



# Economic and Social Council

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## Committee on Economic, Social and Cultural Rights

### Decision adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, concerning communication No. 242/2021\*\* \*\*

<i>Communication submitted by:</i>	Katherine Josefina Martínez de Orellana (represented by counsel, International Service for Human Rights, Centro de Justicia y Paz and Acción Solidaria)
<i>Alleged victim:</i>	The author
<i>State Party:</i>	Bolivarian Republic of Venezuela
<i>Date of communication:</i>	17 September 2021 (initial submission)
<i>Date of adoption of Decision:</i>	14 February 2025
<i>Subject matter:</i>	Right to work and to job security of a human rights defender in the health sector
<i>Procedural issues:</i>	Exhaustion of domestic remedies; manifestly unfounded
<i>Substantive issues:</i>	Right to work; right to the enjoyment of just and favourable conditions of work
<i>Articles of the Covenant:</i>	2 (1), 6, 7 (b), 12 and 13 (1)
<i>Articles of the Optional Protocol:</i>	2 and 3 (1) and (2) (e)

1.1 The author of the communication is Katherine Josefina Martínez de Orellana, a Venezuelan national born on 23 February 1964. The author claims that the State Party has violated her rights under articles 6, 7 (b), 12 and 13 (1), read in conjunction with article 2 (1), of the Covenant. The Optional Protocol entered into force for the State Party on 10 January 2019. The author is represented by counsel.

1.2 On 27 November 2023, the Working Group on Communications, acting on behalf of the Committee, decided to accept the State Party's request to consider the admissibility and the merits of the communication separately.

\* Adopted by the Committee at its seventy-seventh session (10–28 February 2025).

\*\* The following members of the Committee participated in the examination of the communication: Aslan Abashidze, Lazhari Bouzid, Asraf Ally Caunhye, Laura-Maria Crăciunean-Tatu, Charafat El Yedri Afailal, Peters Sunday Omologbe Emuze, Santiago Manuel Fiorio Vaesken, Ludovic Hennebel, Joo-Young Lee, Karla Vanessa Lemus de Vásquez, Seree Nonthasoot, Giuseppe Palmisano, Laura Elisa Pérez, Julieta Rossi, Preeti Saran and Michael Windfuhr.



## A. Summary of the information and arguments submitted by the parties

### Facts as submitted by the author

2.1 The author is a lawyer and human rights defender. Since 2008, she has led the *Prepara Familia* association, which is devoted to the protection of hospitalized children and adolescents and their families, mainly at the J.M. de los Ríos Children's Hospital in Caracas. She claims that she carries out her human rights advocacy work in an "extremely hostile" climate. In this regard, she refers to numerous reports and pronouncements by the Office of the United Nations High Commissioner for Human Rights (OHCHR),<sup>1</sup> special procedure mandate holders,<sup>2</sup> treaty bodies<sup>3</sup> and civil society,<sup>4</sup> which reveal a pattern of stigmatization, threats, criminalization and attacks directed against human rights defenders in the Bolivarian Republic of Venezuela, including by high-ranking government officials.

2.2 In February 2017, an infectious outbreak in the nephrology department of J.M. de los Ríos Children's Hospital caused the deaths of 10 patients. On 5 July 2017, the author denounced the precarious conditions of the Venezuelan healthcare system during a hearing of the Inter-American Commission on Human Rights and, on 22 December 2017, she requested precautionary measures to protect the lives and the personal integrity of patients in the nephrology department of the Children's Hospital. These measures were granted in February 2018 and extended to patients in 13 of the hospital's departments on 21 August 2019.

2.3 The author claims that the complaints she submitted to the Commission resulted in her being subjected to pressure in the years that followed. In February 2018, upon her return to the Bolivarian Republic of Venezuela from a meeting with the Commission, the author noticed that security personnel from the hospital and the Bolivarian National Militia<sup>5</sup> were following and watching her. In April 2018, the authorities of the Children's Hospital and the Venezuelan Social Security Institute withdrew the accommodation and food benefit that caregiving mothers had been receiving, in punishment for attending, with the author, a protest outside the hospital over the scarcity of medicine and the shortcomings of medical treatment. In May 2018, while the author was out of the country reporting to the Commission on compliance with the precautionary measures, the director of the Children's Hospital convened a meeting with all medical department heads in which he described the author as "an imperialist" who was "suing the hospital" and "disturbing the internal order" and said that hospital managers were monitoring those doctors who shared information with the author. In February 2019, during a working meeting with the Commission, a representative of the State Party played a video in which the then director of the Children's Hospital stated that the hospital was in optimal condition and that the author was a liar who was making false allegations. On returning to the Bolivarian Republic of Venezuela from this meeting, the author learned that the director of the Children's Hospital had decided to deny entry to the hospital to all foundations that supported children and adolescents and caregiving mothers. In May 2019, the government news portal *Misión Verdad* accused the author of giving a false account of the causes of the health crisis in the country and of using "anti-Chavista media" to blame the Government.

