



Foro Penal



2017

REPORT
ON STATE
**REPRESSION
IN VENEZUELA**

Este reporte fue elaborado y coordinado por Alfredo Romero y Gonzalo Himiob Santomé, con la colaboración de Mariela Suárez, Patricia Velázquez y con base en la información suministrada por los coordinadores regionales del Foro Penal y abogados miembros de la organización.

El Foro Penal Venezolano (FPV) es una ONG que ha trabajado en la defensa de los derechos humanos desde 2002, asistiendo de manera gratuita a las víctimas de la represión del Estado, incluyendo detenciones arbitrarias, violaciones graves a los DDHH, tortura y tratos crueles, inhumanos o degradantes. El Foro Penal Venezolano cuenta al día de hoy con aproximadamente 200 abogados voluntarios y más de dos mil activistas en toda Venezuela que se ocupan de prestar asistencia y apoyo legal a las víctimas. El Foro Penal Venezolano ha sido galardonada con diversos premios de derechos humanos nacionales e internacionales en virtud de su labor en la defensa de derechos humanos.



Foro Penal

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In addition, throughout 2017, Foro Penal verified that there was a systematic failure to enforce judicial orders to release prisoners, applicable procedures were not followed in the processing of such judicial release orders, in particular, on the part of the Bolivarian Intelligence Services (SEBIN) directly contravening Article 44.5 of the CRBV.

Foro Penal was also able to confirm cases wherein persons were forcibly removed from their place of employment or homes [by government security forces] without any demonstration of a crime having been committed. Such persons disappeared for days, their whereabouts unknown to family members or attorneys. Further, no information was provided to family members or their attorneys by competent authorities. Such arbitrary and unconstitutional forcible removals or disappearances are in breach of Article 45 of the CRBV.

CIVILIANS DEPRIVED OF THEIR LIBERTY AND PROCESSED BEFORE CRIMINAL MILITARY COURTS

With respect to [these cases] [civilians detained and processed in military tribunals], by end of 2017:

- 760 civilians were presented before military tribunals
- 118 remain in detention as of the date of this report
- 554 civilians were processed in military tribunals and sent to prison

It is alarming to bear witness to the fact that 73% of civilians unconstitutionally processed by military prosecutors before military tribunals remain behind bars thereby egregiously evading their due process rights to be tried in civil courts.

Civilians detained in the above-mentioned cases were charged for serious crimes codified in the Organic Code of Military Justice (COJM) such as, military rebellion, insulting/offending a guard, treason to the nation, spying and the like.

The processing of these cases involving regular civilians in military tribunals, denounced and documented by Foro Penal constitute flagrant violations to the right to be judged by a civilian/natural judge and to the due process rights of citizens set forth in Section Article 49, number 4 of the CRBV. Further, these actions constitute a breach of Article 261 of the CRBV which provides that military tribunals have jurisdiction over military crimes specifically codified in the COJM committed by active

military officers in contravention of their military duties.

It is important to note that the National Government claimed legal authority under the “Zamora Special Strategic Military-Civilian Plan” in order to claim the jurisdiction of military tribunals over civilians. However, claiming legal authority pursuant to the “Zamora Plan” directly contradicts provisions in Venezuela’s Constitution as well as multiple decisions issued by the Inter American Court of Human Rights and other international treaties to which Venezuela is a party.

With respect to the application of military justice to the civilian population, the Office of the High Commissioner of Human Rights of the United Nations in its report issued in July 2017¹, indicated, among other issues, that: “the use of military justice in judging civilians resulted in grave violations of the rights of the accused to a fair trial, including the right to be judged by an independent and impartial court with competent jurisdiction as established by law.”

