

Amicus Curiae Brief of Just Access e.V.

In the case of José Luis Parada Sánchez v. Venezuela (Case No. 14.174) before the Inter-American Court of Human Rights

Submitted by: *Just Access e.V.*



I. Introduction and interest of the amicus

1. The German non-governmental organisation Just Access e.V. respectfully submits this amicus curiae brief to the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”) in the case of *José Luis Parada Sánchez v. Venezuela*, pursuant to Article 44 of the Rules of Procedure of the Court. Just Access is dedicated to improving access to justice and to the development of international human rights law, with particular expertise in the justiciability of economic, social, cultural and environmental rights (ESCR) and in the protection of the rights of persons deprived of liberty. Just Access has previously assisted this Court as amicus curiae on the application of Article 26 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) in the context of detention.
2. This brief does not address the facts, which are a matter for the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”) and the representatives of the victim. Its purpose is to assist the Court on questions of law. The brief takes the facts as alleged by the Commission in its submission note of 12 March 2024.¹ According to those documents, Mr Parada Sánchez, a former General Manager of PDVSA, was detained by officials of the Bolivarian National Intelligence Service (SEBIN) on 1 February 2015 and held in the detention centre known as “El Helicoide”. Between 4 August and 17 September 2015, the Eighth Criminal Control Court issued at least six (and, according to the case file, up to eight) orders that Mr Parada Sánchez be transferred from El Helicoide to health facilities for medical evaluations relating to his hypertension and other conditions. On 23 September 2015 he was diagnosed with colorectal cancer. SEBIN permanently refused to execute the judicial transfer orders. When the domestic courts later ordered Mr. Parada Sánchez’s release (first to house arrest, then to a regime of periodic

¹ IACHR, Submission Note (*Nota de remisión*), Case No. 14.174, *José Luis Parada Sánchez v. Venezuela*, 12 March 2024, summarising Admissibility and Merits Report No. 393/22 (Art. 50 report notified to the State on 12 December 2023). Available at https://www.oas.org/es/cidh/decisiones/Corte/2024/VE_14.174_NdeREs.PDF

reporting, with an order of immediate release reiterated up to eight times between April and August 2017), SEBIN again refused to comply.²

3. On these facts, the Commission has already placed the right to health under Article 26 of the Convention squarely before the Court, in relation to Articles 5, 7, 8 and 25 and the obligations under Articles 1(1) and 2. Just Access therefore does not need to invite the Court, through the principle *iura novit curia*, to introduce Article 26 into a case where it was omitted. Rather, this brief seeks to assist the Court in developing the content and reach of the Article 26 right to health of persons deprived of liberty, and it advances four arguments that, in the respectful submission of Just Access, would allow this case to make an original contribution to Inter-American and general international law:
 - a. that the right to health of persons deprived of liberty is not only a Convention right but also a norm of customary international law, derived from and reinforced by the Charter of the Organization of American States (hereinafter “the OAS Charter”), and therefore binding on Venezuela irrespective of the vicissitudes of its adherence to the Convention (Section II);
 - b. that the deliberate and repeated refusal of a detaining authority to comply with judicial orders requiring a detainee’s transfer for medical care, or his release, constitutes a compound and self-standing violation of Article 26 read together with Article 25(2)(c) of the Convention, an argument for which the Court’s own judgment in *Hernández v. Argentina* provides direct support (Section IV);
 - c. that the standards the Court applies should be read in the light of a remarkable convergence across the universal, European and African human rights systems, which both confirms the content of the Article 26 obligation and evidences the customary character of the underlying norm (Section V); and
 - d. that the gap between human rights law and medical science can be addressed in ways that fulfil both rigorous scientific standards and international law’s mandate of progressive development.

² *ibid.*

4. Just Access submits this brief in the hope that it will be of use beyond the present case, by helping to consolidate a coherent body of standards on the health of persons deprived of liberty applicable throughout the region.

