

CRIMINAL JUSTICE AS A TOOL OF POLITICAL REPRESSION IN VENEZUELA

June 2022

This report analyzes data and information gathered through the work of the organization Foro Penal regarding violations to due process committed against individuals who were arbitrarily detained in Venezuela between January 2020 and October 2021. An analysis of 481 arbitrary detentions that took place during the aforementioned time period was performed for this report.



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LIST OF ABBREVIATIONS

FAES (Fuerza de Acciones Especiales - Special Action Forces)

GNB (Guardia Nacional Bolivariana - Venezuelan National Guard)

DGCIM (Dirección General de Contrainteligencia Militar - General Directorate of Military Counter-Intelligence)

CICPC (Cuerpo de Investigaciones Científicas, Penales y Criminalísticas - Scientific, Penal, and Forensic Investigation Agency)

SEBIN (Servicio Bolivariano de Inteligencia Nacional - Bolivarian National Intelligence Service)

PNB (Policía Nacional Bolivariana - Venezuelan National Police)

DIEP (*Dirección de Inteligencia Policial* - Directorate of Police Intelligence) Aragua

DIEP (*Dirección de Inteligencia Policial* - Directorate of Police Intelligence) Yaracuy

GAES (Grupo de Acciones Especiales de la GNB - Special Actions Group of the GNB)

DIEP (Dirección de Inteligencia Policial - Directorate of Police Intelligence)

CONAS (Comando Nacional Antiextorsión y Secuestro - National Anti-Extortion and Kidnapping Command)

CPNB (Dirección de Investigaciones Penales - Directorate of Criminal Investigations)

FFM (Misión Internacional Independiente de determinación de los hechos sobre la República Bolivariana de Venezuela - Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela)

OHCHR (Office of the United Nations High Commissioner for Human Rights)

IACHR (Inter-American Commission on Human Rights)

I. INTRODUCTION

The right to a fair trial and to due process are two of the fundamental guarantees within a rule of law that recognizes and respects human rights.¹ The Inter-American Court of Human Rights has stated that due process “consists of [...] the right of every person to a fair hearing within a reasonable time by a competent, independent and impartial tribunal or court.”² Due process establishes the “set of requirements that must be observed during legal proceedings”³ in order to ensure the effective defense of an individual’s human rights.⁴ Therefore, the Court has also pointed out that the duty of guaranteeing due process falls on any public authority that determines the “rights and obligations of individuals,” whether it be administrative, legislative or judicial in nature.⁵

Due process is a reflection of the proper administration of justice and is a fundamental right that is in turn related to the enjoyment of other rights, such as the right to life and the right to not be subjected to torture or other forms of cruel, inhuman or degrading treatment or punishment.⁶ All persons should have equal rights of access to an independent and impartial tribunal, including access to effective remedies and reparations.⁷ This applies to all proceedings, regardless of the type, but is especially important when it comes to criminal proceedings, where procedural guarantees seek to regulate the State’s reach in criminal sentencing against individuals.⁸

The regulations on due process and judicial guarantees are established in various international instruments such as the Universal Declaration of Human Rights,⁹ Article 14 of the International Covenant on Civil and Political Rights,¹⁰ Article 8 of the American Convention on Human Rights,¹¹ Article 6 of the European Convention on Human Rights,¹² as well as in customary international law and other instruments.

The right to due process and the judicial guarantees established in Article 8 of the American Convention are especially essential in criminal justice proceedings. The Inter-American Court has indicated that Article 8 “entails the system of guarantees that govern the use of *ius puniendi* by the State and that seek to ensure that the accused is not subjected to arbitrary decisions.”¹³ Therefore, the principles and regulations applicable to criminal proceedings must be established with particular clarity and precision.¹⁴ In the same vein, the European Court of Human Rights has established that the rights of persons accused of a crime require greater protection than the rights of the parties in civil proceedings,¹⁵ emphasizing that the key principle governing the application of Article 6 of the European Convention on Human Rights is equity.¹⁶

1 See, for example: IA Court, Case of Velásquez Rodríguez v. Honduras. Preliminary Exceptions. 1987, par. 91. Likewise, IA Court Case of Cruz Sánchez et al. v. Peru Preliminary Exceptions, Merits, Reparations, and Costs Judgment of April 17, 2015. Series C No. 292

2 IA Court, Case of Yvon Neptune v. Haiti. Merits, Reparations, and Costs. Judgment of May 06, 2008. Series C No. 180, par. 79.

3 IA Court. Case of Barbani Duarte et al. v. Uruguay. Merits, Reparations, and Costs. Judgment of October 13, 2011. Series C, No. 234, par. 116. See also IA Court. Case of Ruano Torres et al. v. El Salvador Merits, Reparations, and Costs. Judgment of October 05, 2015. Series C No. 303, par. 151.

4 Ibid.,

5 IA Court. Case of the Constitutional Court v. Peru Merits, Reparations, and Costs. Judgment of January 31, 2001. Series C No. 71, par. 71.

6 See, for example: IA Court. Advisory Opinion OC-9/87; ECHR, Gregačević v. Croatia, July 10, 2012, par. 49. ECHR, Ibrahim and Others v. The United Kingdom [GC], September 13, 2016, par. 250.

7 IA Court. Advisory Opinion OC-9/87.

8 See, for example, IA Court. Case of Herrera Ulloa v. Costa Rica, par. 145.

9 United Nations General Assembly, Universal Declaration of Human Rights, 1948. Available here: <https://www.un.org/es/about-us/universal-declaration-of-human-rights>

10 United Nations General Assembly, International Covenant on Civil and Political Rights, 1966. Available here: <https://www.ohchr.org/es/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

11 Organization of American States (OAS). American Convention on Human Rights “Pact of San José de Costa Rica,” 1969. Available here: https://www.oas.org/dil/esp/tratados_b-32_convencion_americana_sobre_derechos_humanos.htm

12 Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950. Available here: https://www.echr.coe.int/documents/convention_spa.pdf

13 IA Court. Case of Ruano Torres et al. v. El Salvador, par. 152.

14 ECHR, Dombo Beheer B.V. v. The Netherlands, Court Chamber, October 27, 1993, par. 32.

15 ECHR, Moreira Ferreira v. Portugal, Grand Chamber, July 11, 2017, par. 67.

16 ECHR, Gregačević v. Croatia, Chamber of the First Section, July 10, 2012, par. 49.

The role of judicial guarantees and due process as strict regulators of the punitive power of the state is essential, and therefore constitute fundamental elements of a true rule of law, since this implies that all state activity is subject to the law, and any state intervention on the individual rights of the citizen is based upon it. Furthermore, if there is a rule of law, there are, as a result, independent and impartial judges with the capacity and authority necessary to adjudicate conflicts that may arise from the interpretation and implementation of laws by the State.

On the other hand, the antithesis of the rule of law is an authoritarian state where the role of due process is, in practice, nullified because laws and institutions are used for political purposes, and human dignity and equality of individuals before the law are totally or partially rejected. Thus, in an authoritarian state, the individual is at the mercy of the authorities, which uses its penal system to develop an authoritarian criminal policy that criminalizes and persecutes dissident and critical voices.

II. SITUATION IN VENEZUELA

General Background

Venezuela faces acute political repression and systematic violations of citizens' human rights, which includes restrictions on civic space as well as widespread violations of social, economic and cultural rights, but the region's largest ongoing humanitarian crisis is taking place in Venezuela. According to updated UN figures, this crisis has caused close to six million Venezuelans to flee abroad.¹⁷ In addition, arbitrary detentions, torture, extrajudicial executions and enforced disappearances are systematically employed to silence the political opposition and other voices critical of the government.¹⁸

Impunity, which in turn fuels repeated human rights violations, represents a serious problem for victims of human rights violations in Venezuela, particularly when it comes to the policy of repression. This makes it highly unlikely to get justice, much less adequate reparation measures for the victims. In large part, generalized impunity is a direct consequence of the measures taken since the government of Hugo Chávez that have progressively eroded the independence of the Judiciary and the Public Prosecutor's Office, bodies that are now co-opted by the Executive Branch.¹⁹ This situation has caused a severe imbalance in the system of checks and balances among government authorities and has dismantled the guarantees of the democratic rule of law.

Two circumstances in particular have enabled an environment of impunity for abuses committed by state actors. The first is the elevated number of provisional judges that are appointed and removed at the discretion of the Judicial Commission of the Supreme Court of Justice (TSJ).²⁰ For example, during the last decade, the percentage of provisional judges has ranged between 66% and 88%.²¹

¹⁷ Office of the United Nations High Commissioner for Refugees, UNHCR, Situation in Venezuela. Available here: <https://www.acnur.org/situacion-en-venezuela.html>

¹⁸ See: Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela, Informe de la misión internacional independiente de determinación de los hechos sobre la República (Report of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela); September 16, 2020. Available here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/238/94/PDF/G2023894.pdf?OpenElement> See also Informe de la misión internacional independiente de investigación sobre la República Bolivariana de Venezuela (Report of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela), September 16, 2021. Available here: https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFMV/A.HRC.48.69_ES.pdf

¹⁹ See Comisión Interamericana de Derechos Humanos, Democracia y Derechos Humanos en Venezuela (Inter-American Commission on Human Rights, Democracy and Human Rights in Venezuela), OEA/Ser.L/V/II. Doc. 54, December 30, 2009. Available here: <http://www.cidh.org/countryrep/venezuela2009sp/ve09.indice.sp.htm>

²⁰ See for example Ruling No. 2414 of the Constitutional Chamber of the Supreme Court of Justice of December 20, 2007, in which it was established that provisional judges "are susceptible to being removed from office in the same manner in which they were appointed: in a discretionary manner."

²¹ International Commission of Jurists, Lograr justicia por graves violaciones a los derechos humanos en Venezuela (Achieving Justice for Grave Human Rights Violations in Venezuela)

Recently, the National Assembly reformed the Law of the Supreme Court of Justice,²² reducing the number of judges from 32 to 20 and allowing the reelection of judges whose terms are about to expire. The Inter-American Commission on Human Rights (IACHR) expressed its concern in this regard and pointed out that reelection represents “a factor that weakens judicial independence.”²³ In addition, the composition of the Nominations Committee was modified, with it being established that the Committee would be mainly composed of deputies, instead of those from other sectors of civil society. This is problematic not only because it limits participation from civil society in this process, but also because the National Assembly, which is in charge of filling out the committee, is largely composed of pro-government deputies.²⁴

The second circumstance that promotes human rights violations and the consequent impunity is the frequent use of military criminal jurisdiction to try civilians. Under international human rights law, military criminal jurisdiction must be restrictive in scope and limited to military offenses.²⁵ Despite this, military jurisdiction has been consistently used to try civilians in Venezuela. For example, as we reported in our 2020 report on enforced disappearances,²⁶ between April 1, 2017 and October 31, 2017 alone, 757 civilians were prosecuted in military courts.²⁷ In 2021, the Organic Code of Military Justice in Venezuela was reformed, prohibiting the trial of civilians in courts with jurisdiction in military criminal matters, and through a transitory provision it was required to refer to the ordinary criminal courts all those cases against civilians that were in courts with military criminal jurisdiction.²⁸ This reform came on the eve of the publication of the report of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela (FFM), which concluded that the Venezuelan judiciary lacks independence.²⁹ The reform does not address problems such as the lack of impartiality and independence of the Venezuelan military justice system, the application of military jurisdiction to retired military personnel, or the prohibition of the military justice system to investigate and judge human rights violations committed by military personnel.³⁰ As we will analyze below, despite legal reforms, the use of military justice and expedited trials under special jurisdiction (e.g., terrorism tribunals) continues to be alarming.

Political Context

The Venezuelan political landscape is extremely complex. In 2015, the opposition won the majority of seats in the National Assembly. However, a few days after the legislative election results were announced, a group of 13 judges from the Supreme Court of Justice (TSJ) simultaneously filed requests for early retirement.³¹ This unusual event allowed the Assembly, in its previous form and with a pro-government majority, to appoint the replacements for these judges. A few months later,

Estudio de línea de base (Baseline Study), July 2017. Available here: <https://www.icj.org/wp-content/uploads/2017/08/Venezuela-GRABase-Line-Study-Publications-Reports-Thematic-reports-2017-SPA.pdf>

22 Gaceta Oficial de la República Bolivariana de Venezuela (Official Gazette of the Bolivarian Republic of Venezuela), January 19, 2022 Available here: <http://www.asambleanacional.gob.ve/storage/documentos/leyes/ley-reform-20220121013420.pdf>

23 Comisión Interamericana de Derechos Humanos, La CIDH expresa preocupación por la reforma a la Ley Orgánica del Tribunal Supremo de Justicia de Venezuela (Inter-American Commission on Human Rights: The IACHR expresses concern about the reform to the Organic Law of the Supreme Court of Justice of Venezuela), February 17, 2022. Available here: <https://www.oas.org/pt/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2022/034.asp>

24 See “Contexto Político” (“Political Context”) section.

25 UN General Assembly, Principios Básicos Relativos a la Independencia de la Judicatura (Basic Principles on the Independence of the Judiciary), 1985. Available here: <https://www.ohchr.org/es/instruments-mechanisms/instruments/basic-principles-independence-judiciary>.

26 Foro Penal and Robert F. Kennedy Human Rights, La Desaparición Forzada como Herramienta de Represión Política en Venezuela (Enforced Disappearance as a Tool of Political Repression in Venezuela), 2020, pg. 7. Available here: <https://rfkhr.imgix.net/asset/RFKHumanRights-VenezuelaDisappearances-Spanish.pdf>

27 Inter-American Commission on Human Rights, Country Report: Institucionalidad Democrática, Estado de derecho y derechos humanos en Venezuela (Democratic institutions, the rule of law and human rights in Venezuela), OEA/Ser.L/V/II. Doc. 209. December 31, 2017, par. 257. Available here: <http://www.oas.org/es/cidh/informes/pdfs/venezuela2018-es.pdf>

28 Inter-American Commission on Human Rights, CIDH saluda Reforma de Jurisdicción Penal en Venezuela (IACHR welcomes Criminal Jurisdiction Reform in Venezuela), October 14, 2021. Available here: <https://www.oas.org/pt/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2021/273.asp>

29 Informe de la Misión internacional independiente de determinación de los hechos sobre la República Bolivariana de Venezuela (Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela). https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFMV/A.HRC.48.69_ES.pdf

30 PROVEA, La Reforma al Código Orgánico de Justicia Militar es un Maquillaje (Reform to the Organic Code of Military Justice is a Farce), September 23, 2021. Available here: <https://provea.org/comunicados/control-ciudadano-la-reforma-al-codigo-organico-de-justicia-militar-es-un-maquillaje/>

31 Acceso a la Justicia: El Observatorio Venezolano de la Justicia (Venezuelan Justice Observatory), February 3, 2016. <https://www.accesoalajusticia.org/wp-content/uploads/2016/03/informe-a-AN-3-2.pdf>

the Supreme Court of Justice (TSJ) issued a set of decisions that suspended the powers of the National Assembly elected in 2015.³²

On August 4, 2017, the TSJ also authorized President Nicolás Maduro to convene a National Constituent Assembly (ANC) by means of an executive decree,³³ without prior referendum,³⁴ assuming plenipotentiary powers over all other public powers to draft a new constitution that, during its term, was never presented or debated. Instead, it has functioned as a de facto parliament, assigning to itself the constitutional functions of the National Assembly. Upon the date of its dissolution, the ANC, without any legal basis, had dismissed the Attorney General; ordered the immunity of National Assembly deputies to be revoked so they could be arrested and tried; moved up elections; confirmed the National Electoral Council officials and the judges of the TSJ; and approved laws that discriminate against and punish political dissidence.³⁵

One of the most controversial actions by the ANC was its authorization to move up presidential elections for the 2019-2025 term, which Nicolás Maduro ended up winning.³⁶ This unusual change, in addition to countless other measures taken by the Comptroller General of the Republic and the National Electoral Council, evidence the total absence of electoral guarantees. Opposition parties and leaders, as well as dozens of countries, refused to recognize Nicolás Maduro's election victory.³⁷

On January 23, 2019, then-president of the National Assembly, Juan Guaidó, declared himself interim president of the country, citing Articles 233 and 333 of the Constitution.³⁸ Since January 2019, the Organization of American States (OAS) and dozens of countries around the world have recognized Guaidó as interim president and have even accepted the credentials of his ambassadors.³⁹ Since this time, Venezuela has had a sort of double government in which Nicolás Maduro's regime, with the support of powerful governments such as those of Russia and China, maintains control of Venezuelan territory and public authorities at the domestic level, while a large part of Venezuela's diplomatic relations and representation on the international level are being led by Juan Guaidó. In early 2022, Guaidó's interim government was renewed by the opposition National Assembly,⁴⁰ which had been supplanted by the pro-government National Assembly following the December 2020 parliamentary elections in which the opposition did not participate, as it considered there were insufficient guarantees for free elections.⁴¹ At present, Maduro continues to exercise power over the executive and legislative branches, as well as the military.

Local and International Monitoring

Local and international civil society organizations as well as intergovernmental human rights bodies have documented systematic human rights violations in Venezuela. The findings of these organizations and bodies clearly illustrate the gravity of this crisis.

In Venezuela between 2020 and 2021, there were two simultaneous states of exception in effect, the

32 Two decisions in particular stand out, namely: Constitutional Chamber Judgment of March 27, 2017, Case 17 -0323; and Constitutional Chamber Judgment of March 28, 2017, Case No. 170325. See also International Commission of Jurists (ICJ). La [Corte Suprema de Justicia](#) de Venezuela: Un

Instrumento del Poder Político (The Supreme Court of Justice of Venezuela: An Instrument of Political Power), 2017, pg. 3.

33 Decree No. 2,830, [Extraordinary Official Gazette](#) No. 6925 of May 1, 2017.

34 Constitutional Chamber Judgment No. 378 of May 31, 2017, Case No. 2017-0519 (Joint Submission).

35 International Commission of Jurists: La Asamblea Nacional Constituyente y el Desmoronamiento del Estado de Derecho en Venezuela, (The National Constituent Assembly and the Breakdown of the Rule of Law in Venezuela), pg. 21-33. Available here: <https://www.icj.org/wp-content/uploads/2019/07/Venezuela-Sin-Lugar-para-la-deliberacion-Publications-Reports-fact-findings-mission-reports-2019-SPA.pdf>

36 Ibid., pg. 33.

37 CNN, La comunidad internacional no reconocerá las elecciones presidenciales en Venezuela (The international community will not recognize the presidential elections in Venezuela), May 17, 2018. Available here: <https://cnnespanol.cnn.com/2018/05/17/la-comunidad-internacional-no-reconocera-las-elecciones-presidenciales-en-venezuela/>

38 El País, Juan Guaidó se declara Presidente interino de Venezuela (Juan Guaidó declares himself interim President of Venezuela), January 23, 2019. Available here: https://elpais.com/elpais/2019/01/23/album/1548269272_931989.html

39 EFE, OEA reconoce al enviado de Guaidó (EFE, OAS recognize the Guaidó envoy), April 10, 2019. Available here: <https://www.efc.com/efe/america/politica/la-oea-reconoce-al-enviado-de-guaido-hasta-que-haya-elecciones-en-venezuela/20000035-3948579>

40 Bloomberg, U.S. Backs Extension of Venezuelan Opposition Head's Mandate, January 5, 2022. Available here: <https://www.bloomberg.com/news/articles/2022-01-05/u-s-backs-extension-of-venezuelan-opposition-leader-s-mandate>

41 La Nación, Venezuela: Repudio internacional ante la "designación ilegal" del Consejo Electoral y la "manipulación" de las elecciones (International condemnation against the "illegal designation" of the Electoral Council and election "manipulation," June 17, 2020. Available here: <https://www.lanacion.com.ar/el-mundo/venezuela-repudio-internacional-designacion-ilegal-del-consejo-nid2380929/>

first was decreed in response to an economic state of emergency, while a second was decreed in response to a state of emergency due to the COVID-19 pandemic.⁴² Both states of exception granted broad powers to the Executive Branch that have resulted in arbitrary restrictions on multiple rights, including freedom of association, freedom of expression, and due process.⁴³ According to reports by several human rights organizations, including Human Rights Watch, the Venezuelan government and its security forces used the state of emergency implemented in response to COVID-19 as an excuse to “punish dissidents and intensify their control over the population.”⁴⁴ For example, during the COVID-19 state of emergency, many people who shared or posted information on social media questioning policies in response to the pandemic were charged with hate speech or committing a crime.⁴⁵

According to information provided by local and international organizations, “persistent concerns include practices involving police brutality, poor prison conditions, impunity for human rights violations, lack of judicial independence, and harassment of human rights defenders and independent media.”⁴⁶ Specifically, the lack of independence of the justice system has contributed to the direct involvement of prosecutors and judges in the perpetration of serious human rights violations, particularly arbitrary detentions.⁴⁷ Several local human rights organizations claim that the institutions of *in flagrante delicto* and preventive detention, among others, are arbitrarily applied in cases of political persecution against those who are considered to be dissidents or part of the opposition.⁴⁸ These organizations also claim that prosecutors, for example, contribute to the arbitrary delay of the judicial process against these victims, because they do not participate in hearings, request unreasonable extensions, and use resources for no legitimate reason, among others.⁴⁹

In 2020, the organizations Robert F. Kennedy Human Rights and Foro Penal published a report demonstrating how Venezuela’s Bolivarian regime uses enforced disappearances as a tactic to silence its political opponents and critical voices.⁵⁰ For example, in the first half of 2019, the vast majority of disappearances (390) occurred in connection with arrests that occurred as part of protests and demonstrations.⁵¹ It was also found that enforced disappearances had tripled from 2018, with 200 cases reported, as opposed to 2019, which had 524 cases.⁵² Furthermore, women were reported to be more vulnerable than men to being disappeared by state forces.⁵³ Another alarming finding was the fact that when military personnel are subjected to enforced disappearance, they often report being tortured during this process. In 2018, torture was reported in 83.6% of cases of disappeared military personnel.⁵⁴ In 2019, the likelihood of being tortured if disappeared for members of the armed forces was almost 95%.⁵⁵ As detailed below, the data from 2020 and 2021 confirms this.

With regard to international monitoring, the Office of the United Nations High Commissioner for

42 Contribuciones de la sociedad civil venezolana al 3er ciclo del EPU, Hoja Informativa EPU 2022 – Estado de Derecho e Independencia Judicial. (Contributions of Venezuelan civil society to the 3rd cycle of the UPR, UPR 2022 Fact Sheet - Rule of Law and Judicial Independence). Available here: <https://drive.google.com/file/d/1kNzgo8pR2RekTgDda0UuFKMms5KeiFMz/view>

43 Ibid.,

44 Human Rights Watch, Venezuela: Estado policial avanza en el contexto del Covid-19 (Police state advances amid COVID-19), August 28, 2020. Available here: <https://www.hrw.org/es/news/2020/08/28/venezuela-estado-policial-avanza-en-el-contexto-del-covid-19>

45 Report on Enforced Disappearances, Foro Penal and RFKHR, op cit. Note 26. See also: Laboratorio de Paz, [Report](#) Violaciones al Derecho a Defender Derechos Humanos en Venezuela (Violations of the Right to Defend Human Rights in Venezuela), 2021.

