



**PROPOSAL FOR
THE RE-INSTITUTIONALIZATION OF
THE ADMINISTRATION OF
JUSTICE DURING THE TRANSITION**

 **Acceso a la Justicia**
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Background to the proposal

The Access to Justice proposal is supported by an important work that began in 2019. The main activities carried out to achieve the elaboration of a solid proposal for the re-institutionalization of the administration of justice during the transition are indicated below.

1. Regional hearing before the Inter-American Commission on Human Rights: “Corruption and Human Rights: the role of justice systems”, held in Sucre, Bolivia, on February 15, 2019, in which, on the initiative of the NGO Due Process of Law Foundation (DPLF), a report was presented on the situation in the matter of 7 countries in the region and Access to Justice came through Venezuela¹. To do this, she prepared a report on the situation of Venezuelan justice, an important antecedent to the NGO’s proposal.
2. Discussion: “**State of Justice and Democracy in Venezuela**”, held on March 28, 2019, in the city of Bogotá, Colombia, with the Hernán Echavarría Olózaga Institute of Political Science and the Excellence in Justice Corporation, both recognized organizations Colombian. The NGO Due Process of Law Foundation (DPLF) was also supported, who prepared a document to be previously sent to the guests at the event so that they could better understand the situation of Venezuelan justice. On the morning of the event, a diagnosis of the Venezuelan justice system was presented (21 participants) and in the afternoon proposals for its re-institutionalization (25 participants) were discussed. The results of the forum and the discussion are in a press release that was published on the Access to Justice website, whose title is revealing about the content of what was presented and discussed: “The justice system is dying in Venezuela: keys for judicial reinstitutionalization”². Also, on the website of the NGO are press releases that summarize the presentation³.
3. Civil society meeting: “**Transition of justice in Venezuela. Building proposals from civil society**”, which took place from May 15 to 17, 2019 in the city of Bogotá, Colombia. There was the support of the NGO DPLF, which gave support to prepare a document to be previously sent to the participants, containing the agenda, the topics to be discussed, and what has been achieved so far. The meeting was attended by experts, jurists, and representatives of civil society, both Venezuelans and other Latin American countries, who have also suffered from autocratic and dictatorial governments. There were about 20 participants per day, many of whom were also speakers. At the meeting, ways were analyzed to design a road map to walk the path of the re-institutionalization of Venezuelan justice and even transitional justice. The results of the meeting are contained in the press release published on the Access to Justice website with the title: “Achieving an autonomous Judicial Power: a challenge for the transition to democracy in Venezuela”⁴. Also, on the website of the NGO are press releases that summarize the presentations⁵.

1 Vid. <https://www.accesoalajusticia.org/acceso-a-la-justicia-denuncio-ante-la-cidh-el-rol-del-tsj-en-el-regimen-de-facto/>

2 Available in: <https://www.accesoalajusticia.org/el-sistema-de-justicia-agoniza-en-venezuela-claves-para-la-reinstitucionalizacion-judicial/>

3 Available in: <https://www.accesoalajusticia.org/la-toma-del-poder-absoluto/>,
<https://www.accesoalajusticia.org/dominar-la-justicia-para-mantenerse-en-el-poder/>,

<https://www.accesoalajusticia.org/jueces-penales-venezolanos-mantienen-lazos-politicos-y-comerciales-con-el-gobierno/>

