



Brief assessment of the implementation of 1st cycle UPR recommendations

During the first cycle of the EPU, Venezuela received 25 recommendations related to the rule of law, access to justice and due process. Of these, the State agreed to only 6 (93.10, 94.19, 94.20, 94.4, 94.27 and 94.33), referred to as: (a) to continue to cooperate with international and regional bodies in the development of a legal and institutional framework for the protection and promotion of human rights; (b) strengthening the rule of law; (c) reform the criminal code, with special attention to human rights, (d) improving the penitentiary system and speed up criminal proceedings, (e) apply the rules of Bangkok for the treatment of prisoners and the non-custodial measures for women offenders.

The other 19 recommendations not accepted by the State were: (a) implement the judgments of the Inter-American Court of human rights and comply with the recommendations of international and regional human rights bodies; (b) comply with international obligations with respect to the judiciary; (c) respect and guarantee the independence and judicial autonomy; (d) apply open, transparent and independent process for the selection and appointment of judges and prosecutors, as well as to put an end to the provisional nature of the appointment of judges; (e) increase the institutional and material support to the system of Justice; (f) abolish the practice of using the judiciary to stifle criticism of the Government; (g) investigate allegations of interference of the Executive in judicial decisions; (h) give priority to the reform of the law and the judicial system to prevent, sanction and address the culture of impunity; (i) fight against the abuse of power by the security forces and (j) end impunity in retaliation for attacks against defenders of human rights, journalists and dissidents, the excessive use of force on peaceful demonstrations, abuse of State actors, extrajudicial executions and other serious violations of rights (95.8, 95.9, 95.10, 95.11, 95.12, 95.13, 96.1, 96.9, 96.10, 96.13) 96.14, 96.15, 96.16, 96.17, 96.18, 96.21, 96.22, 96.24 and 96.25).

In fact, none of these recommendations achieved any progress whatsoever and instead the stifling tyranny has rather worsened. The situation of the rule of law and the right to justice in Venezuela during the first cycle was already critical. The loss of independence of the judiciary has aggravated, and far from advancing in policies that meet the legal needs of the population; instead they restricted the access to international justice to assert the rights of the Venezuelan people due to the denunciation of the American Convention of human rights in 2013, which is territorially the international jurisdiction in a more accessible way. Between 2013 and 2015, the Venezuelan State also submitted its periodic reports to committees of racial discrimination, discrimination against women and the rights of the child, who recommended: (a) to ensure that the process of selection of judges and magistrates would finally become transparent; (b) ensure the independence of the judiciary; (c) ensure the applicability of all economic, social and cultural rights, as well as their knowledge between rights holders, operators of Justice and the National Assembly; (d) investigate and prosecute all cases of violence against detained women, especially that of judge Afiuni; (e) eliminate barriers to the women for access to justice, including training of operators of Justice in the rights of women and gender equality; (f) reforming the juvenile justice system to adapt it to international standards, in particular a) raise the age of criminal responsibility; b) preventive measures; (c) applying measures alternative to the preventive imprisonment, decrease the time that preventive imprisonment lasts and the amount of crimes punishable with prison, and d) separate between them adults and minors.

In 2014, the State presented its 4th periodic report to the Committee against torture of the United Nations, which recommended: (a) restrict the use of detention in flagrante delicto when committing a crime and freeing Leopoldo López, Daniel Ceballos and all those who have been detained for exercising their rights to express themselves and speak freely; (b) guarantee the due process to each and everyone; (c) to investigate allegations of torture and ill-treatment filed by judge Afiuni, as well as to ensure a fair and independent trial (d) respect the presumption of innocence and avoid any comments affecting judicial independence; (e) take measures to ensure the autonomy, independence and irremovability of judges. By 2015, the State also presented its 4th periodic report to the United Nations Human Rights Committee, which recommended: (a) take measures to ensure the autonomy, independence and impartiality of judges and prosecutors and to immediately resolve the provisionality of a high percentage of these; (b) resolve the situation of judge Afiuni through a fair, independent and impartial trial, as well as to investigate allegations of abuse and sexual assault of which she was the victim; (c) adopt the necessary legislation to avoid that civilians be judged in military courts.

Both the High Commissioner for the human rights of the United Nations and the Working Group of arbitrary detentions have qualified the arrests of Leopoldo López and Daniel Ceballos as arbitrary and recommended them to be released. The Special Rapporteur on the independence of judges and lawyers has likewise expressed its concern about the lack of independence of judges and by the interference of the political power in the judiciary.

National legal framework

The Constitution of the Bolivarian Republic of Venezuela (Constitution), establishes the rule of law as one of the principles on which the Republic is founded. Similarly, the Constitution provides for the access to justice and due process rights and constitutional guarantees. In addition, the Constitution establishes the functional, financial and administrative autonomy of the Supreme Tribunal of Justice (TSJ) and prohibits partisan political activism in the exercise of judicial functions.



