Strengthening the Rule of Law in Venezuela

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PREFACE

This report seeks to contribute to the development of the rule of law, democracy, and human rights in Venezuela. The independence of the justice system is one of the principal concerns of the ICJ, cutting across its geographic and thematic areas of work. For this reason, in recent years, the ICJ decided to give a new impetus and reinforce its Centre for the Independence of Judges and Lawyers, which has produced this report.

The fundamental right to prompt and effective access to justice before a competent, independent and impartial tribunal previously established by law, is recognized in human rights treaties and other international standards. Every State, whatever its system of government, has an international duty to protect and respect this right, and to adopt the measures necessary to guarantee its effective enjoyment by all persons under its jurisdiction.

In the case of Venezuela, legal responsibility arises directly from the International Covenant on Civil and Political Rights, which Venezuela ratified in 1978, as well as the American Convention on Human Rights. (Although Venezuela denounced the American Convention in 2012, the Convention is of continuing relevance not least because it itself provides in Art 78.2 that "denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of denunciation." In any event, the ICJ urges Venezuela to reconsider and to rejoin the Convention.)

The report also relies on instruments such as the Universal Declaration of Human Rights and the American Declaration of Human Rights which, although not legally binding in themselves, are widely accepted as authoritative and reflect or elaborate upon legal obligations of the States under treaty or customary international law. Such instruments are also an important source for international human rights monitoring mechanisms such as the United Nations Human Rights Council and its expert special procedures, and the Inter-American Commission of Human Rights.

An independent judiciary is the cornerstone for democracy and the rule of law; it is an indispensable condition for the full protection and guarantee of all other human rights. Fair trial and other procedural rights are therefore not only human rights in and of themselves, full respect for fair trial and other judicial guarantees are also recognised to be essential for the protection of all human rights.

This report resulted from an ICJ project in Venezuela to train lawyers and other actors within the justice system to use international standards and mechanisms related to the protection of human rights.

This report notes the lack of independence of the judiciary in Venezuela, starting with the functions of the Office of the General Attorney, which has the duty to investigate and prosecute crimes. Non-compliance with its own internal provisions has resulted in an institution without independence from other branches of the government and other political actors. In addition, the fact that almost all of the public prosecutors have been appointed without security of tenure and can be removed at will, make them particularly vulnerable to improper interferences from superior authorities, and other external pressures, affecting the autonomy of their functions.

Similarly, appointments to judicial offices, ranging from the Supreme Tribunal of Justice (STJ) to the lower courts, are predominantly based on political criteria. The majority of judges are appointed on temporary provisional terms and are susceptible to external pressures, since a Judicial Commission of the STJ, characterized by clear political tendencies, can remove them at will. Furthermore, even the minority of judges who in theory enjoy security of tenure can in practice be suspended from office without any specific accusation or legal procedure having been initiated against them. The emblematic case of Judge Maria Lourdes Afiuni illustrates this situation. The "titular" (i.e. permanent) Judge Afiuni was arrested in her office by the police and subjected to an arbitrary criminal procedure that ended with the deprivation of her liberty. She was targeted for ordering that a pre-trial detainee be released on bail, citing among other things

a recommendation for release that had been issued by the UN Working Group on Arbitrary Detention. The then-President of Venezuela Hugo Chávez Frías expressly demanded, on national television and radio, the detention of Judge Afiuni. During the time of her imprisonment, while she was placed together with ordinary criminal convicts, Judge Afiuni was a victim of inhuman and cruel treatment. The implicit messages sent by her case gave rise to the so-called "Afiuni Effect" whereby the rest of the judiciary are wary of finding against the government for fear of similar reprisals, with devastating consequences for the independent administration of justice in the country.

The report also notes the restrictions imposed by the State on the legal profession. For instance, the State has improperly interfered in the Bar Associations, through suspension of the internal elections of their executive bodies, and forced substitution of procedures imposed by the electoral authorities of the Government. The State has also attempted to impose appointments of members of the board of directors of the Bar Association of Caracas.

A judiciary characterized by the lack of independence, as in Venezuela, cannot effectively fulfil its role in maintaining the rule of law. Venezuela has one of the highest homicide rates in Latin America, and indeed in the world. The incidence of impunity – cases in which no-one is held criminally responsible - in such cases amounts to 95 per cent, reaching 98 per cent in cases related to human rights violations. Likewise, the administration of justice is prevented by external pressures from fulfilling its duty of to protect people from abuses of government power. Indeed, the justice system is itself being abused, made to serve as a mechanism for the persecution of political opponents and dissidents, and other critics of the political system in the country, including political, peasant and union leaders, human rights defenders, and students.

The publication of this report in May 2014 (originally published in Spanish) coincides with a situation of acute social and political unrest in Venezuela, where significant social protest has been taking place since February 2014. According to figures provided by official and non-official sources, the number of persons detained in connection with the protests so far amounts to some 2 500 people. At the time of publication, 100 people are still detained, around 1 200 people have been criminally prosecuted resulting in a number of judicially imposed restrictions on their liberty and freedoms. At least 42 people have died in the context of the protests, among which are 38 civilians, and 4 members of law enforcement and security agencies. According to documented cases, excessive use of force is one of the reasons for some of these deaths, which may amount to extrajudicial killings. In this context, the participation of armed groups of civilians acting with acquiescence, protection, and even coordination with the law enforcement agencies of the State is particularly serious. In addition, at least 14 cases of alleged torture or other cruel inhuman or degrading treatment or excessive use of force against detainees, by members of law enforcement and security agencies, have been recorded to date.

Although the Office of the General Attorney has investigated some of these cases, and has in fact detained several law enforcement officials, no substantial progress in the investigations of these cases has been reported to date.

The current situation in Venezuela demonstrates the consequences of the absence of an independent judiciary capable of guaranteeing the right of every person to participate in peaceful protests without becoming a victim of criminalization or repression. Indeed, the system of justice itself has functioned as a mechanism to criminalize the civil protest, by indicting 1 200 detained people without evidence of their participation in any criminal act. Additionally, the judiciary has not made any significant progress in the punishment of those responsible for the violation of human rights involving the repression of recent protest by law enforcement agencies, and armed groups of civilians protected by these agencies.

This report hopes to contribute to the strengthening of a democratic State, respectful of the rule of law with a truly autonomous and genuine justice system, embodied by independent and impartial judges committed to and capable of discharging their duties. It aims to ensure the effectiveness of the right of access to justice and due process of law, and the protection of all human rights in general for all people under the jurisdiction of the State of Venezuela. It strives for a judiciary capable of effectively exercising its functions of control over the excesses of

organs of the public power. The road map to follow is not only written in the Constitution of Venezuela, but also recognized in international human rights instruments and in the jurisprudence of international and regional human rights mechanisms. Consequently, we hope that the recommendations formulated by the ICJ in this report will assist the State and civil society of Venezuela in the realization of justice and the rule of law as a shared objective.

Geneva, May 2014

Wilder Tayler
Secretary General
International Commission of Jurists

I. EXECUTIVE SUMMARY

Guarantees for judicial independence are enshrined in the Constitution and other laws in Venezuela. These guarantees are not, however, followed in practice. Measures introduced in the 1999 Constitution and subsequent laws have led to ambiguity in determining which rules currently apply to the judiciary, contributing to legal uncertainty. Many formal procedures that should safeguard the independence of judges and prosecutors are not in practice applied to the vast majority of officials, who are appointed to provisional or temporary offices. Actual practices in relation to the judiciary, prosecutors and the office of the Attorney General, as well as lawyers and the legal profession, are undermining the rule of law and the independence of the administration of justice in Venezuela.

The Judiciary

The independence of the judiciary in Venezuela is seriously threatened. Security of tenure is not sufficiently guaranteed. Indeed, the vast majority of judges hold temporary appointments with no security of tenure at all. Authorities exercising disciplinary powers do not apply the criteria and norms arising from the national judicial Code of Ethics nominally in force, let alone norms reflected in international standards for the independence of the judiciary.

Interference by the Legislative and the Executive Branch, and improper interference with lower court judges by the superior judicial authorities, has caused further deterioration in the independence of the judiciary. Such interference may have started as isolated episodes, but has now progressed to become systematic and entrenched as a modus operandi of the relevant authorities. Some judges have been individually singled out for personal persecution. The prominent case of judge Maria Lourdes Afiuni, persecuted for conducting her judicial functions in an independent manner, is emblematic. The highly publicized actions against her have negatively impacted the independence of other judges, who must now fear similar reprisals should they give rulings unfavourable to the government.

Legal and Constitutional Framework

The 1999 Constitution recognizes the principle of separation of powers in different branches of government (Article 136), and the independence and financial autonomy of the Judicial Branch and the Supreme Tribunal of Justice (Article 254). The Constitution also incorporates the principal guarantees required by international standards on admission to the judicial profession, the promotion of individual judges to higher posts within the judiciary, and the removal and suspension of judges; it mandated the establishment of a Judicial Code of Ethics, setting out a disciplinary regime (Article 254 and 267). The Constitution does not explicitly recognise freedom of association of judges, justices, public prosecutors, and public defenders; indeed it explicitly prohibits every form of association between judges (Article 256).

The Constitution allowed for a period of year following its adoption in 1999 for the legislative body to enact a law governing the functions of the STJ, the Organic Law of the Supreme Tribunal of Justice, which among other things should regulate disciplinary powers through the disciplinary tribunals and courts belonging to the STJ, and the administration of the Judiciary through the Executive Directorate, an organism ascribed to the STJ. However, no such law was enacted until May 2004. During the interim, two Commissions in fact headed the Judicial Branch: The Commission for the Functioning and Restructuring of the Judicial System, and the Judicial Commission of the Supreme Tribunal of Justice. Under these ad hoc arrangements, adopted by decree, the Commission for the Functioning and Restructuring of the Judicial System exercised disciplinary powers over judges, while the Judicial Commission could appoint or remove them at will. This situation weakened the independence of the judiciary allowing improper interference of other branches of the Government in the disciplinary, appointment and removal procedures.

In 2009 a judicial Code of Ethics entered into force with the stated aim of establishing a disciplinary regime for "every judge within the territory of the Bolivarian Republic of Venezuela…in exercise of permanent, temporary, occasional, accidental or provisional jurisdiction," including the Justices of the STJ. However, following a constitutional judgment of

the Constitutional Chamber of the STJ in 2013, the Code is only applicable to titular judges who have been permanently admitted to the judicial career, and not to temporary judges. This left temporary judges unprotected by any proper formal procedures for appointment, discipline or removal, and the temporary judges are therefore vulnerable to arbitrary interference, through the Judicial Commission of the STJ.

Appointment Procedure and Security of Tenure

International standards on the independence of the judiciary clearly recognize the importance of objective criteria in the selection of judges, as well as the application of public procedures previously determined by law to select, appoint and promote judges. In this regard, in 2000 the Commission for the Functioning and Restructuring of the Judicial System enacted Norms for the Evaluation and Public Competitions for the Admission and Permanence in the Judiciary. Under these Norms, the judges that have been serving in office for a year or more should have received performance evaluations in order to continue their career in the judiciary. The Norms also provided regulations for public tenders and procedures to fill vacant judicial positions.

Contrary to the provisions stated in the Norms, however, all judges were dismissed from office and forced to re-apply in the same manner as any other lawyer would who aspired to occupy the position of judge and enter to the judicial career. Further, the only public competitions for judicial posts took place from 2000 to 2003. Since 2003, there have been no public competitions for judicial appointments and promotions. As a result, only some 20% of judges currently in office have security of tenure. The remaining 80% of judges have little or no security of tenure, as they were appointed to provisional or temporary offices from which they can be removed at will by the Judicial Commission of the STJ.

Disciplinary Regime and Removal from Office

As mentioned above, the Judicial Code of Ethics was enacted in 2009 with the aim of guiding the conduct of all judges in Venezuela, including provisional or temporary judges. The Code also established the competent bodies and procedures for sanctioning disciplinary offences committed by judges in the performance of their duties, as well as the grounds and circumstances in which those sanctions could be applied.

However, not only was the Judicial Code of Ethics was enacted some nine years after the adoption of the Constitution, in 2013 the Constitutional Chamber of the STJ provisionally suspended the application of the Code to the Justices of the STJ, as well as the "temporary, casual, accidental and provisional" judges. The judgment also held that the Judicial Commission of the STJ is competent to punish and remove "temporary, casual, accidental and provisional" judges.

The lack of implementation of the Judicial Code of Ethics does not comply with international standards on the independence of the judiciary, as the disciplinary regime prescribed by law consequently applies only to a small fraction of judges, given that the vast majority of judges are provisional or temporary. Consequently, almost 80% of judges can be removed and sanctioned by the Judicial Commission by a simple communication expressing that the appointment is "no longer in effect". The absence of a legally prescribed procedure with appropriate safeguards for fairness and objectivity does not fulfil the guarantees of due process of law and adversely affects the independence of judges.

The Office of the Public Prosecutor

The autonomy and independence of public prosecutors in Venezuela are seriously affected by improper interference from the Attorney General and other political actors in Venezuela. The lack of security of tenure and transparency in their selection, and the allocation of criminal investigations and procedures without regard to technical criteria and workload of public prosecutors, have yielded an inability or unwillingness of prosecutors to bring perpetrators of crime to justice in an effective and equal manner. The result is a climate of insecurity and

impunity that surpasses 90% concerning common felonies, and it is higher in relation to crimes involving violations of human rights. Additionally, the disciplinary regime set out in the Organic Law of the Office of the Public Prosecutor has not been respected in practice, and public prosecutors have been removed without proper procedures determined by law.

Lack of Autonomy and Improper Interference

The role of public prosecutors, as defined by international standards, is crucial in the administration of justice. Prosecutors must perform their duties "fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights." In order to do so, prosecutors must be able to perform their professional functions without improper interference, in a fair and objective manner. Likewise, the laws and rules regulating the performance of public prosecutors "shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process…".

In this regard, the Organic Law of the Office of the Public Prosecutor establishes a hierarchical structure, as well as incorporating the principles of unity of operation and indivisibility, in theory aimed at guaranteeing the consistency and fairness of decisions taken in criminal prosecutions. In practice however the Attorney General has interpreted these principles to require the Attorney General's prior permission for decisions in every procedure, including those of mere formality. This diminishes the autonomy of public prosecutors, exacerbating the absence of an objective system to allocate cases, and the lack of security of tenure of prosecutors, enhancing the risks of improper interference by other branches of the Government, especially in politically sensitive cases that have usually been "handled by a small group of prosecutors".

Appointment Procedure and Security of Tenure

In order to be appointed as public prosecutor in Venezuela, the Organic Law of the Public Prosecutor Office determines that all candidates must successfully complete the academic programme of the National Academy of Public Prosecutors, and participate in public tenders organized on the basis of the requirements established in the Organic Law.

In line with international standards, the public tenders and the creation of the National Academy of Public Prosecutors should have aimed at ensuring that only individuals of integrity and ability, with appropriate training and qualifications, were appointed as public prosecutors. Nevertheless, until January 2014, only two public tenders for prosecutors have been carried out in Venezuela, and only four individuals have been appointed as public prosecutors in application of the Organic Law of the Public Prosecutor Office. The rest of prosecutors in office are provisional and have been selected by procedures not provided by the law, or directly appointed by the Attorney General, and could be removed from office at will.

Disciplinary Regime and Removal from Office

International standards on the role of prosecutors provide that all disciplinary procedures against public prosecutors must guarantee an objective evaluation and decision, and be determined in accordance with the law and regulations enacted for that purpose. Likewise, prosecutors shall be entitled to expeditious and fair hearings based on previously established law or legal regulations. Along these lines, article 117 of the Organic Law of the Office of the Public Prosecutor provides the grounds on which public prosecutors and other officials of the Office of the Public Prosecutor could be sanctioned after the finalization of due processes established by law. The Organic Law also provides that these procedures shall be established by the Regulations of the Office of the Public Prosecutor.

The legal framework in Venezuela concerning the disciplinary regime of public prosecutors in theory appears to comply with these international standards. However, the Regulations of the Office of the Public Prosecutor are only applied to officials and prosecutors with security of tenure. Therefore, as the vast majority of prosecutors in Venezuela have not been appointed by public tender, and could be removed at will by the Attorney General, the disciplinary regime

provided by these Regulations is not applied. These practices prevent the proper fulfilment of the duties of the Office of the Public Prosecutor and diminish the quality of their services.

The Legal Profession

The legal profession has faced massive challenges in Venezuela. First, governmental favouritism in judicial appoints towards lawyers graduated from governmental universities, and the prosecution of lawyers involved in politically sensitive cases, have created a hostile environment for the independent practice of Law in Venezuela. Second, the constant weakening of the Bar Associations in their advocacy role in matters related to the administration of justice, and the unwarranted meddling of the judiciary in aspects related to the election of the Directorate and Disciplinary Tribunals of the Bars, have undermined the ability of the legal profession as an institution to defend the independence of lawyers in the country.

Legal Education and Licensing

Quality legal education is essential for lawyers to be made aware of their ethical duties towards their clients and their role to guarantee the rule of law. Under international standards, governments, professional associations of lawyers and educational institutions are jointly to ensure that lawyers have appropriate education and training.

In Venezuela legal education is taught in Universities, and students graduate with a legal degree. In 2005, the Government of Venezuela opened the Bolivarian University of Venezuela (BUV), and it was approved to teach Legal Studies. The programme of Legal Studies in BUV differs from that taught in other national and international universities. Essential subjects such as civil law, and civil and criminal procedure are absent from the programme of studies, while other crucial subjects are taught only on an elective basis, such as criminal law and the penitentiary system. However, graduates from the BUV receive a legal degree and are licensed to practice Law even if the program of studies the have followed has excluded essential topics. Besides, the government in practice has shown favouritism regarding appointments to judicial offices, favouring graduates of the BUV, while leaving aside more qualified candidates, or in some cases even constraining judicial appointments only to lawyers graduating from the BUV. The favouritism appears to be based at least in part on the ideological character of the programme at the BUV relative to other universities, and as such impermissibly discriminates on the basis of political opinion or belief, and undermines confidence in the courts as an independent guarantor of equality before the law. Given the narrow scope of subject-matter at BUV, such favouritism also potentially undermines the quality and effectiveness of the judiciary.

Compulsory membership to professional associations is required to practice law in Venezuela. These procedures for such mandatory membership do not comply with international standards, as they are neither strict nor clear. The Bar Associations in Venezuela do not have discretional power over the membership and affiliation to the association, because the only requirement needed to become a member is to be in possession of a law degree granted by any university in the country, even if the programme of studies does not comply with international standards, as is the case of the BUV.

Independence of Bar Associations and Disciplinary Regime for Lawyers

The role of Bar Associations in the independence of lawyers is fundamental; international standards provide that they must uphold professional standards and ethics, and protect their members from persecution and improper restrictions and infringements. In doing so, Bar Associations must be able to exercise their functions without external interference of any kind.

Under international standards, lawyers are entitled to fair and appropriate procedures when complaints are made against them, including the right to a fair hearing, and the guarantees of the due process of law. Additionally, "disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an

independent statutory authority, or before a court, and shall be subject to an independent judicial review."

The disciplinary regime for lawyers in Venezuela is established in the Lawyers' Act and the Code of Ethics. Both of them set out the grounds on which a disciplinary prosecution may be commenced against a lawyer, the procedures that must be followed, and the competent body to lead the process. In Venezuela, this disciplinary power falls upon the Disciplinary Tribunals of the Bar Association, whose members are elected by the General Assembly of the Association for a three years term.

These procedures are characterized by a lack of transparency, because the decisions of the tribunals are not published. Nevertheless, the arrangements are generally perceived positively as the tribunals have not been used as a means of wrongfully sanctioning lawyers for the due exercise of their professional duties. However, the Judicial Code of Ethics allows any judge to impose disciplinary sanctions on lawyers during a judicial proceeding. Although the courts and tribunals have not developed jurisprudence in the matter, the fact that judges are given this poorly-defined legal power is a potential threat to the guarantees of due process of law, as it appears to bypass the competence of the Disciplinary Tribunals of the Bar Associations, and the right to a fair hearing.

Interference by the Electoral and Constitutional Chambers of the STJ in the election of the members of the boards and disciplinary tribunals of the Bar Associations have weakened their autonomy and independence, diminishing their involvement in the matters of the state, and attributing to them a purely marginal role as a simple association of lawyers in the country.