2.4 The author was barred from entering the Children's Hospital until the arrival of a new director in August 2019. However, on more than three occasions, hospital security removed the author from the premises while she was meeting with doctors or caregiving mothers, informing her that her access to the hospital was restricted pursuant to a memorandum issued

<sup>1</sup> [A/HRC/44/54](#); and [A/HRC/44/20](#).

<sup>2</sup> See, for example, the communication with reference VEN 5/2018 available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24053>.

<sup>3</sup> The author refers to [E/C.12/VEN/CO/3](#), [CCPR/C/VEN/CO/4](#), [CEDAW/C/VEN/CO/7-8](#) and [CAT/C/VEN/CO/3-4](#).

<sup>4</sup> The author refers, for example, to the 2020 annual report on the situation of human rights defenders of the Centro para los Defensores y la Justicia (Centre for Defenders and Justice).

<sup>5</sup> The author explains that the Bolivarian National Militia is a body of civilian volunteers who have expressed a wish to participate in maintaining the security of the nation. They have been part of the Bolivarian National Armed Forces since the adoption of the Organic Act on the Bolivarian National Armed Forces in 2008. The hospital's security personnel are not part of the Militia.

by the former director, which remained in force. The author and her colleagues have been unable to confirm the existence of the document purportedly barring her from the hospital, despite requesting it from the hospital management.

2.5 On 12 January 2020, the author detected three intruders at one of her association's collection centres. These individuals threatened to report the author to the Special Action Forces for keeping expired supplies "belonging to humanitarian aid and the leader of the opposition". The author and her colleagues immediately tried to report the incident at a local police station, but no one took their statements and the officers there told them that they could not go to the scene. After repeated calls to the emergency number, a different unit of the Bolivarian National Police arrived at the scene, by which time the intruders had left, having taken food and milk formula that were stored at the centre. The Bolivarian National Police refused to receive the complaint, draw up a police report or notify the competent prosecutor on the grounds that it had not detected a flagrant offence.

2.6 On 14 January 2020, individuals again broke into the Prepara Familia collection centre, this time accompanied by the Bolivarian National Police, who removed boxes from the premises. The Bolivarian National Police officers were not properly identified and did not present a search warrant. The police officers questioned the author about the origin and purpose of the food supplies and told her that they were to be taken away as part of a police investigation. They ordered the author to accompany them to the police station to "continue the procedure", without permitting the presence of her lawyers. This incident gained widespread media attention, with the result that a military unit arrived at the collection centre and talked with the police officers, who then returned the goods they had seized and left the premises.

2.7 On 16 January 2020, the author filed a complaint with the Chief Prosecutor's Office of the Caracas Metropolitan Area regarding the incidents of 12 and 14 January 2020. In her complaint, the author described the fear these events inspired and their adverse consequences for the performance of her work. Several times the author followed up on the complaint but was informed by the Prosecutor's Office that there was "no response". As of the date of submission of this communication, no progress had been made further to the complaint.

2.8 In view of the constant shouting and intimidation in front of the collection centre by members of the community council<sup>6</sup> demanding that the house and food supplies be handed over to them, and the raids that occurred, the author and her colleagues decided to close the collection centre and return the property to its owner.

2.9 On 11 May 2020, a deputy of the Legislative Council of the State of Táchira publicly referred to "a lady with the surname Martínez" and Prepara Familia as possible participants in the attempted armed maritime incursion against the Government that occurred on 3 May 2020. In August 2020, the Inter-American Commission on Human Rights granted precautionary measures in the author's favour, requiring the State Party to take the necessary steps to protect her life and personal integrity. In its resolution, the Commission emphasized that the State Party was aware of the situation of risk faced by the author and that it had failed to act in that regard.<sup>7</sup>

2.10 In August 2021, the author, members of Prepara Familia and the families of hospitalized children and adolescents participated in a demonstration in front of the Children's Hospital. During the demonstration, a public bus was driven onto the sidewalk and in the direction of the demonstrators, forcing them to dodge it. The bus was then positioned at the entrance of the Children's Hospital with the intention of putting an end to the demonstration.

<sup>6</sup> Article 2 of the Organic Act on Community Councils defines community councils as "forums for participation, coordination and integration between citizens and the different community organizations and social and popular movements, enabling the people as an organized body to exercise community government and the direct management of public policies and projects aimed at meeting the needs and aspirations of communities in building a new model of socialist society based on equality, equity and social justice". They operate in parallel to local authorities such as mayors' and governors' offices.

<sup>7</sup> Resolution 42/2020, precautionary measure No. 1039-17, 6 August 2020.

2.11 The author's access to the Children's Hospital continued to be restricted for the remainder of 2021 and she was forcibly removed from the hospital on multiple occasions.

