



Restoring the Rule of Law in Fragile and Conflict-Affected  
Situations: The Venezuelan Case

Minerva Center for the Rule of Law under Extreme Conditions  
Haifa University

May 2024

# Summary

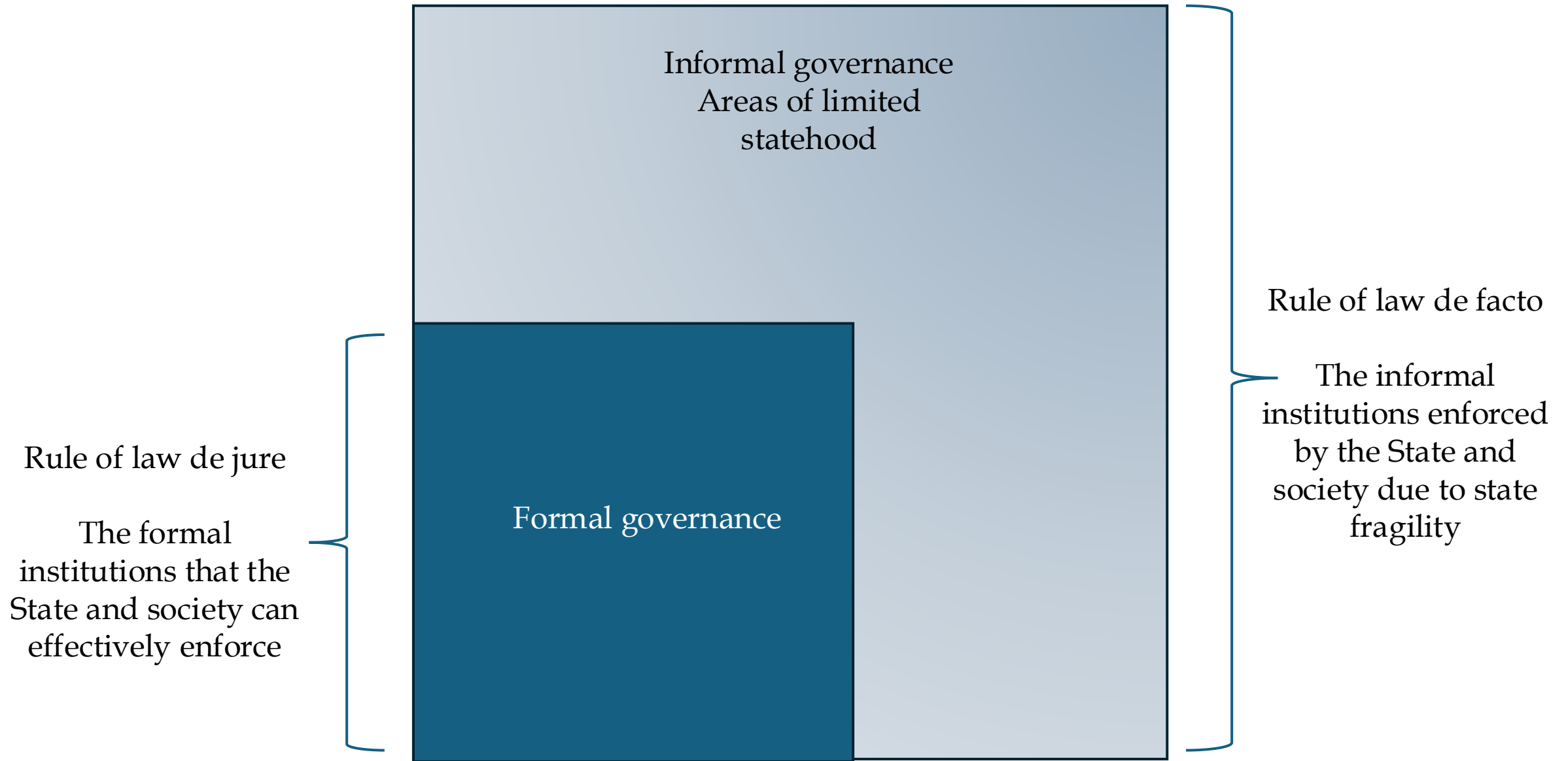
- A brief introduction to the rule of law in Latin America.
- The rule of law in Fragile and Conflict-Affected Situations (FCS): a case of rule of law under extreme conditions.
- The Venezuelan unique collapse: some indicators.
- How to restore the rule of law in Venezuela? A top-down and bottom-up approach.

# A brief introduction to the rule of law in Latin America

- As Brian P. Owensby summarizes, a “*chief reason for slighting law in Latin America has been the tendency to see it through the prism of the rule of law*”.
- John Tasioulas and the broader idea of the rule of law.
- The Latin American approach of “Estado de Derecho” highlights the importance of the link between rule of law institutions and the state capability.
- From that perspective, Latin America has two particularities: the tradition of nonenforcement (García Villegas) and institutional fragility (Brinks et al.).



# The rule of law *de jure* and the rule of law *de facto*



# A brief introduction to the rule of law in Latin America



Rule of law de jure



Rule of law de facto

# The Rule of Law in Fragile and Conflict-Affected Situations (FCS)

- The evolution of the failed state concept: from extreme cases to state fragility (Rotberg).
- State fragility creates areas of limited statehood: tasks where “central authority (governments) lack the ability to implement and enforce rules and decisions and/or in which they do not command a legitimate monopoly over the means of violence” (Risse et al).
- The World Bank's Fragile and Conflict-Affected States (FCS).
- Latin America is a region of latecomer states formation (Mazzuca).



# The Rule of Law in Fragile and Conflict-Affected Situations (FCS)

- Isomorphic mimicry: fragile states adopt ambitious institutions to “look like a state” (Prtichett et al).
- Latin American Constitutional Law is transformative: the government must guarantee social and economic rights through democratic governance institutions (Bogdandy).
- But the region is regarded as one of the most unequal in the world.
- State fragility and inequality encourage authoritarian-populist temptations.



## FCS: A case of rule of law under extreme conditions.

- Extreme conditions involve extraordinary circumstances where institutional normalcy cannot be maintained. They can be addressed through ex-ante, during, and ex-post models (Salzberg).
- Latin American Constitutional Law has a long tradition of using the state of emergency as an ex-ante institutional arrangement (Valadés).
- The Inter-American Human Rights System establishes several safeguards to prevent abuse of power during a state of emergency (Casal et al).



FCS: A case of rule of law under extreme conditions.

- The COVID-19 pandemic demonstrates that the real issue was not the abuse of authority during the state of emergency, but rather the lack of power resulting from the state's fragility (Hernández).
- FCS is an extreme condition that undermines the rule of law.
- The state of emergency was not intended to cover FCS: the pandemic lesson.
- Is it possible to justify “extra-constitutional powers” in FCS? (Tushnet).

