

Legal and Technical Feasibility Study for the implementation of temporal and permanent solutions for the issuance of Venezuelan passports

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Introduction

The following is a study on the legal and technical feasibility of creating temporary and permanent solutions to put an end to the serious problem that Venezuelans are going through, due to the fact that the competent authority responsible for the issuance of the national passports and identity cards has stopped performing its duty. This violation of constitutional guarantees and, in general, of the fundamental human rights to identity and freedom of movement must cease. We therefore present four temporary solutions for obtaining a Venezuelan national passport outside of Venezuela as well as, one permanent solution. To materialize this proposal, it is necessary to have the cooperation of the regional offices and main headquarters of the United Nations' specialized agencies, such as the International Organization for Migration and the U.N. High Commissioner for Refugees, as well as, the U.N. High Commissioner for Human Rights. One of these organizations may act as a trusted third party in the process of issuing the travel document for Venezuelan citizens inside and outside Venezuela.

* A team partner developed a conceptual-prototype for the solutions proposed herewith. For copyright issues the prototype was not included in this paper. Should there be a discussion on the proposed solutions, the author will join the discussion to introduce his conceptual prototype.

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1. Defining the problem

We did not translate this part of the document that explains what happened with Venezuelan passports. In two words, the Venezuelan regime, which is in control of Venezuelans' identification system stopped providing an efficient and accessible service to Venezuelans. We cannot renew our passports. Venezuelan migrants have lots of problem in their country of residence due to the expires passport. Should there be any interest in this subject, we will provide the English translation of this section.

2. Attempts by the interim presidency to solve the problem

Since January 23, 2019, Venezuela has had an interim presidency², which has "consular" representation in thirty-four³ of the fifty-eight⁴ countries in which it has been recognized. The interim presidency is regulated by the Statute governing the Transition to Democracy to reestablish the validity of the Constitution of the Bolivarian Republic of Venezuela decreed by the National Assembly in February 2019⁵ in application of Article 333 of the Venezuelan Constitution⁶, hereinafter referred to as "The Statute".

The Statute claims the urgent need to return to constitutional democracy and proposes to guide the country until the reestablishment of constitutional order in peace and order, laying the foundations for a stable and lasting democracy. The acts dictated by the organs of the Public Power to execute the guidelines established in this Statute are based on Article 333 of the Venezuelan

² Helena Carpio, Indira Rojas, Luisa Salomón, 23 de enero: la marcha de la juramentación de Guaido, Prodavinci, 23 de enero de 2019, <https://bit.ly/3cyYijY>. El Presidente de la Asamblea Nacional es, de conformidad con el artículo 233 de la Constitución, el legítimo Presidente encargado de la República Bolivariana de Venezuela. Los actos del Presidente encargado serán sometidos al control parlamentario de la Asamblea Nacional de conformidad con el artículo 187, numeral 3 de la Constitución. Asamblea Nacional, Estatuto que rige la Transición a la Democracia para restablecer la vigencia de la Constitución de la República Bolivariana de Venezuela, artículo 14, (5 de febrero de 2019) (Venezuela), Website Politika UCAB, <https://bit.ly/3jaxOI5>.

³ Asamblea Nacional, Centro de Comunicación Nacional, <https://presidenciave.com/embajadas-list/>.

⁴ Luis Felipe Colmenares, 58 países reconocen a Guaido como Presidente interino de Venezuela, La Prensa Diario de Lara, 2 de julio de 2020, <https://bit.ly/30cJwuo>.

⁵ Asamblea Nacional, Estatuto que rige la Transición a la Democracia para restablecer la vigencia de la Constitución de la República Bolivariana de Venezuela, artículo 14, (5 de febrero de 2019) (Venezuela), Website Politika UCAB, <https://bit.ly/3jaxOI5>.

⁶ Article 333. *Esta Constitución no perderá su vigencia si dejare de observarse por acto de fuerza o porque fuere derogada por cualquier otro medio distinto al previsto en ella. En tal eventualidad, todo ciudadano investido o ciudadana investida o no de autoridad, tendrá el deber de colaborar en el restablecimiento de su efectiva vigencia.* Constitución de la República Bolivariana de Venezuela [CRBV], Enmienda N° 1 de 1999, artículo 156(5), Gaceta Oficial de la República Bolivariana de Venezuela [GO] N° 5.908 Extr. (19 de febrero de 2009) (Venezuela) <https://tinyurl.com/y5ftdq9f>.

Constitution and are obligatory for all authorities and public officials, as well as for individuals (Art. 4 Statute); therefore, any act emanating from the Interim Presidency or the National Assembly will be recognized and will have legal effect. The Statute regulates the actions of the different branches of the Public Power during the process of democratic transition in accordance with Article 187.1 of the Venezuelan Constitution, allowing the National Assembly to initiate the process of reestablishing constitutional and democratic order (art. 6.1 Statute) and the general framework for implementing reforms aimed at rescuing popular sovereignty through free, competitive, and transparent elections, including **by requesting assistance from the international community (arts. 6.8, 16.5, 29 Statutes)**.

The National Assembly may adopt the necessary decisions for the defense of the rights of the Venezuelan State before the international community, for the purpose of promoting the protection and defense of the human rights of the Venezuelan people, all in accordance with the Treaties, Conventions and International Agreements in force (Art. 15 Statute). It is the responsibility of the National Assembly **to promote the implementation of international cooperation mechanisms** to address the humanitarian emergency and the crisis of refugees and migrants, in accordance with International Humanitarian Law and Article 23 of the Venezuelan Constitution (art. 16.4 Statutes), and **to articulate actions with the civil society to promote mechanisms of citizen participation that legitimize the process of democratic transition** and favor the cessation of the usurpation of presidential powers by Nicolás Maduro (art. 16.6 Statutes).

Thanks to the legal basis of the Statute, the President-in-charge, Juan G. Guaido, can carry out executive acts as in the following example. The President in charge of the Republic of Venezuela, by means of Decree No. 006 of May 2019⁷, hereinafter referred to as “Decree 006”, established the automatic and full extension of the validity of all passports issued to date for five (05) years as of the entry into force of the decree, without the need to comply with any additional procedure. Such term shall start to be computed as from the date of expiration of the passport. The extension of the validity will apply even to passports expired before the publication of the Decree. This does not preclude the application of international standards that may limit the maximum period of validity of passports. It should be noted that Argentina, Brazil, Canada, the Czech Republic, Colombia, Costa Rica, Ecuador, Spain, the United States, Honduras, Panama, the United Kingdom and Uruguay have recognized the validity of the aforementioned Decree. However, countries such as Chile have clearly established that they will not accept extensions or recognition of expired passports that have been issued before 2013,

⁷ Decreto N° 006 de 2019 [Presidencia Encargada de la República], artículo 4 (21 de mayo de 2019) (Venezuela) <https://tinyurl.com/y27ptylr>.

since they are not biometric passports and do not comply with the security elements required internationally⁸.

In the same Decree, the President-in-charge issued additional executive acts to protect the human right to identification of the Venezuelan diaspora such as:

- A. To grant the competence to the consular service the issuance of the consular identification, as a document of identification of the Venezuelans residing abroad that will allow them to identify themselves before the authorities of the country where they reside and that will be granted upon the mere presentation of the Venezuelan Identity Card, the Venezuelan national passport or, in its absence, a birth certificate or a witness statement (Arts. 1.a, 2 second paragraph, 3 Decree 006),
- B. To promote the right to identification of Venezuelans affected by the massive refugee and migrant crisis (Art. 1.c Decree 006),
- C. To design mechanisms to identify the diaspora (Art. 1.d Decree 006),
- D. To establish that the Venezuelan embassies shall provide consular services according with the Vienna Convention on Consular Relations and the Venezuelan national legislation⁹ (Art. 2, first paragraph).
- E. To promote the conclusion of international agreements to guarantee the free movement of Venezuelans, through the recognition of consular identification as a complementary identity document to the passport (Art. 5 Decree 006).
- F. To **celebrate international agreements applying for non-refundable funding to contract the technical cooperation required for the issuance of consular identification that complies with the international security standards contemplated in the Guide for Assessing Security in the Handling and Issuance of Travel Documents of the International Civil Aviation Organization**. The document will be signed by the Ambassador in accordance with the Organic Law on Public Administration or Ley Orgánica de Administración Pública, hereinafter referred to as LOAP¹⁰ (Art. 1, 7, 8 Decree 006). The LOAP foresees, among other things, that the organs and entities

⁸ Maria Gabriela Sarmiento, Países que aceptan los pasaportes vencidos, Sarmiento Núñez Consulting, 17 de agosto de 2020, actualizado 27 de septiembre de 2020 <https://bit.ly/33JgHGV>.

