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Ms Kate Fox  
Secretary  
UN Human Rights Committee  
Office of the United Nations  
High Commissioner for Human Rights  
UNOG-OHCHR  
1211 Geneva 10, Switzerland

25 July 2014

Dear Ms Fox,

**Re: VENEZUELA- List of Issues**

I am writing to provide information to the United Nations (UN) Human Rights Committee (the Committee) in advance of the Committee's preparations to draw up its List of Issues for Venezuela, at the 112<sup>th</sup> session of the Committee to be held in October 2014. In this letter, Amnesty International sets out its concerns about the implementation of the International Covenant on Civil and Political Rights (ICCPR) by Venezuela. The organization will provide a more comprehensive submission in advance of the 114<sup>th</sup> session in July 2015 when the Committee will review Venezuela's fourth periodic report.

**Measures to prevent and punish torture - Article 7.**

Amnesty International welcomes the enactment in 2013 of a new law designed to prevent and punish torture and other cruel, inhuman or degrading treatment.<sup>1</sup> The law is clear and specific on the prohibition of torture and other ill-treatment, and sets up mechanisms to prevent these human rights violations. The law also provides that the state must guarantee the right of victims and their families to full reparations. Nevertheless, it does not set out concrete mechanisms to ensure that this right is fulfilled. The organization believes that it is vital that all the necessary resources are allocated to ensure the full implementation of this very important law. Special attention needs to be given to guarantee adequate, effective and comprehensive reparations to all victims of torture and other ill-treatment, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Under the new law, the authorities have set up a National Commission for the Prevention of Torture and other cruel, inhuman or degrading treatment<sup>2</sup>, led by the Office of the Human Rights Ombudsperson.<sup>3</sup> This Commission was tasked with elaborating a National Plan for the prevention of torture and other cruel, inhuman or degrading treatment.<sup>4</sup> On 11 February 2014, the Ombudsperson announced the

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<sup>1</sup> Ley Especial para Prevenir y Sancionar la Tortura y otros Tratos Crueles, Inhumanos y Degradantes.

<sup>2</sup> Comisión Nacional de Prevención de la Tortura y otros Tratos Crueles, Inhumanos y Degradantes.

<sup>3</sup> Defensoría del Pueblo. Hereafter, the Ombudsperson.

<sup>4</sup> El Plan Nacional de Prevención de la Tortura y Otros Tratos Crueles, Inhumanos y Degradantes.

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approval of the plan. However it has yet to be made public and therefore Amnesty International has not had access to the plan yet.

In addition to these issues specifically relating to the law to prevent torture and the national plan against torture, Venezuela has not ratified the Optional Protocol to the Convention against Torture (OPCAT).

### **Human right violations in the context of protests - Articles 2, 6, 7, 9, 14, 19, 21 and 22.<sup>5</sup>**

Since the beginning of February 2014, Venezuela has been shaken by events which took place in the context of mass pro- and anti-government protest in various parts of the country. This is the most recent manifestation of the growing polarization that has gripped the country for more than a decade. As of mid-June at least 43 people had died and more than 873 people had been injured.<sup>6</sup> Those injured and killed include demonstrators who have taken to the streets to show their discontent with the government, people who support the government and people not involved in the protests, as well as members of the police and other security forces. Over 3,000 people have been charged with or are facing charges for their alleged involvement in violent acts during the protests and if convicted could be sentenced to years in prison. 148 of them are in pre-trial detention.<sup>7</sup>

Amnesty International has documented the following allegations of human rights violations in the context of these mass anti and pro-government protests:

#### Excessive use of force

Amnesty International has documented many instances of excessive use of force by the police and other security forces. These include the use of firearms against demonstrators and in residential areas where people were protesting or had erected barricades. Amnesty International has also received other reports strongly indicating excessive use of force, including victims' and eye witnesses' reports about the use of rubber bullets to disperse demonstrators, used in some cases without a clear warning or at close range, leading to the death of at least one demonstrator. In some cases, members of the National Guard entered residential areas to clear barricades erected by residents and fired rubber bullets and tear gas directly at and into buildings and at demonstrators without any warning or giving them the opportunity to leave the area.

#### Torture and other ill-treatment

Amnesty International has also received reports of torture and other cruel, inhuman or degrading treatment of detainees by members of the police and other security forces. In many instances the aim appears to have been to obtain information or to punish detainees for their participation, or alleged participation, in the protests.

