

## **SOME ACTIONS FOR THE REFORM OF THE VENEZUELAN CRIMINAL JUSTICE SYSTEM IN THE FRAMEWORK OF A "TWO-WAY" SCENARIO**



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Recommendations proposed by civil society regarding the establishment of a local office of the International Criminal Court

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## INTRODUCTION

The criminal justice system in Venezuela, as has been widely documented,<sup>1</sup> does not meet the minimum conditions of independence and impartiality and is part of the repressive apparatus of the State in the commission of human rights violations and crimes against humanity.<sup>2</sup> A set of structural reforms is required to change this state of affairs, which precondition the transition to democracy and the reestablishment of the Rule of Law, with a possible advance of transitional justice mechanisms.

In recent times, international accountability mechanisms have been implemented in the face of gross human rights violations and international crimes committed, such as the creation of the International Independent Fact-Finding Mission for Venezuela (MIIDHV),<sup>3</sup> and the opening of an investigation by the Prosecutor of the International Criminal Court (ICC) in the Venezuela I situation.<sup>4</sup> Both events set milestones of enormous importance in the struggle for truth and justice for thousands of victims and survivors of State violence in the country.

As far as the ICC is concerned, the announcement of the opening of the investigation by Prosecutor Karim Khan was accompanied in an unprecedented way by the signing of a Memorandum of Understanding (MOU) between the ICC Office of the Prosecutor and the Bolivarian Republic of Venezuela.<sup>5</sup> The MOU seeks to ensure that Venezuela adopts measures for properly serving justice with the support and active collaboration of the ICC Office of the Prosecutor under the principle of complementarity.

In June 2023, Venezuela signed a second MOU with the ICC Prosecutor<sup>6</sup> for the establishment of a local office in the city of Caracas, which will aim to serve as a focal point for advice and assistance to be provided to Venezuelan authorities, including - among other measures - guidance for legislative development in the field of justice and the exchange of knowledge and best practices with national authorities, as well as their training to expand knowledge of the Rome Statute and the ICC's modalities of cooperation.

This complementarity approach, which the ICC prosecutor seeks to promote, can serve as a means to introduce specific and gradual reforms that allow for a partial improvement in the serving of justice in the short or medium term and is one of the reasons behind this proposal.

1 Access to Justice, *The Administration of Criminal Justice in Venezuela*, see: <https://accesoalajusticia.org/wp-content/uploads/securepdfs/2022/05/La-administracion-de-justicia-penal-en-Venezuela.pdf>.

2 MIIDHV, *Detailed Findings* (2021), see: [https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFMV/A-HRC-48-CRP.5\\_SP.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFMV/A-HRC-48-CRP.5_SP.pdf).

3 United Nations High Commissioner for Human Rights (OHCHR), Reports: A/HRC/44/20, A/HRC/44/54.

4 CPI, press release of November 5, 2021, See: <https://www.icc-cpi.int/news/icc-prosecutor-mr-karim-aa-khan-qc-opens-investigation-situation-venezuela-and-concludes>.

5 Memorandum of Understanding between the Bolivarian Republic of Venezuela and the Office of the Prosecutor of the International Criminal Court. See: <https://www.icc-cpi.int/sites/default/files/itemsDocuments/otp/acuerdo/acuerdo-spa.pdf>.

6 CPI, press release of June 13, 2023, See: <https://www.icc-cpi.int/news/icc-prosecutor-karim-aa-khan-kc-concludes-official-visit-venezuela-signing-mou-establishment>.



The documentation work of Acceso a la Justicia, as well as the consultations carried out for the preparation of this report, reveal the absolute lack of independence of all the organs of the justice system, and in particular of the criminal justice system, which has led to a virtual paralysis of the serving of justice in Venezuela in what concerns to the protection of the rights of victims of human rights violations and the punishment of those responsible for them. In addition, there are no real guarantees for victims to access effective judicial remedies and comprehensive reparation mechanisms.

In this regard, a judicial reform for a solution to this state of affairs is only plausible in the context of a transition to democracy, given that the justice system, particularly the criminal justice system, has been a crucial factor in sustaining the Venezuelan authoritarian regime; in fact, it has been used as the enforcement arm for the political persecution of dissents or whoever is perceived as such.

However, before this happens, it is possible to introduce gradual changes that, based on the incentives arising from cooperation with the ICC, can lead to a relative improvement in criminal justice serving for the benefit of victims in particular and citizens in general. In that order of ideas, this initiative responds to the effort to think above all about changes that can be implemented in the short and medium term, that do not require a broad political agreement, and that do not require making available substantial financial resources, given the disastrous situation of the Venezuelan economy.

Although some structural changes are alluded to, reference is made to measures that can be implemented at once and thus quickly and effectively benefit the justice system users, especially the victims of human rights violations, by providing them with tools and information they currently lack.

The following work gathers a set of recommendations that serve as a roadmap for the rescue of the minimum normal functioning of the Venezuelan criminal justice system, prepared through a process of consultation with experts in the serving of justice and human rights defenders, which we hope shall be considered as an input of value contributed by the civil society regarding the opening of the ICC office in Venezuela, and that will ultimately contribute to the technical assistance process that Prosecutor Khan will promote.