⁹ El personal del servicio exterior destinado en las misiones diplomáticas, en las oficinas consulares y en las misiones permanentes de la República, está obligado a defender los derechos e intereses de sus ciudadanos/as, dentro de sus atribuciones y de conformidad con el derecho internacional. Ley orgánica del Servicio Exterior de fecha 4 de junio de 2013, artículo 26(2), GO n°. 40.217 (30 de julio de 2013) (Venezuela).

¹⁰ El Estado creará, organizará, preservará y ejercerá el control de sus archivos y propiciará su modernización y equipamiento para que cumplan la función probatoria, supletoria, verificadora, técnica y testimonial. Decreto n° 1.424 (con Rango, Valor y Fuerza Ley) de mediante el cual se dicta la Ley Orgánica de la Administración Pública de fecha 17 de noviembre de 2014, artículo 147, Gaceta Oficial Extraordinaria n°. 6.147 de fecha 17 de noviembre de 2014.

of the Public Administration may incorporate technologies and use any electronic, computer, optical or telematic means for the fulfillment of their purposes. It should be noted that the documents reproduced by these means will have the same validity and effectiveness as the original document, provided that the requirements of the law are met and the authenticity, integrity and inalterability of the information is guaranteed (Art.152 LOAP)¹¹.

- G. To issue a personal identification document that serves as an emergency or provisional passport, as part of the protection measures that may be adopted, (Art. 11 Decree 006).
- H. To implement a database of the Venezuelan Diaspora, also in blockchains, guaranteeing the protection of personal data provided to the consulates in the framework of the application for consular identification, among others (Art. 12 Decree), as well as the temporary establishment abroad of identification and civil registry agencies of the Diaspora (Art. 13 Decree).

Both the Statute and the Decree 006, described above, provide the legal basis for the Venezuelan State at the head of the interim Presidency, with the cooperation, approval and indispensable endorsement of the Venezuelan National Assembly, to decree and execute the creation of a new Venezuelan Identification System that will allow its citizens to recover the fundamental rights to identity and freedom of movement. However, the Presidency-in-charge has encountered insurmountable obstacles, such as the lack of funding and infrastructure, its unexpected prolongation in time and the recognition of the interim Presidency by near to sixty countries out of 196. This number is to be expected, considering that, according to Freedom House, only eighty-six of the 193 U.N. member states are fully-fledged democracies¹². It would require that at least the remaining twenty-six democratic countries recognize the Interim Presidency. In addition, Decree No. 006 mentioned above has been recognized by less than fifteen countries.

Very few countries have accepted and recognized the legal effects of the automatic extension of the validity of passports for an additional period of five years from the date of expiration of the passport, stipulated in the Decree 006. Consequently, the interim presidency does not consider it viable to create at this moment a new identification system, for fear that it will not be recognized. In our opinion, it is not enough to issue a Decree, the Decree requires execution. The execution can be

¹¹ El Archivo General de la Nación podrá, de oficio o a solicitud de parte, realizar visitas de inspección a los archivos de los órganos y entes del Estado, así como a los prestadores de servicios públicos, con el fin de verificar el cumplimiento de lo dispuesto en el presente Decreto con Rango, Valor y Fuerza de Ley Orgánica y el respectivo Reglamento. LOAP, artículo 156.

¹² Freedom House, "Venezuelan Facing a Social Shock – The Country's Health and Food Crises, and Potential Responses," (March 2017), 7, 40, <https://bit.ly/334aHJv>.

materialized through the issuance of a sticker to be placed in one of the pages of the expired passport. The sticker shall naturally comply with ICAO's international security standards¹³.

A Working Paper of the Foreign Policy Commission (FPC) of the Venezuelan National Assembly (VNA) additionally recommends the VNA to **exhort the legitimate government to** exercise its executive powers and, based on the current legal framework, **retake control of the Venezuelan identification system** inside and outside the country; for which it may create a Special Commission for Identity and Free Elections to serve as a guarantor of the transparency of the process and its compliance with national legislation. According to the , the VNA and the interim Presidency could order the issuance of new passports abroad, the extension of passports that have expired or the creation of identity means that adapt to the needs of the Venezuelan Diaspora and the requirements of each hosting country while in the national territory, a mechanism for validating the identity card could be generated to connect it to biometric digital systems, increasing its security¹⁴.

The Venezuelan Constitution stipulates that every person has the right to obtain public documents that prove their biological identity (Art. 56 Venezuelan Constitution). This constitutional provision is complemented by legal provisions provided for in the Organic Law on Identification (LOI, as per the Spanish acronym) (Art. 6 LOI) and the Organic Law on the Civil Registry¹⁵. The passport is the travel document issued by the State, through which Venezuelans abroad are identified (Art. 26 LOI). Venezuelans have the right to renew the passport due to its expiration, loss or deterioration (Art. 37 LOI). According to the Law of Nationality and Citizenship, the passport is a document that proves the Venezuelan nationality¹⁶.

¹³ ICAO, Doc Series Doc 9303 Machine Readable Travel Documents, publications, <https://bit.ly/3ncXsxt> (documentos disponibles en español). Subgroup of the Implementation and Capacity Building Working Group (ICBWG), Working group of the ICAO Technical Advisory Group on the Traveller Identification Programme (TAG/TRIP), Guide for Assessing Security of Handling and Issuance of Travel Documents: Part 1- Best Practices on Secure Issuance of Travel Documents, ICAO, Version: Release 4, February 2016 <https://bit.ly/32B7OPT>. ISO/IEC JTC1 SC17 WG3/TF1 for the New Technologies Working Group (NTWG), Working group of the ICAO Technical Advisory Group on the Traveller Identification Programme (TAG/TRIP), Roadmap for Implementation of New Specifications for MRTDs – Release 1 Final 2016, <https://bit.ly/36nn8Rj>

¹⁴ La Comisión de Política Exterior de la Asamblea Nacional va más allá al recomendar que *el gobierno legítimo podría nombrar el equivalente de una Autoridad Única de Identificación y Registro Civil para la transición que adopte las funciones ejecutivas correspondientes al SAIME y trabaje en coordinación con el nuevo Consejo Nacional Electoral en la limpieza del padrón electoral*. Comisión Permanente de Política Exterior, Soberanía e Integración, Working Paper: Nueva identidad y empadronamiento de los venezolanos, Asamblea Nacional, 15 de agosto de 2020.

¹⁵ La Ley Orgánica de Registro Civil tiene por finalidad *asegurar los derechos humanos a la identidad biológica y la identificación de todas las personas*. Ley Orgánica de Registro Civil (LORC), 25 de agosto de 2009, GO N° 39.264, 15 de septiembre de 2009, en vigencia 14 de marzo de 2010, art. 2(1), <https://bit.ly/2Sqb7ns>. Consejo Nacional Electoral, Resolución N° 121220-0656, 20 de diciembre de 2012, Reglamento N° 1 de la LORC, GO N° 40'093, 8 de enero de 2013, art. 2.

¹⁶ Ley de Nacionalidad y Ciudadanía, del 1 de julio de 2004, artículo 11(4), GO N° 37.971. 01 de julio de 2004 (Venezuela). <https://www.refworld.org/pdfid/4108c5f24.pdf>.

The sources of Venezuelan and international law cited with respect to nationality and identity should be read in accordance with the respective sources on freedom of movement. The right to freedom of movement is promoted and guaranteed by a variety of international legal instruments. Among them can be cited: the Universal Declaration of Human Rights; the Convention for the Protection of Human Rights and Fundamental Freedoms; the International Covenant on Civil and Political Rights; and the American Convention on Human Rights. In addition, the human right to freedom of movement in Venezuela has constitutional rank (Art. 50 Venezuelan Constitution).

3. Why should the international community support the implementation of temporal and permanent solutions to the Venezuelan identification problem?

The lack of a valid passport abroad not only undermines the rights to identity and freedom of movement, but also hinders and sometimes prevents the free exercise of the right to work, to a livelihood, to health, to education, to the free development of personality, to family reunification, to enjoy a dignified life and to enjoy a good quality of life. It should be recalled that these fundamental rights are guaranteed and protected by the Venezuelan Constitution and international legal instruments, many of which have been ratified by Venezuela.

