

VENEZUELA

Country Profile prepared by the ICJ Centre for the Independence of Judges and Lawyers

Current to November 2014

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Overview

Venezuela is a party to many international and regional human rights treaties. However, in September 2012 Venezuela gave notice of its denunciation of the American Convention on Human Rights, effective from 10 September 2013.

Judicial independence is enshrined in the Constitution and other laws in Venezuela, but it is not adequately respected in practice. Measures introduced in the 1999 Constitution and subsequent laws have led to ambiguity in determining which rules relating to the judicial career and judicial discipline currently apply, contributing to legal uncertainty. The vast majority of judges serving in Venezuela have been appointed temporarily or provisionally. They don't enjoy security of tenure.

The legal profession faces considerable challenges in Venezuela. The weakening of the Bar Associations and the interference by the judiciary in aspects related to the election of the leadership of Bar Associations and with the Bars' Disciplinary Tribunals have undermined the ability of Bar Associations to safeguard the independence of lawyers and the integrity and interests of the profession. Further, lawyers face various forms of interference with their work, including the prosecution of lawyers who are involved in politically sensitive case.

The vast majority of prosecutors do not enjoy the guarantee of tenure and are exposed to undue interference and pressure, both internal and emanating from the other branches of government. Prosecutors do not have full autonomy to direct, order and oversee the investigation of (alleged) crimes.

A. Introduction

1. Legal tradition

The legal system of Venezuela is based on the civil law tradition inherited through the reception, adaptation and codification of laws introduced by Spain during the colonial period that lasted from the early 15th century until the mid 19th century. The French Civil Code heavily influenced the legal system as well; it served as a source of inspiration for the first Civil Code adopted in 1861 in Venezuela.

Venezuela declared its independence from Spain in 1811, and in 1830 became a republic under a unitary and centralized power. During the rest of the 19th century, and the first

half of the 20th century, the history of Venezuela was characterized by a succession of revolutions and dictatorships.¹

Elections held at the end of 1958 ushered in a new p The leaders of the principal political parties of the country signed a political and social agreement known as the Covenant of Punto Fijo. During this period, known as "puntofijismo", the political parties Acción Democrática (AD) and Comité de Organización Política Electoral Independiente (COPEI) governed the country for almost forty years.²

In 1998, Hugo Chavez was elected as President, ending the period of "puntofijismo" and starting what the incoming government referred to as the "Bolivarian revolution" with the adoption of a new constitution in 1999. This period was characterized by extensive reform of the institutions of the State, including the Supreme Tribunal of Justice, the National Assembly and the National Electoral Council. Supporters of the reforms believed them necessary to deal with corruption and to enable broader social and economic reforms. At the same time, other commentators considered that the reforms allowed then-President Chavez to concentrate too much power in the Executive Branch, infringing the principle of separation of powers.

Some actors in the legal system, including some judges, have cited the "Bolivarian revolution" as forming part of the current legal tradition, influencing their contemporary interpretations of new and pre-existing laws. The phrase "Bolivarian revolution" does not appear in the Constitution, though article 1 does refer to the state "basing its moral property and values of freedom, equality, justice and international peace on the doctrine of Simón Bolívar, the Liberator."

2. [Constitutional structure](#)

The Constitution provides that the Bolivarian Republic of Venezuela is a social and democratic State, which holds life, liberty, justice, equality, solidarity, democracy, social responsibility and the pre-eminence of human rights as superior values of its legal order.³

The Constitution is the supreme law of the country and the foundation of the legal order, all authorities and public servants being subject to it.⁴ In case of incompatibility between the laws and the Constitution, judges must apply the Constitution.⁵

The country is a federal structure composed of the States, the Capital District, the federal dependencies and the federal territories; each territory is divided in Municipalities.⁶ The States and Municipalities are autonomous entities with legal personality, and are subject to the Constitution and the law.⁷

The National Public Power is composed of the Executive Power, the Legislative Power, the Judicial Power, the Electoral Power and the Citizen Power. The Constitution provides for separation of these powers, and states that the branches of power must work together to ensure the fulfilment of the State's objectives.⁸

The Constitution provides that human rights are to be guaranteed by the State in accordance with the "principle of progressiveness", a concept that is not defined within by

¹ Allan R. Brewer-Carias, "Cinco Siglos de Historia y un País en Crisis" (Five Centuries of History and a Country in Crisis), Keynote Speech in the Solemn Meeting of the National Academies for the Commemoration of the V Centenary of Venezuela, 7 August 1998, p. 21

² Ibid.

³ Constitution of the Bolivarian Republic of Venezuela (hereinafter, 'Constitution'), Article 2. Consulted at: <http://www.tsj.gob.ve/legislacion/enmienda2009.pdf> (Accessed 21 August 2014).

⁴ Constitution, Article 7.

⁵ Constitution, Article 334.

⁶ Constitution, Article 16.

⁷ Constitution, Articles 159 and 168.

⁸ Constitution, Article 136.

Constitution.⁹ The State and government bodies must respect and comply with human rights and guarantees in accordance the Constitution, human rights treaties to which the state is a party, and law.¹⁰

3. International treaty status

The Constitution specifies that human rights treaties to which Venezuela is a party have constitutional rank and prevail over national legislation, provided that they contain provisions more favourable to human rights than those recognized in the Constitution and laws.¹¹ They are directly applicable by the courts and other organs of public power.

The following table sets out the status of a range of human rights treaties in Venezuela as of 21 August 2014:

	Status (including ratification, accession and succession)
International Covenant on Civil and Political Rights	10 May 1978
<i>ICCPR-OP1</i>	10 May 1978
<i>ICCPR-OP2</i>	22 February 1993
International Covenant on Economic, Social and Cultural Rights	10 May 1978
<i>ICESCR-OP</i>	4 October 2011 (signature only)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment	29 July 1991
<i>CAT-OP</i>	1 July 2011 (signature only)
International Convention on the Protection of All Persons from Enforced Disappearance	21 October 2008 (signature only)
International Convention on the Elimination of All Forms of Racial Discrimination	10 October 1967
Convention on the Elimination of All Forms of Discrimination against Women	2 May 1983
<i>CEDAW-OP</i>	13 May 2002
Convention on the Rights of the Child	13 September 1990
<i>CRC-OP1</i>	23 September 2003
<i>CRC-OP2</i>	8 May 2002
<i>CRC-OP3</i>	No signature or ratification
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	4 October 2011
Convention on the Rights of Persons with Disabilities	24 September 2013
<i>CRPD-OP</i>	24 September 2013

⁹ Constitution, Article 19. The UN Human Rights Committee, presumably fearful that this phrase might be invoked to justify failures to fully uphold human rights, including civil and political rights, noted in 2001 that this principle "has not been satisfactorily explained". Human Rights Committee, Concluding Observations on the Report Submitted by Venezuela Under Article 40 of the Covenant, UN Doc. CCPR/CO/71/VEN (2001), para. 5.

¹⁰ Constitution, Article 19.

¹¹ Constitution, Article 23.

	Ratification (including ratification, accession and succession)
Geneva Convention I	13 February 1956
Geneva Convention II	13 February 1956
Geneva Convention III	13 February 1956
Geneva Convention IV	13 February 1956
<i>Additional Protocol I</i>	23 July 1998
<i>Additional Protocol I</i>	23 July 1998
Rome Statute	7 June 2000
Convention against Corruption	2 February 2009
American Convention on Human Rights	23 June 1977 (Denounced, effective as of 10 September 2013)

Venezuela announced its intention to denounce the American Convention on Human Rights and thereby to remove itself from the jurisdiction of the Inter-American Court in a letter to the Secretary General of the Organization of American States dated 6 September 2012. It alleged that the “operational scheme between the Commission and the Court has allowed these two organs to act in an articulated fashion against the Bolivarian Republic of Venezuela by means of the admission of denunciations on cases that were being heard and processed by the legal instances of the country, or admitting denunciations that were never filed before said instances, in flagrant violation of Article 46.1 of the American Convention.”¹² The denunciation became effective on 10 September 2013; nevertheless, under Art 78(2) of the Convention, Venezuela is still subject to the obligations set out in the Convention and the jurisdiction of the Inter-American Court “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.”¹³

4. [Court structure](#)

The Constitution establishes the “justice system” (“Sistema de Justicia”) composed of the Supreme Tribunal of Justice, other courts determined by law, the Office of Public Prosecutions, the Public Defender’s Office, judicial assistance and officials, the penitentiary system, alternative means of justice, the citizens participating in the administration of justice in accordance with the law, and lawyers authorized to exercise the legal profession.¹⁴ It also recognizes that the power to dispense justice is an expression of the citizens’ sovereignty.¹⁵ The organs of Judicial Power are empowered to address cases and matters within their competence according to procedures established by law, and to take measures to enforce their judgments.¹⁶

The Legislative Power was given one year from the adoption of the Constitution to approve the Law organizing the Judicial Power.¹⁷ However, as of 12 August 2014, this law had not been enacted. Accordingly, the Organic Law of the Judicial Power (OLJP), enacted in 1998, remains applicable.

¹² Ministry of Foreign Affairs of Venezuela, Letter of the Minister of Foreign Affairs to the Secretary General of the Organization of American States (OAS) denouncing the Inter-American Convention on Human rights, 6 September 2012. Consulted at: http://www.ucab.edu.ve/tl_files/CDH/recursos/Nota%20000125_Republica%20Bolivariana%20de%20Venezuela_al_SG.PDF (Accessed 21 August 2014).

¹³ American Convention on Human Rights, article 78(2).

¹⁴ Constitution, Article 253.

¹⁵ Constitution, Article 253; Exposition of motifs of the Constitution, p. 10.

¹⁶ Constitution, Article 253.

¹⁷ Constitution, Fourth Transitory Provision.

Under the OLJP, the Judicial Power is constituted of: the Supreme Court of Justice (the Supreme Tribunal of Justice (STJ) since the adoption of the 1999 Constitution), the courts of ordinary jurisdiction, and the tribunals of special jurisdiction.¹⁸

The tribunals of ordinary jurisdiction are organized in four levels:

- Courts of Appeal;
- Higher Tribunals;
- Courts of First Instance; and,
- Municipal Courts.

There are two types of Municipal Courts: ordinary courts (which are recognized as tribunals and render judgments) and specialized courts. Specialized courts only have the power to enforce measures ordered by the Tribunals, in accordance with the law.¹⁹

The ordinary courts have jurisdiction to deal with civil, criminal, administrative, and commercial matters.²⁰

The Constitution recognizes the principle of unity of jurisdiction, meaning that military courts are part of the Judicial Power. They are competent to adjudicate only offenses of a military nature. The Constitution specifies that the commission of common crimes, human rights violations and violations of humanity rights shall be judged by the courts of ordinary jurisdiction.²¹

The STJ is composed of 32 justices, who act in plenary and in the different chambers as follows:²²

- Constitutional Chamber (7 Justices);
- Political and Administrative Chamber (5 Justices);
- Electoral Chamber (5 Justices);
- Civil Cassation Chamber (5 Justices);
- Criminal Cassation Chamber (5 Justices); and,
- Social Cassation Chamber (5 Justices).

The Constitutional Chamber of the STJ is the only body competent to declare the unconstitutionality or nullity of any law or other legal provision that is incompatible with the Constitution.²³

According to the Constitution, the Supreme Tribunal of Justice is responsible for the direction, governance and administration of the judicial power. The Constitution charges the Supreme Tribunal with the creation of an Executive Directorate of the Judiciary in order to exercise these powers, which it currently does.²⁴

However, after the adoption of the Constitution in 1999, the National Constituent Assembly had enacted a Decree creating the Transitional Regime of Public Powers,²⁵ which among other things established the Commission for the Functioning and Restructuring of the Judicial System (CFRJS), whose members were appointed by the National Constituent Assembly.²⁶ The CFRJS took over the powers previously granted to the Judicial Emergency Commission²⁷ and in addition to other things was mandated, "the responsibility of

¹⁸ Organic Law of the Judicial Power, Article 60.

¹⁹ Organic Law of the Judicial Power, Article 70.

²⁰ Organic Law of the Judicial Power, Title IV.

²¹ Constitution, Article 261.

²² Organic Law of the Supreme Tribunal of Justice, Articles 7 and 8.

²³ Constitution, Article 334.

²⁴ Constitution, Article 267.

²⁵ Decree creating the Transitional Regime of Public Powers ("Decreto mediante el cual se dicta el Régimen de Transición del Poder Público"), Official Gazette 36.859, 29 December 1999. Article 3 of the Decree stipulates that the provisions of the transitional regime will remain in force "until the effective establishment of the organization and functioning of the institutions foreseen by the approved Constitution, in conformity with legislation approved to this effect by the National Assembly".

²⁶ Decree creating the Transitional Regime of Public Powers, Article 27.

²⁷ This Commission was created by the Decree on the Reorganization of the Judiciary and the Penitentiary System (19 August 1999). Its attributes included the preparation of a national plan for the evaluation and selection of judges and the organization of the selection process (Decree, Article 3(5)(a)). The Judicial Council – the body responsible

regulating and administering, inspecting and supervising the courts and public defenders”,²⁸ until such time as the National Assembly enacted legislation to establish disciplinary procedures and tribunals.²⁹ Despite the Constitution’s fourth transitional provision instructing the National Assembly to enact legislation relating to the judicial system within one year of its installation, the Assembly did not and the CFRJS exercised disciplinary responsibility until 2010 (see sub-section B4 below).

On 2 August 2000, the Supreme Tribunal of Justice established the Executive Directorate of the Judiciary and the Judicial Commission.³⁰ The Executive Directorate initiated its functions on 1 September 2000 (but as noted above, the CFRJS remained charged with the exercise of disciplinary functions, until 2010).³¹ The Judicial Commission, composed of six magistrates representing each of the STJ’s chambers,³² was created “for the purpose of exercising, by delegation, the functions of control and supervision of the Judiciary’s Executive Directorate and any other functions that were established”³³ in the Regulations and among other things, was delegated by the Supreme Court to appoint judges of a provisional or temporary nature and to remove them when there are no disciplinary grounds.³⁴

B. Judges

It is fundamental to the rule of law, to the right to a fair trial, the right to liberty and security of the person, and to the right to effective remedy for violations of human rights, that individual judges and the judiciary as a whole are independent and impartial.³⁵ The requirement that courts and other tribunals be effective, independent and impartial “is an absolute right that is not subject to any exception.”³⁶

Any judicial, administrative or legislative body that, through its decisions, determines individual rights, must be independent and impartial and respect fair trial guarantees.³⁷

For the judiciary, safeguards of the requirement of independence include ensuring: a fair, open and transparent procedure for the appointment of judges and prescribed, objective criteria for appointment relating to qualifications, experience and integrity; guarantees for security of tenure until a mandatory age of retirement or expiry of term of office; fair and transparent procedure and criteria governing promotion, transfer, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them;

for the administration of the judiciary and charged with ensuring its independence, autonomy, efficacy and discipline (see 1998 Organic Law of the Judicial Council, Article 2) – was subordinated to the Judicial Emergency Commission (Decree, Article 5).

