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## Venezuela: A Uniquely Senian Insight into a Human Rights Crisis

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# VENEZUELA: A UNIQUELY SENIAN INSIGHT INTO A HUMAN RIGHTS CRISIS

## INTRODUCTION

The Preamble of the Universal Declaration of Human Rights (UDHR) states:

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear . . . [w]hereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.<sup>1</sup>

The UDHR marked a new era in human history, particularly acknowledging human rights as universal, equal and inalienable.<sup>2</sup> It additionally allowed for the recognition and achievement of a wide range of civil, political, economic, social and cultural rights through legal enactments supported by institutional and policy changes.<sup>3</sup> Almost seventy years after the UDHR's adoption, gross and systematic human rights abuses continue to be perpetrated throughout the world.<sup>4</sup>

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1. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948) [hereinafter UDHR]. The following UDHR Articles are pivotal to this note,

[A]rticle 19: Everyone has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media; Article 20: (1) Everyone has the right to freedom of peaceful assembly and association; (2) No one may be compelled to belong to an association; Article 24: (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.

*Id.*

2. Laksiri Fernando, *Human Rights Day: Importance of the UDHR*, COLOMBO TELEGRAPH (Dec. 9, 2012), <https://www.colombotelegraph.com/index.php/human-rights-day-importance-of-the-udhr/>.

3. *Id.*

4. *Id.*

Venezuela is a country that has, for decades, undermined the most basic human rights set forth in the UDHR, by intimidating and prosecuting politically dissenting citizens.<sup>5</sup> Politically dissenting citizens are almost always met with a generalized and systematic use of excessive force.<sup>6</sup> Most notably, in recent years, arbitrary detentions of dissenters during demonstrations against the government of President Nicolas Maduro<sup>7</sup> have worsened.<sup>8</sup> For almost two decades, during the course of their political terms, Venezuelan political leaders have blatantly disregarded their citizens' human rights.<sup>9</sup>

Under the leadership of Nicolas Maduro and former President Hugo Chavez,<sup>10</sup> the executive branch has accumulated substantial amounts of power over the nation's legislative and judicial branches.<sup>11</sup> As a result, the country is currently in a multidimensional humanitarian and economic crisis, which includes severe food and medicine shortages as well as staggering inflation

5. HUMAN RIGHTS WATCH, WORLD REPORT 2017: VENEZUELA EVENTS OF 2016 (2017), [https://www.hrw.org/sites/default/files/venezuela\\_2.pdf](https://www.hrw.org/sites/default/files/venezuela_2.pdf) [hereinafter VENEZUELA EVENTS OF 2016].

6. *Id.*

7. Jeff Wallenfeldt, *Nicolas Maduro, President of Venezuela*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/biography/Nicolas-Maduro> (last visited Nov. 12, 2018). Nicolas Maduro, is Venezuela's current President and was a former political and labor leader. In April 2013, Maduro was appointed to serve out the remainder presidential term following the death of former President, Hugo Chavez. *Id.* Throughout his presidential term, Maduro has voiced his massive support of 'chavismo,' the political system and ideology established by Chavez. *Id.*

8. "High-level authorities have labeled demonstrators and journalists as 'enemies' and 'terrorists.'" *Human Rights Violations Indicate Repressive Policy of Venezuelan Authorities — UN Report*, U.N. NEWS CENTRE (Aug. 30, 2017), <http://www.un.org/apps/news/story.asp?NewsID=57437-WbCC-a2ZNE4>.

9. VENEZUELA EVENTS OF 2016, *supra* note 5.

10. Brian A. Nelson, *Hugo Chavez, President of Venezuela*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/biography/Hugo-Chavez> (last visited Nov. 12, 2018). Hugo Rafael Chávez Frías, former President of Venezuela, died on March 5, 2013. *Id.* Notably, Chavez established what is now known as the "Bolivarian Revolution," a socialist political program. *Id.* Chavez's ideology was chavismo, a system notoriously guided by principles of nationalism, a centralized economy, and strong military engagement in public missions. *Id.* Particularly, Chavez's bestowed ideologies have led to repression, corruption, precipitous inflation, high crime rates and lack of economic growth within the country. *The World Factbook: Venezuela*, C.I.A., <https://www.cia.gov/library/publications/the-world-factbook/geos/ve.html> (last visited Oct. 2, 2018).

11. VENEZUELA EVENTS OF 2016, *supra* note 5.

rates.<sup>12</sup> Venezuela's deeply rooted economic crisis has played a decisive role in the country's current demands for humanitarian assistance.<sup>13</sup> The World Bank<sup>14</sup> describes Venezuela as a country with one of the worst business environments in the world, and is only outdone by Eritrea, Libya and South Sudan in this regard.<sup>15</sup> Venezuela faces shortages of medicine, medical supplies, and food, which make it extremely difficult for many people to obtain essential medical care and adequate nutrition.<sup>16</sup> Notably, the Secretary General of the Organization of American States<sup>17</sup>

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12. *Id.*

13. *Id.* Absent official statistics, foreign experts estimate that in 2017, in Venezuela, GDP declined by 12 percent, inflation exceeded 2000 percent and there were extensive resources shortages, including food and medicine. *The World Factbook: Venezuela*, *supra* note 10. Particularly, Venezuela's unemployment rate is at 26.4 percent. *Id.* Most recent statistics show that 19.7 percent of Venezuelans live below the poverty line. *Id.*

14. *See generally*, WBG, DOING BUSINESS 2017: EQUAL OPPORTUNITY FOR ALL (14th ed. 2017), <http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB17-Report.pdf>. The World Bank's 2017 flagship report on business regulation ranks world economies 1 to 190. *Id.* It measures and details the tangible effect of governmental policy to the economy and highlights large discrepancies between high and low-income economies. *Id.* Factors measured by the report include "starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts, resolving insolvency, and labor market regulation." *Id.* at 14. The rankings are benchmarked to June 2016, while an arrow signifies an improvement in the overall economy of a specific country; absence of an arrow indicates no improvement or deterioration. *Id.* at 7. In the case of Venezuela, there is no arrow, which indicates that its ranking has neither improved and likely deteriorated since 2016. *Id.*

15. *Id.* at 7.

16. Org. of Am. States [OAS] Secretary General, Letter dated Mar. 14, 2017 from the Secretary General addressed to the Permanent Representative of Belize to the Organization of American States, OAS Doc. OSG/128-17, 26 (Mar. 14, 2017), <http://www.oas.org/documents/eng/press/Informe-VZ-II-English-Final-Signed.pdf> [hereinafter *Almagro Letter*].

17. *See About the OAS, Who We Are*, OAS, [http://www.oas.org/en/about/who\\_we\\_are.asp](http://www.oas.org/en/about/who_we_are.asp) (last visited Oct. 2, 2018). The Organization of American States, the world's oldest regional organization, was formed on or around 1890. The OAS seeks for its member states to function under Article 1 of its Charter: "[t]o promote solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence." *Id.* The OAS is the main "political, judicial, and social governmental forum" of the Americas. *Id.*

(OAS) has said that the Venezuelan government “[h]as downplayed the severity of the crisis and has failed in its efforts to alleviate the shortages by making limited attempts to obtain available international humanitarian assistance.”<sup>18</sup> In light of the Venezuelan government’s reluctance in recognizing the clear and present crisis in the country,<sup>19</sup> on July 22, 2016, the Inter-American Human Rights Commission (IACHR) issued a statement, in which it expressed its regret over the urgent situation of scarcity in Venezuela: “[T]his situation has led to a significant deterioration in living conditions in the country and an increase in violence, which results in harm to people’s health, personal integrity, and life, to the detriment of the rights protected by inter-American and universal human rights instruments.”<sup>20</sup>

The IACHR has, over the years, recognized Venezuela’s fading democracy, noting that the country’s crisis is in part due to serious and ongoing obstacles set forth by both, the executive and judicial branches, on the legislative branch of the government.<sup>21</sup> Particularly, the IACHR stresses that Venezuela’s Supreme Court’s arbitrary and unconstitutional decisions have played a key role in Venezuela’s humanitarian crisis.<sup>22</sup>

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18. Almagro Letter, *supra* note 16, at 26–27.

19. *Venezuela Must Uphold Rights of ‘Even Those Who Disagree With State Policies’* — UN Human Rights Chief, U.N. NEWS CENTRE (Nov. 12, 2015), <http://www.un.org/apps/news/printnewsAr.asp?nid=52537> (According to a special meeting of the United Nations Human Rights Council, President Nicolas Maduro vowed to continue employing truth to defend his country against “audacious accusations” and “imperialist attacks.”).

20. Almagro Letter, *supra* note 16, at 30. *See also* Press Release, IACHR Presents Report on the Human Rights Situation in Venezuela, OAS Press Release No. 025/18 (Feb. 12, 2018), [http://www.oas.org/en/iachr/media\\_center/PReleases/2018/025.asp](http://www.oas.org/en/iachr/media_center/PReleases/2018/025.asp) (On February 12, 2018, the IACHR published, “*Democratic Institutions, the Rule of Law and Human Rights in Venezuela.*” The Commission’s decision to produce this report stems from the marked deterioration in terms of the exercise of human rights in Venezuela, and the grave political, economic, and social crisis in the country. The report analyzes the institutional and human rights crisis of the last two years, with special emphasis on the events of 2017.).

21. *Id.*

22. The IACHR notes that Venezuela’s Supreme Court has breached the principle of separation of powers by significantly interfering with Venezuela’s National Assembly. *Id.* Significantly, Venezuelan government institutions have been encroached with corruption. *Id.* More importantly, the IACHR highlights that,

In light of this overpowering crisis, Venezuela provides a unique affirmation of the Capabilities Approach<sup>23</sup> introduced by Professor Amartya Sen.<sup>24</sup> Sen developed this theory to allow for individuals to make diverse judgments on quality of life.<sup>25</sup> He describes capabilities as freedoms as they relate to development.<sup>26</sup> Sen focuses not only on the freedoms that individuals possess, but also on what individuals are actually capable of doing as possessors of these freedoms.<sup>27</sup> This Note seeks to use Sen's Capabilities Approach to understand the nature and scope of the Venezuelan humanitarian crisis. It argues that a Senian approach provides a unique perspective into the complexity and deeply intertwined and mutually reinforcing dimensions of this crisis.