In particular, this report would like to highlight the case of Human Rights activist **Lisbeth Anez Thomi** who was detained at the Simon Bolivar International Airport, Maiquetia, Vargas State when she boarded a plane via Miami, FL, USA. Lisbeth was intercepted by officers of the DGCIM via a capture order dated May 5, 2017 for the following alleged crimes: Treason to the Nation and Military Rebellion as provided in the COJM. The evidence provided with respect to such alleged crimes has in no way been linked to Lisbeth Anez Thomi as it is contained in WhatsApp messages which were not presented as evidence [during the proceedings] whereby Lisbeth allegedly engaged in conversations [via WhatsApp] with former political prisoners regarding the encouragement of violent actions during street protests such that those conversations were considered to be “Military Rebellion” and “Treason” [by the authorities]. There was no other evidence put forth other than the “notoriety” of the street protests in Venezuela and their supposed violent character. In addition, the authorities alleged that books, personal correspondence and money in the form of cash were found [to support the capture order/charges]. A military tribunal ordered the preliminary detention of Lisbeth Anez Thomi who is a civilian and she remained detained for more than 118 days in the headquarters of SEBIN. On September

¹ See report “Violations and human rights abuses in the context of demonstrations in the Bolivarian Republic of Venezuela from April 1 to July 31, 2017” (pages 24 & 25. http://www.ohchr.org/Documents/Countries/VE/HCReportVenezuela_1April-31July2017_SP.pdf)

7, 2017, her detention was substituted for house arrest and other measures limiting her freedom such as periodic presentations before a military tribunal and the prohibition to provide any statements to any media.

TORTURE AND OTHER CRUEL, DEGRADING AND INHUMAN TREATMENT

Many persons who were subjected to arbitrary detentions (at least 10%) during 2017 were also subjected to threats, torture, cruel, degrading and inhuman treatment during the time they were detained.

For example, on a national level there was evidence of the following: sexual abuse while in detention; use of teargas in enclosed areas as punishment to the detainees; severe injury and physical beatings by security officers and denial of adequate medical treatment to address abuses; egregious cases of physical abuses such as shaving and/or burning of the detainee's scalp; use of electrical charges on the detainees as a means to obtain confession; handcuffing of detainees hanging from overhead posts for days; detainees detained in holding pens with common criminals who were able to be released on bond subjected to threats and torture during detention, in many cases by the officers guarding the cells.

These practices, which constituted violations of human rights over the course of 2017, contravene Art. 46 of the Venezuelan Constitution² which warrants the physical, psychological and moral wellbeing of citizens as it prohibits torture, cruel, degrading or inhuman treatment and promotes the dignity and adequate treatment of persons who have been detained and further imposes penalties on government officials that physically or psychologically mistreat such persons. In addition, such practices are counter to the Special Law to Prevent and Punish Torture and other Cruel, Degrading and Inhuman Treatment³ as well as the Convention Against Torture and other Cruel, Degrading and Inhuman Treatment⁴ ratified by Venezuela in 1991 (which must be applied by national courts as a Constitution-

al provision) and the Statute of Rome of the International Criminal Court⁵ to which Venezuela is a party since 1998.

Specifically, described below are cases evidencing some of such human right violations which took place in 2017:

– **Wuilly Moises Arteaga**, violinist, uniquely prominent from the moment [anti-government] protests intensified, as he pacifically protested by playing his violin. Wuilly Arteaga was detained by GNB officers with his violin on July 27, 2017 in Bello Campo in the Chacao Municipality of Caracas during the “Civil Strike” and “Trancazo” (“Mega Roadblock”) organized by the MUD on that day. Prior to his detention, on July 22nd, Wuilly had been beaten by security officers during a street protest so that when he was detained again on the 27th his upper lip had been sutured. Wuilly Arteaga remained detained and without access to communication to the outside world at the Command 433 of the GNB at El Paraiso, Caracas. There were many attempts to inquire as to his physical wellbeing on the part of his attorneys and Foro Penal activists. All inquiries were denied. A brief conversation was possible during a review at the Investigating Body of Scientific, Criminal and Penal Organization on July 28 in the afternoon. He briefly recounted haltingly that he had been beaten with GNB helmets on the head. As a result, he lost his hearing on his right ear. His hair was burned with a lighter. This incident was denounced by Foro Penal before the Fundamental Rights Attorney General's Office and before the 80th Attorney General of the Metropolitan Area of Caracas who verified legally [the provision of] medical attention.

