

Response to the Call for contributions for a thematic study by the Working Group on Enforced or Involuntary Disappearances on “Elections and Enforced Disappearances”

The Due Process of Law Foundation (DPLF) is grateful for the opportunity to present this brief response to the Working Group’s call for contributions. We focus our submission on the situation in **Venezuela**. The Venezuelan government, led by Nicolas Maduro, announced on March 5th that the presidential election will be held on July 28, 2024.¹ Regional, local and legislative elections will take place sometime in 2025.² As it seems that President Maduro is determined to remain in power despite the complex humanitarian emergency in the country that has caused the largest external [displacement crisis](#) in Latin America’s recent history, Venezuelan civil society has long sounded the alarm about the likelihood of increased repression in electoral contexts.

Fears that the pre-electoral cycle would be a time of increased repression came to the fore in early 2024 with the government’s renewed efforts to pass a law that would make it virtually impossible for human rights NGOs to operate. This was followed by the enforced disappearance of human rights defender Rocío San Miguel and the expulsion of the presence of the United Nations Office of the High Commissioner for Human Rights from Caracas.

The use of enforced disappearances, particularly short-term forced disappearances, as a means of targeted repression in the lead-up to the elections, is a serious risk based on the patterns of violence and state control in Venezuela. The following addresses select questions of the Working Group’s call for contributions that are particularly relevant to the Venezuelan situation.

Question 1: What are the distinctive features of electoral violence when compared to other forms of political violence?

As the 2024 presidential election draws nearer, restrictions on civic and democratic space have intensified in Venezuela. It appears that electoral violence in Venezuela, as compared to other forms of political violence such as crackdowns on protests, is particularly deliberate, intense, and targeted. The current regime in Venezuela has taken several actions in recent months that indicate

¹ <https://apnews.com/article/venezuela-presidential-election-maduro-opposition-machado-ban-fb387c32fcfe197805e09cc34374e6ff>, <https://apnews.com/article/venezuela-presidential-election-july-28-fb270567897dbc2641e2062c3e877ce2>

² <https://www.wola.org/2023/07/upcoming-elections-provide-important-opportunity-venezuela-lack-guarantees-deepens-concerns/>

it is committed to staying in power at all costs. The government has been further eroding civic freedoms and systematically attacking political opponents, including banning the top opposition candidate, Maria Corina Machado, from the general election, and arresting and issuing warrants against top members of her staff and party on March 20, 2024.³

On February 9, the internationally renowned human rights defender [Rocío San Miguel](#) was arbitrarily detained while attempting to travel out of the country with her daughter. For several days after her detention, until February 15, San Miguel's whereabouts were unknown and the state would not provide information on her status or location, constituting a short-term enforced disappearance. Several of her family members were also detained and then released.⁴ Rocío San Miguel remains imprisoned at Helicoide, an intelligence center well-known for utilizing torture.

After the United Nations Office of the High Commissioner for Human Rights expressed concern for Rocío San Miguel and noted that her detention might qualify as an [enforced disappearance](#)⁵, Venezuela announced the immediate expulsion of OHCHR's personnel in Caracas, who were members of the primary international entity for monitoring the human rights situation from within the country. This signals a concerning escalation in the government's attempts to [evade international scrutiny and accountability](#) in the leadup to the elections.

Question 2: Do enforced disappearances in the context of elections follow a pattern? If so, please describe.

In general, enforced disappearances in Venezuela follow the pattern of being relatively short in duration.⁶ This honorable Working Group has previously expressed its deep concern at the phenomenon of short-term enforced disappearances around the world. The Working Group has stressed “that there is no time limit, no matter how short, for an enforced disappearance to occur” and that “accurate information on the detention of any person deprived of liberty and their place of detention shall be made promptly available to their family members.”⁷

The UN Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela (UN Fact-Finding Mission or FFM) has determined that Venezuelan security forces have utilized

³ <https://www.reuters.com/world/americas/venezuela-attorney-general-arrests-two-people-close-opposition-candidate-machado-2024-03-20/>

⁴ <https://elpais.com/america/2024-02-14/venezuela-libera-a-los-familiares-de-rocio-san-miguel-pero-envia-a-la-activista-a-la-prision-del-servicio-de-inteligencia.html>

⁵ See also Inter-Am. Commission on Human Rights (referring to Rocío San Miguel's detention as a forced disappearance). https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2024/036.asp

⁶ See e.g. Misión internacional independiente de determinación de los hechos sobre la República Bolivariana de Venezuela, *El aparato estatal, sus mecanismos de represión y las restricciones al espacio cívico y democrático* A/HRC/54/CRP.8, Section IIIC (2023).

