

Defenseless

The Impact of the Absence of Consular Services on the Rights of the Venezuelan Population Abroad



Centro de Derechos Humanos
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Facade of the headquarters of the Venezuelan
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I. INTRODUCTION

As a result of the declaration of a transitional government in Venezuela on January 23, 2019, and the appointment, starting January 29, of diplomatic representatives to more than 40 countries and multilateral organizations, several States severed relations with the government represented by Nicolás Maduro. This action was not limited to the diplomatic sphere but, in some cases, extended to consular relations.

This circumstance has brought as a consequence that millions of Venezuelan nationals who reside in states that do not have Venezuelan consular services now face a situation of legal defenselessness, which also affects nationals of these States who reside in Venezuela.

The absence of consular services affecting the Venezuelan population abroad has a negative impact on the exercise of their rights due to the restrictions to access documents that only Venezuela can issue, as well as the impossibility of carrying out procedures before the authorities of receiving countries and the absence of social, economic, and legal assistance in cases of emergency.

The situation tends to go unnoticed, especially for some public entities and most of the private sector in countries receiving Venezuelan nationals. For this reason, the Human Rights Center at Andrés Bello Catholic University (CDH UCAB) decided to address this issue to disseminate information on the reality faced by people from Venezuela in the exercise of their rights because of the absence of consular services.

The fact of having two political forces presenting themselves as legitimate, recognized as such by different sectors of the international community, and exercising government functions to hold administrative control over the population constitutes an atypical situation whose characterization is not simple. Consequently, this study will refer to both the Nicolás Maduro administration and the government represented by the National Assembly elected in 2015 as a means of identifying the actors without implying support for any of the parties.

Although the report focuses on the problems that arise from the absence of consular services, some of the interviews conducted for the study allow us to observe that, even before the political crisis of 2019, consular services were deficient. For this reason, many people face difficulties in obtaining documents and certifications required by receiving countries.

Besides a few exceptions presented in this report, the Venezuelan population abroad generally does not feel represented or supported by the State.

For the purpose of this research, interviews were conducted in countries with no Venezuelan consular services and also in countries with a situation of dual representation, where Nicolás Maduro does not enjoy recognition, and diplomatic relations were broken off, even if consular relations with both representatives of the Maduro administration and the government represented by the National Assembly elected in 2015 kept going. The materials for this report were compiled between December 2020 and March 2021.

The study, directed by Professor Ligia Bolívar with the assistance of lawyer Carlos Rodríguez Pérez, begins with a review of the current situation regarding the issuance of certain documents by the Venezuelan State. Next, the study presents information on the status and type of services offered by the consulates under Nicolás Maduro administration, the consular offer of the posts in the hands of the government represented by the National Assembly elected in 2015, and the case of dual representations. Third, it addresses the impact that the absence or limitation of consular services is having on the rights of the Venezuelan population abroad. Finally, the

study presents the measures adopted by the receiving States to alleviate some of the effects of the lack of access to documents, to close with a set of conclusions and recommendations directed to the receiving countries.

II. THE CHALLENGE OF OBTAINING DOCUMENTS IN VENEZUELA

The exercise of many rights depends on obtaining certain documents, such as an identity card or birth certificate for identification; a passport for free international transit; and certification of academic records and credentials for education and work, among others. Restrictions on the enjoyment of rights begin for many Venezuelans in their own country. The State does not produce the documents it is obliged to issue or does so with extreme delay, which creates barriers to access that only seem to be possible to deal with through corruption.

An obstacle that began to manifest in 2018 and affects the first step of the right to identification is access to a live birth certificate. In that year, the organization *Centros Comunitarios de Aprendizaje* (Community Learning Centers, CECODAP for its acronym in Spanish) had information of some 30,000 babies who did not obtain a birth certificate in the capital region alone and projected that the national figure could have reached 271,850 children. This certificate is made on a form known as EV-25 printed on security paper. This security paper, manufactured outside the country, became

scarce in April 2018, and the situation continued until October of the same year¹.

Not having a live birth certificate prevents the newborn from obtaining a birth certificate in the civil registry. The General Coordinator of CECODAP has not hesitated to point out that “The Venezuelan State not only kills newborns with the lack of medicines but also kills them from a civil perspective by not guaranteeing their identification at birth.”²

A second step in the identification process is the child's registration in the civil registry, which must occur within the first 90 days after birth.³ However, due to the shortage of EV-25 forms, delayed registration of children has increased, surpassing the 90 days established by law.⁴

Additionally, civil registry services have been suspended as a result of the COVID-19 pandemic State of Alarm decreed on March 13, 2020 and extended every 30 days thereafter until the closing date of this report.⁵ Even though the law on the matter establishes

The Venezuelan State not only kills newborns with the lack of medicines but also kills them from a civil perspective by not guaranteeing their identification at birth.

Carlos Trapani, CECODAP

¹ CECODAP. *Violación del derecho a la identidad de las niñas, niños y adolescentes en 2018*. July 2019. Available: <https://drive.google.com/drive/folders/1mPrwHhWRnUHjZJuzfmDgzDGBwHlkxEPo>

² CECODAP. Carlos Trapani: “El Estado mata civilmente a los niños de Venezuela al no garantizar el derecho a la identidad”. Available: <https://cecodap.org/el-estado-mata-civilmente-a-los-ninos-de-venezuela-al-no-garantizar-el-derecho-a-la-identidad/>

³ Art 86, *Ley Orgánica de Registro Civil*. Art 20, *Ley Orgánica para la Protección de Niños, Niñas y Adolescentes*.

⁴ See CECODAP. *Violación del derecho a la identidad de las niñas, niños y adolescentes en 2018*.

⁵ Extraordinary Official Gazette number 6,519 of March 13, 2020.

that, as an essential service, the activity of the civil registry should be “regular, continuous, uninterrupted and oriented to the service of the person,”⁶ the truth is that it has been suspended or carried out intermittently ever since the measures for the prevention and containment of the pandemic were adopted, affecting the registration of births, among other procedures.

In August 2020, CECODAP monitored the situation of 13 civil registry offices located in the Capital District and Miranda state, finding that “38% of the monitored civil registry offices remained open, while 62% were closed and without customer service”⁷.

