

THE CARTER CENTER



Venezuela

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**The Carter Center
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Reporting Organization

The Carter Center is a not-for-profit, nongovernmental organization that has helped to improve life for people in more than 80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care. The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University to advance peace and health worldwide.

The Carter Center's Democracy Program works globally to promote democratic elections and governance consistent with human rights. The Center has monitored more than 100 elections in 39 countries since 1989, forging many of the techniques now common to the field. Recognizing that democratic transitions involve much more than elections, the Center also conducts long-term monitoring of political transitions and works to strengthen civil society organizations to support democratic governance. The Democratic Election Standards (DES) initiative aims to build consensus on standards for democratic elections, based on state obligations under public international law.

The Carter Center in Venezuela

The Carter Center had ongoing projects in Venezuela since 1998 or has monitored political conditions in Venezuela since 1998. The Center observed elections in Venezuela in 1998, 2000 and established a field office in 2002 during a political crisis that was mediated by The Carter Center and the Organization of American States with the help of the UN Development Program. The mediation led to a recall referendum, which the Center also was invited to observe in 2004. The Carter Center closed its field office in 2015 following a deterioration in conditions in the country, but continued to monitor developments with a look toward return to the country.

This submission is based on data and reporting from The Carter Center's 2021 expert election mission to the Bolivarian Republic of Venezuela following the invitation to send an election mission for the Regional and Municipal elections held in November 2021. The Center's submission addresses gaps in the legal framework for elections in Venezuela, as well as observed issues related to the implementation of elections during the 2021 regional and local elections that are relevant for the Committee to consider for the List of Issues, and provides key recommendations to ensure that various stages of the electoral process are implemented in accordance with Venezuela's obligations under the ICCPR in the future.

Issues and Suggested Questions for the Human Rights Committee

Article 25: Right to Participate in Public Affairs

Unequal application of the law

Even though the right of individual freedom is protected by Article 44 of the Constitution, the executive branch's hegemony over other branches and institutions, coupled with ineffective separation of power, opens the door to arbitrary use of legal provisions for political or partisan

ends, and puts opposition and independent actors in a vulnerable position. The Supreme Tribunal of Justice (TSJ in Spanish) is an example of this undue influence of the executive.

The decisions of the Supreme Tribunal of Justice (TSJ in Spanish) directly affected the legal environment of the 2021 elections, including limiting broad participation that was seen as partisan and arbitrary. This was exacerbated by the fact that the TSJ did not provide clear and objective criteria to justify the measure and decisions it introduced during the elections. Specific examples of these measures include:

- TSJ's electoral chamber cited a breach of party bylaws to justify its intervention to replace the executive committees of opposition and dissenting political parties with other leadership bodies without offering clear or objective criteria for its decision.
- The TSJ called for new elections to be held in Barinas state in January 2022, citing the disqualification of the opposition candidate Freddy Superlano, ignoring the presidential decree of Aug. 31, 2020, which pardoned 110 citizens, including Superlano, making him eligible to run for office.

Furthermore, the process's overall competitiveness has been negatively affected by failure to enforce national legislation (including campaign rules); the CNE's reluctance or failure to address blatant legal violations; the lack of transparency about the criteria used to make essential decisions about the electoral process, such as barring or replacing barred candidates; and the inadequate or nonexistent access to official information from the CNE on key decisions, which undermined the clarity of the process and legal certainty.

Indigenous Peoples' Right to Participate in Public Affairs

The Venezuelan Constitution recognizes the rights of indigenous peoples¹ and Venezuela as a multiethnic and pluricultural nation and grants official status to indigenous languages (Article 9). The political participation of indigenous peoples at every level of government is guaranteed by law; the national parliament, regional legislative assemblies, and municipal councils have seats allocated for indigenous representatives in districts with indigenous populations. However, there is no specific voter registry for the indigenous population.

Prior to the regional and local elections in 2021, the Supreme Tribunal of Justice's constitutional chamber repealed provisions of the electoral law governing the election of indigenous representatives² and ordered the CNE to fill the "legal vacuum." On May 27, 2021, the CNE issued regulations for an indirect voting system for the seats allocated to indigenous representatives. Between July 6 and Aug. 13, 2021, 4,334 spokespersons (*voceros*) elected by indigenous communities in open assemblies (where secret ballots are not guaranteed) selected regional

¹ Indigenous peoples constitute approximately 2.5% of Venezuela's total population of 32.9 million.

² Electoral Law, articles 174, 175, 176, 177, 178, 179, 180, 181, 182 and 186.

councilors in eight states. They also selected a total of 69 municipal councilors on behalf of their communities on Nov. 26. The process was similar to the election system used during the 2020 parliamentary elections, which was widely criticized by indigenous groups and representatives on the grounds that the system violates the principles of universal suffrage and direct voting by secret ballot enshrined in the constitution (Article 63).

