



Human Rights
Institute



Joint submission to the United Nations Universal Periodic Review

Bolivarian Republic of Venezuela

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A. Introduction

1. Lawyers for Lawyers (“L4L”) and the International Bar Association’s Human Rights Institute (IBAHRI) submit this report on the state of human rights in the Bolivarian Republic of Venezuela (“Venezuela”), especially in respect of the legal profession, with recommendations for the 40th session of the Universal Periodic Review (“UPR”) Working Group in the UN Human Rights Council in January/February 2022.
2. L4L is an independent and non-political foundation based in the Netherlands, which was established in 1986 and is funded by lawyers’ donations. L4L promotes the proper functioning of the rule of law through the free and independent exercise of the legal profession around the world. L4L has had special consultative status with ECOSOC since 2013.
3. The International Bar Association (IBA), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world. It has a membership of 80,000 individual lawyers and more than 190 Bar Associations and Law Societies, spanning all continents. The IBA’s Human Rights Institute, an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.

B. Executive summary

4. This submission highlights key concerns regarding Venezuela’s compliance with its international human rights obligations to guarantee the right to independent counsel as set out in the UN Basic Principles on the Role of Lawyersⁱ (“UN Basic Principles”) and other international human rights instruments, focusing on the lack of effective guarantees for the functioning of lawyers, including threats and harassment against lawyers and interference, surveillance and criminalization of lawyers by the government.

C. Normative and institutional framework of the State

5. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance can only be provided effectively in a judicial system where lawyers, along with judges and prosecutors, are free to carry out their professional duties independently of the government and political pressure. This follows, inter alia, from the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (“ICCPR”).
6. Furthermore, on 22 June 2017, the Human Rights Council (“HRC”) passed a resolution condemning in general *“the increasingly frequent attacks on the independence of [lawyers], in particular threats, intimidation and interference in the discharge of their professional functions”*. The HRC expressed its deep concern

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“about the significant number of attacks against lawyers and instances of arbitrary or unlawful interference with or restrictions to the free practice of their profession” and called upon States “to ensure that any attacks or interference of any sort against lawyers are promptly, thoroughly and impartially investigated and that perpetrators are held accountable”.ⁱⁱ

7. Additionally, on 16 June 2021, the United Nations High Commissioner for Human Rights presented a rapport on the situation of human rights in the Bolivarian Republic of Venezuela to detail “*recent developments in the human rights situation, with a particular focus on civic space and the rule of law*”. In this report the HRC highlights its concerns with the right to access to a legal counsel of their own choosing, referencing that “private defense lawyers face obstacles to conducting their work” mainly in getting access to case files, being able to visit to their clients in places of detention, and problems with the independence of lawyers’ associations. The HRC also called upon the Venezuelan authorities to “guarantee that lawyers’ associations recover their independence and full autonomy by allowing free internal elections”. Further the HRC expressed its deep concern about the criminalization of human rights defenders and called upon the Venezuelan authorities to “adopt effective measures to protect human rights defenders”.ⁱⁱⁱ
8. In its task of promoting and ensuring the proper role of lawyers, the Government of Venezuela should respect the UN Basic Principles within the framework of its national legislation and practice. The UN Basic Principles provide a concise description of international standards relating to key aspects of the right to independent counsel. Adherence to the UN Basic Principles is considered a fundamental pre-condition to fulfilling the requirement that all persons have effective access to legal services provided by an independent legal profession.^{iv}
9. During the UPR 2nd cycle in 2016, Venezuela received^v and accepted^{vi} one recommendation concerning the need to protect the activities of human rights defenders (**133.181**).
10. Venezuela rejected^{vii} a number of recommendations concerning the adequate protection of human rights defenders against threats, intimidation and attacks through a legislative framework (**133.26**) and by public recognition of the legitimacy of their work (**133.191**, **133.204**). Venezuela further rejected recommendations concerning the taking of measures to ensure the prompt and effective investigation into such threats, intimidation and attacks against human rights defenders and the need to create a strategy for their protection (**133.192**, **133.200**, **133.206**). These recommendations were rejected because Venezuela deemed the language used in these recommendations to be biased, confusing and politically ill-intentioned and seemed to suggest that Venezuela had denied these rights, which according to Venezuela was untrue.^{viii}
11. However, reports gathered by L4L, including information received from lawyers in Venezuela, demonstrate that Venezuela does not uphold the necessary guarantees for the proper functioning of the legal profession as set out in the UN Basic Principles. Consequently, lawyers encounter serious difficulties in carrying out their

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professional duties independently and free from harassment, threats, intimidation and attacks. Moreover, many lawyers working on sensitive cases are being subjected to interference, surveillance and criminalization by the Venezuelan government. This undermines the proper functioning of the judicial system, including the right to a fair trial and effective access to justice.