4 Available in: <https://www.accesoalajusticia.org/poder-judicial-autonomo-reto-transicion-democracia-venezuela/>

4. **Conversations, presentations, and meetings during 2019 between NGOs and the National Assembly.** Meetings were held between Venezuelan NGOs, which are dedicated to the topic of Justice, and who participated in the May 2019 meeting in Bogotá, Colombia, to reach agreements for the transformation of justice in Venezuela. There were also important meetings and events with members of the National Assembly, and in particular with the Justice and Peace Commission, chaired by Deputy Delsa Solorzano, who also participated in the meeting in Bogotá, Colombia. The proposal for Access to Justice on the re-institutionalization of justice during the transition was disseminated in late May as part of an event organized by the Andrés Bello Catholic University (UCAB) in Caracas, Venezuela⁶. In this forum, UCAB wanted to present various proposals within the framework of the “Country Plan” to the National Assembly, and the interim president, Juan Guaidó, and Acceso a la Justicia was invited to present theirs in the area of justice. In August, the NGO made a new presentation of its proposal to the Justice and Peace Commission, chaired by Deputy Delsa Solórzano, who gave an important feed-back in this regard, as well as other members of that Commission.
5. Report: **Diagnosis of the performance of the police in Venezuela.** In July 2019, the first report on this subject was published on the Access to Justice website, with a diagnosis from 2000 to 2018, entitled: “Overview of the police system in Venezuela (2000-2018)”⁷. In June 2020, the update of that report was published, entitled: “The Venezuelan Police Service. Between reality and perception (2000-2019)”⁸.
6. Report: **Diagnosis of the performance of the Public Ministry in Venezuela.** In July 2019, the first report on this subject with a diagnosis from 2000 to 2018 was published on the Access to Justice website⁹. In June 2020, the update of that report was published, entitled: “The Public Ministry in Venezuela: their performance and perception (2000-2020)”¹⁰.
7. Forum: **“Proposal for Justice in Venezuela”, held on June 4, 2020, via zoom.** There were 42 participants, 4 speakers, and a moderator. The results of the forum were disseminated through a press release, prepared and published by Access to Justice on its website¹¹, and in it are the summaries of each presentation or PowerPoint presentations, as appropriate.

5 Available in: <https://www.accesoalajusticia.org/hay-que-fomentar-la-participacion-ciudadana-en-el-sistema-judicial/>, <https://www.accesoalajusticia.org/no-hay-que-crear-un-nuevo-modelo-de-justicia-sino-aplicar-el-vigente/>, <https://www.accesoalajusticia.org/una-comision-de-la-verdad-debe-investigar-redes-de-corrupcion-en-venezuela/>, <https://www.accesoalajusticia.org/una-comision-de-la-verdad-debe-investigar-redes-de-corrupcion-en-venezuela/>, <https://www.accesoalajusticia.org/proponen-dos-etapas-con-dos-modelos-para-aplicar-la-justicia-transicional-en-venezuela/>

6 Available in: <https://www.accesoalajusticia.org/acceso-a-la-justicia-propone-la-reinstitucionalizacion-del-poder-judicial-en-el-marco-del-plan-pais/>

7 Available in: <https://www.accesoalajusticia.org/vision-panoramica-del-sistema-policial-en-venezuela-2000-2018/>

8 Available in: <https://www.accesoalajusticia.org/el-servicio-de-policia-venezolano-entre-la-realidad-y-la-percepcion-2000-2019/>

9 Available in: <https://www.accesoalajusticia.org/el-fracaso-del-sistema-acusatorio-en-venezuela-la-opacidad-ineficacia-y-falta-de-independencia-del-ministerio-publico/>

10 Available in: <https://www.accesoalajusticia.org/el-fracaso-del-sistema-acusatorio-en-venezuela-la-opacidad-ineficacia-y-falta-de-independencia-del-ministerio-publico/>

11 Disponible en: <https://www.accesoalajusticia.org/expertos-discuten-justicia-en-venezuela/>

Proposal's goal

- It refers to the Judicial Power, not to all the constitutional organs of the justice system¹² unless in some aspect they are related to the Judicial Power. Even so, an investigation was carried out on the performance of the police and another on the Public Ministry, since it is essential to understand their operation and role, to make a more solid proposal on the administration of criminal justice.
- The areas of work for re-institutionalization during the transition that the Access to Justice proposal encompasses are judicial independence, judicial transparency, access to justice and judicial management.
- The proposal presented is for a re-institutionalization in the short term, that is, for a period of post-conflict political transition, which could be approximately 3 years.
- The objective of this proposal is to achieve, even if only, a minimal institutionality in that period in the Venezuelan judiciary, to achieve a primitive rule of law, which is essential for the reconstruction of Venezuela.

Work areas for the re-institutionalization of justice

Judicial independence

It is essential to achieve again a judicial power at the service of the citizen and protector of their rights and not at the service of the political power, and also corrupt.

For this, the appointment of new magistrates of the Supreme Court of Justice (TSJ for its initials in Spanish), the governing body of the Judiciary and the highest judicial instance, is necessary, since none of them has been appointed under the constitutional procedure and does not meet the requirements to be¹³. To achieve this objective, first, the authorities of the Citizen Power - Ombudsman, Attorney General, and Comptroller General - must be appointed, since they participate in the appointment of the TSJ magistrates.

