the judiciary, including insecurity of tenure for judges, the absence of transparent process for their designation, political pressure (including threats of dismissal), precarious working conditions, and restrictions to their freedom of association. These elements weaken the ability of the judiciary to check the exercise of power by other institutions and to safeguard human rights.

8. In 1999, the National Constituent Assembly issued a decree of “judicial emergency”,¹¹ which created a commission with power to remove judges from office on grounds such as corruption and judicial delays, without due process.¹² OHCHR has received reports that the Supreme Court’s Judicial Commission has continued to use the decree as a basis to remove judges for other reasons. Since 2002, there has been no open and transparent recruitment of tenured judges. Due to lack of transparency and publicity in the designation of judges by the Supreme Court’s Judicial Commission, it is not possible to verify whether the process complies with legal requirements. In 2019, the Inter-American Commission on Human Rights identified that as a result of this process, less than 25 per cent were tenured judges.¹³

9. OHCHR is concerned that insecurity of tenure limits their independence and exposes judges to undue interference from their superiors, as well as external sources. Information available to OHCHR indicates that magistrates of the Supreme Court have effective control over lower court decisions nationwide, particularly in the area of criminal law. Interviewees reported that, particularly in cases of political relevance, judges would await instructions from magistrates of the Supreme Court before making a decision for fear of dismissal or other reprisals. In 2009, Judge Maria Lourdes Afiuni was prosecuted after adopting a ruling to comply with a decision of the Working Group on Arbitrary Detention.¹⁴ She was deprived of her liberty and released in 2011 with precautionary measures. Her case had a clear chilling effect, inhibiting judges from acting independently for fear of criminal prosecution.¹⁵

10. Information received by OHCHR indicates that the monthly salary of a judge is about 30 USD, which increases the risk of corruption in all areas of judicial administration, at all levels.¹⁶

11. The current composition of the Supreme Court was consolidated through the appointment of 13 judges by the ruling-party-led National Assembly in December 2015, even though a newly composed National Assembly had then been elected with a majority of parliamentarians from opposition parties. According to information received, this process did not comply with legal deadlines, and subsequent legal challenges concerning the qualifications of candidates remain unresolved. Thirteen judges of the Supreme Court were forced to retire early to allow for the new judges to be appointed; some of the newly appointed judges had held positions in the executive branch or were registered as members of the ruling party, and reportedly the majority did not comply with the minimum requirements established by the Constitution.¹⁷

¹⁰ Official Gazette No. 6,207, 28 December 2015.

¹¹ Official Gazette No. 36,805, 11 October 1999.

¹² CCPR/C/125/D/2254/2013 and CCPR/C/121/D/2203/2012. See: Decision 1007 of the Political Administrative Court of 2017.

¹³ IACHR, *2019 Yearly Report, Chapter IV.B*, para. 44.

<http://www.oas.org/en/iachr/docs/annual/2019/docs/IA2019cap4BVE-en.pdf>.

¹⁴ Working Group on Arbitrary Detention. Opinion No. 20/2010, 1 September 2010. A/HRC/16/47/Add.1.

¹⁵ Judge Afiuni was convicted on 21 March 2019.

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24405&LangID=E>

¹⁶ World Justice Project: Rule of Law Index, p. 157.

https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf. Article 11 of the United Nations Convention against Corruption requires Member States to take measures to strengthen integrity and prevent corruption within the judiciary.

¹⁷ Acceso a la Justicia. See: <https://www.accesoaljusticia.org/wp-content/uploads/2016/07/Perfil-de-magistrados-del-TSJ-julio-2016.pdf>.

12. OHCHR observed that decisions of the Supreme Court related to the National Assembly were inconsistent and raised concerns about political considerations prevailing over legal determinations. From December 2015 to May 2020, the Supreme Court issued 127 decisions invalidating decisions of the National Assembly.¹⁸ On 26 May 2020, it validated the election of parliamentarian Luis Parra as President of the National Assembly and declared the presidency of Juan Guaidó “in contempt”, without verifying if Luis Parra had received the required number of votes to be elected as president of the parliament.¹⁹ Since March 2017, the Supreme Court has removed the immunity of 29 parliamentarians of the opposition without following the procedure established by the Constitution and without due process.²⁰

13. OHCHR is concerned about the continued use of the military justice system to try civilians.²¹ For example, on 13 August 2019, trade union leader Rubén González was sentenced to five years and nine months of imprisonment by a military tribunal for outrage against the armed forces.²² Judges, prosecutors and lawyers within the military justice system are active duty military members, subject to military discipline and the principle of hierarchical obedience.²³

14. The establishment of anti-terrorism courts, which were established in 2014 by an internal Supreme Court memorandum, instead of an act of the National Assembly, as well as the compatibility of their judicial proceedings with the right to judicial guarantees and fair trial, are also sources of serious concern. Their mandate has not been made public, hearings are not always public, and they are composed of provisional judges designated through non-transparent procedures. OHCHR is additionally concerned about an increased use of these courts, since 2018, to prosecute cases of political relevance, including of military personnel.