46 See: Centro para los Defensores y la Justicia, [Situación](#) de las Personas Defensoras de Derechos Humanos en Venezuela (Situation of Human Rights Defenders in Venezuela), October 2021. Foro Penal, [Reporte](#) sobre Desapariciones Forzadas (Report on Political Repression in Venezuela), 2021. Human Rights Watch, World [Report](#) 2021

47 Op Cit, [Hoja Informativa](#) – Estado de Derecho (Informational Sheet – Rule of Law), see also: Acceso a la Justicia: La Consolidación de un Estado de Hecho en Venezuela (Consolidation of the State of Affairs in Venezuela), [here](#).

48 See for example: The Law Society of England and Wales, CEPAZ and Acceso a la Justicia. Joint Stakeholder [Submission](#) to the UN Human Rights Council’s Universal Periodic Review.

49 Op Cit., [Informational Sheet – Rule of Law](#); see: Observatorio de Derechos Humanos de la Universidad de Los Andes y otros, [Acceso](#) a la justicia: Erosión de la autonomía e independencia del Ministerio Público e impunidad en Venezuela (Erosion of the autonomy and independence of the Public Prosecutor’s Office and impunity in Venezuela).

50 Op Cit, note 26. Reporte sobre Desapariciones Forzadas Foro Penal y RFKHR (Report on Enforced Disappearances, Foro Penal and RFKHR), pg. 22 -23.

51 Ibid., pg. 27

52 Ibid., pg. 26

53 Ibid., pg. 26

54 Ibid., pg. 24

55 Ibid.,

Human Rights (OHCHR) has provided regular updates to the UN Human Rights Council on its monitoring of the country, describing the various ongoing abuses, such as arbitrary arrests, torture and enforced disappearances, as well as the grave humanitarian situation.⁵⁶ The OHCHR, through an analysis of open sources, found that 2,000 people had been killed in security operations between January and August 2020, taking into account that many of these deaths may have constituted extrajudicial executions.⁵⁷ During 2020 and part of 2021, the OHCHR reported that although the number of extrajudicial killings in connection with protests and security operations decreased compared to the previous reporting period,⁵⁸ it remained alarmingly high. For example, the OHCHR also pointed out that the organizations PROVEA and Fundación Gumilla reported 2,853 executions in 2020.⁵⁹

With regard to due process, OHCHR monitoring identified violations of the rights to liberty and to trial without undue delay, as well as to a fair trial and to legal counsel. In at least 12 documented cases, individuals were detained without the presentation of an arrest warrant and in the absence of flagrante delicto.⁶⁰ The OHCHR also reaffirmed that there is an abusive use of pretrial detention that has not diminished even during the pandemic.⁶¹ There were also reports of constant obstacles for defense attorneys to effectively prepare the defense of the accused. These include difficulties in accessing the case file, restrictions on access to hearings, and restrictions on lawyers' visits to their clients, which includes restrictions on free and private communication between the lawyer and the accused.⁶² The OHCHR also reported that the right of accused persons to be represented by a lawyer of their choice was unduly restricted, particularly by the anti-terrorism courts.⁶³ There were instances in which judges, prosecutors and other authorities allegedly pressured some defendants to fire their private attorneys and replace them with public defenders.⁶⁴

With regard to respect for procedural deadlines, the OHCHR found that undue delays increased even more after the onset of the pandemic, leading in most cases to prolonged periods of arbitrary arrest.⁶⁵ Regarding the right to a fair trial and to be tried by an impartial and independent court, the OHCHR reported that judicial hearings before the anti-terrorism and military jurisdictions were held in private, creating a perception of secrecy and lack of independence.⁶⁶ The OHCHR also made reference to the alarming number of plea bargains and admissions of guilt, which, given the situation, could be the result of several sources of pressure, including prolonged periods of pretrial detention, poor detention conditions, mistreatment and inadequate legal assistance.⁶⁷

The IACHR has also denounced serious and numerous human rights violations in Venezuela for decades, which have seen a marked increase during the last eight years. This body has highlighted, among the many human rights abuses, the patterns of criminalization and stigmatization of those who participate in social protests. In particular, the IACHR has noted how the mass demonstrations that took place in the country between 2014 and 2017 were violently repressed and resulted in arbitrary arrests, torture, cruel treatment and sexual violence.⁶⁸

In 2018, the OAS published a report (with a follow-up report in 2020) about crimes against

56 Situation of human rights in the Bolivarian Republic of Venezuela, [Report](#) of the United Nations High Commissioner for Human Rights, 2021.

57 Ibid., par. 5.

58 In its 2019 report, the OHCHR had already documented serious violations of fundamental rights, such as the rights to food and health, the existence of laws restricting dissent and the democratic space, excessive use of force by state security forces and attacks on certain individuals and groups identified as threats to the government. See United Nations Human Rights Council. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Bolivarian Republic of Venezuela, A/HRC/41/18, July 4, 2019.

59 Ibid., par. 5-7.

60 Ibid., par. 29.

61 Ibid., par. 36.

62 Ibid., par. 33-35.

63 Ibid., par. 37.

64 Ibid.,

65 On March 16, 2020, the Supreme Court of Justice adopted a resolution freezing procedural deadlines and suspending hearings throughout the entire judicial system. This measure was then extended until October 1, 2020. Supreme Court of Justice Resolution No. 001-202029.

66 Op Cit n. 23., par. 39.

67 Ibid., par. 39-41.

68 Op Cit. Note 27. Inter-American Commission on Human Rights, Country Report, par. 20-25.

humanity committed in Venezuela,⁶⁹ which, along with many other documents and evidence, was presented to the Office of the Prosecutor of the International Criminal Court. The report concluded that there were reasonable grounds to establish that crimes against humanity had been committed in Venezuela. For example, at least 8,292 extrajudicial killings (documented between 2018 and 2019 by local organizations) and 131 deaths related to the 2014 and 2017 protests were reported.⁷⁰ Incidences of torture were also reported, with the report establishing that at least 30% of the cases reported and analyzed had been directed at political opponents of the government, and that they had been tortured in order to obtain a confession or to bring accusations against third parties.⁷¹ The report also notes that the remaining 70% were tortured in connection with protests, or as part of an intimidation strategy.⁷² In the follow-up report, there is an approximate breakdown of reported and substantiated crimes against humanity between the years 2014-2020. For example, it states that during this period at least 18,093 murders were committed by Venezuelan security forces and paramilitary groups, including extrajudicial executions and the murder of demonstrators,⁷³ as well as 15,501 arbitrary detentions and 653 documented cases of torture.⁷⁴ With respect to torture, the report argues that this number is far below the reality, and reports allege that many of the thousands of detainees have been subjected to torture and ill treatment.⁷⁵

On this point, it should be noted that the use of torture is not only a serious violation of human rights in itself, but also, in the specific context of a criminal proceeding, has an acute procedural impact, as it leads to other serious violations, including the violation of the right to a fair trial. The use of torture and evidence obtained through torture taints the entire criminal justice process and erodes the rule of law and public confidence in the system's ability to deliver justice. It should be noted that torture, in all its forms, is not usually a crime that gets reported because of the victims' fear of retaliation. There are several components of torture,⁷⁶ among which include intent, producing pain or suffering and a purpose. The purpose behind torture is of absolute relevance when intertwined with an authoritarian criminal policy that seeks to silence dissenting voices. This serious violation of human rights is intended to circumvent democratic principles, values and rules that precisely limit the punitive power of the State.

On September 16, 2021, a new report by the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela (FFM) found not only that the Judiciary lacks independence, but also that it acts as a tool to aid in the repression of real or perceived political opponents. The investigation found "reasonable grounds to believe"⁷⁷ that prosecutors and judges played a role, whether through their acts or omissions, in serious human rights violations and crimes against dissidents.

According to the FFM's second report, the Venezuelan justice system was central to the development of the human rights crisis in Venezuela. The FFM goes so far as to state that "had prosecutorial and judicial officers properly performed their constitutional role, they could have prevented the crimes and violations from being committed, or placed stringent impediments on the ability of the intelligence and public security services to commit them."⁷⁸ As an example, of the 86 judicial

69 Informe de la Secretaría General de la Organización de Estados Americanos y del Panel de Expertos Internacionales Independientes sobre la Posible Comisión de Crímenes de Lesa Humanidad en Venezuela (Report of the General Secretariat of the Organization of American States and the Panel of Independent International Experts on the Possible Commission of Crimes against Humanity in Venezuela), May 29, 2018. Available here: <https://biblioteca.corteidh.or.cr/tablas/r37847.pdf> Also see follow-up report, OAS, Fomentando la Impunidad, *informe* sobre posibles Crímenes de Lesa Humanidad cometidos en Venezuela (Fostering Impunity, report on possible Crimes Against Humanity committed in Venezuela, December 2, 2020. Available here: <http://www.oas.org/documents/spa/press/Crimes-Against-Humanity-II-in-Venezuela-SPA.pdf>

70 SGOEA Report, pg. 245.

71 SGOEA Report, pg. 78.

72 *ibid.*,

73 *Op Cit.*, Follow-up Report pg. 18

74 *Ibid.*, pg. 18-19

75 *Ibid.*, pg. 18, 64-75

76 General Assembly, Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), 1964, Article 1. Available here: <https://www.ohchr.org/es/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

77 Misión Internacional Independiente de Determinación de los Hechos sobre la República Bolivariana de Venezuela (Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela) <https://www.ohchr.org/es/hr-bodies/hrc/ffmv/index>

78 *Ibid.*,

officers who responded to the Mission's questionnaire, 98.2% believed that political cases were not investigated and prosecuted in accordance with the law.⁷⁹ In addition, the report shows flagrant violations of due process, including torture and sexual violence, admission of tainted evidence, denial of access to counsel, and abuse of pretrial detention.⁸⁰

Finally, on November 3, 2021, the Prosecutor of the International Criminal Court announced his decision to open a formal investigation for crimes against humanity committed in Venezuela.⁸¹ As early as December 2020, the ICC had indicated that it had reasonable grounds to believe that, at least since the April 2017 protests, the crimes against humanity of "imprisonment or other severe deprivation of physical liberty," "torture," "rape or other forms of sexual violence," and "persecution against any identifiable group or collectivity on political grounds"⁸² by civilian authorities, members of the armed forces and government sympathizers had been committed in Venezuela. At the beginning of 2022, the Maduro government was granted an extension until April 16 to report on the investigations it is conducting for crimes against humanity committed in the country, under the framework of Article 18 of the Rome Statute.⁸³ Then, in April of this year, the ICC Prosecutor announced during his second visit to Venezuela that after several conversations it had been agreed to open a prosecutor's office in the country's capital.⁸⁴ Finally, on April 20, 2022, the ICC Prosecutor asked the Pre-Trial Chamber for authorization to continue the investigation of Venezuela, after rejecting the Maduro government's request to suspend the investigation for crimes against humanity.⁸⁵

Unfortunately, human rights violations in Venezuela continue to occur, particularly in the context of arbitrary detentions. This report is a collective effort to document and provide practical and accessible information, as well as an overall assessment, of the due process violations that occurred between 2020 and 2021 in the country, and to once again highlight the indiscriminate use of criminal law to criminalize and persecute any critical or dissenting voice, whether real or perceived.

FINDINGS ON ARBITRARY DETENTIONS AND DUE PROCESS VIOLATIONS FOR THE PERIOD JANUARY 2020-OCTOBER 2021

The Venezuelan regime continues to use the punitive power of the State to criminalize human rights defenders, prosecute peaceful social protests and persecute through the criminal justice system those who the authorities consider political opponents in Venezuela. Below, we present an analysis of the data obtained for the period January 2020-October 2021, so it is important to

79 Op Cit note. 18; Second FFM Report, note. 891

80 Op Cit note. 17., Second FFM Report, par. 279, 231, 296

81 International Criminal Court, ICC Prosecutor, Mr Karim A.A. Khan QC, opens an investigation into the Situation in Venezuela, November 5, 2021. Available here: <https://www.icc-cpi.int/news/icc-prosecutor-mr-karim-aa-khan-qc-opens-investigation-situation-venezuela-and-concludes>

82 UN news, La CPI halla una "base razonable" para pensar que se cometieron crímenes graves en Venezuela, pero aún no abre una investigación (ICC finds "reasonable grounds" to believe that serious crimes were committed in Venezuela, but has not yet opened an investigation), November 5, 2020. Available here: <https://news.un.org/es/story/2020/11/1483572> Reuters: ICC prosecutor sees 'reasonable basis' to believe Venezuela committed crimes against humanity

83 International Criminal Court, Pre-Trial Chamber I, Situation in the Bolivarian Republic of Venezuela I. 6 https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_00177.PDF

84 International Criminal Court, Statement of ICC Prosecutor, Karim A.A. Khan QC, on completion of second visit to Venezuela: "Through cooperation we will accelerate our common work towards justice." March 31, 2022. Available here <https://www.icc-cpi.int/Pages/item.aspx?name=20220331-prosecutor-statement-venezuela>. See also Robert F. Kennedy Human Rights, Pronunciamiento de Organizaciones de Sociedad Civil Sobre Oficina Descentralizada de la Fiscalía de la CPI en Caracas (Statement from Civil Society Organizations on the Local Office of the ICC Prosecutor's Office in Caracas), April 13, 2022. Available here: <https://rfkhumanrights.org/press/pronunciamiento-de-organizaciones-de-sociedad-civil-sobre-oficina-descentralizada-de-la-fiscal%C3%ADa-de-la-cpi-en-caracas>

85 International Criminal Court, Pre Trial Chamber I, April 20, 2022. Available here: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_03184.PDF

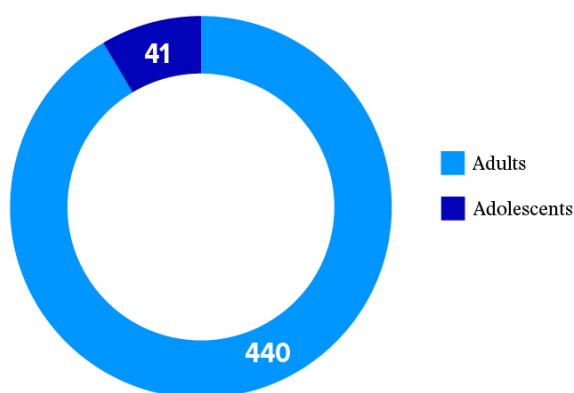
note that the data collected covers a period prior to the decision of the Office of the Prosecutor of the International Criminal Court to open an investigation into possible crimes against humanity committed in Venezuela.

1. PROFILE OF PERSONS SUBJECTED TO ARBITRARY DETENTION AND DUE PROCESS VIOLATIONS

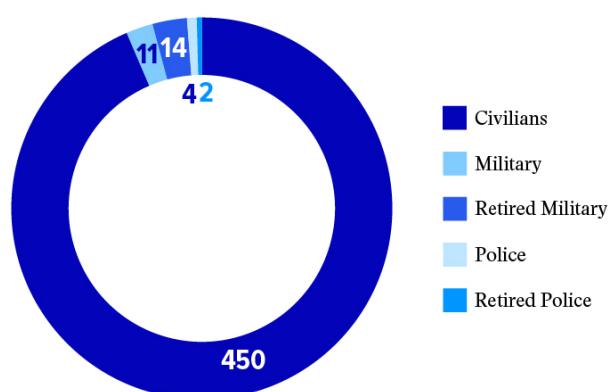
Observations

- *Number of detentions by gender:* Many more men were detained than women—410 men compared to 71 women—however, as will be seen below, women were disappeared or held incommunicado in greater proportion than men.
- *Profile:* The majority of detentions were adults: 91.5% compared to 8.5% of adolescents. The vast majority of those detained were civilians: 450, or 93.6%, compared to 11 military members, 14 retired military members, 4 police members and 2 retired police members.
- *Military members were a specific target:* Although civilians constituted the largest group of detainees, they experienced disappearance/incommunicado detention at a significantly lower rate: 65.33%. In comparison, 10 of the 11 military detainees were disappeared or incommunicado (90.91%); and 12 of the 14 retired military detainees were disappeared or incommunicado (85.71%).

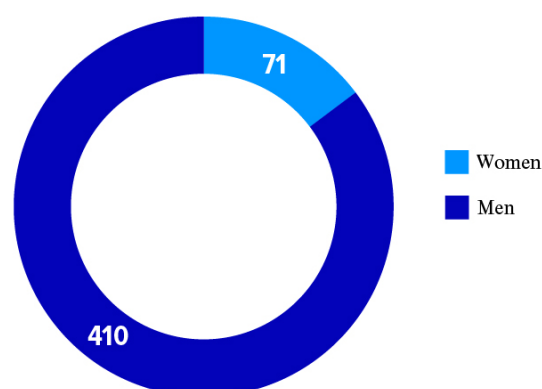
NUMBER OF ADOLESCENTS AND ADULTS DETAINED



NUMBER OF CIVILIANS AND MILITARY DETAINED



NUMBER OF PEOPLE DETAINED BY GENDER



2. TIME IN DETENTION

Observations

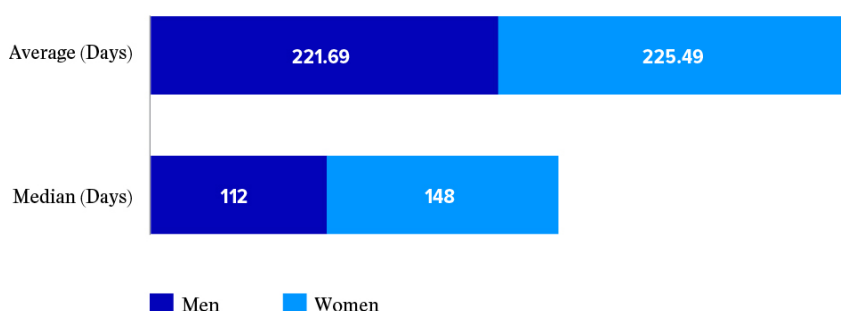
- On average, persons formally deprived of their liberty spent about 220 days in prison (based on 295 detentions, 61% of all detentions). The median detention time was 31 days, while also taking into account that there was a group of people who spent an extended period of time in detention (in some cases more than 400 days), which in turn raised the average.⁸⁶
- Women are above the median prison time of those who were deprived of liberty, as they were in prison for a higher average and higher median time than men (average of 225 days, median of 148 days).
- In general, civilians spent less time in detention—an approximate average of 118 days and a median of 30 days—compared to military and retired military members, who spent an average of more than 400 days in prison and had a median detention time of more than 500 days.

TIME SPENT IN PRISON ON THE BASIS OF THOSE EFFECTIVELY HELD IN PRISON

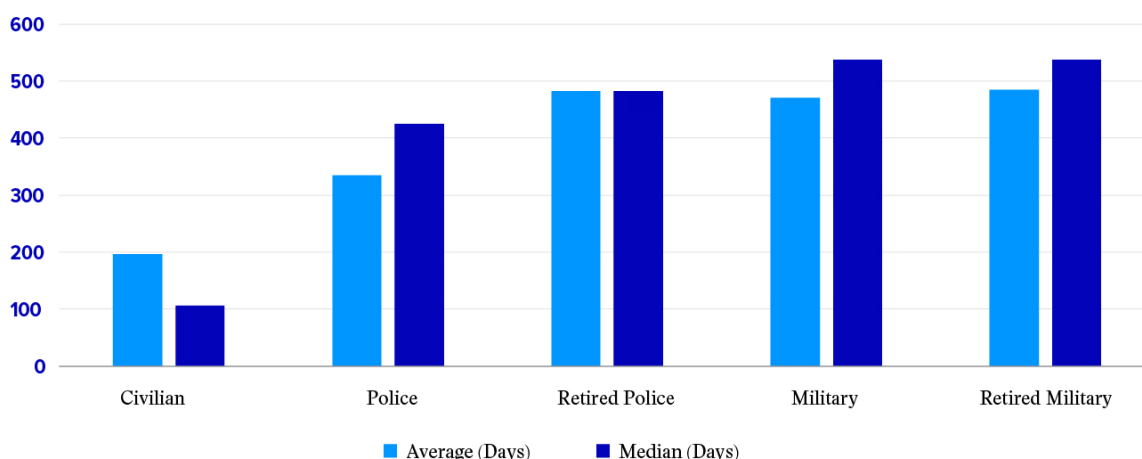
	Average (Days)	Median (Days)	Total number of arrests
Civil	196.85	106	267
Police	335.00	425	3
Police (Retired)	482.50	483	2
Military	471.36	538	11
Military (Retired)	485.33	538	12
Total deprived of their liberty			295

⁸⁶ The median is the midpoint, so 50% of the data are below the median and the other 50% of the data are above the median. Our data show the median as 31, i.e., 50% of the people in our data spent less than 31 days in prison. The nuance here comes from the quartiles. Quartiles do exactly what their name suggests: they divide the upper and lower halves of the data set in half (i.e., they separate the set into quarters). Therefore, the first quartile consists of the first 25% of the data, the median consists of the first 50% and the third quartile consists of 75% of the data (all but the top 25%). In our data set, the first quartile was 3 days, meaning that 25% of those detained spent 3 days or less in jail; however, the other 25% were out after 3 to 31 days.

AVERAGE AND MEDIAN TIME DETAINED (DAYS) – MEN AND WOMEN



AVERAGE TIME DETAINED (DAYS) – CIVILIANS, MILITARY PERSONNEL, AND POLICE



- The highest number of arbitrary detentions occurred in 2020 with 440 detentions, compared to 41 detentions recorded in 2021. Similarly, the vast majority of the 481 people detained (412, or 85.7%) were released as of October 2021. As will be seen below in the section “Criminalization of Protests,” this is explained by the October 2021 release of a significant number of people detained during mass detentions in connection with the 2020 protests and demonstrations.
- In 2020, the majority of people (122 out of 440) were arrested during the month of May in connection with protests and demonstrations. During this month, at least 1075 protests were recorded in Venezuela.⁸⁷ (See more in Section 4 on reasons for detention).

