



Urgent Call for Preventive Action Against Ongoing Crimes Against Humanity in Venezuela

Washington, D.C., August 29, 2024

Mr. Karim Khan
Office of the Prosecutor
International Criminal Court (ICC)
Oude Waalsdorperweg 10, 2597 AK
The Hague, Netherlands

Subject: **Urgent Request for Preventive Measures Regarding Ongoing Crimes in Venezuela**

Dear Mr. Khan,

We, the Arcadia Foundation, a non-governmental and nonprofit organization dedicated to promoting the respect and protection of human rights globally, hereby present this urgent communication to the Office of the Prosecutor of the International Criminal Court (ICC), invoking the Court's foundational mandate under the Rome Statute to act not only as a tribunal of last resort but as a **preventive institution** tasked with deterring the most egregious crimes known to humanity. The current situation in the Bolivarian Republic of Venezuela presents a compelling and dire case for such preventive intervention. There is overwhelming evidence indicating that crimes against humanity—systematic and widespread violations including extrajudicial killings, torture, arbitrary detention, and enforced disappearances—are ongoing and escalating, without any effective remedy or recourse available within the national jurisdiction. In light of these grave and persistent allegations, and considering the ICC's paramount responsibility to uphold international justice and prevent further atrocities, we urge the Office of the Prosecutor to exercise its authority to initiate immediate measures aimed at halting the continuing violations. This action is not only a legal imperative but a moral one, to protect the rights and dignity of the Venezuelan people and to reaffirm the Court's role as a guardian of international peace and security.

I. The Preventive Mandate of the International Criminal Court

The Rome Statute, the founding treaty of the International Criminal Court (ICC), defines the Court's role not solely as a retributive body but as a **preventive institution**, equipped to deter the commission and continuation of the gravest international crimes. While the Prosecutor has already initiated a formal investigation into the situation in Venezuela following the preliminary examination concluded in November 2021, the ongoing and escalating crimes against humanity in the country **necessitate urgent and concrete preventive actions**.

Article 53 of the Rome Statute empowers the Prosecutor to act *proprio motu*, based on credible information, to prevent crimes within the Court's jurisdiction from occurring or

continuing. The mandate to prevent these atrocities obliges the Prosecutor to intervene decisively whenever there is compelling evidence of ongoing violations, especially those that are public, systematic, and widely recognized, such as those occurring in Venezuela. The current situation demands more than investigation; it requires immediate and effective measures to halt crimes such as persecution, arbitrary detention, torture, enforced disappearances, and extrajudicial executions, which continue unabated and with impunity.

II. The Misinterpretation of the "*Interests of Justice*" Clause in the Context of Venezuela

While the Rome Statute grants the Prosecutor discretionary authority under the "*interests of justice*" clause, as articulated in Article 53, to decide whether to proceed with an investigation or prosecution, it is imperative to clarify that this discretion must not serve as a rationale for inaction in the face of ongoing crimes that shock the conscience of humanity. The "*interests of justice*" clause allows for considerations beyond the mere availability of evidence, such as the potential impact of judicial actions on ongoing peace processes or regional stability. However, in the current Venezuelan context, invoking this clause to delay or avoid immediate preventive measures is both inapplicable and counterproductive.

Firstly, it is crucial to underscore that there are no official peace processes or negotiations currently underway between the opposition and the Venezuelan dictatorial regime that would warrant a deferment of ICC action under the pretext of maintaining stability or promoting dialogue. The sole formal negotiation effort, known as the Barbados Agreement of October 2023, which was intended to establish a roadmap toward free and fair elections, was egregiously violated by the Maduro regime. Actions by the regime, such as disregarding opposition primary elections, disqualifying candidates, manipulating electoral timelines, and failing to update voter registries, all exemplify a blatant lack of commitment to any genuine political resolution. These breaches fundamentally undermine any argument that suggests ICC intervention could destabilize a peace process that, in reality, does not exist.