Similarly, the recommendations presented here can be taken as outcome indicators to assess the judicial system's genuine willingness to change to address recent human rights violations and prevent future ones. At the same time, they are a guide to the minimum essentials without which structural criminal justice reform and even future transitional justice measures could not be undertaken.

This working paper can also be a reference for other proposals or give rise to initiating a dialogue between different social sectors or even with the State to promote changes toward the reinstitutionalization of justice.

In particular, we wish to support the process of assistance to be provided by the ICC Prosecutor to the Venezuelan criminal justice corps, suggesting that the recommendations contained herein be taken as goals to be contemplated in this aspired process of institutional strengthening of the judicial system in the country.

The following sections refer to the methodology followed for the elaboration of the 75 recommendations contained in the report, which runs as follows: first, the recommendations whose scope is transversal to all organs of the justice system are listed, organized into three thematic areas identified as the most critical (independence and impartiality, transparency, accountability and combating corruption, and regulatory framework consistent with the protection of human rights). The recommendations are then presented exclusively for each corp that compose the criminal justice system: criminal investigation corps, the Public Prosecutor's Office, the Public Defender's Office, criminal courts and the penitentiary system.

## METHODOLOGY

This report aims to establish a roadmap for rescuing the functioning of a minimum of normality in the criminal justice system through specific and concrete actions that can be promoted in light of the installation of the office of the International Criminal Court (ICC) in Venezuela. This initiative is part of the need to combat impunity, seen as a scourge that aggravates the harm suffered by victims and their families, despite the absence of a transition to democracy or a transitional justice process.

Its starting point is from the current reality in which the ICC office in Caracas has to work within the limitations that such a situation imposes.

Its ultimate purpose is to provide a set of recommendations to improve the situation of the right of access to justice through short or medium-term measures that imply a minimum or medium level of political will for their implementation and that require a low investment of national financial resources or that are guaranteed internationally in some way, either through technical assistance provided for in the mandates of international organizations under the modality of agreements with the Venezuelan State, or through direct financing to the latter.

The 75 recommendations contained herein have been developed through a process of broad consultation with judicial experts, lawyers, users of the justice system, members of human rights organizations, and academics, who provided their expertise based on their direct experience with the various organs of the criminal justice system in each of its roles and facets.

Two dialogues and consultation events were held with the participation of experts and members of various human rights organizations to achieve these recommendations. First, collectively build a diagnosis of the criminal justice system in the country, identifying and prioritizing the problems that require urgent attention; subsequently, a second working group was convened to review and reach a consensus on the recommendations in this report.

In the interim, between the two events mentioned above, 11 interviews were conducted with criminal attorneys-at-law, human rights defenders, and judicial experts to consult them on solutions to the most severe problems that, in their opinion, afflict the criminal justice system. The interviews made it possible to establish points of agreement for establishing and prioritizing recommendations.

Finally, this work took into account the recommendations on justice formulated by the United Nations High Commissioner for Human Rights (UNHCHR),<sup>7</sup> the International Independent Fact-Finding Mission for Venezuela (MIIDHV),<sup>8</sup> and the Inter-American Commission on Human Rights (IACHR),<sup>9</sup> as well as previous reports and investigations by Acceso a la Justicia and other NGOs, to complement and not duplicate the proposals.

7 OHCHR, reports: [A/HRC/44/20](#), [A/HRC/44/54](#), [A/HRC/47/55](#), [A/HRC/48/19](#), [A/HRC/50/59](#), [A/HRC/53/54](#).

8 MIIDHV, *Detailed Conclusions*, 16 September 2021, A/HRC/48/CRP.5, see: [https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFMV/A-HRC-48-CRP.5\\_SP.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFMV/A-HRC-48-CRP.5_SP.pdf).

9 IACHR, *Annual Report 2021* (<https://www.oas.org/es/cidh/docs/annual/2021/capitulos/IA2021cap4B.Venezuela-es.pdf>) and *Annual Report 2022*, Ch. IV. b ([https://www.oas.org/es/cidh/docs/annual/2022/capitulos/9-IA2022\\_Cap\\_4B\\_VE\\_ES.pdf](https://www.oas.org/es/cidh/docs/annual/2022/capitulos/9-IA2022_Cap_4B_VE_ES.pdf)).

The results obtained are a set of recommendations containing actions set out in precise terms that cover the various bodies that make up the criminal justice system, with the understanding that many of these respond to cross-cutting aspects, such as judicial independence, accountability, and the fight against corruption, which can be applied to other areas of justice in Venezuela. The recommendations formulated are conceived as measurable operational measures that, if adopted, would broadly impact improving criminal justice serving to move towards more far-reaching reforms with a reinstitutionalization of justice in Venezuela.



