

# Democratización



Year 3, Issue 13

Human Rights defenders  
criminalized in present-day  
Venezuela

**Andrea Santacruz Salazar**

Human Rights in Venezuela  
(1999-2021)

**Juan Alberto Berríos Ortigoza**

Totalitarian domination, citizen  
organizations and Human Rights.  
An approach to the case of Venezuela

**Miguel Ángel Martínez Meucci**

Javier Tarazona: "NGO activity  
is the response to perverse actions  
that seek to silence dissident voices"

**Pedro Pablo Peñaloza**

MAY 2021

# Human Rights defenders criminalized in present-day Venezuela

Andrea Santacruz Salazar

Human rights defenders in Venezuela are the men and women who dedicate their lives to promoting and seeking the protection and realization of human rights and fundamental freedoms, peacefully, both in the country and internationally. They do not have to be lawyers, nor do they need to have a university degree that accredits them in that sense; it can be anyone, whether professionalized or not. The parents of Juan Pablo Pernalet, Elvira and José Gregorio Pernalet, an accountant and engineer, are examples of this. Ever since their son was murdered, they have dedicated themselves to promoting the right to life, freedom of expression, peaceful demonstration and assembly.

The right to defend human rights is indicated in article 1 of the *Declaration on the Right and Duty of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, where it is established that it is a right that every person has, individually and collectively.

The right to defend human rights is, in turn, related to the right to freedom of expression and thought, association, assembly, life and physical integrity. All are recognized in the International Covenant on Civil and Political Rights, in its articles 19 and 18, 22, 21, 6 and 7, respectively; as well as in the American Convention on

Human Rights, in articles 13, 16, 15, 4 and 5, respectively. Likewise, they are indicated in the Universal Declaration of Human Rights and in the American Declaration of the Rights and Duties of Man. Therefore, States are obliged under international human rights law to protect human rights defenders and guarantee the exercise of their activities.

With the purpose of “*promoting the effective implementation of the UN Declaration on Human Rights Defenders in cooperation and dialogue with governments, relevant interlocutors and other actors*”<sup>1</sup>, among other aspects, the United Nations Special Rapporteurship on the situation of human rights defenders was created in 2000.

The Rapporteurship on Human Rights Defenders and Justice Operators was created in the Inter-American System for the Protection of Human Rights in 2011, which among its functions has: to support the specialized analysis of complaints or individual petitions presented before the Inter-American Commission on Human Rights (IACHR) related to human rights violations against human rights defenders, to carry out specialized studies, on-site visits, among other activities<sup>2</sup>.

We can thus appreciate the importance given by the systems that protect human rights to human rights defenders, who are fundamental “*for the full existence of democracy and the rule of law*”<sup>3</sup>. It is also necessary to highlight the words of Jesús María Casal:

---

1 United Nations Special Rapporteur on the situation of human rights defenders, accessed March 20, 2021, <https://www.ohchr.org/sp/issues/srhrdefenders/pages/srhrdefendersindex.aspx>

2 Functions and initiatives of the Rapporteurship on Human Rights Defenders and Justice Operators, accessed March 20, 2021, <http://www.oas.org/es/cidh/defensores/mandato/funciones.asp>

3 Comisión Interamericana de Derechos Humanos, *Criminalización de la labor de las defensoras y los defensores de derechos humanos*, accessed March

An unbreakable bond has been forged between democracy, human rights and the rule of law. Today, it is not possible to understand a democratic form of government if it does not include the guarantee of the fundamental freedoms of the people, through the mechanisms and principles of the rule of law...<sup>4</sup>

It is foreseeable, then, that when the rule of law is broken in a State and democracy is undermined, serious human rights violations will be commonplace and will represent a greater challenge for human rights defenders in terms of their work, as well as a greater risk of them becoming victims of State persecution.

#### **a) Constitutional rule of law in Venezuela**

When we speak of the Constitutional State of Law, in general, we are referring to a model of State in which it is limited by valid laws, understood as those that have complied with the necessary formalities for its creation and, in addition, those whose content is consistent with the Constitution<sup>5</sup>.