²⁸ Decree creating the Transitional Regime of Public Powers, Article 22.

²⁹ Decree creating the Transitional Regime of Public Powers, Article 23.

³⁰ Regulations for the Direction, Governance and Administration of the Judiciary, Official Gazette No. 37,014 (15 August 2000), Article 1-2.

³¹ Regulations for the Direction, Governance and Administration of the Judiciary, Article 30.

³² Regulations for the Direction, Governance and Administration of the Judiciary, Article 26.

³³ Regulations for the Direction, Governance and Administration of the Judiciary, Official Gazette No. 37,014 (15 August 2000), Article 2.

³⁴ Inter-American Court of Human Rights, *Chocrón Chocrón v Venezuela*, Judgment (1 July 2011), para. 67-68, 74-76.

³⁵ Among others, Universal Declaration of Human Rights, Article 10; International Covenant on Civil and Political Rights (ICCPR), Article 14(1); Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 (hereinafter: ‘UN Basic Principles on the Independence of the Judiciary’), Principle 1 and 2; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 1; Bangalore Principles of Judicial Conduct, Adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25-26 November 2002, Value 1 and 2. Generally, see also International Commission of Jurists, *International principles on the independence and accountability of judges, lawyers and prosecutors – Practitioners’ guide, no. 1* (2007).

³⁶ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19.

³⁷ Inter-American Court of Human Rights, *Constitutional Court v. Peru*, judgment (31 January 2001), para. 71; Inter-American Commission of Human Rights, *Guarantees for the Independence of Justice Operators*, OAS Doc. OEA/Ser.L/V/II. (2013), para. 30.

*and ensuring that executive and legislative branches of power do not in practice interfere with judges and judicial decision-making.*³⁸

*The State is obligated to guarantee the independence of the judiciary, not only in its institutional aspect, in terms of the judicial branch as a system, but also in its individual aspect, in relation to a particular individual judge*³⁹.

*The independence of the judiciary should not only be analysed as the right of the individual to be tried by an independent court, but also as the series of guarantees a judge must have to make judicial independence possible.*⁴⁰

The independence of the judiciary in Venezuela is threatened by the systematic practice of appointing judges on a provisional basis and without following the procedures established in the Constitution and the law. The vast majority of judges in Venezuela are appointed on a temporary basis and can be removed by a simple administrative communication and without guarantees of due process. The lack of security of tenure exposes provisional judges to unwarranted external pressure and undermines judicial independence.

1. Constitutional and legislative recognition of the principle of judicial independence

*The independence of the judiciary must be guaranteed by the State and enshrined in the Constitution or the law.*⁴¹

*International standards prescribe, as a safeguard of judicial independence, that judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.*⁴²

*The Inter-American Commission of Human Rights has observed that independence of justice must be recognized in the constitutions and national laws of States, and that the State must be organized in a way that guarantees its independence.*⁴³ *The principle of mutual cooperation between branches of Government, provided in some constitutions of the region, should not undermine the independence of the judiciary, for example by expecting that its decisions or actions are taken only in accordance with the policy of the government in power.*⁴⁴

*The Statute of the Iberoamerican Judge states that "[t]he other powers of the State ... must respect and make the independence of the judiciary efficient".*⁴⁵

The Constitution of Venezuela recognizes the principle of separation of powers between different branches of the Government, and the need for cooperation between them to achieve the goals of the State.⁴⁶ The Constitutions and laws set out to this end, as described in further in other sub-sections below, provisions about the appointment and

³⁸ See Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19; UN Basic Principles on the Independence of the Judiciary.

³⁹ Inter-American Court of Human Rights, *Apitz Barbera et al. v. Venezuela*, judgment (5 August 2008), para. 55; Inter-American Court of Human Rights, *Reverón Trujillo v. Venezuela*, judgment (30 June 2009), para. 67; Inter-American Court of Human Rights, *Quintana Coello et al. v. Ecuador*, judgment (23 August 2013), para. 154.

⁴⁰ Inter-American Court of Human Rights, *Camba Campos et al. v. Ecuador*, Judgment (28 August 2013), para. 197.

⁴¹ UN Basic Principles on the Independence of the Judiciary, Principle 1.

⁴² UN Basic Principles on the Independence of the Judiciary, Principle 9. The Statute of the Iberoamerican Judge explicitly recognizes that "[t]he impartiality is compatible with the recognition of freedom of judges association apart from the exceptions established by the Constitution or legislation of each country" (Article 36).

⁴³ Inter-American Commission of Human Rights, *Guarantees for the Independence of Justice Operators*, OAS Doc. OEA/Ser.L/V/II. (2013), para. 31.

⁴⁴ Inter-American Commission of Human Rights, *Guarantees for the Independence of Justice Operators*, OAS Doc. OEA/Ser.L/V/II. (2013), para. 33.

⁴⁵ Statute of the Iberoamerican Judge, Adopted by the VI Iberoamerican Summit of President of Supreme Courts and Tribunals of Justice (2001), Article 2.

⁴⁶ Constitution, Article 136.

promotion of judges, financial autonomy, and judicial ethics and discipline.

However it is of concern that as a measure purported to guarantee judicial independence, the Constitution prohibits judges to form professional associations to guarantee their independence.⁴⁷ In contrast with international standards, which guarantee the right to form associations to represent their interests, to promote their professional training and, explicitly, “to protect their independence”,⁴⁸ the Constitution of Venezuela prohibits this, purportedly as a measure to protect judicial independence.

As described in Section A above, after the adoption of the Constitution in 1999, the National Constituent Assembly enacted the Decree creating the Transitional Regime of Public Powers,⁴⁹ which among other things, established the Commission for the Functioning and Restructuring of the Judicial System (CFRJS), whose members were appointed by the National Constituent Assembly and which assumed the competences of the Judicial Council during the transitional phase.⁵⁰ In practice, the creation of the CFRJS meant a division of the competences attributed by the Constitution to the Executive Directorate of the Judiciary. The CFRJS was in charge of the governance and administration of the courts, while the Executive Directorate administered the finances and human resources of the Judicial Power.⁵¹

The principle of mutual cooperation between branches of the government has been applied in a manner that severely affects the independence of the judiciary, as the government reads into it an obligation for judges to follow its instructions. A 2009 Inter-American Commission report on the state of democracy in Venezuela observed that a number of judges have been removed from office after they took decisions affecting the government interests,⁵² without following procedure and without there being a serious grounds of misconduct,⁵³ as enshrined in international standards. Likewise, the attacks from the Executive Power against the judiciary have become a systematic practice,⁵⁴ creating an “atmosphere of fear amongst judges.”⁵⁵

The case of Judge María Lourdes Afíuni Mora is emblematic. She was detained in 2009, a few hours after ordering the release on bail of Mr Eligio Cedeño, in part based on a decision by the UN Working Group on Arbitrary Detention, which had determined that the period of his detention had exceeded the maximum term permissible under Venezuelan law and was therefore arbitrary. The next day, then-President Chavez, in a nationwide radio and television broadcast, called the judge an “outlaw”⁵⁶ and proclaimed that she should be sentenced to a thirty-year prison term “in the name of the dignity of the country”,⁵⁷ a decision he stated to have discussed with the President of the Supreme

⁴⁷ Constitution, Article 256.

⁴⁸ UN Basic Principles on the Independence of the Judiciary, Principle 9.

⁴⁹ Decree creating the Transitional Regime of Public Powers (“Decreto mediante el cual se dicta el Régimen de Transición del Poder Público”), Official Gazette 36.859, 29 December 1999.

⁵⁰ Article 3 of the Decree stipulates that the provisions of the transitional regime will remain in force “until the effective establishment of the organization and functioning of the institutions foreseen by the approved Constitution, in conformity with legislation approved to this effect by the National Assembly”. The CFRJS was to exercise disciplinary responsibility until the National Assembly adopted the pertinent legislation (Decree, Article 23). Despite the fourth transitional provision of the Constitution instructing the National Assembly to adopt legislation related to the judicial system within a year of its installation, the Assembly did not and the CFRJS exercised disciplinary responsibility until 2010. See sub-section 4, below.

⁵¹ International Commission of Jurists, *Strengthening the Rule of Law in Venezuela* (May 2014), p. 9.

⁵² Inter-American Commission of Human Rights, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II, Doc. 54, para. 285.

⁵³ Inter-American Commission of Human Rights, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II, Doc. 54, para. 239 -252.

⁵⁴ Inter-American Commission of Human Rights, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II, Doc. 54, para. 285 -301.

⁵⁵ International Bar Association’s Human Rights Institute (IBAHRI), *The Execution of Justice: The Criminal Trial of Judge María Lourdes Afíuni* (2014), Executive Summary, p. 3.

⁵⁶ “... a judge who frees an outlaw is worse than the outlaw himself.” See Inter-American Commission of Human Rights, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II, Doc. 54, para. 298, referring to the audio recording of the speech (the link is no longer available, on 18 November 2014).

⁵⁷ See Inter-American Commission of Human Rights, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II, Doc. 54, para. 298, referring to the audio recording of the speech (the link is no longer available, on 18 November 2014).

Tribunal of Justice. Following this public instruction from the head of the Executive Branch, charges were filed against Judge Afiuni alleging corruption, abetting an escape, criminal conspiracy and abuse of power, and she spent two years detained in prison pending trial, during which time she was allegedly raped and suffered other types of cruel, inhuman and degrading treatment, until in February 2011 she was placed under house arrest on medical grounds, from which she was eventually released, albeit with restrictive conditions,⁵⁸ on 14 June 2013.

Meanwhile, the criminal trial against judge Afiuni had started in November 2012. However, after frequent procedural delays caused by the presiding judge and the prosecution failing to appear at the trial for various inadequate reasons, in October 2013 the prosecution's failure attend an evidentiary hearing caused the trial to be interrupted and annulled. At no stage of the trial had the prosecutor produced sufficient evidence to substantiate the allegations against judge Afiuni. The court has ordered a retrial, but as of November 2014 it is unclear when this will be held.

In parallel with the criminal proceedings, on 11 December 2009 the Judicial Commission suspended judge Afiuni without pay, without any prior proceeding or inquest, "until the General Inspectorate of Courts finishes its investigation". She also faces two disciplinary proceedings, originating from complaints submitted by the General Inspectorate of Courts in 2012, as a result of investigations that were opened after her suspension. Judge Afiuni has challenged her suspension and the disciplinary actions brought against her in a petition pending before the Political-Administrative Chamber of the Supreme Tribunal of Justice. Furthermore, in June 2013 Judge Afiuni presented a request to the Executive Directorate of the Judiciary for the immediate reinstatement of her position as judge. As of 18 November 2014, however, she remains suspended.⁵⁹

The government has held up her case as an example of what could happen to other judges who do not act in accordance with its wishes.

2. [Appointment and Promotion of Judges; Security of Tenure](#)

To safeguard the independence of the judiciary and the rights to equality before the law and equal access to the profession, international standards clarify that judges should be appointed through an open process on the basis of prescribed criteria based on merit and integrity, and without discrimination.⁶⁰ To ensure that the composition of the judiciary is essentially reflective of the population and to combat discrimination and ensure equality before the law, steps should be taken to ensure the appointment of qualified women and members of minority communities.⁶¹

⁵⁸ International Bar Association's Human Rights Institute (IBAHRI), *The Execution of Justice: The Criminal Trial of Judge María Lourdes Afiuni* (2014), p. 20.

⁵⁹ International Commission of Jurists, *Fortaleciendo el Estado de Derecho en Venezuela*, p. 24.

⁶⁰ Principle 10 of the UN Basic Principles on the Independence of the Judiciary provides in part: "In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory." See Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19. Also see ECtHR, *Campbell and Fell v. UK* (Application No. 7878/77), para. 78, where the Court indicates that "the manner of appointment of its members" forms part of the assessment of a bodies' independence; ECtHR, *Zand v. Austria* (Application No. 7360/76), para. 81: to challenge a judge's independence based on his or her manner of appointment, it would need to be shown that the practice of appointment "as a whole is unsatisfactory" or that "at least the establishment of the particular court deciding a case was influenced by improper motives".

⁶¹ Gabriela Knaul, Special Rapporteur on the independence of judges and lawyers, Report to the General Assembly, UN Doc. A/66/289 (2011), para. 22-33, 92; Statute of the Iberoamerican Judge, Adopted by the VI Iberoamerican Summit of President of Supreme Courts and Tribunals of Justice (2001), Article 13; Human Rights Committee, Concluding Observations on the United Kingdom, UN Doc. CCPR/CO/73/UK (2001), para. 15; Human Rights Committee, Concluding Observations on France, UN Doc. CCPR/C/FRA/CO/4 (2008), para. 26; Human Rights Committee, Concluding Observations on Sudan, UN Doc. CCPR/C/79/Add.85 (1997), para. 21; Committee Against Torture, Conclusions and recommendations on Bahrain, UN Doc. CAT/C/CR/34/BHR (2005), para. 7(h); Committee on the Elimination of Racial Discrimination, General Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system, UN Doc. A/60/18 (pp. 98-108) (2005), para. 5(d); Committee on the Elimination of Racial Discrimination, Concluding Observations on Guatemala, UN Doc.

As regards appointment criteria, the UN Basic Principles on the Independence of the Judiciary stipulate that persons selected must be "individuals of integrity and ability with appropriate training of qualifications in law".⁶²

The Statute of the Iberoamerican Judge specifies that the "process of selection and appointment" should take place through organs and processes predetermined in law that allow for the objective assessment and determination of the applicant's professional knowledge, merits and suitability.⁶³

An appropriate method of appointment of judges is a prerequisite for the independence of the judiciary⁶⁴ and is a means of ensuring equal access to the profession. On the procedure for judicial appointments, the UN Basic Principles on the Independence of the Judiciary underscore the fact that "[a]ny method of judicial selection shall safeguard against judicial appointments for improper motives".⁶⁵

In relation to the appointment and promotion of judges the United Nations Human Rights Committee and the Special Rapporteur on the independence of judges and lawyers have repeatedly recommended the use of bodies that are independent from the executive,⁶⁶ are plural and are composed mainly (if not solely) of judges and members of the legal profession;⁶⁷ and that apply transparent procedures.⁶⁸

It is widely accepted that when judges have security of tenure in office they are less vulnerable to pressure from those who can influence or make decisions about the renewal of their terms of office. Accordingly, international standards safeguarding the independence of judges prescribe that judges' tenure must be guaranteed until a mandatory retirement age or expiry of the term of office.