15. Insecurity of tenure also affects prosecutors at the Office of the Attorney General. Almost all are provisionally appointed, and their appointment and release are at the discretion of the Attorney General, despite legally mandated public competition.²⁴ The current Attorney General was selected by the National Constituent Assembly through a procedure not in line with constitutional provisions.

16. According to the applicable organic law, the Public Defender, which provides government-funded defense lawyers, is an institution with functional and administrative autonomy.²⁵ However, insufficient resources have hindered its capacity to adequately defend those it represents. OHCHR also received information about the lack of independence of public defenders during the hearings in some cases of political relevance, in which defendants were not allowed to appoint their lawyers. Since 2015, the Supreme Court has suspended elections of the Venezuelan Bar Association, weakening its capacity to safeguard the independence and integrity of the legal profession.²⁶

¹⁸ Acceso a la Justicia, el Observatorio Venezolano de la Justicia, 2020, at: <https://www.accesoalajusticia.org/el-ts-j-vs-la-an/>.

¹⁹ Decision adopted by the Constitutional Chamber of the Supreme Court, 26 May 2020. <http://historico.tsj.gob.ve/decisiones/scon/mayo/309867-0065-26520-2020-20-0001.HTML>

²⁰ Article 200 of the Constitution of Venezuela.

²¹ United Nations Human Rights Committee, General Comment N° 32, The right to equality before courts and tribunals and to fair trial, 2007, para 22.

²² International Labour Organization Commission of Inquiry report on Venezuela, October 2019. See: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_722037.pdf.

²³ See International Commission of Jurists, *The Trial of Civilians by Military Courts in Venezuela*, 2018, at: <https://www.icj.org/wp-content/uploads/2018/04/Venezuela-Civiles-Tribunales-Militares-Publications-Reports-Thematic-Reports-2018-SPA.pdf>.

²⁴ Resolution 2703; Official Gazette No. 41482, 14 September 2018. <https://www.ghm.com.ve/wp-content/uploads/2018/09/41482.pdf>.

²⁵ Official Gazette No. 6,207, 28 December 2015.

²⁶ According to the Basic Principles on the Role of Lawyers (1990) “(...) the executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference”.

III. Access to justice, including for violations of economic and social rights

17. Victims of human rights violations continue to face legal, political and socio-economic barriers in accessing effective justice, with women experiencing gender-specific challenges.

A. Violations of the rights to life and security of person

18. In cases of violations of the right to life allegedly committed by security forces, OHCHR identified obstacles faced by the Office of the Attorney General to conduct effective investigations. One main structural obstacle is that criminal investigations concerning crimes allegedly committed by members of security forces depend on the forensic work of the Bureau for Scientific, Criminal and Forensic Investigations (CICPC), which reports directly to the Ministry of Interior, Peace and Justice. The Ministry supervises other security agencies, such as the Bolivarian National Police and its Special Action Forces (FAES), creating a potential conflict of interest and compromising the independence of the investigation. CICPC also conducts security operations, and some of its members have themselves allegedly been involved in killings.²⁷ Furthermore, OHCHR was informed that the operational capacity of the Criminalistic Unit against the Violation of Fundamental Rights, created by the Office of the Attorney General to conduct its own forensic investigations into cases of human rights violations by security forces, has been significantly diminished since 2017.

19. The latest information provided to OHCHR by the Office of the Attorney General indicates that from August 2017 to November 2019, investigations were opened relating to alleged human rights violations by 766 members of security forces. This led to 505 officials being charged, 390 detained, and 127 convicted. Of the convictions, 77 pertained to violations of the right to life, 18 to torture and ill-treatment, six to violations of the right to integrity, three to violations of the right to liberty, six to sexual violence, and two to enforced disappearances.

20. In cases of deaths in the context of protests, relatives of victims informed OHCHR that despite numerous requests for information from the Office of the Attorney General, the Bolivarian National Guard had refused to provide the names of officers who had participated in related operations. OHCHR also identified a high turnover rate of prosecutors and judges in such cases, causing continuous delays in the proceedings and thereby exacerbating the trauma of families. In the few cases where members of security forces were charged, there were numerous adjournments of the trial. Interviewees informed OHCHR that when security officials are detained, they are not held in the detention centres as ordered by the judiciary, but in police compounds where they reportedly receive preferential treatment.

21. The Office of the Attorney General reported it had registered 958 cases of human rights violations related to protests that took place in 2014, 2017 and 2019. Of these cases, 474 were under investigation and 406 cases had been dismissed; and 44 individuals were charged in relation to these cases while 10 others were in detention awaiting the outcome of their trials.²⁸ The information the Government provided did not specify if members of security forces had been convicted for human rights violations committed in the context of protests.

22. When deaths occur in the context of security operations, the modus operandi of such operations presents additional challenges for relatives of the victims seeking to access justice. OHCHR documented that after such killings, security forces were usually unwilling to give families information on the whereabouts of the victims. After days of searching, family members generally find the victim's body in a morgue. Families regularly observed evidence of crime scenes having been manipulated to suggest a confrontation between the victim and security forces. Relatives also reported that the burden of proof was frequently placed on

²⁷ See OHCHR Report A/HRC/44/20, par., 35.

