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VENEZUELAN PRISONS HUMAN RIGHTS VIOLATIONS AND SUGGESTED REFORMS BASED ON THE SUCCESS OF NORWAY'S RESTORATIVE JUSTICE-FOCUSED APPROACH TO INCARCERATION

INTRODUCTION

Venezuela, home to over 28 million people in South America,¹ has long been plagued by devastating urban poverty and widespread corruption,² while holding the title for having the highest crime index of any country in the world.³ The country's prisons are laden with gang presence,⁴ highly contagious and untreated disease, crowded prison cells, and widespread deteriorating mental health.⁵ The deplorable prison conditions that are a product of extreme overcapacity due to a dysfunctional justice system, no medical care, lack of privacy, and country-wide political and social crises, are in violation of prisoners' rights under Articles 46 and 83 of the Constitution of the Bolivarian Republic of Venezuela (Article 46) and (Article 83).⁶

1. *Venezuela Population*, WORLDOMETER, <https://www.worldometers.info/world-population/venezuela-population/> (last visited July 17, 2021).

2. Jennifer L. McCoy, *Venezuela*, BRITANNICA (last updated Sept. 5, 2021), <https://www.britannica.com/place/Venezuela>.

3. *Crime Index by Country 2021 Mid-Year*, NUMBEO, https://www.numbeo.com/crime/rankings_by_country.jsp (last visited July 17, 2021).

4. See HUM. RTS. WATCH, *Punishment Before Trial: Prison Conditions in Venezuela*, in HUMAN RIGHTS WATCH PRISON PROJECT (1997), <https://www.hrw.org/legacy/advocacy/prisons/venez-sm.htm>.

5. Ioan Grillo & Jorge Benezra, *Inside the Hell of Venezuelan Police Prisons*, TIME (June 8, 2016, 12:03 PM), <https://time.com/4360758/inside-the-hell-of-venezuelan-police-prisons/>.

6. Ana Maria Arevalo, *Días Eternos – In Venezuela, Women in Prison Awaiting Trial Endure Crowded Conditions*, PULITZER CENTER (Feb. 15, 2019), <https://pulitzercenter.org/reporting/dias-eternos-venezuela-women-prison-awaiting-trial-endure-crowded-conditions#slideshow-3>; CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [CONSTITUTION], art. 46, 83 [hereinafter CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA]. Venezuela was named the Bolivarian Republic of Venezuela in 1999. *Venezuela: Basic Facts*, VENEZUELA ANALYSIS, <https://venezuelanalysis.com/basicfacts> (last visited July 20, 2021).

Article 46 protects individuals' rights to "physical, mental, and moral integrity," shielding them from penalties, torture, and inhumane or degrading treatment.⁷ Article 83 declares "health a fundamental social right," and grants all persons the protection of their health, in addition to compliance with hygiene measures established by law.⁸ These injustices are also a violation of Venezuelan prisoners' rights under Article 5 of the American Convention on Human Rights (the Convention), to which Venezuela is a party.⁹ Under Article 5(1) of the Convention, "every person has the right to have their physical, mental, and moral integrity respected."¹⁰ Article 5(2) states that no person "shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment."¹¹

The barbaric conditions that Venezuelan prisoners are living in is a result of systemic injustices that are deeply woven in the country's political and humanitarian inadequacies.¹² Currently, there are "no independent government institutions" to "act as a check on executive power," and security forces have responded to political protests with violence, resulting in the detention of hundreds and the death of dozens in several incidents in January and May of 2019.¹³ Poverty has consumed the country, and has impacted 96 percent of Venezuelans, with 70 percent living in extreme poverty on the basis of income as of 2019.¹⁴ Additionally, the country's "health care system is on the verge of collapse,"¹⁵ forcing Venezuelans to search "for medicine on the

7. CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA, *supra* note 6, art. 46.

8. *Id.* art. 83.

9. Organization of American States, American Convention on Human Rights, art. 5, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.

10. *Id.* art. 5(1).

11. *Id.* art. 5(2).

12. *Infra Instability in Venezuela*, note 44; *infra Venezuela: Arrests, Killings in Anti-Government Protests*, note 47.

13. *Venezuela Events of 2019*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2020/country-chapters/venezuela> (last visited July 17, 2021).

14. Noelani Kirschner, *Under Maduro, Nearly All Venezuelans Live in Poverty*, SHARE AMERICA (Aug. 3, 2020), <https://share.america.gov/under-maduro-nearly-all-venezuelans-live-in-poverty/> ("In 2019, the average income in Venezuela was 72 U.S. cents per day.").

15. Samantha Raphelson, *Venezuela's Health Care System Ready To Collapse Amid Economic Crisis*, NPR (Feb. 1, 2018, 3:21 PM), <https://www.npr.org/2018/02/01/582469305/venezuelas-health-care-system->

black market.”¹⁶ These inadequacies have exacerbated and, in many cases, led to the human rights violations that are pervasive in Venezuelan prisons.

Alternatively, Norway, with one of the lowest crime rates in the world and a recidivism rate of only 20 percent, is acclaimed for having one of the most humane prisons in the world.¹⁷ The country’s justice system is modeled on restorative justice, which seeks to view a crime through the lens of the harm it causes to people, relationships, and a community.¹⁸ Norway focuses on rehabilitating prisoners and considers the loss of freedom punishment in itself.¹⁹

In light of the gross human rights violations that have been threatening the lives of Venezuelan prisoners, the country’s prison system is in dire need of reform, particularly to restore prisoners’ protected “physical, mental, and moral integrity”²⁰ and to ensure the preservation of health as a “fundamental social right.”²¹ This Note will analyze the depth of these human

ready-to-collapse-amid-economic-crisis (“The entire Venezuelan health care system is on the verge of collapse, says Francisco Valencia, head of the public health advocacy group Codevida. Some hospitals lack electricity, and more than 13,000 doctors have left Venezuela in the past four years in search of better opportunities.”).

16. *Id.*

17. *Prisons in Norway: Inside a Norwegian Jail*, LIFE IN NORWAY (Oct. 20, 2018), <https://www.lifeinnorway.net/prisons/>; see also Jim Trebold, *Countries With The Lowest Crime Rate In The World*, ENCYCLOPEDIA (Sept. 19, 2018), <https://www.encyclopedia.com/articles/countries-with-the-lowest-crime-rate-in-the-world/>. The recidivism rate here refers to the percentage of prisoners who were “re-arrested within five years.” Christina Sterbenz, *Why Norway’s Prison System is so Successful*, BUS. INSIDER (Dec. 11, 2014, 1:31 PM), <https://www.businessinsider.com/why-norways-prison-system-is-so-successful-2014-12>. Norway’s recidivism rate of 20% is one of the lowest in the world, in comparison to the United States which has one of the highest rates of 76.6%. *Id.*

18. This approach is based on the restorative justice system which “views crime as more than breaking the law – it also causes harm to people, relationships, and the community.” *Lesson 1: What Is Restorative Justice?*, CTR FOR JUST. & RECONCILIATION, <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-1-what-is-restorative-justice/#sthash.ivXrivBH.8fUdvsHV.dpbs> (last visited July 17, 2021).

19. Sterbenz, *supra* note 17.

20. CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA, *supra* note 6, art. 46.

21. *Id.* art. 83.

rights violations and argue that Venezuela can achieve compliance with its Constitutional guarantees by looking to Norway's unique restorative justice-focused approach to incarceration. Norway can serve as a progressive model to encourage Venezuela to reform its own system to provide prisoners with healthcare and respect for their well-being—rights that are protected under Venezuela's Constitution but are currently being heinously violated.