## JUDICIAL REFORMS IN THE FRAMEWORK OF THE "TWO-WAY" STRATEGY OF THE OFFICE OF THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT

The authoritarian political system prevailing in Venezuela has wholly eroded the separation of powers and the Rule of Law.<sup>10</sup> The Judiciary has been hijacked to ensure the absolute immunity of power without subjection to any form of institutional control.<sup>11</sup>

The interviews with experts in judicial matters, as well as the dialogue with human rights defenders, showed that it is impossible to undertake genuine judicial and institutional reforms under the current conditions of permanence in the power of those who lead the government since they have demonstrated the absolute absence of political will to undertake profound changes in the justice sector.

On the rare occasions that changes or improvements have been made,<sup>12</sup> shortly afterward they are reversed<sup>13</sup> for fear of losing power or control over the justice system, which is the repressive arm that endorses actions that do not comply with national and international human rights standards.

The commission of massive human rights violations and crimes against humanity in Venezuela will demand concerted action to establish the truth about what happened and to elaborate the historical memory of it, to serve justice for the most heinous crimes, to make full reparations to the victims and to ensure that similar events do not happen again. These measures, practices, and mechanisms implemented after repressive periods to confront the atrocious legacy of crimes against human rights are often referred to as "transitional justice."<sup>14</sup>

The effectiveness of transitional justice requires the existence of a wide margin of consensus on the mechanisms that should comprise it in each country, as well as the succession among them, i.e., whether truth commissions, criminal trials, reparation programs, legal and institutional reforms, lustration programs, and memory and reparation policies, among others, are carried out.

However, for an adequate recomposition of the social fabric, it is essential to implement holistic transitional justice policies based on its five pillars: truth, justice, reparation, non-repetition, and memory.

10 IACHR (2017), Situation of Human Rights in Venezuela: Democratic Institutionalality, Rule of Law and Human Rights in Venezuela, see: <https://www.oas.org/es/cidh/informes/pdfs/venezuela2018-es.pdf>.

11 Access to Justice (2019), The Absolute Power Grab in Venezuela, see: <https://accesoaljusticia.org/wp-content/uploads/2019/09/Informe-La-toma-absoluta-del-Poder-en-Venezuela.pdf>. See also Access to Justice annual reports: <https://accesoaljusticia.org/publicaciones/informes-anales/>.

12 Access to Justice (2022), Status and analysis of the legislative reforms carried out by the Government of Venezuela linked to the justice system, see: <https://accesoaljusticia.org/wp-content/uploads/securepdfs/2022/06/Situacion-y-analisis-de-las-reformas-legislativas-realizadas-por-el-Gobierno-de-Venezuela-vinculadas-con-e.pdf>.

13 Access to Justice (2023), Alternative Report, United Nations Human Rights Committee. International Covenant on Civil and Political Rights. See: <https://accesoaljusticia.org/informe-alternativo-comite-de-derechos-humanos-de-naciones-unidas-pacto-internacional-de-derechos-civiles-y-politicos/>.

14 Roht-Arriaza, Noemi. *The New Ladscape of Transitional Justice in Transitional Justice in the 21st Century*, Cambridge University Press, London (2006), p. 2.

Indeed, the justice system is a fundamental tool for the five pillars of transitional justice: retributive (punishment for past abuses) and restorative (reparation of individual and collective damages derived from such abuses) components.

However, it is also necessary a process that allows the establishment of an impartial and independent justice system that punishes human rights violations in the present time. Indeed, implementing a transitional justice process requires the adoption of judicial, legislative, and administrative measures that imply the existence of a functional judicial system that is not subject to pressure from various actors involved in the commission of serious human rights violations and international crimes.

For this reason, judicial reforms have also been devised as transitional justice mechanisms involving multiple national and international actors, in order to provide the institutions of the justice system with the capacity to investigate, prosecute, and punish crimes committed in the past. In this sense, the adoption of measures to ensure full compliance with the constitutional and conventional functions of the justice system must be a prior step to any transitional justice policy design, such as the establishment of special national courts, international cooperation initiatives to create hybrid or mixed judicial bodies, measures to reduce sentences in exchange for testimony, etc.

The organs of the Venezuelan justice system have been directly involved in the commission of serious human rights violations, as has been documented by the Office of the United Nations High Commissioner for Human Rights (OHCHR), the International Independent Fact-Finding Mission for Venezuela (IMIDHV), the Inter-American Commission on Human Rights (IACHR) and the Office of the Prosecutor of the International Criminal Court (ICC). It generates greater complexity for future justice initiatives in a transitional process.

The experiences in Poland and the Czech Republic, with their successes and failures, can be helpful in the case of the Venezuelan justice system. Both developed lustration policies,<sup>15</sup> whose purpose was to veto perpetrators of human rights violations in the security forces, even though they were deeply questioned for not offering due process guarantees to officials who were removed from the security forces. Accordingly, lustration as a transitional policy in future judicial reform is an issue that should be analyzed in Venezuela, particularly about the creation of veto mechanisms in competitive examinations for entry or acquisition of tenure in the Judiciary, the Public Prosecutor's Office and the Public Defender's Office.

