

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

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ALFREDO JOSE CHIRINOS SALAMANCA AND OTHERS

vs.

BOLIVARIAN REPUBLIC OF VENEZUELA

Case No. 14.143

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BRIEF OF AMICUS CURIAE

NEW YORK CITY BAR ASSOCIATION

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Submitted to the Court on the 23rd day of May, 2024



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## I. INTRODUCTION

1. The Cyrus R. Vance Center for International Justice (“Vance Center” or “Amicus”) respectfully submits this brief to the Inter-American Court of Human Rights (“Court”) as *amicus curiae* pursuant to Article 44 of the Court’s Rules of Procedure to urge the Court to uphold jurisdiction in this case submitted by the Inter-American Commission on Human Rights (the “Inter-American Commission”), and decide whether the Bolivarian Republic of Venezuela (“Venezuela”) is responsible for violating Articles 5.1, 5.2, 7.1, 7.2, 7.3, 7.6, 8.1, and 25.1 of the American Convention on Human Rights (the “Convention”) related to the obligations established in its Article 1.1, as well as for the violation of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of the 14 petitioners.

2. In this brief, Amicus addresses two issues: *First*, whether the Court has jurisdiction over Venezuela as a result of the Guaido government’s ratification of the Convention and acceptance of the Court’s jurisdiction in July 2019. *Second*, whether the Court may exercise retrospective jurisdiction over Venezuela with respect to alleged human rights violations committed *after* its original denunciation of the Convention became effective on 10 September 2013.

3. On the *first* issue, Amicus concludes that the Court has jurisdiction over Venezuela because the state validly ratified the Convention and consented to the Court’s decision-making power. To address the scope of its jurisdiction, the Court needs to look solely at the ratification records maintained by the General Secretariat. For the Court to further examine the validity of the ratification would contradict the plain text of the Convention, the role of the General Secretariat as treaty depositary, and the jurisdictional powers of the Court. In any event, a closer review of the Guaido government’s treaty-making powers further confirms that Venezuela met all conditions to rejoin the Inter-American system and to appear as respondent before the Court.

4. On the *second* issue, Amicus concludes that the Court may exercise jurisdiction over Venezuela with respect to human rights violations committed *after* President Chavez’s original denunciation became effective in September 2013 and before Venezuela re-acceded to the Convention in July 2019. Venezuela unconditionally recognized the Court’s competence to hear all cases relating to the interpretation or application of the Convention, as if the original denunciation had never taken place. In doing so, Venezuela extended the Court’s jurisdiction backward to the moment the purported denunciation had become effective, in line with international norms and case law, including from the Court. The Court cannot second-guess Venezuela’s consent and must consequently assert jurisdiction *ratione temporis* in this case.

## **II. STATEMENT OF INTEREST**

5. The Vance Center is a non-governmental organization that promotes initiatives to reinforce the rule of law and address human rights violations, including in Venezuela. Facing the thick of a humanitarian crisis that has driven eight million Venezuelans into exile, Amicus is concerned that the Maduro regime seeks to evade accountability. Given the novel jurisdictional questions posed in this case, and its great influence on the resolution of several other cases pending before the Court, Amicus submits this brief to provide arguments supporting a favorable finding on jurisdiction by the Court. Amicus has no personal interest in this matter.

### **A. History and Mandate of Vance Center**

6. The Vance Center is a nonprofit affiliate of the New York City Bar Association that provides legal representation to civil society and international human rights bodies around the world in partnership with leading law firms on a pro bono basis. Taking its name from Cyrus R. Vance, the former U.S. Secretary of State who exemplified ironclad commitment to fundamental rights through the ethical imperative of pro bono practice, the Vance Center advances global justice by engaging lawyers across borders to support civil society, including on matters pertaining to human rights and access to justice. As co-manager of the Pro Bono Network of the Americas, the Vance Center is actively involved in international bodies such as the International Coalition on the Responsibility to Protect and the United Nations Economic and Social Council.

7. As part of its mission, the Vance Center investigates and reports on human rights violations to secure the respect of those rights for all persons. By exposing and calling attention to abuses committed by state and non-state actors, the Amicus seeks to bring international public opinion to bear upon offending governments and others to end abusive practices. The Vance Center has previously filed *amicus* briefs before various international tribunals and human rights bodies, including the Court.

8. Reports and legal analyses by the Vance Center have consistently enjoyed a high level of credibility with policymakers because of the independent nature of the organization. In pursuing its mission, the Vance Center historically has sought to persuade governments around the world to adopt changes favoring the rule of law. For example, the Vance Center has created an African Legal Fellows initiative to overcome the legacy of apartheid in South Africa and sought to strengthen the rule of law in Kenya and other African countries. The Vance Center also has created programs to protect the environment, promote institutional integrity, and guarantee access to justice, working with civil society organizations, special rapporteurs at the United Nations, and institutions at the local, regional, and international levels.

## **B. The Vance Center’s Work in Venezuela**

9. As part of its mission, the Vance Center has conducted extensive work in Venezuela.

10. The Vance Center assisted Observatorio Venezolano de Prisiones in bringing claims against Venezuela in *Mota Abarullo*.<sup>1</sup> The case concerned the death of five teenagers in a fire at the Monseñor Juan José Bernal detention center in Bolívar, Venezuela. In its judgment, the Court found that Venezuela had negligently failed to prevent the deaths, given the many grave structural deficiencies at the detention center at the time.<sup>2</sup> Accordingly, the Court held that Venezuela had breached several guarantees under the Convention, including the rights to life and personal integrity, setting a strong precedent on the scope of states’ obligations regarding the treatment of minors in prison in the Americas.<sup>3</sup>

11. In late 2023, the Vance Center organized and led meetings between human rights organizations and the Inter-American Commission to bolster dialogue and advocacy on LGBTQ+ rights in Venezuela. The Vance Center worked with several national organizations, including Caleidoscopio Humano and Observatorio Venezolano, to address recent widespread incidents of anti-LGBTQ+ violence in Venezuela.<sup>4</sup> The meetings created direct communication channels between interested parties, exchange of information between civil society groups and the Inter-American Commission for country-conditions reports, and the promotion of activities focused on awareness campaigns against anti-LGBTQ+ violence in Venezuela.

12. In early 2024, the Vance Center decided to appear as *amicus curiae* for “Defiende Venezuela,” a Venezuelan non-profit organization, in several cases against Venezuela before the Court.

## **III. STATEMENT OF FACTS**

### **A. Venezuela’s Pivotal Role in the Creation of the Inter-American System**

13. Venezuela played a pivotal role in the Inter-American Human Rights system’s creation and development since its inception. Venezuela participated in the ninth international conference of American states that resulted in the adoption of the Charter of the Organization of American States (“Charter”). On

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<sup>1</sup> I/A Court H.R., *Case of Mota Abarullo et al. v. Venezuela*. Merits, Reparations and Costs. Judgment of November 18, 2020. Series C No. 417; Vance Center, “Vance Center Presents Venezuelan Victim Testimony to Inter-American Court of Human Rights,” September 2020, <https://www.vancecenter.org/venezuela-case/>.

<sup>2</sup> I/A Court H.R., *Case of Mota Abarullo et al. v. Venezuela*. Merits, Reparations and Costs. Judgment of November 18, 2020. Series C No. 417.

<sup>3</sup> I/A Court H.R., *Case of Mota Abarullo et al. v. Venezuela*. Merits, Reparations and Costs. Judgment of November 18, 2020. Series C No. 417.

<sup>4</sup> Vance Center, “Vance Center Organizes Dialogue on Rights of LGBTQ+ Persons in Venezuela,” November 2023. Available at <https://www.vancecenter.org/vance-center-organizes-dialogue-on-rights-of-lgbtq-persons-in-venezuela/>.

30 April 1948, Venezuela was one of the first states to sign the Charter<sup>5</sup> and on 29 December 1951, Venezuela ratified the Charter.<sup>6</sup>

14. Venezuela continued to actively participate in the Inter-American system. In November 1969, Venezuela participated in the specialized conference that resulted in the adoption of the Convention.<sup>7</sup> On 9 August 1977, Venezuela was one of the first states to ratify the Convention.<sup>8</sup> On the same date, Venezuela also recognized the Inter-American Commission's competence to "examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention."<sup>9</sup> On 24 June 1981, Venezuela agreed to the Court's jurisdiction "on all matters relating to the interpretation or application of this Convention."<sup>10</sup>

15. The Inter-American Commission and Court have played a fundamental role in protecting the human rights of the Venezuelan people. In the three decades following Venezuela's accession to the Inter-American system, the Commission submitted almost 20 applications to the Court concerning human rights violations committed by Venezuela.<sup>11</sup> The Court found Venezuela responsible for violations of

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<sup>5</sup> Charter of The Organization of American States (A-41), Signatories and Ratifications, [https://www.oas.org/en/sla/dil/inter\\_american\\_treaties\\_A-41\\_charter\\_OAS\\_signatories.asp#Venezuela](https://www.oas.org/en/sla/dil/inter_american_treaties_A-41_charter_OAS_signatories.asp#Venezuela).

<sup>6</sup> Charter of the Organization of American States. Signed at Bogota on 30 April 1948, United Nations Treaty Series, pp. 48, 90, <https://treaties.un.org/doc/Publication/UNTS/Volume%2019/volume-119-I-1609-English.pdf>. Current Article 139 of the OAS Charter governs ratification of the instrument.

<sup>7</sup> Inter-American Court of Human Rights, History, <https://www.corteidh.or.cr/historia.cfm?lang=en#:~:text=In%20November%201969%20the%20Inter.a%20member%20State%20deposited%20the>.

<sup>8</sup> American Convention On Human Rights "Pact Of San Jose, Costa Rica" (B-32) – Venezuela, [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights\\_sign.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm).

<sup>9</sup> American Convention On Human Rights "Pact Of San Jose, Costa Rica" (B-32) – Venezuela, [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights\\_sign.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm); American Convention on Human Rights, Article 45.

<sup>10</sup> American Convention On Human Rights "Pact Of San Jose, Costa Rica" (B-32) – Venezuela, [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights\\_sign.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm); American Convention on Human Rights, Article 62.

