

Democratization



Year 4, Issue 17

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Institutionality and well-being

Based on Martha Nussbaum's¹ philosophical approach of combined capabilities, for a society to achieve –intergenerationally and environmentally– sustainable well-being, developing individual capabilities and favoring real opportunities is key². Well-being is understood as the achievement of a dignified and full life, which considers ethical and cultural values, i.e., the conditions that allow the promotion of opportunities and freedoms for “human flourishing”, where individuals can make the best of their abilities to be and do freely and responsibly³.

To achieve well-being, institutionality, or the set of rules and restrictions that shape human interaction, represents a cornerstone⁴. This institutional framework does not seek specific results, it is not a deterministic or mechanistic approach, but rather, on the contrary, it takes on the complex multidimensionality of human relations and seeks to promote and favor virtuous

1 Marta Nussbaum, *Creating Capabilities. The Human Development Approach*. Cambridge, MA: Harvard University Press, 2011. <http://dx.doi.org/10.4159/harvard.9780674061200>.

2 Real opportunities comprise the ability to choose and determine what is desired by the individual.

3 Jhoner Perdomo, Mauricio Phélan, Sary Levy-Carciente y Johana Valera, *Measuring Sustainable Well-being Dimensions Using Multiple Correspondence Analysis*, (ISI: 2017)

4 Douglas North, *Institutions, institutional change, and economic performance* (Cambridge: Cambridge University Press, 1990), 3.

dynamics, originated by the free and creative actions of individuals. Therefore, it paves the way for a productive impulse to offer citizens a variety of alternatives to choose from based on what best suits their needs⁵.

It is worth noting that institutionality includes both formal and non-formal rules, and throughout history there are many cases of those that are used to subduing and controlling individuals to achieve their domination and thereby benefit those who exercise political, economic, military or religious power. In this case we speak of a perverse and unsustainable institutionality.

Acemoglu & Robinson (2012) have extensive and widespread work on the role of institutions in the development of countries. They classify institutions as inclusive and extractive. Inclusive institutions are focused on individuals, seeking their full development. Extractive institutions seek to favor certain groups in society, allowing them to extract wealth through the submission of a large part of the citizenry. Specifically, the authors conceive inclusive economic institutions as:

[Those] that enforce property rights, create equal opportunities, and encourage investment in skills and new technologies. These are more conducive to economic growth than extractive economic institutions, structured to extract resources from the majority for a small group and that do not protect property rights or provide incentives for economic activity⁶.

5 Sary Levy-Carciente, *International Property Rights Index 2020* (Property Rights Alliance). Available in: https://cedice.org.ve/wp-content/uploads/2021/01/IPRI_FullReport_2020_v5_compressed.pdf.

6 Own translation taken from: Acemoglu, Daron & Robinson, James, *Por qué fracasan los países*. (Barcelona, Deusto: 2012). :279.

Likewise, they highlight the intimacy that exists between political and economic institutions:

Each society works with a series of created political and economic rules imposed by the State and the citizens collectively. Economic institutions shape economic incentives: the incentives to get an education, save and invest, innovate and adopt new technologies, and so on. It is through political processes that economic institutions are determined and granted power, and political institutions are the ones that determine how this process works⁷.

In view of this, achieving a functional institutional framework becomes one of the great challenges of nations. There is concern as to why so many societies have not achieved it, or why some come closer than others, or why there are even setbacks and the progress made is lost. Currently, when a weakening of liberal democracies is observed, multiple questions arise: Can an autocratic government guarantee sustained economic growth? Can a fragile State create the conditions to generate wealth? Is it possible to be creative without freedom? The answers require a reflection based on facts and ethics.

The link between political and economic institutionalality

According to Acemoglu & Robinson (2012), political institutions are inclusive when they “are sufficiently centralized and pluralistic”⁸. Centralization refers to the State’s power to monopolize violence, control the territory, and thus to impose the Rule of Law and guarantee order in social interaction, not with

7 Own translation taken from: Acemoglu, Daron & Robinson, James, *Por qué fracasan los países*. (Barcelona, Deusto: 2012). :33.

8 Daron Acemoglu y James Robinson, *Por qué fracasan los países*. (Barcelona: Deusto, 2012), 279..

a spirit of imposition, but of respect for individual freedoms. Pluralism rests on the notion that power is distributed in society and is limited.

In fact, an authoritarian system can, at its convenience, stimulate the generation of wealth through more inclusive economic institutions⁹, because the groups in command see in that option a way to benefit and stabilize themselves in power. That same government can also, and at any time, become repressive and controlling when it perceives that its domain is at stake.

When States are weak, their potential growth is less than that of a centralized authoritarian State. This is because with decentralized (non-inclusive) political institutions it is impossible to provide citizens with a minimum of legal security and order to give way to economic activity. Without inclusive political institutions, economic growth is limited and, if it exists, it is unsustainable.

An authoritarian State, not weakened, can provide minimum levels of inclusive economic institutions, without compromising political stability or the economic interests of the governing coalition. There may be tenuous freedoms, however, these are not fully guaranteed, and are uneven, discretionary. In this scenario, although there may be a slightly more intense and extensive growth over time, inequality and the limited capacity for innovation will impose a limit on it.

9 “Chen Yun, one of Deng Xiaoping’s closest associates and supposedly the greatest architect of the initial market reforms, summed up the views of most Party brass with a “bird in a cage” analogy for the economy. The Chinese economy was the bird and Party control the cage. This had to be made larger so that the bird would be healthier and more dynamic, but it could not be opened or removed, because the bird would escape.” Own translation taken from Acemoglu & Robinson (2012).

There's a continuous feedback in the dynamic between economic and political institutions: Certain groups take advantage of the institutional weakness of the political system, and from there they tend to build an extractive institutional conglomerate in the economic sphere. Furthermore, they are capable of deepening the extractive characteristic of political institutions, in order to perpetuate themselves in power and continue extracting wealth from an entire nation, plunging the rest of society into poverty. The existence and persistence of this relationship makes its dismantling or the transformation of the system complex.

Without the ones, there's none of the others. It is not possible to generate wealth and well-being in a sustained manner without a solid and inclusive political institutional framework. It can be seen, like freedom itself, as a general instead of a segmented need.

Institutionality in Venezuela

There are three dimensions to evaluate the institutional quality of a country and a set of variables in its measurement¹⁰: a) economic variables, which refer to private property, the freedom to choose, the functioning of the market, the freedom of association and to carry out voluntary transactions; b) political variables, which refer to the rule of law, civil liberties, political freedoms, the stability of the political system, gender equality, religious freedom, freedom of expression, and c) social variables, which involve corruption and social capital.

The evaluation of Venezuelan performance from the institutional approach –using measurements associated with the rules of the game in the different dimensions of human action in society– shows a marked deterioration, placing the country in a

10 Levy-Carciente, Sary, Venezuela: *La necesidad imperiosa de reglas de juego adecuadas*, (Caracas: A.C. Cedice Libertad: 2013).

very unfortunate level in the regional and global concert. Here are some illustrative examples.

At the economic level, the right to property can be highlighted as a vital measurement of economic institutions as a core for exchange, favoring growth by reducing risk and promoting investment, production and the extension of the time horizon. Throughout its history, Venezuela has had a volatile and weak institutional framework¹¹. For instance, Casanova (2017) states that “throughout our history, the right to property has only been partially recognized and property has been held by a small percentage of the population and, above all, by the State”¹². This description represents a faithful reference to what are referred to as extractive institutions. In addition, another key characteristic is underscored to understand the Venezuelan reality, which is the State as a great owner, or what Pereira (2016) has called the patrimonial State¹³.

This institutional weakness deepened during the last two decades, a fact that can be corroborated by reviewing the International Index of Property Rights, developed by the Property

11 This occurs despite the fact that since 1830, and for a long time, an attempt was made to promote a system of freedoms. Inés Quintero in *Los Liberales en Venezuela (1830-1846)* states (own translation): “Indeed, when the Republic is organized, the establishment of a model appropriate to the guidelines of political liberalism of the time is pursued. A regime of individual freedoms is thought of as a fundamental piece of social organization and of rejection of the authoritarian exercise of power.”

