Acceso a la Justicia

STATUS AND ANALYSIS

OF THE LEGISLATIVE REFORMS CARRIED OUT BY THE VENEZUELAN GOVERNMENT RELATED TO THE JUSTICE SYSTEM

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tus and analysis of the legislative reforms carried out by the Venezuelan government related to the justice system

The purpose of this document is to analyze the legislative reforms that have been made in Venezuela in the period from January 2021 to January 2022 to determine the most significant changes introduced in the legislation. However, before proceeding with such analysis, we consider it pertinent to refer to the evolution and status of the process being developed at the International Criminal Court (ICC) to understand better the circumstances that generated the approval of the laws and reforms, the object of study in this document.

I. The Venezuela I Case before the ICC.

On February 8, 2018, the ICC Office of the Prosecutor opened a preliminary examination on Venezuela, concerning the events that occurred in the country from April 2017, on the occasion of mass protests that resulted in a strong repression of the civilian population by the Venezuelan State security forces. The repression gave rise to systematic and widespread human rights violations that can be assessed as crimes under the Rome Statute[1].

On September 27, 2018, six States parties to the Rome Statute referred to the Venezuelan case, requesting the ICC Office of the Prosecutor to investigate alleged crimes against humanity committed in Venezuela since February 12, 2014, based on the report prepared by the Secretariat of the Organization of American States (OAS) and the panel of experts[2].

In June 2021, Prosecutor Fatou Bensouda's term ended, and Mr. Karim Khan was to succeed her. Therefore, assorted audiences were expecting that Ms. Bensouda would present her conclusions on the preliminary examination of Venezuela I at the end of her tenure. However, she could not do so because the Venezuelan Public Prosecutor's Office had lodged two appeals, one requesting judicial cooperation with the Court and the other for judicial revision before the ICC Pre-Trial Chamber. This last appeal was the one that prevented Prosecutor Bensouda from making her conclusions public, as she stated in her farewell remarks.

Along with these appeals, the Public Prosecutor's Office (Public Ministry) reported the forwarding of information to the Prosecutor's Office on cases of human rights violations[3].

For the reasons stated above, Prosecutor Bensouda could not rule on closing the preliminary examination of Venezuela I, leaving deferred such a decision in the hands of the current Prosecutor Karim Khan.

1 https://accesoalajusticia.org/estatus-del-caso-venezuela-i-ante-la-corte-penal-internacional/
2 Ídem.
3 https://twitter.com/MinpublicoVEN/status/1397968299376455681?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1397968299376455681%7Ctwgr%5E%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fpolitikaucab.net%2F2021%2F05%2F28%2Fministerio-publico-presenta-dos-acciones-ante-la-cpi-para-asegurar-debido-proceso-y-derecho-a-la-defensa%2F

In this context, and in view of the imminent visit to Venezuela of Prosecutor Khan (that took place in November 2021), a package of legal reforms or new laws began to be passed by the National Assembly as of September 2021. This package of legal reforms had the sole intention to show a willingness to change the Venezuelan justice system to eventually investigate and prosecute those responsible for the crimes committed and thus avoid the advancing of the Venezuela case before the ICC.

On November 3, Prosecutor Khan and the Government of Venezuela signed a Memorandum of Understanding which, among other things, states that the preliminary examination of the situation in Venezuela I has been completed and that an investigation to find out the truth in accordance with the Rome Statute shall be opened[4].

At the end of March, Prosecutor Khan revisited the country, and on April 1st, declared that "complementarity is the beating heart of the Rome Statute," adding that "domestic proceedings need support and deference, provided that they are effective, genuine and committed." Therefore, in that regard, he will open an office in Caracas to provide the required technical assistance. In short, Khan seeks to contribute to the domestic justice system to do its work[5]. However, by referring to the fact that "it is not a one-way street," it is also clear that the relevant investigations on the Venezuelan case will continue in The Hague.

On April 16, 2022 the Venezuelan Foreign Minister requested the Prosecutor's inhibition to continue the investigation, among other reasons, because "the Bolivarian Republic of Venezuela has been adopting a set of regulatory and institutional reforms to strengthen national capacities to ensure the effective administration of justice, in accordance with international standards"[6].

However, neither this nor the other arguments put forward by the Venezuelan government were successful. Therefore, the Prosecutor decided to ask the Preliminary Chamber to authorize him to continue with the investigation[7].

Hence, it is necessary to analyze the scope of this legislative effort, both in terms of quality and application, to determine whether such changes responded to a genuine commitment by the ones who pushed the package of legal reforms aimed to try before courts to those responsible for crimes against humanity following international standards.

4 https://www.icc-cpi.int/venezuela
5 https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-completion-second-visit-venezuela-through
6 https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2022_03182.PDF
7 https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_03184.PDF

II. Laws amended or approved between 01/01/2021 and 01/31/2022

Thus, from January 2021 to January 2022, a total of 39 laws were passed by the National Assembly. In reality, with the formal rank of law, there were 38 enacted laws since the Rules of Procedure and Debates of the National Assembly. Although it has such a name, it has been peacefully considered by jurisprudence as a material law, not a formal law.

