

IN DEFENSE OF THE DEMOCRATIC RULE OF LAW
LEGAL OPINION ON THE VENEZUELAN ELECTIONS OF JULY 28, 2024

The principle of transparency is essential to the legitimacy of the Venezuelan presidential election.

All Results must be public and openly verifiable.

Judges do not certify elections, they only apply the rule of law.

The World Jurist Association (WJA) is a non-governmental organization founded in 1963 and in special consultative status with the United Nations, composed of judges, academics, lawyers, and jurists from around the world, who work and cooperate for the promotion and defense of the rule of law. The WJA, expresses its deep concern over the lack of transparency in the publication of the results of the presidential elections held in the Bolivarian Republic of Venezuela on July 28, 2024, and the subsequent proclamation of Nicolás Maduro as president-elect without the publication of individual voting center results by the National Electoral Council (CNE), in contradiction with the tally sheets in the hands of opposition witnesses, which were published by candidate Edmundo González Urrutia and prove that he won the election.

Furthermore, the WJA is concerned about the decision issued by the Venezuelan Supreme Court of Justice, dated August 22, 2024, which purports to validate the election outcome and, more dangerously, to justify the grave governmental repression of the post-election protests, and the persecution and detention of the polling stations witnesses and team members of candidate Edmundo González Urrutia.

After a factual and legal analysis of the current situation, the WJA bases its legal opinion on the following facts and arguments:

I. FACTUAL CONSIDERATIONS

1. On October 17, 2023, in Barbados, the Government of Venezuela and the opposition signed the “Partial Agreement on the Promotion of Political Rights and Electoral Guarantees for all Venezuelans” (the “Barbados Agreement”) which established the commitment to carry out peaceful presidential elections with international observation.
2. The CNE organized presidential elections in Venezuela for July 28, 2024. However, in contravention of the Barbados Agreement, it disqualified several candidates opposing the government, including María Corina Machado, who had won the primary elections among the opposition candidates.
3. The regime of Nicolás Maduro imposed barriers to the registration of new voters both in Venezuela and abroad. In fact, most Venezuelan voters residing abroad were unable to exercise their right to vote.
4. The Maduro regime denied accreditation and access to the elections to almost all independent international electoral observation missions, allowing only the participation of the Carter Center and a mission of electoral experts from the United Nations.
5. During the electoral campaign, President Nicolás Maduro publicly stated that if he did not win the election, there would be a “bloodbath” and that he would be reelected “by hook or by crook”.

6. Since 2014, the Maduro regime has implemented policies that violate human rights. As set forth in detail by the Office of the United Nations High Commissioner for Human Rights in its report of July 4, 2019, the Maduro regime has adopted measures that “*aim to neutralize, repress and criminalize political opponents and critics of the Government*” that may constitute crimes against humanity provided for in the Rome Statute of the International Criminal Court.
7. The Venezuelan Supreme Court of Justice, which was Maduro shortly after the 2015 elections, issued a set of decisions, which eliminated the already weakened conditions of electoral competitiveness. In particular, the Supreme Court of Justice, in violation of the Venezuelan Constitution, appointed the five rectors of the National Electoral Council and, in addition, allowed the rectors to modify the electoral laws in their sole discretion.
8. On July 28, 2024, voting took place throughout Venezuela. Turn out was high and the elections were orderly and peaceful for the most part, however there were some reports of irregularities by Venezuelan opposition witnesses.
9. On July 29, 2024, after the proclamation of Nicolás Maduro as winner by the CNE, in stark contrast to the documented results that gave the victory to candidate Edmundo González Urrutia, massive protests took place. These protests were repressed by the military and police forces. Maduro has publicly admitted to the arrest of more than 2,500 protesters, including more than one hundred minors between 12 and 17 years of age, people with disabilities, senior citizens, political leaders of opposition parties, journalists, lawyers requesting information on their clients arrested for protesting, and even prosecutors who had refused to comply with the order to imprison innocent people. As an international organization of jurists, we are particularly troubled and call the world’s attention to the arbitrary detention of lawyer Rocío San Miguel, since February 2024, and of Perkins Rocha, lawyer of María Corina Machado, detained on August 27, 2024.
10. On July 31, 2024, despite having been declared the winner by the CNE, Nicolás Maduro filed a contentious electoral appeal before the Venezuelan Supreme Court of Justice, with the pretension that the judges carry out an investigation and verification of the electoral process and certify the results, a function that constitutionally falls to the Electoral Commission, headed by the CNE.
11. Following the elections, both The Carter Center and the United Nations Panel of Experts issued reports indicating that the lack of transparency by the CNE in the publication of the results of the Venezuelan elections did not comply with Venezuelan electoral regulations. Therefore, they could not certify that the elections and the vote tallies announced by the CNE had been the result of a democratic process.
12. On August 15, 2024, the Inter-American Commission on Human Rights condemned the “practices of institutional violence in the framework of the electoral process in Venezuela, including violent repression, arbitrary detentions and political persecution. The regime in power is sowing terror as a tool to silence the citizenry and perpetuate the ruling authoritarian regime”.
13. On August 16, 2024, the Permanent Council of the Organization of American States approved by consensus a resolution on the situation in Venezuela, urging the CNE to publish the full, detailed electoral records and to respect the fundamental principle of popular sovereignty through an impartial verification of the election results.

