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POLITICALLY-MOTIVATED ARBITRARY

DETENTIONS IN VENEZUELA



AMNESTY
INTERNATIONAL



Denuncia por incumplimiento de
decisiones judiciales

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INTRODUCTION

In the context of deep political polarization and marked social deterioration in recent years, Amnesty International has noted arbitrary measures being used by the Venezuelan state security forces and justice system. Such measures are aimed at obstructing freedom of expression, association and political participation. They also affect people's rights to freedom, physical integrity and due process.

Amnesty International has previously denounced politically-motivated arbitrary detentions in Venezuela through calls for the release of Leopoldo López and Rosmit Mantilla, both considered prisoners of conscience.¹ The organization has also repeatedly expressed concerns about the increased investigation and prosecution of political and non-political dissidents under the current government.²

Alongside this, in recent years there have been increasing reports of arrests during peaceful demonstrations, following public accusations in the media, or even during spontaneous protests over the lack of food and medicine.³

¹ Amnesty International considers anyone who has been jailed or physically restricted because of their political, religious or other conscientiously-held beliefs, ethnic origin, sex, colour, language, national or social origin, economic status, birth, sexual orientation or other status to be a prisoner of conscience, provided they have neither used nor advocated violence or hatred.

Amnesty International, *Venezuela: Opposition leader Leopoldo López should be released* (Index: AMR 53/023/2014) Amnesty International, *Venezuela: Prisoner of conscience Rosmit Mantilla must be released immediately and unconditionally* (Index: AMR 53/3060/2015).

² Amnesty International, *Venezuela: Detentions on the rise amid "witch-hunt" against opposition* (Index: NWS 11/5500/2017).

³ Amnesty International, *Venezuela: Stubborn politics accelerate catastrophic humanitarian crisis* (Index: NWS 11/5140/2016).

These reports include arrests conducted by the Bolivarian National Intelligence Service (Servicio Bolivariano de Inteligencia Nacional, SEBIN) without a warrant; prosecutions for crimes ‘against the homeland’ or ‘terrorism’ and civilians being accused of military crimes;⁴ the unjustified or disproportionate use of pre-trial detention and, when no reasons can be found to continue the deprivation of liberty, a disregard for release orders on the part of those responsible for holding these people, among other things.

Arrests with no legal basis to justify them, or which are the result of exercising rights such as freedom of expression or political participation, or which violate due process and the right to a fair trial, are all forms of arbitrary detention that have been observed in Venezuela.⁵

In light of the above, it is extremely worrying that there is evidence to suggest political motivation behind these arbitrary detentions and that these tend to be associated with criticism, dissidence and opposition to government policies.

Amnesty International believes that arbitrary detention methods are being repeatedly used to silence political dissidents, and that the existence of such practices encourages the perpetration of other serious human rights violations such as torture and ill-treatment, and even forced disappearances.

In February 2017, Amnesty International conducted a research mission to Venezuela to gather documentation and information on cases already known to the organization. In order to gather this information, and to ascertain and verify the reports that had been made to Amnesty International, legal documentation on current criminal proceedings was consulted, interviews were held with the families and defence lawyers of those arbitrarily detained, the decisions of the UN Working Group on Arbitrary Detention and other international bodies were referred to and the different reports that had been received internally were confirmed.

This mission enabled the organization to obtain duly corroborate the necessary information with which to assess the human rights violations committed in Venezuela through the use of arbitrary detention as an instrument of political persecution.

When and how can someone be arrested in Venezuela?

In Venezuela, a person can be deprived of their liberty while being investigated for an activity that may be criminal in nature or if they are caught in delicto flagrante (“in the act”).⁶ Venezuelan legislation also establishes that a person may, in exceptional cases, remain in detention while their criminal liability is established.⁷

⁴ There have also been recent cases of accusations of drug trafficking.

⁵ Categories of Arbitrary Detention used by the UN Working Group on Arbitrary Detention. See: Amnesty International, Fair Trial Manual 2nd edition (Index: POL 30/002/2014).

⁶ According to national legislation, in delicto flagrante means when someone is caught committing or immediately after committing an offence. It also applies when a person is being pursued by the authorities or by individuals or when the person is caught shortly after committing an offence, in the same place or near the place where it was committed, with weapons that might in some way lead one to presume that they committed the offence. Article 248 of the Venezuelan Organic Code of Criminal Procedure.

⁷ Articles 9, 229 and 233 of the Venezuelan Organic Code of Criminal Procedure.

In the first case, when a judge issues an arrest warrant,⁸ this must state the reasons for the arrest, as well as the place of detention and, once detained, the person must be brought before a court within 48 hours.⁹

In cases where a person is arrested while or immediately after committing a crime, they must be brought before a judge within 12 hours of their arrest to establish whether they should remain in custody or be released while proceedings continue.¹⁰

In accordance with Venezuelan legislation, pre-trial detention must in all cases be approved by the judicial authority, **provided the Public Prosecutor's Office has requested it and when there is a substantiated risk of absconding or of hindering the search for truth during the investigation.**¹¹ In addition, if the Public Prosecutor's Office does not submit a formal charge within 45 days of the detention being decreed by the supervising judge (*Juez de Control* or *Juez de Garantías*) then the person must be released, although another means of restricting their freedom may be ordered, such as a ban on leaving the country or a requirement to report to the court on a regular basis.¹²

During this period of detention, there are minimum guarantees related to the right to defence and to physical integrity, and all detainees have the right to know the reasons for their arrest and, if there is an arrest warrant, the contents thereof.

The detainee also has the right to name another person to whom their detention must be immediately communicated; to be assisted by a defence lawyer; and not to testify against themselves or without the presence of their lawyer; they must enjoy freedom from coercive mechanisms intended to break their will and have the right to be examined by a doctor or other health professional as necessary.¹³

In accordance with international law, when these minimum guarantees are not met, or when someone is detained without regard for these mechanisms (arrest warrant, appearance in court, etc.), the detention may be arbitrary.

