

# **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

Prepared by the Civil Society organization  
*Acceso a la Justicia*  
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## Institutional Presentation

This report is presented by the human rights organization *Acceso a la Justicia (AJ)*, a non-profit, private, independent, and non-partisan civil association established in 2010 by Venezuelans committed to the defense of justice, the Rule of Law, the separation of powers, judicial independence, democracy, freedom and human rights in Venezuela.<sup>1</sup> We are the Venezuelan Observatory of Justice and the Rule of Law in Venezuela, and we spread information to help citizens assert their rights.

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<sup>1</sup> Web portal: <https://accesoalajusticia.org/>

## Introduction

1. According to the international initiative *World Justice Project*, from 2015 to 2022, Venezuela has been ranked in the last place in the Rule of Law index among the countries evaluated. One of the key indicators is the administration of justice. Concerning criminal justice, the country occupies the last place, while serving civil justice ranks second to last.<sup>2</sup>
2. A deep institutional breakdown has been documented<sup>3</sup> during the last decade resulting in the absence of the State as a guarantor of security, justice and basic living conditions, causing a generalized context of violence and defenselessness.<sup>4</sup> Additionally, the State has become autocratic and militarized,<sup>5</sup> even police is used as a tool to remain in power and confront the citizens,<sup>6</sup> who, increasingly dissatisfied with the situation, began to protest in a gradually more massive manner.<sup>7</sup>
3. The election of a National Assembly (NA)<sup>8</sup> with an opposition majority in 2015 led to the disregard of its powers through the Judiciary. The Constitutional Chamber (CC) of the Supreme Court of Justice (SCJ) issued 145 judgments in the annulment of the acts of the NA, which was finally declared in contempt and deprived of its constitutional powers, as well as of State budget allocation.<sup>9</sup> In 2017, the President of the Republic decreed the creation of a National Constituent Assembly (NCA), in open violation of the Constitution, without prior popular consultation.<sup>10</sup> Its primary role was to replace the Parliament<sup>11</sup> by approving a set of laws that were also contrary to the Constitution and the International Covenant on Civil and Political Rights (ICCPR); it appointed senior State officials and served as an instrument of institutional repression against political dissent.<sup>12</sup>

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<sup>2</sup> The World Justice Project, [WJP Rule of Law Index Venezuela, 2022](#).

<sup>3</sup> La Nación (2016), Ban Ki-Moon: "[In Venezuela there is a humanitarian crisis](#)", and The Found for Peace (2015 and 2022), [Fragile States Index](#).

<sup>4</sup> The Found for Peace (2015 and 2022), op cit.

<sup>5</sup> Civil Association Social Watch (March, 2023), [With the appointment of Colonel Pedro Rafael Tellechea Ruiz, there are 14 ministers coming from the Army](#).

<sup>6</sup> Jácome, Francine (March-April, 2018), [The military in Venezuelan politics and economics](#), and Sahari G. (April, 2021), [Fifteen years after the Police Reform in Venezuela: more militarization and human rights violations](#).

<sup>7</sup> Vid. [Venezuelan Observatory of Social Conflict](#).

<sup>8</sup> Parliament in Venezuela.

<sup>9</sup> AJ (January, 2021), [The SCJ vs the NA](#).

<sup>10</sup> Article 347: AJ, [No People, No Constituent](#). 4 May 2017.

<sup>11</sup> AJ, [The legislative role of the National Constituent Assembly in the service of power](#). October 5, 2017.

<sup>12</sup> AJ (December, 2020), [Report on the National Constituent Assembly. Its use as part of the institutional facade in Venezuela](#).

4. The above generated massive protests that resulted in vast repression, documented by the United Nations High Commissioner for Human Rights (OHCHR).<sup>13</sup> The seriousness of the human rights situation in Venezuela led to the fact that, in September of that year, several countries referred the situation to the Office of the Prosecutor (OTP) of the International Criminal Court (ICC) for the alleged commission of crimes against humanity, which is currently in the investigation stage.<sup>14</sup>
5. Both the International Independent Fact-Finding Mission for the Bolivarian Republic of Venezuela (FFM) and the OTP have corroborated that there are reasonable grounds to believe that crimes against humanity have occurred in the context of repression of political dissent and, in particular, in the exercise of the rights to protest by anyone who is or is even perceived to be an opponent.
6. Likewise, since at least 2013, the Government has implemented citizen security policies contrary to human rights standards that have resulted in an alarming number of *extrajudicial executions*, counting as victims mostly impoverished young men, who are passed off as "criminals" that have perished in confrontations during law enforcement operations. OHCHR<sup>15</sup> and FFM<sup>16</sup> have argued that these killings are part of a widespread and systematic pattern of violation of the right to life to exercise social control in marginalized areas to make people believe that there is an "iron fist" against crime.
7. As explained by the FFM, the above would not have occurred if the Justice System had fulfilled its functions:

"The importance and centrality of the justice system to the Venezuelan crisis cannot be overstated. The Mission has reasonable grounds to believe that had the prosecutorial and judicial actors performed their constitutional role appropriately and fully, they could have either prevented many of the crimes and violations committed against real or perceived opponents of the Government, or placed rigorous impediments upon public security and intelligence services' ability to commit them."<sup>17</sup>

<sup>13</sup> OHCHR, [Human rights violations in the Bolivarian Republic of Venezuela: a downward spiral that seems to have no end](#).

<sup>14</sup> ICC-02/18. [Venezuela I Situation in the Bolivarian Republic of Venezuela I](#).

<sup>15</sup> OHCHR, [Op cit](#), June 2018, pp. 14, 17, 23.

<sup>16</sup> FFM, [Detailed Findings 2020](#), paras. 2013-2060.

<sup>17</sup> FFM, [Detailed Findings, 2021](#), para. 486.

8. Recently, laws associated with the justice sector were reformed to respond to the opening of OTP's investigation. These reforms have not been adequately implemented, among other reasons, due to successive interpretations by the SCJ<sup>18</sup> and have not reflected genuine changes for the rescue of judicial independence.<sup>19</sup>
9. This year, repression and persecution, which became a pattern in pre-electoral years since 2005 by the party that has ruled the country since 1999 without alternation in power, has deepened again.<sup>20</sup> There have been threats and political violence<sup>21</sup> in light of an opposition primary election for the 2024 presidential elections. Also, there has been increased repression and criminalization of civil society actors, as in the cases of the imprisonment of trade unionists,<sup>22</sup> and a human rights defender,<sup>23</sup> plus the drafting of laws in Nicaraguan style that seek to hinder the operation of NGOs.<sup>24</sup>
10. This alternative report, without being exhaustive, reflects our concerns and recommendations regarding the rights to judicial independence and due process protected by **Article 14** of the ICCPR and the obligation to implement domestically the rights protected by this instrument (**Article 2**), as well as the connection of the administration of justice with other protected rights (**Articles 7, 9, 25 and 26**).

## **I. Implementation of the Covenant by judges, prosecutors, and other justice officers (Article 2)**

11. The State has not complied with the Committee's recommendation to ensure the direct application of the Covenant by judges and other justice officials. The SC of

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<sup>18</sup> The highest court in the country, including a constitutional chamber and, in addition, the governing and administrative body of the Judicial Branch.

<sup>19</sup> AJ, [Status and Analysis of the Legislative Reforms carried out by the Venezuelan Government related to the Justice System](#), June 2022.

<sup>20</sup> AJ (September, 2019), [The seizure of absolute power in Venezuela](#) and AJ (2022), [Elections in an Autocracy](#).

<sup>21</sup> [Threats against pre-candidate Machado](#), 6 August 2023. [Attacks against pre-candidate Henrique Capriles](#), July 2023, [Threats against president of the Primary Commission](#), 6 September 2023.

<sup>22</sup> AJ (August, 2023), [Persecution of trade union movement intensifies as social unrest increases in Venezuela](#). OHCHR, [Venezuela: UN experts condemn use of counter-terrorism laws to convict trade unionists and labour leaders](#), 1 August, 2023.

<sup>23</sup> AJ, [Chronology of the Fundaredes NGO case](#), 31 August 2023. OHCHR, [Venezuela update by High Commissioner Türk](#), 5 July 2023.