II. The right to health of detainees under Article 26

II.A Derivation of the right to health from the OAS Charter and the Protocol of San Salvador

5. Article 26 of the Convention obliges States to progressively achieve the full realisation of the rights “implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States.”³ The Court has settled that the right to health is one such right. Articles 34(i), 34(l) and 45(h) of the OAS Charter provide for the protection of health, and from these provisions the Court has repeatedly derived the right to health as a right protected by Article 26 of the Convention.⁴⁵ The right is further enshrined in Article 10 of the Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”), which

³ American Convention on Human Rights (“Pact of San José”), Arts. 26 and 25(2)(c). Official text: https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm

⁴ Charter of the Organization of American States, Arts. 34(i), 34(l) and 45(h). Official text: https://www.oas.org/en/sla/dil/inter_american_treaties_A-41_charter_OAS.asp. On the derivation of the right to health from these provisions, see IACtHR, *Poblete Vilches and others v. Chile*, Judgment of 8 March 2018, Series C No. 349, and *Hernández v. Argentina*, Judgment of 22 November 2019, Series C No. 395.

⁵ IACtHR, *Hernández v. Argentina*, Preliminary Objection, Merits, Reparations and Costs, Judgment of 22 November 2019, Series C No. 395, para. 158 (derivation of the right to health from Arts. 34(i), 34(l) and 45(h) of the OAS Charter). Official text:

https://www.corteidh.or.cr/docs/casos/articulos/seriec_395_esp.pdf

recognises the right of everyone to “the enjoyment of the highest level of physical, mental and social well-being.”⁶

6. Since *Lagos del Campo v. Peru*, the Court has affirmed the direct justiciability of the rights derived from Article 26.⁷ In *Poblete Vilches v. Chile* and *Cuscul Pivaral v. Guatemala*, the Court recognised the right to health as an autonomous and directly enforceable right under Article 26.⁸⁹ The content of that right is to be determined, as the Court has held, in the light of the international *corpus iuris* on the matter, comprising treaty rules, rules of customary international law, and instruments of a general character or soft law that give greater precision to the minimum contents fixed conventionally.¹⁰

II.B The right to health of detainees as customary international law and a general principle of law

7. Just Access submits that the right to health of persons deprived of liberty possesses, in addition to its Convention basis, the status of a norm of customary international law, and

⁶ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”), Art. 10. Official text:

<https://www.oas.org/juridico/english/treaties/a-52.html>

⁷ IACtHR, *Lagos del Campo v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment of 31 August 2017, Series C No. 340. Official text:

https://www.corteidh.or.cr/docs/casos/articulos/seriec_340_esp.pdf

⁸ IACtHR, *Poblete Vilches and others v. Chile*, Merits, Reparations and Costs, Judgment of 8 March 2018, Series C No. 349 (autonomous right to health under Art. 26). Official text:

https://www.corteidh.or.cr/docs/casos/articulos/seriec_349_esp.pdf

⁹ IACtHR, *Cuscul Pivaral and others v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs, Judgment of 23 August 2018, Series C No. 359. Official text:

https://www.corteidh.or.cr/docs/casos/articulos/seriec_359_esp.pdf

¹⁰ IACtHR, Advisory Opinion OC-29/22 of 30 May 2022, *Differentiated approaches with respect to certain groups of persons deprived of liberty*, Series A No. 29, para. 47 and note 47 (the *corpus iuris* comprises treaty rules, customary international law, general principles of law and *soft law*). Official text:

https://www.corteidh.or.cr/docs/opiniones/seriea_29_esp.pdf

that recognising this expressly would strengthen the Court’s reasoning and its contribution to general international law.

8. The Court has itself acknowledged that, in determining State responsibility, it applies “the international norm, both conventional and customary.”¹¹ In the case analysed in this *amicus curiae*, both constituent elements of a customary rule, namely State practice and *opinio juris*,¹² are satisfied in respect of the obligation of States to safeguard the life, integrity and health of those they detain. That obligation is reflected in near-universally ratified treaties (Article 10 of the International Covenant on Civil and Political Rights;¹³ Article 12 of the International Covenant on Economic, Social and Cultural Rights¹⁴); in a dense body of standard-setting instruments adopted by consensus at the United Nations (the Nelson Mandela Rules,¹⁵ the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,¹⁶ and the Basic Principles for the Treatment of Prisoners¹⁷); and in the concordant jurisprudence of every regional human rights body (Section VI

¹¹ OC-29/22, *supra*, para. 32 (the Court determines State responsibility in accordance with international law, “both conventional and customary”).