Every Constitutional State of Law is also characterized by the separation of powers and guarantees and respect for human rights.

Explaining in detail the situation of the Constitutional State of Venezuelan Law goes beyond the purpose of this text, but it is

---

20, 2021, <http://www.oas.org/es/cidh/informes/pdfs/criminalizacion2016.pdf>, 24.

4 Jesús María Casal, *El derecho a vivir en Democracia*, accessed April 23, 2021, <https://elucabista.com/wp-content/uploads/2020/11/El-derecho-a-vivir-en-Democracia-Bases-teoricas.pdf>, 18. Own translation.

5 Luigi Ferrajoli, *Derechos y Garantías* (Madrid: Editorial Trotta, 2010), 26.

necessary to point out that there is no Constitutional State of Law in the country.

This statement is supported on the basis of what has been repeatedly stated by the Inter-American Commission on Human Rights (IACHR)<sup>6</sup> and the Office of the United Nations High Commissioner for Human Rights (OHCHR)<sup>7</sup>, which have expressed the lack of impartiality and independence of the Judicial Power, subject to the interests of the National Executive Power, for which there is no separation of powers; as well as the deep concern of the international community about Human Rights in the country, specifically about the serious, systematic and generalized violations of them, which has led to the creation of the Special Follow-up Mechanism for Venezuela (MESEVE)<sup>8</sup> in the in the Inter-American Protection System, and the Independent International Mission to Determine the Facts about the Bolivarian Republic of Venezuela (MIIDH)<sup>9</sup>.

---

6 Comisión Interamericana de Derechos Humanos, de la Organización de Estados Americanos, *Institucionalidad democrática, Estado de derecho y derechos humanos en Venezuela, Informe de País*, accessed April 20, 2021, <http://www.oas.org/es/cidh/informes/pdfs/venezuela2018-es.pdf>

7 ACNUDH, *Independencia del sistema judicial y acceso a la justicia en la República Bolivariana de Venezuela, también respecto de las violaciones de los derechos económicos y sociales, y situación de los derechos humanos en la región del Arco Minero del Orinoco* (Consejo de Derechos Humanos: A/HRC/44/54, September 29, 2020)

8 Mecanismo Especial de Seguimiento para Venezuela (MESEVE), accessed April 20, 2021, <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/meseve/default.asp>

9 Misión Internacional Independiente de la Determinación de los Hechos sobre la República Bolivariana de Venezuela (MIIDH), accessed April 20, 2021, <https://www.ohchr.org/SP/HRBodies/HRC/FFMV/Pages/Index.aspx>

What the MIIDH states in its detailed conclusions, published on September 15, 2020, is particularly relevant<sup>10</sup>: they confirmed that they had reasonable grounds to believe that human rights violations have occurred in Venezuela and that some of them were crimes against humanity.

The latter had already been considered by the Office of the Prosecutor of the International Criminal Court (OTP), which initiated a preliminary examination ex officio on February 8, 2018, and then received the referral of six States which were part of the Rome Statute. This preliminary examination is known today as Venezuela I, and is in phase three of the four phases that such examination has<sup>11</sup>.

#### **b) “Inside enemy”**

Crimes against humanity are defined in article 7 of the Rome Statute, which establishes the following contextual elements:

1. Acts must be committed as part of an attack.
2. That attack must be systematic or generalized.
3. Against a civilian population.

The same Statute defines an attack as “*a course of conduct involving the multiple commission of acts referred to in paragraph 1*”

---

10 Misión internacional independiente de determinación de los hechos sobre la República Bolivariana de Venezuela, *Conclusiones detalladas de la Misión internacional independiente de determinación de los hechos sobre la República Bolivariana de Venezuela*, accessed April 24, 2021, [https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFMV/A\\_HRC\\_45\\_CRP.11\\_SP.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFMV/A_HRC_45_CRP.11_SP.pdf)

11 Oficina de la Fiscalía de la Corte Penal Internacional, *Informe sobre las actividades de examen preliminar 2020*, accessed April 24, 2021, <https://www.icc-cpi.int/itemsDocuments/2020-PE/2020-pe-report-ven-i-spa.pdf>

*against a civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack”<sup>12</sup>.*

The acts established in paragraph 1 are imprisonment, torture and persecution in connection with any act established in the same article of the Statute<sup>13</sup>.