12 Own translation from Roberto Casanova, “Propiedad, libertad e inclusión. Aportes para el debate público” en *La Nueva economía venezolana: Propuestas ante el colapso del socialismo rentista*. (Caracas, Editorial Alfa: 2017), 416.

13 This concept is widely developed in Pereira, Isabel & Quiñones Rafael, *Por un país de propietarios*. (Caracas, A.C. Cedice Libertad: 2016).

Rights Alliance (PRA)¹⁴, which places Venezuela in penultimate position, globally and regionally, being surpassed only by Haiti, in its most recent measurement of 2021. In this century, the country has seen how private property has been violated with a systematic policy of expropriations and confiscations, in most cases under arbitrary and senseless arguments. The violations are not only limited to the ownership of the property, but also to its use and enjoyment. Attacking property manifests the high level of legal insecurity that increases uncertainty and with it decreases the return required by investors because of risk aversion¹⁵.

In politics, the multiple violations of rights stand out, where political repression is perhaps the one that stands out the most. From 2014 to 2021, a total of 15,769 people were arrested for political reasons, 875 civilians have been tried by prosecuted courts, with 244 people considered political prisoners. Moreover, torture cases are being investigated, while 3 political prisoners died in the custody of State agencies¹⁶.

Not to mention the social sphere. As for the level of corruption, measured by the Corruption Perception Index, developed by Transparency International¹⁷ or by the World Bank's Governance Indicators¹⁸, institutional undermining has been constant, as a

14 Property Right Alliance is an American for Tax Reform project. Available in <https://www.propertyrightsalliance.org/>

15 The *Centro de Divulgación de Conocimiento Económico* (CEDICE) has an observatory on issues related to private property in Venezuela, in which testimonies and statistics of violations of property rights can be found. Available in <https://paisdepropietarios.org/propietariosve/>

16 *Reporte de represión en Venezuela*, available in <https://foropenal.com/reportesobre-la-represion-en-venezuela-ano-2021/>

17 <http://www.transparency.org/research/cpi/overview>

18 Worldwide Governance Indicators, Database. Available in <https://info.worldbank.org/governance/wgi/>

result of the opacity in public management, impunity, and the perverse incentives that have been established.

Towards a functional institutionalality

One of the greatest challenges facing Venezuelan society is to achieve a virtuous institutional transformation, and has to do so from the ruins left by a complex extractive system that seeks to perpetuate itself in power.

The virtuosity of this new institutionalality can only be anchored in a firm and solid ethical base, whose guiding axis is the development of society based on the strengthening of the individual, favoring spaces of freedom for their actions –choice and decision-making– with dignity. Without turning to Adamism, the deterioration of the country is such that this institutional framework will have to rise from its foundations, making use of the lived experience with its lessons learned, as well as successful experiences in multiple borders and over time, including our own history.

One of the most urgent elements is rescuing territorial integrity and with it the national name, depreciated by a nationalist populism. The role of the national armed forces will also be essential, in its recomposition and its profound review. According to the Fragile State Indicator¹⁹, published by the Fund for Peace, which assesses the vulnerability of States to collapse, by 2021, Venezuela ranked 25/179 globally, with a continuous deterioration of more than 17 points since 2013. Territorial control is an essential element to address current State fragility, which requires that it be capable of imposing the Law and that a recomposition of the Justice system be carried out in order to have

¹⁹ <https://fragilestatesindex.org/>

functional ways of resolving conflicts that could arise between individuals, companies and organizations. Overcoming fragility also requires an efficient State that favors the provision of basic services and adequately manages public goods.

Politically, an orientation typical of liberal democracies is relevant, that is, respect for the rule of law, with the due balance between powers and the necessary autonomy of institutions, a limited government that is accountable to the citizenry –since its authority emanates from it– that guarantees equality before the law, without discrimination based on gender, race, religion, political inclination, sexual orientation, etc., and, naturally, free, fair and transparent elections. After these two decades, a strenuous effort aimed at deconcentrating power in the Executive is required, and for this there are several proposals: the elimination of indefinite reelection –a clear incentive and a free way to perpetuate itself–, the reduction of the presidential term, and implement a double-round system in elections. These all address significant issues. Lastly, a broad discussion is necessary on the deepening of decentralization, and also on expanding the legal and effective roles of the national parliament, which could once again have a bicameral system in the future.

In economics, we propose market economy as an orientation where trust is the key. This is the core element to promote with a virtuous institutional framework, reduce risk, promote success through merit, stimulate creativity and innovation, and this needs excellent training and research schemes. Just as Zambrano²⁰ states, “property rights, the regulatory system on the real and financial

20 Own translation from Luis Zambrano, “Notas sobre las reformas económicas para el crecimiento y el rol de las instituciones” en *Venezuela 2015: Economía, política y sociedad* (Caracas: Universidad Católica Andrés Bello, 2015), 78-79.

markets, the framework of rules that guarantee macroeconomic stability, the reform of social security and, especially, the institutions that allow the management of distributive conflicts that emerge with the frequent external shocks” are the elements which must be overviewed.

The objective is therefore to reweave social ties from individual moral freedom, with tolerance and peace.

Some notes on economic freedom, property rights and institutional environment

Carlos García Soto

Introduction

The ongoing conversation today in Venezuela about the isolated changes in the economy, which have led to the conclusion that the national economy has improved, requires the analysis of such changes from the perspective of some basic legal concepts. In this essay we want to refer to economic freedom, property rights and the institutional environment.

A key aspect to measure the coherence and sustainability of economic changes is the meaning given to the legislation that regulates State actions in the economy and that impacts the activity of the private sector. A sincere and credible reorientation of economic policy requires the modification or repeal of those regulations that support an exorbitant position of the State and discourage private initiative. If this does not happen, there are plenty of reasons to doubt the sustainability and effectiveness of these economic reforms.

Any analysis about a change in the Venezuelan dynamic concludes on the need to restrict the scope of the State in economic

activity and to promote and protect private, national and foreign investment. The worsening of the crisis in the functioning of the Venezuelan State, and the informality in the exercise of private activity that is sometimes even promoted by the State, further reinforced this conclusion in recent years.

But this requires State decisions that demonstrate that intention to change, expressed through formal State acts, and through changes in the State's action trends, in each of its branches of Public Power. Such acts range from the Laws of the National Assembly, to the Sentences of the Supreme Court of Justice, going through all the administrative acts dictated by the administrative authorities.

The socioeconomic reconstruction of Venezuela entails two things, among several other elements: the protection of economic rights –mainly the economic freedom and the right of ownership– and an institutional environment that promotes and protects the activity of the private, national and foreign sector.

These notes are intended to recall some basic legal concepts around these two aspects, as necessary conditions for any approach to sustainable socioeconomic reconstruction in the country. For this, we will explain (i) why economic freedom and property rights represent economic rights; (ii) the situation of economic freedom and property rights in the implementation of the economic model called “Socialism of the 21st Century”; (iii) why economic freedoms and property rights should be the foundations of the socioeconomic reconstruction of Venezuela, and (iv) the role of the institutional context for Venezuela's socioeconomic recovery.

I. Economic freedom and property rights as economic rights

Every contemporary Constitution –1999 Venezuelan constitution among them– recognizes economic rights, understood as the set of rights which have the purpose of deploying economic freedom of natural and legal persons, both nationals and foreigners.

Among the different economic rights recognized in the Economic Constitutions, the two fundamental economic rights are the right to economic freedom as such, and the right to property, which is in turn a necessary condition for the exercise of economic freedom¹.

