

**Aguaclara Foundation's
Report to the UNO's HRC regarding
Venezuela's Universal Periodic Review
12th Session / October 2011**

1. **Aguaclara** is a non-profit organization (a foundation), established in 2000, dedicated to improving quality of life in Venezuela through environmental education. This objective we aim to achieve by upholding human rights in connection with a variety of environmental issues (health hazards, water quality and accessibility, etc.), as well as our duties as citizen, which make us both participants and leading characters in the preservation of natural and urban environments. The main focus of our environmental education work is on chemical contamination. (www.aguaclara.org)

2. The general theme of this report is the violation of environmental human rights from two perspectives:

- The limitation or annihilation of basic freedoms and legal and human rights of Non-Government Organizations (NGOs).
- Environmental degradation.

Specific points are:

- Restrictions to specific rights of NGOs:
 - The right to free association (Article 20 of the UDHR),
 - The right to openly and publicly express opinions and communicate information (Article 19 of the UDHR)
 - The right to exercise environmental and social audits (Article 21, Paragraph 2, of the UDHR).

These restriction obstruct the work of the environmental NGOs and will inevitably result in environmental degradation.

- International environmental conventions.
- Water quality.
- The use of PVCs as building material.
- Mercury.
- The right to environmental information.

The Rights of Non-Government Organization (NGOs)

3. In the Constitution of the Bolivarian Republic of Venezuela, the right to free association is consacrated in Article 54, which states that everyone has the right to freely associate as long as the purposes are legal; and that the State has the obligation to facilitate that right. The same Article declares that human rights and political pluralism are preeminent values of our legal system.

4. In December of 2010, the National Assembly (our legislative power) aproved the Organic Law of Popular Power [<http://www.pgr.gob.ve/Recursos/gaceta.asp> Gaceta #6011]. As noted therein (Article 7): "The Popular Power has the following goals: 1. To promote the strengthening of organization among the people, in order to consolidate a protagonic and *revolutionary* democracy, and build the bases of a *socialist*, democratic society, with legality and justice." Article 8 declares: "To the effects of this here Law, these definitions apply: ... Organized Community: consists of the forms of popular organization – concils of workers, of peasants, of fishermen, and any other basic social organizations, *articulated to an instance of the Popular Power, duly recognized by the law and registered in the Ministry of the Popular Power that rules over the matter of citizen participation.*" (Italics added by us).

5. The articles of law quoted above are introducing norms of obligatory compliance into our legal system that are in direct conflict with the superior values of defense of human rights and pluralism that are consacrated in our Constitution. They make it obligatory for the various forms of association to assume socialism as the single, unique ideology, since it will be the only way in which they will achieve the necessary recognition by the State. This forfeits any

possibility of free, plural, democratic thought; affects the rights to free association and free expression, and restricts the work of NGOs in all fields, and specifically those working on environmental issues.

6. Regarding the matter of social and environmental audits, which are one of the fundamental roles as well as one of the most important tasks of NGOs, Article 62 of our Constitution consecrates the citizens' freedom to participate in public affairs. Articles 141, 143, and 315 declare the principles of responsibility, transparency, and accountability as duties of all government agencies, as well as the rights of citizens to receive the information that allow to participate in public affairs.

7. On the same December of 2010, the National Assembly passed the Organic Law of Social Audit (Ley Orgánica de Contraloría Social, LOCS), that states that its objective is "to develop and strengthen Popular Power, through the establishment of norms, mechanisms and conditions for the promotion, development and consolidation of social audits, as a means for citizens and social organizations to participate and share responsibility, in an exercise of shared power between the Public Power and the Popular Power."

8. After having established in the Organic Law of Popular Power that the said Popular Power is conformed by 'revolutionary' and 'socialist' organizations, to declare that social audits are a shared exercise of the Popular Power and the agencies of the Public Power automatically excludes the rest of the civil organizations, which from now on are banned from carrying out auditing of governmental performance. In the struggle for environmental protection, as well as in other fields of endeavour, the participation of independent NGOs in that activity is fundamental. It is important to point out that our Constitution does not uphold 'socialist values' as inspiration for carrying out social audits.

International Environmental Conventions

9. To date, Venezuela has ratified 23 environmental conventions to become law in our country. This is of fundamental importance to both human and environmental rights, and to the preservation of Venezuela's mega-diversity. However, governmental compliance with the terms of the Conventions is indeed deficient. There are severe delays in carrying out the various tasks and presenting the reports required by the terms of the Conventions. This represents a limitation in benefiting from both the rights therein consecrated, and the information thus generated, which is of vital importance for executing the tasks needed to preserve nature and life in our country and on the planet. The non-compliance with the Conventions represents an infringement of our Constitution.