*Exhaustion of domestic remedies*

2.12 The author claims that, in view of the harassment she experienced, she turned to the competent authorities to file a complaint and obtain protection. Considering the rights at stake and the nature of the violation committed, in particular the illegal searches of the collection centre, it was reasonable to conclude that the appropriate remedy was criminal in nature. Her initial attempt to file a complaint met with no response from the authorities. Although she was able to file a complaint in relation to the second search, that complaint was still pending, with no progress in the investigation, at the time of submission of the communication some 20 months later. The absence of an ex officio investigation denotes the ineffectiveness of the remedy, and its unreasonable prolongation should exempt the author from the rule of prior exhaustion of domestic remedies.

2.13 The Chief Prosecutor of the Caracas Metropolitan Area, who considered the author's complaint, was an acting prosecutor. The author refers to pronouncements by the Human Rights Committee, the Inter-American Court of Human Rights and the Working Group on Arbitrary Detention that temporary appointments of prosecutors jeopardize the fundamental guarantees of independence and impartiality of justice. The author claims that the provisional status of the prosecutor who considered her case demonstrates the ineffectiveness of the remedy she sought, due to the lack of guarantees of independence and impartiality.

2.14 The author also claims that she was under no obligation to exhaust any other available domestic remedy, as there were no suitable remedies, other than the criminal remedy, capable of redressing the harm caused and the rights violated. Even if another suitable remedy existed, the lack of impartiality and independence of the Venezuelan judiciary meant that no other remedy would be effective. The author notes that the Human Rights Committee, the Inter-American Court of Human Rights, the special procedure mandate holders of the Human Rights Council and OHCHR have referred to the lack of independence of the State Party's judiciary due to insecurity in the tenure of judges and prosecutors and shortcomings in investigations of human rights violations. The author further claims that she had no real chance of challenging the ban on her entering the Children's Hospital, as no official decision had been issued. Any remedy sought in that regard would lack a reasonable chance of success.

**Complaint**

3.1 The author claims that acts of intimidation and stigmatization, illegal searches of her association's collection centre and restrictions of her access to the Children's Hospital violated her right to work under article 6 of the Covenant. The author argues that the right to work includes the right not to be unfairly deprived of employment, including by third parties, and also applies to persons whose profession is the defence of human rights.<sup>8</sup> The author claims that she is a human rights defender by profession and that the acts committed and permitted by the State Party resulted in her being unfairly deprived of her employment. She alleges that the stigmatization she experienced hindered her work, as it resulted in hospital staff not wanting to share information with her. The restrictions and prohibitions on her entering the Children's Hospital impaired the delivery of food supplies and her other face-to-face activities with caregiving mothers and hospitalized children and adolescents. The author also claims that the raids on the collection centre of the association she manages caused the loss of her work tools and workplace, as she was forced, out of a well-founded fear, to relinquish the collection centre. The author further claims that all these restrictions of her right to work did not have a legitimate objective but sought to prevent her from carrying out her work as a human rights defender and were therefore unjustified.

3.2 Furthermore, the author claims that she was unable to exercise her profession in adequate conditions of safety and that the State Party therefore violated her rights under

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<sup>8</sup> The author cites the African Commission on Human and Peoples' Rights, *Zimbabwe Lawyers for Human Rights & Associated Newspapers v. Republic of Zimbabwe*, communication No. 284/03, 3 April 2009, paras. 178 and 179.

article 7 (b) of the Covenant. She maintains that, in its general comment No. 23 (2016) on the right to just and favourable conditions of work, the Committee recognized that States Parties have an obligation to respect, protect and promote the work of human rights defenders so that they can carry out their work free from any form of physical or mental harassment (paras. 49 and 58). The author alleges that she was subjected to psychological harassment by State agents and physical and verbal intimidation when she was forcibly prevented from entering the Children's Hospital. The author also states that two illegal searches of her workplace were carried out, during which her work tools were stolen and it was insinuated that she was involved in illegal activities.

3.3 The author claims that the State Party failed to take measures to ensure the full realization of her rights to work and to safety at work. She alleges that, despite the State Party being aware of her situation of real and immediate risk, especially given the precautionary measures granted by the Inter-American Commission on Human Rights, it did not take protective measures to allow her to carry out her work safely, nor did it provide an effective remedy for the violation of her rights. In her specific case, the author alleges that no investigation was conducted after the first intrusion at the Prepara Familia collection centre and that State agents participated in a new illegal search two days later. The complaint she filed on 16 January 2020 did not result in effective investigations or any protective measures for the author. Consequently, she claims that the State Party has violated her rights under articles 6 and 7 (b), read in conjunction with article 2 (1), of the Covenant.