It is predictable that, when the rule of law is broken, human rights defenders will become victims of persecution, defined in the Rome Statute as *“the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity”*<sup>14</sup>.

MIIDH, in its detailed conclusions, indicated that it had reasonable grounds to believe that some of the crimes against humanity that have occurred in Venezuela are imprisonment, torture<sup>15</sup>, among others; which occur in its understanding as part of an attack against the civilian population and in compliance with two state policies. Here, we will highlight one:

“silencing, discouraging and stifling the opposition to the Government of President Maduro, including targeting people who, through various means, demonstrated their disagreement with the Government or were perceived as

---

12 Estatuto de Roma de la Corte Penal Internacional, accessed April 24, 2021, [https://www.un.org/spanish/law/icc/statute/spanish/rome\\_statute\(s\).pdf](https://www.un.org/spanish/law/icc/statute/spanish/rome_statute(s).pdf)

13 Idem.

14 Idem.

15 Misión internacional independiente de determinación de los hechos sobre la República Bolivariana de Venezuela, *Conclusiones detalladas de la Misión internacional independiente de determinación de los hechos sobre la República Bolivariana de Venezuela*, accessed April 24, 2021, [https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFMV/A\\_HRC\\_45\\_CRP.11\\_SP.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFMV/A_HRC_45_CRP.11_SP.pdf), 434.

contrary to it, as well as their family and friends for being associated with them...”<sup>16</sup>

These people are considered inside enemies. The MIIDH’s detailed conclusions indicate that on April 1, 2015, General Néstor Reverol –at that time General Commander of the National Guard– circulated a manual containing rules and procedures for the control of public order. In it, the inside enemy was defined as “those individuals who may be nationals or foreigners who are in the national territory and maintain stances opposed to the policies of the national government”<sup>17</sup>.

The OMCT, COFAVIC, the Caracas Vicariate for Human Rights and the Center for Defenders and Justice, in their report Venezuela, define “inside enemies” as “any person who opposes, criticizes or questions the government’s authority”<sup>18</sup>, as well as highlight that:

“The State articulates a discourse of conflict and discredit any person or organization that is not aligned with certain criteria, generating a climate of extreme hostility, in this case towards defenders, limiting their operation and consequently

---

16 Misión internacional independiente de determinación de los hechos sobre la República Bolivariana de Venezuela..., 435.

17 Misión internacional independiente de determinación de los hechos sobre la República Bolivariana de Venezuela, *Conclusiones detalladas de la Misión internacional independiente de determinación de los hechos sobre la República Bolivariana de Venezuela*, accessed April 24, 2021, [https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFMV/A\\_HRC\\_45\\_CRP.11\\_SP.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFMV/A_HRC_45_CRP.11_SP.pdf), 60.

18 OMCT, COFAVIC, la Vicaría de Derechos Humanos de Caracas y el Centro para los Defensores y la Justicia, Venezuela “*enemigos internos*”, accessed April 24, 2021, [https://www.omct.org/files/2005/03/25728/venezuela\\_informe\\_2020.03\\_informe\\_completo.pdf](https://www.omct.org/files/2005/03/25728/venezuela_informe_2020.03_informe_completo.pdf), 47.



affecting the rights of the victims and the search for truth, justice and reparation”<sup>19</sup>.

On March 10, 2021, during its oral update, the MIIDH professed concern about the expansion of the term “inside enemy” in Venezuela and the growing persecution “of people and non-governmental organizations dedicated to humanitarian and human rights work”<sup>20</sup>.

