

Venezuela
Contributions of the Centre for Human Rights of Universidad Católica Andrés Bello
(CDH-UCAB), with occasion of the Universal Periodic Review

CDH-UCAB was founded in November 1999, as a University Centre which combines research, teaching, outreach and defending emblematic human rights cases. Its lines of action are: right to political participation, freedom of expression, rights of refugees, asylum-seekers and migrants, and international systems of protection of human rights.

The right to political participation

1. The right to participation is widely enshrined in the Constitution of the Bolivarian Republic of Venezuela, from the preamble to the final article (article 350). However, this right has been violated in different ways.
2. In 2004 took place a process of collecting signatures to convene a consultation on the revocation of the mandate of the President of the Republic. The President of the National Electoral Council, on instructions from the President of the Republic ^[1], gave a copy of the list of signatories to the then National Assembly member (Diputado) Luis Tascón, who made it public on a web site; it is known as "Tascón list". In April 2005, the President ordered "bury" the Tascón list, but it is still active under the name of "Maisanta", being so far used by the State as a tool of discrimination towards those who signed in 2004, in areas such as jobs in public administration, scholarships and study quotas, contracts with the public administration, among others^[2]. CDH-UCAB has evidence that at least until 2010, the list remains active and continues to be used as a tool of discrimination ^[3].
3. While the executive authorities have formally recognized the results of elections that have been adverse, in practice people's will is not acknowledged. In 2007 the President proposed a package of reforms to the Constitution, which was submitted for consultation through a referendum which resulted in the rejection of 51% of voters who participated. Even though the reform was defeated, most of the laws published on July 31st 2008, under special powers granted to the President of the Republic, contain provisions that violate the Constitution whose reform was rejected.
4. In November of 2008 the election of governors and mayors was held. Immediately a series of decisions were taken, through a legislative or administrative way, in order to reduce powers and regional and local budgets, being the governors and mayors of the coalition of parties in opposition to the Government the most affected. The Special Law on the Organization and Regime of the Capital District adopted in April of 2009 created the role of the Head of Government of the Capital District, taking functions, resources and infrastructure to the new headquarters, which is headed by a person appointed by the President, on the fringes of popular election^[4].
5. The election of members of the Parliament occurred in September of 2010. The results implied the loss of the 2/3 and 3/5 parts of seats required to maintain the parliamentary majorities to make certain decisions. Immediately, the outgoing Parliament streamlined the approval of a series of laws, proceeded to appoint 9 judges and 32 deputies of the Supreme Court of Justice, approved a new internal regulation that limits the parliamentary management and passed a new enabling law to the President for a period of 18 months; through this empowerment, for the first time, the President was empowered to create offences and penalties. For its part, the Supreme Court of Justice, through a decision that contradicted the Constitution, rejected the parliamentary

immunity to two members of the Parliament who, upon being elected, were facing a process before the national courts.

Restrictions on political participation to the political and social organizations

6. In December, 2010, the outgoing^[5] Parliament, adopted the Law of Defense of the Political Sovereignty and Self National Determination^[6]. This law restricts the action of "*organizations for the defense of political rights*"^[7]. The breadth of the definition involves regular activities that constitute the core action of the majority of civil organizations, including human rights organizations, such as the monitoring the Administration's performance.

7. One of the main constraints referred to in the Law is the prohibition and punishment to receive funding from foreign entities. It should be noted that in Venezuela, political parties already are prevented from receiving external founding; however the scope of the law seems to be directed to organizations other than these, such as civil organizations, including those of human rights.

8. Among the sanctions established by the law there are fines, which amounts totaled unmanageable numbers for the bulk of the organizations; political inhabilitation towards its directors and even custodial measures against them, considering that penalties contained in other laws could be applied; the issuance of opinions by foreign guests are equally punished when they are deemed offensive by the institutions of the State, which is expected will cause inhibitory effects.

Right to freedom of expression

9. In March of 2005, the criminal code was amended to extend penalties and incorporate other public personnel subject of protection of their honor and reputation^[8]. The reform of the Criminal Procedure Code^[9] strengthens the regression in the content and guarantee of the right to freedom of expression and information, ratifies and deepens the contempt or vilification against public officials, increases the discretion of judges to decide if a conduct or expression falls within the respective criminal type, and is discriminatory to differentiate the officer with respect to the person, limiting citizens' control over public management.