The economic activity of the private sector rests, fundamentally, on these rights: if the private sector does not have the legal guarantees that allow it to fully exercise the right to freedom of enterprise, and the legal guarantees for the full exercise of the right to property, people will not be able to fulfill the economic objective of producing goods or services

1 On the historical evolution of economic freedom and property rights in Venezuela, see Allan R. Brewer-Carías, “El derecho de propiedad y la libertad económica. Evolución y situación actual”, *Estudios sobre la Constitución. Libro-Homenaje a Rafael Caldera*, II, (Caracas: Universidad Central de Venezuela, 1980), <http://allanbrewercarias.com/biblioteca-virtual/%C2%93el-derecho-de-propiedad-y-la-libertad-economica-evolucion-y-situacion-actual-en-venezuela%C2%94/>, *passim* and *Evolución del régimen legal de la economía*, (Valencia: Ediciones de la Cámara de Comercio de Valencia-Editorial Jurídica Venezolana), <http://allanbrewercarias.com/biblioteca-virtual/evolucion-del-regimen-legal-de-la-economia-1939-1979/>, *passim*. On the period after the promulgation of the 1999 Constitution, see, among others, Jesús María Casal & Jorge Luis Suárez (Coordinators), *La libertad económica en Venezuela: balance de una década (1999-2009)*, (Caracas: Universidad Católica Andrés Bello, 2011), *passim*.

they have chosen as personal endeavors, and their rights will be unconstitutionally violated.

Such rights require the State to ensure that citizens can exercise them within a sufficient scope: these are the legal guarantees of these rights, which can be divided into formal guarantees –such as the reservation of Law, or that of procedure and material guarantees– such as that of the essential content, or that of proportionality, or minimal intervention.

Such guarantees are intended to serve as protection against State activity. Formal guarantees, such as those reserved by Law or procedural guarantees, require that any limitation to the rights of citizens originate in the Law and be carried out in accordance with legally established procedures. The guarantee of the essential content of economic freedom requires that the individual be able to exercise that freedom with a minimum of conditions of business autonomy². The guarantee of the essential content of the property right requires this right to be exercised with a minimum of private utility for its owner³. The guarantees of proportionality or minimum intervention, among others, are also material guarantees that are intended to establish substantive limits to State action that limits rights.

2 See José Ignacio Hernández G., *La libertad de empresa y sus garantías jurídicas. Estudio comparado del Derecho español y venezolano*, (Caracas: Funeda-IESA, 2004), pp. 222-237.

3 See Carlos García Soto, *La garantía del contenido esencial del derecho de propiedad en los ordenamientos jurídicos de España y Venezuela*, Doctoral Thesis, Complutense University, Madrid, 2014, passim.

II. Economic freedom in the context of “21st Century Socialism”

The attacks on economic freedoms

A) Introduction

In recent years there have been multiple attacks on economic freedom in Venezuela from the different levels of Public Power. Such attacks have been directed, on the one hand, towards general areas, such as exchange control and price control. But, on the other hand, the different sectors of the national economy have suffered “sectoral” attacks from different channels.

B) Exchange control and price control

Two fundamental restrictions on economic freedom, in general for the vast majority of economic sectors, have been exchange control and price control, since 2003.

a. Exchange control

Since 2003, foreign exchange control has been placed in Venezuela, which has limited, in various ways and with different intensities, the freedom of change. The measure had its temporary origin in the outflow of capital on the occasion of the business and labor strike at the end of 2002 and the beginning of 2003, but it has remained formally in force to this day.

For more than a decade, this exchange regime entailed the centralization of the foreign exchange market in the Central Bank of Venezuela. Consequently, since 2003, access to foreign currency was significantly limited, which had to be acquired and

managed according to the rules imposed in the various Exchange Agreements⁴.

Clearly, as a manifestation of an economy based on “centralized planning” criteria, the exchange rate regime implied a very significant obstacle to the exercise of economic freedom. Particularly for foreign companies, it meant, for example, severe limitations for the repatriation of capital.

But the exchange control not only meant the restriction of exchange freedom in itself, but also implied other limitations associated with that general limitation. This was the case, for example, of the requirement of “certificates of non-production or insufficient domestic production”, which had to be obtained for imports. For exports, the “certificate of satisfied domestic demand” was required.

Of course, the exchange rate regime was complemented by a punitive regime. It started with the 2005 Law Against Illicit Exchange Rates⁵, which established administrative and criminal sanctions for those who violated exchange controls, and which was subsequently reformed on several occasions.

4 On this process, see Anabella Abadi M. & Daniel Raguá, “Control cambiario: trece años en cifras”, in *Debates IESA*, enero-marzo, (Caracas: 2016), <http://virtual.iesa.edu.ve/servicios/wordpress/wp-content/uploads/2016/04/2016-1-abadiragua.pdf>. Also see Fred Aarons P., *Contribuciones del Derecho para el crecimiento económico. Experiencias del control cambiario en Venezuela*, (Caracas: Academia de Ciencias Políticas y Sociales, 2017); José Ignacio Hernández G., *Control de cambio y de precio en Venezuela. Auge y colapso institucional (2003-2020). Del modelo socialista a la dolarización de facto*, (Caracas: Editorial Jurídica Venezolana, 2022) and Pedro A. Palma, *La política cambiaria en Venezuela. Más de cien años de historia*, (Caracas: Editorial Jurídica Venezolana-Ediciones IESA, 2020).

5 Official Gazette N° 38.272 of September 14, 2005.

More recently, the so-called *National Constituent Assembly* issued the *Constituent Decree establishing the Repeal of the Exchange Regime and its Illicit Deeds*⁶ and the *Exchange Agreement No. 17*, by which the entire exchange regime was reordered.

b. Price control

Furthermore, since 2003, a price control regime has been implemented, which has also meant a general limitation on private economic activity. Although originally it was established only for essential goods, since the first version of the *Fair Costs and Prices Law* of 2011 was enacted, this regime has expanded its scope to all private economic initiatives⁸.

On February 6, 2003, the first list of 45 goods and 7 services that would be declared “essential”, and whose maximum sales prices to the public would be set by the National Executive, was published⁹. Less than a week later, on February 11, 2003, the then Ministry of Production and Trade published the first maximum sales prices¹⁰.

6 Official Gazette N° 41.452 of August 2, 2018.

7 Official Gazette N° 6.405 extraordinary of September 7, 2018.

8 See Anabella Abadi M. & Carlos García Soto, “15 años del actual control de precios en Venezuela: un balance”, in *Prodavinci*, February 6, 2018, <https://prodavinci.com/15-anos-del-actual-control-de-precios-en-venezuela-un-balance/>. A deeper analysis of the subject can be found in Anabella Abadi M. & Carlos García Soto, *El control de precios en Venezuela (1939-2015): de la Segunda Guerra Mundial a la “Guerra Económica”*, (Caracas: Cedice-Universidad Monteávila-Universidad Católica Andrés Bello, 2016) and in José Ignacio Hernández G., *Control de cambio y de precio en Venezuela. Auge y colapso institucional (2003-2020). Del modelo socialista a la dolarización de facto*, cit.

9 Official Gazette N° 37.626 of February 6, 2003.

10 Official Gazette N° 37.629 of February 11, 2003.

On May 4, 2004, the *Consumer and User Protection Law*¹¹ was enacted, which would repeal the 1995 Law. The President of the Republic was empowered to declare goods and services as essential based on this Law, however did not grant any power to fix prices. In other words, although the enactment of this 2004 Law provided no legal basis for price control, said measures remained in force.

In 2008, 2009 and 2010, new laws on consumer protection (*Law for the Defense of People in Access to Goods and Services*) were repealed and enacted, always maintaining the same regime provided for in the 2004 Law.

On July 18, 2011, a stage of significant expansion of the scope of the price control system began, on the occasion of the promulgation of the *Law of Fair Costs and Prices*¹². With the approval of this Law, the National Superintendency of Costs and Prices (SUNDECOP) was created to review and control production costs, with the supposed purpose of guaranteeing a fair profit and avoiding speculation.

Under the framework of an Enabling Law, on January 23, 2014, the *Law on Fair Costs and Prices* was repealed through Decree-Law No. 600, which issued the *Organic Law on Fair Prices*¹³. This Decree was preceded by the application of *de facto* price controls in November and December 2013.

The *Organic Law of Fair Prices* was subsequently reformed on November 19, 2014¹⁴ and November 12, 2015¹⁵. Both reforms were made under the execution of an Enabling Law.