### c) Criminalization for defending rights

In 2015, the IACHR published a report entitled *Criminalization of the work of human rights defenders*<sup>21</sup>, which suggests that, in the region, human rights defenders are systematically subjected to criminal proceedings without any reason, with the sole purpose of “paralyzing or delegitimizing the causes they pursue”<sup>22</sup>.

The situation in Venezuela seems to be particularly alarming since said criminalization occurs in a context of Complex Humanitarian Emergency, in which there has been an institutional breakdown that does not allow victims of human rights violations to access instances of justice and reparation

---

19 OMCT, COFAVIC, la Vicaría de Derechos Humanos de Caracas y el Centro para los Defensores y la Justicia, ..., 47.

20 Misión Internacional Independiente de Determinación de los Hechos sobre la República Bolivariana de Venezuela, *Declaración de Marta Valiñas, Presidenta de la Misión Internacional Independiente de determinación de los hechos sobre la República Bolivariana de Venezuela, en la 46ª sesión del Consejo de Derechos Humanos*, accessed April 25, 2021, <https://www.ohchr.org/SP/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26872&LangID=S>

21 Comisión Interamericana de Derechos Humanos, *Criminalización de la labor de las defensoras y los defensores de derechos humanos*, accessed March 20, 2021, <http://www.oas.org/es/cidh/informes/pdfs/criminalizacion2016.pdf>

22 Comisión Interamericana de Derechos Humanos, *Criminalización de la labor de las defensoras y los defensores de derechos humanos*, accessed March 20, 2021, <http://www.oas.org/es/cidh/informes/pdfs/criminalizacion2016.pdf>, 12.

since the criminal justice system is used as a tool for political persecution –together with a non-Constitutional State of Law, and with serious, systematic and generalized human rights violations, some of which have even reached the threshold of crimes against humanity, as expressed by the MIIDH and the OTP.

The use of the criminal justice system as a tool for political persecution is evidenced in the constant arbitrary detentions, short-term forced disappearances and other illegal acts endorsed and even promoted by the Public Ministry and the courts of the Republic, as per the victims' testimonies, collected from their professional practice and what has been stated in different reports from both the OHCHR, the IACHR and the MIIDH.

For example, in 2018, the General Director of the Community Ambassadors Foundation was transferred to the headquarters of the Bolivarian National Intelligence Service (SEBIN) in Helicoide. He was deceived by the officials, who assured him that he would only go in for an interview. He was arbitrarily detained from January 31 to June 1, even though they had a judicial release ticket from April 2. The criminal process against him for the alleged conduct of public instigation and conspiracy is still being processed, even though he has not committed any crime.

More recently, on January 12, 2021, five members of the organization Azul Positivo from Zulia were arbitrarily detained. They were allegedly charged for money laundering, fraudulent use of smart cards with payment cards and association to commit a crime for their humanitarian work known and supported by United Nations agencies such as UNAIDS<sup>23</sup>. Various international

---

<sup>23</sup> For more information about this case, see: <https://accesoalajusticia.org/criminalizacion-de-la-asistencia-humanitaria-en-venezuela-el-caso-azul-positivo/>

organizations spoke about this case, but one statement from OHCHR stands out:

“This is the second time in the last two months that the office of a humanitarian NGO has been raided and its staff questioned, allegedly due to funding received from abroad. States should not impose undue restrictions on the ability of NGOs to access funding from domestic, foreign or international sources. It is even more disconcerting that these incursions are accompanied by statements by public officials calling for the criminalization of civil society organizations and their staff”<sup>24</sup>.

In its 2020 annual report, the Center for Defenders and Justice indicated that it had documented 303 attacks and security incidents against human rights defenders or organizations. 272 occurred after the declaration of a state of alarm due to the COVID-19 pandemic, most of the cases being stigmatization (198), intimidation and harassment (47). But, it should be noted that there were 5 raids and 3 criminal or judicial processes<sup>25</sup>.

