



# The Risk Involved When Claiming Rights in Venezuela

A Discussion Paper by Elienai González Hernández

*Translated into English from the original Spanish version.*

For several years, the stability of Venezuela has been negatively affected and so, in turn, have its most vulnerable citizens. The instability has led to an increase in protests calling for basic rights, which have been met with even greater limitations on the right to demonstrate and the freedom of expression. These human rights violations have been especially prevalent since the first presidential term of Nicolás Maduro in 2013.<sup>1</sup>

In 2014, growing polarization and institutional weakness exacerbated the political crisis,<sup>2</sup> which aggravated repression between February and June. On April 24, 2014, the Constitutional Chamber of the Supreme Court of Justice (Tribunal Supremo de Justicia, or TSJ) issued Ruling No. 276, which required anyone seeking to demonstrate to first receive authorization.<sup>3</sup> The year 2015 was marked by the famous Resolution 8610, which allowed the use of firearms to control demonstrations and granted a primary role to the military in keeping order. The same year saw the launch of the People's Liberation Operatives (Operativos de Liberación del Pueblo), the triumph of the opposition in parliamentary elections, and the hastened appointment of new TSJ justices by the outgoing National Assembly (Asamblea Nacional).<sup>4</sup> In 2016, the Decree of Martial Law and Economic Emergency granted the government special and discretionary powers.<sup>5</sup>

In 2017, the TSJ justices issued two illegal rulings that, among other things, eliminated parliamentary immunity and authorized the president to reform penal laws.<sup>6</sup> During the same period, poverty levels grew by 87 percent, and medicine and food scarcity worsened, adding to the country's chronic insecurity and setting the stage for a "Complex Humanitarian Emergency," according to a 2017 special report from PROVEA (Programa Venezolano de Educación Acción en Derechos Humanos, Venezuelan Education–Action Program on Human Rights).<sup>7</sup> In April that year, the situation led to resumed protests and the an-

nouncement of the Zamora Plan by the government, which entailed a military–civic union used for repression.<sup>8</sup> On May 1, the president directly convened a Constituent Assembly (Asamblea Nacional Constituyente),<sup>9</sup> in violation of Article 347 of the constitution, which provided that the people are the sole depository of constituent power. Additionally, it did not allow citizens who disagreed with the call to voice their opinion.<sup>10</sup>

The presidential election on May 20, 2018, was questioned for multiple irregularities:<sup>11</sup> 6,248,864 votes, approximately 68 percent, were recorded in favor of Maduro,<sup>12</sup> but the election had the lowest recorded voter turnout in Venezuela since 1958.<sup>13</sup> On January 10, 2019, Maduro was sworn in as president before the TSJ.<sup>14</sup> The opposition representatives of the National Assembly dismissed Maduro's legitimacy and called for a march on January 23.<sup>15</sup> In the early morning of January 21, 2019, a failed military uprising at a base in a popular area of Caracas led to a spontaneous outbreak of protests by residents that lasted until January 31. Demonstrations that month increased by 360 percent compared to January 2018.<sup>16</sup>

Control of the demonstrations is unfortunately far from being considered a civil police service that protects human rights. On this last occasion, repression targeted lower income areas, and the Special Action Forces (Fuerzas de Acciones Especiales, or FAES), a tactical unit using lethal force, intervened. The FAES also set up operations after the demonstrations to intimidate the population, leading to an increase in arrests. In just 10 days, from January 21–31, 2019, almost 1,000 people were arrested.<sup>17</sup> In general, the instrumentalization of justice as a repressive apparatus persisted, since many of the demonstrators detained were held in solitary confinement. The procedures following the arrests had serious inconsistencies, such as altered police records and implausible evidence. Neither the public prosecutor's office<sup>18</sup> nor



the courts<sup>19</sup> exercised control over corrupt proceedings, despite their role as guarantors of the constitution.<sup>20</sup>