Part I of this Note will provide a comprehensive overview of Venezuela's prison system, including a deeper look at its deplorable and disease-laden conditions, and the systemic issues that are both creating and intensifying the inhumane treatment of its prisoners. Part II will examine the governing human rights laws in Venezuela and apply these laws to the prison injustices to evidence violations of the Constitution and the Convention. Part III will provide insight into the conditions of Norway's prisons, its restorative justice-focused system of incarceration, and the long-term impact of the country's compliance with its human rights laws. Part IV will argue that Venezuela can achieve compliance with its human rights laws under Articles 46 and 83 by restructuring its prison system to resemble Norway's prisons, specifically by altering its values to align with restorative justice rather than retributive justice.²²

I. BACKGROUND

A. Infectious Diseases, Overcrowding, Food Crisis, and Prisoner Control Over Facilities

Venezuelan prisons are notorious for their deplorable conditions, stripping prisoners of access to healthcare, exposing them to highly contagious diseases, and subjecting them to starvation due to inadequate food supply.²³ The dangers posed by these

22. In a retributive justice system, the focus lies on establishing blame, and punishment is seen as an effective way to change behavior and deter crime. *Retributive vs. Restorative Justice*, CONFLICT SOLUTIONS CTR, http://www.cscsb.org/restorative_justice/retribution_vs_restoration.html (last visited July 21, 2021).

23. Brian Ellsworth & Vivian Sequera, *Overcrowded and Unsanitary, Venezuela's Prisons Brace for Coronavirus*, REUTERS (Mar. 18, 2020), <https://www.reuters.com/article/us-health-coronavirus-venezuela-prisons/overcrowded-and-unsanitary-venezuelas-prisons-brace-for-coronavirus-idUSKBN215323>; see also *Coronavirus Could Worsen Health Crisis in*

conditions are worsened by severe overcrowding and an imbalance of power where prisoners, not law enforcement, have complete control within a majority of the country's prisons.²⁴

Disease within Venezuela's prisons is widespread, with many prisoners struggling with the itching symptoms of scabies, which "thrives in environments with inadequate hygiene."²⁵ Tuberculosis and malnutrition have been referred to as "the pandemic of Venezuelan prisons," claiming the lives of 66 of the 104 inmates who died as of November 2020, while also accounting for 73.46 percent of all deaths in Venezuelan prisons.²⁶ These dangerous prison conditions also promote the spread of HIV and conjunctivitis, which are not appropriately addressed despite the efforts of non-governmental organizations²⁷ that have "carried out medical care programs in several prisons" but are unable to provide medical care to the entire prison population.²⁸ Many prisons are not staffed with nurses to administer necessary medical treatment, posing a grave dilemma for prisoners who become severely

Venezuela Prisons, INSIGHT CRIME (Apr. 6, 2020), <https://www.insight-crime.org/news/brief/coronavirus-health-prisons-venezuela/>.

24. Sebastián Liste, *On the Inside of a Venezuelan Prison Controlled by Inmates*, VISA POUR IMAGE, <https://www.visapourlimage.com/en/festival/exhibitions/de-l-autre-cote-du-mur-d-enceinte-une-prison-du-venezuela-aux-mains-des-detenus> (last visited July 17, 2021) ("Gang violence is rampant in Venezuelan prisons: 591 inmates were killed in 2012, and even more in 2013." Inmate-jailers do "their rounds, night and day, armed with pistols, high-caliber revolvers and automatic rifles."). In Venezuela's thirty-four prisons, "only seven are controlled by the authorities; the rest are ruled by the inmates." *Id.*

25. Ellsworth & Sequera, *supra* note 23.

26. Sahari Gómez, *Tuberculosis and Malnutrition, the Pandemic of Venezuelan Prisons*, OPEN DEMOCRACY (Aug. 5, 2020, 9:20 PM), <https://www.opendemocracy.net/en/democraciaabierta/mas-alla-de-la-pandemia-tuberculosis-y-desnutricion-matan-en-las-carceles-venezolanas-en/>. These statistics were provided by the Venezuelan Prison Observatory, a non-governmental organization whose members are academics and experts engaged in the monitoring and compliance of human rights in Venezuelan prisons. Thamy Pogrebinski, *Venezuelan Prison Observatory*, LATINNO, <https://www.latinno.net/en/case/19055/> (last visited July 17, 2021).

27. "A non-governmental organization (NGO) is a non-profit group that functions independently of any government. NGOs, sometimes called civil societies, are organized on community, national and international levels to serve a social or political goal such as humanitarian causes or the environment." Jean Folger, *What is an NGO (Non-Governmental Organization)?*, INVESTOPEDIA (Feb. 18, 2020, updated Jan. 18, 2021), <https://www.investopedia.com/ask/answers/13/what-is-non-government-organization.asp>.

28. Gómez, *supra* note 26.

ill and require immediate medical assistance, which they do not receive until it is too late.²⁹ The deadly health concerns facing prisoners is exacerbated by overcrowding within prison facilities such as Guanare, which was built to hold 750 inmates but is currently housing 2,500 inmates.³⁰ COVID-19 (coronavirus) creates additional concerns about the spread of the virus consuming the country's unsanitary detention centers.³¹

Malnutrition is a serious concern within Venezuela's prisons, with family members of prisoners serving as their providers of food, water, and needed medication.³² Carolina Giron, Director of the Venezuelan Prison Observatory,³³ revealed the meager food supply that inmates receive, usually consisting of one meal a day with insufficient nutrition value.³⁴ Prisoners have protested in response to the food their family members brought to the prisons being withheld, or even stolen, by corrupt security forces.³⁵ Additionally, due to the coronavirus, family visits to Venezuelan prisons have been suspended, "and the existing food and water shortages have intensified"—a life-threatening reality for prisoners who "depend on family visits to receive food and

29. *Id.*

30. *Dozens Killed in Venezuela Prison Riot*, ALJAZEERA (May 2, 2020), <https://www.aljazeera.com/news/2020/5/2/dozens-killed-in-venezuela-prison-riot>.

31. *Virus Outbreak: Venezuela's Dirty, Crowded Prisons Brace for COVID-19*, TAIPEI TIMES (Mar. 20, 2020), <https://www.taipeitimes.com/News/world/archives/2020/03/20/2003733066> ("Detention centers frequently lack bathrooms, people sleep on floors and many inmates spend their days without shirts or shoes on.").

32. *Coronavirus Could Worsen Health Crisis in Venezuela Prisons*, *supra* note 23.

33. The Venezuelan Prison Observatory is a non-governmental organization created in 2002, which monitors compliance with human rights in Venezuela's prisons. The organization issues reports on the country's penitentiary system and makes recommendations to promote compliance with human rights. *Venezuelan Prison Observatory*, LATINNO, <https://www.latinno.net/en/case/19055/> (last visited Sept. 21, 2021).

34. *Coronavirus Could Worsen Health Crisis in Venezuela Prisons*, *supra* note 23 ("Inmates are provided a single meal a day, and that . . . consists of pasta water, some cooked grains or an arepa (a type of maize bread).").

