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**Master's degree in
Human Rights and Multi-level Governance**



ASSESSING THE ROLE OF CIVIL SOCIETY ORGANISATIONS IN
HUMAN RIGHTS AND INTERNATIONAL JUSTICE:
THE CASE OF THE INTERNATIONAL CRIMINAL COURT'S
INVESTIGATION INTO CRIMES AGAINST HUMANITY IN VENEZUELA

Supervisor: Prof. PAOLO DE STEFANI

Candidate: CLAUDIA CAÑÓN NOGALES

Matriculation No.: 2046776

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Abstract

From the very inception of the International Criminal Court (ICC), Civil Society Organizations (CSOs) have been active participants in the institution, wielding significant influence, notably during the drafting of the Rome Statute in 1998. Their involvement has been instrumental in shaping the global landscape of international justice and criminal law.

In the context of the Bolivarian Republic of Venezuela, since President Maduro assumed office in 2013, the country has witnessed a disturbing trend of authoritarian control aimed at constraining CSOs and limiting civic space. This has manifested in increased government control and restrictions that have decreased their capacity to advocate for human rights, social justice, and political participation. Notably, civil society's protests gained prominence during the mass demonstrations of 2014 and 2017, that led to numerous casualties, arbitrary detentions, and human rights violations. These drew international attention and brought to light the multifaceted crisis that the country had been going through, as well as the subsequent consequences. The brutality endured by Venezuelans nationwide and their determination to protest despite the grave repercussions shows the resilience of civil society and the CSOs capacity of mobilisation.

This study aims to explore the reactions and contributions of CSOs and NGOs (Non-governmental Organisations) in Venezuela to the ICC's investigation, while operating in a challenging environment marked by ongoing persecution and precarious working conditions. Their ability to persist in advocating for accountability and human rights, even under such challenging circumstances, warrants a comprehensive examination into the lessons to be learned and the potential implications for the leading role of CSOs in authoritarian environments where human rights violations go unpunished.

List of Acronyms

ASP: Assembly of State Parties

AVESA: Asociación Consultación para una Educación Sexual Alternativa (Consultative Association for Alternative Sexuality Education)

CICC: Coalition for the ICC

CEVEJ: Comité Evangélico Venezolano por la Justicia (Venezuelan Evangelical Committee for Justice)

COPRE: Comisión Presidencial para la Reforma del Estado (Commission for State Reform)

CSOs: Civil Society Organisations

FAES: Fuerza de Acciones Especiales (Special Forces)

FIDH: International Federation for Human Rights

FUNDALATIN: Fundación Latinoamericana por los Derechos Humanos y el Desarrollo Social (Latin American Foundation for Human Rights and Social Development)

GNB: Guardia Nacional Bolivariana (Bolivarian National Guard)

HRW: Human Rights Watch

ICC: International Criminal Court

IACHR: Inter-American Commission on Human Rights

MoU: Memorandum of Understanding

NGOs: Non-governmental Organisations

OAS: Organisation of American States

OHCHR: Office of the United Nations High Commissioner for Human Rights

OTP: Office of the Prosecutor

OVCS: Observatorio Venezolano de Conflictividad Social (Venezuelan Observatory of Social Conflict)

OVV: Observatorio Venezolano de Violencia (Venezuelan Observatory of Violence)

PNB: Policia Nacional Bolivariana (Bolivarian National Police)

U.S.: United States

UN: United Nations

UNDHR: Universal Declaration of Human Rights

VPRS: Victims and Participation and Reparations Section

TSJ: Tribunal Supremo de Justicia (Venezuelan Supreme Court of Justice)

AN: Asamblea Nacional (Venezuelan National Assembly)

SEBIN: Servicio Bolivariano de Inteligencia Nacional (National Intelligence Service)

SAREN: Servicio Autónomo de Registros y Notarías (National Service of Registry and Notaries)

SUDEBAN: Superintendencia de las Instituciones del Sector Bancario de Venezuela (Superintendency of Banking Sector Institutions of Venezuela)

Chapter 1: Background And Methodology

A) Introduction

The Bolivarian Republic of Venezuela has been mired in a complex and protracted socio-political crisis characterised by economic instability, human rights violations, and deteriorating living conditions for its citizens. These crises, which gained international attention in the early 2010s, have prompted significant concern among human rights advocates, governments, and civil society organisations worldwide. As allegations of grave human rights abuses, including extrajudicial killings, arbitrary detentions, and restrictions on freedom of speech and assembly escalated, international organisations and actors began to closely scrutinise the situation.

Amid this unrest, the ICC, as the world's first permanent international criminal tribunal, has been at the forefront of global efforts to address allegations of crimes against humanity, war crimes, and genocide. Established by the Rome Statute in 1998, the ICC was designed to bring perpetrators of the most heinous international crimes to justice when national authorities are unable or unwilling to do so.

The ICC has assigned two situations in Venezuela to Pre-trial chambers. Firstly, the ICC Office of the Prosecutor has an ongoing investigation¹ related to the Republic of Venezuela, called “Venezuela I”, which focuses on all crimes against humanity committed on the territory of Venezuela since 12 February 2014 by State authorities, members of the armed forces, State security forces, civilian authorities and pro-government individuals (so-called “colectivos”). Secondly, the ICC opened the situation² called “Venezuela II”, where Venezuela accused the United States (U.S.) of committing crimes within its territory due to

¹ During an investigation, the prosecution collects evidence of the commission of crimes under the Statute, to identify the persons allegedly responsible and, possibly, to request the issuance of arrest and surrender warrants against the persons allegedly responsible. The issuance of such an order initiates a case in the context of a situation. See Transitional Justice (n.d.). Retrieved from: <https://transitionaljustice.net/participacion-de-la-victima-en-los-procedimientos-ante-la-cpi-a-la-luz-de-la-investigacion-de-la-situacion-en-venezuela/>

² A situation sets the geographical and temporal limits within which a preliminary examination, an investigation and, eventually, one or more specific cases are carried out. See Transitional Justice (n.d.). Retrieved from <https://transitionaljustice.net/participacion-de-la-victima-en-los-procedimientos-ante-la-cpi-a-la-luz-de-la-investigacion-de-la-situacion-en-venezuela/>

unilateral coercive measures imposed by the North American government since at least 2014. For the purposes of this analysis, only the first examination (Venezuela I) will be considered.

This thesis explores the intricate relationship between the ICC and civil society in Venezuela. It aims to assess how the ICC's actions, pronouncements, and interactions with the Venezuelan crisis have impacted civil society's efforts to promote accountability, human rights, and democracy within the country. Furthermore, it seeks to analyse the dynamics of this relationship, identifying areas of cooperation and challenges faced. By shedding light on the ICC's role in the Venezuelan crisis and its consequences for civil society's actions, this study contributes to the broader discourse on international justice, human rights advocacy, and the evolving role of international institutions in addressing complex national crises. It also portrays the significance of understanding the dynamics between global institutions and local actors in the pursuit of justice and accountability in crisis-ridden regions and authoritarian regimes.

The first chapter serves as an introductory foundation where the aim is to provide a clear understanding of civil society and CSOs. It is crucial to establish a precise definition, given their ever-evolving and diverse nature. Their role in the international arena and specifically, in the accountability and human rights realm will be highlighted. The objective in this research is to examine the influence of the ICC's actions and statements on the activities of civil society organisations in Venezuela. This involves delving into how civil society groups in Venezuela perceive and respond to the ICC's involvement. To achieve this, I have selected four "Acts".

Following this first section, the context of the country will be introduced. This intends to analyse the situation in Venezuela, and the political and social dynamics and circumstances that have impacted how events have unfolded. I will specifically focus on the events surrounding the protests that led to the crisis and to the alleged crimes against humanity. This will also include the updated history of the country with recent developments and situations that are relevant to justify the continuous actions by the CSOs and the emergency of the ongoing investigation.

In the third chapter, the focus will shift towards the proceedings, providing an overview of the "Venezuela I" situation evolution from the initial stages of the preliminary examination to the latest updates.

One of the aims of the research is to understand whether the ICC has influenced NGOs' functions, opinions and actions. For this purpose, different "Acts" have been chosen from among the diverse decisions taken by the ICC in the framework of the proceedings within the Venezuela I situation. In other words, I will closely explore four particular situations starting from the ICC's involvement in Venezuela to the present. In each case, I will examine the interplay between CSOs and the ICC, as well as the Government's reactions. This analysis aims to shed light on how these organisations have been actively working to challenge the authorities in Venezuela and to inform other institutions, ultimately striving to raise global awareness and bring justice to the country.

The last chapter will identify lessons learned from the analysis of civil society's efforts in Venezuela. This objective aims to extract broader insights into the potential impact of the ICC on civil society and human rights advocacy, as well as the challenges and opportunities presented by such interactions for accountability and human rights. It also seeks to understand the dynamics of interaction between civil society organisations in Venezuela and the ICC, including any collaborative efforts and challenges they may encounter in the process.

B) Methodology

This study employs both qualitative and comparative methods to analyse various primary and secondary sources. I appealed to a literature review to establish the basic concept of civil society and civil society organisations as defined by different scholars, as well as their involvement in the promotion and accountability of human rights. This will give an overview of the changes that these organisations have undergone over the years and their role in the process of globalisation and the creation of an international community.

I used a variety of sources to provide a comprehensive understanding of the crisis in Venezuela, particularly focusing on the interactions among different socio-political actors and their impact on the ongoing crises and protests. To establish the historical context, I relied on literary sources. For a more current perspective, I gathered primary data through online interviews, speeches, news reports, and social media platforms. To gain insights into the crisis from various angles, I consulted progress reports from NGOs and international organisations actively engaged in the Venezuelan crisis. These sources include domestic NGOs like Provea, Acceso a la Justicia, and Civilis Derechos Humanos. Secondary data, crucial for a broader context, was primarily drawn from reports by organisations such as the Organization of American States (OAS), Human Rights Watch (HRW), Amnesty International, and the United

Nations (UN). Additionally, social media platforms were considered valuable sources due to their provision of real-time updates, use of informal language, and the unique opportunity they bring to assess public sentiment. Therefore, analysing social media also provided access to the opinions of relevant and ordinary individuals, further enriching the research. In this context, desk research is considered as the most suitable approach for gathering and analysing the necessary information.

The disinformation campaigns that the Venezuelan Government has started limit the ability to access truthful official information. In this context the research carried out is considered credible as it is backed up by several well-established NGOs, international organisations and by experts in the field that have worked throughout the years to bring justice to Venezuela. Due to the current nature of the issue at hand, ongoing changes and updates will also be contemplated.

Chapter 2: Literature Review: Conceptualising Civil Society and CSOs

A) Conceptualising Civil Society and CSOs

Conceptualising civil society is a complex endeavour as it resides within the intricate interplay of state, market, and family, forming a space that can be further dissected into sectors and subsectors, each comprised of organisations sharing common goals. This conceptualisation of civil society is not uniform, giving rise to a variety of interpretations that have evolved throughout time, also as new organisations and initiatives have appeared within it. Therefore, and for the purposes of this analysis it is crucial to establish a unified definition that would allow for the consolidation of various ideas put forth by different theorists.

Originally the term civil society described a political community living in a peaceful society governed by laws consented and agreed upon by citizens (Kaldor, 2003, p. 7). Essentially, this term served to differentiate a structured society from the disorderly and unpredictable condition of nature in which people might otherwise exist. Consequently, its stabilising nature shared a connection with that of the state.

In the 19th century, the emergence of capitalism led to new conceptions such as those proposed by Marx and Hegel who modified the meaning of civil society as an “arena of ethical life in between the state and the family” (Kaldor, 2003, p. 8). Civil society, therefore, became its own entity apart from the state. Neo-Tocquevillans proponents, notably Putnam (1993, 2000 as cited in Hoellerbauer, 2018, p. 5), emphasised civil society's role in fostering

democratic values through social interactions. Besides, there were those who viewed civil society as a counterbalance to the state, as articulated by Rueschemeyer et al (1992 as cited in Hoellerbauer, 2018, p. 5). Another notion like the one proposed by White (2004, p. 8 as cited in Hoellerbauer, p. 6), restricts civil society to organisations that engage with the state, while Putnam (1993, 2000 as cited in Hoellerbauer, 2018 p. 6) includes all social organisations within this realm.

Kaldor (2003, p. 8) specified how the term emphasises the possibility to create change and influence the conditions of life through individual or self-organisation and political pressure. This highlights the emergence of a "global public sphere" for communication and the development of transnational organisations and advocacy groups outside interstate relations. Kaldor's (2003) reflection also manifests the evolution of civil society in tandem with globalisation, evolving into expansive networks of support and mobilisation that transcend national boundaries and traditional state-centric structures.

As stated by several theorists, including Coppedge (et al., 2017a, 61-62 as cited in Hoellerbauer, 2018 p. 10), civil society occupies the public space between the private sphere, including the market and families, and the state, where citizens organise into CSOs to pursue collective interests and ideals. These three pillars that form society exert pressure on it. The CSOs that develop within it, as Coppedge et al. put it, (2017a, p.p. 61-62 as cited in Hoellerbauer, 2018 p. 10), encompass various entities, including interest groups, labour unions, spiritual organisations involved in civic or political activities, social movements, professional associations, charities, and nonprofit organisations. These organisations and the actors that form them may be physically or digitally dispersed and not necessarily citizens. The actors gather within CSOs to interact, collaborate and engage in civil society actions, such as workshops, campaigns, and outreach programs, among others.

In order to expand on the conceptualisation of Civil Society and CSOs, the Johns Hopkins Comparative Nonprofit Sector Project (as cited in Salamon & Helmut, 1996, p. 2) has attempted to establish five structural operational features that are part of the definition of civil society organizations: 1) organized operations; 2) private or separate from the state apparatus; 3) not profit-distributing; 4) self-governing; and 5) voluntary to participants. Thus, in the realm of civil society, the organisation of CSOs is characterised by the grouping of like-minded individuals who share common goals, interests, purposes, and values. In sum, these

organisations are independent from the state and provide an environment where members are free to join voluntarily.

In the context of Venezuela under President Nicolás Maduro's perceived authoritarian rule (Chacín Fuenmayor, 2019), the question arises as to whether these definitions acknowledge the potential for the existence of a civil society. Research suggests that civil society can indeed coexist with, and, in some cases, support authoritarian rulers (Lorch & Bunk, 2017; Cheskin & March 2015; Teets, 2014; Spires, 2011; Ziegler, 2010; Dimitrovova, 2010 as cited in Hoellerbauer, 2018 p. 6), thus challenging conventional boundaries. Hoellerbauer (2018, p.p. 19-20), in fact, developed this idea and categorised CSOs into three types. Firstly, regime-challenging organisations, which aim to influence policies, either anti-democratic or radically democratic, and potentially having varied stances in authoritarian contexts. Secondly, regime-acquiescent organisations, or service providers, whose goals do not align with the regime's interests, with pro-democratic tendencies in democratic systems and a more localised focus in authoritarian ones. And lastly, regime-promoting organisations, actively supporting regime goals, holding pro-democratic or anti-democratic positions depending on the regime type. Toepler et al. (2020) refer to these as claims-making (or advocacy) NGOs, nonprofit service providers and regime-loyal NGOs, respectively. The latter tend to emerge in cases where populist and nationalist discourses need social support.

It is also relevant to note the concept of a “robust civil society”, which, as defined by Bernhard et al. (2015, p. 10 as cited in Hoellerbauer, 2018, p. 11) is a “civil society able to establish autonomy from the control of the state and where citizens pursue their collective interests actively”. In the case of Venezuela, a robust civil society, would be able to pursue its objectives without the control of the State, still fulfilling their functions even when faced with limitations and restrictions. To assess whether a robust civil society exists, Hoellerbauer (2018) proposes three elements to examine. First, the cohesiveness which reflects the interconnectedness of civil society organisations and actors and their ability to pool resources and coordinate actions more effectively. This would enable them to advocate for change and progress towards their goals. Secondly, the higher the embeddedness the stronger the civil society is. Solid links with other organisations and sectors, as well as the reliance on citizens for legitimation and active participation enhance embeddedness. Finally, the strength of civil society is highly influenced by the legal and institutional environment and its openness, which conversely depends on the social trust CSOs hold, as well as the availability of resources they enjoy (Hoellerbauer, 2018).

Under neoliberalism and globalisation, the strengthening of democracy places a focus on individualism and increased political participation (Kaldor, 2003, p. 114). Citizen participation is at the basis of a good democracy that puts an emphasis in “bottom-up” policy making. According to Kaldor (2003), a healthy civil society is vital to the spread of “substantive democracy” and the ability of individuals to shape their own lives and participate in debates about the policies that affect them (Albrow et al 2007, p. 42 as cited in Keane, 2012, p. 4). Therefore, from this conceptualisation it can be drawn that CSOs can exist in a diversity of systems, however, their strength and ability to fulfil their functions is clearly affected by their environment. This means that they would be more prone to thrive in a favourable and open context that allows for full participation in civil society initiatives.

In sum, civil society is a multifaceted space located between the family, the state, and the market, populated by diverse actors and organisations, categorised into sectors with varying relationships to regimes. The strength of these sectors and organisations depends on their cohesiveness, embeddedness, and the prevailing environmental conditions. These components collectively contribute to the dynamic nature of civil society within the broader societal landscape. This conceptualisation will allow the perception of civil society to be clearer throughout the paper and to assess the capacity of the civil society in Venezuela considering its contextual specificities.

I. CSOs vs NGOS

CSOs exist in all sectors of society and fulfil different functions depending on their focus. In relation to human rights and social issues, these groups carry out, directly or indirectly, different roles. Their action is, in general terms, fruitful and very positive for internal and international societies. The incidence or the political pressure on states, intergovernmental organisations, the rest of the civil society and citizens is presented by Montserrat Abad Castelos (2011, p. 185) as an important function of CSOs. NGOs, as a part of CSOs, have a role in getting a reaction from authoritarian governments and therefore they also play a part in the democratisation processes. This particular type of civil society organisation has been the focus of most of the existing literature on civil society in authoritarian contexts. These are claims-making (advocacy) NGOs, or regime-challenging organisations that pursue rights-based agendas and are opponents of those quasi-governmental organisations that authoritarian and dictatorial regimes may develop to interface with the population (eg, Heurlin, 2010 as cited in Toepler et al, 2020, p. 2).

In the case of Venezuela, civil society organisations have encompassed a wide range of non-governmental entities, including advocacy groups, charitable organisations, professional associations, social movements, and non-profits. They have served as vital intermediaries between individuals and the state, offering platforms for citizens to voice their concerns, advocate for change, and engage in collective action. These organisations have also played a pivotal role in promoting social justice, and addressing the societal challenges that have come with the crises that the country has been through. They have tried to hold authorities accountable and contribute to the collection of information to raise awareness and promote international action to condemn the human rights violations.

Within the space of CSOs, NGOs have also been considered “the most dynamic and active” entities (Goel & Tripathi, 2010, p. 769). NGOs are characterised by their voluntary nature, independence from government and donors, non-profit orientation and focus on serving the public interest. Therefore, for the purpose of this analysis, the terms CSOs and NGOs will be used interchangeably. In fact, this is also done by the Assembly of State Parties to the ICC (ASP), which in their Report of the Court on the Public Information Strategy 2011-2013 (2010), it highlights the significance of these actors in the realm of international criminal justice. In the mentioned report (2010, p. 11), the ASP declared that

The Court works in partnership with NGOs actively involved with issues of concern to the ICC. NGOs, and civil society more broadly, are indispensable partners for the ICC public information efforts, particularly at the national level.

In this context, NGOs dedicated to promoting, protecting and enforcing human rights, and making political systems “more responsive and accountable to human rights protection and promotion” (Goel & Tripathi, 2010, p. 775) play a particularly vital role. They engage in advocacy activities, “scrutinising, monitoring human rights violations and abuse” (Goel & Tripathi, 2010, p. 775) to seek justice for the most heinous crimes.

B) The Role of CSOs in Promoting Accountability and Human Rights

This section will delve into the functions of CSOs in the realm of international justice and international criminal law, as well as their role in safeguarding human rights systems and democracy. As mentioned earlier, the ICC has acknowledged the significance of establishing strong bonds and partnerships with civil society organisations, particularly in countries where the Court has initiated situations, conducted preliminary examinations, or launched

investigations. Civil society organisations play a multifaceted role in the realm of human rights and criminal justice initiatives. Their contributions encompass activities such as documenting violations, providing support to victims, advocating for marginalised groups, and exerting pressure on decision-makers at the state, non-state, and international levels to enact and uphold policies that promote the protection of human rights.

Montserrat Abad Castelos (2011) recognises the multi-dimensional functions of CSOs within the framework of international society and international law. Therefore, she considers that examining civil society from a political perspective, which encompasses aspects like mobilisation, contention, and institutionalisation (Brysk, 2000, p. 154), rather than solely from a sociological standpoint, allows for a comprehensive analysis of their role in fostering accountability, advancing democratisation, and safeguarding fundamental rights.

First of all, CSOs provide advice, information and education in relevant international issues. Several international organisations have granted certain CSOs with consultative status which evidences the importance and usefulness of their contribution. For instance, the association of NGOs Coalition for the ICC (CICC), has been qualified as “the main information source in the world on ICC” (Lee, 1999 as cited in Abad Castelos, 2011, p. 179). These organisations offer expertise and first-hand information, which is indispensable for holding governments accountable and ensuring that citizens remain informed, engaged, and empowered. Additionally, CSOs can provide valuable training and engage in both formal and informal education initiatives on human rights, as documented by Richard P.C. (1992 as cited in Goel and Tripathi, 2010, p. 779). This educational aspect is crucial in helping individuals assert their rights in society and equipping them with the knowledge and skills needed to identify and articulate their concerns and struggles effectively.

