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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.

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



## I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 42/25, in which the Council requested the United Nations 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.
2. A report of the High Commissioner for Human Rights, submitted to the forty-fourth session of the Human Rights Council pursuant to resolution 42/4, includes outcomes of the investigation into allegations of possible violations of the human rights to life, liberty, and physical and moral integrity in the Bolivarian Republic of Venezuela in the period 1 June 2019 to 31 May 2020 (A/HRC/44/20).
3. The present report was prepared on the basis of information gathered and analysed by the Office of the United Nations High Commissioner for Human Rights (OHCHR), including 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 contained in the present report have been documented and corroborated in line with OHCHR methodology. OHCHR exercised due diligence in assessing the credibility and reliability of all sources and cross-checked 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 the Bolivarian Republic of 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 the Bolivarian Republic of Venezuela, as expressed in previous reports of OHCHR,<sup>1</sup> by United Nations treaty bodies and special procedures,<sup>2</sup> during the universal periodic review of the country,<sup>3</sup> and by the Inter-American Court of Human Rights<sup>4</sup> and Inter-American Commission on Human Rights.<sup>5</sup>

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<sup>1</sup> A/HRC/41/18, para. 76. See also OHCHR, “Human rights violations in the Bolivarian Republic of Venezuela: a downward spiral with no end in sight” (June 2018).

<sup>2</sup> See, for example, CCPR/C/VEN/CO/4; *Osio Zamora v. Bolivarian Republic of Venezuela* (CCPR/C/121/D/2203/2012), para. 9.3; *Cedeño v. Bolivarian Republic of Venezuela* (CCPR/C/106/D/1940/2010), para. 7.2; CAT/C/VEN/CO/3-4; A/HRC/WGAD/2019/13; A/HRC/WGAD/2019/39; A/HRC/WGAD/2019/75; communications AL VEN 4/2017, dated 28 July 2017; UA VEN 6/2018, dated 13 September 2018; AL VEN 4/2018, dated 13 September 2018; UA VEN 1/2020, dated 28 January 2020.

<sup>3</sup> A/HRC/34/6.

<sup>4</sup> Inter-American Court of Human Rights, *Chocron Chocron v. Venezuela*, Judgment, 1 July 2011.

<sup>5</sup> Inter-American Commission on Human Rights, *Human Rights Situation in Venezuela: Democratic Institutions, the Rule of Law and Human Rights in Venezuela – Country Report*, 31 December 2017.

7. The independence of the justice system is enshrined domestically in the Constitution of the Bolivarian Republic of Venezuela,<sup>6</sup> the Supreme Court of Justice Organic Law<sup>7</sup> and the Code of Ethics for Venezuelan Judges,<sup>8</sup> 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 a 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”,<sup>9</sup> which created a commission with power to remove judges from office on grounds such as corruption and judicial delays, without due process.<sup>10</sup> 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. Owing 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.<sup>11</sup>

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, in particular in the area of criminal law. Interviewees reported that in cases of political relevance in particular, judges would await instructions from magistrates of the Supreme Court before making a decision, for fear of dismissal or other reprisals. In 2009, Judge María Lourdes Afiuni Mora was prosecuted after adopting a ruling to comply with a decision of the Working Group on Arbitrary Detention.<sup>12</sup> 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.<sup>13</sup>

10. Information received by OHCHR indicates that the monthly salary of a judge is about \$30, which increases the risk of corruption in all areas and at all levels of judicial administration.<sup>14</sup>

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

<sup>6</sup> Arts. 254 and 256 of the Constitution of the Bolivarian Republic of Venezuela.

<sup>7</sup> Bolivarian Republic of Venezuela, *Official Gazette*, No. 39,522 (1 October 2010).

<sup>8</sup> Bolivarian Republic of Venezuela, *Official Gazette*, No. 6,207 (Extraordinary) (28 December 2015).

<sup>9</sup> Bolivarian Republic of Venezuela, *Official Gazette*, No. 36,805 (11 October 1999).

<sup>10</sup> *Sabarsky v. Bolivarian Republic of Venezuela* (CCPR/C/125/D/2254/2013) and *Osio Zamora v. Bolivarian Republic of Venezuela* (CCPR/C/121/D/2203/2012). See also decision 1007 of the Political Administrative Court of 2017.