14. On August 16, 2024, twenty-one countries and the European Union issued a statement in Santo Domingo, Dominican Republic, urging respect for democratic principles, human rights and the fundamental freedoms of all Venezuelans. On August 28, seven more countries joined this declaration. The statement highlighted the alarming arbitrary detentions and lack of due process, calling for immediate release of all political detainees. In addition, the joint statement requested the immediate publication of all original vote counts as well as the impartial and independent verification of the results, preferably by an international entity, to guarantee respect for the will of the Venezuelan people expressed at the polls. They stressed that any delay in this process calls into question the official proclamation of August 2, 2024.
15. The Venezuelan justice system has been the object of multiple probes due to its lack of autonomy, independence and impartiality, among other deficiencies. In its 2023 report the international organization, World Justice Project placed Venezuela at the very bottom in the world ranking of justice.
16. On August 22, 2024, prior to the ruling of the Supreme Court of Justice, the UN Fact-Finding Mission to Venezuela warned about the lack of independence and impartiality of the highest Venezuelan Court and of the National Electoral Council.
17. On August 22, 2024, the Electoral Chamber of the Supreme Court of Justice decided the purported contentious electoral appeal, validating the result that declared Nicolás Maduro the winner as president for the 2025-2031 period, and for this purpose invoked inapplicable jurisprudential precedents from rulings in Mexico, Brazil, and the United States.
18. On August 23, 2024, the High Representative of the European Union for Foreign Affairs and Security Policy, Josep Borrell, proposed in the clearest of terms that the EU will not recognize a Maduro administration until the electoral records delivered and can be verified.
19. On August 27, 2024, the Chief Rector of the CNE, Juan Carlos Delpino, made a statement on the multiple irregularities that occurred after the closing of polling stations. He explained his refusal to attend the proclamation of Nicolás Maduro as reelected president, thus expressing his disagreement with the lack of transparency in the process to publish the electoral results and his “responsibility to guarantee that the results reflect the true will of the Venezuelan people”.
20. On September 2, 2024, the Venezuelan regime has issued an arrest warrant against Edmundo Gonzalez Urrutia, for the crimes of usurpation of functions, forgery of public documents, instigation to disobey the laws, sabotage and damage to computer system and criminal association. The international community has also expressed its repudiation of this arrest warrant. Among others, the European Union, the Organization of American States, and countries such as Argentina, Chile, Costa Rica, Ecuador, Guatemala, Panama, Peru, Dominican Republic, Uruguay, United States, as well as Brazil and Colombia, have expressed their rejection of the arrest warrant.

