



**REGULATORY SIEGE
ON**

FREEDOM OF ASSOCIATION IN VENEZUELA

EXECUTIVE SUMMARY



DECEMBER 2022

1. Despite being described by the authorities as the "best in the world", at least in terms of freedom of association, the 1999 Constitution contains rules that restrict it.
2. Article 52 of the Carta Magna recognizes that "everyone has the right to associate for lawful purposes in accordance with the law" and that "the State shall be obliged to facilitate the exercise of this right." However, Article 256 prohibits judges from associating with each other without a statement of reasons justifying the reasons for refraining from doing so, in flagrant violation of the provisions of the Covenant on Civil and Political Rights and the American Convention on Human Rights.
3. These treaties state that the prohibition of association may apply to the Armed Forces or the police, which must be interpreted restrictively and subject to the cases mentioned, so that no additional bans may be imposed. They also point out that any limitations must be compatible with a democratic society. However, in the case of the constitutional ban on the association among judges, there is no justification for it.
4. The 1985 United Nations Basic Principles on the Independence of the Judiciary state in article 8 that "members of the judiciary shall enjoy freedoms of expression, belief, association, and assembly." Likewise, Article 9 states that "judges shall enjoy the right to form and join associations of judges or other organizations whose purpose is to represent their interests, promote their professional training and defend judicial independence," making the constitutional prohibition contrary to the international standard.
5. Although the Constitution recognizes the principle of progressiveness of human rights, its text on association is regressive in comparison with the previous Magna Carta of 1961 because it eliminates the provisions of article 72: "The State shall protect associations, corporations, societies, and communities whose purpose is the best fulfillment of the purposes of the human person and social coexistence." Thus, in the current fundamental text, there is no similar rule.
6. However, the 1999 Constitution recognizes another broad spectrum of manifestations of freedom of association. For example, it protects the freedom to "associate for political purposes" (Article 67), although without expressly referring to political parties, as did the previous Constitution. It also recognizes the right to form trade unions, with the freedom to belong or not to them, expressly excluding the power to be administratively intervened, suspended, or dissolved.
7. However, these latter advances are undermined in Article 293, paragraph 6, which establishes that the Electoral Power (National Electoral Council [CNE]) has the power to conduct elections of unions, professional associations and organizations with political purposes "as well as other civil society organizations at their request, or by order of the Electoral Chamber." It is a provision that impacts the autonomy of any civil society organization by allowing state intervention in its internal affairs.
8. In terms of trade union freedom, this constitutional power has opened the door to a significant restriction, since the simple delay in the holding of elections by the boards of directors of the Electoral Branch has given rise to the Judicial Branch, which issues sentences that go beyond its powers, to appoint *ad hoc* boards of directors. It is a situation that has been condemned by the Commission of Inquiry of the International Labor Organization (ILO).

9. State intervention in labor unions has extended to the guilds, and the Judiciary, instead of curbing it, has encouraged it. This issue was addressed by Acceso a la Justicia in an investigation into the intervention in the Bar Associations, which shows how it has become one more way for the State to annul freedom of association.
10. Article 70 of the Constitution recognizes different means of social organization, such as citizens' assemblies, cooperatives, savings banks and "other forms of association guided by the values of mutual cooperation and solidarity," as well as expressions of social entrepreneurship such as those established in article 118, which encourage workers to "develop associations of a social and participatory nature, such as cooperatives, savings banks, mutual funds and other forms of association."
11. Although, in general terms, the range of expressions of freedom of association has been broadened in the 1999 Constitution, at the same time, it imposes an interference by the State that is contrary to the autonomy of the organizations constituted under the protection of this freedom. Whose concretization in the facts shows the annulment of civil society in its different forms of association and the very exercise of its right to association instead.
12. The restriction of freedom of association at the legislative level is verified in two different ways: by those laws that directly affect the right of association and by those that impose structures alien to freedom of association, which substitute and even usurp spaces that would naturally correspond to civil associations.
13. In the latter case are the structures established through the so-called "laws of popular power," which outline a new model of State and society, the communal one, which, despite having been rejected in the 2007 referendum proposed by the late former President Hugo Chávez to reform the 1999 Constitution, was imposed by legal instruments (Organic Law of Popular Power, of the Communal Councils, of the Communes, of the Communal Economic System and of the Social Comptroller) and sub-legal instruments.
14. Prior to this proposal, structures known as communal councils had already begun to be established in 2006, created by the Organic Law of Communal Councils, Article 2 of which states that:

[these] are instances of participation, articulation, and integration between the various community organizations, social groups, and citizens, which allow the organized people to directly exercise the management of public policies, and projects aimed at responding to the needs and aspirations of communities in the construction of a society of equity and social justice.
15. However, it progressively moved on to create structures imposed by law that led to a substitution of citizen participation, plural and diverse by nature, with the imposition of a new constitutional model outside the text of 1999. It becomes even clearer when one reads the final sentence of the aforementioned article, amended in 2009 in the following terms: "in the construction of the new model of the **socialist society** of equality, equity and social justice." (emphasis ours)

16. The concept of organized community has a very different connotation from that of the constitutional text. Thus, the Organic Law of Popular Power establishes:

For the purposes of this law, the following is understood to mean: Organized Community: Constituted by popular organizational expressions, councils of workers, peasants, fishermen, fisherwomen, and any other grassroots social organization, articulated to an instance of the Popular Power duly recognized by law and registered with the Ministry of Popular Power with competence in matters of citizen participation.

17. The norm leaves out other types of community and neighborhood organizations.

18. The contradiction with the freedom of association is verified for two reasons: by the imposition of a supposedly associative model, and by the fact that, being the only mode of organization of the citizen recognized as such, it implies a prohibition of other ways of exercising the right of association, in particular vis-à-vis the State. That is to say, although it is perfectly possible for a group of neighbors to constitute a civil association with all the freedoms that derive from the right of association, the authorities do not recognize it as legitimate if it is not submitted before them with the scaffolding of popular power, that is to say, as a communal council.

19. In addition to the Constitution and the provisions of the people's power laws, the authorities have issued a series of rules and regulations that infringe on the right to association in recent years. This study mentions five other laws and four sub-legal regulations that hinder or obstruct the right of citizens to form groups to participate in public affairs.

20. The Law in Defense of National Sovereignty and Self-Determination prohibits international funding for those organizations that "threaten sovereignty, the independence of the Nation, the exercise of national institutions or legally constituted authorities," and more specifically for organizations with political purposes (which is the constitutional denomination for political parties), natural persons that carry out "political activities" (Article 1) and non-governmental organizations that carry out "activities for the defense of political rights."

21. Article 6 provides that if organizations receive international funding, they shall be sanctioned with a fine "equivalent to twice the amount received" without prejudice to the application of additional sanctions established in other laws. The same sanction applies to natural persons (Article 7). In the case of recidivism, it also allows disqualification from participating in electoral processes for five to eight years. (Article 9)

22. In addition, Article 8 states that organizations with political purposes, for the defense of political rights or individuals that "invite foreign citizens or organizations, under their sponsorship, to issue opinions that offend the institutions of the State, its senior officials or threaten the exercise of sovereignty" will be punished by a fine ranging from 5,000 to 10,000 tax units. In addition, those who issue such opinions will be subject to expulsion from the country.

23. In 2010, the Law on Political Parties and Public Demonstrations, which dates back to 1965, was reformed, but the amendments retained its Cold War-era restrictions on the right of association.
24. Article 46 of the text gives the country's governors or mayors the power to indicate where "public meetings or demonstrations" may not be held, with the sole condition that they decide to do so "having previously heard the opinion of the parties." This discretion is also vast as no conditions or technical requirements are established for making this decision. Still, rather it is left to the free will of the authorities mentioned, which can easily translate into arbitrariness.
25. The Organic Law against Organized Crime and the Financing of Terrorism has a particular importance these days for being the basis of sub-legal rules in force since 2021 that limit and even prevent the exercise of freedom of association. Because of this, its direct impact is more for what it does not say and should say, that is, the regulation of non-profit organizations (NPOs), according to financial terminology, a concept in which most of the associative expressions of the country would be grouped.
26. The Law for the Registry and Enlisting for the Defense of the Nation is another instrument that contains provisions that affect the right to association by establishing that all "natural and legal persons" must cooperate in defense of the country. Then, in article 40, it indicates the scope of this cooperation, as it establishes that every legal person shall

Register or update their data in the Register for Integral Defense within sixty days from the date of formalization before the respective registry; within the framework of co-responsibility, legal persons shall be categorized in the regulations of this law for the purpose of their participation in the security and integral defense of the Nation.