²⁸ Information provided by the Government of Venezuela to OHCHR on 2 June 2020.

them to demonstrate that the victim was not a criminal. Most were unable to afford to pay for the required court documentation.

23. Relatives of victims also reported various forms of intimidation, threats and reprisals by members of security forces to stop them from seeking justice. In the most serious cases, this led to forced and prolonged displacement of family members or even, in some instances, their killing.

24. OHCHR identified challenges in guaranteeing adequate diligence in response to claims of victims. Interviewees reported that staff working in the justice system are either unable (due to a lack of training or infrastructure) or reluctant to process their claims and to follow up on cases. Authorities sometimes discouraged them from denouncing human rights violations, admitting powerlessness in investigating such cases, or acknowledging they had received orders from superiors to not investigate, especially in relation to alleged violations committed by security forces. Interviewees reported that the main reasons for not approaching authorities include fear of re-victimization and lack of trust in the justice system.

25. OHCHR documented that, in serious cases of alleged enforced disappearances, courts often failed to act with due diligence. For example, it received information concerning the alleged enforced disappearances of Lieutenant Colonel Juan Antonio Hurtado Campos, in September 2018, and of Hugo Henrique Marino Salas (a civilian who had worked as a contractor with the military), in April 2019. Their relatives have not received responses to the *habeas corpus* requests filed in July 2019 and May 2019 respectively, and their whereabouts remain unknown.

26. Sources informed OHCHR that when torture or ill-treatment were reported to judges during hearings, they usually responded that it was not within their competence to address such allegations, despite the obligation to investigate any torture allegations as required by the national law as well as Venezuela's international obligations. In the few cases where the request to investigate was granted, no medical examination was carried out and no inquiries were initiated.

27. OHCHR documented 16 cases of alleged torture and ill-treatment committed from June 2019 to May 2020. The actual number of cases could be significantly higher, in view of patterns of brief enforced disappearances and incommunicado and arbitrary detention, which usually heighten the risk of torture and ill-treatment.²⁹ OHCHR received credible accounts that persons deprived of their liberty by the Directorate General of Military Counter-intelligence (DGCIM) were subjected to sessions of one or more forms of cruel, inhuman or degrading treatment which could amount to torture. 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. Victims of torture suffered from psychological effects such as depression, insomnia, anxiety, post-traumatic stress disorder, and suicidal ideation. Common physical consequences have been chronic pain, loss of sensation in extremities, renal conditions, hypertension, injury to eyes and loss of vision. OHCHR received reports that in some cases, doctors issued false or inaccurate medical certificates not disclosing the signs of torture.

28. A documented instance of torture is the case of retired Captain Rafael Acosta Arévalo, who died in custody on 29 June 2019. Reports of his autopsy revealed that he had suffered multiple blows. He had bruises, wounds and burns on various parts of his body as well as 15 broken ribs and fractures to his nose and right foot. Two DGCIM agents were detained and accused of second-degree murder in that case, but not of committing acts of torture. In September 2019, they were sentenced to six years of imprisonment after acknowledging responsibility, benefiting from a one third reduction in punishment.

29. While the Law on the Protection of Victims, Witnesses and Others contains a comprehensive legal framework, OHCHR observed that victims generally do not receive any

²⁹ See A/HRC/44/20, paras., 46 and 49.

psycho-social support before, during or after judicial proceedings, and protection measures are often not effectively implemented.

30. Moreover, OHCHR received reports of wrongful gender stereotyping within the legal system, and gender-based violence such as threats, mistreatment and verbal abuse by public officials and judicial officers. This particularly affects women petitioners who usually bear the brunt of the search for truth, justice and reparations for violations suffered by their male relatives.

31. OHCHR received information of additional obstacles to access to justice since the declaration of “state of alarm” on 13 March due to COVID-19. Lawyers and NGOs supporting victims reported that the justice system has not established effective mechanisms to process urgent actions.³⁰ Restrictions on access and communication between lawyers and their defendants have also reportedly increased.

B. Gender-based violence

32. While the Organic Law on the Right of Women to a Life Free of Violence aims at providing protection and justice for victims of sexual and gender-based violence, its implementation remains partial and insufficient to adequately protect victims. The Government announced that in 2019, the Office of the Attorney General received 32,530 complaints of violence against women, but it did not provide information on the outcomes.³¹

33. OHCHR observed a lack of due diligence in investigative proceedings related to cases of gender-based violence. Although courts and police units specialized in gender-based violence are in place, victims’ accounts indicate that they usually lack a victim-centred approach. There are only five shelters providing protection to women victims of gender-based violence in Venezuela, and they have been considerably weakened due to the economic crisis.

34. OHCHR received information about potential cases of trafficking in persons, including of women and girls for the purpose of sexual exploitation, to Trinidad and Tobago and Curaçao. Family members reported the disappearances to the Office of the Attorney General in June 2019 and on 20 February 2020 but there has been little progress in investigations into their fate, whereabouts and the alleged existence of trafficking networks.

