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OSG/243-16  
May 30th, 2016

Excellency,

Mr. Juan Jose Arcuri  
Ambassador, Permanent Representative of the Argentine Republic  
to the Organization of American States  
Chairman of the Permanent Council  
Washington, DC

Dear Mr. Chairman,

I am pleased to address you to request the convening of an urgent session of the Permanent Council of the Member States between June 10 and 20, 2016, in accordance with Article 20 of the Inter-American Democratic Charter, in which "...the Secretary General may request the immediate convocation of the Permanent Council to undertake a collective assessment of the situation and to take such decisions as it deems appropriate".

The Permanent Council, depending on the situation, may decide to undertake the necessary diplomatic efforts to promote the normalization of the situation and restore democratic institutions.

If diplomatic efforts prove unsuccessful or if the urgency of the situation warrants, the Permanent Council shall immediately convene a special session of the General Assembly so that it may take whatever decisions it considers appropriate, including diplomatic efforts, in accordance with the OAS Charter, international law, and the provisions outlined in the Democratic Charter.

During this process, the necessary diplomatic efforts to promote the normalization of the situation and restore democratic institutions will be undertaken.

This process should address the "alteration of the Constitutional order" and how this gravely affects "the democratic order" of the Bolivarian Republic of Venezuela, based on the complaints

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submitted to the Secretary General by the National Assembly of Venezuela, as well as the following considerations of fact and law:

## **I. INTERNATIONAL DEFENCE OF DEMOCRACY**

Since the Organization of American States was created in 1948, its member states considered that democracy and the respect for human rights were two core principles which should be enshrined in common instruments to permit cooperation in their pursuit.

In 1959, on the occasion of the Fifth Meeting of Consultation of Ministers of Foreign Affairs, the countries of the region defined the main elements of representative democracy and established the Inter-American Commission of Human Rights. Ten years later, the American Convention on Human Rights was adopted, establishing the Inter-American Court.

In 1991, the OAS General Assembly approved Resolution 1080 which instructed the Secretary-General to “request the immediate convocation of the Permanent Council to make a collective assessment,” “in the event of any occurrences giving rise to the sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the democratic government.” Soon after it was adopted, this Resolution was used by the Organization to address the crisis in Haiti that resulted from the military coup against former President Aristide.

A year later, countries incorporated current Article 9 into the OAS Charter, allowing a member “whose government democratically constituted has been overthrown by force” to be suspended from participating in the activities of the Organization.

In September 2001, faced with concerns of further threats to the democratic order, OAS member States adopted the Inter-American Democratic Charter. The Democratic Charter defined the concept of democracy recognized by the countries of the Americas, and identified situations where the community of member States of the OAS might cooperate and support one of its members.



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This assistance can be provided either upon the request of the affected country, of any other member State, or the Secretary-General, if its democratic, political institutional process is at risk, the legitimate exercise of power is affected, or a serious alteration of the constitutional order has occurred.

These provisions have been invoked on more than one occasion, starting with the Venezuelan case, in 2002, after the institutional crisis faced by President Chavez. The Nicaraguan Government has requested the assistance of the Organization twice: in 2004 and 2005, the Ecuadorian Government has also requested the assistance of the Organization twice: in 2005 and 2010, and the Bolivian Government requested assistance in 2005 and 2008. The 2009 coup d'état in Honduras triggered the application of the Inter-American Democratic Charter dispositions, and the country was suspended from participating in the activities of the Organization.

**The Western Hemisphere has been a pioneer in adopting international regulations for the defense of democracy. As with the protection of human rights, maintaining the region's democratic order is a responsibility shared by all member States.**

In each case where Resolution 1080 or the Inter-American Democratic Charter was applied, all the countries and the General Secretariat cooperated in order to support the affected State. **Since then, all OAS Member States have shared the belief that rather than undermining the principle of nonintervention, it has strengthened the principle of regional solidarity.**

This is evident in that democratic clauses, similar to that endorsed by the OAS, have been adopted by various sub-regional organizations, including MERCOSUR, through *the Protocol of Ushuaia* (1998) adopted even before the Democratic Charter, and UNASUR through the *Additional Protocol* (2014).

Ensuring compliance with these obligations, adopted within the framework of the regional organization, is the responsibility of both Members States and the Secretary General.



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This obligation is not only specific to the instruments cited above, but is recognized as a general principle of international law which requires the state to fulfill, in good faith, all international treaties to which it is party (*pacta sunt servanda*, article 26 of the Vienna Convention on the Law of Treaties, 1969)

The international defense of democracy is essential. This obligation to defend democracy is further strengthened upon assuming related international obligations.

Countries create their own international and domestic obligations by signing onto these international treaties. Not only are they required to incorporate these commitments into their domestic law, but become accountable to the community of signatory states. This is a call for international scrutiny in their democratic process, and in turn the international community is obliged to observe the conditions, performance and integrity of their democracy.

When doing this, countries call for international scrutiny regarding their own democratic development and it is important for both this country and the international community that oblige itself to observe democracy conditions, functioning and integrity.

This is essential since the integral view of the functioning of democracy includes country good practices (in accordance with signed international agreements) in order to protect civil and human rights of citizens, political parties, interest and pressure groups, as well as those of the civil society organizations. **On the other hand, the international community and the authorities of regional and International Organizations must preserve those good practices and permanently monitor the implementation of bad practices which go against the constitutional order and against international agreements, because these can be contagious.**

The concept of democracy must be seen as necessary, as essential, as a fundamental element of international relations in the hemisphere. In this sense, democracy is essential for the OAS. In defending democracy we must avoid double standards, and use the mechanisms available to us, including the Inter-American Democratic Charter, in all cases where situations are identified in



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which the essential elements of representative democracy and the fundamental components of the exercise of democracy are deteriorating. Action is makes the international protection of democracy effective.

Article 3 of the Charter states that the “essential elements of representative democracy include, *inter alia*, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.”

According to Article 4, “Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy”.

**“The constitutional subordination of all state institutions to the legally constituted civilian authority and respect for the rule of law on the part of all institutions and sectors of society are equally essential to democracy”**

The fullest respect for these principles is essential. Without the strictest respect, democracy will inevitably deteriorate, erode or disappear.

The concept of Democracy is necessary, essential, and fundamental in our continent. Democracy must be the substance of relations between countries, and their principles and values must be the content on which we must cooperate.

The OAS changed the logic of how to defend democracy, before any other regional or sub-regional organization took on this commitment. Today, we have a multilateral commitment to uphold shared values and principles. When we encounter dysfunctionalities in the system, we have an obligation to point





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them out. This is an issue that becomes obvious when our rights are violated.

And those fundamental principles must always apply. It is clear that evaluating the quality of democracy of a country, and its system for protecting human rights, when that country has dysfunctionalities, makes it very difficult to start a dialogue. However, this is exactly what the OAS must do – point out things that are uncomfortable, that make people mad, but which must be overcome – so that it makes us all better, as countries, as communities and as citizens.

We have valuable instruments that have produced valuable results. It is our responsibility to protect them and not let them erode. The Member States have been ready to defend the system during moments of truth, and to these instruments on a daily basis. Cooperation between all countries is essential.

We have been very systematic as we have become stronger.

When assuming office we said, “Democracy and the Human Rights are values above politics, because if we lose them, everybody loses, the whole of society loses. The right to say one’s truth is just as important as the right of the other to say his truth, for example, a member of the opposition to say his truth. And this is the way it is because today you may be the government, but tomorrow you may be in the opposition. And it is also this way because democracy must give guarantees to the Government and to the opposition to express their views. This is why as Secretary General of the OAS, I am Government and Opposition”.

I must be the strongest defender of human rights. I must be the poorest among us, I must be the one who suffers from inequality, I must be the one who has no voice or whose voice is not heard, I must be the one who is discriminated against, I must be the one who suffers from a lack of protection of my civil, political, economic, social or cultural rights. I must be the voice of those who have no voice, whose voice has been silenced.

The arguments described above are clear in terms of the responsibility that the OAS has in its function of guaranteeing and



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promoting democracy; from its founding instruments to the drafting and implementation of a specific charter on the subject, according to what the States party have entrusted to the Organization.

Following below, we develop the arguments which under the Inter-American Democratic Charter, and under the responsibility vested in me as Secretary General, make it imperative to apply Article 20 of that instrument because of the situation in the Bolivarian Republic of Venezuela.

## **II. SERIOUS ALTERATION OF DEMOCRATIC ORDER**

The Inter-American Democratic Charter establishes the essential elements of representative democracy (Article 3) as well as its essential components (Article 4) and clarifies that the list is not exhaustive. Article 3 outlines as essential elements the respect for human rights, subjection to the rule of law, the holding of periodic, free, and fair elections, and the separation of powers and independence of the branches of government. For its part, Article 4 refers to transparency, probity, freedom of expression and of the press. This list is largely consistent with the formula drafted by the Ministers of Foreign Affairs in 1959. These are some of the elements that define a democratic regime, according to the repeated reaffirmations of all the countries of the Americas.

### ***At what point should an alteration of one or some of these essential elements or components be considered serious?***

In 2009, the Inter-American Juridical Committee, which for many years had been studying the issue of democracy in the Americas, specifically analyzed this point without arriving at any conclusions because of the nature of the study (case studies). After reviewing the various components of democracy indicated previously, the Organization's consultative body on legal matters identified the need to: *"emphasize that there is a vital link between the effective exercise of representative democracy and the rule of law which is expressed concretely in the observance of all the essential elements of representative democracy and the fundamental components of the exercise of the same. Therefore democracy does not consist only*



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*in electoral processes, but also in the legitimate exercise of power within the framework of the rule of law, which includes respect for the essential elements, components and attributes of democracy mentioned above."*

Let us look then at some the main elements that support the assertion that we are dealing with democratic order and how these elements have been altered in the current Venezuelan situation.

### **III. ETHICS IN POLITICS**

Since the beginning of civilization, the ethics of politics has been a constant battle with the basic principle being not giving up in the face of adversity. Political problems are there to be faced. There is a very clear Greek principle that it is criminal for a citizen to cower in the face of controversy. This logic is also true for countries.

As Desmond Tutu has said: "If you are neutral in situations of injustice, you have chosen the side of the oppressor."

Uncertainty and political volatility must be faced, because if not, politics will be left in the hands of opportunists and not in those of servants that work for the public good. Politics is a question of representation, and those who have been elected to be representatives are obliged to take on that responsibility since they act as an instrument for citizens to channel solutions needed by the State to exercise government, both from the Executive and the Legislative branches.