Abad Castelos (2011, p. 180) proposes a second function of CSOs: “the surveillance of not only the state and other public entities but also the economic private sector”. As she explains, these entities are often the first to report on misconduct, human rights violations by public powers, opposition political parties, as well as official or unofficial armed groups. This monitoring and oversight can compel these actors to fulfil their legal obligations. Additionally, this function encompasses activities such as the monitoring, investigation, and documentation of abuses and violations. This is a process that involves the “Assembling, presenting, and dissemination of pertinent data in a form that enables human rights performance to be assessed

according to agreed international standards” (Alex, et al (eds.), 1993 as cited in Goel & Tripathi, 2010, p. 782).

The following function holds particular significance within the context of this research. CSOs incidence or exert political pressure on states, intergovernmental organisations, the rest of the civil society and citizens (Abad Castelos, 2011, p. 5). NGOs play an important role in the political democratisation processes by demanding more transparency and accountability. They also help in the adoption of practical anti-corruption measures for governments and in the fight against the individuals’ impunity when they are responsible for the most serious human rights violations, including crimes against humanity. They can also create and foster local networks which encourages collective action, advocacy and lobbying that bring about structural changes on certain issues. This includes taking up the claims of persons whose rights have allegedly been violated (Cantwell, 1992: 18 as cited in Goel & Tripathi, 2010, p. 786), as well as gaining access to decision makers who can influence and change policy (Welch, 1995, p. 367 as cited in Goel & Tripathi, 2010, p. 786). In this regard, NGOs have contributed greatly to shaping the public agenda and framing the nature of rights discourse.

Finally, NGOs provide humanitarian aid, development cooperation, and engage in conflict prevention and mediation efforts (Abad Castelos, 2011, p. 187). Notably, these organisations possess the ability to reach the poorest, most marginal populations and the most remote areas. They also have capacities to promote and facilitate local participation and to execute projects in direct collaboration with benefiting communities. These competencies enable international agencies to coordinate with domestic organisations and establish direct connections with local communities (Abad Castelos, 2011, p.p. 187-190).

These functions show how CSOs can represent a threat to authoritarian regimes, since they frequently fulfil the roles and needs that the government fails to provide for the population. Therefore, despite the crucial function that NGOs have, they also face challenges regarding accountability and human rights. Their independence allows them to freely criticise governments and expose human rights abuses and violations but, the existence of a hostile political environment can endanger them and constrain their activities. Furthermore, NGOs are often confronted with resource constraints, that impede their ability to be active and fulfil their mission (Goel & Tripathi, 2010, p. 779).

Within the context of international criminal law and justice, the role of CSOs in accountability and human rights is especially important. Therefore, their involvement in the

inception, establishment and ongoing operations of the ICC is very relevant. The Court actively maintains partnerships and close connections with these organisations that assume pivotal roles in public functions, including activities related to peacekeeping, peace-making, and peacebuilding, (Abad Castelos, 2011, p. 190). Henceforth, NGOs/CSOs are instrumental in combatting impunity and advocating for the protection of human rights, as well as in supporting organisations dedicated to safeguarding these fundamental rights.

C) Civil Society Organisations in International Criminal Law and Justice

International criminal law has provided a legal avenue for seeking justice and accountability when states fail to uphold human rights. CSOs play a pivotal role in advocating for the protection of these rights, raising awareness, and supporting the efforts of international tribunals like the ICC. They help bridge the gap between global legal standards and their practical implementation; making international criminal law an essential tool in advancing the human rights agenda worldwide.

The inception of the human rights agenda and the modern human rights movement is commonly associated with the 1970s. The 1973 coup in Chile was considered a significant catalyst of this trend, which contributed to the emergence of a transnational movement (Keck & Sikkink, 1998 as cited in Lohne, 2017, p. 6). In the midst of the Cold War's political tension, human rights provided a new distinctive framework, frequently referred to as a “third way” for framing interests, rights, and politics while respecting universality. This framework extended beyond the boundaries of partisan politics, providing a non-partisan alternative in a polarised global landscape, facilitating engagement and mobilisation across a wide political spectrum (Lohne, 2017, p. 6).

Following the end of the Cold War, the principles of human rights gained significant momentum. This was exemplified by the creation of UN Ad Hoc Tribunals, which bolstered the recognition of international criminal law as a means to establish and uphold human rights, thereby starting “the fight against impunity”. The human rights movement increasingly embraced legalism (Neier 1998, Engle 2012 as cited in Lohne, 2017, p. 7), also directing their advocacy efforts towards the institutionalisation of international criminal law (Lohne 2015 as cited in Lohne, 2017, p. 7).

Human rights NGOs' protagonist role in the inception of the international criminal law system, gave them considerable expert authority. These organisations are considered both

professionals of international criminal justice and providers of valuable information and legal knowledge. This is what grants them influence and authority (Lohne, 2017, p. 20). Consequently, the role of human rights NGOs in the sphere of international criminal justice is often likened to that of intermediaries that research, monitor, and report on global instances of human suffering. They serve as conduits of information, bridging various nodes within the global networks of international criminal justice. These nodes encompass conflict-affected communities in situation countries, state representatives, and, most notably the ICC. These findings are then disseminated to a broader audience, raising awareness of human rights issues on a local and global scale (Lohne, 2017, p. 7). This process contributes to mobilisation and generates collective action through moral outrage.

D) CSOs and the ICC

Civil society organisations have played a key role in the advancement of human rights, as well as in the establishment of a system and a legal framework of protection, which includes the creation of an international criminal justice system. This is particularly evidenced by the creation of the ICC.

In the late 1980s, the concept of a permanent international criminal court gained attention in the global community and global civil society. The UN General Assembly's establishment of the Ad Hoc Committee on the International Criminal Court in 1995, marked a significant step toward realising this idea. Recognising the need for coordination, NGOs such as Amnesty International, HRW, Asociación Pro Derechos Humanos, the International Federation for Human Rights (FIDH), Human Rights First and others, convened in New York early that year under the leadership of the World Federalist Movement (Augustínyová & Dumbryte, 2014, p. 41). They agreed on the importance of collective action in support of the ICC and the necessity to engage a wider range of civil society actors globally. To facilitate this, they founded the Coalition for the ICC on February 25, 1995, as a loose network of NGOs advocating for an effective, just, and independent International Criminal Court. It remained open to any organisation that shared the same vision (Augustínyová and Dumbryte, 2014, p. 39). In 1998, at the time of the Rome Conference, the CICC had evolved into a global advocacy network comprising over 800 organisations. The network influenced the design of the ICC, and since then CSOs have not stopped being actively involved in the efforts for global implementation and ratification of the Rome Statute (1998). They have also been effective in “bridging the gap between the ICC and local communities through advocacy and litigation to

respect and enforce the Statute, and documenting evidence of international crimes.” (Belay & Biegon, 2019, p. 1101-1102).

The active involvement of these organisations resulted in the recognition of CSOs/NGOs role in the Rome Statute (1998). An illustration of this can be found in Article 15(2) of the Statute (1998), where it is stipulated that when making the decision to initiate an investigation *proprio motu*, the Prosecutor can seek supplementary information from NGOs. This particular provision highlights the potential significant role that NGOs can play in the initial phases of the proceedings within the Court. They have the opportunity to report alleged crimes to the Prosecutor, that can prompt investigations by the ICC. In many cases, NGOs are the first responders to humanitarian crises, often present on-site long before the arrival of peacekeeping forces or investigative teams. Therefore, they are major actors in providing information for the Prosecutor and the ICC in the preliminary stages of the proceedings.

The trust that the ICC gives to NGOs is also enshrined in Article 44(4) (Rome Statute, 1998) which allows the Court to employ the expertise of personnel offered by State Parties, intergovernmental organisations or non-governmental organisations to assist with the work of any of the organs of the Court. Rule 103(1) of the ICC Rules of Procedure and Evidence (2013), allows NGOs to act as “*amici curiae*” and submit to a Chamber, upon invitation, written or oral observations on any issue that the Chamber deems appropriate at any stage of the proceedings.

Regarding the ASP, NGOs are explicitly mentioned in Rules 92, 93, and 95 of the ASP's Rules of Procedure (2002). Rule 92 pertains to representatives of intergovernmental organizations that have a standing invitation from the UN General Assembly to participate in ASP meetings as observers. Rule 93 (2002) outlines the participation of authorized NGOs in ASP meetings and its subsidiary bodies, allowing them to receive official documents and make oral statements under specific conditions. Finally, Rule 95 (2002) further grants NGOs the authority to submit written statements on topics related to the Assembly's work in which the organisation possesses specialised expertise.

Beyond activities directly related to the Court's judicial functions, in the Court's proceedings and the meetings of the Assembly, NGOs still maintain their role in advocacy matters and actively support the principle of positive complementarity by facilitating genuine investigations and prosecutions of core crimes at the national level. Therefore, given the ICC's limited resources and capacity to conduct only a small number of trials, ending impunity for

the most serious crimes also becomes a CSOs role. NGOs, equipped with their knowledge of national proceedings, familiarity with local customs, and understanding of the specific needs and expectations of the affected populations, are uniquely positioned to play an indispensable role in this process. They contribute not only to the functioning of the ICC but also to the overall effectiveness of the international criminal justice system (Augustínyová & Dumbryte, 2014, p. 56).

As stated by the Court in its “Report on the Public Information Strategy 2011-2013” (2010, p. 4),

While the Court has a central role to play in making information available, it seeks to coordinate efforts with partners such as international organizations, non-governmental organizations (NGOs), legal associations, media, external experts, academic foundations and victims’ associations, and in particular States Parties, to maximize the Court’s own impact and to prioritize the use of limited resources.

Therefore, local and international NGOs have taken the initiative to conduct their own outreach efforts, disseminating information within local communities about the Court's activities and investigations. Their focus has particularly centred on educating people about the legal option to participate independently in Court proceedings as victims. This concerted effort by NGOs has undeniably played a role in the significant increase of the number of applications from individuals seeking to participate as victims in Court proceedings (Augustínyová & Dumbryte, 2014, p. 53). Additionally, NGOs aid victims in completing, collecting, and forwarding their applications to the Court for evaluation. This support is particularly crucial in remote areas and regions affected by ongoing armed conflicts, where the Court strongly relies on local NGOs, community organisations, and local leadership to establish contact with the local population (Schiff, 2008: 156 as cited in Augustínyová & Dumbryte, 2014, p. 53). This support also includes local organisations’ help in overcoming the language barrier.

All of these efforts also become useful when creating field offices in situation countries to monitor the evolution of affairs in those states. In fact, “the ICC continues to have very little presence in situation areas and NGOs have stepped in to at least partially rectify this shortcoming” (Schiff, 2008: 156 as cited in Augustínyová & Dumbryte, 2014, p. 53). This dependence on NGOs, however, has sparked considerable debate on whether these organisations are reliable and trustworthy. To push against this conception, CSO’s often derive

their normative legitimacy from claims of moral authority, so they allocate a lot of resources to information processing to prove their “expert authority” and ensure it is never compromised. Nevertheless, as Augustínyová & Dumbryte suggest (2014, p. 53), the Court must exercise caution and careful deliberation when engaging with NGOs in these contexts, since they, like any other entities, may also pursue their self-interests or be sided with the individuals allegedly responsible for the crimes.

Chapter 3: Historical Background Until the Crises Of 2014 And 2017

Venezuela ratified the Rome Statute on June 7, 2000, thereby granting the ICC jurisdiction over crimes committed on Venezuelan territory or by its nationals since July 1, 2002. The ICC has been closely monitoring the situation in Venezuela since its inception. From the beginning, concerns regarding the country's situation, particularly within the Latin American context, prompted numerous reports by the OAS, migration crises, and an influx of refugees into neighbouring nations (Cárdenas Aravena, 2018). An initial preliminary examination was conducted until February 2009, leading to its closure due to insufficient grounds for launching a full investigation. After receiving information from various sources about crimes allegedly being committed in Venezuela, in February 2018 the then ICC Prosecutor Fatou Bensouda, announced that her office would open a preliminary examination on Venezuela for crimes committed from 2017. Later, on September 27, 2018, the ICC Prosecutor received a referral from six States parties to the Rome Statute – Argentina, Canada, Colombia, Chile, Paraguay, and Peru – to initiate an investigation into crimes against humanity allegedly committed in Venezuela since February 12, 2014. This not only extended the case's temporal scope, but it also amplified it in terms of the nature of the crimes committed and the executors involved (Dib and Woo, 2023).

To make a thorough analysis of the background and the rationale for the ICC's intervention in Venezuela, context will be provided focusing on the events of 2014 and 2017 that prompted the protests and subsequent human rights violations. It is also considered essential to understand the broader history and context of Venezuela, marked by instability, economic crises, political unrest and social inequalities. The country's frequent leadership changes and political polarisation have created an environment where disparities have made segments of the population more susceptible to misleading narratives. These factors have combined and resulted in an economic crisis, humanitarian suffering, and a deeply divided society. Understanding the role of CSOs, their interaction with the Venezuelan government,

and their engagement with the international justice system requires considering the context in which their existence and activism is rationalised. Therefore, the subsequent segments will present an overview of the instances of Venezuela's history that are considered most relevant for the purposes of this research.

A) The Rise of Hugo Chávez

The analysis will begin by addressing the history of Venezuela, with a focus on developments during the 20th century, as this is considered a pertinent starting point. Venezuela was a former Spanish colony that gained independence as a republic in 1811. However, the country faced persistent armed conflicts throughout most of the 19th century, resulting in a chronic state of instability. The early 19th century marked the onset of a prolonged military dictatorship, which ruled for nearly three decades. Following the dictatorship's downfall, an initial attempt at democratic governance emerged, only to be interrupted by another military dictatorship that endured for a decade until 1958. From then on, Venezuela experienced a relatively sustained period of democratic governance, at least until 1999 (Arraíz Lucca, 2007).

Hugo Chávez, initially a mid-ranking military official, made one unsuccessful coup attempt in 1992, and was also involved in a second one during the presidency of Carlos Andrés Pérez, who was subsequently impeached in 1993 (Arraíz Lucca, 2007, p. 246). In the same year, Rafael Caldera, the founder of the Social Christian Party, backed by a left-wing coalition, won the elections and decided to pardon Hugo Chávez (Arraíz Lucca, 2007, p. 254).

In 1998, Hugo Chávez won the presidential elections, introducing the concept of "Socialismo del Siglo XXI" or the "Socialism of the Twenty-First Century," a strategy that concealed antidemocratic practices under the guise of existing legal mechanisms from democratically endorsed regimes (International Crisis Group, 2007, p.p. 26-27). A system that Ozan Varol (2014) calls "stealth authoritarianism". Chavez's political strategy was characterised by the use of persuasive rhetoric and the establishment of deep connections with the people, particularly the lower classes. This approach turned the leader into a celebrity that amassed significant popular support. The emerging ideology promoted alliances with other leftist governments in Latin America, such as Cuba and Bolivia, and developed the Anti-American discourse that turned into permanent clashes with the United States (Council of Foreign Relations, n.d.).

B) Venezuela Before 2014: Hidden Authoritarianism and the Socialism of the 21st Century

Understanding Venezuela's current situation requires a look at its historical context, notably throughout Hugo Chávez's mandate. During this time, Venezuela's economy was heavily reliant on oil exports. The country experienced economic fluctuations tied to the volatility of global oil prices. However, while high oil prices in the mid-2000s led to increased government revenue, funds were not effectively managed by the authorities, contributing to continuous economic instability (Council on foreign Relations, n.d.).

Simultaneously, Chávez's governance focused on efforts to incorporate the aspirations and demands of the Venezuelan social and popular movements into a Magna Carta or a new constitution (López Maya, 2016, p. 166). Therefore, innovative political reforms were introduced. For instance, the government initiated social inclusion policies called "missions", (Council on foreign Relations, n.d.) to overcome the inefficiencies of the State in fulfilling the needs of the population. These, however, did yield positive results (Arraíz Lucca, 2007, p. 270). Additionally, participatory initiatives received substantial budget allocations. Nevertheless, many of these reforms aligned with the "Socialism of the 21st century" ideology, which frequently ran counter to the Constitution of Venezuela. Laws enacted from 2002 onwards restricted the right to peaceful protests, with measures such as the creation of "security zones" (Ley Orgánica De Seguridad De La Nación, p. 9) in 2002 and further limitations on protests in the 2005 reform of the criminal code. In 2009, the Ley Orgánica De La Fuerza Armada Nacional Bolivariana (Organic Law of the Bolivarian National Armed Force) introduced "Combat Corps", a trend later bolstered by President Nicolás Maduro's promotion of "milicias obreras" in 2013.

Hugo Chávez's supporters unilaterally approved electoral rules for the Constituent Assembly, granting it power to dissolve the National Assembly and state legislatures (Brewer-Carías, 2010, p. 148). The Constituent Assembly also appointed new judges, ombudsmen, attorneys general, and electoral authorities (Landau, 2013, p. 948). Independent media outlets faced censorship while prominent leaders were barred from elections in an electoral system that was tailored to favour the government's interests. In this context, the surge of anti-government protests and demonstrations was unfairly and violently suppressed (Brewer-Carías & García Soto, 2017, p. 129).

In 2007, President Chávez attempted to amend the Constitution through a referendum, seeking indefinite reselection (NBC News, 2007). Although the referendum failed, Chávez still managed to secure three consecutive presidential election victories. His objective was to transform the civilian Social and Democratic State of Law and Justice into a Socialist, Centralised, Police, and Militarist State, eradicating representative democracy, republican alternation, and decentralisation of power (Brewer-Carías, 2007, p. 13). Human rights protection diminished, with power concentrated in the Head of State which eroded economic freedom and property rights.

The administration initiated extra-constitutional mechanisms to implement proposals rejected by popular votes, undermining the independence of the different branches of government, concentrating power in the presidency, and persecuting dissenters, even within his own party (Council on foreign Relations, n.d.). To exemplify this, the "Ley Orgánica Contra la Delincuencia Organizada y Financiamiento al Terrorismo" (Law against Organized Crime and Terrorism Financing) was enacted in 2012 and increased the powers and resources of the government to combat threats to security. The provisions of law could easily lead to their misuse to persecute opposition leaders or dissident groups, including preventive arrests and confiscation of property. This fostered polarisation was followed by the criminalisation of constitutional rights related to peaceful protests, association, assembly, strikes, and freedom of expression, resulting in attacks and disqualification of civil society organisations. The Law stipulated that CSOs must report all activities deemed "suspicious" to the government, including those which are funded by government-approved funding sources (National Assembly of the Bolivarian Republic of Venezuela, 2012, p. 11).

Despite President Chávez's ambitions to focus on social inclusion and the wellbeing of lower classes, his social and economic policies led to a deterioration of living standards and elimination of many civil and political rights. Towards the end of his presidency, "inflation, corruption, shortages, and violent crimes were on the rise; intimidation of the media was rampant; and judicial independence had been effectively eliminated." (OAS, 2020, p. 23).

Following Hugo Chávez's death in 2013, Nicolás Maduro, his successor, won the April 2013 election and served the remainder of the term. The election was very contested, leading to massive post-election demonstrations worsened by violence, human rights violations, and the underlying economic crisis. Essential services like electricity and water were disrupted, inflation soared, and food shortages and currency devaluation compounded the challenges,

while Nicolás Maduro announced progressive economic measures. President Maduro employed repressive policies to exert comprehensive control over Venezuelan society, systematically dismantling the country's democratic institutions, centralising governmental authority within the Executive branch, and suppressing any form of dissent. (OAS, 2020, p.p. 23-27). Venezuela was quickly turned into a state with authoritarian tendencies.

C) Venezuela in 2014: First Outbreak of Protests

The definition of the political regime in Venezuela under Hugo Chávez's leadership has been a subject of debate in the international arena. Some scholars have classified it as a hybrid regime, displaying elements of both democratic and authoritarian systems (Rodríguez & Sánchez, 2018, p. 50 as cited in Díaz Galán, 2022, p. 167). However, as some of Chávez's defining features began to fade and some to intensify, Nicolás Maduro's regime increasingly leaned towards authoritarianism, with elements such as corruption, weakness of institutions, centralisation of power and limiting civil and political rights (Chacín Fuenmayor, 2019, p. 88).

In 2013, a total of 4410 protests erupted in Venezuela, primarily driven by concerns related to labour rights, security issues, inadequate housing, and educational deficiencies (OVCS, 2014a). These protests were triggered by a heavy-handed police response to initial demonstrations, during which several students were detained and allegedly mistreated, leading to subsequent protests demanding their release.

Between February and May 2014, nationwide protests emerged as a response to the worsening conditions in Venezuela under President Nicolás Maduro's government. Issues such as rising insecurity, violence, soaring inflation, shortages of basic necessities, and increasing criminality fuelled these protests (Global Centre for the Responsibility to Protect, 2023).

On February 4, 2014, in San Cristóbal, Táchira State, students protested to demand improved security due to reported robberies on university campuses and an attempted rape at the University of the Andes campus in Táchira. During these protests, five individuals were detained on charges of participating in violent acts, including an attack on the Táchira State Governor's residence (Amnesty International, 2014, p. 3).

