



Democratización

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Human rights in Venezuela (1999-2021)

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The erosion of human rights guarantees provided for in the 1999 Constitution has been the result of a series of actions aimed at preserving political power by the elite that has ruled the country throughout the last two decades. Both facts and legislative acts, executive decrees and judicial decisions have converged in restricting or suppressing freedoms and equality, which are rights-values whose protection, respect and guarantee are fundamental to achieve individual and collective well-being. This essay makes a brief reference to some situations that have led to the complex humanitarian emergency that Venezuela suffers. Some of these situations imply that if the emergency is not addressed promptly, it could prolong its effects due to the structural nature that is evident in the disregard of rights.

I. Human rights in the 1999 Constitution

The characteristic feature of the constitutional protection of human rights is its fundamental meaning for the order established in the Constitution. Article 2 establishes that *“Venezuela is a democratic and social State of Law and Justice, which advocates for life, freedom, justice, equality, solidarity, democracy, social responsibility and, in general, the pre-eminence of human rights, ethics and political pluralism as superior values of its legal system and its actions”*. In agreement with this premise, article 3 contemplates that *“The*

State has the essential purpose to ensure the defense and development of the people and respect for their dignity, the democratic exercise of the popular will, the construction of a just society and devotee of peace, the promotion of prosperity and well-being of the people, and the guarantee of compliance with the principles, rights and duties enshrined in this Constitution”.

The catalog of human rights is broad, heterogeneous and open, since not only does it include the content of the treaties ratified by the republic on this matter, but also because constitutional protection extends to those rights inherent to the human person that are not expressed specifically in any normative instrument, and does not condition its enforceability on its regulation (Article 22). These issues correspond to a conception of rights based on the principle of progressivity, mentioned along with the principles of non-discrimination, inalienability, indivisibility and interdependence, among the foundations of the guarantees that the Venezuelan State must provide (Article 19). These guarantees are specified, among other means, in specific enforceability instruments such as protection (Article 27) and petition before international bodies (Article 31).

However, from the outset, the Constitutional Chamber of the Supreme Court of Justice limited the scope of this protection. Although the Chamber cleared the implementation of some judicial remedies that were not regulated (such as the review of sentences or the protection of collective or diffuse rights and interests), its conception on the guarantee of rights was based on an alleged antagonism between the Constitution and international law that had to be resolved by ensuring the prevalence of the domestic legal order (among others, judgments 1309/2001, of July 19, and 1942/2003, of July 15). This conditioned the value of the treaties and the decisions of international bodies for the

protection of human rights and laid the basis for the arguments to declare as unenforceable some decisions of the Inter-American Court of Human Rights (Inter-American Court) (among others, judgments 1939/2008, of December 18, on the Apitz Barbera et al. case; 1547/2011, of October 17, on the Leopoldo López Mendoza case; and 1175/2015, of September 10, on the Granier et al. case), as well such as the decision to denounce the American Convention on Human Rights in September 2012, and the Charter of the Organization of American States in 2017.

Other structural aspects affected the independence of the judicial branch, made up mostly of provisional judges, and that of other control bodies such as the Ombudsman's Office and the Public Ministry, led by officials close to the government elite. As a consequence, the guaranteeing purpose of these institutions was diverted towards the preservation of political power.

II. Overview of the situation on human rights

The issue of human rights in the country has gradually worsened. Their disregard and their guarantees have had several phases, with various manifestations. In fact, during the first decade, controls, restrictions and eventual suppressions of certain freedoms, such as economic ones, were justified by the government in the need to ensure social welfare. This social welfare would have been evidenced in greater food security, better access to education, health and social security services, more employment, increased consumption of goods and services, among other demands that government propaganda still proclaims. Altogether, according to the official discourse, endorsed by agencies such as UNDP, UNESCO or FAO, historical inequality gaps would have been reduced. However, this apparent well-being could not be sustained because it depended on the high oil income of this

time, not on controls or restrictions. In fact, at the end of the oil boom, such controls and restrictions intensified in an increasingly authoritarian context and widespread corruption practices that have resulted in a lack of awareness of all rights and their guarantees.

By way of illustrating the systematic violation of freedoms and equality as rights-values, some situations that have arisen in the last two decades (1999-2021) will be presented, surely not exhaustively.