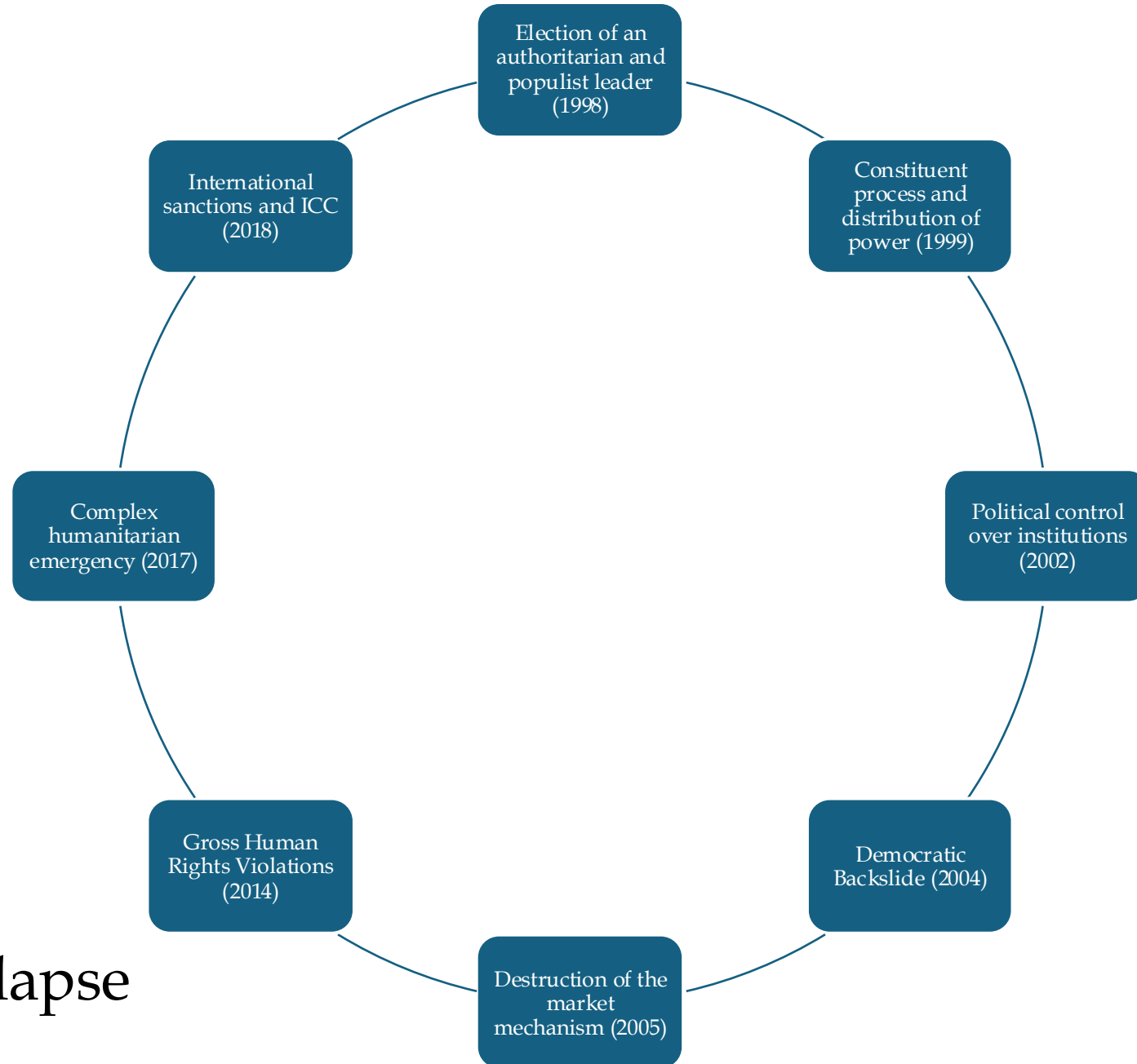


# The Venezuelan unique collapse

- Venezuela is an example of late democratic state development, starting in 1958.
- The political institutions of the Petro-State undermined the weak democratic system foundations.
- Amid a social and economic crisis, Hugo Chávez was elected president in 1998.
- In a slow-motion process, fueled by the populist narrative and the Petro-State, Chávez dismantled the rule of law.
- After 2013, the Maduro regime severely undermined the state capabilities.

