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Justice for Venezuela: The Human Rights Violations That are Isolating an Entire Country

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COMMENT

JUSTICE FOR VENEZUELA: THE HUMAN RIGHTS VIOLATIONS THAT ARE ISOLATING AN ENTIRE COUNTRY

ANDREA MATOS*

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* Andrea Matos received her J.D. from St. Mary's University School of Law and B.A. from The University of Texas at San Antonio. I dedicate this piece to my mother who has guided and supported me every step of the way. I hope to bring light to a country that has been suffering in the shadows for years.

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INTRODUCTION

“A monthly salary doesn’t even buy you a box of cereal.”

Barbara Mendez is the mother of eight-month-old, Nely.¹ Nely was born with a life-threatening heart condition which causes blood to move erratically between her heart and lungs.² Nely’s only solution is a highly specialized and delicate surgical procedure.³ Because this procedure is extremely specialized, only one hospital in Venezuela offers this corrective surgery.⁴ Nely has been on the waitlist for this corrective surgery since the day she was born.⁵ To compound Nely’s dire situation, she is susceptible to infections that require antibiotics, which are difficult to find in Venezuela—leaving many forced to purchase medication on black market at exorbitant costs.⁶ As a result, Nely’s mother must forgo necessities, such as diapers and baby food, to pay for Nely’s life saving medicine.⁷ Nely’s only hope is to survive long enough to get the surgery she so desperately needs.⁸

1. Mariana Zuñiga, *Venezuelan Voices: The Real-Life Stories Beyond the Protests*, NEW HUMANITARIAN (May 19, 2017), <https://www.thenewhumanitarian.org/fr/node/259427> [<https://perma.cc/67A6-TE3X>].

2. *Id.* See generally Ariane Marelli et al., *Brain in Congenital Heart Disease Across the Lifespan*, 133 CIRCULATION 1951, 1951–53 (2016) (echoing adverse effects of children born with congenital heart disease and the risk factors aggravated without proper care).

3. Zuñiga, *supra* note 1.

4. Compare *id.* (emphasizing the limitations in Venezuela as the only hospital in the country capable of providing the complex procedure has less than half of their operating rooms functioning), with Melody Schreiber, *Researchers are Surprised by the Magnitude of Venezuela’s Health Crisis*, NPR (Apr. 5, 2019, 1:34 PM), <https://www.npr.org/sections/goatsandsoda/2019/04/05/709969632/researchers-are-surprised-by-the-magnitude-of-venezuelas-health-crisis> [<https://perma.cc/FV5T-WFWV>] (bolstering the argument that conditions of hospitals in Venezuela need international attention because “patients who go to the hospital need to bring not only their own food but also medical supplies like syringes and scalpels as well as their own soap and water.”).

5. Zuñiga, *supra* note 1.

6. See *id.* (reporting eighty-five percent of necessary medications are unavailable in Venezuela); see also Schreiber, *supra* note 4 (illustrating how the difficulty of accessing medical attention in Venezuela leads Venezuelans with no alternative except fleeing to other countries).

7. Zuñiga, *supra* note 1 (portraying the horrific reality Nely’s mother faces by describing how she must replace diapers with rags in order to afford medication).

8. *Id.*; see Schreiber, *supra* note 4 (“[I]nfant mortality rose by 30 percent—from 8,812 children under age 1 dying in 2015 to 11,466 children the following year.”).

Vanessa Posada grew up in Caracas, the capital of Venezuela, and went to college to get a job as a teacher.⁹ Like many Venezuelan citizens, Vanessa and her husband Adolfo's salaries barely cover the cost of basic necessities—including food.¹⁰ At first, the family eliminated meat from their diet.¹¹ As their situation became more dire, additional food was eliminated from their diet, and the family survived off of rice and beans.¹² Their situation has become so extreme that their evening meals consist of a single plantain between them or skipping dinner entirely, all to ensure their son has something to eat.¹³ Vanessa has lost more than ten kilos in less than a year.¹⁴ Student attendance at Vanessa's school is diminishing—as it is throughout Venezuela—due to sickness, weakness, and other ailments caused by lack of food resources.¹⁵ An estimated one million children are no longer able to attend school regularly.¹⁶ When children are able to attend school, they find classes are regularly cancelled due to teacher absences.¹⁷

9. Zuñiga, *supra* note 1.

10. *Id.* See generally Stefano Pozzebon & Patrick Gillespie, *Venezuelans are Losing Weight Amid Food Shortages, Skyrocketing Prices*, CNN BUS. (May 3, 2017, 10:47 AM), <https://money.cnn.com/2017/05/03/news/economy/venezuela-food-prices/> [<https://perma.cc/NZS6-9HLQ>] (“In March, a basket of basic grocery items—including eggs, milk and fruit—cost 772,614 bolivares, or close to four times the monthly minimum wage, according to the Venezuela-based Center of Social Analysis and Documentation . . .”).

11. Zuñiga, *supra* note 1.

12. *Id.*

13. See, e.g., *id.* (“According to an annual survey of living conditions in Venezuela . . . three out of every four Venezuelans lost an average of 8.7 kilos last year.”); Pozzebon & Gillespie, *supra* note 10 (describing how Maduro raised the minimum wage in Venezuela by sixty percent even though it does not match the skyrocketing prices of necessities and “won’t buy much at the supermarket.”).

14. Zuñiga, *supra* note 1. See generally Pozzebon & Gillespie, *supra* note 10 (reiterating how the extreme poverty and rising cost of food in Venezuela leave many with no option except to go without meals).

15. See Zuñiga, *supra* note 1 (illustrating the adverse effects of malnourishment and its impact not only on the health of children but on their education).

16. *Id.*; see Erica Sanchez & Leah Rodriguez, *4 Ways the Venezuela Crisis is Affecting Children’s Education*, GLOB. CITIZEN (June 14, 2019), <https://www.globalcitizen.org/en/content/venezuela-crisis-childrens-education/#:~:text=Schools%20in%20Venezuela%20are%20struggling%20to%20keep%20their%20doors%20open.&text=At%20the%20beginning%20of%20the,aged%20children%20have%20dropped%20out> [<https://perma.cc/Z5SG-ZSZZ>] (noting the economic crisis and its effect on not only the food supply but the affordability of school supplies).

17. Zuñiga, *supra* note 1.

The following are examples of daily life stories of everyday people that are barely surviving and trapped in Venezuela because they cannot afford to leave:¹⁸

1. Javier Dominguez owns a bakery that he is unable to run due to his inability to sell bread because the government stopped delivering flour.¹⁹
2. Doctor Christian Ramos is unable to treat patients because of the lack in supplies or medications.²⁰
3. Jesus Lopez can no longer work as a hairdresser because of the shortages of supplies and water.²¹
4. Franco Rojas owns a restaurant that he can no longer run or serve food in because there is no rice or pasta.²²
5. Rosa Blanco has not seen her daughter because she left to Mexico due to the insecurity in Venezuela.²³

I. HISTORY

Ninety percent of Venezuelans live in abject poverty.²⁴ More than one in ten children suffer from malnutrition, and nearly ten percent of

18. Natalie Gallon & Stefano Pozzebon, *A Day in the Life of Venezuelans: Anything but Normal*, CNN (June 29, 2017, 1:40 AM), <https://www.cnn.com/2017/06/29/americas/venezuela-shortages-impact-lives/index.html> [<https://perma.cc/9MMN-KXXA>] (acknowledging the reality citizens of Venezuela face in economic and political turmoil, leaving many with few options for survival when food, medicine, and other basic needs are severely limited).

19. *See id.* (depicting the economic standstill caused by the government and its effect on Venezuelan business owners).

20. *Id.* (emphasizing the economic and political turmoil effect on the health of Venezuelan citizens).

21. *See id.* (illustrating how water shortages add pressure to businesses in the Venezuelan work force).

22. *See id.* (revealing the impossibility of cooking foods without staple items and not being able to find them anywhere aside from black markets or other cities hours away); *see also* Zuñiga, *supra* note 1 (depicting the struggle everyday Venezuelans have in purchasing food with the current shortage).

23. *See* Gallon & Pozzebon, *supra* note 18 (analyzing how the lack of opportunities and overall insecurity in Venezuela led many Venezuelans to leave the country).

24. *Venezuela at a Crossroads: Hearing Before the Committee on Foreign Affairs House of Representatives*, 116th Cong. 1 (2019) (Statement of Hon. Albio Sires, chairman of the subcommittee) <https://docs.house.gov/meetings/FA/FA00/20190213/108897/HHRG-116-FA00-Transcript-20190213.pdf> [<https://perma.cc/C83E-SQ2X>].

Venezuela's population of thirty-one million have fled their home country.²⁵ This mass exodus is compounding the already devastated Venezuelan economy, an economy that should be one of the wealthiest and prosperous in the hemisphere.²⁶

The continued corruption, incompetence, and mismanagement of the Venezuelan government led by both Nicolas Maduro and Hugo Chavez have decimated a once thriving country.²⁷ The incompetency of both Chavez and Maduro's leadership has led Venezuela to have an inflation rate of more than 700 percent making their currency of Bolivares nearly worthless.²⁸ Beginning with Chavez, he slowly instituted many programs to reform the country but was ultimately striving to reduce the checks and balances on his authority.²⁹

25. *Venezuela at a Crossroads: Hearing Before the Committee on Foreign Affairs House of Representatives*, 116th Cong. (2019) [hereinafter *Crossroads Hearing*] (Statement of Ted Yoho, Representative for Ambassador Rooney) <https://docs.house.gov/meetings/FA/FA00/2019/0213/108897/HHRG-116-FA00-Transcript-20190213.pdf> [https://perma.cc/C83E-SQ2X] (correlating the number of children suffering from malnutrition with the only other option being fleeing Venezuela to access basic resources).

26. See generally Megan Janetsky, *Fleeing Venezuela, Migrants Flood Colombia Amid Region's Worst Humanitarian Crisis in Decades*, USA TODAY (Nov. 20, 2018, 7:59 PM), <https://www.usatoday.com/story/news/world/2018/11/19/venezuela-colombia-migrants-nicolas-maduro-humanitarian-crisis-migrants-food-and-medicine-shortages/1808395002/> [https://perma.cc/9UWS-QERX] (asserting nearly three million people have fled Venezuela); see also *Crossroads Hearing*, *supra* note 25, at 6 (Statement of Ted Yoho) (stressing the stark contrast between Venezuela's current climate and the country's potential to be prosperous).

27. *Crossroads Hearing*, *supra* note 25, at 6, 7 (Statement of Ted Yoho) (tracing Venezuela's current turmoil to Chavez's and Maduro's corrupt presidential administrations).

28. See Max Fisher & Amanda Taub, *How Venezuela Went from the Richest Economy in South America to the Brink of Financial Ruin*, INDEP. (May 21, 2017, 17:07 PM), https://www.independent.co.uk/news/long_reads/how-venezuela-went-from-the-richest-economy-in-south-america-to-the-brink-of-financial-ruin-a7740616.html [https://perma.cc/AM6P-QESH] ("Maduro, who took power when Chavez died in 2013, inherited an economy that was a shambles . . . Unable to pay for subsidiaries and welfare programs, Maduro printed more money. When this drove up inflation, making basic foods unaffordable, he instituted price controls . . . [which] made imports prohibitively expensive. Businesses shut down. [Yet] Maduro printed more money, and inflation grew again. Food became scarce. Unrest deepened, and Maduro's survival grew more contingent on handouts he could not afford. This cycle destroyed Venezuela's economy."); see also AP Archive, *Venezuelans Recycle Worthless Bolivar Bills into Crafts*, YOUTUBE (Mar. 2, 2018), <https://www.youtube.com/watch?v=f3tpehKSJwA&feature=youtu.be> [https://perma.cc/L2QB-LRZT] (showing the citizens of Venezuela using the Bolivares to make wallets, belts, and purses out of the currency).

29. See Fisher & Taub, *supra* note 28 (depicting Chavez's role in modifying the Venezuelan government to the country's detriment but to his gain).

A. Hugo Chavez

Hugo Chavez was elected as the President of Venezuela in 1998.³⁰ Chavez was a former Lieutenant Colonel in the Venezuelan Military.³¹ Chavez launched the “Bolivarian Revolution,” which established a brand-new constitution and policies funded by the high oil prices.³² Through manipulation, Chavez utilized the Constituent Assembly as a means to dismantle the current political institutions.³³ When the courts challenged Chavez, he would suspend anyone that disagreed with him and packed the courts with judges that supported him.³⁴ Chavez administered a plethora of amendments to the constitution, such as eradicating term limits of presidency, and converting unilateral declarations of a national emergency to a public referendum.³⁵ In 2005, President Chavez initiated regulations on the media to provide fines and prison terms for slandering public figures.³⁶ During Chavez’s administration, Venezuela’s national debt went from \$22 billion to approximately \$70 billion.³⁷ Additionally during Chavez’s time, Venezuela had an income of \$700 billion but Venezuelan citizens are

30. MAX G. MANWARING, VENEZUELA’S HUGO CHAVEZ: BOLIVARIAN SOCIALISM, AND ASYMMETRIC WARFARE I (Oct. 2005).

31. *Id.*

32. *Venezuela Profile—Timeline*, BBC (Feb. 25, 2019), <https://www.bbc.com/news/world-latin-america-19652436> [<https://perma.cc/T9EW-M6QP>] (showcasing governmental overhaul fueled by Chavez’s disenchantment with established parties).

33. See Gustavo Coronel, *The Corruption of Democracy in Venezuela*, CATO INST. (Mar. 4, 2008), <https://www.cato.org/publications/commentary/corruption-democracy-venezuela> [<https://perma.cc/AU9F-TAZ3>] (elaborating on the corrupt tactics Chavez used during his presidency to gain control of the country).

34. See Fisher & Taub, *supra* note 28 (discussing how Chavez gutted and suspended unfriendly judges, saw politics as a zero-sum battle, and use of power to exploit organized crime by granting tacit impunity to armed groups he formed an alliance with).

35. Joe Parkin Daniels, *Venezuela: Who is Juan Guaido, The Man Who Declared Himself President?*, THE GUARDIAN (Jan. 23, 2019, 14:02 PM), <https://www.theguardian.com/world/2019/jan/15/juan-guaido-venezuelan-opposition-leader-challenging-maduros-rule> [<https://perma.cc/J8FU-3HN2>] (illustrating Chavez’s self-serving changes to the Venezuelan Constitution to continue gaining power over the country).

36. *Venezuela Profile—Timeline*, *supra* note 32 (identifying oppressive media regulations Chavez implemented when faced with criticism during his presidency).

37. Coronel, *supra* note 33 (demonstrating the astronomical increase of debt accrued under Chavez’s leadership was based on corruption, and the pocketing money into Chavez’s pockets without transparency or accountability).

unaware where exactly this money is going.³⁸ Despite the substantial sum of money, none was allocated to public services, such as health or education programs.³⁹ Although the money was nowhere to be found within public programs, some of the money was utilized by Chavez “to buy political loyalties.”⁴⁰

Corruption throughout the country became a way of life in Venezuelan society.⁴¹ Crime and violence has become rampant throughout the country.⁴² The murder rate per 100 thousand citizens rose from twenty-five in 1999 to forty-five in 2011.⁴³ After Hugo Chavez’s death in March of 2013 from cancer,⁴⁴ the victims of murder throughout the country were equivalent to the number of civilian casualties in Iraq in 2004.⁴⁵

Chavez hand-picked Nicolas Maduro as his successor, who barely won by taking merely a 50.6% of the vote against his opponent.⁴⁶ A “special”

38. *Id.* (“This formidable amount of money is nowhere to be seen in terms of public works or effective health and education programs . . . [and] none of the[] budgets are discussed publicly or subject to accountability.”).

39. *Id.* (emphasizing the irregularities in the management of public funds derives from Chavez’s decision to use the money for foreign accounts such as donations to Cuba, and to increase his political power and loyalties in his region).

40. *Id.* (demonstrating how funding was utilized to push Chavez’s political agenda and not to assist the citizens).

41. *Id.* (“Chavez’s presidency . . . led to the highest levels of government corruption ever experienced in Venezuela. [Such corruption is due to] money going directly into Chavez’s pockets; a mediocre management team working without transparency or accountability; the ideological predilections of Chavez, which led him to try to play a messianic role in Latin America, and even world affairs; and the policies of handouts put in place by Chavez to keep the Venezuelan masses politically loyal.”).

42. Stephen Keppel, *5 Ways Hugo Chavez Has Destroyed the Venezuelan Economy*, ABC NEWS (Jan. 17, 2013, 7:22 PM), https://abcnews.go.com/ABC_Univision/News/ways-chavez-destroyed-venezuelan-economy/story?id=18239956 [<https://perma.cc/KW64-2W2H>] (depicting the rise in murder under Chavez’s regime and its influence on the workforce in Venezuela).

43. *Id.* (“[V]iolence has an economic impact . . . [and has made it] more challenging and dangerous than ever to do business and go to work in Venezuela [under Chavez’s regime and legacy].”).

44. *Venezuela Profile—Timeline*, *supra* note 32.

45. Fisher & Taub, *supra* note 28.

46. Juan Forero, *Nicolas Maduro Narrowly Wins Presidential Election in Venezuela*, WASH. POST (Apr. 15, 2013), https://www.washingtonpost.com/world/hugo-chavez-heir-nicolas-maduro-leads-in-polls-ahead-of-vote/2013/04/14/334cd2ba-a54b-11e2-9e1c-bb0fb0c2edd9_story.html?utm_term=.8534e37bc463 [<https://perma.cc/2BC2-C6JE>] (“With nearly all the votes counted, electoral authorities said late Sunday evening that Maduro had taken 50.6 percent of the vote to just under 50 percent for Henrique Capriles, a youthful challenger who had only days to mount a campaign against a powerful and tested electoral machine.”); *see also* Zeesham Aleem, *How Venezuela Went from a Rich Democracy to a Dictatorship on the Brink of Collapse*, VOX

presidential election was held giving the opposing candidate, Henrique Capriles, only days to prepare.⁴⁷ Maduro beat Capriles which was no surprise to anyone.⁴⁸

B. *Nicolas Maduro*

Maduro began using his authority as President to rule over the country.⁴⁹ Maduro used his power to appoint new members to the Supreme Court that were dedicated supporters of him with the ultimate goal of removing and eliminating the powers of the National Assembly to increase his control over the country.⁵⁰ The Opposition finally held a majority of the National Assembly in 2016,⁵¹ after 17 years of a socialist majority.⁵² Moreover, the Supreme Court, which supports Maduro, has nullified nearly almost every law in the nation.⁵³

(Sept. 17, 2017, 9:10 AM), <https://www.vox.com/world/2017/9/19/16189742/venezuela-maduro-dictator-chavez-collapse> [<https://perma.cc/YD7J-RKEA>]; Patrick J. Kiger, *How Venezuela Fell from the Richest Country in South America into Crisis*, HIST. (May 9, 2019), <https://www.history.com/news/venezuela-chavez-maduro-crisis> [<https://perma.cc/F4SE-7U8Z>]. See generally *Venezuela Profile—Timeline*, *supra* note 32 (illustrating Nicolas Maduro was chosen by Hugo Chavez to be his successor and was elected president “by a narrow margin” while his opponent unsuccessfully challenged the result).

