Early Warning System
Quarterly Report
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SINERGIA - Venezuela

Introduction

The Early Warning System (EWS) project has become a really valuable tool in terms of providing an organized manner in which to keep track of governmental actions that are already restricting the free exercise of rights and liberties, as well as trends that indicate such restrictions might occur in the future.

Through the reports that Sinergia has already been producing, in particular as components of the “Observatory on the guarantees and exercise of the rights to Freedom of Association and Participation”, there have been restrictive trends and practices on record, among which the most important would be the following:

The attempt by the Venezuelan National Government to impose its political project, called “XXI Century Socialism”, which does not recognize the diversity of the Venezuelan people’s political thought and rejects any form of dialogue. This has affected both opponents and even dissidents from the ranks of the governing party or other sectors that have typically supported the Government but are now showing discontent given the Government’s increasingly authoritarian rule. Incitement to hate through the use of violent language against opponents or dissenters has become particularly worrisome, because it is inscribed into a new military doctrine that involves “an internal military” order through the military training of civilians—who are generally members of community-based organizations created by governmental regulations, workers of public companies, and students— in order to defend the socialist revolution from internal and external enemies.

External threats and restrictive influences

As was recorded by the EWS indicators, during the last three months of 2009 justifications such as the “defense of the revolution” and “threats” against it, were used to criminalize the normal political activity of political opponents and of members of civil society organizations (CSO). In November, the government-controlled National Assembly (Congress) decided to open investigations on travels abroad by well-known opponents, while at the same time accusing them of taking sides with enemies of the Venezuelan Government. It is important to note that President Chávez in general equates his government and even himself with “the Venezuelan People” and “the Revolution”, with all who oppose him labeled as “enemies” of the revolution, “Stateless”, “oligarchs”, “traitors” and “lackeys of the empire”.

Of particular concern in the international arena has been the relationship of the Venezuelan Government with the neighboring Colombian Government. President Chávez raised the level of violent, confrontational rhetoric and severed economic ties with Colombia, even though this measure has deeply hurt the border region and the ordinary people on both sides. The following two speeches by President Chávez exemplify the handling of his relations with Colombia and with internal opposition.
During a public rally at the beginning of November entitled “mobilization for peace and against the US military bases in Colombia”, President Chávez stated: “Let me tell the media tyrants, the empire and its lackeys, and the stateless, miserable and filthy opposition, that they disgust us with their groveling attitude. They have no dignity, not even the slightest bit of self respect, and they demonstrate it when they are now taking sides with the oligarchic and treacherous government of Colombia”. Also on December 29th, President Chávez warned that the Colombian Government “is seeking to destabilize our country, pretending not only to put an end to the Venezuelan revolution, but to the Latin American revolution as well. Let’s hope that they do not carry out acts of aggression, because they are going to regret it for the next 500 years”. He announced that tanks bought from Russia would arrive at the beginning of 2010 because “We Venezuelans are the rulers of our country, we are not ruled by yankies (referring to the US government) or pitiyankies (derogatory for pro US parts of the population)! Here, the people rule and those arms we bought are to defend the people, to defend the Bolivarian Revolution!”

At the same time, President Chávez has strengthened ties with President Ahmadinejad of Iran, calling the Iranian Revolution and his Bolivarian Revolution “daughters of the same history, the same struggles of the people”. Within this context, he also praised Idr Amin Dada saying he was “perhaps a great nationalist, a patriot”, just as he had praised Robert Mugabe expressing “his moral and political support” for him. In December, the opposition leader of Belarus, Alaksandar Milinkevich, also expressed regret for the economic support that President Chávez is providing to the Lukashenko regime.

This pattern of praises and support to authoritarian leaders —there have been others such as Colonel Gaddafi and Omar Al-Bashir— and his insistence that Carlos the Jackal, is a “revolutionary fighter”, could imply a course of conduct that would follow the action of his praised allies and thereby threatens those considered his enemies —dissidents, political opponents and CSO’s.

Lastly in regards to the international arena, it is important to point out a systematic practice by the Government of an explicit disqualification of the Inter-American System of Human Rights (ISHR) and the non compliance with decisions by the Inter-American Human Rights Court (IHR Court), which are legally binding on the Venezuelan State given the fact that Venezuela is a signatory of the Inter-American Human Rights Covenant and the Venezuelan Constitution recognizes the jurisdiction of the IHR Court in cases of violations or threats to human rights in Venezuela. In one such decisions by the IHR Court requiring the Venezuelan government to reinstate a Criminal Court Judge removed without due process and to give provisional judges the same guarantees of stability in their posts as those of appointed judges (more than half are provisional), the Venezuelan Supreme Tribunal decided not to comply: “It is unacceptable and we cannot allow the Court (IHR Court) to dictate disciplinary norms and those related to the selection of judges, since we have such norms in our internal legal system. Just as we respect international treaties, so too they have to respect our sovereignty.”