⁸⁷ Observatorio Venezolano de Conflictividad Social, Conflictividad Social en Venezuela en mayo de 2020 (Social Conflict in Venezuela in May 2020), June 11, 2020. Available here: <https://www.observatoriodeconflictos.org.ve/tendencias-de-la-conflictividad/3409>

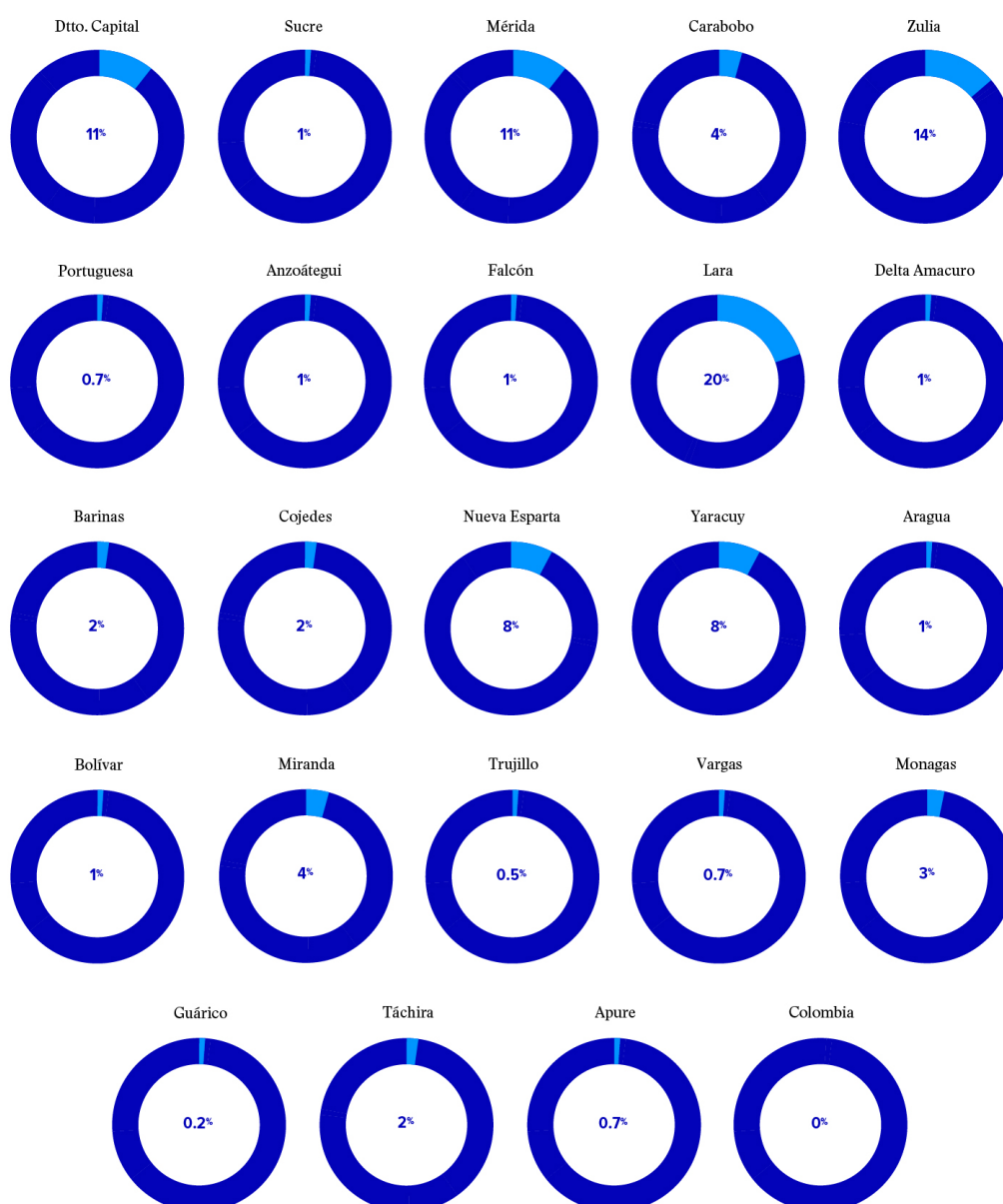
3. PLACE OF DETENTION⁸⁸

Observations

- 424 persons out of 481 persons detained between 2020 and 2021 were detained in states other than the Metropolitan Area of Caracas. However, 30 of them were transferred to the capital city to be tried before the Terrorism Courts—which by 2020-2021 were constituted only in Caracas and had national jurisdiction—as well as to be brought before ordinary and military courts whose cases were assigned to the criminal jurisdiction of the Caracas Metropolitan Area (AMC).
- The states with the highest number of detentions were Lara (89), Zulia (66), Capital District (57) and Mérida (49). Some of the lowest figures came from Guárico (1), Trujillo (2), Vargas (3), Portuguesa (3), Sucre (4) and Delta Amacuro (5).

*There was one (1) detention in Colombia.

DETENTIONS BY STATE, 2020



88 Arbitrary detentions whose “state or place of detention” indicates “Capital District” represent detentions carried out in the Libertador municipality of Caracas and in four (4) municipalities of Miranda state (Chacao, Baruta, Hatillo and Sucre). This grouping of municipalities is known as the Caracas Metropolitan Area. On the other hand, arbitrary detentions whose “state or place of detention” indicates “Miranda” represent detentions carried out in the entire state of Miranda, except in the four (4) municipalities that are part of the Caracas Metropolitan Area.

4. REASON FOR DETENTION

Observations

- *Criminalization of protesting:*⁸⁹ A clear trend of criminalizing both protests and freedom of expression and political dissent was observed. Overall, throughout all of 2020,⁹⁰ 63.41% (279) of 440 recorded detentions were made during demonstrations and protests, more specifically during protests due to shortages or serious failures in the supply of basic services, such as electricity, water, gas and lack of gasoline or fuel. Such was the case of the inhabitants of El Tocuyo in the state of Lara, where residents kept protesting the lack of electricity service during planned daily demonstrations lasting 2 hours, since there were power outages in the area that were lasting 16 continuous hours. As shown in the following section, the state of Lara was the state with the highest number of arbitrary detentions in 2020.
- *Conspiracy was the leading cause of detention in 2021:* In the year 2021, there were a total of 41 detentions. The highest cause of detention was conspiracy, which accounted for a total of 21.95% of those detained (9). Other causes were the following: engaging in human rights activism 17.07% (7), extraction of information within the environment of a political leader or persecuted non-political leader 14.63% (6), related to the Covid-19 pandemic 14.63% (6); publications on social media or sending messages through messaging platforms such as WhatsApp 14.63% (6), Demonstrations and/or Protests 7.32% (3), Practicing journalism 4.88% (2), rebellion 2.45% (1) and armed conflict 2.44% (1), specifically in the border area of Apure state with Colombia.

Cause of detention:	Num. Total	% Num. Total
#25 Conspiracy (non-protest)	55	11.43%
#13 WhatsApp Political Communication/messages	12	2.49%
#19 Social Media Political communication/messages	15	3.12%
#18 Relation to opposition leaders	24	4.99%
#11 Protests – gasoline shortage	50	10.40%
#10 Protests – lack of basic services	195	40.54%
#2 Social media communication/messages	16	3.33%
#36 Public management	1	0.21%
#21 Assault to family or government official	1	0.21%
#32 Covid-19	13	2.70%
#12 Family/friend of an accused person	11	2.29%
#1 Protests (general)	37	7.69%
#4 Military rebellion	21	4.37%
#3 Civil rebellion	4	0.83%
#17 Covid-19 related social media communication/messages	11	2.29%
#16 WhatsApp Covid-19 communication/messages	1	0.21%
#24 Conspiracy (protests)	3	0.62%
#35 Political leaders	1	0.21%
#85 Exercise of human rights defense/activism	7	1.46%
#87 Armed conflict	1	0.21%
#33 Journalism	2	0.42%

⁸⁹ See also section below on criminalization of protests.

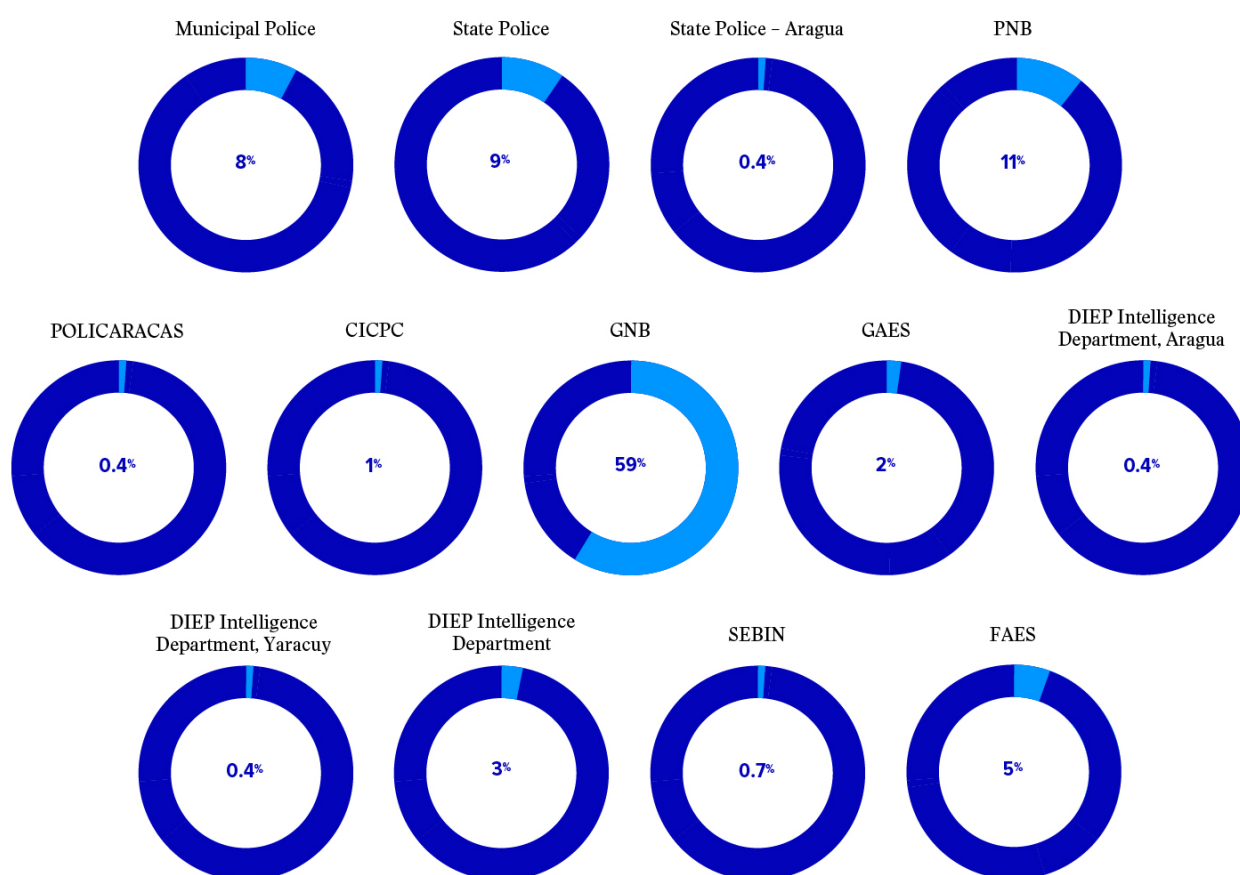
⁹⁰ Other reasons for detention in 2020 (as shown in the table) Conspiracy 11.14% (49), Posting on social networks or sending messages through messaging platforms such as WhatsApp 11.14% (49), Extraction of information within the environment of a Political Leader or persecuted non-Political Leader 6.59% (29), Rebellion 5.45% (24), Related to the COVID-19 pandemic 1.59% (7), from Political Leadership 0.23% (1), as Justification of Governmental Political Actions 0.23% (1), as Individual revenge from a Government Official 0.22% (1).

5. POLICE FORCE ENGAGED IN DETENTIONS

Observations

- Most of the detentions were made by the Bolivarian National Guard (GNB), who made 40% of the detentions recorded, which were mostly related to protests; followed by the FAES and the DGCIM, with 57 detentions each, or 11% of the total. The National Bolivian Police (PNB) recorded a total of 35 detentions (7.5% of the recorded detentions). A table with the total numbers and percentages is shown below:

SECURITY FORCES RESPONSIBLE FOR ARRESTS IN THE CONTEXT OF PROTESTS



6. PRESENTING A WARRANT

Observations

Personal freedom is one of the rights enshrined in the Venezuelan Constitution⁹¹ and in international human rights treaties.⁹² This right implies that no person's freedom may be restricted except in cases established by law. The Inter-American Court has established that Article 7 of the Convention contains “the prohibition of illegal or arbitrary arrests or detentions”⁹³; therefore, “any restriction to the right to personal liberty must be made only for the causes and under the conditions established beforehand by the Political Constitutions or by the laws dictated in accordance with them (material

91 See Article 44 of the Constitution of the Bolivarian Republic of Venezuela, https://www.oas.org/dil/esp/constitucion_venezuela.pdf

92 For example, see Chapter I of the Universal Declaration of Human Rights; Article 5 of the European Convention on Human Rights; Article 7 of the American Convention on Human Rights.

93 IA Court. Case of Gangaram Panday v. Suriname. Merits, Reparations, and Costs. Judgment of January 21, 1994. Series C No. 16, par. 47.

aspect), and also, strictly subject to the procedures objectively defined therein (formal aspect).”⁹⁴ In this regard, the Venezuelan Constitution establishes that a person may only be detained by court order, unless caught in flagrante delicto. With respect to this concept, the Inter-American Court has established that in flagrante delicto cannot be assumed, but must be proven by the authority.⁹⁵ This means that the authority must prove that the deprivation of liberty corresponds to the principles of purpose, suitability, necessity, and proportionality of the deprivation of liberty.⁹⁶

According to the data collected, in most of the cases under analysis, no warrant was presented at the time of detention. This is due, among other things, to the fact that most of the detentions took place within the context of protests, employing the concept of “*in fraganti*” detention.⁹⁷ In this regard, there is an abusive use of the principle of in flagrante delicto to justify detentions.⁹⁸ Likewise, there is complete disregard for the legality of the detention in all other circumstances which, by law, require a warrant to proceed with the apprehension and detention of the individual. Of 481 detentions, only 7 were made upon presentation of a warrant. According to the data collected, 5 search warrants were also presented for alleged conspiracy. It should be added that the 5 people detained under these orders, in the city of Maracaibo, remained incommunicado after their detention.

7. CASES OF INCOMMUNICADO DETENTION OR ENFORCED DISAPPEARANCE

Observations

- *Proportion of disappeared or incommunicado persons by gender.* More women than men were disappeared or held incommunicado. This phenomenon was also found to have taken place during the period covered by the joint RFKHR and Foro Penal report on enforced disappearances published in 2020.⁹⁹ At that time we had already warned that women detainees faced a higher probability of being subjected to enforced disappearance compared to men, and specifically concluded that a significant number of these cases suggested that women were targeted to extract information from them or to punish and intimidate their family members and loved ones.¹⁰⁰ In this report, 267 of the 410 men detained were disappeared or incommunicado (65.12%), while 53 of the 71 women detained were disappeared or incommunicado (74.65%).

94 IA Court. Case of Garcia and Family v. Guatemala Merits, Reparations, and Costs. Judgment of November 29, 2012. Series C No. 258, par. 100.

95 *ibid.*,

96 IA Court. Case of Yarcé et al. v. Colombia Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 22, 2016. Series C No. 325, par. 158.

97 The Supreme Court of Justice has established the justification of a detention warrant issued by a criminal judge against the investigated party in judgment number 714 of the Criminal Cassation Chamber of December 16, 2008, stating that: “There are cases of extreme necessity and urgency, where the detention precedes the indictment, in which such omission is permissible. This is only for exceptional cases, specifically when the crime committed or the particular circumstances endanger the purposes of the proceedings. [...] A similar situation occurs in cases of in flagrante delicto crimes, where, since the criminal act is evident and the perpetrator or participant has been identified (presumption or mere suspicion is not enough), no further investigation or prior judicial warrant is required to apprehend the accused (Article 44, No. 1 of the Constitution of the Bolivarian Republic of Venezuela). However, this condition of extreme necessity and urgency that legitimizes, in principle, the apprehension (in flagrante delicto) or detention (without prior accusation, Article 250 in fine) of an individual does not imply that these are not subject to judicial control, since it is up to the judge, in accordance with the rule of law, to decide on the correctness and legality of the apprehension or detention, weighing the legality, necessity and rationality of the measure and guaranteeing the rights of the apprehended or detained person to be informed of their rights as well as of the act attributed as the basis for the restriction of liberty, in accordance with the principle of presumption of innocence.

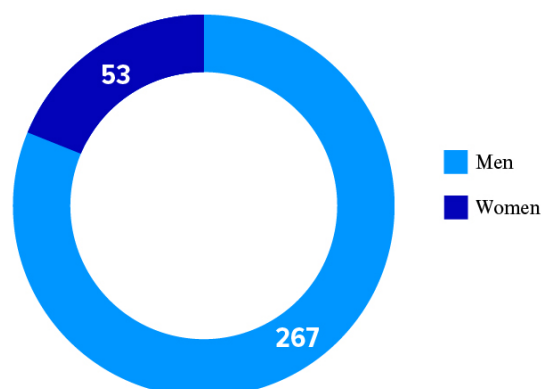
98 Local human rights organizations warned of the abusive use of the principle of in flagrante delicto in the alternative report presented for the Annual Periodic Review of Venezuela at the UN. See for example [Estado de Derecho e Independencia Judicial](#) (Rule of Law and Judicial Independence).

Ibid.,

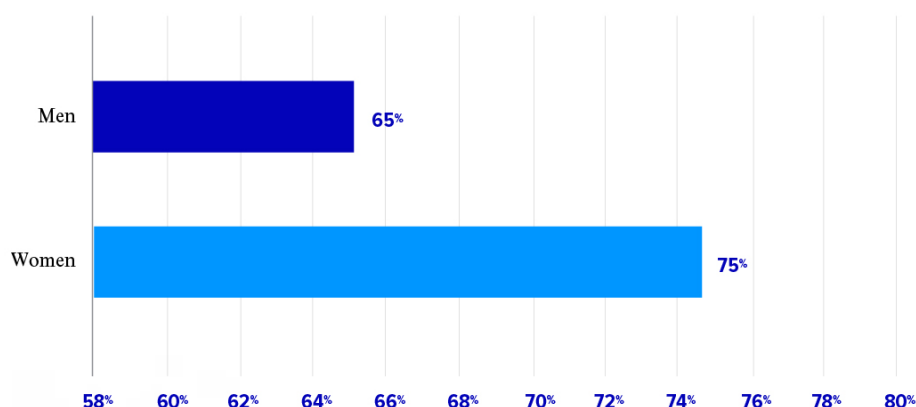
99 Op Cit. Note 26, Report on Enforced Disappearances, Foro Penal and RFKHR.

100 *ibid.*, pg. 48.

PROPORTION OF THOSE DISAPPEARED OR HELD INCOMMUNICADO – MEN AND WOMEN

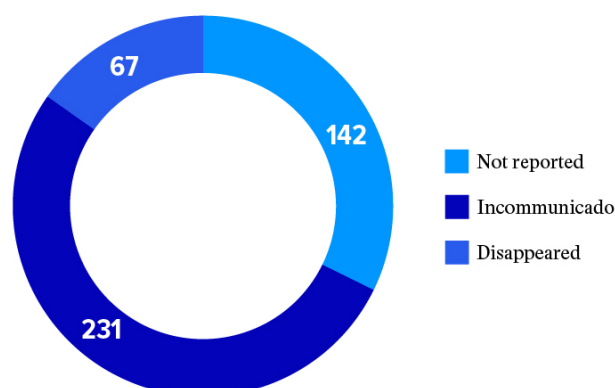


PERCENTAGE OF WOMEN AND MEN DISAPPEARED OR HELD INCOMMUNICADO

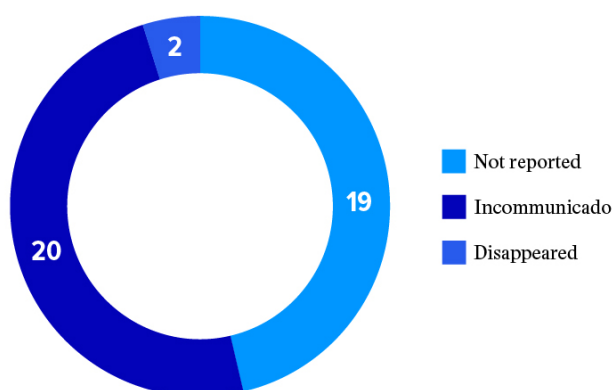


- *Incommunicado*: At the time of detention, 52.3% of the people were incommunicado. This trend continued both in 2020 and 2021. 231 of the 440 people detained in 2020 were held incommunicado, compared to 20 of 41 people detained in 2021.
- *Disappearance*: 14.3% (69) of all detained individuals were effectively recorded as disappeared (67 in 2020 and 2 in 2021).
- Of the 481 detentions recorded between 2020 and 2021, 434 individuals were brought before the courts, 295 of whom were deprived of their liberty (pretrial detention). On this basis (295 people in pretrial detention), 60 were held incommunicado after being brought before a judge (54 people detained in 2020, 6 people detained in 2021).