– **Juan Jose Prado's, Wilfredo Mota's, Kendall Acevedo's and Johan Moreno's** cases are all important to note. Juan Jose, Wilfredo, Kendall and Johan were surrounded by swarms of “colectivos” in motorcycles with firearms and clubs on April 19, 2017 while in the general area surrounding El Torreon, a shopping mall at the entrance of El Limon in the municipality of Briceno Iragorri in Aragua State. While surrounded, they were shot at and there was general panic in the population in the area. Though they ran and dispersed in order to protect themselves, the “colectivos” pursued them and beat them up. Juan Jose Prado was beaten in the head with a metal club requiring sutures. Police officers from Aragua State intervened and took Juan Jose, Wilfredo,

² Official Gazette of the Bolivarian Republic of Venezuela No. 36.860 dated December 30, 1999

³ Official Gazette of the Bolivarian Republic of Venezuela No. 40212 dated July 22, 2013

⁴ Approved and open for execution, ratification and adhesion by the General Assembly in its resolution 39/46 dated December 10, 1984

⁵ United Nations, A/Conf. 183/9, July 17, 1998



Kendall and Johan to the Prefecture at El Limon. The four were then transferred to the headquarters in San Jacinto of the Aragua Police intelligence office. Juan Jose who'd been injured in his head was transferred to the emergency services of the Social Security office of San Jose where he was treated and then returned to the San Jacinto center. Subsequently, around 8pm, the four detainees were transferred to the headquarters of the CIPC at Sector 8 in Sugar Cane, where they remained detained until they were presented on Friday, April 21, 2017. They were granted bail upon the posting of bond provided each came before the court every 15 days. Despite the granting of bail and bond having been posted, they remained detained for 40 days subsequent to the presentation hearing. During this time, they were subjected to cruel treatment and torture. Their detention by Aragua Police officers subjected them to extreme physical and psychological aggression, shots, beatings and various violations to their physical integrity. While detained awaiting the bond posting at CICPC, Section 8 in Sugar Cane, they were subjected to overcrowding and other inhumane conditions, such as bathing only once a week, sleeping squatting or sitting down while handcuffed to the cell bars, suffering intestinal illnesses and deprivation of medical attention.

– **Yoel Bellorin**, a professor at Universidad de Oriente. Detained at GNB Command 51 on April 19, 2017, professor Bellorin was beaten, tortured, threatened and suffered electrical discharges, in addition to other cruel, degrading and inhuman treatment. Evidence was planted at the moment of his arrest including Molotov cocktails, gas mask, gasoline, tires and a grenade. Yoel Bellorin suffered death threats by the officers who detained him; he was taken aboard on small aircraft while the engine was running and told he would be “taken to the Helicoide” [a prison in Caracas] unless he testified against 4 opposition politicians. He refused. He was charged with public incitement, holding explosive materials and illegal possession of weapons of war.

– **Andru Rodriguez, Ygor Meza, Daniel Fragoza Mujica, Abraham Colmenares, Angel Garrido and Javier Mujica**, students at Universidad Pedagogica Experimental Libertador (UPEL) located in Maracay, Aragua State. These students were ambushed by a motorized Commission of the Bolivarian National Guard and shot while in the Cafeteria of the UPEL. Six were gravely

injured and immediately taken to medical assistance centers with gunshot wounds, three of them almost died during surgery. Injuries suffered by these students gravely affected their physical condition; two had colostomy and a third lost a knee.

With respect to torture and other violations of human rights to protesters, Foro Penal and Human Rights Watch have issued a detailed report including relevant testimony.⁶

DENIAL OF MEDICAL ATTENTION TO DETAINEES

Foro Penal has confirmed that in 2017 there were at least 53 confirmed cases of arbitrary arrests or detentions of persons suffering serious medical conditions who were denied basic or specialized medical attention. In addition, in many cases courts refused to issue orders related to health concerns or even denied requests. This resulted in the progression of their medical conditions and, in one instance, the death of a [municipal] council member, Carlos Andres Garcia. Council member Garcia died on September 17, 2017. He had been detained at SEBIN headquarters in Tachira State and had suffered serious health complications that were not treated despite having been repeatedly denounced. He was ultimately hospitalized on August 18, 2017 at the Central Hospital of San Cristobal where he died. He was granted house arrest only days before he died.⁷

The systematic denial of medical attention has been used by the regime as a means to punish detainees. In this sense, Foro Penal has documented and denounced before competent authorities, including international organizations, the health conditions of a number of political prisoners, who in some cases suffer serious illnesses and receive no proper medical attention. This represents a violation of Article 43 of the Venezuelan Constitution⁸ which provides that the right to life is inviolable and that the State is responsible for the life of persons whose freedom is curtailed [by the State] or subjected to any authority in any other way.