3.4 Since the author's work consisted in promoting the rights to health and education of hospitalized children and adolescents and caregiving mothers, the author argues that the State Party had an obligation to respect her work as a means to the full realization of the rights of the persons she served. She claims that, by preventing her from freely carrying out her work, the State Party also violated the rights to health and education of the persons she was assisting, enshrined in articles 12 and 13 (1), read in conjunction with article 2 (1), of the Covenant.

#### **State Party's observations on admissibility**

4.1 On 25 January 2022, the State Party submitted its observations on the admissibility of the communication.

4.2 The State Party argues that the author did not exhaust the remedies provided for in the domestic legal system before approaching the Committee. The alleged restriction of the author's access to the hospital was a *de facto* measure, understood as an action taken by the public administration without following the applicable legal procedure or having previously adopted a decision to serve as the legal basis for the action.<sup>9</sup> The State Party indicates that, to challenge such measures, the law provides for a specific ordinary remedy, namely an appeal under article 65 of the Organic Act on the Settlement of Administrative Disputes. The author did not file such an appeal, either directly or through her representatives.

4.3 The State Party reports that effective judicial protection, enshrined in the Constitution of the Bolivarian Republic of Venezuela, includes the right to seek the extraordinary remedy of constitutional *amparo*, instead of the ordinary remedy, provided that clear and precise reasons are given for the decision to seek this extraordinary remedy. Consequently, the author had both ordinary and extraordinary remedies at her disposal for bringing and resolving her complaint. In the event of an unfavourable ruling by the court hearing her case, she would have been able to pursue the judicial remedies of appeal, appeal in cassation and constitutional *amparo*.

4.4 Even if the author were to substantiate her claims about the effectiveness of the available domestic judicial remedies, this would not relieve her of the obligation to exhaust them in order for the Committee to declare her communication admissible. The State Party refers to the Committee's jurisprudence, according to which the mere perception that domestic remedies are not effective is not sufficient to exempt the author of a communication from the requirement to try them.<sup>10</sup> The basic principle of prior exhaustion of available domestic remedies in the individual communication procedures of the human rights treaties,

<sup>9</sup> Supreme Court, Political and Administrative Chamber, judgment No. 378 of 5 April 2018.

<sup>10</sup> C.A.P.M. v. Ecuador (E/C.12/58/D/3/2014), para. 7.6.

as set forth under article 3 (1) of the Optional Protocol, precludes the Committee from considering the merits of a communication when domestic remedies have not been exhausted. The Committee has indicated that, for the purposes of article 3 (1) of the Optional Protocol, “available domestic remedies” are all remedies in direct relation with the events that gave rise to the claimed violation and that, *prima facie*, may be reasonably considered as effective for remedying the claimed violations of the Covenant.<sup>11</sup> The State Party submits, therefore, that the communication should be declared inadmissible under article 3 (1) of the Optional Protocol for failure to exhaust domestic remedies.

4.5 The State Party notes that two years elapsed between the act that allegedly violated the author’s right to work and the submission of the communication, during which time she took no action to challenge the *de facto* measure that allegedly violated her rights.

4.6 The State Party argues that the author fails to describe how the alleged violation of her substantive Covenant rights occurred. She does not explain how the alleged arbitrary searches of a property in her possession resulted in the violation of her right to work or how the State could be responsible for it. Nor does she explain how the restriction of her access to the hospital amounts to a rights violation, since she did not work at the hospital, provide it with services or have any employment relationship with it. While the author states that the restriction had the effect of preventing her from carrying out activities for the promotion and defence of human rights, such as giving training workshops and delivering food and medical supplies, she does not explain how the prohibition on entry prevented her from holding workshops or donating supplies. The State Party notes that the author herself states in her communication that she “continued to carry out her work with the means at her disposal” and that in August 2021 she participated in a demonstration with members of *Prepara Familia* and the families of hospitalized children and adolescents. This contradicts her statement that the prohibition on entering the Children’s Hospital prevented her from carrying out her activities.

4.7 The State Party argues that, in the light of article 6 (1) of the Covenant and the Committee’s general comment No. 18 (2005), the right to work consists in the possibility of everyone to carry out a remunerated activity and thus gain a living by work. The State Party considers that the author has not established that her work in promoting and defending the rights of children and adolescents is a remunerated work activity within the meaning of article 6 of the Covenant.

4.8 In order to duly substantiate her claim of a violation, the author is required to establish specific facts on the basis of which the State Party allegedly violated her right to work. The State Party concludes that the author’s account does not reveal any facts which could be considered detrimental to any right contained in the Covenant and, consequently, that the communication should be declared inadmissible under article 3 (2) (e) of the Optional Protocol.

#### **Author’s comments on the State Party’s observations on admissibility**

5.1 On 7 July 2022, the author submitted comments on the State Party’s observations on the admissibility of the communication.

