

FREE LEOPOLDO



Submission on the Preparation by the Human Rights Committee of a List of Issues for the Examination of the Fourth Periodic Report of Venezuela 112th Session of the UN Human Rights Committee

**Friends of a Free Venezuela
Submitted on 31 July 2014**

Friends of a Free Venezuela welcomes the upcoming review of Venezuela by the Human Rights Committee. This briefing provides an overview of our concerns regarding Venezuela's compliance with the International Covenant on Civil and Political Rights (ICCPR), particularly in regards to the protests of 2014. We hope it will inform the Committee's upcoming List of Issues review for Venezuela.

Friends of a Free Venezuela is a coalition of international citizens who believe in the universal values of free speech and human rights. The organization is a non-governmental, non-profit organization incorporated in Delaware, United States, on March 5, 2014. Its mission is to help ensure that the Government of Venezuela abides by its duties under its own Constitution and international treaties, including the ICCPR.

Background

On March 5, 2013, Hugo Chávez died and Nicolás Maduro, who was vice-president at the time, took Chávez's place.¹ According to Human Rights Watch, Chávez's tradition of "accumulat[ing] ... power in the executive branch and erod[ing] ... human rights guarantees"² has continued under Maduro, which has "enabled [his] government to [similarly] intimidate, censor, and prosecute its critics."³ The Maduro government also inherited Chávez's legacy of a lack of judicial independence and impartiality.⁴

¹ Catherine E. Shoichet and Dana Ford, *Venezuelan President Hugo Chávez Dies*, CNN, Mar. 5, 2013, available at <http://www.cnn.com/2013/03/05/world/americas/venezuela-Chavez-main>.

² Human Rights Watch, *World Report 2014* (Jan. 21, 2014), http://www.hrw.org/sites/default/files/wr2014_web_0.pdf.

³ *Id.*

⁴ *Id.*

It was in this political climate that a series of protests and political demonstrations broke out in Venezuela in early February 2014.⁵ The protests erupted largely as a result of high levels of violence,⁶ corruption, inflation,⁷ and scarcity of basic goods in the country.⁸ These dynamics bred profound dissatisfaction with the Government among Venezuelans across the social spectrum.⁹ Armed pro-government gangs loyal to Maduro's government, on the other hand, often referred to as *colectivos*, have acted as community enforcers defending revolutionary socialism.¹⁰ Non-violent protests this year have turned violent because of the involvement of armed pro-government gangs and *colectivos*. Protests took place largely under the banner of a platform labeled "*La Salida*" ("the Exit").¹¹ This political platform highlights Venezuela's record inflation (reportedly 56.2 percent in December 2013), high murder rate, and shortage of basic food items.¹² In short, *La Salida* is a political strategy to use democratic and constitutional means to find solutions to the political and economic crisis.

During this year's protests, Venezuelan government officials continued a long tradition of intimidating, censoring, and prosecuting Venezuelans who are critical of President Maduro or hindered his political agenda. As of July 2014, there are approximately 3,238 individuals detained for political purposes, 237 of whom are under age.¹³ Of those, only 340 have been granted full freedom, while 2,066 have been freed with injunctions.¹⁴

The Government's response to these protests and political efforts has raised concerns under the following articles of the ICCPR:

Article 6: Right to Life

The initially peaceful protests in early 2014 turned violent as pro-government *colectivos* and security forces became involved and clashed with protestors. The violence has led to over

⁵ Amnesty International, *Venezuela: Political Spiral of Violence a Threat to the Rule of Law* (Mar. 31, 2014), <http://www.amnestyusa.org/news/news-item/venezuela-political-spiral-of-violence-a-threat-to-the-rule-of-law>.

⁶ *Socialism after Chávez: Political Divisions Deepen Amid Unrest in Venezuela*, PBS NEWSHOUR, Apr. 18, 2014, available at <http://www.pbs.org/newshour/bb/socialism-Chavez-political-divisions-deepen-amid-unrest-venezuela/>

⁷ *Venezuela Hikes Minimum Wage 30 percent Amid High Inflation*, CHICAGO TRIBUNE, Apr. 29, 2014, available at <http://www.chicagotribune.com/news/sns-rt-us-venezuela-salaries-20140429,0,6231814.story>.

⁸ Anatoly Kurmanaev and Corina Pons, *Venezuela Inflation Hits 16-Year High as Shortages Rise*, BLOOMBERG, Nov. 7, 2013, available at <http://www.bloomberg.com/news/2013-11-07/venezuela-inflation-hits-16-year-high-as-shortages-rise.html>; Corina Pons and Jose Orozco, *Venezuela Planning Third Dollar Supply System as Scarcity Rises*, BLOOMBERG, Feb. 11, 2014.