In Venezuela's case, as established in national law, no person may be deprived of their liberty once an order for their release has been issued or they have completed their sentence,¹⁴ and so if the Public Prosecutor's Office decides not to press formal charges then the person must be released without delay or formality. The same applies to orders from supervising judges issuing non-custodial interim measures.

⁸ Article 240 of the Venezuelan Organic Code of Criminal Procedure.

⁹ Para. 1 of the Venezuelan Organic Code of Criminal Procedure.

¹⁰ Articles 234 and 373 of the Venezuelan Organic Code of Criminal Procedure.

¹¹ Article 236 of the Venezuelan Organic Code of Criminal Procedure.

¹² Article 236 para. 4 of the Venezuelan Organic Code of Criminal Procedure.

¹³ Article 71 of the Venezuelan Organic Code of Criminal Procedure.

¹⁴ 999 U.N.T.S. 171, Article 9.1 of the International Covenant on Civil and Political Rights (adopted 16 Dec. 1966; entry into force: 23 Mar. 1976), Article 7.2 of the American Convention on Human Rights (adopted 22 Nov. 1969; entry into force: 18 Jul. 1979).

NO RIGHT TO ARREST

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DETENTION WITHOUT A COURT ORDER



Amnesty International has been made aware of, and has effectively verified, arrests conducted without a court order, even when the person was not caught *in flagrante delicto*. The common factor in these arrests is that those detained by the state authorities have all had a critical or dissenting view of government policies.



On 17 October 2016, José Vicente García, a councillor for the opposition party *Voluntad Popular* in San Cristóbal municipality, Táchira state, was detained by members of SEBIN on leaving his house in La Castra district to attend a municipal council meeting.

Once in detention, his wife, María Alejandra Rivera de García, published via her husband's Twitter account that the intelligence service had been following him for the past couple of days, and she

accused them of planting grenades and military uniforms in his car during his arrest. A few minutes after publishing the tweet, the Governor of Táchira state published a photo of José Vicente, also via Twitter, showing him standing between two masked and uniformed officials behind a table bearing uniforms and grenades. José Vicente was brought before a judge¹⁶ and, although the Public Prosecutor's Office did not request it, his continued detention at the SEBIN offices in Táchira state was ordered. Councillor García has a release order issued by the court as no charges were brought against him.¹⁷ He is, however, still being held in SEBIN's *El Helicoide* facility in Caracas.

Cases such as the detention of José Vicente García and others that have been reported to Amnesty International all have a common denominator in that they have all involved SEBIN. The discretionary and arbitrary use of the concept of *in flagrante delicto* to excuse human rights violations is a constant, despite the fact that the person detained was very often going about their daily activities, which were not of a criminal nature.

¹⁶ Eighth Control Court of First Instance of Táchira State.

¹⁷ According to Venezuelan legislation, once 45 days have passed since a person was brought before the court for a case of *in flagrante delicto*, the Public Prosecutor's Office must submit a formal charge or release the individual. Article 234 para 4 of the Organic Code of Criminal Procedure.

SEBIN: NATIONAL BOLIVARIAN

INTELLIGENCE SERVICE

The National Bolivarian Intelligence Service is an auxiliary body of the Executive. As an intelligence service, its primary task is “the neutralization of real or potential threats to the Venezuelan state”. Although the arrest and custody of people in pre-trial detention are not among their responsibilities, SEBIN has had cells for several years now in a number of its facilities, where it holds people deprived of their liberty for different reasons.

In addition, SEBIN reports directly to the Vice-President of the Republic, and is therefore not governed by the Organic Regulation of the Ministry of People’s Power for Prison Services.

Amnesty International considers it extremely worrying that a repeated practice of detaining individuals without an arrest warrant is developing and that the interpretation of in flagrante delicto is being arbitrarily extended as a pretext for depriving political dissidents of their freedom.

Amnesty International finds the actions of the Venezuelan intelligence service equally worrying as

this body is playing an overwhelming role in such detentions and, after their arrest, holds these individuals in custody.

Amnesty International is also concerned at the growing use of such arbitrary arrests in relation to elected officials while exercising their duties. The detention of people without an arrest warrant and their subjection to criminal proceedings has, in some cases, resulted in their dismissal from public office if they were an elected official.

A clear example of this kind of arbitrary action occurred on 19 February 2015 when the office of Mayor Antonio Ledezma was raided by SEBIN officers. Mr. Ledezma was arrested during this raid without the necessary warrant.

The President of the Republic, Nicolás Maduro, announced that same day that his arrest was due to conspiracy.¹⁸ Antonio Ledezma is currently being held under house arrest;¹⁹ he has been relieved of his duties as Mayor of Caracas and is accused of conspiracy²⁰ and criminal association.²¹

¹⁸ Presidential speech dated 19 February 2015.

¹⁹ According to Venezuelan legislation, if a person is over 70 years old then pre-trial detention shall be via house arrest. Article 231 of the Organic Code of Criminal Procedure.

²⁰ Article 132 of the Venezuelan Criminal Code.

²¹ Article 37 of the Law on Organized Crime and the Financing of Terrorism in Venezuela.

VIOLATION OF LEGAL REQUIREMENTS

Amnesty International has received reports of a disregard for the legal requirements of an arrest.²² For example, indifference to the parliamentary immunity of an alternate Member of Parliament has been noted. There is a serious concern here in terms of the possibility of establishing a practice that shows contempt for the law and the constitution, and that this and other arbitrary actions could be replicated with the aim of silencing political dissidents.



Gilber
CARO

On 11 January 2017, Member of Parliament Caro was on his way home to Caracas, on the Guacara ring road, Carabobo state (central region of Venezuela), when he was arrested by officers of the Bolivarian Intelligence Service. Gilber Caro was with Steyci Escalona, a *Voluntad Popular* activist.

According to their lawyers, SEBIN ordered them to pull over in the area of the La Entrada tolls and proceeded to check their car.