5.2 The author reiterates that she was exempt from the obligation to exhaust domestic remedies, since no domestic remedy, *prima facie*, can be reasonably considered as effective. She claims that no judicial authority in the Bolivarian Republic of Venezuela provides guarantees of independence and impartiality. For example, the author argues that, until recently, 29 of the 32 members of the Supreme Court belonged to circles with close links to the governing political party. An amendment to the Organic Act on the Supreme Court reduced the number of judges to 20, of whom 18 have links with the Government and most are under international sanctions for engaging in corruption, violating human rights or undermining democracy. The author refers to reports of the Inter-American Commission on Human Rights<sup>12</sup> and the independent international fact-finding mission on the Bolivarian

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<sup>11</sup> *Moreno Romero et al. v. Spain* (E/C.12/69/D/48/2018), para. 8.2.

<sup>12</sup> Inter-American Commission on Human Rights, *2016 Annual Report*, chapter IV.B, “Human Rights Developments in the Region: Venezuela”, paras. 68 and 69.



Republic of Venezuela<sup>13</sup> indicating that the Supreme Court has received direct orders from the executive branch, causing the judiciary to cease to function as an independent branch of government. An OHCHR report also highlighted that the Supreme Court exerts control over lower court decisions, in particular in the area of criminal law, by pressuring lower court judges.<sup>14</sup> The Supreme Court also has powers to review any decision and to appoint, discipline and remove lower court judges, which allows government-friendly Supreme Court justices to initiate proceedings against judges they consider troublesome. The author reiterates that the vast majority of Venezuelan judges have been appointed on a temporary basis and that several United Nations special procedure mandate holders have warned in their reports on the Bolivarian Republic of Venezuela that the trial of persons by judges without security of tenure constitutes *prima facie* a violation of the right to be tried by an independent tribunal.

5.3 The author argues that, while exemption from the obligation to exhaust all domestic remedies is an extraordinary situation, there are several precedents that the Committee could use as reference. For instance, the author notes that, in considering three petitions against the Bolivarian Republic of Venezuela, the Inter-American Commission on Human Rights found, based on its numerous reports and for the purposes of the admissibility of the petitions, that the administration of justice did not in principle guarantee due process of law in the country.<sup>15</sup> According to the Commission, the repeated verification in its reports of the lack of judicial independence in the Bolivarian Republic of Venezuela supported an extraordinary exception to the duty to exhaust domestic remedies. The author adds that both the Inter-American Court of Human Rights<sup>16</sup> and the Committee on the Elimination of Discrimination against Women<sup>17</sup> have similarly applied the exception to the rule of prior exhaustion of domestic remedies in the absence of minimum guarantees of judicial independence and impartiality. The author argues that, for the same reasons, the administrative, constitutional *amparo* and criminal remedies theoretically available in the Bolivarian Republic of Venezuela cannot in principle be reasonably considered as effective.

5.4 The author claims that no remedy would have been effective, given the lack of a reasonable prospect of success in the circumstances of her case. Indeed, as she is perceived as an opponent of the Government, the courts would not conduct fair proceedings but would tend to uphold the impunity of the State. She contends that, in her case, the officials responsible for the attacks against her were high-ranking, and that the independent international fact-finding mission on the Bolivarian Republic of Venezuela and the Inter-American Commission on Human Rights have highlighted that the judiciary does not usually hold important public officials accountable. The author claims that, despite being aware of her situation due to the precautionary measures granted in her favour by the Commission and the criminal complaint she filed, the State Party failed to remedy the violations at the national level, which is a clear sign of its unwillingness to remedy the violation committed.

5.5 The author rejects the State Party's argument that her claims regarding the ineffectiveness of remedies are based on mere perception. She argues that the jurisprudence cited by the State Party refers to unreasonable prolongation of remedies, whereas her main argument relates to the lack of judicial independence and impartiality and reasonable chances of success. Her claims in this regard are not based solely on her perception but on multiple sources of objective and verifiable information, as well as her own experience.

<sup>13</sup> Conference room paper on the detailed findings of the independent international fact-finding mission on the Bolivarian Republic of Venezuela (A/HRC/45/CRP.11), para. 73, available at <https://www.ohchr.org/en/hr-bodies/hrc/ffmv/index>; and A/HRC/48/69, para. 42.

<sup>14</sup> A/HRC/44/54, para. 9.

<sup>15</sup> Inter-American Commission on Human Rights, document OEA/Ser.L/V/II Doc. 322, "Report No. 312/21", petition 961-10, Nelson J. Mezerhane Gosen, 2 November 2021, paras. 33–35; document OEA/Ser.L/V/II Doc. 7, "Report No. 7/21", petition 1320-1, Julio Martín Herrera Velutini, 10 January 2021, paras. 15–17; and document OEA/Ser.L/V/II Doc. 8, "Report No. 8/21", petition 992-10, Guillermo Zuloaga Núñez, 10 January 2021, paras. 16–18.