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[T]his situation has a profound impact on Venezuela's people, who face serious obstacles to exercising their political rights and participating in the public affairs of the nation. The Commission is concerned to observe a pattern of reprisals against those who demonstrate or publicly espouse positions at variance with those of the government, as well as severe restrictions to the right to freedom of expression. It is necessary to guarantee, as a matter of priority, the full exercise of the political rights of every authority and inhabitant of Venezuela, irrespective of their political sympathies.

*Id.*

23. "The [C]apabilities [A]pproach explicitly aims at providing an alternative to normative views that rely exclusively on mental states in their evaluative exercises." See Ingrid Robeyns, *The Capability Approach*, STANFORD ENCYCLOPEDIA PHIL. (Oct. 3, 2016), <https://plato.stanford.edu/entries/capability-approach/> - AltForUti.

24. AMARTYA SEN, *DEVELOPMENT AS FREEDOM* (Alfred A. Knoff ed., 1999). Amartya Sen, Indian economist, is remarkably known for receiving the 1998 Nobel Prize in Economic Sciences. See *Amartya Sen — Indian Economist*, ENCYCLOPEDIA BRITANNICA (Sept. 6, 2018), <https://www.britannica.com/biography/Amartya-Sen>. Sen has dedicated his studies to developing new theories relating to deprived members of society. *Id.* Notably, he has worked extensively in determining the causes of famine and in proposing sensible and arguably effective solutions to the effects of real or perceived food shortages. *Id.*

25. Chad Kleist, *Global Ethics: Capabilities Approach*, INTERNET ENCYCLOPEDIA PHIL. (Oct. 5, 2018), <https://www.iep.utm.edu/ge-capab/#H2>.

26. SEN, *supra* note 24.

27. *Id.* See also Robeyns, *supra* note 23 ("The capability approach explicitly aims at providing an alternative to normative views that rely exclusively on mental states in their evaluative exercises.").

Part I will provide a historical background on Venezuela's politics and economy.<sup>28</sup> It will also examine the specific actions taken by the Venezuelan government that have led to the country's current crises, which remain unresolved and continue to be problematic.<sup>29</sup> Part II will provide the groundwork for the Capabilities Approach.<sup>30</sup> The first part of this section will describe the relevant concepts to understanding the approach, such as functioning and freedoms.<sup>31</sup> Then, it will compare the constitutive and instrumental roles of freedom,<sup>32</sup> as they tie into development, focusing mainly on political freedoms.<sup>33</sup> The final part of this section will introduce Martha Nussbaum's<sup>34</sup> interpretation of the Capabilities Approach,<sup>35</sup> which provides a counterpart to a Senian approach. Part III of this Note will apply the Capabilities Approach, as described by Sen and Nussbaum, to Venezuela's current humanitarian and economic crisis.<sup>36</sup> The first part of this section will discuss how political freedoms specifically apply to Venezuela. This section seeks to apply Sen and Nussbaum's Capabilities Approach to the concept of civil and political rights in Venezuela.<sup>37</sup> Finally, Part IV will support the claim that the most appropriate framework for comparisons when interpreting the current crisis in Venezuela is under the Capabilities Approach.<sup>38</sup> This section will also explore a shift in perspective that encompasses the full scope of the Venezuelan crisis, which would represent each citizen individually.<sup>39</sup>

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28. *See infra* Part I.

29. VENEZUELA EVENTS OF 2016, *supra* note 5.

30. SEN, *supra* note 24.

31. *Id.*

32. *Id.* at 36.

33. *Id.*

34. Martha C. Nussbaum, NAT'L ENDOWMENT HUM. (2017), <https://www.neh.gov/about/awards/jefferson-lecture/martha-nussbaum-biography>. Martha Nussbaum is a Philosopher and Professor of Law and Ethics at the University of Chicago. *Id.* Working alongside Amartya Sen allowed Nussbaum to launch the Human Development and Capability Association, which promotes "multifaceted standards for human flourishing." *Id.*

35. Martha C. Nussbaum, *Capabilities and Human Rights*, 66 *FORDHAM L. REV.* 273, 258 (1997).

36. *See infra* Part III.

37. *See* SEN, *supra* note 24; *see also* Nussbaum, *supra* note 35.

38. *See infra* Part IV.

39. *Id.*

## I. A HISTORICAL BACKGROUND OF VENEZUELAN POLITICS AND ECONOMY

This Part will provide a historical background on Venezuelan politics and economy. It will also examine the specific actions taken by the Venezuelan government that led to its crisis, which remain unresolved and continue to be problematic.<sup>40</sup>

### *A. Downfall of Venezuela, Once Latin America's Richest.*

Romulo Betancourt, known as the “Father of Venezuelan Democracy,” was elected President of Venezuela in 1958.<sup>41</sup> Betancourt’s presidency followed decades of rule by dictators and military juntas.<sup>42</sup> Venezuela’s oil economy operated under democratic rule for the next three decades, and according to the Council of Foreign Relations (CFR), during this time, Venezuela was riding the “[b]oom-and-bust cycle of global oil prices.”<sup>43</sup> The country remained in political turmoil, however, because of endemic governmental corruption, which gave rise to Hugo Chavez’s leftist Revolutionary Bolivarian Movement.<sup>44</sup>

In 1992, Chavez attempted to overthrow the Venezuelan government by launching a coup, which ended with his surrender and consequent imprisonment.<sup>45</sup> From 1990 to 1999, Venezuela endured five recessions.<sup>46</sup> Chavez’s release from prison, combined with the country’s uproar at the time, facilitated the acceptance of his proposed philosophies—the eradication of corruption and poverty and changes in Venezuela’s old political system—and gave Chavez sympathy and praise from the majority of the population.<sup>47</sup> As a result, he became the President of Venezuela in 1999.<sup>48</sup> As the new President of Venezuela, Chavez

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40. VENEZUELA EVENTS OF 2016, *supra* note 5.

41. Danielle Renwick, *Venezuela in Crisis — President Nicolas Maduro’s Efforts to Consolidate Power Amid a Deepening Economic and Humanitarian Crisis Have Drawn Widespread International Condemnation*, COUNCIL FOREIGN REL. (Dec. 12, 2017), <https://www.cfr.org/background/venezuela-crisis>.

42. *Id.* A junta is “a group of persons controlling a government especially after a revolutionary seizure of power.” See *Junta*, MERRIAM WEBSTER (Oct. 5, 2018), <https://www.merriam-webster.com/dictionary/junta>.

43. Renwick, *supra* note 41.

44. “The movement was influenced by the nineteenth century Venezuelan revolutionary Simon Bolivar, and aimed to create a unified Latin America.” *Id.*

45. “Carlos Andres Perez was the Venezuelan President at the time.” *Id.*

46. *Id.*

47. *Id.*

48. *Id.*



sought to enact a new rule of law and to remedy social inequality.<sup>49</sup> Chavez's populist platform greatly expanded the powers of the presidency.<sup>50</sup> First, he amended the Constitution, and gave himself the power to run another term.<sup>51</sup> Chavez then removed one chamber of Congress, which, according to the CFR, greatly limited "[c]ivilians' control over Venezuela's military."<sup>52</sup> Chavez later abolished presidential term limits, which allowed him to remain in power until his death in 2013.<sup>53</sup>

The state's role in the economy was considerably enlarged after Chavez came into power.<sup>54</sup> As a result, the Venezuelan government not only asserted majority state control over foreign investments in Venezuela's oil sector, perhaps the leading resources endowment in the world, but it also nationalized multiple enterprises.<sup>55</sup> In the eyes of open supporters of chavismo, Chavez's twenty-first century socialism model was thriving.<sup>56</sup> The president, however, subtly took over and dismantled Venezuela's democratic institutions.<sup>57</sup>

Prior to his death in 2013, Chavez appointed Vice President Nicolas Maduro as his successor.<sup>58</sup> Thus, in the aftermath of Chavez's death, Maduro became the acting president of Venezuela<sup>59</sup> officially taking over on March 8, 2013.<sup>60</sup> Not only does

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49. Rodrigo Acuna & Estela Valverde, *Can the Bolivarian Experiment Implement Transitional Justice in Venezuela*, 13 MACQUARIE L.J. 129, 130 (2014).

50. "The 1999 Constitution has been criticized as concentrating 'state power, state centralization, extreme presidentialism' and promoting an 'extensive state participation in the economy.'" *Id.* at 132.

51. *Id.*

52. Renwick, *supra* note 41.

53. "President Nicolas Maduro announced Chavez's death on March 5, 2013. Elections were to take place thirty days later." *Id.*

54. See Mark P. Sullivan, CONG. RES. SERV., R43239, VENEZUELA: BACKGROUND AND U.S. RELATIONS (2016) [hereinafter VENEZUELA: BACKGROUND AND U.S. RELATIONS].

55. *Id.*

56. Henkel Garcia U, *Inside Venezuela's Economic Collapse*, CONVERSATION (July 10, 2017), <https://theconversation.com/inside-venezuelas-economic-collapse-80597>.

57. Open supporters of chavismo were appointed judges, prosecutors and election officials, contravening Venezuela's 1999 Constitution. See VENEZUELA: BACKGROUND AND U.S. RELATIONS, *supra* note 54. Chavez's legacy was "a government that spent more than it made, even when oil prices remained high at US\$100 a barrel." Garcia U, *supra* note 56.