The Independence of the Judiciary and the Protection of Human Rights

Article 23 of the 1999 Constitution recognizes that human rights treaties to which Venezuela is party have constitutional hierarchy over other laws of the national legal system. Additionally, the Constitution establishes under Article 31 the right of every individual to address complaints to international human rights bodies established by treaties, in order to protect their human rights. In principle, judges should play an important role in the protection of internationally recognised human rights, but in practice the judiciary in Venezuela have frequently failed in doing, instead giving priority to governmental interests citing the principle of sovereignty.

The situation worsened when, on 6 September 2012, Venezuela denounced the American Convention on Human Rights, withdrawing from the jurisdiction of the Inter-American Court and depriving the victims of defence. Civil society, human rights defenders and academics presented a popular action of unconstitutionality to the Constitutional Chamber of the STJ on September 2012. Even without the American Convention, Venezuela is still subject to regional and international human rights standards with implications for the judiciary, prosecutors and legal profession. These include the American Declaration of Human Rights, the International Covenant on Civil and Political Rights, and a wide range of United Nations standards, and the judiciary in Venezuela should assert a strong role in protecting internationally-recognised human rights.

Having analysed the legal framework in which the judiciary and the Office of the Attorney General operate, and actual practices in relation to the legal system, the report concludes that the independence of legal institutions in Venezuela is being seriously undermined. To reverse this threat to the rule of law, all public authorities must act in accordance with the constitutional and legal framework; national laws and practices must be brought into line with international human rights standards; the ability of lawyers freely to practice their profession must be assured. To these ends, the report includes detailed recommendations that aim to help strengthen independent judicial institutions, consolidate the rule of law, and ensure an independent justice system in which all Venezuelans can have confidence.

II. THE JUDICIARY IN VENEZUELA

1. Normative framework

1.1. The Constitution of the Bolivarian Republic of Venezuela and main amendments

a. The 1999 Constitution

The last constitutional process in Venezuela started on 15 August 1999 and ended on 15 December of that same year with the approval of the new constitutional text by the National Constituent Assembly and afterwards through a referendum.

However, prior to the passing of the new Constitution, on 18 August 1999, the National Constituent Assembly had declared a state of "emergency and reorganization" for the judiciary and created the Judicial Emergency Commission.[1] In October 1999, the Judicial Emergency Commission issued the Decree for Precautionary Measures to Protect the Judicial System, which established, without the need for any further proceedings, the immediate suspension without remuneration of judges who had seven or more complaints before disciplinary bodies of the Judicial Council and those who had open criminal investigations.[2] These indefinite suspensions were enacted through the publication of a joint resolution of the President of the Judicial Council, the President of its Disciplinary Chamber and the Inspector General of the Courts.[3] It is reported that, during this process, "[t]he Emergency Commission, working jointly with the Inspector General of the Courts, suspended and subjected 340 judges to proceedings – this amount is the equivalent of nearly one third of the total judges at that time".[4]

The Constitution of the Bolivarian Republic of Venezuela entered into force on 30 December 1999 through its publication in the Official Gazette. However, on 27 December, three days prior to the Constitution's entry into force, the National Constituent Assembly issued the Decree of the Regime for the Transition of Public Power, with the justification that "due to the innovations introduced by the new Constitution it was necessary to declare a state of transition". This transition would be led by a National Legislative Commission, half the members of which were not democratically elected, as a transitional legislative body, with a mandate to prepare the transition of public powers to the provisions of the new Constitution.[5] The Commission was not foreseen as a transitional body in any constitutional provision, nor put to vote in a referendum; however, the Constitutional Chamber of the Supreme Tribunal of Justice affirmed the legality of the Commission and pronounced the Decree of the Regime for the Transition of Public Power to be an act of "indeterminate" validity.[6] On the other hand, the Constitution did not foresee any transitional provision after the expiry of the term of the Constituent Assembly to govern the

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[1] Decree to Reorganize the Judiciary issued by the National Constituent Assembly on August 18, 1999, published in Official Gazette of the Republic of Venezuela No. 36.722 of August 25, 1999.
[2] Decree for Urgent Precautionary Measures to Protect the Judicial System issued by the National Constituent Assembly through the Judicial Emergency Commission, published in Official Gazette of the Republic of Venezuela No. 36.805 of October 11, 1999, Articles 5, 6 and 7.
[3] Unnumbered Resolution of October 7, 1999, published in Official Gazette of the Republic of Venezuela No. 36.807 of October 14, 1999.
[4] See Rogelio Pérez Perdomo, "Reforma judicial, Rule of Law and revolución en Venezuela" (Judicial Reform, Rule of Law and Revolution in Venezuela), in Luis Pásara (ed.), *En busca de una justicia distinta. Experiencias de reforma en América Latina (In search of a different justice. Reform experiences in Latin America)*, Lima, 2004, p. 354.
[5] Decree by which the Regime for the Transition of Public Power of the National Constituent Assembly is issued, published in Official Gazette of the Republic of Venezuela No. 36.857 of December 27, 1999 and reprinted due to material error in Official Gazette of the Republic of Venezuela No. 36.859 of December 29, 1999 and No. 36.920 of March 28, 2000.
[6] Supreme Tribunal of Justice of Venezuela, Constitutional Chamber, Verdict No. 180 de March 28, 2000, quoted in Román J. Duque Corredor, *La manipulación del Estado de Derecho como instrumento de consolidación de un proyecto político de concentración del poder en Venezuela (The Manipulation of the Rule of Law as an instrument to consolidate a political project in concentration of power in Venezuela)*, Mexico City, April 20, 2005, note 19, p. 5, available: http://proveo.org/manipulacion_estado_de_derecho_venezuela.pdf.

period for which the Constituent Assembly assigned itself to legislate and assume the capacity to restructure public power.[7]

The 1999 Constitution caused the "modernization" of the judiciary, introducing deep structural and functional changes. Among these changes, the Supreme Court of Justice was replaced by the Supreme Tribunal of Justice, which was granted functional, budgetary and organizational autonomy. The Supreme Tribunal of Justice was also appointed as the governing body of the judiciary.[8] Further, the new Constitution eliminated the Judicial Council and created the Executive Directorate of the Judiciary, an administrative body under the Supreme Tribunal of Justice with a role in judicial administrative governance.[9]

Structurally, the highest tribunal was also modified by adding three more Chambers to those already in place to hear claims, i.e.: the Constitutional Chamber, the Electoral Chamber and the Social Cassation Chamber.[10] In addition to its jurisdictional role, the Supreme Tribunal of Justice was assigned a role in judicial governance.

b. The Commission for the Functioning and Restructuring of the Judicial System and the Organic Law of the Supreme Tribunal of Justice

The transitional Commission for the Functioning and Restructuring of the Judicial System was not prescribed in the Constitution. It was created by the National Constituent Assembly, which had already ceased the exercise of its mandate through the Decree of the Regime for the Transition of Public Power. In addition to appointing new judges of the Supreme Tribunal of Justice without complying with the procedures established in the new Constitution, the Decree of the Regime for the Transition of Public Power divided the powers that, under the Constitution, should have been exercised by the Executive Directorate of the Judiciary. The Commission for the Functioning and Restructuring of the Judicial System was designated to exercise functions of governance and administration, inspection and monitoring of the courts. Meanwhile, the Executive Directorate of the Judiciary would be in charge of the personnel of the Judicial Power, the infrastructure of the courts and everything necessary for the courts' operation. Under the Decree's terms, this division of roles should remain until a law is issued to organize judicial governance.

Subsequently, from December 1999 to May 2004, when the Organic Law of the Supreme Tribunal of Justice entered into force, this court was governed by the provisions of the 1976 Organic Law of the Supreme Court of Justice that were not in conflict with the new Constitution, and by the aforementioned Decree of the Regime for the Transition of Public Power.[11] During this period, the judiciary was governed by two Commissions: the Commission for the Performance and Restructuring of the Judicial System, which had disciplinary powers over judges, and the Judicial Commission of the Supreme Court of Justice, which appointed and removed judges with full discretion. This situation, which lasted for almost five years, resulted in a significant weakening of the judicial career, as will be analysed in the following sections.

The Organic Law of the Supreme Tribunal of Justice[12] was promulgated in May 2004 and amended in May 2010.[13] In its amending and transitional provisions, the Organic Law increased

[7] This anomalous situation was evidence by one of the national constituents, Dr. Allan Brewer Carías in the dissenting vote he submitted before the National Constituent Assembly, during the discussion session of the aforementioned Decree (Venezuela, National Constituent Assembly (1999), Journal of Debates (Online Document), available: http://www.asambleanacional.gob.ve/ns2/constituyente.asp.
[8] Constitution of the Bolivarian Republic of Venezuela, Article 254.
[9] Constitution of the Bolivarian Republic of Venezuela, Article 267.
[10] Constitution of the Bolivarian Republic of Venezuela, Articles 262 and 266.
[11] See Constitution of the Bolivarian Republic of Venezuela, sole repeal provision: "The Constitution of the Republic of Venezuela decreed on January 23, 1961 is hereby repealed. The rest of the legal system will remain in effect in anything that does not contradict this Constitution".
[12] Organic Law of the Supreme Tribunal of Justice, published in Official Gazette of the Republic of Venezuela No. 37.942 of May 20, 2004.

the number of magistrates comprising the Supreme Tribunal of Justice and ordered the reorganization of the Executive Directorate of the Judiciary as a judicial governance body. Among other things, the 2010 reform granted powers to the Constitutional Chamber which used to belong to the Electoral Chamber, and it was established that alternate judges would be in office for a period of six years, which is half the time of office holders.[14]

It is important to note that a legislative gap remained after the new Constitution entered into force, as the legislature did not promulgate an Organic Law on the Judicial Career or an Organic Law of the Judicial Power to govern its operation. In July 2013, the Bar Association of the State of Lara filed before the Supreme Court of Justice against the National Assembly. The recourse was filed by the Bar Association "because since the year 2000 [the National Assembly] has omitted the creation of a law to establish who may be a judge in the country and how this person should be elected for such core duties for the Republic".[15]

The legal void has existed in this area since the 1999 Constitution came into force – i.e., since the moment from which the articles of the 1998 Organic Law of the Judicial Power,[16] the Organic Law on the Judicial Career,[17] the 1990 Statute on Judicial Staff and its 1991 Complementary Resolution[18] continued to apply insofar as they were not in conflict with the Constitution itself. This legal void was partially addressed with regard to jurisdiction and judicial disciplinary proceedings through the adoption in 2009 of the Code of Ethics for Venezuelan Judges.[19] However, to date, several articles of the Code of Ethics remain suspended following a precautionary measure of the Constitutional Chamber of the Supreme Tribunal of Justice in May 2013.[20]

1.2. The principle of judicial independence and the regime for the protection of human rights

Article 23 of the 1999 Constitution grants constitutional hierarchy to human rights treaties signed by Venezuela. International human rights law requires the judiciary to be independent

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[13] Organic Law of the Supreme Tribunal of Justice, sanctioned on May 11, 2010 and published in Official Gazette of the Republic of Venezuela Extraordinary issue No. 5.991 of July 29, 2010; reprinted due to material error in Official Gazette of the Republic of Venezuela No. 39.483 of August 9, 2010 and No. 39.522 of October 1, 2010.

[14] For a more detailed analysis on the 2010 reform of the Organic Law of the Supreme Tribunal of Justice, See PROVEA (Venezuelan Program for Education-Action in Human Rights), *Human Rights Situation in Venezuela, Annual Report October 2009 – September 2010,* Caracas, December 10, 2010, pp. 290-291, available: http://www.derechos.org.ve/informesanuales/informe-anual-2010/.

[15] *The Bar Association of the State of Lara filed a recurso de carencia - writ of mandamus against the National Assembly*, August 17, 2013, available: http://elimpulso.com/articulo/colegio-de-abogados-de-lara-interpuso-recurso-de-carenciacontra-anNo. Specifically, Enrique Romero, President of the Bar Association of the State of Lara, declared that the decision to file the *recurso de carencia - writ of mandamus* against the National Assembly resulted from the consideration that this type of recourse constitutes "a legal instrument directed against these omission conducts as long as they involve the absence of specific decisions from officials", and noted: "At the end of July we filed before the Supreme Tribunal of Justice a *recurso de carencia - writ of mandamus* against the National Assembly because since the year 2000 they have not deigned to discuss the law governing who and how would a person enter the Judiciary, in other words, who chooses the judges of the country. Since then, they have been selecting them at will and not as the Constitution provides for". In February of 2014, there still has not been any opinion expressed on the claim: the recourse is before the Constitutional Chamber of the Supreme Tribunal of Justice, with Gladys Gutiérrez, J.D., President of the SCJ, as designated rapporteur.

[16] Organic Law of the Judicial Power, published in Official Gazette of the Republic of Venezuela, Extraordinary issue No. 5.262 of September 11, 1998, effective as of July 1, 1999.

[17] Organic Law on the Judicial Career, published in Official Gazette of the Republic of Venezuela, Extraordinary issue No. 5.262 of September 11, 1998.

[18] Statute on Judicial Staff, published in Official Gazette of the Republic of Venezuela No. 34.439 of March 29, 1990, and the Complementary Resolution to said Statute, published in Official Gazette of the Republic of Venezuela No. 34.779 of August 19, 1991.

[19] Judicial Code of Ethics of Venezuela, published in Official Gazette No. 39236 of August 6, 2009, Article 1. Amended again partially on August 23, 2010, with the Partial Amendment Act of the Judicial Code of Ethics of Venezuela, published in Official Gazette of the Republic of Venezuela No. 39.493 of August 23, 2010.

[20] See infra, note 97.

from the executive and legislative branches: firstly, as a specific aspect of the right to a fair trial, and secondly, as a means to obtain protection of human rights and achieve effective reparation for their violation by State authorities.[21]

Judicial independence is also intrinsically connected to the principle of separation of powers. The principle of separation of powers, which is the cornerstone of the rule of law, is reasserted in a series of international instruments, specifically with regard to the judiciary.[22]

To this end, States must ensure respect for judicial independence by prescribing the principle in the Constitution or the law.[23] Judges must be independent and impartial.[24] To be independent, judges must have the freedom to decide cases "without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason".[25] Additionally, as noted by the Human Rights Committee in their General Comment No. 32, "the requirement of competence, independence and impartiality of a tribunal in the sense of paragraph 1 of article 14 [of the International Covenant on Civil and Political Rights] is an absolute right that cannot be subject to any exception".[26]

The members of the judiciary must have freedom of association "provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary".[27] Judges also have the right to form and join judges' associations and other organizations "to represent their interests, promote their professional training and to protect their judicial independence".[28]

In Venezuela, the norms that guarantee judicial independence are enshrined in the Constitution and in laws that govern judicial activity; however, these norms are not fully enforced in practice.

The 1999 Constitution recognizes the principle of separation of powers,[29] the judiciary's financial independence and autonomy,[30] and the "functional, financial and administrative" autonomy of the Supreme Tribunal of Justice.[31] Within the domestic order, the Constitution also establishes main guarantees provided under international standards with regard to entering the judicial career, the promotion of judges, and the removal or suspension of a judge from his/her office.[32]

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[21] See International Covenant on Civil and Political Rights, Articles 14(1) and 2, and Human Rights Committee, General observation No. 32, Article 14: The right to an impartial trial and to equality before the courts of justice, CCPR/C/GC/32 (2007), paragraph 19; American Convention on Human Rights, Article 8(1); American Declaration on the Rights and Duties of Man, Article XXVI; Inter-American Democratic Charter, Article 3. See also Commonwealth Principles on the Accountability of and the Relation between the Three Branches of Government, Principle IV(d); Commonwealth Latimer House Guidelines on Parliamentary Sovereignty and Judicial Independence, Guideline I) 5.

[22] See, *inter alia*, Article 3 of the Inter-American Democratic Charter; Resolution of the Human Rights Commission 2003/36: The interdependence between democracy and human rights, E/CN.4/RES/2003/36 (2003); and Inter-American Court of Human Rights, *Case of the Constitutional Tribunal* (*Aguirre Roca, Rey Terry and Revoredo Marsano vs. Peru*), Verdict of January 31, 2001, paragraph 73.

[23] Human Rights Committee, General observation No. 32, Article 14: The right to an impartial trial and to equality before the courts of justice, CCPR/C/GC/32 (2007), paragraph 19; UN Basic Principles on the Role of Lawyers, Principle 1.

[24] See International Covenant on Civil and Political Rights, Article 14(1), and Human Rights Committee, General observation No. 32, Article 14: The right to an impartial trial and to equality before the courts of justice, CCPR/C/GC/32 (2007), paragraph 19; Universal Declaration on Human Rights, Article 10; Universal Charter of the Judge, Article 1; UN Basic Principles on the Independence of the Judiciary, Principle 2; Statute of the Ibero-American Judge, Articles 1 and 7.

[25] UN Basic Principles on the Independence of the Judiciary, Principle 2; Draft Declaration on Independence of Justice ("Singhvi Declaration"), Article 2.

[26] Human Rights Committee, General observation No. 32, Article 14: The right to an impartial trial and to equality before the courts of justice, CCPR/C/GC/32 (2007), paragraph 19.

[27] UN Basic Principles on the Independence of the Judiciary, Principle 8.

[28] See UN Basic Principles on the Independence of the Judiciary, Principle 9. See also Universal Charter of the Judge, Article 12, and Statute of the Ibero-American Judge, Article 36.

[29] See Constitution of the Bolivarian Republic of Venezuela, Article 136.

[30] See Constitution of the Bolivarian Republic of Venezuela, Article 254.

[31] Ibid.

[32] See Constitution of the Bolivarian Republic of Venezuela, Article 255.

Additionally, the Constitution specifically orders the issuance of a Code of Ethics for Judges that establishes the disciplinary regime for magistrates and judges, and that this disciplinary procedure shall be public, oral and brief, with respect for the principle of due process, thus creating judicial disciplinary jurisdiction under a constitutional mandate.[33] However, the Constitution of Venezuela does not comply with the principle of freedom of association for judges, magistrates, public prosecutors and public defenders, because it prohibits any form of association of judges.[34]

The Code of Ethics of Venezuelan judges was issued under the constitutional mandate "in order to ensure [judges'] independence and competence, preserving the people's trust in the integrity of the judiciary as part of the justice system"[35]. The Code of Ethics reiterates that judges are independent and autonomous in the exercise of their duties, and that their jurisdictional activity "should only be subject to the Constitution of the Republic and the legal system"[36]. The Code of Ethics also establishes that judges have an obligation to ensure for all people the enjoyment and exercise of their human rights, as well as to respect and guarantee human rights as prescribed under the Constitution[37]. However, the Constitutional Chamber of the Supreme Tribunal of Justice provisionally suspended the enforcement of key provisions of this Code in May 2013 (see below).