The third step in the identification process is obtaining an identity card, which the Administrative Service issues, for Identification, Migration and Foreigners (SAIME for its acronym in Spanish). From the age of 9, all children must hold an identity card. Some of the requirements for identification include:

- Original Birth Certificate.
- Certified copy of the Birth Certificate.
- The certificate must be listed in the Civil Registry.

- The certificate must contain the data described in art. 81 of the Organic Law on Civil Registry.

Due to the restrictions described above regarding civil registration, it is easy to deduce that it can be challenging to access some of these requirements when the Venezuelan State is not issuing them. CDH-UCAB has information on parents who have accelerated their plans to migrate before their children reach the age of 9 not to have to comply with the requirement of an identity card. In these cases, the children traveled with a passport issued before they turned 9. However, the consequences of this decision have been counterproductive, as will be seen later.

As of 2017, delays began to occur due to the lack of inputs for identification⁸. This situation worsened in September 2018, when SAIME notified that, as of July 30 of that year, it would suspend the issuance of identity cards until further notice for those trying to get one for the first time⁹. It should be noted that one of the requirements to obtain a passport is to have a valid identity card.

The fourth and best-known step in this series of obstacles to the identification of Venezuelan citizens is getting a passport. The difficulties in obtaining a passport began in

⁶ Art 5, *Ley Orgánica de Registro Civil*.

⁷ CECODAP. *Informe sobre el funcionamiento del registro civil en pandemia*. Septiembre, 2020. Available: <https://drive.google.com/drive/folders/15bRYOXdUlqSZKbnUV9N2BCIDIf7jTu0>

⁸ El Impulso. *Usuarios del Saime denuncian falta de material e inoperancia*. Available:

<https://www.elimpulso.com/2017/01/24/usuarios-del-saime-denuncian-falta-material-e-inoperancia/>

⁹ El Estímulo. *Por “ajustes al sistema”, el Saime comenzará a trabajar el #7Ene*. Available: <https://elestimulo.com/por-ajustes-al-sistema-el-saime-comenzara-a-trabajar-el-7ene/>

2016. The barriers are related to variables such as the lack of resources, failures in the online platform, and delays and uncertainty in the process.

At the end of 2019, SAIME increased the cost of passports by 3,500%, making it the most expensive in the region, according to *Transparencia Venezuela*¹⁰. The cost of the document was US\$203.44 for a new passport and US\$101.72 for an extension, which is out of reach for the majority of the population. The minimum wage was below US\$10 per month and less than a dollar per month on the date of release of this report. This means that a person would have to devote seventeen years of a minimum wage salary to pay the fees for a new passport and eight years and a half for an extension.

On March 22, 2021, the Partial Regulation of the Decree-Law of the Organic Law on Identification regarding the issuance, renewal and extension of passports was published¹¹, establishing that passports would be valid for ten years. However, this provision will be valid for new passports only, while the difficulty for those who cannot afford a new passport remains.

The suspension of civil registration during the pandemic has brought other consequences to the issuance of documents in Venezuela. In addition to birth registration, article 3 of the

law on the matter establishes 13 other functions of the civil registry, all of which are currently suspended.

They are:

- The constitution and dissolution of marriages.
- The recognition, constitution, and dissolution of de facto civil unions.
- Judicial separation.
- Filiation.
- Adoption.
- Full and limited interdictions.
- The appointment of guardians, curators and guardianship councils.
- Acts related to the acquisition, option, resignation, loss and recovery of Venezuelan nationality and the nullity of naturalization.
- The civil status of members of indigenous peoples and communities; first and last names, place of birth, and place of residence, according to ancestral customs and traditions.
- Deaths, presumption and declaration of absence, and the presumption of death.
- Residence.
- The rectifications and introduction of records of civil status.

¹⁰ Transparencia Venezuela. *El Saime da un tiro de gracia a derechos a la identidad y al libre tránsito*. Available:

<https://transparencia.org.ve/el-saime-da-un-tiro-de-gracia-a-derechos-a-la-identidad-y-al-libre-transito/>

¹¹ Official Gazette number 42,092 of March 22, 2021.

- The accreditation, loss, and revocation of temporary and permanent emigrant status.

The completion of these procedures may be necessary for the exercise of rights inside and outside the country. However, amid the restrictions imposed by the COVID-19 pandemic, in force for one year now, no alternative measures were taken to allow certain procedures to be carried out, for example, through the provision of online services. On the other hand, even if this alternative had been chosen, Venezuela faces limited internet access¹² and extremely low speeds¹³.

For most documents to be valid outside the country, they must be authenticated through an apostille. In Venezuela, this procedure is carried out by the Ministry of Foreign Affairs. As in the case of identification documents, the apostille process lost transparency in the country during the last decade due to excessive delays, leading to corruption and the use of informal intermediaries. Consequently, the apostille became a difficult procedure.

As of 2019, the Venezuelan Foreign Ministry started an electronic apostille system, seeking

The lack of simplification of procedures has led to the emergence of corruption networks with the participation of informal intermediaries and State officials.

¹² Debates IESA. *El servicio de internet en Venezuela: una mirada desde las políticas públicas*. Available: <http://www.debatesiesa.com/el-servicio-de-internet-en-venezuela-una-mirada-desde-las-politicas-publicas/>

¹³ Fixed broadband speed was ten times lower than the south american average. See Economic Commission for

Latin American and the Caribbean: Statistics and Indicators. ECLAC 2019. Available: https://cepalstat-prod.cepal.org/cepalstat/web_cepalstat/estadisticasIndicadores.asp?idioma=i

to render the use of informal intermediaries unnecessary. However, when preparing this report, all procedures required the physical presence of the interested party or their attorney-in-fact. So far, only the criminal record certification can be done completely online, free of charge, and with an approximate issuance time of ten days.

The lack of simplification of procedures has led to the emergence of corruption networks with the participation of informal intermediaries and State officials.