15 See: [https://es.wikipedia.org/wiki/Lustraci%C3%B3n\\_\(pol%C3%ADtica\)](https://es.wikipedia.org/wiki/Lustraci%C3%B3n_(pol%C3%ADtica)):

In Central and Eastern Europe, lustration is a policy involving the systematic removal and political exclusion, often without trial, of officials at all levels of the political system associated with the former regimes and their political parties, for example, officials associated with communist parties in Central and Eastern Europe after the collapse of the Soviet Union.

Now, in Venezuela, we have not moved towards a democratic regime; however, the issue of transitional justice is relevant for certain actors of civil society, in particular, human rights organizations and victims' groups, to define their approaches, claims, and demands in the face of a future political change, but also concerning gradual changes that may be introduced in the face of pressures that the power brokers of the current authoritarian regime may receive.

However, the creation of justice, truth, and reparation mechanisms seems unfeasible as long as the political class that governs the country remains in power, or at least does not change the system of perverse incentives established as State policy to stay in control and that do not allow public institutions to function correctly.

Therefore, this paper is part of the logic of promoting gradual changes that may serve as a precondition for the effectiveness of an eventual transitional justice process in the future. To this end, initiating the investigation by the ICC Office of the Prosecutor in conjunction with what Prosecutor Karim Khan has called the "two-way approach"<sup>16</sup> may constitute an incentive to channel specific minor changes that will impact on the present and future improvement of justice served.

The "two-way approach" to the situation in Venezuela has been developed in the draft policy on complementarity and cooperation of September 2023, which calls for "novel and imaginative forms of partnership with national authorities, civil society, and all actors."<sup>17</sup> The "two-way approach" aims to strengthen the interaction between the OTP and States to promote cooperation and complementary action, but without neglecting its mandate to investigate and prosecute crimes under the Rome Statute. It is also announced that the strategy will be present at all stages of the work of the ICC Office of the Prosecutor, and in all situations and cases. Furthermore, it is assured that it will be able to converge when genuine investigation and conviction processes are carried out - at the national level - in the relevant cases.

In this framework and with the future installation in Venezuela of a technical assistance office in judicial matters of the ICC Office of the Prosecutor before mid-2024, this work establishes some initial actions that require little or medium political will and that, although they do not generate structural changes in the short term, which are necessary especially, in terms of judicial independence, they imply improvements in the way of doing things. They can bring about broader changes over time.

<sup>16</sup> Access to Justice (2023), *The "twin-track approach," the ICC Office of the Prosecutor's new strategy for investigating Rome Statute crimes*, see <https://accesoaljusticia.org/enfoque-doble-via-nueva-estrategia-fiscalia-cpi-investigar-crimenes-estatuto-roma/>.

<sup>17</sup> ICC Office of the Prosecutor (2023), *Draft Complementarity and Cooperation Policy*, see: [https://www.icc-cpi.int/sites/default/files/2023-11/DRAFT-Complementarity-and-Cooperation-Policy-Paper\\_September-2023-SPA.pdf](https://www.icc-cpi.int/sites/default/files/2023-11/DRAFT-Complementarity-and-Cooperation-Policy-Paper_September-2023-SPA.pdf).

## ACTIONS TO REFORM THE CRIMINAL JUSTICE SYSTEM WITH REGARD TO COOPERATION WITH THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT

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### JUSTICE SYSTEM: CROSS-CUTTING APPROACH

Criminal justice reform in Venezuela cannot avoid the fact that it is part of a system that suffers from common structural problems that must be addressed with an integral and holistic vision.

According to Section 253 of the Constitution, the justice system is composed of the Supreme Court of Justice (TSJ), the other courts created by law, the Public Prosecutor's Office, the Public Defender's Office, the Criminal Investigation Corps and the Penitentiary System. It is also provided that alternative means of dispute resolution, lawyers and citizens authorized by law to participate in judicial proceedings, are also part of the justice system.

To fulfill their constitutional role, the organs that compose the justice system need to recover their independence and impartiality vis-à-vis the other branches of government, create safeguards and incentives for their transparent and accountable performance, and adequately address the serious problem of widespread corruption.

Thus, it has become clear from the diagnosis that making changes only in cases of gross human rights violations is not enough. Changes shall be made to the entire criminal justice system in order to transform the way things are done and, consequently, the legal culture of officials.

In fact, a system of perverse incentives is applied as State policy by instrumentalizing justice for political and repressive purposes. At the same time, there is a complete lack of supervision in what does not refer to these aspects. Moreover, the lack of training of civil servants and the low salaries have led to the fact that the mistreatment and arbitrariness that prevail in the cases of those persecuted by the justice system are transferred to other cases in which there are no political interests and ends up being the rule of how the justice system works.

### Independence and impartiality

The justice system is essential to the rule of law, as it ensures the existence of checks and balances vis-à-vis the other branches of government. Its independence and autonomy are necessary conditions for peaceful and democratic coexistence.

Compliance with the provisions of the Constitution that enshrine tenureship for judges, prosecutors, and public defenders shall be adequate to guarantee the independence of the organs of the justice system. Likewise, attacks against officials for making decisions that do not please government officials shall cease. To this end, it is urgent that the provisional nature of judges, prosecutors,

and public defenders be reduced and that their removal only occurs on the grounds set forth by law and following procedures that observe due process.

