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**VICTIMS WITHOUT JUSTICE:  
IMPUNITY AND HUMAN RIGHTS VIOLATIONS**

# VICTIMS WITHOUT JUSTICE: IMPUNITY AND HUMAN RIGHTS VIOLATIONS

## *Executive Summary.*

This report sets out the cases of procedural delay and consequent denial of justice in which lawyers from the Observatory of Human Rights are involved, assist or represent the victims.

More than thirty cases are presented, both in the Public Prosecutor's Office and in different courts of the country in which there was no response or legal action, - even in cases such as serious health of babies and children or serious violations of human rights for state repression — or in which there have been significant violations of legal proceedings in cases as serious as extrajudicial executions.

## *II. Poor capacity of the Public Ministry to investigate and prosecute crimes*

In Venezuela, the National Constitution in the third section enshrines the powers of the Public Ministry, the most essential being to guarantee the human rights established in international treaties. It is also the obligation of this institution to ensure the speed of justice and respect for due process, as well as to initiate the investigation and take the corresponding criminal action against punishable acts to contribute to the determination of the responsibility of the alleged perpetrators.<sup>1</sup>

In the more than 30 cases that we report below that extend from April 2017 to August 2019, the Public Ministry has not initiated any criminal investigation or exerted any criminal action, even when the cases do not need an instance of the party, which reveals a poor capacity to investigate and prosecute crimes, especially in relation to serious human rights violations.

### *II.1. Lack of autonomy and provisionality of public prosecutors*

In September 2018, a resolution (No. 2703) of the Public Prosecutor's Office of the Republic published in Official Gazette number 41.482 (09/14/2018) established that all career positions of officials serving in the Prosecutor's Office are transformed into positions of trust, which are freely appointed and removed and, as a result, these officials lose their stability. In this way, this resolution is established by decree, which establishes the

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<sup>1</sup> Art. 285 numerals 1 to 6 of the National Constitution.

provisional nature of the prosecutors of the Public Prosecutor's Office while at the same time reforming, by means of an act of sub-regional rank, the provisions of an organic law.<sup>2</sup>

According to the information available on the website of the Public Ministry, updated on July 10, 2019, there are 2,214 prosecutors in the country in offices with national, state, and municipal jurisdiction and those corresponding to the Plena Chamber and the Constitutional, Administrative Political Chambers and Electoral and before the Plenary Chamber and the Constitutional and Constitutional Chambers of the Supreme Court of Justice, the administrative courts, flagrancy rooms and higher prosecutors. Of the 2,214 prosecutors in the country, 1,471 are auxiliary, 740 are provisional and only three are holders, which represents 0.1%. So we can say that 100% of the prosecutors of the Public Ministry are provisional.<sup>3</sup>

Non-autonomous prosecutors, in which their officials are provisional and depend on the Executive, are subject to political pressure and do not guarantee that crimes, especially human rights violations, are investigated and punished, thus perpetuating impunity.

According to the Report on the situation of human rights in the Bolivarian Republic of Venezuela, the Office of the High Commissioner noted the lack of "prompt, effective, thorough, independent, impartial and transparent" investigations<sup>4</sup>. In fact, the Report sets out as an example the obstacles faced by the relatives of the people who died during the mass protests of 2017, determining that they "have faced (...) multiple obstacles, including the reluctance of the prosecutors to receive their complaints, and the denial of access to information and psychosocial protection and support measures<sup>5</sup>."