⁹ *Socialism After Chávez*, *supra* note 6; *Inside the Barrios*, THE ECONOMIST, Mar. 22, 2014, available at <http://www.economist.com/news/americas/21599382-support-among-poor-government-nicol-s-maduro-conditional-inside-barrios> [hereinafter *Inside the Barrios*].

¹⁰ *Inside the Barrios*, *supra* note 9; Daniel Wallis, *Venezuela Violence Puts Focus on Militant 'Colectivo' Groups*, REUTERS, Feb. 13, 2014, available at <http://www.reuters.com/article/2014/02/13/us-venezuela-protests-colectivos-idUSBREA1C1YW20140213>.

¹¹ See generally *What Lies Behind the Protests in Venezuela?*, BBC NEWS, Mar. 27, 2014, available at <http://www.bbc.com/news/world-latin-america-26335287>.

¹² See generally *Venezuela Forces 'Clear' Protest City of San Cristobal*, BBC NEWS, Mar. 31, 2014, available at <http://www.bbc.com/news/world-latin-america-2681574>.

¹³ *Foro Penal Venezolano*, <http://foropenal.com/>.

¹⁴ *Id.*

forty protest-related deaths.¹⁵ While both protestors and Government security forces have resorted to violence, a regular pattern of excessive force by Government forces shows a particular disregard for the right to life guaranteed in Article 6. As the Human Rights Committee (HRC) has noted, “(t)he deprivation of life by the authorities of the state is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.”¹⁶

There are multiple reports of excessive force by police officers that endangers the life of protestors.¹⁷ This includes firing plastic buckshot at point-blank range,¹⁸ beating protestors,¹⁹ and firing live ammunition.²⁰ Many of these instances involved the use of lethal force or excessive force against those who were already detained during peaceful protests and in other situations where no threat was posed by the victims.²¹ While some arrests of security agents have been made regarding protestor deaths,²² most prosecutions have stalled and few individuals affiliated with the Government have been held responsible.²³

Article 7: Freedom from Torture

Legislative progress towards eliminating torture as described in Venezuela’s State Report should be applauded. However, in practice torture continues with impunity, as evidenced by the experience of numerous detained protestors. One Venezuelan human rights organization has documented the torture of eighteen protestors, including one student who was sodomized with a rifle and another student who was hit with electric charges.²⁴ Human Rights Watch also documented multiple instances where abuse by security forces amounted to torture, including beatings, electric shocks or burns, being forced to squat or kneel for hours at a time, being

¹⁵ Andrew Cawthorne, *Venezuela’s Maduro Combats Dissidence Among Ruling Socialists*, REUTERS, Jul. 26, 2014, available at <http://www.reuters.com/article/2014/07/26/us-venezuela-socialists-idUSKBN0FV0GX20140726>.

¹⁶ *Human Rights Committee General Comment No. 6 (1982) on Article 6: Right to Life*, Apr. 30, 1982 (adopted at 16th session), HRI/GEN/1/Rev.9 (Vol. I) at ¶ 3.

¹⁷ OHCHR, for example, has expressed concern over the use of excessive force by security forces. *Concern Raised over Venezuela’s ‘Excessive Use of Force’ against Protestors*, UNITED NATIONS RADIO, Feb. 28, 2014, available at <http://www.unmultimedia.org/radio/english/2014/02/concern-raised-over-venezuelas-excessive-use-of-force-against-protestors/#.U9ko8WOTImw>.

¹⁸ William Neuman, *In Venezuela, Protestors Point to Their Scars*, NEW YORK TIMES, Apr. 27, 2014, available at http://www.nytimes.com/2014/04/28/world/americas/in-venezuela-protestors-point-to-their-scars.html&assetType=nyt_now&_r=0 [hereinafter *Prisoners Point to Their Scars*].

¹⁹ *Id.*

²⁰ Maria Gabriela Rodriguez, *Policarabobo Reprimio Con Armas de Fuego Protesta en San Diego*, EL VENEZOLANO, Jul. 5, 2014, available at <http://elvenezolanonews.com/regresan-las-protestas-a-san-diego-reportan-cierre-de-vias-y-enfrentamientos>.