10. The criminal code affects the free exercise of freedom of expression in articles 141, 147, 148, 149^[10], 150, 151, 215, 222, 223, 224, 225, 226, 227, 228, 357, 442, 443, 444, 445, 448, 450 and 506 of the adopted text. Those articles maintain and broaden the scope of legal figures which are contrary to the content of the right to freedom of expression, as it is the vilification or contempt^[11].

11. Access to public information in Venezuela has significant restrictions. The Inter-American Commission on Human Rights (IACHR), documented those referring to the work of monitoring the human rights organizations^[12]. In a study based on the follow-up of 157 applications for information^[13] to 50 public institutions in the months of February and March of 2008, more than 70% of the agencies did not reply, by refusal or administrative silence, and only 10% of the answers were appropriate^[14].

12. In 2010 standards were adopted that are restrictive of the right of access to information such as the Presidential Decree number 7.454^[15], which ordered the creation of the Centre of Situational Survey of the Nation (CESNA), as a decentralized body of the Ministry of Popular Power for the Interior and Justice. Article 9 empowers the President of the CESNA to declare the nature of reserved, classified or of limited disclosure of any information^[16], without expressly establishing in what cases or circumstances the officer is empowered to declared the reserved nature of the information. An ambiguous rule is not permissible in a democratic society because

it grants excessive discretionary powers to the authorities, which is incompatible with international standards. The limitation on the right was not established by the law in a formal sense, but rather through a Presidential Decree in violation of the Constitution ^[17].

Rights of refugees and asylum seekers

13. The Constitution recognizes and guarantees refugees rights ^[18], which have been developed in the law ^[19] and implemented through the creation of the competent administrative authority ^[20]. However, the documentation given to demonstrate the identification and quality of applicant for refugee is inadequate, since it prevents the enjoyment of their rights in areas such as public registration of property, formal employment, and registration in social security, certifications of studies (especially children and adolescents) and the free transit.

14. Although the law provides for a 90 days period to respond to refugees status requests, an excessive delay typically occurs in the decision. In addition, about 90% of applications are approved without sufficient substantiation of the reasons for the denial ^[21].

Failure to comply with international obligations in the area of Human Rights ^[22]

15. Only between 2008 and 2009, the Inter-American Court of Human Rights has issued a total of 6 sentences ^[23], which have not been complied with by the Venezuelan State, in breach of the obligations set out therein. The Court has emphasized this failure and in 3 sentences monitoring reports noted that Venezuela has not implemented the decisions of the Court ^[24]. In addition, precautionary measures have been issued in 17 cases ^[25]; in most of these the State has not adopted the measures necessary for the fulfillment of such requests, and in the monitoring process the Court establishes the cessation of the situation but not necessarily in connection with the resolution issued by the Court.

16. Venezuelan has gone from a first phase where the recommendations and rulings are ignored, to a next stage in which its validity is not recognize through the judicial channels, stating that the judgments of the Inter-American Court of Human Rights are "*unenforceable*", based on a supposed "*usurpation of functions*" by the international tribunal ^[26]; to finally reach a third phase in which the judge Maria Lourdes Afiuni, who based a decision on a recommendation by the Working Group on Arbitrary Detention of the United Nations, is herself arbitrarily detained and subjected to trial ^[27]. At the time of this report, the judge had been arbitrarily deprived of her liberty for 15 months without trial. The State has ignored all requests from international and regional bodies for the protection of human rights calling for her immediate and unconditional release ^[28].

17. In the four years covered by this review, no representatives of international or regional bodies for the protection of human rights have been authorized to visit the country.

Recommendations:

18. Abolish all legislation that restricts freedom of association and obstructs the free performance of the legitimate tasks of the monitoring governmental activities.

19. Provide all the guarantees to the civil organizations, including human rights groups, in order to enable them to carry out their tasks without any kind of threat or obstacle.

20. Modify the Criminal Code and Code of Military Justice, by removing the figures of contempt or vilification.

21. Guarantee provisional documents for refuge-seekers.

22. Decide refugees' applications in the period established by law and explain grounds for rejected applications, with the aim of ensuring the right to review.
23. Fully comply with the recommendations, resolutions and decisions of international and regional human rights protection bodies, without alleging interference in internal affairs or violation of sovereignty.
24. Allow access to the country of representatives of international and regional bodies for the protection of human rights.