<sup>16</sup> Inter-American Court of Human Rights, *Case of Dismissed Employees of Petroperú et al. v. Peru*, judgment of 23 November 2017, paras. 42–44.

<sup>17</sup> *Abaida v. Libya* (CEDAW/C/78/D/130/2018), paras. 2.11, 5.3 and 5.4.

5.6 The author claims that application of the remedy she sought was unreasonably prolonged. She reiterates that her first complaint was not processed and that the second complaint has yielded no results, as no initial investigative steps have been taken. Although the prohibition on entering the hospital and the harassment by the authorities could have been dealt with through the constitutional or administrative avenues, the author insists that the criminal complaint was the appropriate remedy for the illegal searches and the threats that prevented her from carrying out her work and undermined her safety at work. The author points out that the State Party has not commented on the criminal remedy sought, its unreasonable prolongation or the circumstances that make any other remedy in the State Party ineffective in practice. In view of this lack of information, the author contends that the Committee should rely on the information she provided and conclude that, *prima facie*, domestic remedies in the State Party are not effective and that she was not required to exhaust them.

5.7 The author maintains that the communication is sufficiently substantiated, since it identifies the rights protected by the Covenant that were violated and the manner in which they were violated. She stresses that the State Party has not adequately argued that the communication is unsubstantiated, but merely questioned whether a violation of the Covenant arises from the facts. As this issue is closely linked to the merits of the case, the author requests the Committee to consider the admissibility and the merits together, in accordance with the consistent practice of international law.

5.8 In response to the State Party's observations, the author argues that article 6 of the Covenant protects human rights advocacy work, regardless of whether it is paid or unpaid. Referring to the Committee's general comments No. 18 (2005) and No. 23 (2016), the author points out that remuneration is not an essential criterion for determining whether work is protected under the Covenant; this is reflected, moreover, in the words "includes" and "of everyone" contained in articles 6 and 7 of the Covenant. The author argues that, respecting the spirit of the Covenant and the *pro persona* principle of interpretation, it must be concluded that human rights advocacy work, whether paid or unpaid, is also protected under the right to work.

5.9 The author also rejects the State Party's argument that there was no violation of her right to work because she was able to continue her work. She contends that the jurisprudence of the Inter-American Court of Human Rights establishes that the right to work is violated not only when there is an absolute restriction, but also when the State unjustifiably interferes, directly or indirectly, in its free exercise. The author claims that, although the restriction of her professional activity is not absolute, it is giving rise to a violation of her rights under the Covenant.

### **Third-party submission**

6.1 On 19 August 2022, the International Commission of Jurists highlighted the growing lack of independence of the State Party's judiciary, which has not followed the procedure and rules established in the Constitution for judicial appointments, but rather a politicized process in which neither the professional qualifications nor the merit of candidates are evaluated. The judges appointed to the Supreme Court in 2022 maintain close ties with the governing political party and members of the military.

6.2 The Commission points out that most appointments of judges are provisional and do not comply with constitutional requirements, and that judges can be arbitrarily dismissed at any time. It reports that, under Venezuelan law, security of tenure is granted only when competitive selection processes are carried out in accordance with the Constitution. It adds that irregularities in the appointment of judges have had widely documented effects on the independence of the judiciary. In a 2021 report, the Commission concluded, after analysing key decisions of the Supreme Court, in particular those of its Constitutional Chamber, that the Supreme Court showed signs of lack of impartiality by favouring the interests of certain political powers.

6.3 Regarding remedies in the area of criminal law, the Commission highlights the lack of independence of the Attorney General, who was not appointed in accordance with the Constitution and who belongs to the governing political party. The Commission adds that



prosecutors have no guarantees of independence from the Attorney General and that the independent international fact-finding mission on the Bolivarian Republic of Venezuela has documented that prosecutors at all levels receive instructions on how to handle cases. As with judges, prosecutors are not appointed on the basis of merit and can be dismissed arbitrarily.

6.4 The Commission highlights additional obstacles and barriers faced by human rights defenders in the State Party in obtaining judicial remedies, and concludes that there are no judicial remedies available to persons who complain of human rights violations, given the lack of independence and impartiality of judges and prosecutors.

## **B. Committee's consideration of admissibility**

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 10 (2) of its rules of procedure under the Optional Protocol, whether the communication is admissible.

7.2 The Committee notes the author's claim that, by preventing her from freely carrying out her human rights advocacy work, the State Party violated the rights to health and education of the hospitalized children and adolescents and the caregiving mothers she assisted, and therefore breached its obligation to take steps to achieve the full realization of these rights under articles 12 and 13 (1), read in conjunction with article 2 (1), of the Covenant.