C. Violations of economic and social rights

35. Domestic legislation provides comprehensive legal remedies to protect economic and social rights, and Venezuela has been a State Party to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights since 2018. Nevertheless, OHCHR found that key legal remedies have been ineffective for victims of violations of economic and social rights. Further, in 2015 the Committee on Economic, Social and Cultural Rights expressed concerns about the Supreme Court’s jurisprudence ruling that some economic and social rights did not fall within the scope of judicial protection.³²

36. Victims and lawyers interviewed by OHCHR raised concerns about the handling of applications for *amparo* by courts, which results in considerable delays in the proceedings affecting their effectiveness, especially in urgent requests for precautionary/interim measures to avoid irreparable harm. OHCHR documented cases of *amparos* demanding urgent access to antiretroviral drugs, in which it took over a year for courts to issue a decision on acceptance for consideration. Although considerable time had elapsed, courts have failed to take any procedural step on the admissibility or merits of the applications, including those seeking to protect collective interests (class actions). OHCHR was informed, for example, that at the closing of the report, courts had not taken any step or decision concerning an application for

³⁰ On 13 March the Supreme Court issued a resolution (001-2020) declaring the general suspension of the work of the courts, but ensuring their capacity to continue dealing with urgent matters.

³¹ Information provided by the Government of Venezuela to OHCHR on 2 June 2020.

³² E/C.12/VEN/CO/3, para. 7.

amparo that was lodged by 307 HIV patients in December 2017, demanding access to antiretroviral drugs. In other cases, plaintiffs received contradicting decisions, which in practice prevent them from accessing to justice since courts found their applications inadmissible, stating that it was a requirement to first file administrative actions, while the administrative instance also rejected their same applications, indicating that it was within the courts' competence to consider such matters.

37. Lack of transparency and access to information on social and economic indicators and the allocation of public funds prevents any comprehensive assessment of the Government's compliance with its economic and social rights obligations. In some particular circumstances, it may also constitute an obstacle for the judicial adjudication of violations of these rights.

IV. The situation of human rights in the Arco Minero del Orinoco region

38. The National Strategic Development Zone "*Arco Minero del Orinoco*" (AMO) was created by decree in February 2016. It covers an area of 111,843.70 km², equivalent to 12 per cent of the national territory, and reaches the Amazon biome. The main objectives of AMO include organizing mining activity in Amazonas, Bolívar and Delta Amacuro states, diversifying the resources of the State, and developing its mineral resources.³³ The decree purports to establish an institutional framework to regulate the exploitation of minerals such as gold, diamonds, coltan, iron and bauxite, foreseeing that this would to be achieved through participation of miners, small mining companies, and larger public, private and mixed companies, under the principles of defence of national sovereignty, respect for indigenous peoples, transparency, and sustainability. The Sectoral Plan for Mining 2019-2025 includes similar objectives, as does Venezuela's social and economic development plan known as *Plan de la Patria* 2019-2025.

39. Due to a lack of transparency on the matter, OHCHR is not able to determine to what extent the Government has managed to regularize mining activity and curb illegal mining in AMO. The Ministry for Mining Development has not published key information of public interest, such as environmental and socio-cultural impact studies, the number and names of companies with whom the Government has formed partnerships, or the number of registered miners in the Single Mining Registry.³⁴ Nor does the Central Bank of Venezuela publish updated information on the amount of gold and other minerals that it receives from the State-owned mining company Minerven,³⁵ the amount of minerals that are exported, their main destination, or the foreign currency that the State receives in exchange.³⁶

40. The information available to OHCHR indicates that much of the mining activity within and beyond AMO is controlled by organized criminal groups or armed elements. They determine who enters and leaves the area, impose rules, inflict harsh physical punishment on those who break them, and gain economic benefit from all activity within the mining area, including through extortion in exchange for protection. The information available shows organized criminal groups, locally called "*sindicatos*", control most mines.³⁷ Although illegal mining has existed in Bolívar State for more than 20 years, the presence of criminal groups

³³ Decree 2.248, Official Gazette, 24 February 2016.

³⁴ The Single Mining Registry was established by Decree 2.165 to organize the activity of small-scale and artisanal mining.

³⁵ Through Decree 8.413 the Government nationalized all gold mining activities and established that the General Mining Company of Venezuela (Minerven) was the only company authorized to process, gather and deliver gold to the Venezuelan Central Bank.

³⁶ The only information made public by the Venezuelan Central Bank related to gold mining activities refers to the gold prices and the amount of gold purchased by the Bank in the domestic market from 1986 to 2018. It reports the acquisition of 9.2 tons of gold in 2018, without specifying the origin of the gold. <http://www.bcv.org.ve/minerales-estrategicos/oro/compras-de-oro-en-el-mercado-interno>.

³⁷ These groups are known as "*sindicatos*" (unions) because they originally emerged from construction unions in Ciudad Bolívar which were practicing extortion. When the crisis hit basic industries in Bolívar State, members of those unions transferred their operations to mining activities.

in mining activities has become more visible since 2011, when concessions for foreign mining companies were terminated.³⁸ Their presence has increased sharply since 2015, coinciding with the rise in international gold prices. These groups replicate the structure of “*pranatos*” which exist in some prisons of Venezuela, whereby a “boss” forcibly imposes internal order and controls illicit activities inside and outside. OHCHR also received information indicating that, more recently, armed irregular elements have seized control of certain mines in the central part of Bolívar State and in the eastern part of the State, near the border with Guyana.

