



**University of Oklahoma College of Law
International Human Rights Clinic
The United States of America**

Report on the Republic Bolivarian of Venezuela for the Twelfth
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Executive Summary:

The University of Oklahoma College of Law International Human Rights Clinic, U.S.A. submits the following report to the Twelfth Session of the UPR Working Group of the Human Rights Council, 3-4 October 2011. The report surveys the Bolivarian Republic of Venezuela's compliance with its human rights obligations as they affect its indigenous populations. The Clinic has chosen four areas of concern to the indigenous population in Venezuela including land rights, health, education, and political participation. Each section includes a reporting of Venezuela's international obligations and domestic endeavors, as well as the impact of these policies on indigenous peoples in Venezuela. The report also contains recommendations as to how Venezuela can better adhere to its international and domestic obligations in these areas. The report is followed by an annex that provides background on Venezuela as well as a more detailed analysis of human rights concerning land rights, health, education, and political participation.

International Law in Venezuela: At all times in this report, Article 23 of the Venezuelan Constitution applies to pacts, treaties, and conventions concerning human rights. Under this provision, such agreements are granted constitutional rank and supremacy over domestic law in so far as they grant greater rights. These agreements are to be given direct effect by the courts and other organs of Public Power.

I. Land Rights

Normative and Institutional Framework

International Obligations: The right to land is addressed in the American Convention on Human Rights, ratified by Venezuela on June 23, 1977 in Article 21(1). The Inter-American Court on Human Rights has held that there is a customary international law norm that grants indigenous peoples the right to their ancestral lands. Convention 169 of the International Labour Organization (ILO C169), ratified by Venezuela on May 22, 2002, addresses land rights in Articles 7(4), 13, 14, 15, 16, 17, 18, and 19(a).

Although they fall outside of Article 23, the 1948 Universal Declaration of Human Rights (UDHR), the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the 1948 American Declaration of the Rights and Duties of Man (ADRDM) may be customary international law. Article 17 of the UDHR addresses the right to property. The UNDRIP addresses the right to land in Articles 8(2)(a), 10, 26, 27, 28, 29, and 32. Article 23 of the ADRDM declares the "right to own such private property as meets the essential needs of decent living."

Domestic Undertakings: The Venezuelan Constitution of 1999 guarantees certain rights including the right to collective title of ancestral lands. The National Executive has the responsibility of granting title, and, concurrently, demarcation of lands. These land rights are inalienable and nontransferable. The Constitution also places restraints on both public and private entities concerning the use of indigenous lands for their natural resources and other purposes. These restraints include the duty to consult affected indigenous communities and peoples in good faith prior to the undertaking of any project. The Constitution places a duty upon the State in the event of State exploitation of natural resources that such endeavors be carried out without damaging the cultural, economic, and social integrity of the affected habitat.

The rights granted in the Constitution are enumerated in further detail in the Organic Law on Indigenous Peoples and Communities (OLIPC), which was enacted on December 8, 2005. The OLIPC sets out the steps of the demarcation process; requirements for use of indigenous lands; and requirements for relocation of indigenous populations. Certain provisions of the OLIPC conflict with the international agreements made by Venezuela even though those agreements were already in force at the time of the OLIPC's adoption. Even though Article 23 of the Constitution decrees that the greater right must prevail, the fact that the OLIPC was enacted later in time creates some ambiguity about the intent of the Venezuelan government with respect to its obligations under international law.

Human Rights on the Ground

Although the international and domestic legal framework that Venezuela has worked to create is quite extensive, these efforts have yielded little practical effect. The demarcation process for indigenous lands was initially intended for completion by 2002, however, only 1.6% of the land thought suitable for demarcation had been granted title by 2008. More recent figures on the amount of land demarcated have not been made available.

The continued lack of demarcation has led to conflicts between indigenous populations and those that have competing claims for the lands, most notably cattle ranchers. Some of these conflicts, such as the situation of the Yukpa Chaktapa, have led to bloodshed between the indigenous populations, third party intruders, and the military. The lack of enforcement of land use rights has also led to health problems for some communities.

