



The Venezuelan Program of Education and Action on Human Rights, PROVEA presents its last Bulletin of 2013. In this occasion we want to bring our readers the analysis on the right to participation of indigenous peoples that highlights the difference between national standards and the actual implementation of them. In our specific topic we present structural impunity in Venezuela, both for ordinary crimes and human rights violations. We end our newsletter with the analysis on the extraordinary powers granted to the President Nicolas Maduro Moros by the National Assembly to legislate by Decree, weakening the legislative function of Parliament.

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 participation of indigenous people

According to researcher and advocate for the rights of indigenous peoples **Luis Bello** the Constitution of the Bolivarian Republic of Venezuela (Constitution, 1999) gave the key step to recognize not only the specific and collective rights of indigenous peoples in a comprehensive manner, but also making a break with the model of integration and assimilation enshrined in previous constitutions: "for the first time in Venezuela, wide indigenous rights are not only defined, but indigenous peoples was confirmed as full subjects of collective and specific rights. It's the recognition of indigenous peoples as collective subjects with their own social and cultural identities". **Chapter VIII of the Constitution** is devoted to the rights of indigenous peoples, with 8 articles that protect rights to the demarcation of their territories (article 119); the right to prior, free, and informed consultation (article 120); maintain and develop their ethnic and cultural identity, worldview, values, spirituality, and its sacred places of worship (article 121); right to overall health with the proper consideration of their practices and culture (article 122); right to maintain and promote their own economic practices based on reciprocity, solidarity and exchange (article 123); the protection of collective intellectual property to knowledge, technologies and innovations of indigenous peoples (article 124) and, finally, the right to political participation and indigenous representation in the National Assembly and legislative bodies of the Federal and local authorities with indigenous population (article 125). In addition, the twelfth provision of the Constitution stated that "the demarcation of the indigenous habitat, referred to in article 119 of the Constitution, shall be held within the period of two years from the date of entry into force of this Constitution".



Photo: Correo del Caroni

The legal progress related to the recognition of indigenous rights in the Constitution was deepened with the approval of other regulations. In 2001 was adopted the **Law on Demarcation and Warranty of the Habitat and Lands of Indigenous Peoples**. In 2005, was sanctioned the **Law of Indigenous Communities and Peoples**. Two years later, in 2007, the **Ministry of the Popular power for indigenous peoples (MINPI)** was created. In 2001 it was ratified the **Convention No. 169 of the International Labour Organization**, in the year 2008 was approved the **Law on Indigenous Languages**, while in 2009 the **Law of Cultural Heritage of the Peoples and Indigenous Communities** was agreed.

The immense expectations generated by the formalization and institutionalization of a wide range of rights, including demarcation and delivery of indigenous territories to its inhabitants, stimulated since year 2000 that indigenous organizations work together with the Executive for the materialization of the

rights. 15 years later, however, the balance about the degree of implementation of those laws is not positive. On the main demand, land demarcation, only 5% has been hardly done. The researcher Esteban Emilio Mosonyi said on state policy to implement community councils within indigenous populations: “a set of communal councils completely Eurocentric and centralized in the capital of the Republic, even in the financial aspect. This new ‘model’ has nothing to do with the advanced articles of our Constitution”.

On a recent visit to the State of Amazonas, which concentrates the most native population in the country, PROVEA could see the situation of the indigenous movement. Gregorio Mirabal, who was elected as indigenous member of the National Assembly and is currently Coordinator of the Regional Organization of the Amazon Indigenous Peoples (ORPIA), summed it up this way: “the indigenous movement is in crisis. When we achieve those rights, we believed that everything was about to take place. But now we are discouraged.”

Despite the fact that there is a national organization called the Confederación Indígena de Venezuela (CONIVE), different spokespersons interviewed agreed that it has lost contact with the indigenous bases and has taken the work guidelines of Government.

Acknowledging the symbolic progress in terms of inclusion and the legislative rights present both in the Constitution and other regulations, the indigenous movement in the country has the challenge to return to their traditional organizations with independence and autonomy. In Amazonas the ORPIA is in a process of internal reflection, while 14 organizations in the region have created a space called Coordination of Indigenous Organizations of Amazon (COIAM) to articulate their demands in a common working agenda. In addition to existing historical

Tips

Municipal elections on December 8, 2013

Venezuela held municipal elections to elect mayors and representatives to local councils and metropolitan councils. Elections were initially scheduled for April 14 2013 but they were delayed because of the death of former President Chavez and the consequential presidential elections carried out on that date. The results of these elections are seen as an indicator of a possible process of recall referendum that could occur when the current President, Nicolas Maduro, met half of its mandate.

This 8 December they choose: 335 Mayors or mayors of municipality; 2435 Municipal councils; 686 Councillors or municipal councillors lists; 1680 Councillors or nominal municipal councillors; 69 Indigenous representation; 2 Mayors and mayors of Metropolitan Council and district high Apure; 20. Integration of the Metropolitan Council and district Alto Apure; 5 Councillors to the Metropolitan Council and district Alto Apure lists; 14 Councillors to the Metropolitan Council and district Alto Apure nominal, 1. Indigenous representatives.