Of these 38 laws, 12 were related to the justice system. Of those 12 laws, only 4 were new laws, while the rest were reforms. 9 out of those 12 were approved between September and October 2021 and, in short, just a few days before Prosecutor Khan visited Venezuela. Furthermore, only one new article was included in one of the reformed laws (Law of Reform of the Law for the Protection of Victims, Witnesses, and Other Procedural Subjects). While in the two other laws, three new articles were included (Law of Reform of the Decree with Rank, Value and Force of Law of the Statute of the Function of the Investigation Police and the Law of Reform of the Decree with Rank, Value and Force of Law of the Statute of the Police Function). The following is a list of the laws approved:

Table No. 1

LIST OF LAWS ON THE JUSTICE SYSTEM PASSED BETWEEN
JANUARY 2021 AND 2022 IN VENEZUELA

		No.	Type of Gazette	DATE
LAWS JANUARY 2021- JANUARY 2022 RELATED TO THE JUSTICE SYSTEM				
1	Law of Amendment of the Decree with Rank, Value and Force of Law of the Statute of the Investigation Police Function.	6.643	Special	17/09/2021
	http://spgoin.imprentanacional.gob.ve/cgi-win/be_alex.cgi?Documento=T028700036794/0&Nombrebd=spgoin&CodAsoc-Doc=2646&TipoDoc=GCTOF&Sesion=1078221015			
2	Organic Law for the Reform of the Organic Code of Criminal Procedure	6.644	Special	17/09/2021
	http://spgoin.imprentanacional.gob.ve/cgi-win/be_alex.cgi?Documento=T028700036796/0&Nombrebd=spgoin&CodAsoc-Doc=2647&TipoDoc=GCTOF&Sesion=952370473			
3	Law for the Reform of the Law for the Protection of Victims, Witnesses and Other Procedural Subjects.	6.645	Special	17/09/2021
	http://spgoin.imprentanacional.gob.ve/cgi-win/be_alex.cgi?Documento=T028700036798/0&Nombrebd=spgoin&CodAsoc-Doc=2648&TipoDoc=GCTOF&Sesion=767797335			
4	Organic Law of Partial Reform of the Organic Code of Military Justice.	6.646	Special	17/09/2021
	http://spgoin.imprentanacional.gob.ve/cgi-win/be_alex.cgi?Documento=T028700036801/0&Nombrebd=spgoin&CodAsoc-Doc=2650&TipoDoc=GCTOF&Sesion=1554192297			

		Nro.	Tipo de Gaceta	FECHA
LEYES ENERO 2021- ENERO 2022 VINCULADAS AL SISTEMA DE JUSTICIA				
5	Law for the Reform of the Organic Penitentiary Code.	6.647	Special	17/09/2021
	http://spgoin.imprentanacional.gob.ve/cgi-win/be_alex.cgi?Documento=T028700036804/0&Nombrebd=spgoin&CodAsoc-Doc=2652&TipoDoc=GCTOF&Sesion=1536360585			
6	Law of Amendment of the Decree with Rank, Value and Force of Law of the Statute of the Police Function.	6.650	Special	22/09/2021
	http://spgoin.imprentanacional.gob.ve/cgi-win/be_alex.cgi?Documento=T028700036863/0&Nombrebd=spgoin&CodAsoc-Doc=2659&TipoDoc=GCTOF&Sesion=1163499671			
7	Organic Law for the Protection of Personal Liberty and Security.	6.651	Special	22/09/2021
	http://spgoin.imprentanacional.gob.ve/cgi-win/be_alex.cgi?Documento=T028700036865/0&Nombrebd=spgoin&CodAsoc-Doc=2660&TipoDoc=GCTOF&Sesion=1487682325			
8	Law for the Prevention and Eradication of Sexual Abuse against Children and Adolescents.	6.655	Special	07/10/2021
	http://spgoin.imprentanacional.gob.ve/cgi-win/be_alex.cgi?Documento=T028700037155/0&Nombrebd=spgoin&CodAsoc-Doc=2697&TipoDoc=GCTOF&Sesion=1018998185			
9	Law for the Respect of Human Rights in the Exercise of the Public Function.	6.658	Special	28/10/2021
	http://spgoin.imprentanacional.gob.ve/cgi-win/be_alex.cgi?Documento=T028700037151/0&Nombrebd=spgoin&CodAsoc-Doc=2710&TipoDoc=GCTOF&Sesion=528112023			
10	Organic Law of Amendment to the Organic Law on the Right of Women to a Life Free of Violence.	6.667	Special	16/12/2021
	http://spgoin.imprentanacional.gob.ve/cgi-win/be_alex.cgi?Documento=T028700037619/0&Nombrebd=spgoin&CodAsoc-Doc=2756&TipoDoc=GCTOF&Sesion=992378199			
11	Law of the Commission for the Guarantee of Justice and Reparation of Victims of Crimes against Human Rights.	6.678	Special	27/12/2021
	http://spgoin.imprentanacional.gob.ve/cgi-win/be_alex.cgi?Documento=T028700037670/0&Nombrebd=spgoin&CodAsoc-Doc=2770&TipoDoc=GCTOF&Sesion=1232294359			
12	Organic Law for the Reform of the Organic Law of the Supreme Court of Justice.	6.684	Special	19/01/2022
	http://spgoin.imprentanacional.gob.ve/cgi-win/be_alex.cgi?Documento=T028700037783/0&Nombrebd=spgoin&CodAsoc-Doc=2795&TipoDoc=GCTOF&Sesion=1610956887			

Given the variety of reforms and new laws approved, we will limit ourselves to a brief analysis of the aspects that we consider most important in terms of their real impact on achieving changes in the justice system.