Recommendations:

- Increase transparency and otherwise pursue international and domestic obligations related to the demarcation process.
- Make continued efforts to prevent conflicts relating to third party and military occupation of indigenous lands.
- Increase oversight of development projects undertaken on indigenous lands to ensure that they are in compliance with international and domestic law.
- Amend the Organic Law on Indigenous Peoples and Communities to require consent for projects on indigenous lands in compliance with the UNDRIP.
- Address ambiguities and contradictions arising from differences between ILO C169 provisions and the Constitution, domestic legislation, and State practices.

II. The Right to Health

Normative and Institutional Framework

International Obligations: The International Covenant on Economic, Social and Cultural Rights (Article 12), ratified by Venezuela on May 10, 1978, recognizes the right to “the highest attainable standard of physical and mental health.” The International Covenant on Civil and Political Rights (Article 1) ratified by Venezuela on May 10, 1978, addresses the right of self-determination in the area of social development. ILO 169 (Article 25) requires that governments ensure adequate health services to indigenous peoples. The right to health is also addressed in Article 12 of the Committee on the Elimination of Discrimination Against Women, ratified on May 2, 1983, Article 5 of the Committee on the Elimination of Racial Discrimination, ratified on October 10, 1967, Article 24 in the Convention on the Rights of the Child, ratified September 13, 1990, and the UNDRIP in Articles 24 and 19.

Domestic Undertakings: Articles 83, 84 and 85 of the Venezuelan Constitution establish a fundamental right to health, guarantee free healthcare, and place the responsibility of financing a public health system on the state. The Constitution also establishes the right of indigenous peoples to health care that takes their practices and cultures into consideration in Article 122. The OLIPC includes provisions guaranteeing a right of incorporation of indigenous medicine into the National Health Care System, and a right of participation in health programs and coordination of public health policies.

Human Rights on the Ground

Venezuela has shown commitment to advancing public health and honoring its international obligations in its domestic law. However, implementation of health rights is largely ineffective, primarily due to the decentralized structure of the healthcare system. A lack of overall coordination and common strategic vision among the various public health sectors has led to duplication of both efforts and resources. As a result, many of the programs initiated by The Ministry of Health have deteriorated due to lack of funding. Coordination of efforts and funding has been made more difficult by a lack of uniform healthcare legislation. Moreover, Mission Barrio Adentro and other government initiatives have not effectively reached the indigenous population due to the remote location of their communities and a lack of communication with indigenous groups.

Recommendations

- The Indigenous Health Department (IHD) of the Ministry of Health should coordinate with the other ministries and the Barrio Adentro Mission when initiating programs in order to consolidate funding and more effectively target indigenous communities.
- Uniform healthcare legislation should be enacted by the National Assembly including provisions incorporating indigenous rights into the National Public Health System.
- The Ministries should consult with leaders within the indigenous communities regarding programming affecting them and the area they inhabit.
- The IHD of the Ministry of Health should coordinate with Mission Barrio Adentro to organize clinics and dispensaries in the most remote indigenous communities.

III. The Right to Education

Normative and Institutional Framework

International Obligations: The following treaties contain provisions related to the right to education: the ICESCR (Articles 13, 14); the CERD (Article 5); the CRC (Articles 2, 28, 29, 32); ILO C169 (Articles 26, 27, 28, 29); the CEDAW (Articles 6, 14); and the ICCPR (Articles 8, 18). Venezuela is also a party to ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO C182) (Ratified on October 10, 2005). In addition, the UDHR may be evidence of customary international law, and addresses the right to education in Article 26. The UNDRIP may also be evidence of customary international law and contains relevant provisions in Articles 14, 15, and 21.

Domestic Undertakings: Article 102 of the Venezuelan Constitution provides that education is a human right, is compulsory and free, and is to be provided equally to all. Article 121 articulates the right of the indigenous peoples to an “intercultural bilingual

education system” that incorporates “their special social and cultural characteristics, values and traditions.” Article 89(6) contains prohibitions against child labor and exploitation.