Current legislation in Venezuela increasingly restricts the right to freedom of expression through regulations such as the Law on the Defense of Political Sovereignty and National Self-Determination (2010); the Law of Social Responsibility in Radio, Television and Electronic Media (2011); and the Constitutional Law Against Hate, for Peaceful Coexistence and Tolerance (2017); among others. It is estimated that 21 journalists were detained while they were covering demonstrations in 2019,<sup>21</sup> with the majority apprehended by the Bolivarian National Intelligence Service (Servicio Nacional Bolivariano de Inteligencia Nacional). Compared to previous years, levels of repression over just these few days of demonstrations multiplied restrictions related to the search for and dissemination of information.<sup>22</sup> From 2014 to 2019, there were a total of 15,045 incarcerations for political reasons, the majority in the context of the protests;<sup>23</sup> approximately 15,000 people were wounded,<sup>24</sup> and there were 254 deaths during the demonstrations (2013–2019).<sup>25</sup> Police violence is an additional concern; from 2010 to May 2019, there were 25,257 police-related deaths recorded,<sup>26</sup> with 60 percent of these deaths occurring between 2016 and 2017.

In the control of demonstrations as well as in work for citizen security, the actions of public security agencies have been increasingly authoritarian, disproportionate, and lethal. This reality has continued to worsen, and with increasing speed, as a result of the arrival of the COVID-19 pandemic to the country in March 2020. The pandemic led to a resurgence of repression and hostility in the lives of Venezuelans, and the State of Emergency Decree that followed the start of the pandemic does not have any regulatory content—<sup>27</sup> it is generic, imprecise, and does not explain what the restrictions on fundamental rights might consist of, generating even greater uncertainty.<sup>28</sup> In fact, given the absence of clear regulations, local authorities have enacted illegal resolutions that give jail time for noncompliance with the quarantine measures,<sup>29</sup> and others have set curfews for the streets without the authority to do so. Added to the state's absolute monopoly of information about COVID-19, the worsening complex humanitarian crisis is especially affecting vulnerable subjects, such as indigenous groups, patients with chronic disease, returned migrants, and those in prisons.

## Recommendations for the Venezuelan State

- Take urgent measures to reestablish the separation of national public powers.
- Implement legal and operational mechanisms to guarantee the free exercise of the right to demonstrate.
- Guarantee full enjoyment of the freedom of expression and the right to information by ceasing the assault on journalists.

- Effectively apply proportionate use of force, both in the framework of demonstrations and in the context of citizen security operations.
- Order the start of criminal investigations related to human rights violations against the public and make actual progress on open proceedings, in the interest of sanctioning those responsible and granting comprehensive reparations to the victims.
- Decree the invalidity of norms that illegally prevent the exercise of the rights to demonstration and freedom of expression based on broad and discretionary interpretations.
- Initiate real dialogues and reconciliation processes with the population and civil society organizations to guarantee the rights of citizens and satisfy their needs.
- Issue clear regulations in line with the national reality based on the State of Emergency Decree and exercise the necessary control mechanisms for its implementation.
- Create logistical conditions for generating full compliance with international protocols of the World Health Organization to effectively combat the pandemic in the national territory.

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## Endnotes

- 1 The Venezuelan Observatory for Social Conflict (Observatorio Venezolano de Conflictividad Social) recorded, in the week following the presidential election on April 14, 2013, 162 protests in 20 states of the country, rejecting the results. PROVEA (*Programa Venezolano de Educación Acción en Derechos Humanos*, the Venezuelan Education-Action Program on Human Rights) reported 13 murders at that time. PROVEA, *Derecho a la manifestación pacífica* [Right to Peaceful Demonstration, 2013 annual report], 2013, 388, <https://www.derechos.org/web/wp-content/uploads/18Manifestaci%C3%B3nPac%C3%ADfica.pdf>.
- 2 Amnesty International report on Venezuela, *Human Rights in Danger in Midst of Protests*, 2014, 1, <http://amnistiaonline.org/Venezuela/Publico/amr530092014es.pdf>.
- 3 This was in violation of Article 46 of the Law on Political Parties, Public Meetings and Demonstrations, dated April 20, 1965, published in *Official Gazette* No. 27.725, <https://pdba.georgetown.edu/Parties/Venezuela/Leyes/LeyPartidos.pdf>.
- 4 *Informe de Acceso a la Justicia para la Comisión Especial de la Asamblea Nacional para el estudio y análisis de la elección de los Magistrados Principales y Suplentes del TSJ* [Report from Access to Justice for the Special Commission of the National Assembly for the study and analysis of the election of Sitting and Alternate TSJ Justices], 8 and 9, <https://www.accesoaljusticia.org/wp-content/uploads/2016/03/informe-a-AN-3-2.pdf>.
- 5 Decree No. 2,184, dated January 14, 2016, published in *Official Gazette* No. 6,214. This has been extended to the present day.
- 6 Ruling No. 155, dated March 27, 2017, <http://historico.tsj.gob.ve/decisiones/scon/marzo/197285-155-28317-2017-17-0323.HTML>; Ruling No. 156, dated March 29, 2017, <http://historico.tsj.gob.ve/>