D. No Effective Guarantees for the Functioning of Lawyers

a. Threats and harassment, interference, surveillance and criminalization of lawyers by the government

12. Fundamental to improving the human rights situation in Venezuela is a justice system that allows lawyers to work independently without fear of harassment or intimidation. Article 16 of the Basic Principles state that governments must “*ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (...) and shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics*”. According to our information, lawyers in Venezuela working on (sensitive) human rights cases have been subjected to threats and harassment in connection to their professional activities.
13. Lawyers involved in politically sensitive cases have reported being subjected to improper interference by the authorities, including surveillance. Moreover, some lawyers working on sensitive cases have been subjected to or threatened with prosecution. Their prosecution is believed to be connected to their legitimate professional activities. Article 18 of the Basic Principles states that lawyers “*shall not be identified with their clients or their clients' causes as a result of discharging their functions.*” This is demonstrated by the following examples:
 - (a) **Raquel Sánchez.** Ms. Sánchez is currently working on a famous case against the government in which she represents victims of police violence. Ms. Sánchez and/or the families of the victims have received (physical) threats on multiple occasions, mostly after this case received media attention. Ms. Sánchez had to temporarily move to Colombia because of the various threats against her and her family in the past few months.
 - (b) **Genesis Davilla.** Ms. Davilla is defending victims of the state regime, which comes with great risks. Some of the lawyers Ms. Davilla was working closely with on sensitive political cases have been harassed, attacked, detained and even murdered (i.e. Carlos Briceno, Joel García, Juan Carlos Gutierrez and Waldemar Nunez). Ms. Davilla herself has also experienced attacks because of her work. Ms. Davilla acts as the founder and president of Defiende Venezuela, a leading human rights NGO in the country. The risks to Ms. Davilla’s personal safety increased since she founded the human rights NGO. Amongst others, Ms. Davilla’s work-email account has been hacked and she has had to ask her mother to leave the country, because she did not want her mother to become a target due to her human rights work.

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- (c) **Alfredo Romero & Gonzalo Himiob.** Alfredo Romero and Gonzalo Himiob are prominent human rights defenders and lawyers in Venezuela since 2002 and are leaders of Foro Penal, an NGO formed by more than 400 lawyers who represent pro-bono victims of repression in Venezuela, including political prisoners. Mr. Romero and Mr. Himiob have received precautionary measures by the Inter-American Commission on Human Rights in 2019 and 2015 respectively given the risk they could suffer for their work.^{ix} However, since then, the threats and harassment against them and other members of the NGO are still present. Additionally, Mr. Romero and other lawyers of Foro Penal are repeatedly intimidated and stigmatized through official government (international) media.
- (d) **Marcelo Crovato.** Since 2004, lawyer Marcelo Crovato has been involved in a number of cases representing political opponents and alleged victims of human rights violations. In 2014, Mr. Crovato was arrested when providing legal assistance to his client during a house search. The officers did not present a proper warrant or any other decision issued by a public authority. His arrest was classified as arbitrary detention by the UNHR Working Group for Arbitrary Detentions.^x Mr. Crovato fled Venezuela in 2018 after having spent almost 10 months in Yare prison and about 3 years in house arrest. Mr. Crovato is currently in exile, considered a fugitive from justice according to the Venezuelan authorities. Mr. Crovato has no possibility of practicing his profession in Venezuela or even returning safely to Venezuela.
- (e) **Henderson Maldonado.** Lawyer Henderson Maldonado was beaten and arbitrarily detained on 31 March 2020 by members of the Bolivarian National Guard (GNB) in Barquisimeto, Lara, while filming the mother of a child with cancer, who was unable to bring her child to his chemotherapy due to lack of fuel around Destacamento 121 of the Venezuelan National Guard. During his detention, which lasted until the 1st of April 2020, Mr. Maldonado suffered cruel and degrading treatment. He was severely beaten with frozen water bottles, handcuffed to a pillar in the courtyard of the GNB while suffering constant verbal threats such as “you will not get out alive” for over 12 hours. Subsequently, he was locked up in a small cell with a penetrating gasoline smell without access to water and denied his right to communicate with a lawyer or his family. Mr. Maldonado is currently awaiting to be granted his freedom by the second municipal control court of Iribarren of the district state of Lara, before which he was presented. This comes as a result of charges imposed on him on the 1st of April 2020 of alteration of public order and resistance to authority. After being released on the 1st of April, the GNB did not return him his belongings, among which a pen drive containing documents of his work, his lawyer’s license, and his cell phone until three months after being released.
- (f) **Luis Manuel Aguilera.** Mr. Aguilera is a human rights lawyer and member of the human rights organization justice and peace of the state of Aragua in Venezuela. Amongst others, he defended a union leader before the Inter-American Commission on Human Rights, who to date has been detained for 9

