

Democratization



Year 4, Issue 19

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More than a change in Miraflores, the country must go back to the Constitution and the Rule of Law to achieve justice, insists the university professor and lawyer accredited before the International Criminal Court (ICC).

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“It is understandable that, given the situation of the last two decades, we are tired, frustrated, disappointed, misunderstood, angered and discouraged in regards to justice, but forgetting the purpose of achieving justice is not an alternative”. Words by Professor Carmen Alguíndigue Morles, specialist in Criminal Science and Criminology and accredited lawyer before the International Criminal Court (ICC) since 2019.

–Taking into account the reality of Venezuela and the observations made by international organizations, what elements should a justice system reform in the country include?

It is imperative to return to the political system provided for in the Constitution, to the rule of law, so as to be able to re-establish justice from there. All the institutions that make up the justice system must be included in order to achieve this, because its correct administration depends on all of them.

This will require the experience and follow-up of multilateral organizations that have knowledge on these institutional and political transformations.

The goal must be the creation of a justice system that guarantees access to justice, that promotes and protects Human Rights, that is easily accessible to those who do not have money, that is timely, effective, fair and transparent. And for this, the autonomy of its members is essential.

A new justice system inevitably goes through ensuring independence, both political and technical, preventing and containing its possible abuse of authority with the surveillance and control of equally solid institutions, also endowed with the necessary resources and participation of civil society.

Many of these parameters already exist. The democratic world and the international institutions for the protection of human rights have developed a full range of minimum standards for the different institutions of justice, which are contained in normative instruments and even have temporary monitoring mechanisms. We are fortunate enough to not have to start from scratch; the challenge is to reach concrete and sincere agreements, and itineraries to put them into practice.

Latin America has gradually gone through justice system reform processes; basically we all enjoy regulatory mechanisms. The question is: why are there differences regarding the respect towards rights and guarantees? Because of the possibility that they will be assimilated and put into practice by institutions –although not completely perfect, committed to the constitutional scaffolding, to the counterweight of civil society.

–In developed countries and with advanced democracies such as the United States and Spain, to mention two cases, there is talk of the politicization of justice. Isn't it too much to ask Venezuela for a justice that is immune to partisan quotas?

No, it is not. Our political parties also have the responsibility and the duty to transform themselves and respect constitutional dynamics. Many of our most serious problems, such as corruption and abuse of power, are the consequence of the collapse of the values that should govern us as a society: moral authority. If we really want to get out of the current quagmire that prevents the construction of a solid democracy, that has to end.

The exercise of criminal action is the potentially most dangerous mechanism of social control. It is thus imperative that the actions of the penal system not be subject to any kind of pressure or guide other than what was previously agreed upon and expressed in a law of a formal nature.

–With this level of dispute and distrust between political actors, it really was impossible for the parties to agree to renew the Supreme Tribunal of Justice and reform the Justice System. In cases like these, are international bodies the only ones left for there to be justice in the country?

There is no international body that can meet the need for internal justice in all its areas. Relying on justice passes through the political will to do so, the will to place common good as a goal. This brings us back to the need for transformation, to the metamorphosis of politics in our country, so that, without consideration or pressure, and acting free of pettiness, only with true adherence to the established constitutional order, we can achieve a robust, independent and transparent justice system that

establishes responsibilities in all pending issues. This is due to criminal violence, corruption and all the scaffolding imposed by “power crimes”, among which are serious violations of Human Rights.

The ICC is an international court that judges war crimes and crimes against humanity, and aims to provide justice and reparation to the victims of such crimes. That is its mandate, and based on that it started an investigation in Venezuela. It is not true that international justice changes, or that it perfects political regimes.

Betting and giving hope with the results that cannot be obtained from international justice is to create despair and greater disillusionment. On the contrary, it is up to us to voice and lead considerate, realistic and responsible action. Supporting our victims with the truth is preventing their instrumentalization and, therefore, their re-victimization.

While international justice has precise powers, it is also complementary. Because of its mission, capacity, and resources, it is extraordinarily selective and focuses its resources on high-ranking perpetrators of crimes against humanity. This is a reality and it means that its action will be focused on few cases.

The Rome Statute contemplates the principle of prevention in its backbone, as well as the preference for internal justice systems to investigate and establish responsibilities with the requirement of compliance with international standards.

The internal justice system deserves to take over its institutions to re-establish them, because it is there where most of the investigations will take place, as well as the establishment of

responsibilities and reparations in the different pending matters, with the support and follow-up of international bodies.

–For there to be justice in Venezuela, should there be a change in the Presidency of the Republic?

Even if Presidents change, situations can remain the same, and even worsen.

I insist on what I said at the beginning of the interview about the need to return to the political system provided for in the Constitution. From there, justice can be rebuilt. Consequently, legitimizing once again the main institutional components of the rule of law is essential, so that the State model provided in the Constitution is maintained.

–Now that there are so many negotiation attempts, it is said that the opposition must be willing to bite bullets to achieve a democratic transition. Is one of those bullets impunity? How much justice can be sacrificed to transition towards democracy?

No, it is precisely impunity that we cannot afford. Impunity seen from the point of view of establishing responsibilities, recognizing the victims, repairing the damage and making the guarantee of non-repetition effective, is an issue that cannot be sacrificed, and neither can other constitutional values. Therefore, persecution and revenge in all its forms, and the generation of more violence, must be excluded.

The allocation of responsibilities is essential. Other historical experiences have already walked down this path, so it could be possible to explore innovative ways always focused on the values of justice and democracy.

–How is Venezuela's case progressing before the ICC?

We could be close to starting the process of submitting observations by victims before the ICC. This is a golden test to influence and demonstrate organization and commitment to justice and, therefore, to the establishment of responsibilities and reparations.

We do not yet know which cases the investigation will focus on, but it will always be aimed, according to its mandate, at representatives of the high chains of command. There will be investigations that will not be included and will have to face international protocols in an independent justice system.

–Can organized society influence the efforts to recover justice in Venezuela?

One of the most important factors achieved with the accusatory system had been to endorse citizen participation and social control. However, jury trials were eliminated almost immediately, followed by courtroom trials, to finally deprive civil society organizations of the possibility of representing victims. Today, the draft Law on International Cooperation poses new restrictions for its operation.

Even acknowledging the mistakes and the perception that any alternative seems to be alien to the common good and rather plagued by an appetite for power in all its forms, we have to seize the ideology of the realization of human rights and make it ours from individual and collective action, each one from their field and possibilities.

Carmen Alguíndigue Morles: "We cannot afford impunity"

We must transform euphoria or disenchantment into proactive, useful and strategic actions. Apathy and disagreement are ruled out in the future of the country we yearn for.