### Recommendations

1. Create truthful mechanisms through a technical process of international accompaniment, guided by instances such as the United Nations High Commissioner for Human Rights (UNHCHR) and the International Criminal Court (ICC) office in Caracas, to urgently reduce the provisionality of judges, prosecutors, and public defenders.
2. Establish mechanisms to evaluate judges, prosecutors, and public defenders on their current performance and make public the results of their work.
3. Train judges, prosecutors, public defenders, and other judicial officials in human rights, including protocols for action in cases of torture, forced disappearances, arbitrary detentions, among others, as well as gender awareness and violence against women.
4. In the medium term, include in the various regulations applicable to access to positions in the justice system, procedures either for impugning or challenging the professional and moral conditions of applicants to the Judiciary, with the participation of civil society organizations.
5. To allow human rights organizations to represent victims in court without demanding requirements not included or enshrined in any legal norm.

### Transparency, accountability, and the fight against corruption

The right to adequate judicial protection enshrined in Section 26 of the Constitution is ensured through the transparent and responsible management of the organs of justice serving. Since this concerns all citizens, the publicity of judicial files and decisions must be guaranteed as a fundamental right for the parties and society in general.

Similarly, the management of all the system's organs shall include the regular publication of achievement indicators and their level of compliance, particularly concerning the use and investment of financial resources.

It has been documented that corruption affects all organs of the justice system, seriously compromising the right to access justice and principles such as free access to justice and non-discrimination. Likewise, corruption in the justice system is intertwined with the forms of this vice in public administration, preventing the effective combat of harmful practices that seriously affect the enjoyment of the population's human rights.

## Recomendaciones

6. Make the budget of the justice system public with an indication of compliance or non-compliance with the minimum required by the Constitution.
7. Update the list of judges of each court in the electronic media of the Judiciary along with their status in office (incumbent, provisional, interim, or other), including their resumes. The list of prosecutors and public defenders, competencies and status in office (incumbent or provisional) should also be made public.
8. Ensure proper distribution of cases to prosecutors, judges, and public defenders based on objective criteria.
9. All TSJ rulings must be published at the time they are approved. Cease the practice of publishing only the operative part of the sentence. Likewise, the practice of publishing judgments weeks or months after their signature should cease.
10. Guarantee access to all court files; no court file should be confidential. Access to the file, particularly in criminal trials, should be made in due time to allow for the proper exercise of the right to defense.
11. Guarantee photocopies of the files to the parties and the public, in those cases permitted by law.
12. Demand that all courts, including the TSJ, have their daily books up to date, open, and available for consultation by any user.
13. Require that notices of trial hearings be published well in advance in the Judiciary's electronic media.
14. Publish numbers of complaints received and processed and recommendations for sanctions to judges from the Inspector General's Office of Courts.
15. Establish rules and suitable measures so that all courts in the country, including the TSJ, dispatch every day and, when for truly justified reasons they are unable to do so, announce it through social networks or other easily accessible media.
16. Establish reliable and easily accessible mechanisms for citizens to receive complaints of wrongdoing by officials of criminal investigation bodies and to be held accountable for their results.



17. Sanction through effective and adequate disciplinary procedures judges, prosecutors, public defenders, and other justice system officials involved in irregularities in performing their duties and proceed to their removal when appropriate and with due process.
18. The fight against and punishment of acts of corruption must comply with the right to due process.
19. The Code of Ethics of the Judge and the Judge should be in force for all judges, including provisional judges and TSJ magistrates.
20. To allow the disciplinary regime's courts to function and appoint the respective judges as stated in the Constitution and the Code of Ethics of the Judge and the Judge.
21. Regarding the Public Prosecutor's Office, the Inspection and Discipline Directorate should publish forms and establish mechanisms accessible to the public to receive complaints of prosecutors allegedly involved in acts of corruption.

### Regulatory framework consistent with the protection of human rights

The international human rights obligations that Venezuela has assumed must be adequately implemented in the domestic legal order. Human rights treaties are of direct and immediate application according to Section 23 of the Constitution, and laws and other normative acts must be compatible with them.

The sanctioning of gross human rights violations and international crimes is facilitated through an opening of legal operators to international law and also, taking into account comparative references of good practices for the accountability of perpetrators of widespread and systematic violations of human rights and international crimes, for which the local office of the Prosecutor of the International Criminal Court (ICC) may serve as an instrument for its dissemination and possible implementation in the country.

The creation of new laws has little impact on improving the conditions of the system if they are not complied with or implemented adequately. The principle of legality of the actions of the Public Power, which also applies to the organs of the justice system, requires that practices outside the law be stopped without stipulating new legal norms for this purpose.

## Recommendations

22. Adequately implement laws related to the justice system that have been reformed and remain unimplemented as of this date. In particular, legal norms issued in favor of LGBTIQ+ persons and indigenous communities shall be enforced.
23. Cease the policy of passing laws that do not become enforced.
24. Eliminate the judicial practice of trying civilians in military courts.
25. Disapply the criteria of Ruling 1942 of 2003 year issued by the Constitutional Chamber of the TSJ, which denies binding effect to the decisions of supervisory organs on human rights matters and submits them to a constitutionality control.
26. Adapt the action protocols of law enforcement agencies to make them compatible with the differentiated realities of gender and vulnerable populations, such as women, children, LGBTIQ+ persons and indigenous peoples.
27. Widely disseminate its international human rights obligations in a manner that is accessible and understandable to the general public.
28. Ratify the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
29. Reintegrate Venezuela into the Inter-American Human Rights System.