With regard to the protection of human rights, the State's obligation to protect and promote the exercise of the right to access to justice is characterized in the Constitution first as a duty to ensure "free, accessible, impartial, suitable, transparent, autonomous, independent, responsible, equitable and expeditious justice, without undue delays, without formalities or unnecessary repetitions".[38]

The protection of constitutional rights is enshrined in the Constitution. These rights include those derived from international human rights treaties ratified by Venezuela, which have constitutional hierarchy, prevail over constitutional norms when more favourable and are "immediately and directly applicable by the courts and other entities of the public powers".[39]

"Any act issued in exercise of public power" that violates or undermines constitutional rights is declared void. Officers who order or execute such acts have criminal, civil and administrative liability and will be prosecuted.[40] In the same vein, the Constitution prescribes that the State of Venezuela has an obligation to investigate and legally punish crimes against human rights committed by its authorities,[41] and to fully compensate the victims for any violations of their human rights attributable to the authorities.[42] Additionally, the Constitution enshrines the right of every individual to address international bodies established by treaties, pacts and covenants, in order to request protection of their human rights.[43]

However, despite these constitutional provisions, the Constitutional Chamber of the Supreme Tribunal of Justice declared the verdict of the Inter-American Court on Human Rights in the *Apitz Barbera* case unenforceable for "violating the sovereignty of the State of Venezuela in the organization of the public powers and in the selection of its officials, which is inadmissible".[44] The

[33] Constitution of the Bolivarian Republic of Venezuela, Article 267.
[34] Constitution of the Bolivarian Republic of Venezuela, Article 256. It should be noted that the provision in question collides against another constitutional standard, which provides the right of association with lawful purposes – and the corresponding obligation of the State to "facilitate the exercise of this right" (Article 52).
[35] Judicial Code of Ethics of Venezuela, Article 1.
[36] Judicial Code of Ethics of Venezuela, Article 4.
[37] Judicial Code of Ethics of Venezuela, Article 6.
[38] Constitution of the Bolivarian Republic of Venezuela, Article 26. See also Article 49, on the guarantees of due process "…within the term reasonably established under the law by a competent, independent and impartial court established beforehand" (Article 49(3)
[39] Constitution of the Bolivarian Republic of Venezuela, Article 25.
[40] Constitution of the Bolivarian Republic of Venezuela, Article 23.
[41] Constitution of the Bolivarian Republic of Venezuela, Article 29.
[42] Constitution of the Bolivarian Republic of Venezuela, Article 30.
[43] Constitution of the Bolivarian Republic of Venezuela, Article 31.
[44] Supreme Tribunal of Justice of Venezuela, Constitutional Chamber, Verdict of December 18, 2008, Exp. No. 08-1572, available: http://www.NCJ.gov.ve/decisiones/scon/December/1939-181208-

Constitutional Chamber held that the implementation of the Inter-American Court's ruling "would affect principles and values which are essential to the constitutional order of the Bolivarian Republic of Venezuela and may lead to institutional chaos in the framework of the justice system, by purporting to modify the judiciary's autonomy, which is established under the Constitution, and the disciplinary system that is legislatively established".[45] This position was reiterated by the then-President of the Constitutional Chamber of the Supreme Tribunal of Justice a few days after the Inter-American Court published its verdict in the *López Mendoza* case,[46] in a televised speech where she expressed that any decision by international bodies would not be binding for the State of Venezuela, as "those international covenants and treaties must be reviewed under the interpretation of the Constitution", invoking the defence of national sovereignty against the recourses filed by Venezuelan citizens "directly, as if trying to provoke an external reaction"[47], before international entities.

On 6 September 2012, Venezuela denounced the American Convention on Human Rights, arguing that the "operative scheme between the Commission and the Court has allowed these entities, in an articulated manner, to act against the Bolivarian Republic of Venezuela through the admission of complaints on cases which were still pending in different judicial instances of the country, or by admitting claims that were never filed before the national courts, thus openly violating Article 46.1 of the American Convention".[48] In September 2012, Venezuelan civil society organizations, human rights defenders, victims of human rights violations and academics filed a popular unconstitutionality action before the Constitutional Chamber of the Supreme Tribunal of Justice. The group requested that the denunciation of the Convention be declared void as it violated several constitutional provisions, including those on the hierarchy and constitutional supremacy of human rights treaties, the right to file international complaints for the protection of human rights, human rights as the governing principle of the international relations of the State of Venezuela, and the principle of progressive realization of human rights, and asking that the Constitutional Chamber request the Executive Branch to withdraw the claim.[49]

As a result of the Convention's denunciation, as of 10 September 2013, Venezuela withdrew from the jurisdiction of the Inter-American Court, although the provisions of the Convention declare that such withdrawal does not have retroactive effect. Even before Venezuela's withdrawal, one of the repercussions of denouncing the Convention was that the State ceased to uphold protection measures issued by the Court, even though these did not lose their full legal effect. This occurred in the case of the Barrios family, to whom the Inter-American Court offered provisional protection measures in September 2004 in light of death threats and acts of harassment and intimidation. On 13 September 2013, a few days after Venezuela left the jurisdiction of the Inter-American Court, several members of the Barrios family were subjected to warrantless searches of the residences where they were, and received death threats from alleged police officers.[50]

2008-08-1572.HTML.

[45] Ibid.

[46] Inter-American Court of Human Rights, *López Mendoza vs. Venezuela*, Verdict of September 1, 2011 (Merits, Reparations and Costs).

[47] El Universal, *TSJ: No son vinculantes órdenes de cortes internacionales* (4 September 2011), available at: http://www.eluniversal.com/2011/09/04/imp_tsj-no-son-vinculantes-ordenes-de-cortes-internacionales.

[48] Letter of complaint of the American Convention on Human Rights sent by the Bolivarian Republic of Venezuela to the General Secretariat of the Organization of American States, September 6, 2012, available: http://www.oas.org/dil/esp/Nota_Republica_Bolivariana_de_Venezuela_al_SG_OEA.PDF.

[49] See Carlos Ayala Corao, "Inconstitucionalidad de la denuncia de la Convención Americana sobre Derechos Humanos por Venezuela" (*Unconstitutionality of the complaint of the American Convention on Human Rights by Venezuela*), in *Estudios Constitucionales*, Vol. 10, No. 2, 2012, pp. 679 et ss.

[50] *Justice and Peace Commission, CEJIL and COFAVIC: The State of Venezuela must maintain and comply with protection measures for the Barrios family*, September 18, 2013, available: http://www.cofavic.org/det_noticia.php?id=249.

Conclusions

Some conclusions follow from the above analysis of the structure and duties of the judiciary in Venezuela:

- The 1999 Constitution introduced significant modifications in the judiciary's organization and structure. Some of these changes are positive in theory and tend towards modernization. However, difficulties and conflicts have arisen while implementing the measures designed to modernize the judiciary's structure.
- Implementing the new measures has led to a lack of clarity as to the norms currently in force. In other words, there is an ambiguous framework of applicable norms as a result of the changes, which creates a grey area in the application of norms and thus contributes to legal uncertainty.
- Prohibiting judges from setting up associations does not comply with international standards that govern the subject matter. This limitation affects the independence and freedom of judges and magistrates.
- Venezuela's denunciation of the American Convention on Human Rights does not remove the State's obligation to respect and adapt its justice system to current international legal standards, including those of the Inter-American Human Rights System and the United Nations' universal system of human rights protection, as set out by the International Covenant on Civil and Political Rights and other treaties that have been ratified by Venezuela.

2. The judicial career

In addition to enshrining the independence of the judiciary as a principle in law, States must establish guarantees intended to ensure the independence of judges in performing their duties. This includes processes and criteria for the appointment and promotion of judges, their irremovability, and guarantees for their remuneration and protection.

2.1. Appointment and promotion of judges in the Organic Law on the Judicial Career and evaluation standards and Public Competitions

The requirements for being a judge in Venezuela are enshrined in the 1998 Organic Law on the Judicial Career. This law created the judicial hierarchy which, under the Law's own terms, "will be uniform for all Judicial Districts and will not be interrupted with the transfer of an official from one judicial jurisdiction to another".[51] Judges are grouped into categories "A", "B" and "C": judges within category "A" are those appointed to appeals or higher courts; judges within category "B" are those appointed to first instance tribunals; and judges within category "C" are those appointed to municipal courts.[52]

According to the 1998 Organic Law on the Judicial Career, category "C" is the entry point to the judicial career, which requires passing a competitive examination and meeting several conditions, including having practiced as a lawyer for at least three years.[53] In any event, as stated in Article 9 of the Organic Law on the Judicial Career, "The winner of the competitive examination for the position must have passed the course organized to that end by the Judicial Council, and have completed the training period established by the tribunal to which he/she is appointed".[54]

After the Judicial Council was abolished under the new Constitution, in March 2000, the Commission for the Functioning and Restructuring of the Judicial System prepared the Norms for

[51] Organic Law on the Judicial Career, Article 7.
[52] Organic Law on the Judicial Career, Article 9.
[53] Organic Law on the Judicial Career, Article 10. Those applicants over thirty years old may also enter the judicial track after passing Public Competitions for categories "A" and "B", provided they have authored valuable legal papers or college professors whose performance is recognized; or attorneys with 10 years of experience; or public defenders or Public Prosecutors with at least six years of service.
[54] Organic Law on the Judicial Career, Article 9(4).

the Evaluation and Public Competitions for admission and tenure in the judiciary.[55] As its articles establish, these standards ought to apply to the evaluation of "all judges with more than a year in office, including those who were provisionally suspended. Any reincorporated judges will also be evaluated".[56] The standards would also govern the public competitions to "fill vacant judges positions, existing positions or positions that may be created".[57]

With regard to the evaluation criteria for judges in office, the Norms establish a list of factors intended to "value and qualify the judicial work performed by the person under assessment, his/her attitude and personal behaviour, his/her cultural level, his/her knowledge of the law and other qualities required for the good performance of the judicial office".[58] However, pursuant to the provisions of the preceding Decree of the Regime for the Transition of Public Power passed in December 1999, just a few days before the Constitution, all judicial positions had to be earned through competitions, and sitting judges had to compete under the same conditions as any lawyer who aspired to enter the judicial career.[59] Therefore, assessments were not carried out.

For public competitions, despite the fact that the Norms maintain the categories and hierarchy provided by the Organic Law on the Judicial Career,[60] the requirements to enter the judicial career were modified in some areas; among others, it is no longer necessary to have experience as a lawyer to access the "C" judge category. It is enough to be listed in the records of the Bar Association and in INPREABOGADO.[61]

The adoption of clear criteria to select the members of the judiciary based on merit is a prerequisite for judicial independence.[62] International standards establish that persons selected for judicial positions "shall be individuals of integrity and ability with appropriate training or qualifications in law".[63] Therefore, as stated by, *inter alia,* the Inter-American Court on Human Rights in the case of *Reverón Trujillo vs. Venezuela*, the selection and appointment of judges must take into account the specific professional duties of a judge.[64] It must also be based on the individual's ability to evaluate freely and impartially the legal issues presented before him/her and to interpret and apply the laws.[65] Likewise, principle 13 of the UN Basic Principles on the Independence of the Judiciary establishes the following regarding judges' promotions: "Promotion of judges, wherever such a system exists, should be based on objective factors, in

[55] Norms for the Evaluation and Public Competitions for the Admission and Permanence in the Judiciary, published in Official Gazette of the Republic of Venezuela No. 36.910 of March 14, 2000.
[56] Norms for the Evaluation and Public Competitions for the Admission and Permanence in the Judiciary, Article 4.
[57] Norms for the Evaluation and Public Competitions for the Admission and Permanence in the Judiciary, Article 13.
[58] Norms for the Evaluation and Public Competitions for the Admission and Permanence in the Judiciary, Article 3. The factors taken into account in the assessment, listed in Article 5 of the Standards, include both elements of subjective and objective assessment of judicial work (among others, quality and number of verdicts issued, compliance with lapses, potential disciplinary punishments) as elements pertinent to the judge, such as his/her physical ability and psycho-technical and psychological profile for the position, compliance with social habits pertinent to the dignity of the office of judge, and the evolution of his/her estate.
[59] See Decree for the issuance of the Regime for the Transition of Public Power, Article 25(2): "All the offices of judges will be subjected to a public competitive contest pursuant to the mandate of the Constitution in effect …".
[60] Norms for the Evaluation and Public Competitions for the Admission and Permanence in the Judiciary, Article 13.
[61] In other words, meet both conditions to be able to practice law in Venezuela; See infra. For the full list of requirements to be judge under the different categories as amended by the new Standards, see Norms for the Evaluation and Public Competitions for the Admission and Permanence in the Judiciary, Arts 14-16.
[62] See the Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, A/HRC/11/41 (2009), paragraph 24. See also Statute of the Ibero-American Judge, Article 11.
[63] UN Basic Principles on the Independence of the Judiciary, Principle 10. See also Draft Declaration on Independence of Justice ("Singhvi Declaration"), Article 11(b).
[64] Inter-American Court of Human Rights, *Reverón Trujillo vs. Venezuela*, Verdict of June 30, 2009, paragraph 72.
[65] See European Charter on the Statute of Judges, Article 2(1).

particular ability, integrity and experience". In principle, objective criteria for promotions should be pre-established under the law.[66]

With regard to the processes for the selection and appointment of judges, international instruments highlight the fact that, regardless of the procedure adopted by a given country, it is necessary that transparency and accountability are always ensured.[67] In this sense, the standards state that the responsibility of selecting and appointing judges must be attributed to an independent authority "that includes substantial judicial representation".[68] On the other hand, to prescribe that members of the executive or legislative branches have a role in the processes for the selection or appointment of judges does not necessarily violate the principle of separation of powers, provided that the processes and procedures are enshrined in the law.[69]

It is important to note that the guidelines for the evaluation, selection and promotion of judges identified in the Norms of Evaluation and Public Competitions are in line with international standards: the guidelines are based on objective criteria for the evaluation of the skills and qualifications of the candidates, and the jury comprises a magistrate of the Supreme Tribunal of Justice, a jury member proposed by the National School of Magistrates and a senior judge (in addition to alternate members with the same requirements as the office holders) .[70] However, the only public competitions governed by these provisions were held from 2000 to 2003 in Venezuela; those competitions were also the last to be held in the country.

2.2. Precarious position: the regime of free appointment and removal of judges

Public competitions to access the judicial career organized in Venezuela from 2000 to 2003 were announced in the media and open to all lawyers who wanted to participate. This was an open and transparent process governed by the Norms of Evaluation and Public Competitions. According to official data of the Supreme Tribunal of Justice, this public competition programme generated more than 200 tenured judges in total; the programme was characterised as "the most ambitious programme of its kind that Venezuela had ever seen", although it was on a much smaller scale than necessary.[71] However, official sources of the Executive Directorate of the Judiciary state that, in 2004, after these public competitions, only 20% of the 1,732 judges in office in Venezuela had tenure in their posts; the remaining 80% comprised of provisional judges (52%), temporary judges (26%) and those who had other positions without any tenure (2%).[72] Since the year 2003, there have not been any other public competitions to fill judges' positions or for promotions.

The Judicial Commission has appointed and continues to appoint judges with mere "provisional" status, who the Judicial Commission can freely appoint and remove. This has been declared to be contrary to international standards on judicial independence by the Inter-American Court in the *Chocrón Chocrón vs. Venezuela* case. As recognized by representatives of the State of Venezuela before the Inter-American Court in that case, "the process of restructuring the Venezuelan judiciary required the temporary appointment of judges to cover existing vacancies […] these non-permanent judges have been appointed exceptionally by a decision of the Judicial

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[66] See Statute of the Ibero-American Judge, Article 17.
[67] See Universal Charter of the Judge, Article 9; Statute of the Ibero-American Judge, Article 11.
[68] Universal Charter of the Judge, Article 9. For example, European standards translate this principle in the requirement that at least half of the members of the pertinent authority are comprised of judges selected by their peers; see European Council, Recommendation CM/Rec(2010)12 of the Ministers Committee to Member States on Judges: Independence, Efficiency and Accountability, November 17, 2010, Chapter VI.46.
[69] Universal Charter of the Judge, Article 11. See also Minimum Standards of the International Bar Association (IBA) on the matter of Judicial Independence, Standard No. 3.
[70] Norms for the Evaluation and Public Competitions for the Admission and Permanence in the Judiciary, Article 28.
[71] See Supreme Tribunal of Justice, Executive Directorate of the Judiciary, Coordinating Unit for the Modernization Project of the Judiciary, "Proyecto Para la Mejora de la Administración de Justicia en el Contexto de la Resolución de Conflictos en Venezuela", p. 22, quoted in Human Rights Watch, *Manipulating the Rule of Law: Judicial Independence threatened in Venezuela*, 2004, p. 12, available: http://www.hrw.org/sites/default/files/reports/venezuela0604sp_0.pdf.
[72] See Human Rights Watch, *Manipulating the Rule of Law: Judicial Independence threatened in Venezuela*, 2004, p. 19, available: http://www.hrw.org/sites/default/files/reports/venezuela0604sp_0.pdf.

Emergency Commission, the Judicial Commission of the Supreme Court of Justice or the plenary chamber of the highest tribunal, without completing a competitive examination to obtain the post".[73] However, the appointment of judges without a competition is no longer an exceptional situation, as expressed by agents of the Venezuelan State, since the practice of not holding public competitions for entry to the judiciary has continued from 2003 to this day.

This institutional regime brought about the proliferation of temporary or provisional judges who are freely appointed and removable.[74] According to the Inter-American Court, based on official information provided by the Supreme Tribunal of Justice of Venezuela, in 2010 the Judicial Commission appointed 1,064 provisional and temporary judges in total, which represents 56% of judges in Venezuela.[75] According to unofficial data, in May 2013 judges working in Venezuelan courts who entered the judiciary without participating in public competitions, i.e., "temporary, occasional, accidental and provisional judges", represented more than 60% of the total judges in office,[76] up to 70%.[77]

The ability of the Judicial Commission of the Supreme Tribunal of Justice to freely appoint and remove provisional judges means that a simple communication stating that "their appointment is no longer in force" is sufficient for those judges' removal.[78]

On the other hand, the magistrates of the Supreme Tribunal of Justice, pursuant to the provisions of the Organic Law of the Supreme Tribunal of Justice, must be selected by the National Assembly with a 2/3 qualified majority of votes. The concrete effect of this provision, along with the expansion of the composition of the Supreme Tribunal from twenty to thirty-two magistrates, was that in the immediate term "it allowed the coalition in power in the National Assembly to appoint 12 magistrates, thus obtaining a great majority of magistrates in the Supreme Tribunal", as denounced by the UN Special Rapporteur on the independence of judges and lawyers in 2005.[79] Moreover, the Organic Law attributed to the National Assembly the power to remove magistrates from the Supreme Tribunal for serious misconduct with a 2/3 majority, including to "annul current magistrate appointments".[80]

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[73] Inter-American Court of Human Rights, *Chocrón Chocrón vs. Venezuela*, Verdict of July 1, 2011 (Preliminary objection, Merits, Reparations and Costs), paragraph 50, p. 16.

[74] See Inter-American Commission on Human Rights, *Annual Report 2009*, paragraph 481, 482, 483, and *Annual Report 2010*, paragraphs 619-621. See also PROVEA (Venezuelan Program for Education-Action in Human Rights), *Human Rights Situation in Venezuela, Annual Report October 2008 – September 2009,* Caracas, December 10, 2009, p. 247, available: http://www.derechos.org.ve/informes-anuales/informe-anual-2009/; *Human Rights Situation in Venezuela, Annual Report October 2009 – September 2010,* Caracas, December 10, 2010, p. 289, available: http://www.derechos.org.ve/informes-anuales/informe-anual-2010/; *Human Rights Situation in Venezuela, Annual Report October 2010 – September 2011,* Caracas, December 8, 2011, p. 287, available: http://www.derechos.org.ve/informesanuales/informe-anual-2011/informe-anual-2011/.

[75] Inter-American Court of Human Rights, *Chocrón Chocrón vs. Venezuela*, Verdict of July 1, 2011 (Preliminary objection, Merits, Reparations and Costs), paragraph 71, p. 16. See also Human Rights Foundation, *Report on the State of the Independence of the Judiciary in Venezuela*, New York, September 26, 2012, p. 8, available: http://www.observatoriodeconflictos.org.ve/oc/wp-content/uploads/2013/09/Informe-Relator-Especial-Judicial-ONU-Venezuela-26-08-2012.pdf.

[76] *NCJ suspends provisions of the Code of Ethics of the Judge*, May 11, 2013, available: http://www.el-nacional.com/politica/NCJ-suspende-Codigo-Etica-Juez_0_187781512.html

[77] El Nacional, *NCJ established that dismissed judges may return to the Judiciary* (15 May 2013).

[78] See for example Supreme Tribunal of Justice of Venezuela, Constitutional Chamber, Decision of March 9, 2012 (*Martín Wilfredo Sucre López*), available: http://www.NCJ.gov.ve/decisiones/scon/Marzo/272-9312-2012-11-0341.html.

[79] Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, submitted in accordance with Commission on Human Rights resolution 2004/33 - Addendum: Situations in specific countries or territories, E/CN.4/2004/60/Add.1 (2004), paragraph 167, p. 65, in reference to Organic Law of the Supreme Tribunal of Justice, Article 8. The Special Rapporteur's conclusion was that "the adoption and application of this law, contrary to the Constitution of Venezuela and the Principles of International Law, has created a highly politicized judiciary".

[80] Ibid. See Constitution of the Bolivarian Republic of Venezuela, Article 265, and Organic Law of the Supreme Tribunal of Justice, Article 12.