<sup>24</sup> AJ, [Comparative analysis between the Nicaraguan Law for the Regulation of Foreign Agents and the draft Law on International Cooperation of Venezuela](#), 8 December 2022. [Communiqué of more than 400 organizations of the society civil society organizations on the draft law that attempts to suppress the right of association in Venezuela](#), 10 February 2023.

the SCJ<sup>25</sup> for more than 20 years<sup>26</sup> has held that the decisions and reports of international human rights bodies have no binding effect and may be subject to constitutional review by the Constitutional Chamber of the Supreme Court of Justice (CC/SCJ). Thus, CC/SCJ has systematically declared the judgments of the Inter-American Court of Human Rights (IACourtHR) to be unenforceable, considering them unconstitutional.<sup>27</sup> As a result, since 1986, Venezuela has not abided by any of the 27 judgments issued against the country by that court. This constitutes a threat to the efficacy (*effet utile*)<sup>28</sup> of the rulings of the Committee itself in the processing of individual communications.

12. The courts' few mentions of the ICCPR are reduced to citing some articles, without any analysis of their applicability to the facts of the specific case.<sup>29</sup> In cases where the content of the general comments of the Covenant is relevant for the proper application of the norm, no mention has been made of them.<sup>30</sup>
13. In response to the list of issues, the State referred to the most recent ruling that alluded to the ICCPR. The CC/SCJ partially annulled Article 565 of the Organic Code of Military Justice that criminalizes homosexual relations carried out by members of the Armed Forces but did not determine measures - according to General Comment 16 of the Committee - to protect the right to privacy and intimacy of persons previously convicted of such crime, nor of those who were being prosecuted before the ruling.<sup>31</sup>
14. The appointment of the current Ombudsman<sup>32</sup> (DdP) was made in contravention of the Constitution by an organ of the National Constituent Assembly (NCA)<sup>33</sup>

<sup>25</sup> It is one of the seven chambers of the Supreme Tribunal of Justice. It is also composed of: the Political Administrative Chamber, the Electoral Chamber, the Criminal Cassation Chamber, the Civil Cassation Chamber, the Social Cassation Chamber and the Plenary Chamber.

<sup>26</sup> CC/SCJ, [Judgment 1942](#), July 15, 2003.

<sup>27</sup> CC/SCJ, Judgments: [1939, December 18, 2008](#); [1547, October 17, 2011](#) and [1175, September 10, 2015](#).

<sup>28</sup> I/A Court H.R., Judgment of November 18, 2020, Case: Granier et al. v. Venezuela (supervision of compliance with judgment), paras. 14.

<sup>29</sup> CC/SCJ, judgements: [1010/2003](#), 2 May 2003; [626/2006](#), 20 March 2006; [562/2013](#), 21 May 2013.

<sup>30</sup> CC/SCJ, [judgment 1353](#), October 16, 2014, regarding general observations 19 and 28; [judgment 128](#) of March 16, 2023, regarding general observation 16.

<sup>31</sup> AJ, [Venezuela takes a step forward by decriminalizing homosexuality, but there is still a long way to go in terms of equality](#), March 23, 2023.

<sup>32</sup> [NCA appointed Alfredo Ruiz Angulo as head of the Ombudsman's Office](#), Diario Tal Cual, November 18, 2018.

<sup>33</sup> The High Commissioner recommended that a new appointment be made in compliance with the Constitution and the Law. The State ignored this recommendation. Vid. OHCHR, [Human rights violations in the Bolivarian Republic of Venezuela: a downward spiral with no end in sight](#) - Report by the Office of the United Nations High Commissioner for Human Rights. June 2018, p. 60. This recommendation was reiterated by OHCHR in Report: [A/HRC/41/18: Human rights in the Bolivarian Republic of Venezuela: Report of the United Nations High Commissioner for Human Rights](#), 4 July 2019, recommendation (j).

and not by the Nominations Evaluation Committee of the Citizen Power or the NA, as required by the Constitution.<sup>34</sup> In appointing the DdP, the plural participation of the various social forces was not allowed,<sup>35</sup> as set forth in the Paris Principles.

15. The management of the DdP lacks transparency in the accountability framework. The annual report for 2022 has not been made public on the institution's website.<sup>36</sup> In its response to the list of issues, the State has not provided information on how the DdP processes complaints and allegations. In addition, previous DdP reports do not indicate the outcome of citizen complaints<sup>37</sup> or the impact of the steps taken before other public institutions; additionally, more than 60% of complaints are labelled as "miscellaneous matters," for which there is no opening of a file for processing.
16. It is alarming that the DdP has remained mute on gross violations of Human Rights,<sup>38</sup> the EHC and crimes against humanity under investigation by the OTP. It is unsurprising that its status was downgraded in 2016 by the United Nations from "A" to "B"<sup>39</sup> and has not changed to date.

## 17. RECOMMENDATIONS

Accordingly, the Committee should recommend the State to:

- a. **Adopt all measures to ensure that the courts give effective application to the provisions of the Covenant, its Protocols, General Comments and decisions in individual communications, without observing the ruling of the Constitutional Chamber of the SCJ and in compliance with the *pacta sunt servanda* principle. Also, implement measures to fully comply with the Committee's findings of a violation of the Covenant, in order to guarantee an effective remedy when there has been a violation.**
- b. **Appoint the head of the Ombudsman's Office following constitutional and legal procedures. Likewise, to ensure the DdP's independence to fulfill its**

<sup>34</sup> Article 279.

<sup>35</sup> There was no consultation process of any kind for the appointment. The NCA had an entirely pro-government composition after a deeply questioned selection process, see: IACHR, [Democratic Institutions, the Rule of Law and Human Rights in Venezuela](#) (Country Report), December 31, 2017, para. 471.

<sup>36</sup> Vid:

[http://www.defensoria.gob.ve/index.php?option=com\\_content&view=article&id=401&Itemid=140](http://www.defensoria.gob.ve/index.php?option=com_content&view=article&id=401&Itemid=140)

<sup>37</sup> AJ, [Report on the Performance of the Ombudsman's Office \(2001-2019\)](#), and PROVEA, [Report on the Situation of Human Rights in Venezuela \(2020\)](#), Chapter Right to Justice, p. 52.

<sup>38</sup> PROVEA, [Public Prosecutor's Office and Ombudsman's Office discriminate against victims of human rights abuses](#), 31 August 2020.

<sup>39</sup> AJ, [The ABCs of the degradation of the Ombudsman's Office](#), 5 September 2016.

**commitment to protect human rights, according to the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).**

## **II. Independence of the Justice System (Article 14)**

18. Concerning the independence of the Judiciary, the State has not adopted any measures to correct the provisional status of judges. Moreover, this precondition for judicial independence has worsened since 2015, as there are estimates that the number of temporary judges has increased. Likewise, interference in the Judiciary by the Executive Branch and other branches of the State, particularly the Legislative Branch, has increased since the ruling party regained control in 2021.
19. Opacity and lack of accountability have been the rule in the functioning of the Judiciary during the last decade. The IACHR documented that, in 2020, 881 temporary judges were appointed,<sup>40</sup> in 2019, it was estimated that 85.3% of the judges were temporary.<sup>41</sup> In 2021, it noted that at least 434 provisional judges were appointed while the Judicial Commission of the SCJ<sup>42</sup> dismissed 244 judges without acknowledging the reasons for their removal.<sup>43</sup> At the inauguration of the 2023 judicial activities, the president of the SCJ, Gladys Gutiérrez, maintained that 642 "provisional" judges had been appointed by the Judicial Commission in 2022.<sup>44</sup> The State has not disclosed the number of judges or their tenure in office. Still, according to the data presented by the State before the Committee, the appointments of provisional judges during the last three years and the number of courts that the State has mentioned<sup>45</sup> indicate that the provisionality of judges may be above 90%.
20. The IACHR indicated in its annual report (2021) that opacity is very common in the administration of justice, since it has yet to be known what the instance judges determine and decide.<sup>46</sup> The IACHR points out that this lack of

<sup>40</sup> IACHR, [Annual Report 2021, Chap IV.b \(Venezuela\)](#), May 26, 2022, para 27.

<sup>41</sup> Ibid, para. 27.

<sup>42</sup> The Judicial Commission is composed of the presidents of the chambers that make up the Supreme Tribunal of Justice. It is not provided for in the Constitution or the Law. It was created by sub-legal means, it currently appears in the e [Internal Regulations of the SCJ \(Articles 73 to 79\)](#).

<sup>43</sup> OHCHR, [Situation of Human Rights in the Bolivarian Republic of Venezuela](#), June 2022, para. 15.

<sup>44</sup> AJ, [SCJ without rendering detailed accounts on its 2022 management and with ethereal promises on its 2023 management](#), February 16, 2023.

