



EXECUTIVE SUMMARY

# ALTERNATIVE REPORT

# UNITED NATIONS HUMAN RIGHTS

# COMMITTEE

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

SESSION 139

Fifth review of the implementation of the  
Covenant for the Bolivarian Republic of Venezuela

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## **I. IMPLEMENTATION OF THE ICCPR BY JUDGES, PROSECUTORS AND OTHER JUSTICE OFFICIALS (SECTION 2)**

1. The State does not comply with the direct application of the International Covenant on Civil and Political Rights (ICCPR) by judges and other justice officials.
2. Since 1986, Venezuela has not complied with any of the 27 judgments issued against it by the Inter-American Court of Human Rights (IACourtHR). In addition, for more than 20 years, the Constitutional Chamber (CC) of the Supreme Court of Justice (SCJ) has held that the decisions and reports of international human rights protection institutions have no binding effect and may be subject to the constitutional control of said Chamber.
3. Articles of the ICCPR are rarely mentioned in Venezuelan courts, even when relevant to a case. The most recent ruling that alluded to the ICCPR was the annulment by the SC of Article 565 of the Organic Code of Military Justice that criminalizes homosexual relations between Armed Forces members. Still, the highest court did not set measures -according to the Committee's General Comment 16- to protect the right to privacy and intimacy of persons previously convicted of such crimes or those prosecuted.
4. The Ombudsman's Office, whose head was appointed in 2017 by the illegitimate and unconstitutional mono-color National Constituent Assembly (NCA), remains silent both concerning accountability, by not reporting on the processing of citizens' complaints and their responses, and about to the crimes against humanity that have occurred in Venezuela and are under investigation by the International Criminal Court (ICC).
5. The United Nations Human Rights Committee should recommend that the State adopt the necessary measures to ensure that the courts effectively apply the ICCPR and that the rulings establishing violations of the Covenant are complied with.
6. The Committee should recommend to the State the appointment of the Ombudsman following the legally established procedure by the National Assembly (NA) and ensure his independence to assume his functions in defense of human rights in accordance with the Paris principles.

## **II. INDEPENDENCE OF THE JUSTICE SYSTEM (ARTICLE 14)**

7. The appointment of provisional judges has worsened, and they are an overwhelming majority (estimated that they may be above 90%) compared to the tenured judges, which affects the independence of the Judicial Branch. Interferences by the Executive and Legislative Branches increased, especially since the Government party regained control of the NA in 2021.
8. The Inter-American Commission on Human Rights (IACHR) reflected in its 2021 report the opacity in the Judiciary with aspects such as that there are no public hearings, the matters ruled by the judges of instance are unknown, nor the exact number of tenured and provisional judges and that the SCJ does not always publish its complete judgments on its website.

9. In the 2022 Universal Periodic Review (UPR), the State did not present the updated number of courts until March 2020. Nor did it indicate the number of judges and whether they were tenured, provisional, or temporary.
10. For almost 20 years, there have been no public and competitive examinations for access to the judicial career, as required by Section 255 of the Constitution, due to a suspension by the SCJ in 2003 without clear reasons. There has yet to be progress to overcome the provisionality of judges.
11. The rules for entering to the Judiciary are contrary to the right to equality (Section 26 ICCPR), as they set severe discrimination assumptions and biases that prevent the goal of fair public competition from being achieved.
12. The NA reformed the Organic Law of the SCJ (OLSCJ) in 2022 but did not improve its lack of independence vis-à-vis the other branches, especially the Executive. The control of the appointment of magistrates was handed over to the NA, contrary to the provisions of the Constitution, since the civil society must select them through a Nominating Committee.
13. The reform of the OLSCJ also allowed 60% of the SCJ magistrates before 2022 to be reelected in office, although the Constitution enshrines that it is for a single 12-year term.
14. In the appointment of the new magistrates, it was also detected that 18 of the 20 magistrates selected held positions in the Governments of Hugo Chávez and Nicolás Maduro and have been members of the Government party, in addition to having some family ties with officers of the Executive, thus compromising their independence and impartiality in the exercise of their functions.
15. Also, 11 of 20 magistrates bear sanctions imposed by the United States, Canada, and Panama for violating human rights and democracy.
16. The appointment of the Inspector General of Courts was also handed over to the NA, which is unconstitutional and increases the control of the Legislative Power over the Judiciary. In fact, the inspector appointed in 2022 is Gladys Requena, former deputy of the United Socialist Party of Venezuela (PSUV) and former Minister of Women of the Maduro Government. In addition, she was the second vice-president of the 2017 NCA.
17. In 2023, the Judiciary was allocated a budget of only 1.42% of the total budget, which is mainly insufficient to comply with the positive obligations arising from the ICCPR.
18. The Committee should recommend a transparent management of the justice administration system to the State through accountability (financial resources, management indicators, number of courts and tenured, provisional, and temporary judges)
19. Competitive examinations shall be held as the only form of entering the judicial career according to the Constitution, and the provisional nature of judges shall be corrected, in addition to reforming the rules of evaluation and competitive examinations to make them compatible with the ICCPR.
20. The reform of the OLSCJ shall be corrected and necessary measures shall be adopted to avoid appointing persons with political connections in the Judiciary.

