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Joao Nataf
Secretary
Committee against Torture
UNOG-OHCHR
CH-1201 Geneva 10
Switzerland

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**AMNESTY
INTERNATIONAL**



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Dear Mr Nataf,

RE: VENEZUELA – ADOPTION OF LIST OF ISSUES BY THE COMMITTEE AGAINST TORTURE

Amnesty International would like to draw the attention of the members of the Committee against Torture (the Committee), to the organization's concerns about the Bolivarian Republic of Venezuela's implementation of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention), in advance of the Committee's adoption of a list of issues during its 52nd session.

1. New legislation to combat torture and cruel and inhuman treatment

Amnesty International welcomes the approval in 2013 of a new law designed to prevent and punish torture in Venezuela (*Ley Especial para Prevenir y Sancionar la Tortura y otros Tratos Crueles, Inhumanos y Degradantes*). The law is clear and specific on the prohibition of torture and other ill-treatment, and sets up mechanisms to prevent these human rights violations. However, although the law acknowledges that the state has the duty to guarantee the right of the victims and their families to full reparations, it does not provide for concrete mechanisms to ensure that such right is fulfilled.

Under the new law, the authorities have set up a national Commission for the Prevention of Torture, led by the Office of the Ombudsperson (*Defensoría del Pueblo*), whose first task was the elaboration of a national plan against torture. On 11 February 2014, the Ombudsperson announced that a national plan for the prevention of torture and other cruel, inhuman or degrading treatment had been approved. Amnesty International has not had access to the plan yet due to its recent approval. The organization believes that it is vital that all the necessary resources be allocated to ensure the full implementation of this very important law.

Venezuela has not ratified the Optional Protocol to the Convention against Torture (OPCAT).

2. Situation of people in detention

a. Prolonged pre-trial detention

Amnesty International is concerned at the lack of up-to-date and comprehensive publicly official information regarding the amount of people in detention and their legal status. Estimates by human

rights organizations¹ indicate that the prison population stands at about 53,000 (see point b below) and that the percentage of those awaiting trial stand at over 60%.

According to information submitted by Venezuela to the Inter-American Commission on Human Rights for its report on pre-trial detention in the Americas, over 50% of the Venezuelan prison population is made up of people awaiting trial.² Currently there is no separation in detention centres between people awaiting trial and those who have been sentenced.

One of Amnesty International's main concerns is the delays in the criminal justice system. A clear plan of action which is adequately resourced needs to be implemented as a matter of urgency to ensure that delays in the criminal justice system are tackled comprehensively, integrally, coherently and holistically by the office of the Attorney General's officer, Public Defence's, the police, the prison services and the judiciary, among others.

The lack of application of alternative measures to detention contemplated in the 2012 reform of the Penal Procedural Code (*Código Penal Procesal*) is another concern. The reform introduced alternative measures to pre-trial detention for less serious crimes. However, according to human rights organizations, these are rarely applied.

b. Overcrowding and poor prison conditions

As mentioned above, there is a lack of publicly available information on prison population statistics, such as capacity and occupancy, legal status of detainees and other data on availability of prison services.

According to estimates by local human rights groups and experts on prison issues, there were 53,566 people in prison detention at the end of 2013 while the prison system capacity stood at only 16,539 places, a third of the current estimated prison population.³ In 2011 overcrowding was already of grave concern. According to information from the International Centre for Prison Studies, data provided to them by Venezuela's Ministry of Prison Services showed that the capacity of Venezuela's prisons in 2011 was 18,515. The same source indicated that in 2012 the number of detainees, including those awaiting trial, was 48,262. Such figures would put the occupancy level of Venezuela's prison system at 270.1 per cent.⁴

Additionally, local human rights organizations indicate that at the end of 2013, there were over 7,700 people held in police detention⁵. Some of the detainees have reportedly been held for months and even years in facilities that are not designed to hold people for longer than a few days. These figures included individuals who have already been sentenced. Reports also indicate that the authorities have stopped transferring people (both those awaiting trial and those already sentenced) from police facilities to prisons apparently due to lack of capacity.