7.3 Under article 2 of the Optional Protocol, communications may be submitted by individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Covenant. The Committee recalls that, where a communication is submitted on behalf of individuals or groups of individuals, this must be with their consent unless the author can justify acting on their behalf without such consent. The Committee observes that the author has not demonstrated that she is acting on behalf of the hospitalized children and adolescents or the caregiving mothers. The Committee also observes – considering that the author's contact with these individuals was not completely interrupted at the time she submitted the communication – that the author has provided no evidence that these individuals gave their consent for her to act on their behalf in the proceedings before the Committee, nor has she put forward any argument in the communication to justify acting without such consent. The Committee therefore considers that the author's claims with regard to hospitalized children and adolescents and caregiving mothers, based on articles 12 and 13 (1) of the Covenant, are inadmissible under article 2 of the Optional Protocol.

7.4 The Committee also notes the State Party's argument that the communication should be declared inadmissible under article 3 (2) (e) of the Optional Protocol on the grounds that: (a) the author has not established that her work as a human rights defender is a remunerated work activity within the meaning of article 6 of the Covenant and (b) she has not established the specific facts on which basis the State Party allegedly violated her right to work.

7.5 Regarding the first of these points, the Committee recalls that the right to work enshrined in article 6 of the Covenant includes the obligation of States Parties to assure individuals their right to freely chosen or accepted work, including the right not to be deprived of work unfairly.<sup>18</sup> This obligation encompasses all forms of work, whether independent work or dependent wage-paid work.<sup>19</sup> The Committee also recalls that the concept of work and workers has evolved from the time of drafting of the Covenant to include new categories, such as self-employed workers, workers in the informal economy, agricultural workers, refugee workers and unpaid workers.<sup>20</sup> The Committee therefore considers that the unpaid nature of the author's work as director of the Prepara Familia association does not exclude it from the scope of article 6 of the Covenant. Accordingly, the Committee deems that it has jurisdiction *ratione materiae* to examine the author's allegations under article 6 of the Covenant. Furthermore, the Committee considers that the author has sufficiently substantiated, for the purposes of admissibility, her claims under article 6 of the

<sup>18</sup> General comment No. 18 (2005), para. 4.

<sup>19</sup> Ibid., para. 6.

<sup>20</sup> General comment No. 23 (2016), para. 4.

Covenant in relation to the repeated acts of intimidation, stigmatization, illegal searches of her association's collection centre and restrictions on her access to the Children's Hospital, all of which allegedly prevented her from carrying out her human rights advocacy work.

7.6 The Committee also notes the author's claims of violations of articles 6 and 7 (b), read in conjunction with article 2 (1), of the Covenant, as the State Party neither took protective measures to allow her to carry out her work safely, nor provided an effective remedy for the violation of her rights. The Committee recalls that, under article 2 (1) of the Covenant, States Parties must take steps to ensure the enjoyment of the rights recognized in the Covenant by all appropriate means, including particularly the adoption of legislative measures. This requirement includes the adoption of measures that ensure access to effective judicial remedies for the protection of the rights recognized in the Covenant, since, as the Committee noted in its general comment No. 9 (1998), there cannot be a right without a remedy to protect it (para. 2). The Committee therefore concludes that the alleged absence of effective remedies falls within the material scope of article 2 (1) of the Covenant. The Committee considers that the author has sufficiently substantiated, for the purposes of admissibility, her claims under articles 6 and 7 (b) of the Covenant, read alone and in conjunction with article 2 (1).

7.7 The Committee notes the State Party's argument that the communication is inadmissible under article 3 (1) of the Optional Protocol because the author failed to exhaust available domestic remedies. The Committee recalls that article 3 (1) of the Optional Protocol precludes it from considering a communication unless it has ascertained that all available domestic remedies have been exhausted. The Committee also recalls its jurisprudence according to which a State Party raising an objection of admissibility on the ground of non-exhaustion of domestic remedies must prove that the author of the communication has not exhausted available and effective remedies capable of redressing the alleged violation.<sup>21</sup>

7.8 In the present case, the Committee takes note of the State Party's argument that the author could have: (a) filed an appeal under article 65 of the Organic Act on the Settlement of Administrative Disputes to challenge the restrictions on access to the Children's Hospital; (b) pursued the extraordinary remedy of constitutional *amparo* for the effective protection of her rights; or (c) filed appeals to the higher courts or an application for constitutional *amparo* against any judgments handed down. The Committee also takes note of the author's arguments that she was exempt from the obligation to exhaust domestic remedies because no domestic remedy can, in principle, be reasonably considered as effective given the lack of impartiality and independence of the judiciary; that she stood no real chance of challenging the ban on entering the hospital in the absence of an official decision; and that she filed a criminal complaint, which was the only suitable remedy against the illegal searches and threats that prevented her from carrying out her work and undermined her safety at work, but the application of this remedy was unreasonably prolonged.