58. See *id.* ("Maduro had been sworn into office on October 13, 2012.").

59. VENEZUELA: BACKGROUND AND U.S. RELATIONS, *supra* note 54.

60. *Id.*

Maduro lack the charisma and popularity possessed by Chavez, but his administration is also responsible for leading Venezuela into the worst depression it has ever known.<sup>61</sup> Since 2014, there has been a significant drop in oil prices.<sup>62</sup> In addition, inflation in Venezuela has reached a staggering 2,000 percent.<sup>63</sup> Instead of focusing on Venezuela's pressing issues of food and medicine shortages, Maduro has concentrated his efforts into rewriting the country's Constitution to further enhance his authority.<sup>64</sup> Throughout his presidency, Maduro has proven to be an incompetent leader. He has been unable to address necessary corrections needed to preserve the nation.<sup>65</sup>

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61. "According to Data-analysis, a business that studies the nation's market, Maduro's most recent national approval was a dismal 17%." Amanda Trejos, *Why is Venezuelan President Nicolas Maduro so Controversial?* USA TODAY (Aug. 23, 2017), <http://www.usatoday.com/story/news/world/2017/08/23/nicolas-maduro-venezuela-president/573363001/>.

62. Garcia U, *supra* note 56.

63. *Id.* See also VENEZUELA: BACKGROUND AND U.S. RELATIONS, *supra* note 54 ("Since mid-2014, the rapid decline in the price of oil has hit Venezuela hard, with a contracting economy (projected -8.0% in 2016), high inflation (projected year-end inflation of 720%), declining international reserves, and increasing poverty—all exacerbated by the Maduro government's economic mismanagement. The economic situation has increased poverty, with increasing shortages of food and medicines and high rates of violent crime.").

64. Trejos, *supra* note 61.

65. "Under Maduro's presidency, per capita supplies of goods and services went down by 40 percent between late 2013 and 2014." Garcia U, *supra* note 56. *But see* Lucas Koerner, *Will the Venezuelan Masses Still Stand with Maduro at Election Time?*, VENEZUELANALYSIS.COM (Feb. 26, 2018), <https://venezuelanalysis.com/analysis/13681>. Maduro and the United Socialist Party still support the idea that Venezuela's existing democracy can be preserved and reinforced, however damaged it is by humanitarian and economic crises. *Id.* Maduro is able to maintain popularity by sustaining social aid programs, such as the CLAP program, which comprises "subsidized house-to-house food distribution in coordination with local communal councils." *Id.*; Elizabeth Melimopoulos, *Venezuela: Why I Support Nicolas Maduro*, AL JAZEERA (June 1, 2017), <https://www.aljazeera.com/indepth/features/2017/05/venezuela-support-nicolas-maduro-170528160033611.html>. One of Maduro's current and on-going objectives involves rewriting Venezuela's Constitution, and his policies are enormously guided by accusations of intrusion towards the United States, as well as his public display of disinclination to the United States. *Id.* Moreover, Maduro supporter, Alberto Mathison, describes Venezuela's current crises as follows: "[w]e are in the middle of a class war. This fight where we, the people who are not part of the oligarchy, are blamed for the fact that hospitals have reached poor neighborhoods, that bus journeys are among the cheapest

*B. A Legacy of Systematic Disregard for Human Rights*

Hugo Chavez's presidency involved an open disregard for basic human rights guarantees, as well as what the non-governmental organization, Human Rights Watch (HRW), has deemed as a "[d]ramatic concentration of power."<sup>66</sup> Currently, in Venezuela, as HRW emphasizes, human rights violations range from the "[n]eutralization of the judiciary as a guarantor of rights" to the expansion of the government's ability to control the content of the country's broadcast and news media.<sup>67</sup> In addition, in September 2012, Venezuela announced its withdrawal from the Inter-American Convention on Human Rights.<sup>68</sup> As a consequence of this withdrawal, human rights violations are no longer being analyzed by the IACHR, which according to the IACHR, essentially "[s]trips the people of Venezuela of a powerful mechanism" that protects their civil and political rights.<sup>69</sup> The Venezuelan

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in the world, that poor people have access to food." *Id.* Furthermore, Kruspcaya Padilla, also a Maduro supporter, has stated,

[W]e learned that a different economic model was feasible, that there was no stigma in being poor, that we could live in dignity... I would be very afraid. I would fear revenge. I would fear going back to a process where people who think differently to the right were ignored. We know the right exterminates the opponent. I would be afraid of that.

*Id.*

66. "By Chavez's second full term in office, the concentration of power and erosion of human rights protections had given the government free rein to intimidate, censor, and prosecute Venezuelans who criticized the president or thwarted his political agenda." *Venezuela: Chavez's Authoritarian Legacy*, HUM. RTS. WATCH (Mar. 5, 2013), <https://www.hrw.org/news/2013/03/05/venezuela-chavez-authoritarian-legacy>.

67. *Id.* at 2.

68. "The Chavez government repudiated the Inter-American human rights system. It failed to carry out binding rulings issued by the Inter-American Court of Human Rights (IACHR), which essentially prevents the IACHR conducting in-country monitoring of human rights problems." *Id.* Furthermore, "[b]ased on the provisions of Article 78(1) of the American Convention, the denunciation took effect on September 10, 2013, one year after the notice was given." See Press Release, IACHR Deeply Concerned Over Result of Venezuela's Denunciation of the American Convention, OAS Press Release No. 64/13 (Sept. 10, 2013), [http://www.oas.org/en/iachr/media\\_center/preleases/2013/064.asp](http://www.oas.org/en/iachr/media_center/preleases/2013/064.asp) [hereinafter IACHR Deeply Concerned Over Result of Venezuela's Denunciation of the American Convention].

69. IACHR Deeply Concerned Over Result of Venezuela's Denunciation of the American Convention, *supra* note 68.

government's decision emerged from a rejection of an underlying agreement between the member states of the Organization of American States (OAS) to implement the universalization of the inter-American system.<sup>70</sup> The Venezuelan government is also opposed to the member states' heightened interest in having all member countries recognize the jurisdiction of the court.<sup>71</sup> As stated by the IACHR, its jurisdiction is now limited to issuing "[n]on-binding recommendations to Venezuela" if it determines that the country has violated the American Declaration on the Rights and Duties of Man—one of the main human rights instruments for all the OAS member states.<sup>72</sup> Since then, according to the human rights non-governmental organization, Amnesty International, victims of human rights violations and their relatives have been continuously denied access to "[j]ustice, truths, and reparation."<sup>73</sup>

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70. See OAS, *Universalization of the Inter-American System of Human Rights*, OAS Doc. OAS/Ser.L/V/II.152 (Aug. 14, 2014), <https://www.oas.org/en/iachr/reports/pdfs/universalization-interamerican-system.pdf> [hereinafter *Universalization of the Inter-American System of Human Rights*]. The IACHR has stressed how important it is to view "the instruments of the inter-American system as a critical ingredient to ensure full respect for and the guarantee of human rights in the Americas." *Id.* at 9. Particularly, the IACHR notes that "the current system of varying degrees of ratification 'leaves millions of people at a disadvantage in terms of the degree of international protection of their rights.'" *Id.*

71. "The Inter-American Commission has a mandate to promote respect for human rights in the region and acts as a consultative body to the OAS in this matter." IACHR Deeply Concerned Over Result of Venezuela's Denunciation of the American Convention, *supra* note 68. The IACHR believes that universal ratification is a "necessary step toward full protection of human rights within the region." *Universalization of the Inter-American System of Human Rights*, *supra* note 70.

72. *Venezuela Denounces American Convention on Human Rights as IACHR Faces Reform*, INT'L JUST. RESOURCE CENTER (Sept. 19, 2012), <http://www.ijr-center.org/2012/09/19/venezuela-denounces-american-convention-on-human-rights-as-iachr-faces-reform/>.

73. *Venezuela 2016/2017, Annual Report*, AMNESTY INT'L 1 (2017), <https://www.amnesty.org/en/countries/americas/venezuela/report-venezuela/>.

The Venezuelan opposition<sup>74</sup> has made massive anti-government protests part of its routine attempts at achieving justice.<sup>75</sup> The government has responded to these protests<sup>76</sup> with excessive force against unarmed protesters and bystanders.<sup>77</sup> Protestors are continually targeted primarily because they exercise their right to peaceful demonstrations against the government of Nicolas Maduro, whose policies have led to the country's hyperinflation and resources' shortages.<sup>78</sup>

Since 2015, Venezuela has declared and renewed several states of general and economic emergency.<sup>79</sup> In December 2015, the opposition party, the Democratic Unity Roundtable, won control over the National Assembly—Venezuela's unicameral

74. Holly K. Sonneland, *Explainer: Who's Who in the Venezuelan Opposition*, COUNCIL AM. (Jan. 10, 2017), <https://www.as-coa.org/articles/explainer-whos-who-venezuelan-opposition>. The Democratic Unity Roundtable, commonly known in Spanish as "MUD," was formed in 2008 to challenge former President Chavez's policies. *Id.* MUD currently encompasses over twelve parties, including, Democratic Action, Justice First, the New Era, and Popular Will. *Id.* In the legislative elections of December 2015, these political parties, combined, gained ninety out of the 112 seats won by MUD. *Id.* Public support for MUD has decreased overall, given the lack of progress it has been able to achieve. *Id.*

75. VENEZUELA EVENTS OF 2016, *supra* note 5.

76. *Id.*

77. *Id.* HUMAN RIGHTS WATCH, WORLD REPORT 2018: VENEZUELA EVENTS OF 2017 (2018), [https://www.hrw.org/sites/default/files/venezuela\\_3.pdf](https://www.hrw.org/sites/default/files/venezuela_3.pdf) [hereinafter VENEZUELA EVENTS OF 2017] "Colectivos," armed groups whose alliance is to the government, and Venezuelan security forces, have targeted politically dissenting citizens at protests, which are usually attended by thousands of citizens. *Id.* At these protests, citizens have been shot, beaten, and run over by Venezuelan security forces. *Id.* Between April and November 2017, over 5,000 citizens were arrested at these demonstrations regardless of their status and without due process. *Id.*

78. A disturbing account of some of the atrocities committed by Venezuelan authorities is identified by the Human Rights Watch report as follows:

[I]n 2016, Jose Gregorio Hernandez Carrasco, a university student, was detained following his participation in an anti-government demonstration. He was tortured until he acceded to sign a confession... Some of the torture techniques included electric shocks, choking with a plastic bag, as well as placing a stick on his rectum and threatening to rape him with it.