WHAT HAPPENED AFTER DETENTION? (2020)

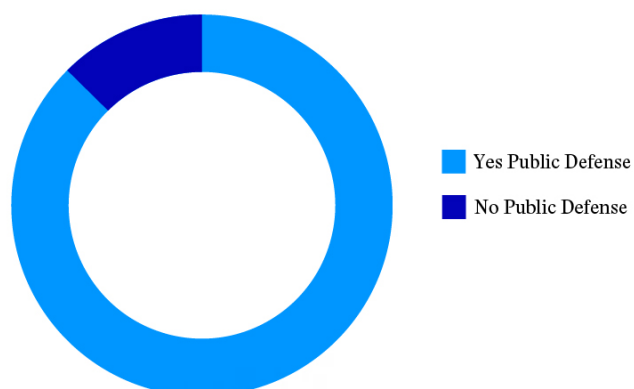


WHAT HAPPENED AFTER DETENTION? (2021)

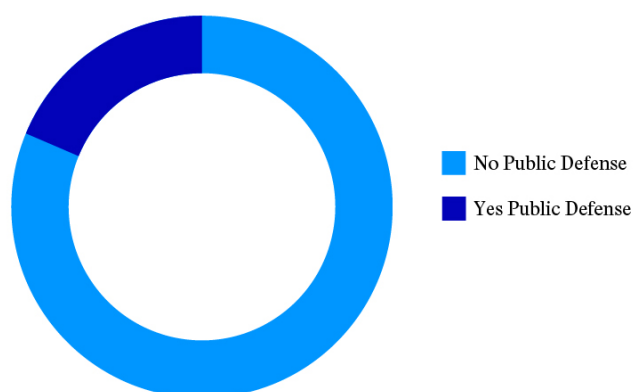


- *Compulsory public defense in cases of disappearance:* A high proportion of disappeared detainees received public defense representation: 44 out of 69 (the other 15 were released without being brought before a court). Of the 69 detainees who reported enforced disappearance, 15 were released without being brought before a court. 12 were released after 48 hours of being detained. 1 of them (Leonard Alexis Hinojosa Diaz Granados) remained in detention for 136 days without being formally deprived of liberty by a judge. Of the 54 people who were brought before a judge, 44 (81%) were forced to use a Public Defender at the hearing. Of the 44 who reported enforced disappearance and were assisted by a public defender, 28 (64%) of them were brought before courts with special jurisdiction (terrorism, military). As can be seen in the stories and conclusions sections, typically, when a person is disappeared, he/she is denied access to his/her trusted legal counsel and is, in fact, forced to be defended by a public defender, even when, in many cases reported by Foro Penal, the detained person demands the appointment of a lawyer of his/her choice. Both disappearances and the imposition of a public defender tend to occur more frequently in cases of detainees who are prosecuted before a special court (with jurisdiction over terrorism or military).
- *Compulsory public defense in cases of incommunicado detention:* Of the detainees who reported incommunicado detention (251), 19 were released without being brought before a court. On average, these people were in detention for 1 day or less. Of the 232 people who were actually brought before a judge, 29 (13%) were forced to use a public defender at the hearing. Of the 29 who reported being incommunicado and who were forced to use a public defender, 10 (35%) of them were brought before courts with special jurisdiction (terrorism, military)

PUBLIC DEFENSE – INCOMMUNICADOS

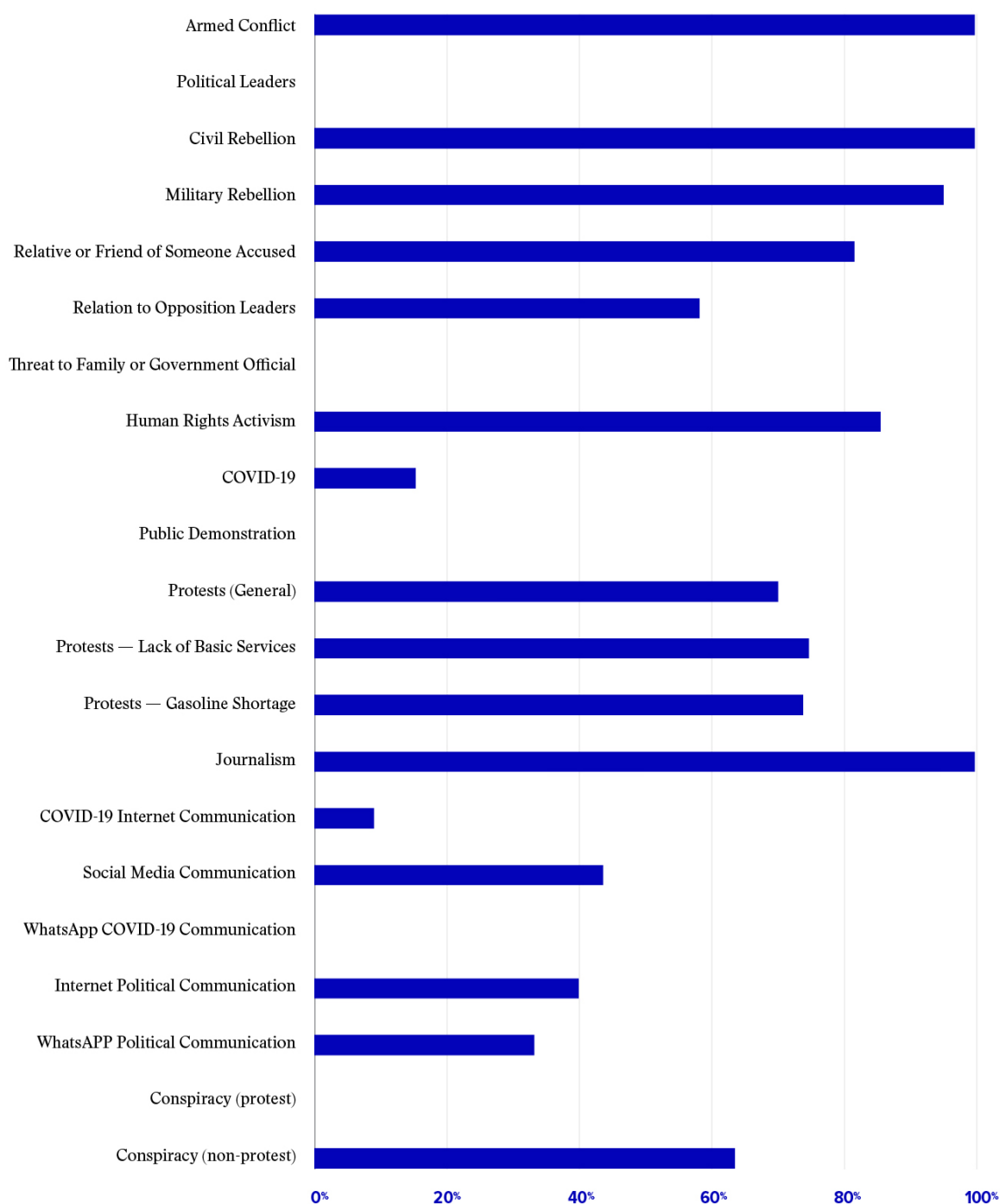


ENFORCED DISAPPEARANCE



- *Pattern of incommunicado detention and disappearance according to the cause of detention:* Most of the incommunicado detentions and disappearances were related to detentions in connection with protests or demonstrations. For example, a total of 211 incommunicado detentions/ disappearances were recorded during protests and demonstrations. 20 disappearances of individuals detained for military rebellion (all but one of the individuals detained for military rebellion were missing at the time of their detention). Similarly, all persons detained for civil rebellion (4) were missing at the time of their detention.

PERCENT EITHER DISAPPEARED OR HELD INCOMMUNICADO – CAUSE OF DETENTION



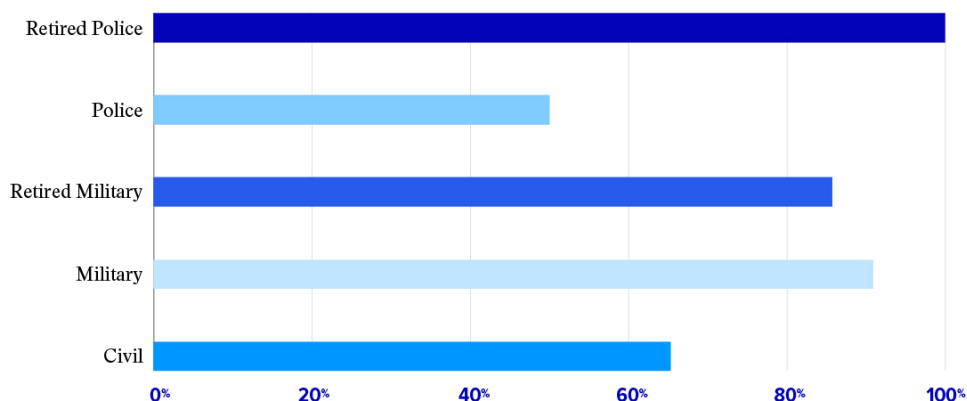
What are the most common cases of incommunicado detention or disappearance?

The cases where enforced disappearance occurs for a longer period of time and more often tend to be those cases where torture takes place and are cases that are directly or indirectly related to the military members.

In cases where there has been an enforced disappearance, whether short or long term, the lawyers of Foro Penal have filed a complaint with the court at the time of the arraignment. This complaint is regularly ignored by judges and prosecutors and so far, there has been no investigation for enforced disappearance. In cases of enforced disappearance, Foro Penal makes public complaints, including

to the Office of the Prosecutor for Fundamental Rights and the Ombudsman's Office. However, to date, there has been no investigation by these agencies.

PERCENTAGE OF MILITARY PERSONNEL AND CIVILIANS DISAPPEARED OR HELD INCOMMUNICADO



PRESENTED WITHIN THE 48 HOURS AFTER HIS/HER DETENTION?

	Number	Percentage
Not presented within the 48h period	183	42.2%
Yes. Presented within the 48h period	251	57.8%

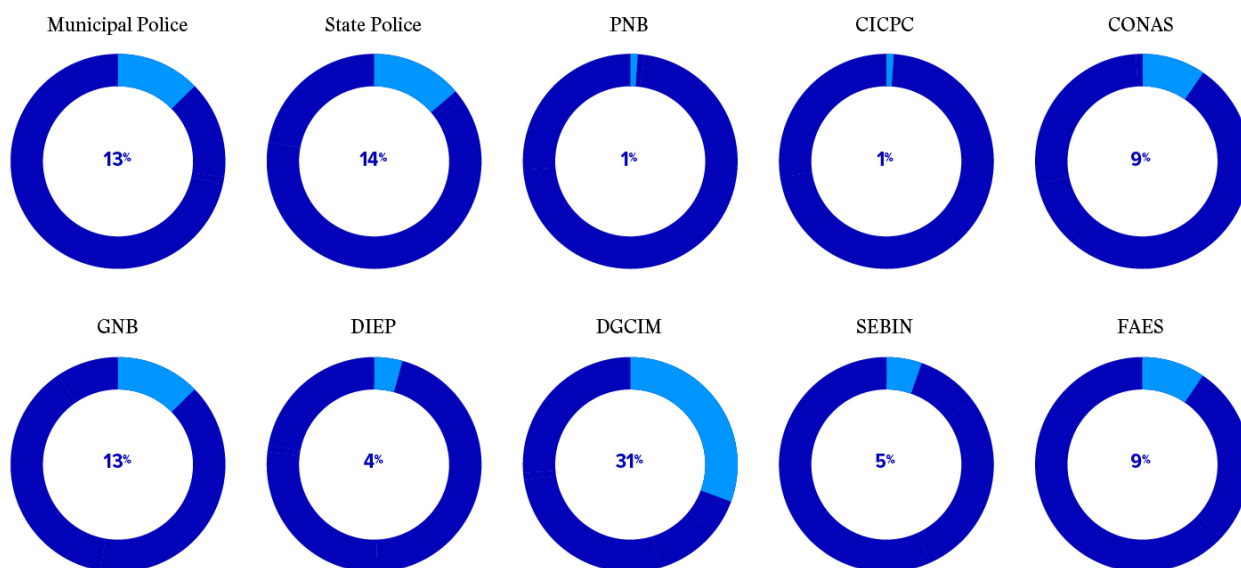
8. TORTURE

Observations

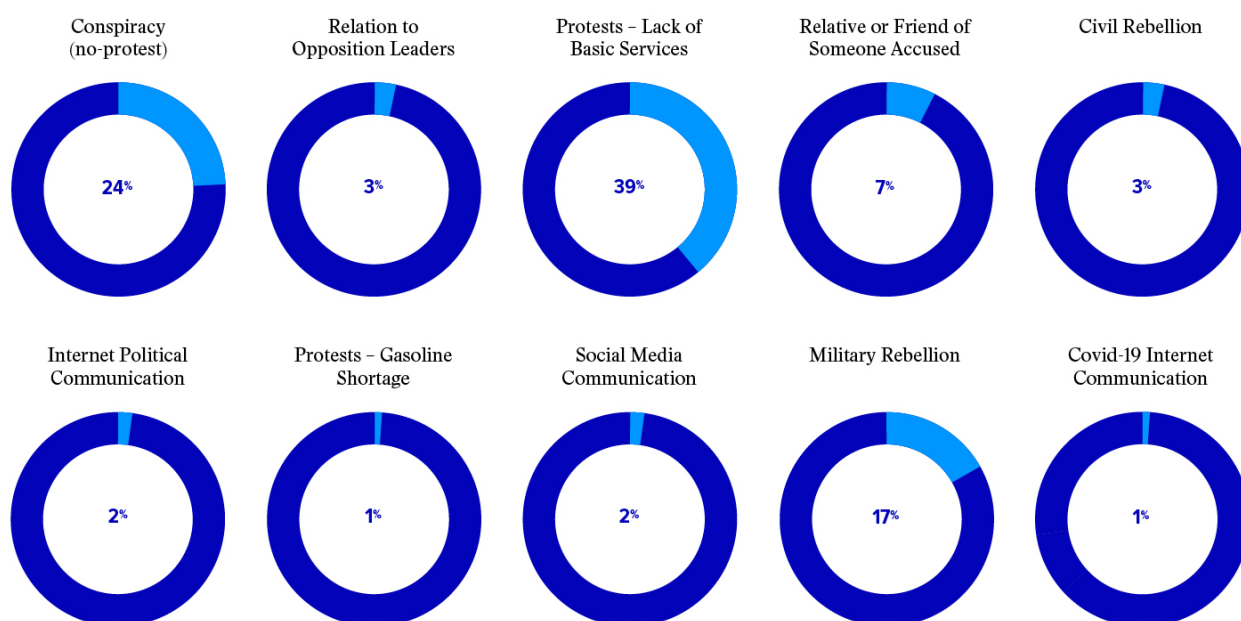
- Between 2020 and 2021, Foro Penal counted 95 cases in which torture was alleged. 93 were from 2020, and two (2) were from 2021. For these cases, the DGCIM (General Directorate of Military Counterintelligence) led in the number of reported instances of torture, representing 29 out of 95 (30.53%) of the total number of complaints of torture.¹⁰¹
- Most of the allegations of torture came from people detained for protesting against failures in basic services: 37 out of 95, or 38.95%. The second largest group alleging torture were those detained for conspiracy outside the framework of demonstrations (23, 24.21%).

¹⁰¹ 36 people who were detained in connection with protests reported the highest occurrence of torture. However, the occurrences of torture were divided between the GNB (7), Municipal Police (12) and State Police (13). Whereas the DGCIM acted as an apprehending and torturing body in detentions due to conspiracy and rebellion. Thus, despite the fact that the largest number of allegations of torture were filed by persons detained in connection with protests, the DGCIM, which does not intervene in protests, appears as the police force against with the highest number of torture allegations filed.

SECURITY FORCES RESPONSIBLE OR ALLEGED TORTURE

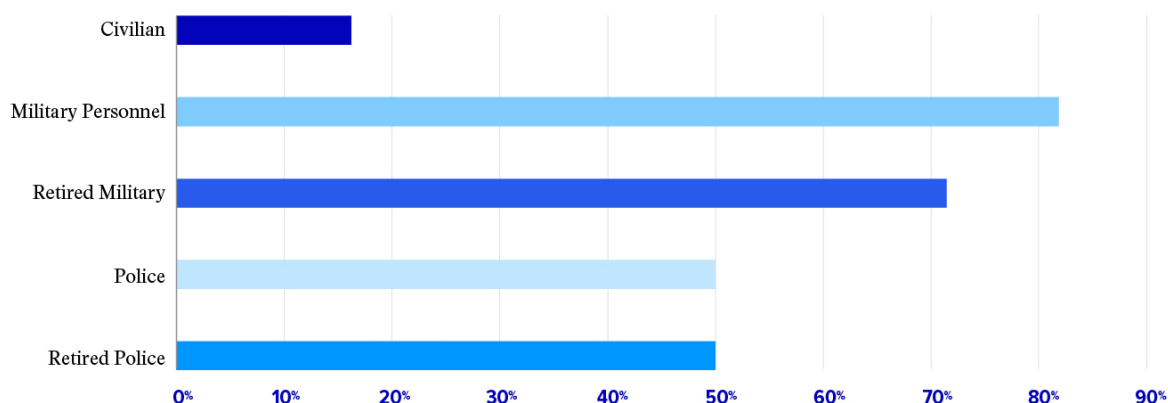


PERCENT OF ALLEGED TORTURE BY CAUSE OF DETENTION



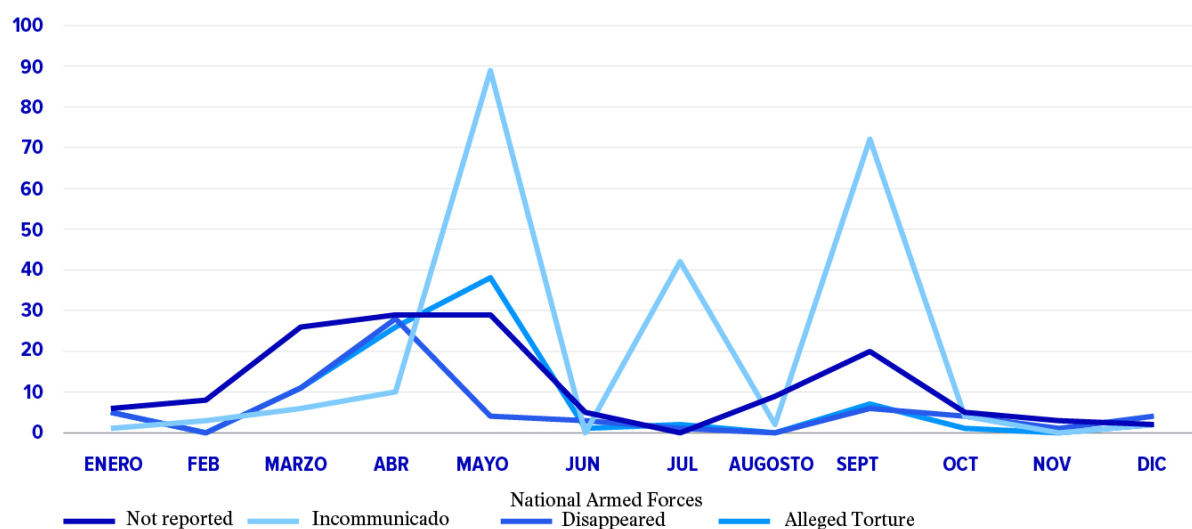
- Military members suffered the highest rate of torture: 9 out of 11 (81.82%) military detainees reported torture. Retired military members also reported the occurrence of torture at an alarming rate: 10 out of 14 (71.43%). 16% of civilians (73 out of 450 detainees) reported torture.

PERCENT OF CIVILIANS, MILITARY PERSONNEL, AND POLICE DETAINED WHO ALLEGED TORTURE

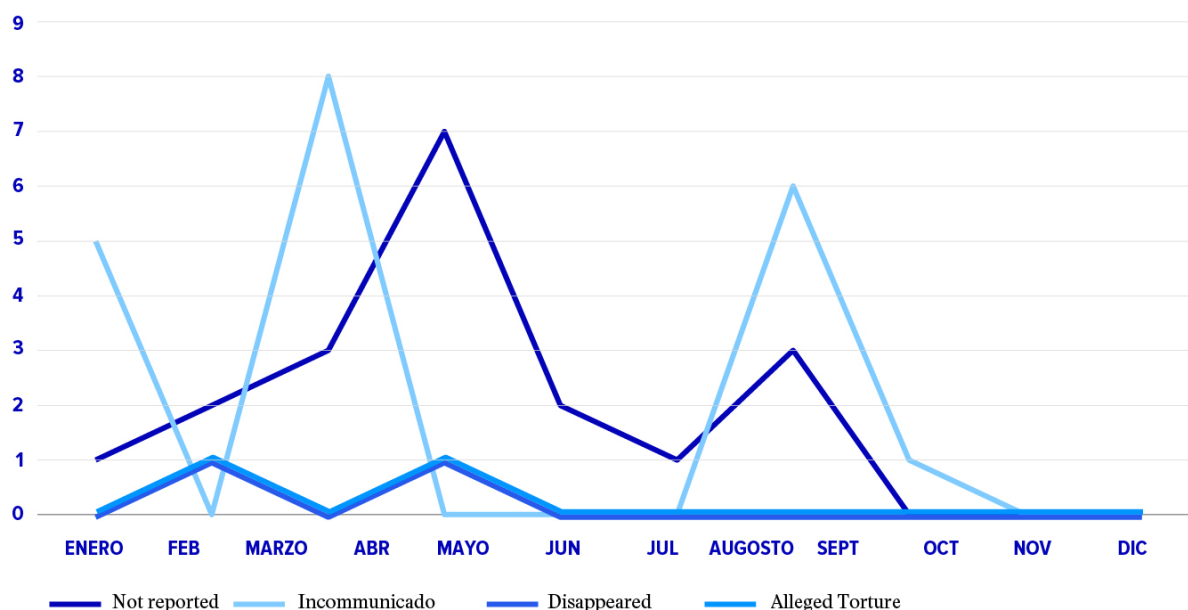


- Most of those who alleged torture were disappeared upon being detained (44 out of 95, or 46.32%). In addition, 44% of those who alleged torture received public defense (42 out of 95). And more than half of them (55, 57.89%) were brought before a judge more than 48 hours after being detained. These results are closely related to the patterns of disappearances and imposition of public defense (in violation of the right to have access to a trusted lawyer) that often occurs when people are prosecuted in special courts. The risk of torture usually increases when the detainee is prosecuted in special jurisdictions, where he or she is generally disappeared and is subjected to compulsory public defense despite his or her express wish to be represented by trusted lawyers.

WHAT HAPPENED AFTER DETENTION? (2020)



WHAT HAPPENED AFTER DETENTION? (2021)



- Of the 95 detainees who alleged torture, 5 were released without being brought before a court and 90 people were formally prosecuted, of which 42 (44%) were assisted by private defense. As of April 2022, 38 of those who alleged torture were still deprived of their liberty, 39 of those who alleged torture were released with precautionary measures, and 1 person was released in February 2022 with full acquittal.¹⁰²

Patterns identified in cases alleging torture

Out of 481 people detained, 95 of them claim to have been tortured. Cases of torture have mostly occurred when the detention takes place due to protests (38 cases), conspiracy (23 cases) or military rebellion (17 cases). It should be noted that all detentions on the grounds of civil rebellion ended in torture (3 cases) (and overall, out of 24 detentions on the grounds of rebellion, 20 alleged torture). The majority of people who were detained because they were relatives or friends of a person being sought alleged torture (6 out of 11). This is an important indicator that torture is used for procedural purposes, i.e., to force a confession against the detainee or a third party and to fabricate guilt. There were also 3 cases of torture due to the detainee's relationship with opposition leaders. Finally, there were 5 allegations of torture during detention due to messages posted on social media.

Generally, the tortured person is also held incommunicado or disappeared (in 76 out of 95 cases the person was held incommunicado or disappeared). These figures allow us to notice a probable pattern: first there is arbitrary detention, followed by prolonged and unjustified detention (incommunicado detention and/or disappearance), either in an official or clandestine detention location, or through the unnecessary extension of the transfer time (the latter is the most likely to apply in cases of detentions in connection with protests or demonstrations). During this period, the arbitrarily detained individual is most likely subjected to torture or ill-treatment in order to coerce him/her to confess or testify against himself/herself or third parties.