Water Quality

10. Article 127 of our Constitution consecrates "the right and the duty that each generation has to protect and maintain the environment, for its own benefit and the future world" Also, that "everyone has the right to individually and collectively enjoy a safe, healthy and ecologically balanced life and environment", and it imposes on the State "with the active participation of society, to ensure that the population lives in an environment free of contamination", where all parts of the environment "are specially protected, according to the law". Article 304 states that "all waters are of public dominion of the nation, irreplaceable for life and development".

11. In compliance with the "Objectives of the Millennium", the present administration has managed to connect many urban areas of the country to aqueduct systems. In spite of that, however, deforestation; contamination of the watersheds of rivers that feed the reservoirs; deterioration of infrastructure of the reservoirs themselves and of the water distribution networks; poor maintenance of the too-few water treatment plants; severe delays in the construction of new water treatment plants adequate to present-day contamination; and the use of contaminated sources, such as Lake Valencia, as supplies of crude water, are causing grave deficiencies, as much in terms of the volume of the supply as in the quality of the water supplied to users. On the other hand, the watersheds of the rivers to the south of the Orinoco (including

those inside the borders of national parks) are being severely deteriorated by illegal gold mining, unplanned expansion of agriculture, and illegal timbering. The criminal activities (illegal timbering and mining) should be persecuted and controlled by the National Guard, but to date, they have proven to be totally inadequate for the task. The damages caused to the country's biodiversity, to the natural patrimony of future generations, and to our environmental rights, are irreversible.

The Use of PVCs as Building Material

12. The present administration's efforts to solve a national crisis regarding a severe deficit in low-income housing, are commendable. However, one of the measures applied in the resolution of this problem – the use of PVCs as construction material in low-income housing developments, presents a problem for human and environmental health. (The houses are almost entirely made of PVC.) The entire life cycle of PVC materials represents a human and environmental health hazard. The risks posed by dioxins and heavy metals leached by PVCs are well known – dioxins were banned by the Stockholm Convention on Persistent Organic Pollutants, which was ratified by Venezuela on March 1^o, 2005 (Gaceta # 38.098). PVCs are virtually impossible to degrade. The PVC used in the government-built housing projects called "Petrocasas", was tested and found to contain lead as stabilizer. The proportion is small, but the heavy metal is biologically available and places the house residents under low but permanent exposure. It is important to note that besides being built in the country, this type of houses have been donated by the Venezuelan government to Perú, Bolivia, Nicaragua and Cuba.

13. Since their construction began in 2008, a growing number of families are living in these 'Petrocasas' in many Venezuelan towns, including villages inside national parks. There are plans under way to build schools, medical centers and even sports facilities with the PVC materials. We have tried by every possible means to provide information on the risks to the developers, to no avail: there is no reply from the authorities in charge.

14. By virtue of the right to a reply from the Ministry of Energy and Oil, a law suit (file N^o 2009-0092 dated 12-15-2009) is pending for sentence in the Venezuelan Supreme Court. A request for information on the components used in the formula for the 'Petrocasas' PVC, was presented to the above mentioned Ministry, but no reply was obtained in more than the time limit established by law. It is not possible to obtain information from Ministry personnel, for the only one who can declare or reply is the Minister, or someone directly designated by him. To that effect we resorted to the Precautionary Principle, and to Article 9 (Paragraph 5) of the Stockholm Convention, which declares that: "For the purposes of this Convention, information on health and safety of humans and the environment shall not be regarded as confidential."

Mercury

15. Mercury is used in Venezuela in both industrial and illegal gold mining. The two types of mining take place in close proximity, in areas that are covered with extensive tracts of lowland rainforests. Annual account statements available to us from a single legal mining field in the "Zona B" of El Callao (one of many in the State of Bolívar) mention an annual release of 12 metric tons of mercury to the environment. With volumes like that, contamination from this heavy metal and its transformation to methyl-mercury are quite significant. Another grave problem associated with gold mining in the south of Venezuela is the extensive deforestation and loss of fragile top soil it causes.

16. In recent years, in order to reduce electricity consumption, the government has been promoting the use of so-called 'saving' light bulbs. Although from the point of view of the energy saved, this is a good idea, the country totally lacks procedures and facilities for the adequate final disposal of these types of light bulbs, nor is the public receiving information, through what should hopefully be an extensive public education campaign, about the risks they represent or the way they should be handled in order to avoid exposure to mercury. The government announced that it has placed more than 50 million 'saving' light bulbs in homes and offices around the country. So far, calculations that have not been denied by the government place the release of mercury into the environment at 25 metric tons (each bulb supposedly

contains 5 mg of Hg, but there is no label on the bulbs themselves declaring contents). Those 25 tons of mercury will end up as pollutants around human settlements because no provisions were made for their final disposal.