- decisiones/scon/marzo/197364-156-29317-2017-17-0325.HTML. Both rulings from the TSJ Constitutional Chamber.
- <sup>7</sup> PROVEA, *Protests, Human Rights and Repression (1989–2017)*, special report, 15, <https://www.derechos.org/ve/web/wp-content/uploads/13InformeEspecial-2.pdf>.
- <sup>8</sup> Speech of President Nicolás Maduro, March 18, 2019, <https://www.youtube.com/embed/SDmUyplGugE>.
- <sup>9</sup> Presidential Decree No. 2,830, of May 1, 2017, published in *Extraordinary Official Gazette* No. 6,295.
- <sup>10</sup> 1999 Bolivarian Constitution of Venezuela, *Official Gazette* Nos. 5,453 and 5,908 (first amendment from 2009).
- <sup>11</sup> CIVILIS Human Rights, “ONG y Sociedad Civil: Las elecciones del 20 de mayo no serán libres ni creíbles [NGO and Civil Society: The May 20 Elections Will Not be Free or Credible],” May 20, 2018, <http://www.civilisac.org/alertas/1131>.
- <sup>12</sup> Election Guide, “Bolivarian Republic of Venezuela,” May 18, 2018, <https://www.electionguide.org/elections/id/2765/>.
- <sup>13</sup> BBC World, “Elecciones en Venezuela: qué dice la alta abstención sobre las presidenciales en las que fue reelecto Nicolás Maduro” [Elections in Venezuela: what the high abstention rate says about the presidential elections re-electing Nicolás Maduro], press release, May 21, 2018, <https://www.bbc.com/mundo/noticias-america-latina-44192914>.
- <sup>14</sup> Nicolás Maduro’s inauguration speech as constitutional president of the Bolivarian Republic for the 2019–2025 period, <http://mppre.gov.ve/discurso/juramentacion-ts-j-nicolas-maduro-presidente/>.
- <sup>15</sup> Vivo Play Television, “Juan Guaidó convoca una manifestación nacional el próximo 23 de enero [Juan Guaidó calls for a national demonstration on January 23],” March 11, 2019, <https://www.youtube.com/watch?v=CeL488goOEE>.
- <sup>16</sup> *Informe Conflictividad Social en Venezuela* [Report on Potential for Social Conflict in Venezuela], January 2019, <http://www.observatoriodeconflictos.org/ve/tendencias-de-la-conflictividad/conflictividad-social-en-venezuela-enero-2019>.
- <sup>17</sup> *Reporte sobre la Represión en Venezuela* [Report on Repression in Venezuela], January 2019, Foro Penal Venezolano [Venezuelan Penal Forum], 4, <https://foropenal.com/2019/02/05/reportesobre-la-represion-en-venezuela-enero-2019/>.
- <sup>18</sup> This was in violation of Articles 285, item 2, of the constitution and 111 of the Organic Penal Code of Procedure (Código Orgánico Procesal Penal, or COPP).
- <sup>19</sup> This was in breach of Article 264 of the COPP.
- <sup>20</sup> This violated Article 9, item 2, of the International Covenant on Civil and Political Rights; Article 17, item 2, of the International Convention for the Protection of All Persons from Enforced Disappearance; Article 44, item 2, of the constitution; and Articles 119 and 127 of the COPP.
- <sup>21</sup> These figures are a product of daily press tracking conducted by the author in January 2019.
- <sup>22</sup> Public Space, “¡Que no se hable de política!” [Let’s Not Talk Politics!], press release, May 5, 2019, <http://espaciopublico.org/enero-2019-venezuela-que-no-se-hable-de-politica/>.
- <sup>23</sup> *Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in the Bolivarian Republic of Venezuela*, July 4, 2019, <https://www.ohchr.org/EN/Countries/LACRegion/Pages/VEReportsOHCHR.aspx>.