That same day, the Vice-President of the Republic explained in a TV address that a gun and explosives had been seized from Caro and Escalona and stated that the Member of Parliament was involved in terrorist activities, indicating that Caro had clandestinely crossed the border to Colombia.²³

Steyci Escalona was brought before a military court and charged with theft of military effects²⁴ and rebellion.²⁵ However, Member of Parliament Caro was taken to July 26 prison in Guárico state²⁶ and, as of March 2017, had not been brought before a court to determine the legality of his situation. Not only has his parliamentary immunity thus been violated but he has also been deprived of his freedom, imprisoned without a warrant, and without his in flagrante delicto detention having been justified by any judicial authority.

STATE POLICY

On 11 January 2017, the President of the Republic appointed the Vice-President and other senior officials to “Delegate the battle against the coup d’état via a special anti-coup command, for peace and sovereignty (...) that devotes 24 hours a day to preventive, legal and corrective measures against all internal coup perpetrators and terrorists.”²⁷ That same day, Steyci Escalona and Gilber Caro were arrested by SEBIN officers and their situation was widely reported on national television by the Vice-President of the Republic.

²² Parliamentary immunity in Venezuela is set out in Article 200 of the Constitution of the Bolivarian Republic of Venezuela.

²³ Speech of the Vice-President of the Republic on 11 January 2017.

²⁴ Article 570 (1) of the Organic Military Justice Code of Venezuela.

²⁵ Article 132 of the Venezuelan Criminal Code.

²⁶ The Minister of People’s Power for Prison Services stated on her Twitter account that: “The fascists imagine tht (sic) we would do what they do! Regardless of their crimes, the treatment is decent!” and included photos of Caro. See: https://twitter.com/irisvarela/status/823170778048983042?ref_src=twsrc%5Etfw

²⁷ Speech of the President of the Republic on 8 January 2017.



LACK OF INDEPENDENCE OF JUSTICE ADMINISTRATORS AND SHORTCOMINGS IN JUSTICE ADMINISTRATION

Among the violations of due legal process that Amnesty International has been able to verify are some that relate to a lack of independence on the part of those who administer justice. This is reflected in a disregard for the principle of presumed innocence that must govern all criminal proceedings and in a lack of impartiality on the part of judges and prosecutors, which results in an unfair trial of the person who has been detained.

This can clearly be seen in the action of the courts and the staff of the Public Prosecutor's Office, such as, for example, temporarily halting the regular activities of the court in charge of the case; detaining people immediately following speeches by senior Venezuelan government officials indicating that a crime has been committed; and the lack of reasons given for some measures such as transfers and pre-trial detention, among others.



Raúl Emilio
BADUEL



Alexander
TIRADO

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On 21 March 2014, Raúl Emilio Baduel Cafarelli and Alexander Antonio Tirado Lara, two young Venezuelans, were detained by the Aragua State Police in the vicinity of a fairground in Maracay city, Maracay state, in the centre of the country. They were holding a peaceful protest in which –

²⁸ A series of protests took place in February 2014, led by students and civil society, which were suppressed with an excessive use of force.

²⁹ Article 286 of the Venezuelan Criminal Code.

³⁰ Article 296 of the Venezuelan Criminal Code.

³¹ Article 287 of the Venezuelan Criminal Code.

by means of a human chain - they were protesting the fact that the San José fairs would be held during a time of high social and political conflict that had cost the lives of many Venezuelans.²⁸

Alexander Antonio Tirado Lara was arrested as he was talking through a megaphone, along with another teenager who was taking photos of the peaceful protest. Raúl Emilio Baduel Cafarelli was sitting on the ground at the side of the road, without interrupting the passing traffic, holding a wooden cross in his hands, and accompanied by a group of people who were later released.

Despite there being videos of these arrests, and numerous witnesses who can state that the protest was taking place peacefully, Baduel and Tirado were convicted of crimes of public incitement,²⁹ public intimidation with explosive devices³⁰ and criminal association.³¹

The arbitrary acts committed during their prosecution and sentencing included the unjustified omission of evidence, such as the videos that demonstrated the peaceful nature of the protest, and the lack of justification, given that the conviction was based on the existence of a megaphone to indicate that they were in a place with objects that could create a breach of the peace.

Moreover, obstacles were placed in the exercise of their defence, such as the refusal to provide copies of the initial proceedings to their defence lawyers, and the refusal to record on video the hearings that were held, despite this being a legal requirement.³²

In addition, Baduel and Tirado have repeatedly denounced the fact that they were subjected to torture and ill-treatment during their pre-trial detention. More specifically, they state that they were beaten by police officers and moved on many occasions without the court's authorization. They were later held in the Uribana prison where they suffered different humiliations, including tear gas

bombs thrown into the cell on several occasions, and hot food delivered straight into their hands so that they were forced to drop it on the floor alongside the raw sewage that seeped into their cell.

They also complained to the authorities of being subjected to propagandist music at night, and that the guards had ordered them to sleep on the hot asphalt floor, causing them to suffer burns to their genitals. In addition to this, their lawyers constantly denounced the fact that none of these incidents were investigated by the prosecution service.

Different international bodies have spoken out against the lack of independence of Venezuela's judiciary. For example, the UN Human Rights Committee has expressed its concern at the fact that 65% of judges in post in Venezuela are only in temporary positions, placing them at high risk of being subjected to political pressure. This seriously compromises the impartiality of the justice system and has had a direct impact on cases such as that of Baduel and Tirado, resulting in a failure to investigate reports of torture and ill-treatment during detention, as well as the other arbitrary actions they suffered as a consequence of their eight-year prison sentence.

³² Article 317 of the Venezuelan Organic Code of Criminal Procedure.