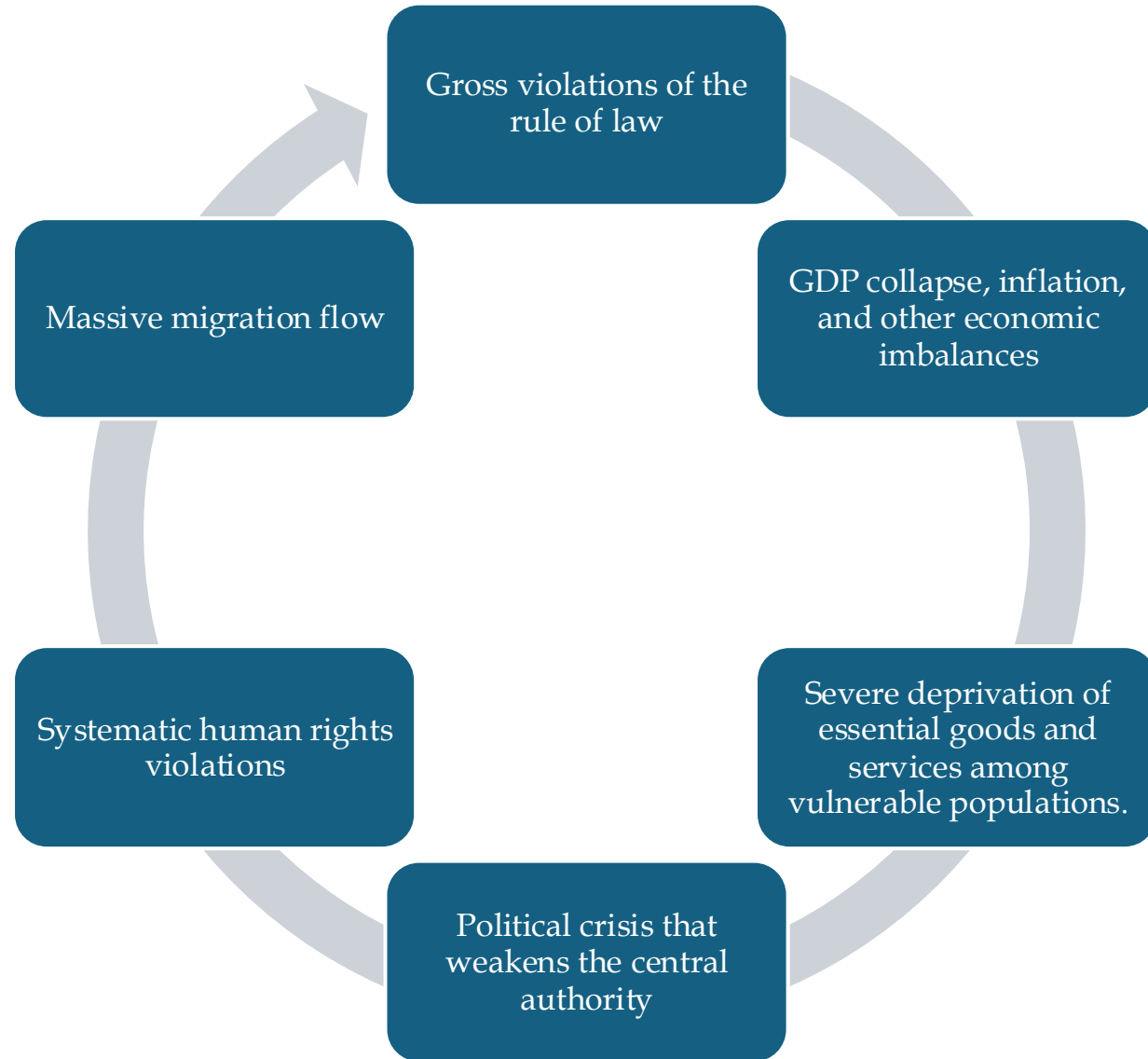


# The Venezuelan unique collapse



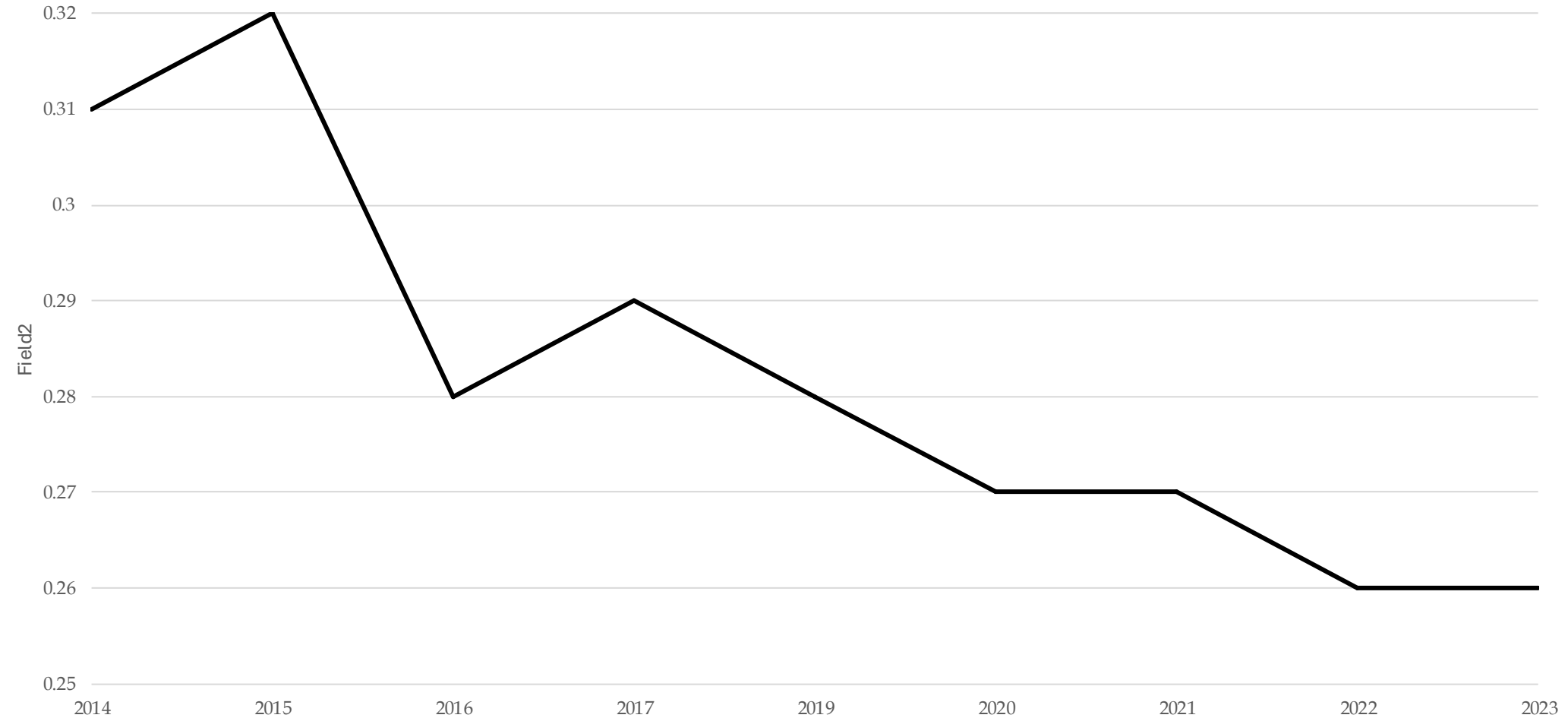
## How Venezuela collapse

# The Venezuelan unique collapse