Likewise, the Report highlights the failure of the Public Prosecutor in its obligation to investigate, as well as bring to trial the persons responsible for the facts<sup>6</sup>. Similarly, the Office of the High Commissioner for Human Rights calls on the Government of Venezuela to immediately "carry out prompt, effective, thorough, independent, impartial and transparent investigations of human rights violations (...) and bring those responsible to

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<sup>2</sup><https://www.accesoalajusticia.org/eliminada-la-carrera-funcionarial-en-el-ministerio-publico/>

<sup>3</sup><http://act2.mp.gob.ve/>

<sup>4</sup>OHCHR, Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary General, July 4, 2019, para. 57 Available at:

[https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session41/Documents/A\\_HRC\\_41\\_18\\_SP.docx](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session41/Documents/A_HRC_41_18_SP.docx),

<sup>5</sup> *Idem*, para. 55

<sup>6</sup> *Ibid.*, Para. 57

justice<sup>7</sup>. ”

The United Nations High Commissioner for Human Rights demonstrates the lack of independence of the Public Ministry and how it translates into her silence in the face of serious human rights violations: “(...) *The Public Prosecutor's Office has regularly breached its obligation to investigate and bring to trial the persons responsible for the events and the Ombudsman has kept silent in the face of human rights violations....Furthermore, the Attorney General has engaged in public rhetoric to stigmatize and discredit the opposition and those who criticize the Government, thus violating the principle of presumption of innocence*”.

The cases before the Public Prosecutor's Office without response to date include violations of the right to life and health, with twenty-two cases before the prosecution, including eight minors, three of them dead; the right to personal integrity and demonstration, with two cases of victims of state repression with shots to the face, one of them with eye loss due to eye trauma.

## ***II.2. Complaints submitted to the Public Prosecutor's Office pending investigation***

### ***II.2.1. Case of injuries to a newborn baby at University Hospital of Los Andes***

The Observatory of Human Rights of the University of Los Andes received on April 21, 2017 a complaint of malpractice during a cesarean procedure that would have taken place at the University Hospital of Los Andes on 04/12/2017, consequently During the caesarean section, the baby's face and eyes were cut with the scalpel causing irreversible damage.

This fact was news by social networks and by the statements to the local press of the girl's father, Mr. Marcelino Vielma Valero. The case was even narrated by the organization La Vida de Nos in a moving video.<sup>8</sup>

Who performed the caesarean section is a graduate of the program called Community Integral Medicine (MIC, by its acronym in Spanish), a program created in 2005 by the late President Hugo Chávez, within the framework of the *neighborhood inside mission*, and which opened in parallel to the medical career of The country's universities. The MIC program has been denounced by the National Academy of Medicine for lacking the proper

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<sup>7</sup> *Ibid.*, Para. 81 (c).

<sup>8</sup> See: <https://www.youtube.com/watch?v=0gbyzTC7szA>

academic and professional requirements, so that it graduates doctors without proper training and education.<sup>9</sup>

After having tried unsuccessfully to communicate with the director of the University Hospital of Los Andes (institution dependent on the National Executive) for the time Dr. Ángel Ferrer, on May 17, 2017<sup>10</sup> ODHULA filed a complaint with the 10th Prosecutor's Office with competence in Protection of Boy, Girl and Teen, for injuries to the physical integrity of the newborn. According to the art. 4 of the Organic Law for the Protection of Children and Adolescents, the State has the obligation to take all measures to ensure that all children and adolescents fully and effectively enjoy their rights and guarantees.

The Prosecutor's Office was requested to initiate the pertinent inquiries in order to determine the responsibilities and **prevent a similar event from happening again, considering that there were already** previous complaints that would involve the same community doctor in serious violations of the integrity of newborns in the IAHULA.

More than **30 months** have passed without the prosecution's response or indicating to the Observatory of Human Rights the investigations that have been carried out in such a sensitive case.

The Observatory of Human Rights of the University of Los Andes has requested eight times information on the status of the investigation and to date the facts have not been clarified, responsibilities have not been determined or the victims have been compensated.

Prosecutors Doris Beatriz Rojas Cabrera and Luisana Rodríguez are responsible for the violation of the duty to provide an accessible, impartial, suitable, transparent, autonomous, independent, expedited and without undue delay; They are also responsible for the omission of the duty to investigate and punish the alleged commission of punishable acts.