¹⁰² Of the 95 detainees who claimed to be victims of torture, as of April 2022: 38 people were still deprived of liberty, one person (1) died while in custody, one person (1) escaped after being subject to deprivation of liberty (he was in a penitentiary center and escaped), one person (1) was released with full freedom after being brought before the court, one person (1) was released with full freedom by means of dismissal (after spending 1 year, 3 months deprived of liberty), 39 were people released with precautionary measures, 8 people were released with full freedom by means of presidential pardon granted on 08/31/2020, 5 people were released without being brought before a court, 1 person was released via acquittal.

According to the data, the police force most prone to employing torture is the General Directorate of Military Counterintelligence (DGCIM), with 29 reported cases of torture, followed by the GNB (12 cases), and the state and municipal police (13 and 12 cases, respectively, in connection with protests). SEBIN (5 cases), FAES (9 cases), CONAS (9 cases), DIEP (4 cases) and CICPC (1 case).

It is important to highlight that there is a close relationship between pretrial detention and torture; 89 of the 95 people tortured were sentenced to pretrial detention.¹⁰³ In this sense, although not all people in pretrial detention were tortured, there is a greater risk of being tortured when in state custody for extended periods of time.

This information is consistent with the results of the FFM's second report. According to this report, in 113 of the 183 detention cases analyzed, detainees or their representatives filed complaints of torture, sexual violence, or other cruel, inhuman, or degrading treatment. In total, 82 of the detainees who were allegedly subjected to torture continued to be charged with crimes, demonstrating a high rate of omission on the part of the Judiciary regarding allegations of torture. This means that despite the requirement under international law to exclude evidence extracted via torture and offer other remedies and reparations to the victims (such as, for example, the complete discontinuance of criminal proceedings), the Venezuelan Judiciary has ignored these complaints, thereby legitimizing the use of torture as a tool to obtain evidence and fabricate guilty parties, and has also refused to establish individual responsibility for acts of torture.

It is very likely that the actual number of cases of torture is much higher than what has been recorded, due to the fact that, as already mentioned, torture, in all its forms, is not usually a crime that is reported due to the victims' fear of retaliation, even more so when the person is deprived of his or her liberty.

What happens in practice when bringing allegations of torture and complaints before the judge of the case or other competent bodies in the matter?

Between 2020 and 2021, Foro Penal filed 13 complaints with national justice authorities. Eleven (11) were for 2020 and two (2) were for 2021.

In most of the cases represented by lawyers from Foro Penal, the victims, when they are detained and brought before a court, report before the judge the torture they have suffered. At least one prosecutor from the Public Prosecutor's Office was also present at the court hearings where the allegations were made. Thus, there is evidence of cases in which the Prosecutor's Office had direct knowledge of these allegations, both through court hearings and by means of complaints filed directly, sometimes through the direct testimony of the victims. However, in no case did the Public Prosecutor's Office investigate the facts or the court require any investigation.

It is important to note that on February 15, 1985, the Bolivarian Republic of Venezuela signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and subsequently ratified the same on July 29, 1991. There is also a Special Law to Prevent and Punish Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹⁰⁴ As such, public officials, especially administrators of justice, have the obligation to investigate, prosecute, try and punish those who are accused of being responsible for torture or cruel, inhuman, or degrading treatment.

More specifically, Article 31 of the Special Law clearly establishes the obligation of public officials, particularly judges and prosecutors, to denounce the crime of torture when they become aware of

¹⁰³ The 89 pretrial detainees who reported having been tortured by state security agencies probably suffered torture before they were remanded in custody. 55 of these individuals were brought before court more than 48 hours after their detention, and the torture most likely continued after they were remanded in custody. The average time in prison for these 89 individuals was 336 days. Even with the correlation between pretrial detention and torture, torture starts from the moment of detention.

¹⁰⁴ National Assembly of the Bolivarian Republic of Venezuela, Ley Especial para Prevenir y Sancionar la Tortura y Otros Tratos Crueles, Inhumanos o Degradantes (Special Law to Prevent and Punish Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), July 22, 2013. Available here: <http://www.asambleanacional.gob.ve/storage/documentos/leyes/ley-especial-para-prevenir-y-sancionar-la-tortura-y-otros-tratos-crueles-inhumanos-o-degradantes-20211108163103.pdf>

it.¹⁰⁵ In addition, Article 32 establishes that the Public Prosecutor's Office of the Public Ministry has the obligation to investigate acts of torture and provides for particular jurisdiction of the Ombudsman's Office by establishing that it may participate in the investigation.¹⁰⁶

At the end of 2021, Foro Penal analyzed 148 cases in which the complaints made, whether before the courts, the Prosecutor's Office or the Ombudsman's Office, are physically on file. In all cases, the courts, in addition to ignoring the complaint, even when in some cases the judges were shown the marks from the blows or injuries suffered by the victims who were present at the hearings, failed to comply with Article 15 of the Special Law, which establishes the obligation for any public official who knows of the existence of a possible case of torture to send the information to the Ombudsman's Office for investigation. In none of the cases in which complaints were filed directly with the Ombudsman's Office was any investigation carried out. In the cases reported directly to the Public Prosecutor's Office, specifically to the Fundamental Rights Prosecutor's Office, no investigation was initiated and conducted nor was guilt established.

Thus, it can be seen that not only is there a lack of investigation into the situations of which the public official with the obligation to investigate cases of torture was alerted, but that there seems to be a systematic intention to omit or conceal these complaints. This makes these officials, due to their deliberate omission in the fulfillment of their legal obligations, participants or accessories to the crime against humanity that was committed.

It is important to highlight that even in cases where, by means of opinions issued by the United Nations Working Group on Arbitrary Detention ("Working Group") and sent to the Venezuelan State in which it was indicated that persons arbitrarily deprived of their liberty had been tortured, there was no investigation into these cases and responsibility for these acts was not even established. Instead, this situation was ignored and no type of investigation was conducted.

There are, for example, cases such as that of Carlos Miguel Aristimuño de Gamas. In the Working Group's opinion No. 81/2019,¹⁰⁷ it was indicated that he was a victim of torture and cruel and inhuman treatment. There is also the case of Deputy Juan Requesens. In the Working Group's opinion 40/2019,¹⁰⁸ the existence of torture and cruel and inhuman treatment against him was established. The relevant information was even referred to other UN special procedures, including the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, as well as to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Despite the above, to date, state authorities have not conducted an investigation.

As noted above, the failure to investigate these cases of torture and cruel, inhuman and degrading treatment has been a systematic action of the Venezuelan regime since at least 2014. This is evidenced by the opinions adopted by the Working Group regarding the cases of Lorent Gómez Saleh and Gabriel Valles (Opinion No. 24/2018);¹⁰⁹ Gerardo Ernesto Carrero Delgado, Gerardo Rafael Resplandor Veracierta, Nixon Alfonso Leal Toro, Carlos Pérez and Renzo David Prieto Ramírez. (Opinion No. 26/2015)¹¹⁰; and Juan Carlos Nieto (Opinion No. 29/2014)¹¹¹.

¹⁰⁵ Ibid., Article 31: Any public official who witnesses or has knowledge of the commission of the crimes provided for in this Law is given an order to take the typical actions provided for in this Law. Even if these actions are not taken, the public official is obligated to report it immediately to the competent authorities. Any public official who fails to comply with the provisions of this article shall be punished with one to three years of imprisonment.

¹⁰⁶ Ibid., Article 32: The Public Prosecutor's Office is responsible for the investigation to determine the punishable act as well as the identification of the perpetrator or perpetrators and/or participants, in accordance with the special procedures provided for such purposes. The Ombudsman's Office may participate in the investigation, and shall have access to the case and its minutes, or to any other information in the archives of the State or private institutions, in order to make the necessary recommendations.

¹⁰⁷ See United Nations Special Procedures Opinion, Working Group on Arbitrary Detention, January 30, 2020. Available at: <https://foropenal.com/opinion-81-2019-relativa-a-carlos-aristimuno-de-gamas-grupo-de-detenciones-arbitrarias/>

¹⁰⁸ See United Nations Special Procedures Opinion, Working Group on Arbitrary Detention, October 09, 2019. Available at https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session85/A_HRC_WGAD_2019_40_AdvanceEditedVersion.pdf

¹⁰⁹ See United Nations Special Procedures Opinion, Working Group on Arbitrary Detention, July 17, 2018. Available at https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session81/A_HRC_WGAD_2018_24.pdf

¹¹⁰ See United Nations Special Procedures Opinion, Working Group on Arbitrary Detention, September 28, 2015. Available at https://www.ohchr.org/Documents/Issues/Detention/Opinions2015AUV/Opinion%202015%2026_Venezuela_Delgado%20y%20al._AUV.pdf

¹¹¹ See United Nations Special Procedures Opinion, Working Group on Arbitrary Detention, November 21, 2014. Available at <https://forope->

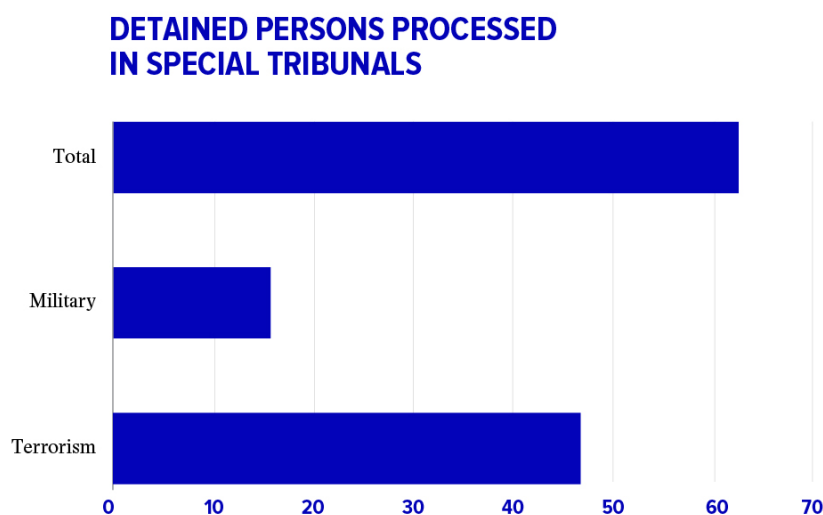
At the close of this report, the situation remained unchanged. Foro Penal is not aware of any investigation, much less judicial proceedings, against those responsible for the aforementioned cases of torture. Rather, we have observed with concern how alarming cases of torture and ill treatment continue to occur. One such example is the case of Emirlendris Benitez (Opinion No. 74/2021)¹¹² She has been detained for more than 3 years, and has reported on multiple occasions of being a victim of torture, including a forced abortion. There is also a specific opinion from the Working Group on her case and the complaints of torture have been submitted to all national authorities. To date there has been no known investigation into the alleged torture.¹¹³

In all cases, judges have ignored their responsibility to investigate and punish acts of torture and ill-treatment. These cases have not been referred to the Public Prosecutor's Office, nor are there any proceedings in the criminal courts to determine whether or not acts of torture have been committed. This implies that the judicial proceedings in which torture has been alleged and reported have continued, and evidence and proof obtained, whether as a result from or related to acts of torture in its collection, has been taken into consideration against detainees by police, military officials, or the Prosecutor's Office.

SPECIAL COURTS¹¹⁴

Observations

- Between 2020 and 2021, a total of 63 people were reported as being tried in special courts. Of these, 26 claimed to have suffered acts of torture (about 41%).



- Among the security agencies responsible for the detentions of this group of people, the DGCIM was responsible for 25 detentions (about 40%) and the FAES was responsible for 16 detentions (just over 25%).

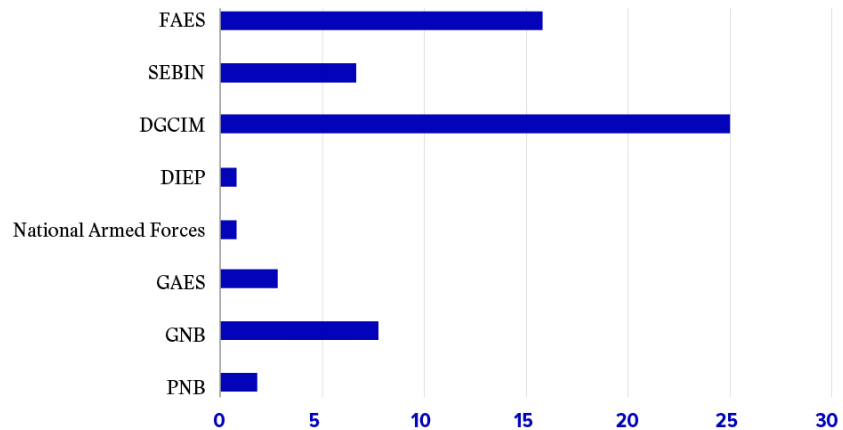
[nal.com/resolucion-292014-del-grupo-de-trabajo-sobre-la-detencion-arbitraria-en-su-70-o-periodo-de-sesiones-25-a-29-de-agosto-de-2014-caso-juan-carlos-nieto/](https://foropenal.com/resolucion-292014-del-grupo-de-trabajo-sobre-la-detencion-arbitraria-en-su-70-o-periodo-de-sesiones-25-a-29-de-agosto-de-2014-caso-juan-carlos-nieto/)

¹¹² See United Nations Special Procedures Opinion, Working Group on Arbitrary Detention, January 24, 2022. Available at <https://foropenal.com/opinion-74-2021-relativa-a-emirlendris-benitez-grupo-de-trabajo-sobre-detencion-arbitraria-en-su-92o-periodo-de-sesiones/>

¹¹³ Ibid.,

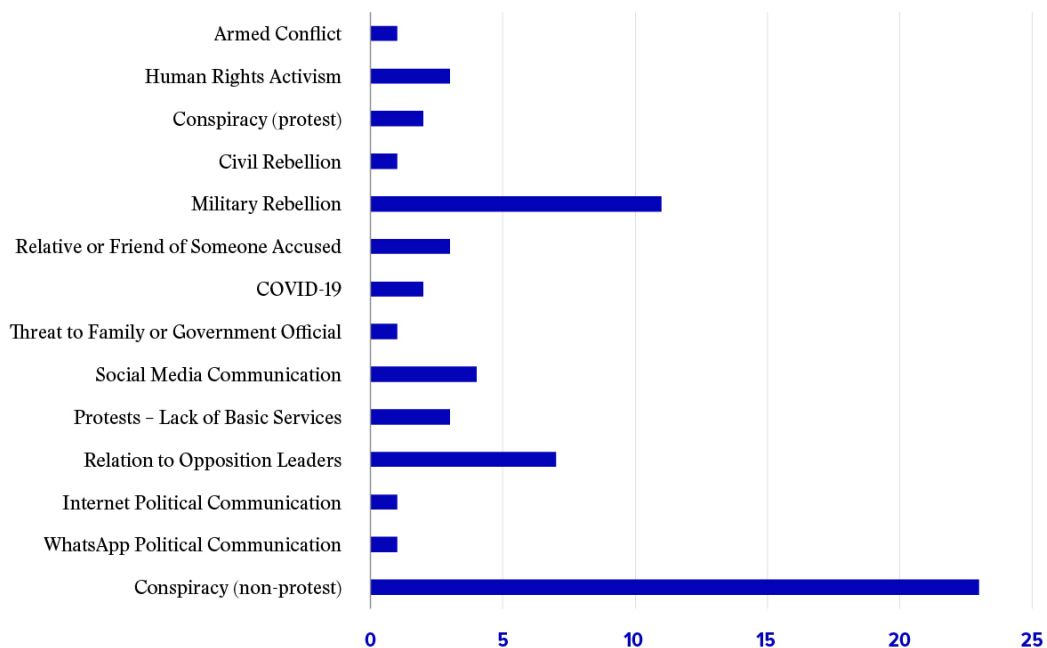
¹¹⁴ We use the term "Special Courts" to refer to those courts with jurisdiction over terrorism and military cases.

SECURITY FORCES RESPONSIBLE FOR THE ARRESTS OF PEOPLE PROCESSED IN SPECIAL TRIBUNALS



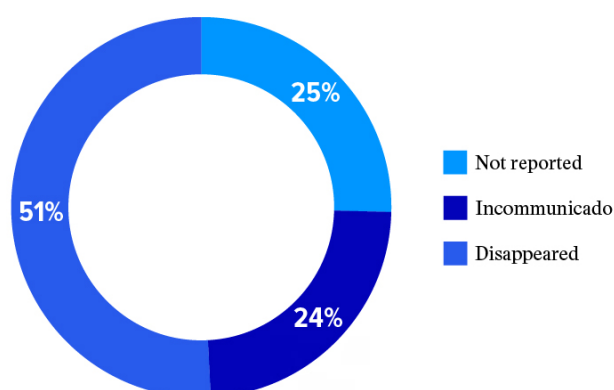
- More than half (36, or just over 57%) of those brought before special courts were still deprived of their liberty as of October 2021.
- 23 people (almost 37%) tried in special courts were detained for conspiracy outside of the scope of protests; another 11 (almost 18%) were detained for military rebellion. Most of these individuals (20) were detained in the Capital District.

ASSIGNMENT TO SPECIAL TRIBUNALS BY CAUSE OF DETENTION



- Just over half (50.79%) of this group were disappeared after being detained. Another 15 (almost 24%) were held incommunicado after their detention.

DETAINED PERSONS PROCESSED IN SPECIAL TRIBUNALS



- People who were tried in special courts tended to spend a particularly long time in detention: the average length of time was 285 days and the median was 291 days. The 25% of this group that spent the least amount of time in detention were detained between 1 and 95 days.

10. DETENTION OUTCOME (LAST KNOWN LEGAL STATUS)

Observations

- Most of those detained during the period covered by this report are currently under precautionary measures: 262 of the 481 people detained (54.5%). Other legal statuses included the following: full release (30), full release via pardon¹¹⁵ (25), release without hearing (47), freedom (after admission to facts) (35), deprived of liberty (20) and deprived of liberty while on trial (48).
- *Release after admission to facts*: 35 of the individuals reported as being detained were released after admitting to the facts. None of these people claim to have been tortured, but the vast majority were held incommunicado in the early stages of the process (31 out of 35). The reason for their detention had to do mostly with their participation in protests in response to the lack of gasoline and failure of basic services (30 out of 35). The remainder were detained for social media or WhatsApp posts (2) and conspiracy (3).
- *Deprivation of liberty*: As of October 2021 (the cut-off date for collection of data for this report), 68 detainees were in custody, 48 of whom had trial dates and 20 who did not. Data from April 2022 indicates that 55 people remain in detention, since 13 of the 68 people detained were released.
- *Died while in custody*: one of the detainees died while in state custody. A male police officer was arrested by the National Anti-Extortion and Kidnapping Command (CONAS) in the Capital District. He was held in pretrial detention and charged with, among other things, criminal association, financing terrorist groups and treason. He spent 485 days in prison (16 months) and is reported to have been tortured.
- *Deprivation of liberty – conviction due to admission to facts*: One of the detained individuals was deprived of liberty for admitting to the facts of which he was accused, which relate to publishing a political post on social media. He was convicted of aggravated promotion and incitement to hatred, as outlined in the Constitutional Law against Hate, for Peaceful

115 Amnesty International, Venezuela: The announcement of pardon for more than 100 people is just the first step in reversing the policy of repression, August 31, 2020. Available here: <https://www.amnesty.org/en/latest/press-release/2020/08/venezuela-el-anuncio-de-indulto-a-mas-de-cien-personas-es-solo-el-primer-paso-para-revertir-la-politica-de-represion/>

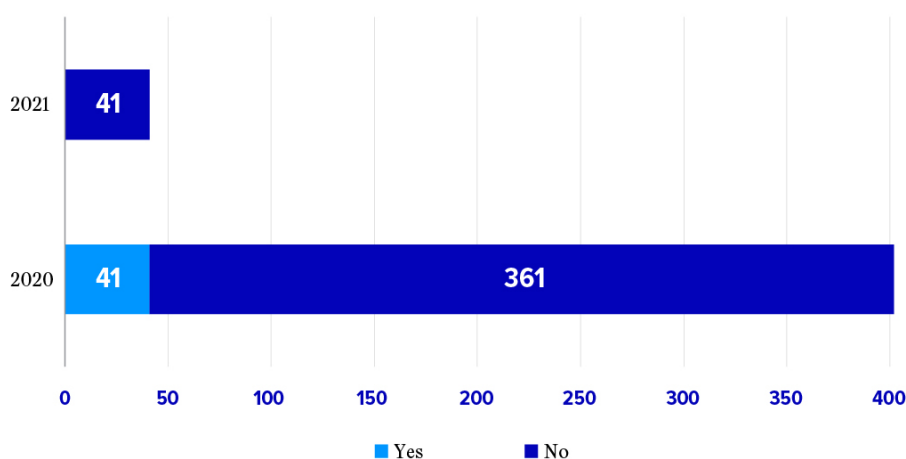
Coexistence and Tolerance published in November 2017.¹¹⁶

****Release - in process of verification:** Two detainees were reported to be released and in process of verification.¹¹⁷

11. ADMISSION TO FACTS

In 2021, out of 41 arbitrary detentions, no instance of admission to allegations was reported. In 2020, out of 440 arbitrary detentions, 36 instances of admission to facts were reported, of which 35 individuals were released. Only one (1) person is still deprived of liberty and serving a sentence. None of these people claim to have been tortured, but the vast majority were held incommunicado in the early stages of the process (31). The reason for their detention had to do mostly with their participation in protests in response to the lack of gasoline and failure of basic services (30). The remainder were detained for social media or WhatsApp posts (2) and conspiracy (3).

ADMISSION OF GUILT BY YEAR, 2020-2021



Of the 35 cases of individuals released on admission to facts, five (5) of them received sentences and are serving their sentences outside of state custody.¹¹⁸

Brief breakdown of cases - admission to facts

25 people, which constitute 71% of the 35 cases of release upon admission to facts, were part of a mass detention in Zulia state, and are part of the same criminal case. The detention took place on May 25, 2020 during a protest at the flea market in Maracaibo. The detained individuals were brought before the court and charged with the following crimes: criminal association, obstruction of public roads, resistance to authority, disturbance of public order. During the presentation hearing, they were placed under house arrest. It was not until a year later that the preliminary hearing was held on July 9, 2021. During this hearing, they were told that upon admission to the facts, their house arrest would be lifted and they would be required ¹¹⁹ to make donations of office supplies to the court, and make appearances for one year before the Technical Unit for penitentiary system support. They were also told that if they complied with their obligations for the established

¹¹⁶ This law was enacted in 2017 by Venezuela's National Constituent Assembly, made up exclusively of pro-government members. <http://www.asambleanacional.gob.ve/storage/documentos/leyes/ley-constitucional-contra-el-odio-por-la-convivencia-pacifica-y-la-tolerancia-20220215163238.pdf>

¹¹⁷ This information is in regard to two people who were detained because of the dissemination of a video on social media showing the conditions of a shelter intended to house people arriving in the country in the midst of the pandemic (April 2020). These people were deprived of their liberty for incitement to hatred. They were represented by a private attorney at the arraignment. Foro Penal learned that both individuals were released from prison, but has not been able to establish communication with their lawyer to verify the details.