This representation is essential, as it is also essential to be always clear that democracy resides among the people, among the citizens. Every solution to an institutional crisis is resolved in the legitimacy bestowed by the people. Any rift among political leaders that leads to a crisis signals the need to consult the people.

Furthermore, public service should not be seen as a business. It is rather a vocation for serving the common good. It is not a profession in which the primary goal is monetary compensation or personal fulfillment. Public service based on ethical principles and





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values is a noble mission. Politics without ethics is dehumanizing because it loses its purpose, which is precisely the service to society in view of the common good.

In practice, however, the relationship between ethics and politics is highly tense and conflictive. It is therefore not surprising to see that, in recent years, citizens have been fed up with politics. This lack of confidence in the political class and subsequent crisis of representation has led to an increase in social protests. These were in large part provoked by a perceived lack of public ethics among governing leaders.

In Latin America and the Caribbean, the most unequal region on the planet and where millions live in a situation of social exclusion and without rights, the lack of public ethics is an even greater insult to citizens. It is incomprehensible that politicians get irresponsibly richer while exercising a public role in which they work, in theory, for the good of the public that is mostly poor and vulnerable. Ethics in politics means exercising leadership with humility, and not with pride -- but this seems to be the exception and not the rule in our Hemisphere.

Ethics in politics also means being consistent between intention and action. Ethics is to honor the leadership position without abusing it. Ethics is to be faithful to the values and motivations that make a person participate in politics, like social justice, without caring about how great are the temptations that usually accompany power.

The responsibility for public ethics does not lie solely with the public class. In order for a new political class to emerge and prevail, a society is needed that values and rewards ethics in public service while strongly and indignantly pointing out and denouncing violations of principles and values. Fortunately, in the Americas there are already signs that the number of citizens with zero tolerance for unethical politicians is growing. Consequences for unethical behavior are needed, as are incentives for ethical behavior.

According to José Antonio Marina, “when we talk about ethics, we’re not talking about window dressing; we’re talking about our



only solution. Our entire system is set up in such a way that an ethical framework is essential in order for it to function properly. It is possible to live unethically in the short term, but in the long term this is impossible – and this is why societies fail. Thus, ethics only works if it is applied in the long term by society as a whole. When someone cuts corners on ethics, somebody else always pays the price.”

### **The Critical Situation in Venezuela**

By definition, a democratic system should not tolerate any kind of exclusion or discrimination.

Similarly, supporting a cause as noble as social justice and inclusion should never create a blank check for unethical action for the good of only a part of society. On the contrary, expectations for supporting the common good are higher when the flags of justice and social equality are waved.

**In Venezuela, the purpose of politics has been lost. They have forgotten to defend the great and collective good over the long term rather than the individual good over the short term. A leader should shape his actions based on a vision of the State, a long-term vision.**

An immoral politician is one who has lost this vision because his/her only interest is staying in power, at the expense of the will of the majority.

Ideally, ethics and politics should not be mutually exclusive. In practice, double standards prevail. No matter the cost, there should not be a distinction between ethics and politics. Our region demands, urgently, that we revisit this underlying relationship between both concepts.

## **IV. HUMANITARIAN SITUATION**

### **Multiple Simultaneous Crises**



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In the present context of crisis, it would be important to have a strong political system that acts with full adherence to the institutions and to the Rule of Law. These are the key elements of a working democracy that allow for the strengthening of democratic conditions in terms of clear constitutional rules that are established to guide the political life of a country.

Detachment from these rules has maximized the conditions for crisis and vulnerability, and has strongly affected the rights of public order, such as access to health and food.

Below follows a detailed analysis of the multidimensional crisis that Venezuela is experiencing, which, due to the precariousness of its economic and financial situation, endangers its social and political future.

Using available official figures, as well as reports from international organizations and civil society, this report seeks to describe, in the most truthful and reliable manner possible, the current health situation, the food and nutrition situation, the access to basic services such as potable water and electricity, and the citizen security situation.

The situation of a country with the largest oil reserves on the planet is critical from an economic, social and humanitarian point of view. The International Monetary Fund estimates an additional 8% reduction of Venezuela's GDP in 2016. It is estimated that inflation has reached 700%, that the fiscal deficit is 17% of the GDP, and that the external debt is US\$130 billion or 6 years-worth of oil exports. Since income has been severely affected by the fall in oil prices, and Venezuela imports a large part of what it consumes, the result has been a scarcity in such basic products as food and medicine.

There is an 80% shortage in medicine and medical equipment. The availability of beds in public hospitals has declined 30-40%, and 70% of hospitals previously administered by Cuban doctors have closed. According to the 2015 Survey on Life Conditions (Encovi), prepared by the Catholic University Andres Bellow, the Central



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University of Venezuela and the Simon Bolivar University, 85.3% of incoming patients are malnourished.

Poverty grew to 76% in 2015 according to Encovi. According to this same report, the level of poverty in 2015 exceeded that of the 1989 Caracazo (58.9%).

Household poverty levels increased 24.5% and individual poverty levels increased 23.4% in this same period.

Furthermore, the UN Economic Commission for Latin America (ECLAC) stated that poverty increased by nearly 10 percentage points in 2013, but ECLAC has not provided figures on poverty in Venezuela since 2013.

The most recent figures from the World Bank show a trend towards increasing poverty, but they also have not offered any data since 2013. The situation of violence has worsened in terms of intensity, frequency and geographical reach, according to unofficial sources. Two NGOs, the Venezuelan Observatory of Violence and the Citizen Council for Public Security and Criminal Justice, report that homicide rate is 90 and 73 per 100,000 inhabitants, respectively.

Official data from the Public Ministry report lower rates of violence. According to the 2015 Annual Management Report of the Public Ministry,<sup>1</sup> which the Attorney General of the Republic, Luisa Ortega Diaz, submitted to the National Assembly, the homicide rate for that year was 58.1 per 100,000 inhabitants.

This represents a total of 17,778 homicide victims during the year. The report showed that attempted murder rate was at 1,675, equivalent to 5.5 per 100,000 inhabitants. In 2015, 121 femicides were committed, with 182 charged and 176 accused.

In addition to these problems, Venezuela faces two other external challenges whose impact is worsened by the ineffectiveness of the State:

<sup>1</sup> [http://www.mp.gob.ve/c/document\\_library/get\\_file?uuid=010ba734-247c4da1-859f-1ae55772d7b5&groupId=10136](http://www.mp.gob.ve/c/document_library/get_file?uuid=010ba734-247c4da1-859f-1ae55772d7b5&groupId=10136)



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*El Niño* and the corresponding drought that have affected the distribution of electric energy; The Guri Dam, a critical element for generating electricity, is near collapse.

The Zika virus has affected approximately 400,000 Venezuelans, who have contracted the virus, with another 5,000 suspected cases.

There is an underlying crisis to the convergence of the economic, social, and humanitarian crisis and it is the mother of all crises: the political crisis because it responds to a structural dysfunctionality.

As previously mentioned, the clash between branches of government and the politicization of the justice system are expressions of this problem. The political division between the ruling and opposition parties is enmeshed in a context of significant fragmentation, distrust, and hostility. Venezuela has a political class and a society that is greatly divided.

### **Sectors and Mechanisms of Economic Control**

The Central Bank of Venezuela (BCV) has not published official figures on the country's shortages since 2013. For that year it was 25%. Analysis firms such as ECOANALITICA estimate that the short supply index for 2015 was at least 56% of the basic food basket and over 70% in some other areas. The pharmaceutical sector is an area of particular concern.

It is difficult to quantify the short supply of medicine. Drug companies, pharmaceutical unions and the BCV agree that the shortage of medicine is alarming. Not only as regards to the lack of variety of medicine, but in many cases the complete absence of certain medicines.

The government and the pharmaceutical sector have come to different agreements regarding the allotment of currency at preferential rates, but the pharmaceutical sector works under the same bureaucratic structure as other regulated sectors in the economy. Three sectors are key for explaining the shortages:

The controlled exchange rate system;



The customs and ports system; and,

The companies subsidized by the Government.

Each of these sectors reports to different factions of the ruling party.

The exchange rate system has been in dispute among different groups within the government. During the most recent ministerial cabinet change, one sector began to exercise control of foreign exchange allocation -- with difficulty because there are fewer exchanges to allocate due to the economic and financial situation. Customs and ports are controlled by the National Guard and the Army. The companies that benefit do not belong to any specific group.

### **Health**

Both local and international actors agree that the humanitarian situation in the country has become critical by all standards and indicators.

#### General aspects:

The situation in this area is critical. A growing number of non-communicable diseases has been reported and is placing increasing demands on health services, hospitalization, and costly care, which affects the general population, while outside causes such as criminal violence and accidents have a greater effect on the younger segment of the population, especially working-age males.

At the same time, communicable diseases—preventable through vaccines and/or efficient vector control programs, environmental sanitation, quality of water for human consumption, and health education, which are not being effectively carried out—have reappeared and are threatening to expand the areas of transmission.

#### Communicable diseases:





Cases of malaria and dengue: the 2015 World Malaria Report places Venezuela as one of the two countries in the world in which both the incidence and mortality of the disease have increased. Malaria has been gradually increasing since 2008, resulting in more than 130,000 cases in 2015, with the State of Bolivar (bordering on Guyana and Brazil) being the most seriously affected.

The diminished response capacity of the health system to conduct surveillance and control of endemic and epidemic diseases has been exacerbated by the recent introduction of emerging infectious diseases like Chikungunya and Zika, which have been met with inadequate or delayed responses.

#### Institutional culture and infrastructure:

The health system has been weakened, and in recent years the government has failed to provide information or facilitate the continuous, periodic, and complete publication of epidemiological data. The weekly *Epidemiological Bulletin*, which reports on diseases subject to mandatory reporting requirements, vaccine-preventable diseases, vector-borne diseases, and maternal and infant mortality, has not been published since October 2014.

This lack of statistical data deprives health professionals of a tool to diagnose and manage clinical cases, and prevents the general public from recognizing risk factors and adopting preventive behavior.

Added to this shortcoming in the health system—needed to promote healthy behavior and to ensure environmental standards and the availability of water of sufficient quantity and quality—is the diminished access and coverage of medical services. Those services have been severely affected by the deterioration of infrastructure, the failure to maintain and update technical resources and equipment, and worsening shortages of medicines and supplies.

In addition, there is a serious shortage of highly skilled medical personnel, as the political, social, and economic instability has led to the mass emigration of health professionals.



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The shortages have affected the public hospital network and, more recently, private hospitals and clinics. The private facilities are unable to meet the demands of the growing number of patients that cannot be served by the public service network. Around 70% of the outside facilities staffed by the brigades of Cuban doctors have been notably reduced.