The Carter Center received complaints of irregularities during these special elections, such as low participation among indigenous peoples in elections for spokespersons, either because the election was not properly called or was held far from the geographical areas of some groups, who could not afford transportation to participate. Other groups decided not to participate in protest of the indirect voting system. Although this system is presumably a temporary solution until the indigenous population is registered—its purpose being to ensure that only members of indigenous peoples participate in electing their representatives—indigenous leaders believe indirect voting is detrimental because it hampers broader participation.

Questions for Consideration:

What specific measures will be put into place in the future to ensure judicial independence from pressure and interference of any kind as recommended by the United Nations (CCPR) Concluding observations on the Bolivarian Republic of Venezuela (2015), paragraph 15?

What steps can and has the government taken to support and strengthen the CNE autonomy and independence from government?

What specific measures will Bolivarian Republic of Venezuela and the CNE put in place to hold those who commit blatant electoral legal violations accountable?

What special measures will the Bolivarian Republic of Venezuela enact and implement to ensure that the elections for indigenous representatives respect the principles of direct voting by secret ballot and universal suffrage presented in the Constitution (Article 63)?

Articles 9 and 14: Right to Liberty and Fair Hearing by an Independent and Impartial tribunal

Political persecution and repression aimed at stifling opposition to the government is a serious problem in Venezuela. Arbitrary arrest and detention of those holding opinions different from the government had a generally chilling effect on the 2021 election atmosphere, with some opposition candidates and supporters going into exile. A civil society organization that provides legal aid to detainees in Venezuela, Criminal Forum (*Foro Penal*), classified a total of 251 detainees as political prisoners as of Nov. 22, 2021.³ Since 2014, there have been 15,749 politically motivated

³ See; <https://www.infobae.com/en/2022/04/14/the-criminal-forum-denounced-that-there-are-240-political-prisoners-in-venezuela/>

arrests. Foro Penal estimates that there are an additional 9,000-plus people in Venezuela who remain “subject, arbitrarily, to measures restricting their freedom.” In 2021, a total of 42 politically motivated arrests were made, and four of those arrested remain behind bars and 38 have been released. On Nov. 3, 2021, the prosecutor of the International Criminal Court reported that the case known as “Venezuela I” had entered a phase of formal investigation of crimes against humanity allegedly committed since at least 2017.

Questions for Consideration:

What steps can the Bolivarian Republic of Venezuela take to ensure the right to a fair and public hearing for the State’s population, especially among opposition political figures and former government allies?

What specific measures will the Bolivarian Republic of Venezuela take to ensure that political prisoners will not face arbitrary trials and sentences and no further harassment or threats that stand in the way of the fulfillment of the State’s Constitution (Article 44) and the provisions of CCPR (Articles 9 and 14)?

Article 19: Freedom of Opinion and Expression

The Venezuelan Constitution recognizes freedom of expression and the right to diverse, truthful, and impartial information (Articles 57 and 58). The 2010 Law on Social Responsibility in Radio, Television, and Electronic Media (*Ley de Responsabilidad Social en Radio, Televisión y Medios electrónicos*) sets out the rights and responsibilities of media and journalists and establishes the National Commission of Telecommunications (*Comisión Nacional de Telecomunicaciones*—CONATEL) as the principal regulatory authority. Electoral law governs campaigns, political advertising, and social media campaigns.⁴

However, during the last 20 years the Venezuelan government has instituted a legal framework comprising around 60 laws, decrees, regulations, and court decisions,⁵ of which 43 have severely restricted freedom of expression and the right to access to information. This body of law restricts the actions of private media on the grounds of protecting national security, combating terrorism, or protecting the truthfulness of information. This has led to the shutdown of media outlets, restricted access to resources monopolized by the government (foreign currencies, replacement parts, newsprint, etc.), and criminalized critical opinions, among other consequences.

In addition, the ambiguous wording of the laws and regulations allows for arbitrary interpretations and discretionary censorship of media and journalists, without the need for court orders.

⁴ http://www.cne.gob.ve/web/normativa_electoral/reglamentos/Reglamento_General_LOPRE.pdf
TITLE VI, ON ADVERTISING DURING THE ELECTION CAMPAIGN PERIOD.