^[1] A facsimile of the letter from the President of the Republic to the President of the National Electoral Council can be seen on the web site: <http://www.noolvidaremos.com/news/lista-de-tascon-aplicacion-maisanta/> (capture date: March 11, 2011); There are also detailed explanations on the use of the list: <http://vcrisis.com/index.php?content=pr/200512061532> (capture date: March 11, 2011).

^[2] Between 2004 and 2005, the CDH-UCAB attended several discrimination cases for having signed the request for consultation to the revocation of the presidential term. Cases were not successful in national bodies and one of them was elevated to the Inter-American Commission on Human Rights. The study was published in 2009 "The price of political opposition: Evidences from Venezuela's Maisanta", which can be consulted at:

http://frrodriguez.web.wesleyan.edu/docs/working_papers/maisanta_april2009_final.pdf

^[3] There is currently a large number of pages on the internet from which you can download the list: can prove with the Google search engine by writing "maisanta.exe".

^[4] In July of 2009 affected Governors, as well as the Major of the Metropolitan District of Caracas, were attended by the Organization of American States where they submitted documentation to the Secretary-General's report of the entity and the Inter-American Commission on Human Rights on the limitations imposed by the Executive on the exercise of their mandate. The Inter-American Commission on Human Rights, in its report "Democracy and human rights in Venezuela" reflects this situation in the section "Modification of the powers of elected officials" (paras. 74 et seq.).

^[5] The mandate will extinguish on January 5th 2011, date in which was set up a new National Assembly, as a result of the parliamentary election held on September 26th 2010.

^[6] The full text of this law can be searched in http://www.tsj.gov.ve/gaceta_ext/Diciembre/23122010/E-23122010-3043.pdf#page=1 (capture date: March 6, 2010).

^[7] For the purposes of the Act defines the **Organizations with political object**: those involved in public or private activities to promote the participation of citizens in public spaces, exercise control over the public authorities or promoting candidates who aspire to hold public office of popular choice. And the **organizations for the defense of political rights**: those which have as their purpose in its constitution promote, disclose, report, or defend the full exercise of the rights of political citizenship.

^[8] Before the Reformation the standard had a scope for the President of the Republic, the Executive Vice President, Government Ministers, Governors, the Major of the Metropolitan District of Caracas, the judges of the Supreme Court, the Presidents of the Legislative Councils and senior judges, to initiate criminal proceedings for the offence of contempt. Legal reform joined the members of the Parliament, officials of the National Electoral Council, the Attorney General, to the Ombudsman, the Comptroller-General and the members of the military high commander.

^[9] Criminal Code of Venezuela. Official Gazette No. 5768E, August 13th 2005. Available at: <http://www.fiscalia.gov.ve/leyes/6-CODIGOPENAL.pdf>.

^[10] *Article 149. Anyone who publicly vilipends to the Parliament, to the Supreme Court of Justice or the Cabinet or Council of Ministers, as well as any State Legislative Council or some of the higher courts, shall be punished with imprisonment from fifteen days to ten months.*

In the middle of this penalty will incur those who committed the acts referred to in this article, with respect to the municipal councils.

^[11] Vilification or contempt is the criminal figure which punishes "offenses" and/or defamation towards officials.

^[12] Inter-American Commission on Human Rights: democracy and human rights in Venezuela, 2010. Paragraphs 647 to 663. <http://www.cidh.org/countr/rep/Venezuela2009sp/VE09CAPVSP.htm#V.B>.

^[13] Venezuelan constitutional rule enshrines the right of petition and through this resource it can be made requests for information to the public bodies.

^[14] http://espaciopublico.org/index.php/Biblioteca/doc_download/250-Acceso-a-la-Informacion-publica-en-Venezuela-2008.

^[15] Fcheck on June 01, 2010, published in the Official Gazette number 39.436, dated June 1st 2010.

^[16] The Chairman or President of the center of situational survey of the nation may declare the nature of reserved, classified or limited to any information disclosure that pursuant to its functions has knowledge that is processed by the Centre for situational survey of the nation, in accordance with article 59 of the Administrative Procedures Act and article 171 of the Decree with value and strength of organic law of public administration.