<sup>11</sup> I/A Court H.R., Case of *El Amparo v. Venezuela*. Interpretation of the Judgment of Reparations and Costs. Order of the Court of April 16, 1997. Series C No. 46.; I/A Court H.R., Case of the *Caracazo v. Venezuela*. Reparations and Costs. Judgment of August 29, 2002. Series C No. 95.; I/A Court H.R., Case of *Blanco Romero et al. v. Venezuela*. Merits, Reparations and Costs. Judgment of November 28, 2005. Series C No. 138.; I/A Court H.R., Case of *Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150.; I/A Court H.R., Case of *Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182.; I/A Court H.R., Case of *Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194.; I/A Court H.R., Case of *Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195.; I/A Court H.R., Case of *Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197.; I/A Court H.R., Case of *Barreto Leiva v. Venezuela*. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206.; I/A Court H.R., Case of *Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207.; I/A Court H.R., Case of *Chocrón Chocrón v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2011. Series C No. 227; I/A Court H.R., Case of *López Mendoza v. Venezuela*. Merits, Reparations, and Costs. Judgment of September 1, 2011. Series C No. 233; I/A Court H.R., Case of *Barrios family v. Venezuela*. Merits, Reparations and Costs. Judgment of November 24, 2011. Series C No. 237; I/A Court H.R., Case of *Díaz Peña v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 26, 2012.

the Convention and ordered Venezuela to pay reparations in all but two cases.<sup>12</sup> By 2012, Venezuela had become one of the most recurrent respondent states before the Court, second only to Peru.<sup>13</sup>

## B. Venezuela Denounced the American Convention

16. In July 2012, then-president Hugo Chavez announced his intention to denounce the Convention and revoke Venezuela's consent to the Court's jurisdiction. In an address to the Venezuelan people, President Chavez referred to the Court's decisions against Venezuela as an attempt to "knock down Venezuela" and "offend the dignity of the Venezuelan people."<sup>14</sup> He also discredited the work of the Inter-American Commission, which he alleged was "campaigning against his government and acting at the behest of the United States" and that of the Court as "supporting terrorism."<sup>15</sup> On 10 September 2012, Venezuela submitted the formal notice of denunciation to the Organization of American States ("OAS") Secretary General.<sup>16</sup> Pursuant to Article 78(1) of the Convention, the denunciation became effective a year later, on 10 September 2013.

17. Following Venezuela's denunciation, the Commission voiced its "deep concern over [its] consequences," including on "the protection of rights of the people of Venezuela, who are stripped of a mechanism to protect their human rights."<sup>17</sup> Amnesty International called the decision "an insult to the victims of human rights violations [that] places future generations of Venezuelans at risk."<sup>18</sup> The UN High Commissioner for Human Rights urged Venezuela to reconsider its decision, warning that its withdrawal

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Series C No. 244; I/A Court H.R., *Case of Uzcátegui et al. v. Venezuela*. Merits and reparations. Judgment of September 3, 2012. Series C No. 249; I/A Court H.R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281; I/A Court H.R., *Case of Granier et al. (Radio Caracas Television) v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2015. Series C No. 293; Inter-American Commission on Human Rights, Statistics – Venezuela, <https://www.oas.org/en/iachr/multimedia/statistics/statistics.html>; Inter-American Commission on Human Rights, Reports on Petitions and Cases – Cases in the Court, <https://www.oas.org/en/iachr/decisions/pc/cases.asp?Country=VEN&Year=2005>; Inter-American Commission on Human Rights, Annual Reports (1986–2004).

<sup>12</sup> I/A Court H.R., *Case of Castillo González et al. v. Venezuela*. Merits. Judgment of November 27, 2012. Series C No. 256; I/A Court H.R., *Case of Brewer Carías v. Venezuela*. Preliminary Objections. Judgment of May 26, 2014. Series C No. 278.

<sup>13</sup> Inter-American Commission on Human Rights, Reports on Petitions and Cases – Cases in the Court, <https://www.oas.org/en/iachr/decisions/pc/cases.asp?Country=VEN&Year=2005>.

<sup>14</sup> Cancillería VE, "Venezuela se retira de la CIDH porque atropella la dignidad del pueblo," 24 July 2012 [https://www.youtube.com/watch?v=q6\\_6NgfVxJQ](https://www.youtube.com/watch?v=q6_6NgfVxJQ).

<sup>15</sup> Fabiola Sanchez, "Venezuela pulling out of OAS human rights bodies," 10 September 2012, San Diego Union Tribune, <https://www.sandiegouniontribune.com/sdut-venezuela-pulling-out-of-oas-human-rights-bodies-2012sep10-story.html>.

<sup>16</sup> "OAS General Secretary Communicates Venezuela's Decision to Denounce the American Convention on Human Rights," Press Release E-307/12, 10 September 2012, [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-307/12](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-307/12).

<sup>17</sup> Inter-American Commission on Human Rights, "IACHR Deeply Concerned over Result of Venezuela's Denunciation of the American Convention," 10 September 2013, [https://www.oas.org/en/iachr/media\\_center/preleases/2013/064.asp#:~:text=On%20September%2010%2C%202012%2C%20the,of%20the%20government%20of%20Venezuela](https://www.oas.org/en/iachr/media_center/preleases/2013/064.asp#:~:text=On%20September%2010%2C%202012%2C%20the,of%20the%20government%20of%20Venezuela).

<sup>18</sup> Amnesty International, "Venezuela's withdrawal from regional human rights instrument is a serious setback," 6 September 2013, <https://www.amnesty.org/en/latest/news/2013/09/venezuela-s-withdrawal-regional-human-rights-instrument-serious-setback/>.

could mean a serious setback for human rights protection in Venezuela and the region as a whole.<sup>19</sup> Several Venezuelan scholars and human rights advocates also denounced Venezuela's denunciation as "contrary to the rights of the People of Venezuela" and an open violation of the Constitution.<sup>20</sup>

18. While Venezuela's denunciation of the Convention became effective on 10 September 2013, the state remained liable for violations that occurred while the Convention was still in force. Pursuant to Article 78 of the Convention, the Inter-American Commission continued to examine human rights violations committed by Venezuela "prior to the effective date of denunciation" and to submit applications to the Court.<sup>21</sup> For instance, in 2015 the Commission brought the case of a man assassinated in 1998 during simulation exercises at a military facility;<sup>22</sup> and in 2016, the Commission filed an application to the Court on behalf of Linda Loaiza López Soto and family members for forceful and illegal detention that occurred in 2001.<sup>23</sup> In both cases, the Court found Venezuela responsible for violating the Convention and ordered reparations to the victims.<sup>24</sup>

### **C. President Maduro Denounced the Charter Amid Widespread Turmoil and Civil Unrest**

19. In early 2017, street protests erupted in Venezuela triggered by unprecedented Supreme Court decisions that threatened to erode democratic institutions and the separation of powers. President Maduro responded with brutal and indiscriminate repression, resulting in thousands of deaths, injuries, and mass detentions,<sup>25</sup> as well as several cases involving torture and inhumane treatment against detainees.<sup>26</sup>

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<sup>19</sup> Inter-American Commission on Human Rights, "IACHR Deeply Concerned over Result of Venezuela's Denunciation of the American Convention," Press Release No. 64/13, 10 September 2013, [https://www.oas.org/en/iachr/media\\_center/preleases/2013/064.asp#:~:text=On%20September%2010%2C%202012%2C%20the,of%20the%20government%20of%20Venezuela](https://www.oas.org/en/iachr/media_center/preleases/2013/064.asp#:~:text=On%20September%2010%2C%202012%2C%20the,of%20the%20government%20of%20Venezuela).

<sup>20</sup> See e.g., Carlos Ayala Corao, "Inconstitucionalidad de la denuncia de la Convención Americana sobre Derechos Humanos por Venezuela," Anuario De Derecho Constitucional Latinoamericano, 2013; Academia de Ciencias Políticas y Sociales de Venezuela, "Academia de Ciencias Políticas y Sociales sobre el retiro de Venezuela de la Comisión Interamericana de Derechos Humanos (CIDH)," 14 May 2012; Profesores de Derecho en distintas universidades, "La decisión presidencial de renunciar a la Convención Americana sobre Derechos Humanos disminuirá los DDHH de TODOS los venezolanos y eliminará un mecanismo de protección adicional a la Constitución," 1 August 2012.

<sup>21</sup> American Convention on Human Rights, Article 78 (2) ("a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of denunciation").

<sup>22</sup> I/A Court H.R., *Case of Ortiz Hernández et al. v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 22 August 2017, Series C No. 338.

<sup>23</sup> Inter-American Commission on Human Rights, "IACHR Takes Case involving Venezuela to the Inter-American Court," Press Release No. 168/16, 17 November 2016, [https://www.oas.org/en/iachr/media\\_center/PReleases/2016/168.asp](https://www.oas.org/en/iachr/media_center/PReleases/2016/168.asp).

<sup>24</sup> I/A Court H.R., *Case of Ortiz Hernández et al. v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 22 August 2017, Series C No. 338; I/A Court H.R., *Case of López Soto et al. v. Venezuela*, Merits, Reparations and Costs, Judgment of 26 September 2018, Series C No. 362.

<sup>25</sup> Inter-American Commission on Human Rights, "IACHR Deplores Repressive Measures Taken by Venezuela against Protests and Condemns Resulting Deaths and Injuries," Press Release No. 058/17, 9 May 2017, [https://www.oas.org/en/iachr/media\\_center/PReleases/2017/058.asp](https://www.oas.org/en/iachr/media_center/PReleases/2017/058.asp).

<sup>26</sup> Inter-American Commission on Human Rights, "Five Years After Protests Over the Suspension of National Assembly Powers, Venezuela Must Restore Judicial Independence." Press Release No. 070/22, 5 April 2022, [https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media\\_center/PReleases/2022/070.asp](https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2022/070.asp).



As the Inter-American Commission later noted, the regime exhibited a consistent practice of “extrajudicial executions[], forced disappearances and torture[], arbitrary detentions of people who make public their dissent with the government, undue restrictions on freedom of expression, and acts of persecution against individuals and organizations that defend human rights.”<sup>27</sup>

20. Against this backdrop, Secretary General Almagro called for a special meeting at the OAS to consider the Venezuela situation. Venezuela’s Foreign Minister Delcy Rodríguez threatened to submit the state’s withdrawal from the OAS if the meeting ever took place.<sup>28</sup> The Permanent Council nevertheless convened all Ministers of Foreign Affairs to consider Venezuela’s situation.<sup>29</sup> On 28 April 2017, President Maduro responded with Venezuela’s “irrevocable decision to denounce the Charter” and to “initiat[e] Venezuela’s permanent withdrawal from the Organization.”<sup>30</sup> Pursuant to Article 143 of the Charter, Venezuela’s denunciation was set to become effective two years later, on 27 April 2019.

21. On 1 May 2017, President Maduro called for a constitutional assembly to draft a new constitution that would restore national “peace.”<sup>31</sup> The election took place on 30 July 2017, which marked “the bloodiest day in four months of anti-government protests.”<sup>32</sup> Absent democratic participation, President Maduro secured all the seats on the constitutional assembly, which quickly declared itself the superior body to all other institutions.<sup>33</sup> The election sparked regional and international criticism, with countries such as Peru condemning the “breakdown of democratic order” in Venezuela.<sup>34</sup> By August 2017,

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<sup>27</sup> Inter-American Commission on Human Rights, 2022 Annual Report, Chapter IV.B – Venezuela ¶ 3.