The disregard for the jurisdiction of the IHR Court and the systematic disqualification of the Commission pose a threat to the protection and guarantees of human rights in Venezuela. Given the lack of judicial independence in Venezuela, the ISHR is vital to preserving and defending human rights.
Threats and restrictions to civil society

Regarding the space for civil society, various types of obstacles and threats faced by CSO’s have been recorded during the past few years, including: administrative procedures; expropriation of facilities without due process; the creation of bogus organizations for “the construction of socialism” recognized as the “legitimate” representatives of the “true” interests of the people; the systematic disqualification of CSO’s by accusations of “destabilization”, “hiding political objectives”, and provoking “mental distress.” Many CSO’s have also opted for different forms of self-censorship. Moreover, the Draft International Cooperation Law, approved in a first Parliamentary discussion in 2006, hangs over CSO’s as a “Sword of Damocles”. And even though the Draft International Cooperation Law has not yet received final approval, it was included for discussion in the legislative agenda of the National Assembly.

Among the restrictive aspects of the Draft Law that CSO’s have called attention to are:

- instead of regulating the cooperation activities of the Venezuelan State—which was the justification for its original design—the Draft Law aims at regulating the activities of civil society organizations, as has been expressed by Representatives at the National Assembly;
- CSO’s must align their programmes to priorities set by the Government in its “First Socialist Plan” which is primarily aimed at the “construction of socialism” and does not human rights anywhere among its priorities;
- in order to be recognized as “subjects” of International Cooperation, all CSO’s have to re-register in a special office, dependant on the Presidency, created to handled international cooperation;
- all funds and other forms of international cooperation—whether technology, human resources, etc.—will be handled by the National Cooperation Fund, also dependant on the Presidency; and
- all aspects related to the actual implementation of the law are delegated to regulations established by the Executive, once the law is approved. This is a serious violation of the right to free association and democratic governance, because the proposed legislation essentially grants the President unlimited authority to restrict this basic human right.

During the last three months of 2009, one of the most serious events affecting human rights organizations was the assassination of Mijail Martínez, a young activist from Lara State’s “Committee of Victims against impunity”. Mijail’s father, Víctor Martínez, had been a Council Member of his municipality, elected through his membership in the governing PSUV party, to which he had already resigned, and hosts a TV program in which he exposes cases of corruption and violations of human rights, by government officials and members of the local police.

The progressive militarization of civilian life has been an aim of the government ever since the President took office in 1999. The participation of military personnel, both active and retired, in the highest government posts, as well as their control of economic and social programs, comprises what has been called “The New Military Doctrine”, inspired by “the Bolivarian ideals and socialist values”. Internal company military units, formed as “militia”, directly affect the autonomous organization of workers. These internal units act essentially as intelligence units with the responsibility of reporting any kind of “counterrevolutionary” activity—which often includes the rightful demands of workers. Rafael Ramírez, President of the Venezuelan Oil Company and Minister of Energy and Petroleum, at a meeting with workers, expressed that
those who do not become a part of the militia will be considered “suspicious of sabotage and conspiracy”. Militia members are further expected to be involved in other types of government-organized associations: Communal Councils, Workers’ Councils, and Students’ Councils.

In November, the Law on Communal Councils (CC) was approved by the National Assembly. The objective of the Law is to “establish the sociopolitical base of socialism, in order to consolidate a new political, social, cultural and economic model”. One of the CC’s functions is “to exercise the community government and the direct execution of public policies in the construction of the new model of a socialist society of equality, equity and social justice”. That is to say that through these CC’s citizens have a mechanism for participating in public matters at the community level. However, participation is also limited to the CC, leaving out other means of autonomous participation that are not approved or backed by the CC. The new law is more restrictive than the previous one approved in 2006, since it only recognizes participation aimed at the “construction of socialism”, excluding other forms of association that do not share this ideology (or forcing others to conform to this ideology in order to be recognized), and limits the possibilities to work freely toward the common good. With this new Organic Law the “construction of socialism” becomes the broad framework for participation and the regulating principle for establishing all CC’s. This Law is directly tied to the First Socialist Plan of the economic and social development of the Nation, 2007-2013, which is not based on, but rather contradicts, the Venezuelan Constitution.