It is highly worrying that this same organization reported on January and February 2021 99 and 28 cases, respectively, which shows that at the beginning of 2021 there has been a “sharpening

---

24 OHCHR, Comment of the spokesperson for the UN Office for Human Rights Marta Hurtado on Venezuela, accessed April 25, 2021, <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=26660&LangID=S>

25 Centro para los defensores y la justicia, Situación de las personas defensoras de Derechos Humanos en Venezuela, accessed April 25, 2021, <https://centrodefensores.org.ve/wp-content/uploads/2021/03/INFORMECDJ-2020.pdf>

of the Criminalization Policy for the defense and demand of human rights”<sup>26</sup>.

Human rights defenders are not anyone’s enemies, they are not criminals, they are people who by exercising their right to defend rights help others in the search for justice, truth, reparation and guarantees of non-repetition. In addition, they are a key element for the rule of law and democracy. Attacking them through criminalization evidences the nature of the State today.

---

26 Centro para los defensores y la justicia, *REPORTE CDJ | Situación de las personas defensoras de derechos humanos en Venezuela – ENERO 2021*, accessed April 25, 2021, <https://centrodefensores.org.ve/?p=153> y *REPORTE CDJ | Situación de las personas defensoras de derechos humanos en Venezuela – FEBRERO 2021*, accessed April 25, 2021, <https://centrodefensores.org.ve/?p=156>

## References

- ACNUDH, *Independencia del sistema judicial y acceso a la justicia en la República Bolivariana de Venezuela, también respecto de las violaciones de los derechos económicos y sociales, y situación de los derechos humanos en la región del Arco Minero del Orinoco* (Consejo de Derechos Humanos: A/HRC/44/54, September 29, 2020).
- ACNUDH, *Comentario de la portavoz de la Oficina de la ONU para los Derechos Humanos Marta Hurtado sobre Venezuela*, accessed April 25, 2021, <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=26660&LangID=S>
- Centro para los defensores y la justicia, *Situación de las personas defensoras de Derechos Humanos en Venezuela*, accessed April 25, 2021, <https://centrodefensores.org.ve/wp-content/uploads/2021/03/INFORMECDJ-2020.pdf>
- Centro para los defensores y la justicia, *REPORTE CDJ, Situación de las personas defensoras de derechos humanos en Venezuela – ENERO 2021*, accessed April 25, 2021, <https://centrodefensores.org.ve/?p=153>
- Centro para los defensores y la justicia, *REPORTE CDJ, Situación de las personas defensoras de derechos humanos en Venezuela – FEBRERO 2021*, accessed April 25, 2021, <https://centrodefensores.org.ve/?p=156>
- Comisión Interamericana de Derechos Humanos, *Criminalización de la labor de las defensoras y los defensores de derechos humanos*, Accessed March 20, 2021, <http://www.oas.org/es/cidh/informes/pdfs/criminalizacion2016.pdf>

Comisión Interamericana de Derechos Humanos, de la Organización de Estados Americanos, *Institucionalidad democrática, Estado de derecho y derechos humanos en Venezuela, Informe de País*, accessed April 25, 2021, <http://www.oas.org/es/cidh/informes/pdfs/venezuela2018-es.pdf>

Declaración sobre el derecho y el deber de los individuos, los grupos y las instituciones de promover y proteger los derechos humanos y las libertades fundamentales universalmente reconocidos, de 09 de diciembre de 1998, de la Asamblea General de Naciones Unidas (Resolución A/RES/53/144, del 8 de marzo de 1999), accessed March 11, 2021, [https://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration\\_sp.pdf](https://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration_sp.pdf)

Estatuto de Roma de la Corte Penal Internacional, accessed April 24, 2021, [https://www.un.org/spanish/law/icc/statute/spanish/rome\\_statute\(s\).pdf](https://www.un.org/spanish/law/icc/statute/spanish/rome_statute(s).pdf)

Funciones e iniciativas, de la Relatoría sobre Defensoras y Defensores de Derechos Humanos y Operadores de Justicia, accessed March 20, 2021, <http://www.oas.org/es/cidh/defensores/mandato/funciones.asp>

Luigi Ferrajoli, *Derechos y Garantías* (Madrid: Editorial Trotta, 2010), 26.