11 Official Gazette Nro. 37.930 of May 4, 2004.

12 Official Gazette N° 39.715 of July 18, 2011.

13 Official Gazette N° 40.340 of January 23, 2014.

14 Official Gazette N° 6.156 of November 18, 2014.

15 Official Gazette N° 40.787 of November 12, 2015.

More recently, the so-called National Constituent Assembly approved the *Constitutional Law of Agreed Prices*¹⁶. This instrument maintains a control policy that perpetuates the distortions generated by previous legislation.

All this legislation, naturally, has been developed by different Regulations issued by the Superintendence for the Protection of Socioeconomic Rights, such as Ruling No. 003/2014, through which *General Accounting Criteria for the Determination of Fair Prices*¹⁷ are established, or the *Providence No. S/N*, which regulates the modalities for the determination, setting and marking of prices throughout the national territory¹⁸.

C) Another example of general regulation: "labor solvency"

Another example of general regulations that excessively limited freedom would be the "employment solvency" that has been required of private companies since Decree No. 4,248 was issued. It regulates the granting, validity, control and revocation of employers' labor solvency, including cooperative associations that contract the services of non-associates, in order to guarantee workers' rights¹⁹. This solvency became a sort of authorization for the exercise of economic activity, and obtaining it from the administrative labor authority was sometimes delayed for significant periods of time.

16 Official Gazette N° 6.342 extraordinary of November 22, 2017.

17 Official Gazette N° 40.351 of February 7, 2014.

18 Official Gazette N° 40.775 of October 27, 2015.

19 Official Gazette N° 38.731 of February 2, 2006.

D) Sector regulations

But when sectors of the economy are considered, the severe restrictions that have been imposed on virtually all areas of the private sector also come to mind. Such attacks on the various sectors of economic activity have led to laws, regulations and other administrative acts that have severely restricted the scope of economic freedom in many markets. Some of which, in fact, have seen their scope reduced to a minimum²⁰.

To point out some examples, such was the case of the construction sector, which was severely attacked by *Resolutions No. 98*²¹ and *110*²² of the Ministry of Public Power for Public Works and Housing, then by a policy against homebuilders and by the Law against real estate fraud²³. Such regulations and policies practically made the market for new homes in Venezuela disappear.

Another manifestation, among many others, of the sectoral restrictions on economic freedom came through the different policies implemented by the National Executive to take over the activity that was previously carried out by private companies²⁴. Cases such as the purchase of shares in CANTV and Electricidad de Caracas were examples of this policy.

20 For the period between 1999 and 2009, see a summary of the different limitations on economic freedom by sector in Jesús María Casal & Jorge Luis Suárez (Coordinadores), *La libertad económica en Venezuela: balance de una década (1999-2009)*, cit, pp. 85 and following.

21 Official Gazette N° 39.055 of November 10, 2008.

22 Official Gazette N° 39.197 of June 10, 2009.

23 Official Gazette N° 39.912 of April 30, 2012.

24 See José Ignacio Hernández G., *Reflexiones sobre la Constitución y el modelo socio económico de Venezuela. A propósito del proceso de reforma constitucional*, (Caracas: Funeda, 2008), pp. 156 and following.

III. The right to property in the context of “Socialism of the 21st Century”

The attacks on the right to property

A) Introduction

Similarly to economic freedoms, the right to property has been the object of attacks from the different levels of the Executive Power.

B) The origin: attacks on agrarian property

The origin of the attacks on property from the Executive Power can be found in the *Land and Agrarian Development Law* of 2001, in which different measures that restricted agrarian property were established.

This Law would mark the beginning of the trend towards systematic abuse of property rights, within the framework of what years later would be known as “21st Century Socialism”²⁵. Although the main abuses by expropriation were carried out as execution of that policy, in reality such practices started as early as 2001 with the *Land and Agrarian Development Law*, where article 71 established that “the lands suitable for agricultural production that are within the rural polygonal established in article 21 are declared of public utility or social interest”²⁶.

25 See the explanation of this whole process in Anabella Abadi M. & Carlos García Soto, “*Expropiación*”. *La política expropiatoria del “Socialismo del Siglo XXI”*, (Caracas: Cedice, Universidad Católica Andrés Bello, Universidad Monteávila, 2019), *passim*.

26 In article 68 of the reform to that Law in 2005 (Official Gazette No. 5,771 extraordinary of May 18, 2005) the declaration of public utility or social interest of the lands with a vocation for agricultural use would be repeated, although no reference is made to the traverse. In the current Law (Official Gazette No. 5,991 extraordinary of July 29, 2010) the

C) Attacks on other types of property

The attacks on property rights had yet other manifestations. This was the case, for example, of urban property, through the *Urban Land Law*²⁷ and the *Emergency Organic Law for Land and Housing*²⁸, which established broad declarations of public or social utility. It enabled the National Executive to issue Expropriation Decrees on urban real estate.

D) The expropriation policy

However, the most important attacks on the right to property came with the expropriation policy that was implemented as of 2005, and that produced disastrous consequences for the country. According to Samantha Sánchez Miralles, the total number of forced acquisitions decreed by the National Executive and published in the Official Gazette reached 113 between 2000 and 2015. Of these, 38 (34%) were registered in 2010 and 40 (35%) in 2011²⁹. The economic model promoted in recent decades in Venezuela, usually called “21st century Socialism”³⁰, is based on a fundamental

formula has been repeated, although substituting the term “agrarian” for “agricultural”.

27 Official Gazette N° 5.933 extraordinary of October 21, 2009. See Carlos García Soto, “El derecho de propiedad en la Ley de tierras urbanas”, *Revista de la Facultad de Derecho*, N° 64, (Caracas: Universidad Católica Andrés Bello, 2010), <http://biblioteca2.ucab.edu.ve/anexos/biblioteca/marc/texto/Revderecho64.pdf>

28 Official Gazette N° 6.018 extraordinary of January 29, 2011. See José Ignacio Hernández G., “La regulación de la propiedad privada en el régimen de emergencia de terrenos y vivienda”, *Revista de Derecho Público*, N° 130 (studies on Decretos Leyes 2010-2012), April-June (Caracas: Editorial Jurídica Venezolana, 2012), http://www.ulpiano.org.ve/revistas/bases/artic/texto/RDPUB/130/rdpub_2012_130_273-284.pdf

29 *Casos de estudio sobre la Expropiación en Venezuela*, (Caracas: Editorial Jurídica Venezolana-Cidep, 2016), pp. 89-115.

30 See Anabella Abadi M., “Socialismo del siglo XXI y su visión sobre la propiedad productiva privada. Evolución de las relaciones económicas

premise: the primacy of State property over private property. To this end, and among other practices, expropriation has been resorted to on repeated occasions. And to this day, the Venezuelan “business state”, caused in part by this expropriation policy, has grown significantly, to the detriment of private property³¹.

público-privadas entre 1999-2015 y los retos que plantea”, in Karl Krispin (Compiler), *Los retos de la Venezuela del siglo XXI. Temas para la agenda del futuro. Informe del Capítulo venezolano del Club de Roma*, (Caracas: O.T. Editores, 2016), *passim*. See also, from a broad perspective, José Guerra, *¿Qué es el socialismo del siglo XXI?*, (Caracas: Ediciones Librorum, 2006) and Manuel Rachadell, *Socialismo del Siglo XXI. Análisis de la reforma constitucional propuesta por el Presidente Chávez en agosto de 2007* (Caracas: Funeda-Editorial Jurídica Venezolana, 2007).