In 2017, the NGO *Transparencia Venezuela* filed more than 100 complaints regarding passport irregularities before the Administrative Service for Identification, Migration and Foreigners (SAIME)¹⁴. The irregularities denounced included the delay in the delivery of passports and the excessive charging by the agency officials in exchange for the issuance of identity documents¹⁵. Juan Carlos Dugarte, director of SAIME in 2017, pointed out that: "... the crisis is due to the lack of inputs..."¹⁶

For its part, CDH UCAB recorded the dismantling of at least three gangs that point

to the officials' involvement from SAIME and the Autonomous Service of Registry and Notary Offices (SAREN for its acronym in Spanish), between mid-2018 and late 2019¹⁷. One of these gangs had international ramifications in Colombia and Panama.

This difficulty in obtaining travel documents explains why many Venezuelans choose to migrate in a forced manner and without the documentation required by the countries receiving Venezuelan nationals. In fact, the Inter-American Commission on Human Rights referred to this situation, noting that:

The IACHR stresses its concern about the many difficulties and hurdles faced by Venezuelans to obtain or renew passports, as well as to be issued documents including ID cards, birth certificates, certificates of live birth and records of past criminal activity, and to apostille documents. The IACHR has been informed that Venezuelans face great difficulties to obtain or renew such documents, based on the lack of inputs to make them and on the high costs and long deadlines that may be involved in

¹⁴ Transparencia Venezuela. *Transparencia Venezuela entregó al SAIME más de 100 denuncias por irregularidades con el pasaporte*. Available: <https://transparencia.org.ve/transparencia-venezuela-entrego-al-saime-mas-de-100-denuncias-por-irregularidades-con-el-pasaporte/>

¹⁵ Ibidem

¹⁶ Ibidem

¹⁷ Ministerio del Poder Popular para la Comunicación e Información. *Desarticulan banda delictiva del SAIME y*

SAREN. Available: <http://www.minci.gob.ve/desarticulan-banda-delictiva-del-saime-y-saren/>; Revista CICPC. Desarticulan banda dedicada a la extorsión en el Saime. Available: <https://revistacicpc.com/desarticulan-banda-dedicada-a-la-extorsion-en-el-saime/>; El Carabobeño. Desmantelada banda de gestores de pasaportes por estafa en Caroní. Available: <https://www.el-carabobeno.com/nuevo-diseno/desmantelada-banda-de-gestores-de-pasaportes-por-estafa-en-caroni/>

procedures to request, process and issue such documents.¹⁸

In this context, it is unrealistic for receiving countries to require people from Venezuela in need of international protection, documents that the Venezuelan State does not produce or certify.

A person would have to devote seventeen years of a minimum wage salary to pay the fees for a new passport and eight years and a half for an extension.

¹⁸ Inter-American Commission on Human Rights. IACHR Concerned about Ecuador's New Measures to Address Forced Migration of Venezuelans. Available:

http://www.oas.org/en/iachr/media_center/PReleases/2019/047.asp

III. SITUATION OF THE VENEZUELAN CONSULAR SERVICE

Since February 2019, an atypical situation has been occurring in the Venezuelan consular service, derived from the dispute between two blocks that claim the legitimacy of the country's representation. Consequently, several situations can be identified: (a) consulates in the hands of representatives of the Nicolás Maduro administration; (b) representatives of the transitional government who exercise some consular functions; and (c) dual consular services in countries where consulates in the hands of representatives of the Nicolás Maduro administration coexist with posts in the hands of the government represented by the National Assembly elected in 2015.

a. Consulates in the hands of representatives of the Nicolás Maduro administration

Officers of the Nicolás Maduro government conduct most of the Venezuelan consular services; they, in theory, are fully empowered to exercise all consular functions.

The efficiency of the service varies from country to country and even from city to city. People interviewed by the CDH UCAB and who reside in different countries of the Americas and Europe acknowledged the

existence of an efficient service with officers willing to provide guidance and solutions, especially concerning the extension of passports and the processing of new ones. In other countries, however, the consular function is not very transparent, no guidance is provided to citizens, and cash charges are made outside the official fees. Also, it is worth noting that no receipt or proof of payment is provided, which makes it difficult for officers to monitor the procedures and verify their completion.

Many consulates have not issued passports for some time. Instead, they act as intermediaries for data collection and the reception and delivery of the document, given that the government has contracted with companies for this procedure.

Regarding consular assistance for cases of health emergencies, robberies, arrests, deaths, and repatriation of remains, among others, most of the interviewees agreed to give a negative rating to consular support in these situations, with some exceptions.

Some interviewees indicated having witnessed or received disrespectful and even contemptuous treatment by consular officers. This conduct may be due to the narrative promoted by senior officials of the Maduro government against the Venezuelan population that has left the country, which is frequently singled out as coup plotters, conspirators, and traitors and, therefore, contrary to the ideological interests of the party that holds power.

Additionally, new officers at the consulates have minimal knowledge of the functions they must perform and the different procedures. However, several interviewees agreed that in some European cities, an improvement in service had been observed.

In general terms, services at consulates in the hands of representatives of the Nicolás Maduro administration are deficient, in the face of which citizens feel disadvantaged, given that the officers do not act with due diligence in the performance of their duties.

What are some of the matters that CANNOT be processed before the Consular Section?

- Issuing or renewing identity cards.
- Legalizing Venezuelan documents or having them apostilled.
- Legalizing academic documents (diplomas, credentials, records, etc.) of studies completed abroad.
- Issuing certified copies of Venezuelan documents, except for births, marriages, and deaths that have been registered in a Venezuelan Embassy.
- Updating or extending the validity of a Venezuelan document that has expired (such as driver's licenses, medical certificates, etc.)
- Issuing certificates related to marital status (single status certificates).
- Issuing certificates regarding criminal records or good conduct.
- Issuing a proof of residency in the Bolivarian Republic of Venezuela.
- Stamping private documents (except for invoices for Venezuelan Medical Insurance).
- Issuing documents to a totally undocumented person.
- Conducting personal procedures for Venezuelan citizens before the authorities of the countries in the consular district.
- Providing financial assistance to citizens residing in the consular district.
- Suggesting or recommending professional services in any area (lawyers, immigration agents, notaries, etc.)
- Interfering in legal proceedings or immigration matters.

Source: Embassy of the Bolivarian Republic of Venezuela in the Republic of Poland. Frequently Asked questions. Available: <https://www.venez.pl/preguntas-frecuentes/>

b. Representatives of the government represented by the National Assembly elected in 2015

In some countries that do not recognize the government of Nicolás Maduro, not only has there been a severance of diplomatic relations, but also a halt in consular services. Colombia and the United States are examples of this situation.