¹¹⁸ Breakdown by state: Bolívar (1), Miranda (1), Anzoátegui (1), Táchira (2).

¹¹⁹ This term refers to the requirement to make a donation of office supplies to the court (e.g., office supplies such as paper, folders, pens).

period of time, they would be granted full release and the case would be dismissed. The people accused accepted this deal.

Five (5) of the 35 cases of release upon admission to facts involve 5 men detained in a mass detention during a protest against failures in basic services (domestic gas and electricity) that took place in the town of Chivacoa, Bruzual municipality of Yaracuy state on September 23, 2020. These 5 individuals were presented before the court and were granted bail; however, they remained deprived of their liberty until the bail was posted. Subsequently, during a hearing held on December 4, 2020, they were released from prison and were granted the procedural benefit of release upon appearance, following the admission to facts for the crime of incitement to hatred. They were accused of being participants in the violent events that occurred in Chivacoa against the headquarters of the Mayor's Office of the Bruzual municipality.

However, there is a person who continues to be deprived of liberty after an admission to facts. This person was detained on April 20, 2020 as a result of a social media post (Facebook) in which he/she expressed his/her opinion on the gasoline shortage and the long lines that the population of his/her area must endure in order to obtain fuel. His/her preliminary hearing took place almost a year after his/her arrest in February 2021. He/she was sentenced to 6 years, 8 months in prison for the crime of incitement to hatred.

Patterns observed in practice in cases where there is an admission to facts, 2020-2021

According to observations from lawyers with Foro Penal, it can be determined that admission to facts originates from a set of factors, among which we can include procedural delay, conditions of detention center facilities and the possibility of obtaining alternative measures, particularly house arrest. Sometimes people are pressured to admit to the facts and are offered immediate release, or their crimes and sentence are negotiated. Sometimes people accept admissions to fact for personal reasons, such as, for example, a health condition that requires specialized medical attention.¹²⁰

12. PRETRIAL DETENTION

In accordance with international and national guidelines, including Venezuela's Organic Code of Criminal Procedure,¹²¹ the right to the presumption of innocence must be taken into account when applying pretrial detention. The exceptional nature of this measure must also be taken into account. Furthermore, pretrial detention must be applied in accordance with the criteria of legality, necessity and proportionality. In this sense, the deprivation of liberty of the accused individual can only be based on the legitimate purposes thereof, namely to ensure that the accused person does not obstruct the course of the proceedings or evade justice.

However, the results show an abusive use of pretrial detention and precautionary measures. The exception, according to the reported cases, is full release. Of the 481 people detained, 295 were held in pretrial detention during the period from January 2020 to October 2021. Pretrial detention was not applied to 47 of the detained individuals, as they were released before being brought before a court. As for those detainees who were not ordered to be held in pretrial detention (139 out of 481 cases), only 26 received full release, while 111 were conditionally released under precautionary measures.

¹²⁰ A clear example is the case of the 15 PDVSA workers detained in 2017. Seven were arrested on September 4, 2017, one on September 28, 2017, and seven others on October 24, 2017. All were arrested in Zulia state and transferred to Caracas to stand trial for participating in oil sabotage plans. They were deprived of liberty and in 2018 were transferred to a penitentiary center in Carabobo state. After numerous deferrals, the preliminary hearing began on January 29, 2021 and ended on February 8, 2021, almost 4 years after their detention. At the preliminary hearing, 12 of these workers decided to admit responsibility for the acts of which they were accused. Although they were innocent, the deplorable conditions in which they were being deprived of their liberty, the legal uncertainty, resulting particularly from the procedural delay, having to wait four years for the preliminary hearing, and not knowing how long they would have to wait for the trial led them to admit to the facts and accept a sentence that for some was five years and for others nine years. To read more about this case visit: <https://foropenal.com/actualizacion-sobre-el-estado-de-salud-de-52-presos-politicos-en-venezuela-28-de-octubre-de-2020/> y <https://talcualdigital.com/cuando-los-trabajadores-petroleros-tambien-se-convierten-en-presos-politicos/>

¹²¹ Gaceta Oficial N° 6.644 Extraordinario (Extraordinary Official Gazette No. 6,644) of 09/17/2021. Available here: https://www.moore-venezuela.com/MediaLibsAndFiles/media/venezuelaweb.moorestephens.com2020/Images/2021_Septiembre_g-e_6-644.pdf In the most recent reform to the Venezuelan Code of Criminal Procedure, Article 230 established that the maximum period of pretrial detention is three years, including any extension that may be determined by the judge (cannot be extended for more than one year)

An important aspect to highlight is that 89 of the people who were held in pretrial detention alleged torture. While it is true that not all those held in pretrial detention reported torture (it should be noted that many do not allege torture out of fear of retaliation), the majority of those who did report torture (89 out of 95 torture cases) were being held in pretrial detention, confirming that the risk of being tortured increases with the amount of time spent in state custody.

The disproportionate use of pretrial detention was also highlighted in the results of the FFM's second report, where in 170 cases of initial appearance documented by the Mission, 146 resulted in pretrial detention.¹²²

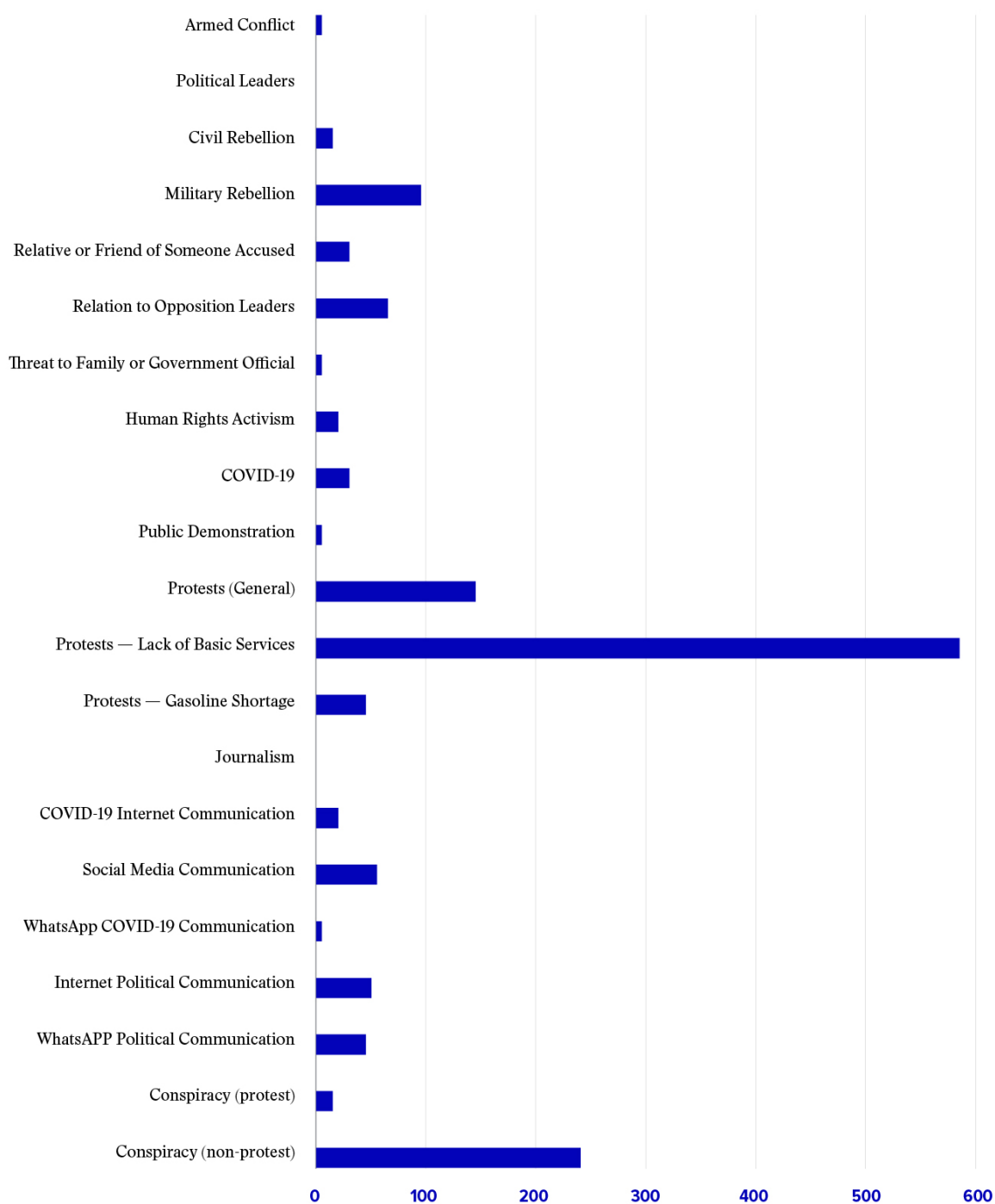
The excessive use of pretrial detention is one of the clearest signs of failure in the administration of justice, and represents a fundamental problem, particularly in non-democratic states that use the criminal justice system as a tool to persecute and criminalize dissidents and critical voices, without at all being subjected to the rule of law or having respect for the right of all persons to the presumption of innocence. In an authoritarian state, every critical voice, whether real or perceived, is criminal and guilty.

**TOTAL NUMBER OF PEOPLE DETAINED IN PRE-TRIAL DETENTION
(ONLY IN THE PERIOD ANALYZED)**

Pre-trial Detention	No	Not applicable
295	139	47

*More than half of the persons detained were held in pretrial detention.

NUMBER HELD IN PREVENTIVE DETENTION – CAUSE OF DETENTION



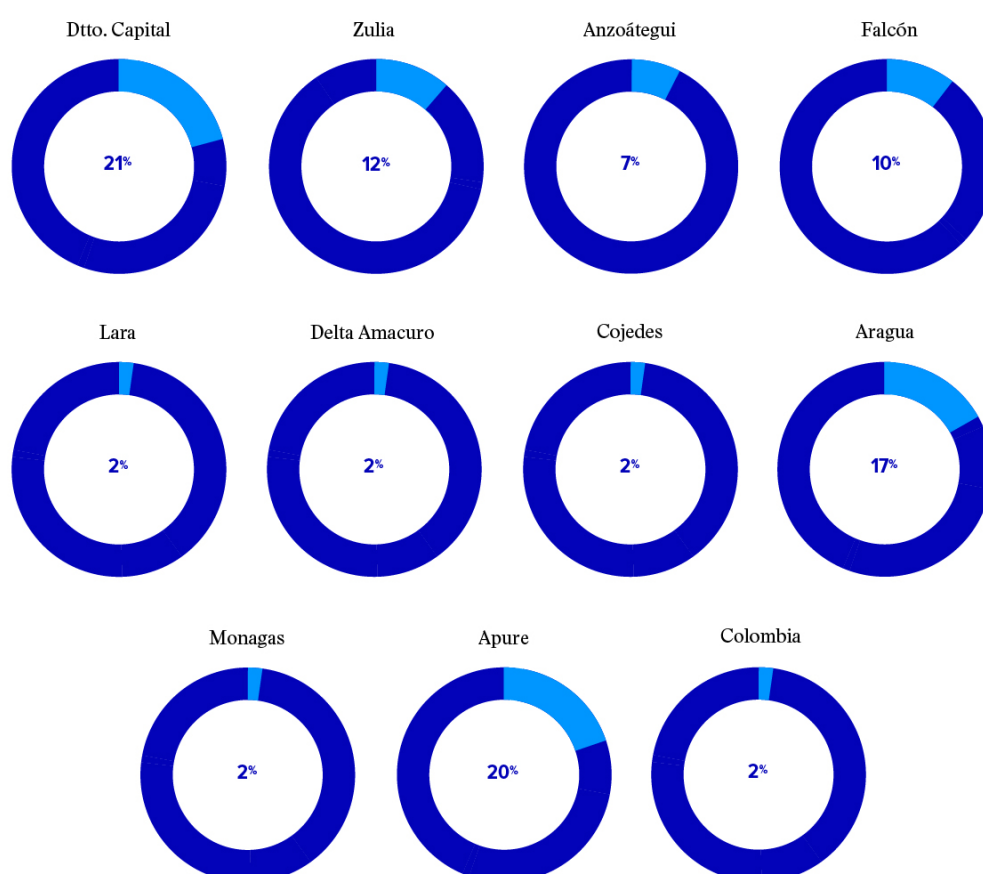
13. CRIMINALIZATION OF PROTESTING

According to the cases recorded, there is a clear trend towards the criminalization of protests as a direct tool for the restriction of civic space in the country and the repression of dissident voices. Between 2020 and 2021, a total of 282 detentions were recorded in connection with protests or demonstrations, i.e., 59% of recorded politically motivated detentions.

Observations

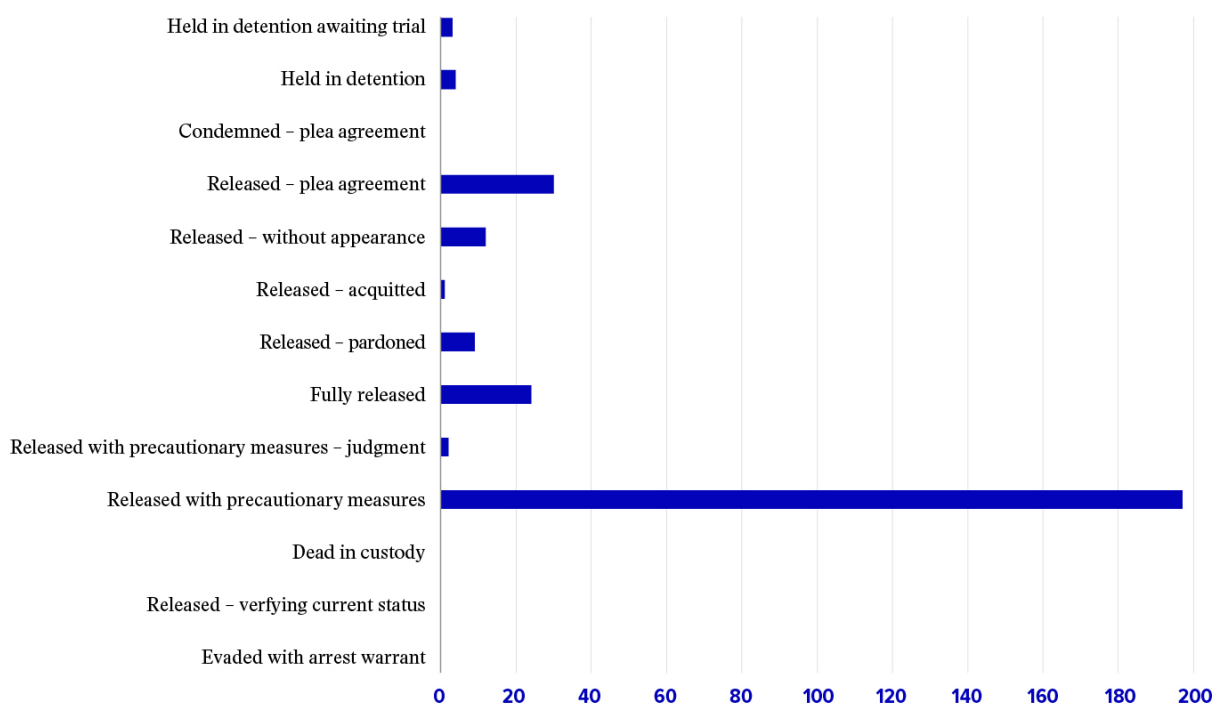
- *Police forces that made the detentions:* The majority of demonstrators were detained by the GNB (167 of the 282 people detained for protesting, i.e., 59.22%). The state police, municipal police and the PNB also detained between 22 and 31 people (between approximately 8% and 11% of the total number of protesters detained).

DETENTION BY STATE, 2021



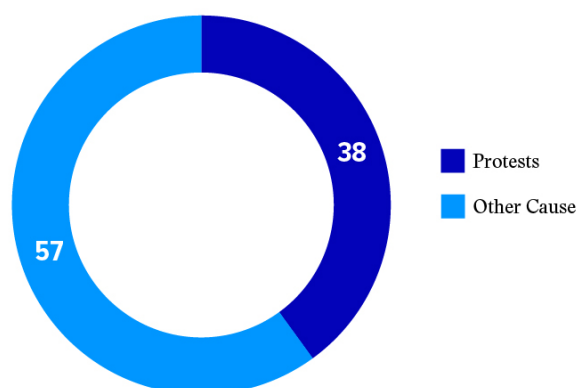
- *Last known legal status of individuals detained in the context of protests:* Most of the people detained in the context of protests or demonstrations were also released as of October 2021. The last known legal status of 197 individuals (almost 70%) was reported to be released with precautionary measures. Another 30 were reported to be released upon admission to facts (10.64%) and another 24 were reported to be fully released (8.51%). Finally, 7 of the 284 detainees were deprived of their liberty at the close of data collection for this report (October 2021). As of April 2022, 3 out of 7 of these individuals were still deprived of their liberty.

LAST KNOWN LEGAL STATUS – DETAINED IN THE CONTEXT OF PROTESTS



- *Presentation before the court within 48 hours*: 99 people were presented before the court within 48 hours of their detention, while 171 people were presented before the court after 48 hours from the time of their detention, contrary to the requirements of the law.
- *Torture allegations*: 38 people detained in the context of protests alleged torture (38 of the 95 people who alleged torture were detained during protests).

ALLEGATIONS OF TORTURE IN THE CONTEXT OF PROTESTS

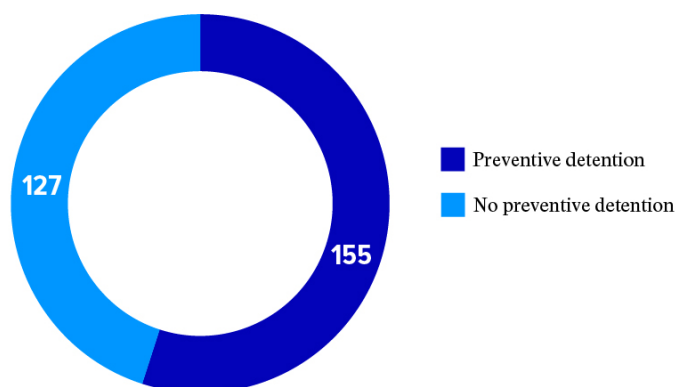


- *Being held incommunicado once detention occurs*: 209 people detained in the context of protests or demonstrations were held incommunicado following their arrest. (208 in 2020, 1 in 2021).
- *Being held incommunicado after the presentation hearing*: Based on 175 individuals—detained in

the context of demonstrations and/or protests—who were brought before a court, one (1) person was held incommunicado following his or her presentation hearing.¹²³

- *Pretrial Detention*: Of the 270 people brought before the court after being detained in the context of protests or demonstrations, 155 were sentenced to prison (pretrial detention).

NUMBER KEPT IN PREVENTIVE DETENTION FOR PROTESTING



- *Public Defenders*: Of 282 people detained in the context of demonstrations and/or protests, 270 were brought before a court, of which 22 were assisted by a public defender. It is important to mention that “mass detentions” usually occur in the context of protests or demonstrations. When this happens, it is common practice in courts to allow access to a private attorney. In these cases, the attorneys of Foro Penal try to assume the defense of the majority. Based on the above, it is appropriate to mention the following disaggregated data on individuals detained in the context of mass detentions in response to protests and demonstrations during the period 2020-2021:
- 49 people were detained during two mass detentions (May and September 2020) while peaceful protests were taking place in the following municipalities: Jesús E Lossada, Maracaibo and Catatumbo, in the state of Zulia.
- 39 people were detained in two mass detentions carried out during peaceful protests against lack of basic services in the Torres and Moran municipalities of Lara state, between July 10 and 11 of 2020. Other detentions of this type were also made between May 9 and 10 (20 people) and between May 18 and 20 (14 people).
- 31 people were detained in mass detentions carried out during peaceful protests against lack of basic services in the Alberto Adriani municipality of Mérida state between May 8 and 10 of 2020.
- 32 people were detained as part of a mass detention that took place during a protest against lack of gasoline in the state of Nueva Esparta.
- 27 people were detained in mass detentions conducted during peaceful protests against lack of basic services in the Peña, Nirgua, Bruzual and Cocorote municipalities of Yaracuy state between September 23 and 28 of 2020.

¹²³ Out of 282 people detained in the context of demonstrations and/or protests, 12 were not brought before the court and 95 were brought before the court, but not deprived of liberty, so after the presentation they were released. Out of 175 people who were presented (282 - 12 - 95), one (1) person was held incommunicado following his or her hearing.

IV. CRIMINAL JUSTICE IN PRACTICE BASED ON THE EXPERIENCE OF FORO PENAL

In Venezuela, physical access to justice is increasingly complex and at times impossible for some lawyers. Those who litigate in criminal matters are themselves subjected to degrading treatment within the justice system itself. The courts, and particularly the buildings known as “Palacios de Justicia,” that exist in the different territorial jurisdictions of the country and where the criminal courts of different instances are located, are in deplorable conditions. Elevators and escalators meant to go up five floors are not functioning or are in limited operation. Lawyers are then forced to climb up and down stairs to access courts or hearings, if they are physically able to do so. Public restrooms are either disabled or unusable. There is no parking for lawyers in the courts, so vehicles must be parked in private parking lots with limited capacity, so cars usually have to be parked on the street, with the risk of being stolen.

The vast majority of court hearings in political cases extend late into the night, and at times even into the early hours of the morning, which is when private parking lots are closed. Thus, for security reasons, lawyers need to pay for private transportation in order to travel to their homes, since there is no safe public transportation. In addition, because of the crime that is common in the area where the courts are located, lawyers are at constant risk. There are several cases of lawyers who have been assaulted by criminals, and several who had their vehicles dismantled.

With respect to access to formal justice through the courts, it is lacking. When the day and time of a hearing or judicial action is known, which only occurs, as far as private attorneys are concerned, if the courts have previously allowed their appointment and swearing in, the hearings are never held at the scheduled times. Hearings are regularly suspended without prior notice or justification, and if they are not suspended, they are held many hours late. As a result, lawyers must constantly follow up, stay at the “Palacio de Justicia” for hours or days, and go in and out of the courts to ask questions that go unanswered, just to stay apprised of and be present at the hearings that are held. Many hearings are held on weekends, when access to the “Palacio de Justicia” is restricted. Therefore, the lawyers’ wait for hearings that are not sure to take place occurs in the street. Lawyers must stand on the sidewalks, bring their own refreshments, including drinking water. They regularly stand outside the courthouse doors all day long, waiting for answers about whether or not a hearing will be held after a person has been detained. In many cases, when lawyers have been waiting uncertainly at the courthouse gates or outside for hours or days, the fact that the detainee has been transferred is concealed from them and the detainee is denied access to private lawyers. This, in practice, imposes the appointment of public or court-appointed lawyers.