<sup>28</sup> Natalie Gallón, Stefano Pozzebon and Euan McKirdy, “Venezuela says it will split from OAS as unrest continues,” CNN, 27 April 2017, <https://www.cnn.com/2017/04/27/americas/venezuela-leaving-oas/index.html>.

<sup>29</sup> “OAS Permanent Council Agrees to Convene a Meeting of Consultation of Ministers of Foreign Affairs to Consider the Situation in Venezuela,” 26 April 2017, Press Release E-035/17, [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-035/17](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-035/17).

<sup>30</sup> Permanent Mission of Venezuela to the OAS, “Note From The Permanent Mission of The Bolivarian Republic of Venezuela Enclosing a Copy of The Letter Denouncing The Charter of The Organization of American States (OAS) Pursuant To Article 143 and Initiating The Permanent Withdrawal of The Bolivarian Republic of Venezuela From The Organization,” 28 April 2017, [http://www.oas.org/en/sla/dil/docs/a-41\\_note\\_venezuela\\_04-28-2017.pdf](http://www.oas.org/en/sla/dil/docs/a-41_note_venezuela_04-28-2017.pdf).

<sup>31</sup> Juan David Lopez, “El Mandatario venezolano busca aniquilar el poder de la Asamblea Nacional, de mayoría opositora,” El Tiempo, 2 May 2017, <https://www.eltiempo.com/mundo/latinoamerica/nicolas-maduro-anuncia-que-convocara-asamblea-constituyente-83412>.

<sup>32</sup> “Peru Calls Latin America Meeting After Venezuela’s ‘Illegitimate’ Vote,” Voice of America, 31 July 2017, <https://www.voanews.com/a/peru-calls-latin-america-meeting-after-venezuela-illegitimate-vote/3966107.html>.

<sup>33</sup> “Venezuela assembly declares its superiority to rest of government,” CBS News, 8 August 2017, <https://www.cbsnews.com/news/venezuela-constitutional-assembly-declares-top-government-body/>.

<sup>34</sup> “Venezuela called ‘dictatorship’ by Peru, condemned by new bloc,” Reuters, 9 August 2017, <https://www.reuters.com/article/us-venezuela-politics-region/venezuela-called-dictatorship-by-peru-condemned-by-new-bloc-idUSKBN1AO2NL/>.

more than 40 countries refused to recognize President Maduro or his constitutional assembly, which terminated its mandate without presenting a single draft.<sup>35</sup>

22. Maduro's crackdown on the opposition continued into 2018, when presidential elections were set to occur. In January 2018, the Maduro-controlled Supreme Court banned several political parties from participating in the presidential election, including the principal coalition of opposition parties.<sup>36</sup> While Maduro and opposition leaders discussed the electoral conditions for the upcoming presidential election, the two sides could not strike a deal.<sup>37</sup> Regardless, Maduro unilaterally called for a presidential election on 20 May 2018.<sup>38</sup>

23. On 20 May 2018, Maduro won the presidential elections amid vehement charges of fraud. In the run-up to the election, Freedom House issued a statement calling it "clearly unconstitutional" and called Maduro a "dictator" who has crushed all opposition.<sup>39</sup> The Commission pointed out that "the elections [] did not meet the minimal conditions necessary for holding free, fair, and reliable elections in Venezuela."<sup>40</sup> On 5 June 2018, the OAS General Assembly passed a resolution "declar[ing] that the electoral process as implemented in Venezuela [] lacks legitimacy, for not complying with international standards, for not having met the participation of all Venezuelan political actors, and for being carried out without the necessary guarantees for a free, fair, transparent and democratic process."<sup>41</sup>

#### **D. President Guaido Annulled Maduro's Purported Withdrawal from the Charter**

24. On 15 January 2019, Venezuela's National Assembly passed a resolution declaring Maduro's "absolute absence" pursuant to Article 233 of the Constitution, making him unable to serve as

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<sup>35</sup> Gustavo Ocando Alex, "Constituyente venezolana se esfumó entre polémicas y sin otra Constitución," Voice of America, 14 January 2021, <https://www.vozdeamerica.com/a/venezuela-constituyente-venezolana-se-esfumo-entre-polemicas-y-sin-otra-constitucion/6070721.html>; Sibylla Brodzinsky and Daniel Boffey, "40 countries protest Venezuela's new assembly amid fraud accusations," 2 August 2017, <https://www.theguardian.com/world/2017/aug/02/venezuela-voting-fraud-corruption-allegations-protests>.

<sup>36</sup> "El Tribunal Supremo de Venezuela excluye a la coalición opositora Mesa de Unidad Democrática de las próximas elecciones presidenciales," BBC Mundo, 26 January 2018, <https://www.bbc.com/mundo/noticias-america-latina-42827734>.

<sup>37</sup> Geoff Ramsey, "No Deal: Venezuela Talks in 'Indefinite Recess'," Washington Office of Latin America (WOLA), 8 February 2018, <https://www.wola.org/analysis/venezuela-political-crisis-negotiations-government-opposition/>

<sup>38</sup> "Venezuela presidential vote set for April 22," France 24, 8 February 2018, <https://www.france24.com/en/20180208-venezuela-presidential-vote-set-april-22>; Marco "Venezuela retrasa las elecciones presidenciales a finales de mayo," Publico, 1 March 2018, <https://www.publico.es/internacional/venezuela-retrasa-elecciones-presidenciales-finales-mayo.html>; Ana Isabel Martínez and Andrew Cawthorne, "Venezuela postpones presidential election to May 20," Reuters, 1 March 2018, <https://www.reuters.com/article/idUSKCN1GD5TO/>

<sup>39</sup> Scott Neuman, "Venezuela's Maduro Wins Boycotted Elections Amid Charges of Fraud," NPR, 21 May 2018, <https://www.npr.org/sections/thetwo-way/2018/05/21/612918548/venezuelas-maduro-wins-boycotted-elections-amid-charges-of-fraud>; Freedom House, "Venezuela: Maduro Looks to 'Sham' Re-Election," 17 May 2018, <https://freedomhouse.org/article/venezuela-maduro-looks-sham-re-election>.

<sup>40</sup> Inter-American Commission on Human Rights, 2018 Annual Report, Chapter IV.B – Venezuela, ¶ 42.

<sup>41</sup> OAS General Assembly, Resolution on the Situation in Venezuela, 5 June 2018, [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=S-032/18](https://www.oas.org/en/media_center/press_release.asp?sCodigo=S-032/18).

President for the term starting on 10 January 2019.<sup>42</sup> Invoking Article 233 of Venezuela’s Constitution, the National Assembly decided to form a transition government until free and transparent elections could be held.<sup>43</sup> On 23 January 2019, the National Assembly officially passed the Law Governing the Transition to Democracy to Restore the Constitution of Venezuela and appointed its leader, Mr. Juan Guaido, as interim president of Venezuela.<sup>44</sup>

25. On 10 January 2019, the OAS Permanent Council approved a resolution repudiating the Maduro regime in the strongest terms.<sup>45</sup> The Council noted that “the 2019-2025 presidential period beginning in Venezuela on 10 January 2019 is the result of an illegitimate electoral process” and resolved “to not recognize the legitimacy of Nicolas Maduro’s new term.”<sup>46</sup> Moreover, the Council “underscor[ed] the constitutional authority of the democratically elected National Assembly” and “reiter[at]ed its deep concern” about the worsening political, economic, social and humanitarian crisis in Venezuela “resulting from the breakdown of democratic order and serious human rights violations.”<sup>47</sup> Around this time, dozens of states also individually recognized Mr. Guaido as the legitimate president of Venezuela.<sup>48</sup>

26. On 22 January 2019, the Venezuelan National Assembly passed a resolution to revoke Venezuela’s previous denunciation of the Charter. The elected body affirmed that “the alleged denunciation of the Charter, formulated arbitrarily by Nicolás Maduro Moros, is legally non-existent and does not produce legal effects.”<sup>49</sup> Accordingly, the National Assembly appointed Mr. Gustavo Tarre as Venezuela’s

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<sup>42</sup> National Assembly of Venezuela, “Acuerdo Sobre La Declaratoria De Usurpación de La Presidencia De La República Por Parte De Nicolas Maduro Moros Y El Restablecimiento De La Vigencia de La Constitución,” 15 January 2019, <https://www.asambleanacionalvenezuela.org/actos/detalle/acuerdo-sobre-la-declaratoria-de-usurpacionde-la-presidencia-de-la-republica-por-parte-de-nicolas-maduro-moros-y-el-restablecimiento-de-la-vigenciade-la-constitucion-331>; see also National Assembly of Venezuela, “Acuerdo con el Objeto de Impulsar Una Solución Política a la Crisis Nacional, Fortaleciendo las Fuerzas Democráticas del Pueblo de Venezuela con el Respaldo de la Comunidad Internacional,” 13 November 2018, <https://asambleanacionalvenezuela.org/actos/detalle/acuerdo-con-el-objeto-de-impulsar-una-solucion-politica-a-la-crisis-nacional-fortaleciendolas-fuerzas-democraticas-del-pueblo-de-venezuela-con-el-respaldo-de-la-comunidad-internacional-315>.

<sup>43</sup> National Assembly of Venezuela, “Acuerdo Sobre La Declaratoria De Usurpación de La Presidencia De La República Por Parte De Nicolas Maduro Moros Y El Restablecimiento De La Vigencia de La Constitución,” 15 January 2019, <https://www.asambleanacionalvenezuela.org/actos/detalle/acuerdo-sobre-la-declaratoria-de-usurpacionde-la-presidencia-de-la-republica-por-parte-de-nicolas-maduro-moros-y-el-restablecimiento-de-la-vigenciade-la-constitucion-331>.

<sup>44</sup> National Assembly of Venezuela, “Ley estatuto que rige la Transición a la democracia para restablecer la vigencia de la Constitución de la República Bolivariana de Venezuela,” [https://asambleanacional-media.s3.amazonaws.com/documentos/botones/boton\\_1559953972.pdf](https://asambleanacional-media.s3.amazonaws.com/documentos/botones/boton_1559953972.pdf).

<sup>45</sup> “OAS Permanent Council Agrees ‘to not recognize the legitimacy of Nicolas Maduro’s new term,’” Press Release E-001/19, 10 January 2019, [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-001/19](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-001/19).

<sup>46</sup> “OAS Permanent Council Agrees ‘to not recognize the legitimacy of Nicolas Maduro’s new term,’” Press Release E-001/19, 10 January 2019, [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-001/19](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-001/19).

<sup>47</sup> “OAS Permanent Council Agrees ‘to not recognize the legitimacy of Nicolas Maduro’s new term,’” Press Release E-001/19, 10 January 2019, [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-001/19](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-001/19).