¹² International Law Commission, Draft Conclusions on Identification of Customary International Law, with commentaries (2018), UN Doc. A/73/10 (two constituent elements: general practice and *opinio juris*). Available at https://legal.un.org/ilc/texts/instruments/english/draft_articles/1_13_2018.pdf

¹³ International Covenant on Civil and Political Rights, Art. 10(1). Available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

¹⁴ International Covenant on Economic, Social and Cultural Rights, Art. 12. Available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

¹⁵ United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), UN General Assembly Resolution A/RES/70/175 (2015). Available at <https://undocs.org/A/RES/70/175>

¹⁶ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN General Assembly Resolution A/RES/43/173 (1988), Principle 24. Available at <https://undocs.org/A/RES/43/173>

¹⁷ Basic Principles for the Treatment of Prisoners, UN General Assembly Resolution A/RES/45/111 (1990), Principle 9. Available at <https://undocs.org/A/RES/45/111>

below). This convergence of practice and conviction is precisely the material from which a customary rule is identified.

9. It is well established that the right to health protected by Article 26 derives from the OAS Charter,¹⁸ a constitutive instrument that binds Venezuela as a Member State of the Organization independently of its adherence to the American Convention, and whose content is illuminated by the American Declaration of the Rights and Duties of Man, Article XI of which recognises the right to the preservation of health.¹⁹ Venezuela deposited its instrument of ratification of the Convention in 1977 and accepted the Court's contentious jurisdiction in 1981. It purported to denounce the Convention with effect from 10 September 2013, and subsequently, on 31 July 2019, deposited a new instrument of ratification recognising the Court's jurisdiction "as if the purported denunciation had never taken place," with retroactive effect to 10 September 2013.²⁰ Whatever view is taken of these events (a matter of jurisdiction for the Court, not for the *amicus*), the obligation to protect the health of persons in State custody bound Venezuela at all material times, both as a Member of the OAS and as a matter of customary international law and general principle. The Court has already had occasion, in Advisory Opinion OC-26/20, to address the legal effects of the denunciation of the Convention and of the OAS Charter and the

¹⁸ Charter of the Organization of American States, *supra*.

¹⁹ American Declaration of the Rights and Duties of Man (1948), Art. XI (right to the preservation of health). Available at <https://www.oas.org/en/iachr/mandate/Basics/declaration.asp>

²⁰ IACHR, Submission Note (*Nota de remisión*), Case No. 14.174, *José Luis Parada Sánchez v. Venezuela*, 12 March 2024, summarising Admissibility and Merits Report No. 393/22 (Art. 50 report notified to the State on 12 December 2023). Available at https://www.oas.org/es/cidh/decisiones/Corte/2024/VE_14.174_NdeREs.PDF

²¹ Instrument of ratification of the American Convention on Human Rights deposited by Venezuela on 31 July 2019 (communication of 1 June 2019). Available at http://www.oas.org/es/sla/ddi/docs/B-32_venezuela_RA_7-31-2019.pdf. See also OAS depositary status of the Convention (B-32): https://www.oas.org/dil/esp/tratados_B-32_Convencion_Americana_sobre_Derechos_Humanos_firmas.htm

persistence of human rights obligations.²² Just Access respectfully submits that the health of detainees falls within the core of obligations that survive such vicissitudes.

III. The content of the Article 26 right to health of persons deprived of liberty

III.A The State's reinforced position of guarantor

10. A person deprived of liberty is placed in a relationship of special subjection to the State.

The Court has consistently held that, being responsible for detention establishments, the State occupies a special position of guarantor of the rights of all persons in its custody, and must guarantee those rights, in particular the rights to life and to personal integrity, and access to basic services indispensable for a dignified life.²³ Because the conditions of confinement prevent detainees from meeting their own basic needs, this position gives rise to positive obligations, and the State may not invoke a lack of economic resources to justify conditions of detention that fail to meet minimum international standards.²⁴ Health care is among the basic services that the guarantor State must ensure.²⁵

III.B The standard of availability, accessibility, acceptability and quality (AAAQ)

²² IACtHR, Advisory Opinion OC-26/20 of 9 November 2020, *The obligations in matters of human rights of a State that has denounced the American Convention on Human Rights and the Charter of the Organization of American States*, Series A No. 26. Official text:

https://www.corteidh.or.cr/docs/opiniones/seriea_26_esp.pdf

²³ OC-29/22, *supra*, paras. 33 and 39 (the State as guarantor of the rights of persons in its custody; obligation to ensure life, personal integrity and access to basic services indispensable for a dignified life), drawing *inter alia* on *Neira Alegría and others v. Peru*, Series C No. 20, “*Juvenile Reeduction Institute*” *v. Paraguay*, Series C No. 112, *Montero Aranguren and others (Detention Center of Catia) v. Venezuela*, Series C No. 150, and *Vélez Loor v. Panama*, Series C No. 218.