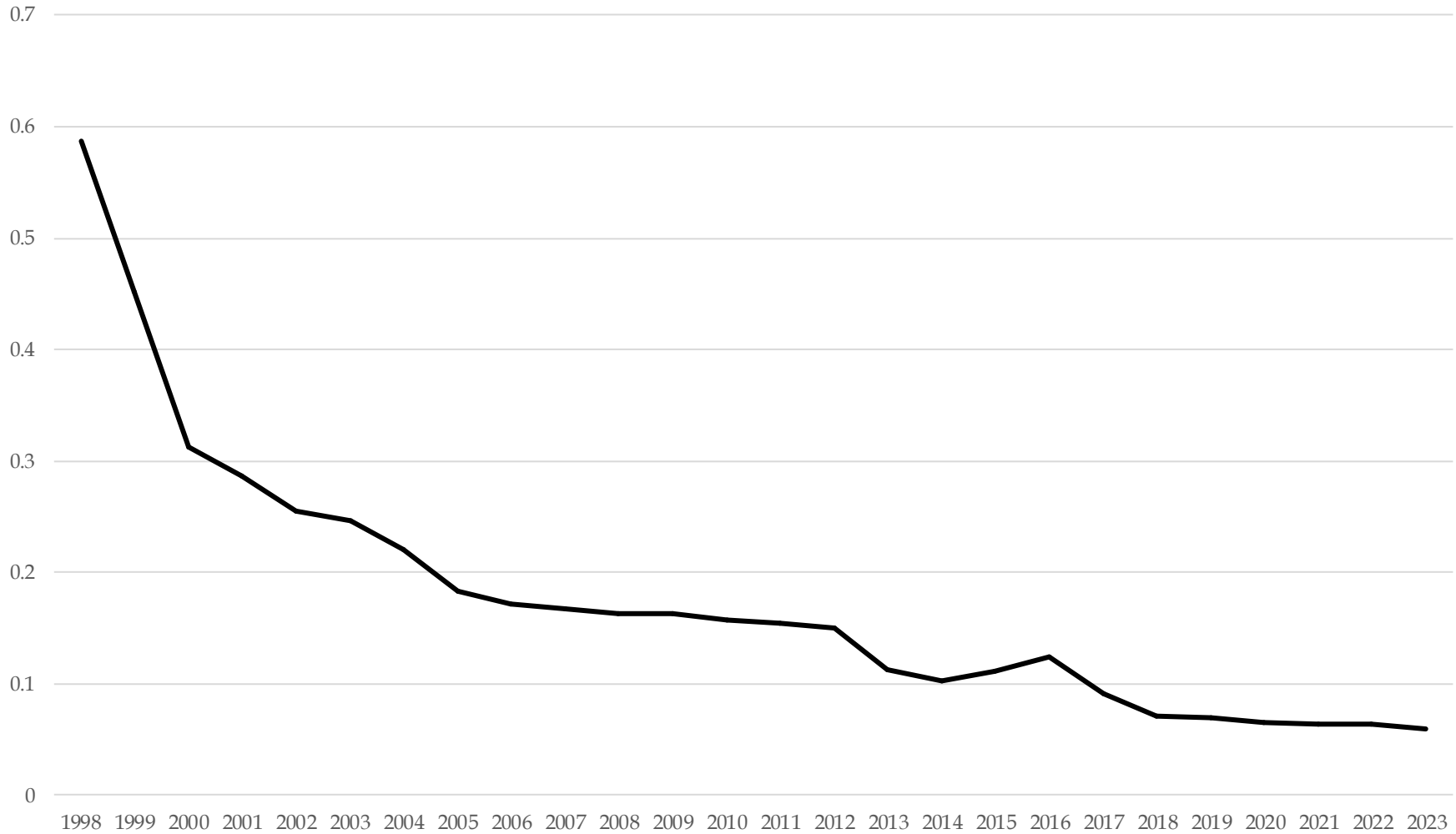
The Rotberg's scale

# The Venezuelan unique collapse: some indicators



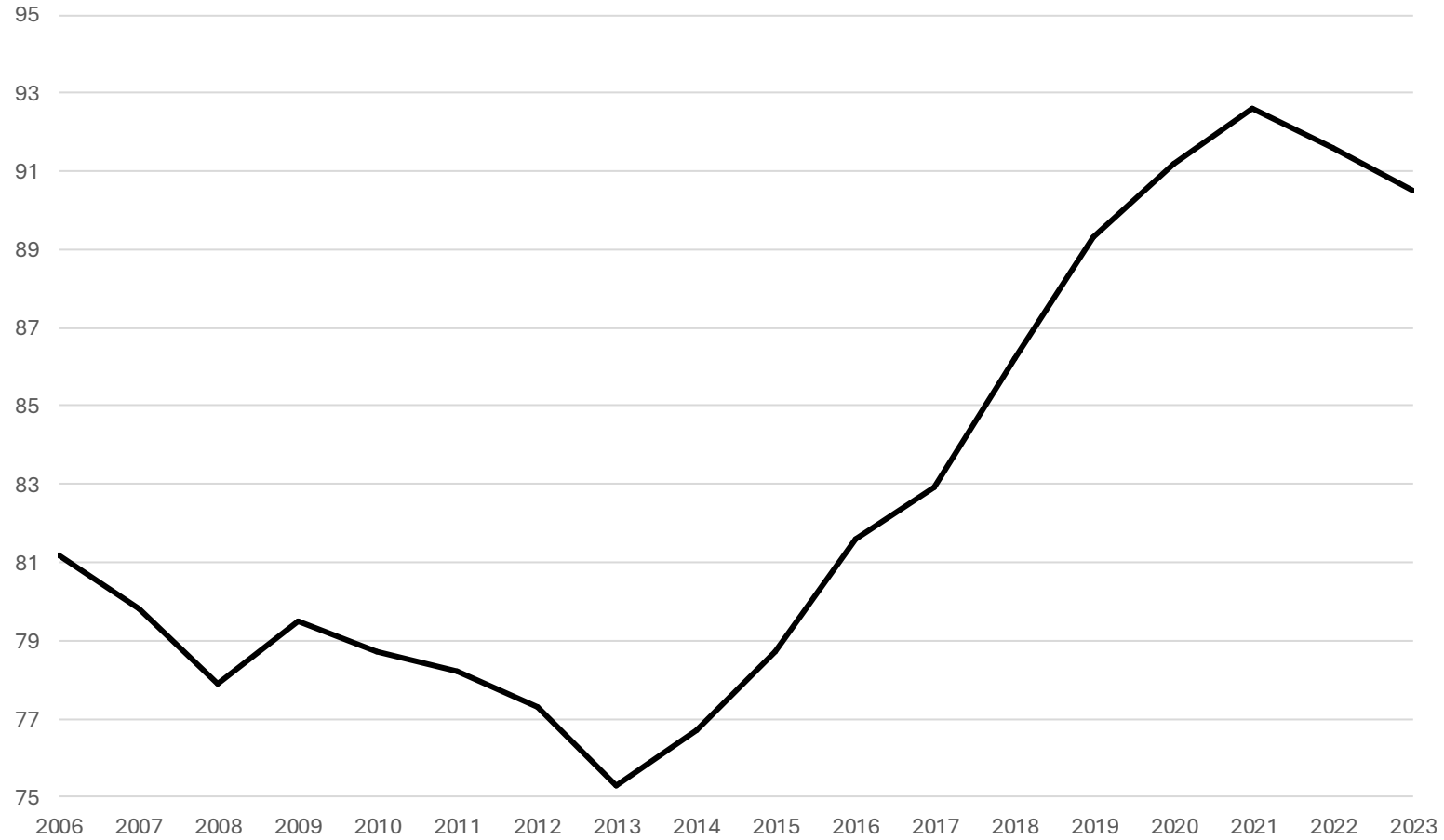
The Rule of Law Index  
World Justice Project