<sup>45</sup> AJ, [Figures on numbers of courts, prosecutors and defenders disclosed by the Venezuelan State under the UPR](#), July 18, 2022.

<sup>46</sup> IACHR, [CHAPTER IV.B Venezuela](#), Op. cit. para. 29.

transparency does not allow monitoring of judicial independence (for example, appointment of judges whether they are provisional or not). It also reports that there are no public hearings; the SCJ does not always publish the full text of its judgments, but only the operative part; it does not notify its decisions, convictions and preventive injunctions but through social networks and not through court orders, those of the other courts in the country have even less publicity, since 2017 they do not appear on the website of the institution.<sup>47</sup>

21. The data provided by the State to the Committee on the number of courts are not updated since they currently correspond to March 2020,<sup>48</sup> as reported in the Universal Periodic Review (UPR, 2022), and do not allow to deduce the number of judges, because the number of courts does not correspond to the number of judges because there are many collegiate courts. Still, the most serious issue is that on that occasion the numbers of tenured, provisional, or temporary judges were not specified, let alone their gender.
22. The Constitution (article 255) provides that access to the judicial career and subsequent professional promotion be verified through a public and competitive process based on the qualification and suitability of candidates. However, such a process has not been carried out for almost twenty years, as it was suspended by the SCJ in 2002-2003 without clear reasons.<sup>49</sup> In its report, the State maintained that *"a call was made to two hundred and seventy-three (273) judges from the Capital District and the states of Miranda and La Guaira."*<sup>50</sup> The information provided by the State to the Committee does not account for a substantial step to overcome the provisionality of judges since it is an alleged competition in only three of the 23 states that comprises the territory. The State also exposes that it has yet to be concluded successfully. It would refer only to an internal call, only open to judges entered as provisional and not to any qualified professional interested in the Judiciary. Although, in the speech at the beginning of the judicial activities of 2023, the president of the SCJ announced that progress has been made in: "[...] the construction of the 'scaffolding' of the judiciary.] *the construction of the 'scaffolding for the holding of competitive examinations for the tenure of judges' and referred that 'the next step is the call for such contest',*"<sup>51</sup> the regulations in force on the matter since 2016, issued by the SCJ itself, does not provide for competitive

<sup>47</sup> Idem.

<sup>48</sup> AJ, [Figures on numbers of courts, prosecutors and defenders revealed by the Venezuelan State under the UPR](#), July 18, 2022.

<sup>49</sup> AJ, [The Legal Regime on the Judicial Branch under the 1999 Constitution: regulatory diagnostics and proposals](#), p. 44.

<sup>50</sup> Report of Venezuela in the 5th review before the Human Rights Committee, para. 125.

<sup>51</sup> SCJ, [News of February 1, 2023 on the occasion of the opening of the judicial year 2023](#).

or public examinations, despite its name "Norms for Evaluation and Competitive Examinations for Entry and Promotion to the Judicial Function." <sup>52</sup>

23. The aforementioned rules for admission to the judiciary are contrary to the right to equality (**art. 26 ICCPR**), as they enshrine severe discrimination assumptions and biases that prevent public competition from being achieved.<sup>53</sup> They state that the competitions shall be governed "*by equality of treatment, without privileges of any kind.*" Still, they are discriminatory in the sense that they allow the Judicial Commission to hold competitive examinations only for provisional judges when they should be open to all persons wishing to participate and not only to a group of persons chosen arbitrarily, as a guarantee of the right to have access to public service, as provided for in **Article 25(c) of the Covenant**. Likewise, although one of the requirements for becoming a judge is not to be a political activist, among the jurors, there will be a representative of the People's Power<sup>54</sup> (a group of the Executive Branch) committed to a partisan ideological project. Let us remember that, according to the law that regulates it, said Popular Power has the purpose of "*building the bases of the socialist society*" (Section 7),<sup>55</sup> which evidences another gross contradiction alien to the principles of impartiality and independence foreseen in **Article 14.1 ICCPR**. Finally, the norms do not establish any procedure for processing objections submitted by citizens or organized civil society regarding the competition's winners and, worse, do not provide for the obligation to respond to them. It is clear that the competition lacks objectivity and impartiality.
24. The Reform of the Organic Law of the SCJ of 2022 does not lead to improvements in the situation of lack of independence of the highest court. It provides for an appointment procedure contrary to the Constitution since it does not allow organized civil society to select the candidates for Justices of the SCJ but rather hands over control of this process to the Parliament. The following figure exposes the procedure set in the current law.

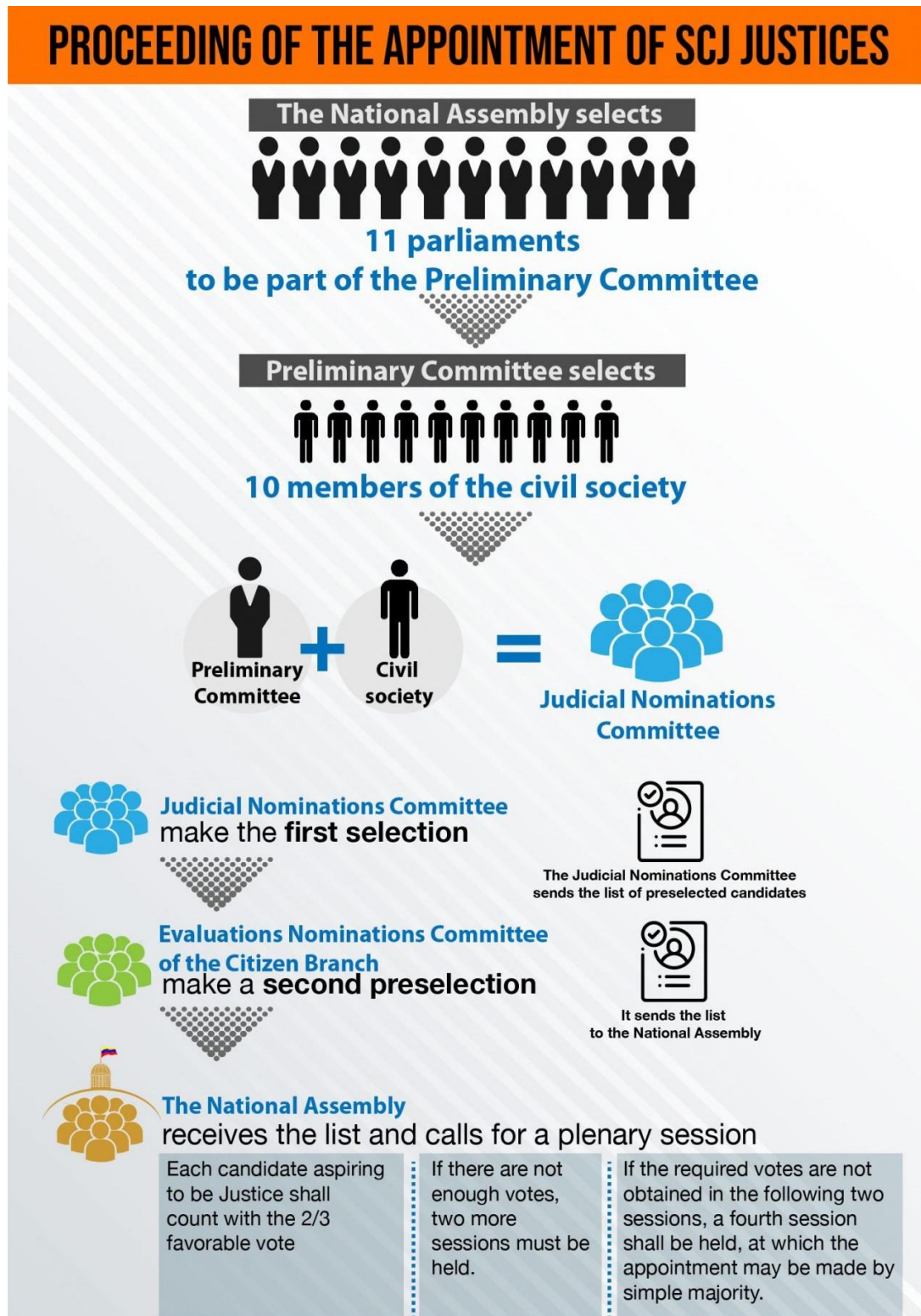
<sup>52</sup> SCJ, [SCJ reimpulses competitions to obtain the tenure of judges of the Republic](#), July 16, 2016, and AJ, [We don't need more Laws, but better judges](#), 5 October 2016.