In the interest of clarifying any doubts that may exist as to whether or not Venezuelan migrants deserve to be granted refugee status or subsidiary international protection, we have chosen to reproduce here the definitions of the different types of refugee status contained in the Glossary of the International Organization for Migration (IOM), complemented by two Guidance Notes of the United Nations High Commissioner for Refugees (UNHCR) on the particular situation of Venezuelan migrants, and the Cartagena Declaration¹⁷. This clarification is made because we will later urge that the countries of the region and the sub-region play a leading role in the restitution of the rights to identity and free movement of Venezuelans. Three (03) types of refugees can be identified on the IOM Glossary¹⁸.

- A. A mandated refugee: is one who meets the characteristics required to receive the protection provided by UNHCR's Statute and subsequent General Assembly resolutions. In this case, it is irrelevant whether the host country has ratified the 1951 Geneva Convention, the 1967

¹⁷ Instrumentos Regionales sobre Refugiados y temas relacionados, Declaración de Cartagena sobre Refugiados [Declaración de Cartagena de 1984], adoptada por el "Coloquio Sobre la Protección Internacional de los Refugiados en América Central, México y Panamá: Problemas Jurídicos y Humanitarios," (22 de noviembre de 1984), <https://www.acnur.org/5b076ef14.pdf>.

¹⁸ Alice Sironi, Céline Bauloz & Milen Emmanuel (Eds.), "Glossary on Migration," [IOM Glossary], International Organization for Migration [IOM] UN Migration, International Migration Law, N° 34, 170 (2019) <https://tinyurl.com/y94hzv6b>.

Protocol relating to the Status of Refugees or the New York Protocol¹⁹, or any regional instrument such as the Cartagena Declaration on Refugees (Case 1).

In March 2018, UNHCR issued a Guidance Note on the exodus of Venezuelans. It stipulates that international protection considerations have become evident to a very significant proportion of Venezuelans, so that Venezuelans outside their country of origin should be protected under the mandate of the UNHCR²⁰. The High Commissioner expressed that international protection represents a humanitarian, not a political, act and that Venezuelans must be guaranteed non-return and minimum fundamental rights, such as freedom of movement. However, the UNHCR published a Guidance Note in May 2019²¹ that expressly replaced the 2018 Guidance Note, suggesting other solutions that we will see later.

- B. *Prima facie* refugee: In certain cases, a group of persons may be declared to be refugees due to circumstances in the country of origin. In the absence of evidence to the contrary, each individual in the group may be declared by a State or the UNHCR to be a *prima facie* refugee on the basis of objective criteria related to the circumstances in his or her country of origin that justify the presumption that he or she meets the criteria of the refugee definition, unless there is evidence to the contrary²² (Case 2).
- C. A refugee under the 1951 Geneva Convention: is a person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to fear of reprisals, is unwilling to return to it²³ (Case 3).

As we have mentioned above, the UNHCR declared Venezuelans to be mandated refugees (case 1) in March 2018. Subsequently, in May 2019, the UNHCR suggested that States declare Venezuelans as *prima facie* refugees (Case 2) and/or as refugees under the Vienna Convention of 1951 (Case 3) for those individuals who met the necessary criteria. In this regard, the UNHCR invited States receiving Venezuelans to provide access to their territory, ensure access to asylum procedures or group-based protection arrangements - *prima facie* refugees - and to guarantee their free movement.

¹⁹ Naciones Unidas, Protocolo sobre el Estatuto de los Refugiados [Protocolo de Nueva York de 1967], S.T.N.U., Vol. 606, p. 267 (31 de enero de 1967), <https://www.acnur.org/5b076dcd4.pdf>.

²⁰ United Nations High Commissioner For Refugees [UNHCR], "Guidance Note on the Outflow of Venezuelans," 1 (March 2018), <https://tinyurl.com/y2zj95rx>.

²¹ UNHCR, "Guidance Note on International Protection Considerations for Venezuelans," Update I, 1 (May 2019), <https://tinyurl.com/y2xcxh5c>.

²² OIM Glossary, 171.

²³ OIM Glossary, 171-172.

The Guidance Note reproduced three (03) of the four (04) minimum standards referred to in 2018, which should be guaranteed. The excluded guarantee is the guarantee of non-return. According to this Guidance Note, States should ensure that Venezuelans will not be deported, expelled or otherwise forced to return to Venezuela²⁴.

UNHCR's report on Global Trends: Forced Displacement in 2019 shows that Venezuelans were the second largest number of displaced nationals in 2019, after Syrians²⁵. In total, according to IOM figures, there were 3.7 million displaced Venezuelans, 1.8 millions of whom were taken in by Colombia, 50% of whom were in an irregular situation. In 2019, the inhabitants of highly conflictive countries such as the Democratic Republic of the Congo, Burkina Faso, Syria, Venezuela and Yemen had to seek refuge and security within their countries or flee abroad in search of protection. Of these, 430,000 have applied for asylum, for a total of 900,000 asylum seekers to date²⁶. Venezuela has become the largest country of origin of new asylum requests²⁷.

This report incessantly designates Venezuelans as displaced persons. According to the definition in the IOM Glossary on Migration, externally displaced persons are persons who have had to leave their country due to external persecution, generalized violence, massive human rights violations, armed conflict or other situations of this nature. These individuals often flee en masse. They are also sometimes referred to as "*de facto* refugees," who are defined by the Glossary as persons not recognized as refugees as defined by the 1951 Convention relating to the Status of Refugees and the 1967 Protocol and who are unable or unwilling, for valid reasons, to return to the country of their nationality, or to the country of their habitual residence when they have no nationality²⁸.

Without elaborating further on whether Venezuelans who have been fleeing their home country for six (06) years²⁹ should be treated as refugees, it is worth recalling that the definition of a refugee has evolved with the contemporary world and, in our case, regional history. For example, the Cartagena Declaration concludes that, taking into account the characteristics of the situation in the region, the concept of refugee should be extended; therefore, in addition to considering as refugees those who meet the characteristics stipulated in the 1951 Geneva Convention and the 1967 New York

²⁴ UNHCR, Guidance Note on the International Protection, 2019.

²⁵ Alto Comisionado de las Naciones Unidas para los Refugiados (Acnur), Tendencias Globales: Desplazamientos forzados en 2019, Acnur, 2020, p. 3, pp. 84 <https://bit.ly/32uSIRe>.

²⁶ Acnur, 2020, p. 8, 10, 23.

²⁷ Acnur, 2020, p. 41.

²⁸ OIM, Glosario de Migración, OIM Derecho Internacional sobre Migración, N°. 7, Ginebra Suiza, 2006, p. 19, 61 https://publications.iom.int/system/files/pdf/iml_7_sp.pdf.

²⁹ Desde 2014, al menos tres millones de ciudadanos venezolanos han abandonado su país. Staatssekretariat für Migration [SEM], «Notiz Venezuela, Venezolanische Migration in Lateinamerika: Aktuelle Zahlen und migrationspolitische Lösungsansätze,» (SEM Sektion Analysen, Bern-Wabern: 27 April 2020) 26, 3 <https://preview.tinyurl.com/y4j2cabm>.

Protocol, those who have fled their countries because their life, safety, or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive human rights violations, or other circumstances that have seriously disrupted public order will also be considered refugees³⁰.

In the view of the UNHCR (2019), this definition with its broad criteria on who is a refugee should be applied by analogy to the case of Venezuela and the South American region, since most Venezuelan nationals who habitually reside in their native country require international protection on the basis of events³¹ that seriously disturb public order in the Caribbean country and threaten the life, security and/or freedom of its inhabitants³². According to the United Nations Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela a, presented to the United Nations Human Rights Council in September 2020, there is no doubt about the veracity of the very serious criminal acts that have irremediably disturbed public order in that country between 2014 and 2020 and which, as quoted below:

160. The Mission has reasonable grounds to believe that most of the violations and crimes documented in this report were committed as part of a widespread and systematic attack directed against a civilian population, with knowledge of the attack, pursuant to or in furtherance of two distinct State policies: Firstly, there was a policy to silence, discourage and quash opposition to the Government of President Maduro, including by targeting individuals who, through various means, demonstrated their disagreement with the Government, or were perceived as being against the Government, as well as their relatives and friends who were targeted for being associated with them. Secondly, there was a policy to combat crime, including by eliminating individuals perceived as “criminals” through extrajudicial execution. 161. The Mission has reasonable grounds to believe that the following crimes against humanity were committed in Venezuela in the period under review: murder, imprisonment and other severe deprivations of physical liberty, torture, rape and other forms of sexual violence, enforced disappearance of persons in the Barlovento case, and other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health. Some of the same conduct may also constitute the crime against humanity of persecution, as defined by the Rome Statute³³.