35. *Venezuela Prison Implodes Under Additional Strain From Coronavirus*, INSIGHT CRIME (May 12, 2020), <https://www.insightcrime.org/news/analysis/venezuela-prison-implodes-coronavirus/>.

medicine.”³⁶ Violence is commonplace, with officers provoking starving inmates who don’t comply with their demands, resulting in shootings, riots, and the death of prisoners, while desperation is driving prisoners to consume stray animals.³⁷

Venezuela currently has thirty-four prisons with only seven under the authority of prison staff, and the rest under the control of prisoners.³⁸ Vista Hermosa, a notorious Venezuelan prison, is currently under the reign of the uncontested pran,³⁹ named Wilmito, who alongside his gang claimed control over the prison by force in 2005.⁴⁰ His power extends beyond prison walls, where he controls drugs, violence, and prostitution outside of Vista Hermosa.⁴¹ Failure to comply with a pran’s requests, such as paying weekly taxes, can result in beatings or death.⁴² Wilmito believes that his control over Vista Hermosa’s 2,000 inmates is more humane than the tactics employed by Venezuelan prison authorities, who have received fierce criticism from human rights groups for the horrendous conditions and corruption that are plaguing Venezuela’s prisons.⁴³

B. Systemic Issues Outside of Venezuela’s Prison Walls

Venezuela has been in an extremely volatile state due to the humanitarian crisis that President Nicolás Maduro has ignored

36. *Short Update: Worsening Prison Conditions in Venezuela Due to COVID-19*, FAIR TRIALS (July 17, 2020), <https://www.fairtrials.org/news/short-update-worsening-prison-conditions-venezuela-due-covid-19>.

37. Angus Berwick & Vivian Sequera, *Anarchy in Venezuela’s Jails Laid Bare by Massacre Over Food*, REUTERS (May 8, 2020, 1:48 PM), <https://www.reuters.com/article/venezuela-security-prison-idINKBN22K2GX>.

38. Liste, *supra* note 24.

39. “Pranatos” comes from the word pran, drawn from a Spanish acronym for ‘Preso Rematado Asesino Nato’ or ‘natural-born double killer prisoner.’” Jesse Chase-Lubitz, *Crime Empires Operate Out of Venezuelan Prisons*, ORGANIZED CRIME & CORRUPTION REPORTING PROJECT (June 26, 2018), <https://www.occrp.org/en/daily/8263-crime-empires-operate-out-of-venezuelan-prisons>. Pranatos claim control through the gradual implementation of structure within the prison by appointing respective positions such as lieutenants and security wings to inmates, which is all under the control of the top pran. *Id.*

40. Liste, *supra* note 24.

41. *Id.*

42. Chase-Lubitz, *supra* note 39.

43. Liste, *supra* note 24.

for years.⁴⁴ His reelection in May 2018, “despite boycotts and accusations of fraud,” resulted in widespread condemnation, including disapproval from the Lima Group.⁴⁵ The country’s government has faced accusations by the United Nations of using fear as a tactic to maintain control over its people.⁴⁶ Venezuelans have responded to Maduro, who “declared himself the country’s acting president,” by conducting “massive anti-government demonstrations,” resulting in hundreds of detentions, in addition to attacks and even deaths at the hands of Venezuelan security forces.⁴⁷ Widespread abuse by members of the country’s security forces has been published by the Human Rights Watch, which supported the conclusion that these tactics were part of a systemic practice of injustice.⁴⁸ The group also documented cases of “politically motivated prosecutions,” where detainees faced abuse and torture during detention.⁴⁹ Over 13,000 Venezuelans including “demonstrators, bystanders, and people taken from their homes without warrants,” have been arrested since 2014 due to their participation in anti-government activity.⁵⁰ The length of detention in Venezuela’s torturous facilities is increasing, with conditions worsening as detainees face sexual abuse,

44. *Instability in Venezuela*, COUNCIL ON FOREIGN REL., <https://www.cfr.org/global-conflict-tracker/conflict/instability-venezuela> (last visited Sept. 21, 2021).

45. *Id.* The Lima Group’s declaration expressed the disapproval of the “illegitimate presidential term of Nicolas Maduro” by the governments of Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Guyana, Honduras, Panama, Paraguay, Peru, and Saint Lucia. *Lima Group Declaration*, GOV’T OF CAN. (Jan. 4, 2019), https://www.international.gc.ca/world-monde/international_relations-relations_internationales/latin_america-amerique_latine/2019-01-04-lima_group-groupe_lima.aspx?lang=eng. The Lima Group is an international coalition of nation governments that are committed to the “recovery of democracy in the Bolivarian Republic of Venezuela and to alleviate the multidimensional crisis suffered by the Venezuelan population.” *Statement From the Lima Group*, GOV’T OF CAN. (Oct. 13, 2020), https://www.international.gc.ca/world-monde/international_relations-relations_internationales/latin_america-amerique_latine/2020-10-14-lima_group-groupe_lima.aspx?lang=eng#health.

46. *Venezuela Crisis: How the Political Situation Escalated*, BBC NEWS (Dec. 3, 2020), <https://www.bbc.com/news/world-latin-america-36319877>.

47. *Venezuela: Arrests, Killings in Anti-Government Protests*, HUM. RTS. WATCH (Jan. 25, 2019, 7:20 AM), <https://www.hrw.org/news/2019/01/25/venezuela-arrests-killings-anti-government-protests>.

48. *Id.*

49. *Id.*

50. *Id.*

strangulation, and the infliction of physical harm at the hands of Venezuelan military forces.⁵¹ These politically motivated abuses are “systematic, planned and structural.”⁵²

Venezuelans are also struggling to obtain an adequate food supply to meet minimum nutrition requirements with hyperinflation severely diminishing the value of their salaries.⁵³ Approximately 9.3 million of the country’s population is “moderately or severely food insecure,” which has become a nationwide concern, highlighting the social, economic, and political crisis that is destroying the country.⁵⁴ Children are showing obvious signs of malnutrition including “bony bodies, distended bellies and patches of discoloured skin.”⁵⁵ One mother describes herself as lucky if she is able to secure one meal a day due to the high cost of food.⁵⁶ The UN World Food Programme conducted a survey, which found “that 74% of families have adopted ‘food-related coping strategies’, such as reducing the variety and quality of food they eat.”⁵⁷ A majority of reports found that food was readily available, suggesting that the issue stemmed from an inability to obtain it due to high prices, rather than a food shortage.⁵⁸ President Maduro has tied the ability to acquire basic

51. Arelis R. Hernández & Mariana Zuñiga, *Political Detentions Climbing Amid Worsening Venezuela Crisis*, THE WASH. POST (Apr. 12, 2019), https://www.washingtonpost.com/world/political-detentions-climbing-amid-worsening-venezuela-crisis/2019/04/12/f52e0b7a-5cc8-11e9-98d4-844088d135f2_story.html.

52. *Id.*

53. *See Venezuela Poverty Rate Surges Amid Economic Collapse, Inflation - Study*, REUTERS (July 7, 2020), <https://www.reuters.com/article/venezuela-poverty/venezuela-poverty-rate-surges-amid-economic-collapse-inflation-study-idUSL1N2EE1MG>; *see also One in Three Venezuelans Not Getting Enough to Eat, UN Finds*, THE GUARDIAN (Feb. 24, 2020, 1:12 PM), <https://www.theguardian.com/world/2020/feb/24/venezuela-hungry-food-insecure-un-world-food-program>.

54. “Food insecurity is defined as an individual being unable to meet basic dietary needs.” *One in Three Venezuelans Not Getting Enough to Eat, UN Finds*, *supra* note 53.

55. Zoe Daniel & Niall Lenihan, *Venezuelans Are Slowly Starving to Death as Maduro and Guaido Battle For Power*, AUSTL. BROADCASTING CORP. NEWS (June 11, 2019, 1:50 PM, updated June 12, 2019, 5:38 PM), <https://www.abc.net.au/news/2019-06-12/venezuelans-starving-as-country-gripped-by-economic-crisis/11197560>.

56. *Id.*

57. *One in Three Venezuelans Not Getting Enough to Eat, UN Finds*, *supra* note 53.