The authorities are aware of the prison crisis and have implemented some measures in order to tackle overcrowding and judicial delays. In 2012 and 2013 the Ministry of Prison Services led on the implementation of *Plan Cayapa Judicial*. This is an integral Plan between the Ministry of Prison Services, the Office of the Public Prosecutor, the Office of the Human Rights Ombudsperson, as well as

¹Observatorio Venezolano de Prisiones, Informe Anual 2013.

²The 2013 Inter-American Commission on Human Rights report on the use of pre-trial detention in the Americas, (*Informe sobre el uso de la prisión preventiva en las Américas*) gives a percentage of 52% in mid-2012, however, this data only refers to the cases defended by the Public Defence Service. The Venezuelan organization Observatorio Venezolano de Prisiones, in their annual report 2013, indicates that the overall percentage is 63%. The International Centre for Prison Studies indicates that in 2012 the percentage of detainees awaiting trial in Venezuela's prisons was 64.1%, see <http://www.prisonstudies.org/country/venezuela>.

³Observatorio Venezolano de Prisiones, Informe Anual 2013

⁴Information provided on 31st July 2011, see <http://www.prisonstudies.org/country/venezuela>

⁵Observatorio Venezolano de Prisiones, Informe Anual 2013

judges and defence lawyers. Members of these institutions visit detention facilities and interview detainees in situ or study their legal documentation to ascertain their status and decide on the spot whether to release them. According to the Ministry of Prison Services, *Plan Cayapa Judicial* has so far led to the release of 13,224 persons deprived of liberty who had a right to be released or be given alternative measures to detention.⁶

Since 2011, two new prisons have been inaugurated (*Comunidad Penitenciaria de Coro, Comunidad Penitenciaria de Fenix*), others have been refurbished and reopened (*Rodeo II*) and others have been closed (*Casa de Reeducación y Trabajo Artesanal de La Planta, Internado Judicial de Coro, Centro Penitenciario Región Occidental – Uribana, and Carcel Nacional de Maracaibo - Sabaneta*).

In recent years inmates have staged protests including hunger and self-harm strikes- in protest at delays in the justice system, lack of food and drinking water, unsanitary conditions and lack of medical attention, and the prospect of being moved to prisons where inmates risked being killed by fellow detainees.⁷ According to the *Observatorio Venezolano de Prisiones*, in 2013 over a third of these protests were triggered by poor prison conditions. Amnesty International is concerned at the lack of detailed information regarding the resources allocated to the provision of food, water, sanitation and medical attention.

c. Violence inside places of detention

The internal security of prisons is administered by civilian prison guards while the security along the perimeter of prisons is ensured by military officials with the National Bolivarian Guard. According to information provided by human rights organization, in many establishments prison guards avoid entering the areas where prisoners are held and prisoners are effectively left to their own devices. A major source of violence and risk for prisoners has been the ready availability of firearms inside prisons. Weapons discovered inside prisons after searches have shown prisoners have access to guns, semi-automatic and assault weapons and hand grenades. The lives and physical integrity of detainees are at constant risk as a result.

There is no publicly available official information regarding the levels of violence inside prisons. Venezuelan human rights organizations which monitor the situation closely have reported increasing levels of violent deaths and injury amongst prisoners over the past few years. According to their figures for 2012, the number of deaths varied between 214⁸ and 591⁹ while estimates of the number of inmates injured varied between 419 and 1132. For 2013, the *Observatorio Venezolano de Prisiones*, reported that the death toll stood at 506.¹⁰

In addition to the number of inmates killed and injured, the *Observatorio Venezolano de Prisiones*, has documented the cases of four prison guards and personnel killed and eight injured, as well as one civilian killed and 13 injured when visiting detention centres or as a result of violence inside and around prisons in 2013. The same organization also counted 41 detainees killed and 239 injured in police detention.¹¹ In 2013 there were several major riots, such as in Uribana¹², Yare¹³ and Sabaneta prison¹⁴.

⁶See article in “El Universal”, 27 January 2014, *Plan Cayapa dejó en libertad a 13.224 presos en dos años*, available at: <http://m.eluniversal.com/sucesos/140127/plan-cayapa-dejo-en-libertad-a-13224-presos-en-dos-anos>

⁷See *Observatorio Venezolano de Prisiones, Informe Anual 2013* and Amnesty International, *Venezuela: How many more must die before the situation of Venezuelan prisons is addressed?*, available at <http://www.amnesty.org/en/library/info/AMR53/016/2013/en>

⁸Provea, *Situación de los Derechos Humanos en Venezuela, Informe Anual enero-diciembre 2012*. The figure is based primarily on news reports.