These reports relate to the treatment of detainees at the time they were apprehended, during transfer, and in detention centres. They include reports that members of the security forces punched, kicked and hit detainees with blunt objects such as helmets and truncheons, including when they were restrained on the ground. The organization has also received testimonies that tear gas was used against detainees in enclosed spaces, and that in detention centres they were forced to kneel or stand for long periods of time, subjected to electric shocks, suffocated with plastic bags, sexually abused, or threatened with rape.

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<sup>5</sup> For detailed information about these concerns, please see Amnesty international, *Venezuela: human rights at risk amid protests*, Index: AMR 53/009/2014, April 2014, available at <http://amnesty.org/en/library/info/AMR53/009/2014/en>

<sup>6</sup> Ministerio Público, Resultado de las manifestaciones violentas. Febrero-Junio 2014. 11 Junio 2014. [http://www.mp.gob.ve/c/document\\_library/get\\_file?uuid=fe445f9f-62cf-43a2-8c35-89c93f9cdf56&groupId=10136](http://www.mp.gob.ve/c/document_library/get_file?uuid=fe445f9f-62cf-43a2-8c35-89c93f9cdf56&groupId=10136)

<sup>7</sup> *Ibid.*

### Arbitrary detentions and violations of due process

In the case of scores of the more than 3,000 people detained, the police did not comply with the requirements of national law, in that they did not have arrest warrants or apprehend the individuals in the act of committing an offence (in flagrante). In some cases, detentions were made after the security officers entered into people's homes without a warrant or simply because officers apparently assumed the people concerned were going to commit offences.

Some detainees, including those under the age of 18, were not allowed access to a lawyer, their families or to NGOs providing legal advice, prior to being brought before a judge. The denial of access to legal counsel is particularly worrying in light of the allegations of torture and ill-treatment mentioned above. In some cases, the authorities did not formally notify detainees' families of their detention or where they were detained.

In many instances, detainees and their lawyers were not informed of the reasons for their detention until a few minutes before being brought before a judge. This hindered their ability to challenge the legality of their detention and to prepare their defence.

### **Situation of people in detention - Articles 6, 7, 9 and 10.**

#### Prolonged pre-trial detention

Amnesty International is concerned at the lack of up-to-date and comprehensive publicly available information regarding the numbers of people in detention and how many of them are detained pending trial. Estimates by the human rights NGO Venezuelan Observatory of Prisons (Observatorio Venezolano de Prisiones, OVP) indicate that the prison population stands at about 53,000, of whom over 60% are detained awaiting trial.<sup>8</sup>

Of major concern are the delays in the criminal justice system which result in many detainees spending years in pre-trial detention or awaiting sentence. A clear plan of action which is adequately resourced needs to be implemented as a matter of urgency to ensure that delays in the criminal justice system are tackled comprehensively, coherently and holistically by the relevant government bodies, including the office of the Attorney General, Public Defence (Defensa Pública)<sup>9</sup>, the police, the prison services and the judiciary.

#### Overcrowding and poor prison conditions

The lack of publicly available information mentioned above also applies to other relevant statistics such as capacity and occupancy rates and other data on prison services.

According to OVP, there were 53,566 people in prison detention at the end of 2013 while the capacity of the prison system stood at only 16,539 places.<sup>10</sup> In 2011, overcrowding was already of grave concern. According to the International Centre for Prison Studies, data provided to them by Venezuela's Ministry of Prison Services showed that the capacity of Venezuela's prisons in 2011 was 18,515.<sup>11</sup> The same source indicated that in 2012 the number of prisoners, including those awaiting trial, was

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<sup>8</sup> Observatorio Venezolano de Prisiones, Informe Anual 2013. Hereafter OVP. The OVP is a respected Venezuelan organization that monitors the human right situation of people deprived of their liberty.

<sup>9</sup> Defensa Publica is a state institution that offers free legal defence in Venezuela.

<sup>10</sup> Observatorio Venezolano de Prisiones, Informe Anual 2013

<sup>11</sup> Information provided on 31<sup>st</sup> July 2011, see <http://www.prisonstudies.org/country/venezuela>

48,262. While there is some variation in these figures, they indicate that prisons are holding around three times as many inmates as they have capacity to hold.

Additionally, OVP indicates that at the end of 2013, there were over 7,700 people held in police detention.<sup>12</sup> Some of the detainees have reportedly been held for months and even years in these facilities, which are not designed to hold people for longer than a few days.