<sup>53</sup> AJ, [Analysis of the evaluation and competition rules for entry and promotion to the judicial function](#), October 5, 2016.

<sup>54</sup> Not expressly enshrined in the Constitution.

<sup>55</sup> OHCHR, [A/HRC/50/59: Situation of human rights in the Bolivarian Republic of Venezuela - Report of the United Nations High Commissioner for Human Rights](#), June 2022, para. 15.

Figure 1<sup>56</sup>



<sup>56</sup> Vid. <https://accesoalajusticia.org/proceeding-of-the-appointment-of-scj-justices/>

25. Another irregularity of the reform of the Organic Law of the SCJ of 2022 was that the tenured justices could be re-appointed for a new term of 12 years. However, Article 264 of the Constitution provides that they shall only be appointed for a single term. Thus, the new SCJ set by the NA on April 26, 2022, comprises 60% of re-appointed justices.<sup>57</sup> Furthermore, at least eighteen of the twenty appointed Justices have family ties with high-ranking government officials, have held positions in the Executive Branch during the administrations of the late Hugo Chávez or Nicolás Maduro, have been members of the governing party, the United Socialist Party of Venezuela (PSUV) or have supported their actions,<sup>58</sup> situation that seriously affects their independence and impartiality.<sup>59</sup> Additionally, on several occasions, SCJ justices have been appointed to positions in other public powers, such as the case of Gutiérrez and Ortega, who served as representatives of the Bolivarian Republic of Venezuela (BRV) before the ICC<sup>60</sup> or Justice Alfonzo who was the rector of the National Electoral Council,<sup>61</sup> allowing them a provisional separation from the position and the return to the same, once the functions in the Executive Branch or another branch of the State are concluded.<sup>62</sup> The following figure illustrates the composition of the "new" SCJ, where it is possible to see the domination of the pro-government justices in each Chamber.<sup>63</sup>

<sup>57</sup> AJ, [The "new" SCJ appointed by the AN of 2020 has nothing new in it.](#), April 29, 2022.

<sup>58</sup> AJ, [Bachelet admits that appointment of "new" SCJ does not guarantee judicial independence](#), 4 July 2022. Transparency, Chapter of Venezuela, [11 Justices repeat in the SCJ, 8 make their debut and one returns](#), 8 April 2022.

<sup>59</sup> OHCHR, [A/HRC/50/59: Situation of human rights in the Bolivarian Republic of Venezuela - Report of the United Nations High Commissioner for Human Rights](#), June 2022, para. 14.

<sup>60</sup> AJ, [Calixto Ortega, from re-elected judge to ambassador to the International Criminal Court](#), August 4, 2022.

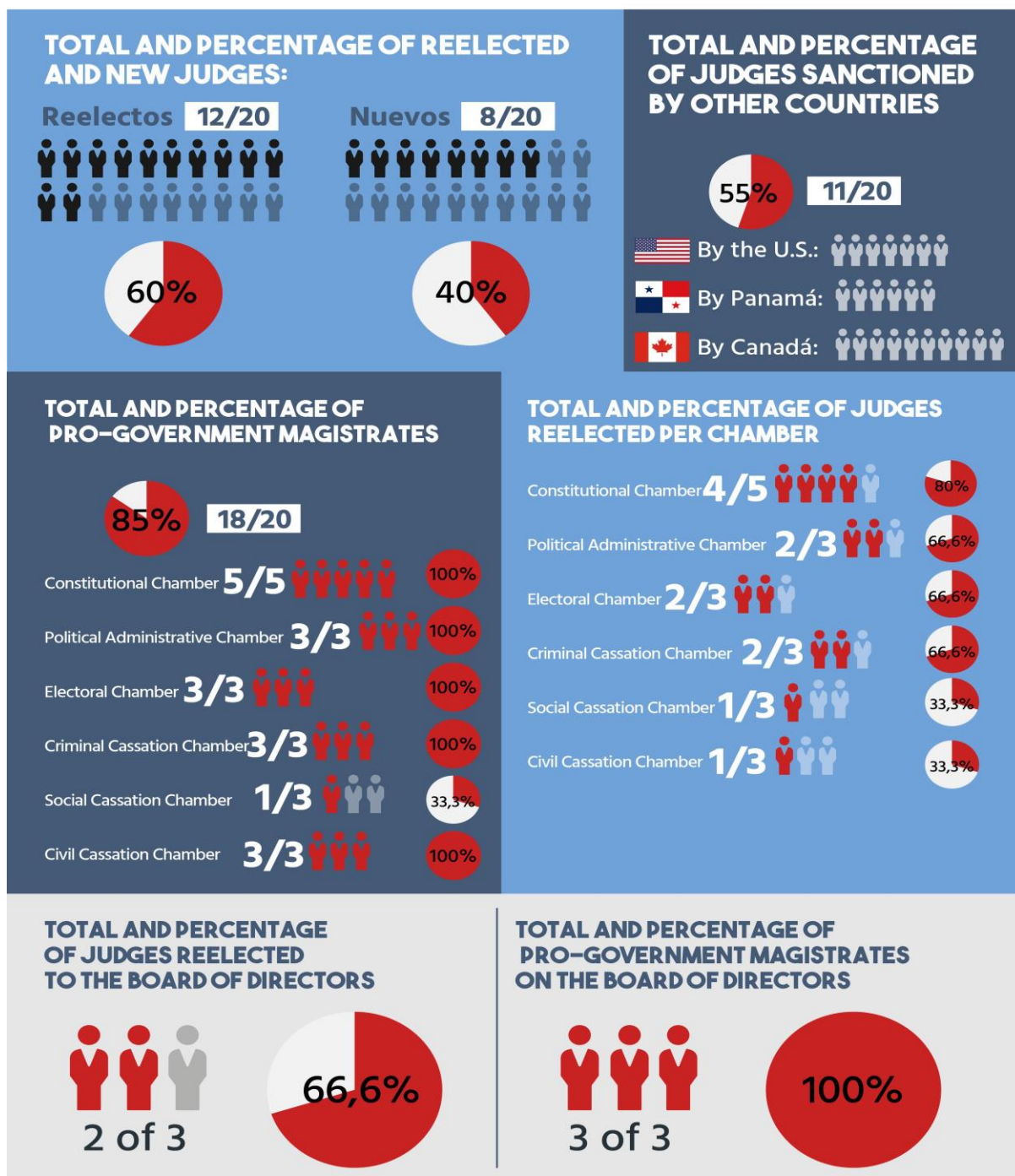
<sup>61</sup> The electoral body.

<sup>62</sup> AJ, [SCJ authorized three of its Justices to hold two public offices simultaneously?](#), April 9, 2021; [Calixto Ortega, from re-elected judge to ambassador to the International Criminal Court](#), August 4, 2022.

<sup>63</sup> Except for the Social Cassation Chamber, although recently there has been information about the closeness also of its new Justices to the political power. AJ (2017), [The Justices of the revolution](#), pp. 17, 19, 20, and TV, [Carlos Alexis Castillo Ascanio](#).

Figure 2<sup>64</sup>

## THE «NEW» SCJ IN THE FIGURES



SCJ: Supreme Court of Justice

<sup>64</sup> Vid. <https://accesoalajusticia.org/the-new-scj-in-the-figures/>

26. In the response to the List of Issues, the BRV offered as a progress that the appointment of the Inspector of Courts corresponds to the NA and not to the SCJ, as in the past.<sup>65</sup> This change is unconstitutional<sup>66</sup> and fails to ensure the appointment of an independent person in the position. Moreover, it reinforces the capture of the Judicial Branch by the NA. Ms. Gladys Requena, who served as deputy of the NA for the governing party days before her appointment, also held important positions in the Executive Branch as minister of Women and Gender Equality, and vice minister for the Supreme Happiness of the People, and also second vice president of the questioned NCA, created by the PSUV only to substitute the opposition-dominated NA.<sup>67</sup>
27. Even though that the Budget Law has ceased to be made public since 2017, in 2023, according to expert estimates, it was allocated 1.42% of the total available resources to the Judiciary.<sup>68</sup> In order to comply with the positive obligations arising from the Covenant, the State must demonstrate that it has made efforts to the maximum of the available resources, for which such a tiny allocation for the justice sector is insufficient. In this sense, the harmful effects of the sanctions alleged by the BRV do not justify such a low allocation.