Jesús María Casal, *El derecho a vivir en Democracia*, accessed April 23, 2021, <https://elucabista.com/wp-content/uploads/2020/11/El-derecho-a-vivir-en-Democracia-Bases-teoricas.pdf>, 18

Mecanismo Especial de Seguimiento para Venezuela (MESEVE), accessed April 20, 2021, <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/meseve/default.asp>

Misión Internacional Independiente de la Determinación de los Hechos sobre la República Bolivariana de Venezuela (MIIDH), accessed April 20, 2021, <https://www.ohchr.org/SP/HRBodies/HRC/FFMV/Pages/Index.aspx>

Misión internacional independiente de determinación de los hechos sobre la República Bolivariana de Venezuela, *Conclusiones detalladas de la Misión internacional independiente de determinación de los hechos sobre la República Bolivariana de Venezuela*, accessed April 24, 2021, [https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFMV/A\\_HRC\\_45\\_CRP.11\\_SP.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFMV/A_HRC_45_CRP.11_SP.pdf) 60, 434,435

Misión Internacional Independiente de Determinación de los Hechos sobre la República Bolivariana de Venezuela, *Declaración de Marta Valiñas, Presidenta de la Misión Internacional Independiente de determinación de los hechos sobre la República Bolivariana de Venezuela, en la 46ª sesión del Consejo de Derechos Humanos*, accessed April 25, 2021, <https://www.ohchr.org/SP/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26872&LangID=S>

OMCT, COFAVIC, la Vicaría de Derechos Humanos de Caracas y el Centro para los Defensores y la Justicia, *Venezuela "enemigos internos"*, accessed April 24, 2021, [https://www.omct.org/files/2005/03/25728/venezuela\\_informe\\_2020.03\\_informe\\_completo.pdf](https://www.omct.org/files/2005/03/25728/venezuela_informe_2020.03_informe_completo.pdf), 47.

Oficina de la Fiscalía de la Corte Penal Internacional, *Informe sobre las actividades de examen preliminar 2020*, accessed April

25, 2021, <https://www.icc-cpi.int/itemsDocuments/2020-PE/2020-pe-report-ven-i-spa.pdf>

Relatora Especial sobre la situación de los defensores y defensoras de los derechos humanos, de las Naciones Unidas, accessed March 20, 2021, <https://www.ohchr.org/sp/issues/srhrdefenders/pages/srhrdefendersindex.aspx>



## Conclusion

Thus concludes the thirteenth issue of *Democratización*, dedicated to Human Rights in Venezuela as we open our pages to the efforts of people and institutions that work to achieve justice in our country. The four articles included in this issue offer keys for reflection and collect testimonies that will feed our historical memory. At the FORMA Institute, we understand that the systematization of information and its subsequent analysis are antidotes against painful silence and harmful forgetfulness. This is our way of accompanying those who suffer the most and raising awareness about the seriousness of the present moment.

It is difficult to estimate the real impact of the sustained and systematic violation of Human Rights in our country. Knowing the depth of the damage caused and its personal and social dimensions requires in-depth studies. We want to encourage researchers, politicians and intellectuals not to rest on this purpose. The history of countries that have overcome episodes of repression and violence like ours teaches us that this work is valuable and irreplaceable. The first step towards healing is knowing the truth. In this sense, Venezuelan Human Rights defenders are the precursors of the necessary reconciliation that our country will eventually demand.

From what has been stated in previous pages, we can narrow down three ideas that we consider fundamental. First, the complex humanitarian crisis is a consequence of the systematic violation of the Human Rights of Venezuelans. Second, the abusive disposition of the Venezuelan State seriously affects the social fabric and imposes challenges for political articulation. And

#### Democratization

third, civil society and the political community are irreplaceable spaces for gathering information, accompanying the victims and alleviating the pain caused.