7.9 With regard to the author's argument, supported by the third party submission, that she was exempt from prior exhaustion of domestic remedies because of the general situation of lack of independence and impartiality of the judiciary, the Committee points out that it has previously expressed its concern about the procedure for the appointment and removal of judges and the large number of judges appointed to posts on a temporary basis, which may be detrimental to the independence of the judiciary.<sup>22</sup> The Committee stresses that States Parties should exercise particular diligence when processing and resolving domestic cases in which the protection of Covenant rights is sought.<sup>23</sup> At the same time, the Committee considers that the mere perception that domestic remedies are not effective is not sufficient to exempt the author of a communication from the requirement to try them.<sup>24</sup>

7.10 The Committee notes that, on 16 January 2020, the author filed a criminal complaint regarding the alleged illegal searches of the collection centre of the association she leads, in which she claimed that the searches affected her work. The Committee also notes that no progress has been made in the investigation, despite more than four years having elapsed. At

<sup>21</sup> *Ziablitsev v. France* (E/C.12/71/D/176/2020), para. 6.6; and *Saydawi and Farah v. Italy* (E/C.12/75/D/226/2021), para. 6.4.

<sup>22</sup> E/C.12/VEN/CO/3, para. 10.

<sup>23</sup> *C.A.P.M. v. Ecuador*, para. 7.6.

<sup>24</sup> *Ibid.*

the same time, the Committee notes that the State Party has not commented on the criminal remedy sought by the author or given reasons as to why its application has been prolonged.

7.11 The Committee recalls that, for the purposes of article 3 (1) of the Optional Protocol, “available domestic remedies” are all remedies available to the author in direct relation with the initial events that gave rise to the claimed violation and that, *prima facie*, may be reasonably considered as effective for remedying the claimed violations of the Covenant.<sup>25</sup> The Committee notes that the author’s main complaint is that acts of intimidation and stigmatization, illegal searches of her association’s collection centre and restrictions on her access to the Children’s Hospital violated her rights to work and to safe working conditions under the Covenant. Therefore, the remedies that must be exhausted are those that relate directly to the alleged actions that restricted and hindered the author’s work activities, and that seek to repair the harm suffered and protect her from similar actions in future. In this regard, the Committee considers that, by filing a criminal complaint concerning the two intrusions at the collection centre, in which she raised the substance of her claims under articles 6 and 7 (b) of the Covenant, the author attempted to exhaust an appropriate remedy to adequately address the nature of the alleged violations of her rights to work and to safe working conditions. The Committee notes that the author repeatedly followed up on the progress of her complaint, and was informed that there was “no response” or any progress in the investigations. In view of the time that has elapsed since the submission of the complaint, and given that the State Party has not submitted observations justifying this prolongation or questioning the effectiveness of the remedy, the Committee considers that these proceedings have been unreasonably prolonged.

7.12 The Committee considers that the author attempted to exhaust a suitable and appropriate remedy by filing a criminal complaint regarding the alleged searches and acts of harassment. However, the lack of progress in processing this complaint, despite the author’s repeated efforts, and the considerable time that has passed since it was filed, demonstrates the ineffectiveness of this remedy. The Committee notes that the State Party has not provided a satisfactory explanation for this inaction, nor has it demonstrated that effective measures have been taken to investigate the alleged events. The Committee also considers that the author was not required to exhaust other domestic remedies, such as the administrative or constitutional remedies mentioned by the State Party.<sup>26</sup> In any event, and in the particular circumstances of the case, the State Party has not demonstrated that these remedies offered a reasonable chance of success, given the credible allegations of involvement of State agents in the reported events and the apparent unwillingness of the Prosecutor’s Office to investigate the author’s complaint, aggravated by the threats and harassment allegedly directed at her by State agents.<sup>27</sup> The Committee therefore concludes that article 3 (1) of the Optional Protocol does not preclude it from considering the author’s claims under articles 6 and 7 (b) of the Covenant.

## C. Conclusion

8. The Committee therefore decides:

(a) That the communication is admissible insofar as it raises issues with respect to articles 6 and 7 (b), read alone and in conjunction with article 2 (1), of the Covenant;

(b) That, in accordance with rule 15 (2) of the Committee’s rules of procedure under the Optional Protocol, the State Party shall be requested to submit to the Committee, within four months of the date of transmittal of the present decision, written observations on the merits of the communication;

<sup>25</sup> See, *inter alia*, *Hernández Cortés et al. v. Spain* (E/C.12/72/D/26/2018), para. 6.2; and *Moreno Romero et al. v. Spain*, para. 8.2.

<sup>26</sup> *Osmani v. Serbia* (CAT/C/42/D/261/2005), para. 7.1.

<sup>27</sup> Inter-American Commission on Human Rights, resolution 42/2020, precautionary measure No. 1039-17, Katherine Martínez (Director of Prepara Familia), 6 August 2020.

(c) That such observations shall be communicated to the author under rule 15 (3) of the Committee's rules of procedure under the Optional Protocol, so that she may submit comments on them;

(d) That the present decision shall be transmitted to the State Party and to the author.

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