As a necessary corollary to the guarantee of security of tenure judges nonetheless remain accountable throughout their terms of office. As discussed further in subsection 4 below, international standards specify that during their term of office, judges may be removed only in exceptional, strictly limited and well-defined circumstances provided for by law, involving incapacity or behaviour that renders them unfit to carry out the duties of their office, and following a fair procedure.

Like judicial appointments, promotions within the judiciary must be based on objective factors, particularly ability, integrity and experience.⁶⁹

The Statute of the Iberoamerican Judge, also states that "[t]he guarantee of non-removal of the judge extends to transfers and promotions which require the full consent of the

CERD/C/GTM/CO/12-13 (210), para. 8; Committee on the Elimination of Racial Discrimination, Concluding Observations on Colombia, UN Doc. CERD/C/304/Add.76 (1999), para. 13.

⁶² UN Basic Principles on the Independence of the Judiciary, Principle 10.

⁶³ Statute of the Iberoamerican Judge, Adopted by the VI Iberoamerican Summit of President of Supreme Courts and Tribunals of Justice (2001), Article 11-12.

⁶⁴ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19.

⁶⁵ UN Basic Principles on the Independence of the Judiciary, Principle 10.

⁶⁶ See e.g. Concluding Observations on the Congo, CCPR/C/79/Add.118, para. 14; Concluding Observations on Liechtenstein, CCPR/CO/81/LIE, para. 12; Concluding Observations on Tajikistan, CCPR/CO/84/TJK, para. 17; Concluding Observations on Honduras, CCPR/C/HND/CO/1 (2006), para. 16; Concluding Observations on Azerbaijan, UN Doc. CCPR/C/AZE/CO/3 (2009), para. 12; Human Rights Committee, Concluding Observations on Kosovo (Serbia), UN Doc. CCPR/C/UNK/CO/1 (2006), para. 20. Also see Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 11; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 9.

⁶⁷ Leandro Despouy, Special Rapporteur on the independence of judges and lawyers, Report to the Human Rights Council, UN Doc. A/HRC/11/41 (2009), para. 28-29; International Commission of Jurists, International principles on the independence and accountability of judges, lawyers and prosecutors – Practitioners' guide, no. 1 (2007), pp. 45-48.

⁶⁸ Leandro Despouy, Special Rapporteur on the independence of judges and lawyers, Report to the Human Rights Council, UN Doc. A/HRC/11/41 (2009), para. 32. See Leandro Despouy, Special Rapporteur on the independence of judges and lawyers, Preliminary Report to the Human Rights Commission on a mission to Ecuador, UN Doc. E/CN.4/2005/60/Add.4 (2005), para. 5(d).

⁶⁹ UN Basic Principles on the Independence of the Judiciary, Principle 13; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 14.

*interested person" (while also recognizing the existence of exceptional transfers in function of the necessities of service).*⁷⁰

The Constitution provides that the entry to the judicial career shall be through open public competitions and candidates should be selected on the basis of excellence and adequate qualifications.⁷¹

The former Organic Law of the Judicial Career enacted in 1998 provided that the judicial career started from category 'C', as judge of Municipal Court, and moved upward to category 'A'.⁷² The judicial categories⁷³ as established by the OLJC were:⁷⁴

- Scale 'A': Judges for Higher Tribunals;
- Scale 'B': Judges for Courts of First Instance; and
- Scale 'C': Judges for Municipal Courts.

The requisites to be appointed as judge in the scale 'C' were:⁷⁵

- At least three years of professional experience as a lawyer;
- Having succeeded in the public completion with the higher qualification; and,
- Having successfully completed the courses organized by the former Judicial Council.

The Constitution guarantees security of judicial tenure, in that judges can only be removed following procedures expressly established in the law.⁷⁶

Under the Constitution, Justices of the Supreme Tribunal of Justice, the apex court, are appointed for a non-renewable term of 12 years.⁷⁷ During their tenure on the Tribunal, they may be removed only on grounds of serious misconduct (previously qualified by the Citizen Power), by a qualified 2/3s majority of the members of the National Assembly following a hearing.⁷⁸

Additionally, the OLJC guaranteed security of tenure for judges, by specifying that they could only be removed on the basis of the grounds and following the procedure established in the OLJC.

In fact, however, the vast majority of judges in Venezuela are appointed on a temporary or provisional basis, without any guarantees regarding their tenure (also see sub-section 4, below). Only titular judges, who comprise approximately twenty per cent of the country's judges, enjoy tenure.

In 2000, the Commission for the Functioning and Restructuring of the Judicial System (CFRJS) enacted the Norms for the Evaluation and Public Competitions for the Admission and Permanence in the Judiciary,⁷⁹ replacing the provisions for open public competitions and evaluations established by the OLJC.⁸⁰

The Norms for Evaluation provide the requirements and procedures for conducting public tenders for judicial vacancies.⁸¹ Under these norms the judges that were serving in office for one year or more should receive performance evaluations in order to continue their career in the judiciary.⁸²

⁷⁰ Statute of the Iberoamerican Judge, Adopted by the VI Iberoamerican Summit of President of Supreme Courts and Tribunals of Justice (2001), Article 16.

⁷¹ Constitution, Article 255.

⁷² Law of the Judicial Career, Article 10.

⁷³ Law of the Judicial Career, Article 7.

⁷⁴ Law of the Judicial Career, Article 9.

⁷⁵ Law of the Judicial Career, Article 10.

⁷⁶ Constitution, Article 255.

⁷⁷ Constitution, Article 264.

⁷⁸ Constitution, Article 265.

⁷⁹ Norms of Evaluation and Open Public Competitions for the Admission and Permanence in the Judiciary.

⁸⁰ Norms of Evaluation and Open Public Competitions for the Admission and Permanence in the Judiciary, Article 40.

⁸¹ Norms of Evaluation and Open Public Competitions for the Admission and Permanence in the Judiciary, Article 13.

⁸² Norms of Evaluation and Open Public Competitions for the Admission and Permanence in the Judiciary, Article 4.

Contrary to these Norms for Evaluation, the Decree of Transitional Power established that all judicial positions should be open to public tenders.⁸³ This was interpreted to mean that all judges then in office were automatically dismissed and forced to reapply for their position. In addition, the evaluation procedure was never carried out and the only public competitions for judicial posts were held in the period of 2000 to 2003,⁸⁴ resulting in the appointment of only 200 judges (against a total of 1732 judicial posts open in that period).

In 2005, the Plenary of the STJ adopted the Norms of Evaluation and Open Public Competitions for the Entry into and Promotion within the Judicial Career, establishing the Special Programme for Regularization of Status.⁸⁵ Under this programme, all judges with temporary or provisional status would have to undergo an evaluation procedure to become titular judges.⁸⁶ However, in 2008 only 73 judges obtained tenure through the Special Programme.⁸⁷

This stands in contrast with the 1451 judges who were appointed to posts without security of tenure in the same year.⁸⁸ In 2009, another 359 judges were appointed without an open public competition.⁸⁹

The practice of appointing provisional, temporary and other judges without organizing an open, public competition and without granting them security of tenure continued in 2013; 1134 judges were appointed on these bases.⁹⁰

As a result, approximately 80% of judges currently in office do not have guaranteed security of tenure and are at risk of being dismissed on a discretionary basis.⁹¹

3. [Financial independence of the judiciary](#)

At the institutional level, international standards make clear that it is the duty of the State to provide adequate resources to enable the judiciary to properly perform its functions.⁹² As a safeguard of judicial independence, the courts' budget shall be prepared "in collaboration with the judiciary having regard to the needs and requirements of judicial administration".⁹³

Furthermore, the remuneration and pensions of judges must be secured by law at an adequate level that is consistent with their status⁹⁴ and is sufficient to safeguard against conflict of interest and corruption. Under the Statute of the Iberoamerican Judge, States are obligated to provide judges with access to a system of social security, guaranteeing an

⁸³ Decree of Transitional Power, Article 25.

⁸⁴ International Commission of Jurists, *Strengthening the Rule of Law in Venezuela*, Executive Summary (May 2014), p. 2.

⁸⁵ Norms of Evaluation and Open Public Competitions for the Entry into and Promotion within the Judicial Career, Article 46.

⁸⁶ Norms of Evaluation and Open Public Competitions for the Entry into and Promotion within the Judicial Career, Article 46.

⁸⁷ Inter-American Commission of Human Rights, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II, Doc. 54, para. 214.

⁸⁸ Inter-American Commission of Human Rights, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II, Doc. 54, para. 209.

⁸⁹ Inter-American Commission of Human Rights, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II, Doc. 54, para. 210.

⁹⁰ PROVEA, *Annual Report 2013*, p. 344.

⁹¹ International Commission of Jurists, *Strengthening the Rule of Law in Venezuela* (May 2014), p. 16.

⁹² UN Basic Principles on the Independence of the Judiciary, Principle 7; Statute of the Iberoamerican Judge, Adopted by the VI Iberoamerican Summit of President of Supreme Courts and Tribunals of Justice (2001), Article 6; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 33.

⁹³ Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 34.

⁹⁴ UN Basic Principles on the Independence of the Judiciary, Principle 11; Statute of the Iberoamerican Judge, Adopted by the VI Iberoamerican Summit of President of Supreme Courts and Tribunals of Justice (2001), Article 32; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 16(a); Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 13.

*honourable pension in case of retirement and adequate indemnity in case of illness or in case of damage arising from the exercise of their function.*⁹⁵

*The Inter-American Commission has emphasized that adequate remuneration, proper human and technical resources, training and security conditions are essential to enabling justice operators to perform their functions, without external or internal pressures, for example corruption.*⁹⁶

*Furthermore, the State must "provide the necessary means for the family and personal security of the judges according to the circumstances of risk to which they can be presented".*⁹⁷

The independence and financial autonomy of the Judicial Branch and the Supreme Tribunal of Justice are enshrined in the Constitution,⁹⁸ as well as in the Organic Law of the Judicial Power (OLJP), which recognize that functional, economic and administrative autonomy is required to guarantee the independence of the Judicial Power.⁹⁹

The Executive Directorate of the Judiciary, created by the Plenary of the STJ, is responsible for the elaboration and implementation of the budget of the judicial power.¹⁰⁰ The National Assembly approves it as part of the National Budget.¹⁰¹ The Constitution establishes that the annual budget of the judicial power may only be modified or reduced by the Legislative, and cannot be less than 2% of the National Budget.¹⁰²

The budget elaborated by the judicial power is not always fully approved by the Legislative Body and in some cases may not be sufficient to satisfy the needs. For example, in 2002 the Judicial System, through the Executive Directorate, requested 680 billions Bolivars, but just 359 billions Bolivars were allocated by the National Assembly.¹⁰³ The Executive Directorate of the Judiciary has stated that the allocated budget in 2003 was 45% less than the one requested by the STJ for that year, and represented a reduction of the budget granted in the previous two years.¹⁰⁴ In 2009, the Inter-American Commission of Human Rights recommended Venezuela "[i]ncrease the budget assigned to the judicial power as necessary to eliminate procedural delay."¹⁰⁵

The increase of the budget of the System of Justice to at least 2% of the National Budget has encouraged the investment in different programmes to increase access to justice (i.e. investment in infrastructure, purchase of IT equipment, and training for judges).¹⁰⁶ However, the actual implementation of the budget is not specified in the information system of the Government.¹⁰⁷

Since 2011, the amount allocated by the National Assembly for the System of Justice has shrunk as a share of the overall national budget.¹⁰⁸

⁹⁵ Statute of the Iberoamerican Judge, Adopted by the VI Iberoamerican Summit of President of Supreme Courts and Tribunals of Justice (2001), Article 33.

⁹⁶ Inter-American Commission of Human Rights, *Guarantees for the Independence of Justice Operators*, OAS Doc. OEA/Ser.L/V/II. (2013), para. 128.

⁹⁷ Statute of the Iberoamerican Judge, Adopted by the VI Iberoamerican Summit of President of Supreme Courts and Tribunals of Justice (2001), Article 35.

⁹⁸ Constitution, Article 254.

⁹⁹ Organic Law of the Judicial Power, Article 1.

¹⁰⁰ Constitution, Article 267.

¹⁰¹ Constitution, Article 187(6).

¹⁰² Constitution, Article 254.

¹⁰³ International Bar Association, *Venezuela: Justice System in Crisis* (2003), p. 18.

¹⁰⁴ PROVEA, *Annual Report 2003*, p. 374.

¹⁰⁵ Inter-American Commission of Human Rights, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II, Doc. 54, para. 339, Recommendation 14.

¹⁰⁶ Budgetary Law for Fiscal Year 2014, Chapter II, Title 21, p. 1.

¹⁰⁷ PROVEA, *Annual Report 2013*, p. 344.

¹⁰⁸ PROVEA, *Annual Report 2013*, p. 343.

4. Independence and impartiality; Judicial integrity and accountability

Respect for the rule of law is founded on public trust of the judiciary and, to maintain that trust, judges must uphold the highest standards of independence, impartiality and integrity, and must be accountable to those standards.