## 28. RECOMMENDATIONS

Accordingly, the Committee should recommend the State to:

- a. **Implement a transparent management of the administration of justice, making public the use of financial resources, management indicators, and the number of courts and judges, permanent, provisional, or temporary.**
- b. **Reform the Rules for Evaluation and Competitive Examination for Admission and Promotion to the Judiciary approved by the Plenary Chamber of the Supreme Court of Justice to make them compatible with the Covenant.**
- c. **Conduct competitive examinations as the only form of entry to the judiciary as provided in the Constitution and implement appropriate measures to correct the overwhelming provisionality of judges.**

<sup>65</sup> Venezuela, Response to the List of Issues, para. 100.

<sup>66</sup> Articles 254 and 267 of the Constitution. See more: AJ, [New Organic Law of the SCJ confirms the lack of political will to build an independent justice in Venezuela](#), January 21, 2022.

<sup>67</sup> AJ, [The NA appoints two figures aligned with Madurismo to the Inspectorate of Courts and the School of Judiciary](#), June 9, 2022.

<sup>68</sup> Los Andes Newspaper, [Transparency Venezuela: "National Budget 2023 is centralist and irresponsible"](#), March 28, 2023.

- d. **Reform the Organic Law of the Supreme Court of Justice to set a procedure consistent with the international human rights law standards that does not contradict the Constitution.**
- e. **Adopt all measures to prevent appointing of persons with political connections to the judiciary.**
- f. **Extend an invitation for a visit to the country to the Special Rapporteur on the Independence of Judges and Lawyers, welcoming the previous requests of the holders of this Rapporteurs hip in 2011, 2014 and 2015 and the offer made by Venezuela to the OHCHR in 2019 and made explicit in resolutions of the Human Rights Council in 2019 and 2020 (A/HRC/RES/42/25 and A/HRC/RES/45/20).**

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

- 29. As for the independence of prosecutors and public defenders, the measures taken were neither adequate nor effective in reducing their provisional status nor in guaranteeing their tenure in the public service, free from interference and pressure from public authorities.<sup>69</sup>
- 30. Contrary to what the State has expressed in the Report<sup>70</sup> and Response to the List of Issues,<sup>71</sup> the situation of the entry of new prosecutors of the Public Ministry is far from being characterized as transparent and "without any exclusion." On September 14, 2018, Resolution 2703 was published in the Venezuelan Official Gazette, which reforms the Statute of the Public Prosecutor's Office, according to which all career positions of officials are transformed into positions of trust, which by their nature are of free appointment and removal, and therefore lose their tenure.<sup>72</sup> This reform of the Statute of the Public Prosecutor's Office violated the principle of legality since it was a sub-legal act derogatory of a Law, which is contrary to **Article 14.1 of the Covenant** and the Venezuelan Constitution, which also orders the tenures hip of the prosecutorial function.
- 31. The Plan for the Regularization of Active Provisional Prosecutors, oriented toward increasing the guarantees of independence of the Public Prosecutor's

<sup>69</sup> FFM, [Detailed Findings 2021](#), para. 120.

<sup>70</sup> Venezuela, [Periodic Report of the State in the Fifth Review](#), para. 132.

<sup>71</sup> Venezuela, [Reply to the List of Issues](#), para. 101.

<sup>72</sup> AJ, [Elimination of the civil service career in the Public Prosecutor's Office.](#), September 21, 2018.

Office, was announced on February 18, 2022, and its rules of operation were modified the following month.<sup>73</sup> It is a strategy very similar to the one used with the judges of making eligible only those already inside as provisional prosecutors, provided they have at least one year in office, and regularizing them through internal credential competitions and certain tests.<sup>74</sup> The credentials of potential candidates will be reviewed by a team of evaluators appointed by the National School of Prosecutors; those who pass such review will be submitted to oral and written tests, but without the need to have "*passed the Training Program for Entry into the Prosecutorial Career or Specialization in the Exercise of the Prosecutorial Function*," as the State claims in its report since such requirement was eliminated in the aforementioned Plan.<sup>75</sup>

32. Since 2017, it has been documented how prosecutors at all levels have been submitted to interference and allegedly received instructions from their superiors on how to proceed in investigations under their assignment.<sup>76</sup> According to FFM, former prosecutors have revealed that "political cases" were usually assigned to a specific group. In addition, in the face of an adverse prosecutorial decision, senior prosecutors reportedly coordinated with judges to overturn them.<sup>77</sup> Finally, the practice of reassigning prosecutors in charge of investigations in some high-profile cases stemming from the 2017 protests has developed.<sup>78</sup>
33. The Republic's Attorney General was appointed by the NCA, which is not competent to do so without respecting the procedure enshrined in the Constitution.<sup>79</sup> On the other hand, the head of the Public Defense was appointed by the NA after a modification of the respective law so that the evaluation of the credentials of the candidates corresponds to the Judicial Nominations Committee, controlled by deputies of the NA. The impartiality of both officials has been questioned due to their past links with the governing party.<sup>80</sup>

<sup>73</sup> Venezuelan Official Gazette, [number 42, 343 \(ordinary\)](#), March 23, 2022.

<sup>74</sup> AJ, [After encouraging it, Tarek William Saab decides to fight against the provisionally in the Public Ministry](#), October 26, 2021.

<sup>75</sup> AJ, [The "regularization" of provisional prosecutors of the Public Prosecutor's Office is not a public competitive examination](#), June 1, 2022.

<sup>76</sup> OAS, [Report of the Secretary General and the Independent International Panel on the Possible Commission of Crimes against Humanity in Venezuela](#), May 29, 2018, paras. 200-204 & 432-433.

<sup>77</sup> FFM, [Detailed Findings of the International Independent Fact-Finding Mission on the Bolivarian Republic of Venezuela, September 2021](#), paras. 144-149. September 2021, paras. 144-149.

<sup>78</sup> OHCHR, [Situation of Human Rights in the Bolivarian Republic of Venezuela](#), 23 June 2022, paras. 37-38. 23 June 2022, paras. 37-38.

<sup>79</sup> AJ, [Annual Report 2022: Justice in Favor of Power and Repression in Dictatorship](#), p. 22.

<sup>80</sup> Op Cit & El País, [Tarek William Saab, from lukewarm activist to faithful chavista](#), 7 August 2017.

### 34. RECOMMENDATIONS:

Accordingly, the Committee should recommend the State to:

- a. **Adopt all measures to ensure prosecutors' and public defenders' complete independence and impartiality. In particular, Resolution 2703 issued by the Attorney General of the Republic on September 14, 2018, should be rescinded, reinstating the full force and effect of the Statute of the Public Prosecutor's Office Staff and the Organic Law of the Public Prosecutor's Office, in safeguard of tenure in the prosecutorial career.**
- b. **Create and implement appropriate rules for competitive examinations for Public Ministry and Public Defense officials, ensuring that any qualified professional can have access without discrimination (Sections 25. c) and 26 ICCPR).**
- c. **Conduct a process for appointing the Republics' Attorney General, ensuring its complete independence and impartiality, per the Constitution.**

### II.2 Judicial Career

35. On December 28, 2015, a new Code of Ethics for Venezuelan Judges was approved.<sup>81</sup> However, the Constitutional Chamber of the SCJ (CC/SCJ)<sup>82</sup> has suspended its application as a preventive injunction, establishing that its provisions are inapplicable to the SCJ Justices themselves and all provisional judges in the country.<sup>83</sup> The reasons given by the CC/SCJ that the provisional judges lack tenure, without considering that the SCJ itself that has not held competitions for more than 20 years. Thus, the Code of Ethics does not apply to more than 90% of the judges who today would be provisional, facilitating their lack of independence and violating their right to defense and due process.
36. However, the conduct of provisional judges is under scrutiny of the Judicial Commission following a report from the Inspector General of Courts. Former judges have reported being summarily dismissed by a simple letter without due process or evaluation.<sup>84</sup>

<sup>81</sup> [Code of Ethics for Venezuelan Judges](#).

<sup>82</sup> AJ, [Suspension of Articles 1 and 2 of the Code of Ethics for Venezuelan Judges](#), 4 February 2016.

<sup>83</sup> AJ, [The precariousness of the Venezuelan judiciary](#), 25 July 2016.

<sup>84</sup> FFM, [Detailed Findings 2021](#), para. 107.