II. DEMOCRATIC REQUIREMENTS FOR ELECTIONS TO BE CONSIDERED VALID UNDER THE RULE OF LAW

The Rule of Law has various manifestations, but these share a core principle that free and transparent elections are, without a doubt, an essential and indispensable factor. An electoral process is insufficient if it is not accompanied

by other integrating elements and requirements, such as respect for a democratic Constitution, observance of the principle of legality, the effective guarantee of fundamental rights and the separation of powers.

Periodic elections, as an expression of the popular will in the formation of the powers of the State and an essential element of democracy, must meet certain requirements in order to be considered free and fair.

According to international standards, in order to meet this requirement, States must adopt legislative provisions and necessary measures in three areas of action:

1. In relation to human rights and the valid exercise of the right of suffrage:
 - a. The recognition and protection of all the candidates in their personal and patrimonial security.
 - b. The right of every person and of every political party to the protection of the law and of their political and electoral rights.
 - c. The distribution of clear rules for the determination of the requirements for the exercise of said right of active suffrage, taking care that its application is carried out without discrimination of any kind.
 - d. The establishment of an effective and impartial electoral procedure, with ample guarantee of access to electoral information in a public and unrestricted manner. Transparency is an essential element of democracy.
 - e. Any person has the right to verify the result of an election.
 - f. The guarantee of the free functioning of political parties, not unreasonably regulating their financing, ensuring the separation of the parties from the State itself and establishing equitable conditions of competition in legislative elections.
2. In relation with the electoral procedure:
 - g. The establishment of a neutral and impartial Administration in charge of the electoral process.
 - h. The guarantee of voter registration, of the updating of the electoral lists and of the voting procedure, with the assistance, if necessary, of national and international observers.
 - i. The guarantee that political parties, candidates and the media adopt and respect a code of conduct that governs the electoral campaign and the counting of votes.
3. The respect and guarantee of the Human Rights of those who are in the territory of the State and subject to its jurisdiction is an essential condition in any democratic electoral process, as well as the right to vote of nationals residing abroad. By virtue of which, the following rules must be adopted:
 - a. Respect for freedom of association, movement, assembly and expression in the context of political demonstrations and meetings.
 - b. The guarantee that parties and candidates are free to communicate their opinions to voters, and that they enjoy reasonable opportunities for access to the official and public service media.
 - c. The adoption of the necessary measures to guarantee impartial coverage of the campaign in the official and public service media.
4. As a joint guarantee, in all three respects, any person or political party whose candidacy, party or campaign rights are denied or limited should have the right to appeal to a competent, impartial and independent jurisdiction to review such decisions and to correct errors promptly and effectively.

Based on these evaluations, the electoral process organized for July 28, 2024, in Venezuela did not guarantee the rights of the opposition to a valid election and did not respect to ensure the free will of the voters in view of the non-compliance with the conditions of electoral integrity recognized by International Law.

The universal protection of Human Rights (Article 2 of the Universal Declaration of Human Rights), and more specifically, the right to democracy recognized in Articles 3 and 4 of the Inter-American Democratic Charter, impose the duty that Venezuelan institutions and the international community must demand.

The preservation or continuity of this mandate is a necessary condition to avoid the systematic violation of human rights and the perpetration of crimes against humanity. All this in the context of the political commitment of the responsibility to protect, recognized in UN General Assembly Resolution No. 60/1 of 2005.

III. THE RULING OF THE SUPREME COURT OF JUSTICE OF VENEZUELA DOES NOT CORRESPOND TO A VALID CONTENTIOUS ELECTORAL PROCEEDING

The contentious electoral proceeding, which occurs in most countries, is a judicial mechanism of imposition, attempted by a candidate, group of voters or organization whose rights have been affected by the infringement of any electoral norm by the institution organizing the electoral process.

The plaintiff acts against an electoral administrative act by means of a public judicial proceeding, the result of which is aimed at the judicial review of the arguments of the parties and to declare, if necessary, the nullity or not of the result proclaimed by the defendant institution.