According to information taken from <http://www.eleccionesvenezuela.com/informacion-que-se-vota-elecciones-municipales-venezuela-119.html>

organizations, this joint has incorporated newer organizations, such as the Organization Yanomami Horonami, with two years of existence and learning with it practice what the right to participation means.

> SPECIFIC TOPIC

Structural impunity in Venezuela

Impunity in Venezuela is a historical and structural problem. More than 90 percent of the crimes go unpunished. The possibilities that the author of a murder is investigated, judged and punished criminally are very remote: the judicial system does not respond to the needs of Justice for the victims or the persons prosecuted. The annual number of homicides in the country has doubled since 1996, [reaching annual rates higher than 50 homicides per 100,000 people according to official sources](#). The prison population is predominantly processed, i.e. they are detained without judgment about their responsibility in the events where they are allegedly involved. Starting from 2008, between 60 and 70 percent of the prison population is composed of processed against a 40 or 30% who are sentenced (with conviction). [This phenomenon is linked to procedural justice administration delay](#).

There is no policy to determine the real needs and establish priorities for the administration of Justice, especially in the penalty area. Judges have no involvement in the formulation of



Photo: Soberania.org

these policies; it is done through the Executive Directorate of the Judiciary of the Supreme Court. The lack of confidence in the administration of Justice, leads citizens to not denounce the crimes. Statistics reflect better the reality in terms of crime, and are related to theft of auto and homicide, i.e. in cases in which the complaint report is required to obtain insurance for theft or to claim the body of a murdered person.

In a context of widespread impunity, violations of human rights are no exception. According to the office of the General Attorney, [the cases of violations of human rights that end without punishment, represent 97% of the complaints](#): only in 2009, 9.610 complaints of human rights violations occurred and the prosecution filed only 315 accusations and in 2010 from 9.131 complaints, only 266 accusations were presented by The General Prosecutor. These figures do not include cases unreported by victims to feel fear or distrust of justice.

The complaint by the Venezuelan State of the American convention on human rights, which came into force last September, has done no more than aggravate the situation of victims who do not find response in the Venezuelan justice. Indeed, although the Inter-American commission on human rights will continue meeting on the situation in Venezuela, new cases not may be brought before the Inter-American Court. In addition, the Venezuelan government has been lackadaisical about the judgment of the Inter-American Court, [especially when punish those responsible in the case of El Amparo Slaughter](#). In this case, two of the suspects have been named in administrative positions or trusted within the State, and one of them was elected Governor of Guárico state on behalf of ruling party in recent elections.

On February 28 2013 the National Assembly swore in the

members of the Commission for Truth and Justice with the mandate to ensure [“the right to the truth to punish those responsible for the facts of violations of human rights in the period 1958-1998 for political reasons”](#). This Commission ad-hoc counts with the participation of the Attorney General and the Ombudsman. Its mandate is limited to this period only, which does not cover the events that occurred during the Government of former President Chávez, or in the current Government. Similar commissions have been created in other countries such as Argentina, El Salvador and Haiti, in dictatorial and post dictatorial conflict situations. The initiative also responds to the right of victims to know the truth and the whereabouts of the missing persons. In this sense, is an effort to rescue the historical memory of the Venezuelan people. However, his character ad-hoc and its mandate limited in time to a single period of the history of the country, represents risks to the right to justice of all those people victims of human rights violations outside of that period. It is a selective and therefore discriminatory effort for victims by events after 1998 not seen similar efforts from the State to guarantee their rights to truth, justice and reparation.

With impunity of 97% those victims deserve a major effort from the State, especially from the Office of the Attorney-General and the national courts. There cannot be victims of first and second category.

> ISSUES ON NATIONAL CIRCUMSTANCES

Legislating by Decree weakening the role of the Parliament

The Constitution of the Bolivarian Republic of Venezuela [establishes in articles 203 and 236](#) that the Parliament can give legislative powers to the President for a specific period and about matters expressly provided by a law known as the Enabling Act. These powers are not a creation of the CRBV (the CONSTITUTION), but already existed in the previous Constitution just limited to economic and financial matters.

Former President Hugo Chávez ruled most of the time with a broad political control over Parliament [and requested four times these special powers](#). Thus, the Parliament, which was already weak by the limited plurality that had, got weakened even more as a backdrop for the democratic debate and the search of consensus.

Also the limits to legislate were not respected, legislating by decree-laws on matters different than the powers granted. In the midst of the political polarization of the country that power to legislate became a mechanism to regulate fundamental issues of economic, political and social life of the country without any consultation and sometimes with a secrecy that made it impossible to see the projects. Thus, more than 200 decrees were dictated by this mechanism. The speech of the active participation of the people was on hold at least in terms of their ability to have an impact on legislative matters.

President Nicolas Maduro seems to imitate his predecessor.