37. Furthermore, it is clear that the admission process to the judiciary, as described above, does not guarantee judicial independence since it is instead a procedure to extend the provisional status of judges in charge of the Judicial Commission. Such a Commission has not been created neither by the Constitution or the Law and functions with sub-legal norms that do not guarantee tenure. Since the becoming into effect of the Constitution (1999) no Judicial Career Law has been passed, which has not been by chance and the practices, rules, and judgments of the SCJ have applied the law above the Constitution so that the judges do not have regulations that protect them.<sup>85</sup>
38. The removal of a judge is carried out without any administrative procedure or motivation by the Judicial Commission, which follows the jurisprudential criteria of the Political Administrative Chamber of the Supreme Tribunal of Justice in infringement of the right to due process.<sup>86</sup> The arbitrariness of the Judicial Commission has reached the point of removing judges under the scope of labor tenure granted by law as a benefit in the protection of maternity<sup>87</sup> and paternity.<sup>88</sup>
39. OHCHR, in its September 2020 report, noted that:
- "The judicial system's independence is significantly undermined by insecurity of judges and prosecutors, lack of transparency in the appointment process, poor working conditions, and political interference, including links between members of the SCJ and the Government and the ruling party.** This situation prevents the Judiciary from exercising its fundamental role as an independent actor in protecting human rights, and contributes to impunity and the persistence of human rights violations."<sup>89</sup> (Emphasis added).
40. In the same report, OHCHR indicated 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

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<sup>85</sup> AJ, [The legal regime on the Judiciary, in light of the 1999 Constitution. Normative diagnosis and proposals](#), and Louza Scognamiglio, Laura (2011), [La revolución judicial en Venezuela](#).

<sup>86</sup> AJ, [Provisional judges may be removed at any time, but will be retired if they meet the requirements for granting that benefit](#). March 14, 2023.

<sup>87</sup> AJ, [Judicial Commission of the SCJ may remove temporary judge even if she is pregnant; however, payment of salaries and other benefits must continue for two \(2\) years](#). March 15, 2022.

<sup>88</sup> AJ, [Removal of a temporary judge who enjoyed job security due to paternal leave](#). September 1, 2021.

<sup>89</sup> OHCHR (September 2020), [Independence of the justice system and access to justice in the Bolivarian Republic of Venezuela, in particular for violations of economic and social rights, and the human rights situation in the Orinoco Mining Arc region](#). Report A/HRC/44/54, para. 66.

judicial administration."<sup>90</sup> Other justice operators' salaries are unknown, as this information is not made public.

41. The following figure presents in a simple manner why judges and even prosecutors lack independence in Venezuela.

Figure 3<sup>91</sup>



<sup>90</sup> Op.cit., para. 10.

<sup>91</sup> Vid. <https://accesoalajusticia.org/Why-is-there-such-a-lack-of-independence-in-the-Venezuelan-justice-system/>

## 42. RECOMMENDATIONS

Accordingly, the Committee should recommend the State to:

- a. Reinstate the constitutional powers of the Executive Directorate of the Judiciary for matters concerning the government and administration of the Judiciary.
- b. Apply the Code of Ethics for the Judges in the disciplinary function of the exercise of the judiciary of all judges, tenured or provisional.

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

43. The Judiciary has been co-opted by the Executive and transformed into a humble tool for perpetuation in power of the PSUV political elite. Several reports have documented, based on interviews with former members of the Venezuelan judiciary, a pattern of intimidation, harassment, and undue pressure exerted on individual judges to decide cases in a certain way, particularly those against real or perceived political opponents of the government. Some judges and prosecutors assigned to politically resonant cases reported being pressured directly from their hierarchy or high-level political actors.<sup>92</sup> This practice has existed at least since 2003.<sup>93</sup> In 2021, it came to light that it was widespread "at all levels" of the judiciary and that political cases had been deliberately assigned to judges "complying with government instructions" in violation of judicial independence.<sup>94</sup>
44. It is on record that at least between 2015 and 2018, SCJ Justices would have received instructions on how to judge specific cases, mainly from political actors close to the Government. Others were given drafts of rulings to be signed without being able to read them or incorporate their opinions, facing reprisals if they expressed criticism.<sup>95</sup> These orders would have been issued by the Executive Branch, with the hierarchy of the SCJ acting as a link between its interests and those of the Executive Branch.<sup>96</sup>
45. In another order, corruption in Venezuela has enormous dimensions, so it has been cataloged as a phenomenon of "Grand Corruption,"<sup>97</sup> and the Judiciary does

<sup>92</sup> FFM, [Detailed Conclusions of Findings, September 2021](#). September 2021, paras. 139-139 & 160-165.

<sup>93</sup> IACHR, [Annual Report 2003, Chapter IV \(Venezuela\)](#), para. 57.

<sup>94</sup> FFM, op.cit, paras. 33, 130-13, 141/142 & 166.

<sup>95</sup> Ibid, paras. 133-137.

<sup>96</sup> Ibid, paras. 132-137.

<sup>97</sup> TV, [Pattern of Grand Corruption in Venezuela and its impact on Human Rights](#). 8 May 2019.

not escape from it.<sup>98</sup> Recently, the State has undertaken an anti-corruption campaign<sup>99</sup> which began with the reform of the Law against Corruption.<sup>100</sup> However, it has been alarmingly observed that in the investigations and judicial processes undertaken, the guarantees of presumption of innocence, and the appearance of the accused without delays before the judicial authority have not been observed, so there have been convictions without prior trial.<sup>101</sup>

46. The new Organic Law on Extinction of Ownership,<sup>102</sup> although it responds to the purpose of recovering assets derived from corruption, contains provisions that contravene **Article 14 of the Covenant**. First, it violates the non-retroactivity principle, since it provides that it would apply to anti-corruption proceedings that were ongoing before the law came into effect. Adequate guarantees are not established to recover previously confiscated and executed assets of those found innocent. Finally, given the absence of judicial independence, its purpose for the Government seems to be rather to have another political tool in a pre-electoral context to attack, persecute, and threaten anyone in Venezuela with appropriation of their assets, whether obtained legally or not. In addition, there is no way to verify whether the guarantees and rights of the persons involved are observed in the investigations and trials carried out in the application of the law and whether the assets that pass into the hands of the State will indeed be assigned to the benefit of the collective as established by the law, given the opacity of the judicial and public management in general.<sup>103</sup>

#### 47. RECOMMENDATIONS:

Accordingly, the Committee should recommend the State to:

- a. **Adopt all measures to prevent and eradicate corruption in the Judiciary, for which it is imperative to improve the salary conditions and stability of judges, prosecutors, public defenders, and other judicial officers.**
- b. **Implement measures to combat corruption in compliance with the judicial guarantees provided for in Article 14 of the Covenant.**

<sup>98</sup> AJ, [The role of the Venezuelan judiciary in the context of corruption and human rights](#), 2019.

<sup>99</sup> VTV, [Prosecutor Tarek William Saab presented balance of the anti-corruption fight in the country](#), April 13, 2023.

<sup>100</sup> AJ, [Anti-Corruption Law Reform Comparison Chart, June 22, 2022](#), June 22, 2022.

<sup>101</sup> AJ, [Do the ends justify the means? Five worrying signs of the new state campaign against corruption in Venezuela](#), April 4, 2023.

<sup>102</sup> AJ, [Organic Law of Extinction of Ownership](#), May 3, 2023.

<sup>103</sup> AJ, [Five reasons to worry about the Extinction of Ownership Bill promoted by the government in Venezuela](#), April 18, 2023.

- c. **Reform the Organic Law on Extinction of Ownership in order to set adequate guarantees for persons submitted to the proceedings established in the Law and provide an effective remedy for the defense of their property (Articles 2 and 14 of the Covenant).**

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

48. It has been alleged that members of the Judiciary, including some judges and prosecutors, may have played a significant role in the commission of possible crimes against humanity and gross human rights violations. In particular, FFM reported that some judicial officers had direct responsibility for the arbitrary arrests and torture of real or perceived opponents by the Government, including by issuing arrest warrants, ordering their pre-trial detention and indicting severe criminal charges without any basis; adducing proof obtained in illegal interrogations and searches, by planting, fabricating or tampering evidence.<sup>104</sup>
49. At least since 2014, the SCJ has issued rulings that curtail the rights of political participation with the removal of democratically elected officers, their illegal arrest by an incompetent court, and the denial of constitutional privileges and immunities.<sup>105</sup> In 2017, the Constitutional Chamber of the SCJ convicted five opposition mayors to prison<sup>106</sup> in violation of all judicial guarantees enshrined in Article 14 of the Covenant. These measures resulted in the opening of irregular judicial proceedings against 16 Mayors and one State Governor.<sup>107</sup>
50. FFM also denounced in its 2020 report the following:

“In 28 of these decisions, the Supreme Court accused parliamentarians of being in a “permanent state” of committing crimes in flagrante delicto of treason of the homeland, conspiracy, instigation of insurrection, civil rebellion, contempt of court and hate crimes, among others. Six of the National Assembly members whose parliamentary immunity was lifted were then arrested and detained, with all but one

<sup>104</sup> FFM, [op. cit.](#) September 2021, paras. 271-272. 275-292 & 469.