Furthermore, deferring action on the grounds of "*interests of justice*" would effectively enable the ongoing crimes against humanity in Venezuela to continue unchallenged. The well-documented patterns of persecution, arbitrary detentions, torture, enforced disappearances, and extrajudicial killings, recognized by credible international bodies such as the UN Independent International Fact-Finding Mission and the Inter-American Commission on Human Rights, require an urgent response. The concept of "*interests of justice*" must not be misinterpreted or misapplied to shield perpetrators from accountability or to prolong the suffering of victims, especially when such grave violations are systematic and serve to perpetuate a regime that flagrantly disregards democratic principles and human rights.

Instead, the discretion under the "*interests of justice*" should be exercised to reinforce the ICC's preventive function, aligning with the spirit and purpose of the Rome Statute. This means not only addressing past atrocities but also proactively preventing further harm to the civilian population. The ICC is uniquely positioned to deter future crimes through concrete actions, such as the issuance of arrest warrants, the implementation of protective

measures for victims and witnesses, and exerting international pressure on the Venezuelan authorities to comply with human rights standards. The ICC must act decisively and swiftly, reaffirming its commitment to justice and the rule of law, ensuring that the principle of preventing atrocities remains central to its mandate and operations.

III. Substantiated Evidence of Ongoing Crimes in Venezuela

The situation in Venezuela represents a stark example of ongoing crimes against humanity that necessitate urgent action from the International Criminal Court (ICC). The evidence compiled by credible international bodies, including the United Nations Independent International Fact-Finding Mission on Venezuela (FFMV) and the Inter-American Commission on Human Rights (IACHR), provides a detailed and alarming account of widespread human rights violations. These findings are consistent with the definitions of crimes against humanity as set forth in Article 7 of the Rome Statute and demand immediate preventive measures to halt further atrocities.

A) Findings of the UN Independent International Fact-Finding Mission on Venezuela (FFMV)

The FFMV, established by the UN Human Rights Council to investigate the human rights situation in Venezuela, has produced several comprehensive reports documenting a systematic pattern of grave violations. These reports, most recently reinforced by statements from the FFMV Chair on August 12, 2024¹, highlight a disturbing continuity of severe abuses, including:

1. **Extrajudicial Executions:** The Mission has recorded numerous cases where state security forces have executed individuals without judicial process, targeting political opponents, activists, and perceived dissidents. These extrajudicial killings are often carried out with impunity, reflecting a deliberate policy of the state to eliminate threats to its authority through lethal force.
2. **Enforced Disappearances and Arbitrary Detentions:** Since 2014, there has been a systematic practice of enforced disappearances and arbitrary detentions aimed at suppressing political opposition and dissent. The FFMV reports detail how state agents have forcibly disappeared individuals, often for prolonged periods without any acknowledgment of their detention, effectively removing them from the protection of the law.
3. **Torture and Inhuman Treatment:** The Mission's findings also reveal the widespread use of torture and other forms of cruel, inhuman, or degrading treatment against detainees. Methods documented include severe beatings, electric shocks, asphyxiation, and sexual violence, used as tools to punish, intimidate, and extract confessions or intelligence. These acts constitute a flagrant violation of international human rights norms and contribute to the regime's broader strategy of repression.

¹ References:

- United Nations Human Rights Council Mission to Venezuela:
<https://www.ohchr.org/en/hr-bodies/hrc/ffmv/index>

4. **Repression of Civic and Democratic Space:** The FFMV has underscored the Venezuelan government's deliberate strategy to dismantle democratic institutions and suppress civic space. This includes the systematic targeting of opposition politicians, human rights defenders, and civil society organizations, alongside draconian measures to restrict freedoms of expression, assembly, and association.

The FFMV's reports conclude that these violations are not isolated incidents but part of a deliberate, widespread, and systematic policy orchestrated by the Venezuelan state to maintain its grip on power. This conclusion aligns with the legal framework of crimes against humanity under the Rome Statute, specifically under the elements that require such acts to be committed as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack.