A significant government investment in the health sector between 2003 and 2015 led to the creation of the *Misión Barrio Adentro* program, which had a major positive impact at the height of its implementation.

Nevertheless, its effectiveness has diminished notably in the past 5 years, due to both a lack of funding and a flaw that existed from its inception: the lack of complementarity in its design, implementation, and expansion with the national health system. This has turned *Misión Barrio Adentro* into a parallel healthcare system.

#### Medicines:

**Medicine shortage:** Given the lack of official government statistics, it is difficult to obtain specific data. It is estimated that drug imports increased by 1345% from 1998 to 2014. The increase reflects the decline in national production and the creation of import companies that operated through the allocation of dollars at a preferential exchange rate. In vital areas such as oncology, the drug shortage is estimated to be around 65%.

Over the past two years, as a consequence of the financial crisis, the absence of contingency plans to secure the necessary funds to meet the population's basic health needs has led to the commercial insolvency of the pharmaceutical and medical equipment and supplies sector to the tune of nearly 6 billion dollars. International suppliers stopped extending credit, which has affected the availability of medicines and supplies.



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The national capacity to produce pharmaceutical and medical goods and supplies is limited, and the vast majority must be imported. According to studies, Venezuela is the most vulnerable country in South America, in terms of essential medicines. The insufficient supply of those drugs to meet the public demand has far surpassed critical levels in the Caracas metropolitan area, where the shortage is more severe than in the rest of the country.

According to a report by DATANALISIS, prepared for Bank of America-Merrill Lynch; Venezuela was the number one importer of medicines in Latin America. The most recent official figure is for 2013, at which time drug imports totaled US \$3.7 billion. The report uses the statistics for pharmaceutical exports to Venezuela through the trade partners that appear in the United Nations **Comtrade** database, which shows a 39.1% drop in drug imports between 2013 and 2015.

The report calculated 2015 imports based on their decrease, placing them at US \$2.3 billion. In spite of the recent reduction in imports, drug purchases abroad represented 31% of all imports last year, a figure that is higher than average for South American countries.

**According to the Venezuelan Pharmaceutical Federation, (FEFARVEN) the drug shortage in Venezuela is at 80%.** Members of the opposition in congress have stated that the shortage could be near 91% with respect to essential medications, but again without presenting official figures.

The Venezuelan Pharmaceutical Federation reported an increase in drug shortages in Caracas from 15% to 60% between 2011 and 2015, and 70% in the rest of the country. In mid-2015, FEFARVEN reported that the drug shortage had reached 70% at the national level and 80% in some states. As of January 2016, it had reached 80% throughout the country.<sup>2</sup> In an interview aired on May 19, 2016 on the program “*Por Donde Vamos*” on the *La Unión Radio* station, the President of the Federation stated that the situation was steadily worsening, especially for those who distribute medication

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<sup>2</sup> *Informe sobre el Derecho a Medicamentos Esenciales para proteger la Salud y la vida de las Personas en Venezuela*, Transparency Venezuela, April 27, 2016.



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for chronic illnesses. “The situation is extremely critical, we have reached an 85% shortage of medications (...) It is difficult to obtain prostate drugs, antibiotics, and drugs to combat intestinal flora.”<sup>3</sup>

The Pharmaceutical Industry Chamber (CIFAR) stated that during 2015 its 32 affiliated laboratories—public and private—received 55% less in foreign currency than they did in 2014. The Chamber additionally stated that, as of January 2016, international suppliers were owed US \$6 billion. CIFAR further reported that, as of January 2016, pharmacies were only able to provide 7 of every 100 drugs requested, and that the inventories of many plants ran out in April 2016.<sup>4</sup>

For its part, the Board of Directors of the Venezuelan Society of Otorhinolaryngology warned in February 2016 that, “due to the absolute scarcity of drugs, especially adequate antibiotics for respiratory illnesses, anti-inflammatory drugs, local and systemic steroids, anti-allergy medicines, decongestants, and anti-vertigo drugs, patients are unable to receive suitable therapies, and we are seeing a steady increase in complications in such cases, with the potential risk of patient deaths from treatable, curable, and preventable conditions.”<sup>5</sup> In view of the drug shortage, the Venezuelan Society of Otorhinolaryngology urged the Venezuelan government and the National Assembly to “seek an expedited solution to the growing scarcity of medicines and medical supplies, which is afflicting the entire population.” According to the Society, the lack of ophthalmological products, equipment, and medications is “a growing cause of irreversible blindness and morbidity.”<sup>6</sup>

The organization *Acción Ciudadana Contra el SIDA* (Citizen Action Against AIDS) reported in early May 2016 that the lives and health of more than 61,000 people with HIV-1 are at high risk in Venezuela, given that the supply of antiretroviral medications

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<sup>3</sup> Mr. Freddy Ceballos, President of the Venezuelan Pharmaceutical Federation, Unión Radio, <http://unionradio.net/177149-2/>, consulted on May 23, 2016.

<sup>4</sup> *Informe sobre el Derecho a Medicamentos Esenciales para proteger la Salud y la vida de las Personas en Venezuela*, Transparency Venezuela, April 27, 2016.

<sup>5</sup> Letter from the Board of Directors of the Venezuelan Society of Otorhinolaryngology to the President of the Venezuelan Network of Scientific Societies, February 10, 2016.

<sup>6</sup> Press Release, Venezuelan Ophthalmological Society



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available in the Ministry of Health's warehouses will be completely depleted in June 2016.<sup>7</sup>

The problem is not confined solely to lack of medicines; the health system in general is collapsing owing to the economic situation and lack of investment.

The most recent published official statistics indicate public expenditure on health care in Venezuela of 74,019.9 billion Bolivars in 2012 and, in 2013, 88,867.3 billion Bolivars.<sup>8</sup> However, while most countries in Latin America have made efforts to increase their levels of health care expenditure, in 2012, Venezuela ranked among the countries with least investment as a percentage of Gross Domestic Product (GDP).<sup>9</sup>

A New York Times article illustrates the condition of the country's health system. Describing the cities of Caracas, Barcelona, and Mérida, the Times journalist noted that when hospital medical equipment breaks down, including X-ray machines, dialysis machines, and incubators, it is not replaced or repaired.

Of the nine operating rooms of the J. M. de los Rios Children's Hospital near Caracas, only two are in use. In the hospitals, patients needing medical care are given a list of medicines and other supplies so that their family members or friends can try to obtain them on the black market.

Patients must bring everything they need to the hospital, from toilet paper, to syringes, medicines, and blankets. When the supplies have run out, treatment is interrupted. Patients have gone to hospitals for non-emergency care and contracted contagious diseases, or even died owing to the insanitary conditions and the lack of medicine and equipment. Without antibiotics, bacteria grow and spread.<sup>10</sup>

<sup>7</sup> Informe Situación del Acceso a Medicamentos Antirretrovirales en Venezuela para el 3 de mayo de 2016, Acción Ciudadana Contra el SIDA, May 3, 2016.

<sup>8</sup> MPPP: Venezuela en Cifras. Source: Oficina Nacional de Presupuesto (ONAPRE). <http://www.infoplan.mppp.gob.ve/?page id=365>

<sup>9</sup> Informe Sobre el Derecho a Medicamentos Esenciales para Proteger la Salud y la Vida de las Personas en Venezuela, Transparency Venezuela, April 27, 2016.

<sup>10</sup> *Dying infants and No Medicine: inside Venezuela's Failing Hospitals*, New York Times, May 15, 2016.

[http://www.nytimes.com/2016/05/16/world/americas/dying-infants-and-no-medicine-inside-venezuelas-failing-hospitals.html?\\_r=0](http://www.nytimes.com/2016/05/16/world/americas/dying-infants-and-no-medicine-inside-venezuelas-failing-hospitals.html?_r=0)



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The situation in the healthcare and food sector in Venezuela is highly deteriorated and at present there are no signs of improvement. The situation has reached the point where not all healthcare needs of the population can be met. This is due to different factors, some usual and others stemming from the context of crisis. Among them are high levels of food scarcity which has led to increased illness, which was typically within normal ranges, and malnutrition, according to specialized healthcare sector reports.

Medicine imports depend on two processes: government foreign currency allocations and complicated bureaucratic procedures for bringing imports into the country: customs and distribution. As indicated above, each such stage is controlled by a different government area.

Despite the hermetic secrecy of official information on medicine distribution, two pieces of information are confirmed: first, that medicine imports have declined; and, secondly, that bills to national producers and importers have not been paid. It is known from non-official sources that the government has begun to liquidate PDVSA 2021 bonds to make payments to the pharmaceutical sector.

The problem of medicine provision stems essentially from the following factors: lack of foreign currency to provide the pharmaceutical sector with resources for imports and diversion of medications—procured at official dollar prices—for resale at the parallel dollar price, an action carried out in the private sphere, and poor state management of resource allocation processes; problems of speed in the distribution of medicines entering the country; and the impact of corruption.

As for the scarcity of medical inputs, Douglas Natera, President of the Venezuelan Medical Federation (*Federación Médica Venezolana*), has affirmed that the figure of 95% scarcity of medical-surgical material in hospitals is used, and nearly 90% scarcity of medicines in pharmacies, meaning that only one in 10 medications can be obtained.





Julio Castro, researcher and OVS physician, indicated that the WHO has medicine assistance programs that would be in Venezuela in two days, but that for that to happen, the government must request it. He also indicated that 92% of the list of essential medicines cannot be obtained in the country: treatments to control high blood pressure, diabetes and cancers, asthma inhalers, antibiotics, and even dermatological medicines. 62% of this group of medicines are “absolutely unavailable,” meaning that they cannot be found anywhere in the country.

Owing to this severe crisis, patients with chronic diseases and children in hospitals or health centers, public and private, have died. This is as a result of the deterioration of the health care system itself, as the basic conditions for providing quality care do not exist. To this must be added the lack therapy for those living with HIV and hepatitis C, since no budgetary allocation has been made for these treatments.

The Let’s Protect National Epidemiology Network (*Red Defendamos la Epidemiología Nacional*) and the Venezuelan Public Health Society (*Sociedad Venezolana de Salud Pública*) have also sounded the alarm regarding the humanitarian healthcare crisis brought about by the evident lack of essential medicines (85%), and a shortage of high-cost pharmaceutical products (75%) nationwide, according to the Pharmaceutical Federation (Federación Farmacéutica de Venezuela) (FEFARVEN).