58. *Id.*

necessities to political loyalty by providing a monthly food handout to Venezuelans who register for the Fatherland Card⁵⁹ (the Card), which is used by officials to track participation in voting.⁶⁰ Although the Card was intended to address the country's dangerous lack of access to food and medicine, it has also been viewed as President Maduro's attempt at controlling information.⁶¹

Venezuela's fragile healthcare system is on the brink of collapse with the country suffering from a severe shortage in medication due to extreme hyperinflation and an inability to attain food.⁶² There has been a resurgence in malaria, dengue, and the Zika virus within the country, which could trigger additional health complications including nerve damage and congenital abnormalities.⁶³ Patients in the country's hospitals are not provided with food, and basic medical supplies like gloves are unavailable,⁶⁴ "leaving Venezuelans desperate for medicine, medical supplies, doctors, and essential [hospital] necessities."⁶⁵ This health care crisis is amplified by President Maduro's intentional efforts to prevent external aid from entering the country, by taking action such as burning a truck full of food, water, and medical supplies sent from the United States.⁶⁶ Venezuelans are

59. The Fatherland Card is a system which has been promoted by the Venezuelan government as a means to facilitate public service initiatives. Laura Vidal, *Venezuelans Fear 'Fatherland Card' May Be a New Form of Social Control*, THE WORLD (Dec. 28, 2018, 1:00 PM), <https://www.pri.org/stories/2018-12-28/venezuelans-fear-fatherland-card-may-be-new-form-social-control>. The card provides its holders with "access to food and medicine, which have become dangerously scarce amid Venezuela's political and economic crises." *Id.*

60. Voters have reported that upon their arrival at voting polls, those with a Fatherland Card were encouraged to register at the Fatherland Card booth instead of the polling station and were incentivized with "special access to food and subsidy bonuses if they did so." *Id.*

61. *Id.* (This control includes "the continuous censorship of media not aligned with the government.")

62. Raphelson, *supra* note 15.

63. Nicole Acevedo, *Life-Threatening, Insect-Borne Diseases Spike in Venezuela, Report Says*, NBC NEWS (Feb. 21, 2019, 6:32 PM), <https://www.nbcnews.com/news/latino/life-threatening-insect-borne-diseases-spike-venezuela-report-says-n974216>.

64. Raphelson, *supra* note 15.

65. Rachel Bierly, *Venezuelans Dying of a Failing Health Care System*, PANORAMAS (Oct. 10, 2019), <https://www.panoramas.pitt.edu/news-and-politics/venezuelans-dying-failing-health-care-system>.

66. *Id.*

dying from diseases that are treatable, and with “no access to essential medicine,” civilians are resorting to the black market to obtain medicine that is usually smuggled from nearby countries.⁶⁷

II. PROTECTED HUMAN RIGHTS UNDER VENEZUELA’S CONSTITUTION AND THE CONVENTION

A. The Right to Physical, Mental, and Moral Integrity and Protection from Torture

1. Firsthand Accounts of Torture in Venezuela’s Prisons

Article 46 of Venezuela’s Constitution protects all individuals’ rights to “physical, mental, and moral integrity,” shielding them from penalties, torture, and inhumane or degrading treatment.⁶⁸ Similarly, Article 5(1) of the Convention asserts that “every person has the right to have [their] physical, mental, and moral integrity respected” and Article 5(2) protects against “torture, or . . . cruel, inhuman, or degrading punishment or treatment.”⁶⁹ Former political prisoner Villca Fernandez spent two years at the El Helicoide prison.⁷⁰ He revealed the psychological impact that prisoners faced as they were tortured with electricity applied to their genitals, ankles, and behind their ears, serving as a reminder of the torturous methods of punishment that prison staff are willing to inflict upon prisoners.⁷¹ He was forced to remain in a standing or squatting position for twenty-eight days, unable to lie down to sleep.⁷² It appears that the goal of the guards was to reduce prisoners to a “permanent state of submission.”⁷³ Another inmate was transferred to a hospital after “falling ill from eating dead rats he found in a prison garbage

67. *Id.*

68. CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA, *supra* note 6, art. 46.

69. Organization of American States, American Convention on Human Rights, *supra* note 9, arts. 5(1), 5(2).

70. Antonio Maria Delgado, ‘Welcome to Hell.’ Former Venezuelan Political Prisoner Says He was Tortured in Jail, MIAMI HERALD (July 20, 2018, 3:07 PM, updated July 20, 2018, 5:18 PM), <https://www.miamiherald.com/news/nation-world/world/americas/venezuela/article215033815.html>.

71. *Id.*

72. *Id.*

73. *Id.*

disposal,” and admitted that he regularly consumed rodents “mainly out of need and hunger.”⁷⁴

2. Venezuela is Violating Articles 5(1) and (2) of the Convention

The methods of torture in Venezuelan prisons demonstrate a violation of its prisoners’ human rights guaranteed under Article 5(1) and (2) of the Convention, a sharp contrast to Peru’s treatment of its prisoners. Both Peru and Venezuela are parties to the Convention,⁷⁵ so the laws under Article 5 should equally protect the prisoners of each country. Venezuela’s violation is sharply contrasted by nearby Peru’s compliance,⁷⁶ demonstrated in *Miguel Castro Castro Prison v. Peru*, where the court held that the Peruvian National Police and military’s attack on prisoners in the Miguel Castro Castro Prison constituted a violation of Article 5(1) and (2).⁷⁷ Similar to the methods of torture in Venezuela’s prisons, where some prisoners are forced to remain in a standing or squatting position for weeks and receive a single meal a day of pasta water, grains, or bread,⁷⁸ prisoners in *Miguel Castro* were “forced to lay face down on the ground outside” and received a diet of only “bread, water, and thin soup.”⁷⁹ The court also held that “tortures such as beatings” and “application of electrical shocks,” similar to the treatment of prisoners in Venezuela’s Helicoide prison, were in violation of Article 5(1)⁸⁰ and

74. Ben Kew, *Venezuelan Inmates Eating Rats and Pigeons to Avoid Starvation*, BREITBART (Feb. 26, 2018), <https://www.breitbart.com/national-security/2018/02/26/venezuelan-prisoners-eating-rats-pigeons-survive/>.

75. See American Convention on Human Rights “Pact of San José, Costa Rica,” *Participant*, <https://treaties.un.org/pages/showDetails.aspx?objid=08000002800f10e1> (last visited July 17, 2021).

76. Peru is one of the 24 member states of the Organization of American States—an international organization created to achieve peace and justice, promote solidarity, and defend sovereignty of its member states—which has ratified the American Convention. *Basic Documents Pertaining to Human Rights in the Inter-American System*, CIDH, <http://www.cidh.org/basicos/english/basic1.%20intro.htm> (last visited July 17, 2021).

77. Brian Gabriel, *Miguel Castro Castro Prison v. Peru*, 36 LOY. L.A. INT’L & COMP. L. REV., 2233, 2246 (2014).

78. Delgado, *supra* note 70; *Coronavirus Could Worsen Health Crisis in Venezuela Prisons*, *supra* note 23.

79. Gabriel, *supra* note 77, at 2236.

80. “Every person has the right to have his physical, mental, and moral integrity respected.” Organization of American States, American Convention on Human Rights, *supra* note 9, art. 5(1).