The judiciary is regulated by the Act of the system of Justice (2009), the organic law regulating the Supreme Court of Justice (2010), Venezuelan law of the administrative litigation jurisdiction (2010) and code of ethics of the judge of both sexes. However, this regulation has been used with policy objectives to allow interference by the Executive in the judiciary. The Act on the system of Justice created the National Commission of the system of Justice, which replaced the TSJ in the exercise of its powers of Government, management and administration, with authority to formulate, monitor and judicial policies, overseeing management of the TSJ, as well as review and approve its budget and management, which also limits their functional, administrative and financial autonomy. The Constitutional Chamber of the TSJ has applied its own irregular interpretation to modify partially the code of ethics of the judge twice, excluding its application to the magistrates of the TSJ, which acts as judge and jury, and has declared them irremovable if they engage in conduct contrary to the code. Also excluded from its application are the provisional judges, which are the vast majority, being the TSJ, which must appoint them through public contests. The rights of persons facing situations constituting a threat, vulnerability, risk or harm to their physical integrity, their properties, the exercise of their rights, respect for their security, social peace, coexistence and compliance with the law, despite the fact that they are established in the organic law of the service of police and the body of the Bolivarian national police (GNP) and the law of the body of scientific research are not complied with in the Venezuelan Penance and criminal investigations body (CICPC).

Challenges

Serious interference by the ruling party in the judiciary, which covers the appointment of judges, the appointment and removal of judges without stability and right to defense and judicial policies.

Cases, facts, comments

All appointments of judges since 2000 have been made in a manner contrary to the Constitution. The more violation was last, at the end of 2015, which violated all legal system, as well as the principles and international standards of judicial independence, separation of powers and democracy. The Commission, which made the appointment was largely composed of representatives of the ruling party and none was an independent civil society representative as required by the Constitution. The selection process started without making it clear how many judges had to retire and one week after its opening, 13 justices retired early. The Commission suspended the process without any justification and then restarted it.

The magistrates of the TSJ must last 12 years in office, according to the Constitution, but only 11% of the nominees since 1999 has completed the constitutional period. The average has been 7 years. Opposition contests are not made since 2003, still very high number of judges not headlines (provisional and temporary), which represent 69%, said a judge at the UN, but according to the website of the Supreme Court are 73%. These judges are appointed and removed by an administrative and non-judicial body, through a simple notice without prior procedure, according to the TSJ whimsical decision, leaving them devoid of possibilities for defense. Each year, according to inferences from the speeches of opening of the judicial year, they use to appoint around 1,500 to 2,200 judges. As a result, their efficiency is low. Less than 25% of its judgments are final. Political prisoners are example of impunity, violations of rights and bias of the judiciary. After acting as temporary judge for a short time, judge Susana Barreiro was charged to pronounce judgment on opposition leader Leopoldo López and then she was rewarded with a nomination as District Attorney General.

After the parliamentary election in 2015, the President of the National Assembly (AN) promised the President of the Republic to have judges appointed prior to December 23, 2015, despite the constitutional impossibility to do it without complying the time periods and statutory requirements. It was the task of the new AN to designate them, but the AN former President on the last days prior to expiration time although violating the law did. With this appointment both unconstitutional and illegal, the governing party who lost most of the seats in the AN reacted by naming 13 new main judges and 21 alternates for another 12 years. The 13 outgoing judges and many alternates retired prematurely, without any justification. One of the forcefully retired judge complained that their retirements were not voluntary but forced.

The TSJ, is ruled by the Strategic Plan 2013-2019 whose bases are Chavez Bolivarian socialism and Chavez Plan of the Homeland "Plan de la Patria" which is the Government's plan and is Entirely inconsistent with the Constitution, because, inter alia, provided for the existence of a single ideology and a form of State and society with collectivist models. The President of the TSJ said in his speech opening of the judicial year 2014: "The activities developed by the Judiciary shall be the foundations of the aims and objectives proposed in the Plan of the homeland 2013 - 2019". Strategic Plan does not provide for judicial independence as one of its axis, but put the



emphasis in the Bolivarian doctrine and national sovereignty and proposes popular control instances, which are in fact subject to the Executive Branch, called "Popular power". The TSJ had not submitted any annual report since 2012. That is why we have practically no statistics on the judiciary since 4 years ago. The opacity is enormous. The rate of access to legal information on the internet fell to 16% according to the studies of Justice of the Americas, in 2004 was almost 70%. Venezuela ranks last of the countries of the region with the internet in terms of their degree of accessibility to information. According to a study by access to justice from the website of the TSJ, only 52% of judgments of the Court are available on time.

Legal uncertainty, separation of powers and violation of guarantees of respect for the will of the people, in violation of the domestic law and human rights standards.