Photo: La Patilla

Even though it controls the parliamentary majority it requested special powers that were given to him by 12 months. The justification was the need to legislate to combat corruption and speculation. [However, at the last minute was incorporated the need to legislate in the field of security, defense and protection of the State institutions and prevent attacks on the provision of public services.](#)

The fight against corruption and speculation are necessary to strengthen democracy and social justice. But it is regrettable that it has not chosen to the search for consensus that would sum the

greater quantity of wills and design a strategy in the framework of the Constitution and the law to have effective results. The path chosen subtracts strength and credibility, even more so when it has undertaken the paths of political polarization.

The more worrying thing about this situation is the granted powers to legislate in the field of security and defense. Especially when progressively the management of Government and the speech and behavior of the ruling political elite has been permeating the Doctrine of national security. In this sense, the security of the State looks to be above public safety, they militarise the structure of the State at different levels and declared an internal fight against any public enemy who disagree from the government ideas. Add to this, the development of legislation that deviates from the Constitution, guarantees and Rights. **Finally, there is a slow but growing selective fight against peaceful social protest.**

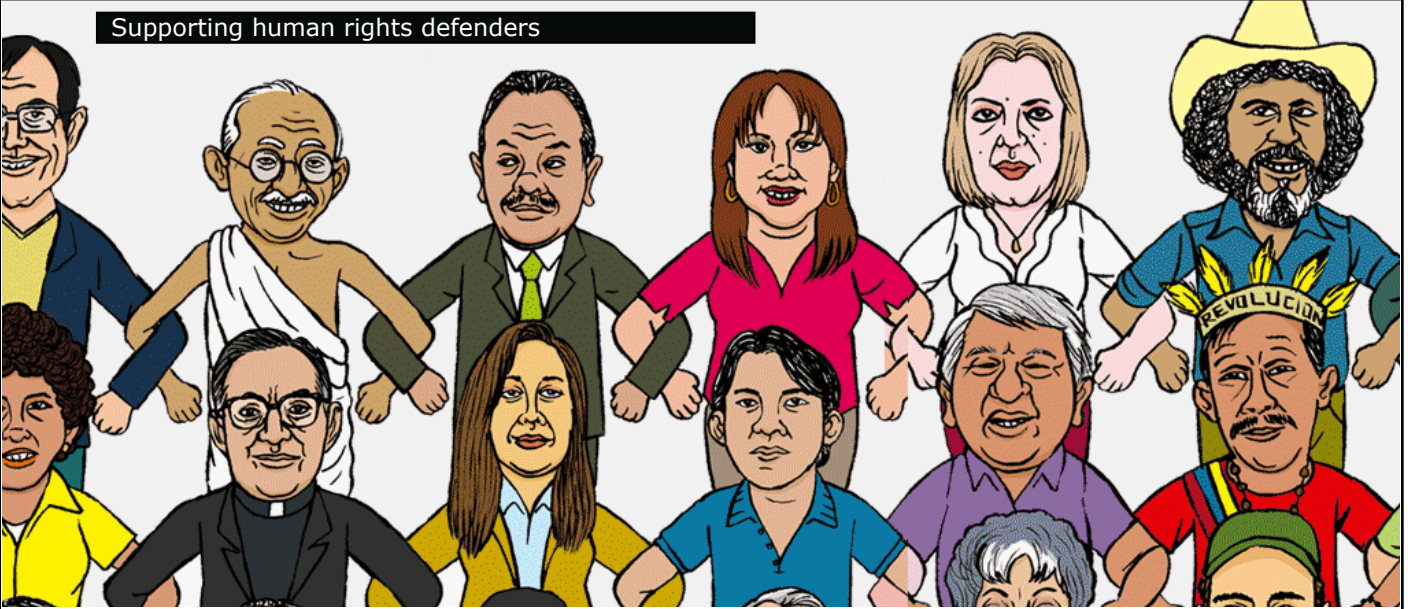
This trend does not escape the decisions of the Supreme Court of Justice (TSJ). Indeed, the highest judicial body of the country have been granting powers to various criminal courts nationwide to investigate the offences set in the law for the defense of people in accessing goods and services. In the norm, the TSJ has said that it seeks to “**the most effective protection against the diversity of criminal offences with trends more serious**

and more dangerous, that threaten the peace of the Republic and its people, in the performance of any activity that involves great danger to the rule of law and justice, and above all for its citizens and of course their national institutions...” (Resolution No. 2013-0025). The TSJ thus remember theories already overcome in criminal laws from the last century that point as an enemy of the State which he had to attack, the perpetrator of the crime based on subjective considerations of endangerment.

Under the so-called “economic war”, Government has also adopted a series of measures with the logic of military operation, that although partially have left any benefits to sectors of the population (prices in very specific products rebate) could indicate the beginning of a process of militarization in the economic activity.

Many democratic reserves remain in Venezuelan society. **With security from social organizations, political parties and institutions that will be the containments to prevent the increasing authoritarianism of the Government to advance.** There is a general framework that guides the democratic wills which is the 1999 Constitution adopted by the majority will of the Venezuelan people. It is in this general context that must hook not only the fight against corruption and speculation, but also against insecurity, public services crisis and strengthen the fight against poverty.

Supporting human rights defenders



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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