<sup>48</sup> “Interactive Map: Degrees of Diplomatic Recognition of Guaidó and Maduro,” Venezuelan Politics and Human Rights – Washington Office of Latin America, 15 October 2020, <https://www.venezuelablog.org/interactive-map-degrees-of-diplomatic-recognition-of-guaido-and-maduro/>.

<sup>49</sup> National Assembly of Venezuela, Official Gazette N° 2, 23 January 2019, p. 7.

representative before the OAS, with the goal of “secur[ing] the permanence of the Venezuelan State in the OAS” and “facilitat[ing] the necessary coordination with the international community, that has already recognized this National Assembly as the only elected authority in Venezuela.”<sup>50</sup>

27. On 8 February 2019, Interim President Guaido sent a letter to the Secretary General noting Venezuela’s intent to annul Maduro’s purported denunciation of the Charter.<sup>51</sup> In his communication, Interim President Guaido reaffirmed “the will of the Venezuelan State to remain a state party to the Charter,” citing to the National Assembly’s 22 January 2019 resolution.<sup>52</sup> On 7 March 2019, the Secretary General acknowledged receipt of the “request from President [G]uaido to rescind the request for the withdrawal” of Venezuela from the Charter, expressing his assent and noting that “[w]e welcome the permanence of the country in the Organization.”<sup>53</sup>

28. The Guaido administration then proceeded to register credentials as the legitimate government of Venezuela with the OAS political organs. On 9 April 2019, the Permanent Council accepted Mr. Tarre as the “National Assembly’s designated Permanent Representative, pending new elections and the appointment of a democratically elected government.”<sup>54</sup> The General Assembly subsequently ratified this decision by an overwhelming majority of its member states.<sup>55</sup> The OAS became the second multilateral organization in the Western hemisphere to recognize Guaido’s administration. A month before, the Inter-American Development Bank had accepted Ricardo Hausmann, who was appointed by the Guaido administration, as its Venezuelan envoy.<sup>56</sup>

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<sup>50</sup> National Assembly of Venezuela, Official Gazette N° 2, 23 January 2019, p. 7.

<sup>51</sup> Bolivarian Republic of Venezuela, President Guaido’s Letter to OAS Secretary, 8 February 2019, [https://www.oas.org/es/sla/ddi/docs/a-41\\_nota\\_Juan\\_Guaido\\_03-7-2019.pdf](https://www.oas.org/es/sla/ddi/docs/a-41_nota_Juan_Guaido_03-7-2019.pdf).

<sup>52</sup> Bolivarian Republic of Venezuela, President Guaido’s Letter to OAS Secretary, 8 February 2019, [https://www.oas.org/es/sla/ddi/docs/a-41\\_nota\\_Juan\\_Guaido\\_03-7-2019.pdf](https://www.oas.org/es/sla/ddi/docs/a-41_nota_Juan_Guaido_03-7-2019.pdf).

<sup>53</sup> Twitter, Secretary General Luis Almagro, 11 January 2019 (noting that “We welcome the assumption of @jguaido as interim President of #Venezuela in accordance with Article 233 of the Political Constitution. You have our support, that of the international community and of the people of Venezuela #OEAcOnVzla”). Available at [https://twitter.com/almagro\\_oea2015/status/1083793260835946497?lang=es](https://twitter.com/almagro_oea2015/status/1083793260835946497?lang=es); Twitter, Secretary General Luis Almagro, 7 March 2019 (noting that “Recibimos la solicitud del Presidente (e) @jguaido de dejar sin efecto el pedido de retiro de #Venezuela de @OEA\_oficial realizado por su predecesor. Damos conformidad a lo solicitado x el Presidente. Vemos con beneplácito la permanencia del país en la Organización #OEAcOnVzla”). Available at [https://twitter.com/Almagro\\_OEA2015/status/1103796815231705088?s=20](https://twitter.com/Almagro_OEA2015/status/1103796815231705088?s=20).

<sup>54</sup> OEA/Ser.G, CP/RES. 1124 (2217/19) rev. 2, “Resolution on The Situation in Venezuela,” adopted by the Permanent Council at its special meeting of 9 April 2019, [https://scm.oas.org/doc\\_public/english/hist\\_19/cp40718e03.doc](https://scm.oas.org/doc_public/english/hist_19/cp40718e03.doc); “Permanent Council Accepts Appointment of Designated Permanent Representative of Venezuela’s National Assembly to the OAS,” Press Release E-019/19, 9 April 2019, [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-019/19](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-019/19).

<sup>55</sup> “Resolución sobre la situación de Venezuela y la crisis de migrantes venezolanos. Aprobada por la Asamblea General,” 28 June 2019, Press Release D-013/19, [https://www.oas.org/es/centro\\_noticias/comunicado\\_prensa.asp?sCodigo=D-013/19](https://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=D-013/19).

<sup>56</sup> Inter-American Development Bank, “IDB Group approves nomination of new Governor for Venezuela,” 15 March 2019, <https://www.iadb.org/en/news/idb-group-approves-nomination-new-governor-venezuela>.

## E. President Guaido Ratified the Convention and the Court's Jurisdiction

29. The Guaido government then proceeded to formally re-ratify the Convention. On 15 May 2019, the National Assembly passed a resolution declaring the unconstitutionality of Venezuela's original denunciation of the Convention.<sup>57</sup> The National Assembly instructed the Government to recognize the Court's unconditional jurisdiction to hear cases against Venezuela and to ratify the Convention retroactively—*i.e.*, as if the purported denunciation had never taken effect.<sup>58</sup> On 1 July 2019, Interim President Guaido signed a letter to the Secretary General confirming Venezuela's "unconditional recognition of the competence" of the Court "to hear all cases relating to the interpretation or application of [the] Convention, as if its purported denunciation had never taken place—*i.e.*, retroactive to 10 September 2013."<sup>59</sup> Venezuela officially deposited its ratification instrument with the General Secretariat on 31 July 2019.<sup>60</sup>

30. After Venezuela re-ratified the Convention, the Inter-American Commission submitted 9 applications before the Court concerning facts that took place *after* Venezuela's original denunciation became effective in September 2013.<sup>61</sup> For instance, in February 2022, the Commission filed an application concerning torture and cruel, inhuman, or degrading treatment against police officials that occurred in 2016.<sup>62</sup> In March 2023, the Commission filed an application concerning extrajudicial killings and failure

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<sup>57</sup> National Assembly of Venezuela, Official Gazette N° 8, 5 June 2019, p. 4.

<sup>58</sup> National Assembly of Venezuela, Official Gazette N° 8, 5 June 2019, p. 4.

<sup>59</sup> Ratification Instrument of Venezuela, Juan Gerardo Guaido Marquez, President in Charge of the Bolivarian Republic of Venezuela, 1 July 2019, [http://www.oas.org/es/sla/ddi/docs/B-32\\_venezuela\\_RA\\_7-31-2019.pdf](http://www.oas.org/es/sla/ddi/docs/B-32_venezuela_RA_7-31-2019.pdf) (“[E]l Gobierno de la República Bolivariana de Venezuela reconoce de manera incondicional como obligatoria de pleno derecho y sin convención especial la competencia y el poder jurisdiccional de la Corte Interamericana de Derechos Humanos para conocer todos los casos relativos a la interpretación o aplicación de dicha Convención, como si nunca hubiese tenido lugar su pretendida denuncia presentada, ello es, ab-initio y con efectos retroactivos al 10 de septiembre de 2013, fecha en la cual habría entrado en vigor dicha denuncia.”).

<sup>60</sup> Department of international Law of the OAS Secretariat, Multilateral Treaties, Signatories and Ratifications. American Convention on Human Rights “Pact Of San Jose, Costa Rica.” (B-32.) [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights\\_sign.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm).

<sup>61</sup> *Case of Poggioli Pérez v. Venezuela* (submitted to the Court on 18 June 2021 regarding Pérez's deprivation of liberty by state agents on 26 April 2021); *Juan Pedro Lares Rángel y otros v. Venezuela* (submitted to the Court on 6 July 2022 regarding Lares's violation of political rights during July 2017); *Alfredo José Chirinos Salamanca y otros v. Venezuela* (submitted to the Court on 16 February 2022 regarding 14 officers' deprivation of liberty during June/July 2016); *Carlos Enrique Graffe Henríquez v. Venezuela* (submitted to the Court on 20 December 2023 regarding Henríquez's arbitrary arrest on July 2017); *Víctor Alfonso Navarro López v. Venezuela* (submitted to the Court on 17 November 2023 regarding Navarro's arbitrary arrest in January 2018); *Oscar Pérez y otros (Masacre de El Junquito) v. Venezuela* (submitted to the Court on 11 October 2023 regarding the extrajudicial killings of seven individuals in January 2018); *Jesús Rondón Gallardo v. Venezuela* (submitted to the Court on 22 August 2023 regarding violence against human rights defender during 2016); *Hermanos Manaure Flores v. Venezuela* (submitted to the Court on 29 March 2023 regarding the extrajudicial killings of four brothers in 2017); *Jose Luis Parada Sanchez v. Venezuela* (submitted to the Court in 12 March 2024 regarding Parada's arbitrary detention in 2015). See Inter-American Commission of Human Rights, Cases in the Court – Venezuela, <https://www.oas.org/en/iachr/decisions/pc/cases.asp>.

<sup>62</sup> Inter-American Commission of Human Rights, “IACHR Takes to Inter-American Court of Human Rights Case Concerning Torture and Unlawful Deprivation of Liberty in Venezuela,” Press Release No. 060/22, 23 March 2022, [https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media\\_center/preleases/2022/060.asp](https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2022/060.asp) (alleging violations of both the American Convention and the Inter-American Convention to Prevent and Punish Torture.).

to observe due process rights that occurred in 2017.<sup>63</sup> In November 2023, the Commission filed an application concerning the unlawful and arbitrary detention of a human rights defender during 2018.<sup>64</sup>

31. Amid increasing discontent over the interim government’s alleged failure to “achieve its mission,” some opposition leaders began calling out for its dissolution. In late December 2022, three of the four main opposition parties in Venezuela backed and approved a reform to terminate the interim government and create a commission of five members to manage foreign assets, seeking a united strategy ahead of the presidential elections scheduled for 2024.<sup>65</sup> On 3 January 2023, the National Assembly officially dissolved the interim government, terminating the mandate of “all entities and officials designated by the Interim President,” including Mr. Tarre, as Interim President Guaidó’s representative at the OAS.<sup>66</sup> Upon the dissolution of the Guaidó government, the Maduro administration took no steps to withdraw or invalidate any of the decisions by the Guaidó interim government before the Inter-American system.