Security of tenure of judges is one of the core guarantees of judicial independence. The UN Basic Principles on the Independence of the Judiciary establish that "[j]udges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists".[81]

In the case of Venezuela, violations of the principle of non-removal of judges have been denounced by international organizations and bodies, and the State of Venezuela has repeatedly been condemned by the Inter-American Court on Human Rights for infringing this principle. In the *Chocrón Chocrón* case, the Court condemned the State for removing Judge Chocrón from her post without giving her the possibility to be heard, the ability to exercise her right to a defence, and access to effective judicial recourse, in violation of the right to due process and the principle of judicial independence.[82] In *Apitz Barbera and others,* the Court specified that the provisional status of judges does not equate to free removal.[83] Referring to its own case law, the Court stated in its verdict in the *Reverón Trujillo* case that unlike all other public officials, judges have "reinforced" guarantees due to the necessary independence of the judiciary, "which the Court has deemed to be 'essential to the exercise of judicial duties'".[84]

However, in Venezuela, as noted by the Inter-American Commission on Human Rights, "the fact that [dismissals of judges] occurred almost immediately after the magistrates adopted judicial decisions in cases with significant political overtones, in addition to the fact that the resolutions for the dismissals do not clearly establish the grounds for the decision, nor do they refer to the procedure under which the decision was adopted, sends a strong signal to society and to other judges that the judiciary does not have the freedom to adopt decisions contrary to the government's interests, because in doing so the judges take the risk of being removed, without further ado, from their positions".[85]

2.3. Disciplinary regime

On 6 August 2009, the Code of Ethics of the Venezuelan Judges came into force, with aims to establish ethical principles to guide the conduct of judges, and the disciplinary regime for "all the judges within the territory of the Bolivarian Republic of Venezuela… in exercise of jurisdiction in a permanent, temporary, occasional, accidental or provisional manner", including the magistrates of the Supreme Tribunal of Justice.[86] In reiteration of the principle of judicial independence, the Code of Ethics clarifies that it is applicable solely to examine the "suitability and excellence" of judges, and not their jurisdictional activity.[87]

The disciplinary jurisdiction system established by the Code of Ethics revolves around two bodies: the Judicial Disciplinary Tribunal and the Judicial Disciplinary Court; both are comprised of judges elected by Judicial Electoral Colleges.[88] The Code of Ethics also created the "Office of Proceedings" as a governing body for disciplinary proceedings.[89]

The Transitional Provisions of the Code prescribed that, once the aforementioned disciplinary judicial bodies were established, the Commission for the Functioning and Restructuring of the Judicial System, which had been working since 27 December 1999 in a transitional capacity, would cease the exercise of its functions.[90] Subsequently, however, the disciplinary regime for judges remained for nine years under the power of this Commission, created for a transitional

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[81] UN Basic Principles on the Independence of the Judiciary, Principle 12. See also Principle 11.
[82] Inter-American Court of Human Rights, *Chocrón Chocrón vs. Venezuela*, Verdict del July 1, 2011 (Preliminary objection, Merits, Reparations and Costs).
[83] Inter-American Court of Human Rights, *Apitz Barbera and others ("First Court of Contentious Administrative Matters") vs. Venezuela,* Verdict of August 5, 2008.
[84] Inter-American Court of Human Rights, *Reverón Trujillo vs. Venezuela*, Verdict of June 30, 2009 (Preliminary objection, Merits, Reparations and Costs), paragraph 67, p. 20.
[85] Inter-American Commission on Human Rights, *Annual Report 2009*, paragraph 843.
[86] Judicial Code of Ethics of Venezuela, Articles 1 and 2.
[87] Judicial Code of Ethics of Venezuela, Article 4.
[88] See Judicial Code of Ethics of Venezuela, Articles 39, 41, 43 and 46.
[89] Judicial Code of Ethics of Venezuela, Article 52.
[90] Judicial Code of Ethics of Venezuela, Chapter VII, First Transitional Provision.

period. In fact, in practice the jurisdiction of the Commission for the Functioning and Restructuring of the Judicial System in this field lasted until September 2011, when a resolution issued by the Court and the plenary of the Judicial Disciplinary Tribunal formally started the disciplinary activities of Venezuela's Judicial Disciplinary Jurisdiction.[91]

Likewise, the Transitional Provisions of the Code of Ethics of Venezuelan Judges established that, until the creation of the Judicial Electoral Colleges, the National Assembly would be empowered to appoint the judges of the Disciplinary Tribunal and Court.[92] One of the immediate effects of this provision was that the appointed judges were former activists and representatives of the government party.[93] One of the most representative examples of this trend is the case of the current President of the Disciplinary Court, who was appointed as Higher Disciplinary Judge in June 2011,[94] after serving as President of the Commission of Internal Affairs of the National Assembly until December 2010.[95]

On 7 May 2013, the Constitutional Chamber of the Supreme Tribunal of Justice admitted a request for a precautionary measure and a request for annulment of the Code of Ethics of the Venezuelan Judges on grounds of unconstitutionality.[96] In its decision, the Constitutional Chamber agreed to suspend *ex officio* some provisions of the Code of Ethics as a precautionary measure, including the provision on the application of the Code of Ethics to the magistrates of the Supreme Tribunal of Justice, given the fact that they are subject to the disciplinary regime under the Organic Law of the Supreme Tribunal. The verdict also suspended the application *ratione personae* of the Code of Ethics to "temporary, occasional, accidental or provisional judges", as they are not judges who have entered the judicial career; the verdict established that the Judicial Commission of the Supreme Tribunal of Justice has jurisdiction to sanction them and exclude them from the judiciary.[97]

As a result of the Constitutional Chamber's decision, the disciplinary procedure under the Code of Ethics is applicable solely to judges in office who entered the judicial career through the public competitions held between 2000 and 2003. Thus, under the conditions of the current Venezuelan justice system, the Code of Ethics of the Venezuelan Judges may only apply in fact to a small portion of judges in the judiciary, since the vast majority of judges in office are provisional.

However, before the verdict *in commento*, the Judicial Commission of the Supreme Tribunal of Justice asserted the power to suspend judges in office indefinitely and without salary as a precautionary measure, including before the initiation or conclusion of an investigation by the General Inspectorate of Courts of potential disciplinary violations. Some examples of this

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[91] On 16 September 2011, processing activities start formally at the *Judicial Disciplinary Jurisdiction*, available: http://www.noticierolegal.com/justicia/tribunal-supremo-de-justicia/9011-elviernes-16-de-September-de-2011-inicia-formalmente-las-actividades-de-despacho-en-lajurisdiccion-disciplinaria-judicial.html.

[92] Judicial Code of Ethics of Venezuela, Chapter VII, Third Transitional Provision.

[93] See *Designated Judges of the Disciplinary Tribunal and the Disciplinary Tribunal of the Judiciary*, 9 June 2011, available: http://noticiaaldia.com/2011/06/designados-jueces-del-tribunal-disciplinario-y-la-cortedisciplinaria-judicial/.

[94] Globovision, *The Assembly took the oath from judges of the Disciplinary Tribunal and the Disciplinary Tribunal of the Judiciary* (14 June 2011).

[95] See *the Reform to the NCJ Law will not change the Judicial System of Venezuela* (23 April 2010), and *National Assembly will investigate the case "El Inca" Valero* (21 April 2010), available: http://www.correodelorinoco.gob.ve/etiqueta/diputado-tulio-jimenez/.

[96] Supreme Tribunal of Justice of Venezuela, Constitutional Chamber, Decision of May 7, 2013, Exp. No. 09-1038 (*Nancy Castro de Várvaro*), available: http://www.NCJ.gov.ve/decisiones/scon/mayo/516-7513-2013-09-1038.HTML.

[97] All other provisions suspended by decision of the Constitutional Chamber were those related to the instruction duties of the Office of Proceedings of the Disciplinary Tribunal, given the fact that the power to accept complaints and carry out investigations against judges, according to the Constitution, belong on the General Inspectorate of Courts; and Article 16 of the Code of Ethics, since the standard restricts the jurisdiction of the Judicial Commission of the Supreme Tribunal of Justice for the appointment of temporary, occasional, accidental or provisional judges, as it establishes the nullity of appointments made without prior consultation with the Registry of Judicial Disciplinary Information.

practice, which application has affected judicial independence in a worrisome manner, include the cases of Judge Juan Carlos Celi Anderson, a tenured judge of the Ninth Higher Court of the Labour Circuit of the Judicial District of the Metropolitan Area of Caracas;[98] Judge Hugo Javier Rael Mendoza, a tenured judge of the First Instance Court of the Criminal Circuit of the State of Merida;[99] Judge Naggy Richani Selman, a tenured judge of the First Instance Court and Temporary Judge of the Court of Appeals of the Criminal Circuit of the Judicial District of the State of Falcón;[100] and Francisco Codecido Mora, a tenured judge of the First Instance Court of the Criminal Circuit of the State of Táchira.[101] An emblematic case of this practice and others that violate the independence of the judiciary is that of Judge María Lourdes Afiuni, a judge who is still suspended from office in the Criminal Circuit of the Metropolitan Area of Caracas (see below).

In all these cases, the Judicial Commission of the Supreme Tribunal of Justice replaced the bodies with disciplinary jurisdiction, which the Constitution of Venezuela identifies as "disciplinary tribunals established under the law",[102] in other words, the Disciplinary Tribunal and Court under the Code of Ethics (or the Commission for the Functioning and Restructuring of the Judicial System, when the Tribunals were yet to be set up). The operation of the Judicial Commission was declared by the Supreme Tribunal as "clearly… outside the scope of its powers", at least insofar the Plenary of said Tribunal authorized the court to suspend without remuneration those judges "who do not pass the institutional evaluation".[103] With regard to the measure of suspension applied, it should firstly be noted that, since the entry into force of the Code of Ethics, the precautionary suspension of a judge may only be ordered pending disciplinary investigation, and until the end of the disciplinary process.[104] Additionally, the practice of the Judicial Commission violates the obligation to provide the grounds for any administrative act, does not respect guarantees of due process, and goes against the principle of presumption of innocence of the suspended judges.

International standards establish that disciplinary measures can only be applied against a judge if he/she violates pre-established norms of judicial conduct, contained for instance in a written code of conduct.[105] The UN Basic Principles on the Independence of the Judiciary state that "judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary".[106] Disciplinary action against judges should not be applied to compromise judicial independence.[107] Judges may only have criminal, civil or disciplinary liability in cases and conditions provided by the law,[108] and may only be suspended or removed from their office "due to incapacity or behaviour that renders them unfit to discharge their duties".[109]

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[98] Supreme Tribunal of Justice of Venezuela, Political-Administrative Accidental Chamber, Decision of April 17, 2012, Exp. No. 2011-0562 (*Juan Carlos Celi Anderson*), available: http://www.NCJ.gov.ve/decisiones/spa/abril/00323-18412-2012-2011-0562.HTML.

[99] Supreme Tribunal of Justice of Venezuela, Political-Administrative Chamber, Decision of February 28, 2012, Exp. No. 2010-0432 (*Hugo Javier Rael Mendoza*), available: http://www.NCJ.gov.ve/decisiones/spa/Febrero/00126-29212-2012-2010-0432.html.

[100] Supreme Tribunal of Justice of Venezuela, Political-Administrative Accidental Chamber, Decision of February 1, 2012, Exp. No. 2009-0221 (*Naggy Richani Selman*), available: http://www.NCJ.gov.ve/decisiones/spa/Febrero/00053-2212-2012-2009-0221.html.

[101] Supreme Tribunal of Justice of Venezuela, Constitutional Chamber, Decision of July 3, 2007 (*Francisco Elias Codecido Mora*), available: http://www.NCJ.gov.ve/decisiones/scon/Agosto/1672-030807-05-2121.htm.

[102] Constitution of the Bolivarian Republic of Venezuela, Article 267.

[103] See Supreme Tribunal of Justice of Venezuela, Political-Administrative Accidental Chamber, Decision of February 1, 2012, Exp. No. 2009-0221 (*Naggy Richani Selman*).

[104] Judicial Code of Ethics of Venezuela, Article 61.

[105] UN Basic Principles on the Independence of the Judiciary, Principle 8; Draft Declaration on Independence of Justice ("Singhvi Declaration"), Article 27.

[106] UN Basic Principles on the Independence of the Judiciary, Principle 8.

[107] Universal Charter of the Judge, Article 11; Statute of the Ibero-American Judge, Article 19.

[108] Statute of the Ibero-American Judge, Article 19.

[109] UN Basic Principles on the Independence of the Judiciary, Principle 18.

Complaints against judges must be processed "promptly and impartially", according to the relevant procedures, pursuant to the guarantees of due process,[110] and "specifically, [respect] for the rights to have a hearing, defence, rebuttal, and the correspondent legal recourses", as stated in the Statute of the Ibero-American Judge.[111] All decisions in disciplinary matters, with very limited exceptions, must be subject to an independent review.[112] With regard to the entity responsible for disciplinary proceedings against judges, some international standards suggest that, when it is not a judicial entity *per se*, it should be a specialized body created by the law, whose decisions must be subject to control by a higher judicial body,[113] and at least half of its members, in principle, must be judges.[114]

Conclusions

- The independence of the judiciary is gravely threatened due to the fact that judges' tenure is not guaranteed. Most judges hold office under provisional instead of permanent terms. The so-called judicial career, disturbed by the settled practice in the judiciary that prevents the appointment of judges with tenure, is incomplete and does not guarantee the attribution of positions pursuant to the criteria of independence and autonomy.
- Public competitions for judges' positions have been suspended since the year 2003, which affects the integrity of the judiciary and its renewal.
- The criteria to select and to maintain judges in their positions do not adhere to international standards on the matter, nor comply with the standards contained in the Venezuelan legal system.
- Ethical standards governing the judiciary have been surpassed by a practice that ignores their application and validity. Judicial authorities do not apply the criteria and standards from the Code of Ethics, much less international standards that govern the subject.

3. The judiciary and its relationships with other State institutions

Notwithstanding the provisions in the law, in practice, Venezuela has witnessed a progressive deterioration of the independence of its judiciary, as a result of interference stemming from the Legislative and Executive branches, and also from higher judicial instances. Such interference has affected both individual judges, as well as the judiciary as an institution. The evident result is a deeply weakened judiciary.

An emblematic example of the attitude adopted by the judiciary with regard to its own independence is the statement by Magistrate Luisa Estella Morales, former President of the Supreme Tribunal of Justice, who characterized the principle of separation of powers as "a principle that weakens the State" and promoted a constitutional amendment intended to reduce that separation.[115]

In this context, it is important to highlight the results of the analysis conducted by the Venezuelan Program for Education-Action in Human Rights (PROVEA) of the case law of the Supreme Tribunal of Justice. The results show the proportion that were declared inadmissible of

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[110] UN Basic Principles on the Independence of the Judiciary, Principle 17; Draft Declaration on Independence of Justice ("Singhvi Declaration"), Article 28. See also Commonwealth Principles on the Accountability of and the Relation between the Three Branches of Government, Principle VII (b).
[111] Statute of the Ibero-American Judge, Article 20.
[112] UN Basic Principles on the Independence of the Judiciary, Principle 20. The only possible exception would seem to imply the cases in which the Decision in disciplinary matters was issued by the highest court instance, or by the Legislative Branch in cases of dismissal due to challenging or similar proceedings.
[113] European Council, Recommendation CM/Rec (94)12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges, Chapter VI.3.
[114] European Charter on the Statute of Judges, Operative paragraph 5(1); Principles and Guidelines relating to the Right to a Fair Trial and Legal Assistance in Africa, Principle A(4)(u).
[115] El Universal, *Morales: "La división de poderes debilita al Estado" (The division of powers weakens the State)* (5 December 2009), available: http://www.eluniversal.com/2009/12/05/pol_art_morales:-la-divisio_1683109; La Patria, *Head of the Supreme Court requests a review of the Constitutional Principle of Separation of Powers* (6 December 6 2009), available: http://www.lapatriaenlinea.com/?t=jefa-del-supremo-pide-revisar-Principle-constitucional-deseparacion-poderes&nota=10673.

appeals filed against the President of the Republic, the National Assembly, the Comptroller General of the State, the National Electoral Council and the Office of the Attorney General.[116] According to the study, "only in 7.14% of the decisions [listed in the website of the STJ] the appeals were declared admissible, and only in cases against the [National Electoral Council] and the [Comptroller General of the State], because in those against the President of the Republic, [National Assembly] and [Office of the Attorney General], not a single one was declared admissible. On the other hand, 32.14% was declared without merit, in other words, the petition filed by individuals who felt their rights were threatened, did not succeed. Only in 39.28% of decisions the SJT has issued a verdict on the merits. In 60.71% of decisions the SJT has referred only to procedural aspects".[117] Based on these results, the organization that undertook the study proposes that "the STJ, either directly by declaring the recourse inadmissible, or indirectly by not ruling on the merits, has avoided setting limits to the exercise of public power, thus distorting its role as guarantor of the people's rights in regards to those powers and as an institutional counterweight".[118]

The "Case of the Commissaries"

Following the serious events of 11 April 2002, during which 19 deaths occurred and over 150 individuals were injured,[119] commissaries Henry Vivas, then-Director of the Metropolitan Police of Caracas, Lázaro Forero, Head Commissary, and Iván Simonovis, Director of Public Safety, were sentenced on 12 August 2009 to a 30-year prison term in first instance; they were found to be accomplices to the murder of two activists of pro-government political entities, against whom all three commissaries were accused of ordering the shots to be fired; they were also found to be accomplices to attempted murder, and criminal assaults against other individuals who were also victims of the tragic events. Attempts in 2010 to appeal the convictions were ruled inadmissible, including finally by an 18 May 2010 ruling of the Chamber of Criminal Cassation of the Supreme Tribunal of Justice.

On 13 September 2012, in a statement sworn in Costa Rica, former magistrate Eladio Aponte Aponte, a past President of the Chamber of Criminal Cassation of the Supreme Tribunal of Justice – and the rapporteur in the case against the Commissaries – declared that she ordered the sentence of the three Commissaries for the events of 11 April "in compliance with direct instructions" from President Hugo Chávez. The former magistrate stated that "[t]he express order that [President Chávez] gave me was: 'Get that out of the way immediately, without further delay, sentence them for good'." Moreover, in a letter addressed to Vivas, Forero and Simonovis, Aponte Aponte added: "It is an urgent duty to confess before you, and before all, that I have committed the sin of transmitting to the judges who tried your case [in the first instance and in appeal], the order to sentence you to 30 years in jail one way or another".[120]

For the duration of the proceedings, which started on 20 March 2006, the three commissaries, who were arrested between November and December 2004, were kept in a detention facility at

[116] As the organization explains in the same report, "To this end the decisions listed in the NCJ's website were selected – starting with the assumption that those of greater interest for the institution are published – and we have classified them according to the criteria used by the NCJ"; See PROVEA (Venezuelan Program for Education-Action in Human Rights), *Human Rights Situation in Venezuela, Annual Report January – December 2012*, Caracas, April 18, 2013, p. 300 (available: http://www.derechos.org.ve/informe-anual-2012/).
[117] Ibid, p. 301.
[118] Ibid.
[119] After three days of a general strike, on April 11, 2002 a 10-Km march took place in Caracas up to the Miraflores Presidential Palace. It was initially started by a call from unions and business organizations to publicly protest to complaint about the worsening of the country's financial situation. Due to some confrontations between Officers of the Metropolitan Police of Caracas, participants in the march and followers of the President, some snipers started shooting against the people, leaving 19 dead. The events of April 11 ended with an attempt to establish a *de facto* government presided by businessman and president of *Fedecámaras*, Pedro Carmona, after an announcement that Chávez had resigned the Office of the President. Forty eight hours after the events of April 11, Chávez retook Office with the support of a group of high commands of the National Armed Forces.
[120] See María del Pilar Pertíñez Heidenreich de Simonovis, Synopsis of the criminal proceeding filed against Commissaries *Ivan Simonovis, Henry Vivas, Lázaro Forero and 8 officials of the Metropolitan Police for the events occurred in Caracas on 11/04/2002*, Caracas, September 15, 2008, p. 12, available: http://www.urru.org/papers/DDHH/PresosPoliticos/2012_PP_varios/SIMONOVIS_2012_1.pdf.

the political police. In July 2011, Henry Vivas and Lázaro Forero were granted humanitarian measures (they had cancer), after the late President Chávez exhorted the judiciary to grant humanitarian measures to "political prisoners" and, in general, to prisoners with grave illnesses, hours before he started chemotherapy himself, during an extraordinary session of the Council of Vice Presidents broadcast on national television.[121] However, in the case of Commissary Simonovis, the humanitarian measure requested several times by his relatives, his defence team and several civil society organizations has so far been denied, despite the fact that the former commissary had developed a number of serious illnesses during his time in prison.[122]

The report published by the Human Rights Institute of the International Bar Association (IBAHRI) in April 2011 about the "Afiuni effect", so-named after the prosecution case of Venezuelan judge María Lourdes Afiuni, noted how the systematic violations of the principles of independence and tenure of judges has created distrust within the Venezuelan justice system. Specifically, the report published by IBAHRI identifies the existence of "an environment of fear among Venezuelan judges in deciding cases that are politically sensitive… fear of being incarcerated if the decision reached is not in agreement with the Executive branch's political guidelines" as a consequence of the judicial prosecution against Judge Afiuni for reasons linked to the exercise of her judicial profession.[123]

The Case of Judge Afiuni

On 10 December 2009, Judge María Lourdes Afiuni, acting judge in criminal matters since 2006, was detained a few hours after agreeing to replace a measure involving the deprivation of liberty of a detainee for an alternative measure; the detainee's arrest had surpassed the maximum term under Venezuelan law and was in violation of international law. In fact, in her decision, Judge Afiuni invoked the decision adopted by the UN Working Group on Arbitrary Detention, in which they recommended the State of Venezuela free the Venezuelan citizen in question, Mr. Eligio Cedeño. The next day, then-President of the Republic Hugo Chávez, in a nationwide radio and television broadcast, called the judge an "outlaw" and ordered "on behalf of the country's dignity" a thirty-year prison term for her, stating that he had discussed this decision with the President of the Supreme Tribunal. Following this public instruction from the head of the Executive Branch, charges were filed against Judge Afiuni alleging that she engaged in corruption, abetting an escape, criminal conspiracy and abuse of power. She spent two years detained in the jail called "Instituto Nacional de Orientación Femenina" (National Institute for Feminine Orientation) where, according to her claims, she was raped and subjected to other types of torture, and cruel, inhuman and degrading treatment, until she received leave for medical assistance to be operated and then a sentence of home arrest, which was subsequently suspended on 14 June 2013. The criminal trial against the judge started on November 2012. In October 2013, after having heard most witnesses' testimonies and having conducted many procedural acts, the trial was suspended due to the absence of the Office of the Attorney General at one of the hearings, and all procedural acts were declared void. In February 2014 the criminal proceedings against Judge María Lourdes Afiuni were halted.