⁶ <https://foropenal.com/2017/12/01/venezuela-arremetida-opositores-brutalidad-tortura-presecucion-politica-venezuela/>

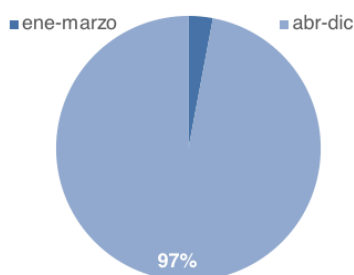
⁷ <https://www.elcarabobeno.com/primer-justicia-informa-la-muerte-del-concejal-pres-politico-carlos-garcia/>

⁸ Official Gazette of the Bolivarian Republic of Venezuela

POLITICAL PRISONERS⁹

By December 31, 2017, there were 214 political prisoners in Venezuela.¹⁰ The aggregate number of political prisoners beginning in January 2014 through the first quarter of 2017 was 470. This number includes persons who have been formally charged with a judicial order for political reasons, including those who were imprisoned by military tribunals in flagrant violation of their constitutional right to be judged by their natural/competent civilian judge. The number of political prisoners throughout the year constantly fluctuates, in relation to increases in detentions and release of prisoners. Foro Penal has named this practice the “revolving door effect.”¹¹

Presos Políticos 2017



At the start of the [anti-government] demonstrations in April 2017, the number of political prisoners increased on a monthly basis in a significant way. In fact, from April 1, 2017 through December 31, 2017, there

were 824 new political prisoners. In April, May, June and July, the numbers were as follows: April, 97, May, 171, June, 138 and July, 368. July reported a disproportionate amount in new political prisoners while in the remaining months of 2017 there were an additional new 50 political prisoners added to the list.

During the course of 2017, the Government detained 849 new additional political prisoners and released approximately 756. July 2017, in particular, had a historically high number of 676 political prisoners. Due to pronouncements made by certain international organizations such as the United Nations High Commissioner on Human Rights, the Secretary General of the Organization of American States, Resolutions by the European Parliament, among other initiatives in favor of the release of the political prisoners, it became politically unsustainable for the regime to continue to maintain such high detention numbers. As a result, beginning in August 2017, political prisoners were released, as follows: 146 in August, 188 in September, 69 in October and 99 in November.

In early December 2017, 16 political prisoners were released. This progressive reduction in the release of political prisoners follows a pattern often observed in our experience. In effect, we have confirmed an increase in detentions and corresponding reduction in the release of political prisoners in the months leading up to an announcement of “dialogue” or talks between representatives of the government and the opposition. Thus, the regime uses [the release of] political prisoners as a “negotiating tool” to incentivize the opposition to agree to the “dialogue”.

In fact, on December 23, 2017, the National Constituent Assembly announced the release of political prisoners. This resulted in the release of 51 political prisoners from December 23rd through December 27th. Compared to the 502 political prisoners released from August to November, 2017, this is manifestly a lesser number of releases. These numbers demonstrate that prisoners released by the Constituent Assembly in December failed to result in a significant reduction of political prisoners as there currently remain exceedingly large numbers of individuals imprisoned for political reasons.

As has been noted repeatedly by Foro Penal, the release of political prisoners, once effected, should be pre-condition to the commencement of “dialogue” or talks rather than a negotiating tool used by the government exclusively to its benefit. In addition, Foro Pe-

⁹ It is important to note in view of the definition of the term political prisoner, that there may be a number of detainees who fall under the definition of political prisoner in prior months to this analysis and determination that may be corrected in future reports.

¹⁰ For practical purposes, the notion of “political prisoner” is addressed by Foro Penal in a broad sense to include prisoners formally detained pending adjudication of their case as well as those prisoners already sentenced and imprisoned, following the distinctions set forth in sections (b) and (c) of the “Terms of Use” of the Set of Principles for the protection of all persons subjected to any form of detention or imprisonment of the UN Resolution 43/173 dated December 1988. Any person who is arrested, including for political reasons, is not considered by Foro Penal as a political prisoner or detainee unless any of following criteria has been met: (1) there is an official decision by a judicial authority unjustly ordering detention or imprisonment; and (2) the maximum legal and constitutional time period (48 hours beginning on the moment of arrest) has elapsed without a release or presentation before a competent judicial authority.