LACK OF INDEPENDENCE OF JUSTICE ADMINISTRATORS AND SHORTCOMINGS IN JUSTICE ADMINISTRATION

Debido proceso e incumplimiento de



Villca
FERNÁNDEZ

Villca Fernández is a young Venezuelan student leader studying at the Los Andes University (ULA) in Mérida state and was also a parliamentary candidate in the 2015 legislative elections. Villca has been a student activist for years and has experienced repression at the hands of government forces. In 2010, for example, he received 65 pellet-gun shots while exercising his right to peacefully protest at the increase in subsidized student fares. Despite this, Villca continued his university activism and was flagged up numerous times on

television by different national authorities as being a terrorist or conspirator.

On 27 January 2016, Villca was named by a senior government party official in a state television programme, accusing him of being part of a conspiracy to destabilize the security of the nation. On 31 January 2016, Villca repeated the accusations made in the speech via a message on Twitter, noting that his message was intended for the show's host and stating: "Your days in power are numbered and you have many scores to settle with the justice system... I'm not afraid of you."³⁴

That same day, SEBIN officers arrested Villca Fernández in the street and took him to SEBIN's offices in Caracas. He was later brought before a judge accused of crimes of inciting³⁵ hatred and disseminating false information.³⁶ He is still being held awaiting trial.

Amnesty International's concerns regarding guarantees of due process are also reflected in the state authorities' improper interference in the detention and prosecution of political dissidents and those critical of government policies.

Amenazas de trasl

Incomunicación y aislamiento

Uso policial del recurso de informantes

³³ He is currently in the process of preparing and presenting his degree thesis in political sciences at Los Andes University.

³⁴ Twitter account of Villca Fernández @VillcaFDEZ" 31 January 2016.

³⁵ Article 285 of the Venezuelan Criminal Code.

³⁶ Article 296 (A) of the Venezuelan Criminal Code.

CRIMINAL DEFINITIONS IN “DEFENCE OF THE HOMELAND”: AMBIGUOUS AND DISCRETIONARY



Politically-motivated detentions that have taken place in Venezuela have as their legal basis a number of articles of the Criminal Code that are set out in the chapter On Crimes against the Independence and Security of the Nation and also other criminal offences that are framed within the context of the Law on Financing Terrorism and Organized Crime and the Military Justice Code.

The use of criminal definitions such as “treason against the fatherland”, “terrorism or theft of military effects” or “rebellion” thus feature among the accusations made against those detained without a warrant for political reasons, i.e. alleging a situation of *in flagrante delicto* in order to commence proceedings.

When these kinds of crime are alleged then the use of pre-trial detention is common given the heavy sentences they entail. Pre-trial detention must not, however, be used unless strictly necessary to avoid hindering a criminal case or if there is a danger that the person under investigation may abscond.

Pre-trial detention has nonetheless often been used without any consideration for the need and/or proportionality of the measure, thus becoming a kind of pre-trial sentence imposed when the limits set by law for continuing to hold someone in custody have been exceeded.³⁷

Given the ambiguity of their definition and the wide margin for discretion, the use of criminal definitions such as “terrorism” or “treason” jeopardizes the possibility of a fair trial and due process.

Allegations of military crimes or the use of counter-terrorism legislation may also result in the actions being heard by special jurisdictions such as the military courts or the counter-terrorism court.

Amnesty International considers that such use of special jurisdictions disregards the right to a natural judge and the right to be tried by a civil and ordinary, independent and impartial court.³⁸

The Inter-American Court of Human Rights stated the following in relation to Venezuela:

“(...) when military justice assumes competence in a matter that should be heard by ordinary justice, the right to a natural judge is affected and, a fortiori, due process, which in turn is closely linked to the right of access to justice”.³⁹



Steyci
ESCALONA

An example of this is the abovementioned case of Steyci Escalona who is being prosecuted through the military courts for alleged crimes incorrectly attributed to this jurisdiction.

These kinds of crime within military jurisdiction are intended to provide a framework for the military code of conduct; however, when used against

³⁷ According to Venezuelan legislation, pre-trial detention must be for a maximum of two years. Article 230 of the Organic Code of Criminal Procedure.

³⁸ Amnesty International, Fair Trial Manual 2nd edition (Index: POL 30/002/2014).

³⁹ Inter-American Court of Human Rights. Judgment on Merits, Usón Ramírez v. Venezuela, 20 November 2009, para. 109.

a civilian, their aim becomes blurred and the principle of the natural judge is disregarded in order to prosecute people through a court that should not be intervening in these decisions. The defence and guarantees of due process are thus placed at risk, particularly when there are indications that the in-

vestigation is being initiated for political reasons.

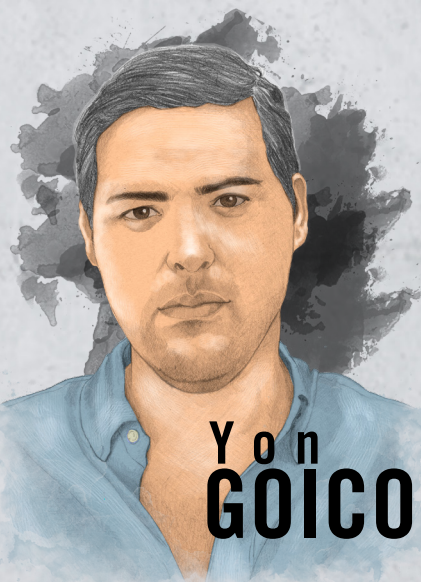
Given the above, Amnesty International considers it essential that all civilians are tried through the ordinary courts and that the military hierarchy is not used to intimidate political expression.

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INCOMMUNICADO DETENTION AND SOLITARY CONFINEMENT

Amnesty International has also documented cases in which detainees have not been permitted any contact with their family or defence lawyer. The organization has discovered cases in which SEBIN has detained a person without a warrant and, prior to taking them before a court, they were held in custody without anyone knowing their situation or whereabouts.



Yon GOICOECHEA

One example of this pattern of incommunicado detention and solitary confinement during arbitrary detention is the case of Yon Goicoechea. Yon was a well-known student leader during the student movement of 2007 that opposed the constitutional reforms proposed by then President Hugo Chávez.