Judge Afiuni also faces two disciplinary procedures before the Disciplinary Judicial Tribunal, originating from two disciplinary complaints submitted by the General Inspectorate of Courts in 2012, as a result of investigations that were opened after her suspension. Judge Afiuni argued the invalidity of these actions in a petition she filed before the Political-Administrative Chamber of the Supreme Tribunal of Justice against the resolution adopted by the STJ's Judicial Commission on 11 December 2009. As a result of this resolution, Judge Afiuni was suspended from office without remuneration, without any prior proceeding or inquest, "until the General Inspectorate of Courts finishes their investigation". In June 2013, Judge Afiuni presented to the

[121] Noticias24, *Lázaro Forero: "Unfortunately there had to be an illness for the President to become sensitized"* (21 July 2011), available: http://www.noticias24.com/actualidad/noticia/283274/extraoficial-lazaro-podria-ser-el-segundopreso-politico-en-libertad/.

[122] El Universal, *Medical board will prepare a new report for the judge in the Simonovis case* (1 February 2014).

[123] IBAHRI*, Distrust in Justice: the Afiuni case and independence of the judiciary in Venezuela,* April, 2011, p. 11, available: http://www.ibanet.org/Human_Rights_Institute/Work_by_regions/Americas/Venezuela_spanish.aspx.

Executive Directorate of the Judiciary a request for the immediate reinstatement of her position as judge.

If the "Afiuni case" was the latest step marking the fragility of the judicial career in the country, the growing frequency of collusion between the judiciary and the Office of the Attorney General in placing the interests of third parties, and those aligned with the Executive branch, before justice has deeply affected judicial independence.

The "Guarapiche River case"

On 21 March 2012, the 25th Tribunal for the Control of the Metropolitan Area of Caracas accepted a request from the Office of the Attorney General to demand "from national and regional printed media - as well as radio, television and digital media - to act with extreme responsibility in broadcasting information related to the alleged pollution of water in the country's rivers intended for human use, requiring due accurate technical support validated by a competent entity". The request of the Office of the Attorney General originated from several media organisations' broadcast about an oil spill that occurred in the Guarapiche River, and the subsequent allegations by some of them regarding the water quality in some areas of the cities of Caracas, Valencia and Maracay.

The Office of the Attorney General's request and the subsequent judicial decision accepting it, arrived a day after then-President, Hugo Chávez, publicly declared that he had urged the Attorney General and the President of the Supreme Tribunal of Justice to investigate the persons who disseminated information about the alleged pollution. More specifically, as can be heard in the speech during a televised Council of Ministers from the Presidential Palace, the Head of the Executive declared at the time: "I am not a judge, but I am the Head of State and I must make a call to State bodies to undertake their own responsibilities. I urge the Attorney General of the State, Luisa Ortega, to undertake her responsibility; I urge the President of the Supreme Tribunal of Justice, Luisa Estela Morales, with all due respect, to undertake her responsibility. We cannot keep our arms crossed in response to such campaigns…"

This collusion has lately risen to dramatic proportions with regard to measures adopted to criminalize protest. It occurs between powers that, according to international law principles and the constitution, must comprise the pillars of a *checks and balances* system, allowing for their mutual control while not implying interference by any one pillar in the duties of the others.

According to data gathered by the Venezuelan NGO PROVEA, public policies for the criminalization of protests have been disseminated and become entrenched since 2005. As a result, as of January 2014 "[n]early 3,000 people were subject to criminal proceedings for exercising diverse forms of protest in the country, about 130 union leaders face criminal charges, and 17 union leaders are imprisoned".[124] This situation is a result of the convergence and proliferation of initiatives taken by representatives of several powers of the State, starting with the amendment of the Organic Law of National Security issued by former President Hugo Chávez in 2002, which defined "security zones" as those areas near government headquarters, military or oil facilities, in which it is forbidden to hold protests. According to the Venezuelan organization 'Control Ciudadano', in March 2014, 30% of Venezuelan territory would qualify as a "security zone".[125] Then, in 2005, there was a legislative amendment to the Criminal Code of Venezuela that increased prison terms to eight years for those blocking roads and impeding free circulation in order to generate an incident.

[124] El Universal, *Military judges process civilians to stop protests* (31 January 2014).
[125] *PROVEA rejects the criminalization of protest and warns about the institutionalization of a repressive mentality in government actions*, February 7, 2014, available: http://www.derechos.org.ve/2014/02/07/provea-rechaza-la-criminalizacion-de-la-protesta-yadvierte-sobre-la-institucionalizacion-de-la-mentalidad-represiva-en-la-accion-de-gobierno/.

However, as PROVEA stated, "the Organic Law of National Security, along… with a set of laws that sets limits on rights, is merely the legal framework for the Office of the Attorney General, Tribunals, military and police forces to support their actions intended to criminalize social struggles".[126] Examples of the different laws used by representatives of the Office of the Attorney General as normative bases to stop protesters include, according to the reports, "offences of road obstruction, damage to the heritage, resisting authority, incitement, and forming or joining an association with the aim to commit crimes".[127] On the other hand, as it was also noted, "[t]wo conditions set in the [Organic Criminal Procedural Code] must be met in order to issue precautionary measures: that there is a danger of flight or obstruction of justice. However, the judges ignore this due to their fear of losing their jobs or ending up in jail like Judge (María) Afiuni".[128]

Conclusions

The interference by other branches of State power has seriously affected judicial independence and autonomy in Venezuela, evolving from being episodic to being systematic and embedded in the *modus operandi* of the various authorities. In addition, the judicial and political persecution experienced by some judges for trying to act independently has negatively impacted other judges, inhibiting them or causing fear among them.

[126] Ibid.
[127] *Criticism against the fact that the Justice system uses the Anti-terrorism law against protests*, March 3, 2014, available: http://www.conflictove.org.ve/criminalizacion-de-la-protesta/critican-que-justicia-use-la-leyantiterrorista-contra-protestas-reportaje-de-juan-francisco-alonso.html See also *PROVEA warns about criminalization of protest in Venezuela, May 4,* 2013, available: http://www.eluniversal.com/nacional-y-politica/130504/provea-alerta-sobrecriminalizacion-de-la-protesta-en-venezuela. According to reports, the provisions of the anti-terrorism law were applied for the first time in Venezuela against public objections as a response to the protests that took place after the presidential elections of April 14, 2013.
[128] *Criticism against the Justice System's use of the anti-terrorism law against protests*, March 3, 2014, available: http://www.conflictove.org.ve/criminalizacion-de-la-protesta/critican-que-justicia-use-la-leyantiterrorista-contra-protestas-reportaje-de-juan-francisco-alonso.html.

III. THE OFFICE OF THE ATTORNEY GENERAL

1. Organization and functioning of the Office of the Attorney General

The Office of the Attorney General is, along with the Comptroller General of the State and the Ombudsman, one of the constitutional bodies that comprise the Citizen Power, a new independent power created by the 1999 Constitution. Like all other bodies of Citizen Power, the Office of the Attorney General has functional, financial and administrative autonomy.[129] The Office of the Attorney General has three main roles: to ensure respect for constitutional rights and guarantees in judicial procedures, including due process, as well as the application of international treaties, covenants and agreements signed by the State of Venezuela; to lead criminal investigations; and to exercise criminal action on behalf of the State, as legally prescribed.[130]

As with the Supreme Tribunal of Justice, after the entry into force of the new Constitution, the Office of the Attorney General underwent a transitional period, which ended with the enactment of the Organic Law of the Office of the Attorney General in March 2007.[131] The highest authorities of the Office of the Attorney General are the Attorney General, appointed by the National Assembly for a seven-year period,[132] and the Deputy Attorney General; next in hierarchical order are the Prosecutors, who represent the Attorney General in each judicial district.[133] There are also "Special Offices of the Attorney General", in charge of representing the Office of the Attorney General before specific entities, such as the Supreme Tribunal of Justice,[134] or per subject matter.[135] It is important to highlight the fact that the trend towards prosecutors' specialization *ratione materiae* and within a specific territorial scope has been accelerated since the enactment of the Organic Law, through the creation of Specialized Offices of the Attorney General under special laws, such as the Organic Law on Women's Right to a Life Free from Violence,[136] the Law Against Corruption,[137] and the Organic Law against Organized Crime.[138]

According to international standards, prosecutors have a crucial role in the administration of justice and must fulfil their duties fairly, consistently and promptly, uphold and protect human dignity and defend human rights.[139] Additionally, they have an active role in criminal

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[129] See Constitution of the Bolivarian Republic of Venezuela, Article 273.
[130] Constitution of the Bolivarian Republic of Venezuela, Article 285.
[131] Organic Law of the Office of the Public Prosecutor, published in Official Gazette of the Republic of Venezuela No. 38647 of March 19, 2007. During the transition, the actions of the Office of the Attorney General were governed by the prior Organic Law of the Office of the Public Prosecutor, published in Official Gazette of the Republic of Venezuela, Extraordinary issue No. 5.262 of September 11, 1998, and by the Personnel Statute of the Office of the Attorney General, issued by Resolution of the Attorney General of the Republic No. 60 of March 4, 1999, in effect since July 1, 1999.
[132] Constitution of the Bolivarian Republic of Venezuela, Article 284.
[133] Organic Law of the Office of the Public Prosecutor, Articles 18 and 27.
[134] Organic Law of the Office of the Public Prosecutor, Article 32.
[135] Examples of this second type are the Public Prosecutors of the Office of the Attorney General of the Constitutional Rights and Guarantees, who are required to guarantee respect for rights with constitutional hierarchy in judicial processes and administrative proceedings "and challenge, upon request of the Public Prosecutor or the Attorney General of the Republic, acts of general effects contrary to the Constitution of the Bolivarian Republic of Venezuela and the laws" (Organic Law of the Office of the Public Prosecutor, Article 40); and the Public Prosecutors of the Office of the Attorney General in the Protection System for Children, Adolescents and Families, with similar guarantee roles (See Organic Law of the Office of the Public Prosecutor, Article 42).
[136] Organic Law on Women's Right to a Life Free from Violence, published in Official Gazette of the Republic of Venezuela No. 38.770 of September 17, 2007.
[137] Law Against Corruption, published in Official Gazette of the Republic of Venezuela, Extraordinary issue No. 5.637 of April 7, 2003.
[138] Organic Law against Organized Crime, published in Official Gazette of the Republic of Venezuela, Extraordinary issue No. 5.789 of October 26, 2005.
[139] See UN Guidelines on the Role of Public Prosecutors, Guideline 12. See also International Association of Public Prosecutors' Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Public Prosecutors, Articles 1(h) and 4.1.

procedure,[140] and must perform these duties impartially and objectively, assuring the protection of the public interest.[141]

However, with regard to the activity of the Office of the Attorney General in Venezuela, it should be noted that the Office has received complaints and actions that did not result in accusations, thus contributing to a rate of impunity that surpasses 90% for common offences and is even higher for crimes involving human rights violations. Most complaints end up being dismissed or closed.[142] Taking into consideration final decisions from 2008 until 2012, the Office of the Attorney General rendered 2,164,751 final decisions and only made a decision to bring charges in 271,740 instances. This situation was denounced before the Inter-American Commission on Human Rights by Venezuelan civil society organizations, who pointed out that "out of 8,813 new claims for human rights violations filed in 2012 before the Office of the Attorney General, 97% were dismissed or closed, and in the remaining 3% charges were filed",[143] noting specifically the harmful impact of the inefficacy in the actions of the Office of the Attorney General in cases of alleged human rights violations.

Another problematic aspect of the actions of the Office of the Attorney General, which has also contributed to the spread of impunity, is the general insufficiency of human resources at the facilities of the Office of the Attorney General throughout the country. As noted by the Observatorio Venezolana de Prisiones, "the excessive number of claims that these officials must attend to, the huge amount of work that is necessary to fulfil their multiple duties and the lack of sufficient staffing at the Offices of the Attorney General", in addition to the practice of rotating prosecutors in several posts, "will significantly impact the deteriorating quality of the work of these officials", giving rise to huge procedural delays and, in the end, causing "serious harm both to the victim and to those accused and to the administration of justice".[144]

This picture stands in contrast with the diligence of the Office of the Attorney General in politically sensitive cases, and particularly in those against opposition leaders, in which its actions have been characterized as biased.

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[140] UN Guidelines on the Role of Public Prosecutors, Guideline 11. See also International Association of Public Prosecutors' Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Public Prosecutors, Article 4.2.

[141] UN Guidelines on the Role of Public Prosecutors, Guideline 13. See also International Association of Public Prosecutors' Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Public Prosecutors, Articles 1(g), 3(a) and 3(c).

[142] In 2008 out of 224.803 final decisions, 153.475 were dismissed and 78.231 case files were closed, and only 26.822 were charges (official data of the Office of the Attorney General – See *Annual Report 2008*, available: http://www.mp.gob.ve/web/guest/informe-anual-2008). In 2009 there were 410.300 final decisions, 42.003 charges and 25.352 dismissals (official data of the Office of the Attorney General – See *Annual Report 2009*, available: http://www.mp.gob.ve/web/guest/informeanual-2009). In 2010, 482.258 were final decisions, 57.715 charges, 286.670 dismissals and 130.009 case files closed (official data of the Office of the Attorney General – See *Annual Report 2010*, available: http://www.mp.gob.ve/c/document_library/get_file?uuid=cd583d88cf064b6a830dd540a56772ca&groupId=10136). In 2011 there were 529.333 final decisions, of which 67.470 were charges, 311.207 dismissals and 107.201 case files closed (official data of the Office of the Attorney General – See *Annual Report 2011*, available: http://www.mp.gob.ve/c/document_library/get_file?uuid=c9efb1a0-93db-4320-8c9f-be4d1a49397b&groupId=10136). In 2012, the Office of the Attorney General changed the manner to submit its Annual Report: thus, neither dismissals nor case files closed appear. The Report states that there were 518.057 final decisions, of which 77.730 filed (official data of the Office of the Attorney General – See *Annual Report 2012*, available: http://www.mp.gob.ve/c/document_library/get_file?uuid=75bdeff7-d8fc-461f-b24bbb24ec8a3019&groupId=10136)

[143] Information received by the Inter-American Commission on Human Rights during the closed hearing on the general situation of human rights in Venezuela, held on November 1, 2012, during the 146th Period of Sessions of the IAHRC, requested by COFAVIC, ACSOL, Human Rights Vicarage of Caracas; See Inter-American Commission on Human Rights, *Annual Report 2012*, paragraph 378, p. 424.

[144] Venezuelan Prisons Observatory, *Report on the Procedural Situation of Inmates in Venezuela - 2008*, pp. 99-101, available: http://www.ovprisiones.org/pdf/INF_SituaPPL08.pdf.

1.1. Hierarchical structuring of the Office of the Attorney General and lack of autonomy among prosecutors

International standards state that the use of prosecutors' discretional powers, when applicable, should be done in an independent manner and not be subject to political influence.[145] Moreover, the law, published rules or regulations must provide guidelines to promote fairness and coherence in the criteria adopted in making decisions in the prosecutorial process.[146] If external authorities to the Office of the Attorney General have the right to provide general or specific instructions to prosecutors, those instructions must be transparent, come from a legitimate authority, and be subject to established guidelines in order to protect both the independence of the Office of the Attorney General, as well as the public perception thereof.[147]

States must ensure that prosecutors can exercise their professional role without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, criminal or other liability.[148] Specifically, the authorities must provide physical protection for prosecutors and their families when their personal safety is threatened as a result of the discharge of prosecutorial functions.[149]

In Venezuela, the Organic Law of the Office of the Attorney General establishes that the Office of the Attorney General is a hierarchical entity, characterized by the fact that the Attorney General exercises the prerogatives on the representation, management, control and discipline over all the staff members of the Office. According to the provisions of the Law: "Prosecutors are required to comply with instructions and guidelines issued by the Prosecutor or the Attorney General of the Republic, or whomever is acting in that position, or through hierarchically pertinent officials, to carry out the criminal investigation or to exercise the representation of the Office of the Attorney General before the courts".[150]

In practice, the principle of unity and indivisibility of the Office of the Attorney General as provided under the Organic Law[151] has been interpreted and utilized to impose a requirement of a unified prosecutorial policy on all Offices of the Attorney General, issued by the Attorney General through both written and oral memos and instructions. Thus, as a result, prosecutors are not independent or autonomous, and a prosecutor in his/her individual capacity may not apply, in actions related to investigations and in criminal proceedings, criteria different from those already established by the Attorney General. Consequently, in the actual practice of the Office of the Attorney General, this principle and that of the hierarchical structure of the Office of the Attorney General have been the normative bases for the practice that all decisions and actions, even those solely procedural, must be authorized by the Attorney General.

Additionally, with regard to the mechanism to assign cases in the Office of the Attorney General, the lack of transparency and the subservience "in many cases to political reasons" was denounced by most lawyers interviewed by the Observatorio Venezolana de Prisiones in 2008.[152] In fact, the discretional assignment and hearing of cases, along with the prosecutors' rotation, may represent windows of opportunity for political manipulation of the mechanisms of justice. In 2009, the Inter-American Commission on Human Rights received information stating that, in

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[145] International Association of Public Prosecutors' Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Public Prosecutors, Article 2.1.
[146] UN Guidelines on the Role of Public Prosecutors, Guideline 17.
[147] See International Association of Public Prosecutors' Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Public Prosecutors, Article 2.2.
[148] UN Guidelines on the Role of Public Prosecutors, Guideline 4. See also International Association of Public Prosecutors' Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Public Prosecutors, Article 6(a).
[149] UN Guidelines on the Role of Public Prosecutors, Guideline 5. See also International Association of Public Prosecutors' Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Public Prosecutors, Article 6(b).
[150] Organic Law of the Office of the Public Prosecutor, Article 8.
[151] See Organic Law of the Office of the Public Prosecutor, Article 6 "Unity in criteria and performance. The Office of the Attorney General is one and indivisible…".
[152] Venezuelan Prisons Observatory, *Report on the Procedural Situation of Inmates in Venezuela - 2008*, pp. 90-91, available: http://www.ovprisiones.org/pdf/INF_SituaPPL08.pdf

Venezuela, "the Office of the Attorney General does not have an objective case assignment system and that matters are assigned "at will". As evidence of this, one can refer to the fact that, despite having more than 1,000 prosecutors nationwide, all investigations related to the interests of the government's party and the executive branch would be concentrated in the hands of a small number of prosecutors".[153]

2. The prosecutorial career

The UN Guidelines on the Role of Prosecutors require that laws or published rules or regulations ensure that prosecutors enjoy "reasonable conditions of service…, an appropriate remuneration and, where applicable, tenure, pension and age of retirement".[154] Promotions must be based on objective factors and the decisions adopted in this matter must follow a fair and impartial procedure.[155] Additionally, prosecutors must maintain "at all times the honour and dignity of their profession".[156] However, as mentioned, most prosecutors are provisionally appointed, so security of tenure is not guaranteed.