²¹ Human Rights Watch, *Punished for Protesting* (May 9, 2014), http://www.hrw.org/sites/default/files/reports/venezuela0514_ForUpload_0.pdf [hereinafter *Punished for Protesting*].

²² *Arrests in Venezuela Protest Deaths*, AL-JAZEERA, Feb. 27, 2014, available at <http://america.aljazeera.com/articles/2014/2/27/5-domestic-intelligenceagentsarrestedinvenezuela.html>.

²³ *Protestors Point to Their Scars*, *supra* note 18.

²⁴ *ONG Registra 539 Detenciones, 19 Presos y 18 Torturados*, EL TIEMPO, Feb. 24, 2014, available at <http://eltiempo.com.ve/venezuela/organismo/ong-registra-539-detenciones-19-presos-y-18-torturados/127685>.

handcuffed to other detainees for hours at a time, or being subjected to extended periods of cold or heat.²⁵

Prisoners who were detained during the protests and remained in detention for multiple months also report torture. Four students who were detained on February 12 (one has since been released) have all reported torture, including being wrapped in a cushion and beaten so the trauma would not leave marks.²⁶ Psychological torture was also used, including dousing the student in gasoline, holding a match, and threatening to light the individual on fire if he refused to sign a confession.²⁷ In addition, political prisoner Mayor Enzo Scarano was brutally beaten on July 26 by members of the Military Counterintelligence Department, endangering his health as he had just undergone surgery.

Venezuela appears to have made a practice out of placing political prisoners in solitary confinement. Two detained mayors and one Police Commissioner, all members of opposition parties, have been held in solitary confinement²⁸ along with opposition leader Leopoldo López. He has been subjected to permanent, enforced, and arbitrary solitary confinement for 23-24 hours per day in the five months following his initial detention. Three times he has been punished for purported offenses by being deprived of all visitors for a two-week period.²⁹ The HRC has noted that “prolonged solitary confinement . . . may amount to acts prohibited by article 7.”³⁰

Article 19: Freedom of Opinion and Expression

The Government took affirmative steps to attempt to limit the freedom of opinion and expression during the period of protests. Media restrictions were put in place during the protests, preventing coverage of the demonstrations.³¹ One television station was taken off the air after broadcasting coverage of the protests.³² Individual journalists were also targeted: the Venezuelan Press Union documented at least eighty-nine journalists who were attacked, robbed or detained during protests between February 12 and early March 2014.³³

²⁵ Human Rights Watch, *Punished for Protesting* 15 (May 9, 2014),

http://www.hrw.org/sites/default/files/reports/venezuela0514_ForUpload_0.pdf.

²⁶ *Student Marco Coello Released after Over 100 Days in Prison*, EL UNIVERSAL, Jul. 24, 2014, available at <http://www.eluniversal.com/nacional-y-politica/140724/student-marco-coello-released-after-over-100-days-in-prison>.

²⁷ Information on these incidents was received by members of Friends of a Free Venezuela.

²⁸ *Hija de Exministro Venezolano Preso Denuncia que Su Padre Fue Aislado*, AMERICA LATINA, <http://www.diariolasamericas.com/america-latina/hija-exministro-venezolano-presos-dice-padre-aislado.html>.

²⁹ Information on these incidents was received by members of Friends of a Free Venezuela.

³⁰ *Human Rights Committee General Comment No. 20 (1992) on Article 7: Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment*, Mar. 10, 1992 (adopted at 44th session), HRI/GEN1/Rev.9 (Vol. 1) at ¶ 6.

³¹ *Venezuelan Government Silencing Media During Protests, Undermining Free Expression*, FREEDOM HOUSE, Feb 21, 2014, available at <http://www.freedomhouse.org/article/venezuelan-government-silencing-media-during-protests-undermining-free-expression#.U9kQUGOTImx>

³² *Venezuelan Authorities Take Foreign Cable Station Off the Air*, COMMITTEE TO PROTECT JOURNALISTS, Feb. 13, 2014, available at <https://cpj.org/2014/02/venezuelan-authorities-take-foreign-cable-station.php#more>.

³³ David Iaconangelo, *Venezuela Protests 2014*, LATIN TIMES, Mar. 7, 2014, available at <http://www.latintimes.com/venezuela-protests-2014-89-journalists-attacked-robbed-or-detained-opposition-protests-says-press>.