The contentious electoral procedure is adopted even handedly, not aimed at certifying and even less at investigating the result of an election. The electoral judges must analyze the claims of the parties and then decide on the matter. If the contentious electoral lawsuit is rejected, the election of the candidate declared winner remains in full force and effect as any other administrative act. **Judges do not certify elections, they only apply the law.**

In the proceedings before the Electoral Chamber of the Venezuelan Supreme Court of Justice, the following has been observed:

- a. The lawsuit was filed by Nicolás Maduro in his capacity as president of Venezuela, he did not act as a candidate.
- b. The act issued by the CNE declaring Nicolás Maduro as the winner is totally favorable to him, therefore, the plaintiff lacks legitimacy due to the absence of any grievance or affectation produced by the administrative act.
- c. There was no contested administrative act. The object of the judicial claim was directed to the performance of an “investigation and verification process to certify” the results of the electoral process.
- d. The Venezuelan Supreme Court of Justice issued their findings in which it certified the validity of the act declaring Maduro as the winner and at the same time ordered the CNE to publish the electoral records, which decisions are openly contradictory.
- e. The Court’s decision states that the opposition candidates participated in conduct typified as alleged crimes of “usurpation of functions, forgery of public documents, instigation to the disobedience of laws, computer crimes, association to commit crimes and conspiracy”.
- f. Having said this, the procedural institution of the contentious electoral recourse and the duty of an autonomous, independent and impartial judicial action have been completely delegitimized.

Another aspect that we highlight in the Venezuelan Supreme Court's judgment is its alleged reliance on jurisprudential precedents of other countries, invoking judicial cases in Mexico, Brazil and the United States of America. This merits special consideration, as follows:

- a. Mexico: Of the three precedents, this is the most relevant, since the Superior Chamber of the Electoral Tribunal of the Federal Judiciary Power on August 14, 2024, resolved the challenges filed by affected candidates. There were 240 trials of nonconformance with results, among other challenges, and the electoral judges dismissed all the arguments of the plaintiffs and ratified the result that declared candidate Claudia Sheinbaum the winner of the election, declaring that the election was valid because: ***“it complied with the principles, which govern the function of organizing elections: certainty, legality, independence, impartiality, maximum publicity and objectivity”***. If applying the criteria of the Mexican judges, we can conclude that the Venezuelan elections of July 2024 did not comply at least with the requirement of “maximum publicity”, by virtue of which, Nicolás Maduro cannot be recognized as president of Venezuela.
- b. Brazil: In this case, there was an electoral contentious appeal filed by the non-elected presidential candidate and a judicial decision dismissed his arguments, there being no legal reason to challenge the electoral victory of President Lula Da Silva. This precedent also certifies the suitability of a true contentious electoral appeal and therefore cannot be applied as a basis for the Venezuelan judges' judgment.
- c. United States: This is the well-known case of George W. Bush. Vs. Al Gore, a US Supreme Court decision that void a decision of the Supreme Court of the State of Florida that ordered the recount of votes. This includes conditions totally inapplicable to the Venezuelan situation.

IV. RESPECT FOR NATIONAL SOVEREIGNTY, THE PRINCIPLE OF NON-INTERVENTION AND HUMAN RIGHTS IN PRESENT-DAY PUBLIC INTERNATIONAL LAW

The current international law admits exceptions to the principle of non-interference. Within the framework of the United Nations itself, since 2005, the rule known as “responsibility to protect” has been enshrined. In addition, international human rights law establishes the obligations that States must respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, protect and fulfill human rights. By ratifying **international human right treaties**, governments commit themselves to adopt domestic measures and laws consistent with the obligations and duties arising from those treaties.

And, in the event that domestic judicial procedures fail to address human rights abuses, there are mechanisms and procedures at the regional and international levels for individual complaints or communications, which help ensuring that international human rights standards are effectively respected, implemented and enforced at the State level.

V. CONCLUSIONS

1. The official result of the Venezuelan presidential elections of July 28, 2024, that declared Nicolás Maduro the winner flagrantly failed to comply with the principles that govern the function of organizing elections, namely “certainty legality, independence, impartiality, maximum publicity and objectivity.”