After spending some years outside the country, Goicoechea returned and became involved in political activity within the opposition party *Voluntad Popular*.

On 29 August 2016, he was moving house in Caracas when - according to an eye witness - he was intercepted by two vehicles out of which stepped unidentified individuals who forced him into one of the vans. When they realized he was missing, his family began to look for him, and also filed a habeas corpus appeal on the grounds that they were unaware of his whereabouts and legal status.

Goicoechea's detention was confirmed by a senior official from the government party, the United Socialist Party of Venezuela, who stated that he had been arrested for carrying explosives allegedly for use in an opposition demonstration on 1 September.

Despite the extensive efforts of his lawyer, Yon Goicoechea's whereabouts could not be ascertained until approximately 13 hours after his last contact with his family. Goicoechea was missing from the time of his arrest until information was obtained that he was being held in SEBIN's *El Helicoide* facility in Caracas. The activist was brought before the courts but, according to information provided to Amnesty International, he remained in incommunicado detention until 1 September 2016.

⁴⁰ The 21st Court of First Instance in Criminal Matters in Control Functions of the Criminal Judicial Circuit of the Metropolitan Area of Caracas issued a resolution on 20 October 2016 agreeing to substitute the deprivation of liberty with a requirement to report regularly to the courts, on the condition that he offer two guarantors. This requirement was duly complied with on 31 October of that year; however, despite Mr. Goicoechea's defense submitting a habeas corpus appeal, there has thus far still been no decision in this regard.

Since 20 October 2016, there has been a court ruling recognizing that all the requirements for his release have been met, given that the Public Prosecutor's Office has failed to find sufficient evidence to bring any charges against him.⁴⁰ Despite this, he is still being held by SEBIN and, according to his family, the court dealing with the case has not been open to the public since December 2016.

The right of detainees to communicate with the outside world and receive visits is a fundamental safeguard against human rights violations such as torture or other ill-treatment and enforced disappearances. Its affects a defendant's ability to prepare their defence and is necessary to protect the right to a private and family life and to health.⁴¹

According to international law, people detained and imprisoned have the right to communicate with the outside world and, in this regard, only reasonable conditions and limitations can be imposed, which must be proportional to the legitimate aim pursued.⁴²

The detainee has the right to inform another person that they have been taken into custody and of the place where they are being held.⁴³ Incommunicado detention seriously affects the possibility of preparing one's defence and makes the detention arbitrary, in addition to placing the detainee at greater risk of suffering other violations of their rights.

Amnesty International considers the complaints made by the families of those arbitrarily detained for political reasons to be a serious concern given the obstacles and humiliations they suffer when visiting the detention centres.

Among the most common complaints are excessive body searches, bugging during visits, a lack of privacy, arbitrary permission to receive visits given the few opportunities offered for visiting hours, confiscation of personal effects brought by family members, amongst others.

Detention in which the person is held in isolation from others is equally arbitrary. Amnesty International has been able to document situations of solitary confinement in which people are taken to punishment cells or *ad hoc* locations in order to separate them from other inmates. The decision to apply this method of solitary confinement is at the complete discretion of the prison staff and is not based on any court order.

For example, Rosmit Mantilla, a prisoner of conscience and activist in the *Voluntad Popular* opposition party as well as an LGBTI (Lesbian, Gay, Bi, Trans and Intersex) rights activist, was arrested on 14 May 2014 and released on 18 November 2016. Due to a serious health condition, he was moved in order to receive urgent medical attention but, on 31 October 2016, before he could be admitted for his operation, Rosmit was transferred once more to the SEBIN facility, ignoring his health condition and the court order requiring the medical treatment.

According to information provided to Amnesty International, on his return to SEBIN, Rosmit Mantilla was taken to a punishment cell where he remained without electricity for 10 days and, according to his own testimony, a guard was placed permanently outside the cell and he was prohibited from receiving any visits other than from his immediate relatives; he had no communication with other inmates.

⁴¹ The 21st Court of First Instance in Criminal Matters in Control Functions of the Criminal Judicial Circuit of the Metropolitan Area of Caracas issued a resolution on 20 October 2016 agreeing to substitute the deprivation of liberty with a requirement to report regularly to the courts, on the condition that he offer two guarantors. This requirement was duly complied with on 31 October of that year; however, despite Mr. Goicoechea's defense submitting a habeas corpus appeal, there has thus far still been no decision in this regard.

⁴² Amnesty International, Fair Trial Manual 2nd edition (Index: POL 30/002/2014).

⁴³ Article 17.2.d of the International Convention against Enforced Disappearances, rule 26 of the Bangkok Rules, principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, guidelines 20 and 31 of the Robben Island Guidelines; see rule 38 of the Council of Europe rules on remand in custody, rules 99 and 24 of the European Prison Rules.

Amnesty International has serious concerns regarding the authorities' violation of the right to communication and regarding the solitary confinement to which people deprived of their liberty for political reasons are subjected. This is particularly because such solitary confinement is not being used solely in exceptional circumstances,⁴⁴ and it has not been restricted to cases where a court order establishing its duration exists.⁴⁵ There has furthermore been a lack of respect for the principle by which solitary confinement must not interfere with a person's contact with their lawyers and family,⁴⁶ given that visits are also sometimes restricted when a solitary confinement sanction is applied.

Prolonged detention in solitary confinement may constitute torture, above all when combined with a lack of communication with the outside world.⁴⁷

The Inter-American Court of Human Rights considers that prolonged solitary confinement and incommunicado detention are in themselves cruel and inhuman treatment. A ruling issued by this court recognized that holding two individuals in incommunicado detention was a violation of their right to humane treatment.⁴⁸

⁴⁴ General Comment 2 of the CAT, para. 13; Council of Europe, Recommendation Rec (2012) of the Committee of Ministers, Annex, para. 15, 2.