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years without having any trial being carried out. Because of his work as a human rights lawyer, Mr. Aguilera received different threats, amongst others by officials of the Aragua state police. Because of the threats against his person, Mr. Aguilera was forced to change his residence. Furthermore, his phone has been tapped, his internet has been cut off and police vehicles continue to watch him.

14. Concerns about further criminalization of the legitimate professional activities of lawyers have increased after the adoption of the Administrative Regulation No. 001-2021 for the “Unified Registry of Obligated Subjects before the National Office Against Organized Crime and Terrorism Financing, of the Ministry of Interior, Justice, and Peace”. This regulation imposes strict controls over civil society organisations, including lawyers’ collectives, such as the obligation to hand over constitutive documentation, assembly notes, lists of members, personnel and donors, financial records, and lists of all their beneficiaries and other organizations with which they work. This regulation is seen as part of the systematic criminalization of civil society organisations by the government of Venezuela.^{xi}

b. Hindrance of lawyers’ abilities to prepare an adequate defence.

15. Lawyers have reported being hindered in their ability to prepare an adequate defence for their clients. This has been confirmed by the findings of the fact-finding mission of the Human Rights Council to Venezuela in 2020. The report of this fact finding mission named numerous examples: *“Private defence lawyers were not provided with copies of essential documents, including police records, indictments or minutes of hearings or were provided with the case-file just few minutes before the hearing. Private defence lawyers were not informed of dates of hearings, impeding the preparation of arguments or filing of briefs. Private defence lawyers were often prevented from visiting their clients. When visits did go ahead, lawyers were sometimes unable to speak to clients confidentially. Private defence lawyers suffered various forms of harassment and intimidation against them or their families. Some detainees informed the Mission that they faced reprisals while in detention for being represented by certain organizations or lawyers.”*^{xii}
16. More recently, such practice also occurred during the detention of three human rights defenders from the NGO Fundación Redes on 2 July 2021: *“All three activists remained in prison after being denied access to their lawyers, and instead assigned a public defender. Meanwhile, their lawyers were denied access to the case filings, hampering any possibility of providing an adequate defense.”*^{xiii} This is also demonstrated by the following examples:

- (a) **Raquel Sánchez.** Ms. Sánchez has reported that the government is deliberately limiting her possibilities to defend her clients. For instance, Ms. Sánchez was denied access to the hearing of her clients and was refused to receive evidence unless Ms. Sánchez’s clients would change lawyer. Ms. Sánchez is part of the NGO Foro Penal, a non-governmental organization that provides legal assistance to arbitrarily detained persons in Venezuela. It has been that when a political prisoner asks for a lawyer of Foro Penal, the police tries to prevent this by saying

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that the prisoner will receive a lighter punishment if their case is not be handled by a lawyer of Foro Penal. This practice has been confirmed by Stefania Migliorini, member of the Venezuelan NGO Fundación Redes.

- (b) **Luis Manuel Aguilera**. Venezuelan authorities make it impossible for Mr. Aguilera to freely conduct his work as a lawyer. For example, on 13 April 2021, he was prohibited from entering the court in Caracas to defend his client, court officials refused to receive Mr. Aguilera's letters regarding irregularities at hearings, Mr. Aguilera's complaints regarding officials were ignored, and he was denied access to administrative files.

