



ARTICLE 19

PRESS RELEASE

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Venezuela: Constitutional Reform Threatens Freedom of Expression

Venezuela's National Assembly approved a Constitutional reform on 2 November 2007 that would make it far easier to impose a state of emergency, during which freedom of expression could be limited. The 69 proposed constitutional amendments will be voted on in a public referendum on 2 December. A series of demonstrations following the National Assembly vote led to violent clashes between opponents of the reform and the police. Opponents have asked for a postponement of the referendum date, claiming that the population is not familiar with many aspects of the reform.

The amendments would allow the president to declare a state of emergency without Supreme Court approval and for an unlimited period of time. The amendments are particularly controversial as they are part of a series of provisions increasing presidential power, including the elimination of term restrictions for presidential re-election.

ARTICLE 19 is particularly concerned with proposed amendments to Articles 337, 338, and 339 of the 1999 Bolivarian Constitution, relating to the rules for declaring states of emergency. The current Article 337 provides for temporary derogations from constitutional guarantees during states of emergency, with the exception of the rights to life, to communicate, to physical integrity, to due process and to information. The amendments would allow for derogations from the right to information.

Article 338 of the 1999 Bolivarian Constitution places limits on states of emergency of 30 days in cases of public catastrophe, 60 days in cases of economic emergencies, and 90 days in situations of internal or external conflict, with the possibility of renewal. The constitutional reform omits any reference to time limits for emergency periods, giving the president the power to declare states of emergency for "as long as the causes that motivated them remain."

The proposed amendments to Article 339 remove the requirement for Supreme Court scrutiny of any decree suspending rights during an emergency, as well as the requirement for "the decree [declaring a state of emergency] to be in compliance with the requirements, principles, and guarantees established by the International Covenant on Civil and Political Rights and the American Covenant on Human Rights."

International law recognises that during states of emergency states may derogate from certain human rights. However, the *International Covenant on Civil and Political Rights* (ICCPR) places a number of conditions on such derogations, including that they may be imposed only in the context of an emergency threatening the life of the nation and to the extent strictly required by the situation.

These conditions are not met under the proposed Venezuelan constitutional reform. The proposed Article 337 defines emergencies as “social, economic, political, natural or ecological circumstances that seriously affect the security of the nation, of its institutions and citizens, and when the available means are not sufficient to face such circumstances”. The proposed Article 338 provides for a state of alarm to be declared “when there is a certain and imminent possibility that a situation capable of generating catastrophes, public calamities or other similar events will occur, with the intention of taking the necessary preventive measures to protect the security of the nation or of its citizens”. The same derogation rules established for the state of emergency would apply to the state of alarm.

These standards clearly fall far short of the requirement under international law of a threat to the life of the nation, permitting emergencies to be declared in the context of a political or economic crisis, or natural disaster, or even simply a threat thereof. The UN Human Rights Committee, which oversees compliance with the ICCPR, has shown great reluctance to accept derogations from rights in situations other than armed conflicts.

The Venezuelan rules would also fail to limit derogations from rights to what is strictly required by the circumstances, which is currently required through the reference to international standards in the existing rules. This is an extremely important constraint on the power of the authorities to derogate from rights.

ARTICLE 19 calls on the Venezuelan National Assembly to reconsider the proposed amendments and, in particular, to refrain from making it easier to declare a state of emergency and to derogate from the right to freedom of expression and information once such an emergency is declared.

NOTES TO EDITORS

- For more information, please contact Paula Martins at paula@article19.org or +55 11 3057 0042
- ARTICLE 19 is an independent human rights organisation that works around the world to protect and promote the right to freedom of expression. It takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees freedom of expression.