⁷ Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/27/49 (Aug. 2014). See also <https://www.ohchr.org/en/calls-for-input/2023/call-inputs-view-issuing-joint-statement-notion-short-term-enforced>

short-term enforced disappearance as a means of selective repression in a context of restrictions on civic space.⁸

It is clear that the arbitrary detention and forced disappearance of Rocío San Miguel was meant to send a message to others who would defend human rights and publicly speak out about electoral matters, and it can unfortunately be expected that a pattern of targeted repression in the form of, among other tactics, short-term enforced disappearances will continue and escalate in the lead-up to the elections in Venezuela this year.

Question 3: Who are the victims of enforced disappearances in the context of elections? If possible, provide examples.

Human rights defenders and others that might be perceived as being opposed to the reelection of the ruling party in Venezuela are the main victims of targeted repression, and this will likely worsen in the election context. It is notable that Rocío San Miguel was forcibly disappeared just days after urging the government to comply with the judgment of the Inter-American Court of Human Rights in the *Sosa* case. The underlying facts of this case relate to electoral matters, namely political rights and discrimination against those who had called for a recall referendum against President Chavez in 2004 (the “Tascon List”)⁹.

Examples abound of targeted repression throughout the reports of Venezuelan NGOs and by the UN Venezuela Fact-Finding Mission, including against election activists. The FFM has also found that in some cases, charges against persons who were victims of short-term disappearances were created after the person had been arrested to cover the period of detention and attempt to justify the disappearance ex post facto.¹⁰

The FFM found that there was sufficient evidence to reasonably conclude that state agents participated in the arbitrary detention and torture of journalist and election activist Mr. Wilfredo Rodríguez, as well as the harassment of his friends and family. Rodríguez is a member of the regional board of primaries of the State of Delta Amacuro, organized by the Venezuelan opposition in preparation for the presidential elections scheduled for 2024. While the mission did not classify this specific detention as a short-term forced disappearance as such, it represents a concerning

⁸ See International independent fact-finding mission on the Bolivarian Republic of Venezuela, *The Directorate of Strategic and Tactical Actions of the Bolivarian National Police Corps and its relationship with the former Special Action Forces*, A/HRC/CRP.9 (2023), paragraph 143.

⁹ <https://examenddhvenezuela.org/democracia-estado-de-derecho/corte-interamericana-solicita-al-estado-cumpla-la-sentencia-en-caso-lista-tascon>, <https://www.hrw.org/reports/2008/venezuela0908/2.htm>

¹⁰ See e.g. Report of the independent international fact-finding mission on the Bolivarian Republic of Venezuela, A/HRC/48/69 (2021), para. 68.

example of human rights violations committed against persons carrying out activism in the context of elections.¹¹

The FFM has also highlighted the case of persecution against election activist Néstor Astudillo, a union leader and activist of the Bandera Roja political party. In 2022, Astudillo was working on an electoral law project for the primary elections, which sought to generate a consensus in the opposition regarding a single candidate for the 2024 presidential elections. This project was opposed by the government as it had the potential to negatively impact the ruling party's grip on power. In July 2022, Mr. Astudillo was arrested at his home by state agents despite the lack of any warrant or judicial order. He was detained for two days, and his family did not receive any information about Mr. Astudillo despite searching for him at a police station.¹²

Question 4: What is the rationale for committing enforced disappearances in the context of elections?

It appears the government seeks to create a climate of fear around electoral advocacy to inhibit the promotion of truly democratic and transparent electoral processes. The FFM found that the Venezuelan state uses short term disappearances as a means of selective repression against persons who are (or are perceived to be) members of the political opposition.¹³

Question 10: Provide any example of legislation that has been adopted with the view of hindering the access to justice and redress to victims of human rights violations, including enforced disappearances in the context of elections.

The ruling party in Venezuela is making a concerted effort to pass the bill entitled “Law of Supervision, Regularization, Performance, and Financing of Non-Governmental and Related Organizations” (Ley de Fiscalización, Regularización, Actuación y Financiamiento de las Organizaciones No Gubernamentales y Afines).¹⁴ This legislation, which was introduced and initially approved by the ruling party in the National Assembly on January 24, 2023, has been

¹¹ Misión internacional independiente de determinación de los hechos sobre la República Bolivariana de Venezuela, *El aparato estatal, sus mecanismos de represión y las restricciones al espacio cívico y Democrático*, A/HRC/54/CRP8 (2023), “Caso 2: Wilfredo Rodríguez.”

¹² Misión internacional independiente de determinación de los hechos sobre la República Bolivariana de Venezuela, *El aparato estatal, sus mecanismos de represión y las restricciones al espacio cívico y Democrático*, A/HRC/54/CRP8 (2023), “El caso de Néstor Astudillo.”

¹³ See e.g. Report of the independent international fact-finding mission on the Bolivarian Republic of Venezuela A/HRC/48/69 (2021) paras 70-75; Misión internacional independiente de determinación de los hechos sobre la República Bolivariana de Venezuela, *El aparato estatal, sus mecanismos de represión y las restricciones al espacio cívico y Democrático*, A/HRC/54/CRP.8 (2023), paras. 183-184.