18 Between September 2021 and January 2022, 12 laws related to the justice system were approved, most of which have not been fully implemented. For a detailed analysis of the situation of lack of implementation of these laws, see Acceso a la Justicia (2022), *Situación y análisis de las reformas legislativas realizadas por el Gobierno de Venezuela vinculadas con el sistema de justicia*, see <https://accesoalajusticia.org/wp-content/uploads/securepdfs/2022/06/Situacion-y-analisis-de-las-reformas-legislativas-realizadas-por-el-Gobierno-de-Venezuela-vinculadas-con-e.pdf>.

## CRIMINAL INVESTIGATION CORPS

The effectiveness of criminal investigations depends on the professional and technical capacity of the criminal investigation corps. Its autonomy shall be guaranteed by protecting its professional and scientific nature in pursuit of the truth and through the control over its actions exercised by the Public Prosecutor's Office.

The technical capacity of forensic investigators, doctors, anthropologists, computer scientists, and other professionals with expertise in criminal investigation in cases of human rights violations shall be urgently installed. With the support of international cooperation, the United Nations (UN) and the ICC Office of the Prosecutor, high-level training should be promoted to investigate cases of extrajudicial executions, torture, forced disappearances, and acts of sexual violence, as well as to collect and safeguard evidence on crimes against human rights, recovery and exhumation of bodies, identification of corpses, extended autopsy practices with the assistance of geneticists and the analysis of bones, among others.

Special measures should be taken to guarantee the independence and ethical conduct of forensic physicians responsible for the examination of detainees and persons deprived of their liberty to prevent and punish cases of torture, cruel treatment and sexual violence.

In general, the criminal investigation bodies are auxiliary bodies under the direction of the Public Prosecutor's Office. Their directive role should serve as a guarantee against the arbitrariness of the Executive. However, the law is ambiguous and gives important powers to the National Executive in criminal investigation matters through the Scientific and Criminal Investigations Corps (CICPC). It should be reviewed.

### Recommendations

30. Re-establish the powers of the Public Prosecutor's Office in this area.

31. Train, with the help of international cooperation, officials of criminal investigation bodies to conduct adequate investigations with forensic and technical standards on gross human rights violations, taking into account internationally recognized standards in instruments such as the Istanbul Protocol,<sup>19</sup> the Minnesota Protocol,<sup>20</sup> the Murad Code<sup>21</sup> and the Méndez Principles.<sup>22</sup>

19 OHCHR, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (2004), see: <https://www.ohchr.org/sites/default/files/documents/publications/training8rev1sp.pdf>.

20 OHCHR, *Minnesota Protocol on the Investigation of Potentially Unlawful Deaths* (2016), see: [https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol\\_SP.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol_SP.pdf).

21 *Murad Code: Code of Conduct for Collecting and Using Information on Systematic and Conflict-Related Sexual Violence* (2022), see: <https://static1.squarespace.com/static/5eba1018487928493de323e7/t/62a3760740a60f40535f33c3/1654879752315/220413+Code+Murad+4website+EN+Rev2+220610.pdf>.

22 Association for the Prevention of Torture et al, *Mendez Principles: principles on Effective Interviewing for Research and Research Collection* (2021), see: [https://www.apt.ch/sites/default/files/publications/apt\\_PoEI\\_SPA\\_04.pdf](https://www.apt.ch/sites/default/files/publications/apt_PoEI_SPA_04.pdf).

32. Immediately cease any acts of intimidation, threats, and reprisals by members of the State security forces, especially those who have the function of criminal investigation corps against victims and their relatives seeking justice, as well as against human rights organizations.
33. To sanction through effective and adequate disciplinary procedures the officials of the criminal investigation corps involved in irregularities in performing their duties and to proceed to their removal when appropriate and after due process.
34. Guarantee effective and gender-sensitive attention by law enforcement services to victims and their families who report human rights violations.
35. Demand that police forces immediately comply with judicial release orders.
36. That all police officers and state security forces are clearly and adequately identified, both personally and institutionally, prohibiting the use of any mechanism that prevents or hinders their identification.
37. That the raids are duly recorded in films, and the corresponding support data become attached and incorporated into the files.

## **PUBLIC PROSECUTOR'S OFFICE**

The Public Prosecutor's Office is the guarantor of legality and, as such, must direct criminal action objectively and independently. Crimes against human rights and international crimes should be the highest priority in fulfilling its functions.

To carry out its constitutional mandate fully, the Public Prosecutor's Office shall meet technical standards and have highly qualified teams of professionals. Its role of directing criminal investigations requires the promotion of multidisciplinary training of prosecutors, who must have a set of legal, criminalistic, and procedural knowledge to perform their work correctly.