47. Aleem, *supra* note 46 ; Forero, *supra* note 46.

48. Kiger, *supra* note 46 ; *Venezuela Profile—Timeline*, *supra* note 32 (acknowledging how although Maduro had previously been selected by Chavez who won by a landslide in his first election, Maduro won by only a small margin which the results have been highly contested); Forero, *supra* note 46.

49. Kiger, *supra* note 46 (detailing Maduro’s approach to leadership after obtaining presidency).

50. *Id.* (depicting tactics Maduro used to provide more power to himself while limiting those who held him accountable).

51. See generally Aleem, *supra* note 46 (“It was quickly apparent that Maduro was no Chávez. . . . [I]n addition to being a poor politician, Maduro has lacked Chávez’s other exceptional asset for most of his time in office: oil money. After oil prices crashed in late 2014, Venezuela’s economy crashed with it. . . . As Venezuela’s economy has collapsed, Maduro’s popularity has also plummeted, and protest movements have rocked the country. . . . ‘The opposition is betting if they gain in the regional elections, they can reinvigorate their mostly dejected forces and take on Maduro’”); see generally *Venezuela Events of 2018*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2019/country-chapters/venezuela> [<https://perma.cc/MZ4Q-UXTV>] (recognizing the shift in the legislative branch under Maduro’s presidency).

52. *Opposition Ends Decades of Socialist Rule in Venezuela*, DW (May 1, 2016), <https://www.dw.com/en/opposition-ends-decades-of-socialist-rule-in-venezuela/a-18962403> [<https://perma.cc/SQD9-2RRN>].

53. See Kirk Semple, *Venezuela’s Two Legislatures Duel, but Only One Has Ammunition*, N.Y. TIMES (Nov. 3, 2017), <https://www.nytimes.com/2017/11/03/world/americas/venezuela->

The Maduro government quickly expanded its power over media, by criminalizing journalists who criticized the Maduro administration and government officials.⁵⁴ A prime example is how Maduro stopped an interview with Jorge Ramos due to interview questions about the many atrocities rumored to be directed by Maduro himself.⁵⁵ President Maduro ordered his security agents to confiscate the journalist's equipment and recordings.⁵⁶ Ramos' equipment was held for three months.⁵⁷ Ramos' equipment was eventually returned, but not before the recordings were uploaded to social media for the world to see.⁵⁸

Since Maduro has come into power in 2013, military and police have "arbitrarily detained" thousands of protestors, committed acts of torture, and carried out hundreds of brutal killings.⁵⁹ The government only has one goal, ensuring those in the Opposition are eliminated.⁶⁰ It's stated that in one weekend Security Forces killed at least 25 people and injured more than 285 because they protested the administration.⁶¹ From

national-assembly-maduro.html [https://perma.cc/969B-APWY] ("[Maduro] and his allies started chipping away at congressional powers. The Supreme Court, stacked with judges loyal to Mr. Maduro, nullified nearly all pieces of legislation that the Assembly passed in 2016 and stripped it of its budgetary oversight powers . . .").

54. See, e.g., Interview by Jorge Ramos with Nicolas Maduro, Dictator of Venezuela, in Urdaneta Avenue, Caracas (June 2, 2019), <https://jorgeramos.com/en/real-america-with-jorge-ramos-interview-with-a-dictator/> [https://perma.cc/46X2-9GNY] [hereinafter Interview by Jorge Ramos] (illustrating Jorge Ramos' experience interviewing Maduro and having his equipment confiscated due to Maduro's dislike of the questioning). See generally HUM. RTS. WATCH, *supra* note 51 (describing how the government expanded and abused its power to regulate and reduce dissenting media outlets).

55. Interview by Jorge Ramos, *supra* note 54 (displaying a tumultuous interview with Nicolas Maduro, who deflected controversial questions and abruptly ended the interview).

56. *Id.* ("Univision was able to recover the interview from confidential sources three months after Jorge Ramos and his team were detained.").

57. *Id.* (discussing Maduro's underlying control over media, especially when journalists challenge his leadership and source of power).

58. *Id.* (asserting the Venezuelan government did as much as they could to prevent individuals from seeing this interview).

59. *Made by Maduro: The Humanitarian Crisis in Venezuela and U.S. Policy Responses: Hearing before the Subcommittee on the Western Hemisphere, Civilian Security, and Trade*, 116th Cong. 1 (2019) [hereinafter *Maduro Hearing*] (statement by Hon. Albio Sires, chairman of the subcommittee).

60. *Id.* See generally Interview by Jorge Ramos, *supra* note 54 (showing how media personal are treated when challenging Maduro's authoritarian leadership).

61. *Made by Maduro: The Humanitarian Crisis in Venezuela and U.S. Policy Responses: Hearing before the Subcommittee on the Western Hemisphere, Civilian Security, and Trade*, 116th Cong. 6 (2019) (statement by Ted S. Yoho, reading Ambassador Rooney's opening statement).

January to May 2019, there were sixty-six documented deaths during protests, fifty-two of which are directly attributed to government security forces.⁶² According to the United Nations (UN), as of May 31, 2019, 793 people remained arbitrarily deprived of their liberty.⁶³

By 2018, Maduro had forced over 3 million Venezuelans to leave their home country due to poverty and a shortage of food and medicine.⁶⁴ By mid-2019, that number skyrocketed and now over 4 million Venezuelans are refugees and migrants in other countries.⁶⁵ Meanwhile, Maduro's personal wealth continues to increase due to drug trafficking and money laundering.⁶⁶

Venezuela's health system has drastically declined since 2017.⁶⁷ There has been a large spread of vaccine-preventable diseases, such as measles and diphtheria, as well as infectious diseases such as malaria and

62. *UN Human Rights Report on Venezuela Urges Immediate Measure to Remedy Grave Rights Violations*, UNITED NATIONS HUM. RTS. OF THE OFF. HIGH COMM'R (July 4, 2019), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24788&LangID=E> [<https://perma.cc/8XV3-XL7E>] (describing how pro-government armed civilian groups, known as *Colectivos*, have contributed to deteriorating the situation in Venezuela by exercising social control and helping repress demonstrations).

63. *Id.*; *Detailed Findings of the Independent International Fact Finding Mission on the Bolivarian Republic of Venezuela*, HUM. RTS. COUNCIL 6 (Sept. 15, 2020) https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFMV/A_HRC_45_CRP.11.pdf [<https://perma.cc/W454-WMLB>].

64. *See generally Maduro Hearing*, *supra* note 59 (statement by Hon. Albio Sires, chairman of the subcommittee) ("Maduro has caused an economic collapse that has left nearly 90 percent of Venezuelans in poverty, and forced over 3 million Venezuelans to leave their country."); *see also* UNITED NATIONS HUM. RTS. OFF. OF THE HIGH COMM'R, *supra* note 62 (reiterating large sections of the Venezuelan population do not have access to essentials such as food).

65. *See Refugees and Migrants From Venezuela Top 4 Million: UNHCR and IOM*, UNHCR (June 7, 2019) <https://www.unhcr.org/en-us/news/press/2019/6/5cfa2a4a4/refugees-migrants-venezuela-top-4-million-unhcr-iom.html> [<https://perma.cc/2B3K-7HGL>] (concluding Venezuelans are one of the single largest population groups displaced from their country).

66. *See Maduro Hearing*, *supra* note 59 (statement by Hon. Albio Sires, chairman of the subcommittee) (contrasting the experience of an average Venezuelan citizen suffering from poverty and food shortages to the wealth Maduro and his regime have accumulated).

67. *See Venezuela's Humanitarian Emergency, Large Scale UN Response Needed to Address Health and Food Crises*, HUM. RTS. WATCH (Apr. 4, 2019), <https://www.hrw.org/report/2019/04/04/venezuelas-humanitarian-emergency/large-scale-un-response-needed-address-health> [<https://perma.cc/98SQ-UKRL>] (noting the increase in preventable diseases, lack of medication for those living with HIV, and rise in maternal and infant mortality). *See generally* UNITED NATIONS HUM. RTS. OFF. OF THE HIGH COMM'R, *supra* note 62 ("The health situation in the country is dire, with hospitals lacking staff, supplies, medicines and electricity to keep vital machinery running. . . . [B]etween November 2018 and February 2019, 1,157 people died because of lack of supplies in hospitals.").

tuberculosis.⁶⁸ Hospitals are lacking in staff, supplies, medicines, and even electricity.⁶⁹ Between November of 2018 and February of 2019, 1,557 people died due to a lack of basic supplies in hospitals throughout the country.⁷⁰ Maduro's government claims they have made continuous and ongoing efforts to increase the access for the Venezuelan population to food through many social programs, but many citizens argue the aid they so desperately need is restricted to only those who support the government.⁷¹

In 2016, infant mortality rose thirty percent and maternal mortality rose sixty-five percent in just one year.⁷² The health minister was fired a few days after releasing this data to the public.⁷³ No statistics have been released since.⁷⁴ Venezuelan authorities under Maduro's direction consistently hinder the release of these statistics, all in an attempt to hide the growing health crisis.⁷⁵ Maduro blames the United States for all of Venezuela's catastrophic conditions yet consistently insists there is no humanitarian crisis.⁷⁶

68. See, e.g., HUM. RTS. WATCH, *supra* note 67 (“Between 2008 and 2015, only a single case of measles was recorded (in 2012), since June 2017, more than 9,300 cases of measles have been reported Venezuela did not experience a single case of diphtheria between 2006 and 2015, but more than 2,500 suspected cases have been reported since July 2016, including more than 1,500 confirmed cases The World Health Organization reports that confirmed malaria cases in Venezuela have consistently increased in recent years—from fewer than 36,000 in 2009 to more than 414,000 in 2017 The TB incidence rate has increased constantly since 2014, reaching 42 per 100,000 in 2017—the highest seen in Venezuela in 40 years.”).

69. UNITED NATIONS HUM. RTS. OFF. OF THE HIGH COMM’R, *supra* note 62.

70. *Id.*

71. *Id.* (highlighting the Venezuelan government's failure to uphold its obligation to ensure the rights to food and health for all citizens, despite efforts to tackle the situation through social programs).

72. HUM. RTS. WATCH, *supra* note 67.

73. *Id.* (insinuating the firing of the health minister after the release of epidemiological data is a result of the Venezuelan government's attempts to suppress information).

74. *Id.*

75. *Id.* (analyzing Maduro's attempt to conceal the health crisis by suppressing data and retaliating against those who publish information regarding the food and medicine shortages proving there is a humanitarian crisis).

76. Tom Llamas et al., *Venezuela President Nicolas Maduro Accuses US Government of Fabricating a Crisis to Start War in South America*, ABC NEWS (Feb. 26, 2019, 4:10 PM), <https://abcnews.go.com/International/maduro-accuses-us-government-fabricating-crisis-start-war/story?id=61215212> [<https://perma.cc/5PCB-PKZX>] (chastising Maduro's attempt to accuse the U.S. government of trying to fabricate a crisis in order to deflect from the growing crisis in the country).

The U.S. government has issued (and continues to issue) many sanctions, to President Maduro, his government, and other key officials.⁷⁷ The U.S. Treasury Department issued sanctions to at least 132 Venezuelan individuals, Venezuela's state oil company, government, and central bank.⁷⁸ The State Department has also revoked the visas of many Venezuelan individuals.⁷⁹ The United States financially sanctioned President Maduro, his wife, his son, Executive Vice President Delcy Rodriguez, eight Supreme Court judges, the leaders of Venezuela's army, national guard, and national police.⁸⁰ These sanctions are based on allegations of corruption, drug trafficking, and human rights abuses.⁸¹ While these sanctions have not successfully led to a political transition, they do place increased pressure on the Maduro government.⁸² Venezuelan government officials are violating the obligation they have to their citizens to ensure their rights to basic food and health are met.⁸³ The Venezuelan government, including Maduro, would rather watch their citizens starve to death than release some of the power they hold

77. See Luke Taylor, *Venezuela: New US Sanctions Pressure Maduro but 'Risk Exacerbating Humanitarian Crisis and Torpedoing Negotiations,'* INDEP. (Aug. 11, 2019, 18:11 PM), <https://www.independent.co.uk/news/world/americas/venezuela-us-sanctions-maduro-guaido-humanitarian-crisis-white-house-a9051786.html> [<https://perma.cc/ZL28-BP5Y>] (depicting harsh sanctions on Venezuelan government in an attempt to hinder Maduro and his administration to potentially weaken the government).

78. *Venezuela: Overview of U.S. Sanctions*, CONG. RSCH. SERV., <https://fas.org/sgp/crs/row/IF10715.pdf> [<https://perma.cc/AXA9-THLF>] (Oct. 30, 2020) (describing the use of sanctions by the United States as a policy tool in response to the activities of the Venezuelan government).

79. *Id.* (highlighting the Trump Administration's expansion of sanctions as the political and economic crisis in Venezuela worsens).

80. *Id.*

81. Scott Smith, *Trump: Venezuelan Socialist President Could Easily be Toppled by Military*, MIL. TIMES (Sept. 25, 2018), <https://www.militarytimes.com/news/your-military/2018/09/26/trump-venezuelan-socialist-president-could-easily-be-toppled-by-military/> [<https://perma.cc/T8E7-ZZ48>] ("Over the past two years the Trump administration has sanctioned dozens of individuals, including Maduro himself, on allegations of corruption, drug trafficking, and human rights abuses.").

82. CONG. RSCH. SERV., *supra* note 78 (referring to the accelerating decline in Venezuela's oil production as a direct result of the sanctions imposed by the United States).

83. UNITED NATIONS HUM. RTS. OFF. OF THE HIGH COMM'R, *supra* note 62 (depicting the growing concern for citizens of Venezuela and their living conditions).

over the country.⁸⁴

C. Juan Guaidó

Juan Guaidó declared himself the interim president in January of 2019.⁸⁵ He led several public mobilizations wanting to convince Venezuelans that he can help lead the country out of its political and economic crisis.⁸⁶ Guaidó was backed by fifty-one nations, including the United States, as the legitimate leader of Venezuela.⁸⁷ Guaidó, in front of many Venezuelans, stated “he was ready to assume the presidency until free and fair elections could be held.”⁸⁸ Guaidó was also “briefly detained” by the intelligence services after his announcement.⁸⁹ Maduro removed Guaidó’s parliamentary immunity.⁹⁰ Venezuelan Supreme Court Justice, Maikel Moreno, called for Guaidó’s prosecution for inciting violence against the government and receiving illicit funds.⁹¹

The Opposition, under Juan Guaidó and the Democratic United Roundtable, is demanding the Maduro regime: “participate in free and

84. *Id.* (finding there were large sections of the Venezuelan population that did not have access to food distribution, with some interviewees accused the authorities of excluding them because they were not government supporters).

85. Taylor, *supra* note 77.

86. Richard Gonzales, *Maduro Allies Move Against Rival Juan Guaidó in Venezuela*, NPR (Apr. 2, 2019, 11:12 PM), <https://www.npr.org/2019/04/02/709306132/maduro-allies-move-against-rival-juan-guaid-in-venezuela> [<https://perma.cc/949K-3WJU>] (illuminating the threat Guaidó candidacy was to Maduro’s regime).

87. Taylor, *supra* note 77 (describing the global response to Guaidó’s declaration to serve as interim president of Venezuela).

88. Daniels, *supra* note 35 (recognizing Guaidó’s wanted to ensure Venezuelans that he was there to bring democracy back not take over the country).

89. *Id.* (“[Guaidó] was incredibly brave and now runs risks that he’ll be jailed, tortured or need to go into exile,” said David Smolansky, an opposition leader . . .”).

90. Gonzales, *supra* note 86 (“Venezuela’s Constituent Assembly voted unanimously to strip self-proclaimed interim president Juan Guaidó of immunity in a move his supporters fear may signal the impending arrest and prosecution of the opposition leader who is challenging the rule of President Nicolas Maduro.”).

91. *The Latest: Venezuela Judge Seeks to Strip Guaido’s Immunity*, AP NEWS (Apr. 1, 2019), <https://www.apnews.com/59c558cb8a0a4f01b945bda8f834a7bf> [<https://perma.cc/TQP3-DW4H>]. See generally Gonzales, *supra* note 86 (insinuating Maduro’s allies are creating charges against Guaidó as a response to his interim presidency).

fair elections with international oversight and monitoring; allow for unimpeded humanitarian aid; release hundreds of jailed political leaders and activists; dismantle the paramilitary *colectivos*; dissolve the constituent national assembly; and respect the national assembly.”⁹²

According to the UN, Venezuela will have over 5 million individuals seeking refuge in other countries by the end of 2019.⁹³ According to the NGO, over 10,477 protests have taken place in Venezuela since the start of 2019.⁹⁴

In April 2019, Guaidó launched “Operation Liberty,” which was a nationwide protest that asked for members of the military to defeat the Maduro regime.⁹⁵ While this protest was unsuccessful, it pushed for further negotiations between Maduro and the Opposition.⁹⁶ Guaidó is pushing for democracy to return to the government, whereas Maduro continues to assert that he should remain in power over the country.⁹⁷ As of November 2019, Maduro has not agreed to any of the proposals the Guaidó government requested.⁹⁸

92. Moises Rendon & Mark Schneider, *Analyzing Obstacles to Venezuela’s Future*, CTR. FOR STRATEGIC & INT’L STUDS. (Nov. 6, 2019), <https://www.csis.org/analysis/analyzing-obstacles-venezuelas-future?amp> [<https://perma.cc/3H3B-XECM>] (“By contrast, the Maduro regime reasserted its desire for its authority to be accepted, argued against any early election, and requested that the opposition leverage their international connections to eliminate the sanctions administered by the United States and a few other countries.”).