#### IV. LEGAL ANALYSIS

##### A. The Court Has Jurisdiction over Venezuela Because the Guaidó Government Validly Ratified the Convention and Accepted the Court’s Jurisdiction

32. The Court must hear this case because Venezuela is a state party to the Convention that validly deposited its ratification and consented to the Court’s jurisdiction. While the Court’s inquiry should focus solely on the Secretary General’s ratification deposit records, a closer review of the Guaidó

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<sup>63</sup> Inter-American Commission of Human Rights, “IACHR Files Application Before Inter-American Court of Human Rights in Case Concerning Extrajudicial Killings in Venezuela,” Press Release No. 171/23, 27 July 2023, [https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media\\_center/PReleases/2023/171.asp](https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2023/171.asp).

<sup>64</sup> Inter-American Commission of Human Rights, “IACHR Files Application Before Inter-American Court of Human Rights in Case Concerning Unlawful Detention and Torture Against Human Rights Defender in Venezuela,” Press Release No. 325/23, 29 December 2023, [https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media\\_center/PReleases/2023/325.asp](https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2023/325.asp).

<sup>65</sup> Mayela Armas, “Venezuela opposition removes interim President Guaidó,” 30 December 2022, <https://www.reuters.com/world/americas/venezuela-opposition-removes-interim-president-guaido-2022-12-31/>; “AD, PJ y UNT anuncian que buscarán fin del Gobierno Interino antes de 2023,” *Cronica Uno*, 21 December 2022, <https://cronica.uno/ad-pj-y-unt-anuncian-que-buscaran-fin-del-gobierno-interino-antes-de-2023/>; National Assembly of Venezuela, “Aprobada 2da discusión Reforma de Ley de Estatuto que rige la Transición propuesta por AD, PJ, UNT y MVP que elimina el Gobierno interino y toda referencia a la usurpación,” 31 December 2022, <https://www.asambleanacionalvenezuela.org/noticias/aprobada-2da-discusion-reforma-de-ley-de-estatuto-que-rige-la-transicion-propuesta-por-ad-pj-unt-y-mvp-que-elimina-el-gobierno-interino-y-toda-referencia-a-la-usurpacion>.

<sup>66</sup> “Mayoría de la AN-2015 ratifica disolución del Gobierno interino,” *Tal Cual*, 30 December 2022 (“Hemos tenido algo que pasó de ser provisional a convertirse en algo perpetuo. Y no se celebraron las elecciones, de manera que el artículo 233 perdió su razón de ser para justificar el gobierno interino.”), <https://talcualdigital.com/an-2015-debate-eliminacion-del-gobierno-interino-en-segunda-discusion/>; National Assembly of Venezuela, “Aprobada 2da discusión Reforma de Ley de Estatuto que rige la Transición propuesta por AD, PJ, UNT y MVP que elimina el Gobierno interino y toda referencia a la usurpación,” 31 December 2022, <https://www.asambleanacionalvenezuela.org/noticias/aprobada-2da-discusion-reforma-de-ley-de-estatuto-que-rige-la-transicion-propuesta-por-ad-pj-unt-y-mvp-que-elimina-el-gobierno-interino-y-toda-referencia-a-la-usurpacion>; Gustavo Tarre Briceño, “Cuatro años en la OEA,” in Allan R. Brewer Carías and Asdrúbal Aguiar A., “El Final Del Encargado De La Presidencia y El Gobierno Parlamentario En Venezuela,” 3 January 2023, pp. 259–262.

government's treaty-making powers further confirms that Venezuela met all conditions to rejoin the Inter-American system and to appear as respondent before the Court.

1. **Venezuela's deposit of its ratification instruments before the Secretary General should decide the scope of the Court's jurisdiction in this case**

33. The Court has jurisdiction over all states parties to the Convention that accept the Court's authority. The Court must hear this case because Venezuela validly ratified the Convention and accepted the Court's compulsory jurisdiction, as confirmed by subsequent practice. The Court cannot second-guess Venezuela's acts because it would be utterly contrary to the plain text of the Convention, the role of the Secretary General as depositary of Inter-American treaties, and the jurisdictional powers of the Court.

34. In the Inter-American system, states become subject to the Court's jurisdiction once they *ratify* the Convention and *accept* the Court's jurisdiction.<sup>67</sup> The Convention sets out that a state may join the Convention by "deposit[ing] an instrument of ratification or adherence with the General Secretariat of the [OAS]."<sup>68</sup> The Convention also clarifies that "upon depositing its instrument of ratification," a state party may "declare that it recognizes as binding [] the jurisdiction of the Court" before "the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court."<sup>69</sup> Article 62 of the Convention provides that the Court's jurisdiction extends to *all* states parties to the Convention that accept its decision-making power.<sup>70</sup>

35. Venezuela clearly complied with all steps to embrace the Court's jurisdiction.<sup>71</sup> Interim President Guaido sent Venezuela's "unconditional" ratification of the Convention and acceptance of the Court's jurisdiction on 1 July 2019,<sup>72</sup> and the Secretary General gave full effect to that instrument, including by accepting its deposit "at the OAS headquarters in Washington, D.C. United States," and informing all

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<sup>67</sup> American Convention on Human Rights, Article 62.

<sup>68</sup> American Convention on Human Rights, Article 74 ("Ratification of or adherence to this Convention shall be made by the deposit of an instrument of ratification or adherence with the General Secretariat of the Organization of American States.").

<sup>69</sup> American Convention on Human Rights, Article 62.

<sup>70</sup> American Convention on Human Rights, Article 62 ("The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.").

<sup>71</sup> American Convention on Human Rights, Article 74(2) (noting that "adherence to this Convention shall be made by the deposit of an instrument of ratification [] with the General Secretariat of the [OAS]" and that "the Convention shall enter into force on the date of the deposit of its instrument of ratification or adherence."); *Ibid.*, Article 62 (noting that upon ratification of the Convention, a state party may "declare that it recognizes as binding [] the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention," which "declaration [] shall be presented to the Secretary General.").

<sup>72</sup> Ratification Instrument of Venezuela, Juan Gerardo Guaido Marquez, President in Charge of the Bolivarian Republic of Venezuela, 1 July 2019, [http://www.oas.org/es/sla/ddi/docs/B-32\\_venezuela\\_RA\\_7-31-2019.pdf](http://www.oas.org/es/sla/ddi/docs/B-32_venezuela_RA_7-31-2019.pdf).

member states of the Convention's entry into force with respect to Venezuela.<sup>73</sup> While the Secretary General sent copies of Venezuela's ratification to all members, no state expressed reservations about its validity or the Secretary General's decision to accept the deposit of such instrument.<sup>74</sup> With the deposit of Venezuela's ratification, the Convention once again entered into force for the state, and despite criticizing Interim President Guaido's actions, the Maduro regime did not seek to withdraw Venezuela's ratification.

36. Subsequent practice confirms that Venezuela's ratification of the Convention remains effective. In 2021, Venezuela participated in the election of the Court judges, which may only be done by states parties to the Convention.<sup>75</sup> Venezuela participated in the election of *four*—out of the *seven* judges that comprise the Court's bench—for a period of six years, selecting the most suitable candidates with “recognized competence in the field of human rights” and “of the highest moral authority.”<sup>76</sup> The Inter-American Commission has submitted various applications before the Court regarding Venezuela's alleged human rights violations after 2013,<sup>77</sup> which it could only do if Venezuela had validly ratified the Convention and accepted the Court's compulsory jurisdiction.<sup>78</sup> As of today, Venezuela still appears in the list of states that have ratified the Convention in the portal of “signatories and ratifications” of the Secretary for Legal

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<sup>73</sup> OAS Secretariat for Legal Affairs, Department of International Law, Multilateral Treaties, Signatories and Ratifications. American Convention on Human Rights “Pact Of San Jose, Costa Rica” (B-32), [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights\\_sign.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm).

<sup>74</sup> American Convention on Human Rights, Article 62 (“A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding [] the jurisdiction of the Court [...] Such declaration [] shall be presented to the Secretary General of the Organization, *who shall transmit copies thereof to the other member states of the Organization.*”); *ibid.*, Article 74(3) (“The Secretary General shall inform all member states of the Organization of the entry into force of the Convention”); Vienna Convention on the Law of Treaties, Article 77(1)(d) (“The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States, comprise in particular: [] examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form and, if need be, bringing the matter to the attention of the State in question”); *Ibid.*, Article 77(2) (“In the event of any difference appearing between a State and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of the signatory States and the contracting States or, where appropriate, of the competent organ of the international organization concerned.”).

<sup>75</sup> American Convention on Human Rights, Article 53 (“The judges of the Court shall be elected by secret ballot by an absolute majority vote *of the States Parties to the Convention*, in the General Assembly of the Organization, from a panel of candidates proposed by those states”); Patricia Tarre, “¿Qué Está Pasando con Venezuela en el Sistema Interamericano?” *Agenda Estado de Derecho*, 6 October 2022. Available at <https://agendaestadodederecho.com/que-esta-pasando-con-venezuela-en-el-sistema-interamericano/>.

<sup>76</sup> American Convention on Human Rights, Article 52; *Agenda Estado de Derecho*, “¿Quiénes Serán los Nuevos Jueces de la Corte IDH?,” 28 October 2021, available at [https://agendaestadodederecho.com/quienes-seran-los-nuevos-jueces-de-la-corte-idh/#:~:text=En%20la%2051%C2%AA%20Asamblea%20General,Derechos%20Humanos%20\(Corte%20IDH\);](https://agendaestadodederecho.com/quienes-seran-los-nuevos-jueces-de-la-corte-idh/#:~:text=En%20la%2051%C2%AA%20Asamblea%20General,Derechos%20Humanos%20(Corte%20IDH);) Patricia Tarre, “¿Qué Está Pasando con Venezuela en el Sistema Interamericano?” *Agenda Estado de Derecho*, 6 October 2022. Available at <https://agendaestadodederecho.com/que-esta-pasando-con-venezuela-en-el-sistema-interamericano/>.

<sup>77</sup> *See, e.g.*, Inter-American Commission of Human Rights “IACHR Files Application Before Inter-American Court of Human Rights in Case Concerning Extrajudicial Killings in Venezuela.” 27 July 2023, [https://www.oas.org/en/IACHR/jsForm/?File=en/iachr/media\\_center/PReleases/2023/171.asp](https://www.oas.org/en/IACHR/jsForm/?File=en/iachr/media_center/PReleases/2023/171.asp); IACHR Brings Case on Violation of Political Rights, Unlawful Deprivation of Liberty, and Forced Disappearances in Venezuela before IA Court, (5 August 2022), [https://www.oas.org/en/iachr/jsForm/?File=en/iachr/media\\_center/preleases/2022/176.asp](https://www.oas.org/en/iachr/jsForm/?File=en/iachr/media_center/preleases/2022/176.asp).

<sup>78</sup> American Convention on Human Rights, Article 62.



Affairs of the Inter-American Juridical Committee.<sup>79</sup> Thus, Venezuela has effectively complied with all necessary steps to ratify the Convention and accept the Court’s jurisdiction.