Just days later, on February 12, during Youth Day in Venezuela, protests erupted across the country, both in support and opposition to President Nicolás Maduro's government. The extension, duration and characteristics of these protests differed from the traditional culture of protests in Venezuela (Civilis Derechos Humanos et al, 2014a, p. 9). Students, along with civil

society organisations and opposition parties, collectively called for the release of detained students and protested against various issues, including security concerns, the economic crisis, and shortages of essential products. These events marked the beginning of a cycle of civil rights violations, chronic product shortages, and high levels of violence. The NGO Provea (Civilis Derechos Humanos et al, 2014a, p. 15) documented mass demonstrations in 16 states of the country, all demanding the release of detainees. Simultaneously, the National Executive's call mobilised people in four Venezuelan states. This day the first fatalities were witnessed, allegedly attributed to both police officers and paramilitary groups, further escalating the violence and widespread human rights violations (Civilis Derechos Humanos et al 2014a, p. 15).

In Caracas, the capital of the country, the February 12 protest concluded in front of the Public Prosecution Service's offices, where students petitioned the release of detained students in Táchira (Amnesty International, 2014, p. 3). Clashes between students, security forces, and pro-government armed groups resulted in numerous detentions and injuries, including among Attorney General's Office staff. Three individuals were fatally shot, including a protester against the government and a man on his way to a pro-government demonstration (Amnesty International, 2014, p. 3). Later that evening, a university student died from a gunshot during clashes between government supporters and opponents in Chacao municipality to the east of the capital (Provea, 2014, p. 156). These protests began to attract non-student participants and opposition leaders, eventually spreading to other parts of the country and leading to more detentions.

In the first two months of 2014, nearly 3000 people were murdered, representing a 500% increase compared to Chavez's period of governance (Ferdman, 2014). The Observatorio Venezolano de Violencia or the Venezuelan Observatory of Violence (OVV) reported in March 2014 that the country's murder rate was the second highest in the world, reaching almost 80 deaths per 100000 people.

Throughout February, protests and demonstrations persisted. Diosdado Cabello, President of the National Assembly, attributed the violence and death toll to North American, specifically U.S., imperialism and the fascist right-wing. This narrative was set as the official government stance.

Following the events of February 12, high-ranking government officials condemned the violence and blamed and persecuted opposition leaders for the deaths. For instance, the

Venezuelan Government issued a warrant for the arrest of opposition leader Leopoldo Lopez, for his alleged responsibility in the violent incidents that occurred on during protest and marches (CNN Español, 2014a). The Ministry of Interior, Justice, and Peace, in a press conference on February 13, claimed that students had been "undoubtedly manipulated" and that the mobilisation of these sectors of the population had been used to introduce infiltrators who were trained to generate chaos and violence (Civiles Derechos Humanos, 2014b).

On February 17, 2014, SEBIN officials conducted a violent raid without a warrant at the headquarters of the Voluntad Popular party in Caracas. The following day, opposition leader Leopoldo López was captured and charged with serious crimes. In February 2014, various organisations, including the Foro Por la Vida (Forum for Life) and other Venezuelan CSOs, issued an "urgent action" report on the deteriorating human rights situation in Venezuela, highlighting violence, misinformation, arbitrary detentions, and other serious human rights violations. They also noted the deterioration of public institutions' ability to mediate political diversity in the country (Solano, 2014).

In March 2014, the Inter-American Commission on Human Rights (IACHR) continued to receive information about ongoing demonstrations. The Commission observed persistent allegations of violations of the right to life, humane treatment and personal liberty, including attacks by armed civilian groups against protesters (OAS, 2014). Some of these deaths were attributed to officials of the Bolivarian National Guard (GNB), SEBIN, Municipal police of Chacao, among others which the Government did not appear to investigate in an exhaustive, independent and impartial way (Amnesty International, 2015, p. 13).

As stated in the Venezuela 2014 Human Rights Report by the US department (2014) "according to media reports, there were 31 attacks on 18 universities in 11 states during the spring protests". Although the Government insisted that these attacks were carried out by peaceful groups, it continued to blame the opposition, particularly Voluntad Popular, and local police for the death toll (CNN Español, 2014a).

The NGO Observatorio Venezolano de Conflictividad Social (OVCS), registered a total of 9286 protests in 2014, with 52% expressing opposition to the government (OVCS, 2015, p. 1). These protests included both ongoing social conflicts and a wave of citizen protests expressing political and social grievances against President Nicolás Maduro's administration and the repressive practices employed by government officials and other affiliated civilians during peaceful demonstrations (OVCS, 2015, p. 1).

The OVCS (2014b, p. 4) stated that the Venezuelan government responded to this wave of peaceful protests with continuous disqualifications, systematic repression, militarisation of cities, and criminalisation of the protests, leading to an escalation of the conflict. Violence and repression against demonstrators reached unprecedented levels in Venezuelan history, comparable only to the violent and repressive events of the Caracazo in 1989³. Official data released by the Public Prosecutor's Office of Venezuela in June reported that from February to June, 3306 demonstrators were arrested, 973 injured, and 42 killed (OVCS, 2014b: 4).

The Government authorities endorsed the disproportionate use of force by the GNB and the Bolivarian National Police (PNB) (OVCS, 2014b, p. 5). Additionally, paramilitary groups and armed pro-government civilian groupings, often acting in coordination with state officials, attacked demonstrators. Authorities also justified its repressive policies by claiming they were necessary to maintain internal order. However, daily monitoring by NGO Conflictove and the OVCS revealed that the majority of protests were non-violent, and that violence was often a result of repression against demonstrators. In this period, 510 violent protests were recorded, constituting only 8% of the total. (OVCS, 2014b, p. 5). The government's argument, therefore, seemed to lack credibility.

To back this reality, HRW (2014) conducted an investigation that uncovered 45 cases of serious human rights violations committed by members of the Venezuelan security forces. These violations included infringements on the right to life, prohibition of torture and cruel treatment, violations of physical integrity, security, liberty, and due process guarantees. These abuses were further exacerbated by the complicity of officials from the Public Prosecutor's Office and the judiciary, who were aware of, participated in, or tolerated abuses against protesters and detainees, including serious violations of rights to due process. HRW acknowledged that some protesters resorted to violence, obstructed roadways and attacked security forces with rocks, Molotov cocktails, and slingshots. However, the evidence in these 45 cases suggested that the victims of unlawful force and other abuses were not engaged in violence or criminal activity at the time security forces acted against them. In fact, the international NGO recorded that most protests were peaceful, and violence often arose as a result of government repression. The victims were usually unarmed and non-violent, some

³ see “Venezuela’s Caracazo: State Repression and Neoliberal Misrule” <https://venezuelanalysis.com/analysis/11868/> thousands of Venezuelans took the streets in a wave of protests that highlighted the right-wing misrule in the country. The protests came to be known as the Caracazo — an uprising that began in the capital Caracas — and ultimately shaped the country’s future.

were not even actively participating in demonstrations or were already detained and under complete control of security forces.

Throughout the 2014 protests, CSOs were actively and diversely engaged in addressing the challenges. They played a crucial role by documenting events and violations, mobilising the population, and providing protection and support to victims. These efforts collectively created an environment conducive to raising awareness and promoting international action.

D) The Second Outbreak of Protests: Venezuela in 2017

After a decline in protests during 2015 (OVCS, 2016, p. 1), in January 2016, the Venezuelan Supreme Court of Justice (TSJ) declared the Venezuelan National Assembly (AN) "in contempt" (Sentencia N°01, 2016; DW Español, 2016). This declaration was a consequence of the AN's failure to adhere to court rulings that had suspended four deputies due to allegations of electoral fraud in the previous year's parliamentary elections. This state of contempt had significant consequences, resulting in the nullification of all parliamentary acts until the suspended deputies were disincorporated (OAS, 2021, p. 441). This institutional deadlock persisted throughout 2016 and 2017, marked by conflicting legislation such as the "Ley de Amnistía y Reconciliación Nacional" (Amnesty and National Reconciliation Law)⁴ (Transparencia Venezuela, n.d.) that highlighted the growing divide between the two branches of government.

Amidst this political turmoil, the Venezuelan population sought a recall election against President Nicolás Maduro, leading to a massive protest on September 1, 2016, where about 1 million people gathered to express their discontent (BBC, 2016). However, the government-leaning National Electoral Council suspended the recall referendum, further intensifying opposition demonstrations. In October 2016, another protest, with hundreds of thousands of participants, evidenced the deepening crisis and the public's demand for change (DW, 2016). Vatican-mediated dialogue attempts between the opposition and the government in late 2016 ultimately failed in January 2017, leaving the ongoing political conflict unresolved (Scharfenberg, 2016).

In this context, the government decided on two rulings that further questioned the democratic nature of the system. First, in March 2017, Constitutional Chamber ruling N°155

⁴ the Amnesty and National Reconciliation Law was approved by the National Assembly with the opposition majority allowing those considered political prisoners to be released from prison

raised questions about parliamentary immunity and granted President Maduro special extensive powers (OAS, 2021, p. 443). Secondly, Ruling N° 156, issued on March 29, 2017, took a step further by absorbing the functions of the National Assembly. The justification for this move was the ongoing contempt and invalidity of the Assembly's actions (OAS, 2021, p. 444).

Following the Ruling N° 156, the Supreme Court of Justice, aligned with Maduro, took political authority from the AN. This caused a national crisis, with youth protests encouraged by hard-liner opposition leaders. This movement was known as La Salida (The Exit). The protests were motivated by multiple objectives, but mainly to call for presidential elections; after the frustrated referendum against Maduro's rule of 2016 (Masullo, 2017, p. 92).

As tensions escalated, protests erupted in April 2017, leading to widespread arrests, instances of violence, and casualties among both protesters and security forces (OHCHR, 2017). On April 19th, Venezuela witnessed what organisers referred to as the “Mother of all protests”, aimed at expressing discontent over scarcity, inflation, and the rising authoritarianism of the regime. This day began with demonstrators gathering around the country (Dwyer, 2017). As the march progressed, the National Guard began to block routes and fire tear gas at marchers, with the demonstrators refusing to leave despite the use of force (WTVQ Admin, 2017).

The marches quickly spread throughout the country and continued for months, fuelled by widespread discontent with the authoritarian practices of President Nicolás Maduro and the grave humanitarian crisis that had deepened during his mandate. Even though this was not the first suppression of dissent under Maduro's rule, the scope and severity of the repression in 2017 reached levels that surpassed anything observed in Venezuela in recent years (HRW, 2017).

On May 1, 2017, President Maduro called for a controversial National Constituent Assembly through presidential decree N° 2830, further complicating the already strained institutional crisis. The NGO Washington Office on Latin America (WOLA) (2017) suggested that while officially presented as a way to encourage national dialogue and political collaboration, its legitimacy was questioned for two main reasons. First, the president's authority to convene a National Constituent Assembly is contingent on the people's decision (as per Article 347 of the Venezuelan Constitution, 1999), which raised doubts about its initiation. Second, although the initiative proposed that participants in the Constituent

Assembly would be chosen through a universal, direct, and secret ballot, concerns were raised due to the fact that this vote would occur within “sectoral spheres.” (WOLA, 2017). This situation led to widespread protests in the whole country, and international criticism to the government’s response and the deteriorating circumstances therein.

The Constituent Assembly elections took place on July 30, 2017, with a predominantly pro-government Assembly elected. This new Assembly subsequently assumed parliamentary legislative powers, effectively side-lining the previously elected National Assembly (OHCHR, 2017, p. 4). Additionally, it rescheduled presidential elections to the first four months of 2018, deviating from the constitutional schedule. These actions led to the rejection of the Constituent Assembly by key governments on the region that were concerned about the lack of democratic processes (OHCHR, 2017, p. 4). The president of the Venezuela’s Electoral Council announced that more than 41 percent of the electorate had participated in the elections while the opposition estimated that just 12 percent participated (Taraciuk Broner, 2017). NGOs and CSOs received complaints from Venezuelans threatened with potential job loss or the denial of access to essential food supplies subject to government-controlled pricing if they abstained from voting. The Attorney General’s Office declared 10 deaths had happened after the violent clashes (Taraciuk Broner, 2017).

This was a tumultuous period in which demonstrations continued to grow more combative and politically charged, with participation rising, making it one of the most significant waves of disruption since the protests of 2014. This extended period of civil unrest and political disorder marked a critical juncture in Venezuela's recent history, shaping the trajectory of the nation's ongoing crisis.

Between April and July 2017, the period of social unrest had more than 120 people killed (OHCHR, 2017, p. 10), mostly by state and pro-government armed civilian groups. At least 1958 people were reportedly injured as a result of the systematic and widespread use of excessive and sometimes intentionally lethal force against protesters (OHCHR, 2017, p. 14). In 2018, one year after the protests, only one GNB officer was reportedly prosecuted for these deaths. In addition, more than 5000 people were recorded as having been detained during the months of protests (OHCHR, 2017, p. 20)

E) Political Context Before the Investigation

In this third section, the focus will primarily be the broader and immediate context that existed prior to the ICC's interest in the country's situation and the formal initiation of the preliminary examination. This analysis is significant for two key reasons. Firstly, it will shed light on the ongoing critical nature of the country's situation, even beyond the most severe instances of protests and violence. Secondly, the investigation, which encompasses crimes committed from 2014 to the present, implies that ongoing crimes are still relevant since they fall within the temporal scope of the prosecution.

As it can be inferred from the analysis above, in addition to the repression, Venezuela suffers from the consequences of the corruption and economic policies, that have plunged the country into a humanitarian crisis. This could be classified as one of the worst disasters ever seen outside of an armed conflict. For example, since 2014, oil production has dropped to a 75-year low (Long & Rathbone, 2018); as a result, oil revenues – accounting for 95 percent of Venezuela's export earnings – have tanked (Reuters, 2017). Due to the lack of foreign exchange, imports have fallen, leading to widespread shortages of basic goods. Further, instead of engaging in fiscal reform to resolve its economic woes, the regime resorted to mass-printing money, resulting in hyperinflation (Carmody, 2019). When the 2018 OAS Report was published in May 2018, inflation had reached several thousand percent; there were acute shortages of essential medicines and food; and over three-fourths of Venezuelans were living in poverty, with millions only able to afford one meal a day (OAS, 2021, p. 24).

On another note, the authoritarian tendencies of Maduro's regime have been made evident by the imprisonment or force into exile of most popular opposition leaders. These have also been banned from participating in the elections in which the Government has taken advantage of its influence and power to buy votes (Casey and Neuman, 2018).

Moreover, as previously mentioned, Maduro called for early elections in May 2018, which were not free, democratic or fair. In fact, *Efecto Cocuyo* (Avendaño, 2018) voiced that 43 Venezuelan NGOs had demanded suspension of the May 20 electoral process which showed continuous efforts by civil society to stop the deterioration of the democratic procedures. Nicolás Maduro was declared the winner on May 20, 2018, with CSOs and the international community condemning his re-election (OAS, 2019). The National Assembly also rejected these results and, after finding Maduro to have abandoned his constitutional duties and position as President, it adopted a resolution on January 15, 2019, officially

declaring that Nicolás Maduro was usurping the Venezuelan presidency⁵. It voted to invoke Article 233 of the Venezuelan Constitution (1999), which made Juan Guaidó, head of political party Voluntad Popular, interim president of Venezuela on January 23rd. However, this did not change the fact that Maduro continued having effective control over most of the economic and government apparatus, including the military and the judiciary (Hernández, 2019).

In January, thousands of people took to the streets to demand a change of government. Many of the reported demonstrations were in low-income areas where the demand for political change had not been so pronounced up to that point. The GNB, PNB and FAES were identified as the bodies responsible for the repression (Amnesty International, 2019, p.p. 4-6). Provea also reported repression acts from GNB, FAES and “colectivos” during this time (Rendón, 2019).

On 25 January, United Nations High Commissioner for Human Rights, Michelle Bachelet (OHCHR, 2019) condemned the situation of violence, where "at least 20 people were reportedly killed as a result of gunfire by members of the security forces and pro-government armed groups during the demonstrations on Tuesday and Wednesday". In addition, she worried that the patterns of repression of 2017 would be repeated and urged all parties to engage in dialogue to prevent this from happening again.

In October 2020, the number of refugees and migrants from Venezuela evidenced the grave situation in the country. It was estimated that 5.5 million had fled to other territories (Inter-agency coordination platform for refugees and migrants from Venezuela, 2020).

In this context, Nicolás Maduro kept making efforts to get full control of the National Assembly and in June 2020, the Supreme Court appointed new leaders for the National Electoral Council, despite this being the legislature's responsibility (Gómez Ramirez, 2020, p. 2). Opposition parties also faced leadership changes. Primero Justicia (Justice First) and Acción Democrática (Democratic Action) were restructured, and Voluntad Popular had its leader, Leopoldo López, replaced, after he fled to Spain (Arciniegas, 2020). Elections were announced for December 6th. These elections, once again, were widely criticised as fraudulent,

⁵ Asamblea Nacional de la República Bolivariana de Venezuela: Acuerdo Sobre la Declaratoria de Usurpación de la Presidencia de la República por Parte de Nicolás Maduro Moros y el Restablecimiento de la Vigencia de la Constitución, January 15, 2019, available in Spanish at: www.asambleanacionalvenezuela.org/actos/detalle/acuerdo-sobre-la-declaratoria-de-usurpacionde-la-presidencia-de-la-republica-por-parte-denicolas-maduro-moros-y-el-restablecimiento-de-la-vigenciade-la-constitucion-331.

lacking transparency and not meeting international standards for free and fair elections (European Union External Action, 2020). Government-aligned parties won over 90% of seats in the National Assembly, amid high voter abstention and a boycott by opposition parties. Repression continued against individuals perceived to be “internal enemies” or opponents of the government (Valiñas, 2021).

During 2020 the Venezuelan people continued to protest and demonstrate against the political situation, as well as the collapse of basic services and the oil crisis, with demands related to labour, health and food. Civil society organisations documented more than a hundred protest-related detentions since September 2020 (OVCS, 2020). Acceso a la Justicia has also expressed concern.

The regime not only does not take measures to solve the humanitarian emergency, but does not recognise it, has not accepted international aid insistently offered and even less admits that it caused it by failing to fulfil its functions, by erroneous policies that destroyed the country's economic capacity and, above all, its enormous corruption in the management of public funds (Acceso a la Justicia, 2020).

In this context, NGOs that continued fulfilling their functions suffered the consequences. As Chairperson of the IFFM on Venezuela, Maria Valiñas stated, the government kept and continues to tighten requirements for their registration, funding and operation. Authorities have detained NGO workers for crimes under the “Law against Organized Crime and Terrorism Financing” (2012), related to the NGOs’ receipt of foreign funds and distribution of pre-paid cash cards. As a depiction of this reality, in November, an arrest warrant was issued for Roberto Patiño, coordinator of the Alimenta la Solidaridad organization, which distributes meals to people in need (Valiñas, 2021). Valiñas added that in January 2021, military and state intelligence officials arbitrarily detained six men from the public health NGO Azul Positivo. Moreover, public officials have contributed to the harassment of NGOs through their use of rhetoric that criticises cooperation with international bodies, organisations, or the acceptance of foreign funds.

The latest data shows that during the first semester of 2023, there were 4351 protests nationwide as documented in the OVCS report (Provea, 2023a). This implied an increase of 12% compared to the same period of 2022. Protests for economic, social and cultural rights remained the epicentre of mobilisations, representing 86% of all those registered. 95 demonstrations were repressed by security forces in 19 states (Provea, 2023a).

Therefore, the situation of human rights in Venezuela remains a source of concern. Judicial authorities have participated or been complicit in the abuses, serving as a mechanism of repression. This corruption that affects the whole system is backed by data gathered by international NGOs, such as Transparency International (2022). The NGO stated in its 2022 report that Venezuela is now 177 in a 180-country ranking that lists countries perceived to be most corrupt. Venezuela faces a severe humanitarian emergency, with millions unable to access adequate health care and nutrition. Authorities harass and persecute journalists, human rights defenders, and civil society organisations. Other persistent concerns include brutal policing practices, lack of protection for indigenous peoples, and poor prison conditions. Moreover, the exodus of around 7 million Venezuelans represents one of the largest migration crises in the world (Hassan, 2022).

Chapter 4: Human Rights Violations During the Protests

The 2014 and 2017 protests in Venezuela were marked by a series of grave human rights violations, revealing a pattern of excessive use of force, violations of personal integrity, and disregard for the international standards governing law enforcement actions during protests. Although some data has been already presented, this section examines the documented instances of these violations, shedding light on the widespread abuses that occurred during this period.

The ICC's decision to initiate a preliminary examination in 2018 was grounded in the review of a variety of reports and information submitted by a range of sources, including individuals, groups, states, intergovernmental organisations, and NGOs. In this context, this chapter will analyse the data presented in numerous documents. Notably, the "Report of the General Secretariat of The Organization of American States and The Panel of Independent International Experts on The Possible Commission of Crimes Against Humanity in Venezuela" (2021) has been particularly valuable for this analysis. The American regional organisation's extensive efforts in gathering and compiling information have had a significant global influence. This has also enabled the data collected by smaller Venezuelan CSOs to reach a broader audience and be more widely disseminated.