(2).⁸¹ The methods of physical torture *Miguel Castro* prisoners faced, and the inadequate food supply provided to them are almost identical to the conditions Venezuelan prisoners are living in.⁸²

The Peru court recognized that this treatment was in violation of Article 5 of the Convention, but Venezuela has consistently failed to recognize the same treatment as a violation of its own prisoners' rights to physical, mental, and moral integrity, and protection from torture, or cruel, inhuman, or degrading punishment. *Miguel Castro* underscores Peru's commitment to recognizing torture and degrading treatment towards its prisoners as it holds those responsible for the human rights violations accountable for their actions.⁸³

In contrast, in Venezuela, authorities have failed to demonstrate their adherence to the Convention to such a gross degree that prans have dominated prisons, believing that the control tactics employed by those with legal authority are worse than their own.⁸⁴ Additionally, the Maduro administration fails to prove its commitment to ensuring that Article 5's rights are recognized for prisoners, as Venezuelans are still facing prosecution for political reasons, in addition to abuse and torture.⁸⁵ The methods of torture and degradation that are occurring in Venezuelan prisons, including beatings, electroshocks, and inadequate food provisions, are also occurring in Peruvian prisons.⁸⁶ The Peruvian government, however, is taking action while the Venezuelan government fails to ensure protection.⁸⁷ Since both countries are parties to the Convention, this proves that Venezuela is not complying with the rights that it claims all individuals are protected by.

81. "No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person." *Id.* art. 5(2).

82. Delgado, *supra* note 70.

83. See Gabriel, *supra* note 77, at 2252, 2253. The judgment in *Miguel Castro* stated that "the State must effectively carry out the ongoing criminal proceedings within a reasonable time and open any new appropriate proceedings." *Id.* at 2252. Additionally, "the State must provide free medical and psychological treatments to the victims and their next-of-kin who suffered physical or psychological problems from the attack." *Id.* at 2253.

84. Liste, *supra* note 24.

85. Hernández & Zuñiga, *supra* note 51.

86. Delgado, *supra* note 70.

87. Liste, *supra* note 24.

3. Prisoners' Rights Are Being Violated Under Article 46 of the Venezuelan Constitution

Article 46 of Venezuela's Constitution is similar to Article 5(1) of the Convention in that it protects the same rights to physical, mental, and moral integrity.⁸⁸ Additionally, Article 46 provides protection against torture and inhumane treatment.⁸⁹ Peru's compliance with the Convention in *Miguel Castro*, supports the conclusion that Venezuela fails to comply with the Convention because the extreme physical torture and malnourishment of Peru's prisoners is similar to the treatment of Venezuelan prisoners.⁹⁰ With the same rights protected under Article 46 and Article 5, both of which govern Venezuela, there is strong support for the conclusion that Venezuela is not only violating the Convention, but also prisoners' human rights under Article 46.⁹¹ Venezuela fails to uphold its prisoners right to physical and mental integrity, and inhumanely disregards its prisoners basic need for food.⁹² These harrowing injustices exemplify a glaring difference in comparison to Norwegian prisons, which aim to preserve inmates ability to feel "like they are still people."⁹³

88. CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA, *supra* note 6, art. 46; Organization of American States, American Convention on Human Rights, *supra* note 9, art. 5(1). Both Article 46 and Article 5(1) protects individuals' rights to "physical, mental, and moral integrity."

89. CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA, *supra* note 6, art. 46.

90. *See* Delgado, *supra* note 70.

91. Venezuela's prisoners have been shot dead in protest of a lack of food, have resorted to consuming rodents due to their inability to access any food supply, and have been both physically and psychologically tortured. *See Deaths Inside Venezuelan Prisons Doubled During Pandemic*, INSIGHT CRIME (Sept. 10, 2020), <https://www.insightcrime.org/news/analysis/deaths-inside-venezuelan-prisons-doubled-during-pandemic/>; Kew, *supra* note 74; Delgado, *supra* note 70. Alternately, in Norway, prisoners are able to form small groups to cook their own meals and eat together, and can even attend cooking classes taught by professional chefs. *Prisons in Norway: Inside a Norwegian Jail*, *supra* note 17.

92. *See Coronavirus Could Worsen Health Crisis in Venezuela Prisons*, *supra* note 23.

93. *Prisons in Norway: Inside a Norwegian Jail*, *supra* note 17.

B. The Right to Health and Hygiene

1. Inaccessible Healthcare and Medication, and Squalid Living Conditions in Venezuela's Disease-laden Prisons

Article 83 of Venezuela's Constitution declares health a fundamental social right, and grants all persons the protection of their health, in addition to compliance with hygiene measures established by law.⁹⁴ The life-threatening conditions that Venezuelan prisoners are living in expose them to tuberculosis, HIV, scabies, conjunctivitis, and other deadly diseases.⁹⁵ The frustration with diseases like tuberculosis is that they are easy to cure if the right treatment is provided.⁹⁶ Venezuelan prisoners, however, are neglected until their condition has reached such a dire state that it is already too late when they are taken to the hospital.⁹⁷ One prisoner's mother spent two days at prison doors to find out more about her son's illness, but was never informed of how bad his condition was until he was admitted to the hospital, where he died minutes later.⁹⁸ With the rise of coronavirus presenting new health concerns,⁹⁹ the safety and well-being of Venezuelan prisoners is further compromised.

Hospitals in Venezuela "lack running water, pharmaceuticals and medical equipment."¹⁰⁰ Even though the number of coronavirus cases in Venezuelan police detention facilities "is far below the number of cases reported from penitentiary systems in Peru and Colombia," the disease is still leading to further deterioration of already horrendous prison living conditions, placing prisoners at an increased health risk.¹⁰¹ The already heightened potential for disease to result in deadly outcomes for Venezuela's prisoners is worsened by severe overcrowding within prison cells.¹⁰² Prisoners "urinate and excrete in plastic bags and

94. CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA, *supra* note 6, art. 83.

95. Gómez, *supra* note 26.

96. *Id.*

97. *Id.*

98. *Id.*

99. Ellsworth & Sequera, *supra* note 23.

100. *Id.*

101. *Deaths Inside Venezuelan Prisons Doubled During Pandemic*, *supra* note 91.

102. See Grillo & Benezra, *supra* note 5 ("In the most crowded cell, prisoners have no room to even sit down, and take turns resting on sheets tied to bars like hammocks.").

bottles and wait for the guards to collect them,”¹⁰³ creating an environment characterized by inadequate hygiene where diseases like the skin infestation scabies thrive.¹⁰⁴ The mother of another prisoner describes the prison where her son resides in as “an underworld,” stating that prisoners “rights are violated everyday.”¹⁰⁵ These prisons are dangerous and uninhabitable for humans.

2. Prisoners’ Rights Under Article 83 Are Being Violated

The deplorable conditions that Venezuelan prisoners are living in is a hub for deadly diseases that have no hope of being cured due to the nation’s insufficient healthcare system.¹⁰⁶ Prisoners fundamental right to their health is being violated, as sick prisoners are neglected by prison staff until their festering illnesses have consumed their lives to a point where they no longer have a chance at survival.¹⁰⁷ The barbaric conditions they live in leaves them weak and malnourished,¹⁰⁸ without access to necessary medication to treat medical conditions,¹⁰⁹ and abandoned by the same government that has guaranteed them protection of their health.¹¹⁰ These inadequacies within Venezuela’s prisons mirror the nation’s systemic issues that the illegitimate presidency of Nicolás Maduro has further exacerbated.¹¹¹ Not only is Venezuela’s prison system failing its prisoners, but on a larger scale, the government itself is failing them by destroying medical supplies and aid that has been provided by other countries.¹¹² This supports the conclusion that the government is not only ignoring prisoners’ rights under Article 83, but is taking active

103. *Id.*

104. Ellsworth & Sequera, *supra* note 23.

105. Grillo & Benezra, *supra* note 5.

106. *See* Raphelson, *supra* note 15.

107. *See* Gómez, *supra* note 26.

108. *See Coronavirus Could Worsen Health Crisis in Venezuela Prisons, supra* note 23.

109. Grillo & Benezra, *supra* note 5.

110. *See* CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA, *supra* note 6, art. 83.