- 31 See Anabella Abadi M. & Carlos García Soto, *¿Cómo ha crecido el Poder Ejecutivo en Venezuela entre 1998-2015?*, in *Prodavinci*, June 12, 2015, <https://historico.prodavinci.com/blogs/como-ha-crecido-el-poder-ejecutivo-en-venezuela-entre-1998-2015-por-anabella-abadi-y-carlos-garcia/>. See also the report by Transparencia Venezuela, *Empresas Propiedad del Estado en Venezuela: un modelo de control del Estado*, Caracas, 2017 and the commentary on that report by Anabella Abadi M. & Carlos García Soto, “El informe de Transparencia Venezuela y el «Estado empresario»”, in *Prodavinci*, September 30, 2017, <https://historico.prodavinci.com/blogs/el-informe-de-transparencia-venezuela-y-el-estado-empresario-por-anabella-abadi-y-carlos-garcia-soto/>. See the case studies by Anabella Abadi M. & Bárbara Lira, coordinated by Richard K. Obuchi M., *Gestión en rojo: evaluación de desempeño de 16 empresas estatales y resultados generales del modelo productivo socialista*, (Caracas: Ediciones IESA, 2012). See also Anabella Abadi M., “Socialismo del siglo XXI y su visión sobre la propiedad productiva privada. Evolución de las relaciones económicas público-privadas entre 1999-2015 y los retos que plantea”, *cit.*, pp. 18 y 19; Isabel Pereira Pizani y Rafael Quiñones, *Por un País de Propietarios. El petróleo no tiene la culpa*, (Caracas: Cedice-Libertad, 2016), <https://paisdepropietarios.org/propietariosve/wp-content/uploads/2020/05/Un-pais-de-propietarios-EL-PETROLEO-NO-TIENE-LA-CULPA.pdf>, pp. 92-97 and Orlando J. Zamora R., *Concentración de poder: revés del sueño protagónico*, (Caracas: Editorial Melvin, 2012), pp. 301 and following.

This decision to promote public property through expropriation has been carried out in various economic sectors³². The intensity of this “policy of expropriation” led to the violation of the legal and economic guarantees of property owners on which expropriation procedures fell in many cases.

Thus, the treatment that has been given to expropriation in this period of study is a manifestation of the political and economic model that the State has tried to promote in recent years, which has aimed at prioritizing public over private property. And among the different formulas adopted to achieve this pre-eminence of public property, the (ab)use of expropriation has occupied a very prominent place.

This process promoted by the Executive Branch gave rise to various anomalies in expropriations, some of which implied significant property damage to important areas of the private sector. Anomalies of the most diverse nature, many times derived

32 See Samantha Sánchez Miralles, *Casos de estudio sobre la Expropiación en Venezuela*, cit., pp. 89-115. See also from the same author, “Estado actual del régimen de expropiaciones en Venezuela”, in *Revista Electrónica de Derecho Administrativo Venezolano*, N° 10 (Aspectos del Derecho Administrativo Económico en Venezuela), September-December, (Caracas: 2016), <http://redav.com.ve/wp-content/uploads/2017/11/Estado-actual-del-re%CC%81gimen-de-expropiaciones-en-Venezuela-SSM.pdf>, *passim*. See the complete analysis of this “expropriation policy” carried out by Antonio Canova González, Luis Alfonso Herrera Orellana & Karina Anzola Spadaro, *¿Expropiaciones o vías de hecho? (La degradación continuada del derecho fundamental de propiedad en la Venezuela actual)*, (Caracas: Funeda, 2009). See also the publication by Acceso a la Justicia, “El trágico legado de las expropiaciones y nacionalizaciones”, February 14, 2018, <https://accesoalajusticia.org/el-tragico-legado-de-las-expropiaciones-y-nacionalizaciones/>. The Property Rights Observatory has compiled statistics on violations of property rights between 2012 and 2017, in the report edited by Por un País de Propietarios, Cedice-Libertad and Liderazgo y Visión, entitled “Total figures 2012-2017 and Glossary of terms”.

from what at the time was considered urgent by the Executive Power, even in purely political terms. Some were:

- I. Anomalies in the declaration of public utility or social interest;
- II. Anomalies in the Expropriation Decree;
- III. Anomalies in the fair value, and
- IV. Anomalies in the expropriation administrative procedure.

A characteristic sign of the expropriation policy of 21st Century Socialism is the deviation of power that this policy encompasses³³. It is known that all administrative activity must be aimed at satisfying the general interest (article 141 of the Constitution)³⁴. And this, in any case, must be promoted in full respect of the rights of citizens.

IV. Economic freedom and property rights as foundations of the socioeconomic reconstruction of Venezuela

Any reflection on the dismantling process of the rights to economic freedom and private property must lead to laying the foundations for these rights to serve as cornerstones for the

³³ In various cases the *expropriandi* cause could not be sufficiently supported. On some occasions, the expropriation is decreed without its motivation clearly indicating the reasons why the expropriation of a specific asset is required. In other cases, the expropriation is presented as a kind of expropriation-sanction for the alleged commission of certain crimes. Finally, in other cases, the urgent –and arbitrary– occupation of property proceeds without there being a sufficient justification for it.

³⁴ See Carlos García Soto, “El carácter servicial de la Administración pública: el artículo 141 de la Constitución”, en *Revista Electrónica de Derecho Administrativo Venezolano*, N° 11, January-April, (Caracas: 2017), <http://redav.com.ve/wp-content/uploads/2018/02/El-caracter-servicial-de-la-administracion-publica-CGS.pdf>

socioeconomic reconstruction of the nation. Only if economic freedom and the right to property have the formal, material and institutional guarantees necessary for their adequate exercise, can there be any hope in the reconstruction of the Venezuelan economic system that reaches the majority of the population, in which private enterprise should play an essential role.

The socioeconomic reconstruction of Venezuela requires that suppliers of goods and services be able to go to the market in competitive conditions that encourage production. This requires that the regulatory environment is favorable to the exercise of economic freedom. This will provide economic incentives to foreign and national investors.

On the other hand, the socioeconomic reconstruction of the country will also require respect for the right to property. Only if national and foreign investors have in their favor the minimum conditions of legal certainty, and specifically of respect for property rights, will they be willing to invest in the production of goods and services.

From this perspective, economic freedom and property rights are two interdependent rights: only if the two rights are guaranteed can we aspire private investment to take place. Economic freedom, in order to be fully exercised, requires the right to own property. In order to exercise the right to property, economic freedom must be assured. That is why these classifications are to some extent artificial: we have pointed to exchange control and price control as restrictions on economic freedom, when in reality they have also constituted limitations on property rights. The expropriation policy, for its part, can be analyzed first of all as a profound restriction on the right to property, as we have seen, when it is

true that it also represented an ostensible limitation on economic freedom.

V. The role of the institutional context for the socioeconomic recovery of Venezuela

But another aspect that is fundamental for the socioeconomic recovery of the country is the institutional environment.

In the field to which we refer in this analysis, the institutional environment is understood as the set of public and private institutional factors that can affect the activity of the private sector. Although the institutional environment is made up in part by private institutions that can have an impact on the private sector -companies, associations, unions-, the most important actor in the institutional environment is the State, formed by its Public Power bodies in the different political-territorial levels³⁵.

The complexity of contemporary economic life requires State intervention in the economy, and specifically in private economic activity. This intervention is justified by various reasons: from national security to the need to ensure the universal provision of

35 See, Ernesto Blanco, "Cómo sobrevive una empresa en un entorno económicamente incierto", in *Debates IESA*, volume XXI, N° 4, (Caracas: 2017), <http://www.debatesiesa.com/como-sobrevive-una-empresa-en-un-entorno-cronicamente-incierto/> and "Tener éxito en entornos complejos", in *Debates IESA*, volumen XVII, N° 4, (Caracas: 2012), https://www.researchgate.net/publication/289130459_Tener_exito_en_entornos_complejos/link/5689b2cd08ae1e63f1f9000a/download. See also Anabella Abadi M. & Carlos García Soto, "Analizar el entorno regulatorio: tarea obligatoria en Venezuela", in *Debates IESA*, Volumen XXII, N° 3 and 4, July-December, (Caracas: 2017), <http://www.debatesiesa.com/analizar-el-entorno-regulatorio-tarea-obligatoria-en-venezuela/>.

public services, and the need to protect free competition between businessmen in the same sector.

In this sense, it can be pointed out that the State intervenes in economic activity to safeguard two fundamental rights: on the one hand, the economic stability of the country; on the other, the protection of the rights of other competitors and of users and consumers.

This regulation of economic activity by the State is carried out through different bodies of the Public Power: (i) the Legislative Power, through the laws that affect economic activity, and (ii) the Executive Power, specifically through the Public Administration, which carries out economic activity in conjunction with individuals, and also orders, supervises and sanctions the economic activity of individuals. The Executive Power also has a relevant role in the regulation of the company's activity, either through Decree-Laws or through Regulations, by means of which it can eventually complement the regulation issued by the Legislative Power.