The OAS Panel of Independent International Experts (OAS, 2021, p. IX) analysed and evaluated the information and evidence, and subsequently considered that there were reasonable grounds, that satisfy the standard of proof required by Article 53 of the Rome Statute (1998), that acts to which the civilian population of Venezuela was subjected to, dating

back to at least February 12, 2014, constitute crimes against humanity, in accordance with Article 7 of the Rome Statute of the ICC (1998). This includes the crimes of murder, imprisonment, torture, rape and other forms of sexual violence, persecution, and enforced disappearances (OAS, 2021, p. XIV). In this process, former ICC Prosecutor Luis Moreno Ocampo was chosen as Special Adviser on Crimes against Humanity by the OAS to help the organisation consider whether Venezuelan authorities had committed crimes against humanity (OAS, 2021, p. 17).

In addition to the OAS relevancy, the OVCS, among other CSOs has been recording and denouncing the pattern of abuses since 2014 during a time where

The Government has been building a system of repression following a pattern that seeks to characterize a segment of the population as internal enemies and destabilising agents, all under the rationale of the doctrine of national security (OVCS, 2018).

Additionally, the Office of the United Nations High Commissioner for Human Rights (OHCHR) in their 2017 (p. III) report on human rights violations in Venezuela declared to have:

Received numerous accounts about the activities of pro-Government armed groups (armed colectivos) in the context of protests. (...) armed colectivos (...) harassed, attacked and shot at demonstrators, media workers and by-standers. They also arrested demonstrators and participated in violent house raids. (...) these groups had been operating with the acquiescence of, and sometimes in coordination with, security forces and local authorities.

This shows that the government set in place mechanisms to foster an environment where violence could easily become widespread and institutionalised. As expressed by Provea (2017a), these constituted a major risk to the human rights situation in the country and escalated the conflict to considerable levels. A depiction of this is the implementation of the “Plan Zamora”, a civilian-military strategy whereby joint operations of the military forces were institutionalised, and militia forces, and armed civilians were incorporated to control the public order and end with the “lacras” or scourges (Provea, 2017a).

The following subsections focus on the different acts that constitute crimes against humanity, as defined in the Rome Statute. The aim is to assess how these have been

systematically violated in Venezuela over the years. This examination serves as the foundation for supporting the necessity of NGO action and an investigation by the ICC in Venezuela.

A) Murder

According to Article 7, paragraph 1, subsection (a) of the Rome Statute of the International Criminal Court (1998), murder constitutes a crime against humanity when it is committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

During the protests in 2014 and 2017, abusive and arbitrary repression by State security forces and colectivos led to the deaths of demonstrators. In 2014, there were at least 43 deaths, of which 25 were murders that occurred either among the protesters or bystanders in the vicinity of the anti-government-related demonstrations (OAS, 2021, p. 62).

The number of people who lost their lives during the four months of protests in 2014 represents 79.2% of the total number of deaths registered between 1997 and 2013, a period in which 53 people died in the context of demonstrations (Provea, 2014, p 155). In 4 of the deaths recorded, the participation of security forces in the commission of the acts is evident. Two cases stand out; Geraldine Moreno, who was shot at point blank range in the eye by members of the GNB, and José Alejandro Márquez, who was beaten by members of the Guardia del Pueblo (OAS, 2021, p. 63).

Security forces were involved in 3 of the deaths caused by the use of firearms, while the participation of armed civilians was reported in 25 cases (Provea, 2014, p. 155). Although most of the killings involving civilians have not been clarified by the authorities, in at least 13 of the cases witnesses mentioned the involvement of paramilitary groups or groups of civilians who opened fire on demonstrators. Besides, several security forces officers were also killed during the protests (Provea, 2014, p. 155).

According to Foro Penal (2017 as cited in OAS, 2021, p. 68), between April 1, 2014, and September 18, 2017, 177 individuals lost their lives in the context of different demonstrations and protests, as a direct consequence of acts of repression by security officers, or colectivos acting under the aegis of the State security forces in Venezuela. At least 131 of these victims were murdered directly as part of the response against demonstrations by security officers and armed civilians acting outside of the law or died while detained and as a consequence of a violation of their rights (OAS, 2021, p. 68).

B) Torture

Pursuant to Article 7, paragraph 1, subsection (f) of the Rome Statute of the International Criminal Court (1998), torture constitutes a crime against humanity when it is committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

In Venezuela, various forms of torture and cruel, inhuman, and degrading treatment have been documented. These violations occurred both during transportation to and inside detention centres (Provea, 2014, p. 43). Complaints encompassed various forms of abuse, including beatings inflicted by law enforcement officials using fists, kicks, and blunt objects, even when individuals were already defenceless and restrained on the ground during their arrests. In addition to physical violence, other instances of abuse involved subjecting individuals to prolonged periods of standing or kneeling, incidents of sexual abuse or rape, threats of death, and denial of access to essential medical treatment (Provea, 2014, p.p. 43-44).

Despite the enactment of “Ley Especial para Prevenir y Sancionar la Tortura y otros Tratos Crueles, Inhumanos o Degradantes” (Special Law to Prevent and Punish Torture and other Cruel, Inhuman, or Degrading Treatment) in Official Gazette No. 40.212 on July 22, 2013, such practices did not stop and persisted within the country's police and military forces (Provea, 2014, p. 39).

The OAS presented the findings by the IACHR (2017 as cited in OAS, 2018, p. 93), which in 2015, "received information on 51 alleged cases of torture and in 2016 it received complaints that the SEBIN and the GNB tortured the majority of the members of a group of 21 people who had been detained”.

The NGO Foro Penal in its 2014 report registered a total of 153 cases of torture, cruel, inhuman and degrading treatment committed against detained demonstrators in different cities of the country, presented to official institutions such as the Ombudsman's Office and the Public Prosecutor's Office. However, there was a much larger number of cases that have not been reported to state institutions, due to the victims' fear of reprisals (Provea, 2014, p. 30).

Torture in Venezuela has been employed as a means to punish, set an example, and instil fear in the population, with the aim of suppressing citizens' actions to exercise or defend their rights, as well as punishing dissent and opponents of the Government (OAS, 2021, p.

94). In this sense, tactics have included Electric shocks; Severe beatings; Being hung in stress positions; Sleep deprivation; Asphyxiation; and, Sexual abuse, including in some cases rape (HRW, 2017, p. 3).

Among the cases presented in the OAS report (2021, p. 94), at least 30% of individuals were specifically targeted because they publicly denounced or expressed dissatisfaction with the regime, or because they demanded their rights. The remaining 70% of cases involved individuals tortured for protesting or participating in mass public demonstrations. As mentioned earlier, this punitive and intimidating approach was employed with the dual purpose of punishing individuals and instilling fear and coercion within them and their families. Additionally, it was a strategy employed to brand them as part of the opposition.

The various state security agencies have demonstrated a consistent and systematic approach in the implementation of their tactics and methods. The CASLA Institute (as cited in OAS, 2021, p. 93) publicly denounced President Nicolás Maduro and other high-level members of different branches of Government as principally responsible for the torture. This includes leaders and officials of the State security agencies at the top of the chain of command and who were necessary accomplices for the acts of torture and cruel, inhuman, and degrading treatment in Venezuela (OAS, 2021, p. 93). This statement is further supported by the fact that most of these abuses have been carried out at bases of the Bolivarian National Guard or of SEBIN (HRW, 2017, p. 3).

Moreover, HRW senior researcher Tamara Taraciuk Broner (Nuñez, 2017), declared in an interview that, after taking statements from 120 witnesses, experts, victims, and their relatives, they had documented 88 cases of alleged abuse involving at least 314 victims. The international NGO concluded that many of the abuses by the security forces were systematic. She found that high-level officials, including the president, the defence minister, and the interior and justice minister, had failed to prevent or prosecute these abuses under their watch.

C) Rape

Pursuant to Article 7, paragraph 1, subsection (g) of the Rome Statute of the International Criminal Court (1998), rape, or any other form of sexual violence of comparable gravity, constitutes a crime against humanity, when it is committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

Over time, there has been a significant expansion of the legal framework regarding sexual violence as an instrument of torture and war. This development signifies a collective effort by a number of international bodies, including the ICC, which have contributed to an increasing body of gender jurisprudence on sexual violence as a form of torture (OAS, 2021, p. 165). However, despite these advancements and the commitment of international organisations to combat sexual violence in armed conflicts, a significant challenge remains. The persistence of these violations in conflict zones demonstrates that “there is a high level of underreporting of cases due to victim shame or intimidation, non-recognition of offenses, and/or lack of human rights defenders and public officials trained in identifying them” (Centro de Justicia y Paz (Cepaz), Freya, Avesa and Mujeres en línea, 2017, p. 46).

In the context of Venezuela, in addition to the wide range of harassment, physical abuse, and violence, already mentioned above, detainees are commonly subjected to various forms of sexual torture, including rape (OAS, 2021, p. 112). Particularly in cases where the detainee is a woman, threats of a sexual nature are the norm. The guards threaten them with rape or to put them in prison cells with criminals from the general population who, they claim, will rape them (OAS, 2021, p. 112).

The first documented incidents that the OAS claimed to have received are from April 2013. This information included that around 73 people had been detained in the city of Barquisimeto and they had been subjected to a broad range of acts of physical, psychological, and sexual torture (OAS, 2021, p. 167). However, after the 2014 demonstrations began, reports of sexual abuse against protestors who had been detained began almost immediately (OAS, 2021, p. 168). In a short span, from February to May 2014, 26 cases of sexual torture following a similar pattern, including forced undressing and, in some instances, rape, were identified (Venezuela awareness, 2017).

During the 2017 protests, the NGO AVESA (Asociación Consultación para una Educación Sexual Alternativa) (2017) documented 25 cases of sexual violence. These cases involved both men and women, with women accounting for 56% of the reported incidents. The reported abuses included exposure to sexual violence (60%), instances of groping (20%), and incidents of rape (16%). Perpetrators of these acts were identified as members of various law enforcement agencies, including the PNB, the Aragua Police, and the GNB.

D) Imprisonment or Severe Deprivation of Liberty

Pursuant to Article 7, paragraph 1, subparagraph (e), of the Rome Statute (1998), the definition of crimes against humanity includes imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

In the context of Venezuela, legal provisions dictate that an individual's liberty can only be restricted through the issuance of an arrest warrant by a competent judicial authority, unless a person is apprehended while actively committing a crime (in flagrante delicto) as outlined in Article 44 of the Venezuelan Constitution (1999).

However, according to Foro Penal in its report about repression in Venezuela (2018, p. 1), since the start of President Nicolás Maduro's administration in April 2013, more than 12000 individuals have been arrested. These arrests often result from combined efforts of the police and military bodies during public demonstrations, where excessive force is frequently used against protestors. Furthermore, some individuals, who have not committed any crimes, are arbitrarily detained in such scenarios. Security forces are also reported to conduct unauthorized raids on people's homes and detain individuals without a valid search warrant or legal justification for their actions, as highlighted in the OAS report (2021, p. 175).

Foro Penal (2017a, p. 1) also reported that between January 2014 and December 7, 2017, 7113 individuals were subject to criminal investigations and placed under precautionary measures instead of being held in custody. These measures included periodic presentation, house arrest, prohibition to testify in the media, etc (Foro Penal, 2017a, p. 1). These individuals were subject to legal proceedings, which often involved precautionary measures such as detention, whether they were defendants on trial or convicted individuals. While the OAS acknowledged that there may have been cases where certain individuals crossed the line of legitimate peaceful protest, the organisation also stated the improbability that such a substantial number of people could have been arrested as criminals for similar actions within such a brief timeframe (OAS, 2021, p. 176).

In this part of the discussion, specific subsections related to imprisonment or severe deprivation of liberty need to be considered.

I. Political prisoners:

The number of political prisoners in Venezuela rose significantly over a relatively short period of time. From 2013 to 2014, it escalated from 9 to 96 political prisoners (OAS, 2021, p. 176). By August 2017, the number of political prisoners reached 676. Foro penal (2017 as cited in OAS, 2021, p.p. 354-355) documented a total of 1321 prisoners deprived of their liberty for political reasons between February 12, 2014, and January 24, 2018. These individuals included a wide spectrum of societal groups, such as political activists, students, professors, journalists, military members, doctors, human rights defenders, and citizens who were peacefully protesting.

For instance, during the 2017 protests, at least 17 university professors were arbitrarily detained (Aula Abierta, 2017). Over the course of April to July 2017, approximately 339⁶ students faced arbitrary detentions, with many of them being processed through the military justice system and subjected to custodial measures (Aula Abierta, 2018, p. 12). These cases illustrate how the regime and the justice system stigmatise individuals who oppose the government, categorising them as criminals and terrorists (Diario Panorama, 2017).

II. Enforced disappearance:

Pursuant to Article 7, paragraph 1, subparagraph (i) of the Rome Statute (1998), the enforced disappearance of persons is a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. Article 7(2)(i) defines enforced disappearance as follows:

The arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

⁶ The figure of 339 students was based on the different cases of detention reported in the thematic reports of Aula Abierta Venezuela of April, May, June and July, <http://aulaabiertavenezuela.org/index.php/informes/>. See also, Aula Abierta Venezuela, "Informe Preliminar: Ataques y Represalias Contra Profesores y Estudiantes Universitarios en Venezuela (Febrero-Octubre 2017)", February-October 2017, <http://aulaabiertavenezuela.org/wpcontent/uploads/2017/08/05-2018-Restricciones-y-represalias-contr-estudiantes-y-profesores-universitarios-enVenezuela-Febrero-Julio-2017.pdf>

Venezuela is also one of the original signatories of the 1994 Inter-American Convention on Forced Disappearance of Persons. However, the government has continuously breached the agreement. In fact, the OAS report (2021, p. 184) highlights a pattern where detainees including minors, are held incommunicado after their arrest, with no access to their families or legal representation.

III. Delaying tactics:

After a confession, a political prisoner is usually convicted. In the context of Venezuela, a recurring pattern emerges once legal proceedings are set in motion for such cases. This pattern involves consistent and prolonged postponement of hearings, which, in practice, transforms the legal process into a punitive measure itself (OAS, 2021, p. 184).

IV. Arbitrary nature of the detentions:

According to Foro Penal, since 2014, there have been more than 15700 politically motivated arbitrary detentions in Venezuela (Amnesty International, 2023). During the massive anti-government demonstrations in Venezuela that began in early April 2017, over 5400 people were detained, as reported by Foro Penal (2017a, p. 1).

In most of the documented arrest cases by Human Rights Watch and Foro Penal (HRW, 2017, p. 4), the detaining agents were affiliated with various security forces, including the GNB, SEBIN, the PNB, or state police units. Often, those taken into custody were not informed of the reasons for their arrests, and at times, they remained unaware of who was detaining them. Some detentions were carried out by members of pro-government armed groups or the “colectivos”, who then handed over the detainees to official security forces.

V. Prosecution of civilians in military tribunals:

During 2017, according to Foro Penal (2018, p. 2), at least 760 civilians were prosecuted by military courts, which raises significant concerns related to fairness, due process, and human rights. By the end of 2017, 118 individuals were still detained by order of these military courts (Foro Penal, 2018, p. 2).

Remarkably, in more than 12000 cases of the persons who were physically deprived of their liberty, not one had been caught in the act of committing a crime and there were no valid arrest warrants. This contravenes both national and international legal standards (OAS, 2021, p. 190). The individuals singled out in these situations were frequently framed as

opponents or political dissidents, being portrayed as internal adversaries of the Nicolás Maduro's government. Notably, those who carried out these actions under orders received personal praise from President Maduro on multiple occasions and were even celebrated as heroes (OAS, 2021, p. 190)⁷.

E) Widespread and Systematic Persecution

Pursuant to article 7(1)(h) of the Rome Statute (1998), persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in Article 7, paragraph 3, or other grounds that are universally recognized as impermissible under international law is a crime against humanity when committed as part of a widespread and systematic attack against any civilian population, when conducted in connection with any act referred to in Article 7(1) or any crime within the jurisdiction of the Court. The Statute (2001) defines persecution as the intentional and severe deprivation of fundamental rights by reason of identity of the group or collectivity.

In Venezuela, the level of political persecution significantly escalated after President Maduro assumed office in 2013, with a particular focus on what is referred to as the "internal enemy." This term, as introduced before, encompasses anyone within the population who opposes the Bolivarian Revolution or speaks out against government policies (OAS, 2021, p. 195). While the government's systematic persecution predominantly targets its political opponents, it also extends to a variety of groups, including judges, students, professors, journalists, civil society leaders, NGOs, human rights defenders, and even police and military officers who have been labelled as dissidents (OAS, 2021, p. 195).

Even though persecution in itself constitutes a crime, there are other practices that occur within the pattern, such as extrajudicial executions, imprisonment, torture, sexual violence, threats, intimidation, illegal and arbitrary dismissal or disqualification from Election to Public Office⁸ (OAS, 2021, p.p. 196-199).

⁷ El Nacional, (2017) "Maduro se acercó a GNB para felicitarlos por reprimir protestas" http://www.el-nacional.com/noticias/gobierno/maduro-acerco-gnb-para-felicitarlos-por-reprimir-protestas_184572; Panorama.com.ve, (2017) "Nicolás Maduro condecora a efectivos de la GNB heridos durante las manifestaciones" <http://www.panorama.com.ve/politicaeconomia/Nicolas-Maduro-condecora-aefectivos-de-la-GNB-heridos-durante-las-manifestaciones-20170804-0086.html>, El Comercio (2017) "Maduro condecora a funcionarios venezolanos sancionados por EE.UU.", July 26, 2017, <http://www.elcomercio.com/actualidad/nicolasmaduro-condecora-venezolanos-sancionados-estadosunidos.html>

⁸ see pages 196-199 from the OAS report (2021) for an exhaustive list of the practices that amount to forms of widespread and systematic persecution and examples.

The situation in Venezuela has also reflected a double trend of politicisation of justice and a judicialisation of politics. This has resulted in a high level of impunity for entities such as SEBIN, the National Guard, as well as the state and municipal police forces controlled by Nicolás Maduro's Government. These groups have been accused of conducting arrests, engaging in acts of torture, and consistently violating human rights without facing accountability. In this, the Ministry of Public Prosecution and the Defensor del Pueblo (Human Rights Ombudsman) are perceived as complicit in supporting the actions of the Regime (OAS, 2021, p. 99). For instance, in the first ten months of 2016, the TSJ ruled against the National Assembly at least 30 times (Mora, 2016). From June 2016 to February 2017, there were at least 32 instances that showed that judicial interpretation consistently favoured the administration's interests, at the expense of the Legislative Branch, the opposition and/or the general citizenry (OAS, 2017, p. 42).

The consistent practice of impunity has protected those who have violently repressed protests and used excessive force. During the 2017 protests, in a report released by Foro Penal (as cited in OAS, 2021, p. 221), the NGO described the following.

Repeated, systematic behaviour by officials of the GNB, PNB and some regional police [...], who have taken advantage of their superior force and who are equipped with arms not permitted for the control of civilian demonstrations to crack down on the demonstrators with considerable cruelty, illegally and unconstitutionally claiming that they are following the orders of their superiors.

NGOs and other CSOs, as well as media outlets, journalists, and the general public have suffered attacks on their freedom of expression. For example, the NGO Instituto Prensa y Sociedad Venezuela (IPYS) (Institute Venezuelan Press and Society) (2014) documented 197 violations of freedom of expression and the right to information between January 1 and April 7, 2014. The situation worsened in 2017 when the same NGO (2018) reported 518 cases, with 325 occurring during the period of protests, as outlined in their annual Index on Journalistic Freedom. The NGO (2018) also highlighted that

The abuse of state power, restrictions on digital rights and acts of aggression, along with the closure and reduction of news reporting and opinion spaces in the radio media represented a historic setback for freedom of information in the country.

Finally, it is also important to consider the findings of the civil society organisation Micondominio.com, which disclosed reports of illegal raids, amounting to another form of widespread and systematic persecution. Amnesty International (2017, p. 394) presented the findings by the local NGO Micondominio.com that had documented at least 47 raids and attacks on residential areas by state security forces and armed civilian groups. These incidents occurred between April and July 2017, a period characterised by high levels of social conflict, frequent protests, and demonstrations.

The OAS report (2021, p.p. 196-230) also recorded other violations that amount to widespread and systematic persecution, including but not limited to:

- Threats and Intimidation
- The Politicisation of Justice and the Judicialization of Politics
- The Illegal and Arbitrary Dismissal of Mayors
- Disqualification from Election to Public Office
- Attacks on the Freedom of Expression
- Illegal Raids
- Violent Repression and the Excessive Use of Force
- The Persecution of Children and Adolescents
- The Invalidation of Passports
- Persecution and Forced Exile
- Political Asylum

F) Conclusion

The 2014 and 2017 protests in Venezuela were marred by severe human rights violations, including excessive use of force, violations of personal integrity, and disregard for international standards governing law enforcement actions during protests. This chapter has examined the documented instances of these violations, shedding light on the widespread abuses that occurred during this period.

This chapter provides the rationale for the decision by the ICC to initiate a preliminary examination in 2018 which was based on a review of various reports and information submitted by individuals, groups, states, intergovernmental organisations, and NGOs which also obtain the information from private citizens, victims and witnesses. The analysis of data presented in numerous documents, including the valuable report from the General Secretariat

of the OAS, has provided significant global influence and enabled wider dissemination of information collected by smaller Venezuelan CSOs.