³⁰ Declaración de Cartagena de 1984, Disposición Tercera. Esta Declaración de aplicación facultativa ha sido adoptada por las legislaciones nacionales de Bolivia, Brasil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, México, Nicaragua, Paraguay, Perú y Uruguay. UNHCR, “Guidance Note on International Protection,” 1.

³¹ Parlement Européen 2019-2024, « Résolution sur la situation humanitaire au Venezuela et la crise des migrants et des réfugiés (2019/2952(RSP)), » P9_TA-PROV(2020)0193 (10 juillet 2020), <https://tinyurl.com/y4pr2lyx>.

³² ACNUR pidió a los Estados que garanticen que los nacionales venezolanos que residían habitualmente en Venezuela no serán deportados, expulsados ni obligados de ninguna otra manera a regresar a Venezuela de conformidad con el derecho internacional de los refugiados y las normas de derechos humanos. Esta garantía tendría que estar asegurada en el documento oficial de residencia expedido a los venezolanos o por otros medios eficaces. UNHCR, “Guidance Note on International Protection,” 1, 3.

³³ Naciones Unidas, Consejo de Derechos Humanos, Informe de la misión internacional independiente de determinación de los hechos sobre la República Bolivariana de Venezuela, A/HRC/45/33, 2, 20 (15 de septiembre de 2020), <https://bit.ly/3lyuwzN>. . .

John Barsa, USAID Acting Administrator stated that, we quote: *the United Nations Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela provided further evidence of what the world has long recognized: the illegitimate Maduro regime will stop at nothing as it desperately clings to power. As the world has seen time and time again, regime thugs routinely harass, exile, unjustly imprison, torture, and even kill those who oppose the kleptocracy in Caracas*³⁴.

Denying international protection to those who need it is like committing the crime of omission of the duty of relief provided for in the national legislation of Latin American countries. When the governments of Latin American countries (and all others) deny international protection to Venezuelans and other inhabitants of Venezuela under international public law, despite being fully aware of the atrocities committed in that country with the support and/or benevolence of the State, it is equivalent to committing the crime of omission of the duty to assist. History will recall the behavior of Venezuela's neighbors towards Venezuelans, towards democracy and the social, political and economic stability of the sub-region; as well as the behavior of the rest of the Pan American States.

4. Proposal to guarantee the Fundamental Rights of Venezuelans Through International Protection and the participation of international and regional organizations and States

The Venezuelan authorities competent to issue the passport refrain from doing so for an unknown but predictable reason, which is not due to or under the control of the applicant of the passport. For approximately eight (08) years, this behavior has been violating in a repeated and continuous manner Venezuelan constitutional and legal norms, as well as international legal instruments, ratified or not by the Venezuelan government. This situation must cease. In order for there to be a permanent solution to the problem of the violation of the rights to identification and freedom of movement of Venezuelan nationals, a political change is necessary. A radical change must take place in the management of the national public administration and for this, a change of government is essential.

However, while this is happening, we must propose temporary solutions that will mitigate the damage caused to Venezuelans and to the countries that receive and host Venezuelans. It is not an easy task to "manage" citizens who have no way to properly identify themselves with valid identification documents. It is for this reason that before moving on to the main proposal, we offer temporary solutions that require the support of neighboring South American countries and international funding. The temporal solutions proposed are described in the following options:

³⁴ John Barsa, REPORT BY THE UNITED NATIONS INDEPENDENT INTERNATIONAL FACT-FINDING MISSION ON VENEZUELA THAT THE MADURO REGIME HAS COMMITTED ACTS THAT "AMOUNT TO CRIMES AGAINST HUMANITY", Statement, USAID, (September 21, 2020), <https://bit.ly/33URV6A>.

A. MERCOSUR. INTERNATIONAL PROTECTION FOR ALL VENEZUELANES: Venezuela entered as a full member of the Southern Common Market (Mercosur) in 2012. It is known that Venezuela is part of Mercosur, but the country was suspended from Mercosur in August 2017 until the full restoration of democratic order in the Bolivarian Republic of Venezuela³⁵ is verified, in accordance with Article 7 of the Ushuaia Protocol³⁶. Regardless of the suspension, the Member countries of Mercosur resolved that the decision on the suspension should affect Venezuelan citizens as little as possible and for this reason, in matters of migration, Venezuelans are still recognized as having certain migration benefits and freedom of movement within the territory of the Common Market. The currently issued Venezuelan passports are Mercosur passports. The Venezuelan population does not exceed thirty million inhabitants. Migrants will not exceed 6.5 million by the end of 2020 and 2.5 million of these have expired or expiring passports. Based on this, it is suggested that the interim Presidency or the UNHCR-IOM agree with Mercosur and its Member countries, that each of them takes care of the issuance of some three or four million Venezuelan passports, distributed among these countries according to the Venezuelan identity card number and country of residence. The countries could participate in this subsidiary international protection and humanitarian duty, from which mainly Venezuelan migrants should benefit, but also Venezuelans within Venezuela. The process could be initiated through a mobile application. There could be one focal point per country. The applicant identifies himself with his identity card, passport, birth certificate, official naturalization gazette and/or any other documentary evidence mentioned in Article 11 of the Law on Nationality and Venezuelan Citizenship. In order to capture digitized fingerprints and a pass photograph, an intelligent device could be used to access the application³⁷ and the application could be based on a blockchain infrastructure. Access to the application could take place through double authentication and the like³⁸. The applicant should cover the necessary fees for the issuance and delivery of the passport by express mail

³⁵ The Bolivarian Republic of Venezuela is suspended in all the rights and obligations inherent to its status as a State Party of MERCOSUR, in accordance with the provisions of the second paragraph of the Article 5 of the Protocol of Ushuaia, Mercosur Countries, Mercosur, <https://bit.ly/37OZwax>.

³⁶ Sistema de Información sobre Comercio Exterior (SICE), Protocolo de Ushuaia sobre Compromiso Democrático en el Mercosur, la República de Bolivia y la República de Chile, OEA, <https://bit.ly/37OZW09>.

³⁷ Haciendo uso del Automated Fingerprint Identification System (AFIS), combined or not-combined with Face and Iris Recognition (ABIS).

³⁸ Haciendo uso de un certificado digital expedido por una Autoridad de Certificación acreditada con la que se haya celebrado un contrato para ofrecer seguridad PKI a las transacciones electrónicas.

to his address or by pick-up. This could be done in this way if an international identification based on a digital device is not feasible.

- B. MERCOSUR. INTERNATIONAL PROTECTION FOR VENEZUELAN RESIDENTS: If option 1. is not feasible, it is suggested that each of the Mercosur member and associate countries issue the Mercosur passport only to Venezuelans residing in their respective territories. Argentina could issue Mercosur passports to Venezuelans residing in that country, Brazil could issue passports to Venezuelans residing in that country, as well as Uruguay and Paraguay could issue passports to Venezuelans residing in their respective territories. Most Venezuelan regular and irregular migrants are in Colombia. Given that Colombia is a Mercosur associated country, the feasibility of that country issuing a Mercosur passport to Venezuelans in its territory could be studied, based on the same conditions described for Mercosur member countries in Option A.
- C. UNHCR-IOM. INTERNATIONAL PROTECTION: In case options A and B are not feasible, the UNHCR-IOM duo could, through their regional offices, issue a travel document within the framework of international subsidiary protection to Venezuelan residents, asylum seekers and refugees in the Pan-American territory to fill the gap left by the Venezuelan-Saime with its inaction or deliberate boycott against the Venezuelan citizen in need of a passport, which is the only document that identifies him/her abroad.
- D. AGREEMENT BETWEEN THE INTERIM PRESIDENCY AND AN ALLIED STATE: should options A, B, and C would not be feasible, we propose the following option D. The Interim Presidency may enter into bilateral agreements, separately, with one or more allied countries that are States Parties to the Vienna Convention on Consular Relations (Vienna Convention) so that the Consulate of the allied country may take care of the processing and issuance of the Venezuelan passport or extension of passports of Venezuelans residing in the foreign country where the Consulate of the allied country is located, in accordance with the provisions of Article 7 of the Vienna Convention. This would work for Venezuelans residing in the country where the Consulate is located³⁹.

