

Report on the performance of the Ombudsman's Office (2001-2019)

The Ombudsman's Office is a new institution within the Venezuelan State, foreseen from the 1999 Constitution, which must play an important role in the justice system, since its main function is to defend human rights, and more specifically, to be a guarantor of its compliance by the State.

In 2015, *Acceso a la Justicia* published a report on its performance from 2001 to 2015 (<https://www.accesoalajusticia.org/informe-sobre-el-desempeno-de-la-defensoria-del-pueblo-2001-2015/>), which revealed that its performance had not been adequate, however, from 2016 to 2019 it only worsened even more.

This time, a partial update of that report is presented until 2019, to the extent that is permitted by the limited official data available. In this regard, it should be noted that the report and its update are based on the organism's annual reports published only up to 2015, as well as on those of recognized Human Rights organizations, for example, the *Programa Venezolano Educación-Acción en Derechos Humanos* (Provea).

In this report, firstly, the resources of the Ombudsman's Office are evaluated, both in budgetary terms and human resources, and secondly, some efficiency indicators according to the scarce information available, as well as its actions and those of its most prominent authorities in the period under study.

1. Despite the fact that the Constitution, in its article 276, obliges it to present "an annual report to the National Assembly" after each budget and annual management exercise, and that its law stipulates that said report must contain "indicators on the situation of the Human Rights", the governmental body has only partially fulfilled these mandates since its creation. In 2016, 2017 and 2018, the institution did not present its respective management report to the Legislative or to any other instance, as *Provea* reported in its annual reports for each of those years in its chapter entitled "Right to Justice. "

2. The website of the Ombudsman's Office (<http://www.defensoria.gob.ve/>), which is currently not operational, played an important role by offering a simple platform for the formalization of complaints through a form. Additionally, it provided contact information such as free hotlines and the directory of offices in the different regions of the country, and it published annual reports, books and bulletins, as well as news about the activities of the institution and the Ombudsman's actions. from town. Although it lacked important data such as the total number of defenders or the number of complaints received and dealt with by said officials. None of the latest data mentioned appears in the annual reports either.
3. Although the Ombudsman's office achieves with its mission to submit annual reports to the National Assembly since its inception until 2015, these had failures such as: the statistics did not distinguish between complaints received and complaints attended. In fact, when reviewing the tables and graphs presented in detail, it can be found that both titles were used interchangeably. Therefore, an important indicator of effectiveness cannot be estimated, which refers to what proportion of the complaints were actually processed and attended by the institution.
4. Additionally, among the cases dealt with between 2001-2015, a constant classification is not maintained in all the reports: there are years in which cases on the rights of children and women are not presented separately, but within social rights (2002-2008), and for example, as of 2009, cases on labor rights stopped being published. Likewise, a significant proportion of the complaints dealt with are classified as "various matters", and in some years this concept means more than half of all the cases dealt with, so there is a significant number of actions whose subject matter is unknown at the time of analysis. In fact, six out of every ten complaints that the Ombudsman receives are labeled under that heading.

5. The main indicator to measure the effectiveness of a public body is obtained by comparing the total of cases or matters entered against the total of causes or matters that were finally addressed. However, the way as the Ombudsman office has been accountable for its management over the years complicates the power to make this comparison.
6. In 2002, the public body reported that it received 60.037 complaints, its all-time high. However, from that moment on, this number maintained a downward trend until 2009, when it registered the lowest value for the period: 26.218 complaints. In the following years a slight recovery was observed, until 2012 and there was another decrease that was stopped in 2015, when another increase in the number of complaints was observed, which totaled 39.418. This drop could well be associated with credibility problems for the institution.
7. Another data that indicates the inefficiency of the institution is that only a third of the requests it receives end up being effectively processed. Thus, in 2015, 30.9% of the petitions ended up in a file compared to 41.5% in 2009.
8. Complaints of violation of civil or social rights, have traditionally occupied the second and third among the matters for citizens to come to the Ombudsman of the People. In the first case, it fluctuates between 15% and 20% of the complaints throughout the period, while in the second it begins with great weight within the total (22%), but then decreases until reaching 8% in 2015. With quite a distance from these rights, there are complaints for failures in public services, which remain on average between 3% and 5% of the total, showing their highest value in 2008 (10%), the year that coincides with the first electricity crisis that was registered in the country.
9. The decreasing trend in the number of complaints received in most of the period and the fact that most of them (60% at the end of the period) are not classified according to the areas of competence of the Ombudsman's Office reveal the lack

of confidence of the society in the organism and of interest of the same one for not showing the reason of the complaints.

10. When inquiring about the financial resources managed by the Ombudsman's Office between 2001-2015, it was found that they grew from the year 2000, when the agency was launched, until 2002, when it managed 78 million strong bolivars (about 10 million dollars at the time). However, in the following years the funds began to fall until 2012, when they rebounded slightly. However, in the rest of the period the Ombudsman's budget decreased again. A situation that has made it difficult, among other aspects, for the body to consolidate and adequately fulfill its constitutional functions of ensuring the fundamental guarantees of Venezuelans.
11. The bulk of the funds that the Ombudsman's Office has administered have been earmarked for the payment of the personnel working in the organization. Eight out of ten bolivars that the institution has received have been used to pay the salaries and salaries of its officials, according to the data contained in the annual reports of the institution, 2001-2015.
12. The resources allocated to the office in charge of safeguarding human rights barely reached 0,003% of the Gross Domestic Product (GDP) in 2002, when it had its largest budget. This data reveals that the promotion and defense of human rights has not been a real priority of the Venezuelan State.
13. To evaluate the quality of the service provided by the Ombudsman's Office, it is also essential to review its human resources. But the agency has not reported how many defenders it has, so for the preparation of the Access to Justice report, 2001-2015, alternative sources were used such as a study prepared by the Support Network for Justice and Peace in 2009, in which made sure that there were 122 defenders in 17 states of the country. In the remaining six entities the figure was unknown.