In the case of Venezuela, specialised agencies and CSOs have played a crucial role in closely monitoring the situation within the country. Their efforts have been instrumental in gathering information about the consistent disregard for the rule of law by the authorities, as highlighted in the previous chapter. This represents just one facet of the work undertaken by NGOs. In the upcoming chapters, we will delve into a more comprehensive examination of the civil society movement in Venezuela.

Chapter 5: CSOs in Venezuela

CSOs and NGOs have played active roles during the Venezuela's crisis, particularly following the ICC's engagement in the Nation. In a recent article from the WOLA (Ramsey, 2022), the organisation has shed light on the functions that they have been fulfilling vis a vis the ICC's investigation. In short, CSOs and NGOs have been documenting cases of people who have been victims of crimes under the jurisdiction of the ICC, fighting misinformation and maintaining transparent communication with the ICC, especially in terms of cooperation and technical assistance aimed at building or guiding public policies. These organisations have vocally condemned all the acts of intimidation and reprisals for attending, reporting, or interacting with the ICC. In addition to this, they have generated valuable information to raise awareness both nationally and internationally about the importance of truth, justice, reparation, and guarantees of non-repetition for the victims of crimes against humanity and human rights violations in Venezuela.

In the Venezuelan context, NGOs often prioritise the social development of the population, but they are also constituted to address immediate needs and tackle pressing situations (Rosillón and Villalobos, 2007, p. 2). NGOs have been willing to shift their focus to address emergency situations and adapt to changing circumstances. However, their work has faced substantial challenges due to the government's reluctance to facilitate their missions. Therefore, it is imperative to analyse the state of CSOs in Venezuela, considering the evolution of their presence, activities, and significance. Additionally, their embeddedness, cohesiveness, and the overall environment in which they operate warrant close examination to understand the complex dynamics and difficulties that underlie their efforts in the country.

A) Pre-Hugo Chávez: The Rise of CSOs

The roots of civil society movements in Venezuela can be traced back to the 1930s and 1940s when the expanding human rights movement introduced democratic elements and dynamics. These early movements were led by a diverse array of entities, including political parties, student organizations, trade unions, and the Catholic Church. Despite their loose connections, their collective aim was to counter the abuses perpetrated under the dictatorial regimes of Gomecista and Perezjimenista (Bolívar and Cubas, 2009, p. 12).

A pivotal moment for CSOs in the country came in 1958 when Venezuela transitioned to a democratic regime, a change marked by a constitutional reform in 1961. This shift introduced legal, administrative, and judicial mechanisms to safeguard fundamental rights (Bolívar and Cubas, 2009, p. 12). Notably, for the first time, the Venezuelan Constitution recognized human rights based on the Universal Declaration of Human Rights (UNDHR). Social organisations gained recognition as legitimate and valuable actors, even if they were not aligned with the main political parties (Bolívar and Cubas, 2009, p. 13).

During the 1960s and the early 1970s, several smaller groups surfaced, primarily dedicated to demonstrating solidarity with political prisoners. However, their primary focus leaned towards accusing the Government, rather than prioritising the protection and welfare of the victims. Given that many of the political prisoners were associated with guerrilla movements, authorities easily discredited their allegations. This resulted in the association of human rights defenders with subversion too, allowing the Government to label them as dissidents, communists, and sources of instability. This negative image persisted over time in public opinion and was perpetuated by the media and certain political fractions (Bolívar and Cubas, 2009, p. 13).

From the 1970s onwards, the term "civil society" gained prominence, although interpretations of its structure, functions, and legitimacy varied (Salamanca, 2003). As it has been previously mentioned, a paradigm change took place from the mid-1970s to the 1980s, during which the prevailing perspective shifted in favour of human rights ideals. Violence and dictatorships in Central and South America led to an influx of migrants and refugees into Venezuela. This prompted the formation of new, more organised groups and committees dedicated to solidarity actions for people in the migrants' and refugees' home countries (Bolívar and Cubas, 2009, p. 15). These newly formed groups established fruitful relationships with the press, political parties, and other organisations. There was also a change in the

perception of the people affected: the image of the victim was no longer necessarily linked to "subversive" actions, since it included ordinary people such as professors, students, priests etc. This change emphasised that anyone could fall victim to persecution and human rights violations (Bolívar y Cubas, 2009, p.p. 14-15).

As Bolívar and Cubas proposed (2009, p. 16), the new broader international context attracted individuals who previously had limited interest in human rights issues. There was a growing emphasis on civil and political rights, and methods of advocacy evolved to include denunciation and reporting. These efforts were complemented by initiatives aimed at broadening participation across different sectors, including human rights defence actions oriented towards victims of repression and professional groups. Public events were organised with the dual purpose of raising awareness among the population and securing funding for assistance programs. These activities were designed to shift human rights advocacy from a semi-clandestine environment, where activists were often persecuted by authorities, to a more public arena where everyone could participate (Bolívar y Cubas, 2009, p. 16). During this period, several noteworthy entities emerged as significant contributors to the human rights landscape in Venezuela. These included the Fundación Latinoamericana por los Derechos Humanos y el Desarrollo Social (FUNDALATIN), the Comité Evangélico Venezolano por la Justicia (CEVEJ), the Movimiento Cristiano Caleb, as well as numerous groups dedicated to aiding refugees and expressing solidarity with other countries of the region (Bolívar and Cubas, 2009, p. 16).

In the mid-1980s, a significant shift marked the beginning of the Venezuelan human rights movement that we know today (Bolívar and Cubas, 2009, p. 16). With the release of most political prisoners and increased left-wing participation in the political and parliamentary life of the country, including senators and deputies, it appeared that progress was being made. However, this period also witnessed the persistence and worsening of human rights violations by the police and security forces, which disproportionately affected marginalised communities. This situation prompted the relatives of victims of abuses, murder or torture to get organised and advocate for their rights (Bolívar y Cubas, 2009, p. 16).

Additionally, this new focus on advocacy for civil and political rights led to the emergence of demands about the depoliticisation of the electoral system and the introduction of uninominal elections (Nayhari Rojas, 2009, p. 62). These innovative pressures, although met with limited political will, led to the establishment of the Commission for State Reform

(COPRE) in 1984 and the initiation of the decentralisation process in 1989 (Nayhari Rojas, 2009, p. 52). This decentralisation aimed to encourage greater local-level participation. So, the government viewed civil society as a means of implementing social development projects, while civil society considered the Government as an executive partner for implementing such programs and advancing their demands.

Between 1988 and 1989, several important human rights organisations emerged, including Provea, Cofavíc, Secorve, Justicia y Paz de Petare, and the Vicaría Episcopal de Derechos Humanos de la Arquidiócesis de Caracas, among others (Bolívar and Cubas, 2009, p. 17). This coincided with a period of repressive actions against the strand of the popular movement that protested structural economic adjustments, and increased police operations and raids aimed at controlling criminal activity (Bolívar y Cubas, 2009, p. 17). The parallelism of these events shows how CSOs emerged in times of repression to challenge the regime, protect human rights and act against authoritarian practices.

These emerging NGOs adopted comprehensive strategies that extended beyond mere media-based condemnations. Their efforts encompassed legal defence at both national and international scales, human rights education initiatives, as well as the investigation and monitoring of Government actions. Furthermore, these NGOs actively collaborated with certain state entities responsible for safeguarding human rights by submitting detailed reports and lodging formal complaints. Gradually, NGOs also formed closer ties with grassroots movements (Bolívar y Cubas, 2009, p. 17).

In the 1990s, new organisations emerged nationwide, and NGOs began collaborating in networks, expanding the space for dialogue among human rights, justice, and social development organisations (Bolívar y Cubas, 2009, p. 19). Subsequently, increased integration and unified criteria led to the formation of Foro por la Vida (Forum for Life) on January 23, 1997, initially comprising ten organisations. This platform crafted the first "Agenda por la Vida," (The Agenda) presented on February 27 of the same year, which contained demands and recommendations for public authorities regarding different rights. The "Agenda" became a vital instrument for monitoring national-level human rights policies (Bolívar y Cubas, 2009, p. 19).

As a result, the human rights movement solidified its position as a legitimate interlocutor with public authorities and was invited to participate in the development of the

first National Human Rights Plan⁹ (Bolívar y Cubas, 2009, p. 19). It also played a role in reforming the judicial system and in the drafting of legislative projects related to peace justice and the organic code of criminal procedure. However, as human rights organisations began using the justice system more frequently, they faced practical challenges such as delays, judicial instability, external influences on court rulings, budget constraints, and undertrained police forces (Bolívar and Cubas, 2009, p. 22). The human rights movement understood the need of addressing these concerns in the mid 1990s. Henceforth, they started proposing reforms in the procedural, judicial, and police domains (Keane, 2012, p. 6).

Bolívar and Cubas (2009, p. 22) signal the El Amparo Massacre in October 1988 as a significant turning point, leading to Venezuela being taken to the Inter-American Court of Human Rights. Venezuela's responsibility was eventually acknowledged, which required them to provide reparations to the victims and their families. As a result, similar actions in the 1990s multiplied before international bodies, addressing economic, social, and cultural rights. Members of Venezuelan human rights NGOs actively started participating in IACHR hearings and utilising various UN mechanisms to monitor Venezuela's human rights compliance. As these international accountability systems evolved, there were also calls to bolster local governance and participation mechanisms. Despite these efforts, the Government's lack of responsiveness led to increased anti-government sentiments and a growing disillusionment with the political system (Bolívar y Cubas, 2009, p. 22).

B) The New Left of Hugo Chávez

The left and centre-left policies that emerged to stand against neoliberalism, brought civil society back under the control and administration of the state in the name of a “populist” political agenda. In the 1990s, as many Latin American citizens, Venezuelans witnessed a change in governmental systems and dynamics, which resulted in a significant shift in their perception of civil society organisations. These groups began to be seen as instruments of neoliberalism. Consequently, they were considered infiltrators, rejected, and were compelled to leave because of the potential harm they might bring to the Venezuelan population. As Olivera (2007: 34) puts it, these new populist movements had “a strong reliance on mobilising the masses against internal and external enemies, as well as on policies of income

⁹ see the text of the National Plan of Human Rights. Available in Spanish.
<https://www.ohchr.org/sites/default/files/Documents/Issues/Education/Training/actions-plans/Excerpts/Venezuela.pdf>

redistribution through social programs”. Henceforth, a greater level of state control was justified for the greater good of the people and the country. CSOs, including NGOs, viewed as a foreign and outside force born within the neoliberalist globalisation, were deprecated.

In the context of Venezuela, Hugo Chávez’s Bolivarian Revolution “redefined the regional political narrative, introducing new language of citizenship, rights, participation, cultural pride and sovereignty.” (Buxton, 2009, p. 57 as cited in Keane, 2012, p. 10). He reshaped the Venezuelan left and the space for civil society in the country, gradually transitioning the regime from a moderate social democracy to a more left-centre approach, and finally, to the “New Left”¹⁰ or what he referred to as the “Socialism of the 21st-century”. Throughout this evolution, he consistently emphasised policies aimed at improving the living conditions of the Venezuelan people. One of these policies was the “Plan Bolívar” whereby the Venezuelan military was tasked with the construction and repair of community infrastructure throughout the country, such as school buildings (Buxton, 2009: 62 as cited in Keane, 2012, p. 12). From the onset of his leftist policies, Chávez was determined to achieve goals with national services and resources instead of international aid. This would limit the activities that the NGOs had fulfilled up until that point since they would not have the resources or the social space to do so. The President also took a pro-poor stance on economic and social policy, as well as anti-neoliberal and anti-US ideals (Motta, 2009, p. 79). Another example of the new policies was the “Consejos Comunales” implemented in 2005 (Motta, 2009, p. 84). These were community organisations created to advance participatory democracy. One of their purposes was to improve the quality of life through the self-management of community services (García Marco, 2017). Henceforth, although Councils like these might initially suggest opportunities for active citizen engagement and advocacy for specific interests, they concealed a strategy to solidify state control over civil society in both urban and rural communities (Motta, 2009, p. 84). Communal banks were installed in each neighbourhood to receive funding from the Government and save profits made by council programs (Motta, 2009, p.p 84-85) The civil society tailored by Hugo Chávez eliminated the space for private NGOs and CSOs; Venezuela shifted towards a more structured civil society controlled and maintained predominantly by the State.

¹⁰ See Ellner, S. (2012). The Distinguishing Features of Latin America’s New Left in Power: The Chávez, Morales, and Correa Governments. *Latin American Perspectives*, 39(1), 96-114. Retrieved from: <https://doi.org/10.1177/0094582X11425333>

As Buxton (2009, p. 65) puts it, this led to a reinforcement of traditional power relations that favoured the elite. The Venezuelan State was effectively a powerful institution capable of controlling society. Nationally, Chávez consolidated his power by taking control of the National Assembly, PDVSA¹¹ (Petróleos de Venezuela) management, the judiciary, the military and the national electoral council.

As stated before “Resistance against neoliberalism (...) fuelled the rise of left-wing governments and movements across Latin America” (Ballvé and Prashad, 2006, p. 60 as cited in Keane, 2009, p. 14), and the intrusion of the U.S. further engrained this characteristic aversion. The Government, therefore, had an excuse to implement policies to drive independent NGOs and CSOs out of the country. The 2010 “Ley de Defensa de la Soberanía Política y Autodeterminación Nacional” (Law on the Protection of Political sovereignty and National Self-Determination), was especially relevant as it aimed at protecting political sovereignty and national self-determination from foreign interference by limiting the possibility of NGOs and CSOs of receiving foreign/international financial support (Keane, 2009, p. 14). Thereon, NGOs were obligated to register with the Government, which, from the outset, restricted the activities of organisations that lacked government support.

Keane (2012, p.p 14-19) presented three interviews with representatives from different NGOs in Venezuela during Chavez’s last years. She shed light on the challenges faced by these organisations in their efforts to affect change in the public sphere. These difficulties were exacerbated by the implementation of new laws and policies. According to the interviewees, the safety of volunteers and employees was seriously compromised due to the presence of government-associated “colectivos”. These individuals risked physical harm, torture, and even death while carrying out their work. Businesses feared retaliation and were decreasingly supporting them. The space and channels for cooperation and communication closed, and this lowered the level of public support and participation in civil society. The Government created organisations that established a model for “correct forms of citizen participation” (Keane, 2012, p. 16) contributing to silencing “the voices of the most outspoken individuals within civil society” (Keane, 2012, p. 18). This enabled and perpetuated the absence of a checks and balances system among government branches and institutions responsible for safeguarding human rights.

¹¹ Venezuelan state-owned oil and natural gas company

In sum, with the emergence of Chávez and the New Left, priority was given to a constructive dialogue with human rights organisations, as reflected in the process before the Constituent National Assembly, which incorporated several of the proposals made by the Foro Por La Vida “Agenda” into the 1999 Constitution. However, it then resulted in an era of increased restrictions and regulations, as well as policies to confront and publicly discredit human rights defenders and their organisations. The attacks started as smear campaigns by the State on human rights defenders (IACHR, 2007). NGOs were henceforth, perceived as outsiders trying to bring in damaging ideas and impactful resources. The concerns about the Government control over these organisations being too limited, led to stringent policies regulating the space available for NGOs and CSOs in Venezuela.

C) Venezuelan CSOs: Current Status

Since Nicolás Maduro assumed office in 2013 following the death of Hugo Chávez, the situation of NGOs in Venezuela began to witness an increasing number of challenges. Maduro's presidency marked a period of government control and consolidation of power. New laws and regulations were introduced, imposing stricter rules on NGOs. These measures included requirements for NGOs to register with the government, provide detailed financial information, and adhere to government-set guidelines. The political climate grew increasingly polarised, making it difficult for NGOs to maintain their independence and do their work effectively.

Furthermore, the economic crisis led to resource constraints. The sentiment among NGOs was expressed by Professor Fernando Fernández (2013) that declared:

Venezuelan human rights NGOs (...) are at risk: they can be dissolved because of a false or erroneous accusation, while local criminal and terrorist gangs cannot be dismantled legally, due to the (...) rules and omissions of the Organic Law against Organised Crime and Terrorist Financing.

Hence, it appeared that CSOs were at a higher risk of being criminalised than actual violent paramilitary groups. In the face of these challenges, NGOs in Venezuela did not cease to report government actions that violated human rights. They dedicated their efforts to protesting, gathering information, writing reports, and supporting victims. Despite the risk to their own safety as they were considered enemies of the State, they persisted in speaking out,

and condemning the use of force by state security agencies during demonstrations¹². These organisations, as expressed by the OVCS (2017), demanded that the Government guaranteed the rights to life, integrity, freedom, peaceful demonstration, property and freedom of thought, as established in the Constitution of the Bolivarian Republic of Venezuela (1999). They also requested the authorities to ensure that the security forces perform adequately. Already in 2014, a group of NGOs declared. “We categorically reject the use of force in some demonstrations by state security agencies, which have overstepped the bounds and have had irreparable consequences” (Voz de América, 2014). These ongoing statements showed that CSOs consistently and openly expressed their concerns about the state of the country and the risks they were facing.

These functions were intensified during the street protests of 2014 and 2017, when NGOs played a prominent role as sources of information and vocal critics, exposing human rights violations committed by security forces and authorities (Promedehum, 2023, p. 2). This, however, did not stop the Government’s attitude towards the organisations or the repressive responses to their advocacy efforts. The OHCHR (2018, p. 4) declared that CSOs confronted growing difficulties to function, and human rights defenders were victims of discrediting campaigns, harassment, abuse, vigilance, and arbitrary detentions and even torture just because they were doing their legitimate activities.

NGOs such as Provea (2017b, p. 6), in the context of the protests in 2017, believed that they should compensate the absence of democracy by playing a political role, coordinating with as many actors as possible for the reestablishment of democratic institutions. They criticised the way sectors of the human rights movement had adhered to their traditional roles in defending human rights, ultimately rendering them passive spectators of the situation. Nevertheless, they did acknowledge and appreciate the courage displayed by certain smaller organisations.

Later on, in 2019 the Venezuelan government denied the NGOs concerns. It claimed to respect the right to freedom of assembly and association, as provided for in the domestic

¹² see CEPAZ (2017) 71 ONG exigen desactivación inmediata del Plan Zamora y fin de la actuación de “Colectivos” armados contra manifestantes. Retrieved from: <https://cepaz.org/noticias/35-ongs-rechazan-la-usurpacion-de-funciones-y-abuso-de-poder-del-poder-judicial-en-venezuela/>. <https://cepaz.org/noticias/71-ong-exigen-desactivacion-inmediata-del-plan-zamora-y-fin-de-la-actuacion-de-colectivos-armados-contra-manifestantes/>

legal system (Mision Permanente de la República Bolivariana de Venezuela ante la ONU, 2019, p. 2). It further stated that there was no official instruction to prohibit the registration of civil society organisations (Provea, 2019). However, in October 2020, the Maduro Government issued a resolution requiring international NGOs seeking to operate within Venezuela to register “activities to be carried out in the territory of the Bolivarian Republic of Venezuela,” (WOLA, 2021) and their intentions. Shortly thereafter, the Government’s Superintendency of Venezuelan Banking Institutions (Sudeban) announced that it would require all financial institutions in Venezuela to monitor all business and financial operations carried out by non-profit organisations in the country (HRW, 2021). Two years after, in 2022, CSOs kept reporting violations such as persecution, harassment by police forces, digital attacks, threats, discrimination, limitations on access to the judicial system and hospitals, physical violence, and death threats (Bureau of Democracy, Human Rights, and Labor, 2022).

The “Ley de Fiscalización, Regularización, Actuación y Financiamiento de las Organizaciones No Gubernamentales y Afines” (“Law on Control, Regularization, Operations and Financing of Non-Governmental and Related Organisation”) was adopted by the National Assembly at the first reading on 24 January 2023, with concerns raised by NGOs and other social actors about the potential damage it could cause. The ruling, popularly named “Anti-society Law” (Civilis Derechos Humanos, 2023), denies access to the support offered by the international community to the capacities of protection, assistance and development of the population in economic, social, civil and humanitarian matters. As stated by WOLA (2022) these elements could alleviate and help overcome the massive and multiple deprivations that the country is experiencing but instead the intention is to punish those who do not submit to this interpretation of international cooperation. UN experts (Civilis Derechos Humanos, 2023) have also raised their concerns about this Law, which, they believe “If passed (...) could affect the exercise of human rights, primarily the right to freedom of association, as well as the rights of individuals who participate in and benefit from the activities of organisations”.

The report by the NGO Promedehum (2023) showed that administrative, legislative, and judicial measures have created an environment of intimidation and reprisals, leading to arbitrary detentions and general discrediting by state authorities. The Government has developed, by using official media outlets, restrictions to the exercise of the right to defend human rights in Venezuela. The State has enabled abuses of authority and violent actions against peaceful defenders and activists, with the use of lethal firearms in protests since 2014. This has resulted in a hostile and unsafe environment for those involved in legitimate defence

work (Promedehum, 2023, p. 3). The NGO has also stated that civil society actors, including opposition parties, NGOs, and grassroots movements, actively and consistently oppose the regime's policies and actions, pushing for democratic change (Promedehum, 2023, p. 2). Therefore, this persecution clearly arises from the critical role played by civil society in Venezuela in confronting the authoritarian rule.

