

# Lack of necessary guarantees for the functioning of the legal profession in Venezuela

## Universal Periodic Review: 40th Session

### Summary

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 are able to carry out their professional duties independently of the government and political pressure.

Since the second UPR cycle, the situation of lawyers in Venezuela has not improved. Venezuela does not uphold the necessary guarantees for the proper functioning of the legal profession as set out in the United Nations Basic Principles on the Role of Lawyers. Consequently, lawyers encounter serious difficulties in carrying out their professional duties independently. This also undermines the proper functioning of the judicial system, including the right to fair trial and effective access to justice.

### Hindrance of lawyers' abilities to prepare an adequate defence

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* ([L4L & IBAHRI joint submission, §15](#)).

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 High Commissioner 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 ([L4L and IBAHRI joint submission, §7](#)).

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 an adequate defense. ([L4L and IBAHRI joint submission, §16](#)).

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

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. 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 ([L4L and IBAHRI joint submission, §12](#)).

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 ([L4L and IBAHRI joint submission, §13](#)).

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 organizations, 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 organizations by the government of Venezuela ([L4L and IBAHRI joint submission, §14](#)).

*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.*

## Recommendations

- 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 such as the expression of critical views or the nature of the cases that the lawyer is involved in.
- Immediately take effective measures to ensure that all communications and consultations between lawyers and their clients within their professional relationship are confidential, including when visiting clients in detention, as set out in article 22 of the Basic Principles on the Role of Lawyers.