¹¹ The “Revolving Door Effect” has been so defined by Foro Penal Executive Director Alfredo Romero in his research conducted as a fellow of the Carr Center of the Kennedy School of Government at Harvard University

Puerta giratoria (arrestos vs. liberaciones)

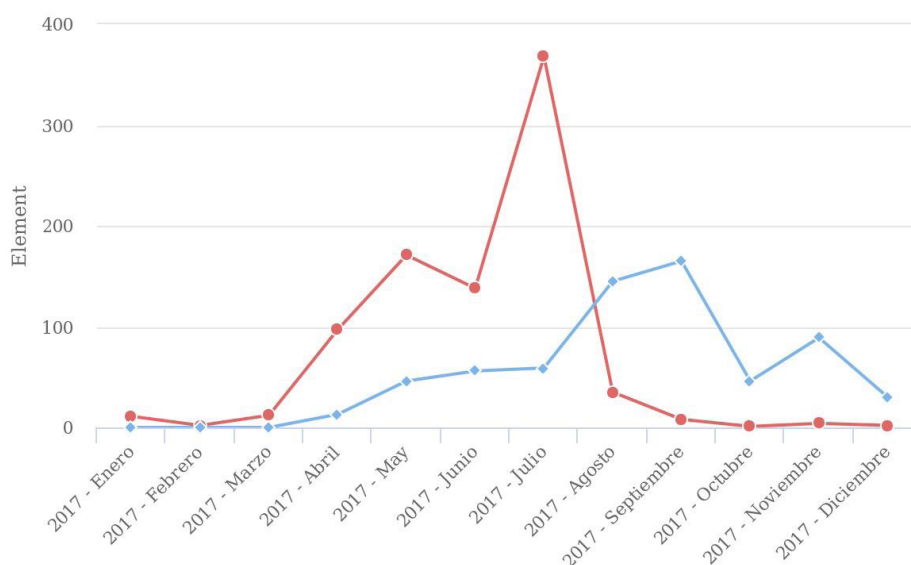


Gráfico que evidencia el efecto "puerta giratoria" de presos políticos durante el año 2017
(en rojo el índice de nuevos presos políticos y en azul las excarcelaciones)