⁹*Observatorio Venezolano de Prisiones, Informe Anual 2012*. The figure is based on information gathered from families of the victims, reports provided by a network of defence lawyers and volunteers, news reports, and counting of bodies sent to the morgues.

¹⁰*Observatorio Venezolano de Prisiones, Informe Anual 2013*.

¹¹*Observatorio Venezolano de Prisiones, Informe Anual 2013*.

The vast majority of deaths are reportedly due to the use of weapons, including firearms, and are mostly attributable to prisoner on prisoner violence (to gain and maintain control of areas of the prison, to settle scores, or when prisoners break rules such as when they fail to pay “protection fees” or other rules set by gang leaders). Information available points to the persistent lack of control by the authorities over the lives of the prisoners in over half of detention centres and the continued existence of self-government imposed by some prisoners by means of violence and threats to other prisoners.

Since 2006 the Inter-American Human Rights system has issued provisional and precautionary measures on nine Venezuelan prisons. Violence, however, continues to claim the lives of hundreds of prisoners. 184 inmates were reportedly killed and 269 injured in 2013 alone.¹⁵

d. Human rights violations by authorities on prisoners

According to reports, excessive force is used in the context of operations in which the authorities seek to regain control of prison facilities, resulting in inmates being injured and killed. For example, on 25 January 2013, an attempt to conduct a search at the Central-Western Region Prison (*Centro Penitenciario Región Centro-Occidental*), in the town of Uribana, Lara state, the joint operation by prison authorities and the National Bolivarian Guard ended with the killing of 58 people and 90 injured.¹⁶ The authorities announced that they would open an investigation; however, over a year later, the results are yet to be published.¹⁷

e. Torture and ill-treatment; lack of medical care

Luis Rafael Escobar Ugas was arrested on 19 March 2013 as he was taking part in protests on the right to adequate housing in Barcelona, Anzoátegui state. According to his testimony during police detention he was hung by the wrists and beaten.¹⁸ To date no investigation has taken place and no officials have been brought to justice. He is still in detention at the police headquarters of Peñalver and has not been given the necessary medical care for a series of health conditions he is suffering from.

Iván Simonovis was in charge of public security in Caracas at the time of the failed coup against President Hugo Chávez on 11 April 2002. On that day two groups of protesters clashed in the center of Caracas. Twenty people died from gunshot wounds and over 60 people were injured. Iván Simonovis and other police officers were arrested in 2004 for their role in the deaths of three people and the injuring of 26 others. In 2009, Simonovis and other two top officials were sentenced to the maximum term of 30 years in prison for complicity in the events. The conditions in which he has been held have led to acute vitamin D deficiency and deterioration of his health, including severe osteoporosis, particularly on his spine and femur, with a significant risk of fracture, and deterioration of several of his vertebrae. Iván Simonovis has not been given the medical attention he urgently needs.¹⁹ Iván Simonovis has filed a request to serve the remainder of the sentence from his home (*arresto domiciliario*) on grounds of ill-health, however, the judge in charge of the decision has so far failed to give him

¹²Amnesty International, “Venezuela: A serious investigation into the grave events at the prison in Uribana is urgently needed”, available at: <http://www.amnesty.org/en/library/info/amr53/001/2013/en>

¹³Amnesty International, Prison bans visits: safety fears for inmates, Amnesty International, available at <http://www.amnesty.org/en/library/info/AMR53/010/2013/en>

¹⁴Amnesty International, How many more must die before the situation of Venezuelan prisons is addressed?, Amnesty International, available at: <http://www.amnesty.org/en/library/info/AMR53/016/2013/en>

¹⁵Observatorio Venezolano de Prisiones, Informe Anual 2013.