In the temporary solution, it is proposed that the member and associate countries of the Common Market or the UNHCR-IOM duo, in their regional headquarters, issue the identification of foreign migrant citizens who are nationals of a suspended Mercosur member country. The

³⁹ Artículo 7. Ejercicio de funciones consulares en terceros estados. El Estado que envía podrá, después de notificarlo a los Estados interesados y salvo que uno de estos se oponga expresamente a ello, encargar a una oficina consular establecida en un Estado, que asuma el ejercicio de funciones consulares en otros Estados. Convención de Viena para las relaciones consulares, 24 de abril de 1963. En vigor: 19 de marzo de 1967.

implementation of any of the four options could take place within the framework of international protection and making use of technologies such as blockchain, artificial intelligence, public key infrastructure (encryption technology), facial recognition, digitalization and fingerprint recognition, double-authentication (confirmation or receipt of code via email or phone number), physical location, DNA, among others⁴⁰.

The identity and identification of Venezuelans should not become a tool of political manipulation of the government in charge, to blackmail, boycott and deliberately cause damage to the Venezuelan population inside and outside Venezuela⁴¹. The Venezuelan identity should not be in the hands of a political ideology and much less in the hands of the Cuban intelligence with destabilizing purposes in the Latin American region⁴². When the management of a State is controlled by subjects who are not attached to democratic values, who lack morality and ethics, to the point of strongly disturbing public order and the rule of law, and destabilizing democratic institutions, the rule of law⁴³, and paralyzing public administration services⁴⁴, it is time to think of non-state-controlled alternatives. There is an urgent need to empower people by giving them control over their own identity, the

⁴⁰ Aunque en Latinoamérica y, en particular, en Venezuela, haya una penetración del teléfono inteligente en casi el 50% de la población, es pertinente acotar que para ser titular de una identidad digital no se requiere necesariamente tener un Smartphone. “...self-sovereignty must also be smartphone resistant, so that identity and capital can be securely controlled...SMS or biomarker-enabled (face, fingerprint) transactions on the blockchain signed by SHA256 hashed pass codes (a potential combination of ID #, phone #, name, and secret pin) or perceptual image hashes could help introduce the rest of the world to the liberty of immutable, digital identity...” Robert Greenfield IV, “Blockchain Identities for Lost Citizens: Developing secure, self-sovereign identities for the undocumented,” 19 January 2018, <https://bit.ly/2HBf1kj>.

⁴¹ A los presos políticos y personas que ejercen cargos públicos en la Asamblea Nacional, Presidencia interina o son figuras políticas opositoras les ha sido sustraído o invalidado el pasaporte. Foro Penal Venezolano, “Reporte sobre la represión del Estado en Venezuela,” (August, 2017), 1–10.

⁴² Adriana Rivera, “Más de un millardo de dólares en planes de identidad con Cuba,” Website Transparencia internacional, <https://bit.ly/2RV6m1C>. “...el gobierno de Cuba, a través de la UCI –y específicamente por medio de su empresa comercializadora de soluciones informáticas, ALBET, tomó control total del sistema de identificación venezolano. ALBET logró capturar la data de la cedula nacional y generó para el gobierno de Chávez los nuevos pasaportes electrónicos. Su rol fue integrar el software, administrar la data y servir de intermediario con la transnacional Gemalto, la cual proveería el hardware de impresión de pasaportes y cédulas...” Comisión Permanente de Política Exterior, Soberanía e Integración, Working Paper, 2020.

⁴³ Material sobre la necesidad de recobrar el estado de derecho en Venezuela: “EU institutions have consistently communicated concerns over the deterioration of the human rights and rule of law situation in Venezuela.” Par Engstrom & Giulia Bonacquisti, “Rule of law and human rights in Cuba and Venezuela and EU engagement,” European Parliament’s Subcommittee on Human Rights (DROI) (26 November 2018) 54, doi:10.2861/488910; “Calls on the EU and other international actors to mobilise a response from the international community that contributes to the urgent restoration of democracy and the rule of law in Venezuela.” European Parliament 2019-2024, “Humanitarian situation in Venezuela and migration and refugee crisis: European Parliament Resolution of 10 July 2020 on the humanitarian situation in Venezuela and the migration and refugees crisis (2019/2952(RSP)),” P9_TA-PROV(2020)0193 (10 July 2020), § 10.

⁴⁴ Artículos sobre el estado fallido venezolano: Moisés Naím and Francisco Toro, “Venezuela’s Problem Isn’t Socialism Maduro’s Mess Has Little to Do With Ideology,” Foreign Affairs, January 27, 2020, <https://fam.ag/3cbd1QK>; Kenneth Rapoza, “Meanwhile, In The Failed State Of Venezuela, Another ‘Coup,’” Forbes, Jan 7, 2020, <https://bit.ly/3iJYUFR>; J.J. Messner (Ed.), Fragile States Index, Annual Report 2020, Fund For Peace, Washington 2020, 22 <https://bit.ly/3clqMln>.

sovereignty of their identity⁴⁵ so that, among other things, they are able to protect themselves from future aggressions that may be perpetrated by the political party or group that will govern in the future.

The current oppressive government will not provide a permanent solution to the problem of identification of the Venezuelan. It should come from the people, from Venezuelans⁴⁶, with the support of the international community, including regional and international organizations. National and international security and defense norms establish that it is the responsibility of the State to identify its nationals. All travel documents are issued by a State. The alien travel document is issued by the country of residence of the applicant.

The power of the only state in Venezuela, in particular, the only legitimate organ of the Venezuelan state, is the National Assembly of Venezuela (VNA) and the Interim Presidency. In accordance with the Statute of the VNA mentioned above and Decree No. 006 of the internal Presidency, it is incumbent upon them to create a new post-COVID-19 XXI century Venezuelan Identification System. However, if the Interim Presidency does not feel that it will obtain the necessary support or recognition to enforce the legal effects of Venezuelan identity documents issued through the use of the new Venezuelan identity system managed by a trusted third party and auditable by the Interim Presidency, the need to propose alternative solutions for the printing of a passport that comply with all the internationally recognized security elements and guidelines is confirmed.

In case the previous options are not feasible, the Venezuelan Identification System should be characterized as autonomous and independent from the Venezuelan government, the Executive Branch and all other branches of the government⁴⁷. In Venezuela we are facing a failed state or a non-state, a state that is not governing, a state that is non-existent, that is not present, that does not interact with the citizen and that does not offer public administration services to the Venezuelan citizen. In turn, the "Saime" identification system is under the control of highly dangerous subjects, which has been largely demonstrated in reports cited in this proposal. Although not controlled by the

⁴⁵ Digital identity solutions can put the user in charge of managing their own information. Aiden Slavin, "Digital Identity: A Solution to Kenya's ID Challenge?," Website Engineering for Change, 7 April 2020, <https://bit.ly/33YpfKa>.

⁴⁶ Esta propuesta es cónsona con lo estipulado en la ley venezolana. Los órganos y entes de la Administración Pública promoverán la participación ciudadana en la gestión pública. Las personas podrán, directamente o a través de las comunidades organizadas, presentar propuestas y formular opiniones sobre la gestión de los órganos y entes de la Administración Pública, así como participar en la elaboración de los instrumentos de contenido normativo (Artículo 139 del Decreto n° 1.424 (rango, valor y fuerza de ley) mediante el cual se dicta la Ley Orgánica de la Administración Pública, 17 de noviembre de 2014, GO Extr. N° 6.147, 17 de noviembre de 2014 (Venezuela).

⁴⁷ En estados como el venezolano, donde la separación de los poderes públicos es inexistente, no debería confiarse el sistema de identificación a ninguno de estos. Benedicte Bull & Antulio Rosales, "The crisis in Venezuela: Drivers, transitions, and pathways," *European Review of Latin American and Caribbean Studies*, No. 109 (2020): January-June 1-20, 4-5.

government, the Identification System could and should be audited by the government, and third trusted parties.