# The Venezuelan unique collapse: some indicators



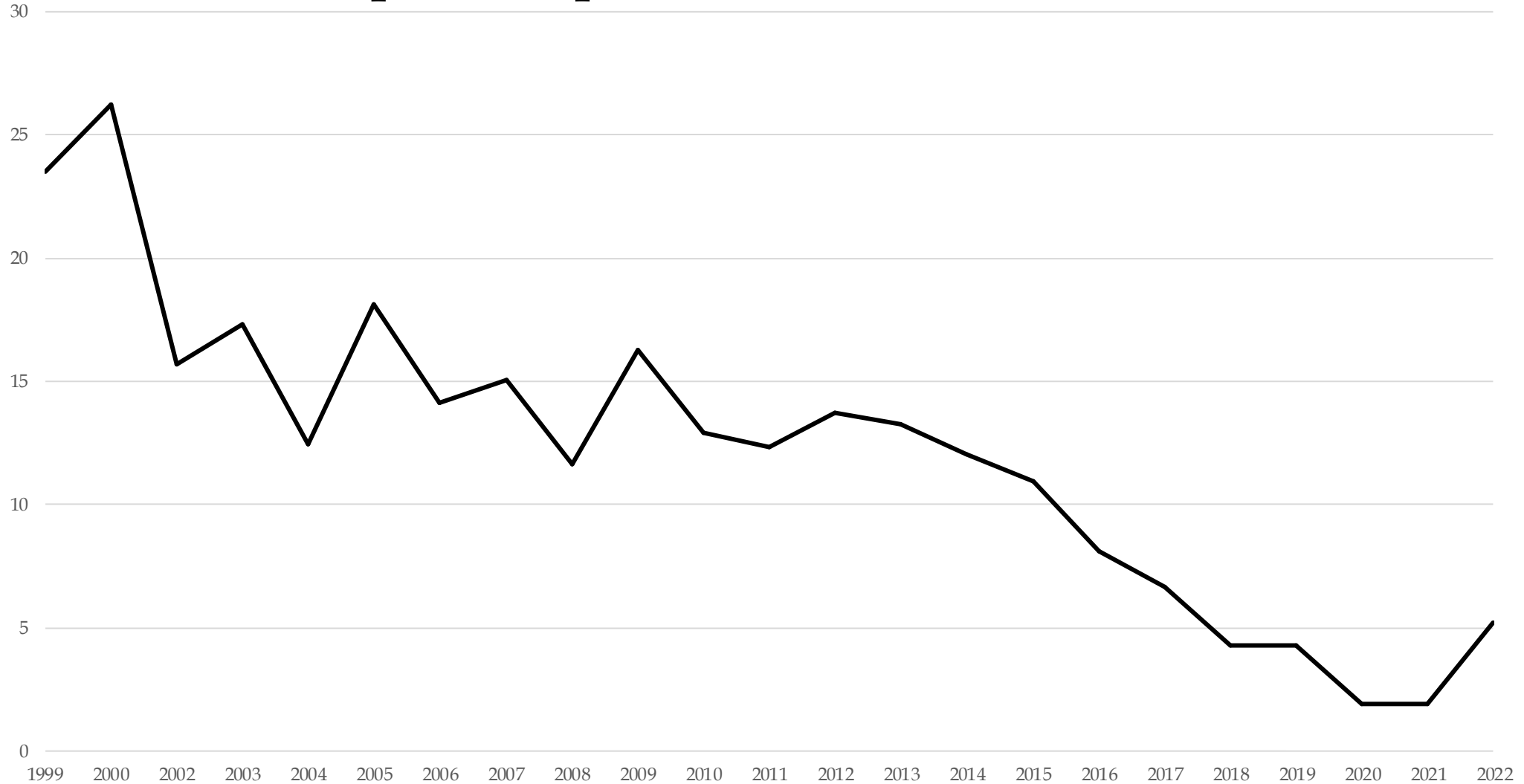
Liberal Democracy Index  
V-Dem Institute