1. Constant threats to life and freedom

The dignity of human life is a constant idea in the constitutional text. It's a "*superior value of the legal system*", such as freedom and equality, which serves as the basis for the democratic and social State of law and justice. In an absolute sense, the Constitution stipulates that "*The right to life is inviolable. No law may establish the death penalty, or any authority to apply it*" (Article 43). Despite this commandment, a policy of extrajudicial executions has defined citizen security plans, highlighting the development of the Operation for the Liberation of the People (2015-2017) and, more recently, the creation of the Special Actions Forces of the Bolivarian National Police (FAES), whose operations tend to be of excessive violence.

Likewise, practices contrary to due process, in violation of personal freedoms, have been carried out to control the population and punish any manifestation of dissent. Cases of raids, arbitrary detentions, torture, cruel, inhuman or degrading treatment –on which the Inter-American Court ruled in the Díaz Peña case (June 26, 2012)– and forced disappearances have been routine, even more so since the antigovernment protests of 2014. This has meant that the Office of the United Nations High Commissioner for Human

Rights (OACNUDH) has devoted its attention to the national situation since 2017 through the publication of several reports¹, as well as the United Nations Human Rights Council, which created an Independent International Mission to Determine the Facts about Venezuela with the objective of investigating this type of violations, concluding in a first report released in September 2020 that had “*reasonable grounds to believe*” that crimes against humanity have been committed². Likewise, at the regional level, the Inter-American Commission on Human Rights (IACHR) has published successive reports and alerts on the general situation of rights in the country³, and a Panel of Independent International Experts found “*sufficient grounds*” on crimes against humanity in 2018⁴.

On the other hand, cases of human trafficking and modern slavery have increased, affecting girls and women to a greater extent, especially in areas controlled by organized crime groups in Guajira, Guayana, the west coast and the northeast.

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- 1 The first of them, “Human rights violations and abuses in the context of protests in the Bolivarian Republic of Venezuela from April 1 to July 31, 2017”, can be consulted at https://www.ohchr.org/Documents/Countries/VE/HCReportVenezuela_1April-31July2017_SP.pdf. The last one, distributed on July 2, 2020, contains the “Results of the investigation of the complaints of possible violations of the human rights to life, liberty and physical and moral integrity in the Bolivarian Republic of Venezuela” between June 2019 and May 2020, can be read at https://www.ohchr.org/Documents/Countries/VE/A_HRC_44_20_UnofficialVersion_SP.pdf. The Oacnudh has an office in Venezuela since mid-2019.
 - 2 Detailed Mission findings can be reviewed at https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFMV/A_HRC_45_CRP.11_SP.pdf.
 - 3 The last of these reports is chapter IV.B of the 2020 annual report, the content of which can be consulted at <https://www.oas.org/es/cidh/docs/anual/2020/capitulos/IA2020cap.4b-VE-es.pdf>.
 - 4 Both the report and its executive summary are available at https://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-031%2F18.

Specifically, the protection of the personal integrity and life of women is an obligation that has not been met by the Venezuelan State. In this regard, the case of Linda Loaiza López Soto stands out, which was heard by the Inter-American Court (September 26, 2018), in the midst of an excessive increase in femicides and other forms of violence against girls and women, more intensified during the pandemic.

Identity has also been a right whose violation has been persistent in recent years. Corruption is common to process any identity document, in particular birth, marriage and death certificates, identity cards and passports, affecting both Venezuelans in the country and abroad as they are subjected to situations of extortion or defenselessness.

2. A country without access to justice

The right to due process and, in particular, to judicial protection has been violated in various ways. The political dependence of judges, as well as the precarious training of judicial officials, and the neglect of court facilities –some without electricity service–, among other problems that are now very visible, have led to an unprecedented crisis of the judicial branch. In fact, in some regions its operation has been intermittent for some years, seriously violating the right to effective judicial protection in a permanent context of legal insecurity, corruption and abuse of power.

3. Economic freedom and property amid increasing state interventionism

Socialism as a state ideology has been imposed by laws and executive decrees. This has been supported, although without clear mentions of socialism, through judicial decisions of the Constitutional Chamber that have authorized State

interventionism and the submission of the Central Bank of Venezuela to the will of the government⁵.

Although the power of economic regulation is provided for in the Constitution, its execution has been disproportionate: controls on the exchange rate, prices, imports and exports, production and demand for goods and services have been established without any correspondence to technical criteria. Meanwhile, the policy of expropriations and reserve declarations has also been developed arbitrarily, in violation of the constitutional guarantees of property and economic freedom⁶. An impoverished population, with humanitarian needs, has been the result of all this.

