

Alternative report on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination

Venezuela



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¹ **AlertaVenezuela** was founded in September 2019, as an information and analysis initiative that regularly and strategically feeds international political decision-making bodies from a rights perspective, based on the information generated by allied organizations in Venezuela and others of own production. The **CDH UCAB** was founded in November 1999, as a university center that combines the work of research, teaching, outreach and defense of emblematic cases. Its lines of action are right to political participation, freedom of expression, rights of refugees and migrants, international systems for the protection of human rights.

I. GENERAL INFORMATION

a. The Role of the NHRI

1. In May 2016, the Global Alliance of National Human Rights Institutions (GANHRI) decided to downgrade the Venezuelan NHRI to category B, alleging that “*it is not prepared to speak forcefully and promote respect for human rights in response to credible allegations of serious human rights abuses by government authorities*”².

2. Of the 13 special offices created by the Ombudsperson's Office in Venezuela, none of them have jurisdiction over racial discrimination. Furthermore, on the institution's website there is a gap in information since only the annual reports corresponding to the years 2001 to 2016 and then 2021 and 2022 are published.³ Therefore, it is not possible to confirm the veracity of the information provided by the institution on activities carried out to prevent and combat racial discrimination. It should be noted that the presentation of these reports is mandatory and that the gap between 2016 and 2021 coincides with the period in which the government ignored the National Assembly with an opposition majority, so the different bodies of public power, including the Ombudsperson's Office, abstained from being accountable to the legislative power.

b. Participation of civil society

3. Contrary to what the State affirms in paragraph 5 of its report to the Committee, there is a recurring practice by the Venezuelan authorities of excluding independent civil society organizations from spaces for consultation, coordination and decision-making for the formulation of public policies and for the preparation of coordinated responses to reports before the treaty bodies of the UN human rights system, as well as the Universal Periodic Review process. The process of preparing the response to the list of issues and the report for the CERD has been no exception.

c. Access to information for public policies

4. In paragraph 12 of its report and in subsequent ones, the State refers to the 2011 census, that is, the last data collection on the population living in Venezuela was carried out 14 years ago. The opacity in the figures is a distinctive feature of the Venezuelan government, which prevents knowing the reality of the inhabitants for the design of public policies according to their needs. It is a relevant consideration to understand the contradictions and gaps that appear in other sections of the State report.

² CDH UCAB y otros: Hoja Informativa. Segundo ciclo EPU Venezuela.
http://w2.ucab.edu.ve/tl_files/CDH/imagenes/Epu%20Vzla%202016/Defensoria%20del%20Pueblo%20EPU%20VEN%20Resumen.pdf

³ <http://www.defensoria.gob.ve/index.php/zona-informativa/informes/anales/>

II. INFORMATION RELATING TO THE ARTICLES OF THE CONVENTION

a. Racial discrimination as the basis for the lack of legislative progress (article 1)

5. The State affirms that the lack of legislative progress to adapt national regulations to the commitments derived from the Convention is due to an alleged contempt of the National Assembly (NA) in the period 2016 – 2020. The State alleges that *“the NA was installed with the incorporation of three deputies whose proclamation had been suspended by the TSJ [Supreme Court of Justice].”* It is particularly relevant for the purposes of the CERD to know the details of the alleged contempt, since behind this decision of the TSJ lies an act of racial discrimination of enormous concern.

6. The three deputies from the state of Amazonas suspended were from the Baniva indigenous ethnic group. On the occasion of their suspension, the former governor of Amazonas and also leader of the Baniva people stated: *“... racism prevails here. The decision to disincorporate the deputies of Amazonas after having been proclaimed by the National Electoral Council is part of that thinking and confirms that those who are at the forefront of this so-called revolution are racists and apply apartheid to the indigenous people of the Amazon.”*⁴ At the time of preparing this contribution, the contentious electoral process followed by the Electoral Chamber of the TSJ had not been concluded. The parliamentary period for which the indigenous deputies were elected ended in 2020. The case of the deputies was heard by the Inter-American Commission on Human Rights, a body that decided, in May 2024, to file the claim before the Inter-American Court of Human Rights.⁵

b. Policies aimed at eliminating racial discrimination in all its forms (article 2)