*Id.*

79. *Id.*

legislative body.<sup>80</sup> Nonetheless, Venezuela's executive branch has exercised widespread influence over the judiciary, intending to guarantee that the Supreme Tribunal of Justice will render favorable decisions to it.<sup>81</sup> This undue influence has resulted in arbitrary and unconstitutional uses of power by Venezuela's executive branch, including undermining the autonomy of judicial institutions, ignoring the principle of checks and balances, and encouraging the President to rule by persistently issuing emergency pronouncements.<sup>82</sup>

The international community has called upon the Venezuelan government to take immediate action to ameliorate the current crisis.<sup>83</sup> Venezuela is described by numerous international non-governmental organizations, including HRW, and the United Kingdom's Foreign and Commonwealth Office as possessing weak democratic governing mechanisms and a highly politically polarized society.<sup>84</sup> Furthermore, Maduro's politics<sup>85</sup> have had a vast impact on the lives of millions of Venezuelans.<sup>86</sup> Not only is Venezuela described by Amnesty International as "[h]ome to some of the most violent cities in the world," but also as a self-

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80. *Country Reports on Human Rights Practices for 2016 — Venezuela*, U.S. DEP'T ST. (Mar. 3, 2017), <http://www.refworld.org/docid/58ec89a613.html>.

81. *Id.*

82. *Id.* ("The government's popularity is undoubtedly affected by the profound economic and social crisis that Venezuela is experiencing. The rapid decline in the price of oil has been a major factor prompting the economic crisis, but economic mismanagement has also played a significant role. Many observers contend that the road to economic recovery will take several years, no matter who is in power."); See also VENEZUELA: BACKGROUND AND U.S. RELATIONS, *supra* note 54.

83. *Country Reports on Human Rights Practices for 2016 — Venezuela*, *supra* note 80.

84. *Human Rights and Democracy Report 2015 — Venezuela*, UK: FOREIGN & COMMONWEALTH OFF. (Apr. 21, 2016), <http://www.refworld.org/docid/57234ee36.html>.

85. See Jon Lee Anderson, *Nicolas Maduro's Accelerating Revolution — Venezuela's President Has Outmaneuvered His Opponents. Can He Survive an Economy in Free Fall?*, NEW YORKER (Dec. 11, 2017), <https://www.newyorker.com/magazine/2017/12/11/nicolas-maduros-accelerating-revolution>.

86. "The lethal combination of severe food and medicine shortages coupled with sky-high crime rates, persistent human rights violations and ill-conceived policies that focus on trying to keep people quiet instead of responding to their desperate calls for help are a recipe for an epic catastrophe." *Venezuela: Stubborn Politics Accelerate Catastrophic Humanitarian Crisis*, AMNESTY INT'L (June 10, 2016), <http://www.refworld.org/docid/575e5bc74.html>.

governing sovereign country.<sup>87</sup> Amnesty International claims that this country shows, at most, little to meager “[r]espect for judicial independence.”<sup>88</sup> Proclamations by such non-governmental organizations stem from the idea that in Venezuela, judges and other officers of the courts are precluded from following the law if it disfavors the demands of the executive branch.<sup>89</sup>

The international community has asked President Maduro to immediately engage in meaningful dialogue in order to bring about efficient and inclusive mechanisms that could bring life-saving aid to the millions of Venezuelans who depend on it to survive.<sup>90</sup> In a report outlining the current crisis in Venezuela, the OAS asked the Venezuelan government to immediately release those individuals who are still imprisoned for political reasons.<sup>91</sup> In addition, the OAS called for Venezuela’s executive and legislative branches to jointly and immediately work together, as stipulated by their obligations to the OAS’s Charter.<sup>92</sup> The OAS has urged the government branches to solve the delicate situation of the population’s basic rights, such as food and health services, and to provide adequate security to its citizens.<sup>93</sup> The OAS also asked the Venezuelan executive branch “[t]o eliminate all forms of violations of the constitutional and political precepts regarding the balance between the branches of government.”<sup>94</sup>

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87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. “The facts have become clear. Venezuela is in violation of *every* article in the Inter-American Democratic Charter. Democracy and Human Rights are values that must be above politics and the task before the Commission is to support Venezuela to restore the rights of the people.” Almagro Letter, *supra* note 16, at 21.

92. *Id.*

93. “As provided in Article 12 of the Inter-American Democratic Charter, poverty, illiteracy, and low levels of human development are factors that adversely affect the consolidation of democracy.” *Id.* at 26–27.

94. The report emphasizes that,

[I]nstead of the rule of law, guided by principles of accountability, impartiality, justice, equal access and equality before the law, the State’s actions are guided by political interests, with an obvious bias in favor of the ruling party. The result is a regime that does not effectively guarantee the political and civil rights of its citizenry.

*Id.* at 38.

Finally, the OAS called for Venezuela to incorporate support from the United Nations (UN) High Commissioner for Human Rights in order to address the human rights challenges in Venezuela.<sup>95</sup> Although Venezuela has a seat in the UN Human Rights Council, it often fails to demonstrate significant cooperation with the UN body.<sup>96</sup>

More recently, on August 8, 2017, foreign affairs ministers gathered to discuss and brainstorm a comprehensive resolution that addressed Venezuela's humanitarian and economic crisis.<sup>97</sup> The resolution "[c]ondemns the rupture of democratic order and the systematic violation of human rights in Venezuela."<sup>98</sup> It also "[e]xpresses concerns about the humanitarian crisis and the government's refusal to accept international aid" and "[i]mposes an arms embargo in Venezuela."<sup>99</sup>

In light of these events, Venezuela currently faces one of its worst economic depressions.<sup>100</sup> The economy continues to destabilize, and the country's food and medicine shortages continue to worsen, requiring immediate attention from the Venezuelan government.<sup>101</sup>

## II. THE CAPABILITIES APPROACH

This Part will provide the groundwork for the Capabilities Approach—a theory founded by Professor Amartya Sen.<sup>102</sup> The first

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95. *Id.* at 62–63.

96. *Id.* at 64–65. The report further states,

[I]t would be immoral if the political actions being orchestrated and implemented in Venezuela Today were mere moves on a chessboard used as a disguise of democracy, by a country whose people are suffering the systematic violation of their human rights, that has seen the rule of law perish, that has no system of minimum guarantees to assert in the face of authoritarians, and that is enduring systematic violation of its constitutional principles and provisions.

*Id.*

97. *The OAS and Venezuela's Supreme Court Saga*, HUM. RTS. WATCH (Apr. 14, 2017), <https://www.hrw.org/news/2017/04/14/oas-and-venezuelas-supreme-court-saga>.

98. *Id.*

99. *Id.*

100. Trejos, *supra* note 61.

101. Almagro Letter, *supra* note 16, at 26.

102. SEN, *supra* note 24.



part will describe the relevant concepts to understanding the approach, such as functioning and freedoms.<sup>103</sup> Then, it will compare the constitutive and instrumental roles of freedom<sup>104</sup> as they tie into development, focusing mainly on political freedoms.<sup>105</sup> The latter part of this section will introduce Martha Nussbaum's interpretation of the Capabilities Approach,<sup>106</sup> providing a counterpart to Sen's approach.

#### *A. Amartya Sen's Capabilities Approach: Functioning and Freedoms*

It is important to lay out basic concepts described by Sen in order to fully understand the Capabilities Approach. A significant aspect of the Capabilities Approach is what Sen refers to as 'functionings.'<sup>107</sup> To Sen, individuals may differ in their abilities to convert the same resources into valuable functionings—beings and doings—<sup>108</sup> which are the "[v]arious states of human beings and activities that a person can undertake."<sup>109</sup> Examples of 'beings' include: "[b]eing well nourished, being undernourished, being illiterate, or being educated."<sup>110</sup> Examples of 'doings' include: "[t]ravelling, voting in an election, taking part in a debate, or caring for a child."<sup>111</sup> According to Sen, an evaluation cannot focus only on resources, rather, it must consider "[w]hat particular people can do with them."<sup>112</sup> As noted by Sen, individuals with physical infirmities, for example, "[m]ay need specific goods to achieve mobility, and pregnant women have specific nutritional requirements to achieve good health."<sup>113</sup>

103. *Id.*

104. *Id.*

105. *Id.*

106. Nussbaum, *supra* note 35.

107. Robeyns, *supra* note 23.

108. Thomas Wells, *Sen's Capability Approach*, INTERNET ENCYCLOPEDIA PHIL. (Oct. 5, 2018), <https://www.iep.utm.edu/sen-cap/#H1>.