E. Recommendations to the Government of the Bolivarian Republic of Venezuela

- **Take effective measures to ensure that threats, harassment and other violations against lawyers are effectively investigated and that the perpetrators of such acts are prosecuted.**
- **Refrain from any actions that may constitute harassment, persecution, or undue interference in the work of lawyers, including their criminal prosecution on improper grounds or illegal surveillance of their private and professional activities.**
- **Immediately take measures to guarantee that lawyers have access to appropriate information, documents and files in sufficient time to enable lawyers to provide effective legal assistance to their clients and to refrain from any actions that limit lawyers in their ability to prepare an adequate defence.**

ⁱ Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August – 7 September 1990.

ⁱⁱ UN Human Rights Council, Independence and Impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/35/12, 22 June 2017, https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/L.20.

ⁱⁱⁱ Report of the United Nations High Commissioner on Human Rights on the situation of human rights in the Bolivarian Republic of Venezuela, A/HRC/47/55, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/150/55/PDF/G2115055.pdf?OpenElement>, 16 June 2021, As stated in the OHCHR's 'A Handbook for Civil Society', human rights defenders and lawyers are part of civil society (p. vii). https://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf

^{iv} During its 25th Session (2 – 13 May 2016) the Human Rights Council adopted without a vote a resolution on the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers. While recalling the Basic Principles on the Role of Lawyers and condemning the increasingly frequent attacks on the independence of lawyers, in particular threats, intimidation and interference in the discharge of their professional functions, the Human Rights Council reminded all States of their duty “to uphold the integrity of [lawyers] and to protect them, as well as their families and professional associates, against all forms of violence, threat, retaliation, intimidation and harassment resulting from the discharging of their functions, and to condemn such acts and bring the perpetrators to justice”. See UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/29/6, https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/L.11.

^v A/HRC/34/6 Report of the Working Group on the Universal Periodic Review of the Bolivarian Republic of Venezuela, 27 December 2016, p.13-24.

^{vi} Report of the Working Group on the Universal Periodic Review of the Bolivarian Republic of Venezuela, Addendum 1: Views on the conclusions and/or recommendations, voluntary commitments and replies presented by the state under review, A/HRC/34/6/Add.1, 13 March 2017, p.2.

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^{vii} Report of the Working Group on the Universal Periodic Review of the Bolivarian Republic of Venezuela, Addendum 1: Views on the conclusions and/or recommendations, voluntary commitments and replies presented by the state under review, A/HRC/34/6/Add.1, 13 March 2017, p.4.

^{viii} Report of the Working Group on the Universal Periodic Review of the Bolivarian Republic of Venezuela, Addendum 1: Views on the conclusions and/or recommendations, voluntary commitments and replies presented by the state under review, A/HRC/34/6/Add.1, 13 March 2017, p.4, 6.

^{ix} Inter-American Commission on Human Rights, Resolution 64/2019, 24 December 2019, <http://www.oas.org/es/cidh/decisiones/pdf/2019/64-19mc143-13-ve-ampliacion.pdf>

Inter-American Commission on Human Rights, Resolution 8/15, 7 March 2015, <http://www.oas.org/es/cidh/decisiones/pdf/2015/mc143-13-es.pdf>

^x A/HRC/WGAD/2017/87 Opinion No. 87/2017 concerning Marcelo Eduardo Crovato Sarabia (Bolivarian Republic of Venezuela)

^{xi} Amnesty International, Urgent Action: NGOs and survivors under threat. First UA: 046///21 Index: AMR 53/4013/2021, 22 April 2021.

^{xii} Detailed findings of the independent international fact-finding mission on the Bolivarian Republic of Venezuela, A/HRC/45/33, 15 September 2020, p. 92-93, para 359.

^{xiii} Public Statement, Amnesty International, 7 July 2021, VENEZUELA: AUTHORITIES SHOULD IMMEDIATELY RELEASE HUMAN RIGHTS DEFENDERS JAVIER TARAZONA, RAFAEL TARAZONA, AND OMAR GARCÍA OF FUNDAREDES, <https://www.amnesty.org/en/documents/amr53/4413/2021/en/>