<sup>11</sup> Inter-American Commission on Human Rights, *2019 Yearly Report*, chapter IV.B, para. 44. Available at [www.oas.org/en/iachr/docs/annual/2019/docs/IA2019cap4BVE-en.pdf](http://www.oas.org/en/iachr/docs/annual/2019/docs/IA2019cap4BVE-en.pdf).

<sup>12</sup> A/HRC/16/47/Add.1, pp. 92–101.

<sup>13</sup> Judge Afiuni was convicted on 21 March 2019. See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24405&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24405&LangID=E).

<sup>14</sup> World Justice Project, *Rule of Law Index – 2020*, p. 157. Article 11 of the United Nations Convention against Corruption requires Member States to take measures to strengthen integrity and prevent corruption within the judiciary.

of the ruling party, and reportedly the majority did not comply with the minimum requirements established by the Constitution.<sup>15</sup>

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 30 December 2015 to 31 May 2020, the Supreme Court issued 131 decisions invalidating decisions of the National Assembly.<sup>16</sup> On 26 May 2020, it validated the election of parliamentarian Luis Parra as president of the National Assembly without verifying if he had received the required number of votes, and it declared the presidency of Juan Guaidó “in contempt”.<sup>17</sup> 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.<sup>18</sup>

13. OHCHR is concerned about the continued use of the military justice system to try civilians.<sup>19</sup> 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.<sup>20</sup> Judges, prosecutors and lawyers within the military justice system are active duty military members, subject to military discipline and the principle of hierarchical obedience.<sup>21</sup>

14. The establishment of anti-terrorism courts in 2014 by an internal Supreme Court memorandum instead of an act of the National Assembly is a source of serious concern, as is the compatibility of the judicial proceedings of those courts with the right to judicial guarantees and a fair trial. The mandate of the courts has not been made public, nor are hearings always public, and they are composed of provisional judges designated through non-transparent procedures. OHCHR is also 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.<sup>22</sup> 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 defence lawyers, is an institution with functional and administrative autonomy.<sup>23</sup> 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 own 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.<sup>24</sup>

<sup>15</sup> See [www.accesoaljusticia.org/wp-content/uploads/2016/07/Perfil-de-magistrados-del-TSJ-julio-2016.pdf](http://www.accesoaljusticia.org/wp-content/uploads/2016/07/Perfil-de-magistrados-del-TSJ-julio-2016.pdf) (in Spanish).

<sup>16</sup> [www.accesoaljusticia.org/el-tsj-vs-la-an/](http://www.accesoaljusticia.org/el-tsj-vs-la-an/) (in Spanish).

<sup>17</sup> Decision adopted by the Constitutional Chamber of the Supreme Court, 26 May 2020. Available at <http://historico.tsj.gob.ve/decisiones/scon/mayo/309867-0065-26520-2020-20-0001.HTML> (in Spanish).

<sup>18</sup> Article 200 of the Constitution of the Bolivarian Republic of Venezuela.

<sup>19</sup> Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to fair trial, para. 22.

<sup>20</sup> International Labour Organization (ILO) commission of inquiry report on the Bolivarian Republic of Venezuela, October 2019. Available at [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_722037.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_722037.pdf) (in Spanish).

<sup>21</sup> International Commission of Jurists, *The Trial of Civilians by Military Courts in Venezuela*, 2018.

<sup>22</sup> Bolivarian Republic of Venezuela, resolution 2703, *Official Gazette*, No. 41,482 (14 September 2018). Available at [www.ghm.com.ve/wp-content/uploads/2018/09/41482.pdf](http://www.ghm.com.ve/wp-content/uploads/2018/09/41482.pdf) (in Spanish).

<sup>23</sup> Bolivarian Republic of Venezuela, *Official Gazette*, No. 6,207 (Extraordinary) (28 December 2015).

<sup>24</sup> According to the Basic Principles on the Role of Lawyers, 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 socioeconomic 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, 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, creating a potential conflict of interest and compromising the independence of the investigation. The Bureau for Scientific, Criminal and Forensic Investigations also conducts security operations, and some of its members have themselves allegedly been involved in killings.<sup>25</sup> Furthermore, OHCHR was informed that the operational capacity of the criminal 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 committed 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 1 August 2017 to 30 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, 6 to violations of the right to integrity, 3 to violations of the right to liberty, 6 to sexual violence, and 2 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 therefore exacerbating the trauma of families. In the few cases where members of security forces had been 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. A total of 44 individuals had been charged in relation to the cases while 10 others were in detention awaiting the outcome of their trials.<sup>26</sup> 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 who are 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

<sup>25</sup> A/HRC/44/20, para. 35.

