



The Venezuelan Program of Education and Action on Human Rights, PROVEA presents its fifth international Bulletin on the human rights situation in the country.

This time we will address the situation of the right to health in our global topic. As specific topic we celebrate the recent adoption of the Special Law to Prevent and Punish Torture and Other Cruel, Inhuman or Degrading treatments and point out some challenges about its implementation. In the conjuncture section we analyze the increasingly frequent use of justice as a means to quell social protest, political opposition and social demands.

Our newsletter is available in Spanish, Portuguese, English and French on our website <http://www.derechos.org.ve>. We welcome your suggestions and comments to the e-mail boletin@derechos.org.ve.

Want to know the 20 human rights landscape in the **past 15 years in Venezuela**? See our special report "15 years on human rights: social inclusion, political exclusion"

> **GLOBAL TOPIC**

Right to Health: Centralism and gaps in resources and dialogue

The Constitution of 1999 established the legal basis for changing the process of privatization of health that the country was at that time, instead, established a system based on a human rights approach, guaranteeing free care and emphasizing in prevention and health promotion in addition to the management of curative medicine.

To do this, the Constitution established a maximum period of two years for the approval of the Health Law by the National Assembly, incorporating constitutional and international principles for the protection of the right to health. Thirteen years later after the deadline, the National Assembly has not met its obligation, the law does not exist, claims that have been made to the legislative branch **have not been heard and legal resources brought before the Supreme Court, have run out of answers.**

The absence of this law is part of the many factors that keep the Venezuelan health system in permanent crisis. The enormous efforts of the State to strengthen the health infrastructure and the development of an incipient process of citizen participation accompanied by several social missions were hampered by centralized management of public health policies.

These policies generated and continue to generate resistance from health care workers who have seen their working conditions deteriorate under the absence of discussion of the collective agreements as low salaries, whose augments are laughable and occur only by order of the executive power, causing the



Photo: Provea

brain drain to the independent exercise of the health professions or abroad.

Traditionally, private health spending has been higher than public spending. **According to WHO**, in 1997 public spending was 35.9% and 64.1% was private. Between 1997 and 2007, government spending rose, touching its maximum in 2007 with 46.5%, but in 2010 returned to be similar to 1997, with only 34.9%. Private spending is still the most representative. It is ironic that the Government, which is the largest employer in the country, has been including among the benefits offered to public

employees, health insurance for treatment in clinics and private health centers (hospitalization, surgery and maternity). Public resources end up in the hands of the private sector while public infrastructure is deteriorating along with the conditions of its workers.

WHO also emphasizes percentage of GDP spent on health in 1997. This percentage has remained above 5% since 1999 with a slight decline in 2010. But public sector participation in the percentage of GDP has remained near or below 3%, except for some peaks in 2006 and 2007.

The public health policies have had positive results in increasing life expectancy at birth, but have not reversed the amount of annual maternal deaths and infant mortality. The number of physicians per 10,000 inhabitants was 24.2 in 1997 and happened to be 13 in 2007. The same downward trend is shown in the number of hospital beds per 10,000 inhabitants, which was 15 in 1996 and went on to 10.83 in 2010. [PROVEA has found](#) an increasing loss of the availability of health services funded by the state and an increase in complaints from the public by a shortage of medical and surgical supplies and a lack of medical

equipment. The situation is particularly sensitive to the more than 40,000 people with HIV who require antiretroviral therapy. During the past four years, the processes related to procurement, distribution and delivery of drugs and supplies has failed, especially in regard to the purchasing process, distribution and delivery of antiretroviral drugs by the Ministry of Health. [Even the reagents for the diagnosis, control and monitoring of HIV have not been provided at various moments.](#)

To PROVEA, it is essential to increase the percentage of GDP allocated to the health sector and to ensure an adequate budget to strengthen the public health system. The working conditions of health workers should be improved, through the discussion of the collective agreements that are due and compliance with the already in place.

It is also important to promote an expansion plan for the recovery and maintenance of the national hospital facilities. In particular it is crucial to expand coverage and services of *Mission Barrio Adentro*, with the cooperation of Cuba, and the national hospital system, to strengthen the comprehensive approach to public health care.

> SPECIFIC TOPIC

New law against Torture in Venezuela

The practice of torture and ill-treatment by the police and Venezuelan military has been a recurring action pattern, usually exercised against poor young men, which criminalized for their poverty, are the subject of control, aggression, intimidation and immobilization that occurs as a victim of torture. Police of the national, state and municipal as well as members of the Bolivarian National Armed Forces, have been reported as perpetrators of torture. The right to personal integrity has been enshrined in the Constitution of the Bolivarian Republic of Venezuela, as well as international human rights treaties signed and ratified by Venezuela. It is an unavoidable obligation of the Venezuelan State to ensure that no person, whether or not it is subject to imprisonment, be subjected to torture or other cruel, inhuman or degrading treatment.

Until recently, Venezuela did not have a special regulatory framework to establish a clear definition of the crimes of torture and cruel, inhuman or degrading treatment as well as penalties and sanctions to be applied to those responsible for them. The 22nd of July, was published in Official Gazette No. 40,212 of the Bolivarian Republic of Venezuela, the [Special Law to Prevent and Punish Torture and Other Cruel, Inhuman or Degrading treatments](#). The National Assembly took over 13 years from the time of the deadline given by the national constitution, disregarding this command because the law had to be approved in 2000, but now, this law becomes a very valuable tool to eradicate this practice, which was implemented by almost all police and military institutions violating human rights.