93. *Id.* See generally *Lockdowns Over, Venezuelans are Fleeing Their Country Once Again*, LOS ANGELES TIMES (Oct. 9, 2020, 4:16 AM), <https://www.latimes.com/world-nation/story/2020-10-09/venezuela-migrants-resume-exodus> [<https://perma.cc/34RB-LGX9>] (acknowledging the number of Venezuelans seeking refuge, as of the beginning of 2020, reached 5 million).

94. Rendon & Schneider, *supra* note 92 (“Over 4,000 protests have been related to the provision of basic services. Altogether, there have been dozens of deaths related to the repression of protestors by the Maduro regime, as well as many others detained and later disappeared.”).

95. *E.g., id.* (recognizing Guaidó’s failed attempt to force a transition to defect from the Maduro regime allowed some high-level officials to flee Maduro’s regime).

96. *Id.* (indicating tensions between Maduro and Guaidó’s talks arose early on due to arrests of members of Guaidó’s security detail and did not yield a resolution).

97. *Id.* (stressing Maduro’s refusal to work with Guaidó to accomplish substantial change for Venezuela and noting Maduro’s plan to “further exploit the suspension of talks to negotiate with several smaller factions of the opposition.”).

98. *Id.* (As of now, the Maduro regime has not been willing to accept the proposals set forth by the Guaidó government, . . . nor has it offered a comprehensive proposal of its own. Ultimately, these talks w[il] fizzle after the Maduro regime skipped the last round of the talks . . .).

II. ANALYSIS

*“If a family member dies, we can’t even bury him with dignity . . .
how can this be our reality?”⁹⁹*

International Criminal Court (ICC) seeks universal participation by nations in its objective to bring leading perpetrators of genocide, crimes against humanity, serious war crimes, and aggression to justice.¹⁰⁰ Maduro must be held accountable for the horrible and egregious acts he has committed, for directing his government, military, and police to commit crimes against fellow Venezuelan citizens, and for his failure to protect the citizens of Venezuela.¹⁰¹ Maduro and other Venezuelan authorities committed heinous crimes against Venezuela and its people; crimes which include murder, rape, torture, and imprisonment.¹⁰²

The ICC must hold Maduro and his regime accountable and answer for the crimes they have committed to the innocent citizens of Venezuela.¹⁰³

99. *In Venezuela’s Former Oil Capital, There’s Poverty in Life and Death*, INDEP. (Sept. 24, 2019, 13:59 PM), https://www.independent.co.uk/news/long_reads/world/venezuela-oil-capital-poverty-life-death-maduro-a9116661.html [<https://perma.cc/G228-QT66>].

100. *Why Back the International Criminal Court and the Fight for Global Justice*, COAL. FOR INT’L CRIM. CT., <http://www.coalitionfortheicc.org/explore/20-icc-benefits> [<https://perma.cc/8GMS-GBA6>]; see Matthew Lippman, *Crimes Against Humanity*, 17 B.C. THIRD WORLD L.J. 171, 269–71 (1997) (“Crimes against humanity—inhumane acts or persecutions based on racial, religious or political grounds—constituted a revolutionary step in the evolution of international jurisprudence.”).

101. See Andrew Rosati & Jose Enrique Arrijoja, *Venezuela is Committing Crimes Against Humanity*, *OAS Panel Says*, BLOOMBERG (May 29, 2019, 2:33 PM), <https://www.bloomberg.com/news/articles/2018-05-29/oas-panel-accuses-maduro-government-of-crimes-against-humanity> [<https://perma.cc/6C7L-DMCX>] (“[T]he experts said the socialist regime was involved in multiple murders and at least 12,000 cases of imprisonment and arbitrary detention. It also accused the authorities of torture, rape, political persecution and enforced disappearances.”). See generally UNITED NATIONS HUM. RTS. OFF. OF THE HIGH COMM’R, *supra* note 62 (emphasizing the failure of the government under Maduro’s regime to provide citizens with basic access to food and health).

102. Rosati & Arrijoja, *supra* note 101 (“Maduro’s administration has pursued a ‘massive assault on the rule of law in Venezuela’ . . . [with] widespread attacks on the judiciary . . . prevent[ing] any ‘genuine legal proceedings to investigate the crimes against humanity.’ Manuel Ventura Robles, one of the panelists and a former judge of the Inter-American Court of Human Rights [stated,] . . . “[c]ases of torture against women, men, it’s all incomprehensible that this continues to occur in our continent.”).

103. See Lippman, *supra* note 100, at 171 (“The rights of individuals were thus determined to transcend culture and country borders, and public officials could no longer claim immunity for the mistreatment of those within their own or other States.”). See generally THE STATE OF

Specifically, the Rome Statute of the International Criminal Court allows the ICC to prosecute Crimes Against Humanity.¹⁰⁴ The Office of the Prosecutor of the ICC began a preliminary investigation into Venezuela at the beginning of 2018.¹⁰⁵ Several protests have occurred across the country since 2017 and are the result of demands by Venezuelan citizens to improve the economic and humanitarian crisis.¹⁰⁶ The government's response to the protests was to impose a policy allowing the excessive use of force on citizens during protests.¹⁰⁷ Between January 21 to January 25 of 2019, State Security Forces used gunfire to kill thirty-three people during protests.¹⁰⁸ More than 900 people were detained and approximately 770 people were detained in a single day.¹⁰⁹ Between

VENEZUELA, *The United Nations and the Responsibility to Protect (with Elisabeth Pramendorfer)*, (July 31, 2020), <https://stateofvenezuela.podbean.com> [<https://perma.cc/MN3R-GBBN>].

104. Rome Statute of the International Criminal Court art. 5, July 17, 1998, 2187 U.N.T.S. 90 (entered into force on July 1, 2002).

105. *Preliminary Examinations: Venezuela*, INT'L CRIM. CT., <https://www.icc-cpi.int/venezuela> [<https://perma.cc/QG5Q-PQH7>] (analyzing the crimes committed under Maduro's regime since April 2017 with a focus on demonstrations and the related political unrest).

106. *Made by Maduro: The Humanitarian Crisis in Venezuela and U.S. Policy Responses: Hearing Before the Subcommittee on the Western Hemisphere, Civilian Security, and Trade*, 116th Cong. 18–19 (2019) (statement by Marcela Escobari, Senior Fellow for Global Economy and Development) (tracing the protest of Maduro's regime to the frustration of Venezuelan citizens and their lack of basic necessities such as food and healthcare); cf. UNHCR, *supra* note 65 (correlating Maduro's regime to the massive exodus in Venezuela).

107. *Made by Maduro: The Humanitarian Crisis in Venezuela and U.S. Policy Responses: Hearing Before the Subcommittee on the Western Hemisphere, Civilian Security, and Trade*, 116th Cong. 29–30 (2019) [Hereinafter *Maduro Hearing*] (statement from Santiago Canton, Former Executive Secretary, Inter-Americas Program) <https://docs.house.gov/meetings/FA/FA07/20190226/108946/HHRG-116-FA07-Transcript-20190226.pdf> [<https://perma.cc/Q95N-TBKE>] (emphasizing Maduro's goal of eliminating those opposed to his leadership in Venezuela at any cost by "weaponizing . . . seriously deteriorated living conditions in Venezuela, using [the] little supplies . . . available to reward those actively loyal to the regime and in turn, withholding resources as punishment to those who have been deemed their enemy. Food, medicines, and other basic necessities have become tools of political and social control, weapons with which to persecute their own people.").

108. *Venezuela: Crimes Against Humanity Require a Vigorous Response From the International Justice System*, AMNESTY INT'L (May 14, 2019, 11:11 AM), <https://www.amnesty.org/en/latest/news/2019/05/venezuela-crimes-against-humanity-require-response-from-international-justice-system/> [<https://perma.cc/ZK4X-6Z9M>] ("At least 33 of these people were killed by state security forces and six were killed by third parties acting with the approval of the authorities during the demonstrations.").

109. *Id.* (emphasizing the pattern of repression by the Maduro administration).

2014 and 2018, thousands of extrajudicial executions occurred.¹¹⁰ Five countries referred the Venezuelan case to the Office of the Prosecutor of the ICC.¹¹¹

A. *International Criminal Court (ICC)*

1. *The Rome Statute*

The Rome Statute was created so that there is an entity specifically meant for prosecuting and punishing individuals accused of human rights violations.¹¹² The Rome Statute was approved in 1998 by 120 countries.¹¹³ The court is located in The Hague, Netherlands.¹¹⁴ The Court came into force on July 1, 2002.¹¹⁵ The Rome Statute allows for the Court to be completely independent, including prosecutors and judges, which helps “safeguard against politically motivated investigations and prosecutions.”¹¹⁶ Cases can be referred to the ICC in two ways: by national governments or the UN Security Council.¹¹⁷ The Rome Statute states the jurisdiction of the Court shall be limited to the “most serious crimes of concern to the national community as a

110. *Maduro Hearing*, *supra* note 107, at 28 (statement from Santiago Canton, Former Executive Secretary, Inter-Americas Program) (“12,000 arbitrary detentions, 289 cases of torture, and 192 cases of rape of persons under State control; and a number of enforced disappearances.”); *see also* The State of Venezuela, *The Challenge of Sharing our Story at Home, Abroad, and on Campus (With Maria Fernanda Bello)*, at 45:10–45:29 (July 31, 2020), <https://stateofvenezuela.podbean.com> [<https://perma.cc/MN3R-GBBN>] (“I better run because they will come after me, they will take me, they will hurt me . . . when you know that the criminals are the only ones allowed to have guns they will come after you and there is nothing you can do . . .”).

111. *Maduro Hearing*, *supra* note 107, at 29 (statement from Santiago Canton, Former Executive Secretary, Inter-Americas Program).

112. *See generally* COAL. FOR INT’L CRIM. CT., *supra* note 100 (highlighting the benefits of this impartial and independent institution and how it can bring justice to victims of crimes against humanity).

113. *International Criminal Court Fast Facts*, CNN (Apr. 7, 2020, 3:15 PM), <https://www.cnn.com/2016/07/18/world/international-criminal-court-fast-facts/index.html> [<https://perma.cc/MY79-6J8W>].

114. *Id.*

115. *Id.*

116. COAL. FOR INT’L CRIM. CT., *supra* note 100 (emphasizing the goal of the ICC is to stand for equality and prevent genocide, crimes against humanity and war crimes); *cf.* Gonzales, *supra* note 90 (recognizing the inequities of the biased Venezuelan judicial system favor Maduro).

117. *International Criminal Court Fast Facts*, *supra* note 113.

whole.”¹¹⁸ The Court has jurisdiction in accordance with this statute with respect to the follow crimes: the crime of genocide, crimes against humanity, war crimes, and crime of aggression.¹¹⁹ There are eighteen judges on the Court which all serve nine year terms.¹²⁰

2. *Crimes Against Humanity*

Article 7 of the Rome Statute states the following crimes fall under the crime of “crime against humanity”: “a) Murder; b) Extermination; c) Enslavement; . . . e) Imprisonment or other severe deprivation of physical liberty . . . f) Torture; g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization . . . i) Enforced disappearance of persons; j) Crimes of apartheid; k) Other inhumane acts . . . intentionally causing great suffering, or serious injury to body or to mental or physical health.”¹²¹

The Rome Statute is a combination of common law and civil law, which typically varies by nation, so the ICC is instituted to have commonality.¹²² The Rome Statute incorporates a defendant’s due process rights into the statute in order to have a fair trial.¹²³ Certain rights given to all defendants include the: “presumption of innocence, right to counsel, right to present evidence and to confront witnesses, right to remain silent, right to be present at trial, right to have charged proved beyond a reasonable doubt, right to an appeal, and protection against double jeopardy.”¹²⁴ It is important the ICC has the support of the

118. Rome Statute of the International Criminal Court pmbl, art. 5, July 17, 1998, 2187 U.N.T.S. 90 (entered into force on July 1, 2002).

119. *See id.* (describing how during this century, millions of children, women, and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity).

120. *International Criminal Court Fast Facts*, *supra* note 113.

121. Rome Statute of the International Criminal Court art. 7, July 17, 1998, 2187 U.N.T.S. 90 (entered into force on July 1, 2002).

122. David Scheffer & Ashley Cox, *The Constitutionality of the Rome Statute of the International Criminal Court*, 98 J. CRIM. L. & CRIMINOLOGY 983, 992 (2008) (detailing the vast majority of nations do not rely on trials by jury and typically only rule by using bench trials).

123. *Q&A: The International Criminal Court and the United States*, HUM. RTS. WATCH (Mar. 15, 2019), <https://www.hrw.org/news/2019/03/15/qa-international-criminal-court-and-united-states> [<https://perma.cc/K75B-U3GJ>] (“The ICC is designed to be an independent permanent tribunal that respects the highest standards of justice.”).

124. *Id.*

international community to send the message to the Maduro regime that crimes against humanity will not be tolerated.¹²⁵

3. *International Crimes Being Committed by Venezuela*

The Human Rights Council held an independent fact-finding mission on Venezuela to “investigate extrajudicial executions, enforced disappearance, arbitrary detentions and torture and other cruel, inhumane or degrading treatment since 2014”¹²⁶ An “[a]ttack directed against any civilian population ‘means a course of conduct involving the multiple commission of acts . . . against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.’”¹²⁷ Crimes being committed by Maduro and other governmental officials are: (1) murder; (2) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (3) torture; (4) rape; (5) enforced disappearances of persons; and (6) other inhumane acts of a similar character intentionally causing great suffering.¹²⁸

a. Murder

The elements under Article 7(1)(a) of murder are:

- 1) The perpetrator killed one or more persons, 2) the conduct was committed as part of a widespread or systematic attack directed against a civilian population, and 3) the perpetrator knew that the conduct was part

125. *Id.*

126. HUM. RTS. COUNCIL, *supra* note 63, at 2.

127. Rome Statute of the International Criminal Court art. 7(2), July 17, 1998, 2187 U.N.T.S. 90 (entered into force on July 1, 2002).

128. *See* Rome Statute of the International Criminal Court pmbl, art. 7(1), July 17, 1998, 2187 U.N.T.S. 90 (entered into force on July 1, 2002) (recognizing that such grave crimes threaten the peace, security and well-being of the world); *see also* David McKenzie et al., *The Women Fighting to Solve Hundreds of Mysterious Murders in Venezuela*, CNN (May 6, 2019, 6:52 PM), <https://www.cnn.com/2019/04/30/americas/venezuela-special-action-force-faes-accused-deaths-intl/index.html> [<https://perma.cc/6NNR-KT88>] (recounting witness testimony of Venezuelan citizens on the murders and other crimes occurring across the country that are perpetrated by the Venezuelan government against its citizens). *See generally* HUM. RTS. COUNCIL, *supra* note 63, at 97–196 (providing examples of cases the Human Rights Council analyzed in an independent fact-finding mission in Venezuela that they concluded involved crimes against humanity).

of or intended the conduct to be part of a widespread or systematic attack against a civilian population.¹²⁹

Venezuelan special forces have carried out thousands of extrajudicial killings and then “manipulated crime scenes to make it look as if the victims had been resisting arrest.”¹³⁰ The Special Action Forces, tasked with handling drug trafficking and crime and known as “death squads,” killed 5,287 people in 2018, but some sources state that number could be much higher.¹³¹ The term Murder is not defined in the Rome Statute.¹³² The United Nation’s High Commission for Human Rights (OHCHR) stated in a report that murder is considered the “[i]ntentional killing committed with firearms or other less lethal weapons, unless strictly unavoidable to protect life, contravenes international standards, and amounts to excessive use of force, and possibly to an extrajudicial execution.”¹³³ There have been plenty of reports and statements by Venezuelan citizens that could be used in an ICC proceeding to show the crimes committed by Maduro and the Venezuelan government.¹³⁴

129. *Elements of Crimes*, INT’L CRIM. CT. 5, 6 (2011) <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf> [<https://perma.cc/7QYP-6BDL>].

130. See Nick Cumming-Bruce, *Venezuela Forces Killed Thousands, Then Covered it up*, *U.N. Says*, N.Y. TIMES (July 4, 2019), <https://www.nytimes.com/2019/07/04/world/americas/venezuela-police-abuses.html> [<https://perma.cc/J8N4-Y2E7>] (citing a U.N. report that found an attempted cover-up of thousands of extrajudicial killings performed by Venezuelan government forces); see also, e.g., McKenzie, *supra* note 128 (“Her son Darwilson was 20 years old when he was shot just outside their home in Caracas in 2013. Sanchez believes the men who executed him were members of Venezuela’s police forces.”).

131. E.g., Cumming-Bruce, *supra* note 130 (“Families of 20 young men who were killed in the last year described a pattern of violence in which the [Special Action Forces] arrived in pickup trucks without license plates, dressed in black and with their faces covered by balaclavas.”).

132. Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90 (entered into force on July 1, 2002). But see HUM. RTS. COUNCIL, *supra* note 63 (“The unlawful and intentional causing of the death of a human being in the context of a widespread or systematic attack constitutes the crime against humanity of murder.”).

133. *Human Rights Violations and Abuses in the Context of Protests in the Bolivarian Republic of Venezuela From 1 April to 31 July 2017*, OFF. UNITED NATIONS HIGH COMM’R FOR HUM. RTS. 33–34 (Aug. 2017), https://www.ohchr.org/Documents/Countries/VE/HCRReportVenezuela_1April-31July2017_EN.pdf [<https://perma.cc/64AX-XEGK>] (stressing the abuses perpetrated by the Venezuelan authorities and the need for an international response).

134. See generally Cumming-Bruce, *supra* note 130 (citing accounts of masked Special Action Forces units in black trucks who would storm into homes, assault the women, and shoot the men before staging the scene to look like their victims were criminals); accord McKenzie, *supra* note 128 (providing the account of Sanchez, one of many mothers who are victims of these crimes, and her willingness to start a support organization of other mothers calling for justice); *Venezuela*:

b. Imprisonment

The elements under Article 7(1)(e) for imprisonment are:

1) the perpetrator imprisoned one or more persons or otherwise severely deprived one or more persons of physical liberty, 2) the gravity of the conduct was such that it was in violation of fundamental rules of international law, 3) the perpetrator was aware of the factual circumstances that established the gravity of the conduct, 4) the conduct was committed as part of a widespread or systematic attack directed against a civilian population, and 5) the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.¹³⁵

The Venezuelan government has put several political opponents in jail to completely stop them from running against the Maduro regime.¹³⁶ In 2018, Venezuelan prisons had more than 230 political prisoners.¹³⁷ Leopoldo López, Opposition leader, is currently serving a thirteen-year sentence on charges of inciting violence despite the fact that the Maduro regime has not presented any credible evidence against him.¹³⁸

c. Torture

“Torture” means the “intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or

'A Worrying Destabilizing Factor in the Region', Bachelet Tells Human Rights Council, UN NEWS (Mar. 20, 2019), <https://news.un.org/en/story/2019/03/1035061> [<https://perma.cc/699J-2DHC>] (noting the report of a U.N. rights chief who found patterns of illegal raids conducted by FAES that similarly resulted in deaths).