<sup>26</sup> Information provided by the Government of the Bolivarian Republic of Venezuela to OHCHR on 2 June 2020.

between the victim and security forces. Relatives also reported that the burden of proof was frequently placed on them to demonstrate that the victim was not a criminal. Most were unable to afford the costs of 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 to process their claims and to follow up on cases – owing to a lack of training or infrastructure – or they are reluctant to do so. 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 revictimization 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 Enrique 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 both the national law of the Bolivarian Republic of Venezuela and its 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 1 June 2019 to 31 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.<sup>27</sup> OHCHR received credible accounts that persons deprived of their liberty by the Directorate General of Military Counter-intelligence had been subjected to sessions of one or more forms of cruel, inhuman or degrading treatment that 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 were 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, 15 broken ribs, and fractures to his nose and right foot. Two agents of the Directorate General of Military Counter-intelligence 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' imprisonment after acknowledging responsibility, benefiting from a one-third reduction in punishment.

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<sup>27</sup> A/HRC/44/20, paras. 46 and 49.

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 psychosocial 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, including threats, mistreatment and verbal abuse by public officials and judicial officers. In particular, this 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 as a result of the COVID-19 pandemic. Lawyers and non-governmental organizations supporting victims reported that the justice system had not established an effective mechanism to process urgent actions.<sup>28</sup> 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 is aimed 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 had received 32,530 complaints of violence against women, but it did not provide information on outcomes.<sup>29</sup>

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 the Bolivarian Republic of Venezuela, and they have been considerably weakened owing 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 Curaçao and Trinidad and Tobago. 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 the investigations into their fates and 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 the Bolivarian Republic of 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. Furthermore, 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.<sup>30</sup>

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 *amparo* demanding

<sup>28</sup> On 20 March the Supreme Court issued a resolution (0001-2020) declaring the suspension of the work of the courts, but ensuring their capacity to continue dealing with urgent matters.

<sup>29</sup> Information provided by the Government of the Bolivarian Republic of Venezuela to OHCHR on 2 June 2020.

<sup>30</sup> E/C.12/VEN/CO/3, para. 7.

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 had 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 time of writing of the present report, courts had not taken any step or decision concerning an application for *amparo* that was lodged by 307 persons living with HIV in December 2017, demanding access to antiretroviral drugs. In other cases, plaintiffs received contradicting decisions, which in practice prevent them from accessing justice since courts found their applications inadmissible, stating that it was a requirement to first file administrative actions, while the administrative instance also rejected the 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. Situation of human rights in the Arco Minero del Orinoco region

38. The national strategic development region Arco Minero del Orinoco was created by Decree No. 2,248 in February 2016. The zone covers an area of 111,843.70 square km, equivalent to 12 per cent of the national territory, and reaches the Amazon biome. The main objectives of the Arco Minero del Orinoco region include organizing mining activity in the states of Amazonas, Bolívar and Delta Amacuro, diversifying the resources of the State and developing its mineral resources.<sup>31</sup> 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 was to be achieved through the 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 the country's social and economic development plan known as *Plan de la Patria 2019–2025*.

39. Owing 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 Arco Minero del Orinoco. The Ministry for Mining Development has not published key information of public interest, such as environmental and sociocultural 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.<sup>32</sup> 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,<sup>33</sup> the amount of minerals that are exported, their main destination or the foreign currency that the State receives in exchange.<sup>34</sup>

40. The information available to OHCHR indicates that much of the mining activity within and beyond Arco Minero del Orinoco is controlled by organized criminal groups or armed groups. They determine who enters and leaves the area; impose rules; inflict harsh

<sup>31</sup> Bolivarian Republic of Venezuela, *Official Gazette*, No. 40,855 (24 February 2016).

<sup>32</sup> The Single Mining Registry was established by Decree No. 2,165 to organize the activity of small-scale and artisanal mining.

<sup>33</sup> By its Decree No. 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 Central Bank of Venezuela.