The Government also detains and imprisons opposition members as a means of limiting free discourse and as a form of punishment for those who exercise their right of free expression. Numerous opposition leaders have been detained for their involvement in anti-government peaceful protests, including opposition Mayors Daniel Ceballos and Enzo Scarano, Police Commissioner Salvatore Lucchese, and opposition leader Leopoldo López.³⁴ While prominent opposition leader Maria Corina Machado has not been arrested, the Venezuelan Congress voted to open a criminal investigation into her involvement in the anti-government protests, alleging treason and other crimes.³⁵ In March, three air force generals were arrested, allegedly for plotting a coup but in reality likely for their ties to the political opposition.³⁶

Such actions reflect a means of punishing those who exercise their freedom of opinion and expression. Freedom of expression includes the right to political discourse.³⁷ The HRC has observed that citizens must be able to “criticize or openly and publicly evaluate their Governments without fear of interference or punishment.”³⁸ The practice of detaining political opponents prevents free political discourse from occurring.

The Government’s limitation of the freedom of expression of protestors and political dissidents is not justified by the narrow exception of Article 19(3). Mere political dissent does not constitute a threat to the public order; rather, the HRC has noted that this exception “may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.”³⁹

Article 21 and 22: Right to Peaceful Assembly and Freedom of Association

The rights to freedom of peaceful assembly and association are protected by Articles 21⁴⁰ and 22(1)⁴¹ of the ICCPR. These rights are further guaranteed by the Venezuelan Constitution. However, an April 2014 ruling by the Venezuelan Supreme Court gave security officials the power to disperse unauthorized demonstrations as part of guaranteeing a “right to free transit,” effectively requiring all peaceful protests to obtain pre-authorization.⁴² This new requirement, when combined with an existing state practice of frequently targeting peaceful demonstrations, places a heavy burden on the right to free association and peaceful assembly.

³⁴ *Capriles Meets with Detainees at Military Prison North Venezuela*, EL UNIVERSAL, Apr. 24, 2014, available at <http://www.eluniversal.com/nacional-y-politica/140424/capriles-meets-with-detainees-at-military-prison-north-venezuela>.

³⁵ *Venezuela Targets Opposition Leader*, AL-JAZEERA, Mar. 18, 2014, available at <http://america.aljazeera.com/articles/2014/3/18/move-to-strip-venezuelaoppositionleadermachadoofimmunity.html>

³⁶ *Venezuela Arrests Generals on ‘Coup’ Charges*, AL-JAZEERA, Mar. 26, 2014, available at <http://america.aljazeera.com/articles/2014/3/26/venezuela-generalsarrested.html>.

³⁷ *Human Rights Committee General Comment No. 34 (2011) on Article 19: Freedom of Expression*, Sep. 12, 2011 (adopted at 102nd session July 11-29, 2011), CCPR /C/GC/34 at ¶ 11 [hereinafter *General Comment 34*].

³⁸ *Aduayom et al. v. Togo*, Communications Nos. 422/1990, 423/1990 and 424/1990, U.N. Doc. CCPR/C/51/D/422/1990/423/1990 and 424/1990 (1996) at ¶ 7.4.

³⁹ General Comment 34, *supra* note 37, at ¶ 23.

⁴⁰ ICCPR at art. 21.

⁴¹ ICCPR at art. 22(1).

⁴² Juan Francisco Alonso, *Venezuelan Top Court Bans Spontaneous Peaceful Protests*, EL UNIVERSAL, Apr. 25, 2014, available at <http://www.eluniversal.com/nacional-y-politica/140425/venezuelan-top-court-bans-spontaneous-peaceful-protests>.

Security forces target peaceful assemblies as well as those that have become violent. During the 2014 protests, peaceful assemblies were frequently targeted and dispersed, often through the use of tear gas, rubber bullets, and water cannons.⁴³ Peaceful protest camps have also been raided and cleared: in May, a raid of a camp set up by anti-government protestors resulted in 243 arrests.⁴⁴

Article 14: Due Process Rights and the Right to a Fair Trial

Arrests and detentions of protestors exhibit a pattern of violations of due process rights.⁴⁵ The ICCPR guarantees an individual the right “to be informed . . . of the nature and charges against him” and “to have adequate time . . . to communicate with counsel.”⁴⁶ However, during the 2014 demonstrations hundreds of protestors were arrested without a warrant and without being linked to any apparent crime.⁴⁷ Many detainees did not have access to a lawyer or family members before being brought before a judge.⁴⁸ Human Rights Watch alone documented 150 individuals who had been denied basic due process rights, including denial of access to a lawyer.⁴⁹