109. Robeyns, *supra* note 23.

110. Additional examples of beings include: "[b]eing housed in a pleasantly warm but not excessively hot house, being part of a supportive social network, being part of a criminal network, and being depressed." *Id.*

111. Additional examples of doings include: "[t]aking drugs, killing animals, eating animals, consuming lots of fuel in order to heat one's house, and donating money to charity." *Id.*

112. Wells, *supra* note 108.

113. *Id.*

Capabilities, on the other hand, are an individual's real freedoms or opportunities to achieve functioning.<sup>114</sup> The distinction between functioning and capabilities is determined by what is "[r]ealized and what is effectively possible."<sup>115</sup> In other words, Sen argues that this amounts to the contrast between achievements and the freedoms or valuable opportunities from which one can choose.<sup>116</sup> The act of travelling, for example, establishes a functioning, but it is the real opportunity to travel that creates the corresponding capability.<sup>117</sup>

Sen often equates capabilities with freedoms.<sup>118</sup> Capabilities, as freedoms, refer to the presence of valuable options or alternatives.<sup>119</sup> The implication of Sen's reasoning is that opportunities must exist not only formally or legally, but also must be effectively available to the individual receiving them.<sup>120</sup> Wealth's functionality, for example, lies in the acts that it allows individuals to achieve; in other words, as Sen notes, wealth's usefulness lies in the substantive freedoms it helps people achieve.<sup>121</sup>

### *B. Constitutive and Instrumental Roles of Freedom and Development*

In terms of development, Sen presents two different approaches to freedoms.<sup>122</sup> The first is the constitutive role of freedom, and the second is the instrumental role of freedom.<sup>123</sup> The constitutive role of freedom is viewed as the *primary end* of development, whereas the instrumental role of freedom is viewed as the *principal means* of development.<sup>124</sup> Sen notes that, the constitutive role of freedom encompasses the importance of

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114. Robeyns, *supra* note 23.

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. SEN, *supra* note 24, at 14.

122. *Id.* at 17.

123. *Id.* See also Robeyns, *supra* note 23 ("The approach stressed that we should always be clear, when valuing something, whether we value it as an end in itself, or as a means to a valuable end.").

124. SEN, *supra* note 24, at 36 (The output to Sen's book "is much more compatible with the instrumental approach.").

"[s]ubstantive freedom" to enhancing an individual's life.<sup>125</sup> In Sen's view, development is "[t]he process of expanding human freedoms."<sup>126</sup> According to Sen, this approach can be illustrated by thinking of the following: it is often asked "[w]hether the freedom of political participation and dissent is or is not conducive of development."<sup>127</sup> Nonetheless, he notes that when looking at this question in light of the foundational view of development as freedom, "[t]he question seems to be poorly articulated."<sup>128</sup> As Sen highlights, the question effectively misses the critical understanding that "[p]olitical participation and dissent are *constitutive* parts of development itself."<sup>129</sup> The point Sen makes is that even a very rich individual who is barred from speaking freely, or from participating in public debates and decisions, is deprived of something that he or she "[h]as reason to value."<sup>130</sup> When judged by the enhancement of human freedom, Sen notes that "[t]he process of development has to include the removal of this person's deprivation."<sup>131</sup> Essentially, Sen argues that these freedoms are "[p]art and parcel of enriching the process of development."<sup>132</sup>

The instrumental role of freedom is viewed as the principal means of development.<sup>133</sup> This view includes: (1) political freedoms, (2) economic facilities, (3) social opportunities, (4) transparency guarantees, and (5) protective security.<sup>134</sup> This Note focuses on evaluating the instrumentality of political freedoms.<sup>135</sup> Nonetheless, it is important to point out that, as Sen asserts, these instrumental freedoms "[d]irectly enhance the capabilities

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125. "Substantive freedoms include elementary capabilities like being able to avoid such deprivations as starvation, undernourishment, escapable morbidity and premature mortality, as well as the freedoms that are associated with being literate and numerate, enjoying political participation and uncensored speech and so on." *Id.*

126. *Id.*

127. *Id.*

128. *Id.* at 37.

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.* at 36.

134. *Id.* at 38.

135. *Id.* ("These instrumental freedoms tend to contribute to the general capability of a person to live more freely, but they also serve to complement one another.").

of people, supplement one another, and can reinforce one another.”<sup>136</sup>

Political freedoms, which include civil rights, refer to the opportunities that individuals have to define who should govern and on what principles they should do so.<sup>137</sup> Moreover, political freedoms include the possibility to, inter alia, dissect and legitimately criticize authorities, enjoy the freedom of associating with distinct political parties, possess the freedom to express conflicting political opinions, and hold equal access to uncensored press.<sup>138</sup>

Sen argues that the severity of economic needs actually enhances the need for political freedoms:

[T]here are three different considerations that take us in the direction of a general preeminence of basic political and liberal rights: (1) their *direct* importance in human living associated with basic capabilities (including that of political and social participation); (2) their *instrumental* role in enhancing the hearing that people get in expressing and supporting their claims to political attention (including the claims of economic needs); (3) their *constructive* role in the conceptualization of ‘needs’ (including the understanding of ‘economic needs’ in a social context).<sup>139</sup>

These considerations are necessary to form a complete picture of Sen’s approach. The direct importance of political freedoms comes from the fact that human beings have reason to value liberty and the freedom of expression in their lives.<sup>140</sup> Also, as social creatures, Sen notes that human beings have reason to “[v]alue unrestrained participation in political and social activities.”<sup>141</sup>

Furthermore, the enhancement of political speech and individuals’ ability to be heard under Sen’s concept of instrumentality turns into incentives.<sup>142</sup> The first step to understanding this concept is by considering the political incentives that have control

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136. *Id.* at 40.

137. *Id.* at 38.

138. *Id.* (Political freedoms “include the political entitlements associated with democracies in the broadest sense encompassing opportunities of political dialogue, dissent, critique, as well as voting rights and participatory selection of legislators and executives.”).

139. *Id.* at 148.

140. *Id.* at 152.

141. *Id.*

142. *Id.* at 148.

over governments and over the persons and groups that are in political office.<sup>143</sup> The idea is that those in power—heads of states—face the prospect of the criticism and support of their citizens during elections and, therefore, have the incentive to listen to what their citizens desire.<sup>144</sup> Political rights are constructive in two particular ways: the relationship between economic needs and incentives of social responses, and their central role to the conceptualization of economic necessities themselves.<sup>145</sup> As Sen notes, political rights, “[e]specially those related to guarantees of open discussion, debate, criticism, and dissent, are central to the processes of generating informed and reflected choices.”<sup>146</sup> Essentially, an independent nation ruled by a leader who tolerates opposition parties’ criticisms, holds regular elections, permits the media to report freely, and ultimately allows dissenting citizens, without widespread censorship, to question his or her policies, is a nation that will likely not experience a traumatic downfall, or as Sen correlates, a famine.<sup>147</sup>

### *C. Martha Nussbaum and the Capabilities Approach*

Martha Nussbaum’s standpoint complements and supplements Sen’s Capabilities Approach. Nussbaum, along with Sen, sought to develop the Capabilities Approach, defining its importance in international debates about welfare and quality of life.<sup>148</sup>

When speaking about human capabilities, Nussbaum speaks of “[l]egal guarantees of freedom of expression . . . and of freedom of religious exercise” as aspects of the general capability that individuals possess to use their own “[m]ind and senses in a way directed their own practical reason.”<sup>149</sup> The capabilities idea is

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143. *Id.* Sen argues that each individual has reason to value freedom of expression, association, and liberty, in his or her life. *Id.* He further asserts that it is not unreasonable for human beings, given their social nature, to value “[u]nrestrained participation in political and social activities.” *Id.* Broadly put, “[i]nformed and unregimented formation of value requires openness of communication and arguments,” a notion inherently entwined to political freedoms and civil rights. *Id.*

144. *Id.* at 152.

145. *Id.*

146. *Id.*

147. *Id.* at 152–53.

148. Nussbaum, *supra* note 35.

149. *Id.* at 277.

interrelated with a concern with equality.<sup>150</sup> According to Nussbaum, analyzing whether individuals should value specific resources cannot be determined by looking at capabilities alone.<sup>151</sup> Both Sen and Nussbaum assert that the role of the Capabilities Approach is to inform individuals as to what types of equality might be relevant.<sup>152</sup>

Unlike Sen, Nussbaum developed a list of capabilities that serves as a focus for political planning.<sup>153</sup> She selects those human capabilities that, according to her, can “[b]e convincingly argued to be of central importance in any human life, whatever else the person pursues or chooses.”<sup>154</sup> Nussbaum proposes an extensive list of capabilities, including: “Life, Bodily Health, Bodily Integrity, Senses, Imagination and Thought, Emotions, Practical Reason, Affiliation, Other Species, Play, and Control Over One’s Environment.”<sup>155</sup> This Note focuses specifically on the capabilities of practical reason and of affiliation.<sup>156</sup> Nussbaum describes practical reason as “[b]eing able to form a conception of the good and to engage in critical reflection about the planning of one’s life, entailing protection for the liberty of conscience and religious observance.”<sup>157</sup> She describes affiliation, on the other hand, in terms of friendship and respect.<sup>158</sup> Nussbaum defines friendship as:

Being able to live for and to others, to recognize concern for other human beings, to engage in various forms of social interaction; to be able to imagine the situation of another and to have compassion for that situation; to have the capability for both justice and friendship. Protecting this capability means,

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150. *Id.* at 280.

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.* at 286 (Nussbaum observes that “the central capabilities are not just instrumental to pursuits: they are held to have value in themselves, in making a life fully human.” The central point of her account is “to put forward something that people from many different traditions, with many different fuller conceptions of the good, can agree on as the necessary basis for pursuing their good in life.”).

155. *Id.* at 287.

156. *Id.* (Nussbaum argues that “practical reason and affiliation are of special importance because they both organize and suffuse all the other capabilities, making their pursuit truly human.”).

157. *Id.*

158. *Id.*

once again, protecting institutions that constitute such forms of affiliation, and also protecting the freedoms of assembly and political speech.<sup>159</sup>

The concept of friendship is essential in understanding Nussbaum's definition of affiliation.