Some figures reveal that, in regard to freedom of association in Venezuela, only 34% of civil society organisations in the country believe it is possible to effectively exercise the freedom of association (Promedehum, 2023, p. 4). In 2022, Venezuelan NGOs experienced a 73.6% decline in the exercise of freedom of expression, association, and peaceful assembly. Currently, 28.3% of organisations operating in Venezuela are not properly registered due to limitations, and 54.7% of the ones that manage to register have encountered obstacles in the primary registration process with the Autonomous Service of Registries and Notaries (SAREN) (Promedehum, 2023).

In view of this data, on 31 august 2023, an extensive group of organisations published a communiqué in which they declared the following:

We, the undersigned organizations, reject the increased activity and further advancement of the repressive system of the Venezuelan State in the current pre-electoral context. This pattern of persecution has materialized through the undermining of the exercise of fundamental rights, such as political participation, freedom of expression and the right of association, maintaining the long-standing restriction of civic and democratic space in the country (WOLA, 2023).

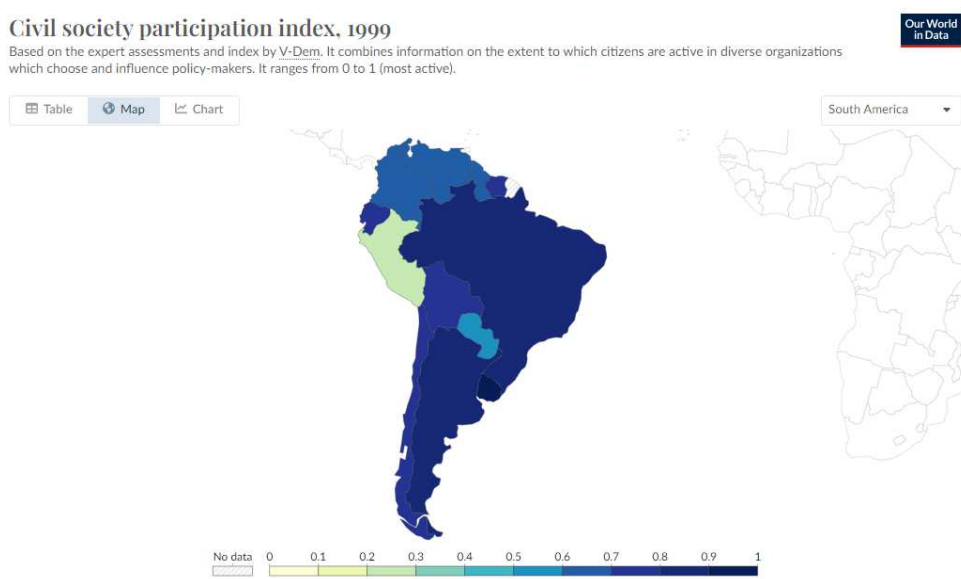
On September 2023, the fourth report of the IFFM was presented to the UN Human Rights Council. On this occasion, the report focused on the State apparatus, its repression mechanisms, and restrictions on the civic and democratic space. It identified the presence of a repression phenomenon that combines the "hardline" approach with other "softer" tactics to suppress dissenting voices (Human Rights Council, 2023, p. 3). This shows the consistent retaliation against civil society through aggression and criminalisation for exercising their rights to freedom of expression and participation in public affairs.

The worrying situation of human rights defenders in Venezuela was also analysed in HRW article: "Venezuela Events of 2022" (2023). This showed that Venezuelan authorities harass and persecute human rights defenders and civil society organizations addressing the

human rights and humanitarian emergencies. HRW (2023) also declared that several organisations and the IACHR expressed concerns regarding the international cooperation bill introduced in the National Assembly in May since it could enable arbitrary cancelations of organisations' legal status for promoting or participating in activities contrary to government interests.

The decreasing influence NGOs hold in shaping policymaking highlights the constraints imposed by the Venezuelan government, underlining the regime's acknowledgment of these organisations' capacity to shape public perceptions and opinions. This context is portrayed in the Civil Society participation Index from “Our World in Data” (1999, 2009, 2019, 2022). Since Hugo Chávez took office in 1999, until 2022 – with a slight increase from 2019 until 2022 – there has been a noticeable decline in the influence of these organisations on policymakers. As a result, while they continue to fulfil their other functions, the data clearly reflects the difficulties they face due to the increasing restrictions placed on civic space.

The figures below are a depiction of this tendency.

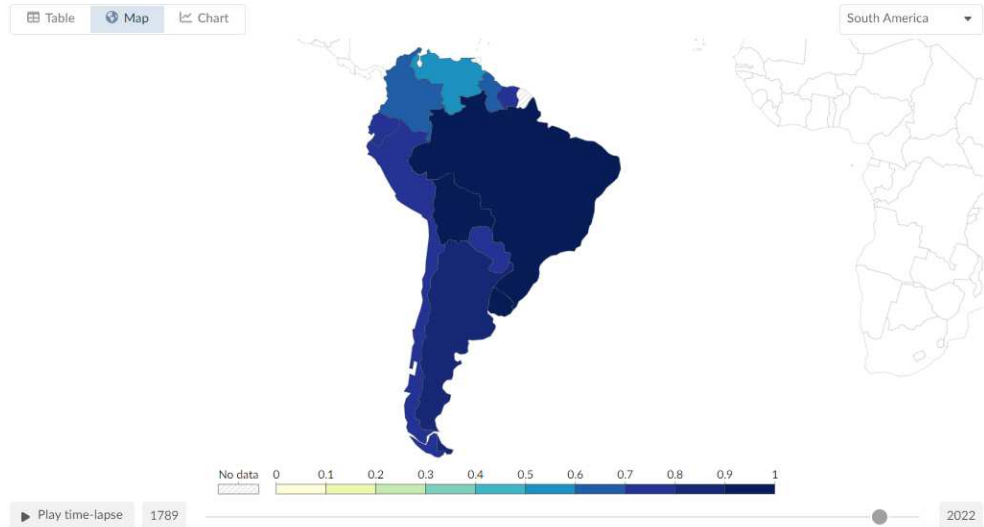


Civil society participation index, 2009

Based on the expert assessments and index by V-Dem. It combines information on the extent to which citizens are active in diverse organizations which choose and influence policy-makers. It ranges from 0 to 1 (most active).

Our World
in Data

Table Map Chart

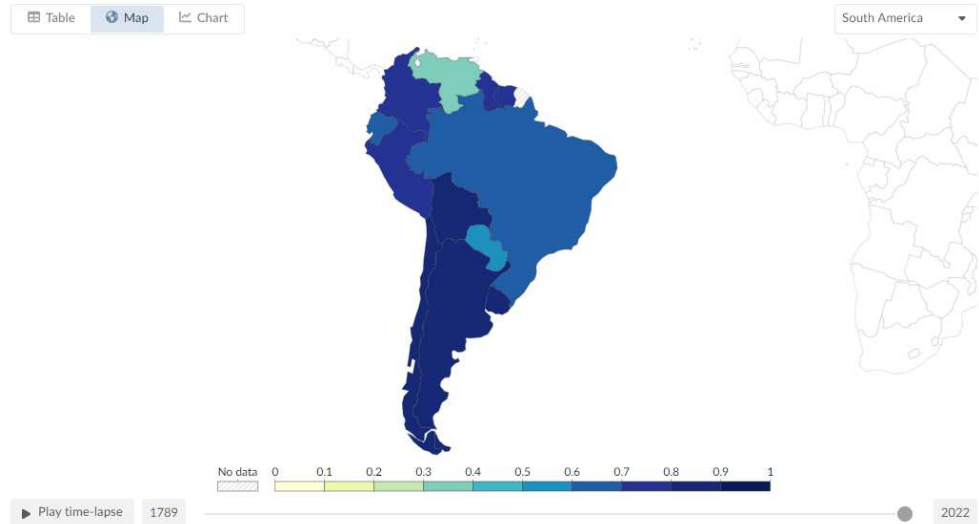


Civil society participation index, 2019

Based on the expert assessments and index by V-Dem. It combines information on the extent to which citizens are active in diverse organizations which choose and influence policy-makers. It ranges from 0 to 1 (most active).

Our World
in Data

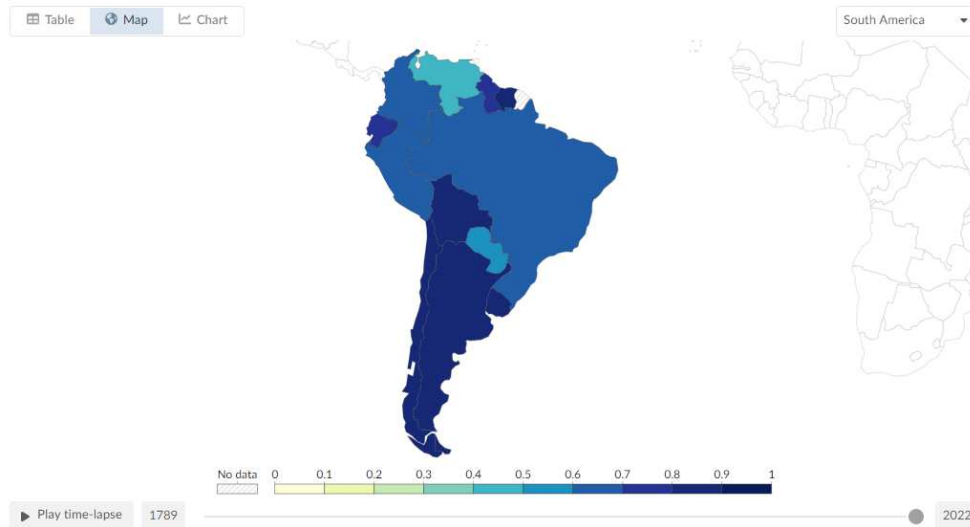
Table Map Chart



Civil society participation index, 2022

Based on the expert assessments and index by V-Dem. It combines information on the extent to which citizens are active in diverse organizations which choose and influence policy-makers. It ranges from 0 to 1 (most active).

Our World
in Data



Finally, if set against the theoretical framework presented in previous sections that evaluates the strength of CSOs based on their cohesiveness, embeddedness, and environment, some conclusions can be drawn. Civil society actors in Venezuela have mobilised for protests, elections, and advocacy campaigns, indicating a high level of cohesiveness. The embeddedness or the extent of civil society organisations' presence in Venezuela varies. While some NGOs enjoy substantial support and legitimacy among specific segments of the population, Maduro's regime's efforts to delegitimise and suppress them have had a notable impact on their stability and presence. Finally, the strength of CSOs is closely linked to the legal and institutional environment in which they operate. In the case of Venezuela, the country exhibits characteristics of an authoritarian regime, marked by restrictions on freedom of expression, arbitrary arrests of activists, the weakening of democratic institutions, corruption, a lack of checks and balances, and a concentration of power in the leadership (Chacin Fuenmayor, 2019: 88). Under Nicolás Maduro's regime, there is significant pressure on civil society organisations, resulting in a lower level of strength for these entities. Nevertheless, these CSOs have sought support from international organisations, foreign governments, and diaspora communities. This external support has been instrumental in providing resources and legitimacy to certain organisations and in ultimately strengthening their capacities.

D) Conclusion

The history of civil society movements in Venezuela has come with challenges. The first consolidated groups can be traced back to the 1930s and 1940s, when various entities,

including political parties, student organisations, trade unions, and the Catholic Church, among others aimed to counter the abuses of dictatorial regimes. A pivotal moment for CSOs came in 1958 when Venezuela transitioned to a democratic regime and recognised human rights in its Constitution. Subsequently, groups emerged, often facing government discredit. From the 1970s, civil society gained prominence, with a shift towards human rights advocacy and solidarity actions. This broader international context attracted individuals previously less interested in human rights issues, broadening participation across different sectors.

CSOs and NGOs have played crucial roles in Venezuela's crisis, particularly in relation to the Court's engagement in the country. Although they have historically focused on the social development of the population, they have also addressed immediate needs and adapted to changing circumstances. Henceforth, these organisations have documented cases of victims of crimes under the jurisdiction of the ICC, fought against misinformation, and maintained transparent communication with the different sections of the Court. They have also condemned acts of intimidation and reprisals against those involved with the ICC and have raised awareness about the importance of truth, justice, reparation, and guarantees of non-repetition for victims of crimes against humanity and human rights violations in Venezuela. Therefore, despite facing challenges, these organisations continue to contribute to the protection and welfare of victims and advocating for accountability.

Chapter 6: Venezuela's Case Before the International Criminal Court

The primary objectives of this analysis are to provide substantive support for the activities that are being carried out by civil society organisations and to assess the legitimacy and significance of the ICC's actions in Venezuela. For this purpose, I will rely on multiple sources, including reports from NGOs, findings from the UN's IFFM, the OAS and preliminary examinations conducted by the ICC Office of the Prosecutor (OTP).

Venezuela's relationship with the ICC started with the ratification of the Rome Statute on June 7, 2000, thereby granting the ICC jurisdiction over crimes committed on Venezuelan territory or by its nationals since July 1, 2002. The ICC, therefore, has been closely monitoring the situation in Venezuela since its inception. Initially, concerns regarding the country's situation, particularly within the American and Latin American context, were evidenced by the series of reports by the OAS and the creation of groups such as Grupo de Lima¹³ (Cárdenas

¹³ group created in 2017 by several American States to establish initiatives to safeguard democratic institutions in the Venezuela.

Aravena, 2018: 2). In the early stages, the ICC conducted an initial preliminary examination that continued until February 2006. This examination was eventually closed due to insufficient grounds to proceed with a full-scale investigation (International Criminal Court Project, n.d.).

In contrast, in February 2018, after receiving information from various sources about crimes allegedly being committed in Venezuela, the former ICC Prosecutor Fatou Bensouda, announced that her office would open a new preliminary examination on Venezuela (Dib and Woo, 2023). The aim was to analyse facts committed since April 2017, which included excessive use of force in the context of demonstrations. On 3 November 2021, Karim Khan, the current ICC Prosecutor announced that the preliminary examination had been concluded with a decision to proceed with investigations (Dib and Woo, 2023).

In February 2020, the ICC initiated another preliminary examination, Venezuela II, in response to a request from the Government of Venezuela. This examination aims to investigate alleged crimes against humanity resulting from the imposition of unilateral coercive sanctions by the U.S. Government since at least 2014 (The Office of the Prosecutor, 2020, p. 24). However, for the purposes of this analysis, only the first examination (Venezuela I) will be considered.

A) The Preliminary Examination

As introduced above, in February 2018 the ICC prosecutor, Fatou Bensouda, announced that her office was opening a preliminary examination to analyse alleged crimes committed in Venezuela since April 2017. The Prosecutor focused on crimes related to protests and political unrest. She evaluated allegations of excessive force against demonstrators and the detention of thousands of actual or perceived opponents, including cases in which they declared to have experienced serious abuse or ill-treatment in detention. The Office of The Prosecutor also declared to have received reports about some protesters resorting to violence, which resulted in death or injury for some members of the security forces (HRW, 2018).

The first step for the ICC was to determine, through its OTP, whether there was sufficient evidence of serious crimes within the jurisdiction of the Court. At this stage it assessed whether genuine national proceedings existed, as well as the likelihood that opening an in-depth investigation would serve the interests of justice and the victims involved (ICC, n.d.a).

Different national and international NGOs and CSOs declared their support for the ICC's decision. For instance, UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein declared: "Given that the State appears neither able nor willing to prosecute serious human rights violations, there is also a strong case to be made for deeper involvement by the International Criminal Court," (OHCHR, 2018b). The OAS had presented a report in May 2018 in which international experts declared to have identified a pattern of abuses against civil population and, thus, invited State Parties to the Rome Statute to refer the situation to the ICC's OTP (OEA, 2018).

Along these lines, the Grupo de Lima (Cancillería. Grupo de Lima, 2017), expressed in its statement in August 2017, its serious concern about the humanitarian crisis threatening the country and its condemnation of the government for not allowing the entry of food and medicines in support of the Venezuelan people. It also called the UN to take a more active role in addressing the Venezuelan crisis.

Following the evidence and declarations, on September 27, 2018, a group of six American states parties to the Rome Statute - Argentina, Canada, Chile, Colombia, Paraguay, and Peru - jointly referred the situation to the ICC Prosecutor Fatou Bensouda. This was the first referral submitted by a group of States Parties concerning a situation on the territory of another State Party with the provisions of Article 14 of the Statute as the legal basis (ICC, 2018a). Prior to this, as briefly noted above, the ICC had received information about Venezuela in 2006, which included twelve complaints against the Government and opposition forces. However, at that time, there was insufficient evidence to meet the criteria for a widespread or systematic attack against civilians. The group of American countries called on the ICC Prosecutor to investigate "the crimes against humanity that (...) include: (i) murder; (ii) imprisonment or other severe deprivation of physical liberty; (iii) torture; (iv) rape; (v) the persecution of an identifiable group or collectivity on political grounds; and (vi) the enforced disappearance of persons" (ICC, 2018b).

The six states parties justified their referral by highlighting reports and declarations by different international institutions and organisations that had been working with local and national organisations to recover information and document the actions. Among these, The Inter-American Commission on Human Rights (2017, p. 29), which recognised "the weakness in democratic institutions and the progressive deterioration of the human rights situation in Venezuela, which have deepened and intensified significantly since 2015 and alarmingly in

2017”. The states further requested that the examination be conducted from the events that occurred in 2014. And even though the Office of the Prosecutor had decided to circumscribe the preliminary examination to the events that occurred since April 2017, the OTP finally attached the temporal criteria of “since 12/02/2014” to the situation in its written submission of 16/12/2021 (ICC Pre-trial Chamber, 2023, p. 54).

On September 28, the Presidency assigned the Situation in the Bolivarian Republic of Venezuela to Pre-Trial Chamber I. Later, on 19 February 2020, the Presidency reassigned the Situation in the Bolivarian Republic of Venezuela I to Pre-Trial Chamber III.

During the preliminary examination the ICC received information from various sources, including states, NGOs, individuals, or other international bodies related to alleged crimes within the Court's jurisdiction. In this process the ICC was also engaging with various stakeholders, including the Government of the country in question, affected communities, NGOs, and other relevant actors. With this information the OTP examined whether the alleged crimes fell under the Court's jurisdiction (genocide, crimes against humanity, war crimes, and the crime of aggression), and whether the situation was admissible to the ICC (ICC, n.d.). This admissibility assessment includes evaluating the complementarity and gravity of the events. The former involved requesting the Venezuelan authorities to provide information from the competent national authorities on the nature, scope and progress of domestic proceedings corresponding to the Office’s subject-matter findings (ICC, n.d.a). These would help assess whether there was an ongoing national investigation.

In this regard, the Report on Preliminary Examination Activities of 2020 (The Office of the Prosecutor, 2020, p. 50) declared that the ICC had found reasonable basis to believe that crimes within the jurisdiction of the Court had been committed in Venezuela since at least April 2017. Civilian authorities, members of the armed forces, and pro-government individuals were identified as those responsible for the commission of the crimes against humanity of imprisonment or other severe deprivation of physical liberty, torture, rape and/or other forms of sexual violence; and persecution against any identifiable group or collectivity on political grounds, all in violation of the Rome Statute. It further stated (The Office of the Prosecutor, 2020, p. 51) that the members of the security forces allegedly responsible for the commission of these crimes included:

the Bolivarian National Police (Policía Nacional Bolivariana or “PNB”), the Bolivarian National Intelligence Service (Servicio Bolivariano de Inteligencia Nacional or

“SEBIN”), the Directorate General of Military Counterintelligence (Dirección General de Contrainteligencia Militar or “DGCIM”), the Special Action Forces (Fuerza de Acciones Especiales or “FAES”), the Scientific, Penal and Criminal Investigation Corps (Cuerpo de Investigaciones Científicas, Penales y Criminalísticas or “CICPC”), the Bolivarian National Guard (Guardia Nacional Bolivariana or “GNB”), the National Anti-Extortion and Kidnapping Command (Comando Nacional Antiextorción y Secuestro or “CONAS”), and certain other units of the Bolivarian National Armed Forces (Fuerza Armada Nacional Bolivariana or “FANB”).

Besides, the OTP also recognised other pro-government individuals that participated in the repression of actual opponents of the Government of Venezuela or people perceived as such, because they acted together with members of the security forces (The Office of the Prosecutor, 2020, p. 51).

The conclusion of this preliminary examination led to a clear basis to proceed. So, in December 2020 the ICC (ICC, n.d.b) declared that, based on the information available, there were reasonable grounds to believe that crimes against humanity were committed in the Bolivarian Republic of Venezuela.

B) The Investigation

On November 3, 2021, Prosecutor Karim Khan officially announced the opening of an investigation into crimes against humanity in Venezuela (ICC, n.d.b). These allegations were based on systematic human rights violations during the April to July 2017 demonstrations, resulting in numerous deaths and detentions.

An agreement was reached between Venezuela and the OTP to facilitate genuine criminal investigations in Venezuela and to foster means and mechanisms to support and promote genuine national proceedings in the country. Both parties also committed to establish mechanisms that improve cooperation among the involved ones to facilitate the fulfilment of the Prosecutor's mandate in the Venezuelan territory. In this regard, Karim Khan declared in a Press release that:

The Government of Venezuela was of the view that the conditions for an investigation have not been met. Despite this, I consider it to their great credit that they have committed to co-operate with my Office as we move to this new stage (ICC, 2021).

However, soon after, on April 2022, the Venezuelan government subsequently requested the ICC Prosecutor to defer the process, due to already ongoing domestic investigations and invoking Article 18(2)¹⁴ of the Rome Statute (1998). As a result, the process was temporarily paused pending a decision by the judges regarding the resumption of investigations.