III. Highlights of the laws passed and their impact on the justice system.

In order to determine these aspects, each of the laws or their amendments will be analyzed separately.

3.1. Law Amending the Decree with the Range, Value and Force of Law of the Statute of the Investigation Police Function and the Law Amending the Decree with the Range, Value and Force of Law of the Statute of the Police Function

These first two legal reforms are included in the same analysis because the added articles are practically the same. In both legal norms, an entity is created with the same name, the National Human Rights Commission, and the same competencies. However, we must point out that these administrative units have not been implemented yet at the date of preparation of this report.

In this regard, in both cases, the Commissioner's Office has the capacity to receive complaints of human rights violations by officials to whom the respective law is applicable. Refer such complaints to the Public Prosecutor's Office and the Ombudsman's Office. Request information on the cases reported, conduct disciplinary investigations of the complaints, instruct the corresponding inspectorates to open administrative investigations, and follow up and supervise them.

However, these capacities do not grant these Commissions the authority to decide on the sanctions to be applied, which remain in the hands of other entities.

Likewise, these Commissioners' Offices are granted the capacity to send the reports of cases handled and statistics to the Minister of assignment. Still, there is no obligation to make them public or inform the complainants. Therefore, it would be difficult to determine the real impact that the creation of these Commissions may help reduce human rights violations by the police. Suppose the information on the processing of these complaints is not managed with transparency criteria by these Commissions, which is the rule in Venezuela and enshrined in the Constitution. In that case, their work will be non-significant.

No less important than the above is that no mechanisms for reparations to victims of human rights violations have been set forth.

In perspective, these new Human Rights Commissions are in addition to the existing disciplinary units. However, they do not add elements that would provide transparency and information since they are units with functions oriented toward the processing complaints but with no real capacity to impose sanctions or make substantial changes, e.g., the set-up of action protocols in cases of gross human rights violations, the issue of protection measures for complainants, or even to inform the latter about the results or whereabouts of their complaints.

3.2. The Organic Law for the Reform of the Organic Code of Criminal Procedure.

This is one of the most extensive with a total of 18 articles modified and only one new one included[8] in the reforms made. We must highlight the modification of articles 122 and 124, related to the victims' rights recognizing the right to have access to the case docket, moreover, even when the victims are not part of the case. As well as the right to appoint a representative in the trial, either through a lawyer of their choice or through "associations, foundations, and other legal assistance agencies." The latter already existed in previous versions of this normative instrument and is now reintroduced.

Although such acknowledgments are undoubtedly improvements, they are nevertheless no more than a simple statement without any backing in reality. Moreover, they highlight the general problem of all the changes made: implementing them efficiently in specific cases.

Thus, other rights, such as the right of the accused to appoint a lawyer, or to have access to the case docket as duly documented in many cases by international organizations, are not fulfilled. Once again the important thing is not to change the laws but to abide by them. In this context, regarding the victim's access to the case docket, we can mention the case of CODHEZ, a human rights organization, whose lawyers represented a victim of sexual torture (in a personal capacity as they could not do so as an organization) and were systematically denied access to the case docket despite being part of the trial. It forced them, after multiple and unsuccessful efforts, to lodge an injunction to gain access to file docket[9].

The same issue occurs in the recognition rights vested on civil society organizations for the defense of human rights in representing victims. Several lawyers in the regions representing NGOs have reported that when it comes to representing a victim, they have been requested - as outlined in Administrative Ruling No. 002-2021 of May 2021 - to exhibit the registration of the NGO in the Unified Registry of Obligated Parties before the National Office Against Organized Crime and Financing of Terrorism.

This registration, issued under the guise of the fight against money laundering, in fact, it violates Recommendation No. 8 of the Financial Action Task Force (FATF)[10] and prevents the exercise of the right of association by setting up conditions that are impossible for organizations to comply with, in addition to violating basic human rights principles[11].

8 For a detailed list of all the articles modified in relation to the previous law see: https://accesoalajusticia.org/codigo-organico-procesal-penal-antes-y-despues/

9 https://codhez.org/tribunal-zuliano-obstaculiza-la-defensa-legal-de-una-victima-de-tortura-sexual/

10 "Targeted measures adopted by countries to protect nonprofit organizations from abuse for terrorist financing should not disrupt or discourage legitimate charitable activities. Rather, these measures should promote transparency and foster greater confidence among nonprofit organizations, both throughout the community and among the general public, that charitable funds and services are reaching their intended legitimate beneficiaries" (emphasis added).

