



 Acceso a la Justicia

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EXECUTIVE SUMMARY

 Acceso a la Justicia
El observatorio venezolano de la justicia
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1. In 2022, the country led the worst justice rankings globally. In the annual report of the World Justice Project (WJP)'s Rule of Law Index, Venezuela repeated in the last place, for the eighth consecutive year, among the 140 countries evaluated. The questionable podium is shared with Cambodia, Afghanistan and the Democratic Republic of Congo.
2. In the report, dated October 2022, Venezuela scored 0.26 points, one hundredth less than the previous year. To compile the Index, WJP evaluated not only the performance of judges and prosecutors in criminal and civil matters, but also the ability of the judiciary to set limits on the government, the absence of corruption in the country, transparency in decision-making, the degree of respect and enjoyment of the fundamental rights of citizens, the situation of internal order and security, and the level of compliance with the current legal framework.
3. The results obtained for criminal justice were striking, since in this area the country has been in the ditch for more than a decade. During the year of evaluation there was no progress and Venezuela again obtained 0.12 points. These data confirm the suspicions that the "judicial revolution" implemented by Nicolás Maduro and the National Assembly (NA) elected in 2020 have not offered results to make the system more efficient and effective.
4. Justice not only failed in the WJP report, but also in the report of the Inter-American Commission on Human Rights (IACHR). In the latter report, the authorities were urged to combat the provisional nature of judges and prosecutors, considering it fundamental to guarantee true judicial independence.
5. In the III Universal Periodic Review (UPR) of Human Rights of the United Nations (UN) to which the country was submitted at the end of 2021, the Venezuelan system justice also occupied a prominent place. Although the authorities supported the recommendations made by other states to strengthen judicial independence, they refused to establish any kind of effective commitment to achieve this goal.
6. The former UN High Commissioner for Human Rights, Michelle Bachelet, stated that the legal and institutional reforms in the Venezuelan justice system did not help to strengthen the autonomy of the courts. "The open links of several justices, including alternate justices, with political parties, raise concerns about the independence of the Judiciary and the separation of powers", she denounced in the report of June 2022 and also, she questioned the effectiveness of measures such as the reform that the Supreme Court of Justice (SCJ) underwent at the beginning of last year.
7. Bachelet complained that during the years 2021 and 2022 the Venezuelan authorities did not take any measures to combat temporariness among judges. Thus, she reported the appointments of 434 provisional judges and the dismissals of 244 others by the Judicial Commission of the SCJ.
8. Another issue addressed by Bachelet was the slow progress of investigations related to human rights violations. The UN official revealed that of the 591 investigations that the Public Prosecutor's Office (MP) announced that it had be opened for murders, injuries, torture and arbitrary detentions that occurred between 2017 and 2019, only

26 have ended with convictions (21 convictions and 5 acquittals); which is only 4.3%. Bachelet attributed also these “long delays” to “changes in prosecutors and repeated postponements of hearings.”

9. In 2022, the International Independent Fact-Finding Mission on Venezuela (FFMV) was renewed for another two years, with the opposition of the Government of Nicolás Maduro. But before the UN Human Rights Council took this measure, the body presented new reports where recognized some progress in the investigation of human rights violations, although it considered them insufficient, since the national investigations are limited in scope and have been directed against low-level perpetrators.
10. The FFMV also questioned the effectiveness of the so-called “criminal package”, stating: “The reforms that have been announced since 2021 have been partially implemented (...) and have not addressed the serious deficiencies of the justice system, which undermine its independence and impartiality.”
11. In 2022 there was also news of the process initiated by the Office of the Prosecutor of the International Criminal Court (ICC). Thus, in April, Prosecutor Karim Khan announced the opening of an office in Caracas to provide “technical assistance to the authorities” and support “the investigation and effective prosecution of alleged crimes” against humanity.
12. However, the Venezuelan authorities asked the ICC Office of the Prosecutor to suspend its investigations, arguing that they were already taking action on the matter. However, Prosecutor Khan rejected this request and asked the Pre-Trial Chamber of the international court for permission to continue his investigations. In November 2022, Khan published a harsh report where he denounces that the Venezuelan government has not adequately demonstrated that the alleged crimes against humanity are being investigated at the national level.
13. Shortly before the end of the year, the ICC asked those affected by the extremely serious human rights violations in the country or their next of kin for information on the State’s investigations. Victims of alleged crimes against humanity that have occurred in Venezuela, at least since 2017, had the opportunity to have their voices heard directly at the Court.
14. In 2022 the authorities continued with their legislative and institutional reforms. Thus, in January, the Venezuelan Parliament approved fast and unanimously the reform of the Organic Law of the Supreme Court of Justice, which opened the doors for a new remodeling of the highest Court of the country. In April, the twenty justices were appointed.
15. The process was plenty of irregularities, such as the fact that incumbent justices were allowed to run for a new term, despite the fact that this is not establish in the Constitution. The final result was not an impartial and independent highest court. Sixty percent of the previous justices were reelected and officials of proven loyalty in other public powers were incorporated as “new faces”, in addition to two retired or active reserve military officers.