⁴⁵ European Court: Ramirez Sanchez v. France (59450/00), Grand Chamber (2006), paras. 138-145, A. B. v. Russia (1439/06) (2010), para. 108; CAT, Concluding observations: Azerbaijan, UN Doc. CAT/C/AZE/CO/3 (2009), para. 13, Denmark, UN Doc. CAT/C/DNK/CO/5 (2007), para. 14, Israel, UN Doc. CAT/C/ISR/CO/4 (2009), para. 18; see CAT, Concluding observations: Norway, UN Doc. CAT/C/CR/28/3 (2002), para. 4.d.

⁴⁶ CAT, Concluding observations: Russian Federation, UN Doc. CAT/C/CR/28/4 (2002), para. 8.d; CPT, 21st general report, CPT/Inf (2011) 28, paras. 56.a and 57.a.

⁴⁷ General comment 20, Human Rights Committee, para. 6; Special rapporteur on torture, UN Doc. A/66/268 (2011), para. 81; CAT, Concluding observations: New Zealand, UN Doc. CAT/C/CR/32/4 (2004), paras. 5.d and 6.d; United States of America, UN Doc. CAT/C/USA/CO/2 (2006), para. 36; McCallum v. South Africa, Human Rights Committee, Doc. UN Doc. CCPR/C/100/D/1818/2008 (2010), para. 6.5; Penal Miguel Castro Castro v. Peru, Inter-American Court (2006), para. 323; Van der Ven v. The Netherlands (50901/99), European Court (2003), para. 51; see CAT, Concluding observations: Japan, UN Doc. CAT/C/JPN/CO/1 (2007), para. 18.

⁴⁸ Inter-American Court: Cantoral-Benavides v. Peru (2000), para. 83; Chaparro Álvarez and Lapo Íñiguez v. Ecuador (2007), paras. 166-172.

ANONYMOUS INFORMANTS AS A BASIS FOR DETENTION


Amnesty International has confirmed cases of recent arrests in which the state apparatus was triggered due to statements or reports from anonymous individuals who did not appear before the judge to make a statement, thus making it impossible for the defence to challenge the complaints. There are different concepts used by the authorities to identify this kind of anonymous statement and we have also been able to identify the use of terms such as “cooperating patriot” or “undercover agent” in this regard.⁴⁹

“Is it a crime to provide legal defence to people whose human rights have been violated?” asks Elky Arellano, Marcelo Crovato’s wife.

Crovato was accused of the crimes of public incitement, criminal association and law-breaking. According to information provided to Amnesty International by the Venezuelan Criminal Forum, Crovato’s detention was based on testimony provided by anonymous witnesses, who turned out to be two undercover police officers acting without the necessary authorization of the prosecution service or the judge in the case, in accordance with Venezuelan procedural law.⁵⁰

During his detention in Yare prison, a prison close to Caracas, his life and physical integrity were at risk given that Crovato had previously been the governor of this prison between 1999 and 2000. On 20 December 2014, Crovato tried to take his own life inside the prison. In February 2015, he was granted house arrest for health reasons.

International human rights case law has repeatedly emphasized that a conviction must not be based solely or decisively on anonymous statements.⁵¹ More specifically, the Inter-American Court of Human Rights has indicated that the American Convention



Marcelo CROVATO

Marcelo Crovato is a lawyer and volunteer with the Venezuelan Criminal Forum (*Foro Penal Venezolano*), a human rights NGO that provides legal assistance to people deprived of their liberty for political reasons. On 22 April 2014, in the context of the pro- and anti-government demonstrations that took place between February and July of that year (during which at least 43 people lost their lives and hundreds more were arrested), Crovato was detained, while working as a lawyer assisting a couple whose home had been raided, for allegedly helping demonstrators during these protests.

⁴⁹ One example is the case of Rosmit Mantilla, declared a prisoner of conscience by Amnesty International. In Rosmit’s case, the Public Prosecutor’s Office accused him of public incitement, public intimidation, obstructing public highways, arson of public and private buildings, violent damage and conspiracy to commit, in the context of the anti-government protests that took place between February and July 2014.

The charges were based on a statement from an unidentified individual who said that Rosmit Mantilla had received funds to finance anti-government protests, and based on evidence that SEBIN officers said they had found during a search of Rosmit Mantilla’s house, such as for example leaflets calling on the people to join the protests and envelopes containing money. Amnesty International, *Urgent Action: Prisoner of conscience at risk* (Index: AMR 53/3303/2015).⁵⁰ There is a victim and witness protection scheme in Venezuela, set out in the Law on Protection of Victims, Witnesses and other Parties to Judicial Proceedings; however, national legislation stipulates that any such identity protection can only be initiated at the request of the Public Prosecutor’s Office and that it requires the approval of the courts. This would necessitate a hearing at which the defence team would have the possibility of opposing such a request.

⁵¹ European Court: *Van Mechelen and Others v. The Netherlands* (21363/93, 21364/93, 21427/93 and 22056/93) (1997), paras. 55, 60-61, *Doorson v. The Netherlands* (20524/92) (1996), para. 76, cited with the approval of the Grand Chamber in *A and Others v. United Kingdom* (3455/05) (2009), para. 208, *Visser v. The Netherlands* (26668/95) (2002), paras. 47-49; but see *Ellis and Simms and Martin v. United Kingdom* (46099/06 and 46699/06) (inadmissibility) Decision (2012), paras. 75-76.

contains the “minimum guarantee” of the “right of the defence to question witnesses present in the court and to obtain the appearance, as witness or expert, of other people who could shed light on the events”,⁵² thus operationalizing the principles of adversarial proceedings and equality of arms.

Among the guarantees recognized to defendants is that of examining witnesses for the prosecution and for the defence, under the same conditions and with the aim of establishing the case for the defence. Protecting witness identities limits the extent to which this right can be exercised as it prevents the defence from asking questions related to the possible enmity, prejudice or reliability of the witness themselves, as well as other questions that might establish that the statement is false or incorrect.⁵³

Amnesty International has serious concerns because the basis for Marcelo Crovato’s detention - and that of others who have denounced their politically-motivated prosecution - lies in the information provided by just such an anonymous witness, thus preventing any defence from being exercised in relation to the fundamental evidence being brought against him.