¹⁶Amnesty International, “Venezuela: A serious investigation into the grave events at the prison in Uribana is urgently needed”, available at: <http://www.amnesty.org/en/library/info/amr53/001/2013/en>

¹⁷See: Notitarde, “Denunciarán en Cidh silencio de Fiscalía en el caso Uribana”, 28 January 2014, available at: <http://www.notitarde.com/Pais/Denunciaran-en-Cidh-silencio-de-Fiscalia-en-el-caso-Uribana-2096377/2014/01/28/300266>

¹⁸Amnesty International, Venezuela: Activist tortured in police cell: Luis Rafael Escobar Ugas, 13 September 2013, available at: <http://www.amnesty.org/en/library/info/AMR53/014/2013/en>

¹⁹Amnesty International, Venezuela: Medical concern for Iván Simonovis, December 2013, available at: <http://www.amnesty.org/en/library/info/AMR53/018/2013/en>

permission to be transferred to a suitable hospital for the necessary medical assessment to make this decision.

f. Violence against women in detention

According to the testimony of an ex-detainee of Venezuela's main women's prison, the *Instituto Nacional de Orientación Femenina* in Caracas, women detainees were often subjected to sexual violence by men who were allowed to enter the facilities, including officials and members of the armed forces. She stated that she was also sexually assaulted during her detention and that investigations following her complaint have not progressed. Amnesty International is conducting further research to corroborate this information. In other instances, local organizations have reported that male prisoners have torn down prison walls and accessed the annexes where female prisoners are held, leading to incidents of violence against women.

g. Oversight mechanisms

The Office of the Human Rights Ombudsperson (*Defensoría del Pueblo*), whose mandate includes ensuring that the rights and guarantees of persons deprived of liberty are guaranteed, does not appear to publish in depth information on the activities it has undertaken and the programs of action it has put in place to guarantee the rights of detainees. According to its 2012 annual report, the Office of the Ombudsperson carried out 386 inspections in prisons. However, the annual report does not specify what the results of these inspections were nor what follow-up actions are being taken to address problems identified, if any, as a result of these visits.

h. Impunity

Impunity for human rights remains a concern in Venezuela as it is in the rest of the Americas. The judicial system does not appear to be adequately resourced and has been subjected to interference by the executive, particularly in cases involving those who are openly critical of the authorities. For example in December 2010, Judge María Lourdes Afiuni Mora was arrested hours after she ordered the release of banker Eligio Cedeño, a decision that was within her power and consistent with Venezuelan law. Her arrest took place a day after the judge's decision was condemned by the late President Hugo Chávez during a television interview in which he called for her to serve the maximum sentence of 30 years. Judge Afiuni is currently free with bail conditions awaiting the outcome of her trial.

More recently, in February 2014, an arrest warrant was issued against Leopoldo López, leader of the opposition party Voluntad Popular (Popular Will), a day after the President of the National Assembly, Diosdado Cabello, and Foreign Affairs Minister, Elías Jaua Milano, accused him of being responsible for the violence during and after the student anti-government demonstrations. A day after López's arrest, President Maduro called for his imprisonment. Leopoldo López is currently under arrest pending the outcome of the prosecutor's office investigation into his responsibility for the crimes of damage to property, arson, instigating to commit a crime and conspiracy to commit a crime, in connection with the violence in the aftermath of the protests. The judge ruled that there was no evidence to charge him with the most serious crimes listed on the arrest warrant, including terrorism, murder and serious bodily harm, among others.

In addition to the problems with the judiciary, since Venezuela's denunciation of the American Convention of Human Rights in September 2013, the Inter-American Court of Human Rights no longer has jurisdiction over Venezuela²⁰. This Court, which represents the last resort and hope for justice for thousands of victims of human rights violations and their families across the Americas, and is a necessary addition to national justice systems, will no longer be available to the people of Venezuela.

Amnesty International has expressed concern at this step and has urged the Venezuelan government to revert this deleterious decision for victims of human rights violations.

In the context of prisons, according to figures published by the *Observatorio Venezolano de Prisiones*, from July 2011 to the end of December 2013, 1,313 inmates died and 2,149 were injured in Venezuelan prisons.²¹ Some investigations were opened into these fatalities, but on few occasions have these investigations identified those responsible, and rarely are concrete measures taken to prevent and sanction violence between inmates and establish whether disproportionate force is used by the security forces when conducting operations in prisons.