135. *Elements of Crimes*, *supra* note 129, at 14; *see, e.g.*, HUM. RTS. COUNCIL, *supra* note 63, at 151–163 (summarizing the accounts of Venezuelan citizens who the Human Rights Council concluded were unfairly treated and imprisoned).

136. HUM. RTS. WATCH, *supra* note 51 (indicating the level of control the current regime has on all facets of Venezuelan society, including the ability to restrict the notion of any political change).

137. *Id.*

138. *See, e.g., id.* (“The Venezuelan government has jailed political opponents and disqualified them from running for office . . . despite a lack of credible evidence against them . . .” and has forced others into exile).

suffering arising only from, inherent in or incidental to, lawful sanctions.”¹³⁹

The elements of torture under Article 7(1)(f) are: 1) the perpetrator inflicted severe physical or mental pain or suffering upon one or more persons, 2) such person or persons were in the custody or under the control of the perpetrator, 3) such pain and suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions, 4) the conduct was committed as part of a widespread or systematic attack directed against a civilian population, and 5) the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.¹⁴⁰

Government agents have found any reason to pull people from their homes, detaining them in order to cause abuses and torture such as “electric shocks, asphyxiation, and other [torture] techniques.”¹⁴¹ Once detained, government agents subjected opponents of the government to abuses ranging from severe beatings to torture involving electric shocks, asphyxiation, being hung in stress positions, sleep deprivation, and sexual abuse (including rape).¹⁴² Security forces detonated teargas where the detainees are held and denied them access to food or water.¹⁴³ One

139. Rome Statute of the International Criminal Court art. 7(2)(e), July 17, 1998, 2187 U.N.T.S. 90 (entered into force on July 1, 2002).

140. *Elements of Crimes*, *supra* note 129, at 14.

141. *Crackdown on Dissent: Brutality, Torture, and Political Persecution in Venezuela*, HUM. RTS. WATCH (Nov. 29, 2017), <https://www.hrw.org/report/2017/11/29/crackdown-dissent/brutality-torture-and-political-persecution-venezuela> [https://perma.cc/P4QF-LN7R] [hereinafter *Crackdown on Dissent*] (“While Human Rights Watch and the Penal Forum have . . . been unable to determine the full scope of human rights violations [in Venezuela] . . . our research shows that the abuses were not isolated cases or the result of excesses by rogue security force member.”); *see, e.g.*, HUM. RTS. COUNCIL, *supra* note 63 (“According to the accounts she received, the most common practice involved hanging the women by their hands, blindfolding them and beating them all over their bodies, while calling them bitches and other insults. Others received electric shocks.”).

142. *See, e.g.*, *Crackdown on Dissent*, *supra* note 141 (“In 53 cases involving at least 232 people documented in this report, detainees were subjected to physical and psychological abuse, with the apparent purpose of either punishing them or forcing them to incriminate themselves or others.”).

143. *See generally id.* (emphasizing the utter disregard for humanity people in Venezuelan prisons are shown, including a detailed account of how security forces under direct command from the Venezuelan government decimate their own population).

individual reported an incident where they had him handcuffed, tied to a pipe on the ceiling, and beaten for nine hours straight.¹⁴⁴

d. Rape

The elements of rape under Article 7(1)(g)-1 are:

1) the perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body, 2) the invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent, 3) the conduct was committed as part of a widespread or systematic attack directed against a civilian population, 4) the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.¹⁴⁵

There are several reports of rape occurring on women detainees, although there is very little information about how this occurs.¹⁴⁶ One individual, Reny Elias, was arrested at his house and describes “officers choosing one young man, pulling down his pants in front of the other

144. Cf. *UN Signals Possible Executions, Forced Disappearances in Venezuela*, AGENCIA EFE (Aug. 30, 2017, 12:28 PM), <https://www.efe.com/efe/english/world/un-signals-possible-executions-forced-disappearances-in-venezuela/50000262-3365147> [<https://perma.cc/PC3P-B6KJ>] (discussing the severe treatment that adults and children were subject to, including: 1) being burned with cigarettes, 2) forced to listen to pro-government chants, and 3) having chemical substances, such as tear gas, placed directly in their respiratory tracts, and 4) other atrocities of the like).

145. *Elements of Crimes*, *supra* note 129, at 28.

146. Cf. *Crackdown on Dissent*, *supra* note 141 (“[A]nd he heard one officer say, ‘rape that bitch.’ Although he had his eyes covered, he could hear a woman who was close to him scream that a member of the GNB was ‘raping her with his fingers.’”); cf. HUM. RTS. COUNCIL, *supra* note 63 (“Male custodians threatened to rape male detainees with sticks and bats. . . . Male officers told C2EE01 that a group of them would rape her if she did not provide information. They threatened to rape her anally and with objects. The officers called her a traitor, a bitch and her mother’s cunt (*coño de su madre*).”).

detainees, putting teargas powder and water in his anus, and penetrating him with a broomstick.”¹⁴⁷

e. Enforced Disappearance of Person

Enforced disappearance of persons means 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.¹⁴⁸

The United Nations Working Group on Enforced or Involuntary Disappearance (UNWGEID) reviewed 425 cases for thirty-six countries.¹⁴⁹ It examined forty-nine reported cases of enforced disappearances using its “urgent action” procedure; recent cases include eleven countries, one of which is Venezuela.¹⁵⁰ Since 2014, more than 12,500 people have been arrested in connection with protests occurring across the country.¹⁵¹ The arrest of these individuals include not only demonstrators fighting for the government to return human rights to the country but also bystanders.¹⁵² Approximately 7,000 individuals have

147. Diego Scharifker, *Accounts of Brutal Torture Further Isolate Venezuela. But We Need Justice*, WASH. POST (June 6, 2018, 12:28 PM), <https://www.washingtonpost.com/news/global-opinions/wp/2018/06/06/accounts-of-brutal-torture-further-isolate-venezuela-but-we-need-justice/> [https://perma.cc/7793-RW5V].

148. Rome Statute of the International Criminal Court art. 7(2)(i), July 17, 1998, 2187 U.N.T.S. 90 (entered into force on July 1, 2002); *Elements of Crimes*, *supra* note 129, at 11; *cf.* HUM. RTS. COUNCIL, *supra* note 63 (“In seven investigated cases, SEBIN officers and other authorities either denied holding the person or told family members and lawyers that they had no information. In at least two cases, SEBIN officers told detainees’ mothers they should check the hospital and the morgue” even though these officers, knew that the detainees were in their custody).

149. Priya Pillai, *Enforced Disappearances: A Global Scourge, Increasingly Under the Radar*, OPINIOJURIS (May 31, 2019), <http://opiniojuris.org/2019/05/31/enforced-disappearances-a-global-scourge-increasingly-under-the-radar/> [https://perma.cc/DG7B-TM3B] (“[E]nforced disappearances have been carried out in a variety of contexts—internal conflicts and separatist movements, civil war, and to quell political dissent in ‘normal’ circumstances.”).

150. *Id.*

151. *Venezuela Events of 2018*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2019/country-chapters/venezuela> [https://perma.cc/MZ4Q-UXTV].

152. *Cf. id.* (“Security forces have committed serious abuses against detainees that in some cases amount to torture . . . [Nonetheless,] security forces continue repressing spontaneous protests and carrying out targeted, arbitrary arrests of opponents or perceived opponents throughout the country.”).

been “conditionally released,” but many still must return to court for possible criminal prosecution.¹⁵³

4. *Individuals Convicted by the ICC*

There have been twenty-eight cases prosecuted by the ICC.¹⁵⁴ The following are four of the most influential convictions within the ICC in other countries.¹⁵⁵

a. Jean Pierre Bemba

Mr. Bemba was accused of three counts of war crimes and two counts of crimes against humanity for failing to keep his forces from raping and killing civilians.¹⁵⁶ The offenses were all committed between 2002 and 2003 in multiple locations throughout the Central African Republic.¹⁵⁷ Bemba’s forces are alleged to have carried out widespread crimes against the civilian population including mass rapes, killings, and looting.¹⁵⁸ This was a landmark case because it was the first time ICC convicted an individual of rape or of the actions of their troops who committed

153. *Id.* (suggesting the retention of an individual’s freedom has not stopped previous prisoners from living in fear that the Venezuelan government will take their life or put them back in prison for no reason).

154. *Trying Individuals for Genocide, War Crimes, Crimes Against Humanity, and Aggression*, INT’L CRIM. CT., <https://www.icc-cpi.int/cases> [<https://perma.cc/6Q87-EHZM>].

155. *Cf.* Jane Stromseth, *Is the ICC Making a Difference?*, JUST SEC. (Dec. 6, 2017), <https://www.justsecurity.org/47717/icc-making-difference/> [<https://perma.cc/QQ67-JM78>] (recognizing the ICC’s importance through landmark convictions help set the position that the ICC is a force to be reckoned with in terms of providing justice for criminal human atrocities across the globe).

156. *Prosecutor v. Bemba et al.*, ICC 01/05-01/08, Judgement Pursuant to Article 74 of the Statute, ¶ 742 (Mar. 21, 2016), https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF [<https://perma.cc/88KP-2ATX>] (explaining the crimes Bemba committed, is responsible for, and eventually convicted of). *See generally Profile; Jean-Pierre Bemba, DR Congo’s Ex-Rebel and Vice-President*, BBC (June 8, 2019), <https://www.bbc.com/news/world-africa-35845556> [<https://perma.cc/G5FV-QFHP>] [hereinafter *Profile; Jean-Pierre Bemba*] (“It was the ensuing reign of terror, allegedly involving looting, civilian killings and mass rape of hundreds of women by MLC fighters, which led the ICC to file charges of war crimes and crimes against humanity against him as the group’s leader.”).

157. *Prosecutor v. Bemba et al.*, ICC 01/05-01/08, at ¶ 742; *Profile; Jean-Pierre Bemba*, *supra* note 156.

158. *Prosecutor v. Bemba et al.*, ICC 01/05-01/08, at ¶¶ 44, 153, 742 (Mar. 21, 2016), https://www.icc-cpi.int/CourtRecords/CR2016_02238.PDF [<https://perma.cc/88KP-2ATX>]; *cf. Profile; Jean-Pierre Bemba*, *supra* note 156 (“In one case, three generations of the same family were gang-raped while their relatives were forced to watch.”).

rape.¹⁵⁹ Essentially, this set the precedent that a commander can be found responsible for failing to take actions to stop crimes they know are being committed by subordinates.¹⁶⁰ The Court declared Bemba guilty on two counts of crimes against humanity and sentenced him to eighteen years.¹⁶¹ Bemba appealed both his sentences and the verdict, stating he did not have control over all 1,500 troops.¹⁶² In the contested majority opinion supported by three of the five judges, the Court held the trial court “erroneously convicted Bemba for specific criminal acts that were outside the scope of the charges.”¹⁶³ Bemba was also charged with and unsuccessfully appealed his conviction for presenting false evidence and corruptly influencing witnesses to not testify or testify falsely during his trial.¹⁶⁴ Bemba only received a one year suspended sentence and was fined 300,000 euros.¹⁶⁵

b. Germain Katanga and Mathieu Ngudjolo Chui

Katanga and Chui were accused of three counts of crimes against humanity and seven counts of war crimes.¹⁶⁶ The charge of war crimes was due to using children under the age of fifteen to take part in hostilities, directing an attack against civilians, willful killing, destruction

159. *Jean-Pierre Bemba’s War Crimes Conviction Overturned*, THE GUARDIAN (June 8, 2019, 12:03 PM), <https://www.theguardian.com/global-development/2018/jun/08/former-congo-leader-jean-pierre-bemba-wins-war-crimes-appeal-international-criminal-court> [<https://perma.cc/87WG-3UMQ>].

160. *Id.*

161. Prosecutor v. Bemba et al., ICC 01/05-01/08, at ¶ 742; *Profile; Jean-Pierre Bemba*, *supra* note 156.

162. *Jean-Pierre Bemba’s War Crimes Conviction Overturned*, *supra* note 159.

163. *ICC Appeals Chamber Acquits Mr. Bemba from Charges of War Crimes and Crimes Against Humanity*, INT’L CRIM. CT. (June 8, 2018), <https://www.icc-cpi.int/Pages/item.aspx?name=pr1390> [<https://perma.cc/AZ6X-LG34>]; *Jean-Pierre Bemba’s War Crimes Conviction Overturned*, *supra* note 159.

164. *Profile; Jean-Pierre Bemba*, *supra* note 156.

165. Prosecutor v. Bemba, ICC 01/05-1/08, Case Information Sheet, <https://www.icc-cpi.int/CaseInformationSheets/BembaEng.pdf> [<https://perma.cc/6EJE-RFL9>] (last updated Mar. 2019).

166. *Germain Katanga & Mathieu Ngudjolo Chui At the International Criminal Court*, INT’L JUST. MONITOR (July 29, 2020), <https://www.ijmonitor.org/category/germain-katanga-and-mathieu-ngudjolo-chui/> [<https://perma.cc/9BWM-XJ4E>] (“Congolese warlords Germain Katanga, . . . and Mathieu Ngudjolo Chui,” were charged by the ICC because: (1) of an attack the two warlords were connected to in a Democratic Republic of the Congo (DRC) village (2) the DRC became a state party to the Rome Statute; and (3) the DRC proved to be unwilling or unable to prosecute the crimes after when they chose to refer the situation to the ICC in 2004).

of property, pillaging, sexual slavery, and rape.¹⁶⁷ Initially Katanga and Ngudjolo's trials were tried together.¹⁶⁸ The Court said they did this particularly on the basis that Katanga and Ngudjolo shared responsibility for crimes committed during a joint attack on the village of Bogoro.¹⁶⁹ Eventually, the Court decided the liability applicable to Katanga required more time whereas, Ngudjolo's judgment should not be delayed.¹⁷⁰ Only Katanga was found guilty "as an accessory to one [count of a] crime against humanity (murder) and four [counts of] war crimes (murder, attacking a civilian population, destruction of property and pillaging)."¹⁷¹ In 2012, Ngudjolo was acquitted of all charges due to insufficient evidence.¹⁷² Katanga was sentenced to twelve years in prison.¹⁷³ The majority concluded Katanga made a significant contribution to the crimes committed and knew the combatants intended to commit crimes during the attack.¹⁷⁴ However, the majority found there was insufficient evidence to find Katanga guilty of using child soldiers in the hostilities, rape, and sexual slavery.¹⁷⁵ Katanga's 12-year sentence was reduced by the almost seven years he spent in ICC detention

167. *Id.* (noting the ICC's investigation of the warlords' actions revealed sufficient evidence to suggest attacks on civilians were due to their ethnicity).

168. *Id.*

169. *Id.* ("All the evidence for these crimes related to both suspects. The joinder was deemed in the interests of the victims and witnesses, conducting the proceedings in a fair and efficient manner, and the protection of the rights of the defendants, including the right to be tried without undue delay.").

170. *Id.* ("The majority recognized that these changes would prolong the trial of Katanga and decided that it was unnecessary to delay the judgment in the case of Ngudjolo.").

171. Prosecutor v. Katanga, ICC-01/04-01/07, Case Information Sheet (Mar. 20, 2018), <https://www.icc-cpi.int/CaseInformationSheets/KatangaEng.pdf> [<https://perma.cc/C9XK-9UWJ>]; *Katanga & Ngudjolo Chui*, *supra* note 166.

172. *Katanga & Ngudjolo Chui*, *supra* note 166 ("[ICC] judges found that there was a lack of credible evidence provided by the prosecution to support the accusation, and testimony from key prosecution witnesses lacked sufficient credibility to prove Ngudjolo was the commander of the combatants" and, thus, could not link him to the actions of soldiers).

173. *Id.*

174. *Id.* ("Katanga knew the combatants intended to commit crimes during the attack and drew attention to the importance of the firearms in the attack. Katanga furnished weapons to local combatants in large quantities, which allowed the combatants to successfully take Bogoro in a matter of hours.").

175. *Id.*

and later subsequently reduced by 3 years and 8 months from a review panel.¹⁷⁶

c. Thomas Lubanga

Lubanga is accused of conscripting and enlisting children under the age of fifteen—child soldiers—“and using them to participate actively in hostilities.”¹⁷⁷ These crimes were committed between September 2002 and August 2003.¹⁷⁸ During the trial, for the first time in ICC history, victims—118 in Lubanga’s trial—were able to give their testimony during the proceedings.¹⁷⁹ The trial took three years.¹⁸⁰ The Court held the prosecutor had proven beyond reasonable doubt that Lubanga was guilty of conscription.¹⁸¹ Lubanga was convicted and sentenced to fourteen years.¹⁸² He is the first person to be convicted and sentenced by the ICC.¹⁸³ Both Lubanga and the prosecutor filed appeals for the

176. Prosecutor v. Katanga, ICC-01/04-01/07, Judgement on the appeals against the order of Trial Chamber II of 24 March 2017 entitled “Order for Reparations pursuant to Article 75 of the Statute”, ¶ 260 (Mar. 8, 2018), https://www.icc-cpi.int/CourtRecords/CR2018_01651.PDF [<https://perma.cc/E9VV-GVMU>] (“On 23 May 2014, Trial Chamber II sentenced Mr[.] Katanga to 12 years of imprisonment. On 4 May 2015, Mr[.] Katanga indicated that he strongly desired to serve the remainder of his sentence in the DRC and requested the Presidency’s assistance in pursuing this possibility. Mr[.] Katanga re-iterated his desire to be transferred to the DRC on 20 October 2015. On 13 November 2015, the Appeals Chamber reduced his sentence by 3 years and 8 months and set the date for the completion of his sentence to 18 January 2016.”).