B) New Evidence from the European Union's High Representative

During a press conference on August 29, 2024², following an informal meeting of EU Foreign Ministers, the High Representative of the Union for Foreign Affairs and Security Policy provided further evidence of the deteriorating human rights situation in Venezuela. The High Representative highlighted the following:

1. **Arrest of Opposition Members and Repression:** The High Representative pointed out that over 1,500 Venezuelan citizens have been arrested since the elections, and there are clear indications of ongoing repression against opposition figures, including María Corina Machado, Edmundo González, and other members of civil society and the press. The statement emphasized the need for the Venezuelan authorities to cease repression and respect the dignity, freedom, and rights of the opposition.
2. **Lack of Democratic Legitimacy:** The High Representative declared that the European Union does not recognize the democratic legitimacy of Nicolás Maduro as president, given the lack of transparent and verifiable election results. The absence of electoral transparency and the refusal to present "*actas*" or official vote tallies undermine the credibility of the electoral process and constitute a direct attack on democratic governance and political rights in Venezuela.

These remarks underscore the international community's consensus on the illegitimacy of the Maduro regime and the urgent need for accountability and preventative action to protect Venezuelan civilians from further state-sponsored repression and violence.

C) Report of the Inter-American Commission on Human Rights (IACHR)

Complementing the findings of the FFMV, the IACHR, through its Special Follow-up Mechanism for Venezuela (MESEVE), has provided additional substantive evidence of ongoing atrocities in Venezuela. In its most recent presentation to the Permanent Council

² References:

- Informal meeting of EU Foreign Ministers: Press remarks by High Representative at the press conference https://www.eeas.europa.eu/eeas/informal-meeting-eu-foreign-ministers-press-remarks-high-representative-press-conference_en

of the Organization of American States (OAS) on August 28, 2024³, Commissioner Roberta Clarke highlighted a continuum of human rights abuses that confirm the severity and persistence of the crisis:

1. **State-Sponsored Terrorism and Political Persecution:** The IACHR's report explicitly describes the Venezuelan government's use of state-sponsored terrorism to instill fear and suppress political opposition. This includes targeted campaigns against opposition leaders, journalists, human rights defenders, and ordinary citizens who are perceived as threats to the regime. The Commission documented a pattern of arbitrary arrests, harassment, and the use of excessive force to quell dissent, which has intensified in the aftermath of the disputed July 2024 presidential elections.
2. **Electoral Fraud and Systematic Suppression:** The IACHR, alongside other international observers such as the Carter Center and the UN Panel of Experts, has condemned the 2024 presidential elections as fundamentally flawed and lacking in transparency. The government's refusal to publish comprehensive voting records and the subsequent use of state apparatus to intimidate and suppress electoral volunteers and opposition figures signify a blatant subversion of democratic processes. Such actions not only violate the principles of free and fair elections but also constitute an attack on the civil and political rights of the Venezuelan population.
3. **Criminalization of Dissent and Suppression of Freedoms:** The IACHR report provides detailed accounts of the criminalization of dissent, where individuals are prosecuted under ambiguous charges designed to stifle political opposition and freedom of expression. The Venezuelan state has also employed digital surveillance and cyber repression to control information, prevent mobilization, and intimidate dissidents. These measures represent an aggressive expansion of the regime's repressive tactics into digital spaces, reflecting a comprehensive strategy to control and suppress all forms of opposition.

D) New Evidence from the Organization of American States (OAS)

On August 28, 2024⁴, OAS Secretary General Luis Almagro issued a call to the ICC to issue an arrest warrant against Nicolás Maduro and other senior officials responsible for gross human rights violations in Venezuela. Almagro's statements underscore the gravity of the situation and the need for immediate action by the ICC. He emphasized the following:

1. **Call for Arrest Warrants:** Almagro specifically urged the ICC to issue arrest warrants for Nicolás Maduro and other key figures within the regime who have orchestrated systematic human rights abuses. This direct appeal aligns with the evidence

³ References:

- Inter-American Commission on Human Rights Speech by Commissioner Roberta Clarke, August 28, 2024: https://www.oas.org/en/iachr/activities/Speeches/2024/08_28_Roberta_Clarke.pdf

⁴ References:

- Luis Almagro asks the ICC to issue an arrest warrant against Maduro and those responsible for "violating human rights" <https://bitlyanews.com/nacionales/luis-almagro-pide-a-la-cpi-dictar-una-orden-de-captura-contra-maduro-y-los-responsables-de-la-violacion-a-los-ddhh/>

presented by multiple international organizations, reinforcing the demand for accountability at the highest levels of the Venezuelan government.