111. Kew, *supra* note 74 (“Increasing numbers of political dissidents are now being incarcerated by the Maduro regime, which is gradually transforming the country into a military dictatorship by upping levels of repression against civilians and dismantling democratic institutions such as the democratically elected national assembly.”).

112. *See* Bierly, *supra* note 65.

steps towards intentionally depriving its vulnerable and severely ill prisoners from accessing their right to health. Prisoners' proximity to sewages, home to large rats,¹¹³ their exposure to dirty conditions with bags of feces surrounding them, and widespread scabies underscores their struggle to comply with hygiene measures under the same Constitutional provision.

The unsanitary conditions that Venezuelan prisoners are subject to closely resemble those in Panama's prisons. Harvard University provided a report on the "deplorable, inhumane conditions at la Joya-Joyita" (the Prison) discussed in *Jesus Tranquilino Velez Loor against the Republic of Panama*, evidencing a disturbing lack of even basic sanitary measures within the prison, and a dysfunctional drainage system.¹¹⁴ The Inter-American Commission on Human Rights (the Commission) visited the Prison in 2001 and issued a press release stating that the jail was deplorable and posed a health risk to the detainees.¹¹⁵ Referencing Article 5 of the Convention,¹¹⁶ the Commission subsequently ordered Panama to provide prisoner Velez Loor with redress for the harm he suffered.¹¹⁷

The human rights violations that are occurring in Venezuelan prisons are similar to those that occurred in Panama's la Joya-Joyita prison where detainees do not have access to needed medical treatment,¹¹⁸ are living in close proximity to filthy sewage systems, and are unable to preserve their health and hygiene due to dirty prison conditions. Venezuela has failed to comply with the guarantees of health and compliance with hygiene measures promised to its prisoners under Article 83, while Panama directs responsibility to the State for the violation of its

113. Delgado, *supra* note 70.

114. Inter-Am. Comm'n H. R., *Application to the Inter-American Court of Human Rights in the Case of Jesús Tranquilino Vélez Loor against the Republic of Panama*, ¶ 40, Case No. 12.581 (2009).

115. The Commission also noted "serious deficiencies in the health services available" to prisoners. *Id.* ¶ 36.

116. "According to Article 5 of the Convention, all persons deprived of their liberty shall be treated with regard for their inherent dignity. The State, as the entity responsible for detention centers, must guarantee prison inmates the existence of conditions that respect their fundamental rights and a decent life." *Id.* ¶ 85.

117. These measures included rehabilitation and to ensuring that "Panama's detention centers meet minimum standards compatible with humane treatment and that afford detainees a decent existence *Id.* ¶ 6.

118. *Id.* ¶ 48.

prisoners right to humane treatment and personal integrity.¹¹⁹ As conditions worsen in Venezuela in the midst of the coronavirus, prisoners are in an even more dire state than before, with the nation's healthcare system proving inadequate to handle this deadly disease.¹²⁰

President Maduro's blatant disregard for Venezuelans¹²¹ sharply contrasts with Panama's approach.¹²² Panama's compliance with its governing laws that are analogous to Venezuela's Article 83 support the conclusion that Venezuela has failed to ensure that its prisoners fundamental social right to the protection of their health and hygiene measures is complied with. The present violations are inconsistent with Norway's prison system, which "has a policy of one prisoner per cell,"¹²³ with each cell containing a private shower and toilet, eliminating the possibility of disease being spread due to overcrowding while also supporting inmates' ability to preserve their health and hygiene.¹²⁴

119. See *Veléz Loor v. Panama*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 218, ¶ 270 (Nov. 23, 2010). The court ordered the State of Panama to pay for the specialized medical and psychological treatment and care, medicine, and other related expenses for a period of six months to prisoner Vélez Loor. *Id.* at Operative ¶ 12. The State was also required to continue carrying out with utmost diligence and within a reasonable time period, a criminal investigation regarding the facts alleged by Vélez Loor in order to determine criminal liability. *Id.* at ¶ 270.

120. See *Deaths Inside Venezuelan Prisons Doubled During Pandemic*, *supra* note 91.

121. Bierly, *supra* note 65.

122. *Veléz Loor v. Panama*, *supra* note 119 (This approach involves ordering prisons to take the necessary actions to comply with the laws that govern prisoners' rights, and also restore justice to harmed prisoners).

123. Manudeep Bhuller, Gordon Dahl, Katrine V. Løken, Magne Mogstad & CS Freeland, *What the Rest of the World Can Learn from Norway's Prison System*, WORLD ECONOMIC FORUM (Mar. 26, 2019), <https://www.weforum.org/agenda/2019/03/incarceration-can-be-rehabilitative>.

124. *How Norway Turns Criminals into Good Neighbours*, BBC NEWS (July 7, 2019), <https://www.bbc.com/news/stories-48885846>.

III. NORWAY'S RESTORATIVE JUSTICE SYSTEM OF INCARCERATION

A. An Overview of Norway's Prison System

Norway's criminal justice system follows a restorative justice model,¹²⁵ which acknowledges "that crime causes injury to people and communities, [and] insists that justice repair those injuries," serving as a "powerful way of addressing not only the material and physical injuries caused by crime, but the social, psychological and relational injuries as well."¹²⁶ This system views criminal acts more comprehensively than restorative justice by measuring the success of the chosen method of post-harm action *not* by the degree of punishment inflicted upon the offender, but by the degree of harm that is repaired or prevented.¹²⁷ Prior to the 1990s, Norway followed a punitive justice system, which received criticism for the harsh living conditions it created for prisoners.¹²⁸ In 1998, however, the "Norwegian Ministry of Justice reassessed the correctional service's goals and methods," which led to a series of reforms aimed at prioritizing prisoners release back into society.¹²⁹ Today, the maximum sentence a prisoner can serve in Norway is twenty-one years, but if the convicted individual "is deemed to be a continued threat to society," their sentence can be extended in five-year increments.¹³⁰

Norwegian prisons such as the Halden Prison—acclaimed as one of the most humane prisons in the world—are designed to "ease psychological stress," with each inmate having access to their own private cell, a toilet and shower room, a desk, a fridge, and a television.¹³¹ The punishment is seen as the taking away of prisoners freedom, while their right to vote, and having access

125. Madelyn Evans, *Restoration and Retribution: A Tale of Two Criminal Justice Systems*, THE MCGILL INT'L REV. (July 16, 2020), <https://www.mironline.ca/restoration-and-retribution-a-tale-of-two-criminal-justice-systems/>.

126. CTR FOR JUST. & RECONCILIATION AT PRISON FELLOWSHIP INT'L, RESTORATIVE JUSTICE BRIEFING PAPER 1: WHAT IS RESTORATIVE JUSTICE? (May 2005), <https://www.d.umn.edu/~jmaahs/Correctional%20Assessment/rj%20brief.pdf>.

127. *Id.*

128. Evans, *supra* note 125.

129. *Id.*

130. *How Norway Turns Criminals into Good Neighbours*, *supra* note 124.

131. *Id.*

to school and healthcare remain.¹³² Prisoners are encouraged to take advantage of opportunities within the prison, such as pursuing advanced degrees, in hopes of finding a stable job after serving their sentence.¹³³ Prison officers are well paid and trained to know more about how to handle inmates and avoid violence – a rare occurrence in Norwegian prisons.¹³⁴ This is in sharp contrast to Venezuelan prisons, where violence causes hundreds of prisoner deaths every year.¹³⁵ A prisoner governor¹³⁶ of the Bastoy prison in Norway states that being sent to prison shouldn't involve placing people in terrible conditions to make them suffer, and believes that if they "treat people like animals when they are in prison they are likely to behave like animals."¹³⁷

B. Norwegian Prisons' Compliance with Human Rights Laws

The Constitution of the Kingdom of Norway grants every individual specific human rights under Section E.¹³⁸ Article 93 of the Constitution grants every human "the right to life" and protection from "torture or other inhumane or degrading treatment or punishment"¹³⁹ and Article 112 provides for every person's "right to an environment that is conducive to health."¹⁴⁰ Norway's treatment of its prisoners is in clear compliance with both of these human rights laws.