2.1. Public Competitions and the National School of Prosecutors of the Office of the Attorney General

International standards state that those individuals appointed as prosecutors must have integrity and ability, with appropriate training and qualifications.[157] Consequently, States must ensure that selection criteria contain provisions against appointments based on partiality or prejudice, and that prosecutors receive appropriate education and training.[158]

In Venezuela, the Organic Law of the Office of the Attorney General establishes that, to enter the prosecutorial career, it is necessary to succeed in a public competition, the basis for and requirements of which are established by the Attorney General of the Republic.[159] One of the essential requirements to participate in the competition is to be an attorney graduated from the National School of Prosecutors of the Office of the Attorney General ('the School'), which was created by a resolution of the Attorney General of the Republic and inaugurated in October 2008.[160]

The School, with administrative, functional and technical autonomy, was created hierarchically under the Attorney General in order to develop and implement an Education and Training Plan for the professional staff of the Office of the Attorney General and for those aspiring to enter the prosecutorial career, and to plan, coordinate and implement competitions to enter the prosecutorial career.[161] As established by the Internal Rules of the School, passing the Training

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[153] See Inter-American Commission on Human Rights, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II., 2009, paragraph 308, p. 78.
[154] UN Guidelines on the Role of Prosecutors, Guideline 6. See also International Association of Public Prosecutors' Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Public Prosecutors, Article 6(c)-(d).
[155] UN Guidelines on the Role of Prosecutors, Guideline 7. See also International Association of Prosecutors' Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 6(e).
[156] UN Guidelines on the Role of Prosecutors, Guideline 3. See also International Association of Prosecutors' Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 1(a).
[157] UN Guidelines on the Role of Prosecutors, Guideline 1.
[158] UN Guidelines on the Role of Prosecutors, Guideline 2.
[159] Organic Law of the Office of the Public Prosecutor, Article 94. See also Article 30, on basic requirements to access prosecution as a career. In application of this standard, the Office of the Attorney General has issued Resolution No. 328 of March 14, 2011 by which it issued the Norms for Public Tenders for the Admission to the Prosecutors' Career, published in Official Gazette of the Republic of Venezuela No. 39.637 of March 18, 2011.
[160] Resolution de la Attorney General of the Republic No. 263 published in Official Gazette of the Republic of Venezuela No. 38.905 of April 8, 2008.
[161] See Internal Rules of the National School for Public Prosecutors of the Office of the Attorney General, issued by Resolution No. 686 of July 8, 2008, published in Official Gazette of the Republic of Venezuela No. 39.004 of August 28, 2008, Articles 4 and 5.

Programme, which is taught by the School as part of the Education and Training Plan, to enter the prosecutorial career, "will be mandatory for anyone who wishes to enter the prosecutorial career, with exception of those who aspire to apply as Prosecutors competent in indigenous matters".[162] Once the Attorney General has established the number of applicants admitted to participate in the programme, based on the available resources, only those who pass may participate in the public competition for entering the prosecutorial career.[163]

The call for the first public competition to enter the prosecutorial career was published on 17 October 2011, to fill three positions as prosecutors in the Metropolitan Area of Caracas.[164] The call, the list of topics[165] and the scale of assessment were set in a resolution of the Attorney General.[166] In April 2012, two prosecutors selected through the competition were sworn in during an event that the Attorney General rated as "historic" and "unprecedented for the Venezuelan justice".[167] In the beginning of 2013, a call was issued for the second competition, and the two attorneys that passed were sworn in on 17 October 2013.[168]

According to data provided by the Office of the Attorney General, as of October 2013, 370 attorneys have graduated from the School since its inauguration.[169] For 2014, the Office of the Attorney General expressed the intention of opening public competitions for "positions in all Offices of the Attorney General of the Metropolitan Area of Caracas".[170]

It is important to highlight that the creation of a National School to manage and provide on-going training for officials of the Office of the Attorney General is necessary for the strengthening and independence of the institution; the School also meets pertinent international standards.

Although holding public competitions is an important achievement, it should be noted that, until January 2014, only four positions in the Office of the Attorney General were filled through two public competitions. On the other hand, the Office of the Attorney General had 751 positions

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[162] Internal Rules of the National School for Public Prosecutors of Office of the Attorney General, Article 25(1). See also an example of the Call for the Pre-registration in the Training Program to Enter Prosecution as a Career Track, available: http://www.mp.gob.ve/c/document_library/get_file?p_l_id=29942&folderId=37303&name=DLFE-2253.pdf.

[163] Internal Rules of the National School for Public Prosecutors of the Office of the Attorney General, Articles 42 and 41. See also *The Office of the Attorney General applied a psychological test to attorneys in continuing with the merits contest*, December 7, 2011, available: http://www.mp.gob.ve/web/guest/buscador/-/journal_content/56/10136/689826; and Office of the Attorney General applied an oral examination in the II Credentials and Competition Contest to Enter Prosecution as a Career Track, July 9, 2013, available: http://www.mp.gob.ve/web/guest/buscador/-/journal_content/56/10136/2750131.

[164] See *Stability of Public Prosecutors*, October 28, 2013, available: http://www.mp.gob.ve/web/guest/buscador/-/journal_content/56/10136/607104; and also *Public Prosecutors are invited to enter credentials and competition contest*, October 25, 2011, available: http://www.avn.info.ve/contenido/invitan-fiscales-postularse-concurso-credenciales-y-oposición.

[165] Resolution de la Attorney General of the Republic No. 1488 setting contents to be used in the implementation of the Norms for Public Tenders for the Admission to the Prosecutors' Career, published in Official Gazette of the Republic of Venezuela No. 39.777 of October 13, 2011.

[166] Resolution of the Attorney General of the Republic No. 1489 approving the scale to be used in the implementation of the I Norms for Public Tenders for the Admission to the Prosecutors' Career, published in Official Gazette of the Republic of Venezuela No. 39.637 of October 13, 2011.

[167] See *Attorney General took the oath of the winners of the I Norms for Public Tenders for the Admission to the Prosecutors' Career*, April 10, 2012, available: http://www.mp.gob.ve/web/guest/buscador/-/journal_content/56/10136/997193.

[168] Noticias24, *Attorney General took the oath of the winners of the Norms for Public Tenders for the Admission to the Prosecutors' Career* (17 October 2013), available: http://www.noticias24.com/venezuela/noticia/200874/fgr-juramento-aganadoras-del-publicode-credenciales-y-de-oposicion-para-su-ingreso-a-la-carrera-fiscal/.

[169] Ibid.

[170] Noticias24, *Attorney General took the oath of the winners of the Norms for Public Tenders for the Admission to the Prosecutors' Career* (17 October 2013), available: http://www.noticias24.com/venezuela/noticia/200874/fgr-juramento-aganadoras-del-publicode-credenciales-y-de-oposicion-para-su-ingreso-a-la-carrera-fiscal/.

that, pursuant to the Organic Law, should have been filled by prosecutors selected through the aforementioned public competitions.[171]

2.2. Discretional selection and appointment of prosecutors

Notwithstanding the provisions of the Organic Law of the Office of the Attorney General and the constitutional requirement that norms are established "to ensure a career system" for the exercise of the role of prosecutor,[172] in effect in 2012, "[t]he decisions through which the Public Prosecutor's Office appointed various persons as prosecutors were published in the Official Gazette of the Bolivarian Republic of Venezuela; however, the notices did not explain the reasons for the appointment".[173] These appointments were conducted for the Higher Prosecutor who, under the Organic Law, is freely appointed and removed,[174] for positions under the Deputy Office of the Attorney General and other General Directorates,[175] and for assistant prosecutors, who comprise most of the staff of the Office of the Attorney General. It should also be noted that these appointments are done through resolutions of the Attorney General "in exercise of the power granted by Article 6 of the Organic Law of the Office of the Attorney General and, in exercise of the powers established under paragraphs 1 and 3 of Article 25", which list the powers of the Attorney General.[176] Additionally, this last provision refers to Article 3 of the Personnel Statute of the Office of the Attorney General, which states that "those positions that contain a reference stating that the pertinent official is freely appointed will be deemed such, or those that are considered such by means of a resolution issued to that effect by the Attorney General of the Republic".

As a result of the above, notwithstanding any statements from the State of Venezuela about reverting the "historic" trend of prosecutors' positions being provisional, through the enactment of the Organic Law of the Office of the Attorney General on the one hand and the creation of the National School on the other, for all prosecutors currently in office, minus the four mentioned above, the situation has not changed in practice since before the 1999 Constitution, when entering the prosecutorial career occurred through a "direct appointment by the Attorney General of the Republic".[177]

As said by the Inter-American Commission in 2009, "according to the information received by the Commission, 100% of 2,644 prosecutors appointed between 2004 and September of 2009 were not appointed through a public competition, and therefore are not in permanent positions. Just in 2008, 411 interim assistant prosecutors were appointed, 183 provisional prosecutors, 9 deputy prosecutors, 6 higher provisional prosecutors, and 22 non-incumbent prosecutors under other categories… The situation repeats itself in 2009, a year in which according to information received by the Commission, by September a total number of 302 prosecutors were appointed outside a public merits and competitive competition, including 209 interim prosecutors, 86 provisional prosecutors, 3 deputy prosecutors, and 4 higher prosecutors. All of these

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[171] Calculation made based on official data published by the Office of the Attorney General, available on the website http://act2.mp.gob.ve/ (consulted for the last time on January 20, 2014). It is stated that the calculation bears in mind the following Public Prosecutor Offices: Public Prosecutors' Offices with national jurisdiction (77); Public Prosecutors' Offices with state wide jurisdiction (637); Public Prosecutors' Offices with municipal jurisdiction (26); Public Prosecutors before the Supreme Tribunal of Justice (8); and Public Prosecutors before Contentious Administrative Courts. The positions of Higher Public Prosecutors were not included because, under Article 27 of the Organic Law of the Office of the Public Prosecutor, access to the position as Higher Public Prosecutor is no accessible through Public Credentials Contests and Competitions, but rather it is a position at will.

[172] Constitution of the Bolivarian Republic of Venezuela, Article 286.

[173] See Inter-American Commission on Human Rights, *Annual Report 2012*, paragraph 478, p. 451.

[174] Organic Law of the Office of the Public Prosecutor, Article 27.

[175] Personnel Statute of the Office of the Attorney General, Article 3.

[176] As an example, see the Resolutions of the Attorney General No. 26, 24 of January 9, 2012; No. 32, 28, 29, 30, 33, 31 of January 10, 2012; No. 36 of January 11, 2012; No. 13, 15, of January 5, 2012, published in Official Gazette of the Republic of Venezuela No. 39.842 of January 13, 2012.

[177] See Inter-American Commission on Human Rights, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II., 2009, paragraph 220, p. 58.

prosecutors are freely appointed and removable."[178] In January 2012, it was reported that "more than 1,500 prosecutors at the Office of the Attorney General are provisional" (sic), appointed and removed by the Attorney General.[179]

The Annual Report submitted by the Office of the Attorney General with regard to the year 2013 provides data about "the appointments, promotions and transfers of provisional and assistant prosecutors… and positions created to strengthen the Offices of the Attorney General". The report states that throughout 2013, 200 positions were created "to strengthen the Offices of the Attorney General". To these are added, presumably, the 157 positions listed in the same report as "appointed" prosecutors, about which the report specifies: "recruitment and selection mechanisms were optimized to appoint persons as prosecutors, by evaluating the applicants' technical-legal formation through a process of specialized interviews, with the guidance of directors of the several areas within the Ministry's competence, thus promoting a selection of the applicants with the skills required".[180] However, it should be noted that none of these selection modalities correspond with the procedures prescribed in the Organic Law in compliance with the constitutional requirement to create a career for prosecutors, the achievement of which seems far from the logic of this recruitment process.

2.3. Prerogatives of the Attorney General and the disciplinary regime for prosecutors

In the aforementioned context, one can place the official information provided by the Office of the Attorney General of the Republic about prerogatives exercised regarding all aspects of the prosecutorial career. In 2013 alone, these consisted of the "preparation of two thousand and fifty three (2,053) resolutions issued by the Attorney General of the Republic, pertaining to: appointments, creations, jubilations, disability and survival pensions, dismissals and retirements, appeals for reconsideration and hierarchical recourses and disciplinary procedures, among others".[181]

The UN Guidelines on the Role of Prosecutors provide that disciplinary actions against prosecutors must ensure an objective evaluation and decision. Disciplinary misconduct by prosecutors must be prescribed in the law or in regulations. Complaints against prosecutors arguing that their conduct was in violation of professional rules will be heard promptly and impartially, subject to the pertinent procedures. The prosecutor in question must receive a fair trial and the decision must be subject to an independent review.[182]

In the Venezuelan system, Article 117 of the Organic Law of the Office of the Attorney General provides the potential grounds for applying a disciplinary sanction against prosecutors and other staff of the Office of the Attorney General, who "following due process may be subject to disciplinary sanctions by the Prosecutor or the Attorney General of the Republic".[183] With regard to the procedure, the Organic Law redirects to the provisions contained in the Personnel Statute of the Office of the Attorney General.[184]

However, pursuant to the express provision contained in the Personnel Statute of the Office of the Attorney General, the norms pertaining to the disciplinary regime under the Statute do not

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[178] Inter-American Commission on Human Rights, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II., 2009, paragraph 220, p. 59.
[179] El Universal, *Plan to legalize Public Prosecutors of the Office of the Attorney General in progress* (31 January 2012)
[180] Office of the Attorney General of the Bolivarian Republic of Venezuela, Office of the Attorney General of the Republic, *Annual Report 2013 to the National Assembly*, January 2014, pp. 138-139, available: http://www.mp.gob.ve/c/document_library/get_file?uuid=017b714e-2c2c-4f03-9de6-0e73c72840bc&groupId=10136.
[181] Ibid, p. 126.
[182] UN Guidelines on the Role of Public Prosecutors, Guidelines 21-22. See also International Association of Public Prosecutors' Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Public Prosecutors, Articles 6(f)-(g).
[183] See also Organic Law of the Office of the Public Prosecutor, Article 25(14) and (16), about the jurisdiction of the Attorney General of the Republic in disciplinary matters.
[184] See Organic Law of the Office of the Public Prosecutor, Article 118.

apply to "those officials or staff members who are freely appointed and removed by the Attorney General of the Republic".[185] Hence, given that most of acting prosecutors in Venezuela's Office of the Attorney General are freely appointed, the disciplinary regime of prosecutors has not been applicable over the past few years.

Conclusions

- The Office of the Attorney General of Venezuela is an essential entity in the institutional design of the country's judicial system. However, in spite of current legal provisions, the Office of the Attorney General has developed a practice that prevents full compliance with its mandate.
- Lack of tenure for prosecutors gravely affects the institution's efficacy. The existence of a very high percentage of officials, particularly prosecutors, in provisional positions reduces the quality of the service and does not comply with international standards.
- The National School of Prosecutors of the Office of the Attorney General is a good initiative to train and empower prosecutors, but requires significant change to how its role within the processes of training and selecting prosecutors for the Office of the Attorney General is perceived.
- The disciplinary procedures, necessary in public institutions and particularly in those as essential as the Office of the Attorney General, have been severely distorted. The fact that officials are beyond the purview of disciplinary standards due to the precarious status of their appointment (most are provisional, freely appointed and removable at the discretion of the Attorney General), affects the credibility and image of the service in the public's perception.
- It is undesirable for the autonomy of prosecutors to be affected by guidelines or instructions from the Attorney General. The autonomous exercise of the prosecutor's role, particularly in preparing the theory of a case, is crucial to ensure compliance with due process standards and with the victims' rights and guarantees. It is neither appropriate nor desirable to have interference from political or institutional stakeholders in the decision-making process inherent to the role of a prosecutor in a given case.
- A worrisome factor is the consistent complaint from civil society organizations and from attorneys about the lack of efficacy of the Office of the Attorney General in complying with its main obligations, and about the consequent climate of insecurity and sense of impunity. Some of the main reasons gravely affecting the efficacy of prosecutors' work are the high staff turnover, the assignment of cases without considering technical criteria and the workload, the lack of transparency in the appointment of prosecutors, the lack of focus on public service and the politicization of the prosecutorial role.

[185] Resolution No. 60 of the Attorney General of the Republic issuing the Personnel Statute del Office of the Attorney General, published in Official Gazette of the Republic of Venezuela No. 36.654 of March 4, 1999, Article 116.

IV. LAWYERS

Lawyers play a crucial role in the protection of human rights and in upholding the rule of law in any country. Thus, it is essential that access to the profession, its exercise and its members' obligations are regulated in line with international standards. In addition to the obligations they have towards their clients,[186] "lawyers shall at all times maintain the honour and dignity of their profession as fundamental agents of the administration of justice".[187]

1. Lawyers' education and access to the legal profession

Each country must ensure the existence of objective, clear and coherent rules for admission to the legal profession, in order to ensure that each individual who possesses "the necessary qualifications, integrity and good character" has access to the legal profession.[188] Procedures to allow access to the profession must be designed and implemented in such a way as to guarantee that "there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status", with the exception of requiring the attorney to be a citizen of the country.[189] Admission criteria must take into account not only the individual's professional skills and qualifications, but also his/her ethical and moral qualities, which are essential to preserve the integrity of the profession and, lastly, the legal system.[190]

Having a proper legal education is of the outmost importance, and international standards emphasize that no person may become an attorney without proper training.[191] The Singhvi Declaration explicitly recognizes the importance of legal training designed "to promote in the public interest, in addition to technical competence, awareness of ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law", helping lawyers to understand the ethical, moral and legal obligations that the members of the legal profession have towards society.[192] Additionally, legal training should not be limited to new lawyers. Moreover, a culture of continuous education for lawyers and judges should be developed, one that is "organized, systematic and permanent".[193]

The UN Basic Principles on the Role of Lawyers, as well as other international and regional instruments, attribute a joint responsibility to governments, professional associations and educational institutions (including those universities and schools that provide preparation for the access exam to the legal profession) that participate in the legal training, to ensure access to proper legal training, both at the initial level and in terms of continuous legal training.[194]

1.1. Universidad Bolivariana de Venezuela (UVB)

Currently in Venezuela, law studies are offered in universities, which award a law degree to their graduates, who subsequently only need to register before a State Bar Association and the *Instituto de Previsión Social del Abogado - Social Security Institute for Attorneys* ('INPREABOGADO') in order to practice.

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[186] UN Basic Principles on the Role of Lawyers, Principle 13. See also International Code of Ethics of the International Bar Association, Rule 10.
[187] UN Basic Principles on the Role of Lawyers, Principle 12; See also Principle 26. Draft Principles on the Independence of the Legal Profession (Noto Draft Principles), Article 17; Charter of Core Principles of the European Legal Profession, Principle (d).
[188] Draft Declaration on Independence of Justice ("Singhvi Declaration"), Article 80.
[189] UN Basic Principles on the Role of Lawyers, Principle 10.
[190] See International Bar Association's Standards and Criteria for Recognition of the Professional Qualifications of Lawyers, adopted in Istanbul in June 2001, Standard 3(a).
[191] International Bar Association, Policy Guidelines for Training and Education of the Legal Profession, adopted on November 3, 2011, Guideline 1. See also European Council, Recommendation CM/Rec (2000)21 of the Committee of Ministers to Member States on freedom to practice the legal profession, Principle II.
[192] See Draft Declaration on Independence of Justice ("Singhvi Declaration"), Article 78.
[193] Commonwealth Latimer House Guidelines on Parliamentary Sovereignty and Judicial Independence, Guideline II.3.
[194] UN Basic Principles on the Role of Lawyers, Principles 9 and 10.

In Venezuela, there are 42 law schools: 10 in public universities and 32 in private universities.[195] According to the National Council of Universities (CNU), the entity that governs the higher education system in Venezuela, these are the only universities authorized to teach the legal profession and award law degrees upon completion of studies. In 2005, the Government of Venezuela created the Universidad Bolivariana de Venezuela (UBV – Bolivarian University of Venezuela) and approved the new institution to teach legal studies, different from the programme of law, in six of its schools.