This is a clear violation of the detainee’s right to defense, since in the face of all these obstacles the detainee is restricted or prevented from having actual access to a personal lawyer. In practice, the private attorney is not considered part of the justice system. On the contrary, he/she is discriminated against and is constantly denied relevant information to effectively defend his/her client.

This is closely related to the enforced disappearances that are common after a detention occurs, since at the moment a person is detained, there is generally no information about where he or she will be taken or where he or she is located. This makes it impossible to know when that person will be transferred to the court within the 48 hours established by law. This is why lawyers must wait with uncertainty, from the moment a person is detained, in court or outside the courthouse to find out whether or not the detained individual will be brought to court within 48 hours.

The case of human rights defender Javier Tarazona is a clear example of the irregularities and violations of the right to defense in the country. Javier was arbitrarily detained on July 2, 2021, along

with two other activists from the human rights organization FUNDAREDES. The two activists have already been released, while Javier Tarazona is still in custody. The three were detained in Coro, Falcón State, inside the office of the Public Prosecutor's Office, at the request of the Prosecutor's Office itself, when they were voluntarily filing a complaint due to persecution and violation of their human rights. The Prosecutor's Office, being the investigating body and the one requesting the "preventive" detention warrant, did not even take the opportunity to charge or interrogate them, despite the fact that the three defenders were at the Prosecutor's Office headquarters and were absolutely willing to cooperate with the justice system. After SEBIN officers forcibly removed them from the Prosecutor's Office and the prosecutors ignored this arbitrary action, they were disappeared.

In the case of FUNDAREDES, Foro Penal lawyers had to mobilize to various detention centers in Falcón without being informed of the whereabouts of the detainees. Without warning, they were flown to the city of Caracas on Saturday, July 3, 2021. At that time, the Foro Penal lawyers were already at the "Palacio de Justicia" facilities, waiting with uncertainty for the aforementioned individuals. They were never informed when the detainees arrived. However, they managed to learn through unofficial channels that the vehicle transporting the detainees had entered the "Palacio de Justicia." Lawyer Estefania Migliorini also managed to enter the courthouse and wait in front of the door of the court on duty. In this case, not only were the lawyers and family members not informed of the detainees' arrival at the court, but the detainees were not allowed any phone calls. Furthermore, even when the lawyer who would have defended them was just outside the doors of the court, her entry was not permitted, which forced the detainees to accept public defense against their will. This similar situation has occurred in practice in a systematic manner.

Criminal Justice during the COVID-19 Pandemic

Starting on March 17, 2020, Venezuela formally went under a "radical quarantine" as a measure against the COVID-19 pandemic, through the signing of a decree of State of Emergency throughout the national territory to address the health emergency.¹²⁴ In October 2020, a quarantine easing program began, under a scheme known as "7x7" (seven days of strict quarantine and seven days of flexible quarantine).¹²⁵ The Venezuelan Judiciary adopted this quarantine easing scheme, which had a direct effect on the already existing procedural delays in the criminal jurisdiction.

The pandemic has had an unprecedented impact on an already overburdened criminal justice system in Venezuela. Access to justice was severely restricted and hearings were postponed or moved online without the necessary infrastructure and resources to provide effective access. In addition, the intake of complaints and appeals by courts and other national justice agencies was significantly affected. These measures significantly increased the obstacles experienced by detainees in exercising their rights to defense and due process.

Based on the testimonies from legal coordinators and teams of volunteer lawyers at the national level, we can conclude that, once the state of emergency was decreed, the judicial system was paralyzed and, in some states, specifically Anzoátegui, the criminal circuit was modified, violating the entirety of proceedings and due process as a result of procedural lapses, both in preliminary hearings and presentation hearings.

124 Gaceta Oficial N. 6.602 (Official Gazette No. 6,602), December 2, 2020, available here: <https://www.moore-venezuela.com/MediaLibsAndFiles/files/venezuelaweb.moorestephens.com2020/4c/4ccb1124-b8ee-460d-a73d-f5193aed9610.pdf> this was the last decree extending the state of emergency that had been announced by means of the first decree, No. 4,160, published on March 13, 2020.

125 BBC News, Coronavirus en Venezuela: qué es el sistema 7-7, la peculiar cuarentena con la que el país trata de frenar el avance de la covid-19 (Coronavirus in Venezuela: What is the peculiar 7-7 system the country is using to try to stop the advance of COVID-19?), June 29, 2020. Available here: <https://www.bbc.com/mundo/noticias-america-latina-53187996>

Testimonies by state

a. Case of the state of Anzoátegui

A case was reported where an individual was apprehended and brought before the prosecutor's office on a Friday, with presentation before the court scheduled for a Tuesday, thus exceeding the 48 hour deadline established for presentation before the court. The in flagrante delicto prosecutors had shifts during the week and did not conduct presentation hearings every day. In addition, it was almost impossible for lawyers to access the courthouse facilities; they spent many hours outside the courthouse, waiting for access to conduct a virtual hearing, which usually did not take place because the court was not in full operation.

This situation was denounced before the Public Prosecutor's Office and the complaint was admitted; however, no action was taken because when the complaint was sent to the prosecutor's office with jurisdiction over Fundamental Rights in Anzoátegui state, there were no workers who could process it.

In addition, with respect to preliminary hearings, the implementation of the well-known "Cayapa Plan" took place in prisons¹²⁶ (a plan developed in 2012 with the aim of reducing procedural delays and speeding up trials). However, the implementation of these measures was discriminatory, as they were only carried out for certain individuals deprived of their liberty. This was a clear example of violation of procedural time limits in the state of Anzoátegui.

b. Case of the state of Carabobo

In the state of Carabobo, the dynamics among justice administrators following the decree of the state of emergency to address the COVID-19 pandemic health emergency gradually limited the right to access to justice. The technological means to access justice were insufficient and unstable due to failure of the internet service, as was the bureaucracy to access rooms within the court for online sessions. In addition, transfers of people deprived of liberty from the penitentiary centers to the court were limited due to lack of transportation and fuel, such that detainees had to pay for their transfers themselves.

c. Case of the state of Táchira

At the time the state of emergency was decreed in the state of Táchira, the entire justice system was paralyzed. At that time (March 2020), Foro Penal in Táchira was handling cases under military jurisdiction. The detainees' trial guarantees had been violated, the amparos that they tried to introduce were not received, and the requests made to the Ombudsman's Office could not be filed because there was no institutional mail. Furthermore, the online link used by the Ombudsman's Office for complaints was not available and, at the time, the headquarters for this office was closed with a padlock. Occasionally, telephone contact could be made with the Ombudsman, but not all requests were answered. Acknowledgments of receipt of complaints were not provided because, at the request of the Ombudsman, lawyers could go to the physical headquarters and leave the document under the door. The Fundamental Rights Prosecutor's Office was always accessible, but no action was taken on the complaints filed. On the other hand, there was practically no access to the courts; if the lawyer was not formally summoned for a hearing, he/she could not enter the court. Complaints filed in court were also not heard and filed appeals were resolved many months later. In other words, at the time, there was no real access to justice in a timely manner.

d. Case of the state of Portuguesa

Between March and June 2020, access to justice in Portuguesa was very limited. There was no response from the courts to the requests filed, nor did the courts receive new complaints or appeals. They only held hearings for the presentation of the accused and in flagrante delicto hearings. However, according to what was reported by Foro Penal lawyers who practice in that state, conditions improved starting in August 2020 and some answers were received from the courts.

¹²⁶ El Nacional, Plan Cayapa carcelario: ¿estafa o solución? (Cayapa Plan for prisons: Scam or Solution), July 24, 2020. Available here: <https://www.elnacional.com/opinion/plan-cayapa-carcelario-estafa-o-solucion/>

e. Case of the state of Zulia

In the state of Zulia, it was observed at the beginning of the quarantine that presentation hearings—in the case of groups of five (5) or more detainees—were being held at police headquarters. Access to the headquarters by lawyers was very difficult. Sometimes they could not enter the hearing because they were not notified and they were not allowed to wait inside the headquarters. Similar situations occurred in the courts. Lawyers were only allowed access once the person was detained and everything was ready to start the hearing, but sometimes the detained individual did not know that he/she would be assisted by a private lawyer and instead accepted public defense. The lawyer waiting outside the courthouse would then not be notified. As for the complaints, they were received, but no response was given because processing was at a standstill. Detained individuals could be presented, but there was no investigation because the prosecutors were not processing cases, save those who were on duty. The same happened with all other types of complaints, including those involving Fundamental Rights.

f. Case of the state of Mérida

During the quarantine in 2020, the Judiciary in Mérida was paralyzed for seven months in its processing of preliminary hearings and trial hearings. It only conducted presentation hearings and the only written documents they received were those related to appeals for the right to health. The presentation hearings were conducted from time to time using certain procedures. Other requests were not received.

g. Case of the Metropolitan Area of Caracas

From the beginning of the quarantine, all activities in the Metropolitan Area of Caracas were suspended, as well as preliminary hearings, trial hearings, and other proceedings. Only presentation hearings were held in the courts on duty. The Fundamental Rights Prosecutor's Office worked twice a week and the Ombudsman's Office worked every day, but with limited hours of 10 AM-12 PM.

V. EMBLEMATIC CASES

GIDEON-INCURSION (APRIL 2020)

Violation of the right to defense and access to a trusted lawyer.

Between April 20 and 27 of 2020, a group of people were arbitrarily detained by DGCIM officials at different times and places. Most of the group was held at the DGCIM headquarters in Boleíta Norte, Caracas. During their detention, they were subjected to enforced disappearance, torture and cruel, inhuman and degrading treatment. Their right to defense was also violated. The victims' relatives went to these headquarters on several occasions, and were always denied information about the detainees' whereabouts and health status. This situation was reported to the competent authorities and posted on social media on several occasions, but these actions were unsuccessful and there was no official response from the authorities.

On Sunday, May 3, 2020, the government of Nicolás Maduro announced that Venezuela's armed forces had thwarted an armed incursion,¹²⁷ which was called *Operation Gideon*, and labeled it a "failed

¹²⁷ BBC News, "Operación Gedeón" en Venezuela: una supuesta confesión televisada y otros detalles de la "fallida incursión armada" por la que se detuvo a dos estadounidenses ("Operation Gideon" in Venezuela: An alleged televised confession and other details of the "failed armed incursion" for which two Americans were arrested), May 5, 2020. Available here: <https://www.bbc.com/mundo/noticias-america-latina-52546757>

coup attempt.” During the operation, Venezuelan armed forces killed eight men near the coastal town of Macuto (near Caracas). Dozens of others were captured and remain imprisoned in Caracas.

During a national press conference¹²⁸ on May 8, 2020, the Attorney General of the Bolivarian Republic of Venezuela announced that the Public Prosecutor’s Office charged the group of individuals detained between April 20 and 27, 2020, along with others detained on May 3, 4 and 6 of 2020, for the alleged crimes of terrorism, treason, criminal association, rebellion, illicit trafficking of weapons of war, and financing of terrorism. Finally, they were implicated in Operation Gideon that took place on May 3, 2020. However, the aforementioned group was already in detention at the time the Operation was supposed to begin. This detention was also denounced before the competent authorities before the aforementioned date, so it is completely false that this group of people could have participated in the Operation.

Lawyers representing the detainees went to DGCIM headquarters for more than 12 months after the date of their detention in order to obtain the document appointing the defense and signed by the accused. However, the lawyers were unable to do so, thus violating the right to defense of the detainees. The courts with jurisdiction over terrorism also did not allow the appointment of trusted defense attorneys for the victims.

On May 18, 2021, a complaint was filed before the Fundamental Rights Prosecutor’s Office stating that eleven (11) detainees were not allowed to appoint trusted attorneys, as the appointments had been delivered on several occasions to DGCIM officials to be signed by the detainees and were not processed. In this way, their right to appoint trusted legal counsel, as established in Articles 44 and 49.1 of the Constitution and 127.3 of the Code of Criminal Procedure, was violated. The complaint also stated that lawyers seeking to be sworn in at the first trial court with jurisdiction over terrorism had not been allowed to be appointed. The Director of Fundamental Rights of the Public Prosecutor’s Office was asked to intervene and allow the detainees to appoint their personal lawyers.

All the detainees mentioned in the complaint belong to the case known as “Gideon-Incursion.” Their names are: Leonardo Carrillo Primera, Angelo Rosales, Marifrancys Marcano, Renny Olivares, Tony Adonis Guevara, Franciher Ramos, Víctor Perozo, Gerardo Cotticchia, Rubén Fernández, Franklin Caldera, Ervin Gragirena.

Finally, 13 months after the detention, the signatures for the respective appointments were obtained; however, the corresponding court denied the swearing in of the defense. On June 2, 2021, a complaint was filed with the Director of Fundamental Rights mentioning six (6) detainees and indicating that the court in the case (First Trial Court for Terrorism) had not allowed the swearing in of the trusted attorney appointed by said detainees and/or their family members. Specific mention was also made of the lawyer’s continued waiting outside the court on April 8, May 19, 25, and 27 of 2021 to attend the scheduled trial hearings, and it was indicated that despite the lawyer’s insistence to the court clerk to allow him entry, he received a response that by order of the judge he was not allowed access, with the judge stating that the detainees had opted for public defense.

Subsequently, the testimony of one of the detainees in this case, who is also mentioned in the complaint, was obtained, indicating that the court did not inform them of the presence of their lawyers outside the courthouse. Once again, a petition was sent to the Director of Fundamental Rights, requesting his intervention to guarantee their right to have a trusted legal counsel. However, despite the fact that during the trial hearing of August 24, 2021 detainees Leonardo Carrillo, Tony Guevara and Renny Olivares dismissed their public defenders and requested the appointment of their personal attorney, while also signing the necessary documents, they were not allowed access to the attorney during that hearing, indicating that he/she should come and obtain the certified

128 Europa Press, Venezuela imputa a 31 personas, entre ellas dos estadounidenses, en relación con la ‘Operación Gedeón (Venezuela charges 31 people, including two Americans, in connection with ‘Operation Gideon’), May 8, 2020. Available here: <https://www.europapress.es/internacional/noticia-venezuela-imputa-31-personas-ellas-dos-estadounidenses-relacion-operacion-gedeon-20200508203829.html> See also Attorney General Tarek William Saab, press conference on May 8, 2020. Available here: <https://www.youtube.com/watch?v=LEyYufYWnE>

copy in order to be able to enter the next scheduled trial hearing.

With respect to Franklin Caldera, another of the detainees mentioned in this report, the signature appointing his trusted lawyers was obtained on June 17, 2021, while he was being held in the Ramo Verde Military Prison. This appointment was filed with the 4th Terrorism Court on August 30, 2021.

One of those detained in this operation was Renny Adolfo Olivares Moreno. He was detained on April 20, 2020 by DGCIM officials in Carrizal, Miranda state and was subject to enforced disappearance from his arrest until May 16, 2020, when he was presented before the court. His family members learned of his detention through social media. For more than 72 hours they visited police agencies, hospitals, clinics, the Caracas coroner's office, and the DGCIM headquarters. They did not find any answers regarding his whereabouts or the reasons for which he had been detained.

As a result, his family members filed a writ of habeas corpus on May 7, 2020. Then, on May 19 of the same year, they filed a complaint with the Director of Fundamental Rights of the Public Prosecutor's Office because they still did not know the whereabouts of Renny Olivares. On June 23, 2020, Renny managed to communicate with his family and told them that he was being held at the DGCIM in Boleíta.

Renny Olivares was presented on May 16, 2020 before a court with jurisdiction in terrorism-related cases and deprived of his liberty. In a preliminary hearing in August 2020, his imprisonment was ratified and he was transferred to trial. After several deferrals, the trial finally started on May 19, 2021. The trial continues to date (April 2022).

Renny Olivares' right to defense has not been respected. There were several occasions in which the paperwork for the appointment of his legal counsel were taken to the DGCIM headquarters to be signed by Olivares, but it was not processed. On May 18, 2021, family members filed a complaint with the Fundamental Rights Office of the Public Prosecutor's Office, notifying them that Renny had not been allowed to appoint a trusted lawyer. On June 1, 2021, his trusted attorney filed a complaint with the Ombudsman's Office that detailed how the trial court would not allow him and other attorneys to be sworn in as trusted attorneys at the request of the detainee and his family members. In July 2021, in a handwritten complaint from Renny Olivares himself, he complained that the court did not allow the appointment of his trusted lawyers. Finally, by August 31, 2021, Renny Olivares had the legal assistance of a lawyer selected by him, which was 9 months after the November 20, 2020 appointment submitted to the DGCIM headquarters by a lawyer from Foro Penal.

GEDO CASE (SEPTEMBER 2020)

Disappearance, torture and violations of the right to defense.

Between September 9 and 12 of 2020, a group of people were arrested at their homes and in the vicinity of the Paraguaná refining center (Falcón state), which, according to oil unions, is currently practically paralyzed.

In a press conference broadcast on national television on September 11, 2020,¹²⁹ President Nicolás Maduro announced the detention of an American citizen and three Venezuelan citizens near the aforementioned refinery. The detention was carried out by a commission of the Bolivarian National Guard that were patrolling the area, and according to investigations, four more people were apprehended at their residences.

129 BBC News, Maduro anuncia la captura de un estadounidense que supuestamente estaba espiando dos refinerías en Venezuela (Maduro announces capture of American who was allegedly spying on two refineries in Venezuela), September 11, 2020. Available here: <https://www.bbc.com/mundo/noticias-america-latina-54127130>

According to information announced by Venezuelan Attorney General Tarek William Saab,¹³⁰ a U.S. “spy” and seven detained Venezuelans, among them a military member, will be charged with “terrorism” after being linked to a failed attack against oil installations,

Family members of the detained individuals reported their enforced disappearance to the competent authorities. However, they did not receive any information. On September 17, 2020, the family members learned via social media posts that their detained relatives had been presented before the courts. Family members and lawyers repeatedly went to DGCIM headquarters located in Boleíta Norte, Caracas, but did not receive a response regarding the location and physical well-being of their loved ones. The lawyers visited the headquarters of the apprehending body on several occasions, and it was not until a month and a half after their detention that family members were allowed to visit the detainees to talk to them, verify their health status, and obtain the signed document authorizing them to assume their defense.

Some of the people detained in this operation were: Marco Antonio Garcés Carapaica, Darwin Andreizo Urdaneta Pardo, and Daeven Enrique Rodríguez Argueta, who were detained by officers of the Bolivarian National Guard while traveling in a vehicle (taxi) on September 9, 2020. They were detained at the Los Pedros tollbooth in Falcón state. They were subsequently transferred to the DGCIM headquarters in Punto Fijo and two days later they were transferred to the DGCIM headquarters in Boleíta – Caracas. They were heavily tortured by DGCIM officials.

On September 17, 2020, they were presented before a court with national jurisdiction over terrorism cases that was located in the city of Caracas. They remained deprived of their liberty after being brought before the court. On February 25, 2021, a preliminary hearing was held and the detention was upheld, both for the aforementioned detainees and the other people who were detained and subsequently added to the case. A transfer to trial was then ordered. On October 20, 2021, the trial began, which is still in process as of April 2022.

On November 17, 2020, a complaint was made to the Ombudsman’s Office regarding the arbitrary detention, enforced disappearance, presentation in court seven (7) days after his detention, and torture of Daeven Enrique Rodríguez. This same complaint was also addressed to the Director of Fundamental Rights of the Public Prosecutor’s Office on November 25, 2020.

On September 23, 2020, a complaint was formally lodged with the Ombudsman’s Office regarding the arbitrary detention and enforced disappearance of Darwin Andreizo Urdaneta Pardo. He had not communicated with his family members since September 9 and his family did not know about his whereabouts or his physical well-being. His family members learned of his detention through a national broadcast on September 11, 2020. This same complaint was also addressed to the Director of Fundamental Rights of the Public Prosecutor’s Office on September 23, 2020.

On September 22, 2020, complaints were filed with the Department of Fundamental Rights of the Public Prosecutor’s Office stating that, since 10:00 a.m. on September 9, 2020, there was no information on Marco Antonio Garcés Carapaica. This complaint also detailed that Marco Garcés’ parents learned of his detention on September 14 through a press conference given by Attorney General Tarek William Saab. On February 26, 2021, a complaint was lodged against the arbitrary detention, enforced disappearance, and presentation in court seven (7) days after his detention, and torture to which victim Marco Antonio, as well as the two other detainees that were in the taxi with him, were subjected.

To date, there has been no response from any body to the complaints lodged. Regarding access to justice for these three individuals, on November 20, 2020, a lawyer appointment document was taken to the DGCIM Boleíta headquarters, where they were being held at that time. However, the

¹³⁰ France 24, “Espía” estadounidense detenido en Venezuela será imputado por “terrorismo” (United States “spy” detained in Venezuela will be charged for “terrorism”), September 14, 2020: “All of the Venezuelan citizens will be charged with the crimes of treason, terrorism, illicit arms trafficking and criminal association, while the U.S. citizen will be charged with the crimes of terrorism, illicit arms trafficking and criminal association.” Available here: <https://www.france24.com/es/20200914-esp%C3%ADa-estadounidense-detenido-en-venezuela-ser%C3%A1-imputado-por-terrorismo>

appointment and swearing in of legal counsel took place in court on February 25, 2021 during a preliminary hearing, which had been deferred from February 17, 2021.

BOYCOTT OF THE NATIONAL ASSEMBLY (DECEMBER 2020)

Disappearance, torture and violations of the right to defense

Minister of Popular Power for Internal Affairs, Justice and Peace: During a press conference on December 29, 2020,¹³¹ Carmen Meléndez exposed the so-called “Operation Boycott of the National Assembly,” which, according to her, was a plan of the Venezuelan extreme right wing to prevent the installation of the new National Assembly (NA), scheduled for January 5, 2021.

According to the details above, this plan entailed an attack on the Guri hydroelectric plant, an attack on the Amuay refinery, the assassination of a governor, the assassination of Attorney General Tarek William Saab, and the seizure of the National Assembly and key points in the city of Caracas. According to the Minister, such actions would have been carried out between December 27, 2020 and January 5, 2021. Furthermore, subversive materials would have been brought into the country via the following states: Zulia, Táchira, Apure and Bolívar.

At least 14 detentions were reported to Foro Penal’s complaint center in connection with this operation, among whom the following individuals can be identified: Francisco Javier Pacheco Pérez, Argenis Enrique Ugueto Benítez, Cesar Antonio Guevara Diaz, and Robert José Franco Vallera.