The most critical aspect for the promotion and protection of investment is domestic legislation, to the extent that it is in this area in which the State can make decisions that favor or, on the contrary, discourage investment. Here, it is necessary to consider not only the formal legislation issued by the State, but also the decisions that may actually be taken by government authorities, particularly the Public Administration.

This internal legal regime may encourage or discourage investment, which will produce certain socioeconomic consequences in each country. Principles and rules have been progressively adopted in the contemporary world, and it is thus

possible to determine what are the general features that an internal legal system must show to favor foreign investment.

But the Judiciary also plays a fundamental role in the field of the institutional environment, because this Public Power is responsible for protecting the rights of citizens against the arbitrariness of the Legislative Power and the Judicial Power. In particular, in the area to which we refer, the Judiciary must protect economic rights, such as economic freedom and the right to property.

In addition, the Judiciary should be the guarantor of the fulfillment of contracts, both contracts entered into with the public sector and those between individuals, such as labor contracts or commercial contracts. Although the scope of arbitration in private contracting is expanding every day, the truth is that for many matters it is not efficient and proportionate to go to arbitration.

In this way, the institutional context is also key to any aspiration to our socioeconomic recovery. This means that the action of the State does not discourage, but instead encourages private initiative and property, and that, on the other hand, the State serves as an institutional mediator for investor disputes with the State itself and with other individuals.

Venezuela, today: Economic growth without social mobility?

Juan Pablo Olalquiaga

The recovery of the Venezuelan economy has been a common topic during the first months of 2022. Undoubtedly and fortunately, hyperinflation has been overcome... but not inflation. The exchange rate does not worry the minds of those Venezuelans who have made the US dollar their currency of exchange and for savings. The lack of many everyday consumer products has also been left behind. Today, on the contrary, goods that we only used to get abroad can be easily obtained in Caracas. Likewise, many companies sell their products in US dollars or at dollarized prices. Consequently, payrolls are managed in dollars or, if deposited in *bolívaes*, they follow dollar-based salary structures, progressively increasing the purchasing power of their employees. Many companies have begun to see increasing sales in goods or services, which has allowed them to raise their prices in an attempt to reach the equivalents in other countries. This has resulted in the creation of several businesses, mainly in the trade and services sector.

So far, this picture suggests that there certainly is a recovery of the Venezuelan economy, that the regime understood that capitalism and the market economy are necessary, and that it is currently adapting the wrongly-called “Chinese Model” –that is,

the stimulation of economic growth but without giving political freedoms–.

However, looking a little further, it is clear that this stabilization and greater purchasing power do not go beyond a very small portion of the population: a hypothetical three million inhabitants. There are about 22 million Venezuelans who are excluded from this new stability. 22 million people is no small thing: it represents 88% of the current population, excluding the 7 million people who left the country because their income was not enough to live by. These 22 million Venezuelans who do not enjoy this theoretical economic recovery are classified by the Survey of Living Conditions in Venezuela, Encovi, as being in circumstantial or structural poverty.

Further beyond, we can see that part of the income of those three million who do benefit from this recovery are remittances sent from relatives who migrated. In other words, their subsistence does not depend solely on their work because there are not numerous jobs with fair enough remuneration to pay for the family basket. Also, these three million mainly make transactions with paper money, in a country with financial mechanisms that date back to the 19th century, but which lacks the credit system that operated at that time. Of those three million, few can afford to change their refrigerator or car, and even fewer can access a private home.

Statistical manipulation

Judging the growth or contraction of an economy is not easy, and even less so when there is no credible system for producing statistics. The importance of figures lies in being able to judge, with some degree of certainty, the impact that this growth, or contraction, has in terms of its sustainability and, desirably, in

terms of the social mobility that may arise from it. In Venezuela, figures are manipulated to present a desired but unrealistic scenario. Worse yet, even if one wanted to know the truth, the dismantling of the statistical census mechanisms of the National Institute of Statistics (INE) and the Central Bank of Venezuela (BCV) would not allow it. Even assuming that these mechanisms had not been dismantled, the economically active population is reluctant to provide information out of fear that it will be used against them. Additionally, an economy in which these active subjects have opted for informality seeking to lose visibility, for many reasons, does not generate any type of statistics. Thus, the perception of growth cannot be measured with certainty and, therefore, the notion of growth is no more than the reality of a few, and its extrapolation to the economy as a whole has no real basis.

If there is no growth in the economy as a whole, how can we understand what caused this refloating, or consumption bubble, that the hypothetical three million are experiencing? Even more so, if there is no financial system that generates credits; if the infrastructure has not been maintained and fails regularly; if within the new companies there is no local production that generates a positive trade balance, how could this bubble that some confuse with growth be created? Two essential variables have changed: the first is that many of the controls that suffocated trade were eliminated: exchange controls, prices, the circulation of goods, the type of products that can be manufactured and imported, on the employment relationship, on inventory levels... in short, all kinds of controls. These controls have not been formally eliminated, but they have ceased to operate in practice. With this, the market economy –that is, human creativity– has rebounded and flourished on its own and spontaneously freed from the controls that chained it. The second variable that has

changed is that now those three million are dealing with a hard currency, one that is not rapidly losing purchasing power over time and whose stability does not depend on the incompetence of the Central Bank of Venezuela: the US dollar.

More middle class

Now, for this punctual flourishing to be transformed into real and sustainable economic growth that can lead to greater well-being shared by society as a whole, it must generate social advancement, that is, towards the creation of a middle class. In other words, this flourishing must lift a relevant portion of the population out of poverty. Let's be clear: if only a few flourish, we can hardly speak of an economy that grows in a sustainable and inclusive way. Over many years Venezuelans have cruelly learned the opposite: how economic contractions generate poverty. The most recent and most violent economic contraction that we have experienced was the period of hyperinflation that formally began in October 2017 and from which we have been emerging for a few months, which led to the largest emigration in the history of the American continent, and which has led the vast majority of citizens to have incomes below the World Bank's definition of extreme poverty (US\$1.90 per day), even though less than 10% of the world's population as a whole falls into this condition.

Creating social advancement requires agreements, structure, an institutional fabric, and incentives to attract productive investments; that is, public policies that are credible and sustainable over time—nothing further than what we are living now in Venezuela.

In the absence of statistical figures, other factors become visible when an economy, as a whole, begins to grow. A growing economy, in my opinion, generates three essential things in visible

amounts: jobs, tax revenue, and foreign exchange from the export of goods and services. Each of these three things is indispensable in itself, but the combination of all three has an exponential effect on growth.

Jobs are an end themselves: for the population to sustain itself materially, satisfying its needs thanks to its talent and effort and can have professional growth. In contrast, more sophisticated jobs generate higher income. Thus, a farm foreman earns much more than a field harvester; a planning engineer earns much more than a line operator, but less than a production manager; a researcher dedicated to digital developments earns more than his counterparts in other areas; thus, an experienced commercial director is near the top of the salary structures. Going from a collection worker to a line operator, to a planning engineer, or to a digital researcher requires academic training and practical experience, which together are the basis for professional growth. If there is economic growth, it will require more people, and immediately they will begin to find opportunities that will help them grow professionally. Is this the case in Venezuela? Here the pool of talent has decreased significantly due to emigration. With all that, poverty continues to grow in a stagnant labor market and without opportunities for professional growth.

A social effect linked to this phenomenon is that any person with professional growth and, therefore, growing income materializes the power to move to a larger house, with better equipment; gradually gaining access to social clubs or cultural or sports associations, where they share common interests. This person with professional growth becomes part of a social structure that cares and deals with influencing their environment, immediately and, possibly, even politically. In addition, larger homes, new developments, social clubs, and non-governmental

organizations create more specialized jobs in a virtuous circle. The question that arises is: are we seeing this in today's Venezuela?