On 25 January 2013 in the *Centro Penitenciario Región Centro-Occidental*, Central-Western Region Prison, in the town of Uribana, Lara state, a joint operation between the Ministry for Prison Services and the National Guard to disarm inmates ended with 58 people dead and 90 injured. The authorities, announced at the time that they would open an investigation into the events. Over a year after these events the results of this investigation have not been published.

3. Attacks, threats and intimidation of human rights defenders

Attacks and intimidation on human rights defenders are commonplace.

In the context of the pro and anti-government demonstrations in February 2014, Inti Rodríguez, human rights defender with PROVEA, reported being detained for two hours, beaten and threatened with death by members of the Venezuelan Intelligence Service (SEBIN) and armed civilian groups (*colectivos*). All of his possessions and the documents he was carrying were taken from him.

Human rights defenders Humberto Prado and Marianela Sánchez, of the *Observatorio Venezolano de Prisiones* have been repeatedly intimidated and threatened. In 2012, the husband of Marianela Sánchez was abducted and robbed and told to stop his wife from complaining about prison conditions and criticizing the government or his family would face the consequences.²²

On 12 April 2013, Marianela Sánchez and her family were again threatened with death via an anonymous letter which she found at the entrance of her mother-in-law's home. *Observatorio Venezolano de Prisiones* filed a complaint about this last incident, but the authorities have failed to provide the necessary security measures in accordance with their wishes, nor has any investigation taken place. In 2011 Humberto Prado received an anonymous death threat after he denounced the situation in Rodeo prison and after being branded a liar and an agitator in the Venezuelan media.²³ He has since been smeared in the press on several occasions including by the Minister of Prison Services who accused him of lying, organizing violent protests inside prisons and of destabilizing and criminal activities. In February 2014, in the context of the student led demonstrations, the Minister of the Interior accused Humberto Prado of having taken part in violence during the protests, and of plotting to destabilize the government and the prisons.²⁴

Over the past few years, Víctor Martínez, a human rights defender from Barquisimeto, Lara State who spent years drawing attention to the corruption and human rights violations committed by local police,

²¹Observatorio Venezolano de Prisiones, Informe anual 2013

²²Amnesty International, Venezuelan activist threatened: Marianela Sánchez Ortiz, 1 June 2012, available at: <http://www.amnesty.org/en/library/info/AMR53/004/2012/en>

²³Amnesty International, Venezuelan activist received death threats: Humberto Prado Sifontes, 27 June 2011, available at: <http://www.amnesty.org/en/library/info/AMR53/006/2011/en>

²⁴Organización Mundial Contra la Tortura, Venezuela: Nuevos actos de difamación contra el Sr. Humberto Prado Sifontes, <http://www.omct.org/es/human-rights-defenders/urgent-interventions/venezuela/2013/05/d22246/> and <http://www.derechos.org.ve/2013/05/07/omct-venezuela-nuevos-actos-de-difamacion-contra-el-sr-humberto-prado-sifontes/>

has been attacked repeatedly, including after the killing of his son Mijail Martínez in 2009. In January 2012 Víctor Martínez suffered an assassination attempt, and in the summer of 2013, he found out that two men arrested for this killing are now free, one having been granted conditional freedom, and the other having been spotted in the street, presumably having fled the prison where he was held. Víctor Martínez is in danger of retaliation by the two men and the authorities need to take all the necessary measures to protect him and his family according to their wishes as well as to take steps to clarify the murder of his son Mijail.

4. Implementation of the Law to Eradicate Violence against Women

Since 2008 Amnesty International has actively been campaigning to ensure that the authorities fully implement the Law on the Right of Women to a Life Free of Violence (*Ley Orgánica sobre el Derecho de las Mujeres a una Vida Libre de Violencia*). The law represented a major step in the criminalization and eradication of widespread gender-based violence in Venezuela. However, to date the implementation of the law has been slow.

To ensure that the law is implemented, it is essential that the authorities take steps such as issuing a regulatory framework. Priority should be given also to unifying procedures for receiving and dealing with complaints of gender-based violence in order to ensure women's equal access to justice. Also, courts specialized in dealing with these cases must be reinforced and the authorities must guarantee that there are sufficient and well-resourced shelters to ensure women's physical and mental integrity, whilst their cases are dealt with through the courts.