41. Accounts documented by OHCHR describe that levels of labour, exploitation, trafficking and violence are high, due to the existence of a corruption and bribery scheme by groups controlling the mines whereby they pay off military commanders to maintain their presence and illegal activities.

42. Due to the economic crisis, internal migration to the mining area has increased dramatically, although there is no official information on the number of people currently engaged in mining within AMO. A significant portion of this population migrates temporarily from across Venezuela to work in and around the mines due to unemployment in their communities of origin or leaving their jobs in other sectors, including education and health, due to low wages, seeking to better support their families. The vast majority have no previous mining experience.

43. Within AMO, the most widely used technique is open-pit mining whereby large cuts or holes are made in the earth. Miners explained that they descend into pits without any protection, sometimes even barefoot, to collect rocks and climb back up with them in loaded bags. The work is organized in crews of four or five miners, doing day and night shifts of approximately 12 hours. Former miners reported that accidents were common, and they had witnessed landslides in which miners were buried alive.

44. The vast majority of work in AMO is informal, with people lacking employment contracts. OHCHR identified a pattern of labour exploitation whereby miners are forced to give up a large percentage of the gold they extract to the various actors who control the mines. They are generally required to pay about 10 to 20 per cent of the ore mined to the criminal groups or armed elements in order to work, and pay approximately 15 to 30 per cent to the owner of the mill where rocks are crushed for gold extraction. Gold buyers purchase the gold at a rate of 25 per cent below international prices. Additionally, miners have to pay high prices for food and water to vendors within the area, who in turn have to pay a fee to the criminal group or armed elements controlling the mines. Although incomes in AMO are generally higher than in the rest of Venezuela, some miners indicated they were barely able to survive or support their families.

45. According to accounts received by OHCHR, most miners camp on the margins of mining areas, using plastic sheeting and wooden boards as shelters. They do not have access to water or sanitation services, and are not connected to electricity.

46. Women also engage in mining as well as all kinds of mining-related work, including working as vendors. Many travel to the mines to work as cooks. Several accounts highlighted a sharp increase since 2016 in prostitution, sexual exploitation and trafficking in mining areas, including of adolescent girls. Prostitution is either organized in nearby towns or in so-called “*currutelas*”, which are bars made from wooden planks located within mining areas, whose owners pay a fee to criminal groups to be able to operate.

47. OHCHR received reports that children as young as seven were present in mining areas, often unaccompanied, leaving them vulnerable to exploitation. Sources also reported children as young as nine or 10 working in the mines.

48. The Pan American Health Organization (PAHO) identified mining municipalities in Bolívar State as the main cause of an increase in malaria cases in Venezuela since 2015.³⁹

³⁸ On 23 August 2011, the President nationalized all mining companies operating in Venezuela. Decree 8.413.

³⁹ PAHO, *Response to Maintaining and Effective Technical Cooperation Agenda in Venezuela*, 30 August 2019.

Pools of stagnant and polluted water resulting from mining activity have become malaria breeding grounds, also causing skin diseases. Former miners interviewed by OHCHR reported having suffered from malaria while living in AMO. Local authorities informed OHCHR that thanks to joint efforts by international organizations and the State regarding vector control programmes and increased availability of anti-malarial drugs, malaria cases had decreased in the second half of 2019. Malaria and other treatable conditions, such as diarrhoea and vaccine preventable diseases, such as measles, are rampant among the indigenous population, and often fatal, since communities often have little or no access to appropriate treatment.

49. Another serious effect on health and the environment in AMO is contamination from the widespread use of mercury. Despite its nationwide prohibition as a method to obtain or process minerals, OHCHR was informed that chemical mercury is widely used in the region to separate gold from other minerals, a task which is often carried out by women⁴⁰. Once its alloy with gold is produced, it is burned and the volatilized mercury is breathed in by miners and people living in the area. Mercury is also poured into the ground and then carried into rivers by rainwater. High levels of mercury have thus been detected in indigenous communities living downstream from AMO.⁴¹ Fluvial mercury contamination has a disproportionate impact on women who spend much of their time in direct contact with water, including carrying out household duties. This exposes them to greater health hazards, with particular concern for pregnant women due to potential neurological effects in foetuses.

50. Miners and others living in surrounding communities also suffer from high levels of violence. According to the Government, in 2019, Bolívar State registered 36 homicides per 100,000, while the non-governmental organization *Venezuelan Observatory of Violence* (OVV) registered 84 homicides per 100,000 inhabitants.⁴² According to the Government, the mining municipalities of El Callao, Roscio and Sifontes registered rates of 94, 109 and 64 homicides per 100,000 inhabitants, respectively.⁴³

51. Criminal groups and armed elements use violence to exercise control over mining areas. Interviewees reported that harsh corporal punishments are inflicted upon those not complying with the rules imposed by these groups. Reported examples of this occurred from 2018 to 2020, and include a miner beaten in public for stealing a gas cylinder; a young man shot in both hands for stealing a gram of gold; a woman beaten with sticks for stealing a phone from a *sindicato* member; and a miner having a hand cut off for not declaring a gold nugget.