These countries have recognized the representatives of the government represented by the National Assembly elected in 2015, who enjoy treatment similar to that of an ambassador. Furthermore, the representatives have assumed some consular functions in these countries.

One of the functions that these posts cannot perform is issuing new passports and extensions. On May 21, 2019, Juan Guaidó issued Decree No. 006, extending the validity of passports for five years after their expiration date.¹⁹

Through agreements with the authorities of the respective receiving country, those who are recognized to exercise consular functions are granting some documents. Thus, for example, certificates of life and single status are issued in some of these consulates in

Colombia. However, these documents are limited in their reach, as Maduro government officials do not recognize documents issued by these consular posts. In this way, a certificate of life or single status issued by representatives of the government represented by the National Assembly elected in 2015 can be recognized by Colombian authorities, but not in Venezuela. An agreement is expected to be signed with the Colombian Ministry of Foreign Affairs for the certification of academic credentials²⁰.

In the United States, the representatives of the government represented by the National Assembly elected in 2015 are issuing a document dubbed certificate of nationality, as some banks refuse to accept the extension of expired passports. This certification is also being used by some states that do not recognize Venezuelan driver's licenses.²¹

On the other hand, it must be remembered that, under normal conditions, a country that does not have diplomatic or consular relations with another State can reach an agreement with a third country to take charge of consular services for its citizens. In this sense, the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families refers to the

¹⁹ Presidencia (E) de la República Bolivariana de Venezuela. *Decreto 006 Atribuciones especiales de los servicios consulares en el extranjero para el resguardo del derecho a la identificación de la diáspora venezolana*. May 21, 2019. Available: <https://us.embajadavenezuela.org/wp-content/uploads/2019/06/Decreto-006-2019-Atribuciones-especiales-de-los-servicios-consulares-en-el->

[extranjero-para-el-resguardo-del-derecho-a-la-identificacion-de-la-diaspora-venezolana.pdf](#)

²⁰ Interview with Tomás Guanipa, representative of the transitional government in Colombia, January 5, 2021.

²¹ Interview with Brian Fincheltub, Director of Consular Affairs of the transitional government in the United States. December 7, 2020.

obligations of States towards their citizens by stating that “Migrant workers and members of their families **shall have the right** to have recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin **or of a State representing the interests of that State** whenever the rights recognized in the present Convention are impaired.”²² That is, such obligations are not limited to direct representation, but extend to the search for alternative representation through third States when there is not a consular post in the respective country.

Venezuelans in Colombia and the United States do not have the possibility of going to a third country to carry out consular procedures, so Venezuelan citizens in these countries are in a situation of defenselessness. Concerning Colombia, Professor Ronal Rodríguez from the Observatory on Venezuela at Universidad del Rosario highlights:

No mechanism has been developed with third countries to assume consular responsibilities; even the personnel assigned to bilateral relations at the Ministry of Foreign Affairs has been reduced to the desk for Venezuela, the smallest number of officials on record. We went from having an embassy and 15 consulates to having nothing, not

*even a representative of Venezuela before the Colombian State.*²³

In this sense, the situation with consular services in countries like Colombia and the United States also constitutes a violation of Venezuela's international commitments towards its citizens abroad, given that the State has failed to seek options to represent and provide them with consular assistance.

Finally, the consular services in the hands of representatives of the government represented by the National Assembly elected in 2015 also include support in emergency cases, such as attention to health emergencies, assistance to detainees, and verification of extradition cases in which the principle of non-refoulement could apply.

c. Countries with dual representation

A third modality involves countries that do not recognize Nicolás Maduro as president but have not severed diplomatic relations or have broken off diplomatic relations without affecting consular services. In this case, the consulates in the hands of representatives of the Maduro administration coexist with representatives of the government represented by the National Assembly elected in 2015, recognized by the authorities of those countries, and exercise some consular

²² Art 23, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. (Emphasis added)

²³ Consultation with Professor Ronal Rodríguez, March 14, 2021.

functions, giving rise to a situation that can be classified as consular duality.²⁴

Peru, Canada, and most of the European Union countries are in this category. Consulates with officers of the Maduro administration offer all the services under their competence, including the processing of new passports and extensions. Meanwhile, the posts of the government represented by the National Assembly elected in 2015 provide a limited amount of services, including certifications, driver's licenses, replacement of lost identity documents, and legalization of documents and university diplomas.

Another feature that differentiates both services is that consulates under the control of the representatives of the Maduro administration charge for their services, with varying costs between posts. Some payments are channeled through bank accounts of companies hired for that end and others charge in cash without handing out an invoice. The posts in the hands of the government represented by the National Assembly elected in 2015 do not charge for their services. In the case of Peru, this representation has even established itinerant service operations, through which it issues certain documents for free in different cities across the country.²⁵

A phenomenon observed in some countries is the decrease in the representation of the Maduro administration, as is the case of Canada and France. This is because the foreign ministries of these countries, once the period of service of a diplomatic or consular officer has expired, do not receive a request for new accreditation or do not renew their visas, since it could be considered a form of recognition of the Maduro government.

In Canada, the existing consulates in different cities have been closing operations due to the non-renewal of their officials' visas, and only one remains open in Ottawa. For its part, the term of the ambassador representing the Maduro administration in France expired and the new appointee has only been accredited as *chargé d'affaires*²⁶.

This decrease in the representation of the Maduro administration is not accompanied by a growth in the number of functions covered by the representatives of the transitional government because the latter continue to lack the powers to carry out certain procedures. The consequence of this situation is a progressive loss of options for Venezuelan nationals in these countries looking to carry out consular procedures.

²⁴ Interview with Carlos Scull, representative of the transitional government in Peru, December 7, 2020.

²⁵ Interview with Carlos Scull, representative of the transitional government in Peru, December 7, 2020.

²⁶ Interview with Soraya Benitez, Executive Director of Canada Venezuela Democracy Forum; Interview with Milagros Pimentel, co-founder of the Facebook group "*Pasaportes-Venezolanos Exterior*", March 14, 2021.

IV. IMPACT ON RIGHTS

The absence of consular services negatively affects several rights of the Venezuelan population abroad as it loses access to certain documents or procedures.