Specialized prosecutors' offices for human rights matters shall be promoted in a decentralized manner to cover the country's various regions. These will be guided by best practices and international standards for investigating these crimes and will tend to develop their standards for controlling the actions of the auxiliary bodies in the investigations.

The Public Prosecutor's Office shall direct its actions in a manner consistent with protecting victims. To this end, it should develop an efficient program of attention and protection for victims and witnesses, with a gender perspective and considering each person's particular risk conditions.

The management of the Public Prosecutor's Office shall be transparent and responsible, offering periodic accountability.

### Recommendations

38. To develop highly specialized continuing education programs in criminal investigation and criminalistics, forensic sciences, criminal and procedural law, human rights, and international criminal law.
39. Create internal protocols under international standards for investigating gross human rights violations, such as the Istanbul Protocol and the Minnesota Protocol.
40. Establish mechanisms that allow provisional prosecutors to have guarantees of stability.
41. Train officers to conduct non-coercive interrogations, following the guidelines of the Principles on Effective Interviewing for Investigation and Information Gathering (Méndez Principles).
42. Produce detailed annual reports containing valid and evaluable statistics with objective criteria on criminal proceedings, disaggregated by charges, sex, and age of the victims, as well as location, affiliation and rank of the accused person. The reports should include all proceedings in cases of human rights violations and provide annual updates on the resolution of cases or progress made.
43. Ensure that criminal charges are based on solid and valid evidence obtained by lawful means and without torture, ill-treatment or coercion.
44. Effectively implement a victim and witness protection program to safeguard their integrity.
45. That officials of the Prosecutor's office attend to the victims and inform them periodically, in writing if possible, about the scope of the investigations and their activities.
46. The Prosecutor's office in the military criminal jurisdiction shall be independent of the active military ranks to ensure its full autonomy and impartiality.

## PUBLIC DEFENSE

The right to a defense is an essential guarantee of due process that must be fully protected in all proceedings and instances of the criminal process. Those accused and charged with crimes must be allowed to be represented by an attorney of their choosing, must be duly informed of the charges against them promptly so that they have sufficient time to prepare their defense, must not be forced under any circumstances to confess against them, and must not be held incommunicado with their attorney or members of their family.

For persons who do not have the means for a private defense, the State provides a public defender, who must be a highly trained professional dedicated to performing his service optimally and diligently. The choice of a public defender should be a free and optional matter for the accused; under no circumstances should he or she be obliged to do so if he or she has a trusted private defender.

### Recommendations

47. Guarantee detainees to appoint legal representation of their choice and to have access to it at any stage and level of the judicial process.
48. To act diligently in the managing of the interests and rights of the defendants in the process, abandoning the practice of coercing the defendants to admit the facts as an incentive to obtain a reduction of the sentence.
49. Establish mechanisms that allow temporary public defenders to have guarantees of tenureship.
50. Implement training plans for public defense officials on human rights and a gender-differentiated approach.
51. The Public Defense in the military criminal jurisdiction shall be independent of the active military ranks to ensure its full autonomy and impartiality.



## CRIMINAL COURTS

The Judiciary is the arbiter of legality and the Rule of Law but also the essential guarantor of human rights. Criminal courts shall ensure the rights of the accused, as well as the rights of victims when trying to punish those responsible for crimes.

The judicial function shall regain the majesty that derives from its power to regulate societal conflicts. Judges shall be perceived as just arbitrators to whom citizens can entrust their freedom, property, security, and other fundamental rights. In this context, the Judiciary shall generate incentives to attract the best legal professionals who seek in the judicial service a decent means to achieve their professional and economic goals commensurate with the demands of that profession.

The Judiciary must be professionalized in order to exercise its role correctly and, above all, to provide appropriate responses to the massive commission of serious human rights violations and international crimes. Judicial officials must receive first-rate training in human rights and international criminal law focusing on the judicial function, to fill the lack of knowledge in these areas.

### Recommendations

Concerning the Judiciary in general:

52. Reform the Organic Law of the Supreme Court of Justice (LOTSJ) so that the procedure for electing the magistrates of this highest instance is done competitively and transparently per the Constitution.
53. To cease the practice, without any legal basis, of invalidating the appointments of judges.
54. Establish mechanisms that allow provisional judges to have guarantees of tenureship.
55. Develop training programs for judges and judicial officials through the National School of the Judiciary in the subjects and competencies necessary for the Judiciary's performance, including legal, psychological, grammatical, and managerial aspects.
56. Training programs on human rights shall be created and implemented.

Concerning the criminal courts:

57. To abolish the criminal courts of terrorism, created by a regulation of the TSJ (in violation of the principle of legal reserve) to prosecute dissidents since they do not comply with national and international standards of justice.