In addition, it is proposed to review the credentials of the main and alternate magistrates who were appointed by the National Assembly in July 2017¹⁴, in which case the constitutional procedure was not followed either.

The credentials of the criminal superior judges must also be reviewed, and successively, of the superior judges of the other specialty matters of the courts. Finally, from all the other judges in the country, giving priority to penalties. In parallel, opposition competitions must be launched to select new judges.

12 Article 253 of the Constitution: "(omissis)... The justice system is constituted by the Supreme Court of Justice, the other courts determined by law, the Public Ministry, the Public Defender, the criminal investigation bodies, the auxiliary ones. and justice officials, the penitentiary system, alternative means of justice, citizens who participate in the administration of justice in accordance with the law, and attorneys authorized to exercise it".

13 Vid. <https://www.accesoaljusticia.org/los-magistrados-de-la-revolucion/>

14 Some of which are part of the so-called "court in exile".

The review of the credentials of the new members of the Citizen Power and the Judiciary will be carried out by the Judicial Independence Commission, which will be made up of a maximum of five people, three foreigners, and two Venezuelans.

The foreign members of the Commission must be named as follows: one by the Inter-American Commission on Human Rights (IACHR); another by the Office of the High Commissioner for Human Rights, and the last, by mutual agreement between international organizations such as the International Commission of Jurists, Human Rights Watch, International Amnesty and the Foundation for Due Process. The Venezuelan members must be proposed by mutual agreement by the three foreign members to the National Assembly for it to appoint them definitively.

The Judicial Independence Commission must also monitor the opposition competitions of judges and the selection processes for magistrates and authorities of the Citizen Power.

It is essential to bear in mind that in the event that as a result of the review of credentials by the Judicial Independence Commission, a judge or magistrate does not meet the requirements to be one, they are given the opportunity to defend themselves. It is necessary to comply with due process to achieve the establishment of a rule of law in the future of the country.

The disciplinary jurisdiction, which has never been during Chavismo, must be put in place so that its judges can review the decisions of the Judicial Independence Commission if the affected party so requests.

Likewise, a period of judicial vacations must be established for the courts of the judges that are in the process of reviewing credentials, including for the TSJ, so that while this procedure lasts, they do not make decisions or process cases.

Lastly, the establishment of a Subcommittee on Truth and judicial non-repetition within the Judicial Independence Commission is proposed, which will prepare a historical memory of what happened in the Judiciary in the Chavista stage, to avoid the re-edition of practices to co-opt judicial independence.

Judicial transparency

It is essential to end the opacity of the Judiciary. For this, it is proposed to do a financial audit of the same, as well as the gathering of information about its physical, technological, and infrastructure resources, to know its real state.

All judges should be encouraged to publish their sentences, as well as a schedule of hearings. The Court Journal, with what happens every day, must be public. All the country's courts must be equipped with cameras and guarantee that the hearings are public in those cases that the law allows.

It is essential that judges report their work to universities and law schools annually in their region through the coordinating judge, president or rector of their specialty, and in this sense, it is also important that judicial statistics be made public. The magistrates of the TSJ must make their sworn declaration of assets public the day they enter the Judiciary and the day of their discharge. Likewise, the judges.

Likewise, citizen participation should be promoted again. One cannot continue to have the idea that the citizen is alien to justice.

The Judicial Transparency Commission should be in charge of all these aspects and, in addition, create a Subcommittee on Truth and no judicial repetition within it that collects information on the corrupt practices of the Judiciary in the Chavista period to avoid its reissue.

The Judicial Transparency Commission will be named in the same way as the Judicial Independence Commission. You may appoint subcommittees to deal with operational aspects. Likewise, civil society organizations may be designated for these aspects. Accountability to the Commission by the operating bodies will be essential.

Access to justice

The great barriers that were created during the period of Chavism were created for access to justice, especially for the common citizen, who must be eliminated or at least reduced.

For this, a first step will be to seek to establish mechanisms for access to local justice, and the vast majority of them outside the scope of the Judiciary, as this is the last one that should be accessed, given the costly and complex procedures that are usually judgments.

Thus, it is proposed to re-create the prefectures where any illegal act could be reported, among other aspects; restore the justice of the peace and assign it to the jurisdiction of the Municipality, repealing the special law of the jurisdiction of communal peace, as well as creating conflict resolution bodies at the municipal, state and national levels.