52. Punishment also includes killings. For instance, OHCHR received information about two male teenagers who were executed on the grounds they were alleged infiltrators from another *sindicato*; a 27-year-old miner killed by a member of a *sindicato* for allegedly having an affair with his wife; and a young man killed for allegedly stealing 25 grams of gold. According to accounts received by OHCHR, bodies of miners are often thrown into old mining pits used as clandestine graves. OHCHR documented five cases of people who were reported to have disappeared while working in the mines from 2016 to 2020. According to their relatives, people in the area were afraid of speaking out about the disappearances. Family members in search of the disappeared denounced lack of support from authorities, including investigative agencies, in their search for truth and justice.

53. Violence also originates from disputes over the control of mines. Based on open source analysis, OHCHR identified 16 such violent incidents between March 2016 and March 2020, in which 140 men and nine women reportedly died in or around mines within AMO. Most victims were miners or members of criminal groups. The perpetrators were allegedly members of other criminal groups or armed elements. In eight of such incidents, members of State security forces participating in security operations in the area were

⁴⁰ Decree 2.412 5 August 2016.

⁴¹ Alejandro Álvarez, *Mercurio: Otro asesino oculto en Venezuela*, 26 September 2019, <https://www.derechos.org.ve/opinion/mercurio-otro-asesino-oculto-en-venezuela>.

⁴² OVV, Annual Report, 2019; <https://observatoriodeviolencia.org.ve/informes/informe-anual-de-violencia/>.

⁴³ OVV registered a rate of 368, 221 and 175 homicides per 100,000 inhabitants respectively in the municipalities of El Callao, Roscio and Sifontes.

reportedly involved in some of the killings. OHCHR requested the Government provide information about these incidents, but has not received a reply.

54. These high levels of violence occur despite a significant military presence in AMO and surrounding municipalities. The AMO decree mandates the National Bolivarian Armed Forces (FANB) to protect and maintain the activities of the strategic industries in the area, and FANB has over 25 checkpoints along the highway that runs through Bolívar State from north to south, connecting the various mining towns. Military authorities informed OHCHR about security challenges they face, mainly due to the penetration of criminal groups in mining areas. They also reported on the Government's efforts to regularize mining and neutralize criminal groups through the creation of a Special Brigade for the Protection and the Security in AMO, and the adoption of a Special Security Plan for Bolívar State in 2020. Authorities reported a consequent reduction of homicide rates in Bolívar State from 76 homicides per 100,000 inhabitants in 2016 to 36 in 2019.⁴⁴

55. In June 2018, the Government launched an operation called “metal hands” to combat illegal gold trafficking. According to the Office of the Attorney General, 426 bank accounts were blocked in that context, 29 properties seized, 22 individuals accused, 11 charged, and two of the latter deprived of their liberty. The Government reported on efforts to combat forced prostitution and human trafficking in AMO since 2016, including the prosecution of 12 individuals.⁴⁵

A. Collective rights of indigenous peoples

56. AMO affects the traditional territories of 16 indigenous groups, who mainly live in 197 communities within the area.⁴⁶ Moreover, indigenous peoples and various experts have consistently emphasized that the impact of mining on indigenous peoples' rights extends far beyond the delineated AMO, including due to mining taking place throughout the surrounding area.

57. Mining has a differentiated impact on indigenous peoples and the enjoyment of their individual and collective rights, mainly due to the presence and actions of armed actors and environmental damage. Consequences include the loss of control of traditional territories and natural resources, and affect the right to self-determination.⁴⁷ Interviewees also stressed a link with the lack of demarcation of indigenous territories based on the understanding that they would have more control over their territory if they had official title to it.⁴⁸

58. Indigenous peoples reported to OHCHR increased violence and intimidation since 2018. The presence of military actors, and organized criminal groups and armed elements generally affects peace and security in their communities.⁴⁹

59. For instance, on 22 November 2019, members of a criminal group opened fire within the community of Ikabaru, a mining area within indigenous Pemón territory in Bolívar State. Eight people were killed, including one Pemón, one teenager, and one member of the

⁴⁴ Information provided by the Government of Venezuela to OHCHR on 2 June 2020.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ United Nations Declaration on the Rights of Indigenous Peoples, Articles 26 and 32; Constitution of Venezuela, Articles 119 and 120; ILO Convention 169, Articles 10, 14, 15, and 18; 2005 Organic Law on Indigenous Peoples and Communities 2005, Article 19.

⁴⁸ United Nations Declaration on the Rights of Indigenous Peoples, Article 26; ILO Convention 169, Article 14(2) (3); Constitution of Venezuela, Article 119; Law on Demarcation and Guarantee of the Habitat and Lands of Indigenous Peoples (2001); 2005 Organic Law on Indigenous Peoples and Communities, Article 24. According to information provided by the Government of Venezuela to OHCHR on 2 June 2020, traditional land of three indigenous groups has been officially demarcated in Bolívar State: Pemón (597,982,87 hectares), Mapoyo (261,493,29 hectares) and Karina (54,612,96 hectares).