Amnesty International is concerned at the use of anonymous statements and witnesses as it considers this to be in contradiction to the presumption of innocence, the right of the accused to refute evidence and the capacity of the court to pass sentence based on all relevant evidence, which the parties have had an opportunity to disprove.⁵⁴

Incomunicación y aislamiento

Uso policial del recurso de informantes anónimos para justificar detenciones

⁵² Article 8 (2) (f) of the American Convention on Human Rights.

⁵³ Norín Catrimán v. Chile, Judgment on Merits, Inter-American Court of Human Rights. para. 242.

⁵⁴ Amnesty International, *Fair Trial Manual*. Second Edition. p. 162.

DISREGARD FOR RELEASE WARRANTS

Amnesty International has documented the situation of no less than 16 people who are currently deprived of their liberty despite having met the legal requirements for their release. They even have court orders specifically stipulating their release and their transfer to non-custodial measures such as court reporting requirements.

Yon Goicoechea (see above) currently has a decision issued by the judge in his case recognizing that he has met all the requirements for his release, given that the Public Prosecutor's Office found insufficient evidence to bring any charges against him. However, since 1 December 2016, according to complaints filed by his family, the court has had "no office"⁵⁵ and so cannot provide a service to the public or issue any release orders.

In the abovementioned García case, the Public Prosecutor's Office had brought no charges by the end of the investigation period and so the court responsible for the case decreed its curtailment. On 20 December 2016, a prison release document was issued to SEBIN's facilities in San Cristóbal, Táchira state. However, despite numerous appeals through the justice system and through the Ombudsman, José Vicente continues to be held at SEBIN's El Helicoide facility in Caracas.

Amnesty International has also become aware of another case of 14 members of the municipal police of Chacao,⁵⁶ Miranda state, near Caracas, who on 20 June were accused by a senior SEBIN officer of being responsible for the murder of journalist Ricardo Durán, a government supporter.⁵⁷

According to the complaints filed by their lawyer, 13 members of this municipal security body were seconded to Prosecution Service 36, which has national-level competence⁵⁸. On 22 June 2016, they



Police officers OF CHACAO

These include the abovementioned cases of Yon Goicoechea and José Vicente García, Fred Armando Mavares Zambrano, Eduardo José Salazar Martínez, Edgar José González Urtado, Alfredo José Chirinos Salamanca, Jorge Luis Delgado Fragosa, Jhonny Roberto Velásquez Gómez, César Eduardo Mijares Oviedo, Ángel Alfonso Sánchez Blanco, Reggie Jackson Andrade Alejos, Ever Darwin Meneses Solano, Venus Soleil Medina Ferrer, Miguel Jonosky Mora and Maria Perez.

⁵⁵ In Venezuela, courts with jurisdiction to hear criminal matters have an internal mechanism by means of which the judge in the case can set the days on which they will be open and providing a service to the public. These days when the court is operational are known as "office" days. An office day is considered a working day when calculating deadlines. However, a court may autonomously decide whether it is going to be open to the public or if, in contrast, it will be temporarily "closed" to clients. This wide discretionary power in the administration of justice has particularly been used in politically-sensitive cases. For example, the case of Yon Goicoechea, in which the supervisory court responsible for issuing the prison release document, once the defence had submitted all the legal requirements for this, decided not to have office days for more than two months in order to avoid dealing with Mr. Goicoechea's defense, while he continued to be arbitrarily deprived of his liberty.

⁵⁶ Fred Armando Mavares Zambrano; Eduardo José Salazar Martínez, Edgar José González Urtado; Alfredo José Chirinos Salamanca; Jorge Luis Delgado Fragosa; Jhonny Roberto Velásquez Gómez; César Eduardo Mijares Oviedo; Ángel Alfonso Sánchez Blanco; Reggie Jackson Andrade Alejos; Ever Darwin Meneses Solano; Venus Soleil Medina Ferrer; Miguel Jonosky Mora and Maria Perez.

⁵⁷ Speech of the Ministry of People's Power for Interior Relations, Justice and Peace. 20 June 2016. Available at: <https://youtu.be/BHK2EQk3LKY>

were charged with facilitating aggravated murder. However, on 8 August 2016, the prosecution service requested the imposition of non-custodial measures, which were granted by the judge.⁵⁹ The court order for their release has been taken to SEBIN's *El Helicoide* facility numerous times and yet, according to the proceedings drawn up by the bailiff of the court, the intelligence officers have refused to accept it as "they do not have orders from their superiors to do so".

According to the Body of Principles for the Protection of All Persons under Any Form of Deten-

tion or Imprisonment, a detainee may dispute their detention at any time, and if this is established as **lacking in legal basis, they must be released immediately.**

Continuing to hold people despite a direct court order for their release is a clear and highly worrying sign of arbitrary detention on the part of SEBIN in cases that have a political element.⁶⁰

In addition, pre-trial detention cannot have the effect of a pre-judgement.⁶¹ Anyone detained on a criminal charge has the right to trial within a reasonable time or to release pending trial.⁶²

Debido proceso e incumplimiento de decisiones judiciales

Incumplimiento de Decretos Internacionales sobre Libertad

Incumplimiento de Decretos Internacionales sobre Libertad Amenazas de traslado

⁵⁸ 13 of the 14 members of the Chacao municipal police force who were accused came forward to their superiors who, through the Scientific, Penal and Criminal Investigation Corps (*Cuerpo de Investigaciones Científicas Penales y Criminalísticas*, CICPC)

⁵⁹ The Seventh Court in Control Functions of the Criminal Judicial Circuit of the Metropolitan Area of Caracas.

⁶⁰ Amnesty International has received information on cases in which people involved in criminal proceedings for other non-political reasons have also suffered arbitrary detention at the hands of SEBIN as they have release orders that have not been implemented by this body.