14. The absence of this information makes it impossible to determine whether the agency has had the necessary human resources to fulfill its constitutional mission. In addition, the absence of these data prevented obtaining another key piece of information: how many civil servants there are for every 100.000 inhabitants.

15. Since its creation, the appointment of the highest authority of the Ombudsman's Office has been controversial. However, the way its last two incumbents took office have been examples of the cooptation that *Chavismo* has made of the Venezuelan state, including this institution. Thus, in 2014 the then National Assembly with an official majority managed to designate the former deputy and former governor of Anzoátegui, Tarek William Saab, as Ombudsman without the 2/3 parts required in article 279 of the Constitution; and, therefore, without the need for the votes of the parliamentary opposition. How? Thanks to judgment number 1864 that the Constitutional Chamber of the Supreme Court of Justice issued in December 2014. In that ruling, the highest court authorized Parliament to make the appointments of the members of the Republican Moral Council by simple majority, arguing that the Constitution it did not establish a qualified majority if the obligation to convene the Nominations Committee to select the candidates for Prosecutor, Ombudsman and Comptroller General of the Republic was not fulfilled.

16. But as if what happened in 2014 were not enough, in 2017 the fraudulent National Constituent Assembly not only dismissed the now attorney general in exile, Luisa Ortega Díaz; Instead, she sent Saab, who was the Ombudsman at that time, to the Public Ministry, despite her poor performance, and in the latter's place, she placed Alfredo Ruíz. All this, despite the fact that the Legislative was the constitutionally empowered body to make such a decision.

17. Saab's passage through the Ombudsman's Office was not positive, and proof of this is that at the end of 2016, the Global Alliance of National Human Rights Institutions (GANRHI) demoted the national institution for Human Rights of Venezuela from its category "A" —which it had since 2002— to "B", for not having demonstrated its independence and autonomy from the Government. The measure prevented the organization from participating with its own voice in the II Universal Periodic Review of Human Rights to which the country was submitted that same year before the United Nations Human Rights Council.
18. The GANRH Subcommittee on Accreditations accused the Ombudsman's Office of "not being prepared to speak forcefully and promote respect for Human Rights in response to credible complaints of serious human rights abuses committed by government authorities".
19. Although the body's evaluation process, which began at the request of different Venezuelan civil society organizations, began during the administration of Gabriela Ramírez, prior to Saab, who held the position at that time, issues such as the closure of the border with Colombia, the mass deportations and without procedure of thousands of Colombians that the Government of Nicolás Maduro ordered in 2015, the controversial Operation for the Liberation of the People (OLP by its acronym in Spanish), the government's attacks against Human Rights activists, to name a few, they did not help the Ombudsman's Office approve the review.
20. For his part, the current head of the institution, Alfredo Ruíz, despite his past as a human rights defender and former director of the *Red de Apoyo por la Justicia y la Paz*, did not hesitate to align himself with the Government. Thus, for example, in 2017 it did not pronounce on the massacre that occurred in the Amazonas Judicial Detention Center, and also collaborated in the drafting of the questioned Law Against Hate, for Peaceful Coexistence and Tolerance dictated by the fraudulent Assembly National Constituent Assembly, and remained silent in the

face of repeated reports of executions attributed to the Special Actions Forces (FAES by its acronym in Spanish) of the Bolivarian National Police.

21. An example of Ruíz's submission to the designs of the Miraflores Palace was his statement denying the migratory crisis that the country is experiencing. "It is not true that Venezuela is a country of emigrants. Venezuela is still a host country for immigration [...] the flow of people entering is greater than those leaving", he declared.
22. With the passage of time the silence of the Ombudsman has only worsened. Thus, in its report for the year 2018 in the chapter on the right to justice, Provea denounced that Ruíz's silence in the face of the growing number of complaints of extrajudicial executions "costs lives, and encourages the perpetration of serious human rights violations".
23. From the foregoing, it is clear that the information that could be accessed on the Office of the Ombudsman does not provide a fully up-to-date overview of its management, since the information available on the total number of defenders, cases entered and heard does not appear systematically for the entire period 2001-2015, and there is almost no information from 2016 to 2019. In the case of defenders, no official data or independent institutions could be found that would allow estimating the efficiency of their activity. Even so, the degradation of this institution by the Global Alliance of National Human Rights Institutions at the end of 2016, the absence of accountability before parliament since that year, the absolute opacity about its management from 2016 onwards, the lack of online website and the silence of the current Ombudsman in the face of the serious events that occur in Venezuela that have been recognized as serious human rights violations, among others, by the Office of the United Nations High Commissioner for Human Rights, are sufficient indicators of his absent role as ombudsman, and therefore of his poor performance.