### ***II.2.2. Case of a five year old boy who died from a scorpion sting***

The Observatory of Human Rights of the University of Los Andes received on June 20, 2017 a complaint of malpractice during a child care procedure stung by scorpion in the town of Mesa Bolívar, Mérida state. The boy would have been admitted to the medical clinic of Mesa Bolívar on June 12, 2017 at 2 in the morning, affected by a scorpion sting.

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<sup>9</sup> <https://www.elimpulso.com/2014/01/21/academia-de-medicina-cuestiona-a-medicos-integrales-comunitarios/>

<sup>10</sup> Public Ministry MP-183994-2017.

He was attended by a graduate of the Community Integral Medicine (MIC) program. The Integral Community doctor, would have indicated two ampoules of antiscorpionic serum. At 6 in the morning the child was discharged for presenting alleged improvement. However, at 9 in the morning of the same day the mother returns with the child who presented with respiratory distress.

He is attended by another doctor graduated from a university of recognized academic solvency, who immediately refers to the University Hospital of Los Andes. The child died 12 hours later due to heart failure because the doses of anti-scorpionic serum prescribed by the 'community doctor' were insufficient.<sup>11</sup>

On August 2, 2017, ODHULA filed a complaint with the 8th Prosecutor's Office with jurisdiction over Common Crimes for the death, avoidable, of a 5-year-old child.<sup>12</sup>

After more than 27 months the prosecutor Yulimar Ureña Camperos has not initiated any investigation. The Observatory of Human Rights of the University of Los Andes has requested eight times information on the status of the investigation and until now has not received a response.

### ***II.2.3. Case of death of an adolescent affected by diphtheria***

The Observatory of Human Rights of the University of Los Andes received on July 26, 2017 a complaint for the death, on June 21, 2017, of a child under 14 years of age who entered the University Hospital of Los Andes for emergency. The doctors diagnosed him with septic<sup>13</sup> shock and indicated antibiotic therapy. However, the Hospital did not have antibiotics, so no treatment could be given.

On the other hand, due to his cardiorespiratory problem, the young man deserved orotracheal intubation and mechanical ventilation, but the Hospital did not have relaxants or sedatives for the adequate neuromuscular management of the patient, so he remained in pain during the death process.

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<sup>11</sup> 4 ampoules should have been placed and only 2 were placed. Consult medical stories IAHULA.

<sup>12</sup> Public Ministry No. MP-343266-2017

<sup>13</sup> The medical report states: 'septic shock produced by diphtheria. Secondary left pneumonia, acute pulmonary edema and heart failure caused by left ventricular dysfunction. ' Source: IAHULA

On August 2, 2017, the Observatory of Human Rights of the University of Los Andes filed a complaint with the 14th Prosecutor's Office with competence in the protection of children and adolescents<sup>14</sup> for alleged responsibility of the State in the death of the adolescent.

More than **27 months** have passed without the prosecution, in charge of prosecutors Carol Lisset Pacheco Guerrero and Manuel Antonio Rosario Núñez have responded or indicated to this Observatory of Human Rights of the University of Los Andes the investigations that have been advanced in such sensitive case.

The Observatory of Human Rights of the University of Los Andes has requested eight times information on the status of the investigation and until now has not received a response.

#### ***II.2.4. Case of a 7-month-old baby who died due to lack of medical supplies***

The Observatory of Human Rights of the University of Los Andes received on July 28, 2017 a complaint for the death, on June 16, 2017, of a 7-month-old baby who could not have been adequately treated at the Hospital University of Los Andes due to lack of medical supplies.

The baby would have been admitted on June 13, 2017, with a diagnosis of septic shock due to malnutrition, skin and soft tissue infection, scabiosis, acute diarrheal syndrome, dehydration, acute renal failure and anemia. The mother would have indicated that she made the three bottles daily with only two tablespoons of milk.

The child could not be properly treated in the hospital because there were no milk formulas for malnourished babies, nor was there any oral serum available. Nor could the infectious process of skin and soft tissues be treated for not having adequate antibiotics. For their part, the parents did not have financial resources and the baby died due to a multi-organ failure.