Based on the evaluation of the "Rule of Law Index 2020", Venezuela had an overall score of 0.27 over 1 based on the evaluation of factors such as limits to government power, absence of corruption, open government, fundamental rights, order and security, regulatory compliance, civil justice and criminal justice⁴⁸. According to the 2019 data, Somalia, South Sudan, North Korea, Yemen, and Venezuela presented the highest risk of bribe demands⁴⁹. For the same year, Venezuela was ranked 173 out of 180 (the worst record) of the most corrupt countries in the "Corruption Perception Index"⁵⁰. In its "Fragile States Index" for 2020, Fund For Peace (FFP) affirms that the countries that have worsened the most in the last decade, in the long term, are Libya, Syria, Mali, Yemen and Venezuela, which have continued to operate in the midst of various levels of prolonged conflict and instability. In addition, there is much political instability and questionable leadership in Bolivia, Brazil, and Venezuela. **The FFP report asserts that the Venezuelan state has collapsed and that this has allowed the subsequent emergence of ungoverned spaces to organize outside of the control of state authority**⁵¹.

History is cyclical, that is why the future Venezuelan Identification System should be decentralized, autonomous and independent of the "government" that exercises the mandate in the Venezuelan State. Future generations should not experience again what the Venezuelan predecessor generations have suffered because of a government that since the beginning of the 21st century appropriated the democratic institutions in the country and decided to implement a revolution that only brought regression, large-scale corruption and destruction⁵².

In authoritarian countries, from birth certificates to migration control, official documents are an instrument of control. In Nation-states that are geopolitically aligned against foreign aid to their citizens, charitable transactions such as wire transfers and remittances can easily be blocked, withheld

⁴⁸ Los puntajes van de 0 a 1, donde 1 indica la mayor adherencia al Estado de Derecho. "Índice de Estado de Derecho 2020," World Justice Project, <https://bit.ly/3j9DVMT>.

⁴⁹ "Trace Bribery Risk Matrix," Trace International, <https://bit.ly/3kXvTHd>.

⁵⁰ "Corruption Perception Index," *Transparency International*, <https://bit.ly/338O1YT>. Véase también: "POLICE CORRUPTION IS BECOMING A PANDEMIC TOO: During COVID-19, police collect bribes and turn toward brutality and abuse," *Transparency International*, 23 September 2020, <https://bit.ly/3mZhr3h>.

⁵¹ J.J. Messner (Ed.), *Fragile States Index, Annual Report 2020*, Fund For Peace, Washington 2020, 10, 22 <https://bit.ly/3clqMln>.

⁵² Se sugiere leer: Allan Brewer-Carías, "Transition from Democracy to Tyranny through the Fraudulent Use of Democratic Institutions: The Case of Venezuela." Conference on the "Transition to Democracy," European Public Law Organization, Municipality of Fyli, Athens, September 11, 2017, 4–5; Allan R. Brewer-Carías, *Dismantling Democracy in Venezuela: The Chávez Authoritarian Experiment* (Cambridge: Cambridge University Press, 2010), 129; Mario J. García-Serra, "The 'Enabling Law': The Demise of the Separation of Powers in Hugo Chavez's Venezuela," *The University of Miami Inter-American Law Review*, 32, no. 2 (January 7, 2001): 265–93; Gabriel Negretto et al., "Liberalism and Emergency Powers in Latin America: Reflection on Carl Schmitt and the Theory of Constitutional Dictatorship," *Cardozo Law Review* 21 (1999–2000): 1800, 1797–1823.

*or confiscated, without ever achieving the intended goal of relieving the recipient*⁵³. *The very existence of authoritarian states in the modern era shows that technology can be as easily exploited as a tool of absolute control and can also provide unlimited freedom*⁵⁴.

Joseph Lubin, Chief Operating Officer of Ethereum Switzerland and founder of ConsenSys states that when people are in control of their own identity, they will be less subject to the arbitrariness of their governments and to adverse situations such as natural disasters and wars. If a person is expelled from their country, but already has a self-sovereign identity, they will be able to rebuild their life⁵⁵.

Consequently, we suggest to structure a new Venezuelan identification system - based on open source blockchain technology⁵⁶ or any other that surpasses it in security - for the issuance of decentralized digital travel documents, valid for travelling outside Venezuela, which will be endorsed by a trusted third party⁵⁷, with the joint support of the United Nations High Commissioner for Refugees (UNHCR) and the IOM. Aware of the problem of Venezuelans who are unable to obtain passports and having identified the characteristics of a failed or even non-existent state⁵⁸ in the Venezuelan State, the UNHCR and/or the IOM, as the appropriate agencies for this purpose, could support the new identification system and become the third trusted party. The legitimate government should be granted the possibility of auditing such a system, but the administration and service should be provided independently from the government. The idea was proposed by Save My Identity⁵⁹ at a session of the Commission on Foreign Policy, Sovereignty and Integrity of the Venezuelan National Assembly on July 29, 2020.

To this end, the Venezuelan National Assembly did foresee in the February 2019's Statute that *the interim government of national unity will process the international financial cooperation of multilateral organizations and countries of the free world in order to initiate the process of economic*

⁵³ Robert Greenfield, "ConsenSys Blockchain for Social Impact," UN Ideas Unite, 01/10/2018, <https://bit.ly/3i76F7M>.

⁵⁴ Robert Greenfield IV, (19 January 2018).

⁵⁵ Aaron Stanley, "US State Department Seeks Blockchain Boost Amid \$10 Billion Reboot," Coindesk, Oct 12, 2017, <https://bit.ly/3cC3kMK>.

⁵⁶ Los sistemas de información interoperables y servicios de información deberán ser desarrollados bajo estándares abiertos y software libre (Artículo 35). Decreto N° 9.051 mediante el cual se dicta el Decreto con Rango, Valor y Fuerza de Ley sobre Acceso e Intercambio Electrónico de Datos, Información y Documentos entre los Órganos y Entes del Estado de fecha 15 de junio de 2012 publicado en Gaceta Oficial N° 39.945 de fecha 15 de junio de 2012. En vigor: 14 de junio de 2014, (Venezuela).

⁵⁷ ACNUR y/o OIM podrían jugar un rol imprescindible, como terceros de confianza, en el nuevo sistema de identificación.

⁵⁸ Según el Índice de Estados Frágiles, Venezuela está en Estado de Alerta con un índice de 91.2. J.J. Messner (Ed.), 2020, 4.

⁵⁹ Sociedad de hecho formada el 26 de junio de 2020 por ocho (08) venezolanos domiciliados en ocho (08) países en Europa y Latinoamérica. La sociedad de hecho será prontamente registrada como organización no gubernamental en Ginebra, Suiza. www.savemyidentity.org.

transition and to continue the reversion of the humanitarian emergency. It will also request the permanent presence of international organizations specialized in the guarantee and defense of human rights in order to accompany the process of democratic transition and inform the international community of the situation of such rights in Venezuela (Article 28 Statute).

The aim is to benefit from an authentic, integral, validated and non-repudiation identification system. The idea is inspired, among others, by European Union projects⁶⁰ as well as national initiatives such as the Swiss one. In the opinion of the Swiss Federal Council, the executive body of the Switzerland, the Swiss legal framework requires specific adaptations⁶¹ in certain areas of law in order to increase legal certainty, eliminate obstacles to blockchain-based applications and electronic registration technology (DRT)⁶² and limit new risks⁶³. Bahrain adopted the Legislative Decree No. 54/2018 which provides a legal framework for the use of new technologies such as blockchain for government services⁶⁴. The idea and proposal are not alien to the programs and projects implemented by specialized agencies of the United Nations. Some specialized agencies of the United Nations are even using emerging technologies to address or cover more urgent priority needs in the Middle East, such as the use of blockchain for the distribution of humanitarian assistance⁶⁵.

⁶⁰ Tom Lyons, Ludovic Courcelas, Ken Timsit, "Blockchain and Digital Identity," The European Union Blockchain, Observatory and Forum, May 2019, <https://bit.ly/2FP9NYi>; European Commission, "Horizon 2020. Decentralized Citizens Owned Data Ecosystem," Servicio de Información Comunitario sobre Investigación y Desarrollo [CORDIS] resultados de la investigación de la UE, <https://cordis.europa.eu/project/id/732546/es>.

⁶¹ National Assembly's Special Committee on the 4th Industrial Revolution in the Republic of Korea is focusing on blockchain, AI and big data. The Swiss Federal Council recently published a draft law on blockchain and distributed ledger technology. United Nations, "E-Government Survey 2020: Digital Government in the Decade of Action for Sustainable Development," Department of Economic and Social Affairs, New York, 2020, 160 <https://bit.ly/30ctil8>.