An indispensable aspect is to launch mass communication campaigns on human rights, transitional justice, and conflict resolution mechanisms.

The Access to Justice Commission is the one in charge of coordinating and promoting all these aspects. Its integration will be equal to that of Judicial Independence, especially for the purposes of preparing a plan to achieve the aforementioned objectives and to supervise its implementation. You may appoint subcommittees to deal with operational aspects. Likewise, civil society organizations may be designated for these tasks. Accountability to the Commission by the operating bodies will be essential.

Judicial management

As established in the Constitution, the administrative function of the Judicial Power is exercised by the Executive Directorate of the Magistracy (DEM). For this, a manager must be appointed by public tender. The DEM must be organized as a technical, professional body, with sufficient autonomy to make administrative decisions, without interference from the TSJ.

Improving judicial management will focus on addressing chronic problems of judicial functioning. For example, efforts will be made to establish a policy of immediate application of vacating police dungeons and to restore them to their anticipated condition of early detention. Guarantee the transfers of defendants to the courts in an expedited manner and, if not possible, hold the hearings in a special place in the detention center equipped with a camera, internet, and microphone, connected to the court. Reactivate the use of all the tools offered by the judicial management computer system, Juris 2000. Guarantee the separation of the judicial from the administrative function.

Trials, their speed, and adherence to the law should also be monitored, and possible irregularities, corrupt practices, and bottlenecks should be detected.

It is essential to promote meritocracy, destroyed by Chavismo, establish incentives for judges, so that those with outstanding management during the month, receive recognition as “the judge of the month” or that there is an honor roll with the judges more Featured by jurisdiction.

The Judicial Management Commission will prepare a plan to achieve the previously proposed objectives and will supervise its execution. You may appoint subcommittees to deal with operational aspects. These can also be made up of people from international organizations, above all, this is recommended in terms of monitoring trials. You may appoint subcommittees to deal with operational aspects. Likewise, civil society organizations may be designated for these aspects. Accountability to the Commission by the operating bodies will be essential.

Comments about the proposal

In the forum held on June 4 of this year, “Proposals for Justice in Venezuela”, the proposal for Access to Justice was presented in general terms. This event was supported by other organizations such as the UCAB Institute for Legal Research, the Human Rights Center of the Metropolitan University, and the UCAB Center for Human Rights, as well as UCAB itself. Below are comments from the speakers and questions from the participants in the forum, with their respective responses, to the extent that they may constitute observations, expressions of support, or supplements, as appropriate, in relation to the proposal for Access to the Justice.

Speaker Comments

Eduardo Trujillo

Director of the UCAB Center for Human Rights:

“In the Venezuelan case, the authoritarian context of those who hold power is evident, this being one of the reasons why serious human rights violations have occurred in the country. In this regard, there is no doubt that in the future, at the time of achieving a political pact that will facilitate the transition to democracy, given the lack of independence and autonomy of the judiciary, which must be re-institutionalized.

Jaiber Nuñez

Professor and researcher at the UCAB Legal Research Institute:

“It is important to understand that institutional reform is an essential guarantee for non-repetition, it would be a huge failure for all Venezuelan society the fact that in the future the errors and contradictions of our present will be repeated, for which institutional reform and specifically, the reform of the Judiciary constitutes one of the most important guarantees in order to prevent such repetition. In short, it is necessary to insist that in order to recover the rule of law, the norms and principles that characterize the rule of law model must be applied. , renouncing attitudes and mechanisms of the past, that beyond ideology, have been marked by intolerance, sectarianism, and arbitrariness in the exercise of power ”.

Andrea Santa Cruz

Director of the UNIMET Center for Human Rights:

Although I agree that the hearings can be virtual between the court and the prison, in certain cases, this is not convenient because in prison the detainee is mistreated and this can only be detected as a lawyer in court. Undoubtedly, this practice of mistreatment and coercion of detainees will no longer exist over time, but at the beginning of the new regime it will be necessary to be vigilant, and therefore it will not always be convenient to hold virtual hearings.

Questions from the participants

1st question

How to reconcile judges' stability with the need to rebuild the judiciary, in particular TSJ?

Answer: It is recommended to separate TSJ from the rest of the judges. The proposal is that the TSJ magistrates be replaced because the magistrates do not meet the requirements and the appointment procedures do not comply with the Constitution either. As for the judges, they are in a provisional situation, the vast majority of which is why they should do the opposition contests to be ratified and see that they have not committed serious human rights violations.