Presos políticos desde el año 2014 al 31/12/2017

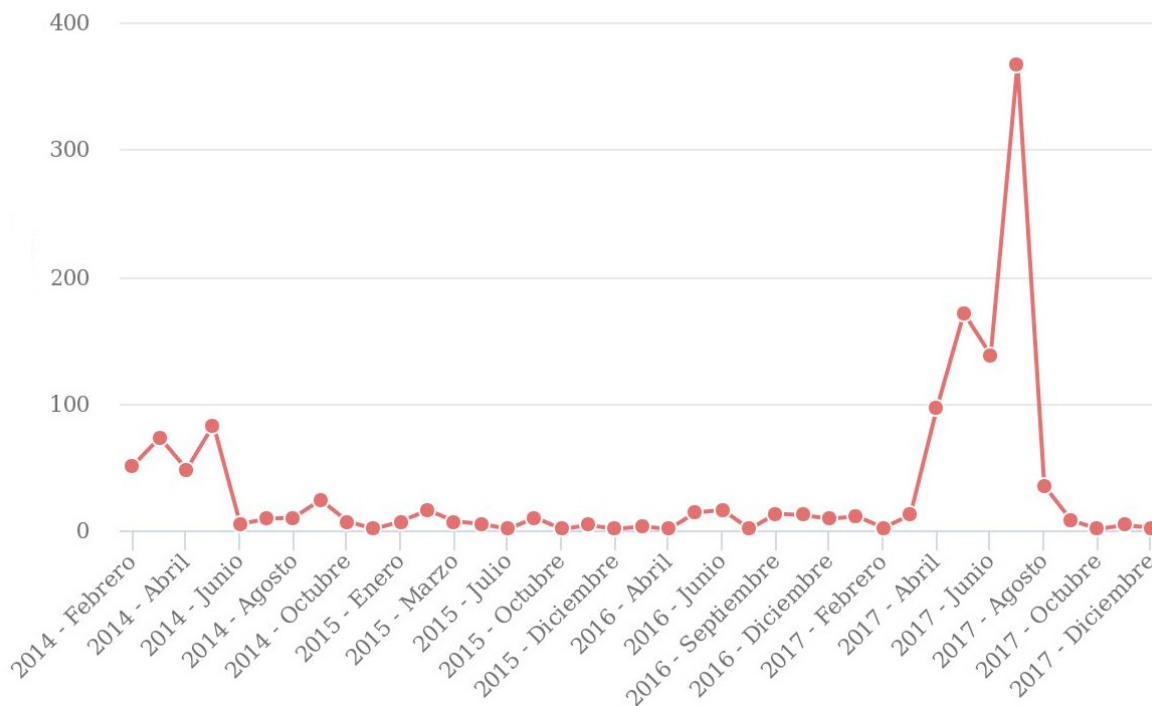


Gráfico que evidencia el efecto "puerta giratoria" de presos políticos durante el año 2017
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nal takes the position that any dialogue or negotiation should include other participants such as the UN High Commissioner on Human Rights as well as the Secretary General of the OAS. Both the Commissioner and Secretary General are fully cognizant of the myriad of issues relating to Venezuelan the political prisoner and the daily violation of human rights in our country.

Another interesting example among the many relevant cases is the case of Juan Pedro Lares. Juan Pedro Lares, 23 years old, is the son of the Mayor of Ejido in the Municipality of Campo Elias in Merida State. Juan Pedro Lares was taken in an arbitrary fashion from his home by agents of the government on July 30, 2017 without a judicial order. As it appeared he had been forcibly removed, in the beginning his family had no information on his whereabouts. He is currently being held at the headquarters of SEBIN at the Helicoide, Caracas. He remains imprisoned without having been presented before any court or competent authority. His arrest, was allegedly perpetrated to coerce his father, the Mayor of Campo Elias, to surrender himself to the authorities. Foro Penal attorneys presented a writ of habeas corpus. SEBIN is the government agency arbitrarily detaining Juan Pedro and it flagrantly disregards the enforcement of legal and judicial actions against it. As of the date of this report, no statement has been obtained from the Attorney General on this matter.

SYSTEMATIC PROGRAM OF ILLEGALLY ENTERING PRIVATE HOMES ON THE PART OF GOVERNMENT SECURITY FORCES

In connection with the above-mentioned cases and as part of the various tools and actions the Government of Venezuela has used to oppress and intimidate its citizens, the systematic illegal entering of private homes increased markedly from April to August, 2017.

The illegal intrusions into private homes happen when government security forces lacking any judicial basis, order or legal exception, storm into residential communities with bullet proof vehicles and firearms to break down fences, barriers and doors causing multiple damages to private property and harming individuals and pets along the way while they committing arbitrary individual arrests. In many cases, government se-

curity forces take this opportunity to “plant” evidence¹², thereby intimidating the general population and generating fear in order to prevent popular demonstrations against the government.

Government security forces have used these intimidating tactics in the past. However, [throughout 2017] was the first time these tactics were used specifically to prevent the population from continuing to participate in street demonstrations against the Government. In prior occasions, the Government had been denounced for grave abuses of power against the poorest sections of the populations in what the government labeled “Operations to Liberate the People” (OLP). In effect, Government Security Forces have been denounced in the past for, under the pretext of seeking out criminals, carrying out OLP and indiscriminately arresting individuals, entering their homes illegally and perpetrating extrajudicial executions.

Studies analyzing cases of arrests made inside private residences over the course of 2017 have concluded that all were conducted in contravention of applicable laws, absent judicial orders, procedures or any legal authority. No public prosecutors or witnesses were present as required pursuant to Article 196 of the COPP¹³. Furthermore, individuals in these cases were not granted to access defense attorneys as also mandated by the Article 196.

The following are documented cases of a broad number of unconstitutional intrusions into private residences in 2017: Residential Complex El Paraíso, “Los Verdes”, Caracas; private residential buildings OPS, El Picacho and Sierra Brava, in Altos Mirandinos; Los Tulipanes in the San Diego community in Carabobo State and the residential area Torres de Saladillo in Zulia State.¹⁴

Actions by government security forces described above are counter to constitutional principles and rights and the rule of law. The right to constitutional searches of a homestead or place of residence is provided in Article 47 of the Constitution. Actions in contravention to this provision are classified pursuant to Article 184 of the Penal Code as crimes of “Violation of Domicile by a Public Officer in Charge”. In addition, it is evident these acts constituted the implemented a Gov-

¹² “Planting” evidence is making believe certain incriminating items were in the possession of the detained person at the time of the arrest when it is factually incorrect.