The ICCPR also affords individuals “the right to be presumed innocent until proved guilty according to law.”⁵⁰ The Human Rights Committee has noted that the presumption of innocence is expressed in unambiguous terms, and that there is “a duty for all public authorities to refrain from prejudging the outcome of a trial.”⁵¹ The Venezuelan Constitution also enshrines this right.⁵² Yet public officials engage in a practice of commenting on active cases: the President of the National Assembly told the media that a 20-year-old protestor had materials on him for terrorist purposes while the case was still pending,⁵³ and in the case of Leopoldo López, President Maduro and other public officials accused him of coordinating violent attacks or said he should be “behind bars.”⁵⁴

⁴³ Amnesty International, *Los Derechos Humanos en Riesgo en Medio de Protestas 7* (Apr. 1, 2014), <http://www.amnesty.org/es/library/info/AMR53/009/2014/es> [hereinafter Amnesty Report].

⁴⁴ William Neuman, *Venezuela Arrests 242 in Raids on Antigovernment Protest Camps*, NEW YORK TIMES, May 8, 2014, available at http://www.nytimes.com/2014/05/09/world/americas/venezuela-arrests-243-in-raids-on-antigovernment-protest-camps.html?_r=0&assetType=nyt_now.

⁴⁵ Amnesty Report, *supra* note 43, at 9.

⁴⁶ ICCPR at Article 14.

⁴⁷ Amnesty Report, *supra* note 43, at 9.

⁴⁸ Amnesty Report, *supra* note 43, at 9.

⁴⁹ *Venezuela: Unarmed Protestors Beaten, Shot*, HUMAN RIGHTS WATCH, May 5, 2014, available at <http://www.hrw.org/news/2014/05/05/venezuela-unarmed-protestors-beaten-shot>.

⁵⁰ ICCPR at art. 14.

⁵¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Venezuela* 308, A/HRC/60/1, Dec. 7, 2011.

⁵² *Venezuelan Constitution*, at art. 49(2).

⁵³ Amnesty Report, *supra* note 43, at 9.

⁵⁴ See, e.g., Andrew Cawthorne, David Wallis, *This Politician is a Wanted Man in Venezuela After Leading Anti-Government Protests This Week*, BUSINESS INSIDER, Feb. 14, 2014, available at <http://www.businessinsider.com/leopoldo-lopez-wanted-in-venezuela-2014-2>; William Neuman, *Prominent Opposition Leader in Venezuela is Blamed for Unrest*, NEW YORK TIMES, Feb. 13, 2014, available at http://www.nytimes.com/2014/02/14/world/americas/prominent-opposition-leader-in-venezuela-is-blamed-for-unrest.html?_r=0.

Finally, serious concerns about the independence of the judiciary raise concerns over fair treatment for protestors and opposition party members. ICCPR Article 14(1) affords individuals “a fair and public hearing by a competent, independent and impartial tribunal established by law.”⁵⁵ Despite this *de jure* protection, the HRC recently stated its clear views about the lack of independence in Venezuela’s judiciary. In a prominent case⁵⁶ regarding Venezuelan petitioner Eligio Cedeño, it found:

[T]he judicial authorities who heard the case were not independent because the State party has imposed a system of provisional judges who are not secure in their positions and who can be removed at will without any predefined procedure; and that those who do not follow instructions from the executive branch are subject to reprisals . . . The Committee recalls that States should take specific measures to guarantee the independence of the judiciary . . .⁵⁷

An illustrative example of the manner in which courts have been used for political purposes is the case against opposition leader Leopoldo López, who has been detained since February despite no evidence linking him to violent or illegal actions. The crux of the case against him relies upon supposed “subliminal messages” that Mr. López conveyed to Venezuelans, allegedly urging them to engage in violence. This is despite the fact that he explicitly called for peaceful demonstrations in multiple speeches and never advocated for protestors to use violent tactics. Mr. López’s case reflects a failure on the part of the Venezuelan government to guarantee an impartial trial; notably, Judge Susana Barreiros allowed all the prosecution’s evidence, but excluded all evidence presented by the defense, including sixty witnesses, fifteen videos, and a dozen experts. Similarly, Mr. López’s case has been overseen by provisional judges. Such questionable practices reflect more widespread flaws in judicial proceedings targeting political dissidents.

Sincerely,



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⁵⁵ ICCPR at art. 14(1)

⁵⁶ *Cedeño v. Bolivarian Republic of Venezuela*, Communication No. 1940/2010, U.N. Doc. CCPR/C/106/D/1940/2010 (2012).

⁵⁷ *Id.* at ¶ 7.2-7.3.