Undoubtedly, one of the main problems is related to the impossibility of obtaining a new **passport** or extending an existing one. Not having a passport not only affects free movement. A passport can also be an identity document for a foreigner to carry out certain procedures, such as opening bank accounts, having access to other financial products, or obtaining a visa to stay in a regular status in the receiving country.

In the course of this investigation, the CDH UCAB learned of various cases of people who have had their right to family unity affected due to the impossibility of obtaining a new passport or an extension. Many people fled Venezuela and left their relatives behind, expecting to take them to their new place of residence as soon as they have found the stability and resources to do so. During this time, the relatives who remain in Venezuela find themselves trapped and unable to reunite with their loved ones abroad due to not having a passport.

In Colombia, not having a passport also constitutes a barrier to accessing the right to health beyond emergency care, including

sexual and reproductive health, among others. In this sense, people interviewed by the CDH UCAB mentioned the impossibility of accessing health care for the voluntary interruption of pregnancy for women victims of abuse or whose life could be at risk or women who have become pregnant due to the lack of contraceptive methods in Venezuela.²⁷

The CDH UCAB received testimonies from people who have lost job opportunities due to the expiration of their passports. Likewise, other people in a regular status lost their jobs after their passport expired, and they could not get a stamp for a new visa. When they stopped earning an income, they became unable to pay for housing or support themselves, thus becoming a burden for the receiving country.

It should be noted that, for the issuance of passports, either in Venezuela or through consulates - where they exist -, an identity card is required from any person over 9 years of age, a document that is only issued by the SAIME offices in Venezuela. Therefore, obtaining a passport for children over the age of 9 is practically impossible if they have left Venezuela.

This investigation learned of the case of an 18-year-old young man who left Venezuela as a

minor and, therefore, has his record on the SAIME platform associated with his parents' information. As he does not have a Venezuelan identity card, he cannot make an independent registration to obtain a passport, despite being of legal age.

The absence of consular services negatively affects several rights of the Venezuelan population abroad as it loses access to certain documents or procedures.

²⁷ Interview with Carolina Moreno, Director of the Center for Migration Studies (CEM for its acronym in Spanish) at Universidad de los Andes. December 7, 2020.

The passport as a means of exercising the right to free movement and the responsibility of the States

In the late 1970s and early 1980s, and in a different context, international and regional human rights organizations heard several cases of citizens against Uruguay due to refusals from the consulates of that country to grant passports to its nationals. These cases made it possible to elaborate a valuable doctrine on the matter.

In the first place, the Human Rights Committee observed that “a passport is a means of enabling an individual ‘to leave any country, including his own’”²⁸, from which it follows that obtaining a passport is directly related to the right to free movement, enshrined in article 12.2 of the International Covenant on Civil and Political Rights.

Second, the same decision recalls that “in the case of a citizen resident abroad, article 12 (2) imposes obligations on the State of nationality as well as on the State of residence and, therefore, article 2 (1) of the Covenant cannot be interpreted as limiting the obligations of Uruguay under article 12 (2) to citizens within its own territory”²⁹. In other words, the obligations of a State towards its citizens extend beyond the territory, as long as they are subject to its territorial or administrative jurisdiction.

Third, the Inter-American Commission on Human Rights, in a different case against Uruguay, refers to a doctrinal principle “valid for this case and similar cases that may arise today or tomorrow or at any other time, as to whether a government that refuses to issue valid passports to persons entitled to them, or imposes upon them conditions so severe that would, in fact, make them desist in the exercise of that right, complies with the obligation of respecting the right of the human being to leave his country's territory to go to that of any other State whose doors are not closed to him”³⁰. Thus, the IACHR makes it clear that a state.

violates its obligations not only by denying a passport but also imposing requirements that may be impossible for a citizen to meet.

For its part, the Human Rights Committee, in its General Comment No. 27, established that “[t]he refusal by a State to issue a passport or prolong its validity for a national

²⁸ Human Rights Committee, Communication No 106/1981, *Montero v Uruguay*, para. 9.4

²⁹ *Ibid.* This view was reiterated by the Human Rights Committee in Communication No 77/1980, *Liechtenstein v Uruguay*, para. 6.1.

³⁰ IACHR, Resolution No 18/83, Case 2711, *Juan Raúl Ferreira (Uruguay)*, June 30, 1983, para. 4

residing abroad may deprive this person of the right to leave the country of residence and to travel elsewhere. It is no justification for the State to claim that its national would be able to return to its territory without a passport³¹, which means that the granting of a passport is an obligation of every State, regardless of the particular circumstances of departure or entry of its citizens from or to their country of origin.

³¹ Human Rights Committee, General Comment No. 27, para. 9.

Apart from the passport, there are other aspects of the right to identity that are being affected by the absence of consular services, such as the **registration of children** born to Venezuelan parents in countries where the service is not provided.

This is a particularly complex situation in Colombia, where nationality is not granted upon the principle of *jus soli* (the recognition of the nationality of the territory in which one was born). Given that there is no consular representation that can register these births, those born in Colombia are at risk of statelessness. As will be seen later, the Colombian authorities have tried to solve this situation, albeit with limitations.

The granting of **powers of attorney** can only be done through consulates. Since there is no consular representation, this possibility is not available to Venezuelans who need to authorize another person to represent them in Venezuela. This affects their ability to buy or sell real estate and other assets and conduct other affairs before the administration or other individuals. Nor is it possible to grant special powers of representation before the National Institute of Social Security for matters related to retirement, disability, or survivor benefits.

In many countries, minors are required to certify courses and academic credentials issued in Venezuela and they find themselves unable to do it.

On the other hand, the **certificate of life** is a document required by public and private institutions for the payment of pensions. Although some private entities have made this requirement more flexible by accepting a certificate issued by a notary in the retiree's country of residence or by a representative of the government represented by the National Assembly elected in 2015, this has not been the case for retirees in all entities of the public sector.

The certification of **driver's licenses** is also carried out through consular channels and currently remains unavailable to Venezuelan nationals in many countries. In the case of the United States, some states recognize the Venezuelan driver's licenses that incorporate a certification issued by the government represented by the National Assembly elected in 2015 but other states do not have this recognition. For many people who are just beginning to settle in a new country, work in transportation or delivery services may be an option but sees itself hampered by the lack of a driver's license, which may affect their right to work.