#### Institutional Response:

On January 26, the National Assembly approved a Declaration in which is exhorted the National Government to guarantee the necessary, basic and essential medications and other health inputs which should always be available. It also asked that the Government recommence publication of epidemiological information and invited the health authorities to working meetings in order to find solutions jointly with the pharmacological and health industries, health workers’ unions and organizations which represent patients.



The National Assembly proposed that the Executive should recognize the humanitarian healthcare crisis, worsened by the lack of funds, by the poor disposition of the Government to offer solutions and for refusing to accept offers of help and donations from different private and public institutions, both national and international. Since then, more than three months have passed, with no response from the Executive Branch, at any level.

The health situation in Venezuela will accentuate and worsen the health indicators which are outlined in Table 1. These have already deteriorated, including maternal mortality, neonatal mortality, the incidence of endemic diseases, or access to and coverage of medicines and essential services. At the same time, it will make it more difficult for Venezuela to fulfill its United Nations sustainable development commitments.

**Table I: Health Indicators, Venezuela (2)**

Maternal Mortality (2013) Annual Mortality MPPS Maternal Mortality Rate (2013) x 100.000 NV	377 (2013) 66,6 (1990)
Live births (LV) 2014 (Projection, Survey 2011, INE)	598.433
Crude birth rate (per 1.000 inhab.) 2014	19,81
Life expectancy at birth (years) 2013	74,07
Death rate 2012 (Annual Mortality MPPS)	
Children (per 1.000 NV)	15,58
Neonatal (per 1.000 NV)	11,55
Post-neonatal (per 1.000 NV)	4,03



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Morbidity	
Reported malaria cases (2015) Bol Epid Shem 52, 2015	136.402
Reported dengue cases (2015) Bol Epid Shem 52, 2015	54.152
AIDS annual incidence rate (per 100.000 inhab.) (*)	6,59
Public expenditure on health as gross domestic product (GDP) 2010. Source: SISOV.	2,48%

Sources. 1. José Félix Oletta L, Ángel Rafael Orihuela, Pablo Pulido M, Carlos Walter V., Venezuela former Health Ministers.

2. Data provided by Venezuela former Health Ministers

3. ECHO/ UE Report

4. OEA - SG in República Bolivariana de Venezuela (OSG-OEA-RBV) Federations of Pharmaceutical and Medical Professionals, etc.

On April 5, 2016, the National Assembly of Venezuela, “aware of the disturbing facts concerning the death rate from disease, lack of implementation of timely treatment, deterioration or lack of essential medical equipment for the provision of health care and the shortage of medicine, both in hospitals and private health centers and specialized pharmaceutical stores” passed, at first reading, the bill “Special Law to address the humanitarian health crisis.”<sup>11</sup> The law would aim to allow medical supplies into the country from the international community, as well as seek help from the World Health Organization.

The medical shortages that triggered the introduction of this legislation in the National Assembly, as well as the food shortages, cannot be separated from the economic deterioration in the country, and the increase of the poverty rate.

### **Food and Nutrition:**

<sup>11</sup> Special Law to face Health Humanitarian Crisis, Venezuelan National Assembly, [http://www.asambleanacional.gob.ve/uploads/documentos/doc\\_a41b084cdfbef69ce87dcecd2fb9ae0d59131c9.pdf](http://www.asambleanacional.gob.ve/uploads/documentos/doc_a41b084cdfbef69ce87dcecd2fb9ae0d59131c9.pdf)



Since 2003<sup>12</sup>, the government established a list of 165 products whose prices would be set unilaterally by the Executive Power to control inflation.

Some of these products received a direct subsidy; others were subsidized through the State marketing and sale network. During the first few years, the fixed prices were in line with the increase in inflation, but since 2007 the gap between production costs and the set price grew, leading many companies to close or to bankruptcy. Since then, there has been an increase in food imports while there has been a reduction in the capacity of local agricultural production.

This process was accompanied by a series of state interventions in agrifood companies, including the confiscation or nationalization of state companies producing coffee, sugar mills and rice and pasta producers. The Government also expropriated the main seed distribution company (Agroisleña); the main dairy products company (Lácteos Los Andes), 10000 hectares from cattle and milk production companies, and at least five corn flour producers, two oil manufacturers, as well as Venezuela's major supermarket chains.

Index shortages for some products exceed 90%. Data from a survey conducted by DATANALISIS, illustrates the impact of the basic commodities shortages in the table below:

Corn oil	95,5%
Vegetable oil mixture	94%
Ground coffee	83,6%
Powder Milk	83,6%
Cornmeal	83,6%

<sup>12</sup> In the 10 years when price controls were in effect, shortages tripled. (2016) El-nacional.com Retrieved April 24, 2016, from [http://www.el-nacional.com/economía/control-precios-escasez-alimentos-triplico\\_0\\_129589009.html](http://www.el-nacional.com/economía/control-precios-escasez-alimentos-triplico_0_129589009.html)



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Margarine	82,1%
Tuna in oil	82,1%
Sugar	80,6%
Beef	64,2%

In the state-run Mercal chain, shortages reached 80%; in supply markets and wineries 75%; in independent supermarkets 57.4%, in the state-run Pdval 56%, in supermarket chains 50.3%, Market Bicentenario 39% and in “informal market” shortage reached to 38.7%. This demonstrates that there are incentives for informal trade and sale of regulated produce in parallel markets.

The market shortage is alleviated with the provision of basic food provided to the population at subsidized prices through different mechanisms, some are no longer in place after cases of corruption where public officials diverted products to the private sector.

Recently, the State has implemented a new model to replace the previous distribution network and which has been closed progressively because of problems of corruption and inefficiency-known as CLAP, Local Supply and Productions Committees, (*Comités Locales de Abastecimiento y Producción*), which consists of a system distributing food to every household implemented by the community councils starting March 16, 2016. This initially effective measure it late in coming.

The shortages stem from a distortion in prices, the existence of several exchange rates, a state subsidy that is not related to the actual market prices, the seizing of some companies, and the consequent flourishing of the business known as “*bachaqueo*” (the resale of products individually, multiplied by the scale the large segment of the population operating in the informal economy).

This has a multidimensional effect on the population’s nutrition, especially affecting teenagers and children. The rate of truancy, for the first time, has increased from 12 to 18%, because many children are forced to join the search for food in food stores with subsidized



prices, while others are used by their own families dedicated to “bachaqueo”, spending long hours in line to get products at subsidized prices and then reselling them in the informal market. These practices are most common in poorest segment of the population, where truancy and poor nutrition impact most heavily.

Long lines for subsidized products have also led to small conflicts which are growing in number. Altercations are occurring, in some cases they have resulted in deaths after long hours of queuing. These lines are sometimes 12 hours long and places in line are relieved by relatives, and in some cases the shifts are “rented”. This obviously becomes a public safety issue, with security forces often monitoring these locations to prevent unrest that in many cases end in either attempts to, or participation in looting.

In January 2016, the overall rate of food shortages was 82.8%.<sup>13</sup>

Due to the shortages, on average, individuals in Caracas bought food every 4.8 days in 2015 and every 3 days in 2016. This would involve visiting 4.1 stores and waiting in line for an average 3.23 hours in 2015, and visiting 4.8 stores, waiting in line for 4.42 hours in 2016. More than two thirds of the population has had to change their eating habits as a result of the crisis, with a quarter of the population surviving on less than three meals a day.<sup>14</sup>

It was not a surprise that 2016 began with a series of violent incidents, looting shops and supermarkets began in several states across the country, including in the capital city. Between January and February 2016, the Venezuelan Social Conflict Observatory recorded 64 looting and attempted looting incidents. In February, 41 were reported, the highest number in the last 12 months. The data highlights that 81% of these events were targeting food or drink deliveries, while on their distribution routes. The other 19% targeted shopping centers, warehouses and other facilities.<sup>15</sup>

### **Basic Services (water and electricity):**

<sup>13</sup> *Entorno Económico y Político*, Datanalisis, Mayo de 2016.

<sup>14</sup> *Entorno Económico y Político*, Datanalisis, Mayo de 2016.

<sup>15</sup> *Social Conflicts in Venezuela, February 2016*, Venezuelan Observatory of Social Conflicts, <http://www.observatoriodeconflictos.org.ve/oc/wp-content/uploads/2016/03/Conflictividad-social-en-Venezuela-en-febrero-2016.pdf>





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In the last six months, cuts to the water supply and electricity have become very common. There are several causes, but the recent impact of the drought caused by the El Niño weather phenomenon has affected the production of energy at the only hydroelectric dam in the country –El Guri, located in Bolivar State. The dam provides energy to the entire country, and has reached critical water levels, 3.5 meters above the point of collapse. Several areas of the country suffer from both regularly scheduled and abrupt energy and water cuts for several hours a day.

The lack of chemicals, such as chlorine, for the water treatment systems has increased cases of diarrhea. Meanwhile, the practice of collecting and storing water in homes, to prepare for the inconsistent access to water, has contributed to the proliferation of conditions to transmit Dengue, Chikunguya and Zika.

### **Security:**

The security situation is today of greatest impact and concern for the population, with its inevitable side effect in the area of health, nutrition and general quality of life.

The issue of citizen security is not new in Venezuela, which has historically had high levels of criminal activity and murders. However, in the last three years this has increased to alarming levels. After some years where the government has not provided statistical data on homicides rates, the Ministry of Public Information reported that the number of homicides in the year 2015 was 17,779, i.e. 58.1 per 100,000 inhabitants. Meanwhile, the NGO, Venezuelan Observatory of Violence (OVV) (*Observatorio Venezolano de Violencia*) states that there were 27,875, that is to say 90 per 100,000 inhabitants.

Added to this is the increased impact of large criminal gangs exercising territorial control with total impunity. In the city of Maracay in the State of Aragua, an “armed strike”, decreed by one of these gangs, affected a sector of the city. The State has been trying to vigorously fight the phenomenon of the large armed gangs with the creation of a special operations program called *-Operación*



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*Libertad del Pueblo*- Operation Peoples Freedom (OLP) that has had a positive impact on public opinion, but which has also resulted in accusations of summary executions.

Finally, there is an additional new phenomenon that is the high rate of policemen, military, and members of security forces killed since January 1 this year, a figure that has already exceeded 109 cases.

## V. CORRUPTION INDICATORS

Venezuela definitely needs to clean house. International corruption indicators place the country at the bottom, showing an endemic state of corruption.

The ongoing corruption investigations conducted by Permanent Committee on Audits of the National Assembly involve \$69 billion (USD) in corruption. There are no primary sources on corruption available in Venezuela, which is itself extremely worrying. Below are three secondary sources, most citing public opinion research: Transparency International, Transparency Venezuela, and Gallup.