- <sup>24</sup> *Report from the Organization of American States General Secretariat and the Panel of International Independent Experts on the possible commission of Crimes against Humanity in Venezuela*, May 29, 2018, <http://www.oas.org/documents/spa/press/Informe-Panel-Independiente-Venezuela-ES.pdf>. The report cited *Diario Libre*, “Oposición contabiliza 15,000 heridos tras 63 días de protestas en Venezuela” [Opposition records 15,000 injuries after 63 days of protests in Venezuela], June 2, 2017, <https://www.diariolibre.com/mundo/latinoamerica/oposicion-contabiliza-15-000-heridos-tras-63-dias-de-protestasen-venezuela-AN7249002>.
- <sup>25</sup> The 254 victims came from the total deaths announced in the protests of 2013, 2014, 2017, and 2019. PROVEA, *Derecho a la manifestación pacífica*. There were 43 deaths in the protests of 2014. UN Committee Against Torture, *Final observations on the Third and Fourth Interim Reports on the Bolivarian Republic of Venezuela*, item 9, p. 3, <http://acnudh.org/wp-content/uploads/2015/01/CAT-Venezuela.pdf>. In 2017, there were 163 deaths. Observatorio Venezolano de Conflictividad Social, “Venezuela: 6.729 protestas y 163 fallecidos desde el 1 de abril de 2017,” August 2, 2017, <https://www.observatoriodeconflictos.org/ve/sin-categoria/venezuela-6-729-protestas-y-157-fallecidos-desde-el-1-de-abril-de-2017>. And in 2019, there were 35 deaths. PROVEA, “35 asesinados en protestas 2019 eleva a 250 el número de fallecidos en manifestaciones durante la era Maduro,” January 29, 2019, <https://provea.org/actualidad/https-www-derechos-org-ve-actualidad-asesinado-de-27-personas-en-protestas-2019-eleva-a-242-el-total-de-fallecidos-en-manifestaciones-durante-la-era-maduro/>.
- <sup>26</sup> This is the sum of three figures: (1) 18,401 total deaths between 2010 and 2017 according to data from K. Ávila, *Special Report on the Use of Public Force and Right to Life in Venezuela*, PROVEA, January 2019, <https://www.derechos.org/ve/web/wp-content/uploads/uso-de-la-fuerza-p%C3%BAblica.pdf>; (2) in 2018, the government reported 5,287 violent deaths in that category, as confirmed in a report from the United Nations High Commissioner for Human Rights, *UN Human Rights report on Venezuela urges immediate measures to halt and remedy grave rights violations*, July 4, 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24788&LangID=E>; and (3) between January 1 and May 19, 2019, the government reported 1,569 violent deaths due to “resistance to authority” in just five months. *Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in the Bolivarian Republic of Venezuela*, 2019.
- <sup>27</sup> State of Emergency Decree, No. 4,160, *Extraordinary Official Gazette* No. 6,519, March 13, 2020.
- <sup>28</sup> Allan R. Brewer-Carías, *El Decreto del Estado de Alarma con ocasión a la Pandemia del Coronavirus: inconstitucional, mal concebido, mal redactado y bien inefectivo* [The State of Emergency Decree due to the Coronavirus Pandemic: unconstitutional, ill-conceived, poorly drafted and very ineffective], <http://allanbrewercarias.com/wp-content/uploads/2020/04/Brewer.-El-estado-de-alarma-con-ocasi%C3%B3n-de-la-pandemia-del-Coronavirus.-14-4-2020.pdf>.
- <sup>29</sup> For example, Decree No. 0024-2020, issued by the Maracaibo Mayor’s Office, state of Zulia (western part of the country), <https://www.maracaibo.gob.ve/gweb/img/carruselprincipal/DOCUMENTOS/Segundo%20Decreto%20alcalde%20Willy%20Casanova.pdf>.





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