21. It is necessary to extend an invitation for a visit to the country by the Special Rapporteur on the Independence of Judges and Lawyers, welcoming the previous requests of the holders of this Rapporteurship in 2011, 2014, and 2015.

## **II.1. Independence of the Public Prosecutor's Office and the Public Defender's Office**

22. Provisionality also affects prosecutors of the Public Prosecutor's Office (PPO) and public defenders, which does not free them from interference and pressure from agents of the political power. On September 14, 2018, Resolution 2,703 was published in the Official Gazette reforming the Statute of the PPO, according to which all officers' career positions became transformed into positions of trust, which by their nature are of free appointment and removal, and therefore lose tenureship. This reform was carried out in violation of the principle of legality.
23. Since 2017, it has been documented how prosecutors at all levels have been subject to interference and have allegedly received instructions from their superiors on how to proceed in investigations under their assignment.
24. The NCA appointed the Attorney General of the Republic, which is not competent to do so, infringing the procedure enshrined in the Constitution. The head of the Public Defense (PD) was appointed by the NA in 2022, after a law reform, which also increased the power of the Parliament over the administration of justice.
25. The Committee shall recommend the State to adopt all measures to ensure the complete independence and impartiality of prosecutors and public defenders and that resolution 2,703 be repealed.
26. Create and implement the appropriate rules for the entrance by competitive examinations of the PPO and PD officers and follow the process for appointing the Attorney General of the Republic per the Constitution.

## **II.2. Judicial career**

27. The CC of the SCJ suspended on a precautionary basis the application of the Code of Ethics of the Venezuelan Judge approved on December 28, 2015, on the grounds that it was inapplicable to the magistrates of the SCJ and to all provisional judges in the country, estimated to be more than 90%, which facilitates their lack of independence and violates their right to defense and due process.
28. Former judges have reported being summarily dismissed by a simple letter without due process or evaluation.
29. Since the coming into effect of the Constitution (1999), no judicial career law has been enacted; this has not been merely by chance and the practices, rules and sentences of the SCJ have been changing the law before to the Constitution so that judges do not have regulations to protect themselves.
30. The removal of a judge is carried out without any administrative procedure or motivation by the Judicial Commission.

31. In its September 2020 report, the United Nations High Commissioner for Human Rights (OHCHR) reflected that the monthly salary of a judge is about US\$30, "which increases the risk of corruption in all areas and at all levels of judicial administration." Other justice clerks' wages are unknown, as this information is not publicized.
32. It is recommended to reinstate the constitutional powers of the Executive Directorate of the Judiciary over the government and administration of the Judicial Branch and to apply the Code of Ethics of the Judge in the disciplinary function of the exercise of the judiciary of all judges, whether provisional or tenured.