The authorities have implemented some measures to tackle overcrowding and delays in the criminal justice system. In 2012 and 2013 the Ministry of Prison Services led on the implementation of the *Plan Cayapa Judicial*. This plan involves members of the Ministry of Prison Services, the Office of the Public Prosecutor, the Office of the Human Rights Ombudsperson, as well as judges and defence lawyers. Members of these institutions visit detention facilities and interview prisoners in situ or study their legal documentation to ascertain their status and make decisions on the spot whether to release them. Although there is a lack of official data on the number and category of prisoners who have benefited from this plan, the Ministry of Prison Services has publicly stated that *Plan Cayapa Judicial* has so far led to the release of 13,224 persons deprived of liberty who had a right to be released or be given alternative measures to detention.<sup>13</sup> In recent years prisoners have staged protests including hunger strikes and self-harm in protest at delays in the justice system, lack of food and drinking water, unsanitary conditions and lack of medical attention, and the prospect of being moved to prisons where inmates risked being killed by fellow prisoners (see below). According to the OVP, in 2013 over a third of these protests were triggered by poor prison conditions. Amnesty International is concerned at the lack of detailed information regarding the resources allocated to the provision of food, water, sanitation and medical attention.

#### Violence inside places of detention

Since 2006 the Inter-American Human Rights system has issued provisional and precautionary measures in relation to nine Venezuelan prisons. Violence, however, continues to claim the lives of hundreds of prisoners. 506 people were reportedly killed and 616 injured in 2013 alone within places of detention.<sup>14</sup> In 2013 there were several major riots, such as in Uribana, Yare and Sabaneta prisons.<sup>15</sup>

There is no publicly available official information regarding incidents of violence inside prisons. Venezuelan human rights organizations which monitor the situation closely have reported increasing numbers of deaths and injuries resulting from violence amongst prisoners over the past few years. According to their figures for 2012, the number of deaths varied between 214 and 591 while estimates of the number of prisoners injured varied between 419 and 1132. In addition to the number of prisoners killed and injured, OVP documented the cases of four prison staff members killed and eight injured, as well as one person killed and 13 injured when visiting places of detention or as a result of

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<sup>12</sup> Observatorio Venezolano de Prisiones, Informe Anual 2013.

<sup>13</sup> See article in "El Universal", 27 January 2014, *Plan Cayapa dejó en libertad a 13.224 presos en dos años*, available at: <http://m.eluniversal.com/sucesos/140127/plan-cayapa-dejo-en-libertad-a-13224-presos-en-dos-anos>

<sup>14</sup> Observatorio Venezolano de Prisiones, Informe Anual 2013.

<sup>15</sup> Amnesty International, *Venezuela: A serious investigation into the grave events at the prison in Uribana is urgently needed*, Index: AMR 53/001/2013, January 2013, available at: <http://www.amnesty.org/en/library/info/amr53/001/2013/en>. Amnesty International, *Prison bans visits: safety fears for inmates*, Index: AMR 53/010/2013, June 2013, available at <http://www.amnesty.org/en/library/info/AMR53/010/2013/en>. Amnesty International, Index: AMR 53/016/2013, September 2013, *How many more must die before the situation of Venezuelan prisons is addressed?*, available at: <http://www.amnesty.org/en/library/info/AMR53/016/2013/en>

violence inside and around places of detention in 2013.<sup>16</sup> The same organization also counted 41 detainees killed and 239 injured in police detention.<sup>17</sup>

Civilian prison guards are responsible for security inside prisons, while security along the perimeter of prisons is the responsibility of military officials in the National Bolivarian Guard. In many establishments prison guards avoid entering the areas of the prison in which prisoners are held, with the result that prisoners are effectively left to their own devices. A major source of violence and risk for prisoners has been the ready availability of firearms inside prisons. Weapons discovered inside prisons after searches have shown prisoners have access to a range of guns, including semi-automatic and assault weapons, as well as hand grenades. The lives and physical integrity of prisoners are at constant risk as a result.

#### Excessive use of force within the prisons

There have been several instances in recent years where prisoners have reportedly been injured or killed in the context of operations in which the authorities have sought to regain control of prison facilities. These incidents are not usually subject to full and impartial investigations, making it impossible to determine whether the authorities have used excessive force. For example, on 25 January 2013, in an attempt to conduct a search at the Central-Western Region Prison (*Centro Penitenciario Región Centro-Occidental*), in the town of Uribana, Lara state, the joint operation by prison authorities and the National Bolivarian Guard ended with the deaths of 58 people and injuries to 90.<sup>18</sup> The authorities announced that they would open an investigation; however, over a year later, the results are yet to be published.<sup>19</sup>

#### Inadequacies of oversight mechanisms

The Ombudsperson's mandate includes ensuring that the rights of persons deprived of liberty are guaranteed. However, it does not publish in depth information on activities it has undertaken and programs of action it has put in place to guarantee the rights of such persons. According to its 2012 annual report, the Ombudsperson carried out 386 inspections in prisons. However, the annual report does not specify what the results of these inspections were or what follow-up actions are being taken to address problems identified, if any, as a result of these visits.