7. The State refers to the National Human Rights Plan (NHRP) 2016 – 2019, as an initiative for broad consultation of civil society. However, independent human rights defenders consulted by AlertaVenezuela stated that they had not been invited to participate in any of these initiatives. AlertaVenezuela insisted on several occasions with the OHCHR team in Venezuela on the need to incorporate the broad participation component of civil society organizations (CSOs) in the processes of preparation, execution and evaluation of the National Human Rights Plan and in the tracking mechanism.

8. Although the OHCHR team provided technical assistance to the State on these matters, there is no public information on the specific results or progress made by the State nor evidence that the authorities have favorably received the recommendations on the participation of independent CSOs. The lack of references by the State to a new NHRP after 2019 shows the low priority given to the issue.

⁴ <https://www.elimpulso.com/2023/02/19/entrevistadominical-afirma-liborio-guarulla-todos-los-procesos-de-primarias-han-terminado-en-desastre-19feb/>

⁵ Inter-American Commission on Human Rights.
https://www.oas.org/es/cidh/decisiones/Corte/2024/VE_14.142_NdeREs.PDF

d. Immediate and positive measures aimed at eradicating the dissemination of ideas based on superiority, hatred, racial discrimination, as well as any act of violence (article 4)

9. The State refers to the so-called Constitutional Law Against Hate, for Peaceful Coexistence and Tolerance. This is an unconstitutional law due to its origin, because it was promulgated by the National Constituent Assembly, a body created without adequate guarantees for an electoral process. The power to legislate, especially in criminal matters, is exclusive to the National Legislative Branch.

10. On the other hand, the content contravenes international standards of freedom of expression. In its article 20, the crime of inciting hatred is punished. Likewise, an administrative sanction is established, in article 22, for radio and television media that disseminate “*messages in favor of hate and war.*” These provisions prohibit “*hate*” in such broad and vague concepts, that any expression can be framed within this figure, which grants broad discretion to interpret the norm, which facilitates the application of prior censorship. Added to this is the use of disproportionate sanctions such as “*prison of ten to twenty years*”, the revocation of broadcasting permits for radio and television, the imposition of self-censorship through the removal of prohibited content on social networks “*within the six hours following its publication*” under the threat of a fine, with high sums exceeding \$10,000.00 USD, as well as the blocking of portals.

11. This is a law that has been used to criminalize dissent, real or perceived, and that does not protect minorities who are victims of structural discrimination, as well as those who are at risk of being persecuted for exercising their rights. According to data from the Espacio Público organization, since the promulgation of this regulation in 2017 until December 2023, 162 complaints of violations of freedom of expression were registered, derived from 63 cases. The types of complaints that are repeated most frequently are: 73 judicial harassments, 62 intimidations that materialize in arbitrary arrests and 15 violations through censorship⁶.

12. Additionally, the bill against fascism, neo-fascism and similar expressions is under discussion before the AN⁷, which in practice would be a continuation of the law against hate. Both regulations use vague concepts and imprecise definitions that allow for disproportionate administrative and criminal sanctions, leaving ample room for state discretion. The State may punish those who express, demonstrate or associate with the purpose of “*promoting*

⁶ Espacio Público. Incitación al odio: balance de una ley de criminalización y los desafíos del problema real. [Incitación al odio: balance de una ley criminalizante y los desafíos del problema real - Espacio Público \(espaciopublico.org\)](https://www.espaciopublico.org/); [A tres años de la “ley contra el odio” - Espacio Público \(espaciopublico.org\)](https://www.espaciopublico.org/)

⁷ The available version was published in the media and social networks. To date, it is not formally available on the National Assembly website. <https://www.laiguana.tv/wp-content/uploads/2024/04/Proyecto-de-Ley-contra-el-Fascismo-020424.pdf>; for more information, Espacio Público. [Ley contra el odio y el fascismo, dos caras de una misma moneda \(espaciopublico.org\)](https://www.espaciopublico.org/)

fascism.”⁸ The law against hate uses provisions with similar wording, which is why it is considered its predecessor, under a logic of supporting repression against civic space.

e. Commitment to prohibit and eliminate racial discrimination in all its forms and to guarantee the rights of all people, as well as equality before the law (Article 5).