132. "Prisoners maintain the right to vote unless" they are "convicted of an act of terrorism or political violence." Evans, *supra* note 125; *How Norway Turns Criminals into Good Neighbours*, *supra* note 124.

133. *Id.*

134. *Id.* ("It takes 12 weeks in the UK to train a prison officer. In Norway it takes two to three years."). There is a rigorous selection process, which includes written exams in Norwegian and English, and since about a third of the prison population is non-native, officers are expected to be fluent in English. *Id.*

135. Grillo & Benezra, *supra* note 5.

136. A prison governor is "the senior administrator or head of a prison." *Prison Governor*, COLLINS, <https://www.collinsdictionary.com/us/dictionary/english/prison-governor> (last visited July 17, 2021).

137. Sterbenz, *supra* note 17.

138. KONGERIKET NORGES GRUNNLOV [GRL] [CONSTITUTION] May 17, 1814, § E (Nor.).

139. *Id.* art. 93.

140. *Id.* art. 112.

1. Norway's Compliance with Article 93

Norway's commitment to rehabilitating its prisoners by creating a safe and humane environment for them to reside in while they serve their sentences¹⁴¹ evidences its compliance with Article 93's right to life and protection from torture or degrading treatment¹⁴² as it demonstrates the country's value for rehabilitating its prisoners and its willingness to prepare them for successful reentry into society. Norway has almost an equal number of correctional officers as it does prisoners, with officers required to pass a two to three-year training program prior to working in prison facilities.¹⁴³ This underscores how strongly Norway values training those in an authoritative position within its prisons so that they are well equipped to handle conflict with detainees in a way that promotes the goals of restorative justice¹⁴⁴ instead of retributive justice.

In contrast, prisoners in Venezuela are subject to beatings and psychological torture and starving inmates are even provoked by officers, resulting in violence and death.¹⁴⁵ Instead of punishing prisoners, as in Venezuela, Norway's restorative justice approach seeks to measure the success of time spent in prison by the degree of harm that is *repaired* and *restored*.¹⁴⁶ Norwegian prison officers see their duty as helping prisoners to become better people, and serving as their "role models, coaches, and mentors."¹⁴⁷ This intentional avoidance of torture and inhumane or degrading treatment or punishment complies with Article 93, and has also evidenced the success of a restorative justice approach to incarceration, since Norway has one of the lowest recidivism rates in the world at 20 percent.¹⁴⁸

141. The maximum sentence in Norway is twenty-one years. *How Norway Turns Criminals into Good Neighbours*, *supra* note 124.

142. KONGERIKET NORGES GRUNNLOV [GRL], *supra* note 138, art. 93.

143. *How Norway Turns Criminals into Good Neighbours*, *supra* note 124.

144. These goals include encouraging the prisoner to take responsibility for their harmful behavior in a way that is meaningful while also allowing them to gain insight into the cause and effects of their behaviors on others. *Values and Principles of Restorative Justice in Criminal Matters*, SERVING CANADIANS, <https://www.iirp.edu/pdf/RJValues-DOJCan.pdf> (last visited July 17, 2021).

145. Delgado, *supra* note 70; Berwick & Sequera, *supra* note 37.

146. CTR FOR JUST. & RECONCILIATION AT PRISON FELLOWSHIP INT'L, *supra* note 126.

147. *How Norway Turns Criminals into Good Neighbours*, *supra* note 124.

148. Sterbenz, *supra* note 17.

2. Norway's Compliance with Article 112

The organization of healthcare and the living conditions in Norway's prisons support the assertion that the country's prison facilities foster "an environment that is conducive to health," in compliance with Article 112.¹⁴⁹ Every prison in Norway has a health care unit, and "each facility has at least one medical cabinet with basic equipment."¹⁵⁰ Healthcare is free and guaranteed throughout incarceration for all prisoners, and each prisoner is required to "be examined by a nurse within twenty-four hours of incarceration."¹⁵¹ Many Venezuelan prisons do not have nurses to administer medical treatment or provide medical assistance, and the process of transferring a gravely ill prisoner to a hospital is often delayed until it is too late.¹⁵² Medical teams in Norway's prisons, however, consist of nurses and general practitioners, and some facilities even staff "psychologists, psychiatrists, and specialists in addiction."¹⁵³

In 2019, the Norwegian government built a psychiatric unit in its Oslo prison, and inmates in every Norwegian prison can request to be transferred to a psychiatric facility.¹⁵⁴ Additionally, inmates who are struggling with addiction "receive special attention," including access to detox units, and continuous monitoring.¹⁵⁵ These efforts at rehabilitating its prisoners evidence Norway's active participation in successfully reintegrating its prisoners back into society, and demonstrate how its prisons cultivate "an environment that is conducive to health," in accordance with Article 112. As Norway works to preserve and maintain the physical and mental health of its prisoners to reintegrate them back into society, Venezuela psychologically torments its prisoners and seeks to reduce its prisoners to a "permanent state of submission."¹⁵⁶ With free access to healthcare and medical staff, Norway proves that it is taking the necessary

149. KONGERIKET NORGES GRUNNLOV [GRL], *supra* note 138, art. 112.

150. *Norway*, PRISON INSIDER, <https://www.prison-insider.com/countryprofile/prisons-norway2019?s=sante-5cab190969190#sante-5cab190969190> (last visited July 17, 2021).

151. *Id.* (The examination normally includes screening for diseases such as tuberculosis and HIV).

152. Gómez, *supra* note 26.

153. *Norway*, *supra* note 150.

154. *Id.*

155. *Id.*

156. Delgado, *supra* note 70.

measures to protect its prisoners' health-related human right, unlike Venezuela, which neglects its prisoners who are dealing with deadly and untreated diseases, in violation of Article 83.

IV. THE SUCCESS OF NORWAY'S RESTORATIVE JUSTICE BASED PRISON SYSTEM CAN SERVE AS A STRONG MODEL FOR VENEZUELA TO FOLLOW

A. Reframing the Goals and Function of a Prison Sentence

The current conditions in Venezuela's prisons reflect values aligned with retributivist justice, which seeks to impose *punishment* on an offender after a judicial finding of a criminal offense.¹⁵⁷ Based on the human rights violations that Venezuelan prisoners are facing, however, this approach results in more harm than the correction of an offense. The retributivist goal of punishment¹⁵⁸ in Venezuelan prisons has proven to be ineffective as Venezuela holds the highest crime index in the world.¹⁵⁹ This crime rate evidences that a retributivist approach is unable to correct the wrong and prevent future crimes from occurring. The torture and starvation inflicted upon Venezuelan prisoners fail to deter future offenders from committing crimes, and the goals promoted by Venezuela's retributivist approach to criminal justice ultimately undermine the interest of justice. This failure to ensure justice supports the conclusion that the goals of retributivism are insufficient to correct and prevent future crimes from occurring within Venezuela.

Restorative justice, the foundation of Norway's criminal justice system, is a forward-looking response to a harm that seeks to break the cycles that lead to violence and crime.¹⁶⁰ Restorative justice asserts that "healing is crucial not just for victims, but also for offenders," whose reintegration into society is an

157. See Donald H.J. Hermann, *Restorative Justice and Retributive Justice: An Opportunity for Cooperation or an Occasion for Conflict in Search for Justice*, 16 SEATTLE J. FOR SOC. JUST. 71, 71 (2017).