⁶¹ Amnesty International, *Fair Trial Manual 2nd edition* (Index: POL 30/002/2014).

⁶² Article 9.3 of the International Covenant on Civil and Political Rights. Article 7.5 of the American Convention on Human Rights.

Incomunicación

CONCLUSIONS

The widespread lack of independence of the judiciary in Venezuela and the frequent interference of the Executive and its agencies in its work, against a backdrop of deep political polarization, has given rise to an abusive and arbitrary use of criminal law as a mechanism by which to detain and prosecute people who hold opinions critical of the Venezuelan government's policies.

Amnesty International has been able to authoritatively observe the existence of numerous arbitrary actions when arresting and prosecuting dissidents, actions which are in violation of their rights to due process, freedom and personal integrity.

It has also verified the existence of signs of political motivation behind these violations. This directly affects the right to freedom from discrimination, the right to public protest, as well as the right to freedom of expression, association and meeting, all of which are obligations of the Venezuelan state under international law.

The arbitrary nature of these actions manifests itself in different ways. Arrests without a court warrant, justified by the excuse that a person has been caught *in flagrante delicto*; the lack of independence of the judicial authorities, who respond to accusations from other public authorities; the use of special jurisdictions, such as the military courts, which are neither independent nor impartial; the practice of solitary confinement and incommunicado detention of people deprived of their liberty, which in some cases constitutes torture; the use of anonymous informants - many of them public officials - as a basis for detention; and the failure to comply with court orders demanding the release of those detained by SEBIN.

RECOMMENDATIONS

In light of the serious human rights violations that Amnesty International has observed in Venezuela, some of which constitute crimes under international law, the organization makes the following recommendations to the Venezuelan authorities:

To the Executive

- Rigorously respect orders issued by the judiciary to release people who have a prison release document and/or court order for release; in addition, release those who have been arbitrarily detained in breach of the Venezuelan state's obligations under international law.⁶³
- Refrain from arresting people without an arrest warrant.
- Immediately cease all persecution of individuals who express their opposition to the government's policies.
- Ensure that people deprived of their liberty are held in appropriate centres capable of holding them in accordance with international norms and standards in this regard.
- Refrain from acts that could interfere in the work of the judiciary or Public Prosecutor's Office and which are aimed at accusing dissidents of being responsible for alleged criminal activities.
- Implement the Organic Law on the Police Service and the National Police Corps, which establishes the creation of an intelligence service reporting to the National Civil Police and which is subject to the control of the judiciary.
- Respect and guarantee freedom of expression, and the right to meet and peacefully protest, in compliance with international human rights agreements.
- Guarantee full compliance with the recommendations of international human rights protection bodies.

⁶³ If a person is administratively detained without being brought before a court, Amnesty International considers they must be released immediately as this is an attempt to ignore judicial guarantees; if a military jurisdiction has been used to try civilians, Amnesty International also considers this to be a substantial violation of due process which prevents the detention from being legitimate; in cases of unfair trials where evidence for the defense has been arbitrarily excluded, or in which there has been no opportunity to refute fundamental evidence on which the accusation is based, the person must be released because their detention has not taken place before an impartial judge. Human rights violations cannot be prosecuted before military jurisdiction.

- Retract the denouncement of the American Convention on Human Rights and promptly accept the jurisdiction of the Inter-American Court of Human Rights.
- Ratify the International Convention for the Protection of all Persons against Enforced Disappearances, signed in 2008, and recognize the competence of the Committee against Enforced Disappearances to admit and consider communications submitted by victims or their representatives, as well as those formulated by other States Party (Articles 31 and 32 of the Treaty).
- Promptly sign the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.
- Ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

To the Judiciary

- Exhaustively and impartially investigate reports of arbitrary detentions and torture or cruel, inhuman and degrading treatment.
- Guarantee due process and the right to a fair trial to all people subject to criminal proceedings, ensuring there is no discrimination due to political motives.
- Refrain from using ambiguous or discretionary criminal classifications of a political nature, such as treason against the homeland, rebellion, public incitement, or those belonging to special jurisdictions such as the Anti-Terrorism Law.
- Immediately inform all people deprived of their liberty of the reasons for their arrest or detention and provide full information on their rights.
- Put an end to the practice of holding people in incommunicado detention.
- Guarantee that people deprived of their liberty have effective access to their families without delay following their detention, and regularly as from that moment on.
- Guarantee that people deprived of their liberty have immediate access to a lawyer of their choice. If a person deprived of their liberty does not have their own lawyer, they must be provided with a state-appointed lawyer, free of charge if they are unable to pay.
- Guarantee that people deprived of their liberty have immediate access to adequate medical examinations, if they request them, and to medical attention at their request or if they require it during the entirety of their detention. They must be allowed to obtain an independent medical opinion if they so wish.
- Guarantee that all people deprived of their liberty have the effective opportunity to challenge the legality of their detention before a court that has the authority to order their release.

- Put an end to the use of administrative detention. People deprived of their liberty must be formally accused of a recognized common crime so that they can be tried in accordance with international standards on fair trials, or otherwise released.
- Reject the use of anonymous witnesses to convict political dissidents.
- Ensure that all release orders that have been issued by a competent court but disregarded by the security forces are executed without exception.

To the Legislature

- Amend the law so as to set strict limits on the jurisdiction of military courts, ensuring that it can be applied only to military personnel who are in post and for crimes or offences of a military nature (those that only a soldier can commit), ensuring that no civilian can be tried by a military court, as required by the Inter-American Court of Human Rights.⁶⁴
- Amend the Criminal Code so that all crimes are clearly defined in accordance with the principle of legality, thus avoiding ambiguity or discretionary application of so-called political crimes.

⁶⁴ Usón Ramírez v. Venezuela, Inter-American Court of Human Rights, Judgment on Merits, 20 November 2017, series C No. 207, operative part 3.

debido a la falta de cumplimiento de
decisiones judiciales

Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all.

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