Political rights, in particular the right to take part in elections, elect and be elected

13. The State refers to the Electoral Registry as part of a transparent electoral system. However, for the presidential election scheduled for July 28, 2024, the National Electoral Council made decisions that hindered the registration and updating of data in the RE for more than 5 million voters abroad, which constitutes a massive denial of the right to vote, based on an arbitrary, illegal and discriminatory decision⁹.

14. The norm that regulates electoral processes in Venezuela is the Organic Law of Electoral Processes ¹⁰ (LOPRE). In its article 29, the LOPRE establishes that “*For the purposes of registration in the Electoral Registry, the only required and valid document is the identity card.*” However, article 124 of the LOPRE regulates voting abroad in the following terms: “*Only voters who have residence or any other regime that denotes legality of permanence outside Venezuela may vote abroad*” (underlined added). In this way, a discriminatory condition is established to the extent that the exercise of a fundamental political right is subordinated to the immigration status of the person.

15. The requested requirements were based on the first part of article 124: “*Only voters who have residency may vote abroad,*” which is why the presentation of a valid passport, and a resident visa was required. Additionally, the universe of Venezuelan voters is further filtered by omitting the second part of the article, which refers to “*another regime that denotes the legality of permanence outside Venezuela.*” Venezuela violated its own norm (article 124 of the LOPRE) - in itself unconstitutional and contrary to human rights - by applying an instruction that only recognizes and implements the first part of the aforementioned electoral norm. The effect achieved was the exclusion of all people who did not have a “resident visa”, despite living for years, even regularly, in any foreign country. In this way, the population that was able to register or update data in the RE is less than 1% of voters eligible to vote abroad. This situation was publicly denounced by the Inter-American Commission on Human Rights, through a Press Release of June 18, 2024.¹¹

⁸ Espacio Público. [Ley contra el odio y el fascismo, dos caras de una misma moneda \(espaciopublico.org\)](https://www.espaciopublico.org/ley-contra-el-odio-y-el-fascismo-dos-caras-de-una-misma-moneda)

⁹ AlertaVenezuela, Espacio Público and Voto Joven. Barriers to electoral registration abroad. <https://en.alertavenezuela.org/barriers-to-electoral-registration-abroad/>

¹⁰ http://www.cne.gob.ve/web/normativa_electoral/ley_organica_procesos_electorales/indice.php

¹¹ Inter-American Commission on Human Rights. Venezuela Must Ensure the Right to Vote of Venezuelans Who Live Outside the Country Whatever their Migration Status, IACHR Says. https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2024/141.asp

Derechos políticos de los pueblos indígenas

16. In its report, the State presents the “*Special Regulations that will govern the election of the Indigenous Representation to the National Assembly 2020*”¹² as a rule favorable to the interests of the indigenous peoples of Venezuela. However, this norm reduces the political participation of indigenous peoples to a second-degree election. As an expert on the subject explained: “*The show of hands or second-degree election for indigenous people contains two theories detached from reality and their own worldview. In practice, a traditional assembly in indigenous communities is different from an election to political positions or positions of popular representation*”¹³.

17. For her part, the regional coordinator of indigenous affairs of the Un Nuevo Tiempo party in the state of Zulia rejected resolution 0027, stating: “*It is a racist method because it distances us from society and widens the social gap*”¹⁴.