177. Prosecutor v. Lubanga, ICC-01/04-01/06, Case Information Sheet (Dec. 15, 2017), <https://www.icc-cpi.int/CaseInformationSheets/LubangaEng.pdf> [<https://perma.cc/QX99-VY5X>].

178. *Thomas Lubanga Dyilo*, TRIAL INT’L (July 6, 2016), <https://trialinternational.org/latest-post/thomas-lubanga-dyilo/> [<https://perma.cc/5F9S-73JR>].

179. *Id.* (“This decision, which allows victims to participate from the very beginning of the investigation, constitutes an important development with respect to the role of the victims of breaches of international criminal law in such proceedings. Neither the International Criminal Tribunals for Rwanda and for the former Yugoslavia, nor the Special Court for Sierra Leone allowed for such forms of participation by victims. The proceedings against Thomas Lubanga Dyilo allow, for the very first time, the possibility for victims of international crimes to explain their views and concerns to the Court, where their personal interests are at stake.”).

180. *Id.*

181. *Id.*; *Conscription*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“The compulsory enlistment of persons into military service.”).

182. David Smith, *Thomas Lubanga Sentenced to 14 Years for Congo War Crimes*, THE GUARDIAN (July 10, 2012, 5:25 PM), <https://www.theguardian.com/law/2012/jul/10/icc-sentences-thomas-lubanga-14-years> [<https://perma.cc/9AMR-HW7Z>].

183. *Id.*

verdict and sentencing.¹⁸⁴ As of December 2014, the appeals confirmed the guilty verdict as well as the sentencing of fourteen years.¹⁸⁵ The appeals chamber also quashed the decision of Lubanga having to be held personally liable for the collective reparations due to the fact the prosecutor failed to prove direct harm was suffered by the victims as a result of Lubanga's crimes.¹⁸⁶

d. Ahmad al-Faqi Al Mahdi

Ahmad, a member of Malian Jihadist organization, was convicted of the war crime of "intentionally directing attacks against ten buildings of a religious and historic character in Timbuktu, Mali" in 2012.¹⁸⁷ Essentially, this is a conviction for intentionally targeting cultural heritage.¹⁸⁸ This is the first conviction for intentionally directing attacks on buildings of cultural heritage.¹⁸⁹ Al Mahdi lead others to "attack and destroy" an important cultural site known as "Timbuktu."¹⁹⁰ Ahmad physically took part in the destruction of at least five sites.¹⁹¹ The prosecutor charged Al Mahdi with one count of the war crime of attacking protected objects.¹⁹² The prosecutor and Al Mahdi reached a plea

184. *Thomas Lubanga Dyilo*, *supra* note 178 ("The legal representatives of the victims also appealed the judgement.").

185. *Id.* ("[T]he appeals chamber, by a majority decision of the five sitting judges, confirmed the guilty verdict against Lubanga . . .").

186. *Id.* ("The Chamber specified that the Trust Fund for Victims (TFV) could advance its resources to implement the decision to benefit of the victims, and would be able to claim back its resources from Lubanga. . . . As the link between Lubanga's crimes and the harm suffered by the victims of SGBV was not proven, the latter could not benefit from reparations. Nevertheless, the Chamber recalled that the TFV could decide to compensate those victims on the basis of its discretionary assistance mandate.").

187. Recent Case, *International Criminal Law—Roman Statute—International Criminal Court Imposes First Sentence for War Crime of Attacking Cultural Heritage—Prosecutor v. Ahmad Al Faqi Al Mahdi*, 130 HARV. L. REV. 1978, 1978 (2017).

188. *Id.* at 1978–79 ("The ICC's reluctance to define the scope of the Rome Statute's protection for cultural heritage more broadly, or alternatively to sound the alarm regarding certain inadequacies in its coverage, renders the symbolic and precedential value of the case less potent than it might have been.").

189. *Id.* ([Al Mahdi's] conviction for the sole crime of intentionally targeting cultural heritage—the first of its kind by the ICC—has rightly been lauded as a victory for the court and for cultural heritage law . . .").

190. *Id.* ("Al Mahdi was present at all ten attacks, often providing instructions and tools to assailants and making statements to journalists . . .").

191. *Id.*

192. *Id.* at 1978, 1980.

agreement, and the Court accepted his admission of guilt and sentenced him.¹⁹³ Ahmad was sentenced to nine years in prison after pleading guilty to war crimes for destroying religious and historic monuments in the ancient city of Timbuktu, Mali.¹⁹⁴ The court issued a reparations order finding Al Mahdi liable for 2.7 million euros in expenses for individual and collective reparations for the community of Timbuktu.¹⁹⁵

5. *Rules of Evidence in the Rome Statute*

The Rules of Evidence for the Rome Statute were an adoption of rules that declared how pieces of evidence are to be admitted into the ICC.¹⁹⁶ The rules have many similar attributes to those of the Federal Rules of Evidence in the United States.¹⁹⁷ Procedural requirements are set forth in Articles 53–61 of the Rome Statute and the principles governing ICC trials are in Articles 62–76.¹⁹⁸ The Rules of Procedure and Evidence enforce all the provisions in the Rome Statute.¹⁹⁹ Parties may submit evidence relevant to the case.²⁰⁰ The court shall have the authority to

193. *Id.* at 1978–79 (“The Court and AL Mahdi reached a plea agreement in February 2016, and [Al Mahdi]’s subsequent admission of guilt at trial . . . marked the first guilty plea at the ICC.”).

194. *Prosecutor v. Al Mahdi*, ICC-01/12-01/15, Judgment and Sentence, ¶ 109 (Sept. 27, 2016), https://www.icc-cpi.int/courtrecords/cr2016_07244.pdf [<https://perma.cc/EUN2-QEDE>].

195. *Al Mahdi case: ICC Trial Chamber VIII Issues Reparations Order*, INT’L CRIM. CT. (Aug. 17, 2017), <https://www.icc-cpi.int/Pages/item.aspx?name=pr1329> [<https://perma.cc/U7NC-7HK8>] (“[The] Trial Chamber VIII also stressed that reparations in the present case are designed—to the extent achievable—to relieve the suffering caused by the serious crime committed and enable victims to recover their dignity and deter future violations. . . . The Chamber highlighted the importance of cultural heritage and stressed that, because of their purpose and symbolism, most cultural property and cultural heritage are unique and of sentimental value. . . . [Thus,] [t]he Chamber ordered reparations for three categories of harm: damage to the attacked historic and religious buildings, consequential economic loss, and moral harm.”).

196. *See generally Rules of Procedure and Evidence*, INT’L CRIM. CT. (2013), <https://www.icc-cpi.int/resource-library/Documents/RulesProcedureEvidenceEng.pdf> [<https://perma.cc/8SJJ-88GF>] (outlining the various rules and procedures adhered to in ICC cases).

197. *See generally id.* (elaborating on the procedural rules of evidence utilized by the ICC).

198. Rome Statute of the International Criminal Court art. 53–76, July 17, 1998, 2187 U.N.T.S. 90 (entered into force on July 1, 2002); Scheffer & Cox, *supra* note 122, at 996; *Rules of Procedure and Evidence*, *supra* note 196.

199. *Compare* Rome Statute of the International Criminal Court art. 53–76, July 17, 1998, 2187 U.N.T.S. 90 (entered into force on July 1, 2002) (remarking on the powers, limits, and expansive set of guidelines encompassed in the Rome Statute), *with Rules of Procedure and Evidence*, *supra* note 196 (clarifying the Rules of Procedure and Evidence expand on the procedural requirements of Parts four and five of the Rome Statute).

200. Rome Statute of the International Criminal Court art. 69(3), July 17, 1998, 2187 U.N.T.S. 90 (entered into force on July 1, 2002).

request the submission of all evidence that it considers necessary for the determination of the truth.²⁰¹ The Court may rule on the relevance of any evidence while considering the “probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness”²⁰² When deciding on the relevance or admissibility of evidence collected by a State, the Court shall not rule on the application of the State’s national law.²⁰³

Currently, the ICC has started a preliminary investigation into Venezuela.²⁰⁴ During the preliminary investigation, Office of the Prosecutor must determine whether there is sufficient evidence of each crime.²⁰⁵ The Prosecutor focuses on whether “an investigation would serve the interests of justice and of the victims.”²⁰⁶ Once the prosecutor has determined that the crimes are under their jurisdiction and the requirements have been met, the office will then request an arrest warrant or summons to appear from a ICC judge.²⁰⁷ Once the suspect gets to The Hague, there is an initial appearance in front of three judges that confirm the suspect’s identity and ensure they understand the charges being brought against them.²⁰⁸ Following the initial appearance, there is a confirmation of charges hearings that allows the prosecution, the defense, and the legal representative of victims to speak.²⁰⁹ The judges then decide if there is enough evidence to go to trial.²¹⁰ At trial, there are three judges that determine if the prosecutor has proved beyond a

201. *Id.*

202. Rome Statute of the International Criminal Court art. 69(4), July 17, 1998, 2187 U.N.T.S. 90 (entered into force on July 1, 2002).

203. Rome Statute of the International Criminal Court art. 69(8), July 17, 1998, 2187 U.N.T.S. 90 (entered into force on July 1, 2002).

204. *Preliminary Examinations: Venezuela*, INT’L CRIM. CT., <https://www.icc-cpi.int/venezuela> [<https://perma.cc/QG5Q-PQH7>] (stating the focus of the preliminary investigation is on allegations the State’s security forces used excessive force in the context of demonstrations and related political unrest).

205. *How the Court Works*, INT’L CRIM. CT., <https://www.icc-cpi.int/about/how-the-court-works> [<https://perma.cc/M3LQ-7TXXF>].

206. *Id.* (clarifying the ICC only intends to complement, not replace, national criminal systems and will only prosecute cases when countries are unwilling or unable to do so).

207. *Id.* (“Pre-Trial Judges issue warrants of arrest and ensure there is enough evidence . . .”).

208. *Id.*

209. *Id.*

210. *Id.*

reasonable doubt the suspect is guilty.²¹¹ The judge then considers all evidence and issues a verdict, which, if the suspect is found guilty, may include a sentence for up to life in prison.²¹² Judges can also order reparations for the victims.²¹³ While the process of this is similar to that of a criminal bench trial in the United States, there are some slight differences.²¹⁴ Venezuela is a party to the Rome Statute and would therefore be subject to their jurisdiction.²¹⁵ The judges would only have to determine if the crimes that have been committed—since 2014—in Venezuela amount to their definition of crimes against humanity.²¹⁶

B. *Venezuela and the Rome Statute*

1. *Who's Committing These Crimes*

There are a multitude of groups in the Venezuelan government that fall under the term security forces.²¹⁷ The Bolivarian National Guard's

211. Scheffer & Cox, *supra* note 122, at 1048 (“The major differences from common law procedure in the ICC are the use of a factfinding panel of three Judges instead of a jury, with a verdict to be rendered by the vote of at least two Judges . . .”); cf. *How the Court Works*, *supra* note 205 (“If a case is closed without a verdict of guilt, it can be reopened if the Prosecutor presents new evidence.”).

212. Rome Statute of the International Criminal Court art. 5, 77(1)(b), July 17, 1998, 2187 U.N.T.S. 90 (entered into force on July 1, 2002) (“A term of life imprisonment” is permissible for war crimes; crimes against humanity; crimes of genocide; and crimes of aggression); *How the Court Works*, *supra* note 205.

213. *How the Court Works*, *supra* note 205. See generally Rome Statute of the International Criminal Court art. 75, July 17, 1998, 2187 U.N.T.S. 90 (listing the different types of reparations that may be given by the court post-sentencing such as restitution, compensation, and rehabilitation).

214. Compare *How the Court Works*, *supra* note 205 (explaining how the ICC’s legal process functions differently than the United States national jurisdiction and highlighting the key components of the ICC process), with *Criminal Procedure*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/criminal_procedure [<https://perma.cc/F7PY-7CX7>] (reviewing the rules and procedures behind the U.S. criminal bench trial process).

215. See generally *The State Parties to The Rome Statute*, INT’L CRIM. CT., https://asp.icc-cpi.int/en_menus/asp/states%20parties/pages/the%20states%20parties%20to%20the%20rome%20statute.aspx [<https://perma.cc/56CE-2JVQ>] (listing the 123 countries—under the jurisdiction of the ICC—who are parties to the Rome Statute); see generally *How the Court Works*, *supra* note 205 (“States Parties support the Court, accept the ICC’s jurisdiction, and also work to incorporate the rules stipulated in the Rome Statute into their own judicial systems.”).

216. Rome Statute of the International Criminal Court art. 7, July 17, 1998, 2187 U.N.T.S. 90 (entered into force on July 1, 2002).

217. See generally *Crackdown on Dissent*, *supra* note 141 (identifying the different organizations within the “Venezuelan Security Forces”; such organizations include the: GNB,

(Guardia Nacional Bolivariana, GNB) primary responsibility is “conducting required operations to ensure internal order of the country.”²¹⁸ The General Direction of Military Counterintelligence’s (Dirección General de Contrainteligencia Militar, DGCIM) purpose is to coordinate and execute any activities required to stop “enemy activity,” as well as contribute to the security of the Armed Forces and the president.²¹⁹ The National Bolivarian Police (PNB), State and Municipal police, and Scientific, Penal, and Criminal Investigative Police (CICPC) are all in charge of public security and the investigation of crimes throughout the country.²²⁰ Most importantly, the “*Colectivos*”—a pro-government “gang”—are the ones typically attacking protestors and anyone they believe to be an opponent of the government and Maduro.²²¹ Often times, the *Colectivos* can be wrong about individuals, but because they aren’t an official organization of the government they are typically never held responsible.²²² The *Colectivos* collaborate with the other government organizations even though they are typically made up of citizens committing violent acts against other citizens.²²³ Often times they will detain citizens before turning them over to the other

DGCIM, PNB, CONAS, State and Municipal Police, CICPC, SEBIN, and *Colectivos*—who work in tandem with the corrupt Venezuelan government).

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.*; see Patricia Torres & Nicholas Casey, *Armed Civilian Bands in Venezuela Prop up Unpopular President*, N.Y. TIMES (Apr. 22, 2017), <https://www.nytimes.com/2017/04/22/world/americas/armed-civilian-bands-in-venezuela-prop-up-unpopular-president.html> [<https://perma.cc/6HYW-Q32A>] (“*Colectivos* control vast territory across Venezuela, financed in some cases by extortion, black-market food and parts of the drug trade as the government turns a blind eye in exchange for loyalty.”).

222. Patricia Torres & Nicholas Casey, *Armed Civilian Bands in Venezuela Prop up Unpopular President*, N.Y. TIMES (Apr. 22, 2017), <https://www.nytimes.com/2017/04/22/world/americas/armed-civilian-bands-in-venezuela-prop-up-unpopular-president.html> [<https://perma.cc/6HYW-Q32A>] (“[*Colectivo* members re armed by the Venezuelan government . . . [and a]s rising foreign debt and falling world oil prices . . . deplete[] the Venezuelan government’s coffers, it has increasingly turned to *Colectivos* as enforcers. . . . [C]*olectivos* are appearing almost anywhere the government sees citizens getting out of line.”).

223. See, e.g., Patricia Torres & Nicholas Casey, *Armed Civilian Bands in Venezuela Prop up Unpopular President*, N.Y. TIMES (Apr. 22, 2017), <https://www.nytimes.com/2017/04/22/world/americas/armed-civilian-bands-in-venezuela-prop-up-unpopular-president.html> [<https://perma.cc/6HYW-Q32A>] (Maduro has . . . sen[t] National Guardsmen armed with water cannons and rubber bullets to disperse [protesting] crowds. But alongside the security forces, experts and witnesses say, are the enforcers from the *Colectivos*, who engage in fiercer and often deadly intimidation.”).

security forces organizations to which there is no telling what kind of torture and other inhumane acts are being done to these individuals.²²⁴

2. *How the ICC Can Help Bring Justice to Venezuela*

The ICC generally only exercises its jurisdiction when a country is either unwilling or unable to investigate and prosecute these crimes in order to give states the opportunity to prosecute on their own first.²²⁵ While the ICC cannot try organizations or governments, they should be able to effectively investigate Maduro and other members individually.²²⁶ Venezuela was one of sixty states that ratified the Rome Statute in July 2002.²²⁷ In 2018, six governments requested the ICC open an investigation in Venezuela.²²⁸ These states include Argentina, Canada, Chile, Colombia, Paraguay, and Peru.²²⁹ The preliminary

224. *Crackdown on Dissent*, *supra* note 141 (reporting documented abuses initiated by the Colectivos and cases showing their illegal detainment of Venezuelan citizens).

225. *Q&A: The International Criminal Court and the United States*, HUM. RTS. WATCH (Sept. 2, 2020, 12:00 AM), <https://www.hrw.org/news/2019/03/15/qa-international-criminal-court-and-united-states> [<https://perma.cc/K75B-U3GJ>] (“Even after an [ICC] investigation is opened, there are opportunities for states and individual defendants to challenge the lawfulness of cases before the court based on the existence of national proceedings.”).

226. *How the ICC Works*, A.B.A., <https://how-the-icc-works.aba-icc.org> [<https://perma.cc/EX3P-G3BD>] (“The ICC can *only* investigate and prosecute “natural persons” who are over the age of 18. The ICC cannot investigate or prosecute governments, corporations, political parties, or rebel movements, but may investigate individuals who are members of groups.”); see David Adams, *Venezuela Facing Unprecedented Accusations of Crimes Against Humanity*, UNIVISION (Aug. 27, 2018, 2:38 AM), <https://www.univision.com/univision-news/latin-america/venezuela-facing-unprecedented-accusations-of-crimes-against-humanity> [<https://perma.cc/N2XW-9KXW>] (analyzing Maduro’s potential liability to the ICC as “evidence of abuses” continues to: 1) gather momentum; and 2) show disparities and injustices occurring in Venezuela under his presidency and, at times, at his direct authority).

227. David Adams, *supra* note 226.

228. *Venezuela: Six States Request ICC Investigation*, HUM. RTS. WATCH (Sept. 26, 2018, 12:00 PM), <https://www.hrw.org/news/2018/09/26/venezuela-six-states-request-icc-investigation> [<https://perma.cc/6KRR-CA7W>] (This is the first time that ICC member governments have sought an investigation of potential crimes that took place entirely on the territory of another country. “This unprecedented step reflects the growing alarm among other countries about the human rights catastrophe that has overtaken Venezuela”); David Adams, *supra* note 226 (“No country—let alone a group of countries—has ever brought a case against another country in ICC[’s twenty-year] history”).