Taxes and currencies

The second factor that economic growth produces is the generation of tax revenue. If public officials do not steal them, well-managed tax revenues finance physical protection systems, that is, police and citizen security bodies; legal system, the courts; public health system, hospitals; public education system and thus, the entire institutional fabric that a nation requires to assist its citizens, providing a physical and administrative infrastructure on which the societies that seek to support their citizens rest. Having all these systems working properly allows societies to deal with crises when they break out. Thus, for example, the rapid response to the COVID 19 pandemic, with financial support for those who lost their jobs, with massive rapid detection and vaccination systems, as well as the treatment of patients, would have been framed in this type of institutionality –what some in Venezuela have had minimally, and the great majority have not had it at all. With this, the infrastructure systems that provide public support for all citizens are not visible in today's Venezuela either.

On the other hand, the third factor that goes hand in hand with economic growth is the creation of foreign exchange, which allows us to interact internationally: importing human talent in its many forms; acquiring in other countries those goods that are not produced locally so that all citizens can consume them; receiving and canceling loans from multilateral entities that finance extensive infrastructure and development projects; and so many other purposes. These currencies should be seen through an increase in the international reserves of the Central Bank of Venezuela and in asset and liability accounts of commercial banks. These foreign

exchange reserves enable absolutely common mechanisms in international trade, such as letters of credit or the use of credit cards issued by Venezuelan banks, to be used anywhere in the world. We are seeing none of this in today's Venezuela.

Thus, when the economy grows, the educated Venezuelan who is achieving professional development has an institutional system that guarantees them property rights over their new house; they manage to use the justice system to settle differences with contractors who remodel their home; they have public physical security that protects them and their family, they begin to have leisure time to bond with other people with shared interests; and they can formally carry out international transactions. This Venezuelan is the result of a growing economy, transforming them, and many others like them, into a middle-class person. That is the result of effective economic growth, and from the point of view of State planning, it must be one of the central objectives. Consequently, those indicators that reflect that a country is lifting people out of poverty in significant numbers, measured as a percentage of the population, are the ones that will tell us if there is economic growth in the country as a whole, and not mere punctual bubbles in zones and classes.

The Venezuela of 2022 does not have mechanisms that would lead one to think that significant amounts of the population, something like more than two million people (which is less than 10% of the population), will be out of poverty in the course of the following three or five years. Nor does it generate tax revenue to build an institutional fabric, much less generate foreign currency through international trade to offset the growing flow of imports, if these were destined for a majority of the 25 million citizens of the country.

For this economic growth to materialize, we need investments in the production of goods and provision of services, as well as up-to-date technology and research institutes; we need clear rules for production and trade to create international trade through treaties with other countries; we need transactional and exchange logistics systems, both physical and payment methods, as well as many other aspects derived from programmed public policies.

Economic growth is also associated with entrepreneurship, which many small businesses generate. These companies require working capital that their partners do not have, so, out of necessity, they use bank financing or seed capital mechanisms. It is difficult for these small companies to arise without transitory tax exemptions that allow them to dedicate their resources to the construction of working capital. They exist in environments where associativity in clusters will enable them to unite in order to access more significant opportunities. This is how Germany grew post-war, South Korea after its war, or China itself when it left Mao and entered its so-called special period. Today's Venezuela prohibits banking intermediation, denies credit, and extorts economically active natural and legal subjects with tax structures that suffocate them, causing the few enterprises that are created to arise informally and not transparently in an economy that stimulates and nourishes them.

Realistically, not naively

Monetary policy is also not used as a savings tool that leads to bank intermediation or to stimulate the competitiveness of local production, as China has done steadily for years. Although it is true that there is a somewhat greater oil export, even if it is a fraction of what it was about 20 years ago when the misnamed "Revolution of the 21st Century" began, these currencies are

used by the State to overvalue the rate of change, thus reducing the competitiveness of local production, whatever its nature, from farm products to raw materials and finished products. The mistaken perception that inflation is stopped by contracting the money supply and freezing the exchange rate is a clear example of public policies whose result rather contracts the economy. From the point of view of tax policy in its tariff aspect, opening imports of finished products while importing raw materials is also a clear demonstration that the planning process is not considering promoting real growth, but rather feeding a particular bubble.

Therefore, if more Venezuelans descend into poverty than overcome it, if there is no creation of an institutional fabric that supports the citizen, if there is no financial system that allows the massive start-up of enterprises, if there are no tax or tariff policies that stimulate the production of local goods, if the economically active subjects hide in the black market for fear of becoming visible, if organizations that encourage associativity or access to the adaptation of technology and research are not created, if the exchange rate favors the import of all kinds of consumer goods at the expense of local production, if there is no creation of education institutes to encourage knowledge and for it to translate into professional growth and social advancement; the question is: What leads us to believe that a bubble around the consumption of a small portion of the population as a consequence of punctually and informally dismantling controls is equivalent to real, sustainable and deep economic growth? The bubble is welcome, but as long as it is assumed realistically and not naively.

Tamara Herrera: “I do not see a path where Venezuela can initiate any solid economic transit without a government nationally agreed upon”

Pedro Pablo Peñaloza

The director of *Síntesis Financiera* states that Nicolás Maduro’s regime decreed a kind of “every man for himself” by applying a “prolonged and bloody” economic adjustment to Venezuelans, which expelled millions from the formal labor system and from the country itself. But presidential elections are already on the horizon, which is why the economist reassures that “there is no fiscal discipline that could contain Maduro’s need to legitimize himself in 2024”.

–Professor Herrera, is Venezuela fixed?

No, not at all. A country that accumulates an excluded population after having lost 75% of its “muscle mass” over seven years cannot be considered fixed. The great news of 2021 is that this downward spiral has been halted as well as the level of

hyperinflation. This is not a sure exit, for it can be resumed at any time, at any time we can return to it.

That body that has lost 75% of its muscle mass has to replenish its labor force, employment, overcome migration, informality, and an enormous inequality that has increased over the years, even more so now that the general rule for the last year and a half has been "every man for himself". During these times, this informality mixed with dollarization allowed the lower-income strata to have income in dollars, without social security of any kind, because that was also swept by the hyperinflation and the policy of severe fiscal control. We are talking about millions of excluded people. Venezuela is far from fixed.

-Can Venezuela at least return to what it was before this complex humanitarian emergency tidal wave?

I do not want to say that we can return to the Venezuela of the past; thinking that way would be a mistake. That nostalgic dream of going back to being what you once were is no longer possible. Real conditions are now different, as well as the geopolitical context, including the credible access to international markets, and access to multilateral entities with confidence in medium and long-term policies.

The economic policy team carries a great burden and its main challenge is to rescue credibility and consolidate it. It is a difficult challenge to meet because the legacy of exacerbated interventionism and overregulation of the economy is very rooted. Despite this Bolivarian laissez-faire, there is always a hint of threat in the rhetoric, and that is enough for any progress beyond the anti-blockade laws to be gradual.

-You talk about the importance of rescuing credibility. What other factor would you identify as essential to try to get out of this hole?

Throughout all these years the Venezuelan economy has weakened, and currently it is not competitive enough. Competitiveness is not a final issue of prices or exchange rates, but rather about how the country has lagged behind technologically. In the same period, the rest of the world has moved forward, which is equivalent to a delay of 20 or 30 years in technological terms. That is what defines productivity and competitiveness.

Venezuela would have to consolidate its growth, and right now I don't see how it is possible without a political change and a national agreement, which sounds commonplace, but which is still absolutely essential.

-Business sectors celebrate the death of expropriations and believe that the economic model imposed by Hugo Chávez is gone, never to return. Do you agree with this assessment?

To say "never" is reckless. In the current context, I believe that the authorities came to their senses only because of the relative financial weakness they faced as a result of the sanctions and the whole chain of events during a fateful 2020, which weakened the oil industry and took the country even further out of competitiveness. All these things made them see reason and finally led to the dismantling of overregulation, which was already exhausted.

The current economic team is "imported", but it is an economic team, even though one may have their differences with them. They understood that the exchange control had to be dismantled, that price controls did not have to be applied in such ways, that

regulations had to be reasonable. Is that enough to say it changed? I honestly don't think so.