# The Venezuelan unique collapse: some indicators



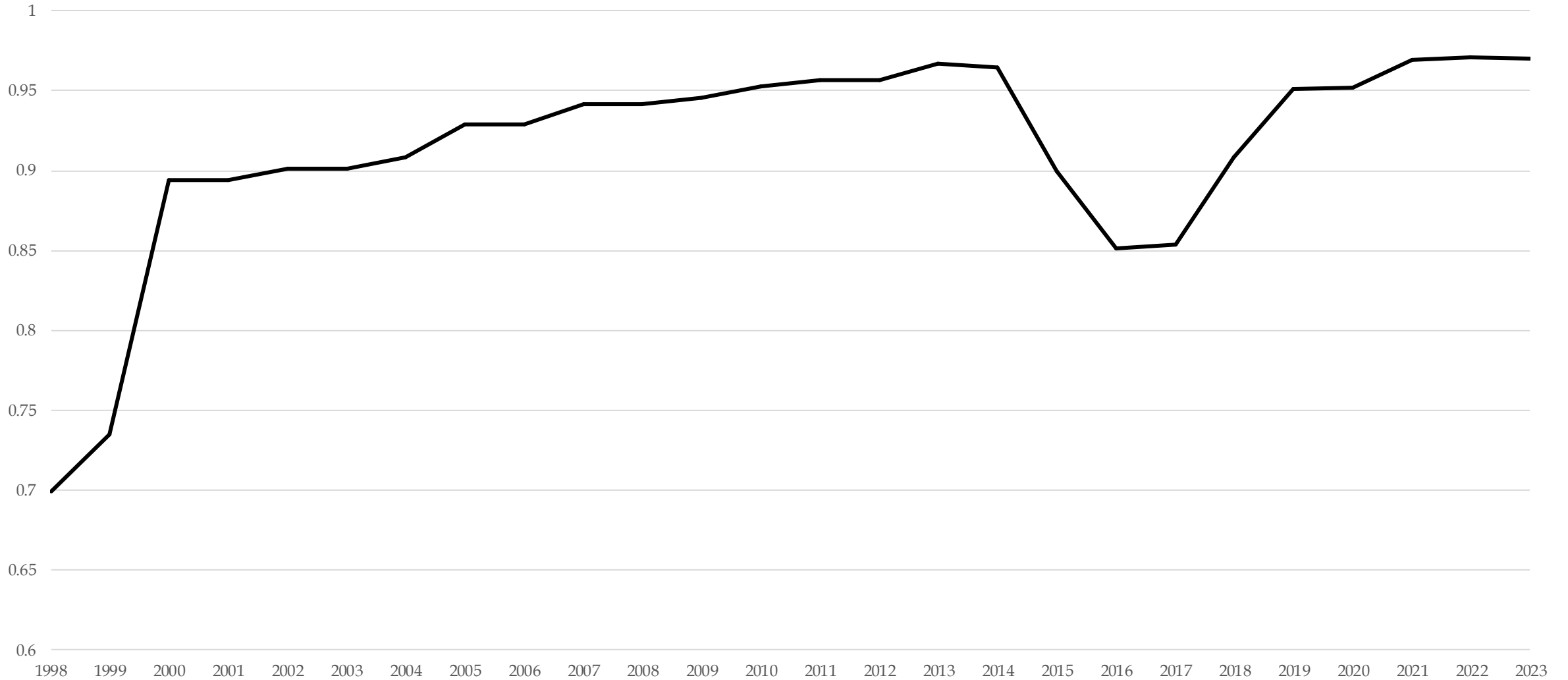
Fragile State Index  
Fund for Peace

# The Venezuelan unique collapse: some indicators



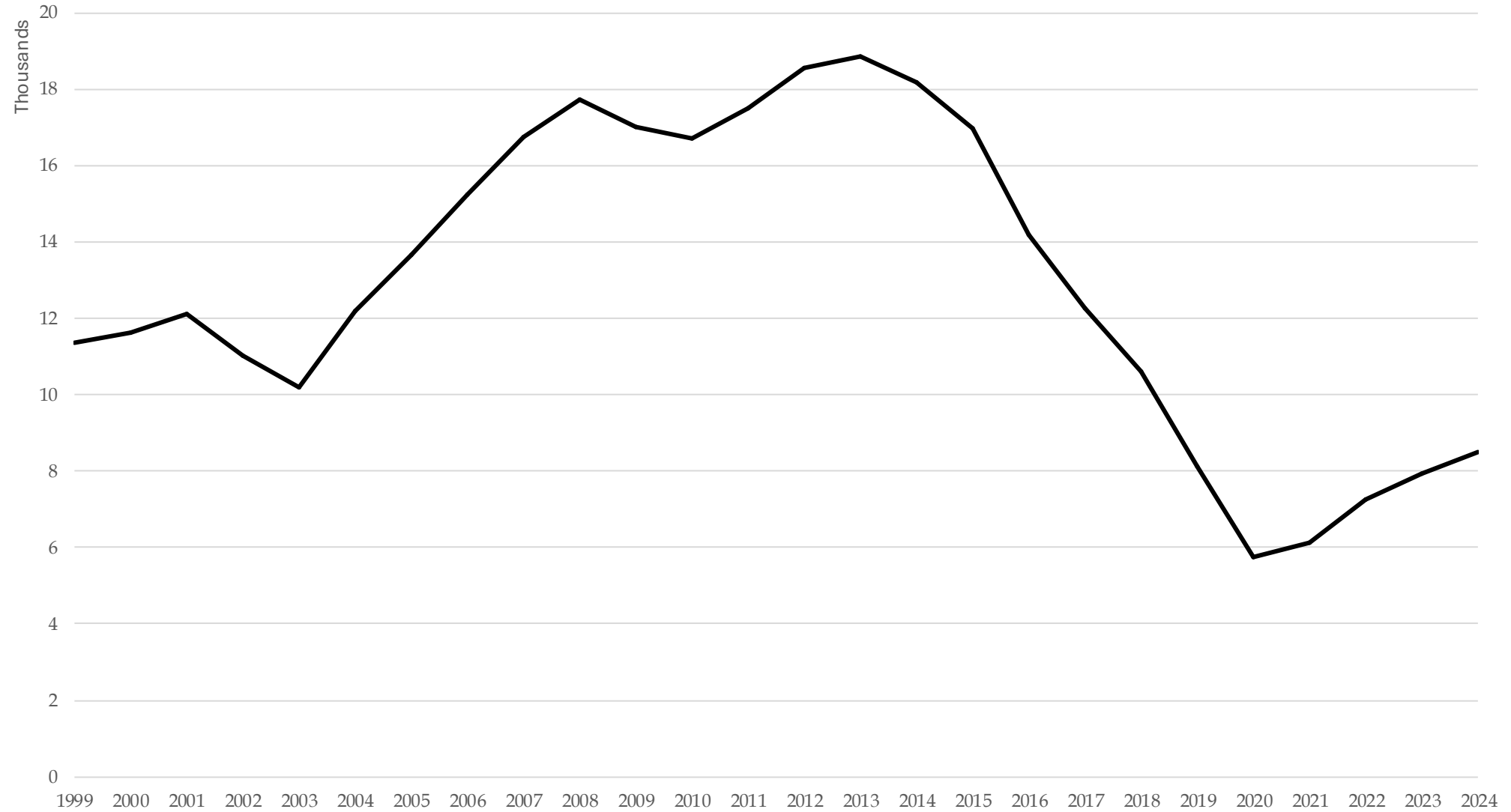
Governance Effectiveness  
WGI, World Bank