⁴⁹ United Nations Declaration on Rights of Indigenous Peoples, Article 7.

Bolivarian National Guard. This incident occurred amidst increased insecurity in Gran Sabana in recent years, including violence related to mining.⁵⁰

60. Indigenous peoples have also reported human rights abuses by criminal groups in Ye'kwana and Sanema territory, within AMO, including violence, theft, and sexual abuse of women. On 6 May 2020, one such group ambushed a group of indigenous peoples in "La Puerta" mine, leaving one Wayuu dead, and kidnapping one Yekwana who was later rescued by the military.

61. Armed actors also practice extortion and often control essential supplies. OHCHR received reports of indigenous peoples required to pay for essential goods and services, such as fuel and medicines, in gold.

62. Environmental destruction was consistently cited among the gravest consequences of mining, affecting the indigenous peoples' right to conservation of the environment and productive capacity of their territories and resources.⁵¹ One indigenous leader reported that the mines are "destroying mother earth without any mercy"⁵², and others stated that indigenous peoples and the environment are paying the highest price for AMO. Affected groups reported deforestation, in addition to contamination of waterways and fauna, and outbreaks of infectious diseases. They reported that the contamination of ecosystems has impacted negatively traditional diets and the rights to health and an adequate standard of living. The Ye'kwana and Sanema peoples of the Caura River basin estimate that within five years, the Caura River will be contaminated, and they are seriously concerned about the future of their people.

63. On 8 April 2020, the Government adopted a resolution allowing mining in six rivers, with reference to the AMO decree.⁵³ The opening up of mining in potable water, food sources and traditional navigation routes will impact their rights and territories. Indigenous leaders expressed concern about the resolution, fearing the expansion of mining and its impact on the biodiversity of the entire region, which includes protected areas. Affected indigenous peoples and experts reported that no consultations, nor environmental or socio-cultural impact studies were conducted before the adoption of the resolution.

64. Mining affects the right to autonomy and self-government of some indigenous peoples, such as the Pemóns.⁵⁴ The expansion of non-traditional mining in their territory has created or exacerbated divisions, and has affected their governance structures, including due to conflicting opinions on mining, and differing relationships with the Government. Accounts from indigenous peoples confirm that the expansion of mining interrupts their traditional ways of life and affects their ability to maintain a spiritual relationship with their territories.⁵⁵ They reported having to mine their traditional lands for survival due to the economic situation in the country, while they previously subsisted on a combination of hunting, fishing, agriculture, tourism, trade of artisanal products, and traditional artisanal mining. The inability to freely pursue their economic, social, and cultural development adversely affects their right to self-determination.

65. The Ministry for Indigenous Peoples advised OHCHR of efforts to inform and consult with indigenous peoples about potential mining activities within AMO, including some 90 meetings with indigenous communities since AMO was established.⁵⁶ While certain representatives of some indigenous groups, such as the Mapoyo, reported being satisfied with consultations, most indigenous peoples and experts reported a lack of consultation in

⁵⁰ This includes the killing of indigenous Pemón Charly Penalzoza Rivas and injury of two others in Canaima National Park, in December 2018.

⁵¹ United Nations Declaration on the Rights of Indigenous Peoples, Articles 29 and 31 and Constitution of Venezuela Article 127.

⁵² Report submitted to OHCHR by indigenous representatives.

⁵³ Resolution 0010 of 8 April 2020, Official Gazette, No 6.526.

⁵⁴ United Nations Declaration on the Rights of Indigenous Peoples, Article 4.

⁵⁵ United Nations Declaration on the Rights of Indigenous Peoples, Articles 11, 12, 25; ILO Convention 169, Article 13; Constitution of Venezuela, Article 121.

⁵⁶ Meeting with the Ministry for Indigenous Peoples and indigenous leaders of AMO, 28 January 2020, Bolívar. Information provided by the Government of Venezuela to OHCHR on 2 June 2020.

accordance with national and international legal standards. Interviewees reported that, in particular, requisite environmental and socio-cultural impact studies were not carried out.⁵⁷ While OHCHR takes note of the Government's efforts and challenges, the information available raises serious concerns as to the lack of free, prior, and informed consent,⁵⁸ which is a critical safeguard for all collective rights of indigenous peoples.⁵⁹

V. Conclusion

66. OHCHR considers that the independence of the justice system is considerably undermined due to insecurity of tenure of judges and prosecutors, the lack of transparency in the process of designation, precarious working conditions, and political interference, including links of members of the Supreme Court with the Government and the ruling party. This situation prevents the judiciary from exercising its key role as an independent actor in protecting human rights, and contributes to impunity and the persistence of human rights violations.

67. Victims of human rights violations experience serious obstacles in accessing justice, which also causes re-victimization. OHCHR found that, in cases of violations of economic and social rights, the effectiveness of legal remedies is undermined due to a lack of timely and adequate responses by the judiciary, coupled with unavailability of essential official information. The absence of gender sensitive, victim-centred processes and effective protection measures has exacerbated generalised distrust in the justice system.