I think the challenge is still to establish the credibility that this course will not be taken again. First, the legal framework of price control, and of the powers of taxation and control of different entities has not been dismantled yet. There is a whole legal framework that is not conducive to new economic activities and although the rhetoric has subsided, it has not ceased.

With the recent approval of the reform of the Tax Law on Large Financial Transactions (IGTF), it was enough to say –without using any aggressive rhetoric–: We want to collect more because it turns out that there are companies that have obviously moved their transactions in bolívares to dollars, and we want to put a limit on this financial dollarization, or we want it to be “de-dollarized”. Within the law itself, the ranges of the rate are conducive to panic and are simply inhibitors, and although rationally at this time no one decides to apply a 20% rate on a transaction in foreign currency, the truth is that this possibility is embodied in the law.

The question is: Who is going to operate in this country with such doubts about monetary stability? Despite this stabilizing effort that the government is making thanks to the oil strength that it is gaining, who can come close when there is the legal right to set a 20% rate that can destroy all arguments for any economic intervention?

The same is happening with the banking system: it is gradually easing to increase credit, and it will have to continue to be gradual. The best that could be hoped for is that the government does not alter the course of strengthening the economy, even when we are talking about moderate growth and not big rebounds or long-term

trends. This context has invited those close to the government to facilitate their entry into the economy with assets that cost a tenth of what they used to cost. As more friends of the government get involved, the more hope one has that the rationale of economic functioning will be respected without incurring in activating overregulation.

–Although it won the regional elections, Chavismo once again suffered a significant loss in its number of votes. It's difficult to blackmail a voter with bonus of 7 bolívares and a meaningless salary. What can Nicolás Maduro do in the economic field to strengthen his re-election aspirations?

In *Síntesis Financiera*, we see the presidential elections of 2024 very close. Maduro is aware that he needs to improve his economic performance: make it more harmonious, successful, and credible for actual legitimacy in 2024. For that, I think he will begin to loosen the ferocity of the slowdown in public spending. Maduro made a reduction the size of the State for three years, the longest and bloodiest economic adjustment that I am aware of. Since 2018, there has been an unusual flattening of the salary tabulator for public employees, and salary increases have lagged, not even approaching real compensation. In reality, the expulsion was fostered, a spontaneous exit propitiated from the labor space of the State and the country.

There are different approaches towards the regional elections, a political cost that the government paid for approaching a clean-up of its fiscal accounts, which consisted of slowing down public spending with a reduction that relied heavily on salaries and bonuses, and the firmness of its tax policy. Not even with the pandemic were there reductions, and the taxing unit has been intentionally kept well below inflation so that in the country even

the poorest pay their taxes. Tax pressure has not been abandoned, and, in addition, there is an increase in rates, as seen with the procedures for notaries and registries. That is expected to happen rationally and not brutally.

Through this reorganization they have managed to reduce the monetary financing of the fiscal deficit, which is nothing more than the indebtedness of Petróleos de Venezuela (PDVSA) with the Central Bank to receive the bolívars that PDVSA delivers to the treasury and other public entities. This is not a clean process of restructuring, but that is the direction in which 2022 is going, and we believe that, in that sense, it will stop being bloody in expenses, but it will start to be stronger in collection. In 2023, it will be more acute, and I believe that all the effort of the economic authorities is in that balance between not losing the stabilization effect that they are achieving with the exchange rate and, at the same time, not "recessing" the economy too much with measures as poorly implemented as the IGTf, which are like little torpedoes for a nascent recovery.

The government is aware that the country's infrastructure limitations cannot support a sustained growth acceleration. Although there have been regional improvements, there is no clear recovery in electricity sustainability.

-Is the clock ticking on discipline and reductions? Will they appeal to the usual formula: the cyclone of money?

I think that spending will go up a little more and that they are looking to link it with the private sector and a kind of regional freedom. By the way, the greed of municipal fiscal greed is much stronger than that of Seniat. They are trying to promote this, and they are aware that this can only be achieved accompanied by the private sector. And by the private sector, we mean friends

and relatives who may be there. There is nothing special about that, except for the hyperadvantageous, and therefore unequal, conditions in which it may occur.

I believe that the government will continue relying on bonuses and Clap bags, currently diminished but which have not ceased to exist nor have managed to systematize and increase the proportion of national products. I believe that, outside of that, all the momentum will come through stabilization, and then, inevitably, there will be strong spending. I think there is no fiscal discipline that could contain Maduro's need to legitimize himself in 2024. And in this country campaigning starts a year earlier at least.

-Experts highlight the end of hyperinflation and the slowdown in prices, but my mother says that's a lie because every time she goes to the supermarket, she spends more and brings less. Who is right?

We must not incur in economism. Venezuela remains a country with moderately high inflation. This year there will be a significant deceleration, another one in the inflation scale. Still, they are high inflation scales and, above all, they do not go hand in hand with wage adjustments. It's a precarious road: I can't increase my consumption anymore because my income won't cover it. What we are looking for here is a way to promote growth that increases jobs and increases the income of the population without triggering inflation.

What they are doing now is a filigree job of keeping a low dollar price by selling them in the banking market, making it much cheaper, which means that dollars yield much less and that the workforce is more expensive for companies. Dollars do not yield because they are making them too cheap. So even though

inflation is slowing down, it is growing at a higher rate than the rate at which the bolívar is depreciating. The bolívar is even being appreciated. Since the beginning of the year, it has fallen almost 2%, while inflation in January is calculated at 4.2%. They are now holding off to loosen up further in 2023 and eventually run amok in 2024.

-You were referring to the imported economic team, headed by former Ecuadorian Minister Patricio Rivera, with the support of former President Rafael Correa himself. Will that team be able to work the Venezuelan miracle?

This situation is an indication that they do not want to incorporate competent Venezuelan economists. On the other hand, the national and foreign private sector looks cautiously, if not suspiciously, at the fact that they are Rafael Correa's men, supervised by Rafael Correa.

That economic direction is what made us reach that goal of overcoming hyperinflation. To do so, a prolonged gradual attack of three and a half years was applied, ending bank credit, weakening the banking system, reducing the size of the State, and producing unemployment. But the idea was to achieve by force what you cannot achieve simply because you don't have a government that rescues credibility on future goals.

This strategy sought to generate an increasingly intense shortage of bolívares, prohibiting credit, spending less, and collecting more, so that dollars could not be bought. In this way, the government slowed down the rise of the dollar and inflation. They forcefully created the demand for bolívares in order to pay for services and taxes, while bolívares cannot be found: that is the strategy. Just as Correa was unable to dismantle dollarization in Ecuador, here they are trying to prevent it from advancing.

-How to survive in an economy as distorted as Venezuela's?

There is room for growth, mostly out of necessity. Growing by reopening the doors closed throughout these years of hyperinflation and such strong astringency, applied because the only way to survive was making themselves smaller, is not that simple.

Venezuela has an informality that is surely around 60%. The space to grow and consolidate the economy is vast, and the need is even greater. There are a lot of opportunities for anyone who wants to invest; many things are cheap. The capital exists, national and foreign; there isn't a lack of money, it is there, what is missing is the willingness to put it in a place that is certain. This Ecuadorian economic team is promoting meetings with international investors. It is pointing out all the virtues of the achievements, not the cost at which it was done. But I don't think it's that easy.

The exclusion of millions of people from economic activities is so serious that it matters little to me whether it is this government or a transitional government that achieves it. Still, a transitional government will achieve much more. When I say transition, not to be misunderstood, I mean a government nationally agreed upon. I do not see a path where Venezuela can initiate any solid economic transit, less uncertain, without that national agreement. That would clear all the clouds covering the horizon, and then we could aspire modernity, instead of survival.

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Index

Institutional deficit

Sary Levy-Carciente & Henkel García Uzcátegui 2

Some notes on economic freedom,
property rights and institutional
environment

Carlos García Soto 12

Venezuela, today: Economic growth
without social mobility?

Juan Pablo Olalquiaga 31

Tamara Herrera: "I do not see a path
where Venezuela can initiate any
solid economic transit without a
government nationally agreed upon"

Pedro Pablo Peñaloza 40