# The Venezuelan unique collapse: some indicators



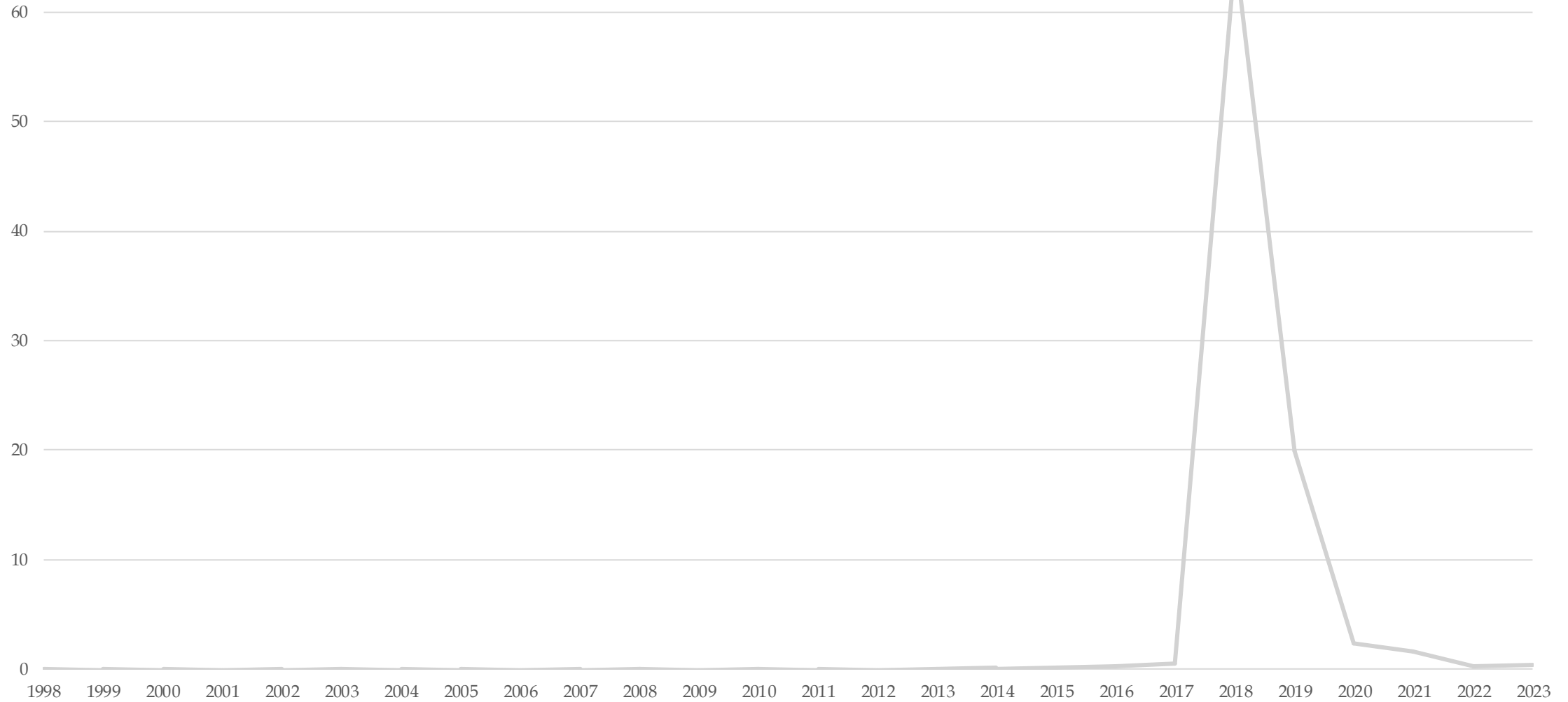
Political Corruption  
V-Dem Institute

# The Venezuelan unique collapse: some indicators



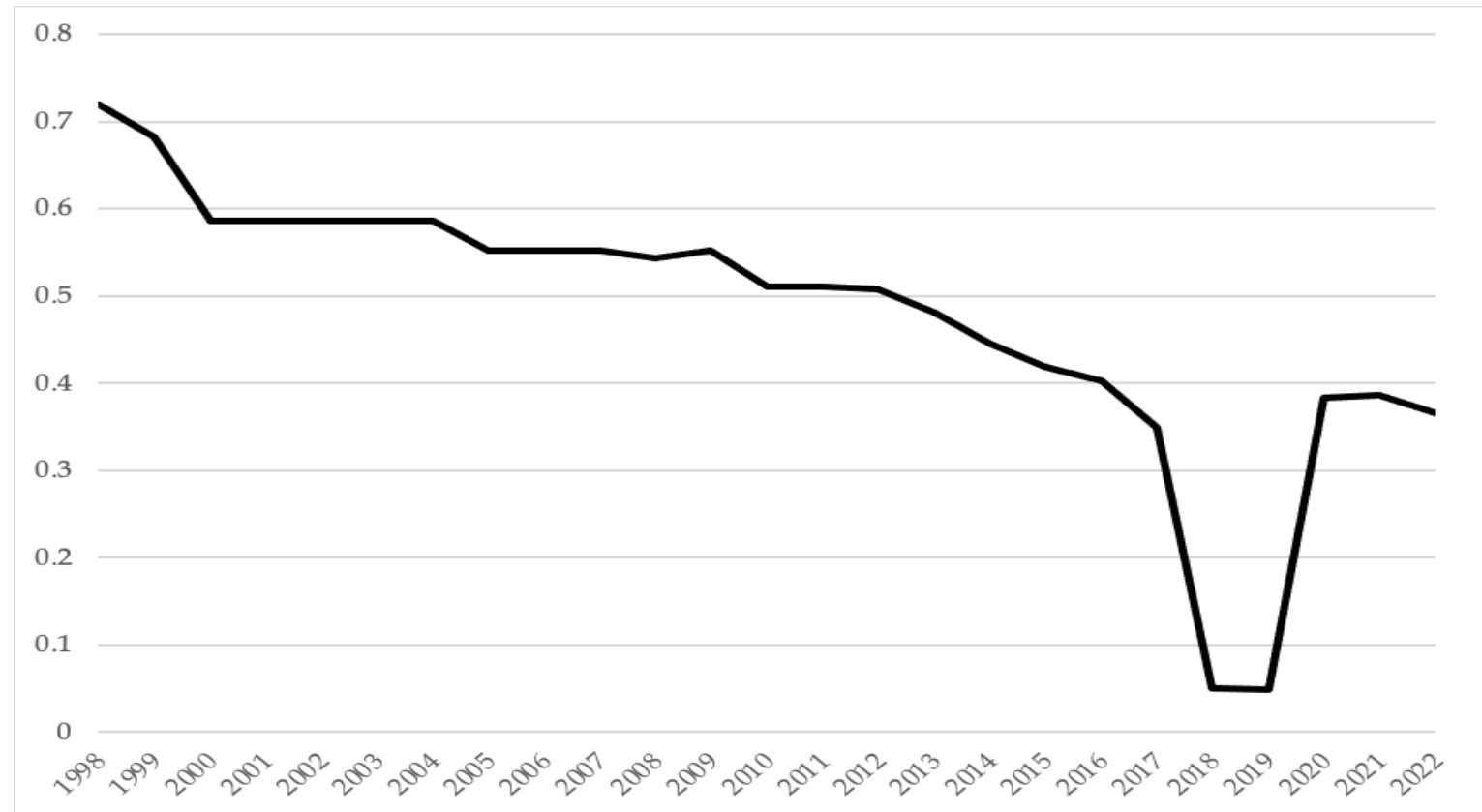
GDP per capita, current prices, USD  
IMF