229. *Venezuela: Six States Request ICC Investigation*, *supra* note 228 (outlining the countries, some not even directly surrounding Venezuela, who are speaking out against the injustices Venezuelan citizens are facing).

investigation was announced on February 8, 2018.²³⁰ The prosecutor has to first analyze whether crimes specified in the ICC treaty have been committed then see if they merit the court's attention.²³¹ Unfortunately, the investigation could take as little as a few months to as much as a decade before reaching a decision.²³² Venezuelan officials have not taken any steps to prevent abuses; if anything, they are continuing to downplay the abuses and continue to implement even greater use of force on their citizens.²³³

3. *Amendments Needed for Venezuelan Constitution*

Venezuela's 1961 constitution was designed to be anti-authoritarian.²³⁴ The Venezuelan 1961 constitution had separation of powers with a legislature, Supreme Court, and the President, similar to that of the United States.²³⁵ When Chavez was elected, on his first day in office he claimed "the people through a referendum, could overthrow an existing constitution," which was nowhere in the constitution at the time.²³⁶ Throughout Chavez and Maduro's terms as presidents they

230. INT'L CRIM. CT., *supra* note 204; *Venezuela: Six States Request ICC Investigation*, *supra* note 228.

231. INT'L CRIM. CT., *supra* note 204 (recognizing the prosecutor, pursuant to Article 14 of the Statute of the ICC, is tasked with determining if: 1) the alleged actions violate the ICC statutes; and 2) the actions investigation merit court action); *see Venezuela: Six States Request ICC Investigation*, *supra* note 228 ("[T]he prosecutor faces a high threshold. Her current preliminary inquiry will analyze whether crimes specified in the ICC treaty have been committed; whether those crimes are sufficiently grave to merit the court's attention; and whether national authorities are genuinely carrying out credible investigations and, if appropriate, prosecutions of the cases under ICC consideration.").

232. David Adams, *supra* note 226.

233. *Venezuela: Six States Request ICC Investigation*, *supra* note 228.

234. Diego A. Zambrano, *The Constitutional Path to Dictatorship in Venezuela*, LAWFARE (Mar. 18, 2019, 8:00 AM), <https://www.lawfareblog.com/constitutional-path-dictatorship-venezuela> [<https://perma.cc/2CGK-87U2>].

235. *Id.* (highlighting the similarities between the constitution of Venezuela and the United States, and, noting, "[u]like the U.S. constitution . . . the Venezuelan constitution . . . prohibit[s] immediate presidential re-election . . ." unless the Venezuelan Congress' exclusive role permitted such actions).

236. *See id.* ("[I]mmediate re-election prohibition was seen as a wall against would be dictators" because Venezuelan "president[s] had almost no role in the process [to allow immediate re-election] and w[ere] indeed explicitly prohibited from opposing amendments. . . .").

slowly stripped the power of the people away, such as increasing the years in a presidential term.²³⁷

The Supreme Court of Venezuela made a decision that there is a possibility of calling a referendum in order to determine the popular opinion regarding an election of a constituent assembly.²³⁸ A referendum was then held in April of 1999 with 81.9% voting yes and 18.1% voting no, which started the process of the Constituent Assembly.²³⁹ In July 1999, an election was held to elect 131 individuals to the Constituent Assembly.²⁴⁰ President Chavez's party won an overwhelming majority of the seats at ninety-five percent.²⁴¹ In August of 1999, the Constituent Assembly, with many of Chavez's supporters, created a "Commission of Judicial Emergency" aimed at being able to intervene in certain judicial matters when needed.²⁴² The Constituent Assembly immediately began chipping away at the Senate and the Legislative Assemblies of the States.²⁴³ The Supreme Court upheld these actions by the Constituent Assembly.²⁴⁴ In September 1999, the

237. *Id.* (describing the multiple steps taken by both Chavez and Maduro to not only undermine the intentions set forth by the 1961 Venezuelan Constitution, but to also extend their terms of presidency well beyond the prescribed ten-year term limits). *See generally* BOLIVARIAN REPUBLIC OF VENEZUELA CONSTITUTION of 1999 (rev. 2009), *translated in* CONSTITUTEPROJECT.ORG, VENEZUELA (BOLIVARIAN REPUBLIC OF)'S CONSTITUTION OF 1999 WITH AMENDMENTS THROUGH 2009 (Jefri J. Ruchti trans., William S. Hein & Co., Inc. trans., 2020), https://www.constituteproject.org/constitution/Venezuela_2009.pdf?lang=en [<https://perma.cc/Y22G-UBG8>] (showing amendments to the Venezuelan Constitution and its effect on the change of power throughout Chavez and Maduro's presidential terms).

238. *Constitutional History of Venezuela*, CONSTITUTIONNET, <http://constitutionnet.org/country/constitutional-history-venezuela> [<https://perma.cc/6T75-25UQ>].

239. *Id.* ("On February 2, 1999, Chávez issued his first decree as President ordering a consultative referendum to ask the Venezuelan people whether a constituent assembly should be convened. The referendum was held on April 25, 1999. 38.7% of eligible voters participated With this mandate, the work of convening a constituent assembly began.").

240. *Id.*

241. *Id.*

242. *Id.* (noting the newly elected Constituent Assembly was determined to begin the deconstruction of judicial processes already in place in order to further the reconstruction of a new constitution in Venezuela without the legislature).

243. *Id.* (discussing how Chavez's actions were the beginning of the dissolution of the anti-authoritarian government set forth in the 1961 Venezuelan constitution and would pave the way for more drastic changes).

244. *Id.* ("[T]he Supreme Court upheld the Constituent Assembly's actions by recognizing the Constituent Assembly as a "supra constitutional power". Later, the Constituent Assembly would use its "supra constitutional power" to suspend judges and replace the Court.").

Constituent Assembly began drafting a new constitution that would give more power to Chavez.²⁴⁵ President Chavez submitted a document that was prepared with the help of a Constitutional Council composed of independent political leaders.²⁴⁶ The Constitutional Commission had only two weeks to integrate almost 800 articles, which left little room for public discussion and civil society participation.²⁴⁷ In December 1999, 44.3% of eligible voters casted their vote for the new constitution and 71.8% of voters approved it.²⁴⁸ The 1999 Venezuelan Constitution had 350 articles, making it one of the longest, most complicated, and most comprehensive constitutions in the world.²⁴⁹ Many of the changes in the constitution related to the structure of the government.²⁵⁰ It converted Venezuela's three-branch system of government to a five-branch government.²⁵¹ As well as changing the legislative branch from bicameral to unicameral.²⁵² The constitution also reformed the presidency by increasing the presidential term from five to six years and gave Chavez the most power of any president in Latin American countries.²⁵³ President Chavez now had the power to dissolve the National Assembly.²⁵⁴ Constitutional reform in 2009 further strengthened the presidency in Venezuela as fifty-four percent of Venezuelan voters backed a constitutional amendment that abolished term limits for the president.²⁵⁵

245. *See id.* (detailing the timeline of the Constituent Assembly's actions).

246. *Id.*

247. *Id.* (describing the steps made by the Constituent Assembly to ensure there was no change of public intervention. In doing so, the Board of Directors of the Constituent Assembly assured that the changes Chavez wished to enact took effect).

248. *Id.* ("The National Election Council audited the vote. The new constitution therefore replaced the 1961 Constitution, becoming Venezuela's 26th Constitution and the first constitution in the history of Venezuela to be approved by popular referendum.").

249. *Id.*

250. *Id.* (evaluating the changes that occurred with the new Constitution and the overall impact it would have on Venezuela).

251. *Id.* (outlining the adoption of the five-branch governmental system and distinguishing it from the previous three-branch system.).

252. *See id.* (discussing how the rights of the Venezuelan citizens were altered by the 1999 Constitution).

253. *Id.*

254. *Id.*

255. *Id.*

a. Freedom of Expression

More than 13,100 people have been arrested in connection with anti-government protests.²⁵⁶ This wide spread ban on protest needs to be stopped as it is vital to a democracy and shows the government that the Venezuelan citizens are only attempting to bring light to atrocities occurring in the country.²⁵⁷ In 2017, the Venezuelan government put a ban on protests that could “disturb or affect” the election of that year—which was highly contested as an illegitimate election.²⁵⁸ The government stated people could be sentenced to prison for anywhere between five and ten years.²⁵⁹ The government is not even following through with the prison sentence as the security forces are killing individuals involved in any protest-related incidents.²⁶⁰

256. *Venezuela: Arrests, Killings in Anti-Government Protest Reports of Violent Abuses by Security Forces*, HUM. RTS. WATCH (Jan. 25, 2019, 7:20 AM), <https://www.hrw.org/news/2019/01/25/venezuela-arrests-killings-anti-government-protests> [<https://perma.cc/Y8K8-RFMG>].

257. *Cf. Constitutional History of Venezuela*, *supra* note 238 (“The 1999 Constitution incorporated the idea of popular sovereignty (such as frequent referendums), social responsibilities, the right to rebel against injustice, and the eternal independence of the republic from foreign domination. Further, it enshrined certain human rights such as . . . the rights for minorities (including indigenous people), to uphold their own cultures, religions, and languages”; Yet, by suppressing these rights, particularly the right to rebel against injustice, the Venezuelan government is violating the very Constitution they put into place.); *see also Venezuela: Arrests, Killings in Anti-Government Protest Reports of Violent Abuses by Security Forces*, *supra* note 256 (condemning the widespread abuses by members of the security forces in Venezuela and calling for individuals to help reclaim and restore constitutional order to Venezuela).

258. *Venezuela Crisis: Bans on Protest that ‘Disturb’ Election*, BBC (July 28, 2017), <https://www.bbc.com/news/world-latin-america-40744851> [<https://perma.cc/77DB-GTAF>] (“National meetings and demonstrations, concentrations of people and any other similar act that may disturb or affect the normal development of the electoral process are prohibited throughout the country . . .”).

259. *Id.* (commenting on the ever-increasing violent Venezuelan citizens faced and noting more than 100 individuals reported as killed due to violence related to the protests).

260. *See, e.g., Venezuela: Arrests, Killings in Anti-Government Protest Reports of Violent Abuses by Security Forces*, *supra* note 256 (“On January 23, 2019, Venezuelan security forces used force to disperse massive anti-government demonstrations. . . . Venezuelan media outlets and civil society groups reported 26 people killed, use of teargas by security agents against demonstrators, and 364 people detained. Security forces have also allegedly attacked and detained several journalists covering the protests.”); *see also Venezuela Crisis: Bans on Protest that ‘Disturb’ Election*, *supra* note 258 (“The situation has worsened to the point that the United States has ordered family members living at the embassy in Caracas to evacuate the country. It also authorized its staff members to leave if they desire.”).

b. Freedom of the Press

The government has abused its power by over regulating the media and working to reduce the number of media outlets that disagree with the presidency and its administration.²⁶¹ The government can suspend or revoke media stories or outlets for any reason they see fit due to the broad regulations to media, but many self-censor due to fear of harassment.²⁶² Because of this, very few newspapers, websites, and radio stations criticize the government.²⁶³ In 2017, Venezuela's new Constituent Assembly, which supports Maduro and his administration, granted itself the power to write and pass legislation and to supersede the country's legislature, the National Assembly, which essentially handed Maduro the Power he so desperately wanted.²⁶⁴ This allows the Constituent Assembly to supersede the country's legislature and the National Assembly which has been led by the Opposition party for a few years.²⁶⁵ At this point, Maduro secured all the power he needed in the government—many countries consider Venezuela to now be a dictatorship.²⁶⁶

261. See, e.g., HUM. RTS. WATCH, *supra* note 151 (“The government can suspend or revoke concessions to private media if ‘convenient for the interest of the nation,’ arbitrarily suspend websites for the vaguely defined offense of ‘incitement,’ and criminalize expression of ‘disrespect’ for high government officials.”).

262. *Id.*; see, e.g., *Detailed Findings of the Independent International Fact Finding Mission on the Bolivarian Republic of Venezuela*, HUM. RTS. COUNCIL (Sept. 15, 2020) https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFMV/A_HRC_45_CRP.11.pdf [<https://perma.cc/W454-WMLB>] (“Inés González . . . a chemist and professor, was detained without a warrant by SEBIN in Maracaibo on 4 October 2014, for publishing derogatory comments about Mr. Serra after his death.”).

263. HUM. RTS. WATCH, *supra* note 151.

264. Nicholas Casey, *Venezuela's New, Powerful Assembly Takes Over Legislature's Duties*, N.Y. TIMES (Aug. 18, 2017), <https://www.nytimes.com/2017/08/18/world/americas/venezuela-constituent-assembly-maduro.html> [<https://perma.cc/UK44-G28C>] (discussing Maduro's illegitimate victory stemmed from disallowing Venezuelans to oppose the Constituent Assembly and packing the ballot with individuals handpicked from his closest allies and supporters).

265. *Id.* (explaining the steps taken to enable the Constituent Assembly to control the five branches of government in Venezuela was finalized by usurping control from the National Assembly, allowing Maduro to finally achieve control over all five branches of government and making it easier for individuals in his position to rewrite laws and remain in power long after the term limits were finished).

266. *Id.* (describing the shift in power from legislature to Maduro after he consolidated his power and his impact on how the world views Venezuela).

The Venezuelan government closed forty radio stations in 2017.²⁶⁷ Since 2013, three-quarters of the country's newspapers have closed.²⁶⁸ One of Venezuela's last anti-government newspaper closed and blamed the government for restricting the supply of newsprint.²⁶⁹ Physical threats to journalists have increased since the implementation of these restrictions on the Media.²⁷⁰ During the first four months of 2017, there were more than 200 attacks on reporters.²⁷¹ Journalists are even being detained by government authorities and have repeatedly been subjected to harassment and violence, which is leading many to leave the country.²⁷² That's just for journalists that are there, but foreign reporters

267. See Angus Berwick & Vivian Sequera, *Venezuelan Newspaper Closures Leave Coverage in State's Hands*, REUTERS (July 26, 2018, 5:07 AM) <https://www.reuters.com/article/us-venezuela-media-coverage/venezuelan-newspaper-closures-leave-coverage-in-states-hands-idUSKBN1KG18G> [<https://perma.cc/NFH3-M6VJ>] (“According to the Venezuela’s Press institute, . . . [the] radio stations [were closed due to] citing irregularities in their licenses. Maduro’s government says it treats all media outlets equally and there is freedom of expression. However, it has publicly said it wants more control over the media”); see also Jon Allsop, *Venezuela’s War on the Press*, COLUM. J. REV. (Jan. 25, 2019), https://www.cjr.org/the_media_today/venezuela_crisis_maduro_trump.php [<https://perma.cc/E5AG-W5J4>] (admonishing the Venezuelan government over its impact in the disappearance and infringement of Venezuela’s independent press).

268. See generally Berwick & Sequera, *supra* note 267 (describing how the five-year recession closed nearly all of Venezuela’s newspaper leaving El Nacional as the last independent national daily newspaper); see also Allsop, *supra* note 267 (noting since three-quarters of Venezuela’s newspapers closed in 2013, El Nacional is Venezuela’s last nationally circulated anti-government newspaper).

269. See, e.g., *Venezuela’s Last Nationally Circulated Anti-Government Newspaper Closes*, NPR (Dec. 17, 2018, 4:27 PM) <https://www.npr.org/2018/12/17/677511273/venezuelas-last-nationally-circulated-anti-government-newspaper-closes> [<https://perma.cc/4JC4-8VMD>] (citing an interview with Jorge Makriniotis, general manager of El Nacional, where he described how the Venezuelan government has stopped selling paper to the newspaper and how they now have to buy paper on the black market); Allsop, *supra* note 267 (explaining the Venezuelan government has not only restricted the paper supply but has also place blockages on online news publications).

270. Allsop, *supra* note 267.

271. *Id.*

272. See *Journalists Detained, Attacked, and Threatened Amid Unrest in Venezuela*, COMM. TO PROTECT JOURNALISTS (July 31, 2017, 6:16 PM), <https://cpj.org/2017/07/journalists-detained-attacked-and-threatened-amid/> [<https://perma.cc/MM3A-BPVP>] (detailing government attacks on journalists, protestors attacking and stealing the equipment of two photographers, and soldiers threatening journalists); accord John Otis, *Lawsuits and Economic Crisis Drive Venezuela’s Journalists into Exile*, COMM. TO PROTECT JOURNALISTS (Dec. 18, 2018 12:08 PM), <https://cpj.org/2018/12/lawsuits-and-economic-crisis-drive-venezuelas-jour/> [<https://perma.cc/A6LW-QJQ5>] (“Venezuelan reporters have been driven out amid President Nicolás Maduro’s efforts

are typically imprisoned or detained and then deported.²⁷³

c. Free and Fair Elections

The re-election of President Maduro in May 2018 for another six years had several reports of “coercion, fraud and electoral rigging.”²⁷⁴ Maduro preyed on the poor by making false promises of aid to those already receiving benefit cards and subsidized food handouts if he was re-elected.²⁷⁵ Another huge issue with Maduro’s re-election was that they had an “exceptionally low” voter turnout with less than half of the country actually voting.²⁷⁶ A Venezuelan Supreme Court Judge, Christian Zerpa, fled the country and went to the United States stating that the elections were unfair.²⁷⁷ Maduro knew the only way for him to win re-election was to ban key political leaders and the Opposition from running.²⁷⁸ The election is traditionally held in December, but they

to control and intimidate the media. CPJ has found that these measures include arbitrary arrests, defamation lawsuits, threats to cancel broadcast licenses, a government monopoly over the importation and distribution of scarce newsprint, and an anti-hate law that mandates prison terms for anyone who instigates hate or violence in the media.”); Allsop, *supra* note 267 (describing how the harassment and sustained violence has led journalists—such as Elyangelica Gonzalez, a long-time radio reporter and many Senior reporters at Armando.info, an investigative website—to flee the country).

273. Allsop, *supra* note 267 (describing three instances where the Venezuelan government extend their war on journalism to foreign journalists. “In 2017 the government barred Nicholas Casey, a correspondent from the *Times*, from re-entering the country after he left to take a vacation. . . . [L]ast year, Billy Six, a German free-lance journalist, was reportedly imprisoned . . . on charges including espionage and rebellion. And just this week, . . . Kristoffer Toft, a Danish Freelance reporter, was detained by airport security and subsequently deported”).