Civil rights

18. With respect to the opacity of the figures referred to (paragraph 4 of this alternative report), the information provided by the State with respect to the so-called Plan Vuelta a la Patria stands out, according to which 17,785 Venezuelan migrants would have returned to the country from 2018 to 2020 thanks to this plan. The above means that, after 16 months of execution, prior to the start of the pandemic, the beneficiaries would be equivalent to 0.35% of the population that has left the country. According to the government, the imposition of unilateral coercive measures would have prevented greater coverage of this plan. However, in his intervention during the Interactive Dialogue with the Special Rapporteur on the human rights of migrants on June 25, 2024, the representative of Venezuela stated that “*close to a million Venezuelans have been reinserted into economic and social activity of the country through the Plan Vuelta a la Patria*”; There is no explanation as to how this figure was arrived at.

19. The political manipulation of the immigration issue has been a constant on the part of the State. First, denying the existence of the phenomenon¹⁵, later accusing returnees of being “*biological weapons*” and “*bioterrorists*” during the COVID-19 pandemic¹⁶, later stating that it was an induced migration¹⁷, subsequently refusing to receive new deportees from the

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http://www.cne.gob.ve/web/normativa_electoral/elecciones/2020/asamblea_nacional/documentos/reglamento_especial_para_regurar_la_elecci%C3%B3n_de_la_representaci%C3%B3n_ind%C3%ADgena_en_la_asamblea_nacional_2020.pdf

¹³ <https://www.radiofeyalegrianoticias.com/eleccion-de-segundo-grado-para-los-indigenas-dos-enfoque-errados/>

¹⁴ <https://www.radiofeyalegrianoticias.com/exigen-al-cne-derogar-elecciones-de-segundo-grado-para-los-indigenas/>

¹⁵ <https://www.france24.com/es/20180829-venezuela-niega-la-crisis-migratoria-que-desborda-america-latina>

¹⁶ <https://ln5.sync.com/dl/488d9d360/uqapd6ar-3f57w2k8-mxx3tywn-8e7wqkj5/view/doc/7901655340014>

¹⁷ <https://news.un.org/es/story/2022/09/1515221>

United States ¹⁸, in reaction to the reimposition of sanctions by that country and, more recently, inflating figures on the supposed return of close to a million Venezuelans ¹⁹.

III. Recommendations

20. In light of the above, the Committee is requested to evaluate recommending to the State:

Ensure the genuine participation, without any discrimination, of all sectors of society in the consultation processes on human rights issues associated with compliance with the State's international commitments.

Repeal the so-called Constitutional Law Against Hate, for Peaceful Coexistence and Tolerance.

Refrain from approving the bill against fascism, neo-fascism and similar expressions.

Adopt measures that ensure the registration and updating of data of voters abroad, under equal conditions and requirements with voters within the country.

Disapply the Special Regulations that will govern the election of the Indigenous Representation to the National Assembly 2020 in future electoral processes and ensure the prior consultation of indigenous peoples in any regulations relating to their right to political participation.

Refrain from stigmatizing and criminalizing Venezuelans who return to their country, even if their entry occurs through irregular channels.

21. The CERD could ask the Venezuelan government about:

Measures taken to ensure the genuine participation, without any discrimination, of all sectors of society in the consultation processes on human rights issues associated with compliance with the State's international commitments.

Report on the number of people prosecuted and sentenced by the so-called Constitutional Law Against Hate, for Peaceful Coexistence and Tolerance, duration of the processes, precautionary measures that do not deprive the defendants of liberty and sentences issued, including the type of sentence.

Reasons to exclude second part of article 24 of the Organic Law of Electoral Processes that prevented the updating and registration of voters abroad.

¹⁸ <https://www.vozdeamerica.com/a/venezuela-vuelos-deportados-eeuu-mexico-/7502980.html>

¹⁹ <https://www.swissinfo.ch/spa/maduro-afirma-que-casi-un-mill%C3%B3n-de-migrantes-venezolanos-han-retornado-a-su-pa%C3%ADs/48875874#:~:text=%2D%20El%20presidente%20de%20Venezuela%2C%20Nicol%C3%A1s,sanciones%20internacionales%2C%20a%20juicio%20del>

Effective application of consultation mechanisms to ensure the participation of indigenous peoples in the formulation of regulations that directly affect their rights.

Effective number of migrants returned to Venezuela with sources and information collection methodology.