²⁴ OC-29/22, *supra*, para. 39 (positive obligations; States may not invoke economic privations to justify conditions of detention below minimum international standards).

²⁵ OC-29/22, *supra*, para. 40 (access to basic services, including health-care services, as a component of dignified detention).

11. The content of the right to health is measured by the interrelated criteria of availability, accessibility, acceptability and quality (the “AAAQ” framework) elaborated by the United Nations Committee on Economic, Social and Cultural Rights in its General Comment No. 14 on the right to the highest attainable standard of health.²⁶ Notably, the Commission itself framed the present case in these very terms, observing that it would allow the Court to address the State’s duty to ensure equal access to health care for persons deprived of liberty, “particularly those suffering from serious or chronic illnesses, as well as the availability, accessibility, acceptability and quality of such services.”²⁷ The refusal of a detaining authority to execute repeated judicial orders for the transfer of a seriously ill detainee to facilities capable of providing appropriate treatment defeats each of these criteria at once. The treatment that was available in the health facilities was rendered inaccessible by the very authority holding the detainee.

III.C The principle of equivalence of care

12. A cardinal principle of the international law governing detention is that persons deprived of liberty are entitled to enjoy the same standards of health care that are available outside prisons, without discrimination on the ground of their legal situation. This principle is codified in Rule 24 of the Nelson Mandela Rules, which provides that the State bears responsibility for the health care of prisoners, who “should enjoy the same standards of health care that are available in the community.”²⁸ The Court has drawn on the Mandela

²⁶ UN Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000): The right to the highest attainable standard of health (Art. 12 of the ICESCR), UN Doc. E/C.12/2000/4 (availability, accessibility, acceptability and quality). Available at <https://undocs.org/E/C.12/2000/4>

²⁷ IACHR, Submission Note (*Nota de remisión*), Case No. 14.174, *José Luis Parada Sánchez v. Venezuela*, 12 March 2024, summarising Admissibility and Merits Report No. 393/22 (Art. 50 report notified to the State on 12 December 2023). Available at https://www.oas.org/es/cidh/decisiones/Corte/2024/VE_14.174_NdeREs.PDF

²⁸ Nelson Mandela Rules, *supra*, Rules 24-27, in particular Rule 24 (the State bears responsibility for prisoners’ health care; prisoners should enjoy the same standards of health care available in the community; access without discrimination on the ground of their legal situation).

Rules as an authoritative source in giving content to the obligations of the guarantor State.²⁹ In the present case, the domestic courts recognised the seriousness of Mr Parada Sánchez's condition (to the point of ordering house arrest on account of the gravity of his illness), yet the detaining authority prevented him from obtaining the care that the same courts had ordered.

III.D Heightened obligations towards persons with serious or chronic illness and older persons

13. The obligations of the guarantor State are heightened where the detainee suffers from a serious or chronic illness. A diagnosis of colorectal cancer, and untreated hypertension, place a detainee among those for whom timely access to specialised diagnosis, treatment and, where necessary, palliative care is a matter of the gravest urgency. In Advisory Opinion OC-29/22 the Court, addressing differentiated approaches to particular groups of persons deprived of liberty, devoted specific attention to the right to health of older persons deprived of liberty and to the palliative care they may require, and emphasised that the failure to provide differentiated care can place the life and integrity of such persons at risk.³⁰ The same reasoning applies, *a fortiori*, to a detainee suffering from a life-threatening oncological condition. Should the Court consider it appropriate, and in application of the principle *iura novit curia*, Just Access respectfully submits that the standards of the Inter-American Convention on Protecting the Human Rights of Older Persons (including its provisions on the right to health and to dignified treatment) provide further interpretive guidance on the content of the Article 26 obligation in circumstances such as the present.³¹

²⁹ OC-29/22, *supra*, paras. 33 and 39 (the State as guarantor of the rights of persons in its custody; obligation to ensure life, personal integrity and access to basic services indispensable for a dignified life), drawing *inter alia* on *Neira Alegría and others v. Peru*, Series C No. 20, “*Juvenile Reeduction Institute*” *v. Paraguay*, Series C No. 112, *Montero Aranguren and others (Detention Center of Catia) v. Venezuela*, Series C No. 150, and *Vélez Loor v. Panama*, Series C No. 218.