The guarantee of judicial decisions by independent tribunals means that judges must be free to "decide matters before them impartially, on the basis of the facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason".¹⁰⁹ Thus, both state actors and non-state actors alike must respect the independence of the judiciary and refrain from action aimed at improperly influencing members of the judiciary, undermining their independence and impartiality. While respecting the hierarchy between the courts of first instance and higher courts, international standards clarify that other judges must also respect the independence of their colleagues within the scope of the exercise of judicial functions: "No one must give or attempt to give the judge orders or instructions of any kind, that may influence the judicial decisions of the judge, except, where applicable, the opinion in a particular case given on appeal by the higher courts."¹¹⁰

In the course of the exercise of judicial functions, judges must be impartial, and be seen to be impartial. Judges "must not allow their judgment to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other." Further, even where an individual judge might in fact be able to ignore a personal relationship to one of the parties to a case, he or she should step aside from the case to protect against an apprehension of bias: "the tribunal must also appear to a reasonable observer to be impartial."¹¹¹ The Statute of the Iberoamerican Judge pointedly states that "[t]he impartiality of the judge has to be true, real and obvious for the citizens".¹¹²

Judges must also ensure that their conduct is above reproach in the view of a reasonable observer. They must avoid impropriety and the appearance of impropriety in all their activities. Their behaviour must reinforce the people's confidence in the integrity of the judiciary.¹¹³

The Statute of the Iberoamerican Judge, under the heading of "Judicial Ethics" lists a number of obligations of judges, such as, to try to give justice in conditions of efficiency, quality, accessibility and transparency, in respect of the dignity of the person demanding the service,¹¹⁴ to act as a guarantor of the rights of the parties through enforcing due

¹⁰⁹ UN Basic Principles on the Independence of the Judiciary, Principles 1-7, in particular Principle 2; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Articles 2-8; Bangalore Principles of Judicial Conduct, Adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25-26 November 2002, Value 1; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 1-4.

¹¹⁰ Statute of the Iberoamerican Judge, Adopted by the VI Iberoamerican Summit of President of Supreme Courts and Tribunals of Justice (2001), Article 4; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 4; Venice Commission, Report on the Independence of the Judicial System, Part I: the Independence of Judges, CDL-AD(2010)004, para. 72.

¹¹¹ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 21; UN Basic Principles on the Independence of the Judiciary, Principle 2; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 25; Bangalore Principles of Judicial Conduct, Adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25-26 November 2002, Value 2 and 4; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 5.

¹¹² Statute of the Iberoamerican Judge, Adopted by the VI Iberoamerican Summit of President of Supreme Courts and Tribunals of Justice (2001), Article 8.

¹¹³ Bangalore Principles of Judicial Conduct, Adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25-26 November 2002, Value 3 and 4; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 5-7. See ECtHR, *Fey v. Austria* (Application No. 14396/88), para. 30: "What is at stake is the confidence which the courts in a democratic society must inspire in the public and, above all, as far as criminal proceedings are concerned, in the accused."

¹¹⁴ Statute of the Iberoamerican Judge, Adopted by the VI Iberoamerican Summit of President of Supreme Courts and Tribunals of Justice (2001), Article 37.

process principles;¹¹⁵ to resolve cases within a reasonable delay;¹¹⁶ and to keep strict confidence and professional secret.¹¹⁷

A judicial code of conduct, drafted primarily by judges and members of the legal profession and consistent with international standards,¹¹⁸ can help to safeguard judicial integrity and protect against conflicts of interest.¹¹⁹ Pursuant to international standards, such judicial codes of conduct, which should be enshrined in the law, should serve as the basis for the determination of cases of alleged judicial misconduct within a fair disciplinary system.¹²⁰

Complaints about judicial misconduct must be processed expeditiously and fairly under an appropriate procedure that is subject to independent review.¹²¹ The judge in question has the right to a fair hearing before an independent and impartial body. The body responsible for discipline of judges should be independent of the executive,¹²² plural and composed mainly (if not solely) of judges and members of the legal profession.¹²³ The judge's rights to a fair proceeding, including to notice of the accusations against him or her, to adequate time and facilities to prepare and present a defence including through counsel, to challenge the evidence against him or her and to present witnesses must be respected. Decisions must be based on established standards of judicial conduct, and sanctions must be proportionate. Decisions to suspend or remove a judge must be limited to cases in which the incapacity or behaviour of a judge renders the individual unfit to discharge his or her judicial duties.¹²⁴ Decisions and sanctions in disciplinary proceedings should be subject to independent judicial review (although this may not apply to decisions of the highest court or the legislature in impeachment proceedings).¹²⁵

The dismissal of judges by the executive, e.g. before the expiry of the term for which they have been appointed, without any specific reason given to them and without effective judicial protection being available to contest the dismissal is incompatible with the independence of the judiciary.¹²⁶ Further, the removal of judge at will "fosters an objective doubt in the observer about the real possibility of judges to decide specific disputes without fear of reprisal."¹²⁷

¹¹⁵ Statute of the Iberoamerican Judge, Adopted by the VI Iberoamerican Summit of President of Supreme Courts and Tribunals of Justice (2001), Article 39.

¹¹⁶ Statute of the Iberoamerican Judge, Adopted by the VI Iberoamerican Summit of President of Supreme Courts and Tribunals of Justice (2001), Article 42.

¹¹⁷ Statute of the Iberoamerican Judge, Adopted by the VI Iberoamerican Summit of President of Supreme Courts and Tribunals of Justice (2001), Article 44.

¹¹⁸ See Bangalore Principles of Judicial Conduct; International Bar Association Minimum Standards of Judicial Independence, para. 35-42.

¹¹⁹ See Bangalore Principles of Judicial Conduct, Preamble and 'Implementation'.

¹²⁰ UN Basic Principles on the Independence of the Judiciary, Principle 19.

¹²¹ UN Basic Principles on the Independence of the Judiciary, Principle 17 and 20; Statute of the Iberoamerican Judge, Adopted by the VI Iberoamerican Summit of President of Supreme Courts and Tribunals of Justice (2001), Article 20; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 28.

¹²² Human Rights Committee, Concluding Observations on Azerbaijan, UN Doc. CCPR/C/AZE/CO/3 (2009), para. 12; Human Rights Committee, Concluding Observations on Honduras, UN Doc. CCPR/C/HND/CO/1 (2006), para. 16; Human Rights Committee, Concluding Observations on Kosovo (Serbia), UN Doc. CCPR/C/UNK/CO/1 (2006), para. 20.

¹²³ Leandro Despouy, Special Rapporteur on the independence of judges and lawyers, Report to the Human Rights Council, UN Doc. A/HRC/11/41 (2009), para. 28-29.

¹²⁴ UN Basic Principles on the Independence of the Judiciary, Principle 16; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 20; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 10.

¹²⁵ UN Basic Principles on the Independence of the Judiciary, Principle 17-20; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 26-31; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 8 and 11.

¹²⁶ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 20.

¹²⁷ Inter-American Court of Human Rights, *Apitz Barbera et al. v. Venezuela*, Judgment (5 August 2008), para. 44; Inter-American Court of Human Rights, *Chocrón Chocrón v. Venezuela*, Judgment (1 July 2011), para. 99; Inter-American Court of Human Rights, *Camba Campos et al. v. Ecuador*, Judgment (28 August 2013), para. 189.

*In order to safeguard the independence of the judiciary, individual judges should also enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.*¹²⁸

The Constitution of Venezuela guarantees that judges may only be removed or suspended by means of procedures previously established by the law.

The Judicial Code of Ethics provides the ethical principles to guide the conduct of judges, the disciplinary procedures to guarantee their independence,¹²⁹ and it guarantees the impartiality of the disciplinary bodies in charge of conducting these proceedings.

The Constitution also recognizes personal liability of judges for "unjustified omissions, delay or errors, for substantial failure to observe the rules of procedure, for denial of justice, for partiality and for the criminal offences of bribery¹³⁰ and prevarication¹³¹ in office."¹³²

Before the adoption of the Constitution in 1999, the Judicial Council was in charge of the disciplinary procedure against judges. The Organic Law of the Judicial Council (OLJC) established the Disciplinary Chamber of the Council, competent to decide disciplinary procedures started against judges.¹³³ The OLJC also established the Tribunals Inspectorate in charge of the inspection of tribunals, regarding the efficiency, performance and behaviour of judges,¹³⁴ but not concerning the judicial decisions taken by them or the grounds thereof.¹³⁵

The OLJC also prescribed the procedure for the removal of judges.¹³⁶ Even though these procedures were of an administrative nature and the disciplinary bodies were not composed of judges,¹³⁷ the right to an independent judicial review of the disciplinary sanctions was guaranteed by way of an appeal to the former Administrative Chamber of the Supreme Court of Justice.¹³⁸

With the adoption of the new Constitution, the Judicial Council ceased to exist and all of its competences were delegated to the Supreme Tribunal of Justice. The procedure provided by the former OLJC was also abrogated after the adoption of the Judicial Code of Ethics.¹³⁹

The 1999 Constitution provides for judicial discipline by disciplinary tribunals, and foresees the creation of a Judicial Code of Conduct that contains the disciplinary regime for judges and guarantees for due process of law during these proceedings.¹⁴⁰ Upon the adoption of the Constitution, the Commission for the Functioning and Restructuring of the Judicial System (CFRJS) assumed all the disciplinary competences previously held by the Judicial Council. These arrangements were supposed to be temporary, pending the National Assembly's adoption of a law organizing the judicial power within one year after the

¹²⁸ UN Basic Principles on the Independence of the Judiciary, Principle 16; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 20; Universal Charter of the Judge, Approved by the International Association of Judges on 17 November 1999, Article 10.

¹²⁹ Judicial Code of Ethics, Article 1.

¹³⁰ Defined in the Criminal Code as the act by a civil servant of accepting any undue retribution for the performance of his or her functions. Criminal Code, Article 197. Consulted in:

<http://www.mp.gob.ve/LEYES/codigo%20penal/codigo%20penal.html>

¹³¹ Defined in the Criminal Code as the act of collusion between an accused and a lawyer to prejudice his or her client, or the act of a lawyer to request from his or her client money or something of value in exchange for the favours of judges, witnesses or experts in a proceeding. Criminal Code, Article 250 and 253.

¹³² Constitution, Article 255.

¹³³ Organic Law of the Judicial Council, Article 12.

¹³⁴ Organic Law of the Judicial Council, Article 24.

¹³⁵ Organic Law of the Judicial Council, Article 31.

¹³⁶ Organic Law of the Judicial Council, Articles 36-39.

¹³⁷ Judicial Disciplinary Jurisdiction, Background, Available at: <http://jdi.gob.ve/lajurisdicciondisciplinariajudicial.html> (Accessed 21 August 2014).

¹³⁸ Organic Law of the Judicial Council, Article 51.

¹³⁹ Judicial Code of Ethics, Derogating Provision.

¹⁴⁰ Constitution, Article 267.

adoption of the Constitution.¹⁴¹ Contrary to this provision, the Legislature did not promulgate said law, and the CFRJS exercised disciplinary functions until 2010.

In 2008, the Inter-American Court of Human Rights ordered Venezuela to “adopt [...] measures as may be required to pass the Code of Ethics within the term of one year as from notice of this Judgment”.¹⁴² The reasoning behind this order was the fact that for more than nine years, a provisional body, set up on a discretionary basis, was given power to remove judges, resulting in a situation where guarantees for avoiding external pressure and undue influence on judicial decisions were lacking.¹⁴³

The judgment of the Inter-American Court led to the adoption of the Judicial Code of Ethics, which entered into force in 2009. The Judicial Code of Ethics establishes the disciplinary regime for “every judge ... in exercise of permanent, temporary, occasional, accidental or provisional jurisdiction.”¹⁴⁴ The Code also provides the procedures, competent bodies and grounds for sanctioning disciplinary offences committed by all judges in the fulfilment of their duties.¹⁴⁵

The sanctions prescribed by the Judicial Code of Ethics are:¹⁴⁶

- Written warnings;
- Temporary suspension; and,
- Removal.

The Judicial Code of Ethics specifies that the Disciplinary Tribunal and the Disciplinary Court are the competent bodies in charge of sanctioning judges in accordance with proceedings established in the Judicial Code of Ethics.¹⁴⁷

The Disciplinary Tribunal is the body in charge of exercising the disciplinary jurisdiction in the first instance,¹⁴⁸ while the Disciplinary Court acts as a higher court.¹⁴⁹ Both are composed of three titular judges and three substitute judges¹⁵⁰ elected by the Judicial Electoral Colleges¹⁵¹ that are composed as follows:¹⁵²

- A representative of the judicial branch;
- A representative of the Attorney General’s Office;
- A representative of the Public Defenders Office;
- A representative of lawyers authorized to practice law; and,
- Ten delegates of the Communal Councils.

The list of candidates for the disciplinary bodies¹⁵³ that is presented to the Judicial Electoral College for selection is compiled by the Judicial Nominations Committee (JNC). Each of the candidates must comply with the requirements provided in the Code.¹⁵⁴ In particular, they must:

- have previously exercised the legal profession for at least ten years and have a postgraduate degree in law; or,
- have taught law in the university for the same period of time; or,
- have been part of the judicial career for at least ten years.¹⁵⁵

¹⁴¹ Constitution, Fourth Transitory Provision.

¹⁴² Inter-American Court of Human Rights, *Apitz Barbera et al. v. Venezuela*, Judgment (5 August 2008), para. 253.

¹⁴³ Inter-American Court of Human Rights, *Apitz Barbera et al. v. Venezuela*, Judgment (5 August 2008), para. 147.

¹⁴⁴ Original text in Spanish: “todos los jueces y juezas dentro del territorio de la República Bolivariana de Venezuela ...en ejercicio de manera permanente, temporal, ocasional, accidental o provisoria”.

¹⁴⁵ Judicial Code of Ethics (Código de Ética del Juez Venezolano y Jueza Venezolana), Official Gazette No 39 236, 6 August 2009, Article 2.

¹⁴⁶ Judicial Code of Ethics, Article 28

¹⁴⁷ Judicial Code of Ethics, Article 39.

¹⁴⁸ Judicial Code of Ethics, Article 40.

¹⁴⁹ Judicial Code of Ethics, Article 42.

¹⁵⁰ Judicial Code of Ethics, Articles 41 and 43.

¹⁵¹ Judicial Code of Ethics, Article 46.

¹⁵² Judicial Code of Ethics, Article 47.

¹⁵³ Judicial Code of Ethics, Article 49.

¹⁵⁴ Judicial Code of Ethics, Article 44.

¹⁵⁵ Judicial Code of Ethics, Article 44(4).

The Organic Law of the Supreme Tribunal of Justice specifies that the JNC is an advisory body of the National Assembly, and it is funded through the National Assembly budget.¹⁵⁶ In addition to composing the list of candidates for election (by the Judicial Electoral Colleges) of members of the Disciplinary Tribunals and Courts, the JNC also serves as an advisory committee of the Judicial Power for the election of candidates to the STJ and to the Judicial Electoral Colleges.