Furthermore, Nussbaum defines respect as "[h]aving social bases of self-respect and non-humiliation; [it means] being able to be treated as a dignified being whose worth is equal to that of others. This entails provisions of non-discrimination on the basis of race, sex, ethnicity, caste, religion, and national origin."<sup>160</sup> Nussbaum additionally expands her analysis by describing three different types of capabilities: (1) basic capabilities; (2) internal capabilities; and (3) combined capabilities.<sup>161</sup>

This Note focuses on combined capabilities, which are, according to Nussbaum, "[i]nternal capabilities combined with suitable external conditions for the exercise of the function."<sup>162</sup> It is helpful to look at rights<sup>163</sup> as combined capabilities that function in various ways.<sup>164</sup> Nussbaum asserts that "[t]he right to political participation, the right to religious free exercise, the freedom of speech, the freedom to seek employment outside the home, and the freedom from unwarranted search and seizure are all best

159. *Id.*

160. *Id.*

161. *Id.* at 289.

[B]asic capabilities: the innate equipment of individuals that is the necessary basis for developing the more advanced capability. For example, most infants have from birth the basic capabilities for practical reason and imagination, though they cannot exercise such functions without a lot more development and education. Further, internal capabilities are states of the person herself that are, so far as the person herself is concerned, sufficient conditions for the exercise of the requisite functions. To illustrate, think of the fact that most human beings everywhere have the internal capability to use speech and thought in accordance with their own conscience.

*Id.*

162. *Id.* at 290.

163. *Id.* at 292 ("Human rights involve an especially urgent and morally justified claim that a person has, simply by virtue of being a human adult, and independently of membership in a particular nation, or class, or sex, or ethnic or religious or sexual group.")

164. *Id.* at 292-93.

thought of as human capacities.”<sup>165</sup> She argues that it is also helpful to think of this methodology in the following way: “[a] citizen who is systematically deprived of information about religion does not really have religious liberty, even if the state imposes no barrier to religious choice.”<sup>166</sup> Internal conditions alone, however, will not suffice.<sup>167</sup> Accordingly, securing a right to individuals in these areas is paramount to affording them with a capability of deciding to freely choose a function, if they so desire.<sup>168</sup> Nussbaum puts forth women as an example, by stating that “[w]omen who think about work outside the home, but who are going to be systematically denied employment on account of sex, or beaten if they try to go outside, do not have the right to seek employment.”<sup>169</sup> If the concept of human rights is thought of in this sense, it will be closely related to basic capabilities because, as asserted by both Sen and Nussbaum, human rights are typically perceived as deriving from some actual feature of a human person.<sup>170</sup>

### III. APPLYING THE CAPABILITIES APPROACH TO VENEZUELA

This Part will apply the Capabilities Approach, as described by Sen and Nussbaum, to Venezuela’s current humanitarian and economic crisis. The first section will discuss how political freedoms specifically apply to Venezuela. Then, this Note will expand the analysis to the concept of rights, which both Sen and Nussbaum consider when describing the Capabilities Approach.<sup>171</sup>

#### *A. Venezuela, Political Freedoms, and Development*

As Sen points out, people in many different countries of the world are “[s]ystematically denied political liberty and basic civil rights.”<sup>172</sup> Leaders of non-democratic regimes often claim that the denial of civil and political rights helps to stimulate economic growth and is good for rapid development.<sup>173</sup> Non-democratic

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165. *Id.* at 293.

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. See SEN, *supra* note 24; see also Nussbaum, *supra* note 35.

172. SEN, *supra* note 24, at 14.

173. *Id.*



leaders also argue that eradicating civil and political rights promotes economic development.<sup>174</sup> Sen argues, on the contrary, that “[t]here is little evidence, however, to back up the claim that authoritarian politics actually help economic growth.”<sup>175</sup> In fact, as he points out, evidence very strongly suggests that economic growth is more “[a] matter of a friendlier economic climate than a harsher political system.”<sup>176</sup> The distinctive case of Venezuela provides particular support for the latter claim.<sup>177</sup>

As previously discussed with regards to political freedoms, in order for individuals to fully exercise their political freedoms, they must possess the capability to freely decide which candidate should govern them.<sup>178</sup> They must possess the capability to vote based on political candidates’ governing ideologies.<sup>179</sup> Individuals must be able to determine on their own what they value most.<sup>180</sup> Even if individuals actively choose not to exercise their right to decide who should govern, the ability to do so must still be present.<sup>181</sup> Human beings should not be deprived of something that they have reason to value.<sup>182</sup>

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174. *Id.* at 15.

175. *Id.*

176. *Id.* at 14–15 (This thesis, often called the “Lee thesis,” attributed in some form to the former prime minister of Singapore, Lee Kuan Yew, is sometimes backed by some fairly rudimentary empirical evidence. Sen further argues that, “[i]t is not surprising that no famine has ever taken place in the history of the world in a functioning democracy.”).

177. VENEZUELA EVENTS OF 2016, *supra* note 5.

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

According to Freedom House,<sup>183</sup> an independent organization that oversees the expansion of freedom and democracy worldwide, as of 2018, Venezuela is “not free.”<sup>184</sup> This is not surprising given that the country currently faces a growing humanitarian crisis that is linked to its collapsing economy.<sup>185</sup> Continued efforts by the executive branch and the politicized judiciary to restrict the opposing legislators, and to hinder any legislative efforts to address the country’s economic and humanitarian crisis have rendered Venezuela not self-reliant.<sup>186</sup> Venezuela ranks incredibly low under Freedom House’s methodology, which suggests that the excessive accumulation of power by the executive branch directly correlates to Venezuela’s paltry conditions.<sup>187</sup>

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183. *Freedom in the World 2018 — Venezuela Profile*, FREEDOM HOUSE 1 (2018), <https://freedomhouse.org/print/50078>. See also Michael J. Abramowitz, *Democracy in Crisis — Freedom in the World 2018*, FREEDOM HOUSE 2 (2018), [https://freedomhouse.org/sites/default/files/FH\\_FITW\\_Report\\_2018\\_Final\\_SinglePage.pdf](https://freedomhouse.org/sites/default/files/FH_FITW_Report_2018_Final_SinglePage.pdf). Freedom House assesses the real-world rights and freedoms enjoyed by individuals, rather than looking directly at governments or government performance per se. *Id.* It ranks countries based on political rights and civil liberties. Under its methodology, a score of 7 implies the least free nation. *Id.* Notably, Venezuela ranks at a low of 5.5. *Id.*

184. *Id.* Freedom in the World 2018 evaluates the state of freedom in 195 countries and 14 territories during the 2017 calendar year. *Id.* Freedom House’s measures are based on the following guidelines:

[E]ach country and territory is assigned between 0 and 4 points on a series of 25 indicators, for an aggregate score of up to 100. These scores are used to determine two numerical ratings, for political rights and civil liberties, with a rating of 1 representing the most free conditions and 7 the least free. A country or territory’s political rights and civil liberties ratings then determine whether it has an overall status of Free, Partly Free, or Not Free.

*Id.* Moreover, according to Freedom House’s 2017 report, Venezuela was “not free” and ranked as 11/40 (-4) in political rights. See *Freedom in the World 2017 — Venezuela Profile*, FREEDOM HOUSE 1 (2017), <https://freedomhouse.org/report/freedom-world/2017/venezuela>.

185. *Freedom in the World 2017 — Venezuela Profile*, *supra* note 183, at 1.

186. *Id.* at 5.

187. *Id.*

The April 2013 presidential election held in Venezuela, following Hugo Chavez's death, has been critical to Venezuela's current crises.<sup>188</sup> President Maduro defeated MUD's<sup>189</sup> leader, Henrique Capriles, 50.6 percent to 49.1 percent.<sup>190</sup> MUD, Venezuela's largest opposition party, accused the government of multiple violations and a lack of transparency during the presidential election.<sup>191</sup> For the first time in almost ten years, the Venezuelan opposition refused to accept the outcome's legitimacy without a complete audit.<sup>192</sup> The National Electoral Council<sup>193</sup> conducted a limited audit that revealed a few discrepancies, but it did not go any further and concluded the electoral process, electing Maduro as Venezuela's president.<sup>194</sup> Members of the opposition were left with no other recourse to validate their concerns about the process's legitimacy.<sup>195</sup> Moreover, elections in Venezuela are tainted by corruption.<sup>196</sup> State employees, for example, face direct threats, intimidation, and monitoring by their superiors to ensure that they vote in favor of the government.<sup>197</sup>

The given scenario describing Venezuela's electoral process can be interpreted in terms of functioning.<sup>198</sup> On the one hand, with regard to 'beings,' Venezuelan citizens who are eligible to vote hold the status of being able to vote.<sup>199</sup> On the other hand, in terms of 'doings,' Venezuelan citizens must be able to actually

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188. *Freedom in the World 2017 — Venezuela Profile*, *supra* note 183, at 5.

189. *Sonneland*, *supra* note 74.

190. *Id.*

191. *Id.*

192. *Id.*

193. The National Electoral Council is an "institution that has the responsibility of overseeing and guaranteeing the transparency of all elections and referendums in Venezuela at the local, regional, and national level." *National Electoral Council*, SYGIC TRAVEL, <https://travel.sygic.com/en/poi/national-electoral-council-poi:15163823> (last visited Nov. 12, 2018).

194. *Id.*

195. *Id.*

196. *Id.* at 5–6 (Including "delayed initial announcement, a campaign environment clearly tilted in favor of the ruling party, disqualifications of prominent opposition candidates, government abuse of public resources to boost voter support, uneven access to the state-dominated media, a near extinction of independent traditional media, a lack of international observers, [and] some violence").

197. *Freedom in the World 2017 — Venezuela Profile*, *supra* note 183, at 5.

198. *Robeyns*, *supra* note 23.