³⁰ OC-29/22, *supra*, Section IX (differentiated approaches applicable to older persons deprived of liberty), including the right to health and to palliative care of older persons in detention.

³¹ Inter-American Convention on Protecting the Human Rights of Older Persons (2015), including its provisions on the right to health and to dignified treatment. Official text:

III.E The progressive development of human rights law requires a functional understanding of medical science

Colorectal cancers are slow to develop, making early diagnosis of paramount importance. Individual cases vary, but the specifics of Mr. Parada Sánchez's cancer are unknown exactly due to SEBIN's denial of his rights. This leaves the Court with only the robust public health data that are available as its guide while making a determination of the severity of harm caused.

In addition to the effect of SEBIN's actions on Mr. Parada Sánchez's life expectancy and quality of life due to timely detection of his colorectal cancer, treatments of colorectal cancer have also improved considerably within the last decade. Some of these treatments, including immunotherapy, have now become clinical standards, given that they are highly effective and affordable. The harms caused by SEBIN's denial of Mr. Parada Sánchez's aforementioned rights are therefore far greater than they would have been a mere decade ago. This case provides an opportunity for the Court to formulate that international law's mandate of progressive development; the dynamic interpretation of the applicable human rights treaties that Bolivia is party to; and general principles of international law, especially those of equity and good faith, all indicate that assessments of human rights violations should be based on up-to-date and case-specific understandings of relevant medical science and clinical practice.

IV. Denial of court-ordered medical care and release as a breach of Articles 26 and 25(2)(c)

14. Just Access respectfully submits that the most significant legal feature of this case, and the one on which the Court is invited to make a distinctive pronouncement, is that the violation of the right to health did not occur through mere State inaction or want of resources. It

https://www.oas.org/en/sla/dil/inter_american_treaties_A-70_human_rights_older_persons.asp. Cited by way of interpretive guidance, in application of the principle *iura novit curia*, should the Court find the victim to fall within its scope.

occurred because the detaining authority deliberately and repeatedly defied binding orders of the competent judicial authority: at least eight orders to transfer Mr Parada Sánchez for medical treatment, and later a judicial order of release reiterated up to eight times.

15. The Court has already recognised this precise configuration as a violation. In *Hernández v. Argentina*, a case concerning a pre-trial detainee who contracted meningitis in custody and whose health deteriorated with permanent consequences, the Court held that the authorities' failure to comply, in a timely manner, with the orders of the trial judge directing that the detainee be provided with medical care itself constituted a violation of the Convention, engaging his rights to personal integrity, to health and to judicial protection.³² The parallel with the present case is exact, and indeed amplified: in the case under consideration the judicial orders were more numerous, were defied over a longer period, and concerned a detainee with a diagnosed life-threatening illness.

16. Article 25(2)(c) of the Convention obliges States “to ensure that the competent authorities shall enforce such remedies when granted.”³³ The right to judicial protection requires that the decision be executed. The Court has consistently held that the effectiveness of judicial remedies entails the enforcement of the resulting decisions, and that the failure to enforce a final judicial decision itself violates the Convention.³⁴ Where the decision to be enforced concerns the health, integrity or liberty of a person in State custody, and where the very authority holding that person is the author of the non-compliance, the failure of enforcement is the mechanism by which the substantive rights to health and integrity are

³² IACtHR, *Hernández v. Argentina*, *supra*, Series C No. 395: the Court found that the authorities' failure to comply, in a timely manner, with the judicial orders directing that the detainee be provided with medical care violated his rights to personal integrity, to health and to judicial protection. Official text: https://www.corteidh.or.cr/docs/casos/articulos/seriec_395_esp.pdf

³³ American Convention on Human Rights (“Pact of San José”), Art. 25(2)(c). Official text: https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm

³⁴ On the obligation to enforce judicial decisions under Art. 25(2)(c), see *inter alia* IACtHR, *Mejía Idrovo v. Ecuador*, Judgment of 5 July 2011, Series C No. 228, and *Acevedo Jaramillo and others v. Peru*, Judgment of 7 February 2006, Series C No. 144.

violated.