On 1 November 2022, the Prosecutor filed an application seeking authorisation to resume the investigation. This request was followed by an order by the Pre-Trial Chamber directed to the Victims and Participation and Reparations Section (VPRS) to seek the views and concerns of victims on the request to resume the investigation. The VPRS received 8900 testimonies and published a report on the matter. This particular event held significant importance. As exposed by WOLA (Dib and Woo, 2023), it allowed for direct involvement of the victims in the process. It was also relevant because of the Venezuelan Government's response. The national authorities claimed that the ICC proceedings were politically motivated and lacked impartiality. They also said irregularities and violations of due process had been committed by the ICC, including the defencelessness to which the Venezuelan state had been subjected throughout the proceedings, as well as the links of the ICC Office of the Prosecutor with NGOs that had provided information against the national authorities in this case (Gobierno de la República Bolivariana de Venezuela, 2023a). The Government, henceforth, asked to respond to the report, however the ICC denied this request in May due to the “broad nature” (ICC Pre-trial Chamber, 2023) of the arguments presented.

On 10 June 2023, the ICC Prosecutor completed his third official visit to the Bolivarian Republic of Venezuela. The result of the visit was a Memorandum of Understanding (MoU) with President Nicolás Maduro, establishing an in-country office of the OTP in Venezuela (Dib and Woo, 2023). This MoU was concluded within the framework of the first Memorandum that Prosecutor Karim Khan had signed with President Maduro on 3 November 2021 and followed the agreement upon the second visit to Venezuela in March 2022 to establish the office in Caracas. The aim of this MoU was to “increase the scale and impact” (ICC, 2023) of the field presence of the Court in Venezuela, identifying and supporting meaningful efforts to improve national justice initiatives. The OTP, through the local office,

¹⁴ Article 18 (2) Within one month of receipt of that notification, a State may inform the Court that it is investigating or has investigated its nationals or others within its jurisdiction with respect to criminal acts which may constitute crimes referred to in article 5 and which relate to the information provided in the notification to States. At the request of that State, the Prosecutor shall defer to the State's investigation of those persons unless the Pre-Trial Chamber, on the application of the Prosecutor, decides to authorize the investigation.

would also provide advice and assistance to Venezuelan authorities by assisting legislative developments in the field of justice and sharing of knowledge and best practices with national authorities (Dib and Woo, 2023).

In this context, on June 27, 2023, the Pre-Trial Chamber granted permission to reinstate the investigation. This authorisation was afforded because the domestic level investigations did not sufficiently reflect the scope of the ICC Prosecutor's investigation, and the investigations were insufficient in matters of discrimination and crimes of a sexual nature (ICC Pre-trial Chamber I, 2023b, p. 44). Furthermore, the domestic investigations were opened between 2021 and 2022, but the punishable acts were committed in 2017. Among the investigations that were opened before 2021, the majority had a significant period of inactivity with no identification of a possible perpetrator (Pre-trial Chamber I, 2023b, p. 31). In this regard, the Venezuelan State admitted that their internal investigations "do not relate to crimes and facts that could support charges of crimes against humanity domestically", their reason being "because these have not occurred in its territory" (Pre-trial Chamber I, 2023b, p. 34). Admitting, thus, that the Venezuelan authorities do not believe the allegations of crimes against humanity, so it would not be investigating them. The last element that the ICC used to justify the restart of the investigations was that the domestic proceedings had focused on the direct perpetrators or material authors of the acts, without any investigation into the chain of command (Pre-trial Chamber I, 2023b, p. 37).

Venezuela appealed this decision on July 3, requesting an extension to formalize the appeal, which was granted until August 14, 2023 (Dib and Woo, 2023). Nevertheless, since the Prosecutor's decision to resume investigations on July 21, 2023, the Appeals Chamber considered it appropriate for the Office of Public Counsel for Victims (OPCV) to submit written observations regarding the general interests of victims, following Venezuela's submission of the appeal brief (ICC Appeals Chamber, 2023a). This signals another landmark in the situation Venezuela I.

C) The Investigation: Latest Developments

Over the past few weeks, there have been significant developments in the situation Venezuela I, which is a positive and encouraging shift following the initial delays in the preliminary examination. The ongoing involvement of the victims in the proceedings highlights the consistent support and assistance provided to them by civil society organisations during the legal process. On 28 July, 2 August and 3 August 2023, three groups of victims

filed before the Appeals Chamber petitions to present their views and concerns on the Government of Venezuela's appeal (ICC Appeals Chamber, 2023b, p. 3). Additionally, on 7 August 2023, the OAS Panel of Independent International Experts on the Possible Commission of Crimes against Humanity in Venezuela filed a request for leave to submit amicus curiae briefs to the Appeals Chamber to offer their opinion, expertise and information regarding the situation (Provea, 2023b).

On 24 August, the VPRS was “instructed to collect and transmit to the Appeals Chamber representations from any interested victim and victims' group and prepare and submit a report thereon by Tuesday, 17 October 2023”. (ICC Appeals Chamber, 2023b, p. 3)

On 13 September 2023, Office of the Public Counsel of the Victims (OPCV), that provides support and assistance to victims and legal representatives of victims, submitted observations on behalf of victims on the appeal filed by the Government of Venezuela against the decision authorising the reopening of the investigation (ICC Appeals Chamber, 2023c).

A month later, on 12 October 2023, the Appeals Chamber, scheduled a hearing on the appeal of the Republic against the Pre Trial-Chamber I’s “Decision authorising the resumption of the investigation pursuant to Article 18(2) of the Statute” of 12 October 2023 (ICC-02/18-65), for 7 and 8 November 2023 (ICC, n.d.c). The representatives of the State, the OTP and the OPCV were invited by the Appeals Chamber on 17 October 2023 to address the suggested matters to be discussed during the hearing. The parties involved in the hearing will also be able to respond to the questions asked by the Appeals Chamber. The “Directions on the conduct of the hearing”, proposed the issues to be discussed. These include the submissions on the alleged error in failing to identify cases and crimes, in failing to require the Prosecutor to provide translations of documents and in declining to rely on documents in Spanish. And finally, in requiring the State to investigate contextual elements of crimes against humanity, and in requiring the State to investigate “international crimes” (ICC, n.d.c).

D) Conclusion

The process presented above supports the actions of the CSOs in Venezuela in favour of the ICC’s involvement in the country. It also revealed the Government of Venezuela's ongoing efforts to obstruct the proceedings at every stage. Despite these challenges, NGOs and CSOs have shown their commitment to seeking justice for those behind human rights violations. They have continued their advocacy efforts, provided information, combated

misinformation in the country and have served as an invaluable link between the victims and their testimonies before the ICC. This also highlights the important space for these organisations in the proceedings and their duty to act when there is a lack of effective local systems to protect the rights of victims and their families. Henceforth, the advances in this situation are also to be attributed to their efforts.

The chapter has served as a context to the following one in which I will explore how NGOs have responded to the ICC's efforts to combat impunity in the country. At present, it remains to be seen how the examination will progress and what outcomes it will yield. However, it is undeniable that the investigation that is being conducted by the ICC into the situation in Venezuela has marked a pivotal moment in the pursuit of justice and accountability for human rights abuses in Latin America. The decision to launch a preliminary examination in Venezuela reflected the global community's commitment to addressing allegations of serious violations and crimes against humanity.

Chapter 7: The Role of NGOs in Bringing Justice to Venezuela

NGOs play a critical and multifaceted role in providing extensive support and services to the ICC. They provide guidance, representation, and support throughout legal proceedings, ensuring that victims have access to fair and effective legal representation. NGOs also work to bridge the gap between victims and the ICC, empowering individuals to assert their rights and seek accountability for the violations they have endured. In addition to direct support, NGOs play a pivotal role in documenting and preserving the testimonies of victims as evidence. This documentation serves to validate victims' experiences, amplify their voices, and hold perpetrators accountable.

Furthermore, NGOs have played a vital role in advocating for systemic change, challenging impunity, and fostering a culture of respect for human rights. They work to raise awareness about human rights abuses, mobilise support, and influence policy changes. NGOs collaborate with other organisations, civil society groups, and international bodies to advocate for stronger legal frameworks, improved protection mechanisms, and the implementation of human rights standards. Their aim, therefore, is to promote human rights, strengthen the rule of law, and ensure the protection of vulnerable populations.

The most active organisations regarding the ICC's involvement in Venezuela include FORO Penal, Acceso a la Justicia, CEPAZ, Civilis Derechos Humanos, Provea among others.

International NGOs with strong connections to local NGOs, such as Amnesty International, Human Rights Watch, WOLA, and FIDH, have also played crucial roles.

The following sections will explore four “Acts” that illustrate the reactions of NGOs to the ICC's proceedings and the interactions between the Government, NGOs, and the Court. These highlight the CSOs' efforts to create a safer space for reporting violations, conducting judicial proceedings, and prosecuting those responsible for human rights violations and crimes against humanity. Presented in chronological order, these “Acts” will help illustrate whether there has been a gradual development in the support and responses of CSOs or if the progression has remained consistent.

A) Act 1: Preliminary Examination and State Referral

The ICC started its preliminary examination in February 2018 to investigate allegations that since April 2017 government forces had “frequently used excessive force to disperse and put down demonstrations” and had mistreated opposition members while in detention (ABC news, 2018). Previously, NGOs and civil society organisations had been actively documenting government violations, supporting victims, and raising public awareness. They primarily concentrated on using existing internal mechanisms to hold those responsible accountable. These organisations criticised the Government's repressive actions and its perceived dictatorial rule (Rodríguez, 2018). They called for justice, and often promoted protests through their social media networks. For example, Inti Rodríguez from Provea (2018) claimed that “the State was responsible for all deaths in custody”, reflecting their deep concerns and their position against the government.

When the ICC initiated the preliminary examination, NGOs not only welcomed the decision, but they also saw it as an opportunity to utilise their communication channels to inform the public about the ongoing process. Acceso a la Justicia tweeted (2018a);

The Venezuela case is an opportunity for the International Criminal Court to change its criteria for assessing violations of #hr from massive to systematic, as has been the case of Maduro's government against the population.

The CSOs took a realistic approach, effectively communicating the process to the public, as seen in the straightforward language used in the following:

On the Preliminary Examination of the International Criminal Court, we must point out that no investigation has been initiated against any Venezuelan official. The Office

of the Prosecutor will analyse whether there are grounds to open an investigation (Provea, 2018).

In that same year, on September 26, 2018, as mentioned earlier, a coalition of States Parties to the Rome Statute, including Argentina, Canada, Chile, Colombia, Paraguay, and Peru, collectively referred the situation in Venezuela to the Prosecutor. They aimed to initiate an investigation into crimes dating back to February 12, 2014. The international support that followed expedited the preliminary examination and played a role in shaping the investigation's direction. Their call for an adjustment in the investigation's timeframe was welcomed by the NGOs that had been documenting potential crimes against humanity since the 2014 protests.

In relation to this, Carlos Patiño (2018), human rights lawyer from Provea, signalled:

Since the opening of a preliminary examination (...) to verify the "alleged" excessive force to disperse and repress demonstrators and the imprisonment of thousands of members of the opposition in Venezuela, interest in the Court's mechanisms and their scope was increased.

From the beginning, national organisations took steps to ensure that Venezuelans were aware of the justification and basis of the referral in the evidence presented by various international actors, including the OAS and the UN. Credit was placed in the international human rights and justice systems, and although there had been a growing involvement of international actors in addressing the crisis and seeking its resolution, Francisco José Quintana (2019) highlighted domestic NGOs' paramount role in addressing the human rights violations in the country and in supporting ICC's involvement.

It should not be ignored that it has been Venezuelan civil society, together with a sophisticated (...) human rights diplomacy, that has positioned the ICC as a relevant actor in the crisis (Quintana, 2019).

While the decision was initially welcomed and served as an inspiration for activism, a shift occurred during the period between the launch of the preliminary examination to the ICC's decision to open an investigation in December 2020. During this period, certain NGOs started to question the effectiveness of the ICC's justice process. CEPAZ published an article by Dr. Mark Kersten (2019) suggesting that the joint referral may have been politically motivated to pressure the Maduro Government rather than driven by a belief in the ICC's

investigative usefulness. Kersten (2019) further recognised the lengthy proceedings of the ICC, as well as the lack of coherency on “the timing and duration of decisions at the Court”. He also critiqued the lack of “logic to why the organs of the ICC do what they do or when they do it” (Kersten, 2019). The FIDH (2018) published the words by Rafael Uzcategui, General Coordinator of Provea:

The steps taken towards accountability for serious crimes are laudable, however these steps must also be accompanied by concrete responses to resolve Venezuela's complex humanitarian emergency. The international community, (...), must provide an adequate response to the thousands of Venezuelans fleeing the repression of the Maduro government and the economic collapse in the country.

These organisations recognised the significance of initiating the investigation, while stressing the pressing needs of the multifaceted crisis that required cooperation and resources to ensure a seamless process.

During this period, in September 2019, Alerta Venezuela was established as a collaborative effort involving organisations such as Acceso a la Justicia, Centro de Derechos Humanos de la UCAB, Civilis Derechos Humanos, Codevida, and Espacio Público. Its primary focus remains on the analysis and international advocacy of human rights in Venezuela. This was another one of the initiatives to combat disinformation and propaganda that affect international decision-making spaces (Civilis Derechos Humanos, 2019). This new conglomerate took a victim protection approach and emphasised the need to provide stronger support to victims, especially considering the potential for them to face “possible revictimisation conditions” (Civilis Derechos Humanos, 2019) during the lengthy process. Additionally, they referenced the necessity to help them prepare for the Government's response to this new setback. Alerta Venezuela (2021) urged the ICC to be transparent in their actions, guarantee international cooperation first with the victims, not the States, prioritising rapprochement, and protection.

This cautious approach demonstrated a reluctance to place excessive trust in the process and a commitment to maintaining a focus on internal efforts. NGOs and CSOs continued to publish reports, share updates about the process, and counter disinformation, showing ongoing dedication (Acceso a la Justicia, 2018a). In fact, although in some instances their engagement with the ICC's decision appeared relatively restrained, their willingness to collaborate with the Court was evidenced by the publication of a joint report by Provea and

the CICC (2019). The text was called: “*La “Política de un Estado o de una organización de cometer un ataque contra una población civil” en los crímenes de lesa humanidad según el Derecho Internacional Penal*” (the "policy of a State or an organization to commit an attack against a civilian population" in crimes against humanity under international criminal law). It aimed to provide an overview of international criminal law to help contextualize the situation in Venezuela in relation to the ICC.

Notably, two years after the decision to launch a preliminary examination, in 2020, organisations expressed optimism that the UN Fact-Finding Mission Report will bear fruit and that progress will be made in the preliminary phase of the investigation of the Venezuelan case, (Acceso a la Justicia, 2021a) thereby expecting that the ICC’s process would conclude with the prosecution of those responsible for the alleged crimes against humanity.

B) Act 2: Opening of the Investigation

On November 3, 2021, after visiting Venezuela as part of the preliminary examination, Prosecutor Khan announced that the preliminary examination had been concluded and decided to formally open an investigation.

Alí Daniels, the Director of Acceso a la Justicia (2021b), shared his pleasant surprise regarding the news, after having anticipated a lengthier process. The NGO Acceso a la Justicia also acknowledged the significance of this decision and highlighted its positive impact on the victims, since this would give them the opportunity to share their truths and participate in the process. CSOs highlighted the positive repercussion of this decision for the region, as it marked the first time the ICC had initiated a formal investigation in the Americas. The ICC’s decision not only showed the lack of human rights guarantees in Venezuela, but it also signalled the inadequacy of the measures taken by authorities to address the crimes. Despite their enthusiasm, NGOs continued to emphasise the importance of exercising caution and patience, as the process is expected to span several years (Acceso a la Justicia, 2021c).

Positive reactions were met with a counterresponse from government officials. Venezuela's Attorney General, Tarek William Saab, expressed confidence that the internal justice system would manage to prosecute without the ICC’s intervention (La Vanguardia, 2022). This was another effort by the regime to undermine the ICC's actions, making it appear as a hasty decision. The authorities also discredited the work of international organisations and CSOs in the country that had showed dedication to collaborating with the ICC in

combating impunity, while putting their freedom and their lives on the line. The organisations, thus, denounced the harassment and persecution they were subjected to. In a communication issued by CEPAZ, a group of Venezuelan social and human rights organisations, rejected

The criminalisation and smear campaign that the current Venezuelan authorities were conducting against those who have cooperated with the Office of the Prosecutor of the ICC on the preliminary examinations currently underway in the country (CEPAZ, 2021a).

They also expressed the State's consistent policy of limiting civic space within the country, especially for those cooperating with international mechanisms to safeguard human rights. The campaigns to discredit the work of the CSOs aimed to intimidate victims and discourage them from sharing their testimonies further (CEPAZ, 2021a). This would then indicate the Government's lack of genuine commitment to addressing the root causes of the crimes against humanity in Venezuela. Additionally, it reinforced the findings of the UN IFFM, which highlighted significant irregularities in the justice system.

However, far from being taken aback, the opening of the investigation gave the organisations a renewed ambition and desire to continue fighting for their cause. In fact, Provea and FIDH (Provea, 2021) expressed how the opening of an investigation provided the possibility of an impartial and independent investigation in cases of crimes against humanity. They further supported the Venezuelan State's commitment, through an agreement of understanding with the ICC Prosecutor to establish mechanisms. This would improve cooperation with the ICC and allow the adoption of all necessary measures to ensure the effective administration of justice in the national territory. Previously, laws and reforms had been criticised as inadequate and as serving the authorities' objective of creating a façade of national justice procedures. Therefore, CSOs maintaining a positive tone called for the resumption of negotiations between the political actors, whose agenda included the re-institutionalisation of the justice system. They kept hoping that a faster, nationally based solution would be found, and recognised the need for the Government to cooperate.

In order to be considered capable and willing to investigate, prosecute and punish those responsible for the crimes against humanity currently under investigation by the ICC Office of the Prosecutor, it is necessary to address important reforms in the different bodies of the justice administration system, which cannot be achieved without national

agreements and the plural participation of the country's social and political actors (Provea, 2021).

In the meantime, NGOs and CSOs also pledged to keep monitoring the administration of justice and provide their support to restore the rule of law in Venezuela (Provea, 2021). This reflects the hopeful outlook of these organisations, indicating their hope that justice was moving in the right direction.

Henceforth, the ICC's decision to formally investigate Venezuela was met with both optimism and concern. NGOs and civil society organisations welcomed it as a crucial step towards finding justice for victims. They remained committed to monitoring justice administration and restoring the rule of law. However, the Government's response, which included complaints about the speed of the examination and attempts to discredit organisations, raised doubts about its true commitment to punish those responsible for the crimes. Despite these challenges, the organisations expressed their determination to seek a national solution and emphasised the need to support strong negotiations among political actors.

C) Act 3: Invitation to Submit Observations, Views, and Concerns of Victims

As explained in the previous chapters, in April 2022, the Venezuelan Government petitioned the ICC to stop its investigation and defer the proceedings since Venezuela had been undertaking its own investigations. The State party did so by activating Article 18 (2) of the Rome Statute. As the Prosecutor did not accept the request made by the State of Venezuela, the study was suspended until the judges of the Pre-Trial Chamber had decided on the matter. In the meantime, the ICC Prosecutor requested to resume the investigation. Tamara Taraciuk Broner, Deputy Director of the Americas Division of HRW (2022) explained the reasoning behind the ICC's decisions:

Having visited Venezuela twice, Khan concluded that “patterns and policies” of alleged crimes against humanity are not being investigated by Venezuelan authorities, that domestic proceedings appear to focus on low-level security force members and mostly on crimes considered to be of “minor” gravity. Legal reforms undertaken by the Maduro government “remain either insufficient in scope or have not yet had any concrete impact on potentially relevant proceedings”.

The Pre-Trial Chamber ordered the VPRS to seek the views and concerns of victims on the Prosecutor's request to resume the investigation. The Chamber authorised the victims to present their own opinion during the investigation if a state party questions its admissibility. Amid this incident, Newspaper El Nacional (Villarreal, 2022) expressed:

Since April 2022, the Prosecutor of the International Criminal Court (ICC), Karim Khan, had remained inhibited from his action concerning the Venezuela I case, referring to crimes against humanity committed in Venezuela in 2014 and 2017.

This statement highlights the frustration and concern of the public regarding the Court's lack of action in response to the Government of Venezuela's attempts to slow down the proceedings.

In April 2023 the VPRS issued a public version of the report on the testimonies received by victims themselves and their legal representatives. This report included observations from approximately 8900 individuals, two institutions or organisations and approximately 630 families, from different social backgrounds, ages, origins, religions etc (FIDH, 2023).

As the ICC opens its avenues to victim submissions, civil society organisations and NGOs play a pivotal role in disseminating the information, ensuring that the population is aware of this opportunity, and combating the fear imposed by the Government. Acceso a la Justicia (2022) viewed said decision as a "first chance [for the victims of alleged crimes against humanity in Venezuela] to have their voices heard at the International Criminal Court". The goal is to directly engage with the population to determine whether the ongoing process should continue or whether Venezuela currently possesses the necessary conditions to pursue justice domestically (Acceso a la Justicia, 2022). Provea, further expressed how it was necessary for the investigation to move forward, since not only Venezuelan authorities showed no willingness to investigate those responsible for the crimes, but arbitrary detentions, extrajudicial executions and torture, including murder, persisted (Provea, 2023c).