The **certification of academic diplomas** can only be done by a consulate, and the impossibility of carrying out this procedure may affect the right to work and an adequate standard of living, considering that qualified individuals may not be able to get a job in

conformity with their technical or professional training and may be forced to earn a living with other activities, including informal employment.

Not having this certification may also affect the right to education since the lack of a certified diploma prevents the continuation of academic training.

In the case of Colombia, the government represented by the National Assembly elected in 2015 is in talks with the government of that country to make the requirements in this matter more flexible and establish alternative mechanisms for the certification of academic diplomas³².

University diplomas are not the only source of difficulties. In many countries, minors are required to certify courses and academic credentials issued in Venezuela and they find themselves unable to do it.

Consular assistance for cases such as medical emergencies or contingencies due to accidents or theft is one area with limited attention, both by the consulates in the hands of representatives of the Maduro administration and those in the hands of representatives of the transitional government, affecting the right to health and personal safety, among others.

³² Interview with Tomás Guanipa, representative of the transitional government in Colombia, January 5, 2021

Another area under the competence of consulates with limited attention is the **consular assistance to people deprived of liberty**. The deprivation of liberty may be related to breaches of law or an irregular migration status. More and more frequently people have been caught in their good faith by alleged intermediaries who turn out to be forgers, only to end up facing administrative sanctions or legal cases for bearing false documents. Another situation is that of people who travel to countries in the European Union with passports with over 10 years of issuance (the original 10 years after the date of issue plus the two-year extension), which is not allowed and may result in the arrest of the bearer.

Sick and without a consulate: Fernando's story*

I have been living in Ireland since the end of 2013. Between December 2016 and January 2017 I experienced a serious mental health crisis. At that time I had a regular migration status under the category of foreign student; For that reason, I did not have access to the Irish public health network. My condition required me to be urgently admitted to a health center and remain under the care of a close relative because I was also homeless and without a job.

My family did not have the financial resources to pay for plane tickets or a private hospital in euros, nor could they travel freely to Ireland without a special visa, coupled with the fact that they were not fluent in English. However, they tried - unsuccessfully - to contact and receive help from non-governmental organizations in Ireland.

I want to highlight that there was not an Irish diplomatic mission in Venezuela at that time, much less a Venezuelan consular post in Ireland. The closest option was to process "something" through the Irish Consulate in Mexico City, but it was impossible to contact them during the Christmas break of 2016. Similarly, no one could be reached at the Venezuelan Embassy in London, which in theory exercises consular functions in the Republic of Ireland.

A few friends of mine heroically managed to explain to the authorities my state of total defenselessness. Thanks to this, I received the necessary medical treatment on humanitarian grounds, something very difficult to achieve when you are a foreigner.

When I think back, it is still shocking to me that in the end, it was the Irish State that came to my rescue and gave me the protection I needed, even in my condition as a foreigner! While my own country, Venezuela, of which I am a citizen, simply did not care about me and left me to my own devices.

*Fictional name to protect the identity of the affected person.

In the case of countries that do not have consular representation in Venezuela, nationals of those countries are also being affected by this situation.

In all these cases, the absence of consular assistance not only affects the right to personal liberty but also other rights such as the right to a defense, due process, and an interpreter, all of which implies the violation of international obligations assumed by Venezuela.

A positive practice occurred in the United States, where 843 Venezuelan nationals (of a total of 1,100) in immigration detention were released in December 2020 thanks to the good offices of the consular representative of the transitional government³³.

Finally, we cannot fail to refer to the situation of nationals of other countries in Venezuela, although it is not the main object of this study. In the case of countries that do not have consular representation in Venezuela, nationals of those countries are also being affected by this situation.

In the case of Colombia, the country's consular posts no longer operate in Venezuela. This absence of representation is affecting Colombians living in Venezuela, who are unable to carry out procedures such as the request of birth certificates, apostilles, or legalizations. In April 2019, Colombia created the Border Service Points (PAF for its acronym in Spanish) in Norte de Santander, Arauca, and Maicao to provide consular assistance to Colombian nationals living in Venezuela.

³³ El Pitazo. *Autoridades liberan a 843 venezolanos detenidos por asuntos migratorios en Estados Unidos*. Available: [https://elpitazo.net/migracion/autoridades-](https://elpitazo.net/migracion/autoridades-liberan-a-843-venezolanos-detenido-por-asuntos-migratorios-en-estados-unidos/)

[liberan-a-843-venezolanos-detenido-por-asuntos-migratorios-en-estados-unidos/](https://elpitazo.net/migracion/autoridades-liberan-a-843-venezolanos-detenido-por-asuntos-migratorios-en-estados-unidos/)

Undoubtedly, this is an important initiative, although it is not available to the entire population because of the cost of transportation, which is increasingly complicated and expensive due to the fuel and transportation crisis in Venezuela.

In summary, the absence of consular services or their limited functioning affects the exercise of a series of rights of Venezuelan nationals in other countries, as well as nationals of other countries who reside in Venezuela.

V. MEASURES TAKEN BY RECEIVING STATES

Several states have adopted measures to make the requirements for people with Venezuelan citizenship more flexible.

After Guaidó's decree extending the validity of Venezuelan passports for 5 years after their expiration date, a spokesperson for his team announced that more than 50 countries would recognize expired passports.³⁴ However, this recognition has not been as extensive in practice. By August 2019, fourteen countries recognized expired Venezuelan passports under different conditions and for different procedures.³⁵ According to an article published by the *Venezuelan - American Chamber of Commerce of the United States*, the situation at that time was as follows:

- Countries that accept expired passports, but ask for a visa: United States, Canada, Peru, and Ecuador.
- Countries that accept expired passports as identification within the country, but do not allow the entry of Venezuelan nationals with an expired

³⁴ Radio Televisión Martí. *Pasaporte venezolano vencido será reconocido por más de 50 países*. Available: <https://www.radiotelevisionmarti.com/a/pasaporte-venezolano-vencido-aceptado-ser%C3%A1-vencido-por-m%C3%A1s-de-50-pa%C3%ADses-/239313.html>

³⁵ The countries that recognized expired Venezuelan passports were Argentina, Brazil, Canada, Chile, Colombia,

Costa Rica, Ecuador, Spain, United States, Mexico, Panama, Peru, United Kingdom and Uruguay. See <https://www.venezuelanchamber.org/single-post/2019/08/01/aceptaci%C3%B3n-de-pasaportes-venezolanos-vencidos-en-el-exterior>

passport: Canada, Panama, and Costa Rica.

