

SOME ACTIONS FOR THE REFORM OF THE VENEZUELAN CRIMINAL JUSTICE SYSTEM IN THE FRAMEWORK OF A "TWO-WAY" SCENARIO

Recommendations proposed by civil society regarding the establishment of a local office of the International Criminal Court



Executive Summary

JANUARY 2024

With the collaboration of university professors:

Joel García - Simón Gómez Guaimara - Edgar López - Carlos Lusverti - Andrea Santa Cruz

And with the support of the following organizations:



EXECUTIVE SUMMARY

1. The opening of an investigation by the Prosecutor of the International Criminal Court (ICC) for crimes against humanity in the Venezuela I situation sets a milestone of enormous significance in the struggle for truth and justice for thousands of victims and survivors of state violence in the country. The announcement of the opening of the investigation by Prosecutor Karim Khan was accompanied by the unprecedented signing of a Memorandum of Understanding (MOU) between the ICC Office of the Prosecutor and the Bolivarian Republic of Venezuela. The MOU seeks to ensure that Venezuela adopts measures for properly serving justice with the support and active collaboration of the ICC Office of the Prosecutor, following the principle of complementarity.
2. Thus, the Venezuela I situation constitutes the first occasion in which the Office of the Prosecutor will attempt to investigate while strengthening institutional ties in an effort to enhance the capacity of the national criminal justice system. This Prosecutor has defined this strategy as "a two-way process," which implies, on the one hand, the investigation conducted by his office in The Hague and, on the other hand, cooperation efforts with the Venezuelan State following the principle of complementarity.
3. In this context, Prosecutor Khan made a third visit to Venezuela in June 2023. Consequently, a second MOU was signed to establish a local office in Venezuela and provide technical assistance to the national authorities through its officials.
4. This commitment by the ICC Office of the Prosecutor can be understood as exercising the so-called positive complementarity in developing an investigation. As suggested by the ICC's Panel of Independent Review Experts, positive complementarity can result in more effective investigations in terms of prioritization of cases and cooperation not only with the State concerned but also about measures other States may take. This change in strategy initiated by Prosecutor Karim Khan calls for constructive observation by the various actors with an interest in the Rome Statute system, including human rights non-governmental organizations (NGOs), and victims' collectives, to ensure that the principles of transparency, broad stakeholder participation, and accountability guide exchanges with the Venezuelan State.
5. The MOU for establishing of the ICC Office of the Prosecutor has not been made public. Still, according to statements made by Karim Khan, the office would be tasked with technical assistance in international criminal justice matters to promote legislative initiatives, transfer knowledge on best practices in justice, and increase awareness of the Rome Statute system and the ICC's cooperation modalities.
6. In this context, we consider that it is required to define the possible scenarios surrounding the application of positive complementarity together with the development of an investigation by the ICC for the fight against impunity to have a broad scope and serve as a means

for the construction of sustainable peace in Venezuela. To this end, the national criminal justice system must address the legacy of serious human rights violations and a roadmap for its improvement shall be established when a genuine will for change emerges, or progress is made toward the transition to democracy.

7. Aiming this target, Acceso a la Justicia prepared a document with the collaboration of experts, defenders, and human rights organizations, which holds a series of recommendations that may constitute a roadmap for the rescue of the minimum normal functioning of the Venezuelan criminal justice system through specific and concrete actions that may be promoted in sight of the installation of the Office of the International Criminal Court in Venezuela.
8. The diagnosis determined that making changes only in cases of gross human rights violations is not enough. It must involve changes that encompass the entire criminal justice system so that the way things are performed and, consequently, the legal culture of officials can be changed. There is no getting around the fact that the courts that process these cases and the Public Prosecutor's Office that investigates them are part of a system that suffers from common structural problems that shall be addressed with an integral and holistic vision.
9. Thus, the purpose of this report is to provide a set of recommendations to improve the situation of the right of access to justice in criminal matters in Venezuela, some of which require short or medium-term measures, which imply a minimum or medium-level of political will for their implementation, as well as the investment of resources.
10. The first thing to highlight is that the criminal justice system in Venezuela, as has been widely documented, does not respond to the minimum conditions of independence and impartiality and is part of the repressive apparatus of the State in the commission of human rights violations and crimes against humanity. Thus, achieving the necessary changes for criminal justice to function correctly is challenging.
11. In the analysis carried out, it is recommended that the Public Prosecutor's Office direct its actions in a manner consistent with protecting victims. For this purpose, it should develop an efficient program for the care and protection of victims and witnesses, with a gender perspective and taking into account the particular risk conditions of each person.
12. As far as criminal investigation organs are concerned, the Public Prosecutor's Office should be the guarantor of legality and, as such, should direct criminal action objectively and independently. Crimes against human rights and international crimes should be the highest priority in fulfilling its functions.

13. In this context, it is proposed to reestablish the competencies of the Public Prosecutor's Office in the area of criminal investigation, where it should have the leadership and not the Scientific and Criminal Investigations Corps, which, by the way, it is suggested to train, with the help of international cooperation, to conduct adequate investigations with forensic and technical standards on gross human rights violations.
14. Concerning the Public Defender's Office, it is necessary to bear in mind that the right to defense is an essential guarantee of due process that must be fully protected in all proceedings and instances of the criminal process. In this regard, those accused of crimes shall be allowed to have the representation of an attorney of their choosing and be duly informed of the charges indicted against them in a timely manner so that they have sufficient time to prepare their defense. Under no circumstances shall a person be forced to confess against themselves nor be subjected to detention without communication with their attorney or family members.
15. For its part, the judiciary should be the guarantor of the Rule of Law and effectively ensure the country's protection of human rights. In this context, criminal court judges shall be perceived as fair and impartial so that citizens can trust their freedom, property, security, and other fundamental rights before the courts. The same should also apply to prosecutors and public defenders. For this to be the case, the criminal justice system should generate incentives to attract the best legal professionals who seek a decent environment in the judicial career to achieve their professional and economic goals commensurate with the profession's demands.
16. To achieve this goal in the short term, it is important to immediately establish mechanisms that allow provisional judges, prosecutors, and public defenders to have guarantees of tenureship, develop new training programs, create and implement training programs on human rights, and cease the practice of leaving "without effect" the appointments of judges, prosecutors or public defenders.
17. Building a prison system per the constitutional mandate to guarantee human rights is also essential. These reforms must respect the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules). In the long term and under an innovative and transparent approach, a mixed management model for prisons (between the State and private companies) shall be implemented. Furthermore, they shall be managed decentralized, as enshrined by the Constitution.
18. Concerning all justice system organs, it is essential to establish effective evaluation mechanisms, as well as human rights training for their members, including protocols for action in cases of torture, forced disappearances, arbitrary detentions, gender awareness, and violence against women.

19. Finally, for transparent and responsible management of the justice-serving organs, it is recommended that judges, prosecutors, public defenders, and other officials of the criminal justice system involved in irregularities in the performance of their duties be sanctioned through effective and adequate disciplinary procedures and that they be removed, when appropriate and after completion of due process.

accesoalajusticia.org



accesoalajusticia



@AccesoJusticia



@accesoajusticia



AccesoLaJusticiaONG



accesoalajusticia



Accesoalajusticia