⁶² La tecnología de registro distribuido (TRD) o Distributed Ledger Technology (DLT) permite la gestión común de datos y, en particular, la contabilidad común con los participantes que no se conocen ni confían entre sí. Se trata esencialmente de sistemas comunes de gestión de datos basados en registros distribuidos. La cadena de bloques o blockchain es una de las posibles formas de almacenamiento de datos en ese sistema. El TRD permite la transferencia electrónica directa de valor entre los participantes de la red sin necesidad de una autoridad central de gestión de cuentas. Federal Council, "Federal Council wants to further improve framework conditions for DLT/blockchain," Federal Department of Finances, Bern, 27.11.2019, <https://bit.ly/3ichYLD>.

⁶³ Département fédéral de finances, Consultation relative à la loi fédérale sur l'adaptation du droit fédéral aux développements de la technologie des registres électroniques distribués. Rapport sur les résultats, 29 novembre 2019 <https://bit.ly/3cHcfwn> y Conseil fédéral, Bases juridiques pour la distributed ledger technology et la blockchain en Suisse, État des lieux avec un accent sur le secteur financier, *Rapport*, Berne, 14.12.2018 <https://bit.ly/36a5To7>.

⁶⁴ *Recently, the United Arab Emirates developed the UAE Strategy for Artificial Intelligence and Emirates Blockchain Strategy 2021. The objective of the blockchain strategy is to transfer 50 per cent of government transactions to blockchain by 2021, while the AI strategy focuses on improving government activities in specific sectors, including technology, transport, health, education, water, renewable energy and environment. Saudi Arabia has an agreement with IBM to implement blockchain applications for government and commercial services. In 2018, Bahrain implemented Legislative Decree No. 54/2018 for the Issuance of Letters and Electronic Transactions, which provides a legal framework for the use of new technologies such as blockchain for government services.* United Nations, "E-Government Survey 2020, 75, <https://bit.ly/30ctil8>.

⁶⁵ A number of United Nations entities are utilizing emerging technologies to address some of the more urgent needs in the region; for example, blockchain is being used in the distribution of humanitarian assistance, and

According to figures handled by the United Nations, more than a billion people do not have legal identification. For now, Venezuelan migrants are six million people who will potentially be left without identity, while within Venezuela, another twenty-four million would be left without identity. As we have stated before, not having an identity restricts access to services and opportunities, as well as the exercise of fundamental rights. According to the United Nations Office of Information and Communication Technology (OICT)⁶⁶, the identity card allows for identification, which in turn offers access to development.

Providing every person with an identity is a goal (16.9) under the Sustainable Development Goals (SDA) of the U.N. Agenda 2030. According to the OICT document, a digital identity based on blockchain is a more secure solution against identity theft and data privacy. For this reason, ID2020 is working to offer universal digital identification to every person on the planet⁶⁷, although there are local initiatives that are easier to implement⁶⁸. Possession of basic documentation to verify one's identity is critical to survival and security, as it is essential for obtaining basic humanitarian assistance and reaching safe areas⁶⁹. The blockchain can provide accessible and verifiable identification in humanitarian and disaster crises.

A recent project by Microsoft, Blockstack Labs and ConsenSys⁷⁰ is working on an "open source, self-sovereign, blockchain-based identification system"⁷¹. With this, it is possible for a person to prove their existence and identity through a distributed public ledger, similar to an international notary

new technologies for online education are helping to build the needed skills in refugee camps in Jordan. United Nations, "E-Government Survey 2020, 75, <https://bit.ly/30ctil8>; World Food Programme (WFP), "Building blocks: blockchain for zero hunger," Innovation Accelerator, Website WFP, <https://bit.ly/3kPynaL>.

⁶⁶ U.N. Office of Information and Communication Technology (OICT), "BLOCKCHAIN – WHAT DOES IT MEAN FOR THE UN," June 2018 (2 of 3) Emerging technologies whitepaper series: Blockchain and distributed ledgers, Website UNITE, <https://bit.ly/2HwWixo>.

⁶⁷ Website ID2020, <https://id2020.org>.

⁶⁸ For example, in New York, the Fummi app provides a digital ID for the homeless to access government services. OICT.

⁶⁹ Julia St. Thomas King; Dennis Ardis, "Identity crisis? Documentation for the displaced in Iraq – Overseas Development Institute (ODI) Humanitarian Practice Network," Website HPN, October 2015, <https://bit.ly/36cHOWU>.

Julia St. Thomas King; Dennis Ardis, "Identity crisis? Documentation for the displaced in Iraq – Overseas Development Institute (ODI) Humanitarian Practice Network," Website HPN, October 2015, <https://bit.ly/36cHOWU>.

⁷⁰ Consensys, The most trusted Ethereum Blockchain Solutions, Website Consensys, <https://consensys.net>.

⁷¹ Yorke Rhodes III, "What does identity mean in today's physical and digital world?," Microsoft Azure, 31 May 2016, <https://bit.ly/3joic7W>.

public. This allows for a decentralized system of managing personal data that individuals own and control themselves⁷². BitNation⁷³ and OneName⁷⁴ also work in this space⁷⁵.

UNHCR, the United Nations Relief and Works Agency (UNRWA) and a number of other public, private and humanitarian actors are taking advantage of digital technologies to modernize identity verification, authorization and authentication. Aid organizations are seeking to empower beneficiaries by providing them with IDs that enable them to access jobs, income, remittances, online learning and financial service providers⁷⁶. Distributed ledger-based identification management systems allow users to maintain control of their identity data: a person stores claims about his or her identity in a "hardware wallet" (a digital repository) that can then be verified by trusted third parties and used to facilitate authentication⁷⁷.

Many international organizations, such as the United Nations and the World Bank, are leading discussions aimed at promoting digital identity systems. *The first step towards the adoption of an effective Digital Identification System at the national level is the development of a clear framework that can be implemented.* The approach adopted by governments should consider a number of factors, including the number of citizens who are expected to use the Identification System and how often they are able to do so, as well as the total number of services it offers.

It is not possible to identify a single model for a National Digital Identity Framework that is better than the others - there is no one-size-fits-all solution, as each country has its own characteristics, needs and objectives⁷⁸. However, certain international technical standards must be taken into consideration when developing the National Digital Identity framework, such as: *the ISO/IEC DIS 29115 - Information technology - Security techniques - Entity authentication assurance framework, Recommendation ITU-T X.1253 proposes security guidelines for identity management (IdM) systems, ITU-T X.1254 Recommendation: Entity authentication assurance framework and ITU-T*

⁷² Guy Zyskind; Oz Nathan; Alex Sandy Pentland, "Decentralizing Privacy: Using Blockchain to Protect Personal Data," 2015, <https://www.enigma.co/ZNP15.pdf>.

⁷³ Bitnation es la primera nación virtual. Una nueva jurisdicción blockchain. Bit-Nation Governance 2.0, <https://www.bitnation.co>. Léase también: Susanne Tarkowski Tempelhof, Elliott Teissonniere, James Fennell Tempelhof, Dana Edwards, Bitnation Governance 2.0, La Jurisdicción Pangea y el Token de Arbitraje Pangea (PAT), El Internet de la Soberanía, Planet Earth, Abril 2017.

⁷⁴ Website OneName, onename.com.

⁷⁵ *Idem.*, 12.

⁷⁶ Aiden Slavin, Distributed ledger identification systems in the humanitarian sector, I4A Council Sovrin, May 2019, 12 <https://sovrin.org/wp-content/uploads/14A-Report.pdf>;

⁷⁷ *Idem.*, 26.

⁷⁸ International Telecommunication Union (ITU), "Digital Identity Roadmap Guide," Website ITU, ISBN: 978-92-61-27831-1 Geneva, 2018, 57-58, <https://bit.ly/2EyAlr4>.

X.1255 Recommendation: Framework for discovery of identity management information⁷⁹; as well as all ICAO's Security Guidelines.

Good ID in Latin America expressed that it *supports a systemic vision of digital identification, which goes beyond digital authentication, or login to a website, a legal identity based on mobile, digital certificates or isolated electronic birth records. It is a technical mechanism for secure digital identification of individuals where there is no face-to-face contact. In a foundational identification system (World Bank, 2018d), the digital identity must be based on a responsible institution, coherent legislation and technical means that allow interoperability with different information systems. Digital identity must be inclusive, accessible, portable and persistent*⁸⁰.