5. Human rights violations by members of security forces

Allegations of excessive use of force by the security forces, including use of fire arms, during anti-government protests as well as about reports of violence by armed pro government civilian groups carried out with the acquiescence of the authorities, are a concern. In the most recent of such incidents, following violent outbreaks that occurred during and after pro and anti-government demonstrations in February 2014, at least 13 people were killed and scores were injured nationwide, including 120 by firearm, according to local human rights organizations.

During the protests and in the aftermath hundreds of demonstrators were detained (579 according to the Public Prosecutor's office). Many were allegedly tortured and ill-treated at the time of their arrest and while in detention. To date, 45 remain in detention and most have been conditionally released, but still face charges.²⁵ Amnesty International is not aware of the outcome of investigations into the death and injuries of those taking part in the demonstrations and into the allegations of torture and other ill-treatment of detainees.

Complaints of use of excessive force and torture and other ill-treatment of detainees are not uncommon in Venezuela. Local human rights organizations have raised concerns that the number of such complaints has risen in recent years. For instance in its latest Annual Report, the human rights organization PROVEA documented over 330 cases of torture and ill-treatment in 2012, a figure which represents an increase of nearly 35 per cent in relation to the previous year. In the vast majority of cases the allegations have not been investigated. Most of the alleged perpetrators are members of the police and remain unpunished.

²⁵ According to figures from the Public Prosecutor's office, as of 26 February, 45 people remain in detention and five have been unconditionally released, the remaining 529 are facing charges and have been conditionally released. See http://www.mp.gob.ve/web/guest/curriculum?p_p_id=101_INSTANCE_lh5H&p_p_lifecycle=0&p_p_state=maximized&p_p_mode=view&_101_INSTANCE_lh5H_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_lh5H_urlTitle=fgr%3A-529-personas-han-recibido-medidas-cautelares-tras-ser-presentadas-por-hechos-de-violencia&_101_INSTANCE_lh5H_type=content&redirect=%2Fweb%2Fguest%2Fcurriculum%3Fp_p_id%3D101_INSTANCE_lh5H%26p_p_lifecycle%3D0%26p_p_state%3Dmaximized%26p_p_mode%3Dview%26p_p_col

Amnesty International has long campaigned on the case of the Barrios family in Aragua state. Since 1998, 10 members of this family have been murdered in circumstances that suggest police involvement. The case was submitted to the Inter-American Human Rights system in 2004 and both Commission and Court issued precautionary and provisional measures to safeguard the family. However, the murders have continued and the state has done little to protect the family and bring those responsible for the killings to justice. In 2011, the Inter-American Court of Human Rights ruled that the Venezuelan State had violated the right to life, physical integrity, and freedom of several members of the Barrios family. It ordered the State to provide effective protection measures for the family and carry out thorough and impartial investigations and bring those responsible to justice. Since then, 3 members of the family have been killed, the latest being 17-year-old Roni Barrios, killed in May 2013.²⁶ The family was threatened again in September 2013 in a house provided by the State and whose whereabouts were supposed to be secret and safe from rogue police.²⁷ A similar case is being considered by the Inter-American Court (the case of the Landaeta Mejias brothers vs Venezuela). As in the Barrios case, the state has shown negligence in stopping rogue members of the police and bringing those responsible to justice.²⁸

I hope this information is of interest to the Committee.

Yours sincerely,

Tania Baldwin-Pask
International Advocacy Program

²⁶Amnesty International, Venezuela: Murders of family continue; 17-year-old killed, available at: <http://www.amnesty.org/en/library/info/AMR53/007/2013/en>

²⁷Amnesty International, Venezuela: Further information: Police threaten to kill more of Barrios family, 19 September 2013, available at: <http://www.amnesty.org/en/library/info/AMR53/015/2013/en>

²⁸CEJIL, Negligencias judiciales internas en el caso Hermanos Landaeta Mejías Vs. Venezuela quedan en evidencia ante la Corte IDH, 4 February 2014, available at: <http://cejil.org/comunicados/negligencias-judiciales-internas-del-caso-hermanos-landaeta-mejias-vs-venezuela-quedan--0>