- Countries that allow entry with an expired passport: United States, Peru, Argentina, and Colombia.
- Countries that accept passport extensions for two years instead of five: Colombia and Chile.
- Countries that accept passport extensions for an unspecified period: Spain.
- Countries that accept expired passports but had not defined clear rules: Uruguay, Mexico, and Brazil.³⁶

In any case, the extension of the validity of Venezuelan passports only benefits those already outside the country since departure from Venezuela requires a valid passport. In consequence, many people in Venezuela find themselves unable to leave by regular routes.

In January 2019, the National Migration Directorate of Argentina adopted the Venezuelan Migrant Assistance Program through Provision 520.³⁷ The provision recognized the validity of expired passports

for two years and authorized entry with a Venezuelan identity card up to two years after the expiration date and established a special mechanism for the regularization of the migration status of Venezuelan nationals.

On the other hand, some countries understand the difficulties in obtaining a passport but have not adopted a specific measure to recognize expired passports. In these cases, there is some flexibility, as in the case of Ireland, where the authorities ask Venezuelan passport holders to show evidence of having acted diligently in the renewal or extension of their passports and that the delay in issuing the document is not their responsibility but that of the Venezuelan State. However, in these circumstances, visa extensions are granted for a very short time, which generates uncertainty in Venezuelan nationals.³⁸

Regarding the certification of courses and academic credentials issued in Venezuela, some countries like Colombia have adopted an exception mechanism through a validation test for children and teenagers³⁹. However, some schools do not comply with the

³⁶ Venezuelan-American Chamber of Commerce of the United States. *Aceptación de Pasaportes Venezolanos Vencidos en el Exterior*. Available: <https://www.venezuelanchamber.org/single-post/2019/08/01/aceptaci%C3%B3n-de-pasaportes-venezolanos-vencidos-en-el-exterior>

³⁷ República Argentina. Dirección Nacional de Migraciones. *Disposición 520/2019* <https://www.argentina.gob.ar/normativa/nacional/disposici%C3%B3n-520-2019-319449/texto>

³⁸ Interview with Julio César López, co-founder of the Facebook group “Pasaportes-Venezolanos Exterior”, March 14, 2021.

³⁹ Consejo Nacional de política Económica y Social de la República de Colombia. Departamento Nacional de Planeación. *Documento CONPES 3950*. November 23, 2018. Bogotá, Colombia. Available: <https://colaboracion.dnp.gov.co/CDT/Conpes/Econ%C3%B3micos/3950.pdf>

provision and continue to require a certification of academic records and credentials⁴⁰.

Regarding the recognition of university diplomas in Peru, inaccurate information was circulated in mid-2019, according to which the National Superintendence of Higher Education (Sunedu for its acronym in Spanish) was going to exempt Venezuelan nationals from presenting an apostille if they could demonstrate the authenticity of their diplomas by other means⁴¹. In reality, this is a measure applied by Sunedu to all foreigners, although it could favor Venezuelan professionals in the difficulty of obtaining an apostille.

In general, the homologation and recognition of diplomas is not a simple process and can become more complex for people from Venezuela due to the country's circumstances in terms of issuance and certification of documents. A Sunedu official explained that "[d]ue to the increase in Venezuelan migration

A general risk of statelessness for the children of Venezuelans born in Colombia could emerge again.

⁴⁰ Interview with Carolina Moreno. Director of the Center for Migration Studies (CEM for its acronym in Spanish) at Universidad de los Andes. December 7, 2020

⁴¹ La República. *Viral sobre la validación de títulos venezolanos por la Sunedu es engañoso*. Available:

<https://larepublica.pe/sociedad/1488186-sunedu-viral-validacion-titulos-venezolanos-apostilla-enganoso-venezuela/?ref=lre>

since 2016, this procedure has been highly requested by Venezuelan nationals. The verification of their diplomas is complicated due to several issues, including the very operation of the universities in Venezuela. This makes the procedures take longer or need some additional inquiries"⁴².

Even so, between 2015 and 2018, 23% of all foreign diplomas recognized by Sunedu corresponded to Venezuelan professionals⁴³, while **1,148 doctors from Venezuela** obtained the homologation of their diplomas between 2015 and 2017 in Spain, becoming the nationality with the highest number of certified doctors in that country⁴⁴.

During the COVID-19 pandemic, some countries, including Peru and Chile, have decided to expedite the recognition of university diplomas of Venezuelan health professionals. Although a similar measure was announced in Colombia, the decision was reversed due to objections from the country's medical union⁴⁵.

Regarding the recognition of children of Venezuelan nationals born in Colombia, the country approved Law 1997 in September 2019 which "establishes a special and exceptional regime to grant Colombian nationality by birth to children born in Colombian territory to Venezuelan parents with a regular or irregular migration status, or to Venezuelan asylum seekers, in order to prevent statelessness"⁴⁶. However, the lack of a regulatory elaboration of this law makes it difficult to apply it in the case of children born in Colombia whose parents later moved to other countries. Registration can only be done before the National Register of the Civil Status; Colombian consulates are not empowered to carry out this procedure, so these children remain at risk of statelessness.

It is worth noting that this law is effective from January 1, 2015, up to 2 years after the enactment of the instrument, that is, September 2021. Therefore, if an extension is not agreed upon, a general risk of

⁴² Gestión. *Sunedu: mitad de títulos extranjeros reconocidos en Perú proceden de España y Venezuela*. Available: <https://gestion.pe/economia/management-empleo/sunedu-mitad-titulos-extranjeros-reconocidos-peru-proceden-espana-venezuela-256177-noticia/?ref=gesr>

⁴³ Gestión. Op. cit.