The ODHULA filed a complaint with the 14th Prosecutor's Office with jurisdiction over the Child, Girl and Teen Protection System on August 2, 2017.<sup>15</sup>

29 months have elapsed) without this prosecution initiating due investigations. The Observatory of Human Rights of the University of Los Andes has requested eight times information on the status of the investigation and until now has not received a response.

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<sup>14</sup> Public Ministry MP-343293-2017.

<sup>15</sup> Public Ministry No. MP-343240-2017.

### ***II.2.5 Case of eighteen affected in their right to health as a result of the lack of supplies and medical equipment in the IHULA***

The Observatory of Human Rights of the University of Los Andes received on September 23, 2017 information from eighteen people affected in their right of access to health due to the lack of medical supplies and equipment at the University Hospital of Los Andes, in the span between July 1 and July 18, 2017.

Among the victims there are four children, three of them affected by epilepsy disease, and the other people affected by neurological diseases and traumatic accidents. **The victims did not have access to any of the medical exams or treatments required.**

The ODHULA filed a complaint on October 11, 2017 before the Superior Prosecutor of the Public Ministry of the State of Mérida<sup>16</sup> in charge of lawyer José Rafael Bastos.

More than 25 months have passed without the superior prosecutor's office distributed the complaint in order to initiate the investigation. The Observatory of Human Rights of the University of Los Andes has requested eight times information on the status of the investigation and until now has not received a response.

### ***II.2.6. Case of a university student victim of state repression for eye shots***

On August 7, 2019, Leonard Eduardo Rondón Monsalve, assisted by ODHULA, filed a complaint before the 13th Prosecutor's Office with competence in Fundamental Rights<sup>17</sup> for the attack of which he was a victim on June 27, 2017 by the Bolivarian National Police in the context of the protests of that day, in the Ejido area of Mérida state, causing eye trauma and loss of his right eye.

More than 3 months have passed without the prosecution of fundamental rights, under the charge of prosecutor Javier Díaz González, has initiated any investigation in such a serious case.

### ***II.2.7. Case of state repression victim with face shots***

On April 9, 2019, Charlis Quiroga, accompanied by ODHULA, filed a complaint with the 13th Prosecutor's Office with jurisdiction in Fundamental Rights<sup>18</sup> for injuries caused by 18

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<sup>16</sup> Public Ministry No. MP-343266-2017

<sup>17</sup> Public Ministry No. MP-343240-2017.

<sup>18</sup> Public Ministry MP 91699-2019.

shots of pellets in the face caused by agents of the Bolivarian National Guard in the context of protests.

More than four months have elapsed without the Prosecutor's Office, in charge of prosecutor Javier Antonio Díaz González, having initiated any investigation. The Observatory of Human Rights of the ULA has requested the necessary procedures and investigations on three occasions, with no response to date.

### ***II.2.8. Case of invasions to university units***

On February 12, 2019, ODHULA filed a complaint before the 23rd Prosecutor with jurisdiction over Environmental Crimes<sup>19</sup> due to the environmental destruction caused by invaders of the university spaces of the University of Los Andes, specifically the Experimental Station Finca Judibana, located in El Vigía, Merida state.

More than 9 months have elapsed without the prosecution, in charge of the prosecutor Jesús Rodríguez, having responded or indicated to this Observatory of Human Rights about the investigations that have been advanced in the case.

The Observatory of Human Rights of the University of Los Andes has requested eight times information on the status of the investigation and until now has not received a response.

### ***III. Procedural delay in the courts and denial of the right to justice***

In cases that are known, legally assisted or represented by the Observatory of Human Rights of the University of Los Andes, there is serious concern with judicial delay and / or violations of Venezuelan procedural regulations even in cases of human rights violations violating This way the right to justice.

#### ***III.1. Public Prosecutor's Office cases expelled for political reasons***

Between August 23 and September 20, 2017, the Attorney General of the Republic appointed by the National Constituent Assembly, Tarek William Saab, dismissed a group of 25 prosecutors in the State of Mérida.