17. On this basis, Just Access respectfully invites the Court to hold that the systematic refusal of a detaining authority to comply with judicial orders requiring the medical transfer or release of a person in its custody constitutes a self-standing violation of Article 26 of the Convention, read in conjunction with Article 25(2)(c) and Article 1(1), and that such conduct (because it subordinates a court's protection of a detainee's health to the will of the executive body holding him) strikes at the interdependence of the rule of law and the protection of human rights that underpins the Convention system. Recognising this standard would mean that a judicial order protecting the health or liberty of a detainee is not advisory, and that its executive frustration is, in itself, an internationally wrongful act.

V. Cross-regional convergence and the customary character of the standard

18. The standards set out above are not particular to the Inter-American system. They are shared, in substance, by the universal and other regional systems. This convergence confirms their content and evidences the customary character of the underlying norm.

V.A The universal system

19. At the universal level, Article 10(1) of the International Covenant on Civil and Political Rights guarantees that persons deprived of liberty be treated with humanity and respect for their inherent dignity,³⁵ and Article 12 of the International Covenant on Economic, Social and Cultural Rights guarantees the right to the highest attainable standard of health,

³⁵ International Covenant on Civil and Political Rights, Art. 10(1). Available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

elaborated through the AAAQ framework of General Comment No. 14.³⁶³⁷ The Nelson Mandela Rules require the provision of health care equivalent to that available in the community (Rule 24) and that a physician attend to the sick without delay (Rules 24-27),³⁸ and the Body of Principles requires that detainees be offered a proper medical examination and care and treatment whenever necessary (Principle 24).³⁹ The United Nations Human Rights Committee has found violations of the Covenant where a State's failure to provide medical care to a detainee resulted in avoidable death.⁴⁰

V.B The European system

20. The European Court of Human Rights, interpreting Article 3 of the European Convention, has established in *Kudla v. Poland* that, although that Article does not require the release of a detainee on health grounds, the State “must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured

³⁶ International Covenant on Economic, Social and Cultural Rights, Art. 12. Available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

³⁷ UN Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000): The right to the highest attainable standard of health (Art. 12 of the ICESCR), UN Doc. E/C.12/2000/4 (availability, accessibility, acceptability and quality). Available at <https://undocs.org/E/C.12/2000/4>

³⁸ Nelson Mandela Rules, *supra*, Rules 24-27, in particular Rule 24 (the State bears responsibility for prisoners' health care; prisoners should enjoy the same standards of health care available in the community; access without discrimination on the ground of their legal situation).

³⁹ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN General Assembly Resolution A/RES/43/173 (1988), Principle 24. Available at <https://undocs.org/A/RES/43/173>

⁴⁰ UN Human Rights Committee, *Lantsova v. Russian Federation*, Communication No. 763/1997, Views of 26 March 2002, UN Doc. CCPR/C/74/D/763/1997 (State responsibility for the death of a detainee resulting from failure to provide adequate medical care). Available at <https://undocs.org/CCPR/C/74/D/763/1997>

by, among other things, providing him with the requisite medical assistance.”⁴¹ The provision of requisite medical assistance to detainees is thus, in the European system as in the Inter-American, a component of the minimum guarantee of humane treatment.