⁴⁴ Redacción Médica. *Venezuela es el país con más médicos homologados en España*. Available: <https://www.redaccionmedica.com/secciones/formacion/venezuela-es-el-pais-con-mas-medicos-homologados-en-espana-3232>

⁴⁵ Proyecto Migración Venezuela. *Revista Semana. Más de 1.800 profesionales venezolanos de la salud, listos para*

trabajar en Colombia. Available:

<https://migravenezuela.com/web/articulo/medicos-venezolanos-esperan-pronta-autorizacion-del-gobierno-para-ejercer-en-el-pais/2067>

⁴⁶ República de Colombia. Government Gazette. Year CLV. No 51078. September 16, 2019. *Ley 1997 De 2019, por medio del cual se establece un régimen especial y excepcional para adquirir la nacionalidad colombiana por nacimiento, para hijos e hijas de venezolanos en situación de migración regular o irregular, o de solicitantes de refugio, nacidos en territorio colombiano, con el fin de prevenir la apatridia*. Available: <http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/30038068>

statelessness for the children of Venezuelans born in Colombia could emerge again.

On the other hand, some countries, far from making the requirements more flexible, have made them more rigid, demanding more documents from Venezuelan people. At least ten countries resolved to require a visa for Venezuelan nationals between 2017 and 2019⁴⁷. The curious thing about some of these measures is that a name is given to the visa that appears to have a humanitarian-based approach, as has been the case in Ecuador, Peru, and Chile, when in practice they require a series of documentation, including a passport.

Finally, it should be noted that all limitations in the provision of consular services affect, at least in theory, migrants but not refugees and asylum seekers. This is because it is assumed that a refugee or asylum seeker does not have the protection of the State of which he is a citizen. As UNHCR maintains: "by definition, the applicant has a well-founded fear of persecution; communicating with the authorities of the country of origin risks handing him over to his persecutors"⁴⁸.

Some countries, far from making the requirements more flexible, have made them more rigid, demanding more documents from Venezuelan people.

⁴⁷ Crónica Uno. *Ya son 11 los países que piden visa a los venezolanos en medio de la crisis de migrantes*. Available: <https://cronica.uno/ya-son-11-los-paises-que-piden-visa-a-los-venezolanos-en-medio-de-la-crisis-de-migrantes/>

⁴⁸ UNHCR. *Buena práctica 15: No comunicación con las autoridades del país de origen del solicitante*. Available: https://acnur.org/fileadmin/Documentos/Proteccion/Buenas_Practicas/9291.pdf#_ga=2.204796438.761520771.1616297399-2051628242.1615643915

However, some situations can be considered restrictive and contrary to the necessary flexibility of requirements concerning persons in need of international protection. Such is the case in Colombia, where the asylum seeker is issued a pass that does not allow him to work. The Colombian Ministry of Foreign Affairs has explained that nothing prevents an asylum seeker from working, as long as he or she has a visa that authorizes it, for which holding a passport and having entered through an immigration checkpoint are necessary conditions⁴⁹. However, this interpretation omits to consider that asylum seekers are not required to enter a country with a passport or through checkpoints. This requirement could imply that the asylum seeker must go to the authorities of the government that denied him protection, undermining the sense of responsibility of the receiving State concerning international protection.

⁴⁹ Reply by the Ministry of Foreign Affairs of Colombia to a petition presented by a Venezuelan asylum seeker whose identity is being kept confidential. September 2017.

VI. CONCLUSIONS Y RECOMMENDATIONS

This report has provided evidence on the significant deficiency in the production of documents by the Venezuelan State, affecting all citizens, whether they are inside or outside the country.

These deficiencies become more complex for those who have left Venezuela and reside in countries with no Venezuelan consular services or where these services have limited operation, affecting their access to and enjoyment of different rights.

Faced with this situation, some States receiving the Venezuelan population have adopted certain measures to try to solve the limitations affecting Venezuelan nationals in the matter of personal documents. Although these are undoubtedly positive measures, they are insufficient to solve the complex situation that the Venezuelan population is going through outside the country.

Although this report focuses on the impact that the absence of consular services has on the Venezuelan population, it is also true that nationals of countries that do not have consular relations with Venezuela are also being affected.

It is important to emphasize that reestablishing consular services does not

imply recognition of the legitimacy of a government. Many States that have differences regarding the political legitimacy of a ruler opt to maintain consular relations - although not diplomatic relations - not to transfer the consequences of political rows to the people.

Finally, in the context of mixed flows where a large number of people require international protection, it is necessary to remember that complementary measures are possible. As UNHCR points out, "complementary forms of protection allow regularization of the permanence of people who are not recognized as refugees but whose return would be contrary to the general obligations on non-refoulement, contained in different human rights instruments"⁵⁰.

Reestablishing consular services does not imply recognition of the legitimacy of a government.

⁵⁰ UNHCR. Buena práctica 28: Protección Complementaria y visas humanitarias. Available:

https://acnur.org/fileadmin/Documentos/Proteccion/Buenas_Practicas/9304.pdf

Given these considerations, the States receiving the Venezuelan population are advised to:

- Start from the basis that the Venezuelan population, in a context of forced displacement and mixed flows, requires international protection given that it is being denied by its country of origin, making it dependent on the receiving State for the production of documents that its own State is unwilling or unable to produce.
- Advance towards greater flexibility in the requirements made to Venezuelan nationals regarding both identification documents and certifications and apostilles.
- Establish alternative mechanisms to certify the authenticity of acts conducted in Venezuela by demonstrating the document's legitimacy through complementary means.
- Recognize expired passports for a minimum of 5 years and make sure this provision is observed at all levels of the State and the private sector to avoid rejection or delays in the procedures that require a passport due to lack of information on regulations.
- Develop systems for the issuance of travel documents to people who demonstrate the impossibility of obtaining a new Venezuelan passport, making stamping a valid visa possible.
- Advance in permanent mechanisms for the registration of children of Venezuelan nationals to avoid the risk of statelessness, including the simplification of the process, taking into account the impossibility of showing identification documents issued by Venezuela.
- Reestablish consular relations with Venezuela, even when diplomatic relations remain severed, to ensure that both Venezuelan nationals and nationals of other countries residing in Venezuela are not affected in the enjoyment of their rights due to political differences between States.

Defenseless

The Impact of the Absence of Consular Services on the Rights of the Venezuelan Population Abroad

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