According to the CNU career description, those who graduate from UBV are '*Licenciado en Estudios Jurídicos*', the equivalent of having a Bachelor in Legal Studies.[196] However, in practice the UBV grants a law degree to graduates of the legal studies programme, although their training is substantially different from that of graduates from other law schools in and outside of Venezuela. This may be verified by reviewing the syllabus of the legal studies programme at UBV. A worrisome fact is the total absence of core classes for lawyers' training, such as those on civil law and civil and criminal procedural law, and the fact that courses on subjects such as criminal law and the penal system are placed among the elective courses.[197]

To complement evident gaps in the legal training of those who graduate from the Legal Studies programme at UBV, and to enable them to hold public positions in the Venezuelan justice system, academic levelling is necessary. This becomes evident from the content of the courses taught at the National School of Magistrates, in the framework of an agreement between the Office of the Attorney General and the UBV since 2006.[198] This agreement "establishes workshops, courses and, even, the professionalization and accreditation of studies of the Institution's officers".[199] According to a statement by the former president of the Supreme Tribunal of Justice at a graduation event of the Sucre Mission, "[at the National School of Magistrates] we offer all 731 *lawyer graduates the levelling courses in the first place, which is the comprehensive legal training and* then the post-graduate training for magistrates starts in March (…) the curriculum and the agreement with Universidad Bolivariana are ready" [emphasis added].[200]

To complete this picture, one should firstly note that so far no agreement of this type has been signed between the Office of the Attorney General or any other entity of the justice administration system of Venezuela, and any other public or private university that offers a programme in law in Venezuela.

Second, and more relevantly due to its consequences, according to public statements by several authorities from Venezuela, only lawyers who graduate from UBV are entitled to access positions as judges, prosecutors and public defenders, to the detriment of students who graduate from other universities. The most emblematic case came in January 2010, when the late President Hugo Chávez ordered the exclusive allocation of a monthly income combined with a scholarship to the recent class of lawyers from UBV, which was the start of the so-called Socialist Justice

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[195] See Ministry of the People's Power for Higher Education, National Training Programs and Careers: Social Sciences-Law, available: http://loe.cnu.gov.ve/vistas/carreras/consultar.php?id=137.
[196] See Ministry of the People's Power for Higher Education, National Training Programs and Careers: Social Sciences-Law Studies, available: http://loe.cnu.gov.ve/vistas/carreras/consultar.php?id=724.
[197] To give some examples, the mandatory classes offered during the first semester of legal studies at the UBV include, according to the University's website, courses on Legal Anthropology, Latin American and Venezuelan Political Thinking, Social Analysis of Justice, Society, State and Constitution, Theories of Knowledge, Legal Complexity, Justice and Diversity, and Language and Legal Argument. To see the full study plan of the Legal Studies Track at UBV, go to https://surubv.ubv.edu.ve/includes/malla_curricular_open.php?id_malla=EJRNOC&id_pfg=EJR
[198] See Inter-Institutional Agreement UBV-NCJ, available: http://enm.NCJ.gob.ve/site/index.php?option=com_content&view=article&id=59&Itemid=79.
[199] See *the Attorney General took the oath of attorneys graduated from UBV as new officers of the Office of the Attorney General*, February 1, 2010, available: http://www.ciudadccs.org.ve/?p=41915.
[200] *National School of Magistracy signed an agreement with the Bolivarian University betting on a judicial career of excellence*, July 10, 2006, available: http://www.NCJ.gov.ve/informacion/notasdeprensa/notasdeprensa.asp?codigo=3359.

Mission.[201] On the other hand, Prosecutor Luisa Ortega announced a contribution of the Office of the Attorney General "not only for students to have their *internships but also to include in the payroll of the Office of the Attorney General all those who wish to continue working in it*" [emphasis added]. Likewise, the Prosecutor stated that "through this agreement we seek that the attorneys at the Office of the Attorney General be trained at the School of Magistrates".[202] As a follow-up to the aforementioned statements, in February 2010, the Attorney General of the Republic took the oath of 18 attorneys who graduated from UBV as adjunct attorneys to several Offices of the Attorney General, stating that this occurred in the framework of the aforementioned agreement with UBV.[203]

At the event opening the 2011 judicial year, the then-President of the Supreme Tribunal of Justice reported that, in the year 2010, 1,401 attorneys from UBV were trained in the Judicial Management Programme under the National School of Magistrates.[204] In June 2013, an official announcement was made that 400 UBV graduates "will be destined by the judiciary to fill the positions of [provisional] municipal judges, to adjudicate cases on crimes carrying a sanction of eight years or less of imprisonment". As it was already noted by the previous President of the Supreme Tribunal, all those selected belonged to "a group of lawyers who graduated from UBV and started a programme known as 'Gestión Judicial', which is intended for training on legal-technical matters and on what a judge should know in order to carry out a procedure in a clear manner".[205]

1.2. Procedure to access the legal profession

International standards prescribe that if admission to the legal profession is subject to a mandatory affiliation to an association in charge of regulating the profession, this must maintain the profession's autonomous and self-governing nature,[206] and admission to the association must follow "strict and clear admission procedures", which is "of the utmost importance to preserve the integrity of the legal profession and to gain credibility among the people and the relevant government branches".[207] Mandatory membership of a professional association should never be allowed to become a means of discrimination for any reason, in theory or in practice.

In Venezuela, the Lawyers' Act prescribes mandatory registration in a professional association, that is a Bar Association in one of the country's States, as well as registration in INPREABOGADO (Social Security Institute for Lawyers) in order to practice law.[208]

Corporately, lawyers are organized in the Federation of Bar Associations of Venezuela, which is comprised of each State's Bar Association.[209] In order to formalize registrations before the Bar Association and INPREABOGADO, lawyers must submit their law certificate (college diploma) registered before the Main Registry, and be sworn in by the Board of the State's Bar Association.[210] Once the degree is recorded in the "Book for the Inscription of Law Degrees" in the relevant Bar Association, the next step is to register with INPREABOGADO.

From the provision's terms, it seems possible to conclude that in the aforementioned process, the Bar Associations do not actually have true discretionary power regarding the acceptance of

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[201] See *President Chavez announces the creation of the Socialist Justice Mission*, January 16, 2010, available: http://www.ciudadccs.org.ve/?p=27270.
[202] Ibid.
[203] *The Attorney General took the oath of attorneys graduated from UBV as new officers of the Office of the Attorney General*, February 1, 2010, available: http://www.ciudadccs.org.ve/?p=41915.
[204] *Speech for the start of Judicial Year 2011 – Magistrate Luisa Estella Morales*, February 5, 2011, available: http://www.NCJ.gov.ve/informacion/miscelaneas/discursoapertura2011.pdf.
[205] El Impulso, *Graduates of the Bolivarian University will hold provisional judgeships* (22 June 2013).
[206] See UN Basic Principles on the Role of Lawyers, Preamble and Principle 24.
[207] See Report of the Special Rapporteur on the Independence of Magistrates and Lawyers, Gabriela Knaul, Addition: Mission to Mozambique, A/HRC/17/30/Add.2 (2011), paragraph 89 (their own translation).
[208] Lawyers' Act, published in Official Gazette of the Republic of Venezuela, Extraordinary issue No. 1.081 of January 23, 1967, Articles 7, 32 and 78.
[209] Lawyers' Act, Article 43.
[210] Lawyers' Act, Article 8.

new members, once the applicant satisfies the requirement of holding a law degree granted by one of the relevant universities. With regard to this issue, the Lawyer's Act provides that, upon verifying the existence of the law degree, "the Board of the Bar Association will select one of the next five days for the applicant to be sworn in to obey the Constitution and the Laws of the Republic and to comply with the standards on professional ethics and other duties set by the legal profession".[211]

Conclusions

- For attorneys to be able to ensure the proper defence of and counselling for their clients, it is crucial that they receive initial and continuous legal training that matches the exigencies of their role and provides them with the technical knowledge and skills necessary to fully appreciate and comply with their professional and ethical obligations. The fact that a college programme such as the Legal Studies programme offered by the UBV exists in Venezuela, the syllabus of which is notable for a total absence of crucial courses for legal training, and the graduates of which, nonetheless, earn a professional law degree, with all its concomitant prerogatives and obligations, is worrisome and violates international standards.
- The State of Venezuela places undue pressure on the legal profession by establishing discriminatory conditions to access public positions within the judicial system favouring, *de facto* and *de jure*, UBV graduates. Through these actions, the State also threatens the quality and independence of the legal process.

2. Bar associations

International instruments on the independence of the judiciary and on the independence of lawyers emphasize the role and prerogatives of lawyers' associations. Principle 24 of the UN Basic Principles on the Role of Lawyers explicitly recognizes the right of lawyers "to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity".[212] The importance of bar associations, along with professional judges' associations, for the defence of the independence of judges and lawyers, is also highlighted in a series of resolutions by the UN Human Rights Council.[213]

Bar associations must be independent and self-governing, and operate pursuant to international standards. Once established, the bar association must be independent from interference by the executive branch.[214] The self-governing nature of bar associations has been regularly emphasized by UN Special Rapporteur on the independence of judges and lawyers[215] and by the Human Rights Committee.[216]

In Venezuela, Bar Associations are "professional corporations with legal personality and financial independence", whose main role is "to ensure compliance with standards and professional ethics

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[211] Ibid.
[212] See also International Bar Association Resolution on Standards for the Independence of the Legal Profession, adopted in 1990, Standard 17; International Association of Lawyers, Letter of Turin on the exercise of the legal profession in the 21st century, adopted at the Sidney Congress of October 17-31 of 2002, Preamble.
[213] See for example Human Rights Council, Resolution 15/3 on the Independence and impartiality of the Judiciary, juries and advisors and the independence of lawyers, A/HRC/RES/15/3 (2010), paragraph 6 of Preamble.
[214] Commonwealth Latimer House Guidelines on Parliamentary Sovereignty and Judicial Independence, Guideline VII.6; Human Rights Committee, Final comments of the Human Rights Committee on Azerbaijan, CCPR/CO/73/AZE (2001), paragraph 14; Human Rights Committee, Final comments of the Human Rights Committee on Belarus, CCPR/C/79/Add.86 (1997), paragraph 14.
[215] See for example Report of the Special Rapporteur on the Independence of Judges and Lawyers, Dato' Param Cumaraswamy, addition: Mission to Italy, E/CN.4/2003/65/Add.4 (2003), paragraph 114; Report of the Special Rapporteur on the Independence of Magistrates and Lawyers, Gabriela Knaul, Addition: Mission to Maldives, A/HRC/23/43/Add.3 (2013), paragraph 87.
[216] See for example Human Rights Committee consider report on the Ukraine (see English), July 9, 2013, available: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13524&LangID=E.

principles by its members and defend the interests of the legal profession".[217] Each Bar Association is comprised of an Assembly, a Board of Directors and a Disciplinary Tribunal, elected by the lawyers registered in the Association.[218] Each Bar Association's Disciplinary Tribunal is the only entity competent to take disciplinary action against its members.[219]

Among other obligations of the Bar Associations, the Lawyer's Act prescribes the duty to "draft and write laws, and send relevant comments on legislative amendments" to representatives of the legislative and executive branches; those authorities may request "consultations… on matters of law or the scientific merits of works or papers related to the legal profession" to Bar Associations, which can also offer advice on these issues on their own initiative.[220]

However, in recent years there has been no proposal from the Venezuelan Bar Association with regard to legislative reforms, nor has any initiative been taken with regard to the power under the Lawyer's Act to advise authorities of the legislature and executive branches on any legal questions of relevance to the country. Public authorities have also not requested the collaboration of professional associations of lawyers, as provided under the Lawyers' Act, with regard to any of these issues. The lack of initiative of the Bar Associations on the one hand, and on the other the lack of will expressed by Venezuelan political authorities to recognize any significant role of the professional association and other components of civil society, bring about the invisibility of the Bar Associations and the weakening of their role as interlocutor with regard to matters pertaining the administration of justice in Venezuela.

On the other hand, it should be noted that Bar Associations have training and post-graduate programmes for professional improvement, in agreement with some universities. Many Bar Associations even offer levelling courses for attorneys who graduated from UBV. Additionally, there is a free legal counselling office in each Bar Association that provides assistance to anyone who requires such legal support, in the form of guidance, advice and assistance with procedural matters. The Bar Associations also collaborate with the courts when there is a need to appoint a lawyer *ad litem*, in the cases in which the defendant is not able to defend him/herself. The legal counselling offices also collaborate with the courts whenever there is need to appoint an advocate *ad litem*, in cases of contempt by the defendant. However, this activity of the bar has diminished significantly since the inception of the Public Defenders system as a constitutional entity, whose role is to provide assistance, advice, and free legal representation "in any judicial or administrative procedure" to all citizens who require it.[221]

Bar Associations have seen their budget reduced since the 1999 Constitution established that justice be free, so court fees and the obligation to pay a percentage of the fee for registered or authenticated documents to the Bar Associations, were eliminated.[222] Bar Associations do not receive any support from the government or the judiciary for their strengthening and thus they are subject to the will and ability of their members to pay a monthly fee to the Bar Association to which they belong,[223] giving rise to these Associations' budgetary weakness.[224]

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[217] Lawyers' Act, Article 33.
[218] Lawyers' Act, Article 35.
[219] Lawyers' Act, Article 61.
[220] See Lawyers' Act, Article 42(6) and (7).
[221] See also Organic Law of Public Defenders, published in Official Gazette of the Republic of Venezuela No. 39.021 of September 22, 2008, Article 1. See also Constitution of the Bolivarian Republic of Venezuela, Articles 268 and 253.
[222] Judicial Tariffs Law (Decree with the power and Rank of the Judicial Tariffs Law, published in Official Gazette of the Republic of Venezuela, Extraordinary issue No. 5.391 of October 22, 1999) applicable to civil, commercial, contentious administrative procedures and some criminal justice acts, it establishes that a percentage (5%) of the amounts received by the National Office of Judicial Tariffs "will be destined to maintain the Bar Associations, Commission or Delegation of the respective federal entity and the provision of free legal assistance services" (Article 41(1)).
[223] See Lawyers' Act, Article 42(14). However, the mandatory contribution originally provided under the Lawyers' Act was made optional as a result of the verdict of the Supreme Tribunal of Justice.
[224] El Tiempo, *Calderón: attorneys must rebel against any disrespect to the Constitution* (10 July 2011), available: http://eltiempo.com.ve/locales/regionales/entrevista/calderon-abogados-debenrebelarse-contra-cualquier-irrespeto-a-la-constitucion/26344

On the other hand, it should be noted that, over the past few years, the Electoral and Constitutional Chambers of the Supreme Tribunal of Justice in Venezuela have adopted a number of verdicts related to elections for Boards, Disciplinary Tribunals and other authorities of Bar Associations, the overall effect of which has been to hinder these processes. As an example, it is worth recalling the Electoral Chamber's verdict of December 2003 suspending elections for the renewal of the authorities of the Caracas Bar Association;[225] the decisions of that same Chamber that left elections definitely without effect,[226] after its precautionary suspension of the proclamation of the members of the Board and the Disciplinary Tribunal elected in the Aragua Bar Association;[227] and the successive verdict ordering the precautionary suspension of the effects of all actions by the Electoral Commission of the Bar Association in Caracas, paralysing it as a result.[228] This pattern, which is disturbing due to its impact on the guarantees of independence of Bar Associations, was initiated with the decision on the *'amparo'* action of the Electoral Chamber ordering that the election of the Board of the Bar Association of Barinas take place "pursuant to the standard that will be issued to that effect by the National Electoral Council" (CNE),[229] and ended with two successive verdicts by that same Chamber ordering the CNE to appoint all the members of the *ad hoc* Electoral Commission in charge of elections of the bodies of the Federation of Bar Associations of Venezuela.[230]

The verdict of the Constitutional Chamber of the Supreme Tribunal of Justice, which intervened in the Bar Association of Caracas and appointed "at will" the members of its Board and its Disciplinary Tribunal, lies in the same line.[231] Although this verdict – in fact even more alarming than the aforementioned trend due to the level of interference it entails in the self-governance of Bar Associations – was never implemented, its concrete consequences have entailed the impossibility of the Bar Association to renew its authorities through regular elections among its members.

Conclusions

- Bar Associations are expected to fulfil a crucial role in ensuring the rule of law. However, in Venezuela Bar Associations have relinquished their duties, to the point where currently their functioning as professional associations has been gravely diminished.
- Pursuant to Venezuela's standards and applicable international standards, Bar Associations have powers that would allow them to support and strengthen the rule of law in Venezuela, such as advising the Government on legislative matters and presenting to the general public their opinion about topics of national interest, but they don't exercise them.
- Over the past few years, Venezuela's Bar Associations have suffered the effects of a generalized lack of support from governmental and judicial institutions, which has impeded their structural strengthening. At the same time, the measures adopted have contributed to weakening the institutional independence and self-governance of the Bar Associations and their Federation.

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[225] Verdict of December 8, 2003, ratified by the Supreme Tribunal of Justice of Venezuela, Electoral Chamber, Decision of January 20, 2004, Exp. No. AA70-X-2003-000032, Verdict No. 5, available: http://www.NCJ.gob.ve/decisiones/selec/January/5-200104-X00032.HTM.

[226] Supreme Tribunal of Justice of Venezuela, Electoral Chamber, Decision of August 4, 2003, Exp. No. AA70-E-2003-000048, Verdict No. 105, available: http://www.NCJ.gob.ve/decisiones/selec/agosto/105-040803-000048.HTM

[227] Supreme Tribunal of Justice of Venezuela, Electoral Chamber, Decision of July 22, 2003, Exp. No. 2003-000057, Verdict No. 96, available: http://www.NCJ.gob.ve/decisiones/selec/julio/96-220703-000057.HTM.

[228] Supreme Tribunal of Justice of Venezuela, Electoral Chamber, Decision of December 13, 2007, Exp. No. AA70-X-2007-000048, Verdict No. 234, available: http://www.NCJ.gob.ve/decisiones/selec/December/234-131207-X00048.HTM.

[229] Supreme Tribunal of Justice of Venezuela, Electoral Chamber, Decision of 22 de October de 2001, Exp. No. AA70-E-2001-0000131, Verdict No. 146, available: http://www.NCJ.gob.ve/decisiones/selec/October/146-221001-000131.HTM.

[230] See Supreme Tribunal of Justice of Venezuela, Electoral Chamber, Decision of December 7, 2005, Exp. No. AA70-E-2003-000111, Verdict No. 185, available: http://www.NCJ.gob.ve/decisiones/selec/December/185-071205-000111.HTM.

[231] Supreme Tribunal of Justice of Venezuela, Constitutional Chamber, Decision of February 14, 2008, Exp. No. 04-1263, available: http://www.NCJ.gob.ve/decisiones/scon/febrero/11-140208-04-1263.HTM.

3. The ethics of lawyers

The codes of professional conduct for lawyers play an essential role in providing guidance, inspiration and coherence in legal practice. The UN Basic Principles on the Role of Lawyers highlight that self-governing Bar Associations are responsible – either through their own bodies or by giving input to legislators – for the adoption and review of codes of conduct that incorporate and are compatible with international standards and reflect lawyers' obligation to promote and protect human rights.[232]

In addition to containing a set of guidelines to inspire and guide the conduct of attorneys, codes of conduct that meet international standards also serve as legal reference for the assessment of the behaviour of lawyers and to judge any potential allegations of misconduct.[233]

In the case of a disciplinary proceeding, the attorney whose conduct is under investigation has the right to a fair trial, in which his or her rights are respected and protected and the guarantees of due process are applied. The procedure must be initiated "before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court";[234] the attorney has the right to be properly informed of the allegations against him or her, to be represented by an attorney of his or her choice and to defend him- or herself and to submit evidence. Decisions must be reasoned and, if there is a sanction it must be proportionate to the circumstances. The outcome of the disciplinary procedure must be subject to review by an independent judicial organ.[235] The disbarment, suspension or disciplinary action ordered against a specific lawyer must be based on specific legal provisions or other standards applicable to the legal profession.[236]

In Venezuela, the standards that regulate the practice of law are the Lawyers' Act of 1967 and its Rules,[237] and the Lawyer's Code of Ethics,[238] which contain both the grounds to initiate disciplinary action against lawyers and the disciplinary procedure, and designate the entity that will hear and lead the process, i.e. the Disciplinary Tribunals of Bar Associations.