199. *Id.*

vote in the election.<sup>200</sup> Since capabilities are a person's real freedoms or opportunities to achieve functioning, it is clear that in this scenario, Venezuelan citizens, specifically state employees, are not able to effectively achieve their freedoms because they are not only exploited into participating during elections, but they are also coerced into voting for a specific candidate.<sup>201</sup> This ultimately deprives citizens of their capabilities to exercise political freedom and freedom of thought.<sup>202</sup>

Finally, this scenario can be identified in terms of development.<sup>203</sup> Even those citizens who voluntarily choose not to vote are deprived of something they should value.<sup>204</sup> Citizens' political freedoms become less effective and unachievable.<sup>205</sup> Since the electoral process is marred by corruption even when citizens choose not to participate in an election, their vote would be tainted nonetheless,<sup>206</sup> effectively diminishing their capabilities.<sup>207</sup> As Sen notes, development involves political incentives, as well as political rights.<sup>208</sup> Thus, the political leaders of a country like Venezuela, where elections are overpowered by corruption, lack the necessary incentives to value the opinion of not only their critics, but also their supporters.<sup>209</sup> In addition, Sen points out that political rights are central to the conceptualization of economic needs themselves.<sup>210</sup> Thus, overlooking people's freedoms will have an adverse effect on the country's development.<sup>211</sup>

### *B. Venezuela's Internal Laws, Political Freedoms and the Effect on Development*

Further evidence of effective deprivation of political freedoms in Venezuela can be found by interpreting not only the actions

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200. *Id.*

201. *Freedom in the World 2017 — Venezuela Profile*, *supra* note 183, at 5.

202. *Id.* at 1; *see also* SEN, *supra* note 24, at 152.

203. SEN, *supra* note 24, at 152.

204. *Id.* at 37.

205. *Freedom in the World 2017 — Venezuela Profile*, *supra* note 183, at 5.

206. *Id.*

207. SEN, *supra* note 24, at 37.

208. *Id.* at 152.

209. *Id.*

210. *Id.*

211. *Id.*

taken by the Venezuelan government to silence the opposition,<sup>212</sup> but also by analyzing the country's internal laws.<sup>213</sup> As Sen notes, political freedoms include the possibility to "[s]crutinize and criticize authorities, to have freedom of political expression and an uncensored press, and to enjoy the freedom to choose between different political parties."<sup>214</sup> Venezuela's Constitution, specifically Articles 57 and 58, provides for freedom of speech and press.<sup>215</sup> There are, however, significant repressions of these

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212. See *Venezuela: Systematic Abuses of Opponents*, HUM. RTS. WATCH (Nov. 29, 2017), <https://www.hrw.org/news/2017/11/29/venezuela-systematic-abuses-opponents>. Human Rights Watch reports that,

[T]he abuses against government opponent's in Venezuela, including egregious cases of torture, are not isolated abuses or occasional excesses by rogue officers, rather they are '[a] systematic practice taken adopted by Venezuelan security forces...' Under the 62-page report, 'Crackdown on Dissent: Brutality, Torture, and Political Persecution in Venezuela,' widespread abuses against government opponents range from, 'detonating teargas canisters in closed environments where detainees were being held; keeping detainees crowded into small confinement cells for prolonged periods; denying detainees access to food or water, or forcing them to eat food that was deliberately tainted with excrement, cigarette ashes, or insects; physically and psychologically abusing detainees.'

*Id.*

213. *Id.*

214. SEN, *supra* note 24, at 38.

215. *Country Reports on Human Rights Practices for 2016 — Venezuela*, *supra* note 80. See also CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA tit. III, ch. 2, § 2, arts. 57–58, available at <http://www.venezuelaemb.or.kr/english/ConstitutionoftheBolivarianingles.pdf> (last visited Nov. 20, 2018). According to Article 57,

Everyone has the right to express freely his or her thoughts, ideas or opinions orally, in writing or by any other form of expression, and to use for such purpose any means of communication and diffusion, and no censorship shall be established. Anyone making use of this right assumes full responsibility for everything expressed. Anonymity, war propaganda, discriminatory messages or those promoting religious intolerance are not permitted. Censorship restricting the ability of public officials to report on matters for which they are responsible is prohibited.

freedoms.<sup>216</sup> For example, according to the U.S. Department of State Human Rights Report (“Human Rights Report”), Venezuelan laws make insulting the president an offense punishable by “[s]ix to thirty months in prison without bail.”<sup>217</sup> In terms of press and media freedoms, the Venezuelan media is required to broadcast only “true” information.<sup>218</sup> The Human Rights Report also notes that Venezuelan law provides that “[i]naccurate reporting that disturbs the public peace is punishable by prison terms of two to five years.”<sup>219</sup> In addition, Article 57 of Venezuela’s Constitution prohibits all media from broadcasting messages that “[i]ncite, promote, or condone criminal acts; constitute war propaganda; foment anxiety in the population or affect public order; do not recognize legitimate government authorities; incite homicide; or incite or promote disobedience to the established legal order.”<sup>220</sup> In 2016, however, even with these laws in place, President Maduro and the ruling government party, the United Socialist Party of Venezuela, used nearly six hundred

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*Id.* art. 57. According to Article 58,

Communications are free and plural, and involve the duties and responsibilities indicated by law. Everyone has the right to timely, truthful and impartial information, without censorship, in accordance with the principles of this Constitution, as well as the right to reply and corrections when they are directly affected by inaccurate or offensive information. Children and adolescents have the right to receive adequate information for purposes of their overall development.

*Id.* art. 58.

216. *Country Reports on Human Rights Practices for 2016 — Venezuela, supra* note 80 at 16 (According to the 2016 country report conducted by the United States Department of State, numerous international organizations including “the Inter-American Commission on Human Rights (IACHR), the UN Human Rights Committee, Freedom House, the Inter American Press Association, Reporters without Borders, and the Committee to Protect Journalists, condemned or expressed concern over government efforts throughout the year to restrict freedom and create a climate of fear and self-censorship.”).

217. *Id.*

218. *Id.*

219. *Id.* (“The requirement to disseminate only ‘true’ information was undefined and open to politically motivated interpretation. The Office of the UN High Commissioner for Human Rights (OHCHR) issued a statement in August expressing serious concern over the continuing erosion of media freedom.”).

220. *Id.* at 17. *See also* Constitution of the Bolivarian Republic of Venezuela, *supra* note 215.

government-owned or controlled media outlets to consistently insult and intimidate their political opposition.<sup>221</sup>

Furthermore, government officials continuously retaliate against individuals who publicly express criticism of the president or his government's policy.<sup>222</sup> The Venezuelan media and opposition members are not only disproportionately punished for speaking out, but they are also subjected to reprisals set forth by Venezuelan laws that do not apply evenly to government authorities.<sup>223</sup> Venezuela's citizens are, therefore, discouraged from socially and politically participating in the electoral system.<sup>224</sup> Their political freedoms, which are supposed to enhance their ability to be heard, are weakened.<sup>225</sup>

The government is infrequently concerned with people's opinions.<sup>226</sup> Because presidential terms have been terminated under the Constitution,<sup>227</sup> Venezuela's rulers have little to no incentives to consider its citizens' opposing views but also overall criticism.<sup>228</sup> Dissenting opinions are moot because Venezuelan rulers do not need further support to be reelected.<sup>229</sup> Under the Ca-

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221. "Maduro regularly referred to Miranda state governor Henrique Capriles using homosexual slurs on live television, while PSUV [United Socialist Party of Venezuela] First Vice President Diosdado Cabello used his weekly television program to bully journalists and media outlets." *Id.*

222. *Id.*

223. *Id.*

224. *Id.* See also SEN, *supra* note 24, at 152.

225. SEN, *supra* note 24, at 152.

226. *Country Reports on Human Rights Practices for 2016 — Venezuela, supra* note 80, at 17.

227. Renwick, *supra* note 41. See CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA, *supra* note 215, ch. 4, § 1. According to Article 62 of Venezuela's Constitution,

All citizens have the right to participate freely in public affairs, either directly or through their elected representatives. The participation of the people in forming, carrying out and controlling the management of public affairs is the necessary way of achieving the involvement to ensure their complete development, both individual and collective. It is the obligation of the State and the duty of society to facilitate the generation of optimum conditions for putting this into practice.

*Id.* art. 62.

228. SEN, *supra* note 24, at 152.

229. *Id.*

pabilities Approach, Venezuela is a country that does not tolerate opposition parties' voicing their concerns.<sup>230</sup> It is a country that has no room for media to report freely and question government policies.<sup>231</sup>

Over the years, Venezuela has actively censored and controlled media outlets.<sup>232</sup> Thus, it is a country likely to experience a traumatic downfall.<sup>233</sup> An example of a traumatic downfall is illustrated by Sen's theory behind famines,<sup>234</sup> which is represented not as freedom per se, but as a lack thereof.<sup>235</sup> He argues that famines are still present in parts of the world, which consequently denies millions of humans one of the most fundamental freedoms—the freedom to survive.<sup>236</sup> As aforementioned, Sen contends that independent countries, which hold elections regularly, tolerate criticism by opposing parties, allow the media to report freely, and question government politics without censorship, are unlikely to experience a famine.<sup>237</sup> In the case at hand, one can argue that Venezuela has a government that blatantly disregards political rights.<sup>238</sup> It is a country currently facing a collapsing economy coupled with a humanitarian crisis, potentially leading to a traumatic downfall or even a famine.<sup>239</sup>

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230. *Id.* See also *Country Reports on Human Rights Practices for 2016 — Venezuela*, *supra* note 80, at 17.

231. *Id.*

232. *Id.*

233. *Id.*

234. SEN, *supra* note 24, at 14.

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. Emma Graham-Harrison, *Hunger Eats Away at Venezuela's Soul as Its People Struggle to Survive*, *GUARDIAN* (Aug. 26, 2017), <https://www.theguardian.com/world/2017/aug/26/nicolas-maduro-donald-trump-venezuela-hunger>, Some examples of food shortages in Venezuela are as follows:

As of 2017, About ten million Venezuelans skip at least one meal a day; Nearly three-quarters of Venezuelans have lost weight over the past year, and the average loss was a huge 9kg, or nearly a stone and a half, for many citizens that is simply because food is too expensive; Nine of ten homes can't cover the cost of what they should eat; Formula for babies who can't be breastfed was hard to track down anywhere last year, with shortages so severe they claimed the lives of newborns.