37. The Court should solely look at the ratification instruments deposited with the Secretariat General to confirm that Venezuela ratified the Convention and accepted the Court’s jurisdiction.<sup>80</sup> The Vienna Convention on the Law of Treaties (“VCLT”) provides that the “deposit [of ratification instruments] with the depositary” of a treaty “establish[es] the consent of a State to be bound by [that] treaty.”<sup>81</sup> Pursuant to the VCLT and the Inter-American framework, the OAS Secretary General, “as depositary of Inter-American treaties and agreements [and] instruments of ratification thereof,” must “act impartially in th[e] performance” of her/his obligations, including when “examining whether the signature or any instrument [of ratification] is in due and proper form,” and bring “questions to the attention of the [member] states” in case of discrepancies.<sup>82</sup> The Secretary General did not raise any such questions, and member states did not raise any observations or reservations. The Court accordingly should hold that the deposit of Venezuela’s ratification instrument with the Secretariat General’s records decisively determines the scope of its jurisdiction in this case.

38. Importantly, the Court cannot second-guess the validity of Venezuela’s ratification deposit. While the Court is an autonomous judicial body entitled to determine its own jurisdiction, it must exercise its power within the Convention’s framework in accordance with international law.<sup>83</sup> The Court’s jurisdiction extends solely to the application and interpretation of the Convention in contentious and advisory proceedings<sup>84</sup>—not to the verification of authenticity and validity of ratification deposits—tasks

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<sup>79</sup> OAS Secretariat for Legal Affairs, Department of International Law, Multilateral Treaties, Signatories and Ratifications. American Convention on Human Rights “Pact Of San Jose, Costa Rica” (B-32), [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights\\_sign.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm).

<sup>80</sup> American Convention on Human Rights, Article 62.

<sup>81</sup> Vienna Convention on the Law of Treaties, Article 16(b) (“Unless the treaty otherwise provides, instruments of ratification, acceptance, approval or accession establish the consent of a State to be bound by a treaty upon [] their deposit with the depositary”).

<sup>82</sup> Vienna Convention on the Law of Treaties, Article 76(2) (“The functions of the depositary of a treaty are international in character and the depositary is under an obligation to act impartially in their performance.”); *ibid.*, Article 77(1)(d) (“The functions of a depositary, unless otherwise provided in the treaty or agreed by the contracting States, comprise in particular:[] examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form and, if need be, bringing the matter to the attention of the State in question”); *ibid.*, Article 77(2); OAS Charter, Article 112(f) (“The General Secretariat shall also perform the following functions: Serve as depositary of inter-American treaties and agreements, as well as of the instruments of ratification thereof”); American Convention on Human Rights, Article 74(2) (noting that “adherence to this Convention shall be made by the deposit of an instrument of ratification [] with the General Secretariat of the [OAS]”).

<sup>83</sup> Statute of Inter-American Court of Human Rights, OAS Resolution No.448, October 1979, Article 1 (“The Inter-American Court of Human Rights is an autonomous judicial institution whose purpose is the application and interpretation of the American Convention on Human Rights. The Court exercises its functions in accordance with the provisions of the aforementioned Convention and the present Statute.”).

<sup>84</sup> Statute of Inter-American Court of Human Rights, OAS Resolution No.448, October 1979, Article 2 (“The Court shall exercise adjudicatory and advisory jurisdiction.”); *see also* Gerald L Neuman, “Inter-American Court of Human Rights (IACtHR),” Max Planck Encyclopedias of International Law, January 2007 (noting that “The ACHR gives the IACtHR both advisory jurisdiction (Article 64) and contentious jurisdiction (Article 62).”).

that fall exclusively on the Secretary General and member states.<sup>85</sup> Once a State’s ratification deposit is validly accepted by the Secretary General, the Court has to hear “all cases concerning the interpretation and application” of the Convention and “cannot abdicate [its] prerogative.”<sup>86</sup> As the Court held in *Girls Yean and Bosico*, the assessment of the Court’s jurisdiction should be faithful to the text of the Convention, which only requires valid ratification and acceptance.<sup>87</sup> While in that case the Dominican Republic’s highest court considered that the state’s acceptance was void, the Court noted that the ratification had been effectively deposited in the General Secretariat’s records and held that such evidence was dispositive to assert its jurisdiction over the state.<sup>88</sup>

39. Courts operating under similar treaties have also held they lack authority to review treaty ratification or accession processes. For instance, in *Situation in the State of Palestine* the International Criminal Court held that “the outcome of an accession procedure [was] binding” on that Court, “regardless of Palestine’s status under international law,” because it “ha[d] no jurisdiction to review that procedure and to pronounce itself on the validity of the accession of a particular State Party” to the Rome Statute, which similarly extended jurisdiction over *all* parties that deposited their *ratification*.<sup>89</sup> In *Right of Passage over Indian Territory* and *Temple of Preah Vihear*, the International Court of Justice (“ICJ”) concluded that a declaration accepting the ICJ’s jurisdiction was effective upon deposit, no further conditions needing to be fulfilled.<sup>90</sup> The Court recognized it could not review the validity of the deposit or read further conditions into the ICJ Statute, including that an interval should elapse between the making of a declaration and the deposit of an application.<sup>91</sup> In the same vein, this Court should hold that it does not have the power to review the deposit of Venezuela’s ratification instrument.

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<sup>85</sup> American Convention on Human Rights, Article 74(2) (noting that “adherence to this Convention shall be made by the deposit of an instrument of ratification [] with the General Secretariat of the [OAS]” and that “the Convention shall enter into force on the date of the deposit of its instrument of ratification or adherence.”); OAS Charter, Article 112(f) (“The General Secretariat shall also perform the following functions: Serve as depository of inter-American treaties and agreements, as well as of the instruments of ratification thereof”).

<sup>86</sup> See I/A Court H.R., *Case of the Constitutional Court v. Peru*. Competence. Judgment of September 24, 1999. Series C No. 55, ¶ 32.

<sup>87</sup> I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*, Monitoring Compliance with Judgment and Competence. Order of the Inter-American Court of Human Rights of 12 March 2019, ¶¶ 46–51 (“The text of Article 62 of the American Convention is clear in establishing that a State can be a party to the treaty and recognize or not the mandatory jurisdiction of the Inter-American Court.... The Dominican Republic not only decided to be a State Party to the American Convention, but also accepted the mandatory jurisdiction of the Inter-American Court of Human Rights through an instrument that it presented to the OAS on March 25, 1999. Its acceptance was made without limitations or conditions.”).

<sup>88</sup> I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*, Monitoring Compliance with Judgment and Competence. Order of the Inter-American Court of Human Rights of 12 March 2019, ¶¶ 46–51.

<sup>89</sup> *Situation in the State of Palestine*, ICC-01/18-143, Decision on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine,’ 5 February 2021, ¶ 102; Rome Statute, Article 12(1), 125.

<sup>90</sup> See ICJ, *Right of Passage over Indian Territory (Portugal v. India)*, Judgment, Preliminary Objections, 1957 ICJ Rep. 125; *Temple of Preah Vihear (Cambodia v. Thailand)*, Judgment, Preliminary Objections, 1961 ICJ Rep. 17, p. 31.

<sup>91</sup> *Ibid.*; see also Daniel-Erasmus Khan, “Land and Maritime Boundary between Cameroon and Nigeria Case (Cameroon v Nigeria),” Max Planck Encyclopedias of International Law.

40. Finally, the Court should note that giving effect to the deposit of Venezuela’s ratification instrument advances the goals outlined in its *Advisory Opinion No. OC-26/20*. There, the Court held that member states are “collective guarantors of the American Convention” and “have a duty to express their observations[] to safeguard the effective protection of human rights and the democratic principle.”<sup>92</sup> In the case of ratification instruments, states collectively oversee the Convention and democratic principles by scrutinizing government credentials and raising objections before their deposit in the Secretariat General records.<sup>93</sup> Because member states accepted the Guaido government’s legitimacy and the validity of Venezuela’s ratification of the Convention, the Court should defer to that collective recognition, respecting the democratic credentials of member states in advancing the protection of human rights.<sup>94</sup>

**2. In any event, the Court should uphold jurisdiction in this case because the Guaido government had full powers and complied with domestic law**

41. Even if the Court were to review the validity of Venezuela’s ratification of the Convention and acceptance of the Court’s jurisdiction, it would still find that it has jurisdiction to hear this case because Interim President Guaido had the power to assert Venezuela’s position on international affairs, including to ratify treaties.

42. *First*, as Venezuela’s Interim President, Mr. Guaido had the power to validly ratify the Convention and accept the Court’s compulsory jurisdiction. The VCLT provides that heads of state have comprehensive representation rights “for the purpose of all acts relating to the conclusion of a treaty.”<sup>95</sup> In *Land and Maritime Boundary between Cameroon and Nigeria*, the ICJ held that heads of state “are considered as representing their state” for treaty-making purposes due to their hierarchical position.<sup>96</sup> The ICJ expanded this position beyond the law of treaties in *Bosnian Genocide*, citing the VCLT for the proposition that “every head of state is presumed to be able to act on behalf of the state in its international

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<sup>92</sup> I/A Court H.R., *Denunciation of the American Convention on Human Rights and the Charter of the Organization of American States and the consequences for State human rights obligations*. Advisory Opinion OC-26/20, November 9, 2020. Series A No. 26, ¶¶ 75, 112.

<sup>93</sup> I/A Court H.R., *Denunciation of the American Convention on Human Rights and the Charter of the Organization of American States and the consequences for State human rights obligations*. Advisory Opinion OC-26/20, November 9, 2020. Series A No. 26, ¶¶ 75, 163 (“The Court has also referred to the notion of the ‘collective guarantee,’ which underlies the entire inter-American system, and in particular to the solidarity and good neighborliness among the States of the Americas, as mentioned in the OAS Charter. This Court has also considered that, in accordance with the collective guarantee mechanism underlying the American Convention, it is incumbent upon all States of the inter-American system to cooperate with each other in order to comply with their international obligations, both regional and universal.”).

<sup>94</sup> J. McNally, Representation, “Recognition, Resistance: Rival Governments Before the International Court of Justice,” 61 *Columbia J. Transnat’l L.* 267 (2023), at 303.

<sup>95</sup> Vienna Convention on the Law of Treaties, Article 7(2)(a).

<sup>96</sup> See ICJ, *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, Judgement, 2002 ICJ Rep. 303, ¶¶ 265-266.

relations.”<sup>97</sup> Thus, as Interim President, Mr. Guaido had the necessary authority to bind the state internationally.