The Constitution provides that the JNC should be composed of representatives of all the sectors of society.¹⁵⁷ The JNC is composed of eleven members: five active members of the Assembly, and six members of the "other sectors of society" (which are not defined). The members of the JNC are elected and appointed by simple majority of the National Assembly.¹⁵⁸

This institutional set-up endangers the system of checks and balances by placing too much weight on the decisions by the Legislative Power concerning appointment of members to the judiciary's disciplinary bodies.

Further, in practice there are no open recruitments to fill judicial vacancies, judges do not enjoy security of tenure, they are not subject to a code of ethics, and may be removed at will without a formal proceeding being followed.

Even though the Constitution and the law, in particular the Judicial Code of Ethics, prescribe procedures for the appointment and removal of judges, as of August 2014 it remains a common practice to remove temporary judges through a simple communication informing them that their appointment is "no longer in effect,"¹⁵⁹ without mention of any grounds of misconduct committed or a fair procedure, adversely affecting their independence. Moreover, in 2013 the Constitutional Chamber of the STJ provisionally suspended the application of the Code of Ethics to the Justices of the STJ, as well as the "temporary, casual, accidental and provisional"¹⁶⁰ judges, and held that the Judicial Commission of the STJ is competent to sanction and remove "temporary, casual, accidental and provisional" judges, limiting the competences given to the disciplinary bodies of the judiciary by the Constitution and the law. Accordingly, temporary and provisional judges, who constitute the vast majority of judges in Venezuela, are not protected, as no formal procedure is followed for their appointment, discipline or removal.

C. Lawyers

*Lawyers fulfill an essential function in protecting human rights and ensuring the fair and effective administration of justice. An independent legal profession is one of the pillars upon which respect for human rights and the rule of law rests.*¹⁶¹

UN Basic Principles on the Role of Lawyers enumerate duties that lawyers must be able to carry out at all times freely. They include, among others: "advising clients on their rights and obligations and the working of the legal system insofar as it is relevant to their rights and obligations; assisting clients in every appropriate way and taking legal action to protect their interests"; and "assisting clients before courts, tribunals and administrative authorities, where appropriate".¹⁶² In doing so, and promoting the cause of justice lawyers "shall seek to uphold human rights and fundamental freedoms, and shall at all times act

¹⁵⁶ Organic Law of the Supreme Tribunal of Justice, Article 64.

¹⁵⁷ Constitution, Article 270.

¹⁵⁸ Organic Law of the Supreme Tribunal of Justice, Article 65.

¹⁵⁹ Supreme Tribunal of Justice of Venezuela, File No.11-0341, 9 March 2012. Available at:

<http://www.tsj.gob.ve/decisiones/scon/Marzo/272-9312-2012-11-0341.HTML> (Accessed 21 August 2014).

¹⁶⁰ Supreme Tribunal of Justice, Constitutional Chamber, File No. 09-1038, 7 May 2013. Available (in Spanish only) at: <http://www.tsj.gov.ve/decisiones/scon/Julio/983-16713-2013-09-1038.html> (Accessed 21 August 2014).

¹⁶¹ Lawyers' essential role in defending human rights and the rule of law has been underscored repeatedly by United Nations authorities, see *inter alia* General Assembly, Strengthening the rule of law: Report of the Secretary-General, UN Doc. A/57/275 (2002), para. 41; Human Rights Council, Resolution on the Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/23/6 (2013), Pre-amble.

¹⁶² UN Basic Principles on the Role of Lawyers, Principle 13.

freely and diligently in accordance with the law and recognized standards and ethics of the legal profession".¹⁶³ They must "always loyally respect the interests of their clients".¹⁶⁴

As essential agents of the administration of justice they must also maintain the honour and dignity of their profession.¹⁶⁵

Governments must, among other things, ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.¹⁶⁶ They must recognize and respect that all communications between lawyers and their clients within their professional relationship are confidential.¹⁶⁷ The competent authorities must ensure that lawyers have access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance.¹⁶⁸

The ICCPR and other international standards guarantee the right of all persons charged with a criminal offence to access to counsel, and the right to defend themselves against the charges with the assistance of counsel. Those who do not have counsel of choice to represent them are entitled to have legal assistance assigned to assist in their defence in any case where the interests of justice so requires, free of charge if the accused cannot afford to pay.¹⁶⁹ The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems and the Human Rights Committee have clarified that the gravity of the offence, the complexity of the case, and the severity of the potential penalties are important factors in deciding on when the "interests of justice" require that appointed counsel be available to represent people who are at risk of deprivation of liberty.¹⁷⁰ Effective assistance by a lawyer, free of charge if necessary, is considered to be a fundamental requirement in death penalty cases.¹⁷¹ At the regional level, the right to a fair trial has been interpreted as also requiring the State to ensure the assistance of a lawyer, free of charge if necessary, in at least some non-criminal (e.g., civil) proceedings.¹⁷²

1. [Legal recognition of the role of lawyers](#)

The role of lawyers should be recognized in the Constitution and other national laws, including as an essential element of the right to a fair trial.¹⁷³

¹⁶³ UN Basic Principles on the Role of Lawyers, Principle 14.

¹⁶⁴ UN Basic Principles on the Role of Lawyers, Principle 15.

¹⁶⁵ UN Basic Principles on the Role of Lawyers, Principle 12.

¹⁶⁶ UN Basic Principles on the Role of Lawyers, Principle 16.

¹⁶⁷ UN Basic Principles on the Role of Lawyers, Principle 22.

¹⁶⁸ UN Basic Principles on the Role of Lawyers, Principles 21.

¹⁶⁹ ICCPR, Article 14(3)(d).

¹⁷⁰ UN principles and Guidelines on the Access to Legal Aid in Criminal Justice Systems Proceedings, UN Doc. A/RES/67/187 (2013), Principle 3 (para. 20); European Court of Human Rights, *Prezec v. Croatia*, Application No. 48185/07 (2009), para. 29; European Court of Human Rights, *Talat Tunç v. Turkey*, Application No. 32432/96 (2007), para. 56; European Court of Human Rights, *Benham v. United Kingdom*, 19380/92 (1996), para. 61; European Court of Human Rights, *Quaranta v. Switzerland*, Application No. 12744/87 (1991), para. 34. Also see European Court of Human Rights, *Maxwell v. United Kingdom*, Application No. 18949/91 (1994), para. 40-41.

¹⁷¹ UN principles and Guidelines on the Access to Legal Aid in Criminal Justice Systems Proceedings, UN Doc. A/RES/67/187 (2013), Principle 3 (para. 20); Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 38.

¹⁷² See the jurisprudence of the European Court of Human Rights on the interpretation of Article 6: *Airey v. Ireland*, Application No. 6289/73 (1979), para. 26; also see *McVicar v. the United Kingdom*, Application No. 46311/99 (2002), *Essaadi v. France*, Application No. 49384/99 (2002), *P., C., and S. v. the United Kingdom*, Application No. 56547/00 (2002), *Steel and Morris v. the United Kingdom*, Application No. 68416/01 (2005). The Inter-American Court of Human Rights has addressed the need to remove obstacles in access to justice that might originate from a person's economic status, including by ensuring free legal assistance, in *Advisory Opinion OC-11/90*; also see *Advisory Opinion OC-18/03* on "juridical condition and rights of undocumented migrants" and Inter-American Commission on Human Rights, *Report on Terrorism and Human Rights*. The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Adopted by the African Commission on Human and People's Rights, Article H explicitly provides for a right to legal assistance in civil cases where the interests of justice so require, to be determined in light of the complexity of the case, the rights that are affected and the likely impact of the outcome of the case on the wider community.

¹⁷³ See for instance: UN Basic Principles on the Role of Lawyers, Preamble ("The Basic Principles on the Role of Lawyers, set forth below... should be respected and taken into account by Governments within the framework of their national legislation and practice"); Human Rights Council, Resolution on the Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, UN Doc A/HRC/RES/23/6 (2013), para. 1 ("Calls

In Venezuela, the Constitution classifies lawyers as part of the "System of Justice",¹⁷⁴ and enshrines the right of access to legal advice and proper legal defence as a component of due process of law.¹⁷⁵ The Law of Lawyers¹⁷⁶ and the Lawyers' Code of Ethics¹⁷⁷ regulate the legal profession, containing the principles that guide their activities and the grounds for initiating disciplinary proceedings against them.

2. [Access to the profession](#)

*Every person who has the necessary qualifications and integrity should be allowed to practice as a lawyer. No discrimination is permitted on grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status with regard to entry into the profession or continued practice. The prohibition of discrimination does not however necessarily preclude a requirement that a candidate lawyer must be a national of the country concerned.*¹⁷⁸

*States should take special measures to provide opportunities and ensure needs-appropriate training for candidates from groups whose needs for legal services are generally not met, particularly when those groups have distinct cultures, traditions or languages or have been the victims of discrimination.*¹⁷⁹

The Special Rapporteur on the independence of judges and lawyers has recommended that "all aspects of the lawyers' career be regulated by the bar association",¹⁸⁰ which in turn must be independent (see below).

Independence of the legal profession both implies and includes security for lawyers, their clients and justice. For lawyers, this regularly means being granted a license that establishes their credentials and gives them the privilege to practice law. Licensure is a means of ensuring the quality and integrity of lawyers. At the same time, being part of a licensed profession provides lawyers with special protection, applying particular safeguards to the exercise of their professional activities, thus contributing to their independent functioning. It thus also serves to protect and assure those who call upon lawyers for legal services and enhances the quality of the administration of justice.

Bar Associations in Venezuela are corporations with legal personality, territorially organized in the Departments of the country and united under the Federation of Bar Associations (see subsection 3).

Under the Law of Lawyers, membership of a professional association and inscription to the Institute of Social Security for Lawyers (INPREABOGADO in Spanish) are mandatory conditions¹⁸¹ for accessing the legal profession in Venezuela. The requirements needed to become a member of a Bar Association are:

upon all States to guarantee the independence of ... lawyers ..., as well as their ability to perform their functions accordingly, including by taking effective legislative ... measures"); Special Rapporteur on the independence of judges and lawyers, report on independence of lawyers and the legal profession, UN Doc A/64/181 (28 July 2009), paras 15-18, and 105 recommending that: "(a) The right to legal counsel of choice be enshrined at constitutional level or be considered as a fundamental principle of law; this fundamental right must be adequately translated into domestic legislation" and "(c) Legislation regulating the role and activities of lawyers and legal profession be developed, adopted and implemented in accordance with international standards; such legislation should enhance the independence, self-regulation and integrity of the legal profession...".

¹⁷⁴ Constitution, Article 253.

¹⁷⁵ Constitution, Article 49(1).

¹⁷⁶ Law of Lawyers, Article 1.

¹⁷⁷ Code of Ethics of Lawyers.

¹⁷⁸ UN Basic Principles on the Role of Lawyers, Principle 10; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 77 and 80; International Bar Association (IBA) Standards for the Independence of the Legal Profession, Standard 1.

¹⁷⁹ UN Basic Principles on the Role of Lawyers, Principle 11.

¹⁸⁰ Gabriela Knaul, Special Rapporteur on the independence of judges and lawyers, Report on mission to Turkey, UN Doc. A/HRC/20/19/Add.3 (2012), para. 66. See also Human Rights Committee, Concluding Observations on Belarus, UN Doc. CCPR/C/79/Add.86 (1997), para. 14.

¹⁸¹ In contrast to the situation for judges, who are prohibited from forming professional associations. Constitution, Article 256.

- Present a valid law degree;
- Be registered in INPREABOGADO;
- Pay the required fees; and,
- Take an oath before the Executive Board of the Bar Association.¹⁸²

The Bar Associations in Venezuela do not have the power to otherwise regulate their membership and affiliation of the associations. There are no procedures for verifying that the person requesting the membership complies with the qualification and integrity requirements necessary to be allowed to practice the legal profession.

The Bar Association must register all individuals who meet these requirements. There is no additional bar or ethics exam.

Once a member of one of the Bar Associations and registered in the Lawyers' Registration Book, lawyers may legally practice their profession anywhere in the territory of Venezuela.¹⁸³

3. [Independence of the legal profession](#)

In order for legal assistance to be effective, it must be carried out independently.¹⁸⁴ To this end, international law establishes safeguards aimed at ensuring the independence of the individual lawyer, as well as the profession as a whole.

The UN Basic Principles recognise that lawyers are entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training, and protect their professional integrity. The executive body of the professional associations are to be elected by its members and are to exercise its functions without external interference.¹⁸⁵ The UN Special Rapporteur on the independence of judges and lawyers has also underscored the "importance of an organized legal profession, including an independent and self-regulated association, to safeguard the professional interests of lawyers".¹⁸⁶

Lawyers' professional organizations' functions in ensuring the profession's independence include, among other things, maintaining the honour, dignity, integrity, competence, ethics, standards of conduct and discipline of the profession, as well as protecting the intellectual and economic independence of the profession; defending the role of lawyers in society; promoting equal access of the public to the system of justice; promoting and supporting law reform; promoting a high standard of legal education as a prerequisite for entry into the profession, while ensuring equal access for all persons having the requisite professional competence; and promoting the welfare of the members of the profession.¹⁸⁷

International standards place a duty on the authorities of the State to abstain from interfering in the establishment and work of professional associations of lawyers. The Human Rights Committee has raised concern about requirements for the compulsory affiliation of lawyers to a State-controlled association and the need for authorization by the Executive as prerequisites for the exercise by lawyers of the legal profession.¹⁸⁸

International standards also underscore that associations of lawyers must, however, cooperate with governments to ensure effective and equal access to legal services, and to

¹⁸² Law of Lawyers, Article 8.

¹⁸³ Law of Lawyers, Article 10.

¹⁸⁴ UN Basic Principles on the Role of Lawyers, Preamble para. 9.

¹⁸⁵ UN Basic Principles on the Role of Lawyers, Principle 24; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 97; International Bar Association (IBA) Standards for the Independence of the Legal Profession, Standard 17.

¹⁸⁶ Gabriela Knaul, Special Rapporteur on the Independence of Judges and Lawyers, Report on missions to Mozambique, UN Doc. A/HRC/17/30/Add.2 (2011), para. 79.

¹⁸⁷ See International Bar Association (IBA) Standards for the Independence of the Legal Profession (1990), Article 18.