### 1. International Transparency – Corruption Perception Index 2015

The Corruption Perception Index (CPI), analyzes how citizens of 168 countries perceive their public sector, through a scoring system where 1 is "highly corrupt" and 100 is "very clean of corruption". Venezuela obtained 17 points out of 100, **ranking at number 158 of 168 countries evaluated.** This represents a drop since last year Venezuela obtained 19/100.

Venezuela is in the last position on the continent, therefore the most corrupted country in the region, according to this indicator.

### 2. Transparency Venezuela – Report of the Second Cycle of the Universal Periodic Review of Venezuela of the Human Rights Council of the United Nations



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The Venezuelan State has not adopted an anti-corruption program plan, and, on the contrary, encourages the practice by limiting the right of access to public information and on social data.

The report drafted by Transparency Venezuela points out that one of the main causes of malpractice is the institutionalization of official secrecy protected by the rulings of the Supreme Court. In this regard, during the **period between 1999 and 2014**, the NGO counted **60 rules that violate or limit the right of access to public information**.

According to the NGO, the Constitutional Chamber and the Administrative Chamber of the Supreme Court limit access to information for the following reasons: lack of legitimacy by the applicants; lack of justification on the administration of the controls to be exercised; precautionary measures not being the ideal avenue, and, exhausting previous judicial mechanisms.

At the same time, according to the NGO, the **Public Ministry** encourages corruption by its refusal to investigate cases, such as the President of the Criminal Chamber of the Supreme Court Justice, Eladio Aponte Aponte, who made detailed statements of his links to drug traffickers and operations conducted in Venezuela; former Minister of Planning, Jorge Giordani, who denounced irregularities in the management of the National Oil Company (PDVSA) and the Central Bank of Venezuela, as well as overspending and mismanagement within the government; and, Lieutenant Commander Leamsy Salazar, who denounced Diosdado Cabello to the DEA in Washington for drug trafficking.

### **3. Gallup – Survey of Perception of Corruption in Venezuela**

According to the survey conducted by Gallup in Venezuela, the perception of worsening corruption levels appears to have contributed to the erosion of confidence in the government. Although government corruption has always been perceived as extensive, an increase was recorded from 63% in 2012 to **75% in 2013 in the number of persons who consider corruption as a widespread** in the government of President Maduro. Another sign

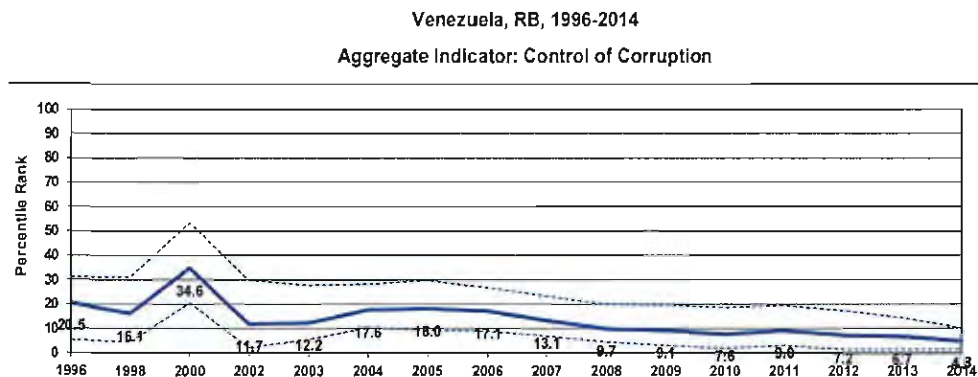


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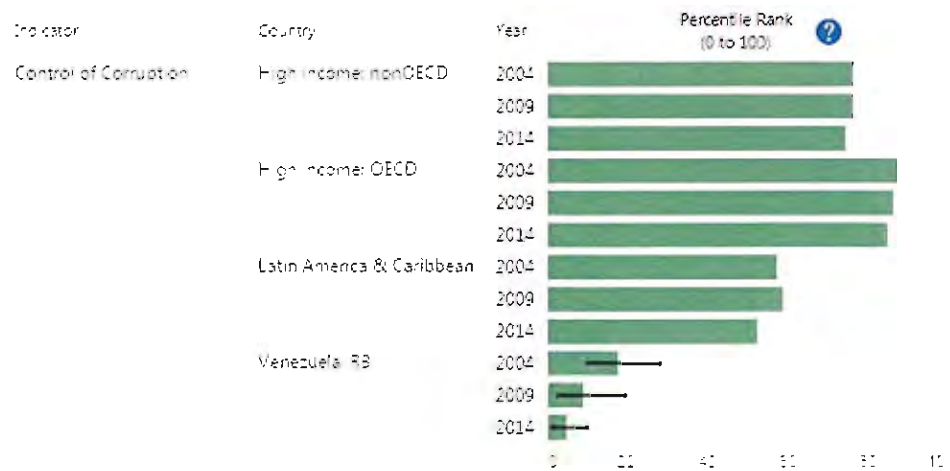
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of the deterioration of public opinion of the government is that only 31% of Venezuelans trust the national judicial system.



**Comparative Chart of level of Control of Corruption - Venezuela vs. other regions**



In 2014, Venezuela obtained 4.8%, which places the country a long distance from the average for Latin America and the Caribbean (52%) and even further from the higher income countries of the



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**OECD (85%)**, where the norm is high control of corruption. At the same time, the richest countries not belonging to the OECD reported a 74% of control of corruption.

## **VI. CONTRADICTION BETWEEN DEMOCRACY AND THE EXISTENCE OF POLITICAL PRISONERS**

Democracy is not compatible with the arrest of persons for their ideas. This is not an abstract concept; this is clearly embodied in the instruments to which the Member States of the OAS have committed. From the American Convention on Human Rights, (which among the democratic institutions sought to be an instrument to consolidate "a system of personal liberty and social justice based on respect for the essential rights of man"<sup>16</sup>) which recognizes the rights of association and freedom of thought and of expression, to the Inter-American Democratic Charter, which recognizes "transparency in government activities, probity, responsibility of governments in public administration, respect for social rights and freedom of expression and press"<sup>17</sup> as fundamental components of the exercise of democracy.

In Venezuela, the government has closed the natural channels of democratic dialogue. Citizens participate in public demonstrations as a way of being heard. It is the valid space for expression of a section of society that the government wants to fight against. In the context of the country's polarization, protesters are oppressed and react to this oppression.

**The criminalization of protests, harassment and imprisonment of opponents are typical practices of an oppressive State. These people are prisoners in the consciousness of the Venezuelan government.**

Not recognizing the right a free expression and the right to protest for all sectors of society is synonymous with a limited and unjust vision of democracy. The use of criminal law to quiet political

<sup>16</sup> Preamble, American Convention on Human Rights: [https://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm)

<sup>17</sup> Article 4 of the Inter American Democratic Charter: [http://www.oas.org/charter/docs/es/resolucion1\\_es.htm](http://www.oas.org/charter/docs/es/resolucion1_es.htm)



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criticism is highly restrictive for society and goes against international human rights treaties.

In its 2009 report on Democracy and Human Rights in Venezuela, the Inter-American Commission on Human Rights expressed concern about the impediments for citizens to exercise the right to demonstrate peacefully. In the report, the CIDH observed:

“with concern that in Venezuela the institutional response to the peaceful demonstrations has been characterized by the criminalization of social protest through criminal prosecution of the persons involved, distorting the application of punitive state laws. This situation is of particular concern because repression and deprivation of freedom for people participating in protest actions have the effect of inducing social actors not to participate in peaceful demonstrations.”<sup>18</sup>

I have carefully followed the allegations by government representatives of being “traitors to the homeland” for having visited me in Washington and for sharing their views on the situation in the country.

Calling the opposition “traitors”<sup>19</sup> is an attempt to control dissent, expressed in their views and their protests. As a representative of the State, these statements are acts of intimidation because when a citizen becomes president, he is not speaking in a personal capacity but as head of an authority that is responsible for the armed forces, intelligence agencies and the police of the Nation.

**To accuse people who do not agree with a particular type of government and call them traitors to their country or to the Chavista Revolution is essentially, as Noam Chomsky would say, “one of the most common mechanisms used by totalitarian regimes”.**

<sup>18</sup> CIDH, *Democracia y Derechos Humanos en Venezuela*, 2009. Puede consultarse en: [http://www.cidh.org/countryrep/Venezuela2009sp/VE09CAPIISP.htm#\\_ftn91](http://www.cidh.org/countryrep/Venezuela2009sp/VE09CAPIISP.htm#_ftn91) (última visita 25/5/2011), capítulo relativo al derecho de protesta pacífica.

<sup>19</sup> President Nicolas Maduro: “this week we witnessed how some traitorous Venezuelan congressmen went to Washington to ask the United States to sanction Venezuela” Source: video: <http://entodoticias.com/no-vayan-crear-aqui-inmunidad-la-traicion/> (consulted May 25, 2016).





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These Congressmen, are, like it or not, are an essential part of their nation. They believe in their ideas and express their concerns. With their ideas, which may or not coincide with those of the government, they have clamored for a democratic Venezuela, an inclusive Venezuela. To compare opposing the Government to treason means that only the Government represents Venezuela, leaving aside its history, its people and its culture.

According to the statement by the Executive Director of the Venezuelan Criminal Forum, Alfredo Romero, in the session on human rights in Venezuela held within the 157th Period of Sessions of the Inter American Commission of Human Rights, “today, the Criminal Forum considers that there are 82 political prisoners in Venezuela, and only since 2014 3785 people have been arrested for political reasons. As of today, 1882 people have pending judicial processes”.<sup>20</sup>

After the May 18, 2016 protest against President Maduro’s government, the Criminal Forum stated that there had been 41 arrests. As of May 19, the organization registered 3932 arrests as a result of demonstrations against the national government<sup>21</sup>.

Alfredo Romero reported through his Twitter account that on May 25<sup>th</sup>, the number of political prisoners increased to 96 after the arrests of the May 18 protest. Students, professionals and military personnel are among the people arrested for protesting, for using social networks; they were accused of civil and military rebellion, among other crimes.

To better understand this situation, it is important to take into account the report published by Human Rights Watch (HRW) on May 5, 2014 entitled *Punished for Protesting*.<sup>22</sup> The report is about the violation of rights on the streets, in detention centers, and by the judicial system in Venezuela. The report contains the results of

<sup>20</sup> 157<sup>th</sup> Period of Sessions of the Inter-American Commission on Human Rights, Heading on the General Situation of Human Rights in Venezuela, speech by Alfredo Romero, Executive Director of the Venezuelan Criminal Forum, Monday, April 4, 2016: <http://www.oas.org/es/cidh/multimedia/sesiones/157/default.asp>, consulted 5/25/2016.