^[17] Constitution of the Bolivarian Republic of Venezuela, article 325: "the National Executive reserves classification and disclosure of matters which relate directly to the planning and implementation of operations concerning the safety of the nation, in the terms established by law"

^[18] Article 69. Constitution of the Bolivarian Republic of Venezuela.

^[19] Organic law on refugees and asylum seekers, refugees or isolation, October 3rd 2001.

^[20] Article 12 of the organic law on refugees and asylum seekers, refugees or isolation. National Commission for refugees and refugee, asylum-seekers and isolation (CONARE).

^[21] The annual report provides 2010 reflects the historic from 2002 to 2010 (see table on p. 263 in:

http://www.derechos.org/ve/proveaweb/?page_id=9235).

^[22] Constitution of the Bolivarian Republic of Venezuela, article 23: "*treaties, covenants and conventions concerning human rights, signed and ratified by Venezuela, have constitutional status and take precedence in domestic law, insofar as they contain rules on the enjoyment and exercise more favorable than those established by this Constitution and the laws of the Republic, and are applied immediately and directly by the courts and other bodies of public power*".

^[23] Barbera Apitz et al. ("court first litigation administrative") vs. Venezuela, judgment of August 5, 2008; Case rivers and other vs. Venezuela, ruling from January 28, 2009; Case Perozo and other vs. Venezuela, ruling from January 28, 2009; Case Reverón Trujillo vs. Venezuela, judgment of 30 June 2009; Case Barreto Leiva vs. Venezuela, judgment of November 17, 2009; Case uson Ramirez vs. Venezuela, judgment of November 20, 2009.

^[24] Resolution of the Inter-American Court of human rights of 4 February 2010, case El Amparo vs. Venezuela; Resolution of the Inter-American Court of human rights of July 7, 2009, case white Romero and others vs. Venezuela; Resolution of the President of the Inter-American Court of human rights of December 18, 2009, case Apitz Barbera and others ("Corte Primera de lo Contencioso Administrativo) vs. Venezuela.

^[25] Luisiana Ríos and others, a matter on July 3, 2007; Case Guerrero Gallucci and Martínez Barrios, November 29, 2007; Issue of the radio station of television "Globovisión", January 29, 2008; Issue daily "National" and "Así es la news", November 25, 2008; Carlos Nieto, a matter on January 26, 2009; Issue Luis Uzcategui, January 27, 2009; Liliana Ortega, a matter on July 9, 2009; Issue Guerrero Larez, November 17, 2009; Matter of the central prison region Capital Yare I and Yare II, issue of the Internado Judicial Capital El Rodeo I and El Rodeo II, subject of the Judicial boarding school of Monagas ("the Pike") and subject Centre prison of the West Central region: Uribana prison, November 24, 2009; Issue Natera Balboa, February 1, 2010; Issue Belfort Istúriz and others, April 15, 2010; Subject penitentiary Center of Aragua "Tocorón prison", November 24, 2010; Issue Eloisa neighborhoods and others, November 25, 2010; Maria Lourdes Afiuni, December 10, 2010 issue.

^[26] Apitz et al. ("Corte Primera de lo Contencioso Administrativo") vs. Venezuela, judgment of August 5, 2008. Supreme Court of Justice: judgment on December 18, 2008: <http://www.tsj.gov.ve/decisiones/scon/diciembre/1939-181208-2008-08-1572.html>. The judgment of the TSJ requests in addition to the National Executive, to "denounce" the American Convention on human rights.

^[27] La judge Maria Lourdes Afiuni, was detained without judicial order on December 10th 2009 and processed on charges of own corruption, abuse of authority, facilitating for evasion and association to commit a crime, provided for in the law against corruption, the criminal code and the organic law against organized crime.

^[28] Only six days after the detention of the judge Afiuni, three bodies for the protection of human rights of the UN requested her immediate release <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?LangID=S&NewsID=9678>; the Inter-American Commission on human rights agreed on interim measures on January 11th 2010 in her favor and the Inter-American Court of human rights issued interim measures on December 10th 2011. A count of all the international efforts in favor of the judge can be seen at: <http://www.ucab.edu.ve/cddhh.html>.