274. Ana Vanessa Herrero & Megan Specia, *Venezuela is in Crisis. So How Did Maduro Secure a Second Term?*, N.Y. TIMES (Jan. 10, 2019), <https://www.nytimes.com/2019/01/10/world/americas/venezuela-maduro-inauguration.html> [<https://perma.cc/9KAR-FG4Z>] (analyzing the impact President Maduro’s re-election had on Venezuela).

275. *Id.* (describing how representatives of Maduro’s party targeted individuals who registered to vote using their “Fatherland Card” and attempted to bribe them with government aid in exchange for their vote).

276. *Id.* (“[A] crackdown on critics left several of them unable to participate. Opposition leaders called for a boycott of the election, and that, combined with the disillusionment of many longtime government supporters, meant the turnout was exceptionally low.”).

277. *Venezuela Supreme Court Judge Christian Zerpa Flees to US*, BBC (Jan. 7, 2019), <https://www.bbc.com/news/world-latin-america-46777851> [<https://perma.cc/A4Q9-MNWC>] (explaining the former Maduro loyalist, Judge Christian Zerpa, fled to the United States, and accused President Maduro of “systematically manipulating the affairs of the Supreme Court.”).

278. See William Neuman & Nicholas Casey, *Venezuela Election Won by Maduro Amid Widespread Disillusionment*, N.Y. TIMES (May 20, 2018), <https://www.nytimes.com/2018/05/20/>

moved the election up to May in order to disadvantage any opponent of President Maduro.²⁷⁹ The elimination of the requirement to fingerprint voters could have allowed some to vote multiple times.²⁸⁰ There were even reports of individuals that worked in the government agency who voted for Maduro out of fear of losing their jobs.²⁸¹ Many people even stated they felt pressured to vote for Maduro because they believed the government computers tracked people's votes.²⁸²

C. *United States*

1. *United States and the Rome Statute*

The United States is not a state party to the Rome Statute and would therefore not fall under their jurisdiction.²⁸³ While the United States participated in the negotiations, they ultimately decided to vote against the statute.²⁸⁴ In 2000, two years after the initial ratification of the Rome Statute, Bill Clinton signed but decided not to submit it to the senate for ratification.²⁸⁵ Then 2 years later, George W. Bush outright stated to the UN secretary that the United States no longer intended to ratify the treaty.²⁸⁶ The Bush administration felt so threatened by the possibility of U.S. citizens being brought before the ICC that they pressured several

world/americas/venezuela-election.html [https://perma.cc/Y53N-VQRC] (“Mr. Maduro sought to give himself every advantage in Sunday’s vote. The electoral authorities banned the largest opposition political parties from taking part in the election, and key politicians were barred from running.”).

279. *Id.*

280. *Id.* (illustrating the lengths the Maduro’s regime would enforce in order to ensure their victory in the election).

281. *Id.* (depicting a woman’s account of waiting outside a polling place and the concern she faced knowing her failure to vote would lead to the loss of her job since government computers tracked who voted).

282. *Id.* (explaining it was a common notion for the Venezuelan government to track people’s votes).

283. HUM. RTS. WATCH, *supra* note 225.

284. *Id.* (discussing the complicated relationship between the ICC and the United States after the United States adamantly refusal to be a party to the Rome Statute).

285. *Id.*; see Andrew Henderson, *Six Countries that Aren’t a Part of the ICC*, NOMAD CAPITALIST, <https://nomadcapitalist.com/2018/08/29/countries-arent-part-of-icc/> [https://perma.cc/YX5U-4W42] (last updated Dec. 26, 2019, 1:36 PM) (arguing the United States deliberately chose to not be party to the Rome Statute out of fear their identity would be threatened by the ICC).

286. HUM. RTS. WATCH, *supra* note 225; Henderson, *supra* note 285 (“[D]uring Bill Clinton’s presidency the treaty was signed and later revoked by George W. Bush, who was afraid of the possibility of American soldiers being targeted by the international community.”).

governments to enter into agreements requiring them not to surrender U.S. citizens.²⁸⁷ Under the Trump administration, it was stated the United States would not cooperate with the ICC and “threatened retaliatory steps against ICC should the court investigate United States or allied country citizens.”²⁸⁸ The United States threatened to impose bans on visas of any ICC staff that is involved in any sort of “potential investigation” of U.S. citizens.²⁸⁹ John Bolton, the U.S. National Security Adviser, threatened ICC staff and other signatory countries with “prosecutions and financial sanctions.”²⁹⁰ The main reason the United States has denied signing the Rome Statute is that the ICC would be able to hold U.S. military and political leaders to the global standard of justice.²⁹¹ The United States seems to want to mask the problem instead of addressing past tortures and other abuses by government agents of the United States.²⁹² The United States does not want the ICC to investigate and prosecute military members or other members of the government.²⁹³ The United States can solve the problem of the ICC prosecuting U.S. citizens by taking it into their own hands and prosecuting those individuals that have committed atrocious crimes and prosecuting them themselves.²⁹⁴

287. HUM. RTS. WATCH, *supra* note 225.

288. *Id.* (expressing how in the past twenty years, the United States’ position on joining the ICC has not changed).

289. *US Threatens International Criminal Court*, HUM. RTS. WATCH (Mar. 15, 2019, 12:58 PM), <https://www.hrw.org/news/2019/03/15/us-threatens-international-criminal-court> [<https://perma.cc/U379-NQ7R>] (expanding on the U.S.’s threat to the ICC through the imposition of visa bans and how this action “will imperil [the United States’] accountability for grave international crimes.”).

290. *Id.* (“Bolton was the architect of a hostile campaign against the ICC in the early 2000s under the George W. Bush administration.”).

291. Lila Smith, *Reasons Why the US is Not a Part of the ICC*, THE ODYSSEY (Sept. 11, 2016), <https://www.theodysseyonline.com/reasons-why-the-us-is-not-part-of-the-icc> [<https://perma.cc/YE7L-LRCE>] (contending that if the United States signed the Rome statute then “the United States would not be able to protect both its military and political leaders that have committed crimes against humanity . . .”).

292. *US Threatens International Criminal Court*, *supra* note 289 (noting the United States’ failure to join the ICC is a strategic attempt to prevent any investigation into the past and present crimes committed by their citizens).

293. Smith, *supra* note 291.

294. Scheffer & Cox, *The Constitutionality of the Rome Statute of the International Criminal Court*, 98 J. CRIM. L. & CRIMINOLOGY 983, 994–95 (2008) (proclaiming how the United States could avoid its “ill-founded” concerns regarding the ICC if it decided to take initiative to investigate U.S. nationals before U.S. courts).

2. *Constitutionality of the Rome Statute*

If the United States becomes a party to the Rome Statute then that would allow the United States to prosecute any American citizen or other individual within its jurisdiction.²⁹⁵ The Rome Statute allows the United States the first opportunity to investigate any U.S. citizen who may become an ICC target.²⁹⁶ The U.S. citizen would be prosecuted under U.S. federal law and therefore would not require any sort of ICC investigation or intervention.²⁹⁷ The U.S. constitutional Due Process rights of individuals would not become an issue if the United States simply prosecuted those individuals in the United States first.²⁹⁸ One of the biggest issues is that many within the United States make arguments the Rome Statute violates Article III of the Constitution, which vests the power in the Supreme Court.²⁹⁹ Some say allowing the ICC to be given jurisdiction over U.S. citizens would “threaten the institutional integrity of the Judicial Branch.”³⁰⁰ Americans have the constitutional right to have all judicial power within the Supreme Court, as the highest court that has jurisdiction over them.³⁰¹ But if American citizens commit atrocious crimes at an international level, then they should be prosecuted even if the United States wants to protect them from prosecution.³⁰² The United States should be a party to the Rome Statute as it does not conflict with the Constitution and is a highly independent fact finder ready to

295. *Id.* at 994 (stressing the degree of freedom given to the United States when becoming party to the Rome Statute and noting the general principles surrounding the Statute are based on American common law, and therefore are likely to be familiar to individuals from the United States).

296. *Id.* at 986–87.

297. *Id.* at 994 (addressing how the ICC is not “a court of universal jurisdiction” and how the Rome Statute invites courts to apply their laws in their country, thereby preempting the ICC’s jurisdiction).

298. *Id.* at 995 (advancing the idea that the United States should be proactive in investigate its citizens before the ICC begins its investigation in order to avoid constitutional due process rights issues).

299. *Id.* at 1005 (identifying the ICC’s subject matter jurisdiction has a critical bearing on whether the Rome Statute violates Article III, Section 1 of the U.S. Constitution).

300. *Id.* (determining congress authorizes a non-Article III court to adjudicate Article III business it would threaten the foundation of the Judicial Branch).

301. *Id.* (explaining the powers vested in the Supreme Court via the Constitution—specifically Section 1, Article III—are in congruence with the ICC).

302. *See generally id.* at 983.

prosecute individuals and groups that commit high level crimes.³⁰³

3. *Immigration Consequences*

While many Venezuelans are staying in Latin America, there is still a large portion of migrants fleeing to the United States and Europe.³⁰⁴ The number of Venezuelans coming into the United States has nearly doubled in the last decade to about 350,000.³⁰⁵ The Trump Administration expressed support for the Venezuelan people during this humanitarian crisis but refused to grant legal status to immigrants attempting to escape these atrocities.³⁰⁶ A petition for Temporary Protected Status (TPS) was filed by the Venezuelan American National Bar Association to allow immigrants to come to the United States and escape the humanitarian crisis; however, the TPS has been ignored by the Department of Homeland Security.³⁰⁷ Typically, the only Venezuelans that are able to afford the trip to the United States are educated professionals who are coming to get any job they can.³⁰⁸ The number of Venezuelans deported

303. *Id.*

304. Rocio Cara Labrador, *The Venezuelan Exodus*, COUNCIL ON FOREIGN RELS. (July 8, 2019), <https://www.cfr.org/in-brief/venezuelan-exodus> [<https://perma.cc/EW3T-N7YF>] (discussing the popular geographic locations where more than three million Venezuelans have migrated to due to mass poverty, a ruined economy, and an immensely corrupt government).

305. Tim Henderson, *Venezuelan Immigrants get Trump Sympathy but Not Status*, PEW (Oct. 2, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/10/02/venezuelan-immigrants-get-trump-sympathy-but-not-status> [<https://perma.cc/TZ99-GM8E>] (commenting on the significant increase of Venezuelan immigrants in the United States in more recent years who are attempting to escape the severe economic and political crisis happening in their home country).

306. *Id.* (“The Trump administration has provided about \$100 million to house refugees in countries neighboring Venezuela . . .”).

307. *Id.* (“It is rare for the United States to grant blanket legal status for those escaping a regime, but it was granted for Cubans until 2017.”).

308. *Id.* (stating how the highly educated class of Venezuelans are not working jobs analogous to their credentials once they arrive in the United States because of their need to only want to survive).

last year increased from 182 to 248.³⁰⁹ Venezuela had the most Asylum applications for the year of 2017–2018 with 28,919 applications.³¹⁰ The United States has given Temporary Protected Status to El Salvador, Honduras, and Haiti, as well as a few other countries.³¹¹ For example, El Salvador was given TPS by George W. Bush in 2001 because they were struck by a 7.6 magnitude earthquake and then two more earthquakes the following month.³¹² These earthquakes caused damages across the country with approximately \$2.8 billion in damage.³¹³ Due to the instability of the country and its citizen's lives, the United States granted El Salvadorian citizens Temporary Protected Status.³¹⁴ The Venezuelan people are being killed by their Government and the Maduro regime, yet there has been no response from the United States on protection with regard to TPS.³¹⁵

309. *See id.* (emphasizing how the increased number of Venezuelan deportations leads to increased constant fear of deportation from the United States); *see also* Manuel Madrid, *Despite Messages of Solidarity, the U.S. Still Deports Venezuelans*, MIA. NEW TIMES INT'L NEWS (Sept. 24, 2019, 8:00 AM), <https://www.miaminewtimes.com/content/printView/11273793> [<https://perma.cc/BHN2-3M5U>] (“If they can deport a Venezuelan, they will. And if they can’t, they leave them in jails for months.”).

310. Henderson, *supra* note 305 (“More Venezuelans are applying for asylum than any other country, federal statistics show. But they don’t have much change of getting it, said Kostencki[, president of the Venezuelan American Bar Association in Florida].”).

311. *Fact Sheet: Temporary Protected Status (TPS)*, NAT’L IMMIGR. F. 2–3 (Sept. 17, 2020), https://immigrationforum.org/wp-content/uploads/2020/09/TPS-Fact-Sheet_Updated-9_18_2020.pdf [<https://perma.cc/98C9-PAHK>] (designating the different countries that have been granted TPS as far back as 1999).

312. *Temporary Protected Status for El Salvador*, CLINIC LEGAL (June 13, 2018), <https://cliniclegal.org/resources/temporary-protected-status-el-salvador> [<https://perma.cc/H29E-PBM6>] (“The series of earthquakes resulted in 1,100 deaths and left more than 2,500 people missing. Nearly 8,000 suffered injuries. Seventeen percent of El Salvador’s population (1.3 million people) were displaced by the earthquakes and resulting landslides.”).

313. *Id.* (“[I]ncluding the destruction or damage of 220,000 homes, 1,696 schools and 856 other public building.”).

314. *Id.* (examining how the damage to El Salvador was deemed worthy of TPS by the United States in 2001, whereas, Venezuelan immigrants fleeing extreme poverty provided by a corrupted government have yet to receive TPS).

315. *Senate Republicans Again Block Venezuela TPS Legislation*, U.S. SENATE COMM. ON FOREIGN RELS. (Sept. 30, 2020), <https://www.foreign.senate.gov/press/ranking/release/senate-republicans-again-block-venezuela-tps-legislation-> [<https://perma.cc/333J-KHS7>] (“For the fifth time in the last 18 months, Senate Republicans blocked the Venezuela TPS Act of 2019, refusing to affirm the U.S. government’s support for Venezuelans and allowing the Trump administration to continue forcefully deporting them back to the Maduro regime.”).

III. SOLUTIONS

A. ICC Prosecution

When the ICC prosecutes Maduro and other governmental officials, only then can Venezuela move toward a democracy.³¹⁶ There are young politicians who are willing and able to bring democracy back into Venezuela as long as the previous corrupted politicians pay for the crimes they have committed.³¹⁷ If Maduro and the other government officials are convicted and sentenced, then Venezuela can be free to move towards a new process of democracy.³¹⁸

316. See Holly K. Sonneland, *Explainer: The Case Against Venezuela in the ICC*, AM. SOC./COUNCIL OF AMS. (Oct. 4, 2018), <https://www.as-coa.org/articles/explainer-case-against-venezuela-icc> [<https://perma.cc/9NE2-R8NJ>] (elaborating on the importance of a prosecutorial investigation being opened on the current Venezuelan regime); see also *Venezuela: ICC Prosecutor to Review Alleged Crimes*, HUM. RTS. WATCH (Feb. 8, 2018, 10:00 AM), <https://www.hrw.org/news/2018/02/08/venezuela-icc-prosecutor-review-alleged-crimes> [<https://perma.cc/DD9Z-QTAR>] (“By opening a preliminary examination, the ICC prosecutor is sending a powerful message that her office is closely tracking the Maduro government’s egregious abuses,” said José Miguel Vivanco, American Director at Human Rights Watch.”).

317. See Dick Durbin, *Sen. Dick Durbin: With Maduro out, Democracy is Finally Coming to Venezuela—From Within*, USA TODAY (Feb. 1, 2019, 3:15 AM), <https://www.usatoday.com/story/opinion/voices/2019/02/01/dick-durbin-maduro-putin-trump-guaido-venezuela-column/2735516002/> [<https://perma.cc/QN4T-8M2X>] (explaining how corrupt politicians in Venezuela have created the dire need for change in the current political system and how young leaders, such as interim President Guaidó, are willing to stand up against Maduro, regardless of the potential danger he may face, to fight for a return to democracy for their country); see also Francisco Rodríguez, *The United States Helps Venezuela’s Regime Survive*, FOREIGN AFFS. (Oct. 9, 2020), <https://www.foreignaffairs.com/articles/venezuela/2020-10-09/united-states-helps-venezuelas-regime-survive> [<http://perma.cc/77GB-QZUS>] (“[Maduro] has refused to budge despite an economic and humanitarian crisis larger than any the continent has ever seen, punitive oil sanctions, and the fact that 58 countries recognize his rival Juan Guaido as Venezuela’s legitimate president.”).

318. See *How to Restore Democracy in Venezuela*, EUROPEAN COUNCIL ON FOREIGN RELS. (Feb. 7, 2019), https://www.ecfr.eu/article/commentary_how_to_restore_democracy_in_venezuela [<https://perma.cc/F3NM-GT69>] (noting if Maduro’s regime is defeated, Venezuela stands a fighting chance at obtaining a democratic government and helping its citizens); see also Franco Ordoñez, *Amid Border Crackdown, White House May Shield Venezuelans from Deportation*, NPR (Aug. 2, 2019, 7:01 PM), <https://www.npr.org/2019/08/02/747734905/amid-border-crackdown-white-house-may-shield-venezuelans-from-deportation> [<https://perma.cc/RQP7-D3XG>] (“The situation is as bad or worse than what you see on television . . . It’s run by a group of people who do whatever they want and with great power. Really, that is not how you can run a country. It’s not a democracy.”).

B. *Constitutional Amendments*

With new amendments to the constitution pushing for a fair and democratic process within the government, this could be a huge step towards a free country.³¹⁹ Amendments need to be implemented to ensure elections are fair and the citizens of Venezuela are given basic rights such as freedom of speech and freedom of the press.³²⁰ When it comes to elections, there must be amendments to ensure there is no voter fraud or political pressure to vote for any one candidate.³²¹ As well as allowing any and all eligible candidates from campaigning.³²² There should also be term limits added back to the constitution for the President.³²³

319. *See How to Restore Democracy in Venezuela*, *supra* note 318 (explaining how making changes to the constitution will progress Venezuelan government to make and work towards solving its ongoing humanitarian crisis); *cf. Constitutional History of Venezuela*, *supra* note 238 (showing how the 1999 Constitutional Amendments drastically changed Venezuela's governmental structure and it's continued affect in 2020).

320. *How to Restore Democracy in Venezuela*, *supra* note 318 (stating in order for Venezuela to achieve democracy, the country requires a complete transformation which includes changing the way elections are handled).