¹³ Extraordinary Official Gazette of the Bolivarian Republic of Venezuela No. 6078 dated June 15, 2012

¹⁴ <https://www.el-carabobeno.com/al-menos-18-detenedos-tras-allanamientos-torres-saladillo/>

ernment policy of systematically conducting unconstitutional searches and arrests in private residences. As such, the Government may have incurred in Crimes Against Humanity pursuant to Article 7 of the Statute of Rome of the International Criminal Court.¹⁵ This Statute has been ratified by Venezuela in the “Law Approving the Statute of Rome and the International Criminal Court”.¹⁶

INTIMIDATION/ATTACKS TO JOURNALISTS AND OTHER MEDIA

In this respect, as a result of decisions taken by the National Commission of Telecommunications (CONATEL), there were 52 closings of radio and television stations or cable channels in 2017. At least 10 printed media outlets have ceased circulation as a result of the Government’s determination regarding such media printed content favoring the opposition thereby depriving the citizenship of their constitutional right to truthful and uncensored information per Article 58 of the CRBV.¹⁷ In addition to the cases mentioned above, the persecution and harassment of journalists by government security forces have included physical attacks, arbitrary detentions, severe beatings and takings of equipment in an effort to create fear and dissuade journalists from reporting events in Venezuela.

Among other cases, we bring attention to the case of journalist Jesus Medina who was arbitrarily arrested on October 6, 2017 together with Filippo Rossi (Swiss citizen) and Roberto Di Matteo (Italian citizen), both journalists by authorities from the jail of Tocoron in Aragua State. Jesus, Filippo and Roberto were doing investigative journalism in the jail. They were set free upon presentation to the court. Thereafter on November 3, 2017, Jesus Medina was kidnapped by police officers. In a statement provided upon his release, Jesus testified that he was held in a dark room, without water or food for four days while subjected to tortures and threat-

ened.¹⁸ He was set free on November 7 in the early hours of the morning, half naked in a highway in Caracas. He further testified that his alleged kidnapping was the result of the publication of his investigative journalism pieces regarding Venezuelan prisons.

FINAL OBSERVATIONS

As clearly established in this report, repression levels during 2017 were unprecedented in Venezuelan history. Specifically, during the months in which increased antigovernment demonstrations took place, according to our analysis, repressive tactics detailed herein used by the Government were directly linked to the protests. This demonstrates that peaceful political protests and demonstrations were effectively criminalized by the Government. The Venezuelan Government used repression, intimidation, harassment, denial of medical attention to political prisoners, torture, trials before military tribunals, disregard of judicial detention orders to release and, in general, failed to comply with the rule of law in order to control and repress Venezuelan citizens. These tactics further incentivize the abuse of power.

Due to these systematic repression tactics directed against a specific sector of the population opposing the Government, in accordance with statements made by various ONG such as the UN and the OAS, among others, there are potential causes of action which could be filed against high level officers of the Venezuelan Government and others in the line of command who may be responsible for the commission of crimes against humanity.

Foro Penal will continue to document each and every case of human rights violations taking place in Venezuela and will continue to denounce such violations before competent national and international entities.

¹⁵ Statute of Rome of the International Criminal Court. United Nations. A/Conf. 183/9, July 17, 1998

¹⁶ Official Gazette No. 37.098 dated December 13, 2000 and Extraordinary Official Gazette No. 5.507 dated the same date.

¹⁷ Published in Official Gazette of the Bolivarian Republic of Venezuela No. 6.323 Extraordinary dated August 8, 2017, Article 58 of the CRBV states that communications shall be free and plural and in accordance with the duties and responsibilities provided by law. Every person has the right to timely, truthful and impartial information free of censorship and in accordance with the principles of this Constitution.

¹⁸ http://www.el-navional.com/noticias/sociedad/asi-dejaron-jesis-medina-mientras-estuvo-desaparecido_210731

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