These declarations evidence how in the midst of Venezuela's ongoing crisis, human rights organisations are persistently working to document and record systematic violations of various rights, including civil, political, economic, social, and cultural rights. Their aim is to support the victims, transmit the truth and shed light on these abuses both nationally and internationally. It should be noted, that on February 28, 2023, the Venezuelan Foreign Ministry

(Gobierno de la República Bolivariana de Venezuela, 2023b) had already issued a statement saying that the proceedings before the ICC were politically motivated. It mentioned that a person who had presented their testimony before the VPRS had allegedly been interviewed by the Venezuelan authorities and their testimony had been denied. However, considering the confidentiality of the process before the ICC, this seems unlikely. In fact, such an assertion contributes to creating fear and discouraging the participation of victims before the ICC. Media outlets sided with the government further declared that the ICC had been part of mediatic and geopolitical attacks against the country. The Newspaper “Últimas Noticias” published an article called “The ICC uses NGOs against Venezuela” in which it declared the following:

Through a communiqué, the Ministry affirmed that the process started by the ICC in 2018 is part of a strategy to change the regime in Venezuela propelled by the United States (González, 2023).

Thus, the Government's strategy was to respond to the VPRS report and deny the declarations therein; however, the ICC denied their request considering that:

A response to the victims was not appropriate at this stage of the proceedings, and that, in any event, the arguments presented by the State were very broad in nature and do not persuasively identify any specific aspect of the VPRS report that requires a response from Venezuela. (WOLA, 2023)

The Venezuelan Ministry of Foreign affairs replied to this on May 8 by issuing a statement in which it “welcomes the decision adopted” and declares that this decision recognizes that the VPRS report only reflects the opinions of potential victims and that, with this pronouncement, the ICC confirms that “there are no victims of crimes against humanity since such crimes have never been committed in the national territory”. (WOLA, 2023) Provea clarified that “The judges adopted the term "potential victims" to safeguard the interests of the victims, not to disregard them as the Venezuelan Government intends” (Ávila Alarcón, 2023). Henceforth, the Government's attempt to distort the Court's technical language has created confusion, fear and hopelessness among the victims, as expressed by Calixto Ávila Alarcón (2023), who further recognised the gravity of these declarations

The Government's statement violates the principle of good faith in the fulfilment of international treaties by manipulating a concept created by the judges to protect the

interests of the victims and turning it into a concept that goes against them. These statements support their conclusion that national authorities are not investigating or prosecuting alleged crimes against humanity, or in other words, that there are no genuine criminal investigations in Venezuela.

Other organisations such as Acceso a la Justicia (2023a), heavily criticised the Venezuelan's Government because it "does not seem to have the slightest intention of putting aside its obstructionist and dilatory strategy before the Court". The NGO also made clear that the country had been obstructing the process and using strategies to protract it. Its stance before the Government remained clearly negative "The Venezuelan authorities tried to turn their defeat into a kind of victory and for this purpose they emphasized that "so far, there is no victim recognized as such by the Court" (Acceso a la Justicia, 2023a).

The described process illustrates the Government's disinformation campaign, which was supported by certain segments of the media. In response to this explicit manipulation, NGOs and CSOs voiced their concerns and took proactive measures to combat it. The NGOs that worried about the regime's determination to protect its own agenda declared:

It is false that the International Criminal Court has stated that there are no victims of crimes against humanity in Venezuela. It is false that they have claimed that these crimes have not been committed in the country. (Provea, 2023d)

The response of CSOs and NGOs to victim submissions in the case of Venezuela before the ICC represents a multifaceted and dynamic effort to seek justice for victims of human rights abuses. Their work in facilitating submissions, advocacy, legal support, transitional justice, and addressing challenges contributes significantly to the broader goal of accountability and redress in the face of grave human rights violations. The Government in Venezuela has tried to discredit this work by perpetuating the notion that NGOs, CSOs and international organisations are tools of neoliberalism and western imperialism. However, this thesis analysis shows the critical role these organisations play in bridging the gap between victims and international justice mechanisms, emphasizing the importance of their continued engagement in ICC proceedings.

D) Act 4: The ICC Opens an Office in Venezuela

On June 10, 2023, ICC Prosecutor Karim Khan completed his third official visit to Venezuela. At the end of the visit, the Office of the Prosecutor signed a MoU with President

Nicolás Maduro, establishing the installation of an ICC field office in Venezuela. However, this Memorandum was not published, leading to some concerns and doubts about its contents and implications. The Agreement is presumed to allow the ICC to increase its presence in Venezuela, expanding its capacity to work with the national government and to “seek to identify and support meaningful efforts to enhance national justice initiatives within the mandate of the investigation” (Dib and Woo, 2023).

Once again, CSOs expressed their support for the ICC's decision to advance in the “Venezuela I” situation by opening a country office. They view it as a step toward the full implementation of the standards of the Rome Statute, with a focus on the rights of victims, including truth, justice, reparation, and guarantees of non-repetition. However, they also expressed their disapproval of the secrecy surrounding the visit and the lack of transparency regarding the MoU. CEPAZ (2023) stated that the Office should not provide assistance to legislative processes, such as those conducted by the National Assembly, without public notice and citizen participation.

In their consistent efforts to provide assistance to and support the work of the Court, a group of organisations proposed a list of elements for the ICC to consider when opening the office (CEPAZ, 2023). They called for the ICC to assist in creating conditions that safeguard the presence and activities of CSOs because these entities are essential collaborators in ensuring accountability for crimes against humanity. Cooperation with the United Nations High Commissioner for Human Rights and its findings was also considered indispensable, as well as due protection for victims and their right to be heard. The organisations signing this statement of advice, including Provea, Civiles Derechos Humanos, Defiende Venezuela, among others, expressed hope that the Office would encourage the Venezuelan State to conduct genuine criminal investigations and prosecutions in line with the standards of the Rome Statute (CEPAZ, 2023).

The social, political, and legal expertise that the Office's personnel could bring to the investigation by being closer to the sources was celebrated. Their ability to access documents, collaborate with civil society actors, and assess legal procedures against those responsible for the crimes would also be key elements to consider. However, concerns were raised about the possibility of a protraction of the procedure and the ability to assess the Government's willingness to collaborate. The CSOs feared that there might be a risk that the Government

will use the existence of the Caracas' Office and the application of positive complementarity to lengthen the process and hinder the investigation (CEPAZ, 2022).

In the case of Provea (2023d), the NGO also expressed disappointment with how the ICC managed the visit. They criticised the lack of information and transparency, which they believed contradicted the mission of the Prosecutor. They reminded the statement by the Office of the Prosecutor, in which a collaborative approach was promoted.

Through positive engagement across national authorities, international and regional organizations, and civil society actors, we have charted a renewed course for common action that prioritizes dialogue, promotes coherence, and places the rights and experiences of victims at its center (The Office of the Prosecutor, 2022).

This demonstrates the advocacy efforts of NGOs, which involve acknowledging the positive results achieved by the Court while also ensuring the institution remains accountable for its commitments.

During the visit of the Prosecutor in Venezuela, Tarek William Saab (2023), Prosecutor of Venezuela, mentioned that he had discussed the achievements regarding human rights protection in Venezuela with ICC Prosecutor Karim Khan. This conversation, and the way it was transmitted, seemed to indicate a change in the ICC's position, which could be misunderstood by the public as an endorsement of the State's actions. This, in fact, provoked a variety of responses. NGOs, however, fulfilled their role of preventing the spread of misleading information; Acceso a la Justicia (2023b) explained the significance of establishing an office. They emphasized the positive impact of the ICC's presence in Venezuela and clarified that it did not signal a shift in the Court's stance toward the Government.

Following his visit, Karim Khan emphasized the vital role played by social actors and expressed his commitment and willingness to continue working with them as well as civil society organisations. He confirmed that some of these groups had already travelled to The Hague to express the persecution they have been subjected to (Monitoreamos, 2023).

This fourth "Act", once again, illustrates the vital role played by CSOs in supporting the efforts of the ICC and driving progress in the current situation. These CSOs diligently ensure that the public remains well-informed, while also maintaining a critical stance towards the Court's methods. They continue asserting their rights, remaining determined to ensure that

the ICC operates to the victim's benefit so that they receive accurate and comprehensive information.

E) Conclusion

In this chapter, the "Acts" have allowed for an exploration of the interesting and dynamic interplay between the ICC, the Venezuelan Government, and the country's CSOs. From the "Acts" discussed there are some important takeaways.

Initially, the Court's preliminary examination was met with support and optimism from NGOs and CSOs in Venezuela. They saw it as an opportunity to raise public awareness about the alleged government violations and to seek justice for the victims. The NGOs effectively communicated the ICC process to the public, clarifying that no investigation had been initiated against any Venezuelan official and that the Office of the Prosecutor would analyse whether there were grounds to open a fully-fledged investigation. The international support from the coalition of American States Parties to the Rome Statute further expedited the preliminary examination and inevitably influenced the direction of the investigation. This support, along with the ongoing documentation of violations by NGOs, contributed to a growing interest in the ICC's mechanisms and scope among Venezuelans and the country's civil society. This demonstrated the mutual influence between both parties.

As time went on, certain NGOs started questioning the effectiveness and coherence of the ICC's justice process. Concerns were raised about the potential political motivations behind the joint referral and the lengthy proceedings of the ICC. Some critics suggested that the Courts' decisions lacked logic and clarity in terms of timing and duration. While acknowledging the progress made in holding individuals accountable for serious crimes, there is a critical need to offer practical solutions to address the multifaceted crises in Venezuela. These solutions go beyond the scope of what the ICC can provide. Therefore, the analysis also highlighted the international community's responsibility to provide an adequate response to address both the human rights violations and the multifaceted crisis in Venezuela.

The unprecedented nature of this kind of investigation in Latin America, but most notably the fact that it was the first multistate referral, led the government to perceive it as a political decision made by a group of governments aligned with United States interests. However, it is important to acknowledge that this does not diminish the harsh reality of the deteriorating situation in Venezuela which, in any case, would have drawn international attention. In fact, the widespread anti-government demonstrations in Venezuela that were met

with severe repression, along with the exodus of millions of Venezuelans from the country, were the primary factors that raised concerns and garnered attention from the ICC.

The different “Acts” presented above demonstrate the crucial role played by NGOs and CSOs in Venezuela. These organisations have effectively carried out the functions discussed in previous chapters, such as supporting the ICC's work, facilitating victim participation, and documenting crimes, even before the Court's involvement in the country. Their mobilisation efforts have been instrumental in advocacy campaigns and in actively encouraging individuals to voice their concerns, share their testimonies, and disseminate information. These actions compelled institutions like the ICC to take the necessary steps. However, the prevailing culture of impunity in the country presents challenges for these organisations and discourages victims from coming forward.

Almost a decade into Nicolás Maduro's presidency, severe human rights violations persist, with a systematic pattern of arbitrary detention, torture, and other violations. The ongoing nature of these crimes highlights a significant issue in Venezuela: the lack of an effective judicial system. This is evident because current Government officials and individuals who continue to serve in the State's security forces are subjects of the prosecution by the ICC. The impunity underlines the challenges in holding individuals accountable for their actions within the country's legal framework. It also shows the widespread problem of corruption and the lack of a separation of powers due to the Government's overarching control of the judiciary and the Venezuelan Supreme Court of Justice.

Therefore, despite the Government's efforts to stop the investigation by adhering to the Rome Statute's complementarity principle, authorities and the State apparatus lack genuine motivation to conduct thorough investigations or bring those responsible to justice. The State argued that crimes against humanity did not exist, that the referral was political and that they are engaging in reforms and domestic accountability. The challenge, therefore, lies in the fact that the ICC operates as a Court of last resort, which renders it ineffective when falling in the scheme of a government eager to resort to all the means available to stop the investigation. This process has engaged the ICC and the Government of Venezuela in a complex and evasive interaction. In addition, Venezuelan authorities utilise disinformation campaigns and exert control over various media outlets as a strategy to disseminate deceptive information. This approach allows them to mould public opinion and influence the statements made by the ICC, aligning them with their own interests.

In this context, the effectiveness of CSOs in mobilising the population and advocating for action often falls short when depending on external forces, such as the ICC, for addressing the issues. When the mechanisms of these external agents fail to function, people's fear of speaking-out limits the effectiveness of NGOs. In the case of Venezuela, powerful public figures and their private sector allies enjoy impunity so this sense of "getting away with it" not only enables mass atrocities, but it also underlines the need for international intervention, as national justice systems fall short in delivering adequate accountability.

The analysis has shown that Venezuela has a very strong, well-educated and organised civil society that is ultimately a very powerful partner in justice and accountability. Confirmation of this strength is the Government's attempts to suppress it and its fixation in persecuting human rights defenders. The prevailing logic is straightforward: If there is no one to report the crimes, then it essentially means there are no crimes.

Additionally, these dedicated efforts of NGOs and human rights defenders have raised high expectations for the role of the ICC in Venezuela. These groups have placed significant trust in the investigation and welcomed the decision as a recognition of their consistency and the victims' suffering. Nevertheless, the situation became more complex as the ICC Appeals Chamber declared that Venezuela was not meeting the standards but signed the second MoU "behind closed doors". This event sparked concerns, confusion, caution and self-censorship among NGOs and the victims who lack alternative avenues for seeking justice and reparations for the crimes.

The analysis, therefore, is prompted to question whether the resilience shown by Venezuelan civil society is exceptional or if it challenges the common assumptions about the disruptive impact of populist or authoritarian regimes on CSOs. The ability of Venezuelan CSOs to remain active amidst sociopolitical deterioration suggests a nuanced relationship that calls for a reconsideration of the common understanding of how civil society operates within challenging political environments.

Based on the "Acts", CSOs are diligently fulfilling their roles, compensating for the ICC's resource limitations, while the Court's contribution seems somewhat inadequate or ineffective, and influenced by political dynamics. Henceforth, transparency should be regarded as the minimum standard the ICC must uphold to reciprocate the invaluable contributions of these partner organisations.

Chapter 8: Closing Argument

This research has delved into the intricate relationship between CSOs and the ICC in the context of Venezuela's evolving human rights crisis. The aim was to assess the extent of CSOs' collaboration with the ICC, their influence on legal proceedings, and their role as pivotal actors in the pursuit of accountability and justice in Venezuela, despite the obstacles.

For this purpose, the study began by defining civil society, conceptualising it as a multifaceted space, essential in bridging the gaps between the family, the state, and the market. Due to the authoritarian tendencies of the Venezuelan regime, the ability of NGOs to thrive in different political systems was also confirmed. This understanding highlighted the adaptability of CSOs in the face of political adversity, resource constraints, and hostile governance. NGOs have emerged as essential intermediaries between individuals and the state, promoting social justice and filling the void in societies lacking sufficient checks and balances or resources for comprehensive human rights work.

The analysis then explored the global scene, contextualising CSOs within international justice and international criminal law, emphasising their invaluable role as partners of the ICC. Their deep local knowledge, familiarity with customs, and understanding of the specific needs and expectations of the populations make them indispensable collaborators in the Court's processes. CSOs have played pivotal roles in the ICC's creation, the design of the Rome Statute, and the advocacy for its universal implementation and ratification. These functions underline how CSOs facilitate the principle of positive complementarity by supporting national investigations and prosecutions of crimes. Political pressure, development cooperation, conflict prevention, and mediation efforts make CSOs necessary actors in international relations.

Specifically, the interaction between CSOs and the ICC in Venezuela began with the ratification of the Rome Statute in June 2000, allowing for ICC jurisdiction over crimes committed in Venezuela or by its nationals. Since then, NGOs have played an active role in reporting alleged crimes to the ICC Prosecutor. They have been engaged as *amici curiae* and taken part in meetings of the Assembly of States Parties. The first ICC investigation in Venezuela led to a preliminary examination in 2006, fuelled by a tumultuous history of instability, economic crises, political unrest, and social inequalities. This preliminary examination was later closed due to the lack of sufficient grounds to proceed. Nevertheless,

Venezuela's frequent leadership changes and political polarisation resulted in multifaceted crises, humanitarian suffering, and societal division.

Hugo Chávez's rise to power marked a significant turning point in Latin American politics. His "Socialism of the Twenty-First Century" ideology and charismatic leadership not only reshaped his own country but also led to the formation of political alliances in the region. Additionally, his anti-American discourse defined his political agenda and foreign policy. Despite enacting social inclusion policies, the economic mismanagement and restrictions on rights characterised his rule. Following Chávez's death in 2013, Nicolás Maduro took office amid contested elections and post-election demonstrations. His presidency was defined by a centralisation of power and widespread repression. Essential services deteriorated, inflation and corruption rose, and democratic institutions were dismantled. Venezuela culminated in a state with authoritarian tendencies.

2014 and 2017 were particularly significant years in which Venezuela witnessed massive protests driven by various grievances and issues, ultimately triggering widespread human rights violations. Despite government repression and violence, CSOs documented the events, mobilised the population, and supported victims, raising international awareness and prompting action. During this period, Nicolás Maduro's government also made attempts to occupy public and civic spaces, posed requirements on civil society organisations and eroded their independence and ability to freely express, often with the intent of undermining transparency and accountability.

The extensive abuses during the protests prompted the ICC to initiate a new preliminary examination in 2018, to investigate the commission of the following crimes against humanity: murder; imprisonment or other severe deprivation of physical liberty; torture; rape; persecution based on political grounds; and enforced disappearance of persons. This decision was reinforced by reports from various sources, including individuals, groups, states, intergovernmental organisations, NGOs, and specialised agencies. It is worth noting that these reports drew extensively from local NGOs as their sources, underlining the credibility and significance of the information. The significant role of CSOs becomes evident in their attachment to the local context, as well as in their interactions with the Government, the ICC, and international actors. This emphasises their importance in promoting justice, safeguarding human rights, and assisting victims.

In the case of Venezuela, its civil society has been active since the 1930s and 1940s, taking a more prominent role as the country faced escalating crises, characterised by authoritarian-leaning governments, human rights abuses, and a growing sense of disillusionment with the political system. The significance of these organisations in Venezuela is evident from the interactions between the Government, the ICC, and CSOs, as portrayed in the “Acts”. Therefore, the last chapter of this thesis confirmed the extensive support offered by both domestic and international human rights organisations, as well as NGOs, in response to the ICC's decision to investigate alleged crimes against humanity in Venezuela. Their combined efforts demonstrate a commitment to accountability and justice in the face of widespread human rights violations and crimes against humanity.

Domestic and international human rights organisations recognised the inefficacy of the country's internal checks and balances and united in support of the ICC's decision to investigate alleged crimes against humanity in Venezuela. NGOs sought to engage different stakeholders, ensuring that the ICC's examination received global support and attention. In essence, they bolstered international pressure on the Venezuelan government, particularly through the effective use of communication tools to combat disinformation. Their expert authority and knowledge make them valuable information points for communicating complex issues to local populations. In this sense, social media emerged as an important platform for combating disinformation and engaging diverse societal groups, as it is also less susceptible to censorship.

The unique multistate referral that characterises the “Venezuela I” case, led to the Venezuelan Government’s perception of the existence of a political motivation behind the decision. This triggered the “imperialist enemy” discourse and deepened the anti-American sentiments. Henceforth, NGOs recognised the need to communicate sincerely. They informed the population about the lengthy and complex nature of the ICC's legal processes, maintaining a realistic perspective. This approach aimed to ensure that the victims and affected population understood the challenges ahead while sustaining their activism. The support extended to providing legal aid, assistance, support, and expertise as needed.

In this process, NGOs’ loyalty to the ICC was not always consistent. Some organisations questioned the Court’s effectiveness, emphasising the need for comprehensive solutions beyond its scope and mandate. Due to the lack of effective national mechanisms to fight impunity, the fulfilment of CSOs' objective of prosecuting the people accountable for the

crimes, depends on external agents. However, the ICC's "last resort" nature renders it ineffective when the government halts investigations by using disinformation campaigns to influence public opinion and Court's statements.

Nowadays, the situation in Venezuela remains critical, marked by human rights concerns, corruption, and a severe humanitarian emergency. Millions of people lack access to basic resources, and there is continuous harassment of journalists, human rights defenders, and civil society organisations. However, the Judiciary and Government remain in control using the existing regulatory framework to limit the operations of NGOs, labour unions and political parties (Human Rights Council, 2023, p. 14). The latest Report of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela confirmed that the Government "target[s] individuals and/or organizations that investigate, denounce or attempt to address human rights or social and economic problems in the country, and individuals who interfere or are perceived to interfere with interests of government actors" (Human Rights Council, 2023, p. 3). This validates the concerns expressed by NGOs, as well as the lack of checks and balances that requires the ICC to urgently prosecute the responsible people and ultimately bring relief to the victims. While internal efforts are crucial, they cannot suffice if those in power continue to control the judicial system. The recent results of the primary elections in Venezuela are a clear demonstration of the determination of NGOs to push for democratic change. Therefore, the work of CSOs and NGOs remains essential to shape the public agenda, provide crucial information, and combat impunity. Their commitment and resilience in the face of adversity challenges the common understanding of their role in severe sociopolitical circumstances. It is therefore undeniable that the responsibility to hold those accountable for these abhorrent crimes and human rights violations in Venezuela ultimately lies with CSOs and NGOs, due to the ICC's lengthy proceedings, its obligation to respect complementarity and its inability to address immediate needs.

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