#### **Attacks, threats and intimidation of human rights defenders- Articles 2, 6 and 22.**

Over the years Amnesty International has documented cases of attacks and intimidation on human rights defenders. In the vast majority of cases the perpetrators go unpunished. It is essential that the authorities guarantee the right of human rights defenders to carry out their work without fear of reprisal, and they must refrain from making statements that discredit their work. Authorities must also carry out full and independent investigations into all complaints of threats, harassment and intimidation of human rights defenders and provide effective protection to them.

Human rights defenders Humberto Prado and Mariana Sánchez of the OVP have been repeatedly intimidated and threatened.

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<sup>16</sup> In May 2013 a five year old girl who lived close to the Sabaneta prison was injured by a bullets fired from the prison. Please see Observatorio Venezolano de Prisiones, Informe Anual 2013.

<sup>17</sup> Observatorio Venezolano de Prisiones, Informe Anual 2013.

<sup>18</sup> Amnesty International, "Venezuela: A serious investigation into the grave events at the prison in Uribana is urgently needed", available at: <http://www.amnesty.org/en/library/info/amr53/001/2013/en>

<sup>19</sup> See: Notitarde, "Denunciarán en Cidh silencio de Fiscalía en el caso Uribana", 28 January 2014, available at: <http://www.notitarde.com/Pais/Denunciaran-en-Cidh-silencio-de-Fiscalia-en-el-caso-Uribana-2096377/2014/01/28/300266>

In 2012, the husband of Marianela Sánchez was abducted and robbed and told to stop his wife from complaining about prison conditions and criticizing the government or his family would face the consequences.<sup>20</sup> On 12 April 2013, Marianela Sánchez and her family were again threatened with death via an anonymous letter which she found at the entrance of her mother-in-law's home. OVP filed a complaint to the authorities about the latter incident but the authorities have failed to provide her and her family with the necessary security measures in accordance with their wishes, nor does it seem that any investigation has taken place.

In 2011 Humberto Prado received an anonymous death threat after he denounced the situation in Rodeo prison and after being branded a liar and an agitator in the Venezuelan media.<sup>21</sup> He has since been vilified in the press on several occasions including by the Minister of Prison Services who accused him of lying, organizing violent protests inside prisons and of destabilizing the government and criminal activities. In February 2014, in the context of the student led demonstrations, the Minister of the Interior accused Humberto Prado of having taken part in violence during the protests, and of plotting to destabilize the government and the prisons.<sup>22</sup>

Over the past few years, Víctor Martínez, a human rights defender from Barquisimeto, Lara State who spent years drawing attention to corruption and human rights violations committed by local police, has been subjected to repeated violent attacks, including after the killing of his son Mijail Martínez in 2009. In January 2012 Víctor Martínez was the victim of an assassination attempt, and in the summer of 2013, he found out that two men arrested for his son's killing are now free, one having been granted conditional freedom, and the other having been spotted in the street, presumed to have escaped from the prison where he was held. Víctor Martínez is in danger of retaliation by the two men and the authorities should take all measures which are necessary to protect him and his family and are in line with their wishes, as well as to take effective steps to investigate the killing of his son Mijail.<sup>23</sup>

### **Implementation of the Law to Eradicate Violence against Women- Articles 2 and 6.**

The Law on the Right of Women to a Life Free of Violence (*Ley Orgánica sobre el Derecho de las Mujeres a una Vida Libre de Violencia*) enacted in 2007 represented a major step in the criminalization and eradication of widespread gender-based violence in Venezuela. However, to date the implementation of the law has been slow and not enough resources have been made available to guarantee that women have access to justice and effective protection measures.

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

### **Impunity – Articles 2, 6 and 9.**

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<sup>20</sup> Amnesty International, *Venezuelan activist threatened: Marianela Sánchez Ortiz*, 1 June 2012, available at: <http://www.amnesty.org/en/library/info/AMR53/004/2012/en>

<sup>21</sup> Amnesty International, *Venezuelan activist received death threats: Humberto Prado Sifontes*, 27 June 2011, available at: <http://www.amnesty.org/en/library/info/AMR53/006/2011/en>

<sup>22</sup> Organización Mundial Contra la Tortura, Venezuela: Nuevos actos de difamación contra el Sr. Humberto Prado Sifontes, <http://www.omct.org/es/human-rights-defenders/urgent-interventions/venezuela/2013/05/d22246/> and <http://www.derechos.org.ve/2013/05/07/omct-venezuela-nuevos-actos-de-difamacion-contra-el-sr-humberto-prado-sifontes/>

<sup>23</sup> Amnesty International, *Venezuela: Activist in danger from son's killers: Víctor Martínez*, 14 August 2014, available at: <http://www.amnesty.org/en/library/info/AMR53/012/2013/en>

Impunity for human rights violations remains a concern, with the state failing to protect victims and those at risk or to effectively investigate and bring those responsible for killings to justice.