<sup>21</sup> Venezuelan Criminal Forum: <https://foropenal.com/node/2429> (last visit 5/25/2016).

<sup>22</sup> Human Rights Watch, *Punished for Protesting*, <https://www.hrw.org/report/2014/05/05/punished-protesting-rights-violations-venezuelas-streets-detention-centers-and>, consulted 5/25/2016



research conducted by the organization which found “a pattern of serious abuses”.

According to the report, HRW found evidence that Venezuelan security forces committed serious human rights violations in 45 cases; and the victims’ accounts of those cases provided credible evidence that more than 150 people were victims of abuses in related incidents.

*Political prisoners* are people who are imprisoned for their activities or statements against a government or a regime. The Parliamentary Assembly of the Council of Europe in 2012 reaffirmed the criteria established by the Council of Europe in 2001<sup>23</sup>:

“A person deprived of his personal liberty is considered a ‘political prisoner’:

- a. if the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights and its Protocols (ECHR), in particular freedom of thought, conscience and religion; freedom of expression and information; freedom of assembly and association;
- b. if the detention has been imposed for purely political reasons without a connection to any offence;
- c. if, for political motives, the length of the detention or its conditions are clearly out of proportion to the offence the person has been found guilty of, or is suspected of;
- d. if, for political motives, he or she is detained in a discriminatory manner as compared to other persons; or,
- e. if the detention is the result of proceedings which were clearly unfair and this appears to be connected with the political motives of the authorities.” (SG/Inf (2001) 34, paragraph 10).

<sup>23</sup> Parliamentary Assembly of the Council of Europe: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19150&lang=en>



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## **VII. SEPARATION AND INDEPENDENCE OF THE BRANCHES OF GOVERNMENT**

The principle of the separation of the different branches of government is a basic requirement for the functioning of a democratic system and that separation strengthens the Rule of Law and provides for the full respect for the Constitution. Given this, the General Secretariat of the OAS provides below a detailed analysis of the situations which have been shown to violate the principle of the separation of the branches of government in the Bolivarian Republic of Venezuela. This is presented as a result of the efforts to impede the normal workings of the National Assembly through a number of interventions against the legislative branch by the Executive, with the support of the Constitutional Chamber of the Supreme Court of Justice.

This is especially reflected in the decree limiting the powers and functions of the National Assembly, in the extension of the State of Economic Emergency, by the repealing of laws, and by the decision to nullify the Partial Amendment of the Internal Rules and Debates of the National Assembly.

**It is of vital importance that the President of the National Assembly, Henry Ramos Allup, be able to present his views to the Permanent Council, regarding this, and the next chapter of this document.**

This dysfunction is also evidenced in some of the characteristics of Venezuela's judicial system. Because a large number of judicial officials are appointed to temporary positions, this negatively affects the impartiality and the necessary continuity which this branch of government must have in order to provide the basic guarantees of judicial due-process which is also a requirement of democratic systems.

The electoral results of December 6, 2015 which gave 112 seats in the National Assembly to the opposition, provided an opportunity for a slight change in the balance between the Executive, the



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Legislative and the Judicial Branches which had previously been dominated by the government.

The Government's majority in the National Assembly designated and swore-in 13 out of 32 magistrates and 21 alternates of the Supreme Tribunal of Justice (TSJ) before the new Assembly took office on January 15, 2016. The change was slight because a court decision threatened to leave the Assembly without any real power and the opposition lost three deputies. Without them, the opposition lost its supermajority.

### **The State of Laws Approved by the National Assembly**

Beginning on January 5, 2016, when the National Assembly took office controlled by an opposition with an absolute majority (109 of 13 deputies), the Judicial branch became the main vehicle for the clash between the Executive and the Legislative branches of government. The Government's aim was to use the Supreme Court of Justice (SCJ) to disable the National Assembly and weaken the opposition. At least 17 Supreme Court decisions constitute the Judicial branch's coopting by the Executive branch.

The list of 17 decisions is as follows<sup>24</sup>:

1. The Electoral Chamber suspended four members elected to the Assembly from the State of Amazonas from taking their seats (3 from the MUD and 1 from the PSUV). Decision 260 of December 12, 2015:

<http://historico.tsj.gob.ve/decisiones/selec/diciembre/184227-260-301215-2015-2015-000146.HTML>

2. The Electoral Chamber ordered that the members from the State of Amazonas should be removed from the National Assembly and rendered the Assembly's subsequent acts null and void. The removal of the three members of the opposition who were elected

<sup>24</sup> The list was designed based upon the information published in <http://www.el-nacional.com/politica/Guerra-sentencias-TSJ-decisiones-AN-D-836316569.htm>; and was complemented with primary information published in [www.tsj.gob.ve](http://www.tsj.gob.ve)



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on December 6 from the state of Amazonas prevented the opposition from having a supermajority in the Legislative branch. The opposition obeyed the decision of the Supreme Court to avoid the situation in which the Assembly would be left with no power. Decision 1 of January 11, 2016:

<http://historico.tsj.gob.ve/decisiones/selec/enero/184253-1-11116-2016-X-2016-000001.HTML>

3. The Constitutional Chamber ratified the decisions of the Electoral Chamber pertaining to the members of the National Assembly from the State of Amazonas. (Decision 260 of December 12, 2015, and Decision 1 of January 11, 2016).

<http://historico.tsj.gob.ve/decisiones/scon/enero/184316-03-14116-2016-16-0003.HTML>

4. The Constitutional Chamber interpreted as constitutional Decree Number 2.184, Economic Emergency, presented by President Nicolas Maduro. The majority opposition bloc had rejected it, however, the Constitutional Chamber decided in favor of the Government. Decision 4 of January 20, 2016:

<http://historico.tsj.gob.ve/decisiones/scon/enero/184426-04-20116-2016-16-0038.HTML>

5. The Constitutional Chamber declared the Economic Emergency Decree to be “in force”, despite as mentioned in point 5, that this was not approved by the National Assembly. Decision 7 of February 11, 2016

<http://historico.tsj.gob.ve/decisiones/scon/febrero/184885-07-11216-2016-16-0117.HTML>

6. The Constitutional Chamber limited the auditing faculties of the National Assembly which is a constitutional right of this branch of government *vis a vis* the other branches of government. Decision 9 “interprets constitutionally the auditing function of the National Assembly and establishes its democratic limits to ensure the balance between the braches of government”. Decision 9 of March 1, 2016:

<http://historico.tsj.gob.ve/decisiones/scon/marzo/185627-09-1316-2016-16-0153.HTML>





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7. After the time period that the State of Emergency was in force expired, the President and his Cabinet decided that they needed an extension of the Emergency Economic Decree. This was rejected by the Legislature, but the Constitutional Chamber approved it. Decision 184 of March 17, 2016.

<http://historico.tsj.gob.ve/decisiones/scon/marzo/186437-184-17316-2016-16-0038.HTML>

8. In response to the complaint against the designation of magistrates “for being illegal and unconstitutional”, the Constitutional Chamber determined that the complaint demanding partial annulment filed by lawyer Robert Luis Rodríguez Noriega was inadmissible. This decision by the SCJ made it impossible to revoke the appointments of the SCJ Magistrates made on December 23, 2015 when the previous National Assembly had been controlled by the Government’s party. Decision 225 of March 29 2016:

<http://historico.tsj.gob.ve/decisiones/scon/marzo/186523-225-29316-2016-16-0042.HTML>

9. The Constitutional Chamber declared the Reform of the Law of the Central Bank of Venezuela (BCV) a to be unconstitutional. This reform had been enacted by the National Assembly on March 3rd. The law was intended to reinforce the independence of the Central Bank. The SCJ argued that the law infringed upon the autonomy of the BCV and the stability of the economy. Decision 259 of March 31 2016:

<http://historico.tsj.gob.ve/decisiones/scon/marzo/186656-259-31316-2016-2016-0279.HTML>

Act: [http://www.asambleanacional.gob.ve/uploads/leyes/2016-03-03/doc\\_alf3cc396c1baf852bd2b57677e1c9ad4a0150c6.pdf](http://www.asambleanacional.gob.ve/uploads/leyes/2016-03-03/doc_alf3cc396c1baf852bd2b57677e1c9ad4a0150c6.pdf)

10. The Constitutional Chamber determined the Law of National Reconciliation and Amnesty, enacted by the National Assembly on March 29, 2016, to be unconstitutional. Decision 264 of April 11 2016:

<http://historico.tsj.gob.ve/decisiones/scon/abril/187018-264-11416-2016-16-0343.HTML>

Act:





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[http://www.asambleanacional.gob.ve/uploads/leyes/2016-03-29/doc\\_6b63c35ab412e6d99cd561e9190df5b0681b1b81.pdf](http://www.asambleanacional.gob.ve/uploads/leyes/2016-03-29/doc_6b63c35ab412e6d99cd561e9190df5b0681b1b81.pdf)

11. The Constitutional Chamber of the SCJ admitted a request by the opposition on March 9, 2016. The response was to nullify as unconstitutional the Partial Amendment of the Internal Rules and Debates of the National Assembly (published in the Official Bulletin number 6.014 of December 23, 2010). Decision 269 of April 21, 2016:

<http://historico.tsj.gob.ve/decisiones/scon/abril/187363-269-21416-2016-11-0373.HTML>

12. In response to a request for clarification submitted on March 15, 2016 regarding the constitutionality of article 340 of the Constitution, the Constitutional Chamber ruled that “absolute non-retroactivity” applied.<sup>25</sup> The SCJ determined that “any amendment of the Constitution of the Bolivarian Republic of Venezuela shall not have retroactive effects in time nor be of immediate application<sup>26</sup>”. This means that a constitutional amendment during a presidential term of office would not be of immediate application, that is to say, it would not be applicable to the current president. Decision 274 of April 2016.