<sup>105</sup> AJ, [Annual Report 2019: The Consolidation of a De Facto State in Venezuela](#), pp. 7-12 and [The Consolidation of a De Facto State in Venezuela](#). Pp. 7-12, and [The Consolidation of a De Facto State in Venezuela. Formal Submission to the United Nations Human Rights Council for the Universal Periodic Review-Venezuela. Session 40](#), 2021.

<sup>106</sup> AJ, [The SCJ has wanted to punish with jail the opposition mayors who have respected the right to protest against the national government](#), August 9, 2017.

<sup>107</sup> AJ, [5 keys to the SCJ's lawsuits against 16 mayors and one opposition governor](#), August 18, 2017.

held for over two years.<sup>657</sup> Cases investigated in depth by the Mission include those of Gilber Caro and Juan Requesens."<sup>108</sup>

## 51. RECOMMENDATIONS:

Based on the preceding, the Committee should request the following from the State:

- a. Refrain from using the administration of justice for political and repressive purposes.
- b. Conduct prompt, independent, effective, impartial, transparent, thorough, and credible investigations and judicial proceedings in cases of alleged human rights violations and prosecute, and punish those responsible, including the hierarchical superiors and officers of the Judiciary involved.

## III. Access to Justice and Judicial Guarantees (Article 14)

52. The State has insisted on reflecting information in the framework of this fifth review of the ICCPR only until 2019, without making reference to the legislative reforms undertaken since 2021, which, in theory, should speed-up the criminal judicial delay and strengthen the procedural guarantees of detainees.<sup>109</sup>
53. These reforms are the result of the work of the Special Commission for the "Judicial Revolution," created in June 2021 and presided over by two deputies of the governing party, Diosdado Cabello and Cilia Flores, the latter is also the spouse of the President of the Republic and one person coming from the SCJ.<sup>110</sup> Some initial efforts to reduce prison overcrowding by releasing unjustly detained persons stand out among the actions undertaken. Still, the reforms have been a tool to mitigate even more the authority of the Judicial Branch and somewhat for the Legislative Branch to interfere in its decisions.
54. In addition, there have been new laws and reforms of others. Still, as stated by the OHCHR in its latest report, published in July 2023, "*concerns persist regarding*

<sup>108</sup> FFM, [Detailed Findings 2020](#), para. 255.

<sup>109</sup> MINCI, [Special Commission will have 60 days to solve procedural delays in pretrial detention centers](#). June 21, 2021. National Assembly, [NA sanctioned block of laws for the reform of the judicial system](#), September 17, 2021.

<sup>110</sup> AN, [Special Commission for the Reform of the Judicial System is Installed](#). June 25, 2021.

*the application of approved legislation.*<sup>111</sup> In this regard, it has observed the continuation of the practice of late presentation of detainees before a judge, the abuse of pre-trial detention, generalized non-compliance with procedural deadlines, and violations of the right to defense.<sup>112</sup>

## 55. RECOMMENDATION:

**The Committee should recommend the State to ensure 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 court

56. The absolute lack of judicial independence undermines this right. In criminal proceedings carried out by terrorism courts<sup>113</sup> and the military jurisdiction, these instances were used as subterfuges for the criminalization of dissent, where hearings were held privately, which, in the words of the OHCHR, "*generated a perception of secrecy and lack of independence.*"<sup>114</sup> The courts in terrorism matters have not been created by Law. It is a jurisdiction assigned through internal resolutions of the SCJ, violating the guarantee of the natural judge that requires courts created by Law.

## 57. RECOMMENDATION:

**For the above reasons, the Committee should require the State to issue a law on anti-terrorist courts and take all necessary measures to guarantee their independence, impartiality and transparency, and strict compliance with international human rights standards.**

### III.2 Right to be assisted by a defense attorney retained by the arrested person. To be presumed innocent, and not to be compelled to testify against oneself

58. The right to be assisted by a defense attorney retained by the arrested person is undermined in cases of political persecution, as the accreditation of private attorneys is generally not permitted.

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<sup>111</sup> OHCHR, [A/HRC/53/54: Situation of human rights in the Bolivarian Republic of Venezuela - Report of the United Nations High Commissioner for Human Rights](#), 4 July 2023, p. 20.

<sup>112</sup> AJ, [Four cases that reveal that the failures of the Venezuelan justice system persist despite the "judicial revolution"](#), 27 April 2022.

<sup>113</sup> ICJ, [Judges on the Tightrope](#), June 2021, p. 44.

<sup>114</sup> OHCHR, [Situation of human rights in the Bolivarian Republic of Venezuela \(June 2021\)](#), para. 39.

59. OHCHR has reported that when the private defense is admitted, attorneys are not notified of the hearings, are prevented from physically accessing the court, or are denied access to the case file. They are even told that they can access the file after the preliminary hearing. There have been cases where officers have pressured defendants to dismiss their private defense attorneys and replace them with public ones.<sup>115</sup>
60. The appointment of public defenders against the free and express will of the accused has also been a pattern, not only in cases of political persecution. OHCHR recounted the cases of two foreigners who did not speak Spanish, did not understand the proceedings, and were represented by a public defender.<sup>116</sup> Public defenders commonly engage in professional malpractice, including pressuring accused persons to accept the charges, negligence performing of their duties as defense attorneys, and withholding information related to the case progress from family members and accused persons.<sup>117</sup>
61. In cases of political persecution, the FFM has documented the practice of forcing accused persons to sign plea agreements, as well as spreading videos of alleged confessions of arrested persons in blatant violation of the right to the presumption of innocence and to a fair trial.<sup>118</sup>
62. **RECOMMENDATION:**

**Accordingly, the Committee should recommend that the State fully guarantee the independence of public defenders through sufficient resources and training and ensure the right of defendants to appoint defense attorneys of their choice freely.**

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

63. Trials are excessively prolonged, even in relatively simple situations, to investigate and prosecute. In criminal trials where the person is preventively detained, procedural deadlines are not respected, leading to arbitrary detentions. The FFM documented the demand for work supplies and bribes from judges, prosecutors, and public defenders to accused persons and their relatives to speed-up trials.<sup>119</sup>

<sup>115</sup> OHCHR, [Situation of human rights in the Bolivarian Republic of Venezuela](#), June 2021, paras. 34-35.

<sup>116</sup> OHCHR, *op cit.* para.35.

<sup>117</sup> *Idem.*

<sup>118</sup> FFM, [Detailed Findings 2021](#), p.123

<sup>119</sup> FFM, *op cit.* Paras 316-324.

64. Although the amendments to the Organic Code of Criminal Procedure introduced a maximum of three years of pre-trial detention:

"OHCHR documented 35 cases of arbitrary and illegal deprivation of liberty, including against six women [...] At least 22 individuals remained subjective to coercive measures beyond limits of the current applicable law [...].<sup>120</sup>

65. The excessive length of criminal proceedings is often due to the postponement of court hearings due to problems with timely notification of transfers of detainees, reflecting the need for better coordination between judicial authorities and detention centers. Postponements are often the general rule in cases involving gross human rights violations and may occur at least ten times and as many as 90 times in the same case.<sup>121</sup>

66. **RECOMMENDATION:**

**According to the above, the Committee should recommend that the State guarantee effective compliance with the Organic Code of Criminal Procedure reforms and others that reduce delays and increase procedural guarantees.**

#### **IV. Threats and Attacks against Legal Professionals**

67. Judges and prosecutors have suffered threats and intimidation against them and their families, and many fear reprisals if they report such threats. According to FFM, many were under surveillance and had their telephones tapped. A significant number of them had to leave Venezuela with their families for fear of their safety.<sup>122</sup>
68. In the event of non-compliance with improper instructions, prosecutors and judges may also be threatened with disciplinary or criminal punishment and other adverse measures impacting their place of work at the courts, like the lack of clerical support, lack of air conditioning, or heavy workload. Judges and prosecutors have reportedly been reassigned to locations nowhere in the countryside or had their apartments assigned to others.<sup>123</sup>

<sup>120</sup> OHCHR, [Human Rights Situation in Venezuela](#), June 2022, para. 26.