The Constitutional Chamber of the TSJ has exceeded their functions. It has endorsed the disincorporation of elected officials by popular vote of the National Assembly; It has violated legal certainty to create standards, which in addition to changing the laws contradict the Constitution; It has usurped legislative functions and has used the concept of sovereignty to disregard and violate human rights. This Constitutional Chamber accused of contempt of orders of protection, two elected mayors, revoking their mandates in an unconstitutional way and condemning them to comply with prison sentences, while it is expected worth any law. Mrs Maria Corina Machado was removed for the AN, violating the constitutional procedure to pave the immunity of a member of Parliament, for having participated in a meeting of the Permanent Council of the Organization of American States (OAS). The AN decision was ratified and "legalized" by the said Chamber, acting ex officio, after declaring an action inadmissible. Members of an entire State are currently suspended and made AN inoperable because the TSJ not allowed it and void everything that makes or prohibits compliance with its decisions.

Violation of due process and harassment to the work of lawyers for actions of bodies of State security.

The Venezuelan Government has not taken measures to ensure due process in its judicial and administrative proceedings. The so-called operation of people's Liberation (PLO) as part of public policy in the field of security, has largely contributed to the violation of this principle, given that these operations have not fulfilled the legal means necessary to assure the protection of the rights of citizens against the actions of the State security bodies.

In research conducted by CODEHCIU in 2015 in the State of Bolivar on the right to defense, 70% of 50 criminal lawyers said that they had been affected in their work because of actions or omissions of officials attached to judicial authorities. The main reasons were: refusal of access to sites of detention (50%), refusal to provide information on the circumstances of detention (42%); and impediments to communicate with their defended (38%). The official involved were the body of penance investigations and criminal investigations (CICPC) and the police state of Bolivar (PEB) agencies.

The State Prosecutor's Office responds just 6% of complaints on violation of constitutional rights of the accused. In January of 2016, when her attorney tried visit to a lady of Syrian citizenship detained in the Bolivarian Intelligence Service (SEBIN), to see her State of health, the official of Guard denied the visit and threatened with her transfer to another Center, which is overcrowded with 100 women, in a space with a capacity for 20. There are no rest rooms for women in that State.

Deficit of public defenders and legal aid for vulnerable groups by economic constraints.

The personnel formed in assistance legal is very scarce in the country. According to the People's Defensor, for every 10,000 people trained in courses developed for them, As many as 35,000 complaints of rights violations occur. Currently, low-income people do not have enough free legal assistance to the organs of Justice. The deficit of public defenders, judges and officials who meet the legal needs of the majority of the population needs is extraordinary. The most underserved towns include lesbian, gay, bisexual and transgender and intersex (LGBTI), which do not have protection mechanisms and also towns and villages in border areas.

Recommendations

1. Stop the interference of the Executive power and the Popular power in decisions, appointment and management of judicial resources and reforming legislation related to the justice system, with a focus on judicial independence.
2. Comply with the legal system in relation to the established procedures to appoint, replace and remove judges from the justice system, return to public and open CONTESTS, regulate the number of temporary judges and the constitutional rules on the appointment of judges.



3. To promulgate a code of ethics for magistrates and judges Venezuelans, according to the international guidelines of the independence and security of judges.
4. Abandon the practice of the resource of interpretation and the performance of trade, as mechanisms of repression and "legalization" of the practices of the Government contrary to the Constitution and to Human Rights.
5. Respect legal certainty and abandon the practice of legislating or even act as a constituent power from sentences, violating the separation of powers and the will of the people.
6. Reform the Judicial Strategic Plan 2013-2019 and separated it from any ideological or partisan reference.
7. Bring stability to the judge, career incentives, training to the Court and create mechanisms for its evaluation and tenure..
8. Create an annual system of accountability with clear and comprehensive statistics of the Judicial Branch.
9. Comply with the issued decisions of the Inter-American system for the protection of human rights, thus ensuring the international protection of the human rights of Venezuelans.
10. Remove the denunciation of the American Convention of human rights and to the international jurisdiction of the Inter-American Court of human rights.
11. Adopt training programs in the field of human rights with emphasis on due process directed to research bodies and auxiliary involving actions of monitoring and control of their actions.
12. Investigate and follow up on allegations made by lawyers and citizens in general, the actions of officials who violate the right to a defense and respect for citizenship.
13. Adopt measures that facilitate complaints against police abuses, to place the complainant in a State of danger or vulnerability.

Summary prepared based on contributions Access To Justice, PROVENE and the Commission on Human Rights and Citizenship (CODEHCIU). Available in: - <https://goo.gl/bYzTO3> - <https://goo.gl/OeAF3a> - <https://goo.gl/xlsD36> Twitter: - @AccesoaJusticia - @ProVene - @Codehciu