The case of the Barrios family in Aragua state is illustrative of this. Since 1998, 10 members of this family have been murdered in circumstances that suggest police involvement. The case was submitted to the Inter-American Human Rights system in 2004 and both the Commission and the Court issued precautionary and provisional measures to safeguard the family. In 2011, the Inter-American Court of Human Rights ruled that the Venezuelan State had violated the right to life, physical integrity, and liberty of several members of the Barrios family. It ordered the State to provide effective protection measures for the family and carry out thorough and impartial investigations and bring those responsible to justice.<sup>24</sup> Since then, three members of the family have been killed, the latest being 17-year-old Roni Barrios, killed in May 2013.<sup>25</sup> The family was threatened again in September 2013 when they were living in public housing assigned to them by the state to facilitate the provision of protection measures, where their whereabouts were supposed to be secret and safe from rogue members of the police.<sup>26</sup> The authorities have not done enough to protect the family and bring those responsible for the killings to justice.

In addition, Venezuela has withdrawn from the jurisdiction of the Inter-American Court of Human Rights (see next section), removing the international judicial oversight which is an important component of addressing impunity at the national level.

### **Independence of the judiciary – Articles 9 and 1.**

The judicial system does not appear to be adequately resourced and has been subjected to interference by the executive, particularly in cases involving people who are openly critical of the authorities. For example in December 2009, Judge María Lourdes Afiuni Mora was arrested hours after she ordered the release of banker Eligio Cedeño, a decision that was within her judicial powers and was consistent with Venezuelan law. She was accused of “corruption, abuse of authority, aiding escape, and association to a commit crime”. Her arrest took place a day after her judicial decision was condemned by the then President Hugo Chávez during a television interview in which he called for her to serve the maximum sentence of 30 years. Judge Afiuni is currently free on bail awaiting the outcome of her trial.

More recently, in February 2014, an arrest warrant was issued against Leopoldo López, leader of the opposition party Voluntad Popular (Popular Will), a day after the President of the National Assembly, Diosdado Cabello, and Foreign Affairs Minister, Elías Jaua Milano, accused him of being responsible for the violence during and after the student anti-government demonstrations. A day after López’s arrest, President Maduro called for his imprisonment. Leopoldo López is currently awaiting trial for charges of the crimes of damage to property, arson, instigating to commit a crime and conspiracy to commit a crime, in connection with the violence in the aftermath of the protests. Amnesty International is concerned that Leopoldo López’ detention appears to be politically motivated. These public accusations by the executive, not backed up by credible evidence, fail to send a clear message that the authorities respect the impartiality and independence of the judicial system, and undermine Leopoldo López’s right to be presumed innocent until proven guilty, which is crucial for a fair trial.

Since Venezuela’s denunciation of the American Convention of Human Rights in September 2013, the Inter-American Court of Human Rights no longer has jurisdiction over Venezuela. This Court, which represents the last resort and hope for justice for thousands of victims of human rights violations and their families across the Americas, and is a necessary addition to national justice systems, will no longer be available to the people of Venezuela. Amnesty International has expressed concern at this

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<sup>24</sup> Inter- American Court of Human Rights, Case of the Barrios Family v. Venezuela, Judgement of November 24 2011, available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_237\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_237_ing.pdf)

<sup>25</sup> Amnesty International, *Venezuela: Murders of family continue; 17-year-old killed*, available at: <http://www.amnesty.org/en/library/info/AMR53/007/2013/en>

<sup>26</sup> Amnesty International, *Venezuela: Further information: Police threaten to kill more of Barrios family*, 19 September 2013, available at: <http://www.amnesty.org/en/library/info/AMR53/015/2013/en>

step and has urged the Venezuelan government to reverse this deleterious decision for victims of human rights violations. Further information is available in the documents that are referred to in this letter. However, please do not hesitate to contact me should you need any further information.

Yours sincerely,

A handwritten signature in black ink that reads "Tania Baldwin-Pask". The signature is written in a cursive, slightly slanted style.

Tania Baldwin-Pask

International Advocacy Programme