# The Venezuelan unique collapse: some indicators



Inflation rate, average consumer prices  
IMF

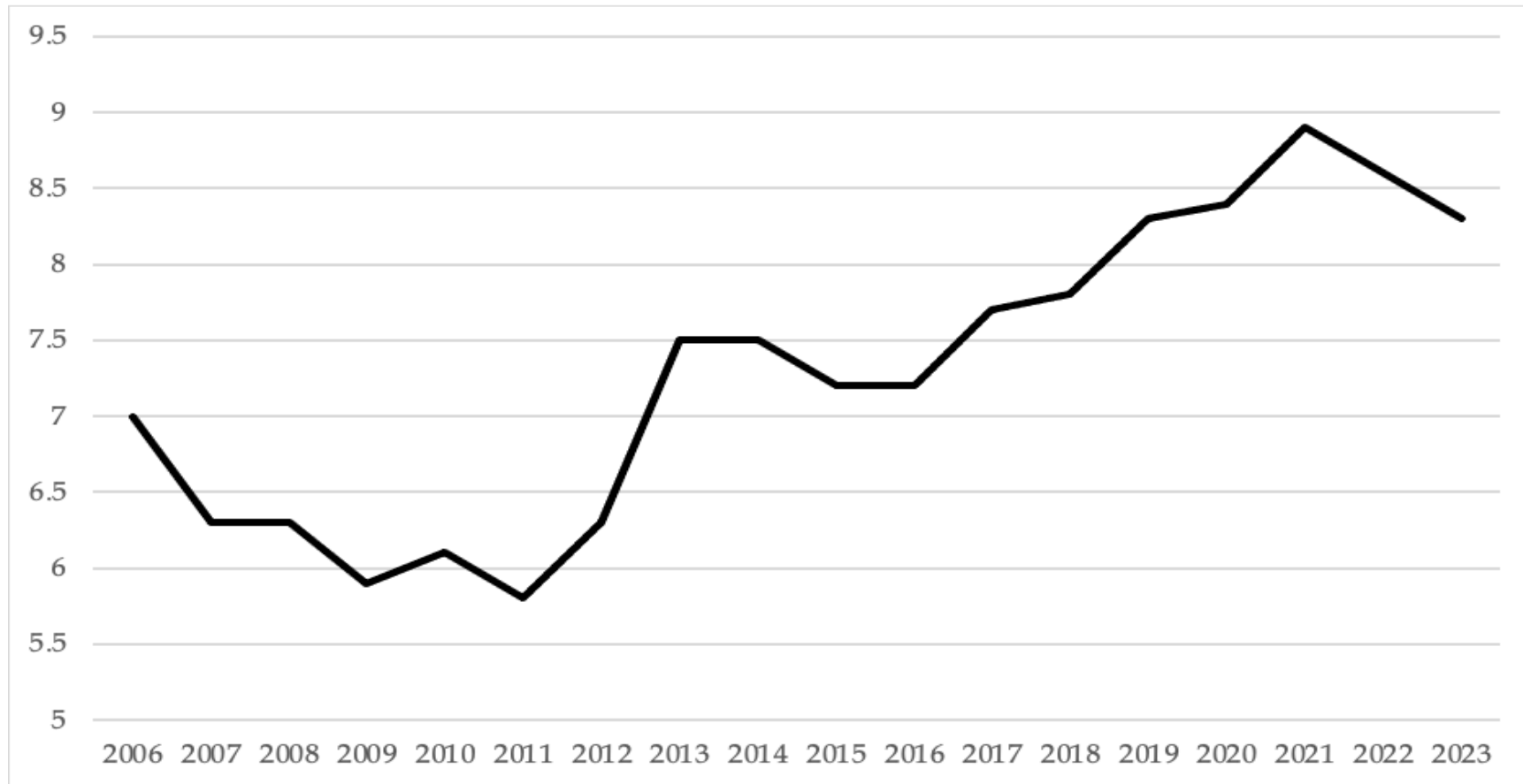
# The Venezuelan unique collapse: some indicators



Stateness Index, 1998-2022,

Source: Stateness Index (StIx), prepared by the University of Wuerzburg

# The Venezuelan unique collapse: some indicators



Public Service Indicator-Fragile State Index, 2006-2023 Venezuela

Source: Fund for Peace

# The Venezuelan unique collapse: some indicators

Dimension	Value
Overall	1
Prevalence of clientelism	1
Perception of corruption	1
Judicial constraints on executive power	1
Legislative constraints on executive power	1
Arrest from online political content	1
Freedom from political killing and torture	1
Restriction on political rights	2
Size of regime support group	1
Women's political empowerment	3

Venezuela State of Fragility: Political, 2022

Source: OECD

# The Venezuelan unique collapse: some indicators

“If, according to Max Weber, the (modern) state is a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory, Venezuela has – intentionally or not – experienced a further refeudalization, given the fragmentation of the once comprehensive state monopoly on the use of force. The boundaries between state and non-state actors have become even more blurred, placing a great burden on future redemocratization. The governing elite has de facto delegated parts of the state monopoly on the use of force to guerrillas; mining, drug and human-trafficking mafias; and regime-friendly urban gangs, the so-called colectivos”

Bertelsmann Stiftung’s Transformation Index (BTI) 2022 Country Report. Venezuela

# The Venezuelan unique collapse: some indicators

NOVEMBER 2023

**R4V** Inter-Agency Coordination  
Platform for Refugees and  
Migrants from Venezuela

## REFUGEES AND MIGRANTS FROM VENEZUELA

ESTIMATE NUMBER OF  
VENEZUELAN REFUGEES  
AND MIGRANTS  
GLOBALLY.

 **7.72 M**

ESTIMATE NUMBER OF  
VENEZUELAN REFUGEES  
AND MIGRANTS IN LATIN  
AMERICA AND THE  
CARIBBEAN.

 **6.54 M**

FOR MORE INFORMATION



PLEASE SCAN THE QR CODE.



Source: R4V



INTERNATIONAL MONETARY FUND

FY24 LIST OF FRAGILE AND CONFLICT-AFFECTED STATES (FCS)<sup>1</sup>

Conflict	Institutional and Social Fragility
Afghanistan	Burundi
Burkina Faso	Chad
Cameroon	Comoros
Central African Republic	Republic of Congo
Democratic Republic of the Congo	Eritrea
Ethiopia	Guinea-Bissau
Iraq	Haiti
Mali	Kiribati
Mozambique	Kosovo
Myanmar	Lebanon
Niger	Libya
Nigeria	Marshall Islands
Somalia	Federated States of Micronesia
South Sudan	Papua New Guinea
Sudan	São Tomé and Príncipe
Syrian Arab Republic	Solomon Islands
Ukraine	Timor-Leste
West Bank and Gaza <sup>2</sup>	Tuvalu
Republic of Yemen	República Bolivariana de Venezuela
	Zimbabwe

**NOTES:**

<sup>1</sup> As of July 20, 2023. For additional information on IMF support to FCS, see <https://www.imf.org/fcs>.

<sup>2</sup> For purposes of Fund relations, the West Bank and Gaza (WBG) fall under Israeli jurisdiction in accordance with Article XXXI, Section 2(g) of the Articles of Agreement.

# How to restore the rule of law in Venezuela? A top-down and bottom-up approach.

- The top-down approach and the “governance package” (Trubek).
- A “reform menu”: liberal constitution, separation of powers, etc. (Carothers).
- “Getting to Denmark isn’t an option (Fukuyama).
- A bottom-up approach: developing capacity from society and institutions (Rose-Ackerman).
- The co-evolution of development and state capacity (Krasner).



# How to restore the rule of law in Venezuela? A top-down and bottom-up approach.

- Despite its collapse, Venezuela registered economic growth even higher than the regional average.
- Economic growth is the result of areas with limited statehood.
- In 2022, Transparency Venezuela concluded that 20% of the GDP is produced by economic crime.
- Extreme conditions affect institutional reform: state fragility, limited capacity to control violence, and areas with limited statehood.



# How to restore the rule of law in Venezuela? A top-down and bottom-up approach.

- Venezuela needs policies to restore the rule of law *and* strengthen the state's capacity.
- Institutional reforms without state capacity will expand the gap between the rule of law de jure and de facto.
- Instead of emphasizing the “grand narrative” of “restoring the rule of law,” the aim is to rebuild institutions and capabilities in specific areas through a bottom-up approach.
- The ex-post model to restore the rule of law must consider Venezuela’s extreme conditions.



# How to restore the rule of law in Venezuela? A top-down and bottom-up approach.

## ➤ The bottom-up ex-post model:

- ✓ Establish a legal framework rooted in the extreme conditions.
- ✓ Identify areas of limited statehood.
- ✓ Introduce adaptive institutional reforms to address these areas.
- ✓ Focusing on key areas that promote development: the extractive industries.