16. Only two of the justices appointed, Elías Bittar (Social Cassation Chamber) and José Luis Gutiérrez Parra (Civil Cassation Chamber), have not held positions in the current or previous administrations of Hugo Chávez nor have they been members of the ruling United Socialist Party of Venezuela (PSUV).
17. However, in the case of Gutiérrez Parra, it cannot be forgotten that he is the brother of the Secretary General of Acción Democrática imposed by the SCJ, Bernabé Gutiérrez, who participated in the questioned parliamentary elections of 2020 and has maintained relations and reached agreements with the Government of Maduro, while attacking the traditional opposition and without voting against any of the initiatives of the PSUV in the NA. In addition, the current magistrate was part of the National Electoral Council (CNE), temporarily appointed by the SCJ in 2020 to conduct the parliamentary elections.
18. Another reason why nothing different is to be expected from the new SCJ is the return of Judge Gladys Gutiérrez not only in the Constitutional Chamber but also in the Presidency of the Supreme Court of Justice. It cannot be forgotten that during the time Gutiérrez was president of the Constitutional Chamber and the SCJ (2013-2017), the highest court of the country lifted a siege against the Parliament elected in 2015, where the majority was made up of the opposition. Moreover, the SCJ did not offer protection to citizens who, for exercising their right to protest, were victims of attacks by the police forces and also laid the groundwork for the imprisonment of opposition mayors.
19. In spite of having fewer justices per Chamber, which reduces the costs of negotiation in order to reach agreements for the approval of sentences, in June the new SCJ had yielded only one result: an increase in unproductivity. After reviewing the data available in the web page of the governing body of the Judiciary, Acceso a la Justicia found that some of its departments had more than two and a half months without issuing a single decision, as is the case of the Civil Cassation Chamber, and the Full Chamber accumulated three months without sentencing.
20. In 2022 there was a resurgence of social protest. Of the 7,032 protests documented during the year 2022 by the Venezuelan Observatory of Social Conflict (OVCS), 3,185 (45%) were in claim of labor rights and of them 763 were against the instruction called “Process of Adjustment of the Remuneration System of the Public Administration, Collective Agreements, Special Tables and Strategic Companies” of the National Budget Office (acronym in Spanish is Onapre). The instruction reduced the bonuses and premiums provided for in the different collective bargaining agreements of the Public Administration.
21. In the heat of the protests and complaints against the instructions, the SCJ declared inadmissible a nullity suit filed by retirees of the MP against the document, which it labeled as “non-existent”. It also ordered the plaintiffs to pay a fine for misuse of judicial resources.
22. One way to resolve the doubt about the existence or non-existence of the instrument would have been to process the lawsuits, hold the trial and summon the authorities of Onapre to clear up the mystery.

23. In 2022 the deputies not only appointed justices, but also the Inspector General of Courts, the director of the National School of the Judiciary and the Public Defender General. However, this last process was not free of irregularities either. Thus, the NA reformed without debate or consultation the Organic Law of the Public Defense in order to assign to the Judicial Nominations Committee “the power to advance in the competitive examination for the Public Defender General and his alternate”.
24. In July, the Parliament appointed Daniel Ramírez Herrera as general public defender, third official since 2019 to assume the Public Defense (DP).
25. The act of Opening of Judicial Activities corresponding to the year 2023 showed the alignment of the Judicial Branch with the Government. Proof of this is that Nicolás Maduro ordered the SCJ to deepen “the judicial revolution”.
26. Justice Gutiérrez, during her annual report, assured that in 2022 they focused on promoting the construction of the “scaffolding” for the holding of the competitive examinations in order for judges to obtain tenure. Although he mentioned that “the only thing missing is the call for such contest”, he did not give a date.
27. The official also pointed out that 423,248 sentences were issued in all the material and territorial scope, “dividing the figure into the contributions of the SCJ in its different chambers”. 3,955 maximum instance sentences were issued, which, according to the magistrate, represents an increase of 74.43% in productivity, with respect to the immediately preceding fiscal year. However, given that since 2012 the SCJ does not publish the management report of the Judiciary and that since 2017 not all courts publish all their sentences, it is not possible to corroborate the statements of the president of the highest court.

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