⁵ The Legal Framework for Communications in Venezuela, 1999-2019 (*Marco Legal Comunicacional en Venezuela 1999-2019*), Lupa Ininco- Global Observatory for Communication and Democracy (GOCD): <https://www.observademocracia.org/33666-2/>

CONATEL has issued directives to censor digital media, and the Law on Social Responsibility on Radio and Television and the 2017 Law against Hatred (*Ley contra el Odio*) gives government officials and bodies considerable discretion to restrict reporting and journalism.

Other ad-hoc measures also have contributed to stifling the media, free speech and diversity of sources of information. For example, foreign news channels have been removed from the programming schedule (NTN 24, CNN), sometimes by presidential decisions. Several independent media outlets have closed, or have been handed over to people or companies with close ties to the ruling party, or shield themselves through various forms of self-censorship. There are also considerable obstacles blocking online access to information portals.

During the November 2021 elections, The Carter Center found that radio broadcasters avoided sharp criticisms of the government and prevented their guests from expressing criticisms for fear of receiving a warning or fine that could threaten the station's license. According to CONATEL data, the regulatory body filed disciplinary proceedings against 79 radio stations in the last four years for failure to comply with the Organic Law on Telecommunications' (*Ley Orgánica de Telecomunicaciones*) rules against clandestine use of the radio spectrum (Article 165). Disciplinary proceedings were also filed against 19 radio and TV stations for violating Article 17⁶ of the Law on Social Responsibility in Radio, Television, and Electronic Media, which prohibits the broadcasting of messages that promote hate and intolerance or incite crime, as well as those that "foment unease among citizens."

Assaults against journalists have also been recorded. The National Journalists Association (*Colegio Nacional de Periodistas*) reported several acts of violence against the press on election day. According to this association, reporters were denied access to voting centers in at least 25 instances; in another five, they were required to erase recorded materials; and in another two instances, attempts were made to confiscate their equipment. The association also reported three threats, two incidents of harassment, and one arbitrary detention.

Questions for Consideration:

How will the Bolivarian Republic of Venezuela ensure a free media environment, that is conducive to the conduct of genuine elections?

What steps can the government take to guarantee that CONATEL's authority will not trump constitutional rights like freedom of expression?

Article 3: Equality Between Men and Women

Article 21 of the Venezuelan constitution prohibits discrimination based on sex. The State has also ratified several relevant human rights treaties, including the Convention on the Elimination of All

⁶ The Article is known by the acronym "*Ley RESORTE*" in Spanish.

Forms of Discrimination against Women (CEDAW) and its optional protocol. Despite this, women remain underrepresented in political life in Venezuela, occupying only 33% of the seats in parliament.

There is no gender parity or gender quotas law in Venezuela. However, as mentioned in the most recent State report,⁷ the State Party takes policy measures to ensure more equal political participation of women. Over the years, the National Electoral Council (*Consejo Nacional Electoral*, CNE) has issued various regulations that seek to promote parity in candidate lists at all levels of government, with the most recent focusing on Equal and Alternate Composition of party lists.⁸

However, enforcement of this regulation is lax. The Carter Center found that candidate lists that did not meet the gender alternation requirement—where women were relegated to the end of lists in positions where they had little chance of being elected—were nonetheless registered for the 2021 regional and local elections. The CNE registered such lists without formally changing its gender parity regulation. Women constituted 51.4% of registered voters, and 49.44% of the candidates running for assemblies and councils were women. However, women won fewer regional and municipal elected offices in the 2021 elections than in the 2017 elections.

Of a total of 2,730 candidates for the 335 mayoral positions, 496 were women (18 percent). Sixty were elected (18 percent of mayoral posts are now filled by women). A total of 183 candidates competed for the 23 governorships, 20 of whom were women, resulting in the election of just two female governors (8.7 percent). The number of women elected as governors in 2021 dropped by 40 percent when compared to 2017, while the number of female mayors elected decreased by 16 percent.

Questions for Consideration:

What specific steps will the Bolivarian Republic of Venezuela take to increase women's representation in decision making so they can enjoy equal political rights?

What specific steps will the Bolivarian Republic of Venezuela take to ensure that men and women have equal opportunities to compete for office on a level playing field? What steps will the National Electoral Council (Consejo Nacional Electoral, CNE) take to ensure compliance with its gender parity and alternate composition regulations?

⁷ Fifth Periodic Report Submitted by the Bolivarian Republic of Venezuela Under Article 40 of the Covenant, CCPR/C/VEN/5, (September 7, 2021), Paragraphs 41 and 42

⁸ Special rules guaranteeing rights to political participation with gender parity and alternation of male and female state representatives and councilors in the 2021 regional and municipal elections (Reglamento especial para garantizar los derechos de la participación paritaria, alterna y política de legisladoras o legisladores y concejalas o concejales en las elecciones regionales and municipales 2021) and instructions for implementing these rules.