<sup>34</sup> The only information made public by the Central Bank of Venezuela 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. See [www.bcv.org.ve/minerales-estrategicos/oro/compras-de-oro-en-el-mercado-interno](http://www.bcv.org.ve/minerales-estrategicos/oro/compras-de-oro-en-el-mercado-interno) (in Spanish).



physical punishment on those who break the rules; and gain economic benefit from all activity within the mining area, including through extortion in exchange for protection. The information available shows that organized criminal groups, locally called *sindicatos* (unions), control most mines.<sup>35</sup> Although illegal mining has existed in Bolívar State for more than 20 years, the presence of criminal groups in mining activities has become more visible since 2011, when concessions for foreign mining companies were terminated.<sup>36</sup> 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 in the Bolivarian Republic 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 groups 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, owing 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. Owing to the economic crisis, internal migration to the mining area has increased exponentially, although there is no official information on the number of people currently engaged in mining within Arco Minero del Orinoco. A significant portion of the population migrates temporarily from across the Bolivarian Republic of Venezuela to work in and around the mines owing to unemployment in their communities of origin or leaving their jobs in other sectors, including education and health, because of the low wages, seeking to better support their families. The vast majority have no previous mining experience.

43. Within Arco Minero del Orinoco, 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 Arco Minero del Orinoco is informal, with people holding no 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 per cent to 20 per cent of the ore mined to the criminal or armed groups in order to work, and pay approximately 15 per cent 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 or armed groups controlling the mines. Although incomes in Arco Minero del Orinoco are generally higher than in the rest of the country, 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 and in 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

<sup>35</sup> These groups are known as *sindicatos* (unions) because they originally emerged from construction unions in Ciudad Bolívar that were practising extortion. When the crisis hit basic industries in Bolívar State, members of those unions transferred their operations to mining activities. <sup>36</sup> On 23 August 2011, the President nationalized all mining companies operating in the Bolivarian Republic of Venezuela (Decree No. 8,413).

<sup>36</sup> On 23 August 2011, the President nationalized all mining companies operating in the Bolivarian Republic of Venezuela (Decree No. 8,413).

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 9 or 10 working in the mines.

48. The Pan American Health Organization identified mining municipalities in the Bolívar State as the main cause of an increase in malaria cases in the Bolivarian Republic of Venezuela since 2015.<sup>37</sup> 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 Arco Minero del Orinoco. Local authorities informed OHCHR that thanks to joint efforts by international organizations and the State regarding vector control programmes and increased availability of antimalarial drugs, malaria cases had decreased in the second half of 2019. Malaria and other treatable conditions, such as diarrhoea, and diseases that can be prevented through vaccination, such as measles, are rampant among the indigenous population. They are often fatal, since communities often have little or no access to appropriate treatment.

49. Another serious effect on health and the environment in Arco Minero del Orinoco is contamination from the widespread use of mercury. Despite its nationwide prohibition as a method for obtaining or processing minerals, OHCHR was informed that chemical mercury was widely used in the region to separate gold from other minerals, a task that is often carried out by women.<sup>38</sup> 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 Arco Minero del Orinoco.<sup>39</sup> 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, which are of particular concern for pregnant women because of the potential neurological effects to fetuses.

50. Miners and others living in surrounding communities also suffer from high levels of violence. According to the Government, in 2019, the Bolívar State registered 36 homicides per 100,000, while the non-governmental organization Observatorio Venezolano de Violencia (Venezuelan Observatory of Violence) registered 84 homicides per 100,000 inhabitants.<sup>40</sup> According to the Government, the registered rates of homicide per 100,000 inhabitants in the mining municipalities of El Callao, Roscio and Sifontes were 94, 109 and 64, respectively.<sup>41</sup>

51. Criminal and armed groups 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 that 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 regularly 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.

<sup>37</sup> Pan American Health Organization, “PAHO’s response to maintaining an effective technical cooperation agenda in Venezuela and neighboring member States”, document CD57/INF/7, 30 August 2019.

<sup>38</sup> Decree No. 2,412 of 5 August 2016.

<sup>39</sup> Alejandro Álvarez, *Mercurio: Otro asesino oculto en Venezuela*, 26 September 2019.

<sup>40</sup> <https://observatoriodeviolencia.org.ve/informes/informe-anual-de-violencia/> (in Spanish).

<sup>41</sup> The Venezuelan Observatory of Violence registered the rate of homicide per 100,000 inhabitants as follows: El Callao (368); Roscio (221); and Sifontes (175).

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 9 women reportedly died in or around mines within Arco Minero del Orinoco. Most victims were miners or members of criminal groups. The perpetrators were allegedly members of other criminal groups or armed groups. In eight such incidents, members of State security forces participating in security operations in the area were reportedly involved in some of the killings. OHCHR requested that the Government provide information about these incidents, but it has not received a reply in relation to them.