11 https://accesoalajusticia.org/reiteramos-nuestra-exigencia-de-revocar-la-providencia-administrativa-002-2021-y-cualquier-otra-medida-dirigida-a-criminalizar-y-cerrar-el-espacio-civico-en-venezuela/, https://accesoalajusticia.org/siguen-bajo-amenaza-las-ong-en-venezuela-con-la-providencia-002-2021/

However, in the specific case, the situation is even more serious, if we take into account that the registry that was demanded cannot be presented because it has not yet been implemented, so that beyond the fact that it violates human rights, something is being demanded that cannot be complied with to the detriment of the victims and their right to appoint as representative in a trial whoever they consider to be their representative.

In addition, this requirement is not demanded by the COPP, which means that an essential right such as the right to be assisted or represented in a trial is subject to a registry, established in a sub-legal norm, and therefore cannot limit human rights[12].

The above are just two examples of how legal changes are not enough if an effective implementation policy does not accompany them on the part of the courts.

Finally, we would like to mention that among the changes in the Code is the reduction of pretrial detention periods (Article 230). Still, once again, practice shows a different reality from the norm. As evidenced by the United Nations High Commissioner for Human Rights in her oral update on March 17, 2022, she pointed out that she knew of at least 22 cases where detainees had exceeded the maximum period of pretrial detention and were still being held[13].

Thus, without needing to be exhaustive, we observe that the legislative changes do not go and match with the compliance that should result from the Venezuelan courts, thus continuing the same pattern of violation of rights that existed before the reforms.

12 https://accesoalajusticia.org/siguen-bajo-amenaza-las-ong-en-venezuela-con-la-providencia-002-2021/
13 https://www.justiciayverdad.org/es/actualizacion-de-la-alta-comisionada-sobre-venezuela/

3.3. Law for the Reform of the Law for the Protection of Victims, Witnesses and Other Procedural Subjects.

As indicated above, this reform only introduced a new article, Article 44, through which the Office of Attention to Victims of the Public Prosecutor's Office was created. This Office's capacities ensure protection and assistance to victims, witnesses, and other procedural subjects. The providing of integrated attention to the multidisciplinary victim support teams. The receiving of requests and evaluating the risk factors of the persons requesting protection, processing the suitable protection measures before courts, following upon them, and updating them. The carrying out training activities for the agencies responsible for executing the protection measures.

The first thing to note is that the National Assembly passed this law in 2006. There is no official information on its application, the number of beneficiaries of protection measures, or whether these measures have been applied and have had the desired effect on the victims.

Likewise, we must point out that for several years there has been an office within the Public Prosecutor's Office called the Office of Victim Services. We understand that this office would be granted with the capacities outlined in the law. Therefore, the reform of the law, would be adding capacities to an already existing office[14].

Since 2006, some partial studies have referred to the law's implemenation in a specific geographic area. However, protection measures are the exception and are granted in 4% or less of the cases upon request[15]. There is no evaluation of their full compliance so far. Also, it is noteworthy that only one type of protection measure was granted in all cases: police car patrols, despite the existence of a wide range of possibilities in accordance with the law.

Furthermore, the law and its reform only refer to the measures that a court may grant, but not to those that may be given outside of a trial depending on an administrative authority, which the law calls "extra-procedural protection measures" (article 21). Besides, there is no reference to the advice that should be given to victims in terms of compensation or reparation. In short, its narrow framework of capacities does not match the broad framework of action that victims require.

Finally, it is observed that the law did not include a coordination unit such as the one created in this reform, such as the Office of Attention to Victims of the Public Prosecutor's Office.

14 Thus, for example, the Public Prosecutor's Office in 2013 indicated that it had created 33 extensions of the victim outreach units. Vid: http://escueladefiscales.mp.gob.ve/userfiles/file/coleccion-memoria/IIIEncuentroVictimasytestigos.pdf

15 http://mriuc.bc.uc.edu.ve/bitstream/handle/123456789/4484/jmeneses.pdf?sequence=3

3.4. The Organic Law of Partial Reform of the Organic Code of Military Justice.

This outdated Code has its origins in the Gomecista dictatorship that ruled the first third of Venezuela's twentieth century. It has only been submitted to specific or procedural reforms. It features structural elements that are non-compatible with basic principles of the rule of law like the separation of powers, human rights principles like the right to a natural judge, or even respect for freedom and sexual orientation since Article 525 of the Code qualifies sexual relations "against nature" a crime[16].

Despite these significant flaws, its reform was very restrictive, impacting only five articles and one transitory provision. The changes moved around the prohibition of civilians tried at the military courts. The core of this modification was enshrined in the reformed Article 6, which mentions the following:

> "Article 6. Military personnel shall only be prosecuted before the courts with competence in military criminal matters for the acts qualified and punished by this Code and for military misdemeanors in accordance with the provisions of the laws governing the case. It is not allowed to qualify and punish facts by analogy or parity with military crimes and misdemeanors.
>
> No civilian shall be tried before the courts with jurisdiction on military criminal matters. In the event of cases incurring in the acts foreseen and punished by this Code, they [civilians] shall be tried before the ordinary criminal courts.".

