



Does international law permit the granting of amnesties for crimes against humanity?

A look into Maduro's Venezuela

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On April 25, 2023, diplomatic delegations from 19 countries and the European Union met in Bogotá, Colombia to resume negotiations with the aim of ending Venezuela's political crisis. Like those before it, this summit largely focused on the lifting of sanctions and a return to free and fair elections. Yet in a similar meeting held in November 2022, Colombia's President Gustavo Petro raised the possibility of granting amnesty to Venezuelan officials, some of whom are being investigated for crimes against humanity. While it is unclear whether the issue was again raised during the April 25 meeting, diplomats should bear in mind that the legality of a general amnesty for crimes against humanity is doubtful under international law.

Background on Venezuela's crisis

In March 2013, then-Vice-President of Venezuela Nicolas Maduro assumed the mantle of power from Hugo Chavez, the long-serving self-styled “leader of the Bolivarian revolution.” Picking up where Chavez left off, Maduro’s reign has been marked by a brutal crackdown on political freedoms, with Venezuelan security forces allegedly detaining, torturing, and killing dissidents in a widespread manner. In response, in 2018 a group of states, including Colombia, invoked article 14 of the Rome Statute, to which Venezuela is party, and referred a request to the Office of the Prosecutor of the International Criminal Court (ICC) for investigation into “crimes against humanity allegedly committed in the territory of Venezuela since 12 February 2014.”

While the ICC investigation is the “stick” which the international community has sought to wield in response to alleged violations of international law, the Venezuelan government has likewise been offered a “carrot” through various enticements seeking to alleviate Venezuela’s “humanitarian and human rights crises.” On November 26, 2022, delegates from Maduro’s government met with members of the opposition Unitary Platform coalition to engage in internationally-mediated negotiations. Although talks had previously stalled, Venezuela returned to the bargaining table after the United States offered to ease financial sanctions and establish a \$3 billion fund to address the crises consisting of previously frozen Venezuelan funds.

Yet, the enticements offered to the Maduro government have led to muddled messaging. Perhaps most worrisome, during talks in Paris on November 11, 2022, Colombian President Gustavo Petro proposed a “general amnesty” for Venezuelan officials as part of the ongoing negotiation process, despite such an amnesty, if indeed intending to encompass crimes against humanity, plainly violating Article 29 of the Venezuelan constitution. This raises serious

concerns regarding impunity and prompts the following question: **does international law permit the granting of amnesties for crimes against humanity?**

Amnesty under international law

According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), amnesties are legal measures that prospectively bar criminal prosecution and, in some cases, civil actions against certain specific individuals or categories of individuals in respect of specified criminal conduct committed prior to the adoption of the amnesty. Whether assessed from the perspective of treaty, customary, or peremptory international law, the legality of Petro's proposed general amnesty appears doubtful.

Petro's general amnesty likely violates Venezuela's obligations under the Rome Statute and the ICCPR. Per the OHCHR, an amnesty that forecloses prosecution of an offence that a State party has an explicit obligation to investigate amounts to a violation of international law. Organizations such as the UN, the International Committee of the Red Cross, and Human Rights Watch ascribe a responsibility to states under international law to investigate and appropriately prosecute (or extradite) suspected international crimes against humanity. Indeed, the most immediately relevant treaty by which to assess the legality of Petro's proposed amnesty, the Rome Statute, emphasizes in its preamble the duty of states to "exercise its criminal jurisdiction over those responsible for international crimes". Likewise, as a member of the *International Covenant on Civil and Political Rights* (ICCPR), Venezuela is under an obligation to "ensure that those responsible [for torture and similar cruel, inhuman and degrading treatment, summary and arbitrary killing, enforced disappearance and crimes against humanity] are brought to justice."

Additionally, the obligation to investigate and prosecute crimes against humanities is likely considered *jus cogens* -- a peremptory norm under international law from which no derogation is permitted. The UN stated that the prohibition of crimes against humanity has been considered a peremptory norm of international law even prior to its codification in the Rome Statute because of its evolution under international customary law, and international and domestic courts. The International Court of Justice also recognized the prohibition of torture (a type of crime against humanity) as “part of customary international law” that “has become a peremptory norm (*jus cogens*)”. If the prohibition of crimes against humanities is indeed *jus cogens* and extends to the investigation and prosecution of such crimes, the granting of amnesties for crimes against humanity would be impermissible under international law.

To be sure, some argue that amnesties for crimes against humanity form part of customary international law because of the number of state-issued amnesties previously granted. However, recent amnesties preclude the inclusion of crimes against humanity, thereby pointing to a rule under customary international law. For example, the Lomé Agreement signed in 1999 by the parties to the armed conflict in Sierra Leone was amended to include the following: “The United Nations holds the understanding that the amnesty and pardon in article IX of the Agreement shall not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of humanitarian law.” Similarly, in 2003 in Cambodia, the authorities agreed that they “shall not request an amnesty or pardon for any persons who may be investigated for or convicted of crimes referred to in the present Agreement [genocide, crimes against humanity, and grave breaches of the Geneva Conventions].” Although South Africa’s 1996 Truth and Reconciliation Commission had the authority to grant amnesties to perpetrators of apartheid crimes who fully disclosed the truth, South Africa’s amnesty was never evaluated

before an international human rights body. Since South Africa's Truth and Reconciliation Commission, other countries have adopted modified versions to be compatible with international human rights law, such as the 2002 Truth and Reconciliation established in Timor-Leste where immunity was granted for only certain crimes and when the confessor "undertook community service or made a symbolic payment, pursuant to an agreement negotiated between the perpetrator, the victim(s) and the community". These negotiated settlements in Timor-Leste therefore did not amount to an amnesty, as they can be considered a reduced sentence appropriate to the circumstances.

Many UN treaty bodies, such as the Human Rights Committee, the Committee Against Torture, the Committee on the Elimination of Discrimination against Women, and the Committee on Enforced Disappearances, have also agreed that amnesties that bar prosecution of crimes against humanity are prohibited under customary international law. Although international criminal tribunals have had few opportunities to address this question, the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia suggested in *Furundžija* that amnesties are not available where the prohibition of the conduct in question has the status of a peremptory norm (such as the prohibition of torture), as it would be "internationally unlawful".

While Petro has yet to elaborate on his proposed "general amnesty," the preceding discussion demonstrates that the legality under international law of a general amnesty for crimes against humanity committed by Venezuelan officials is highly doubtful, which parties to the negotiations ought to bear in mind as further talks unfold.

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