<http://historico.tsj.gob.ve/decisiones/scon/abril/187368-274-21416-2016-16-0271.HTML>

13. The Constitutional Chamber declared the Supplementary Food and Medicine Act for retirees and pensioners enacted by National Assembly as constitutional but inapplicable. Although it was declared constitutional, it was determined to be inviable for economic reasons, and thus it was declared null and void. Decision 327 of April 28 2016:

<http://historico.tsj.gob.ve/decisiones/scon/abril/187498-327-28416-2016-16-0363.HTML>

Act:

[http://www.asambleanacional.gob.ve/uploads/leyes/2016-03-30/doc\\_5e7206c4716004ece964bf844a834f05b3315921.pdf](http://www.asambleanacional.gob.ve/uploads/leyes/2016-03-30/doc_5e7206c4716004ece964bf844a834f05b3315921.pdf)

<sup>25</sup> [www.tsj.gob.ve/-/una-enmienda-constitucional-sobre-el-periodo-presidencial-no-seria-de-aplicacion-inmediata](http://www.tsj.gob.ve/-/una-enmienda-constitucional-sobre-el-periodo-presidencial-no-seria-de-aplicacion-inmediata)

<sup>26</sup> [www.tsj.gob.ve/-/una-enmienda-constitucional-sobre-el-periodo-presidencial-no-seria-de-aplicacion-inmediata](http://www.tsj.gob.ve/-/una-enmienda-constitucional-sobre-el-periodo-presidencial-no-seria-de-aplicacion-inmediata)



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14. The Constitutional Chamber declared the Partial Reform of the Organic Law of the SCJ Act as unconstitutional. Decision 341 of May 5 2016:

<http://historico.tsj.gob.ve/decisiones/scon/mayo/187589-341-5516-2016-16-0396.HTML>

Act:

[http://www.asambleanacional.gob.ve/uploads/documentos/doc\\_b546de39577942fde98fcac5f7d06abe1100d78e.pdf](http://www.asambleanacional.gob.ve/uploads/documentos/doc_b546de39577942fde98fcac5f7d06abe1100d78e.pdf)

15. The Constitutional Chamber declared the “Granting of Property Titles to the Beneficiaries of the Great Housing Mission of Venezuela and Other Housing Programs” Act as unconstitutional. The law had been passed by the National Assembly on Pail 13, 2016, prior to the decision of the Chamber.

<http://historico.tsj.gob.ve/decisiones/scon/mayo/187591-343-6516-2016-16-0397.HTML>

Act

<http://www.asambleanacional.gob.ve/documento/show/id/1482>

16. The Second Court on Contentious Administrative Matters (a lower court than the SCJ, but a national court) prohibited unapproved protests before the National Electoral Council, and ordered that the National Guard and the National Police should repress “violent protests”. Decision AP42-0-2016-00021 of May 18, 2016

<http://jca.tsj.gob.ve/DECISIONES/2016/MAYO/1478-18-AP42-0-2016-000021-2016-0120.HTM>

17. The Constitutional Camber declared Decree number 2323, issued by the President of the Republic, as constitutional. The decree established a new State of Emergency and State of Economic Emergency, and once again gave the President special powers for an additional 60 days. Decision 411 of May 19, 2016.

<http://historico.tsj.gob.ve/decisiones/scon/mayo/187854-19516-2016-16-0470.HTML>

Out of a total 414 Decisions made by the Constitutional Chamber, 5 were handed down in January, 2 in February, 252 in March, 69 in April and 85 in May, 2016. The majority of these decisions consisted of responses to requests for remedy (*amparo*) (53%),



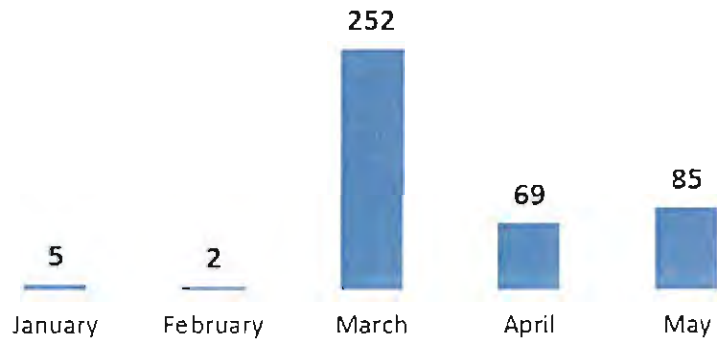
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requests for review (29.5%), followed by requests for annulment (4.6%) and on the matter of the constitutionality of a law (2.2%).

### # Total Rulings Constitutional Court TSJ



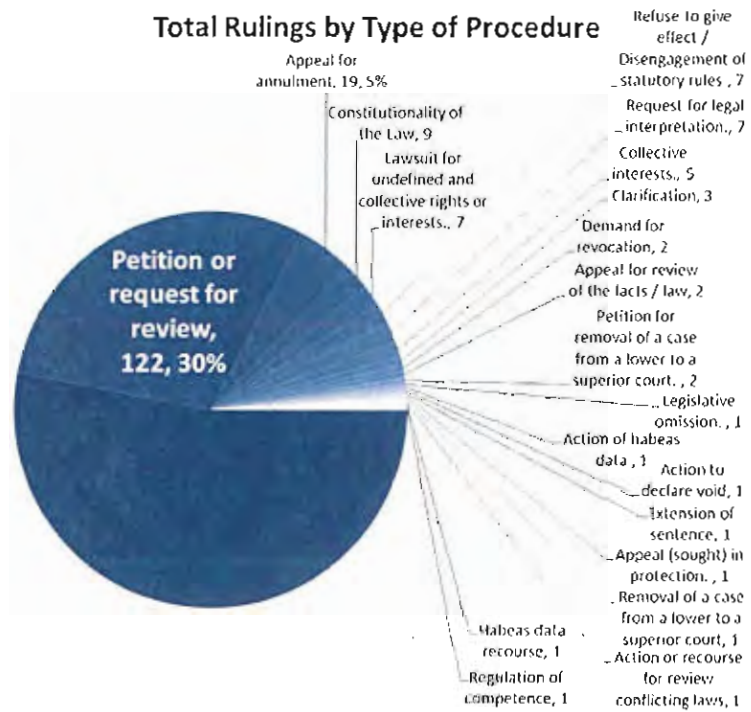


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### Total Rulings by Type of Procedure





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Act of Proceeding	Total	%
Action for protection	219	53,0
Petition for review	122	29,5
Appeal for Annulment	19	4,6
Constitutionality of the Law	9	2,2
Lawsuit for undefined and collective rights	7	1,7
Refuse to give effect	7	1,7
Request for legal interpretation	7	1,7
Collective interests	5	1,2
Clarification	3	0,7
Claim to annul	2	0,5
Appeal for review of the facts as well as the law	2	0,5
Petition for removal of a case from a lower to a superior court	2	0,5
Legislative omission	1	0,2
Habeas Data petition	1	0,2
Action to declare void	1	0,2
Extension of sentence	1	0,2
Appeal sought in protection	1	0,2
Removal of a case from a lower to a superior court	1	0,2
Action or recourse for review of conflicting laws	1	0,2
Habeas Data recourse	1	0,2
Regulation of competence	1	0,2



From January 5 to May 24, there were eight recorded appeals of legal constitutionality and one appeal which was not classified. (See the following Table). President Nicolas Maduro Moros presented all but two of the appeals. As regards the two cases not presented by the President, the SCJ publishes “NA” in the section entitled “parties” on its website. Of the nine appeals, five were found constitutional and four unconstitutional. It is worth noting that all nine decisions constitute judgments in favor of the Executive Branch.

Proceeding	Parties	Judgment #	Court file #	Constitutional/ unconstitutional	In favor/ against the Executive Power	Decision
Constitutionality of the law	Nicolas Maduro Moros	2	15-1192	Constitutional	In favor	Decree is constitutional. The decision extends the time limit of Decree N° 2071 for 60 days. Date October 23, 2015.
Constitutionality of the law	NA	4	16-0038	Constitutional	In favor	Declared constitutional Decree N° 2184 issued by the President of the Bolivarian Republic by which a State of Economic Emergency throughout the country is declared.
	Nicolas Maduro Moros	184	16-0058	Constitutional	In favor	Declared constitutional Decree N° 2270 on March 11, 2016 by which the time limit of Decree N° 2284, dated January 14, 2016, is extended for 60 days.
Constitutionality of the law	NA	259	2016-0279	Unconstitutional	In favor	The Act of Partial Reform of the Decree N° 2179 with Rank, Effect, and Force of the Act of Partial Reform of the Law of the Central Bank of Venezuela is declared unconstitutional. It was approved by the National Assembly on March 3, 2016 in its ordinary session.
Constitutionality of the law	Nicolas Maduro Moros	262	15-0343	Unconstitutional	In favor	The Act of National Reconciliation and Amnesty sanctioned by the National Assembly on March 29, 2016 in its ordinary session was declared unconstitutional.
Constitutionality of the law	Nicolas Maduro Moros	327	16-0363	Constitutional	In favor	The Law of Supplements for Food and Medicine for Pensioners and Retired People is declared constitutional.
Constitutionality of the law	Nicolas Maduro Moros	341	16-0395	Unconstitutional	In favor	The Act is declared unconstitutional.
Constitutionality of the law	Nicolas Maduro Moros	343	16-0397	Unconstitutional	In favor	The Act is declared unconstitutional.
Constitutionality of the law	Nicolas Maduro Moros	411	16-0470	Constitutional	In favor	Declared constitutional. Decree N° 2323, issued by the President of the Republic that proclaims the State of Emergency and State of Economic Emergency.





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The aforementioned judicial decisions include themes we want to further develop in this report, which relate to the Supreme Court of Justice (SCJ) preventing three congressmen of the Amazonas from taking their seats in the National Assembly, to the Declaration of State of Emergency and State of Economic Emergency; the Law of Reconciliation and Amnesty; the statement of non-retroactivity of the constitutional amendments; and the nullification of the Partial Reform of the Internal Rules and the Debates of the National Assembly. We will now elaborate on these issues.

### **The Supreme Court of Justice Preventing the three Congressmen from Amazonas from taking their seats in congress**

In a recent case, regarding the decision of the Electoral Chamber of the Supreme Court of Justice to prevent the three congressmen of the Amazonas from taking their seat in the National Assembly, the Court used a line of reasoning related to the figure of the “well-known communicative event”. While this event does not constitute evidence in the understanding of the Court, the alleging party is exempt from meeting the burden of proof. Basing the suspension of the effects of the acts of totalization, adjudication and declaration issued by the National Electoral Council, without previously hearing from the Council, violated in a flagrant manner the guarantee of due process.

On December 29, 2015, the Electoral Chamber of the Supreme Court of Venezuela received a request for an interim injunction related to the voting for the legislative elections of December 6, 2015 in the electoral circuit of the State of Amazonas. The petition requested the annulment of the election of specific congressional seats (held by Julio Haron Ygarza, Nirma Guaralla and Romel Guzama) proclaimed by the National Electoral Council, because, among other reasons, a recording was disseminated through social media on December 16, 2015, in which Secretary of the Government of the State of Amazonas is heard discussing with an anonymous person how different amounts of money were paid to electors to vote for opposition candidates.