The preceding was complemented by Article 128, which states that if civilians and military personnel are being tried in the same case, the competent courts shall be the civilian courts

The clarity of the before-mentioned norm and the rest of the object of the reform would seem to leave no room for exceptions to this prohibition, which would be compatible with the international standard established by the Inter-American Court of Human Rights.

However, once again, the application of the rule is compromised, not as in previous cases, by contrary practices of various courts, but by a reiterated jurisprudential criterion of the Constitutional Chamber of the Supreme Court of Justice (TSJ).

Thus, it is the case that said Chamber in decision no. 0735 of December 9, 2021, that is to say, **more than two months after the reform of the Code**, confirmed its previous criterion (set in decision no. 246 of 14-12-2020), where it mentioned that "(...) the civilian status held by a detained citizen obliges the Courts in Military Criminal Control Functions to preliminarily carry out

16 "Article 565. The officer who commits acts that affront him or demean his dignity or who permits such acts, without attempting to prevent it by the means authorized by law, shall be punished with imprisonment of one to three years and separation from the Armed Forces.
The same penalty shall apply to any soldier who commits unnatural sexual acts".

a reasoned analysis regarding the limits of their competence to hear ex officio without the need to require a request from the interested party (...)"[17].

It should also be added that the decision makes no mention whatsoever of the reform made.

The criterion set by the Constitutional Chamber is grossly serious insofar as it leaves open the possibility that the military criminal courts may again be used when it suits the interests of the Executive Power. Insofar as these jurisdictional bodies are subject to even greater control than the ordinary criminal courts, given the fact that both the President of the Republic and the Minister of Defense are part of their structure (Article 28).

Consequently, although an important step, the reform is neutralized by the aforementioned ruling of the Constitutional Chamber, and its application, as in the case of the other regulations analyzed, will be left to the discretion and convenience of those who control the judiciary.

3.5. The Law for the Reform of the Organic Penitentiary Code.

The changes in the new Code are limited to eight articles and one transitory provision. The central part of the reform revolves around the creation of a new security and custody body "of a civilian nature" (Article 85) for the internal custody of prisons, while external custody would be in the hands of the Bolivarian National Police (Article 87).

This change was given a time frame of two years to be implemented. Although no specific implementation of this measure is known so far, we observe that it would be positive in demilitarizing detention centers as long as the training criteria of the new corps comply with international standards.

Another significant change is the transfer of detainees since it is no longer the sole power of the corresponding judge but also the penitentiary authorities (Article 122), even for health reasons.

This last change would be of enormous importance for the protection of those deprived of liberty if implemented since several organizations have denounced both the existence of prison populations without medical assistance[18] and the occurrence of deaths due to the same cause[19], both among those detained for ordinary causes and in the case of political prisoners[20] for this reason it is imperative that this change shall be implemented as soon as possible.

17 https://accesoalajusticia.org/decretado-sobreseimiento-de-causa-penal-seguida-contra-civiles-ante-un-juzgado-militar/
18 https://runrun.es/megafono/421160/ovp-sin-atencion-medica-y-en-condiciones-inhumanas-sobreviven-mas-de-120-presos-en-amazonas/
19 https://www.elimpulso.com/2022/03/18/ovp-denuncia-precarias-condiciones-que-viven-los-presos-en-las-carceles-venezolanas-ante-la-cidh-18mar/
20 https://foropenal.com/foro-penal-presos-politicos-en-venezuela-sometidos-a-prision-preventiva-eterna/

However, there are still cases, as the UN High Commissioner for Human Rights pointed out in her update in March 2022. There were at least 6 cases of people with release orders were still under arrest, demonstrating one more time that the legal reform is not the ideal means to prevent arbitrary detentions from continuing[21].

3.6. The Organic Law for the Protection of Personal Liberty and Security.

This new law is not only unnecessary since there is an Organic Law of Amparo on Constitutional Rights and Guarantees of 1988 which already regulated *habeas corpus*, but it is also regressive in nature inasmuch as it now establishes special courts with competence in this matter when, due to the principle of diffuse control of the Constitution, this recourse could be lodged in any court.

This law does not introduce advances in the development of habeas corpus, already regulated in Venezuela by the Organic Law of Amparo on Constitutional Rights and Guarantees of 1988. On the contrary, like the rest of the legislative measures that have been analyzed, it contrasts with a reality that does not match, as the Fact-Finding Mission to Venezuela has pointed out. There are documented cases where the courts neither process the appeals lodged nor request in a proper manner that the state security agencies shall comply with their mandates with the urgency that these judicial injunctions require.

In this regard, the following cases documented in the Mission's second report serve as examples:

a) **Leonard Hinojosa case:** "Dr. Leonard Hinojosa was arrested in Zulia on October 26, 2020 and then detained in La Boleíta in Caracas until March 12, 2021, without being presented before a judge or informed of the reason for his detention. On November 10, 2020, two weeks after his detention, a habeas corpus petition was filed before the Criminal Judicial Circuit of the Metropolitan Area of Caracas. The court requested information from the DGCIM, but the DGCIM did not respond; however, the judge did not notify the complainants."

b) **First Lieutenant Franklin Caldera case:** "From February 11 to March 22, 2021, Mr. Caldera's family had no official confirmation of his whereabouts. His parents lodged a habeas corpus request before the Criminal Judicial Circuit of Caracas, as well, and claimed before the Public Prosecutor's Office and the Ombudsman's Office. They posted a video online pleading for information on his whereabouts. At no time did they receive any response. They finally found out that Mr. Caldera was in the Boleíta center of the DGCIM through a third party."