43. *Second*, as the recognized legitimate authority of Venezuela by the OAS, the Guaido government had the power to bind the state internationally. The VCLT provides that a person represents a state for treaty-making matters “[i]f it appears from the practice of the states concerned or from other circumstances that their intention was to consider that person as representing the state for such purposes.”<sup>98</sup> Here, the OAS—as the international organization under which the Court and the Inter-American human rights system operates—decisively settled the representation question by opting “not to recognize the legitimacy of Nicolas Maduro” “due to an illegitimate electoral process,” and by accepting the Guaido administration as Venezuela’s legitimate government.<sup>99</sup> On that basis, the OAS steadfastly confirmed that only the Guaido government’s actions would be binding on the organization as a whole.

44. The fact that the Guaido government co-existed with the Maduro regime due to the latter’s exercise of effective control over Venezuela’s territory does not alter the above conclusion. International law recognizes that where various authorities contest a state’s representation, their capacity to express state consent internationally depends on recognition by other states.<sup>100</sup> For instance, in the case of governments in exile, practice shows that authorities without effective control validly express a state’s consent to be bound by an international treaty if they receive recognition and validly deposit their ratification instruments.<sup>101</sup> Having accomplished these tasks, the Guaido government’s actions became legally binding for the state with respect to the OAS.

45. *Third*, Interim President Guaido had “full powers” to ratify the Convention and accept the Court’s jurisdiction by express mandate of the competent authority. The VCLT recognizes that a person represents their state in treaty negotiations when duly authorized by the competent authority, which in the case of Venezuela is the National Assembly.<sup>102</sup> The National Assembly not only authorized Guaido’s

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<sup>97</sup> *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, Preliminary Objections, 1996 ICJ Rep. 595, pp. 621-622.

<sup>98</sup> Vienna Convention on the Law of Treaties, Article 7(1)(b).

<sup>99</sup> “OAS Permanent Council Agrees ‘to not recognize the legitimacy of Nicolas Maduro’s new term,’” 10 January 2019, Press Release E-001/19, [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-001/19](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-001/19); OEA/Ser.G, CP/RES. 1124 (2217/19) rev. 2, 22 April 2019. Resolution on The Situation in Venezuela. Adopted by the Permanent Council at its special meeting of April 9, 2019, [https://scm.oas.org/doc\\_public/english/hist\\_19/cp40718e03.doc](https://scm.oas.org/doc_public/english/hist_19/cp40718e03.doc); “Permanent Council Accepts Appointment of Designated Permanent Representative of Venezuela’s National Assembly to the OAS,” 9 April 2019, [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-019/19](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-019/19); “Resolución sobre ‘la situación de Venezuela y la crisis de migrantes venezolanos’ aprobada por la Asamblea General,” 28 June 2019, Press Release D-013/19, [https://www.oas.org/es/centro\\_noticias/comunicado\\_prensa.asp?sCodigo=D-013/19](https://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=D-013/19).

<sup>100</sup> R. Jennings and A. Watts, *Oppenheim’s International Law: Volume 1 Peace* (9th ed., 1992), p. 158.

<sup>101</sup> See Stefan Talmon, *Recognition of Governments in International Law: with Particular Reference to Governments in Exile*, Clarendon Press, 1998, Chapter IV.

<sup>102</sup> Vienna Convention on the Law of Treaties, Article 7(1)(a) (“A person is considered as representing a State for the purpose of adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a

government *twice* to ratify the Convention and accept the Court’s jurisdiction but also reaffirmed these directives unequivocally on multiple occasions.<sup>103</sup> These authorizations remained unchallenged by Venezuelan agencies, including the Maduro regime, confirming their validity. Hence, Interim President Guaidó’s actions in this case were legally binding on the state because his government had “full powers” to ratify the Convention and accept the Court’s jurisdiction on behalf of Venezuela.

46. *Finally*, Venezuela cannot rely on domestic law to invalidate its international obligations, as the Guaidó government fully complied with Venezuelan law formalities when ratifying the Convention and accepting the Court’s jurisdiction and any inadvertent breach, if any, could not have been manifest.

47. As a general principle, domestic laws cannot override a state’s valid consent. Article 46 VCLT provides that a state “may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”<sup>104</sup> On that basis, this Court recognized in *Advisory Opinion No. 26/20* that “domestic provisions and procedures may not be used as a pretext or an obstacle to the fulfilment of human rights obligations previously acquired.”<sup>105</sup> So, if a competent state official validly consents to a treaty under international law, the state is generally bound by its obligations regardless of domestic law in accordance with the general principle that presumes the validity and continuity into force of a treaty.<sup>106</sup>

48. Exceptionally, Article 46 VCLT provides that a domestic law violation may serve to nullify treaties if it concerns a fundamental violation that is “manifestly” evident to a treaty partner acting in good faith.<sup>107</sup> Given this provision’s exceptional nature, courts have interpreted the “manifest” requirement narrowly—particularly in cases of alleged violation of domestic treaty-making rules, as they are often

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treaty if: he produces appropriate full powers.”); *Ibid*, Article 2(1)(c) (defining “full powers” as “a document emanating from the competent authority of a State designating a person” as representative “for negotiating, adopting or authenticating the text of a treaty, for expressing the consent of a State to be bound by a treaty.”); Bolivarian Republic of Venezuela, Political Constitution, Article 154 (“Los tratados celebrados por la República deben ser aprobados por la Asamblea Nacional antes de su ratificación por el Presidente o Presidenta de la República”); *Ibid.*, Article 187(18) (“Corresponde a la Asamblea Nacional . . . Aprobar por ley los tratados o convenios internacionales que celebre el Ejecutivo Nacional, salvo las excepciones consagradas en esta Constitución.”).

<sup>103</sup> National Assembly of Venezuela, Official Gazette No. 8, 5 June 2019, p. 4; National Assembly of Venezuela, “Ley estatuto que rige la Transición a la democracia para restablecer la vigencia de la Constitución de la República Bolivariana de Venezuela,” Article 6, [https://asambleanacional-media.s3.amazonaws.com/documentos/botones/boton\\_1559953972.pdf](https://asambleanacional-media.s3.amazonaws.com/documentos/botones/boton_1559953972.pdf).

<sup>104</sup> Vienna Convention on the Law of Treaties, Article 46.

<sup>105</sup> I/A Court H.R., *Denunciation of the American Convention on Human Rights and the Charter of the Organization of American States and the consequences for State human rights obligations*, Advisory Opinion OC-26/20, 9 November 2020. Series A No. 26, ¶ 171.

<sup>106</sup> J. Crawford, *Brownlie’s Principles of Public International Law* (9th ed., 2019), at 372 (“Generally speaking, the validity and continuance in force of a treaty and of consent to be bound is presumed.”).

<sup>107</sup> Vienna Convention on the Law of Treaties, Article 46 (“A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.”).

uncertain and contested.<sup>108</sup> For instance, in *Land and Maritime Boundary between Cameroon and Nigeria*, the ICJ clarified that a domestic law limitation on a head of state’s treaty capacity is not “manifestly” evident for purposes of Article 46 VCLT because these officials “are considered as representing their state” by virtue of their functions.<sup>109</sup> In *Case C–327/91*, the European Court of Justice refused to invalidate a treaty signed by the European Union and the United States because the latter state could not have been aware of any “manifest” violations of domestic law given the “complexities” of European treaty-making rules.<sup>110</sup> In *Eastern Greenland*, the Permanent Court of International Justice also refused to question an agent’s authority to bind his state internationally, finding that despite exceeding his constitutional power, other contracting states could not have been manifestly aware of the violation, since the agent’s complained-of actions pertained to matters generally falling within his portfolio of powers.<sup>111</sup>

49. Here, Venezuela cannot rely on any purported domestic law violation to invalidate its international obligations. Contracting states could not have known about any breach of domestic treaty-making rules given their limited understanding of Venezuelan law, even if such a breach had occurred. They were also not required to stay updated on Venezuelan legislative and constitutional developments impacting international relations, as this falls outside the “manifestly” evident requirement.<sup>112</sup> Any further questioning of Interim President Guaido’s constitutional powers or treaty negotiations would likely have been seen as illegal meddling in internal affairs, given that heads of state are manifestly seen as representing their state by virtue of their roles.<sup>113</sup>

50. The above conclusion is consistent with the Court’s findings in *Girls Yean and Bosico*. There, the Court held that the Dominican Republic’s acceptance of the Court’s compulsory jurisdiction was binding despite a contrary finding by the state’s highest court—which had invoked Article 46 VCLT to void the state’s acceptance of the Court’s jurisdiction based on a lack of legislative approval.<sup>114</sup> In reviewing that state’s conduct, the Court found that the legislative omission could not amount to a violation “capable of affecting the validity of treaties.”<sup>115</sup> Noting the “exceptional character” of Article 46 as a

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<sup>108</sup> See *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, 2002 ICJ Rep. 303, ¶ 265; see also Meinhard Schröder, Angela Schwerdtfeger, “Treaties, Validity,” Max Planck Encyclopedias of International Law, January 2022.

<sup>109</sup> See *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, 2002 ICJ Rep. 303, ¶ 265.

<sup>110</sup> See *France v Commission of the European Communities*, Court of Justice of the European Union, Case C-327/91, 16 December 1993.

<sup>111</sup> *Legal Status of Eastern Greenland (Denmark v. Norway)*, PCIJ Series A/B. No 53, Judgement, 5 April 1933, p. 72.

<sup>112</sup> See *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, 2002 ICJ Rep. 303, ¶¶ 265–266 (holding that “contracting states are not required “to keep themselves informed of legislative and constitutional developments in other states which are or may become important for the international relations of these States.”).

<sup>113</sup> See *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, 2002 ICJ Rep. 303, ¶ 265; *Legal Status of Eastern Greenland (Denmark v. Norway)*, PCIJ Series A/B. No 53, Judgement, 5 April 1933, p. 72.

<sup>114</sup> I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*, Monitoring Compliance with Judgment and Competence. Order of the Inter-American Court of Human Rights of March 12, 2019, ¶¶ 46–55.

<sup>115</sup> I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*, Monitoring Compliance with Judgment and Competence. Order of the Inter-American Court of Human Rights of March 12, 2019, ¶ 54.

mechanism to void a state's consent to enter into treaties, the Court determined that the deficiency was not "manifest" because "there was no uniform view within the state" and "its organs had proceeded differently to the Constitutional Tribunal's position."<sup>116</sup> On that basis, the Court simply reviewed the records kept by the OAS Secretariat and held that the Dominican Republic government's deposit of acceptance of the Court's jurisdiction was sufficient to uphold its jurisdiction over the state.

51. Finally, there is in any case no violation of domestic law that Venezuela could point to here, because Mr. Guaido, as Interim President, lawfully ratified the Convention and accepted the Court's jurisdiction. The Constitution grants the National Assembly the power to declare an absolute absence in leadership, triggering new presidential elections and the formation of an interim government headed by the National Assembly's front-runner.<sup>117</sup> Following the National Assembly's declaration of Maduro's absolute absence, Mr. Guaido assumed the Interim Presidency and received *all* the constitutional powers associated with that office, including all acts related to the ratification of treaties.<sup>118</sup> The National Assembly further authorized him to ratify the Convention and accept the Court's jurisdiction through an unequivocally worded and domestically unchallenged resolution that appeared in Venezuela's Official Gazette as required by the Constitution.<sup>119</sup> Hence, by his office and the National Assembly's mandate, Interim President Guaido enjoyed the incontestable authority under Venezuelan law to ratify treaties on behalf of the state.