4. Reduction of civic space and obstacles to citizen participation for political change

The right to association, essential for the development of civic space, has also been interpreted restrictively by the Constitutional Chamber. These interpretations have referred to the financing of civil society organizations with foreign funds (judgment 1395/2000, of November 21) and, specifically, to consider that, under certain circumstances, those who had this support do

5 J.A. Berríos Ortigoza, "Interpretación judicial de los derechos económicos en Venezuela (2000-2016)" in *Cuestiones Jurídicas* Vol. 11 Number. 2 (Maracaibo: Universidad Rafael Urdaneta, 2017), 11-52.

6 In more recent years, certain companies that had been expropriated by the government have been privatized, among others, the Bicentenario supply chain, without having transcended the conditions of these negotiations. As an example of this, in the Official Gazette number 41,275, of November 9, 2017, the ruling number 002-2017 of the Ministry for Food was published, "by means of which the Bidding Committee for the Sale and Exchange of Public Goods of the mercantile company Red de Abastos Bicentenario, SA, (RABSA), made up of the citizens mentioned therein, is constituted".

not have the right to present petitions before courts (judgment 796/2010, of July 22).

Subsequently, regulations regarding international cooperation have been issued through the *Law for the defense of sovereignty and national self-determination*, which prohibits it for civil society organizations that promote political rights⁷; a decree of state of exception that instructed the audit of agreements signed by individuals and civil organizations for the execution of projects with foreign financing⁸, and an administrative ruling that obliges civil organizations to sign up in a registry related to organized crime and terrorism⁹, all this outside of international standards¹⁰. At the same time, there have been raids and arrests of human rights activists and humanitarian workers from United Nations partner organizations within the framework of the humanitarian response that has been taking place since 2019.

7 Published in the extraordinary number 6,013 of the Official Gazette of the Republic, of December 23, 2010.

8 Article 2.18 of Decree No. 2,323, of State of Exception and Economic Emergency, published in the 6,227th extraordinary number of the Official Gazette of the Republic, of May 13, 2016..

9 It is the order of the National Office against Organized Crime and Terrorism Financing number ONCDOFT-001-2021 “by means of which the Regulations for the Unified Registry of Obligated Subjects before the National Office against Organized Crime and Terrorism Financing is issued. (RUSO-ONCDOFT) ”. It was published in number 40,098 of the Official Gazette of the Republic, of March 30, 2021. It was reprinted “due to failure in the originals” through ruling ONCDOFT-002-2021, published in number 42,118 of the Official Gazette of the Republic, of May 3, 2021.

10 Among the standards, the document “Protection of Civic Space and Right of Access to Resources” stands out, which was published in 2015 by the United Nations Special Rapporteur on the right to freedom of peaceful assembly and association (2015), the content of which can be consulted in <http://freeassembly.net/wp-content/uploads/2015/03/Principios-Generales-Spanish-Nov.-13.pdf>.

These actions correspond to a policy of social control and persecution whose first objective was to obstruct and then prevent the participation of activists and opposition political parties through various strategies that have involved the National Electoral Council, the Supreme Court of Justice and the Comptroller General of the Republic. Thus, among other measures, in the context of electoral processes, the registration of political parties by the CNE has been denied, and boards of directors have been intervened through judicial decisions.

These are actions that have the purpose of preventing political change, including the postponement or advancement of elections, or the allocation of seats in contravention of the principle of proportionality. But not only have the conditions under which the elections have been held deteriorated to discourage participation, but the authority of elected officials from opposition parties has also been disregarded in various ways. Emblematic cases are those of the National Assembly of 2015, or the suppression of the Metropolitan District of Caracas, for being under opposition management.

However, not only have leaders been persecuted through disqualifications or criminal trials (even, in ignorance of parliamentary immunity), but, in general, any critical, individual or collective manifestation or initiative contrary to the interests of the governmental elite poses a risk of persecution. This persecution of citizens, at a time implemented through databases containing the identity of those who requested the 2004 presidential recall referendum (on what the Inter-American Court ruled in the San Miguel Sosa case and others through a judgment of 8 February 2018), has evolved with the homeland system, a registry with a totalitarian vocation that is presented as a means for social protection. The nationalization of the forms of community

organization through the laws on communal power issued since 2006 has also been of a totalitarian nature.