¹⁴ <https://dplf.org/en/news/international-organizations-express-concern-over-legislation-aiming-criminalize-and-obstruct>

called “a point of no return in the closure of democratic and civic space.”¹⁵ It stands in contradiction to international [norms and standards](#) and poses a dire threat to the operations of civil society organizations, especially those working to seek justice for human rights violations and organizations politically opposed to the current Venezuelan administration. New efforts to pass the legislation have resumed with the [announcement](#) on January 9, 2024, by the President of the National Assembly about a public consultation on the content of the draft law, aiming to facilitate a second discussion and its ultimate approval.

If enacted, this law would seriously hinder the freedom of association and the free and independent functioning of civil society organizations by requiring them to seek government authorization for their operations and disclose any foreign funding. The vague and ambiguous language in the current draft of the bill raises fears of heightened persecution against human rights defenders, with potential fines, registration cancellations, and even criminal charges. This would directly impact the ability of independent civil society to advocate around issues of public interest that are relevant to the election, such as the rights to access to information, food, health, and education.

The mere existence of this legislation represents a threat, with a chilling effect on civil society that constitutes a form of control, contrary to an enabling environment for a truly democratic society. As Venezuela embarks upon a pivotal year, the timing of the bill raises concerns that it will be used to repress debate and dissent in the lead-up to the presidential elections this year, as well as the legislative and regional elections in 2025.

Question 13: What has been the role of the judiciary in safeguarding the rights of victims of enforced disappearances in the context of elections? Provide any examples of lack of judicial independence as well as attacks to judicial actors as a consequence of their work in this specific context.

There is widespread recognition that the judiciary in Venezuela is corrupt, coopted and not at all independent.¹⁶ This makes it virtually impossible to safeguard the rights of victims of enforced disappearances, especially in the context of elections. The UN Venezuela Fact-Finding Mission dedicated its 2021 report to the Venezuelan judiciary and noted how it perpetuates impunity by failing to adjudicate serious human rights crimes, including short-term enforced disappearances.¹⁷

¹⁵ <https://www.ohchr.org/en/press-releases/2023/01/venezuela-draft-ngo-law-reaching-point-no-return-closure-civic-space>

¹⁶ See e.g. International Commission of Jurists, “Judges on the Tightrope Report on the Independence and Impartiality of the Judiciary in Venezuela” (2021). See also https://www.dplf.org/sites/default/files/judicial_transition_ven_eng_vf.pdf, <https://www.ibanet.org/article/8A67EDC3-B8E7-4431-BF7D-0CC90B1A278A>.

¹⁷ Report of the independent international fact-finding mission on the Bolivarian Republic of Venezuela, A/HRC/48/69 (2021), paras 70-75.

The FFM has noted:

“The Venezuelan courts have established ad hoc boards of directors in unions, federations, professional associations and even political parties. The judicial interventions of political parties, which include major ones, such as Acción Democrática, Voluntad Popular, Primero Justicia or the Communist Party of Venezuela, have been taking place gradually since 2020 and are especially relevant in view of the upcoming presidential elections planned for 2024.”¹⁸

This close relationship between the court system and the political parties severely undermines judicial independence and inhibits the judiciary from safeguarding the rights of victims of enforced disappearance in the context of elections.

Question 15: What measures could be put in place to prevent or reduce the risks as well as address the practice of enforced disappearances, including so-called “short-term” enforced disappearances in the electoral context?

Given the lack of judicial independence in Venezuela, the international community must act to reduce the risks of and address the practice of short-term and other enforced disappearances in the electoral context. First, other states should exercise jurisdiction according to their national law to criminally investigate and prosecute the perpetrators of enforced disappearances in Venezuela. In addition to universal jurisdiction, if the victim or perpetrator has dual nationality or other ties to a foreign country, this may offer a legal nexus for prosecution by the country of nationality other than Venezuela. This is in accordance with the recommendation to the international community made by the UN Venezuela Fact-Finding Mission in its 2020 report: “States should consider... initiating legal actions against individuals responsible for violations and crimes [in Venezuela], in accordance with their relevant domestic legislation.”¹⁹

The issue of enforced disappearances in the electoral context should also be consistently raised and condemned at the UN Human Rights Council. The work of the UN Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela should be supported and its mandate extended through 2026, to ensure that cases of enforced disappearance in the electoral context are documented and reported, and to act as an early warning mechanism for an expected increase in these types of human rights violations as needed throughout the electoral cycles of 2024 and 2025.

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¹⁸ Report of the independent international fact-finding mission on the Bolivarian Republic of Venezuela, (A/HRC/54/57), para 81.

¹⁹ Detailed findings of the independent international fact-finding mission of the Bolivarian Republic of Venezuela, 2020 A/HRC/45/CRP.11 (2020).