Two emblematic national associations were disqualified for having a “political agenda”. These were the Association of Parents and Representatives of School Children and the National Association of Journalists. In the case of the former, after bringing a legal case before the Supreme Tribunal against the Department of Education for limiting parental rights regarding their children’s education, Representative María de Queipo said that “many [members] of the Associations of Parents and Representatives of School Children do not represent all of the educational community. I invite these associations to be legitimate and to respect the real interests of the community...”. Regarding the National Association of Journalists, after its President, William Echeverría, participated with seven human rights organizations in the hearings of the Inter-American Human Rights Commission, Representative Desireé Santos Amaral demanded that William Echeverría stop using his position in this association for political proselytizing and asked him to resign from his post “if he is going to keep on doing these activities and to take on the role of a political leader or to become a member of a political party.”

Threats and restrictions to civil and political rights

Freedom of expression is one of the rights most severely affected during the past few years: since 2002, over 800 cases of aggression against journalists have been recorded. As well, 32 radio stations and 2 TV stations have been arbitrarily closed. The National Telecommunications Commission (CONATEL) is being used as the restrictive unit of the government regarding freedom of expression, just as the Public Defender’s Office is being used as its criminalization unit regarding the right to peaceful demonstrations. In both cases, one of the outcomes of the selective measures —closures and criminalization— has been self censorship.

For example, after President Chávez talked about confrontations and even war with Colombia, opposition leaders, members of CSO’s, and journalists expressed their concerns. Soon thereafter Diosdado Cabello, Minister of Public Infrastructure and President of CONATEL,
announced that CONATEL would analyze all media reports regarding the President’s statements and that those reports that use the statements “to cause instability” would be punished.

The right to elect and to be elected for public office has been seriously affected in Venezuela. The vote, as an institution, is being discredited through a series of unconstitutional means under the guise of new “revolutionary” legality. On the one hand, 272 potential candidates for office were prohibited from participating at the end of 2008 in Regional and Municipal elections, without legal process or criminal sentence, based on accusations of administrative irregularities by the Comptrollers’ Office. As well, those opposition-party members elected as Mayors, Governors or Council members, have seen their authority, public resources and funds, taken away by President Chávez by decree or through new “revolutionary” laws. He went as far as naming a “Chief of Government” in the new “Capital District”, disrespecting and effectively dismissing the decision of voters in the capital city of Caracas who had elected their Metropolitan District Mayor.

The General Comptroller’s office has again published a new list of people (“inhabilitados” or “inhibited”) who will not be able to become candidates for election to political posts. This time, the list includes 125 people, among them ex-governors, mayors and political opposition leaders. In sum, almost 400 people have been “inhibited” from exercising their political rights without due process.

In this context, on October 14th the National Assembly approved the new Law on Electoral Processes. Two aspects are the most relevant in terms of the exercise of the rights to elect and to be elected: 1) the proportional representation of minorities has been seriously affected, since the approved mechanisms of election give advantage to the party that gets the most votes in a sort of “winner takes all” fashion; 2) the combination of nominal votes and party lists for the September elections of Representatives to the National Assembly has been changed, so that the party that gets 50% of votes could get 80% of the seats. In addition, the National Electoral Council (NEC) was given the ability to change voting districts at will. This allows for a rearrangement of districts such that, based on past results, an added advantage could possibly be given to the governing party.

Since the term in office of two members of the NEC’s Board of Directors came to an end, a 10-member Selection Committee was created by the National Assembly; of which 9 of the members belong to the governing PSUV party. In turn, the two new Board Directors elected by the Selection Committee have both been members of the PSUV who recently resigned in order to be eligible for selection. Electoral processes observer Súmate, a Venezuelan NGO, published a communiqué stating that “the new Directors will usurp the authority of their important public posts since they were not selected in accordance to Constitutional norms”. The observation mission of the European Union also previously warned, in its 2006 report —when presidential elections took place—, that the NEC actions have been tarnished by accusations of partisanship. They recommended that in order to solve this problem, the new Board “be composed by independent professionals, from diverse areas, who have the trust of all sectors of society”.

Criminalization of dissidence and peaceful demonstrations has been another trend that calls for serious concern. Since 2005, more than 2,400 people have been subjected to prosecution for participating in protests or for expressing dissenting opinions. Just as the Public Defender’s Office has been used to criminalize legitimate peaceful demonstrations, the Supreme Tribunal of
Justice has further authorized it to make “preventive” arrests. Well-known Venezuelan Jurist Alberto Arteaga Sánchez expressed: “from now on, anyone can be arrested preventively — beyond cases of flagrancy— and informed later why he or she is a suspect under investigation. This increases the power of the Public Defender’s Office and criminal judges and decreases the judicial guarantees of citizens.”