However, with the enactment of the Judicial Code of Ethics of Venezuela, powers were granted to the bodies of the judicial disciplinary jurisdiction, created by this Code, to initiate disciplinary action against lawyers. Thus, the Code's application encompasses "all other participants in the justice system who, in light of judicial actions, violate legal or regulatory provisions, or omit or delay the implementation of an action proper of their duties or comply in a negligent manner or that for any other reason or circumstance undertake to observe ethical principles and duties".[239] In any case, it establishes that all stakeholders of the justice system "must be punished pursuant to the law that governs them".

Although the standard provides that the application of this disciplinary procedure against non-judges is exclusively a residual power of the judicial disciplinary jurisdiction, it is provided that this power is activated when "the responsible entities do not comply with their disciplinary

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[232] UN Basic Principles on the Role of Lawyers, Principle 26. See also International Bar Association Resolution on Standards for the Independence of the Legal Profession, adopted in 1990, Standard 21.
[233] UN Basic Principles on the Role of Lawyers, Principle 29.
[234] UN Basic Principles on the Role of Lawyers, Principle 28.
[235] UN Basic Principles on the Role of Lawyers, Principle 28. See also IBA, Guide for Establishing and Maintaining Complaints and Discipline Procedures, paragraphs 7 and 8.
[236] Draft Declaration on Independence of Justice ("Singhvi Declaration"), Articles 102-106.
[237] Rules of the Lawyers' Act, published in Official Gazette of the Republic of Venezuela No. 28.430 of September 13, 1967; Rules of the Lawyers' Act on Elections in Professional Bodies and in the Institute for the Social Security of Attorneys, published in Official Gazette of the Republic of Venezuela, Extraordinary issue No. 4.506 of December 23, 1992.
[238] Lawyer's Code of Ethics, whose last amendment was published in Official Gazette of the Republic of Venezuela No. 33.357 of November 25, 1985. In addition to those standards contained in the Republic's ordinary laws, there are several Internal Rules adopted by the Federation of Bar Associations of Venezuela, like for example the National Internal Rules of Minimum Fees adopted by the Federation of Bar Associations of Venezuela in 2010.
[239] Judicial Code of Ethics of Venezuela, Article 2(2)

power".[240] This ought to happen in those cases in which there is no entity that can punish the alleged breach, or that although existent has not opened the disciplinary procedure. Given the silence of the provision about which authority would be competent to assess, in the second hypothesis, whether those responsible entities have not complied with their disciplinary role thus waiving the initiation of a disciplinary procedure, it is assumed that the Judicial Code of Ethics of Venezuela attributes this power to Judicial Disciplinary Tribunals created under this Code.

Likewise, in light of the silence – and ambiguity – of the provision, it is presumed that the Judicial Code of Ethics of Venezuela recognizes the jurisdiction of the ordinary tribunal that hears the claim and in which an alleged disciplinary violation was committed to exercise disciplinary power against "all participants in the process". This is what arises from reading the provisions of Article 20 of the Code ("Due exercise of disciplinary power"): "The judge must order *ex officio* or at the petition of a party, all the necessary measures established in the law intended to prevent or punish any breaches of loyalty and probity of all the participants in the proceedings, as well as any actions contrary to professional ethics, collusion, fraud or procedural recklessness, or any act contrary to justice and respect for those participants".

So far the Venezuelan courts have not developed jurisprudence on the exercise of the disciplinary power against the "participants in the process" based on Article 20 of the Judicial Code of Ethics of Venezuela. The judicial Disciplinary Tribunals have not developed a practice of adjudicating and punishing other participants in the process, and specifically lawyers, in application of Article 2(2) of this Code. Nonetheless, the fact that these powers exist, under the terms of the law, leads to a potential violation of the guarantees of fair process for the members of the legal profession who have allegedly committed disciplinary violations, and violates the principle of the natural judge, given that lawyers have their own disciplinary jurisdiction, i.e. the Disciplinary Tribunals that operate within each Bar Association throughout the country.

With regard to the latter, in general terms their functioning is known for a certain lack of transparency. Bar Associations do not publish annual statistics about disciplinary procedures and the decisions adopted by the pertinent Disciplinary Tribunal; not even the Federation of Bar Associations of Venezuela has information in this regard nationally. Neither are there any public files about disciplinary decisions.

Despite the absence of official information, it should be noted that until recently, in the general perception of the operation of the disciplinary mechanisms, there were no cases on record in which the system had been deviated from its natural objectives, to be used as a punishing measure for activities or opinions expressed by lawyers outside of their professional duties. However, a worrisome trend appears to have arisen lately, identifiable with what is characterized in a recent IBAHRI report as the risk of a 'Graterol effect' – the name of the defence attorney of Judge María Lourdes Afiuni – to indicate the harmful potential of "a threatening result similar [to the so-called 'Afiuni effect'] among Venezuelan lawyers, with the consequence that lawyers fear for their freedom if they accept to work on cases with political overtones or express in public their opinions about matters related to justice".[241]

Case of attorney José Amalio Graterol

Attorney José Amalio Graterol, counsel for the defence of Judge Afiuni, who had complained about the lack of judicial independence, was arrested based on an oral order in a court on 4 June 2012, for opposing the continuation of the trial against his client in the absence of the defendant, which at the time was in fact a violation of the Organic Criminal Procedural Code. In December of that same year, Mr. Graterol was sentenced to a six-month jail term for the crime of obstruction in the implementation of a judicial act; his appeal against the verdict was subsequently dismissed, and at the time of writing, he is awaiting the issuance of a resolution on the modalities of compliance with his sentence.

[240] Ibid.
[241] IBAHRI, *Criminal trial against Venezuelan attorney José Amalio Graterol*, November of 2013, p. 17, available: http://www.ibanet.org/Article/Detail.aspx?ArticleUid=d6d70307-d68c-4517-9fe9-0782fd43a2a8

In the months immediately prior to his arrest at the hearing, attorney Graterol had received threats and intimidations in relation to public complaints he made in the media in connection with the actions of the judges in the Afiuni case and, more broadly, complaining about the state of the Venezuelan justice system. According to the report published by IBAHRI, attorney Graterol and his associate, Attorney Thelma Fernández, were told confidentially in March 2012 that "'something' was being prepared against them to accuse them of committing several crimes and, through this, deprive them of their freedom". In this context of growing threats and tensions, Attorney Graterol participated in a television broadcast during which he "criticized and strongly questioned the Venezuelan judicial system". This occurred the day before going to court to participate in a hearing; at the end of this hearing, Attorney Graterol was arrested for obstruction of justice.

Conclusions

- The Judicial Code of Ethics of Venezuela should not be used to punish lawyers, given the fact that the legal profession has its own disciplinary procedure and jurisdiction. Thus, in case of alleged disciplinary misconduct, attorneys, like all other participants in the justice system, should undergo a disciplinary process pursuant to the standards that govern their conduct, in other words, before the Disciplinary Tribunal of the pertinent Bar Association and pursuant to the Lawyer's Code of Ethics.
- Recently, with much concern we have witnessed how a hostile attitude has spread against members of the Venezuelan legal profession for performing their professional duties, ending with the emblematic case of the prosecution of attorney José Amalio Graterol, legal counsel of Judge Afiuni.

V. CONCLUSIONS AND RECOMMENDATIONS

The information presented in the report about the legal framework applicable to judges and lawyers, considered together with the actual practices in this regard, lead to the conclusion that the independence of legal institutions in Venezuela is very weak. This has contributed to a climate of growing insecurity. As observed by the United Nations Development Program (UNDP) in its Latin America Regional Report for 2013-2014, "Such insecurity has multiple negative impacts on human development: it profoundly affects the capabilities and the freedoms of the people, the way they build their lives in society and their relationship with the institutions of the State. Such insecurity generates significant costs, from the spending of public institutions and private costs of citizens in order to obtain security, to the irreparable costs of damage to the life and physical integrity of the people."[242]

It is of the utmost importance that the legal and political institutions of the State – especially the judiciary and the Attorney's General Office – be strengthened and become the fundamental pillar of democracy, as guardians of the rule of law. In particular, it is necessary for institutions such as the Supreme Tribunal of Justice and the Attorney's General Office to uphold the system of checks and balances between branches of the state, guaranteeing that other branches do not unduly interfere in areas within the exclusive competence of the judiciary or prosecutors. In practice, however, according to the information available to the ICJ, undue interference by the Executive Branch is becoming a systematic practice in Venezuela. In order to give full effect to the provisions of the Constitution, members of the public institutions involved in the administration of justice should be chosen from among the best candidates, through public contests "founded on principles of honesty, suitability and efficiency", and their promotion must be "based on a system of merits," as the Venezuelan Constitution of 1999 requires. The implementation of such regulations will represent a (first) step along the path toward the achievement of true independence of judges, justices, prosecutors, public defenders, and lawyers in Venezuela.

The fact that more than fourteen years after the adoption of the Constitution, all but four public prosecutors, and 70% of judges, hold only provisional or temporary office, cannot be justified under either the Venezuelan Constitution or international law. The lack of security of tenure renders the system of justice vulnerable to improper influence and manipulation.

When a judicial system lacks independence, individual judges become fearful of applying the law justly and impartially, because they fear reprisals or professional consequences. Lawyers also become fearful of being persecuted, subjected to disciplinary or criminal procedures for exercising their profession, or that the processes in which their represent clients will be paralyzed; consequently they are unable to fulfil the crucial role of lawyers, recognised by national and international law, for the defence of human rights. In Venezuela, the situation has become even starker after the detention of Judge Maria Lourdes Afiuni and the criminal investigation and process started against her, targeted simply for having duly fulfilled her judicial functions.

The examination of the actions of the public prosecutor in criminal proceedings, has revealed a success rate of 12.55% from 2008 until 2012: in the perception of the population, this translates to a mismanagement of public resources, encourages a loss of confidence in the justice system, and represents one of the main causes of impunity, which in turn, helps to perpetuate the feeling of citizen insecurity.

The different branches of the Venezuelan State must, each respecting the limits of their respective powers, undertake to improve the situation for judges, prosecutors and lawyers. To achieve this goal, the first step would be to begin implementing on a *bona fide* basis the current constitutional and legal regulations that should in theory help secure the rule of law. Doing so

[242] Unofficial translation of United Nations Development Program, Regional Human Development Report 2013-2014,Citizen Security with a human face: Evidence and Proposals for Latin America, November 2013, p. 93, available (in Spanish only) at: http://www.latinamerica.undp.org/content/dam/rblac/img/IDH/IDH-AL%20Informe%20completo.pdf

would, it is to be hoped, initiate a virtuous cycle that builds rather than erodes confidence in the judicial system.

In light of the above considerations, the ICJ makes the following recommendations:

Concerning the judiciary:

a. To carry out public competitions for judicial appointments, as provided for in the Rules of Evaluation and Competitive Examinations for the Admission and Permanence in the Judiciary, which should be administered by independent authorities and incorporate a substantive role for judges.
b. To ensure that competitions for permanent titular judicial offices are equally open to all lawyers who comply with the requirements indicated in the Rules of Evaluation and Competitive Examinations for the Admission and Permanence in the Judiciary.
c. To cease the practice of systematically appointing provisional, temporary, casual, accidental or any other types of posts that depart from the ordinarily prescribed judicial recruitment process through resolutions of the Judicial Commission of the Supreme Tribunal of Justice; practice that undermines the independence of the Judiciary and international law standards.
d. To guarantee the security of tenure and independence of provisional judges (including temporary, occasional, accidental, or any other type of posts different from the judge of career), including by lifting the suspensory effect of the 7 May 2013 judgment of the Constitutional Chamber of the Supreme Tribunal of Justice on 7 May 2013 on the code of ethics. In consequence, affirm that the provisions of the Code of Ethics of the Venezuelan Judge apply to all judges and justices operating within the jurisdiction of Venezuela, and not only to the titular judges; and not to recognize a discretionary and arbitrary power of the Judicial Commission of the Supreme Tribunal of Justice to appoint and remove judges without reasons.
e. To cease the abusive practice of the Judicial Commission of the Supreme Tribunal of Justice whereby the Commission has suspend without remuneration titular judges without previous proceedings, and without any allegation of the possible commission of disciplinary offenses, in violation of essential guarantees of the due process of law.
f. To ensure that the suspension for precautionary reasons of a judge shall be decided, and then only if the circumstances justify it, by the exclusively competent Disciplinary Tribunal or Court, and only when a disciplinary investigation is underway, and only for so long as the disciplinary process takes to conclude.
g. To ensure that the appointment of members of the Tribunal and Court that constitute the judicial discipline mechanism is exclusively based on the criteria of competence, experience and integrity, in a non-partisan manner without regard to political affiliation.
h. To undertake a constitutional reform or issue a constitutionally binding interpretation that recognizes the right of freedom of association for lawful purposes of judges and justices, in accordance with existing international standards, and to facilitate the creation of associations of judges.
i. To adopt the necessary legislation to complete the legal framework regulating the functioning of the judiciary, in particular legislation regarding the judicial career and the Organic Law of the Judicial Power.
j. To ensure, with regard to the rules and principles of the Inter-American System, that Venezuela fulfils and implements interim and final decisions adopted by the Inter-American Commission of Human Rights and the precautionary measures and judgements of the Inter-American Court.
k. To ensure, with regard to the rules and principles of the international human rights system, that Venezuela respects international human rights and complies with the recommendations contained in the decisions of treaty bodies and reports by United Nations special procedures.

Concerning prosecutors and the Office of the General Attorney:

a. To comply with the constitution and admit public prosecutors to the Attorney General's Office only through public tenders, designed objectively to select the most qualified candidates, and ensuring security of tenure of public prosecutors (almost 100% of whom do not currently enjoy security of tenure).
b. To cease the regular practice of appointing or removing public prosecutors through resolutions of the Attorney General's Office issued without providing reasons.
c. To repeal the provision of the Statute of the Personnel of the Attorney General's Office, by effect of which the guarantees of the disciplinary jurisdiction provided in the Organic Law of the Attorney General's Office have not been applied to the vast majority of public prosecutors.
d. To ensure that the provision of initial training and capacity building for public prosecutors by means of courses delivered in an specialized Academy does not become a bottleneck, limiting the possibility of equal participation in public competitions for admission to the Public Prosecutor's Office, or slowing the process of tenure for the position of Public Prosecutor, or distorting the objectivity of the selection process.
e. To ensure public prosecutors have decisional and operational autonomy, including by reversing the practice of centralizing decision-making in the Office of the Attorney General or in centres of political power.
f. To systematize efforts to enhance the efficiency and effectiveness of the work of the Attorney General's Office in its capacity as a governing body for criminal investigations in Venezuela, in order to combat the growing rate of impunity for violations of human rights. Any reform initiative should start by reconsidering internal procedures and regulations of the Public Prosecutor's Offices that have a direct impact on effectiveness and efficiency, such as: addressing the high rate of rotation of prosecutors; ending the practice of assigning cases without considering technical expertise and workload; bringing greater transparency to prosecutions and ensuring an orientation towards public service; and ending the politicization of the function of the public prosecutor.
g. To ensure the impartiality of the work of public prosecutors in all cases, including those that could be considered politically sensitive.

Concerning the legal profession:

a. To guarantee the autonomy of all universities in the country, allowing them to organize programmes for the study of law according to the highest quality standards of training.
b. That the Bolivarian University of Venezuela should adapt the programme of the career of legal studies leading to law degrees, to ensure the development of those skills and competencies that are necessary to carry out the professional duties of lawyers, such as they are conceived in general terms in other universities that offer a career in Law within and outside Venezuela.
c. To grant without discrimination to all graduates of all universities that teach Law in Venezuela, equal opportunities for admission to the Judiciary, the Office of the General Attorney, the Office of the Public Defender, as well as to all other public agencies in the justice system.
d. To ensure that the Bar Associations are autonomous in their organization and in the election of their authorities, for them to assume a leading and authoritative role as promoters and defenders of the Constitution, the Rule of Law, the independence of the judiciary and legal profession, and human rights.
e. To promote a culture of continuous training for lawyers, as well as for judges, justices, prosecutors of the Office of the General Attorney, and others involved in the administration of justice, and to provide the resources and tools needed to concretize an organized and permanent training system. In particular, to strengthen the education and training in public international law and human rights, ensuring public awareness of international human rights treaties ratified by the State and other international standards and that they are put into practice by all actors within the legal system.
f. To amend Article 2(2) and 20 of the Code of Ethics of the Venezuelan Judge, as regards the disciplinary powers given to judges over every participant in judicial proceedings,

even if the person in question is not a member of the Judiciary (i.e. allowing judges unilaterally to discipline lawyers appearing beofre them).

g. That the Disciplinary Tribunals of the Bar Associations should exercise their own disciplinary powers in relation to the members of the Associations by transparent means, and allowing for accountability by transmitting to the Federation information about on-going procedures, and making available to the public relevant statistics and other data.
h. To undertake all necessary measures to prevent a sort of "Graterol Effect" (the lawyer who has faced reprisals for acting on behalf of Judge Afiuni) in terms of indirect intimidation and persecution of lawyers, which would parallel the "Afiuni Effect" of indirect intimidation of judges.

VI. METHODOLODY AND ACKNOWLEDGMENTS

The present report arises from the work of the International Commission of Jurists (ICJ) to support the independence of judges and lawyers in Venezuela, within the framework of international standards on the administration of justice, and in particular the international treaties signed and ratified by the Republic of Venezuela.

The ICJ carried out five seminars in Venezuela during 2013, through its Centre for the Independence of Judges and Lawyers (CIJL), in coordination with the National Human Rights Commission of the Federation of Bar Associations of Venezuela. The Seminars took place in the cities of Caracas, San Cristobal (Táchira State), Puerto Ayacucho (Amazonas State), Coro (Falcon State) and Barquisimeto (Lara State). They involved lawyers, trade union representatives of Venezuelan civil society, as well as former justices, former judges and former public defenders from Venezuela. Among the issues addressed in the seminars were: the role of the Supreme Tribunal of Justice and the Attorney General's Office in a democratic society; the role of the Bar Associations in the promotion and strengthening of the independence of the judiciary; the importance of the training for lawyers in human rights; their legal obligations in the exercise of their profession; and the protection of the rights of victims of human rights abuses to file claims and seek remedies. The Venezuelan and international participants in the seminars also discussed the regulatory framework and the functioning of the Venezuelan justice system today. The jurists also formulated recommendations and proposals to promote respect for the rule of law and the independence of the judicial system as a whole, in accordance with international standards and the international obligations of the Government of Venezuela in relation to human rights and administration of justice.

The ICJ also conducted a four-day mission to Caracas in 2013, carried out by an Honoured Judge of the Supreme Tribunal of Spain, and a CIJL staff member. The ICJ delegation met with persons active in various aspects of the Venezuelan justice system. The issues discussed included: elements of the career paths for the judiciary and the office of the public prosecutor; security of tenure; the composition of the Supreme Tribunal of Justice of Venezuela; the grounds and procedures for removal of judges and justices; they ways in which the principle of checks and balances has been implemented in practice; guarantees for lawyers to be able to exercise their profession independently; and the means by which the office of the public prosecutor carries out its functions. The ICJ was deeply concerned by the findings or earlier research, reported complaints and other information gathered prior to the mission. As such, the delegation sought to deepen and contextualize its understanding and advocacy concerning the attacks that occurred against the independence of the judiciary and the legal profession, as well as the autonomy of officials from the office of the Attorney General, in the context of the process of reform of the administration of justice in Venezuela. The delegation addressed the constitutional, normative, political and factual aspects of these issues, and their impacts at both the institutional and the individual level.

The present report is based on the findings, conclusions and recommendations that arose from the ICJ activities described above, as well as additional research and interviews. It also draws on official sources and data published by the Government of Venezuela and other Venezuelan authorities.

The report concludes with recommendations of a technical and legal nature, as well as suggested good practices. The aim is to present concrete measures that can help to stop further weakening of the judicial system in Venezuela, and can help Venezuela to comply with international standards on independence of the judiciary, lawyers, and prosecutors, as the cornerstone for the rule of law.

The ICJ is particularly grateful for the many distinguished international and Venezuelan lawyers who have played a fundamental role in this project, who contributed to so rich discussion during the seminars and other activities. In addition to their contribution, this report is based on information provided by the widest range of actors within Venezuelan justice system, and draws

on the experiences generously shared by all the participants in the activities carried out by the ICJ in Venezuela during 2013. To those engaged with the ICJ in this process: thank you.

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