321. *See* Joe Parkin Daniels, *Venezuela: Who is Juan Guaidó, The Man Who Declared Himself President?*, THE GUARDIAN (Jan. 23, 2019, 14:02 PM), <https://www.theguardian.com/world/2019/jan/15/juan-guaido-venezuelan-opposition-leader-challenging-maduros-rule> [https://perma.cc/J8FU-3HN2] (detailing the political corruption present in Venezuela and how a change to the country's constitution is essential in driving the country back towards democracy); *see also*, e.g., *UN Human Rights Report on Venezuela Urges Immediate Measure to Halt and Remedy Grave Rights Violations*, UNITED NATIONS HUM. RTS. OFF. OF THE HIGH COMM'R (July 4, 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24788&LangID=E> [https://perma.cc/ZC9R-TU9U] (reviewing the numerous human rights violations committed in Venezuela, including suppressing political opponents from running against the current President); *see also* Kyle Rempfer & Todd South, *There are Mounting Signs of Military Planning for Venezuela*, MIL. TIMES (Mar. 15, 2019), <https://www.militarytimes.com/news/your-military/2019/03/15/there-are-mounting-signs-of-military-planning-for-venezuela/> [https://perma.cc/3VRV-RK5X] (discussing the possibility of needing military intervention in Venezuela to control the widespread political corruption rampant in the country).

322. Daniels, *supra* note 321 (emphasizing the need for a political reformation in Venezuela to ensure the electoral process is free and fair).

323. *Constitutional History of Venezuela*, *supra* note 238 ("Constitutional reform in 2009 further strengthened the presidency in Venezuela as 54% of Venezuelan voters backed a constitutional amendment that abolished term limits for elected officials, including the president" and further led to an increased and continued corruption).

C. Immigration—Temporary Protected Status

Temporary Protected Status provides individuals with work permits and stay of deportation in the United States.³²⁴ TPS is usually given to certain countries that are experiencing an environmental disaster or extraordinary conditions, including violence.³²⁵ TPS can usually be given to an entire country for anywhere between six and eighteen months, but this can always be continuously extended.³²⁶ Then, sixty days prior to the expiration of the protected status, the Secretary of Homeland Security must decide whether to extend or terminate the TPS based on the conditions of the foreign country.³²⁷ This can be a temporary solution until Venezuela can get back to democracy.³²⁸ Many of the individuals that would be coming to the United States would be well educated.³²⁹ Congress has proposed a bill to give Venezuelans Temporary Protected Status, which has been passed in the house and is now in the process of being evaluated by the senate.³³⁰ There are already many Venezuelans in the United States; this bill would prevent them from being deported and allow them to get jobs.³³¹ Former President Trump

324. *Temporary Protected Status: An Overview*, AM. IMMIGR. COUNCIL (May 21, 2019), <https://www.americanimmigrationcouncil.org/research/temporary-protected-status-overview> [<https://perma.cc/5SN7-5MRW>] (outlining the requirements and benefits individuals can receive by obtaining Temporary Protected Status in the United States).

325. *Id.* (listing the various circumstances under which a country is eligible to receive temporary protected status designation).

326. *Id.* (articulating how short-lived Temporary Protected Status is for individuals who are fortunate enough to receive it).

327. *Id.* (expanding on the stringent guidelines in place for terminating and/or extending temporary protected status for countries).

328. *Id.* (alluding to the benefits that countries designated for TPS allow its citizens to receive by providing a means of escape from dire and catastrophic conditions within their country and temporarily remaining in the United States as a safe haven).

329. *See generally* NAT'L IMMIGR. F., *supra* note 311 (detailing how individuals from TPS designated countries have a positive impact and contribute to the economy of the United States).

330. Venezuela TPS Act of 2019, H.R. 549, 116th Cong. § 244 (2019) (emphasizing the purpose of the bill is to designate Venezuela under Temporary Protected Status pursuant to section 224 of the Immigration and Nationality Act); *Senate Republicans Again Block Venezuela TPS Legislation*, *supra* note 315 (emphasizing the lack of Senate support on this bill which has not been approved as of September 2020—due to republicans blocking the bill).

331. NAT'L IMMIGR. F., *supra* note 311 (portraying the advantages of obtaining TPS and the protections received to individuals under that status); *see, e.g.*, Alex Daugherty, *Democrats Will Force a House Vote on TPS for Venezuelans. They'll Need GOP Support*, MIA. HERALD (July 22, 2019, 11:58 PM), <https://www.miamiherald.com/news/nation-world/world/americas/venezuela/article232966177.html> [<https://perma.cc/2KSW-VNUM>] (discussing the widespread benefits of

issued sanctions and supported Democracy for Venezuela, and, without congressional approval, he could have given Venezuelans TPS, but he refused to do so.³³² Once TPS is granted to Venezuelans, the Secretary of the U.S. Department of Homeland Security can continue to monitor the conditions of the country and continuously review the country's Temporary Protected Status.³³³

D. U.S. Military Intervention

On a command of the President, the U.S. Navy, Army, Air Force, Marines, and Coast Guard could potentially send thousands of troops into Venezuela.³³⁴ Former President Trump discussed the possibility of sending troops into Venezuela in order to “force regime change,” but there are dire consequences for this action.³³⁵ Many individuals are estimating that in order for the military to be successful in overthrowing the current administration in Venezuela it would require somewhere between 100,000 and 150,000 troops.³³⁶ Many opponents to military intervention in Venezuela by the United States say this invasion could result in a war that resembled the Iraq war, which would result in many deaths of both Venezuelan and U.S. citizens and could possibly last several years.³³⁷ But the Venezuelan citizens are already constantly dying from their own government either due to food shortages, medicine

passing the bill to grant TPS to Venezuelans, including the opportunity work and remain in the United States lawfully); see also Sonia Osorio, *Venezuelan Population in U.S. has Seen Explosive Growth Since 2000*, MIA. HERALD (Sept. 19, 2019, 4:59 PM), <https://www.miamiherald.com/news/nation-world/world/americas/venezuela/article235250772.html> [<https://perma.cc/L736-2B5Y>] (discussing the explosive growth of the Venezuelan population in the United States over the last generation).

332. Daugherty, *supra* note 331 (“The Department of Homeland Security hasn’t moved forward with TPS for Venezuelans a full seven months after the U.S. [and President Trump] recognized Juan Guaido as the country’s legitimate leader even though Nicolas Maduro maintains control of the military and lucrative oil fields.”).

333. NAT’L IMMIGR. F., *supra* note 311.

334. Rempfer & South, *supra* note 321 (contemplating the consequences of United States military intervention in Venezuela responding to the crisis under Maduro’s continued political control).

335. *Id.* (“It’s a regime that, frankly, could be toppled very quickly by the military if the military decides to do that.’ Trump said in September [of 2018]”).

336. *Id.* (emphasizing the implications of a possible military intervention in Venezuela).

337. *Id.* (“It would be prolonged, it would be ugly, there would be massive casualties . . .”).

shortages, or even during protests.³³⁸ There needs to be a change in Venezuela, and a military intervention by the United States should be the last resort that could ultimately change the country around.³³⁹

CONCLUSION

Over the past few decades, Venezuela has been run by two major presidents that have led to the incredible downfall of an entire country.³⁴⁰ Most importantly, Maduro has pushed the country to one of the biggest humanitarian crises the world has ever seen.³⁴¹ There are electricity blackouts, food shortage, medicine shortage, and more.³⁴² The inflation rate has essentially made the Venezuelan currency worthless.³⁴³ All the

338. *Id.* (portraying examples of the devastation people in Venezuela experience).

339. *Id.* (“They’re not trying to provoke a war,’ according to Fulton T. Armstrong, a former CIA analyst with significant Latin American experience. ‘They’re trying to provoke the Venezuelan military to rise up and overthrow Maduro”).

340. See, e.g., Patrick Kiger, *How Venezuela Fell from the Richest Country in South America into Crisis*, HIST. (May 9, 2019), <https://www.history.com/news/venezuela-chavez-maduro-crisis> [<https://perma.cc/F4SE-7U8Z>] (criticizing both Chávez and Maduro regimes for having contributed to the economic collapse of Venezuela); Vox, *The Collapse of Venezuela, Explained*, YOUTUBE (Aug. 25, 2017), <https://www.youtube.com/watch?v=S1gUR8wM5vA> [<https://perma.cc/C5LD-LAQC>] (emphasizing Maduro, like Chavez, has also rigged the economy to keep himself in power and consistently destroys the poor individuals in the country).

341. *Made by Maduro: The Humanitarian Crisis in Venezuela and U.S. Policy Responses: Hearing before the Subcommittee on the Western Hemisphere, Civilian Security, and Trade*, 116th Cong. 6 (2019) (statement by Ted Yoho, Representative for Ambassador Rooney), <https://docs.house.gov/meetings/FA/FA07/20190226/108946/HHRG-116-FA07-Transcript-2019-0226.pdf> [<https://perma.cc/Q95N-TBKE>] (“[T]he socialist policies, corruption, and economic mismanagement by the Maduro regime have destroyed what was once the most prosperous, the most prosperous country in Latin America and created one of the greatest exoduses of people, wealth, and talent in recent historical memories.”).

342. See generally *Venezuela’s Humanitarian Emergency, Large Scale UN Response Needed to Address Health and Food Crises*, HUM. RTS. WATCH (April 4, 2019), <https://www.hrw.org/report/2019/04/04/venezuelas-humanitarian-emergency/large-scale-un-response-needed-address-health> [<https://perma.cc/98SQ-UKRL>] (bolstering the argument that Venezuela is undergoing a massive humanitarian crisis that demands the aid of UN medical professionals to ease the spread of fast growing diseases and remedy shortages of basic necessities); see generally Melody Schreiber, *Researchers Are Surprised by the Magnitude of Venezuela’s Health Crisis*, NPR (Apr. 5, 2019, 1:34 PM), <https://www.npr.org/sections/goatsandsoda/2019/04/05/709969632/researchers-are-surprised-by-the-magnitude-of-venezuelas-health-crisis> [<https://perma.cc/FV5T-WFWV>] (providing firsthand testimony from medical professionals in Venezuela who are witnessing malnourished children in hospitals and basic diseases that are curable with simple vaccines resurfacing).

343. See Max Fisher & Amanda Taub, *How Venezuela Went from the Richest Economy in South America to the Brink of Financial Ruin*, INDEP. (May 21, 2017, 17:07 PM),

issues in the country has led to the multitude of protests by citizens as a call to the government to fix these humanitarian issues.³⁴⁴ This humanitarian crisis has led to approximately four million people to leave their homes to several other countries around to world.³⁴⁵ Accountability for the current Venezuelan presidency and the government's various human rights violations must be dealt with fairly.³⁴⁶ International assistance will be crucial to ensure that Venezuelans are given a smooth transition back to democracy.³⁴⁷ This transition should be used to unify all Venezuelans.³⁴⁸ The ways of

https://www.independent.co.uk/news/long_reads/how-venezuela-went-from-the-richest-economy-in-south-america-to-the-brink-of-financial-ruin-a7740616.html [<https://perma.cc/AM6P-QESH>] (noting, as of 2016, Venezuela's economy has shrunk by ten percent and its currency is almost worthless due to a 700 percent inflation rate); *see also* Stephen Keppel, *5 Ways Hugo Chavez Has Destroyed the Venezuelan Economy*, ABC NEWS (January 17, 2013, 7:22 PM), https://abcnews.go.com/ABC_Univision/News/ways-chavez-destroyed-venezuelan-economy/story?id=18239956 [<https://perma.cc/KW64-2W2H>] (“[T]he Bolivar fuerte, is anything but strong. . . . [I]t has lost nearly two-thirds of its value since it was launched in 2008.”).

344. *See, e.g.*, Kiger, *supra* note 340 (providing an example of a massive uprising led by Juan Guaidó against the Maduro regime).

345. *See, e.g.*, HUM. RTS. WATCH, *supra* note 342 (“WFP has provided assistance to more than 100,000 Venezuelans in Colombia and Ecuador. At the Brazilian border with Venezuela, UNHCR has established 13 shelters that house more than 6,850 Venezuelans who receive shelter, medical care, and food.”); *see also, e.g.*, Schreiber, *supra* note 342 (supporting the contention that Venezuelan citizens cannot receive basic medical attention within their country and are left with no alternative but to flee to neighboring countries like Brazil and Colombia in order to survive).

346. *Ensuring Accountability in Venezuela is Key to End Rights Crisis*, HUM. RTS. WATCH (July 5, 2019, 6:30 AM), <http://www.admin.hrw.org/news/2019/07/05/ensuring-accountability-venezuela-key-end-rights-crisis-0#> [<https://perma.cc/RTA7-DK9N>] (“[T]he UN High Commissioner’s strong report, which includes key information on the major human rights problems in Venezuela . . . recommends that the Human Rights Council request OHCHR to ‘focus on ensuring accountability for human rights violations and abuses in Venezuela, including by enhancing its monitoring, documentation, analysis, and public reporting on the human rights situation.’ In this regard, the creation of a Commission of Inquiry, which was recommended in the previous OHCHR report, should be a key priority in advancing accountability, given overwhelming evidence that the situation in Venezuela has worsened in recent months.”).

347. Moises Rendon & Mark Schneider, *Analyzing Obstacles to Venezuela’s Future*, CTR. FOR STRATEGIC & INT’L STUDS. (Nov. 6, 2019), <https://www.csis.org/analysis/analyzing-obstacles-venezuelas-future?amp> [<https://perma.cc/3H3B-XECM>] (“[T]o mitigate the politicization of justice, international assistance and credibility will be crucial to ensure that reconciliation accompanies the transition and that Venezuelans feel confident the country is establishing the rule of law.”).

348. *Id.* (“Constructing an effective transitional justice system will require that truth is assured to the victims. The most effective systems have been those where international involvement has been present. Venezuela’s transitional justice would be uniquely challenging but can benefit from the lessons of other international truth commissions, as in El Salvador, and

bringing justice to the people of Venezuela is to have corrupt governmental individuals charged and convicted by the ICC.³⁴⁹ Amending the Venezuelan constitution to ensure the power is with the people once again.³⁵⁰ Possibly during this transition or even before, giving immigrants Temporary Protected Status until the country can be restored.³⁵¹ As a last-ditch effort, if nothing else is successful, to have the United States intervene with its military.³⁵²

A key question that also has to be addressed is how to ensure Venezuela does not return to a dictatorship and ensuring another individual similar to Maduro and Chavez does not take office.³⁵³ With the implementation of a new constitution along with the younger Venezuelan politicians that are working to bring democracy back to

national truth commissions, as in Chile, Argentina, Uruguay, and Guatemala, as well as others in Africa and elsewhere.”).

349. Claire Felner, *The Role of The International Criminal Court*, THE COUNS. ON FOREIGN RELS. (May 30, 2019), <https://www.cfr.org/background/role-international-criminal-court> [<https://perma.cc/QJ82-SGHQ>].

350. Cf. *Venezuela: A Democratic Crisis*, U.S. DEP’T OF STATE, <https://www.state.gov/a-democratic-crisis-in-venezuela#restoring> [<https://perma.cc/7VT9-X6T7>] (“Maduro and his inner circle dismantle Venezuelan democracy piece by piece, as they plunder the country’s natural resources to enrich themselves. A devastating health and humanitarian crisis continues to grow, with consequences for our whole hemisphere. The United States seeks a peaceful restoration of democracy in Venezuela.”).

351. See generally NAT’L IMMIGR. F., *supra* note 311 (“[T]emporary Protected Status is granted by the Secretary of the Department of Homeland Security (Secretary) to eligible foreign-born individuals who are unable to return home safely due to conditions or circumstances preventing their country from adequately handling the return.”).

352. See Rempfer & South, *supra* note 321 (“White House officials say ‘all options on the table,’ including a military intervention or military support of allies in the region.”). But see Karen DeYoung & Anthony Faiola, *Trump Administration to Tap into Frozen Venezuelan Government Funds to Revive Efforts to Oust Maduro*, WASH. POST (Aug. 20, 2020, 12:28 PM), https://www.washingtonpost.com/national-security/trump-administration-to-tap-into-frozen-venezuelan-government-funds-to-revive-efforts-to-oust-maduro/2020/08/20/b0024968-df20-11ea-809e-b8be57ba616e_story.html [<https://perma.cc/XQA3-PRPE>] (“Trump has repeatedly said that ‘all options are on the table’ for dealing with Maduro, a coded reference to possible use of force. But more than a year and a half after the United States recognized Guaidó as interim president and imposed sanctions on oil, the lifeblood of the national economy, he’s shown no inclination to use it.”).

353. Cf. *How to Restore Democracy in Venezuela*, *supra* note 318 (“Ninety percent of Venezuelans, by no means a small amount, want Maduro to go, including a group of the Chavistas. But Maduro has 90 percent of the weapons, both the regular ones in the hands of the armed forces and the irregular ones belonging to the so-called “collectives” who are paramilitary assassins.”).

Venezuela, democracy is available.³⁵⁴ The citizens of Venezuela are also rightfully striving and pushing for a leader that will represent them and do what is best for the country as a whole.³⁵⁵

354. See, e.g., Daniels, *supra* note 321 (“Juan Guaidó, the 35-year-old leader of Venezuela’s opposition-controlled national assembly, was an unknown figure on the international stage. That changed on Wednesday, when the young politician stood before thousands of protesters in Caracas and swore himself in as interim president. . . . He’s part of . . . a brave generation that grew up under a dictatorship” and seeks democracy and freedom for the people of Venezuela).

355. David Smilde, *Venezuelans Want President Maduro Out, but Most Would Oppose Foreign Military Intervention to Remove Him*, THE WORLD (Jan. 10, 2019, 5:15 PM), <https://www.pri.org/stories/2019-01-08/venezuelans-want-president-maduro-out-most-would-oppose-foreign-military> [<https://perma.cc/ACM6-6Q9A>]; Markos Kounalakis, *Venezuelans Will Have to Fight for Their Democracy. Trump Can’t, and Won’t, do it for Them*, MIA. HERALD (May 3, 2019, 12:32 PM), <https://www.miamiherald.com/opinion/op-ed/article229939659.html> [<https://perma.cc/78QE-W7DX>] (“[T]he good people of Venezuela . . . are victims of “President” Nicolás Maduro and his regime’s continual and cynically systemic use of food and energy resources to keep political friends and allies happy while shunting and starving his opponents. Millions have chosen to leave and live in exile as refugees, while others head to the Venezuelan streets to topple Maduro.”).