The dismissed prosecutors publicly supported the position of the Attorney General of the legitimate Republic, Dr. Luisa Ortega Díaz, who expressed her disagreement with the presidential decree dated May 1, 2017, which convened a National Constituent Assembly, a

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<sup>19</sup> Public Ministry No. MP-40908-2019

call that in the opinion of the aforementioned Prosecutor constituted 'a rupture of the constitutional thread' and that led to his dismissal on August 5, 2017.

Some of the dismissals were unmotivated in violation of article 18, numeral 5 of the Organic Law of Administrative Procedures. None of the removals were framed in the offenses provided for in the Statute of the Public Ministry<sup>20</sup>.

The arbitrarily dismissed prosecutors filed complaints against the act of dismissal, initiating a contentious-administrative judicial procedure that has remained paralyzed since the admission of the complaints on January 23, 2018.

Judge Silvia Moreno Camacho, head of the State Superior Court of the Administrative Litigation of the state of Mérida, has not responded to this case even though the prosecutors have filed a written request for legal action on at least ten occasions.<sup>21</sup>

### ***III.2. Case of student killed in the context of peaceful protests***

Germán Cohen, a law student at the University of Los Andes was murdered on January 23, 2019, in the framework of protests in the city of Mérida. His body appeared burned several hours after the protest ended. Multiple witnesses identified, by their clothing, an official of State security forces as the material author of the murder. The body would have been calcined later to erase evidence.<sup>22</sup>

So far only the person who burned the body of German Cohen has been arrested but the intellectual and material perpetrators of the murder have not yet been arrested. It is recorded in the file that after the fact, and after the removal of the body came 2 vehicles with people dressed as civilians and carrying long weapons who were responsible for erasing the evidence.

The preliminary hearing has been deferred five times and after ten months of the murder it remains unpunished.

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20 Art. 99 of the Statute of the Public Ministry, published in the Official Gazette of the Bolivarian Republic of Venezuela, No. 40,785, of November 10, 2015, see at: <http://www.juris-line.com.ve/data/files/3172.pdf>

<sup>21</sup> File LP41-G2017-00088

<sup>22</sup> Information contained in the file before the Court 4t of Control of the Judicial District of the state of Mérida N: LP-01-P-2019-757

So far in 2019, the preliminary hearing has been delayed 5 times. There is a notorious and serious violation of the constitutional principle of due process, enshrined in article 49 of the CRBV (National Constitution)

The ODHULA has denounced this case in the 174 period of hearing of the IACHR as well as, nationally, by press and social networks.

### ***III.3. Student case arbitrarily detained, without trial for more than two years***

Erickvaldo Márquez, a Physical Education student at the University of Los Andes and a student leader of the 100% Student Movement, was arrested without a warrant at his home on September 13, 2017, for an event that occurred five months earlier, on April 24, 2017, during the peaceful protests in the city of Mérida<sup>23</sup> in which an official of the Mérida state government would be killed.

The prosecution conducts testimonial evidence without complying with the procedures established in the law for the protection of victims, witnesses and other procedural subjects by incorporating a witness not authorized by the control court. On the other hand, the fiscal accusation was filed extemporaneously since it exceeded the period of 45 days established in article 236 third apart from the Organic Criminal Procedure Code.

In the Preliminary Hearing held on the day of the year 2019, that is to say two years after the student's detention, the control judge did not review the tax accusation and referred the case to the Court of Judgment, failing to comply with due formal control and material of the accusation in order to verify that there were sufficient elements of conviction to determine the alleged responsibility of the student.

The trial hearings have deferred four times and to date Erickvaldo remains detained in inhuman and unsanitary conditions.

### ***III.4. Case of a student expelled from the Bolivarian University of Venezuela (UBV)***

On March 27, 2017, ODHULA filed an appeal for annulment with precautionary measures before the State Superior Contentious Administrative Court of<sup>24</sup> the state of Mérida for the expulsion of Rafael Avendaño from the Integral Community Medicine career at the Bolivarian University of Venezuela, an expulsion that was made apart from legal procedures and without allowing the right to defense.