The obstacles have also violated the right to demonstrate and have been expressed in a policy of disproportionate repression carried out by both the police and the military, as well as armed civilian groups loyal to the government. The experience of the national days of protest of 2002, 2013, 2014 and 2017 shows that the government's reactions have been increasingly violent, but maintaining the pattern of cases of raids, arbitrary detentions, torture, cruel inhuman or degrading treatment, forced disappearances, homicides, among other serious human rights violations, while the responsible officials have not been investigated or punished. It should be noted that the right to demonstrate is regulated in the *Law on political parties, public meetings, and demonstrations* (published on December 23, 2010), providing that for its exercise it is only required to notify the first civil authority of the locality, with the purpose of ensuring security conditions for the protest. However, the Constitutional Chamber in judgment 276/2014, of April 24, established that it was mandatory to request an authorization without the granting of which the demonstration was illegal. In addition to this unconstitutional restriction, the defense ministry issued a resolution (number 008610, of January 27, 2015) that authorized the carrying and use of firearms to control demonstrations, despite the fact that the National Armed Forces have no constitutional competences relating to public order (Article 332 of the Constitution).

The right of assembly has also been limited in practice in spaces managed by State entities, be it squares, parks or cultural centers, when it is considered that the organizers or the activity contravene the political ideology of the ruling elite.

5. Policy of censorship of free expression of thought

Free expression, and with it the rights to inform and express opinions, have also been subject to illegitimate restrictions that have smoothed the transition to authoritarianism. The censorship has guided both interpretations of the Constitutional Chamber on the scope of these rights (judgments 1013/2001, of June 12, and 1942/2003, of July 15), as well as laws of sanctioning purpose such as the *Law of social responsibility of radio and television* (which would be extended to electronic media in 2011¹¹), and the *Law against hatred, for peaceful coexistence and tolerance* (issued by the National Constituent Assembly of 2017¹²).

A diversity of practices have also been enforced in order to curtail the freedom to inform¹³, to prosecute journalists, cartoonists and columnists, or people who issue critical messages on social media or private communication applications, to shut down radio and television stations –sometimes breaking into their headquarters and confiscating their production and broadcasting equipment–, or to prohibit cable television systems from offering some channels under the threat of revoking their permits. Also, administrative or judicial procedures have been implemented to force the sale of communication media to groups of businessmen linked to the government. The written press has almost disappeared due to the state monopoly on the import and sale of paper, having to migrate to web platforms that, in certain cases, have been blocked for access from Venezuela. As a result, in recent years, the way to access information has been limited to

11 Published in number 39,610 of the Official Gazette of the Republic of February 7, 2011.

12 Published in number 41,274 of the Official Gazette of the Republic of November 8, 2017.

13 In this regard, the Ríos et al. and Perozo et al. cases, decided by the Inter-American Court on January 28, 2009, can be consulted.

radio and television stations run by the state while privately run ones are subject to censorship.

On the other hand, free expression of thought, ideas or opinions finds no place in State institutions. Public officials and employees have been forced to participate in public demonstrations in support of the government, as well as to use certain slogans in official or internal communications, including the military sphere with the endorsement of the Constitutional Chamber (judgment 651/2014, of 11 of June).

6. Vulnerability at work

Work conditions have also worsened throughout the past two decades, in a context of government decisions that have not been in agreement with either workers or employers. The government has ignored trade unions of worker or business organizations, persecuted their leaders and forced others to impose collective agreements or salary scales. In 2012, the President of the Republic reformed the organic labor law by decree-law, despite the fact that according to the fourth transitory provision of the Constitution, this was the duty of the National Assembly.

Over time, the minimum wage –the basis for wage scales and pensions– has become increasingly derisory, encouraging modern slavery practices, both in urban and rural areas, or groups of workers, such as those in public education, to leave their jobs. In fact, the organic law on social security, amended on various occasions between 2002 and 2012, has not been implemented. Instead, a policy of social missions was developed, which, in recent years, has been linked to the *homeland system*, so that instead of responding to an idea of universal social protection, it is used to discriminate for political reasons.

7. Poor education

In recent years and, even more so, during the pandemic, structural failures have been evidenced at all levels and modalities of education. There is notable inequality between the few services that maintain their quality standards and many others, either private or public, urban or rural, affected by the massive desertion of students and teachers, and the deterioration or abandonment of their facilities. Announced achievements such as the total literacy of the population, or greater educational coverage, were supported by social programs of dubious quality, such as educational missions or the creation of universities without an academic project or infrastructure. The latter also ensured a political majority for the government within the National Council of Universities, reducing the self-government of autonomous public universities.