21 https://www.examenonuvenezuela.com/derechos-civiles-y-politicos/alta-comisionada-solicito-a-venezuela-la-liberacion-de-todas-las-personas-detenidas-arbitrariamente

c) **Case of María Auxiliadora Delgado Tabosky and Juan Carlos Marrufo Capozzi:** "Instead, the prosecution requested that the court issue precautionary measures consisting of the presentation to the court every 15 days and the posting of two bondsmen. The Control Judge agreed. On June 7, 2019, the court approved the two required sureties and issued orders to the DGCIM to release Ms. Delgado and Mr. Marrufo. On June 10, 2019, the DGCIM received the orders, but did not release Ms. Delgado or Mr. Marrufo.

On July 3, 2019, the defense requested the Control Judge to order the DGCIM to transfer the couple to the courts to process their release, without receiving a response. The defense then filed a writ of habeas corpus that was distributed to the Tenth Control Court of the Metropolitan Area of Caracas regarding the continuity of their detention, without obtaining a response. On August 21, 2019, the defense again requested a hearing on the couple's release. On September 5, 2019, the defense addressed a brief to the Tenth Control Court requesting a decision on the habeas corpus appeal. Again, there was no response."

d) **Case of Lt. Col. Juan Antonio Hurtado**: "On July 10, 2019, the representation of Lt. Col. Hurtado lodged a writ of habeas corpus before the Thirty-Sixth Control Court of Caracas. The Thirty-sixth Control Judge did not rule on the matter within the 96 hours required by law, or in the following months. On November 25, 2019, the judge presiding the court informed the representation of Tn. Col. Hurtado that the brief had been lost and suggested them to lodge another one. They filed a new brief on November 27, 2019, highlighting their "state of absolute helplessness in the absence of institutional response.[22]"

In conclusion, this law is not only regressive with respect to the instrument of the guarantee it intends to regulate, but also depends once again on the will of the courts and state security agencies to verify its effective application, since reality shows us a pattern of non-compliance on the matter. No special courts to hear habeas corpus cases have been created.

22 https://www.ohchr.org/es/hr-bodies/hrc/ffmv/index

3.7. The Law for the Prevention and Eradication of Sexual Abuse against Children and Adolescents.

This new law introduces significant advances in the fight against sexual abuse against children and adolescents, such as the non-expiration of sexual abuse crimes (article 4, numeral 12) and measures to avoid revictimization. However, it lacks regulations to regulate and punish cases when the abuse involves statal responsibility. In addition, it does not enshrine reparation measures for the victims but only ensures that they receive the medical treatment they may need.

In addition, no concrete prevention mechanisms are featured in the law to sanction those institutions that have a relationship with children and adolescents (for example, ecclesiastical authorities) if they fail to notify the security corps about alleged abuses of minors.

In general, the law features protection bodies and objectives but does not indicate the consequences of non-compliance by the authorities.

Finally, it is noteworthy that the only specific sanction of the law is found in article 19, which allows the suspension of the exercise of parental authority for those convicted of sexual abuse. In addition, some other sanctioning mechanisms shall be imposed, for example, when the abuse is a consequence of the negligence of educational or other authorities related to children and adolescents. In particular, no sanction or action protocols are mentioned when the abuse occurs in protection establishments under the state's responsibility, showing the law's serious deficiency in this area.

3.8. The Law for the Respect of Human Rights in the Exercise of the Public Function.

This new law establishes fundamental principles such as the preeminence of human rights, equality, non-discrimination, and gender equity. It also states that public officials are obliged to provide "support, understanding, and solidarity, given the effects of their personal and family situation" to victims of threats or human rights violations.

This last point is very striking in a polarized society, where the logic of the internal enemy is the narrative from the highest echelons of power in Venezuela and, therefore, does not see criticism with a good eye; instead, whoever criticizes can become an enemy. Under such a perspective, a political opponent or dissident is undoubtedly perceived as an enemy. For this reason, it is difficult for Venezuelan state officers, especially those in the Executive Branch or in any area aligned with the governing party, to generate any type of empathy when the victims of human rights violations are political opponents. An assumption that is not explicitly considered by the law[23].

Finally, Article 21 of the law states that "Public officials of the State are prohibited from ordering, carrying out, admitting, tolerating or promoting threats or violations of human rights. Superior orders are no excuse." It is observed that it is prohibited to give such orders in this regard. Still, it is not forbidden to obey them.

In addition, Article 21 collides with Article 176 of the Military Disciplinary Law, which enshrines that an order given by a military superior must be abided even in the event of a complaint appeal has been lodged. By the way, an appeal that univocally shall be lodged before the same authority that - by paradox - gave the order[24].