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<sup>23</sup> Diario la Nación <https://lanacionweb.com/sucesos/imputan-a-joven-de-24-anos-por-muerte-de-funcionario-de-la-gobernacion-de-merida/>

<sup>24</sup> File number: LP 41-G-2017-000026

On March 29, 2017, the requested precautionary measure was denied. However, 8 months later, the measure was agreed during the trial hearing dated November 14, 2017, but it was never executed and the student was not allowed to continue his studies at the university.

After more than 3 years since the end of the procedure, the court in charge of Judge Silvia E. Moreno Camacho has not issued the final sentence. The Observatory of Human Rights of the University of Los Andes has intervened in ten opportunities proceedings requesting judgment and execution of the same and until now we have not received a response.

### ***III.5. Case of appeal of unconstitutionality***

On April 2, 2019, the ODHULA introduced before the administrative contentious court of the state of Mérida, an appeal for annulment due to the unconstitutionality<sup>25</sup> of the resolution of the Legislative Council of the State of Merida that creates an Integral Defense Directorate in which the president of the legislative council It stands as the sole and highest authority in the state regardless of constitutional guarantees.

The state court declined jurisdiction in the Constitutional Chamber of the TSJ and the file did not reach the TSJ until August 1, 2019.

It has been 4 months since the file arrived at the Constitutional Chamber, the Observatory has gone 3 times, on 7/30/2019; 10/25/2019; and 11/6/19 and we were unable to see the file, until 11/28/2019, when after much insistence we were able to access the file, without any action being recorded except the designation of the rapporteur.

### ***III.6. Case of Mérida firefighters detained by satirical video***

Firefighters Carlos Varón and Ricardo Prieto were arrested without a warrant on September 12, 2018, accused of instigating hatred for having broadcast a satirical video that compared Nicolás Maduro with a donkey.

It has been more than a year since its imputation and the preliminary hearing has not yet been held although the Organic Criminal Procedure Code (COPP, by its acronym in Spanish) states that it must be carried out within a period not exceeding twenty days after the prosecution has been filed.<sup>26</sup>

The hearing, scheduled for May 31, 2019 with a delay of 3 months according to the COPP, was deferred for November 11, 2019 which was not held due to the absence of Prosecutor

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<sup>25</sup> File 2019-0400. Constitutional Chamber TSJ.

<sup>26</sup> The prosecution was filed on December 20, 2018

Yohama Alexandra Alviárez Paredes, being deferred again for on May 13, 2020, violating the procedural regulations that establish that a hearing cannot be deferred for a next next date greater than twenty days.

***III.7. Case of a person executed by Bolivarian National Police (PNB, by its acronym in Spanish) at Llanitos de Tabay Service Station***

On June 20, 2019, ODHULA assumed the representation of the victims by extension of Wuilderman Paredes, who was executed by the PNB while doing a gas line at the Service Station of Los Llanitos de Tabay in the state of Mérida on the 8th of June 2019

Once the control judge passes the case and trial, you must submit the file within 5 days, however the judge was delayed 25 days and the trial hearing has not taken place to date.

THE ODHULA introduced on the 11/29/2019 nullity appeal for constitutional defects in the procedure.

***IV- Conclusion***

The inability of the Public Prosecutor's Office to investigate and punish those responsible for crimes, particularly those involving human rights violations, is a matter of concern. On the other hand, there is imprisonment of people without rigorous and timely investigations, as in the case of university student Erickvaldo Márquez.

With regard to the performance of the courts, the provisional nature of the judges, the lack of professionalism of the judicial career and the subordination to the National Executive translates into serious delays and irregularities in the proceedings, which translates into prison overcrowding and other human rights violations during custody.

The lack of action of the bodies that must seek justice makes impunity a de facto government policy of Nicolás Maduro, guaranteeing the repetition of crimes and human rights violations.



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