All of the above is subject to a fine of 50 to 150 tax units without prejudice to other sanctions (Article 101). In addition, a penalty is also applicable in the event that the legal person fails to update its data (Article 103), as well as for repeated non-compliance (Article 104).
27. The Income Tax Law Reform Law maintains the elimination of the exemption from payment of this tax for organizations dedicated exclusively to religious, artistic, scientific, conservation, defense, and improvement of the environment, technological, cultural and, sports activities, as well as for those professional or trade associations, university, and educational institutions. However, it does oblige them to comply with formal duties such as the corresponding declaration.
28. Article 43 (1) (i) of the Rules for Management and Control of Risks Related to Money Laundering, Financing of Terrorism and Financing of the Proliferation of Weapons of Mass Destruction, applicable to institutions in the banking sector, stipulates that non-profit associations and foundations shall be considered as "high-risk customers or economic activities,". This is a generalized and indiscriminate measure that flagrantly violates the provisions of the Financial Action Task Force (FATF), and generates a presumption against civil organizations.

29. Circular SIB-DSB-CJ-OD-06524 issued on November 20, 2020, by the Superintendency of Banking Sector Institutions (Sudeban) states that it had evidenced
- the malicious use by some organizations under the guise of a legal person of a financial product provided through a prepaid card called Professional Benefits, for national and international use, which represents a [money laundering] alert for the national banking system.
30. The Special Rules for recognition and operation of non-domiciled non-governmental associative organizations not domiciled in Venezuela, issued by the Ministry of the Interior and the Ministry of Foreign Affairs, stipulates that in order to continue their activities, foreign groups operating in the country must meet the following conditions: obtain the relevant certificate of registration in the Special Automated Register of Non-Domiciled Non-Governmental Organizations; and have a permanent establishment, headquarters or fixed base, or designate a representative, in accordance with the provisions of the Resolution and other applicable regulations.
31. Groups that do not register and do not comply with the obligation to account to the authorities for their activities may be prohibited from operating.
32. Article 2.1 of the Norms assures that it is only limited to the humanitarian field but requires these organizations to develop their activity "within the framework of the United Nations Humanitarian Response Plan with Needs Assessment," which is incompatible with their autonomy of management since they may or may not follow this Plan in their right to give humanitarian aid to those in need.
33. Finally, there is the Providencia [Guidelines] for the Single Registry of Entities before the National Agency against Organized Crime and Financing of Terrorism (RUSO-ONCDOFT), which creates a system of registration additional to that established in the national regulations for non-profit civil organizations, using as an excuse the presumption of crimes of terrorism, financing of terrorism and organized crime, among others, because of the activities carried out by these organizations and their sources of financing.
34. In reality, the "Providencia" establishes an authorization regime, subject to annual renewal, whereby only those who have obtained credentials issued by the competent office may act as legal representatives of the organizations. In addition, each organization is required to have a compliance officer who registers and obtains credentials.
35. By constantly forcing organizations to prove that they are not legitimizing capital or financing terrorism, the principle of presumption of innocence is violated to the extent that a general state of suspicion is established over them without a prior and individualized investigation to justify it.
36. The regulations require organizations to submit a series of documents, many of which are already in possession of the authorities (articles of incorporation, membership reports, financial statements, etc.) in violation of the Law on Simplification of Administrative Procedures.

37. This is even more aggravating when it is considered that the documents cannot be kept up to date, because the State itself does not allow it, although the order establishes that they must be submitted in order to obtain the ONCDOFT certificate, thus making it clear that this requirement would be impossible to comply with, not because the associations so wish, but because it is the State itself that prevents it.
38. In general terms, national regulations establish exorbitant limitations and obligations for associations that do not comply with the requirements of international treaties on the protection of human rights, particularly the right to association.
39. Also, national legislation prohibits funding for civil and political rights organizations, which is incompatible with international standards.
40. In addition, national legislation establishes tax, registration and reporting obligations that unnecessarily burden organizations and hinder their activities.
41. In the area of combating money laundering and financing of terrorism, the national legislation does not establish limitations on the powers of the public administration to regulate non-profit organizations, thus violating the principle of the legal reserve as regards restrictions and prohibitions on human rights, laid down both in the Constitution and in international human rights treaties.
42. In the area of combating money laundering and terrorist financing, the national legislation also does not reflect the FATF principles for the protection of NPOs.
43. The sub-legal norms of the country, linked to the fight against money laundering, violate the legal reserve on restrictions to human rights, do not comply with FATF requirements in this area, and break the principles of progressivity and presumption of innocence.
44. It can be concluded that domestic law does not meet international standards to protect the basic elements of freedom of association in Venezuela.

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