### **II.3. Cooptation of justice and judicial corruption**

33. In its 2021 report, the International Independent Fact-Finding Mission for the Bolivarian Republic of Venezuela (FFM), based on interviews with former members of the Judiciary, found a pattern of intimidation, harassment, and undue pressure on judges to decide cases in a certain way, particularly those against real or perceived political opponents of the Government.
34. It was made public that political cases had been deliberately assigned to judges "complying with government instructions" in violation of judicial independence.
35. FFM also reflected that between 2015 and 2018, SCJ magistrates reportedly received instructions on resolving specific cases; others were given drafts of judgments to sign without being able to read them or incorporate their opinions, facing reprisals if they expressed criticism. The Executive Branch allegedly issued these orders.
36. In investigations and judicial processes undertaken in corruption cases, the guarantees of presumption of innocence and the prompt presentation of the accused before the judicial authority have not been observed, and there have been convictions without prior trial.
37. The Organic Law of Extinction of Ownership approved this year, with the purpose of recovering assets derived from corruption, contains provisions that contravene Section 14 of the ICCPR regarding non-retroactivity. No adequate guarantees were set forth to recover the confiscated and executed assets of those found innocent. The law seems to be aimed at attacking, persecuting, and threatening any person with the appropriation of his or her property, whether obtained legally or not.
38. The Committee should recommend improving the salary conditions and stability of judges, prosecutors, public defenders, and other judicial officers to prevent and combat corruption.
39. It is recommended that the Organic Law on Extinction of Ownership be reformed to establish adequate guarantees for persons subject to the measures specified in the Law and to provide an effective remedy for defending their property (Sections 2 and 14 of the ICCPR).

### **II.4. The organs of the Justice System are instruments of repression and political persecution.**

40. FFM reported that some judges and prosecutors have had direct responsibility for possible crimes against humanity through arbitrary arrests and torture of real or perceived opponents by the Government, by issuing arrest and preventive detention warrants, bringing severe criminal charges

without basis with evidence obtained as a result of illegal interrogations and searches, and planting, fabricating or tampering with evidence.

41. In 2017, the CC sentenced five opposition mayors to prison, violating all judicial guarantees provided for in Section 14 of the ICCPR. These measures resulted in the opening of irregular judicial proceedings against 16 mayors and one state governor.
42. The FFM reflected in its 2020 report that since 2014, the SCJ requested the NA to lift the parliamentary immunity of 32 deputies to prosecute them criminally. In 28 cases, they were accused of committing "flagrante delicto," the crimes of treason, conspiracy, instigation to insurrection, civil rebellion, contempt of court, and hate crimes, among others. The FFM thoroughly investigated the case of opposition deputies Gilber Caro and Juan Requesens.

### **III. ACCESS TO JUSTICE AND JUDICIAL GUARANTEES (SECTION 14)**

43. In the fifth review of the ICCPR, the Venezuelan State has only presented information up to 2019 without referring to legislative reforms undertaken by a Special Commission for the Judicial Revolution, created in June 2021, in theory to combat judicial delays and reinforce procedural guarantees for detainees. From said commission presided by the first vice-president of the PSUV, Diosdado Cabello, and integrated by deputies such as Cilia Flores, wife of Nicolás Maduro, only initial efforts have been made to reduce prison overcrowding. It implies more interference of the Legislative Branch over the Judicial Branch.
44. Despite legislative reforms, OHCHR reflected in its latest report of July 2023 that the practice of late presentation of detainees before a judge, the abuse of pretrial detention, widespread failure to comply with procedural deadlines, and violations of the right to defense persist.
45. The Committee should recommend ensuring that judicial proceedings are strictly governed by the principles of legality, due process, presumption of innocence, and other national and international standards.

#### **III.1. Right to be heard by a competent, independent and impartial tribunal**

46. Terrorism courts (created by internal SCJ resolutions and not by law) and military jurisdiction are used to criminalize dissent. OHCHR warned about the private nature of the hearings, which generates a perception of secrecy and lack of judicial independence.
47. It is recommended that terrorism courts be created by law and that the necessary measures be taken to guarantee their independence, impartiality, transparency, and strict compliance with international human rights standards.