2. **Need for Immediate International Intervention:** The Secretary General highlighted that the ongoing violations in Venezuela are not merely internal matters but crimes that shock the conscience of humanity and require an urgent international response. He argued that the issuance of arrest warrants would send a strong signal that the international community will not tolerate impunity for crimes of such severity.

Based on the substantial evidence detailed above, corroborated by the findings from international bodies and recent statements from the European Union and the Organization of American States, the Arcadia Foundation urges the International Criminal Court (ICC) to take immediate and decisive action. The gravity and scale of the ongoing crimes against humanity in Venezuela, including systematic and widespread violations such as extrajudicial killings, torture, arbitrary detention, and enforced disappearances, require urgent intervention to prevent further atrocities and to uphold the principles of international justice as mandated by the Rome Statute.

We call upon the Office of the Prosecutor to thoroughly evaluate this evidence and act swiftly to halt these violations. Continued impunity only emboldens the perpetrators and puts more lives at risk. It is imperative that the ICC reaffirms its commitment to justice and accountability by exercising its preventive mandate to its fullest extent. The time for decisive action is now.

IV. The Urgent Need for Immediate ICC Action

The Arcadia Foundation strongly urges the Office of the Prosecutor to recognize the gravity and urgency of the situation in Venezuela and to act in accordance with the ICC's preventive mandate. It is critical to underscore that this request does not seek the immediate prosecution of all individuals within the chain of command, but rather demands immediate and effective measures to halt the ongoing commission of crimes against humanity. Such actions are well within the prosecutorial discretion and responsibility under the Rome Statute.

We respectfully submit that the ICC's response to the ongoing crisis in Venezuela must prioritize the following actions:

1. **Reject Any Misuse of the "Interests of Justice" Argument:** The Prosecutor must unequivocally clarify that the "*interests of justice*" cannot be invoked to justify inaction in this case. The current circumstances in Venezuela, characterized by a complete lack of genuine peace negotiations or political resolution efforts, do not support the deferral of ICC intervention on these grounds. The invocation of "*interests of justice*" must be aligned with its intended purpose—to ensure that justice is served, not to allow crimes against humanity to persist unchallenged. The Prosecutor's office should issue a public statement affirming that, given the ongoing and systematic nature of the crimes being committed, the "*interests of justice*"

justice" principle mandates active and immediate engagement rather than hesitation or delay.

2. **Utilize the Full Preventive Powers of the ICC:** The Rome Statute grants the ICC a robust set of tools to prevent further atrocities. The Prosecutor should employ these tools to their fullest extent to protect the civilian population in Venezuela. This includes issuing public statements that highlight the ongoing crimes and the ICC's commitment to pursuing justice, thereby serving both as a deterrent to perpetrators and a beacon of hope for victims. Furthermore, the Prosecutor should actively engage with States Parties and international organizations to mobilize diplomatic and economic pressure on the Venezuelan dictatorial regime, encouraging compliance with international human rights standards and discouraging further violations.
3. **Issue Arrest Warrants or Summonses for Key Perpetrators:** Where the evidence is sufficient, the Prosecutor should not hesitate to request the issuance of arrest warrants or summonses for individuals identified as being most responsible for orchestrating or committing these crimes. Such actions serve as a powerful deterrent against the continuation of these crimes and signal the ICC's unwavering commitment to accountability. Arrest warrants or summonses, particularly for high-ranking officials, would disrupt the operational capacity of those committing crimes and convey a strong message that the international community will not tolerate impunity for crimes of such gravity.
4. **Coordinate with International and Regional Bodies for Immediate Measures:** In addition to judicial measures, the Prosecutor should coordinate closely with international and regional bodies, such as the United Nations, the Organization of American States, and other relevant actors, to implement immediate protective measures for victims and potential witnesses. This could include facilitating safe havens, issuing protective orders, or establishing communication hotlines for reporting ongoing abuses. Such measures would not only protect those most at risk but also preserve crucial evidence that could support future prosecutions.