The law provides for sentences of 15-25 years in prison for those applying torture, both physical and mental. It also provides



Photo: El Universal

penalties for cruel, inhuman and degrading treatment and recognizes the rights of victims to justice, rehabilitation, compensation and reparation for the damage caused. It also establishes the State's obligation to educate, to investigate and prevent these incidents are not repeated. This law contains a better definition and punishment of the crime of torture and cruel, inhuman and degrading treatment and establishes a national preventive mechanism, which allows monitoring of detention centers. But it presents as weakness on one side, the low participation in this mechanism and, on the other hand, does not contemplate the possibility that representatives of international human rights bodies (especially The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment "SPT") to make regular visits to places of detention. These

latter aspects are necessary to implement the [Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading treatments](#) signed by Venezuela in June 2011, pending its ratification.

The approval and publication of a law against torture in Venezuela is the result of the struggle of the victims and their families, but also because of the persistence of human rights organizations such as the [Support Network for Justice and Peace](#) (RED DE APOYO POR LA JUSTICIA Y LA PAZ), which was maintained over 23 years promoting the bill.

Victims of torture and their families expect this standard is

Amnesty International has launched a campaign inviting to exercise virtual activism against the denunciation made by the Venezuelan government on the American Convention on Human Rights. [We invite you to join the campaign](#)

implemented effectively and that people who have responsibility in torture, severely punished. The whole society should play a role in the exercise of social control to monitor the law against torture, its implementation and the State to comply with its obligations to prevent and punish torture in Venezuela.

> ISSUES ON NATIONAL CIRCUMSTANCES

The political use of the Venezuelan judicial system

In its report "[Democracy and human rights in Venezuela 2009](#)" The Human Rights Commission said:

"In recent years, the Commission has heard of cases in which members of the judiciary have expressly stated their support for the executive, showing the lack of independence of this institution. The Commission has also observed how certain failures caused by the lack of independence of the judiciary is exacerbated in cases of high political significance, and consequently affects society's confidence in justice." Four years later the situation is even more worrying. The judiciary and the Public Prosecutor are political instruments of the executive branch to criminalize social protest and to persecute dissident voices.

As it has been indicated by several Venezuelan human rights organizations in a [statement of July 26](#) there is "a deep concern over the progressive weakening of judicial guarantees in Venezuela and prosecution as a method to criminalize those with critical positions and to discard them."

The use of justice, to face social protest, led by the working men and women of the country, is expressed in the opening of lawsuits against student leaders, community, indigenous and unions and even, in some cases, by applying military justice. The most emblematic case is the trial of the unionist Rubén González after the Criminal Chamber of the Supreme Court set aside the judgment against him, which was deliberately biased in favor of the government, (that verdict sentencing him to seven years in prison). The Criminal Chamber overturned the judgement after unions announced the call for a strike in response to the decision. [In its judgment the Criminal Chamber said:](#) "[the judgement] injured the constitutional rights of the defense, due process and hence to effective judicial protection as provided in Articles 26 and 49.1 of the Constitution of the Bolivarian Republic of Venezuela, what ultimately denied the exercise of procedural defenses that our legal system provides in a criminal trial"

This biased and unconstitutional conduct of a criminal court



Rubén González. Photo: Youtube.com

has been repeated in trials of other social leaders, some of whom have more than six years on probation.

But there are two major elements in the manipulation of the justice system. One of them is a priori defense of senior government officials from the high courts to the claims brought by individuals for violations of their rights. It is even exclude senior officials of their constitutional obligations, through sentences being handed down by the Constitutional Court, which imposed same criteria to other courts. Although the Constitution provides that any public official should give timely and adequate response to the requests made by any person, [but when the request is made to the President of the Republic, the Constitutional Court stated](#) that: "In this regard, it is noted that the multiple functions assigned to the President and the scale of these, prevents such

public officer to be given equal treatment as any other official who did not answer, -within the time periods-to requests that have been made.”

A study conducted by PROVEA on the behavior of the Supreme Court of Justice to complaints against senior government officials, determined that only 7.14% of decisions are in favor of the petitioners, **but when it came to action against the National Assembly, the General Prosecutor or against the President of the Republic, the petitioners did not receive positive responses in any case.**

The other outstanding feature is the use of Justice to prosecute political dissidents. An emblematic case is the open trial against General Francisco Vicente Uson Ramirez, who in a television program gave his opinion about alleged human rights

violations in a particular fact. The many irregularities in the judicial process, generated his case had to be presented at the Inter-American system for the protection of human rights, which concluded in a **judgment handed down by the Inter-American Court of Human Rights on November 20, 2009.**

Conclusion issued by the IACHR in its **Report on Democracy and Human Rights** in Venezuela, is fully in effect: “The lack of independence and autonomy of the judiciary from political power is one of the weakest points of democracy in Venezuela, a situation that seriously hinders the free exercise of human rights in Venezuela. According to the Commission, is the lack of independence that has allowed the possibility of using the punitive power of the State to criminalize human rights defenders in Venezuela, prosecute peaceful social protest and prosecute political dissidents.”

Tips



The following are some of the main findings of the **report on the management of the Ombudsman’s Office between 2007 and 2012**, conducted by Venezuelan human rights organizations:

- The way in which the Ombudsman is elected restricts the participation of civil society.
- There is a clear political identification by the Ombudsman with the so-called “Bolivarian project”.
- The Ombudsman’s Office is more concerned with the failure of public services, but seems to care less about the human rights violations.
- The Ombudsman’s Office has not encouraged the ratification of international human rights treaties.
- The annual report of the ombudsman has been manipulated as a government propaganda mechanism.



*It is available the 2012 Annual Report on the situation of Human Rights in Venezuela, may be consulted on the website of PROVEA:
www.derechos.org.ve.*



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