It is especially worth mentioning the case of Professor Robert José Franco Vallera. At 7:12 p.m., he was on Calle Juncal in front of Carúpano Park, the residence of his colleague, Mario Bellorín. Witnesses report that at that moment around three 4Runner SUVs arrived, two black and one white, as well as two white Toyota Corollas, with about 15 FAES officers. The agents burst into the residence, asked for the cell phones of those present, asked for Robert José Franco, who identified himself, and violently put him into one of the vehicles. Once inside the vehicle, he was told that he would be transferred to Caracas to the FAES La Quebradita headquarters.

Franco Vallera’s relative stated that he believed Franco Vallera had been detained in retaliation for his participation in *Colegas de Profesores de Carúpano*, an association that had for some time been organizing peaceful protests against the government and the Ministry of Education. These protests were conducted via social media and in the streets on the national level due to non-compliance with the Collective Bargaining Agreement. Robert Franco was transferred to Caracas, presented on December 30, 2020 before a court with jurisdiction over terrorism cases, and deprived of his liberty. Then, on April 24, 2021, he was again brought before the court for his preliminary hearing, where his imprisonment was upheld and he was transferred to trial. His trial began on October 28, 2021.

Robert Franco remained under enforced disappearance and was held in incommunicado detention. He was presented 4 days after his detention and was assisted by a public defender. On May 25, 2021, he signed the documents appointing personal legal counsel, who were able to represent him in the opening hearing.

131 TeleSurTV, Venezuela denuncia Operación Boicot contra la Asamblea Nacional (Venezuela denounces Operation Boycott against the National Assembly), December 29, 2020 Available here: https://www.youtube.com/watch?v=nA_M_bGvWMY

AZUL POSITIVO (2021)

Criminalization of human rights activists

In 2021, Foro Penal began the record of arbitrary detentions with the detention of five (5) members of the NGO Azul Positivo, human rights activists who were detained on January 12, 2021 in a raid conducted by DGCIM officials and the Criminal Investigation Service of the State of Zulia (SIPEZ) at the headquarters of the NGO Azul Positivo in Maracaibo. According to CODHEZ (Zulia State Commission for Human Rights), the raid was carried out to perform an alleged administrative procedure related to the humanitarian assistance activities that the organization performs in several communities in Zulia. The operation lasted more than six hours.

Since their detention, the five human rights defenders have not had access to a lawyer. Their lawyers were denied entry and could not verify the health status and physical well-being of the detainees.¹³² On January 13 at the gates of the DGCIM in Maracaibo, the legal representatives for the detainees were again denied access.¹³³ The members of Azul Positivo were denied the right to legal defense and were deprived of legal counsel until the time of the presentation hearing. They were also unable to communicate with their families.

This group of human rights defenders was presented on January 14, 2021 before the 4th Control Court of Zulia, deprived of their liberty and charged with the crimes of fraudulent handling of smart cards or similar instruments, criminal association and money laundering. On February 10, 2021, imprisonment was replaced by periodic presentations and prohibition to leave the state of Zulia and the country. To date, these activists continue to periodically appear in court.¹³⁴

ORLANDO JAVIER MORENO GIBORI (2021)

Criminalization of human rights activists

Orlando Javier Moreno Gibori, a human rights defender and member of the Foro Penal volunteer team for more than 7 years, was detained on April 25, 2021. On April 25, 2021, at approximately 12:30 PM, he was, as he regularly does, accompanying the families of the victims of the recent shipwreck that occurred in the waters en route from Venezuela to Trinidad and Tobago. However, on that day, police officers arrived at the public location where Orlando was with family members and violently took him into custody. Orlando is one of the best known human rights defenders in Delta Amacuro.

He was taken to the CICPC headquarters on Avenida Guasina in Tucupita. The Second Control Judge of Delta Amacuro, Dr. Lizgreana Palma, set Orlando's hearing for April 28, 2021. That day, in the morning hours, a complaint regarding Orlando's arbitrary detention and the violation of his right to personal freedom was filed with the Fundamental Rights Office of the Public Prosecutor's Office. Subsequently, a court hearing was held and he was held in pretrial detention until bond was posted. Orlando was charged with the following crimes: incitement to commit a crime, resistance to authority, violent outrage, multiple crimes resulting in multiple charges-single crime resulting in multiple charges,¹³⁵ general intentional personal injury.

On April 30, 2021, he was released with precautionary measures, including periodic appearances

¹³² Frontline Defenders, Integrantes de la Organización Humanitaria, ONG Azul Positivo Ligados a proceso (Members of the Humanitarian Organization, NGO Azul Positivo Linked to process), <https://www.frontlinedefenders.org/es/case/six-members-humanitarian-organization-azul-positivo-detained>

¹³³ Ibid.,

¹³⁴ At the end of March 2022, the precautionary measure of regular court appearances continued for the 5 members of Azul Positivo. The lawyers have requested that the case be dismissed; however, the court has not issued a ruling on the matter.

¹³⁵ Concurrent offenses: Single offender's commission of multiple offenses and severally indictable offenses.

every 15 days before the court or the authority designated by the court. Orlando Moreno was assisted by his personal lawyer during his presentation hearing held before the prosecutor's office for in flagrante delicto and an ordinary court of Delta Amacuro state.

FUNDAREDES (2021)

Criminalization of human rights activists

On July 2, 2021, José Rafael Tarazona Sánchez, José Javier Tarazona Sánchez and Omar de Dios García Marín were detained. All of them were activists, human rights defenders and members of the NGO FUNDAREDES. They were detained by FAES officers inside the headquarters of the Public Prosecutor's Office in the city of Coro, Falcón state, when they were about to file a harassment complaint against SEBIN. While inside the facilities of the Public Prosecutor's Office, they were detained by the FAES and taken to an unknown location. Later that same day they were transferred to Caracas.

Jhonny Romero, director of the National Committee of Relatives of Victims of Enforced Disappearances on the Venezuelan Coasts, which is part of COFAVIC, was accompanying these three human rights defenders from FUNDAREDES while they were going to file a complaint with the Public Prosecutor's Office. Jhonny Romero is the father of a missing individual who was on a boat that sailed from Falcón to Curacao in 2020. He was released without being brought before a court on July 2, 2021, after 8 hours of arbitrary detention.

The group of FUNDAREDES activists was presented before the terrorism court in the city of Caracas on July 3, 2021 and deprived of liberty on charges of treason, terrorism and incitement to hatred. The assigned location of imprisonment was "La Planta" in the city of Caracas. However, after the presentation hearing they were taken to the SEBIN headquarters: El Helicoide.

On July 3, 2021, the lawyers were outside the Palacio de Justicia and requested access in order to talk to and assist the detainees in the hearing, but were not allowed to do so. At the end of the hearing, one of the lawyers managed to speak briefly with one of the detainees as he was being led out of the Palacio. The detainee indicated that they were not allowed to call their lawyers or their families, and that they were forced to accept public defense.

It is worth noting that a new detainee named Larry Arcesio Osorio Chía, who was detained on August 6, 2021 in the state of Apure and transferred to Caracas as part of an investigation carried out by a Control Court with Jurisdiction over Terrorism, of the Criminal Judicial Circuit of the AMC of Caracas, was added to the FUNDAREDES case. Larry's relatives learned of his detention through his boss, who called them on Saturday, August 7 at 1:00 PM to inform them. Family members went to the city of Caracas to try to see him; however, as of the date of his presentation in court on August 10, 2021, they had not been able to see him. He was brought before the courts with jurisdiction over terrorism and deprived of his liberty.

During the presentation hearing, all of them were denied the right to legal representation from a trusted lawyer and, contrary to their wishes, they were obligated to use public defense. It was not until September 2021 that the appointment of the attorneys was filed with the courts. The preliminary hearing was held on December 9, 2021 and the case went to trial. José Javier Tarazona and Larry Osorio Chía had their imprisonment upheld, while Omar de Dios de García and José Rafael Tarazona were released under the precautionary measure of periodic court appearances every 15 days. As of the date of this report, the trial has not yet begun.

FRANKLIN ALFREDO CALDERA MARTÍNEZ

Franklin Alfredo Caldera Martínez was a member of the military who deserted in 2019 and was living in Medellín, Colombia. The last time his parents had communication with him was February 10, 2021. Then, on February 23, Franklin contacted his uncle and told him that on February 11 (2021) he had been kidnapped in Cúcuta (Colombia) by an armed group and DGCIM officials who entered Colombian territory. From there he was transferred to an airport in the state of Táchira and later transferred to the La Carlota military air base in Caracas. By the time he called his uncle on February 23, Franklin had managed to flee from where he was being held, but was recaptured by the DGCIM the following day and shot in the leg.

On March 3, 2021, his parents reported the enforced disappearance to the Director of Fundamental Rights of the Public Prosecutor's Office, and on the same date they also reported the situation to the Ombudsman's Office. On March 4, they decided to file a writ of habeas corpus with the Caracas metropolitan area criminal judicial circuit because they had no information about their son, and they also presented the case before the representative of the UN High Commissioner for Human Rights in Caracas.

On March 22, 2021, a DGCIM official contacted the representative of the UN High Commissioner for Human Rights in Caracas and informed her that Franklin Caldera, who had allegedly been detained by the DGCIM in Cúcuta, was at the DGCIM Boleíta headquarters in Caracas. That same day, Franklin Caldera called his parents and confirmed that he was there.

Franklin Caldera is mentioned in the indictment in the case of the assault on battalions in the state of Bolívar in 2019, a case known as "Operation Aurora," in which 13 Pemones (indigenous group) and a group of civilians and military personnel were arrested.

According to Franklin Caldera's testimony, on February 26 or 27 of 2021, a judge accompanied by some prosecutors and a public defender, as well as Captain Soto of the DGCIM, went to the Military Hospital where Caldera was being hospitalized as a result of the gunshot wound to the leg he received when he was recaptured. In front of the judge and prosecutors, Franklin detailed everything that had happened; however, the judge did not take any action. He was deprived of his liberty and does not know the crimes for which he is being charged.

On May 15, 2021, after 94 days of detention, he was allowed his first visit from his father. On June 4, 2021, he was transferred from the DGCIM Boleíta headquarters in Caracas to the National Center for Military Prosecutions (Ramo Verde) in Miranda state, where he is currently being held. This was an arbitrary and illegal transfer that his trusted attorneys and even the court were not aware of.

On June 17, 2021, following several complaints made by the lawyer selected by Caldera and once he was confined in the Ramo Verde Military Prison, the legal counsel appointment was signed, due to the impossibility of their being sworn in. This appointment was filed with the 4th Terrorism Court on August 30, 2021. The preliminary hearing was held on August 31, 2021, where the imprisonment was upheld and the case went to trial.

In a hand-written testimony, Franklin Caldera reported being tortured by DGCIM officials, severely beaten, and threatened with death. During his recapture, he received a gunshot wound to the left kneecap and a penetrating puncture wound to the right leg. He remained in the so-called "casa de los sueños" (house of dreams) at DGCIM Boleíta¹³⁶ until his transfer to Ramo Verde.

Regarding the claims of arbitrary detention, enforced disappearance and torture of which Franklin Alfredo Caldera was a victim, no investigation has been carried out and no response has been received from any of the aforementioned agencies.

136 For an explanation of the term, see <https://www.elnacional.com/venezuela/la-casa-de-los-suenos-las-nuevas-celdas-de-castigo-de-la-dg-cim/>.

VI. CONCLUSIONS AND RECOMMENDATIONS

General conclusions

The findings of this report, as well as the cases presented, reflect a specific State policy: engaging in the systematic practice of enforced disappearance, torture and other human rights violations carried out by State agents to criminalize, repress and terrorize anyone perceived as a critical voice or political dissident. As can be seen, people are typically arbitrarily detained and their whereabouts are not reported by the security agencies that carry out the detention, even when lawyers and family members are present at the places of detention and are seeking to verify the location and physical and psychological well-being of the detainees. As shown in the accounts, enforced disappearance leads to other serious human rights violations, such as violations of the right to life, security and personal liberty, due process (including the right to an effective defense and fair trial) and practices of torture and cruel, inhuman or degrading treatment. Despite the seriousness of these practices, it can be concluded that the state authorities responsible for investigating and punishing these serious crimes (Judiciary, Public Prosecutor's Office, Ombudsman's Office), fail to perform their duties, to the point that they seem to cover up for those responsible and promote impunity.

The connection between judicial independence and respect for human rights is fundamental, particularly when it comes to the instrumental use of criminal law for political and repressive purposes. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights mention judicial independence as an essential factor in the protection of human rights.¹³⁷ An authoritarian regime that concentrates all power in the executive branch and uses the judicial system as an instrument of that power not only validates and encourages constant human rights violations, but also fosters impunity, corruption and criminal practices, which are facilitated by the lack of accountability, a consequence of a non-existent separation of public powers and a breakdown of the rule of law.

The most recent OHCHR report, as well as the reports of the UN FFM, affirmed that the Judiciary in Venezuela lacks independence, and serves as a tool to assist in the repression of real or perceived political opponents. They have also affirmed that torture and cruel and degrading treatment are common, as well as enforced disappearances, incommunicado detention, and extrajudicial executions.

Part of these conclusions are confirmed by the data obtained in this report. For example, as previously mentioned, at the time of detention, most of the people (251 or 52.2%) were incommunicado and 69 (14.3% of all detainees) were effectively reported as missing. This trend continued both in 2020 and 2021. Women were more often disappeared or held incommunicado than men (74.6% of women compared to 65% of men).

Similarly, there is a close relationship between disappearance and torture: a high percentage of those who alleged torture were disappeared at the time of their detention (44 out of 95, 46.3%).

Pretrial detention is the rule, and in many cases, people may spend weeks or months before being brought before a court. Individuals detained for prolonged periods of time are at a higher risk of torture and ill-treatment. This report shows that most of the people who alleged torture (89 out of 95) were in pretrial detention.

There is also a worrying number of "terrorism" cases where judicial proceedings are conducted

¹³⁷ Op Cit, notes 1 and 2.

“expressly” or “in an expedited manner” and under total secrecy.¹³⁸ According to this report, during the time period studied, 50.7% of the people brought before special courts were disappeared and 23.8% were held incommunicado.

There is an important pattern with respect to compulsory public legal defense, particularly in cases where the detained individual is also reported as disappeared (in this report, 81% of the people reported as disappeared and who were presented before a judge were forced to use public legal defense). This figure is alarming because, according to the accounts of lawyers from Foro Penal, in many cases, detainees are denied their right to be assisted by a lawyer of their choice, as established by law.¹³⁹ Instead, public defense is imposed on them against their will. There have been cases reported where lawyers stand outside the courthouse, waiting to communicate with the detainee, but are either not informed that the person has had their presentation hearing, or are simply denied access.

In general, civil society, activists and human rights defenders continue to be criminalized. For example, according to reports by several local organizations¹⁴⁰ as well as the cases represented by Foro Penal lawyers and mentioned in this report, in 2021 a total of eight human rights defenders were detained. Seven of them have been released, but with alternative measures, and one of them continues to be deprived of liberty (five human rights defenders belong to the NGO Azul Positivo and three to the NGO FUNDAREDES). According to this report, during the period under study there has been a clear trend towards the criminalization of protests, freedom of expression, particularly related to political or COVID-19 issues, and the work of human rights defenders.

Arbitrary detentions, and particularly the abusive use of *in flagrante delicto*, are alarming and account for approximately 60% of the cases recorded.¹⁴¹ As observed, there is a harmful pattern of arbitrary detentions, usually accompanied by incommunicado detention prior to presentation before a judge (i.e., protests/demonstrations, posts on social networks), and in several cases, disappearances (i.e., rebellion, conspiracy). We believe that the latter can occur in official or clandestine facilities, or through other methods, such as the unjustifiable extension of the transfer. Almost invariably, during this period of incommunicado detention or disappearance, the arbitrarily detained individual is subjected to torture or cruel, inhuman and degrading treatment in order to coerce him/her to incriminate himself /herself or others. This conclusion is derived from the fact that 33% of the people who alleged torture were also held incommunicado and 46% were disappeared. It is important to note that 36 of the 95 people who alleged torture are still deprived of their liberty while awaiting trial.

On the other hand, full release after detention is the exception. In most of the cases recorded, detainees continue to be held in detention for a prolonged period (69 detainees have been deprived of their liberty, 48 of them have a trial date, 20 do not have a trial date, and 1 is deprived of liberty following a plea bargain), or they are released with precautionary measures (55% of the cases). In those cases where full release was granted, 6 were due to dismissal, 25 due to pardon, and 41 due to signing plea bargains, which, as we have already mentioned, is alarming, given the context in which they take place.

Finally, we reiterate that there is a clear trend towards the criminalization of protests as a direct tool for the restriction of civic space in the country. As mentioned, a total of 284 detentions were recorded in the context of protests or demonstrations; this is 59% of the total number of detentions between January 2020 and October 2021.¹⁴²

138 Ibid.,

139 See Op Cit., No. 10 and 23.

140 Op Cit., No. 13; see [comunicado](#) from RFKHR et al.; [Monitor](#) Civicus; Venezuela: ataques contra defensores de DDHH aumentaron 157% durante la pandemia (Venezuela: Attacks against human rights defenders increased 157% during the pandemic), [report](#) International Federation for Human Rights.

142 Our conclusions confirm what has already been [pointed out](#) by civil society organizations in the Universal Periodic Review of Venezuela before the UN: “the restrictive and threatening environment within the civic space, as well as the acts of criminalization and persecution against civil society have intensified.”

Recommendations

As has already been emphasized by several international organizations, we demand the immediate release of all individuals detained for political reasons and those who have been arbitrarily detained, including those who have exceeded the legal period of pretrial detention according to the new reform of the Organic Code of Criminal Procedure.

The State is under an international and constitutional obligation to immediately adopt all appropriate and necessary measures to prevent, investigate and punish all practices of enforced disappearance, torture and other serious human rights violations.

Reiterating the recommendations of international organizations and civil society organizations, the State is urged to declare as mandatory the registration of detainees, guarantee access to family members and lawyers, and sanction officials who fail to comply with the obligation to report this information. Access to a personal lawyer and family members in the early stages of detention is essential to reduce the risks of enforced disappearance, torture and other human rights violations.

The State must abandon the abusive use of in flagrante delicto. Likewise, the abusive use of pretrial detention must be halted, and unjustified judicial delays must be rectified. The competent courts should review the current lists of pretrial detainees and proactively release as many as possible. This becomes particularly urgent in the context of the COVID-19 pandemic and after the reform of the Organic Code of Criminal Procedure, which established a maximum term of 3 years, inclusive of extensions.¹⁴³

As the Office of the High Commissioner recommended at the time,¹⁴⁴ the State must reform the justice system and ensure the independence and impartiality of the judiciary.¹⁴⁵ Judicial action must be guided by the principles of legality, due process, presumption of innocence, independence, impartiality and separation of powers.¹⁴⁶

The State must abandon the use of torture as a tool for the fabrication of guilty parties and investigate and punish those responsible. The use of torture not only constitutes an egregious violation of human rights in itself, but also leads to other serious human rights violations, including the violation of the right to personal integrity and a fair trial. The use of torture and evidence obtained through torture taints the entire criminal justice process and erodes the rule of law and public confidence in the system's ability to deliver justice.

Likewise, administrators of justice in Venezuela must abandon the idea that a confession is the sole and determining evidence in criminal investigations. The excessive use of confessions as evidence encourages the use of torture, especially by security forces.

A particular appeal is also made to judges, prosecutors and other competent institutions; the former are required to at least exclude evidence obtained unlawfully through methods of torture in criminal proceedings where the accused person claims to have suffered torture or ill-treatment. The latter are required to open the applicable criminal investigations in order to establish individual responsibility for the crimes of torture and ill-treatment.

Access to a trusted defense attorney chosen by the detained individual must be respected and guaranteed. Private and effective attorney-client communication must also be guaranteed. The

¹⁴³ Gaceta Oficial N° 6.644 Extraordinario (Extraordinary Official Gazette No. 6,644) of September 17, 2021. Available here: https://www.moore-venezuela.com/MediaLibsAndFiles/media/venezuelaweb.moorestephens.com2020/Images/2021_Septiembre_g-e_6-644.pdf

¹⁴⁴ Report of the United Nations High Commissioner for Human Rights, 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, A/HRC.44/54, 2020. Available here: <https://digitallibrary.un.org/record/3897807?ln=en>

¹⁴⁵ Other international organizations such as the IACHR have also spoken out in this regard. See more recently, for example, <https://twitter.com/CIDH/status/1511427423904141330?s=20&t=Qzew3BXQNBqtQ33f2-DLTg>

¹⁴⁶ In January 2022, the National Assembly approved the reform of the Organic Law of the Supreme Court of Justice (TSJ). This reform reduced the number of TSJ judges from 32 to 20, without prohibiting the reelection of judges whose terms are about to expire. Local and international civil society organizations, as well as the IACHR, have spoken out demanding the adoption of "reforms truly committed to the consolidation of the independence of the Supreme Court of Justice from the Executive Branch and the reconstruction of a system of checks and balances."

defense must have full and unrestricted access to the case file prior to the hearings. Such access should be provided with sufficient time to prepare in advance so that an effective defense can be developed for the detained individual. In this regard, the authorities must guarantee access to lawyers to ensure adequate preparation when their clients are in detention.

The State must immediately cease acts of intimidation, reprisals and criminalization by State agents against relatives of victims of human rights violations, as well as relatives of dissidents or perceived dissidents and those related to members of the Venezuelan opposition.

Finally, we demand that the State, as international organizations have done on several occasions, respect and guarantee the existence of civic space and immediately cease acts of intimidation, reprisals and criminalization by state agents against activists, human rights defenders and people exercising their right to free expression, free association and assembly through protests and demonstrations. An open civic space allows civil society and a wide range of actors to play their roles and act autonomously in defense of democracy, inclusive participation, and human rights.

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ABOUT

ROBERT F. KENNEDY HUMAN RIGHTS

Robert F. Kennedy Human Rights is a nonpartisan, nonprofit organization that has worked to realize Robert F. Kennedy's dream of a more just and peaceful world since 1968. In partnership with local activists, we advocate for key human rights issues, pursuing strategic litigation at home and around the world. And to ensure change that lasts, we foster a social-good approach to business and investment and educate millions of students about human rights and social justice.

FORO PENAL

Foro Penal is a non-governmental organization that has worked in defense of human rights in Venezuela since 2002, providing pro bono assistance to more than 15,000 victims of political repression, including victims of arbitrary detention, torture and murder. Currently, Foro Penal has more than 400 volunteer lawyers and approximately 7,000 activists in Venezuela and around the world providing legal and humanitarian assistance to victims.

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