¹⁸⁸ Human Rights Committee, Concluding Observations of the Human Rights Committee on Belarus, UN Doc. CCPR/C/79/Add.86 (1997), para. 14.

ensure that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.¹⁸⁹

Lawyers' associations are created to safeguard the professional interests of lawyers and to protect and strengthen the independence of the legal profession. As associations of essential agents in the administration of justice, they also have a key role in supporting law and justice sector reform. They should be able to engage in activities, and to initiate and participate in public discussion on the substance, interpretation and application of existing and proposed legislation. They should do so in a manner that is consistent with the protection and promotion of human rights, upholding the dignity of the legal profession and the legal system.¹⁹⁰

The Bar Associations in Venezuela are professional corporations with legal personality and their own patrimony, who oversee their members' compliance with the law and the ethical principles of the legal profession, and protect the interests of the lawyers in the country.¹⁹¹

The Bar Associations are territorially organized in the Departments of the country. The Federation of Bar Associations unites all the departmental Bar Associations.¹⁹² The Federation is composed of the Assembly, the Superior Council, the Directory and the Disciplinary Tribunal.¹⁹³

Among other functions, the Bar Associations actively participate and provide legal and technical advice in the drafting, design and adoption of laws and other provisions affecting the exercise of the legal profession,¹⁹⁴ provide free legal assistance in cases when *ad litem* representation is required by the judge,¹⁹⁵ and promote the continuing and specialized training and education of lawyers, through relevant studies and research in the field.¹⁹⁶

The Bar Associations are composed of:¹⁹⁷

- The Assembly of members;
- The Executive Board; and,
- Disciplinary Tribunals.

The Executive Board consists of the President, the Secretary, the Treasurer, the Librarian, and three substitute members. The Assembly elects all of the members of the Executive Board by secret ballot for a two-year term.¹⁹⁸

The Disciplinary Tribunal is independent, made up of five titular members and three substitutes, who are elected for a two-year term in the manner decided by the Executive Board.¹⁹⁹

Judgments of the STJ have unduly interfered with the election and appointment of the authorities of the Bar Associations, including the disciplinary tribunals.²⁰⁰ For example, in

¹⁸⁹ UN Basic Principles on the Role of Lawyers, Principle 25. For a more elaborate list on the functions of lawyers' associations, see International Bar Association (IBA) Standards for the Independence of the Legal Profession, Standard 18; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 99. Also see General Assembly, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, UN Doc. A/RES/67/187 (2012), Principle 10-11.

¹⁹⁰ UN Basic Principles on the Role of Lawyers, Principles 12 and 23; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 99(g); International Bar Association (IBA) Standards for the Independence of the Legal Profession, Standard 18.

¹⁹¹ Law of Lawyers, Article 33.

¹⁹² Law of Lawyers, Article 43.

¹⁹³ Law of Lawyers, Article 47.

¹⁹⁴ Law of Lawyers, Article 42(6).

¹⁹⁵ International Commission of Jurists, *Strengthening the Rule of Law in Venezuela* (2014), p. 38.

¹⁹⁶ Law of Lawyers, Article 42(3).

¹⁹⁷ Law of Lawyers, Article 35.

¹⁹⁸ Law of Lawyers, Articles 39-40.

¹⁹⁹ Law of Lawyers, Article 58.

²⁰⁰ See: *Judgment of 14 February 2008*, Supreme Tribunal of Justice, Constitutional Chamber, File 04-1263.

Available (Spanish only) at: <http://www.tsj.gov.ve/decisiones/scon/febrero/11-140208-04-1263.htm> (Accessed 22 April 2014). Also see: *Judgment No. 105 of 4 August 2003*, Supreme Tribunal of Justice, Electoral Chamber, File No.

2003, the Electoral Chamber of the STJ issued a judgment ordering the Bar Association of Barinas to carry out the election of the members of the Executive Board according to regulations issued by the National Electoral Council.²⁰¹ A 2008 judgement of the Constitutional Chamber of the STJ set out a list of names that the Court ordered be appointed as interim members of the Executive Board and Disciplinary Tribunal of the Bar Association. It further ordered that the election of its titular members should be conducted, supervised and organized by the National Electoral Council.²⁰²

Prior to the adoption of the Constitution in 1999, Bar Associations were partially funded with fees paid by litigants in civil, commercial, and administrative procedures, known as "judicial fees". The Law of Judicial Fees provided that five per cent of such fees paid in these procedures should be used to finance Bar Associations and free legal aid.²⁰³ Furthermore, the Law of Lawyers established that the patrimony of the Bar is constituted by:²⁰⁴

- The membership fee of its associates;
- The contributions of the State;
- The contributions of public and private entities; and,
- Five per cent of judicial fees.

Since the adoption of the 1999 Constitution, the income of the Bar Associations has diminished, as the Constitution abolished the payment of judicial fees,²⁰⁵ eliminating this line of contributions to the Bar Associations' patrimony.

4. [Non-interference with the work of individual lawyers](#)

*Lawyers shall at all times maintain the honour and dignity of their profession. Their duties, as set out in the UN Basic Principles on the Role of Lawyers, include advising clients on their rights and obligations and the working of the legal system insofar relevant to their rights and obligations; assisting clients in every appropriate way and taking legal action to protect their interests; and assisting clients before courts, tribunals and administrative authorities, where appropriate. In doing so, lawyers must seek to uphold human rights and fundamental freedoms, and at all times act freely and diligently in accordance with the law and recognized deontological standards. They must always loyally respect the interests of their clients.*²⁰⁶

*The UN Basic Principles on the Role of Lawyers recognize that in order for legal assistance to be effective, it must be carried out independently.*²⁰⁷ *To this end, international human rights standards enumerate safeguards aimed at ensuring the independence of the individual lawyer, as well as the profession as a whole.*

*Governments must ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.*²⁰⁸

*In addition, among other things, the authorities must ensure lawyers are granted prompt and regular access to individuals who have been deprived of their liberty, regardless of whether they have been charged with a crime.*²⁰⁹ *Lawyers must be permitted to meet with*

AA70-X-2007-000048. Available (Spanish only) at: <http://www.tsj.gob.ve/decisiones/selec/Diciembre/234-131207-X00048.htm> (Accessed 22 April 2014).

²⁰¹ *Judgment No. 146 of 22 October 2001*, Supreme Tribunal of Justice, Electoral Chamber, File No. AA70-E-2001-0000131. Available (Spanish only) at: <http://www.tsj.gob.ve/decisiones/selec/octubre/146-221001-000131.HTM> (Accessed 21 August 2014).

²⁰² Supreme Tribunal of Justice, Constitutional Chamber, File No. 04-1263, 14 February 2008. Available (Spanish only) at: <http://www.tsj.gob.ve/decisiones/scon/febrero/11-140208-04-1263.HTM> (Accessed 21 August 2014).

²⁰³ Law of Judicial Fees, Article 5.

²⁰⁴ Law of Lawyers, Article 38.

²⁰⁵ Constitution, Article 26.

²⁰⁶ See UN Basic Principles on the Role of Lawyers, Principles 12-15.

²⁰⁷ UN Basic Principles on the Role of Lawyers, Preamble para. 9.

²⁰⁸ UN Basic Principles on the Role of Lawyers, Principle 16(a).

²⁰⁹ UN Basic Principles on the Role of Lawyers, Principle 7; General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN Doc. A/RES/43/173 (1988), Principle 17; Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair

clients who are detained from the very outset of detention, and in matters involving suspected criminal conduct, before and during questioning of a suspect by the competent authorities, such as police, and investigating judges.²¹⁰ Delay in granting an individual access to counsel and/or other interference in the lawyer-client however, in particular in a criminal case, can affect the ability of the accused to protect and preserve his or her rights and may prejudice the overall fairness of the subsequent criminal proceedings. Any delay in access to counsel must be determined and justified on a case-by-case basis. In any case, delay should not exceed "forty-eight hours from the time of arrest or detention".²¹¹

International standards related to the rights of people charged with a criminal offence, including the ICCPR, provide that a client must be granted "adequate time and facilities for the preparation of his defence".²¹² Respect for this right requires, among other things that lawyers be permitted adequate time and facilities to meet with their detained clients. The UN Basic Principles on the Role of Lawyers, among other standards, affirm that those detained "shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality".²¹³

Because confidentiality is paramount to an effective lawyer-client relationship, states have the duty to respect and protect the confidentiality of lawyer-client communications, within the professional relationship. In the fulfilment of this duty international standards specify, among other things, that lawyer-client consultations between a detained person and their lawyer "may be within sight, but not within the hearing, of law enforcement officials"²¹⁴, ensuring confidentiality but taking security needs into account.

The state is obliged to ensure that lawyers have "access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients".²¹⁵

It is essential that lawyers do not face any adverse consequences for representing any client. The UN Basic Principles require that lawyers "shall not be identified with their clients or their clients' causes as a result of discharging their functions".²¹⁶ Furthermore, lawyers "must never be subjected to criminal or civil sanctions or procedures which are abusive or discriminatory or which would impair their professional functions, including as a

trial, UN Doc. CCPR/C/GC/32 (2007), para. 34; Human Rights Committee, Concluding Observations on Georgia, UN Doc. CCPR/C/79/Add.74 (1997), para. 28; International Commission of Jurists, Geneva Declaration: Principles on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis (2008), Principle 8.

²¹⁰ General Assembly, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, UN Doc. A/RES/67/187 (2012), Guideline 3, para 43(b); Inter-American Commission on Human Rights, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas* (2008), Principle V; Inter-American Court of Human Rights, *Barreto Leiva v. Venezuela*, Judgment (17 November 2009), para. 62; Human Rights Council, Resolution 13/19 on Torture and other cruel, inhuman or degrading treatment or punishment: the role and responsibility of judges, prosecutors and lawyers, UN Doc. A/HRC/RES/13/19 (2010), para. 6.

²¹¹ UN Basic Principles on the Role of Lawyers, Principle 7.

²¹² ICCPR, Article 14(3)(b); General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN Doc. A/RES/43/173 (1988), Principle 18.

²¹³ UN Basic Principles on the Role of Lawyers, Principle 8; Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 34; General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN Doc. A/RES/43/173 (1988), Principle 18; Inter-American Commission on Human Rights, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas* (2008), Principle V; Inter-American Court of Human Rights, *Castillo Petruzzi et al. v. Peru*, judgment (30 May 1999), para. 139; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 91; International Commission of Jurists, Geneva Declaration: Principles on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis (2008), Principle 8; International Bar Association (IBA) Standards for the Independence of the Legal Profession (1990), Article 12-13; International Law Association, Paris Minimum Standards of Human Rights Norms in a State of Emergency (1984), Article 5.2(b).

²¹⁴ UN Basic Principles on the Role of Lawyers, Principle 8. Outside criminal justice matters, Principle 22 establishes that "Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential".

²¹⁵ UN Basic Principles on the Role of Lawyers, Principle 21; Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 33; International Commission of Jurists, Geneva Declaration: Principles on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis (2008), Principle 8.

²¹⁶ UN Basic Principles on the Role of Lawyers, Principle 18.

*consequence of their association with disfavoured or unpopular causes or clients”.*²¹⁷ Thus, lawyers “shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority”.²¹⁸

*Further, the authorities must safeguard lawyers’ security where this is threatened as a result of discharging their functions.*²¹⁹

Lawyers in Venezuela face improper interferences and threats when exercising their profession.

First, the prosecution of lawyers involved in politically sensitive cases has not only infringed the rights of those prosecuted but also has created a general sense of fear among lawyers that they may be subject to sanction for the fulfilment of their professional duties. As explained below in sub-section 6, under the Judicial Code of Ethics, any judge is allowed to impose disciplinary sanctions during a judicial proceeding upon the lawyers exercising their profession. The mere possibility that judges may impose disciplinary sanctions on lawyers during the conduct of a case, in combination with the tendency to prosecute lawyers who work on politically sensitive cases or who have expressed opinions concerning the situation of the judiciary creates has had ‘chilling effect’ among members of the legal profession in Venezuela.

Second, governmental favouritism in judicial appointments has contributed to the creation of a hostile environment and internal tensions between members of the legal profession.

In 2005, the Government of Venezuela launched the Bolivarian University of Venezuela (BUV), approved to teach Legal Studies.²²⁰ This programme differs from the Programme of Law taught in other national and international law schools, as it excludes essential topics for lawyers (i.e. civil law, civil and criminal procedural law). Nevertheless, in 2010 President Chávez announced the creation of the “Mission of Socialist Justice”, offering secure postgraduate studies for all of the BUV’s graduates in the School of Judges and guaranteeing their practice and further exercise of their profession in the Office of the Attorney General.²²¹ This favouritism, at times, led to the more qualified candidate not being considered for appointment to judicial positions, or in some cases even limiting these appointments to lawyers who have graduated from the BUV exclusively.²²²

Third, some civil society organizations have alleged that since the outbreak of violent street-protests in February 2014, detainees have been deprived of their right to a defence, as law enforcement agents prevented lawyers from meeting with their clients.²²³

Furthermore, in certain cases judges have replaced individuals’ lawyers of choice with appointed counsel. For example, lawyers who used procedural safeguards in their clients’ defence, in a manner not to the liking of the judge, have been accused of obstructing justice and have been replaced for this reason.²²⁴

²¹⁷ International Commission of Jurists, Geneva Declaration: Principles on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis (2008), Principle 7; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 84.

²¹⁸ UN Basic Principles on the Role of Lawyers, Principle 20; Singhvi Declaration, Article 85.

²¹⁹ UN Basic Principles on the Role of Lawyers, Principle 17.

²²⁰ See: <http://www.ubv.edu.ve/index.php/p-formacion-de-grado/6-estudios-juridicos> (Accessed 21 August 2014).

²²¹ Ocarina Espinoza in El Universal (16 January 2010), ‘Chávez propone la creación de la Misión Justicia Socialista’. Available at: http://www.eluniversal.com/2010/01/16/pol_ava_chavez-propone-la-cr_16A3298331 (Accessed 21 August 2014).

²²² Juan Francisco Alonso in El Universal (22 June 2012), ‘TSJ: De la Bolivariana saldrán los jueces municipales’. Available at: <http://www.eluniversal.com/nacional-y-politica/120622/tsj-de-la-bolivariana-saldran-los-jueces-municipales> (Accessed 21 August 2014).

²²³ Human Rights Centre – Andres Bello Catholic University, *Documents of Human Rights Violations in Venezuela since February 2014: Personal Freedom, Due Process and Personal Integrity*, Preliminary Report (2014), p. 4.