58. Respect the sphere of autonomy of the judges and prohibit and sanction undue interference by the presidents of the criminal judicial circuits and other instances of the TSJ.
59. To create a repository of judgments with a gender perspective on violence against women to constitute precedents for the guarantee of women to a life free of violence, as a valuable pedagogical effort, facilitating access to this information and the construction of referents in the way of reasoning in the decisions of the courts of instance.
60. Respect the procedural deadlines established by law, avoiding unjustified delays in criminal proceedings. In particular, the 48-hour period for a detainee to be brought before a judge should be respected, and in the event that this does not occur, the officials responsible should be sanctioned.
61. Act immediately on allegations of torture raised in court, including sexual violence, by ordering the immediate transfer of the detainee out of the detention center where the torture allegedly occurred to the care of another detention authority and with guarantees for the victim.
62. Eliminate the practice of making public any statement or confession of detainees before they are presented in a fair trial, with the corresponding exercise of the right to defense and control of evidence.
63. Strict and restricted application of preventive detention. It should be the exception and not the rule, and its decree should be issued when the requirements outlined in the law are met; under no circumstances should its execution exceed the legal term of 2 years.
64. Disregard evidence obtained illegally or through torture, cruel treatment, or any form of coercion, particularly that which comes from investigations carried out by the Bolivarian National Intelligence Service (Sebin) and the General Directorate of Military Counterintelligence (DGCIM) and when there are indications that it was obtained through such practices.
65. Remove current obstacles to the right to defense, in particular, that the right to the presumption of innocence is guaranteed, that defense counsel is provided with sufficient time with essential court documents, is promptly informed of hearings, and is allowed adequate access to court records to enable him to carry out the proper representation.
66. Guarantee the principle of publicity of the criminal process. Criminal court hearings are public according to the Law, so access must be allowed to all interested persons, with

no restrictions other than those derived from the capacity of the spaces allocated for them or grounds established in the Law. This was indicated above in the section on transparency.

67. Enable the exercise of victims' right to remedy and reparations with a gender-sensitive approach, and their protection from intimidation and retaliation.

68. Serving of justice in the military criminal jurisdiction must be independent of the active military ranks to ensure its full autonomy and impartiality.

## PRISON SYSTEM

Section 272 of the Constitution enshrines that:

The State will guarantee a penitentiary system that ensures the rehabilitation of inmates and respect for their human rights. To this end, the penitentiary establishments will have spaces for work, study, sports, and recreation, will operate under the direction of professional penitentiary professionals with university academic credentials, and will be governed by a decentralized administration in charge of the state or municipal governments, and may be subject to privatization modalities. Generally, the open regime and the character of penitentiary agricultural colonies will be preferred. In any case, the formulas for serving non-custodial sentences will be applied in preference to reclusive measures. The State will create indispensable institutions for post-penitentiary assistance that will make possible the social reintegration of the ex-inmate and will promote the creation of a penitentiary entity with an autonomous character and exclusively technical personnel.

Constructing a penitentiary system per the constitutional mandate is a peremptory and undeniable task to guarantee human rights. These reforms must ensure observance of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules)<sup>24</sup> and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules).<sup>23</sup> The reintegration of persons deprived of their liberty should be the ultimate goal of all penitentiary institutions.

During the last three decades, numerous human rights violations have been committed against persons deprived of their liberty, which must be fully repaired by the State, in particular, the violations

23 United Nations Office on Drugs and Crime (UNODC), *Nelson Mandela Rules: United Nations Standard Minimum Rules for the Treatment of Prisoners* (2015), see: [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-S-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-S-ebook.pdf).

24 UNODC, *Bangkok Rules: United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (2011), see: [https://www.unodc.org/documents/justice-and-prison-reform/Bangkok\\_Rules\\_ESP\\_24032015.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ESP_24032015.pdf).

derived from the non-compliance with provisional measures of the Inter-American Court of Human Rights (IACHR)<sup>25</sup> and the ruling in the case of the Catia Prison Detention Center.<sup>26</sup>

In the long term, under an innovative and transparent approach, subject to broad national consultation, a mixed management model (between the State and private companies) should be implemented and managed in a decentralized manner, as required by the Constitution.

### Recommendations

69. Ensure that all detainee records are freely accessible to family members and attorneys upon request.
70. Immediately cease the practice of taking essential goods from detainees, such as medicine or food, during searches, and sanction anyone who engages in such practices.
71. Establish disciplinary mechanisms to be applied immediately when torture or ill-treatment is reported and that, at least as a precautionary measure, officials accused of such acts should not interact with detainees.
72. Immediately cease the prohibition in some detention centers that detainees may only be visited by family members.
73. Return control of the penitentiary system to civilian authorities.
74. Take appropriate positive measures to mitigate the risks faced by LGBTIQ+ persons deprived of their liberty.
75. Allow the International Red Cross to visit all persons deprived of their liberty, as well as the OHCHR, and allow them to be attended immediately by medical services in cases of emergency.

<sup>25</sup> The Inter-American Court has issued provisional measures with respect to the penitentiary centers of Yare I, Yare II, Monagas Judicial Prison (La Pica), El Rodeo, Centro Penitenciario de la Región Centro Occidental (Uribana), Vista Hermosa, among others.

<sup>26</sup> I/A Court H.R., Case of Montero Aranguren (Retén de Catia) v. Venezuela, Judgment of July 5, 2006, see: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_150\\_esp.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_150_esp.pdf).

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