### C. Capabilities and Rights

As both Sen and Nussbaum argue, the Capabilities Approach is important because it illustrates that what is involved in securing a right for people is a lot more important than simply putting it down on paper.<sup>240</sup> Accordingly, both Sen and Nussbaum believe that the Capabilities Approach needs to be combined with a focus on rights.<sup>241</sup>

Nussbaum applies this approach to India, stating that, “[t]he Constitution of India is full of guarantees of fundamental rights that are not backed up by effective state action.<sup>242</sup> Thus, since ratification, women have had rights of gender equality, but in actuality, they are unequal not only *de facto*, but also *de jure*.”<sup>243</sup> The same can be applied to Venezuela. The Venezuelan Constitution guarantees a number of freedoms<sup>244</sup> that are systematically violated without recourse.<sup>245</sup> For example, Article 68 of the Constitution states that “[c]itizens have the right to demonstrate, peacefully and without weapons, subject only to such requirements as may be established by law.”<sup>246</sup> Recently, however, thousands of Venezuelan citizens marching peacefully were injured during a demonstration against President Maduro when security forces confronted them.<sup>247</sup> In addition, in the beginning of July 2017, approximately 1,500 Venezuelans were injured, and over ninety people died in the context of protests.<sup>248</sup> Thus, although the right to “demonstrate peacefully” is explicitly guaranteed in the Constitution, citizens cannot effectively exercise

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*Id.*

240. Nussbaum, *supra* note 35, at 293–94.

241. *Id.* at 258.

242. *Id.* at 293–94.

243. *Id.*

244. *Constitution of the Bolivarian Republic of Venezuela*, VENEZUELANANALYSIS.COM, <https://venezuelanalysis.com/constitution> (last visited Jan. 3, 2018).

245. See *Country Reports on Human Rights Practices for 2016 — Venezuela*, *supra* note 80; see also *Freedom in the World 2017 — Venezuela Profile*, *supra* note 183, at 1.

246. Article 20 states, “Everyone has the right to the free development of his or her own personality, subject only to the limitations deriving from the rights of others and public and social order.” CONSTITUTION OF THE BOLIVARIAN REPUBLIC OF VENEZUELA, *supra* note 215, ch. 1, art. 20.

247. *The OAS and Venezuela’s Supreme Court Saga*, *supra* note 97.

248. *Id.*

this right.<sup>249</sup> In essence, Venezuelans do not have the right to demonstrate peacefully since politically dissenting citizens do not have the capability to function as equals.<sup>250</sup>

Moreover, Venezuela's "Anti-Hate Law"<sup>251</sup> provides further illustration that simply having rights that are written down, whether in the Constitution or any other legislation, is not probative of citizens' actual possession of said rights. This law, passed by the all-powerful Constitutional Assembly, tightens the media's autonomy and orders prison sentences of up to twenty years for anyone found to instigate hate.<sup>252</sup> This law is not only vague and overbroad, but it also significantly reduces citizens' incentive to engage in any kind of political debate that opposes the government.<sup>253</sup> Thus, as Nussbaum illustrates in the case of India, even though there are guarantees offered by the Constitution, and even by the UDHR,<sup>254</sup> all politically dissenting citizens in Venezuela are de facto and de jure unequal.<sup>255</sup>

#### IV. A NOVEL AND UNEXPLORED SOLUTION TO INTERPRET THE VENEZUELAN CRISIS

This Note recommends a multi-dimensional approach to interpret a crisis like the one currently faced by Venezuela. First, there must be an understanding that political freedoms and rights, as described by the Capabilities Approach, are inherently intertwined with the process of development. Second, when it comes to evaluating rights, the focus should be on what an individual is actually able to do and be.

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249. *Id.*

250. Nussbaum, *supra* note 35, at 293–94.

251. "The country's legislative super body, or constituyente, passed the so-called Anti-Hate Law, which threatens to revoke licenses or block web pages of any outlet that transmits messages that the government considers to be promoting hate or intolerance. Additionally, television and radio stations are now required to broadcast at least 30 minutes of programming a week that 'promotes peace and tolerance' or risk hefty fines." See Andrew Rosati & Fabiola Zerpa, *Venezuela Passes 'Anti-Hate Law' to Clamp Down on the Media*, BLOOMBERG POL. (Nov. 8, 2017), <https://www.bloomberg.com/news/articles/2017-11-08/venezuela-passes-anti-hate-law-threatening-media-censorship>. See generally LEY CONSTITUCIONAL CONTRA EL ODIO, POR LA CONVIVENCIA PACÍFICA Y LA TOLERANCIA, GACETA OFICIAL [G.O.] 8 November 2017 (Venez.).

252. *Id.*

253. *Id.*

254. UDHR, *supra* note 1.

255. Nussbaum, *supra* note 35, at 293–94.

*A. First Step: Understand that Political Freedoms and Rights Are Inherently Intertwined with the Process of Development*

Sen's approach provides a unique perspective into the complexity and deeply intertwined and mutually reinforcing dimensions of the Venezuelan crisis. This Note asserts that the best way to interpret a crisis faced by countries like Venezuela, is, as both Sen and Nussbaum imply, under the Capabilities Approach.<sup>256</sup> The goal is to understand the crisis in terms of the effect that political freedoms and rights have on development. By doing this, one can recognize that the countries, which seriously lack political freedoms and rights, are more likely to experience a traumatic downfall.<sup>257</sup> This is illustrated by the observation that countries like Venezuela, which heavily censor civil and political expression will potentially experience a traumatic downfall.<sup>258</sup> This Note implies that the lack of political incentives by government leaders strongly ties into a collapsing economy.<sup>259</sup> In addition, it suggests that political rights are central to the conceptualization of economic needs themselves.<sup>260</sup>

Finally, this Note envisages the current Venezuelan crisis by evaluating what an individual is actually able to do.<sup>261</sup> It suggests that when it comes to development, the emphasis is not on how many resources are sitting around, but how they are actually going to work in enabling people to function in a fully human way.<sup>262</sup>

*B. Second Step: The Focus Should Be on What an Individual Is Actually Able to Do and Be*

The Capabilities Approach is mainly concerned with what is actually going on in an individual's life in question.<sup>263</sup> When it comes to understanding and measuring people's rights, the issue should neither be how satisfied person "A" is, nor how much in

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256. "The specification of these rights usually involves both an internal and an external component." *Id.* at 285.

257. See *Country Reports on Human Rights Practices for 2016 — Venezuela*, *supra* note 80; see also SEN, *supra* note 24, at 152.

258. *Id.*

259. SEN, *supra* note 24, at 152.

260. *Id.*

261. Nussbaum, *supra* note 35, at 285.

262. *Id.*

263. *Id.*

the way of resources that “A” commands.<sup>264</sup> Instead, the question should be, as posed by Nussbaum, “[W]hat is A actually able to do and to be?”<sup>265</sup> The Capabilities Approach shifts the focus to a variety of functions that are of central importance to human life.<sup>266</sup> The objective is to come to a shift in perspective that encompasses the full scope of a crisis like the one in Venezuela. Shifting perspectives will allow citizens to be represented individually. Moreover, focusing on capabilities means looking at citizens one by one and insisting on locating empowerment in each different individual life, rather than in the nation as a whole.<sup>267</sup>

Finally, this Note posits that the Capabilities Approach provides an interpretation of rights that, when applied to a country like Venezuela, can suggest an unexplored avenue of interpretation. This approach is important because it illustrates that what is involved in securing a right for people is actually a lot more important than simply codifying it on paper.<sup>268</sup> This analysis helps illustrate that even when rights are written down in a constitution, that is not sufficient evidence to establish that a citizen actually is able to enjoy said right.<sup>269</sup> For example, one cannot say that Venezuelans have the right to demonstrate peacefully, even though its Constitution strongly suggests said right.<sup>270</sup> Finally, by interpreting rights this way, one can fully understand that, sometimes, even though there are guarantees offered by a constitution, citizens in countries, such as Venezuela, are highly exposed to being *de facto* and *de jure* unequal.<sup>271</sup>

## CONCLUSION

Venezuela currently faces one of the worst depressions it has ever seen.<sup>272</sup> The country’s humanitarian and economic crisis

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264. *Id.*

265. *Id.*

266. *Id.*

267. *Id.*

268. *Id.* at 293–94.

269. *Id.*

270. *Id.*

271. *Id.*

272. Trejos, *supra* note 61.

has the potential to lead to a traumatic downfall.<sup>273</sup> The Capabilities Approach, articulated by Professor Amartya Sen, provides a unique perspective into the complex, deeply intertwined, and mutually reinforcing dimensions of this crisis. The approach also presents a noble and unexplored avenue to interpret critical situations, such as the one Venezuela presents, suggesting that when it comes to evaluating such a complex situation, the focus should be on what an individual is actually able to do and be.

*Andrea I. Scheer\**

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273. See SEN, *supra* note 24, at 152; see also *Country Reports on Human Rights Practices for 2016 — Venezuela*, *supra* note 80, at 17.

\* B.A., Florida State University (2014); J.D., Brooklyn Law School (Expected 2019); Executive Articles Editor, *Brooklyn Journal of International Law* (2018–2019). This Note is dedicated to the millions of Venezuelans, like my family and me, who were forced to escape the country out of desperation and fear for their lives and to those who are still fighting for a better Venezuela. To my parents, who left everything and everyone they knew behind in the hopes of procuring a better life for my brother and me. From kidnappings to murders, my family and I have suffered the consequences of Venezuela's dictatorship first-hand. I can only hope that this Note sheds some light into how a country which was once considered the richest in its hemisphere, can traumatically fall apart. To all the Venezuelans out there still fighting, please never give up, democracy and justice will rise once again. Lastly, to the staff of the *Brooklyn Journal of International Law* for their countless support in the development of this Note. All errors or omissions are my own.