²²⁴ See: El Nacional (23 July 2014), ‘Dirigentes calificaron de “injusto” las condiciones del juicio de López’. Available at: http://www.el-nacional.com/politica/Dirigentes-calificaron-injusto-condiciones-Lopez_0_451155009.html (Accessed 21 August 2014). El Universal (7 June 2012), ‘Ortega Díaz: Detención de Graterol es por obstaculizar la

5. [Freedom of expression and association](#)

Like other citizens, lawyers are entitled to enjoyment of their rights to freedom of expression, belief, association and assembly. These fundamental freedoms acquire specific importance in the case of persons involved in the administration of justice.

The UN Basic Principles accordingly underscore and clarify the particular rights of lawyers to take part in public discussions of matters concerning the law, the administration of justice, and human rights; to join or form local, national or international organizations; and to attend the meetings of such groups or associations without suffering professional restrictions. They also emphasize that in exercising their rights to freedom of expression and association, lawyers must conduct themselves in line with the law and recognized standards and ethics of the legal profession.²²⁵

Furthermore, as set out above in sub-section 3, lawyers are entitled to form and join self-governing professional associations that represent their interests, promote their continuing education and protect their professional integrity.

a) Freedom of association

Although the Constitution of Venezuela guarantees freedom of association,²²⁶ as set out in sub-section 3 above, Bar Associations in Venezuela have experienced various forms of improper interference in their organization and funding.

b) Freedom of expression

Freedom of expression is guaranteed by the 1999 Constitution of Venezuela, which recognizes that every person has the right to disseminate his or her ideas or opinions.²²⁷

However, the authorities do not always respect this freedom. As mentioned above in sub-section 4, the prosecution of lawyers involved in politically sensitive cases or in cases challenging the government's interests has had a 'chilling effect' on lawyers exercising their right to freedom of speech, including in reference to matters related to the functioning of the legal system or related to protection of the rights and interests of their clients. The case of José Amalio Graterol²²⁸ illustrates this situation:

- i. On 3 June 2012, acting in defence of his client Judge María Lourdes Afuni, Mr Graterol publicly criticized the handling of her case by the Venezuelan authorities and the situation of judicial independence in the country.
- ii. Following these public statements, Mr Graterol received threats and warnings. Mr Graterol and his co-counsel Mrs Thelma Fernández were confidentially informed that 'something' was being prepared against them in order to prosecute them for criminal offences.
- iii. On 4 June 2012, in a separate case, Mr Graterol was detained by order of a judge for refusing to continue with a trial in the absence of this client. On that date, the Criminal Procedural Code in fact prohibited trials *in absentia*.²²⁹ This provision was however rapidly repealed.²³⁰ In December 2012, Mr Graterol was convicted of

justicia'. Available at: <http://www.eluniversal.com/nacional-y-politica/120607/ortega-diaz-detencion-de-graterol-es-por-obstaculizar-la-justicia-imp> (Accessed 21 August 2014).

²²⁵ UN Basic Principles on the Role of Lawyers, Principle 23; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 92; International Commission of Jurists, Geneva Declaration: Principles on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis (2008), Principle 5; International Bar Association (IBA) Standards for the Independence of the Legal Profession, Standard 14.

²²⁶ Constitution, Article 67.

²²⁷ Constitution, Article 57.

²²⁸ International Bar Association Human Rights Institute (IBAHRI), *The Criminal Trial of Venezuelan Lawyer Jose Amalio Graterol* (2013).

²²⁹ Organic Code of Criminal Procedure, Article 125(12), before the reforms of June 2012.

²³⁰ Compare Organic Code of Criminal Procedure, Article 125 (before amendment) and Article 127 (after the amendment pursuant to the *Decreto No. 9.042, mediante el cual se dicta el Decreto con Rango, Valor y Fuerza de Ley del Código Orgánico Procesal Penal*, 12 June 2012).

“obstruction of justice” and sentenced to six months’ imprisonment; his appeal was denied on 15 July 2013.

The International Bar Association’s Human Rights Institute (IBAHRI) has expressed grave concerns in the case of Mr Graterol and the “creation of a ‘Graterol’ effect, which risks creating a chilling effect amongst the Venezuelan legal profession, with lawyers fearful of being deprived of their liberty for taking on politically sensitive cases or publicly expressing their views on justice-related matters.”²³¹

6. Integrity and accountability

*As with judges, a code of professional conduct for lawyers is an essential tool for the maintenance of the integrity of the profession and, consequently, the quality of access to justice in a country. The UN Basic Principles on the Role of Lawyers state that “[c]odes of professional conduct shall be established by the legal profession through its appropriate organs, or by legislation”.*²³²

In order to uphold the integrity of the legal profession lawyers must be held accountable for breaches of established standards of professional conduct in fair proceedings before independent bodies.

Complaints against lawyers for misconduct in their professional capacity should be “processed expeditiously and fairly under appropriate procedures.”²³³ They should be decided “in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession.”²³⁴

International professional standards prescribe that the body responsible for investigating and adjudicating on allegations of misconduct by lawyers should be independent and impartial, and ensure that proceedings are conducted fairly and following proper procedure.²³⁵ A lawyer accused of professional misconduct must have “the right to be assisted by a lawyer of their choice”.²³⁶ He or she should be entitled to notice of the complaints against him or her and have adequate time and facilities to prepare and present a defence. Any sanction against a lawyer for misconduct should be proportionate. The lawyer should be entitled to independent judicial review of the proceedings and any disciplinary sanction.²³⁷

The disciplinary regime for lawyers in Venezuela is contained in the Law of Lawyers²³⁸ and the Code of Ethics of Lawyers.²³⁹ Both set out the grounds and procedures for discipline of lawyers and designate the competent body. In Venezuela, responsibility for disciplinary matters against lawyers falls upon the Disciplinary Tribunals of the Bar Association, whose five titular members are elected by the General Assembly of the Association for a two-year term.²⁴⁰

²³¹ International Bar Association Human Rights Institute (IBAHRI), *The Criminal Trial of Venezuelan Lawyer Jose Amalio Graterol* (2013), p. 17.

²³² UN Basic Principles on the Role of Lawyers, Principle 26. The International Bar Association (IBA) Standards for the Independence of the Legal Profession (Standard 22) reserve this task for lawyers’ associations. See Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 102.

²³³ UN Basic Principles on the Role of Lawyers, Principle 27.

²³⁴ UN Basic Principles on the Role of Lawyers, Principle 29.

²³⁵ UN Basic Principles on the Role of Lawyers, Principle 27 and 29; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 106; International Bar Association (IBA) Standards for the Independence of the Legal Profession, Standard 22.

²³⁶ UN Basic Principles on the Role of Lawyers, Principle 27.

²³⁷ UN Basic Principles on the Role of Lawyers, Principle 28; Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 105; International Bar Association (IBA) Standards for the Independence of the Legal Profession, Standard 24.

²³⁸ Law of Lawyers, Articles 59-74.

²³⁹ Code of Ethics of Lawyers, Official Gazette No. 33.357, 25 November 1985.

²⁴⁰ Law of Lawyers, Article 58.

According to the Law of Lawyers, the Disciplinary Tribunals of the Bar Associations of each Department act as first instance tribunals. Their decisions are reviewed by the Disciplinary Tribunal of the Federation of Bar Associations.²⁴¹ The latter is composed of seven members, elected in a similar way as the members of the Disciplinary Tribunals of the departmental Bar Associations.

Disciplinary Tribunals can start disciplinary proceedings against lawyers who are alleged to have committed offences against the Law of Lawyers, the Code of Ethics, and other regulations enacted by the bodies of the Bar Associations, among others.²⁴²

The proceedings start upon receiving an allegation or complaint by the Disciplinary Tribunal. First, the Tribunal completes preliminary checks of the allegation or complaint, and thereafter summons the lawyer complained about is for a hearing.²⁴³

After the hearing, and if serious grounds of misconduct are established, the file is communicated to a prosecutor, who may or may not press charges against the lawyer accused of misconduct within ten days after receiving the case. Even if the prosecutor does not present misconduct charges, the procedure is open for the presentation and examination of evidence for twenty days.²⁴⁴ After hearing the reports of the parties, the Tribunal decides by way of a judgment approved by the majority of its members,²⁴⁵ which may be appealed within five calendar days of receiving notification of the judgment.²⁴⁶ The sanctions may include:²⁴⁷

- Fines; and,
- Temporary suspension of activities.

These proceedings are characterized by a lack of transparency, as the decisions of the tribunals are not published. However, they are generally perceived positively, as it is considered that the disciplinary tribunals of the Bar Associations have not been used as a means to wrongfully sanction lawyers for the due exercise of their professional duties.

Nevertheless, two factors have undermined the independence of lawyers' disciplinary proceedings:

First, as explained above in sub-section 3, different judgments of the Electoral and Constitutional Chambers of the STJ have interfered in the election and appointment of the members of the Disciplinary Tribunals, undermining their independence and objectivity.

Second, although grounds and procedures for disciplining lawyers for professional misconduct are clearly set out in the Law of Lawyers and Code of Ethics of Lawyers, as mentioned above in sub-section 4, the Judicial Code of Ethics allows any judge to impose disciplinary sanctions on lawyers during a judicial proceeding.²⁴⁸ Although the courts and tribunals have so far not developed jurisprudence on the matter, these provisions undermine the jurisdiction of the Disciplinary Tribunals of the Bar Associations set out in the Law of Lawyers and the lawyers' Code of Ethics, and have had a chilling effect on lawyers, who are fearful of taking on politically sensitive cases or publicly criticizing the functioning of the judiciary.²⁴⁹

²⁴¹ Law of Lawyers, Articles 61 and 66.

²⁴² Law of Lawyers, Article 61.

²⁴³ Law of Lawyers, Article 63.

²⁴⁴ Law of Lawyers, Article 64.

²⁴⁵ Law of Lawyers, Article 65.

²⁴⁶ Law of Lawyers, Article 66.

²⁴⁷ Law of Lawyers, Article 70.

²⁴⁸ Judicial Code of Ethics, Article 20.

²⁴⁹ Law of Lawyers, Articles 58-74; Code of Ethics of Lawyers, Article 27.

D. Prosecutors

*Prosecutors play a crucial role in the administration of justice, which they must fulfil fairly, consistently and expeditiously in accordance with the law. International standards underscore that they must respect and protect human dignity and uphold human rights.*²⁵⁰

*Prosecutors perform an active role in criminal proceedings, including the institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of such investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest. These functions shall be carried out separately from judicial functions.*²⁵¹

Every prosecutor must fulfil his or her professional duties in an independent, impartial and objective manner, without discrimination of any kind, and as essential agents of the criminal justice system, maintain the honour and duty of their profession.

*Prosecutors may not initiate or continue prosecution if an impartial investigation shows the charge to be unfounded. Further, they must give due attention to the prosecution of crimes committed by public officials, in particular corruption, abuse of power, grave violations of human rights and other crimes recognized by international law. If prosecutors come into possession of evidence that they know or believe on reasonable grounds was obtained through recourse to unlawful methods that constitute a grave violation of the suspect's human rights, they must refuse to use such evidence against anyone other than those who used such methods or inform the Court accordingly and take all necessary steps to ensure that those responsible are brought to justice.*²⁵²

The Constitution of Venezuela establishes the duty of the State to investigate and punish any violation of human rights.²⁵³ It also provides that the Attorney General's Office and the bodies in charge of investigating criminal offences are part of the "Justice System" in the country.²⁵⁴ The Constitution also establishes that the Attorney General of the Republic is the prosecutorial services' highest authority,²⁵⁵ and that the Attorney General's Office has the duty to guarantee the protection of human rights in every judicial proceeding, and to order and direct the investigation of criminal offences within the national territory.²⁵⁶

1. Functioning of the prosecutorial services

Prosecutors play a crucial role in the administration of justice, and respect for the rule of law requires a strong prosecutorial authority in charge of investigating and prosecuting criminal offences. Each prosecutor must be empowered to fulfil his or her professional duties in an impartial and objective manner.

*Prosecutors must perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights.²⁵⁷ They perform an active role in criminal proceedings,²⁵⁸ and must carry out these functions impartially and objectively, protecting the public interest.*²⁵⁹

²⁵⁰ UN Guidelines on the Role of Prosecutors, Guidelines 12-13.

²⁵¹ UN Guidelines on the Role of Prosecutors, Guideline 11.

²⁵² UN Guidelines on the Role of Prosecutors, Guidelines 14-16.

²⁵³ Constitution, Article 29.

²⁵⁴ Constitution, Article 253.

²⁵⁵ Constitution, Article 284.

²⁵⁶ Constitution, Article 285.

²⁵⁷ UN Guidelines on the Role of Prosecutors, Guideline 12; International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 1(h) and 4.1.

²⁵⁸ UN Guidelines on the Role of Prosecutors, Guideline 11; International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 4.2.

²⁵⁹ UN Guidelines on the Role of the Prosecutor, Guideline 13; International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 1(g), 3(a) and 3(c).

This requires, among other things that Prosecutors:

- *Ensure that victims of crime are provided with information about the proceedings and their rights within them, and consider their views, as appropriate;*²⁶⁰
- *Do not initiate or continue a prosecution when an independent investigation indicates that the charge is unfounded;*²⁶¹
- *Refuse to use evidence gained as a result of unlawful means, including torture or other ill-treatment, except in proceedings against those allegedly responsible for using such unlawful means;*²⁶²
- *Give due attention to the prosecution of crimes committed by public officials, including in particular corruption, abuse of power, violations of human rights and crimes under international law.*²⁶³

*States must ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.*²⁶⁴ *In particular, the authorities must physically protect prosecutors and their families when their personal safety is threatened as a result of discharging their prosecutorial functions.*²⁶⁵

*The use of prosecutorial discretion, when permitted in a particular jurisdiction, should be exercised independently and be free from political interference.*²⁶⁶ *Further, the law or published rules and regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecutorial process.*²⁶⁷ *If non-prosecutorial authorities have the right to give general or specific instructions, those should be transparent, consistent with lawful authority, and subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence.*²⁶⁸

The Organic Law of the Office of the Public Prosecutor regulates the functioning of the prosecutorial service in Venezuela.²⁶⁹ The Organic Law guarantees the independence and functional autonomy of the Attorney General's Office²⁷⁰ and sets out the organic structure of the office and prescribes the principles for the fulfilment of its duties.²⁷¹

The Office of the Attorney General has a hierarchical structure, the Attorney General being the highest authority. The principles of unity of operation and indivisibility are also applied, ostensibly with the objective of guaranteeing consistency and fairness of the decisions taken in criminal prosecutions. Under this hierarchical structure, prosecutors are compelled to comply with all the instructions and orders given to them by the Attorney General in the context of criminal investigations.²⁷²

In practice, these provisions have been applied in a manner contrary to the purposes for which they were intended. The Attorney General has interpreted these principles to require his or her prior permission for decisions in every procedure, including those of mere formality. This, in turn, has diminished the autonomy of public prosecutors to direct, order and oversee the investigations of crimes, as provided in the OLOPP.²⁷³

²⁶⁰ UN Guidelines on the Role of Prosecutors, Guideline 13 (d).