<sup>121</sup> Op cit. paras 37-38 & 43-44.

<sup>122</sup> FFM, [Detailed Findings \(2021\)](#), A/HRC/48/CRP.5, paras 160-162.

<sup>123</sup> Op cit, paras 158-159.

69. The Venezuelan justice administration suspended Judge Afiuni from her position in 2009 and depriving her of her liberty until her trial in 2019.<sup>124</sup> During her time in a high-security prison, surrounded by convicts she had convicted, she was plunged into physical, psychological violence, and sexually abused. After a trial with few guarantees in 2019, she was sentenced to five years in prison on charges of committing spiritual corruption, without being proven to have received a bribe for her release, which is the alleged crime she committed.
70. In addition, she was dismissed by the Venezuelan justice administration without a summons or the right to defense.<sup>125</sup> In social networks, the judge expressed: "After 13 years and one month suspended, I am finding out that I was dismissed as a tenured judge, in a procedure that I was never notified of and with a defense attorney that I do not know."<sup>126</sup> Her case has been so emblematic that there is talk of the "Afiuni effect," which marked a before and after in the Venezuelan Judiciary so that any judge knows that if he or she does not bow to the regime besides being dismissed, he or she can also be imprisoned and even tortured.<sup>127</sup>
71. Another emblematic case is that of the former Attorney General, Luisa Ortega Díaz, who was dismissed in 2007<sup>128</sup> for the rejection of two rulings of the SCJ<sup>129</sup> that annulled the powers of the Parliament, controlled by the opposition by that time, and denounced the "rupture of the constitutional order."<sup>130</sup> Following this, the SCJ disqualified her from holding public office, froze all her assets, and prohibited her from leaving the country, accusing her of committing gross misconduct in exercising her office.<sup>131</sup> In 2017, she took refuge in Colombia and is currently a political asylum in Spain.<sup>132</sup>

<sup>124</sup> AJ, (January 2023). [Chronology of the case of María Lourdes Afiuni.](#)

<sup>125</sup> AJ, [The endless persecution: Venezuelan justice system removes Judge María Lourdes Afiuni without summoning her or allowing her to defend herself.](#), 22 February 2023.

<sup>126</sup> Tweet dated January 23, 2023. Available at: <https://twitter.com/mariafiuni/status/1618275368451850240>

<sup>127</sup> La Voz de America (2011), [UN concerned about the Afiuni Effect](#). FFM, [Detailed Findings 2021](#), paras 33 & 208.

<sup>128</sup> La Voz de America (2022). [Venezuela's Attorney General resigns from her duties from exile in Spain.](#)

<sup>129</sup> AJ, [SCJ annuls NA agreement on reactivation of Inter-American Democratic Charter and orders change of criminal legislation.](#), 28 March 2017 and AJ, [Authorization of the SCJ over the NA to the Executive to create joint ventures](#), 29 March 2017.

<sup>130</sup> El Estímulo (2017), [VIDEO | Prosecutor Luisa Ortega Díaz denounces "rupture of the constitutional order"](#).

<sup>131</sup> Ruling No. 65 of the Full Chamber of August 4, 2017, the text of which is not available, but an excerpt of the decision. See more: AJ. [What does judgement no. 65 of the Supreme Court of Justice say.](#) August 4, 2017.

<sup>132</sup> ABC Spain (2021). [The double face of LO, the former Chavista prosecutor who turned against Maduro and asks for asylum in Spain.](#)

72. In the last two decades, the SCJ, through its Electoral Chamber, has intervened in the elections of the Bar Associations, which are organs of the organized civil society that shall be autonomous, to achieve political interference in the practice of the legal profession in Venezuela. It has been denounced by the United Nations Rapporteur on Judicial Independence,<sup>133</sup> which cites the AJ's report published in January 2022.<sup>134</sup>

## 73. RECOMMENDATIONS

**The Committee should recommend the State to:**

- a. **Cease acts of intimidation and persecution against judicial officers and lawyers.**
- b. **Conduct effective investigations into threats and attacks against legal professionals and ensure that those responsible are punished.**
- c. **Guarantee the autonomy and independence of the Bar Associations.**

## V. Military Criminal Jurisdiction

74. Article 261 of the Constitution enshrines that military jurisdiction is reserved for trial of military crimes. However, prior to the Constitution, the Organic Code of Military Justice, allowed for military prosecution of civilians. Thus, in September 2021, this norm was reformed. Still, in December of that same year, the SCJ ruled that the military courts may continue to 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)*", and provided that there is motivation in the sentence by the court for the exercise of its jurisdiction, thus leaving the reform mentioned above without practical effect.<sup>135</sup>
75. The discretionary and selective use of the military criminal jurisdiction constitutes another evidence of the Judiciary's lack of independence. As is known, during the massive demonstrations of 2017, and as a result of the refusal of the Republic's Attorney General Office to indict the arrested demonstrators, the Executive Branch decided to use military courts to try them, reaching the

<sup>133</sup> Special Rapporteur on the Independence of Judges and Lawyers, [Protection of Lawyers against Undue Interference with the Free and Independent Exercise of the Legal Profession](#). April 2022, para. 69.

<sup>134</sup> AJ, [The takeover of power in the Venezuelan bar associations 2000-2020](#). January 2022.

<sup>135</sup> AJ, [Dismissal of criminal case against civilians before a military court ordered](#). December 9, 2021.

point of prosecuting 757 civilians in military courts between April and September 2017.<sup>136</sup>

## 76. RECOMMENDATION:

**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 Women and Indigenous Peoples

77. In general, access to courts and tribunals is also extremely limited. Physical entry is restricted to them and to most state institutions, particularly NGOs and human rights defenders.
78. Indigenous peoples have been targets of violence on various scales, especially since the creation of the Orinoco Mining Arc. Both irregular armed groups with a presence in Venezuela: illegal miners, and Colombian guerrillas, as well as military troops, star in the aggressions against indigenous communities and peoples. On December 08, 2018, the General Directorate of Military Counterintelligence (DGCIM) carried out an armed incursion in the Canaima municipality, killing an indigenous person of the Pemón ethnic group and leaving two other indigenous people wounded. Community members managed to capture three officials allegedly responsible and handed them over to the State security forces and the Public Prosecutor's Office. To date, the results of the investigation are unknown, and, in particular, the request of the community members to initiate a mixed judicial process, since the victims are indigenous.<sup>137</sup>
79. On February 10, 2022, the first indigenous trial was held in the VI Akurimö sector of the community of Kumarakapay, in the Gran Sabana municipality, to 12 of the 13 Pemones accused of terrorism for their alleged involvement in the so-called "Operation Aurora," which took place in December 2019.<sup>138</sup>
80. Another serious problem when it comes to accessing judicial services is the lack of translation and interpretation into indigenous and foreign languages. For example, in Zulia state,<sup>139</sup> not enough people speak indigenous languages, which

<sup>136</sup> AJ, [7 Questions on Military Justice](#), February 19, 2018, p. 20.

<sup>137</sup> PROVEA, [Annual Report 2018, Indigenous Peoples, Chap.](#) Pp. 57-59.

<sup>138</sup> PROVEA, [Annual Report 2022, Chapter Indigenous Peoples, p. 24](#). P. 24.

<sup>139</sup> It is known that, in the entire province, there is only one prosecutor who speaks the language.

prevents them from knowing what happens in legal proceedings. Moreover, the constitutional mandate to translate sentences is not complied with.<sup>140</sup>

## 81. RECOMMENDATIONS:

The Committee should recommend to the State:

- a. Conduct 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.
- b. Ensure the right of victims to seek remedies and reparations with a gender-sensitive approach, as well as their protection from intimidation and retaliation.
- c. Review the protocols and methods of the Attorney General's Office to provide gender-sensitive care and support to victims of human rights violations and their families.

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<sup>140</sup> The need for an interpreter is regulated in article 9, in connection with article 49, numeral 3, and 121, of the Constitution of the Bolivarian Republic of Venezuela in concatenation with article 2 and 40 of the Law on Indigenous Languages (Venezuelan Official Gazette No. 38.981 of July 28, 2008). More information at: <https://derechodelacultura.org/wp-content/uploads/2018/07/LEY-DE-IDIOMAS-INDIGENAS-VENEZ.pdf>