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OVERCOMING THE WESTPHALIAN NOTION OF "ABSOLUTE SOVEREIGNTY": THE VENEZUELAN CASE WITH THE INTER-AMERICAN CONVENTION OF HUMAN RIGHTS *by Gabriel Ortiz**

In 2012, Former Venezuelan President Hugo Chavez withdrew from the American Convention on Human Rights (ACHR or "the Convention").¹ He presented a letter issued by the Department of Foreign Affairs before the Secretary General of the Organization of

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1 Press Release, Inter-American Court of Human Rights, *IACHR Regrets Decision of Venezuela to Denounce the American Convention on Human Rights*, OAS (Sept. 12, 2012), https://www.oas.org/en/iachr/media_center/PReleases/2012/117.asp. [*hereinafter* Denunciation Letter].

American States (OAS).² The denunciation became effective in 2013.³ Thereafter, no one could petition before the Inter-American Commission or the Inter-American Court (IACHR) to hold Venezuela accountable for human rights violations. Meanwhile, between 2014 and 2019, the government's armed groups have killed more than 19,000 people.⁴

Venezuela holds that all Human Rights treaties are hierarchically equivalent with the Venezuelan Constitution.⁵ However, international norms are more favorable because they offer greater protection against human rights violations. Therefore, the only way for a government to withdraw from the ACHR is by using the pre-established methods of constitutional changes.⁶ Former Presidents Hugo Chavez and his successor, Nicolas Maduro, maintained their position on the ACHR, seeing

2 Letter from the Foreign Ministry of the Venezuelan Bolivarian Republic to the Secretary General of the Organization of American States (Sept. 6, 2012), https://www.oas.org/dil/esp/Nota_Republica_Bolivariana_de_Venezuela_al_SG_OEA.PDF (Only available in Spanish).

3 Press Release, Inter-American Court of Human Rights, *IACHR Deeply Concerned over Result of Venezuela's Denunciation of the American Convention*, OAS (Sept. 10, 2013), https://www.oas.org/en/iachr/media_center/PReleases/2013/064.asp.

4 U.N. Human Rights Council, *Detailed Findings of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela*, U.N. Doc. A/HRC/45/CRP.11 (Sept. 25, 2020), https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFMV/A_HRC_45_CRP.11.pdf.

5 CONSTITUCION DE LA REPUBLICA BOLIVARIANA DE VENEZUELA [CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA], Dec. 30, 1999, art. 23, https://www.oas.org/dil/esp/constitucion_venezuela.pdf (Only available in Spanish).

6 See generally Carlos Ayala Corso, *Inconstitucionalidad de la Denuncia de la Convencion Americana sobre Derechos Humanos por Venezuela* [*Unconstitutionality of the Withdrawal of Venezuela from the American Convention on Human Rights*], 9 ANUARIO DE DERECHO CONSTITUCIONAL LATINOAMERICANO [LATIN AM. CONST. L. Y.B.] 43 (2013), <https://www.corteidh.or.cr/tablas/r32197.pdf> (Only available in Spanish).

international human rights organs as “*interfering with national security and Venezuela’s sovereignty*.”⁷ Undoubtedly, returning to the IACHR depended on a governmental change. That change happened in January 2019 when Congressional President, Juan Guaido, retroactively ratified the ACHR by presenting it before the OAS Secretary General, pursuant to Article 74 of the Convention.⁸

In December 2021, the Inter-American Commission on Human Rights heard a case about the arbitrary detention of fourteen police officers during a 2016 protest. The protest took place after Venezuela’s withdrawal from the ACHR, but the IACHR heard the case under the protection of the retroactive ratification.⁹ This case raised key questions: Could a Congress ratify a convention unilaterally by alleging that a denunciation of the Convention was unconstitutional? Could a state member of a human rights treaty express their willingness to cover violations retroactively? What does the Vienna Convention on the Law of Treaties say about these

⁷ See Denunciation Letter, *supra* note 1; see also *Venezuela Denounces American Convention on Human Rights as IACHR Faces Reform*, INT’L JUST. RESOURCE CTR. (Sept. 19, 2012); Julian Ku, *Venezuela Formally Withdraws from American Convention on Human Rights, Blames the U.S.*, OPINIO JURIS (Sept. 9, 2013), <http://opiniojuris.org/2013/09/11/venezuela-formally-withdraws-american-convention-human-rights-blames-u-s/> (emphasis added).

⁸ See OAS, *American Convention on Human Rights, “Pact of San Jose”*, Costa Rica, O.A.S.T.S. No. 74 (Nov. 22, 1969), <https://www.refworld.org/docid/3ae6b36510.html>; see also National Assembly of the Bolivarian Republic of Venezuela, *Agreement to Restore the Validity of the American Convention on Human Rights and the International Protection Offered by the Inter-American Court of Human Rights and the Commission* (May 15, 2019); Silvia Steininger, *Don’t Leave Me This Way: Regulating Treaty Withdrawal in the Inter-American Human Rights System*, EJIL (Mar. 5, 2021), <https://www.ejiltalk.org/dont-leave-me-this-way-regulating-treaty-withdrawal-in-the-inter-american-human-rights-system/>.

⁹ Press Release, OAS, *IACHR Takes to Inter-American Court of Human Rights Case Concerning Torture and Unlawful Deprivation of Liberty in Venezuela* (Mar. 23, 2022), https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2022/060.asp.

questions?¹⁰

This will be a landmark decision for human rights regional systems, resolving issues regarding jurisdictional exercises of human rights courts against previous denunciation and withdrawal decisions made by extra-constitutional authoritarian states. More importantly, this case will determine whether 30 million Venezuelans can bring claims before the IACHR against Venezuela.

¹⁰ Patricia Tarre Moser, *What is Happening with Venezuela in the Inter-American System*, AGENDA ESTADO DE DERECHO (Oct. 6, 2022), <https://agendaestadodederecho.com/que-esta-pasando-con-venezuela-en-el-sistema-interamericano/>.