Consequently, since this law does not expressly repeal this regulation nor specifically state that an order violating human rights must not be obeyed. This new law does not set a timely protection mechanism for victims of human rights violations.

3.9. The Organic Law of Amendment to the Organic Law on the Right of Women to a Living Free of Violence.

This is the second reform to the law that aims to protect women against violence. However, as a study by Acceso a la Justicia and Centro de Justicia para la Paz (Cepaz)[25] on this legal text and its interpretation by the courts have made clear that its enforcement turns out to be far from its initial target. Moreover, specialized courts on this matter have not been created yet in all the country's states. Furthermore, the judges themselves demonstrate gross deficiencies in training on the protection of women against violence, which reflects the inability of the judiciary to establish effective mechanisms concerning this serious problem.

Despite the above, the reform was the most comprehensive concerning the other instruments analyzed in this report, as there were more than sixty articles modified, and indeed the law presents positive elements, among which we highlight the following: the recognition that violence against women is "rooted in systemic discrimination against women especially when in a situation of vulnerability." The inclusion in Article 6 of the obligation to have effective mechanisms to make the rights recognized in the law a reality, regardless of, among other factors, their "political or philosophical affiliation", "sexual orientation, gender identity or gender expression." The prohibition of re-victimization of women who have suffered violence; the recognition of political violence as a crime, among others.

23 https://www.omct.org/es/recursos/reportes/internal-enemies-the-open-season-on-human-rights-defenders

24 Daniels, Alí (2018). Approaching the mismatches of the Military Disciplinary Law. Available at: https://www.academia.edu/76276412/Aproximaci%C3%B3n_a_los_desencuentros_de_la_Ley_de_disciplina_militar

25 https://accesoalajusticia.org/acceso-a-la-justicia-y-cepaz-publican-mitos-y-realidades-de-la-violencia-contra-la-mujer-en-venezuela/

In addition, four new types of violence against women were included: multi-causal violence, gynecological violence, computer violence, and political violence. In addition, previously established criminal offenses were reformed since violent carnal access was renamed "sexual violence in couple relationships." Domestic violence is now called "family violence," and the introduction of the so-called "vicarious violence" defines the violence that impacts ascendants, descendants, and caregivers of women because it uses them to create an environment of violence.

The incorporation of new crimes and the reform of others, although undoubtedly positive, the law still fails to consider all forms of violence against women. For example, street violence such as verbal or sexual harassment in public spaces. Or as important as the above, psychological violence in public hearings, whether administrative or judicial, that generates the re-victimization of women.

Likewise, the contempt of protective measures was not categorized as a typical autonomous criminal offense, mainly when it implies an escalation of the initial violence.

Another significant element is that the children of the victims of femicides are left aside since they are not granted reparation or attention measures based on the cause that generates their orphanhood. Sadly, this deficiency ultimately implies a failure of the State to prevent it.

It should also be noted that among the protection measures, there is a reference to foster homes as a temporary relief measure (Article 106, paragraph 2). However, there is no information on how many currently exist and how many operate as such[26]. The law does not consider those cases where this kind of protection shall be understood as a long-term relief measure when women do not have family support or social networks to safeguard themselves.

As an adverse change in the new reform, we must highlight the elimination of the reference to the Convention of Belém do Pará in Article 5, perhaps with the intention of disassociating the State from the Inter-American Human Rights System. However, we must point out that Venezuela ratified the Convention, so it has a binding character, and its exclusion in the law does not imply at all that it should not be enforced as a valid norm in the country.

The fact that Venezuela has complained about the OAS Charter and the American Convention (the latter unconstitutionally) does not exempt the State from continuing to comply with the rest of the Human Rights treaties of the American System, including the Convention of Belém do Pará.

Finally, it is dire that the law refers to agencies that go against the structure of the Public Power enshrined in the Constitution while also lacking the fundamental capacities to address the complex problem of violence against women. The assignment of promoting human rights,

26 https://cepaz.org/articulos/reforma-a-la-ley-organica-sobre-el-derecho-de-las-mujeres-a-una-vida-libre-de-violencia-mas-retos-que-aciertos/

the accompaniment and defense of women victims of gender-based violence to the communal councils and communes instead of the State is a significant flaw. These tasks belong to the State and not to the citizens or their organizations. In addition, several of those communal councils are often tightly controlled and supervised by the National Executive and the government party. Therefore, in some instances, there may be political, partisan, or ideological interests that do not allow in reality to protect women or the required impartiality.

3.10. The Law of the Commission for the Guarantee of Justice and Reparation for the Victims of Crimes against Human Rights.

What is most striking about this new law is that from its reading, it is clear that it bears no relation to its title since the Commission that is created therein neither guarantees justice nor much less reparation, even though the Commission has broad investigative capacities (Article 7), and can even "conduct studies aimed at the identification and scientific knowledge about the causes, determining factors and dynamics involved in the functioning of the justice system, concerning the investigation and punishment of crimes against human rights" (Article 7.4). Bottom line: it [the Commission] can only "recommend reforms and measures aimed at strengthening the respect and guarantee of human rights and the better functioning of the justice system, following up on their implementation."