68. The Office of the Attorney General has made efforts in ensuring accountability for human rights violations committed by members of security forces. However, it still needs to take significant steps to reduce the high levels of impunity for killings in the context of protest, security operations, allegations of torture and ill-treatment, and gender based violence.

69. OHCHR found that the Government's efforts have been insufficient in organizing and regulating mining within AMO. OHCHR documented a pattern of labour exploitation of miners, including child labour, by criminal groups and armed elements controlling mining activities and received reports of human trafficking and forced prostitution, which it was unable to verify. The vast majority of miners work many hours in hazardous conditions and are exposed to mercury contamination and diseases. OHCHR also documented high levels of violence and human rights violations linked to the control of and dispute over mines by organized criminal groups and armed elements. In some cases, security forces were reportedly involved in some of those violent incidents. Despite a sizeable presence of security and military forces within AMO and surrounding areas, and efforts to address criminal activity, authorities have failed to prevent, investigate and sanction human rights violations, abuses and crimes linked to mining.

70. Moreover, AMO and the expansion of mining have considerably affected the right to self-determination of indigenous peoples, their rights to their land, territories and resources, to the conservation and protection of the environment, and to live in peace and security. OHCHR has serious concerns about the lack of free, prior, and informed consent with regard to the establishment of AMO in their traditional territories.

⁵⁷ Constitution of Venezuela, Article 129.

⁵⁸ International Labour Organization Convention No. 169, Article 6; United Nations Declaration on Indigenous Peoples, Article 19; Constitution of Venezuela, Article 120.

⁵⁹ Free, prior, and informed consent: a human rights-based approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples, A/HCR/39/62, 10 August 2018, p. 4.

VI. Recommendations

71. OHCHR calls upon the Government of the Bolivarian Republic of Venezuela to:

(a) Undertake and complete the reforms of the justice system announced by the Government in January 2020 to guarantee its independence, impartiality, transparency, accessibility and effectiveness;

(b) Establish an independent, impartial, and transparent mechanism to increase the number of tenured judges and prosecutors through a transparent public process;

(c) Publish the legal authority and mandate of the counter-terrorism courts and take all necessary measures to guarantee their independence, impartiality and transparency, as well as their strict compliance with international human rights standards;

(d) Put an end to the trial of civilians by military tribunals, and ensure that their jurisdiction is limited to military offences committed by active members of the military;

(e) Conduct prompt, effective, thorough, independent, impartial, and transparent investigations into allegations of human rights violations, including deprivation of life, enforced disappearance, torture and sexual and gender-based violence involving members of the security forces; bring perpetrators to justice, and provide victims with adequate reparation;

(f) Cease immediately any acts of intimidation, threats and reprisals by members of security forces against relatives of victims of human rights violations who seek justice;

(g) Guarantee that lawyers' associations recover their independence and full autonomy by allowing free internal elections;

(h) Guarantee the independence of the Public Defender, through sufficient resources and training, and ensure the rights of defendants to appoint a lawyer of their choices;

(i) Review the protocols and methods of the Office of the Attorney General to provide gender sensitive attention and support for victims of human rights violations and their families;

(j) Restore the capacity of the Criminalistics Unit against the Violation of Fundamental Rights of the Office of the Attorney General to conduct independent forensic investigations into cases of alleged human rights violations by security forces;

(k) Publish a comprehensive report on the investigations and criminal proceedings of deaths that occurred in the context of protests in 2014, 2017 and 2019;

(l) Adopt the necessary regulations and protocols to fulfil all rights and obligations enshrined in the Organic Law on the Right of Women to a Life Free of Violence; and adopt effective measures to assist and protect victims of all forms of violence, including women and children;

(m) Establish a system for the systematic collection of statistical data on violence against women, disaggregated by forms of violence, number of complaints, prosecutions, and convictions imposed on perpetrators;

(n) Ensure all mining in Venezuela is carried out in accordance with adequate human rights, socio-cultural and environmental impact studies, and meets national and international environmental standards;

(o) Undertake and publish key information related to AMO, such as environmental and social impact studies, violence and homicide rates and socio-economic data of the population living within AMO and its surroundings, including indicators related to economic and social rights;

(p) In compliance with international human rights standards, conduct effective and transparent investigations and law enforcement operations to dismantle criminal groups and armed elements controlling mining activities; tackle corruption and prosecute and sanction those responsible for crimes and human rights violations in AMO and surrounding areas;

(q) Take urgent steps to end labour and sexual exploitation, child labour, and human trafficking within AMO, and ensure regularization of mining activities that respects the right to just and favourable working conditions;

(r) Ensure adequate and representative consultations are conducted with all indigenous peoples prior to the adoption or implementation of any decision, activity or measure that may affect them, including any impact on their traditional lands, territories and resources;

(s) Ensure that indigenous peoples are able to enjoy their collective right to live in freedom, peace and security, and that they are able to own, use, develop and control their lands, territories and resources, including through the demarcation of traditional lands;

(t) Rescind Resolution 0010 related to mining in rivers; and

(u) Provide redress to indigenous peoples affected by mining activities, including in AMO, in consultation with them.