One of the most emblematic cases is that of Mr. Franklin Brito, a small-farm owner, who had been on hunger strike and was taken by force from the grounds of the building that houses the Organization of American States (OAS) in Caracas to the Military Hospital. It is important to note that the initial decision to take Mr. Brito to a hospital was taken by a Criminal Court, even though Mr. Brito has not committed or been accused of any crime. Venezuelan human rights organization PROVEA stated that this creates a really dangerous precedent in terms of human rights, because anyone exercising his right to protest by any peaceful means can be taken by force, without due process. Mr. Brito remains detained against his will at the Military Hospital.

Another case is that of Metropolitan Municipality Prefect, Richard Blanco, deprived of liberty while his trial continues. Prefect Blanco was detained on Aug 26th for allegedly assaulting an undercover Metropolitan Police agent, during a large demonstration to protest against the recently approved Organic Law on Education. This decision, affecting an opposition politician, once again disrespects the basic principle of the “presumption of innocence”, which is also enshrined within the Venezuelan Criminal Code. In cases of aggressions to opposition politicians and journalists by government backers, even when perpetrators have been brought to justice, the accused have gone through their judicial processes in liberty. This case also evidences the systematic practice of criminalizing protests, since Prefect Blanco was arrested for inciting to commit a crime while participating in a demonstration, a charge without evidence as videos actually show him protecting the undercover Police agent from protesters.

The loss of independence of powers

Political interference in judicial proceeding have drastically undermined any principled balance between executive a judicial powers. Take for instance the action against Judge Maria Afiuni, in charge of the 31st Tribunal of the Caracas Metropolitan District, who ordered that banker Eligio Cedeño be put on probation as Mr. Cedeño had been imprisoned for almost three years without trial; a situation that had been specifically denounced by the Rapporteur on Arbitrary Detentions for the Office of the United Nations High Commissioner on Human Rights. However when the banker was being conditionally released, Judge Afiuni was arrested. President Chávez, in a national public broadcast, demanded that Judge Afiuni, “responsible for freeing Cedeño”, be condemned to 30 years in prison: “She is a delinquent judge, everything was prearranged, she violated the law because she called Cedeño to a hearing without the presence of representatives of the Public Defender Office, and freed him through the back door”. He demanded of Attorney General Luisa Ortega that Judge Afiuni and everyone involved “pay with all the rigor of the Law”. That same night, Judge Afiuni was charged with “corruption, abuse of authority, favoring evasion and association to commit a crime” and ordered to be put in INOF, Venezuela’s main women’s prison.

Just as the National Assembly and the National Electoral Council constantly evidence their submission to the Executive, so too the Judiciary has followed the same path. This lack of separation of powers is one of the gravest threats to democracy and human rights in Venezuela.
Referring to this issue, Luisa Estela Morales, President of the Supreme Tribunal of Justice publicly expressed: “We cannot continue thinking in a division of powers because that is a principle that weakens the State.” She continued on to argue that it was necessary for the State and power to be one and that all powers must work in a united manner and always promoting cooperation. Regarding this statement, together with other issues, President Chávez said: “There is a new process of popular and revolutionary constitutionalism taking place in our America, and we cannot disappoint them, because a new theory is rising from the people…”

Conclusions

All of these patterns of conduct by various public authorities severely threaten the state of democracy, the rule of law and human rights in Venezuela. Institutional violence, expressed by statements and practices from the highest levels and all the way down the State apparatus, together with the impunity that results from a distorted and discriminatory judicial system, has been one of the most serious consequences of the lacking separation of state powers.

Instead of opening doors for discussion and dialogue, the Government is instead resorting to repression and criminalization in restricting the freedom of expression, association and participation. This is creating a vicious circle in which social justice, rights and freedoms are under increasing threat.

The use of a distorted justice to punish, criminalize, harass, imprison and persecute anyone who expresses dissidence or discontent with the state of affairs in Venezuela is a grave obstacle to individuals’ and CSO’s participation in finding solutions for pressing social problems. Given the shrinking space for constructive dialogue as social problems increase — as is evidenced by the ever increasing homicide rate and the lack of personal security, water shortages, electricity shutdowns, and growing demands for dignified housing — the general population, both supporters and opponents of the Government, resorts to public demonstrations and protests. At the same time, and in spite of the loss of credibility of democratic institutions, individual citizens and CSO’s have not abandoned the path of institutional engagement and continue to pursue legal action against unconstitutional governmental deeds, which leaves open possible bridges for increasing cooperation and organized collective action.

As the Venezuelan national government attempts to impose an exclusive and discriminatory model of a “Socialist State”, more and more the Venezuelan people are realizing that social justice demands democratic practices and the rule of law, just as democracy and the rule of law cannot prevail without social justice.