54. These high levels of violence occur despite a significant military presence in Arco Minero del Orinoco and surrounding municipalities. The Arco Minero del Orinoco decree mandates the National Bolivarian Armed Forces to protect and maintain the activities of the strategic industries in the area. The National Bolivarian Armed Forces 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 the security challenges they face, mainly as a result of 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 of and security in Arco Minero del Orinoco, and the adoption of a special security plan for Bolívar State in 2020. Authorities reported a consequent reduction in homicide rates in Bolívar State, from 76 homicides per 100,000 inhabitants in 2016 to 36 per 100,000 in 2019.<sup>42</sup>

55. In June 2018, the Government launched an operation called "Metal Hands" to combat gold trafficking. According to the Office of the Attorney General, as a result of the operation, 426 bank accounts were blocked, 29 properties seized, 22 individuals accused and 11 charged. Two of those individuals were deprived of their liberty. The Government reported on efforts to combat forced prostitution and human trafficking in Arco Minero del Orinoco since 2016, including the prosecution of 12 individuals.<sup>43</sup>

## A. Collective rights of indigenous peoples

56. The Arco Minero del Orinoco decree affects the traditional territories of 16 indigenous groups, who mainly live in 197 communities within the area.<sup>44</sup> Moreover, indigenous peoples and various experts have consistently emphasized that the impact of mining on the rights of indigenous peoples extends far beyond the delineated Arco Minero del Orinoco region, including owing 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 as a result of environmental damage and of the presence and actions of armed actors. Consequences include the loss of control of traditional territories and natural resources, and they affect the right to self-determination.<sup>45</sup> 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.<sup>46</sup>

<sup>42</sup> Information provided by the Government of the Bolivarian Republic of Venezuela to OHCHR on 2 June 2020.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> United Nations Declaration on the Rights of Indigenous Peoples, arts. 26 and 32; Constitution of the Bolivarian Republic of Venezuela, arts. 119–120; ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), arts. 10, 14–15 and 18; Organic Law on indigenous peoples and communities of 2005, art. 19.

<sup>46</sup> United Nations Declaration on the Rights of Indigenous Peoples, art. 26; ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 14 (2) (3); Constitution of the Bolivarian Republic of Venezuela, art. 119; Law on demarcation and guarantee of the habitats and lands of indigenous

58. Indigenous peoples reported to OHCHR that since 2018, they have experienced an increase in violence and intimidation. The presence of military actors and organized criminal and armed groups generally affects peace and security in their communities.<sup>47</sup>

59. For instance, on 22 November 2019, members of a criminal group opened fire within the community of Ikabaru, a mining area within indigenous Pemon territory in Bolívar State. Eight people were killed, including one Pemon, one teenager and one member of the Bolivarian National Guard. This incident occurred amid increased insecurity in Gran Sabana in recent years, including violence related to mining.<sup>48</sup>

60. Indigenous peoples have also reported human rights abuses by criminal groups in Ye'kwana and Sanema territory, within Arco Minero del Orinoco, 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 Ye'kwana, who was later rescued by the military.

61. Armed actors also practice extortion and often control essential supplies. OHCHR received reports of indigenous peoples being 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 rights of indigenous peoples to conservation of the environment and productive capacity of their territories and resources.<sup>49</sup> One indigenous leader reported that the mines were "destroying mother earth without any mercy",<sup>50</sup> and others stated that indigenous peoples and the environment were paying the highest price for Arco Minero del Orinoco. Affected groups reported deforestation, contamination of waterways and fauna, and outbreaks of infectious diseases. They reported that the contamination of ecosystems had had negative impacts on 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 Arco Minero del Orinoco decree.<sup>51</sup> The opening up of mining in areas of potable water, which also function as food sources and traditional navigation routes, will affect 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 or environmental or sociocultural 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 Pemon community.<sup>52</sup> The expansion of non-traditional mining in their territory has created or exacerbated divisions, and has affected their governance structures, including as a result of 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

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peoples and communities of 2010; Organic Law on indigenous peoples and communities of 2005, art. 24. According to information provided by the Government of the Bolivarian Republic of Venezuela to OHCHR on 2 June 2020, traditional land of three indigenous groups has been officially demarcated in Bolívar State: Pemon (597,982.87 hectares), Mapoyo (261,493.29 hectares) and Karina (54,612.96 hectares).