2nd question

Can the current TSJ carry out the reforms so that the judiciary is efficient?

Answer: No. A change of actors is needed, especially because the current dynamics of the TSJ are not very transparent, which goes against efficiency. Furthermore, the TSJ does not comply with due process in any way, so it can hardly carry out a real and institutional reform of any kind.

3rd question

Criminal judges only have judged by name. They are corrupt. In addition, criminal justice is almost paralyzed, so nothing is changed when changes or restructuring are made that take 4 or 5 months. What do you think about it?

Answer: This is undoubtedly the case, but it cannot be generalized, we must respect the rule of law and see each case, which is what our proposal consists of.

4th question

What do you think if the universities accompany the judging process?

Answer: Universities would undoubtedly be willing to support these processes and it would be ideal since they have the appropriate platform to do so.

5th question

In the event of a possible reform of the Constitution, they have thought about the following: establishing that the magistrates are for life and that they are not appointed by the parliament, which is a political body.

Answer: We consider that it is better not to make constitutional reforms in the transition. We have to wait for certain stability and above all that the Constitution has not been put into practice, it has never been fulfilled with regard to the appointment of magistrates, it is proposed that this route be followed: to comply with the constitutional procedure. According to the Constitution, the legislative power is not the only one that participates in the appointment of magistrates, the judicial power itself participates, as well as the citizen power and civil society itself.

6th question

Should bar associations have a role in restructuring the justice system?

Answer: In general, they have had a very passive attitude and, in that sense, they have been complicit in this regime, except in very specific cases. Therefore, what is proposed is to also reform the bar associations. However, it is obvious that they must have a voice in these reforms, although it is very important that universities also act.

7th question

What are the procedures to be carried out for the removal of judges? If judgments were made, could they be public?

Answer: There is a disciplinary procedure in case of serious offenses and, in addition, those judges who have committed serious human rights violations or corruption must be tried.

8th question

Has a return to the scheme of the Judicial Council been considered?

Answer: It does not seem to us the best model, the one that guarantees more independence is that of the Constitution, the problem is that it has never been applied, and also in a transition stage it is better not to make changes that are not indispensable, such as a reform. constitutional.

Conclusions

1. In order to present a solid proposal for the re-institutionalization of justice, Access to Justice carried out previous work of analysis, diagnosis, and discussions on the administration of justice in Venezuela, which lasted more than a year.
2. The proposal for Access to Justice refers to the Judiciary, not to all the organs of the justice system.
3. The proposal presented is for a re-institutionalization in the short term, that is, for a period of post-conflict political transition, which could be approximately 3 years.
4. The objective of this proposal is to manage to build, even if only, a minimum institutionalization in the Venezuelan judiciary in that transition period, to achieve at least a minimum rule of law, essential for the reconstruction of Venezuela.
5. The work areas for reinstitutionalization during the transition are judicial independence, judicial transparency, access to justice, and judicial management.
6. In each of these areas, the creation of a Commission is proposed that will have the name of the area it occupies. For example, the Judicial Independence Commission will see to it that there is judicial independence.
7. Each Commission will be made up of a maximum of five people, three foreigners, and two Venezuelans. The foreign members of each commission must be named as follows: one by the Inter-American Commission on Human Rights (IACHR); another by the Office of the High Commissioner for Human Rights, and the last, by mutual agreement between international organizations such as the International Commission of Jurists, Human Rights Watch, Amnesty International and the Due Process of law Foundation. The Venezuelan members must be proposed by mutual agreement by the three foreign members to the National Assembly for it to appoint them definitively.
8. Each Commission may appoint subcommittees to be in charge of operational aspects. Likewise, civil society organizations may be designated for these tasks. The rendering of accounts to the respective commission by the operating bodies is essential.
9. The creation of a Subcommittee on Truth and judicial non-repetition is proposed within the Judicial Independence Commission, which will prepare a historical memory of what happened in the Judiciary in the Chavista stage, to avoid the re-edition of practices for co-opting judicial independence.
10. The creation of a Subcommittee on Truth and judicial non-repetition within the Judicial Transparency Commission is proposed, to collect information on the corrupt practices of the Judiciary in the Chavista period to avoid its reissue.
11. It is of great importance to prepare a preliminary draft law on the Judicial Transition, which includes these proposals.