### **III.2. The right to be assisted by a defense counsel of one's choice, to the presumption of innocence, and not to be forced to testify against oneself.**

48. In cases of political persecution, accreditation of private attorneys is generally not allowed. In cases where private defense is admitted, attorneys are not notified of the hearings, allowed to enter the court or have access to the case docket. Defendants are even pressed to dismiss them and forced to accept public defenders.
49. Public defenders commonly engage in malpractice, including pressing defendants to accept charges, negligence in performing their duties and withholding information about the case's progress from family members and defendants.
50. In cases of political persecution, FFM has documented the practice of forcing defendants to sign plea agreements, and spreading videos of alleged confessions in blatant violation of the right to the presumption of innocence and to a fair trial.
51. The State must guarantee the independence of public defenders, as well as the right of defendants to appoint their attorneys freely.

### **III.3. Right to a regular trial without undue delays**

52. There is disrespect for procedural deadlines in criminal trials with preventive detention, which leads to arbitrary detention. FFM documented demands by judges, prosecutors, and public defenders for payments or resources from defendants and family members in exchange for speeding up trials.
53. The Organic Code of Criminal Procedure provides a maximum of 3 years of pretrial detention. However, the OHCHR documented 135 cases of detainees, including ten women, with pretrial detention that has exceeded the legal period, which amounts to arbitrary detention.
54. In many cases, procedural delays are caused by the postponement of hearings due to the lack of transfer of detainees to the courts, which denotes a lack of coordination between detention centers and judicial authorities. In cases of serious human rights violations, 10 to 90 postponements can occur in a single case.

## **IV. THREATS AND ATTACKS AGAINST LEGAL PROFESSIONALS**

55. FFM also documented that judges and prosecutors are subjected to pressure, intimidation against them and their families, and administrative and criminal sanctions threats. They are constantly monitored and their telephones are tapped.
56. An iconic case is the one of Judge María Lourdes Afiuni, who was suspended from her position by the Venezuelan justice administration in 2009 and deprived of her liberty until her trial in 2019, with few guarantees. During her time in prison, she was a victim of physical, psychological, and sexual violence. In 2019, she was convicted to 5 years in jail for "spiritual corruption" without evidence.

57. The Committee should recommend that the State cease intimidation and persecution against judicial officers and lawyers, conduct effective investigations into threats and attacks against legal professionals, and punish those responsible.

## **V. MILITARY CRIMINAL JURISDICTION**

58. Article 261 of the Constitution stipulates that military jurisdiction is reserved for trialing military crimes. However, in 2021, the SCJ ruled that military courts may try civilians if there are "elements of conviction founded to establish a causal relationship between the military crime charged [...] and the participation of the detained citizens (civilians)."
59. The discretionary and selective use of military criminal jurisdiction constituted another evidence of the Judiciary's lack of independence. It was evidenced in the massive anti-government citizen demonstrations of 2017 when citizens were arrested and brought before military courts. Between April and September 2017, 757 civilians were prosecuted in military courts.
60. The Committee should recommend that the State ensure that the jurisdiction of military courts is limited to military offenses committed by active military personnel.

## **VI. ACCESS TO JUSTICE FOR INDIGENOUS WOMEN AND INDIGENOUS PEOPLES**

61. On December 8, 2018, the General Directorate of Military Counterintelligence (DGCIM) carried out an armed raid in the Canaima municipality, killing an indigenous person of the Pemón ethnic group and leaving two others wounded. Community members managed to capture three officials allegedly responsible and handed them over to the State security forces and the PPO. To date, the results of the investigation are unknown.
62. Another gross problem when accessing judicial services is the lack of translation and interpretation into indigenous and foreign languages. The constitutional mandate to translate sentences is also not complied with.
63. The Committee shall recommend that the State carry out prompt, effective, thorough, independent, impartial, and transparent investigations into human rights violations, including killings of indigenous people, in full compliance with their ancestral customs and practices, and bring those responsible to justice.
64. It must also guarantee the right of victims to seek remedies and reparations with a gender-sensitive approach, as well as their protection from intimidation and retaliation.



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