Some claim the need to implement digital identity pilot projects⁸¹. Among many other pilot projects, there is one in Latin America developed by the Institute of Technology and Society (ITS) Rio, in Brazil, where the most vulnerable population struggles to access an identity document, whose private data is not well protected and where the identification system is strongly centralized. For ITS Rio/Good ID in Latin America, *identification can vary considerably in its conceptualization, legal and organizational provisions, and operational and technological infrastructure*⁸².

In creating the Venezuelan Identification System based on Blockchain, not only the international standards on digital identity, or ICAO standards, will be respected, but also the Blockchain Principles created to preserve and protect the rights of the user, which represent the founding values of the decentralized future, will be carefully taken into account. As can be read in the World Economic Forum news: *this "Blockchain Declaration of Rights" establishes a global basis for building blockchain applications that respect the rights of participants, safeguard data, and protect users*⁸³. To meet this objective, it suggests the adoption of an appropriate legal framework, considering what already exists, that is, considering the study of existing standards in countries where there is legal certainty⁸⁴.

⁷⁹ *Ibid.* ITU, 2018, 59-60. Véase también: Identification for Development (I4D); World Bank Group, "Technical Standards for Digital Identity, Draft for discussion," International Bank for Reconstruction and Development/The World Bank, Washington, 2017, <https://bit.ly/3kTISuC>.

⁸⁰ Alexandre Barbosa; Celine Carvalho; Cláudio Machado; Janaina Costa, "Good ID in Latin America: Strengthening appropriate uses of Digital Identity in the region," Good ID, July 2020, p. 11 <https://bit.ly/309p8du>.

⁸¹ Cornelius Saunders; Hilman Palaon; Devina Srivastava, "Advanced Technologies, Cultural Diversity and Operational Constraints: the Need for Pilots," Website Good-ID, 16 April 2020, <https://bit.ly/366dP9J>.

⁸² Alexandre Barbosa et. al. (2020). See also: Brazil Overview Success Story <https://www.dermalog.com/success-stories/brazil/>.

⁸³ Amanda Russo, "Blockchain Principles Launched to Preserve and Protect User Rights," World Economic Forum, 22 May 2020 <https://bit.ly/3j3j5yC>.

⁸⁴ Por ejemplo, deberá regularse la captación de datos biométricos correspondientes a señas de identidad, para lo cual se podría tomar como modelo normas como la suiza que regulan el sistema automático de identificación de huellas digitales (AFIS): Ordonnance sur le traitement des données signalétiques biométriques, RS 361.3, 6 décembre 2013 (Suiza) <https://bit.ly/2GbTi8T>.

The Venezuelan Organic Law on Identification provides that the State will guarantee the incorporation of technologies that allow for the development of a secure, efficient and coordinated identification system with the organs of the Public Power and that the National Executive, by means of the organ of the Saime, will oversee the maintenance and permanent and progressive updating of the identification system, with the aim of achieving a system of advanced technology that facilitates access to public services, the exchange of information and support for the functions of the organs of the State (Art. 5 LOI). It is public and notorious at the international level that this is another right of legal rank that the Venezuelan State has been violating repeatedly and continuously. The creation of a new Venezuelan identification system could correct these faults of the Venezuelan government in full compliance to the Venezuelan law.

The Venezuelan Organic Law of the Civil Registry (LORC, for the Spanish acronym) establishes the need to use appropriate technologies to carry out the processes of civil registration, maintaining the integrity of the information, guaranteeing the physical, logical and legal security, as well as the reliability and inalterability of its data (Art. 13 LORC). Chapter VI of this legal text explains the need and conditions for the automation of citizens' information, while Chapter VII establishes the validity of electronic certifications as evidentiary documents. *The Public Power and the People's Power have the obligation to protect the information they obtain through the services they provide through information technology and that which is stored in their electronic files or records, under the terms established in this Law, and other laws regulating the matter* (Art. 77, Infogovernment Law or *Ley Infogobierno*).

With a new Identification System with the characteristics described herewith, it is not intended to replace or change the number of the Identity Card that has been issued to each Venezuelan by the Saime or the previous National Office of Identification and Foreigners (Onidex) as from the forties on, during the presidential period of Dr. Isaías Medina Angarita. The aim is to safeguard the personal data on the basis of which such identity card number was generated and to develop a more expeditious, secure, reliable and transparent way of issuing identity cards and passports, inside and outside Venezuela. Likewise, it is desired to eliminate all fraudulent issuance - before and after- of "V" identity cards⁸⁵ and national passports to citizens who have not acquired Venezuelan nationality either by birth or by naturalization. In case these flaws have not been detected at the time of debugging the Saime database or comparing the new database with the Saime database, it will be necessary to study the case of those persons who have obtained the Venezuelan passport fraudulently when applying for the renewal of the document. With this project, the aim is to free the

⁸⁵ "V" corresponds to "Venezuelan ID cards in Venezuelan are classified in "V" cards for Venezuelans and "E" cards for foreigners. The ID numbers are preceded by one of these two letters.

Venezuelan citizen and his or her identity from the yoke of any government taking over the Venezuelan State apparatus, which is why we should pay attention to the adjectives: autonomous, independent and decentralized, which are of much importance. A decentralized database is not as compromised and vulnerable as a centralized one.

The permanent solution of creating a Venezuelan Identification Management System based on blockchain, decentralized, autonomous, independent from the government is innovative because there is no equal project to manage the identity of thirty million nationals of the same country. It has been used at most in communities, in sectors of six million subjects⁸⁶ and mostly in communities of migrants in vulnerable situations⁸⁷. The proposal of the Venezuelan Identification System based on blockchain differs from the approaches that already exist, because it would be implemented for the nationals of a State that in practice has ceased to exist, for nationals of a country, of which twenty percent of its inhabitants have chosen to migrate with or without identification. The idea is to create an identity manager that is not at the mercy of any government that may take over the Venezuelan failed State.

Finally, with regard to the financial resources to implement such a project, a document for discussion by the Department of the Andean Group of member states of the Inter-American Development Bank (IDB) establishes that the IDB has expressly stated the need to change the Venezuelan system of identification and civil registration. The document states that:

*The country's reconstruction effort will need an agile and secure international trade system that allows for the entry of aid and inputs to guide this process. Therefore, it is proposed to work on a contingency plan for the ⁸⁸emergency in order to guarantee that imports and donations can enter the country safely. In order to implement the programs and projects, it is **necessary to reconvert the identification and civil registry system**⁸⁹.*

Conclusion

We believe that the legal conditions are in place, the technological feasibility has been sufficiently studied and verified in pilot projects, the only thing missing is the political will to implement the project

⁸⁶ Ejemplos: British Columbia y Ontario, Canadá, Países Bajos, Estonia, Zug-Suiza y Blockchain Identity Management del Ministerio de Relaciones Exteriores turco.

⁸⁷ Ejemplos: AnKER Centre Dresden, Alemania; Digital Nation: Refugiados Rohingya, Kuala Lumpur, Malaysia; Refugiados Rohingya, Cox's Bazar, Bangladesh.

⁸⁸ Horacio Medina, Consulta Popular en el Exterior, *Venezolanos Siempre en Youtube.com*, 29 de octubre de 2020 <https://youtu.be/LOOpZlDc8iE>. Prensa AN, AN aprobó Acuerdo que promueve consulta popular para realizar elecciones libres y rechazar el fraude del 6D, *Asamblea Nacional*, 1 de octubre de 2020 <https://bit.ly/3oG8kFM>.

⁸⁹ Emmanuel Abuelafia; José Luis Saboin, "Una mirada a futuro para Venezuela," Banco Interamericano de Desarrollo, Departamento de países del grupo andino, Documento para discusión N° IDB-DP-798, Agosto 2020 <https://publications.iadb.org/publications/spanish/document/Una-mirada-a-futuro-para-Venezuela.pdf>.

to create a new decentralized, autonomous and independent Identification System. Financing does not seem to be the main impediment.

Although we do not know if blockchain technology will be used to find out, block by block, the destination of our opinion at any poll, the Popular Consultation Abroad 2020 that will be carried out on the initiative of the Venezuelan National Assembly, will use technological means: . A secure application (.app), a smartphone, an internet connection, double user authentication and digital certificates. If it is true that any smartphone can be used, there will be no facial or fingerprint recognition.