The Right to Environmental Information

17. As already mentioned in paragraph 6, the Venezuelan Constitution explicitly declares the right of citizens to participate freely in public affairs and to be 'accurately and opportunely' informed. Environmental matters are not excluded from that right. However, government agencies that deal with them are not answering requests for information, and our attempts at communication have been ignored. In the specific case of information about the PVCs as building materials, we found ourselves having to resort to a law suit before the Supreme Court in 2009. Sentence on that suit has not been passed to this date. No explanation has been given, either, to the people who are living in the 'Petrocasas' about the threat that surrounds them. The saving light bulbs do not indicate that they contain mercury nor is there a public awareness campaign in place or in preparation, that may instruct the users on the risks they entail and the proper way to dispose of them once they burn out. There are no reports either on water quality, in spite of numerous requests and denunciations. No reports are issued about oil-industry accidents, even though it is Venezuela's principal industry, nor is there any information available on the amounts produced and disposal measures used for the slurry (red-mud) from our aluminum industry, or on the persistent organic contaminants from either the oil industry or the 'basic industries' (aluminum, iron) in Bolivar state. Technical personnel in government agencies are not authorized to give information or any kind of comments, nor is there access to itemized budgets for environmental aspects of the various government-owned industrial sectors. When the tasks and reports required by the various Conventions are not completed, the technical information required by NGOs and international agencies is seriously affected. The lack of information affects citizen's rights and cripples the benefits brought to society by the environmental audits of government performance that the NGOs generate.

Recommendations:

18. In the efforts to promote citizen participation, develop programs and legislation that do not discriminate against or privilege any ideology, adhere to the articles and principles of the Constitution of the Bolivarian Republic of Venezuela, and allow full enjoyment of the right to participate in public affairs without discrimination of any kind.
19. In cooperation with universities and research institutions, the private business sector, NGOs, and the communities, undertake a complete revision of the status of each of the International Conventions that Venezuela has ratified, in order to fulfill all the commitments made by the nation for each Convention, and place our country in a position of full compliance.
20. In cooperation with universities and research institutions, the private business sector, NGOs, and the communities, undertake a complete environmental evaluation of each of the country's watersheds, including the reservoirs and dams, and producing las cuencas, embalses y represas del país, y producir la agenda de actividades para su recuperación.
21. In the resolution of the country's housing crisis, change to the use of other types of construction materials, different from Polyvinyl chloride PVC.
22. In cooperation with universities and research institutions, public health agencies, the private business sector, NGOs and the communities, carry out the research needed to evaluate the impact of lead in populations exposed to this danger.
23. Take on responsibility for the medical assistance required by people affected by lead intoxication, if they should occur.
24. In cooperation with universities and research institutions, public health agencies, the private business sector, NGOs and the communities, carry out the research needed to evaluate the impact of mercury on the country's rural and urban populations. And . take on responsibility for the medical assistance required by the population affected by mercury contamination.

- 25.** In cooperation with universities and research institutions, the private business sector, and NGOs, establish, with great urgency, a system of integrated management, and build the centers needed for final disposition of the so-called 'saving' light bulbs. These should include all the technology required to recuperate the metal.
- 26.** Inform the general public about the risk of exposure to mercury that the use of so-called 'saving' light bulbs (new-generation fluorescent light bulbs) entails, as well as the exact amount of mercury contained in each type and brand of light bulb, and the mitigating measures available.
- 27.** In cooperation with universities and research institutions, the private business sector, NGOs, and the communities, establish the best technology and best practices to recuperate mercury in the mining industry.
- 28.** In cooperation with universities and research institutions, the private business sector, NGOs and affected communities, develop a social and economic plan to reduce illegal gold mining to a minimum, since the plans carried out to date – 'Misión Piar', 'Plan de Reconversión Minera', 'Plan Caura' – have not achieved their expected goals.
- 29.** In cooperation with universities and research institutions, the private business sector, NGOs and affected communities, develop the required evaluations of impact on communities and the environment of both legal and illegal gold mining; and afterwards propose an agenda of measures and actions to recuperate the areas.
- 30.** In cooperation with universities and research institutions, the private business sector, NGOs and affected communities, develop the plans and carry out the work necessary to recuperate damaged watersheds, destroyed forests, lost soils and other associated damages.
- 31.** At all levels – the Chancellery, Ministry of the Popular Power of Environment, universities and research institutions, NGOs and communities - support the work of the United Nations Environmental Program, UNEP, toward the creation, in 2013, of the international convention on Mercury Contamination.
- 32.** Facilitate access to technical and any other relevant information on environmental issues, in order to guarantee citizen participation in government performance.
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