<sup>47</sup> United Nations Declaration on the Rights of Indigenous Peoples, art. 7.

<sup>48</sup> This includes the killing of Charly Peñalosa Rivas (a member of the indigenous Pemon community) and the injury of two others in Canaima National Park, in December 2018.

<sup>49</sup> United Nations Declaration on the Rights of Indigenous Peoples, arts. 29 and 32; and the Constitution of the Bolivarian Republic of Venezuela.

<sup>50</sup> Report submitted to OHCHR by indigenous representatives.

<sup>51</sup> Bolivarian Republic of Venezuela, resolution No. 0010, *Official Gazette*, No. 6,256 (Extraordinary) (8 April 2020).

<sup>52</sup> United Nations Declaration on the Rights of Indigenous Peoples, art. 4.

relationship with their territories.<sup>53</sup> They reported having to mine their traditional lands for survival owing 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 the Arco Minero del Orinoco region, including some 90 meetings with indigenous communities since it was established.<sup>54</sup> 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 accordance with national and international legal standards. Interviewees reported that, in particular, requisite environmental and sociocultural impact studies were not carried out.<sup>55</sup> While OHCHR takes note of the Government's efforts and challenges, the information available raises serious concerns as to lack of free, prior and informed consent,<sup>56</sup> which is a critical safeguard for all collective rights of indigenous peoples.<sup>57</sup>

## V. Conclusion

66. OHCHR considers that the independence of the justice system is considerably undermined owing to the insecurity of tenure of judges and prosecutors, the lack of transparency in the process of designation, precarious working conditions and political interference, including links between members of the Supreme Court and 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 revictimization. OHCHR found that, in cases of violations to economic and social rights, the effectiveness of legal remedies is undermined owing to a lack of timely and adequate responses by the judiciary, coupled with the unavailability of essential official information. The absence of gender-sensitive, victim-centred processes and effective protection measures has exacerbated generalized 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 to organize and regulate mining within Arco Minero del Orinoco have been insufficient. OHCHR documented a pattern of labour exploitation of miners, including child labour, by criminal and armed groups 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 and armed groups. In some cases, security forces were reportedly involved in some of those violent incidents. Despite the sizeable presence of security and military forces within the Arco Minero del Orinoco region and the surrounding

<sup>53</sup> *Ibid.*, arts. 11, 12 and 25; ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 13; Constitution of the Bolivarian Republic of Venezuela, art. 121.

<sup>54</sup> Meeting with the Ministry for Indigenous Peoples and indigenous leaders of Arco Minero del Orinoco, 28 January 2020, Bolívar. Information provided by the Government of the Bolivarian Republic of Venezuela to OHCHR on 2 June 2020.

<sup>55</sup> Constitution of the Bolivarian Republic of Venezuela, art. 129.

<sup>56</sup> ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 6; United Nations Declaration on the Rights of Indigenous Peoples, art. 19; and Constitution of the Bolivarian Republic of Venezuela, art. 120.

<sup>57</sup> A/HRC/39/62, para. 13.

area, 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, the establishment of the Arco Minero del Orinoco region and the expansion of mining have had considerable negative effects on the right to self-determination of indigenous peoples; their rights to their land, territories and resources; and their rights 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 on the part of indigenous lands with regard to the establishment of the Arco Minero del Orinoco region encompassing their traditional territories.

## **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 the jurisdiction of military tribunals 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 the provision of sufficient resources and training, and ensure the rights of defendants to appoint a lawyer of their own choice;**

**(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 criminal 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 also adopt effective measures to assist and protect victims of all forms of violence, including women and children;**

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- (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 the Bolivarian Republic of Venezuela is carried out in accordance with adequate human rights, sociocultural and environmental impact studies, and meets national and international environmental standards;
- (o) Undertake and publish key information related to the Arco Minero del Orinoco region, such as environmental and social impact studies, violence and homicide rates and socioeconomic data of the population living within Arco Minero del Orinoco and the surrounding area, 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 and armed groups controlling mining activities, tackle corruption, and prosecute and sanction those responsible for crimes and human rights violations in Arco Minero del Orinoco and the surrounding area;
- (q) Take urgent steps to end labour and sexual exploitation, child labour and human trafficking within Arco Minero del Orinoco, and ensure regularization of mining activities that respect 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 No. 0010 related to mining in rivers;
- (u) Provide redress to indigenous peoples affected by mining activities, including in the Arco Minero del Orinoco region, in consultation with them.
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