²⁶¹ UN Guidelines on the Role of Prosecutors, Guideline 14.

²⁶² UN Guidelines on the Role of Prosecutors, Guideline 16.

²⁶³ UN Guidelines on the Role of Prosecutors, Guideline 15.

²⁶⁴ UN Guidelines on the Role of Prosecutors, Guideline 4; International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 6(a).

²⁶⁵ UN Guidelines on the Role of Prosecutors, Guideline 5; International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 6(b).

²⁶⁶ International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 2.1.

²⁶⁷ UN Guidelines on the Role of Prosecutors, Guideline 17.

²⁶⁸ International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 2.2.

²⁶⁹ Organic Law of the Office of the Public Prosecutor, Official Gazette No. 38.647, 19 March 2007.

²⁷⁰ Organic Law of the Office of the Public Prosecutor, Article 4.

²⁷¹ Organic Law of the Office of the Public Prosecutor, Article 8.

²⁷² Organic Law of the Office of the Public Prosecutor, Article 8.

²⁷³ Organic Law of the Office of the Public Prosecutor, Article 31(11).

Further, almost ninety per cent of public prosecutors do not have guaranteed tenure, which exposes them to undue interference and external pressures by other branches of the government. The Inter-American Commission of Human Rights has observed that “[t]he Attorney General’s Office does not have an objective system for assigning cases, and that matters are cherry-picked. As proof of this it is claimed that [...] all investigations related to the interests of the ruling party and the executive branch are handled by a small group of prosecutors.”²⁷⁴

2. The prosecutor’s career

*Persons selected as prosecutors must be individuals of integrity and ability, with appropriate training and qualifications.*²⁷⁵ Accordingly, States must ensure that selection criteria embody safeguards against appointments based on partiality or prejudice, and that prosecutors have appropriate education and training.²⁷⁶

*Promotion of prosecutors must be based on objective factors and decided upon in accordance with fair and impartial procedures.*²⁷⁷

*Prosecutors must enjoy “[r]easonable conditions of service ... adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations”.*²⁷⁸ They must “at all times maintain the honour and dignity of the profession”.²⁷⁹

The Organic Law of the Office of the Public Prosecutor provides the procedure and criteria for the appointment of prosecutors.²⁸⁰ To enter the career of prosecutor, it is necessary to participate and be selected in public tenders carried out by the Attorney General’s Office. In order to be appointed, candidates must additionally complete the academic programme of the National Academy of Public Prosecutors²⁸¹.

The Organic Law guarantees the tenure of all prosecutors selected in accordance with these provisions.²⁸²

The Attorney General recently stated that there is a continuing programme of public competitions to select and appoint public prosecutors in Venezuela,²⁸³ and that currently there are 53 postulants²⁸⁴ for 207 open posts during 2014.²⁸⁵

²⁷⁴ Inter-American Commission of Human Rights, *Democracy and Human Rights in Venezuela*, OEA/Ser.L/V/II, Doc. 54, para. 308.

²⁷⁵ UN Guidelines on the Role of Prosecutors, Guideline 1.

²⁷⁶ UN Guidelines on the Role of Prosecutors, Guideline 2.

²⁷⁷ UN Guidelines on the Role of Prosecutors, Guideline 7; International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 6(e).

²⁷⁸ UN Guidelines on the Role of Prosecutors, Guideline 6; International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 6(c)-(d).

²⁷⁹ UN Guidelines on the Role of Prosecutors, Guideline 3; International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 1(a).

²⁸⁰ Organic Law of the Office of the Public Prosecutor, Article 94 and Articles 99-114.

²⁸¹ Resolution of the Attorney General No. 263, Official Gazette No. 38.905, 8 April 2008.

²⁸² Organic Law of the Office of the Public Prosecutor, Article 89.

²⁸³ See: El Nuevo Herald (13 June 2014), ‘Luisa Ortega Díaz niega que fiscales venezolanos no sean independientes’.

Available at: <http://www.elnuevoherald.com/2014/06/13/1772297/fiscal-venezolana-asegura-no-es.html> (Accessed 21 August 2014).

²⁸⁴ See: El Nuevo Herald (13 June 2014), ‘Luisa Ortega Díaz niega que fiscales venezolanos no sean independientes’.

Available at: <http://www.elnuevoherald.com/2014/06/13/1772297/fiscal-venezolana-asegura-no-es.html> (Accessed 21 August 2014).

²⁸⁵ See: *Ministerio Público inició proceso de recepción de credenciales para aspirantes a la carrera fiscal*, Public Prosecutor Office Web Site. Available at: http://www.mp.gob.ve/web/guest/escuela-nacional-de-fiscales?p_p_id=101_INSTANCE_jB3X&p_p_lifecycle=0&p_p_state=maximized&p_p_mode=view&p_p_col_id=column-2&p_p_col_pos=1&p_p_col_count=2&_101_INSTANCE_jB3X_struts_action=%2Fasset_publisher%2Fview_content%2F101_INSTANCE_jB3X_urlTitle=ministerio-publico-inicio-proceso-de-recepcion-de-credenciales-para-aspirantes-a-la-carrera-fiscal%2F101_INSTANCE_jB3X_type=content&redirect=%2Fweb%2Fquest%2Fescuela-nacional-de-fiscales (Accessed 21 August 2014).

In practice, the vast majority (99 per cent) of prosecutors are however not appointed through public tenders, and are appointed and may be dismissed at will by the Attorney General at his or her discretion, as the regime provided by the Organic Law is only applied to career prosecutors.²⁸⁶

Approximately 600 prosecutors do not have guarantee of tenure, and continue to be exposed to undue interference and pressure.

3. Accountability

Like all members of the legal profession, Prosecutors must carry out their roles with integrity and in accordance with the law and in a manner that is consistent with human rights and established standards of prosecutorial conduct. And like other legal professionals Prosecutors must be accountable for professional misconduct. These are imperatives for upholding the integrity of the office of the Prosecutor as well as the legal system and respect for the rule of law.

Disciplinary proceedings must guarantee an objective evaluation and decision.

Disciplinary offences must be defined in law or lawful regulations and complaints alleging misconduct must be processed expeditiously and fairly in the context of fair procedures before an independent and impartial body. The prosecutor whose professional conduct is in question must be afforded a fair hearing and the decision must be based on established standards of professional conduct, and subject to independent review.²⁸⁷

The Organic Law of the Office of the Public Prosecutor provides the disciplinary proceedings and grounds for the removal of prosecutors.²⁸⁸ The disciplinary sanctions applied to prosecutors are:²⁸⁹

- Letters of Caution;
- Verbal Warnings;
- Written Warnings;
- Temporary suspension; and,
- Dismissal.

A prosecutor found guilty of prevarication or collusion will be dismissed and not allowed to enter the prosecutorial career again, under any circumstance.²⁹⁰

Sanctions may only be imposed through disciplinary proceedings²⁹¹ that follow due process of law.²⁹² Even though the Organic Law describes the procedure to be followed for sanctioning prosecutors,²⁹³ it also mentions that provisions to carry out disciplinary proceedings shall be specified by the Statute of the Staff of the Office of the Public Prosecutor.²⁹⁴

The Statute provides that the disciplinary procedure it contains is only applicable to prosecutors with security of tenure.²⁹⁵ Therefore, the vast majority of prosecutors, who have been appointed to provisional posts and can be removed at will by the Attorney

²⁸⁶ Resolution of the Attorney General No. 60, Official Gazette No. 36.654, 4 March 1999, Article 5.

²⁸⁷ UN Guidelines on the Role of Prosecutors, Guideline 21-22; International Association of Prosecutors Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 6(f)-(g).

²⁸⁸ Organic Law of the Office of the Public Prosecutor, Articles 117-119.

²⁸⁹ Organic Law of the Office of the Public Prosecutor, Article 118.

²⁹⁰ Organic Law of the Office of the Public Prosecutor, Article 118.

²⁹¹ Organic Law of the Office of the Public Prosecutor, Article 119.

²⁹² Organic Law of the Office of the Public Prosecutor, Article 117.

²⁹³ Organic Law of the Office of the Public Prosecutor, Article 119.

²⁹⁴ Organic Law of the Office of the Public Prosecutor, Article 118.

²⁹⁵ Resolution of the Attorney General No. 60, Official Gazette No. 36.654, 4 March 1999.

General, do not enjoy the guarantees and procedural safeguards provided for in the Law and the Statute.

E. Legal education

The availability and provision of quality legal education and continuing education is essential to ensuring that legal professionals are competent and able to play their essential role in contributing to ensuring respect for the rule of law, the protection and promotion of human rights and the fair administration of justice.

The Basic Principles on the Independence of the Judiciary provide that persons selected for judicial office must have "appropriate training or qualifications in law".²⁹⁶ Furthermore, the Singhvi Declaration places a duty on judges to "keep themselves informed about international conventions and other instruments establishing human rights norms".²⁹⁷ The Bangalore Principles of Judicial Conduct add that "a judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control".²⁹⁸ The Statute of the Iberoamerican Judge states that while on-going training can be obligatory or voluntary for a judge, "it must be marked by an obligatory nature in case of promotion, transfer involving a change of jurisdiction, important legal reforms and other circumstances specifically qualified".²⁹⁹ For the judge, in-service training constitutes a "right and a duty", and for the judiciary a "responsibility".³⁰⁰

The Guidelines on the Role of Prosecutors likewise specify they shall be individuals "with appropriate training and qualifications".³⁰¹ States must ensure that they meet this criterion and that prosecutors be made aware of the ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law.³⁰² Prosecutors have a duty to "keep themselves well-informed and abreast of legal developments".³⁰³

The Basic Principles on the Role of Lawyers place a duty on governments, professional associations of lawyers and educational institutions to ensure that lawyers have appropriate education and training and are aware of lawyers' ethical duties and of human rights and fundamental freedoms recognized by national and international law.³⁰⁴ Further, they should take special measures to provide opportunities and ensure needs-appropriate training for law students from groups whose needs for legal services are not consistently met, particularly including those who have distinct cultures, traditions or languages or have been the victims of past discrimination.³⁰⁵ Legal education must be open to all persons with requisite qualifications and no one shall be denied such opportunity by reason of race, colour, sex, religion, political or other opinion, national, linguistic or social origin, property, income, birth or status.³⁰⁶

²⁹⁶ UN Basic Principles on the Independence of the Judiciary, Principle 10.

²⁹⁷ Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 40. See Bangalore Principles of Judicial Conduct, Value 6: Competence and diligence, 6.4.

²⁹⁸ See Bangalore Principles of Judicial Conduct, Value 6: Competence and diligence, 6.3.

²⁹⁹ Statute of the Iberoamerican Judge, Adopted by the VI Iberoamerican Summit of President of Supreme Courts and Tribunals of Justice (2001), Article 28.

³⁰⁰ Statute of the Iberoamerican Judge, Adopted by the VI Iberoamerican Summit of President of Supreme Courts and Tribunals of Justice (2001), Article 27.

³⁰¹ UN Guidelines on the Role of Prosecutors, Guideline 1.

³⁰² UN Guidelines on the Role of Prosecutors, Guideline 2(b).

³⁰³ International Association of Prosecutors, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, Article 1.

³⁰⁴ UN Basic Principles on the Role of Lawyers, Principle 9. See International Bar Association (IBA) Standards for the Independence of the Legal Profession, Standards 2-4.

³⁰⁵ UN Basic Principles on the Role of Lawyers, Principle 11.

³⁰⁶ Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 77.

The UN Special Rapporteur on the independence of judges and lawyers has recommended that magistrates, judges, prosecutors, public defenders and lawyers should be requested to take courses on international human rights law. She also recommended that on-going legal education should be mandatory at all levels.³⁰⁷ The Singhvi Declaration states that "continuing legal education shall be available to judges".³⁰⁸

In Venezuela, law is taught at university, at one of the 42 authorized Law Schools.³⁰⁹ The students graduating from the Faculty of Law receive the title of "Lawyer" upon successful completion of a five-year programme of study.³¹⁰ In theory, an individual must have obtained this title in order to be authorized to practice law in Venezuela.

As noted above in Section C, subsection 4, in 2005 the Government of Venezuela opened the Bolivarian University of Venezuela (BUV), authorized to teach the programme of Legal Studies.³¹¹ This programme at the BUV is different from the programme of Law taught in other national and international law schools, as it excludes certain essential topics for lawyers (i.e. civil law, civil and criminal procedural law). Accordingly, the Ministry of Popular Power for University Education decided that the Legal Studies programme graduates would receive the title of "Bachelor of Laws" instead of "Lawyer".³¹²

However, the Bolivarian University of Venezuela in practice bestows the title of Lawyer upon their graduate students. In 2010, President Chávez announced the creation of the "Mission of Socialist Justice", offering secure postgraduate studies for all of the BUV's graduates in the School of Judges and guaranteeing their practice and further exercise of their profession in the Office of the Attorney General.³¹³

³⁰⁷ Gabriela Knaul, Special Rapporteur on the independence of judges and lawyers, Advance report on the global thematic study on human rights education and training of legal professionals, UN Doc. A/HRC/20/20 (2012), para. 112.

³⁰⁸ Draft Universal Declaration on the Independence of Justice (also known as the Singhvi Declaration), Article 12.

³⁰⁹ See: <http://loeu.opsu.gob.ve/vistas/carreras/consultar.php?id=137>.

³¹⁰ See: <http://www.curricular.info/carreras/derecho.html> and <http://w2.ucab.edu.ve/servicios-al-estudiante.html>.

³¹¹ See: <http://www.ubv.edu.ve/index.php/p-formacion-de-grado/6-estudios-juridicos>.

³¹² See: <http://loeu.opsu.gob.ve/vistas/carreras/consultar.php?id=724>.

³¹³ Ocarina Espinoza in El Universal (16 January 2010), 'Chávez propone la creación de la Misión Justicia Socialista'. Available at: http://www.eluniversal.com/2010/01/16/pol_ava_chavez-propone-la-cr_16A3298331 (Accessed 21 August 2014).