This university autonomy, moreover, has been disregarded through executive resolutions and judicial decisions. For this purpose, the government has appointed rectorial authorities to be elected and, more recently, has assumed the financial administration of university personnel. Before that, it reformed the organic law of education in 2009 and tried to modify the university law in 2010 to broaden the definition of the concept of university community and seek a political advantage in the elections of its authorities. After a series of judicial and political disputes, there have been no elections in autonomous public universities.

8. A country without a health system

The pandemic has revealed the precariousness of health services. The most important hospitals, considered so due to their installed capacity for care, have suffered serious deteriorations

throughout the last two decades. Problems not only include corruption in the management of these centers: contaminated facilities, shortage of supplies and medicines, insufficient medical equipment, outdated or damaged technology, failures in the provision of drinking water and electricity, are some of the aspects that stand out, as well as the emigration of health personnel, especially medical specialists. Persecution against medical and nursing personnel who protest or disclose this type of situation has also been common.

Meanwhile, vulnerable groups are often neglected: among others, children, pregnant women, older adults and people with chronic diseases. There are no policies that respond to their particular needs. Likewise, the food insecurity suffered by most families has resulted in situations of malnutrition that are compromising, in particular child development and, therefore, the future of the country.

9. Environmental damage

Although it does not usually stand out from the human rights violations that have been committed in the country in the last two decades, the environmental situation is one of the most worrying. The consequences of an extractive economic policy without considering the environmental impact are notable in oil areas where, among other pieces of evidence, it is common to observe permanent spills in bodies of water.

Faced with the crisis in the national hydrocarbon industry, the State opted for mining exploitation in the Orinoco region, which is under the control of organized crime groups, damaging not only the Guiana ecosystem but also the indigenous peoples who live there, in a context where violations of all kinds are committed,

as well as the most severe cases of modern slavery and human trafficking practices documented.

On the other hand, the deficient management of garbage and waste by local governments has generated an environmental problem of contamination that further affects the precarious quality of life of Venezuelans.

10. Discrimination and marginalization of indigenous peoples

Ignorance of indigenous peoples and their rights has been recurrent. Their habitats have not yet been demarcated. Instead, their territories have been militarized and occupied for the exploitation of the natural resources found there. Since 2010, the border security policy has involved the transfer of a greater number of military officials to indigenous areas, where all kinds of abuses have been documented, among others, raids, arbitrary detentions, extrajudicial executions and forced disappearances, especially in Guajira, Guayana and Amazonas, where there are also often struggles for territorial control between organized crime groups.

Hunger, unhealthy conditions, poverty, lack of opportunities for life projects and isolation define the marginalization to which these peoples have been subjected.

On the other hand, electoral regulation has affected its representativeness. This has been more noticeable since 2015, when the election of some of its representatives was disregarded in order to annul the National Assembly with an opposition majority, and then in 2017 and 2020 when the voting of the representatives before the constituent assembly and the National Assembly was carried out through a mechanism not provided for

in the electoral law and contrary to the traditions of the indigenous peoples, which involved, among other irregularities, indirect and non-secret voting.

III. Final considerations

The result of these years of persistent human rights violations has led to a complex humanitarian emergency in the midst of an ongoing political persecution. The response to the emergency, managed by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), with the participation of UNHCR, FAO and UNICEF, has been insufficient, and their local partners often face obstacles in carrying out humanitarian work. In fact, in January 2020, the headquarters of an organization in Zulia, Azul Positivo, was raided and five of its activists arrested and prosecuted because, in the government's opinion, they had committed the crime of money laundering for implementing a money transfer program for food in vulnerable communities. As a consequence, by the decision of OCHA, this type of program was suspended across the country. It is evident that in these circumstances it is even more difficult for the emergency to be solved.

The role of the Oacnudh, as well as the Human Rights Council, and the Independent International Mission to Determine the Facts about Venezuela, is fundamental to ensure that the validity of human rights is restored in the country. The same can be said of instances such as the IACHR and the Inter-American Court. Even more so is the action of civil society organizations, whose perseverance and firmness have managed to fix the attention of these international organizations in Venezuela. Safeguarding them from government harassment is a guarantee that the country can have a better future.

The investigation of the human rights violations that have occurred, as well as the punishment of those responsible, and reparation to the victims, is the main challenge of this time and will mark the fate of the next Venezuelan century.

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

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