## **B. The Court Has Jurisdiction over Claims Arising after Venezuela's Denunciation**

52. The Court has jurisdiction over *all* facts that preceded Venezuela's re-entry into the Inter-American system in 2019. Venezuela's unequivocal decision to ratify the Convention and accept the Court's jurisdiction retroactively aligns with international norms and practice, including prior Court decisions. On that basis, the Court should rule that it has jurisdiction *ratione temporis* to hear this case.

53. The Court must assert jurisdiction *ratione temporis* given Venezuela's unequivocal ratification of the Convention and acceptance of the Court's retrospective jurisdiction. Contrary to other declarations drafted in ambiguous terms, Venezuela "unconditionally recognize[d] the competence" of the Court "to hear all cases relating to the interpretation or application of [the] Convention, as if its purported denunciation had never taken place—*i.e.*, retroactive to 10 September 2013."<sup>120</sup> In doing so, Venezuela

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<sup>116</sup> I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*, Monitoring Compliance with Judgment and Competence. Order of the Inter-American Court of Human Rights of March 12, 2019, ¶ 55.

<sup>117</sup> Bolivarian Republic of Venezuela, Political Constitution, Article 233.

<sup>118</sup> Bolivarian Republic of Venezuela, Political Constitution, Article 236(4) ("Son atribuciones y obligaciones del Presidente... Dirigir las relaciones exteriores de la República y celebrar y ratificar los tratados, convenios o acuerdos internacionales.").

<sup>119</sup> National Assembly of Venezuela, Official Gazette No. 8, 5 June 2019, p. 4; National Assembly of Venezuela, "Ley estatuto que rige la Transición a la democracia para restablecer la vigencia de la Constitución de la República Bolivariana de Venezuela," Article 6, [https://asambleanacional-media.s3.amazonaws.com/documentos/botones/boton\\_1559953972.pdf](https://asambleanacional-media.s3.amazonaws.com/documentos/botones/boton_1559953972.pdf).

<sup>120</sup> Ratification Instrument of Venezuela, Juan Gerardo Guaido Marquez, President in Charge of the Bolivarian Republic of Venezuela, 1 July 2019, [http://www.oas.org/es/sla/ddi/docs/B-32\\_venezuela\\_RA\\_7-31-2019.pdf](http://www.oas.org/es/sla/ddi/docs/B-32_venezuela_RA_7-31-2019.pdf).

extended the Court’s jurisdiction backward to the moment the purported denunciation had become effective, consistent with the express mandate from the National Assembly to the Guaido government.<sup>121</sup> And because Venezuela’s ratification complied with necessary formalities and averted any challenges, including from the Maduro regime, there remain no gap periods in the Court’s jurisdiction over Venezuela.

54. Venezuela’s decision to ratify the Convention retroactively, “as if the [original] denunciation had never taken place,” aligns with well-known principles of international law. While treaties generally “do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force,” the VCLT recognizes that parties exceptionally may deviate from this rule if “a different intention appears from the treaty or is otherwise established.”<sup>122</sup> In that vein, the ILC Commission has clarified that the VCLT only sets out a presumption of non-retroactivity, which can be overridden by the parties to the treaty, noting that “[t]here is nothing to prevent the parties from giving a treaty, or some of its provisions, retroactive effects if they think fit.”<sup>123</sup> Thus, Venezuela’s decision to apply the Convention provisions retroactively was entirely valid.

55. Venezuela’s decision to accept the Court’s jurisdiction retroactively is equally proper, as international law recognizes the power of courts to adjudicate facts retroactively based on party consent. In the *Ambatielos* case, the International Court of Justice observed it could “adjudicate upon the validity of a claim based on an alleged breach [that] took place wholly before the new treaty came into force” “if there had been any special clause or any special object necessitating retroactive interpretation.”<sup>124</sup> In *Blečić v Croatia*, the European Court of Human Rights noted that it could have temporal jurisdiction over facts that preceded a state’s ratification of a treaty if that state agreed to apply “treaty provisions [] retroactively.”<sup>125</sup> In the ICC context, several *ad hoc* declarations by states parties to the Rome Statute have given rise to prosecutions covering retrospective situations.<sup>126</sup>

56. Scholars widely agree that treaties may apply retroactively based on the principle of party autonomy. Referring to Article 28 VCLT, Professor Crawford noted that treaties may apply retroactively

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<sup>121</sup> National Assembly of Venezuela, Official Gazette No. 8, 5 June 2019, p. 4 (“Dejar sin efecto, ab initio y como si nunca hubiese tenido lugar, la denuncia de la Convención Americana sobre Derechos Humanos [] y reafirmar la declaración depositada ante el Secretario General de la OEA el 24 de junio de 1981, [] que reconoce de manera incondicional como obligatoria de pleno derecho y sin convención especial, la competencia de la Corte Interamericana de Derechos Humanos sobre todos los casos relativos a la interpretación o aplicación de esta Convención, como si nunca hubiese tenido lugar la denuncia presentada, ello es, de manera retroactiva al 10 de septiembre de 2013.”).

<sup>122</sup> Vienna Convention on the Law of Treaties, Article 28.

<sup>123</sup> ILC, Draft Articles on The Law of Treaties with Commentaries (1966), I.L.C. Yearbook (18th Sess., Vol. I, Pt. II) p. 211.

<sup>124</sup> *Ambatielos Case, Greece v. United Kingdom*, Preliminary Objection, Judgement of 1 July 1952, I.C.J Reports, 1952, pp. 28, 40.

<sup>125</sup> *Blečić v Croatia*, Case No. 59532/00, ECtHR 2006, ¶ 90.

<sup>126</sup> See generally Talita de Souza Dias, “The Retroactive Application of the Rome Statute in Cases of Security Council Referrals and Ad hoc Declarations,” 16 J. Int’l. Criminal Justice 65 (2018).



to “acts or facts taking place [before] the treaty entered into force” if the parties expressly so agree.<sup>127</sup> Former ICJ Judge Gerald Fitzmaurice opined that “a treaty can of course perfectly well provide” for the retroactive application and “relate back in certain ways to events that have already occurred” if parties agree.<sup>128</sup> Professor Briggs noted that “[t]he right of the parties to make provision for the retrospective application of a treaty is not questioned” in international law, and Professor Villiger observed that “states can rebut the presumption in Article 28 [VCLT] and declare treaty provisions retroactive by expressly stating this in the treaty itself” or by “separate agreements concluded expressly or impliedly between the parties.”<sup>129</sup>

57. This Court has also left open the possibility for states to accept its jurisdiction retroactively. While states had only recognized the Court’s forward-looking jurisdiction, the Court has scrutinized the scope of state consent in cases of prolonged human rights violations and left open the possibility of adjudicating cases retroactively if parties agree.<sup>130</sup> For instance, in *Dos Erres Massacre*, the Court held it could not adjudicate facts retroactively because Guatemala had accepted the Court’s jurisdiction solely with respect to “cases that occurred after” its acceptance.<sup>131</sup> Similarly, in *Guerrilha do Araguaia*, the Court refused to adjudicate facts retroactively because Brazil had consent to the Court’s jurisdiction only with respect to “subsequent facts.”<sup>132</sup> While Venezuela’s case here would be one of first impression, the Court’s decision to assert retroactive jurisdiction would be entirely consistent with its prior decisions and international law.

## V. CONCLUSION

58. Human rights have suffered a vital blow in Venezuela in recent years. The Maduro regime has eroded democratic institutions and ruptured Venezuela’s constitutional order, curtailing basic human

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<sup>127</sup> J. Crawford, *Brownlie’s Principles of Public International Law* (9th ed., 2019), p. 378.

<sup>128</sup> Gerald Fitzmaurice, “Fourth Report on the Law of Treaties”, A/CN.4/120, 17 March 1959, 2 Y.B. Int’l L. Comm’n 74

<sup>129</sup> Herbert W. Briggs, *Reflections on Nonretroactivity of Treaties*, 21 R.E.D.I. 320 (1968); Mark Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties*, Brill, 2008, p. 384.

<sup>130</sup> I/A Court H.R., *Case of the Las Dos Erres Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, ¶ 45; I/A Court H.R., *Case of Garibaldi v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 23, 2009. Series C No. 203, ¶¶ 19–20.

<sup>131</sup> I/A Court H.R., *Case of the Las Dos Erres Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211, ¶ 45 (“Guatemala recognized the contentious jurisdiction of the Court on March 9, 1987, and in its declaration it indicated that the Court would have jurisdiction on ‘cases occurred after’ that recognition. *Based on the foregoing* and on the principle of non-retroactivity, the Court may not exercise its contentious jurisdiction to apply the Convention and declare a violation of its standards on facts occurred or state conduct which may imply its international responsibility when these are prior to the recognition of the Court’s competence.”).

<sup>132</sup> I/A Court H.R., *Case of Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, ¶ 17 (“[I]n its declaration [Brazil] noted that the Court would have jurisdiction regarding “facts subsequent” to said recognition. *Based on the aforementioned* and the principle of non-retroactivity, the Court cannot exercise its jurisdiction to apply the Convention and rule a violation of its norms when the alleged facts or conduct of the State, that may implicate its international responsibility, are prior to the recognition of jurisdiction.”).

rights of Venezuelans in the process. The violations are systematic, massive, and part of a deliberate strategy to suppress dissent and control all branches of power. Interim President Guaido took charge to amend course, and at the behest of the democratically elected National Assembly, annulled Venezuela's purported withdrawal from the Inter-American system. With the categorical and widespread recognition from the OAS political organs and member states, he has offered renewed hope to thousands of victims of severe and gross human rights abuses. Before this Court, 14 of those victims appear to seek redress.

59. Because Venezuela validly ratified the Convention and consented to the Court's decision-making authority retroactively, the Court has jurisdiction to hear this case. Under the Inter-American system, the deposit of ratification instruments is sufficient to declare a state's consent to be bound by the Convention and to appear before this Court. Such interpretation aligns with basic principles of treaty interpretation and safeguards in the Inter-American system.

60. For the foregoing reasons, the Vance Center, as *amicus curiae*, respectfully supports the Inter-American Commission's application and urges the Court to uphold its jurisdiction to hear this case against Venezuela in relation to the potential violation of Articles 5.1, 5.2, 7.1, 7.2, 7.3, 7.6, 8.1, and 25.1 of the Convention and in relation to the obligations established in its Article 1.1, as well as for the violation of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of the 14 petitioners.

Dated: May 23, 2024.

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