That is, it [the Commission] can only recommend, investigate and carry out studies, but, for example, it cannot make historical memory of cases of serious human rights violations. Nor can it make public denunciations of cases where these violations are being committed or publish the studies it carries out on their causes since Article 19 states that the Commission's actions and documents "shall be confidential to third parties."

Furthermore, although it is recognized that the Commission will be able to "Ensure the granting of measures of integral attention and reparation to the victims," it would be challenging to achieve due to the following: The Commission will only have a term of barely two years, that is short and not enough considering the length of the judicial processes of compensation. The lack of an adequate diagnosis of the problems of the Venezuelan justice system and its possible solutions, solutions that it does not have the competence to implement. However, it must be said that the National Assembly can extend the duration of the Commission.

Given the significant limitations mentioned above, it is evident that the Commission cannot guarantee justice for the victims nor set a reparation mechanism but only make recommendations. Consequently, it is clear why its name does not correspond to its real functions. In this context, we are concerned about the expectations that this law may generate for the victims, especially considering that the Commission has not been appointed yet as of the date of this report.

3.11. The Organic Law for the Reform of the Organic Law of the Supreme Court of Justice.

We will highlight two aspects of this law reform that we consider the most relevant: first, the continuation of the usurpation of the Nominations Committee by deputies of the National Assembly, and second, the constitutional fraud involved in the reelection of magistrates.

As Acceso a la Justicia has pointed out on several occasions[27] although the Nominations Committee"...shall be composed of representatives of the different sectors of society", per Article 270 of the Constitution, such provision has never been abided. Instead, the Nominations Committee has always been composed of deputies of the National Assembly only in contradiction to the Constitution, even though no public official should be a member of the Nominations Committee.

With the new reform, the Committee now has 21 members, 11 of whom are deputies and 10 representatives of civil society (Article 65), which means that the deputies have a majority on the Committee.

This reform demonstrates that the supposed change is not properly a change since the ruling party controls the Committee to the same extent as it has always been.

On the other hand, the possibility established in the second transitory provision where the current Justices of the Supreme Court of Justice may be reelected, disregarding a single term of 12 years per Article 264 of the Constitution, put in the spotlight evidence that the much-needed changes to improve the gross deficiencies that have historically existed since the coming into effect entry of the 1999 Constitution in the election of Justices have not been implemented yet. In short, extending the term of office of a public position beyond what the Constitution permits violates it.

The recent election shows us the harsh reality. 60% of the Justices of the "new" Supreme Court of Justice have been re-elected to stay in office for twelve more years[28]. The most serious aspect of the appointment of repeating magistrates is that they were the ones who made it possible to move from a preliminary examination to the investigation stage by the Office of the Prosecutor of the International Criminal Court, among other reasons, for their refraining in punishing those responsible for crimes against humanity. For that fact alone, none of them should have been re-elected, let alone rewarded for such upsetting performance, that is, for being members of a web of impunity.

Therefore, these two aspects evidence that the reform of this law will further aggravate the already weakened institutional framework and allow the justice system to be controlled by the Executive Branch in general and the governing party in particular, to the detriment of the victims' demand of justice from courts that are part of the problem. In sharp contrast to the Constitution, the above-referred law is still far from ensuring an independent and impartial judiciary.

27 https://accesoalajusticia.org/nueva-ley-organica-del-tsj-confirma-la-falta-de-voluntad-politica-para-construir-una-justicia-independiente-en-venezuela/; https://accesoalajusticia.org/la-reforma-ley-organica-del-tsj-un-caramelo-envenenado/

28 https://accesoalajusticia.org/nuevo-tsj-designado-an-2020-no-tiene-nada-nuevo/

CONCLUSIONS

a) The reform of the laws is based on the false premise that the problems that generated and generate crimes against humanity and human rights violations in Venezuela originate in the regulatory deficiency but not in the existence of public policies that make them possible.

b) Although the changes in most of the norms analyzed are positive, they do not guarantee by themsel either justice for the victims or the punishment of those responsible for human rights violations.

c) Since the effectiveness of the changes made depends on the political will of the judicial and administrative authorities, they lose all their effect insofar as a law cannot be subject in its compliance to the will of any official.

d) Some reforms that do not represent any improvement, such as *habeas corpus*, but on the contrary, are regressive and therefore contrary to international human rights standards.

e) The laws that have been reformed or enacted to protect the victims of human rights violations do not establish the obligation to inform them of the actions carried out, nor do they implement reparation mechanisms.

f) The Commission for Justice and Reparations for Victims has no competencies to guarantee justice and reparations for victims. Nor has it yet been constituted.

g) The inclusion of entities outside the structure of the state, provided for in the Constitution, such as communal councils and communes in the law against violence against women, endangers the victims to the extent that the people who would exercise these functions are ordinary citizens, who have neither the skills to deal with this serious problem, nor the necessary tools.

h) The changes in the judiciary not only maintain the existing vices in the election of Justices, but even aggravate the current situation by incurring constitutional fraud.

i) The facts evidence that when legislative changes are positive they are not enforces, and when laws depend on the will of those who shall comply with them, then they cease to be laws.