The OLIPC provides further detail on the right to an intercultural bilingual education, and outlines the State’s obligations in regards to providing this education. The Indigenous Languages Act of 2008 (ILA) requires the use of indigenous languages for educational institutions and services where indigenous peoples live. The Organic Law for the Protection of Children and Adolescents of 1998 (OLPCA) contains prohibitions against child exploitation, slavery, and forced labor in Article 38.

Human Rights on the Ground

Although the general population of Venezuela enjoys high rates of school enrollment and literacy, there is evidence that indigenous children suffer low enrollment rates and may receive substandard educations. A lack of comprehensive disaggregated data makes the situation difficult to assess and monitor.

School facilities and basic access to education are lacking for some indigenous communities in Venezuela, and there is a pressing need for more qualified indigenous teachers. In addition, through the Ministry of Education, texts and educational materials have been translated into certain indigenous languages; however, for some indigenous groups, bilingual and culturally appropriate materials are not available.

There is evidence that indigenous children in the regions of the Upper Orinoco and the Casiquaire and Guainia-Rio Negro Basins are suffering exploitation and the worst forms of child labor, including slavery, child prostitution, trafficking and sale. Other reports indicate that indigenous girls in the states of Bolivar and Delta Amacuro are being lured from their communities and sold as domestic slaves to wealthy families in the regions.

Recommendations

- Ensure access to education for indigenous children, including transportation.
- Strengthen efforts to train indigenous teachers and to develop pedagogical guides in cooperation and in consultation with the respective indigenous communities.
- Increase efforts to translate texts, and to provide culturally appropriate, bilingual educational materials for all indigenous communities without discrimination.
- Provide more complete data, disaggregated by age, gender and minority status on attendance and performance in each region in order to measure the impact of educational programs on indigenous peoples and to identify key areas requiring more resources.
- Investigate all reports of forced labor and trafficking of children for sexual or labor exploitation, ensuring that perpetrators are prosecuted and heavy punishments imposed.

IV. The Right to Political Participation

Normative and Institutional Framework

International obligations: ICCPR Articles 1 and 2, Article 25 of the ACHR, Article 6 of ILO C169, and Article 8 of UNDRIP all implicate indigenous political process rights. Pursuant to its obligations under these instruments, Venezuela must recognize its citizens’ rights to vote and to take part in public affairs; ensure protection of indigenous

tribes' right to self-determination; provide indigenous peoples an effective means of redress for rights violations; and establish means for indigenous participation in the political process.

Domestic Undertakings: The 1999 Constitution recognized Venezuela's indigenous peoples as distinct groups and guaranteed to them the right to participate fully in national and local government. Subsequent legislation guaranteed three seats in the National Assembly to indigenous representatives. Venezuela has various ministries with the responsibility of ensuring indigenous rights. Foremost among these is the Ministry of People's Power for Indigenous Peoples. In 2006, Venezuela enacted its Special Communal Councils law, which enables thousands of communities to form local councils to aid government in allocating funds for projects.

Human Rights on the Ground

Community councils are designed to encourage local participation and are available to the population as a whole. Their use is widespread, but experts say the nature of the involvement, i.e., that the community councils must decide issues by majority vote, can distort the traditional power structure of indigenous tribes, which can cause political discord within tribes.

The effect of indigenous political participation is limited. One community complained that the government was unresponsive and they felt alone in their efforts to be heard. As a result, the community abandoned attempts to solve their problems through the government. Instead, it relies on local businesses to fund needed projects. Experts note that high turnover in public administration at the national level is a main culprit in situations like this. They claim that dedicated public servants become disenchanted and move on, and the work they had done is then lost. A lack of inter-agency cooperation means duplicated work throughout the indigenous parts of the country. Given the remoteness of many indigenous communities and the fact many indigenous communities do not have knowledge of government agencies, indigenous peoples can become frustrated when their pleas go unanswered due to inefficiencies in public administration.

Recommendations

- Focus on retention of ministerial workers combined with robust inter-agency communication of indigenous problems at the national level.
- Create a database of reported indigenous problems to governmental agencies, accessible to all national agencies charged with protecting indigenous rights.
- Make non-politicization of community councils a priority so as to not create discord among tribes.