2. The sentence issued by the Electoral Chamber of the Venezuelan Supreme Court of Justice completely ignores the essence of the contentious electoral recourse and affects the credibility of the current Venezuelan justice system.
3. The post-electoral acts of governmental repression have generated a wave of arrests, disappearances, allegations of torture, cruel treatment, assassinations and politically motivated persecutions. From our legal point of view, these could constitute crimes against humanity within the jurisdiction of the International Criminal Court, whose prosecutor's office is conducting an investigation that the WJA supports.
4. Likewise, we join the governments, supranational institutions, member countries of the international community and NGOs, , to demand respect for the will of the majority of Venezuelans through a process of vote counting carried out in a public, auditable manner and with broad international oversight.
5. If the opacity and lack of commitment of the Venezuelan authorities to comply with universal democratic principles persist, Mr. Nicolás Maduro cannot be validly recognized as president of the Bolivarian Republic of Venezuela.

Washington, D.C., September 4, 2024

Jurists who have participated in the preparation of this opinion on the Venezuelan elections of July 28, 2024, in defense of the rule of law in Venezuela:

- Javier Cremades. President of the World Jurist Association (WJA) and the World Law Foundation (WLF).
- Johann Kriegler. Chairman of the Electoral Commission of South Africa (1997-1999) appointed by Nelson Mandela. Judge of the Constitutional Court of South Africa (1995-2002) and of the Supreme Court (1993-1995).
- Egils Levits. Judge of the European Court of Human Rights (1995-2001) and Judge of the Court of Justice of the European Union (2004-2018). President of Latvia (2019 - 2023).
- Luca Mezzetti, Dean of the Faculty of Law of the University of Bologna (Italy) and Professor of Constitutional Law.
- Hanna Sochocka, Prime Minister of Poland (1992-1993). Minister of Justice of Poland (1997-2001).
- Víctor Olea. President of the Mexican Bar Association - Mexican Bar Association.
- Ricardo Ríos Ferrer. President of the General Council of the Mexican Bar and former President of the Mexican Bar Association.
- Diego García-Sayán, United Nations Special Rapporteur on the independence of judges and lawyers (2016-2022), President of the Inter-American Court of Human Rights (2010 -2014), Minister of Foreign Affairs and Justice of Peru (2000-2002).
- Marisol Peña. Judge and President of the Constitutional Court of Chile (2006-2018).
- David Mills. Professor at Stanford University Law School.
- David Kovel. General Counsel of the WJA and Managing Partner of Kirby McInerney LLP (New York).
- James Black II. Vice President of the WJA and Partner of Falcon Rappaport & Berkman LLP (New York).
- Hilarie Bass. President of the American Bar Association (2017-2018).
- Manuel Aragón Reyes. Judge of the Constitutional Court of Spain (2004-2013). Dean of the Faculty of Law of the Universidad Autónoma de Madrid (1994-1998).
- Encarnación Roca Trías. Judge and Vice-President of the Constitutional Court of Spain (2012-2021), Judge of the Supreme Court (2005-2014) and Professor of Law at the University of Barcelona.
- Rafael Fernández Montalvo. Judge Emeritus of the Supreme Court of Spain (1995-2017).
- Inés Huerta Garicano. Judge Emeritus of the Supreme Court of Spain (2014-2023).
- Elena Fernández Bezanilla. Practicing lawyer and Prosecutor on leave of absence.
- Augusto Trujillo. University professor and former President of the Colombian Academy of Jurisprudence.

- Ricardo Abello. Professor of the Faculty of Jurisprudence of the Universidad del Rosario (Colombia) and Member of the Colombian Academy of Jurisprudence.
- José Celestino Hernández. University Professor and Member of the Colombian Academy of Jurisprudence.
- Cándida Rosa Araque. Former Magistrate and university professor. Member of the Colombian Academy of Jurisprudence.
- Darío Encinales. Member of the Colombian Academy of Jurisprudence.