Conclusions

In light of the arguments and urgent context presented in this submission, it is crucial for the International Criminal Court (ICC) to recognize the immediacy and gravity of the situation in the Bolivarian Republic of Venezuela and to act swiftly to prevent further crimes against humanity. This is not merely a matter of theoretical legal interpretation or diplomatic negotiation; it is a stark and urgent reality in which systematic and widespread atrocities continue to be perpetrated with impunity, causing immense suffering to countless individuals. The ICC, as mandated by the Rome Statute, is uniquely positioned and obligated to take decisive action to halt these crimes and prevent further atrocities.

The Arcadia Foundation urges the Office of the Prosecutor to fully exercise its preventive mandate, a core principle of the Rome Statute, which envisions the ICC not only as a tribunal of last resort but also as an active institution committed to preventing the commission and continuation of the gravest international crimes. The situation in Venezuela represents a clear and present danger to its civilian population, characterized

by acts of persecution, arbitrary detentions, torture, enforced disappearances, and extrajudicial executions. These acts form part of a deliberate policy by the Venezuelan state to maintain its grip on power through fear and repression.

We must stress that this communication is not a request for the immediate prosecution of the entire chain of command within the Venezuelan regime. Rather, it is a call for the ICC to undertake serious and immediate **preventive measures** to stop the ongoing violations. Such measures fall squarely within the responsibilities and powers of the Prosecutor under the Rome Statute.

It is essential that the Prosecutor does not misinterpret the "*interests of justice*" clause as a reason for inaction. The suggestion that pursuing justice could destabilize a non-existent peace process or disrupt regional stability lacks merit. There are no credible or official peace negotiations currently taking place that would justify delaying ICC intervention. The sole formal negotiation, the Barbados Agreement of 2023, was blatantly violated by the Maduro regime, thereby invalidating any argument that accountability would obstruct a legitimate peace effort.

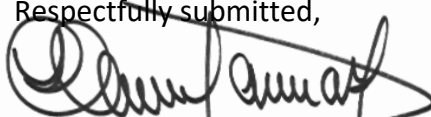
The "*interests of justice*" must be interpreted and applied in alignment with its true purpose: to ensure that justice is served and that victims are protected from further harm. It should not be wielded as a pretext to shield perpetrators from accountability or to perpetuate gross human rights violations. To do so would undermine the very foundation of the ICC and betray the victims who continue to suffer under a regime of oppression.

In conclusion, the Arcadia Foundation calls upon the ICC to utilize its full preventive powers immediately. We urge the Prosecutor to make public declarations that reaffirm the ICC's commitment to justice in Venezuela, to request cooperation from States Parties to apply diplomatic and economic pressure on the Venezuelan regime, and to issue arrest warrants or summonses for those most responsible for orchestrating these crimes. Additionally, we advocate for coordination with international and regional bodies to establish protective measures for victims and potential witnesses as a matter of urgency.

The ICC's response to the crisis in Venezuela is not just a test of its judicial capabilities but also a testament to its moral authority and commitment to uphold international justice and human rights. By acting swiftly and decisively, the ICC will reinforce its role as a guardian of human dignity and a formidable force against impunity. Failure to act decisively in this matter would not only embolden the perpetrators but also weaken the ICC's credibility and its foundational mission to prevent the gravest crimes known to humanity.

The international community, and most importantly, the victims of these heinous crimes, are watching. The time for action is now. The ICC must rise to this challenge and demonstrate that the pursuit of justice is not merely an aspiration but a resolute reality that will be defended and upheld in the face of injustice and tyranny.

Respectfully submitted,


Robert Carmona-Borjas
 CEO – Cofounder


José Vicente Carrasquero A.
 Director of Conflict Resolution Strategies