V.C The African system

21. The African Commission on Human and Peoples’ Rights, in *Purohit and Moore v. The Gambia*, held that the right to enjoy the best attainable state of physical and mental health under Article 16 of the African Charter obliges States to take concrete and targeted steps, to the maximum of available resources, to ensure that the right to health is realised without discrimination, and that persons detained on account of their health must never be denied the health care crucial to their survival and their assimilation into and acceptance by the wider society.⁴² The regional standard-setting instruments are to the same effect: the Robben Island Guidelines require States to ensure that all persons deprived of their liberty have access to medical services and that conditions of detention conform to international standards,⁴³ and the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines) guarantee the right to urgent medical

⁴¹ European Court of Human Rights, *Kudla v. Poland* [GC], Application No. 30210/96, Judgment of 26 October 2000, para. 94. Official reference on HUDOC (App. No. 30210/96). Available at [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-58920%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58920%22]})

⁴² African Commission on Human and Peoples’ Rights, *Purohit and Moore v. The Gambia*, Communication No. 241/2001 (2003), paras. 80-85 (right to health under Art. 16 of the African Charter; obligation to take concrete and targeted steps; persons detained on account of health must never be denied crucial health care). Available at <https://achpr.au.int/en/decisions-communications/purohit-and-moore-v-gambia-24101>

⁴³ Robben Island Guidelines (Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa), African Commission on Human and Peoples’ Rights (2002; 2nd ed. 2008), Guidelines 20 and 31 (basic safeguards, including the right to an independent medical examination, and access to legal and medical services). Available at <https://achpr.au.int/index.php/ar/node/600>

assistance, to request and receive a medical examination, and to obtain access to existing medical facilities.⁴⁴

22. The European Court, the African Commission, the United Nations treaty bodies and this Court have independently arrived at the same effective core standard that the State which detains a person must secure that person's health by providing the medical care his condition requires, on a footing of equivalence with the community, and with heightened diligence where the illness is serious. This is powerful evidence of a general practice. Just Access respectfully submits that the Court may draw on this convergence both to confirm the content of the Article 26 obligation and, if it sees fit, to recognise the customary status of the right to health of persons deprived of liberty.

VI. Reparations

23. Should the Court find Venezuela responsible, Just Access respectfully submits that the reparations ordered should reflect the structural and rule of law dimensions of the violation, and in particular should include, as guarantees of non-repetition and in addition to the measures already requested by the Commission:

- a. the adoption of binding protocols ensuring that detaining authorities, including intelligence services operating places of detention, execute without delay judicial orders directing the medical transfer, medical treatment or release of persons in their custody, together with effective disciplinary and, where appropriate, criminal consequences for non-compliance;
- b. the establishment of an effective, independent mechanism of judicial control over the execution of the penalty and of detention, with the power to enforce orders

⁴⁴ Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines), African Commission on Human and Peoples' Rights (2014), guarantee of "the right to urgent medical assistance, to request and receive a medical examination and to obtain access to existing medical facilities." Available at <https://achpr.au.int/en/node/853>

concerning the health and liberty of detainees, consistent with the standards identified by the Court in Advisory Opinion OC-29/22;

- c. measures to guarantee that persons deprived of liberty who suffer from serious or chronic illnesses have timely access to specialised diagnosis, treatment and, where necessary, palliative care, on a footing of equivalence with the community and in accordance with the availability, accessibility, acceptability and quality of services; and
- d. the adoption of independent medical oversight of places of detention under the authority of intelligence and security services, in conformity with the State's obligations of prevention.

VII. Conclusion

24. For the reasons set out above, Just Access e.V. respectfully invites the Court:

- a. to develop, in this case, the content of the Article 26 right to health of persons deprived of liberty, in the terms of the State's reinforced position of guarantor, the AAAQ framework, the principle of equivalence of care, and the heightened obligations owed to detainees with serious or chronic illnesses;
- b. to recognise that the right to health of persons deprived of liberty constitutes not only a right protected by Article 26 of the Convention but also a norm of customary international law, derived from and reinforced by the OAS Charter and the American Declaration, binding on the State independently of the vicissitudes of its adherence to the Convention;
- c. to hold that the deliberate and repeated refusal of a detaining authority to comply with judicial orders requiring the medical transfer or release of a person in its custody constitutes a self-standing violation of Article 26, read in conjunction with Articles 25(2)(c) and 1(1) of the Convention; and
- d. to order reparations that address the structural and rule of law dimensions of the violation, including the guarantees of non-repetition set out above; and
- e. to incorporate elements of up-to-date, personalised medicine in its jurisprudence.

Respectfully submitted,

Just Access e.V.

Luca Brocca

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Luca Brocca

Head of Legal Research

Just Access e.V.

Prof. Dr. Dr. Mark Somos

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Mark Somos

Founder and Special Counsel

Just Access e.V.