158. These include physical and psychological torture, food scarcity, and sleep deprivation. Delgado, *supra* note 70; *Coronavirus Could Worsen Health Crisis in Venezuela Prisons*, *supra* note 23.

159. *Crime Index by Country 2021 Mid-Year*, *supra* note 3.

160. Sterbenz, *supra* note 17; Michelle Maiese, *Restorative Justice*, BEYOND INTRACTABILITY, https://www.beyondintractability.org/essay/restorative_justice (last visited Nov. 18, 2021).

important goal.¹⁶¹ Norway presents a sharp contrast to other countries such as the U.S., where strict incarceration has been reported by the U.S. Department of Justice to actually *increase* offender recidivism.¹⁶² Like many of Norway's prisons, the Halden prison seeks to prepare inmates for post-sentence life through vocational programs instead of first seeking to punish them as in the U.S.¹⁶³ This restorative justice approach has proven to be successful as only a small portion of the few citizens who are sentenced to prison in Norway reoffend.¹⁶⁴ With the goal of rehabilitation prioritized over punishment, judges in Norway can only sentence offenders to a maximum of 21 years, but if the individual is determined to not be rehabilitated, the sentence can be increased by increments of five years.¹⁶⁵ This important goal of rehabilitation over punishment is one that Venezuela should seek to accomplish as part of its needed efforts of dismantling and rebuilding its prison system.

B. The First Step to Rebuilding Venezuela's Prison System and the Crucial Role of a Stable Government

Norway's monarchy is among the top ten governments in the world measured by its success in leading its country towards prosperity by creating a safe and lawful environment.¹⁶⁶ Good governance is a benchmark for ranking nations,¹⁶⁷ and governments play a key role in defining its citizens life experiences including "protecting peace, human rights, and freedoms."¹⁶⁸ "Official corruption is very low in Norway, and independent media and civil society actors" hold the government to account.¹⁶⁹ Alternatively, in Venezuela, Maduro's declaration of himself as acting president has resulted in hundreds of detentions and even

161. Maiese, *supra* note 160.

162. Sterbenz, *supra* note 17.

163. *Id.*

164. *Id.*

165. *Id.*

166. Antonia Cirjak, *Countries With the Best Governments in 2019*, WORLD ATLAS (Dec. 31, 2019), <https://www.worldatlas.com/articles/best-governments-2019.html>.

167. Lanessa Cago, *The 25 Best Governments in the World*, WORLD ATLAS (Apr. 25, 2017), <https://www.worldatlas.com/articles/the-best-governments-in-the-world.html>.

168. Cirjak, *supra* note 166.

169. *Id.*

deaths at the hands of Venezuelan security forces.¹⁷⁰ Widespread abuse by members of the country's security forces has been published by the Human Rights Watch, which supports the conclusion that these tactics are part of a systemic practice of injustice.¹⁷¹

Reclaiming the government from President Maduro's tyranny is an important step in restructuring Venezuela's prison system to prevent further violations of prisoners' human rights, and to serve as a system of rehabilitation to help prisoners reenter society. In contrast to Norway, Venezuela has "no independent government institutions" to "act as a check on executive power," and security forces have responded to political protests with violence.¹⁷² Cases of "politically motivated prosecutions" where detainees faced abuse and torture during detention are common,¹⁷³ and over 13,000 Venezuelans have been arrested without warrants since 2014 due to their participation in anti-government activity.¹⁷⁴ There is overwhelming power in the hands of President Maduro, leading to mass detentions which cause overcrowding in Venezuela's prisons, often resulting in death.¹⁷⁵ Without government checks on Maduro's ability to detain prisoners,¹⁷⁶ the country's prison system will continue to fail, leading to continued starvation, disease, violence, and death.

Given that Venezuela's government currently operates under Maduro's tyrannical rule,¹⁷⁷ intervention from outside countries will likely be necessary to allow citizens to reclaim their rights and work towards stabilizing the country's political climate. Countries party to the Convention, to which Venezuela is also a party, can intervene to assert pressure on Maduro.¹⁷⁸ Ensuring the transition of power from Maduro to an effective leader who upholds Venezuelans' human rights must be given priority if the unjust political detentions and abuses at the hands of

170. *Venezuela: Arrests, Killings in Anti-Government Protests*, *supra* note 47.

171. *Id.*

172. *Venezuela Events of 2019*, *supra* note 13.

173. *Venezuela: Arrests, Killings in Anti-Government Protests*, *supra* note 47.

174. This is from 2014-2019 – based on 2014 reference in article and 2019 date of article's publication. *Id.*

175. *Venezuela Events of 2019*, *supra* note 13; *Venezuela: Arrests, Killings in Anti-Government Protests*, *supra* note 47.

176. *Venezuela Events of 2019*, *supra* note 13.

177. *Venezuela: Arrests, Killings in Anti-Government Protests*, *supra* note 47.

178. Organization of American States, American Convention on Human Rights, *supra* note 9, art. 5.

government authorities are to end.¹⁷⁹ It is important to recognize that removing Maduro will present immense challenges and opposition, but this remains an essential component of the plan to tear down and rebuild a prison system that promotes justice and the protection of prisoners guaranteed human rights.

Venezuela's prison system is also plagued by devastating disease, torture, and inadequate food supply, which are products of larger national issues that Maduro is failing to address, or in some cases, exacerbating.¹⁸⁰ By rejecting medical assistance from other nations, particularly when Venezuelans are in dire need of medicine, Maduro is consciously disregarding their protected human right to health under Article 83¹⁸¹ of the Venezuelan Constitution, which causes even greater harm to prisoners who depend on their families for these necessities.¹⁸² Norway's successful government serves as a strong, stable foundation for its nation to create a safe and lawful environment for its people. With the primary goal of rehabilitation, Norway has one of the lowest rates of recidivism in the world at only 20 percent, proving that a strong government is the foundation of a successful, safe, and lawful environment.¹⁸³ It is crucial that Venezuela reforms not only its prison system, but its entire government, to prioritize goals of safety, lawfulness, and rehabilitation of its prisoners, as in Norway.¹⁸⁴

CONCLUSION

Venezuela's prison system, in its current state, fails to comply with its country's Constitutional guarantees of its prisoners' protection of their physical, mental, and moral integrity, as well as the protection of their health as a fundamental social right and compliance with hygiene measures as established by law. These failures are deeply rooted in the country's systemic healthcare, political, and social inadequacies, which are often created and exacerbated by the illegitimate presidency of Maduro.¹⁸⁵

179. *Venezuela Events of 2019*, *supra* note 13.

180. *See* Berwick & Sequera, *supra* note 37.

181. CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA, *supra* note 6, art. 83.

182. *Short Update: Worsening Prison Conditions in Venezuela Due to COVID-19*, *supra* note 36.

183. Sterbenz, *supra* note 17.

184. *See* KONGERIKET NORGES GRUNNLOV [GRL], *supra* note 138.

185. *Statement From the Lima Group*, *supra* note 45.

Venezuelan prisoners live in deplorable conditions,¹⁸⁶ with punishment being evidenced as the ultimate goal of incarceration.

Norway's successful restorative justice approach¹⁸⁷ to incarceration offers a promising alternative for Venezuela to follow. Although the substantial tearing down and rebuilding of many important systemic factors is needed within Venezuela, with challenges expected to arise related to the social, political, and economic struggles plaguing the country, Venezuela must honor the protections its citizens are guaranteed under its Constitution, and under the Convention. Norway offers the optimal route to compliance and to justice by prioritizing prisoners' rehabilitation and reentry into society.

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186. See Arevalo, *supra* note 6.

187. *How Norway Turns Criminals into Good Neighbours*, *supra* note 124.

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