Thus it was argued that an infringement of voting rights had occurred during the election process as it was determined that citizens voted in favor of the mentioned candidates for economic gain.



Moreover, it was alleged that in other cases identity fraud and violation of voter secrecy had occurred, diminishing the legitimacy of the vote and increasing the risk that when these persons assumed their offices, that they would take decisions without regard to the people they represent.

In this way, the results of the vote in the parliamentary elections of December 6, 2015 in the electoral circuit of the State of Amazonas were suspended as well as all other outcomes as a result of the voting, in other words, the proclamation of candidates elected to the National Assembly that would come into effect on January 5, 2016. The request also asked for the annulment of voting act, the final act of scrutiny, the vote counting act, and the act proclaiming the elected candidates to the corresponding parliamentary seats. It also called for new elections in this circuit.

On December 30, 2015, the Electoral Chamber of the Supreme Court of Justice ordered, in an immediate and provisional manner, the suspension of the outcomes resulting from the vote counting, adjudication and proclamation acts issued by the subordinate bodies of the National Electoral Council in reference to the involved elected candidates (Decision 260/ 15)

During an Ordinary Session on January 5, 2016, the National Assembly initiated its constitutional term with those new deputies elected and legitimately proclaimed. Because of the decision of the Supreme Court, those candidates subject to the injunction were not granted their credentials. Nevertheless, on January 6 of 2016, the new Directive Board of the National Assembly proceeded to administer the oath to these representatives, ignoring the decision of the Supreme Court.

On January 7, 2016, the Electoral Chamber of the Supreme Court received another request to comply with the Court decision dated December 30, 2015, and to pronounce itself on the constitutionality of the oath administered on January 6, 2016.

Among other things, it was argued that the decision of the Supreme Court of Justice was ignored and that consequently the congressmen



whose seats had been suspended could not, under any circumstances, have their votes counted in the Legislature.

On January 11, 2016, the Electoral Chamber of the Supreme Court of Justice declared that the members of the Directive Board of the National Assembly had ignored the ruling of the Supreme Court, and declared the oath of office without effect and thus prevented the congressmen in question from taking their seats in the National Assembly. The acts of the National Assembly, issued or to be issued while the congressmen subject to the decision of December 30, 2015 were part of the Assembly, were also to be considered void (Decision 1/2016).

Article 200 of the Constitution of Venezuela states that the members of the National Assembly are granted immunity in the exercise of their functions, from the time of their proclamation until the conclusion of their mandate or until they resign.

Article 297 of the Constitution, however, states that the jurisdiction over electoral disputes will be exercised by the Electoral Chamber of the Supreme Court and the other courts determined by law. Furthermore, the Electoral Chamber of the Supreme Court is responsible for dealing with electoral dispute appeals filed against the actions, interventions and omissions of the bodies of the Electoral authority. This is true not only for those acts directly related to the voting process, but also to those related to the organization, administration and functioning of the elections, according to Article 27 of the Organic Law.

These rules thus determine the competence of the Chamber in reference to the previously stated decision, which is also based on the Article 138 of the Constitution of Venezuela, which establishes that “all usurped authority is ineffective and its acts are considered void.”

Nevertheless, the Supreme Court resorted to the argument of the “well-known communicative event”.

Although, this particular event does not constitute evidence, due to its notoriety, the party making the allegation is exempt from demonstrating the burden of proof.



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In the judgement dated January 11, 2016, the Supreme Court asks whether the judge can set the communicative event as a proven fact without entering elements that can verify it. The Court accepted that it can do this since the publicity received allows the judge as well as the members of society to prove its existence. In the judgement dated December 30, 2015, the Court concluded that according to previous case law regarding the judge's consideration of a well-known communicative event alleged by one of the parties, the uniformity in various print and digital media published December 16, 2015 regarding a news item consistent with the audio recording of a conversation between citizen Victoria Franchi Caballero, Secretary of the Government of the State of Amazonas and an unidentified person, in which they refer to the vote buying and political payments to voters to vote for the Roundtable for Democratic Unity (MUD), among other, provides preliminary evidence of the grave presumption of a violation of the constitutional right to vote and of the political participation of the voters in the State of Amazonas. Based on this, the Court declared appropriate the application of the interim precautionary injunction.

Nevertheless, basing the interruption of the effects of the summative acts of adjudication and declaration issued by the National Electoral Council on these facts without previously listening to the said Council and the defense cases of the elected members of the Parliament violates guarantees of the due process.

As regards the scope of the decision, and as some specialists have affirmed, it is not possible under the law to annul an action through a precautionary injunction, nor can action in the future be rejected. This can only be done after a judgement in which due process is respected and both parties are able to present evidence. On January 4, 2016, the Constitutional Chamber validated the decision of the Electoral Chamber of the Supreme Court on this subject (Decision 3/ 2016).

As of today, the referred congressmen cannot exercise their powers in the National Assembly and continue to insist that the National Electoral Council come to a decision on the precautionary measure issued by the Electoral Chamber of the Supreme Court, which keeps them out of the National Assembly, thus leaving the state of Amazonas with no voice in the National Assembly.



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### **Declarations of States of Emergency and of Economic Emergency:**

President Maduro has repeatedly issued declarations of states of emergency in Venezuela. In August last year, he declared a state of emergency in 23 municipalities on the Colombian border, thereby suspending the constitutional requirements by which the authorities must obtain an authorization from the courts to enter citizens' private residences or to violate an individual's right to private communication, among other rights.

These states of emergency have been consistently extended. Another measure that is included in these states of emergency is the suspension of the right of free passage across national territory and across international borders.

One of the most controversial events concerning these declarations occurred at the end of January, when President Nicolás Maduro presented an Economic Emergency Decree to the National Assembly.

While the majority bloc rejected it, the Constitutional Chamber of the Supreme Court of Justice ruled in favor of the Executive branch. Through Ruling 4/2016 of 20 January 2016, the Chamber asserted the constitutionality of the Economic Emergency Decree and ordered its implementation.

On 11 February 2016, the Constitutional Chamber, by means of Ruling 7/2016, declared the Decree was in effect. This demonstrates clearly that even though the opposition in Venezuela has an ample majority in the National Assembly, it is difficult for them to pass laws as these are regarded as "unconstitutional".

Subsequently, and once the State of Emergency had expired, President Maduro and his Cabinet determined that an extension was necessary. This was rejected by the legislative branch and once again approved by the Constitutional Chamber of the SCJ (Ruling 184/2016 of 17 March 2016).





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The most recent issue in this regard occurred on May 13, 2016, when President Nicolás Maduro approved Decree N° 2.323, once again declaring a state of emergency and economic emergency throughout the entire national territory “given the extraordinary social, economic, political, natural and ecological circumstances that have severely impacted the national economy, the rule of law, social peace, national security, public institutions and the citizens of the Republic, so that the National Executive might take the necessary extraordinary and exceptional steps, to guarantee the people’s full enjoyment of their rights, the maintenance of internal order, timely access to basic goods and services, and reduce the impact of natural events which have affected the generation of electricity, access to food and other essential products for life”.

The Decree asserts that the state of emergency is in force for 60 days and may be extended for 60 more days in accordance with the constitution. In fact, Article 236 of the Constitution of the Bolivarian Republic of Venezuela states that a function and obligation of the President is to declare states of emergency and decree the restriction of guarantees where the Constitution so provides.

Articles 337, 338 and 339 further describe this responsibility. Article 337 defines the “state of emergency” as the social, economic, political, natural and ecological circumstances that have a dramatic impact on the security of the Nation, its institutions and its citizens, and with which normal measures are unable to cope. It is stated that in such cases the guarantees contained in the Constitution may be temporarily restricted, with the exception of those relating to the right to life, prohibition of incommunicado detention or torture, the right to due process, the right to information and other intangible human rights.

Article 339 states that the decree that declares the state of emergency shall be submitted to the General Assembly or the Executive Commission within 8 days of being pronounced, for its examination and approval, and to the Constitutional Chamber of the Supreme Court of Justice for it to rule on its constitutionality.

The Organic Law about States of emergency from August 15, 2001 (N° 37.261), develops this concept. Article 27 states that the decree declaring the state of emergency shall be approved by an absolute





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majority of representatives. Article 30 points out that the National Assembly may modify the terms of the decree in light of the particular circumstances of the case. Then, the President of the National Assembly shall send the Agreement in which the state of emergency is approved to the Constitutional Chamber (Article 32). Article 34 of the Organic Law also indicates that the Constitutional Chamber of the Supreme Court of Justice shall disregard every pronouncement if the National Assembly or Executive Commission disapproves such a decree of state of emergency or denies its extension, further petitions being declared void.

For its part, the National Assembly of the Bolivarian Republic of Venezuela, in accordance with Article 339 of the Constitution and Article 27 of the Organic Law about States of Exception, issues a resolution on the States of Emergency and Economic Emergency Decree, in which it notes, among other things, that “Decree N° 2.323 declares a generic state of emergency that, under the heading of economic emergency includes political issues and others related to public order, maintenance of social peace, preservation of the rule of law and international funding for private organizations, together with those of a natural and ecological nature, wherewith civil and political rights may be unduly affected and that the decree violates several human rights or sets out the foundations for their violation by means of indefinite regulations and general authorizations.

The National Assembly also charged that **“the state of emergency shall not be invoked as a pretext to concentrate powers and that the decree of state of emergency and economic emergency suspends constitutional principles arbitrarily, such as the authority of the National Assembly over public contracts, senior government officials and the budget.”** The resolution notes particularly that “the decree is issued primarily to diminish the constitutional competencies of the National Assembly in the aforementioned areas, thus the state of emergency is being used to overthrow the Constitution and not to ensure it” and that “the state of emergency does not suspend the Constitution or the Rule of Law, cannot justify the violation of human rights, and cannot take away the constitutional competencies of other branches of government”.



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In the resolution's operative part, the Legislative Branch strongly "Condemns Decree N° 2.323 of May 13, 2016, which deepens the serious alteration of the democratic constitutional order suffered by Venezuela and demonstrates a clear abandonment of the Constitution by the President of the Republic".

It also makes a call which cannot be ignored "To urge the United Nations, the Organization of American States and the organs of the Southern Common Market (MERCOSUR) and the Union of South American Nations (UNASUR) to join with the National Assembly and the people of Venezuela to curb the dismantling of democracy and the rule of law by the President of the Republic and the institutions that serve him". From an institutional perspective, it is impossible for the OAS to avoid considering this issue and its grave implications.

The Supreme Court of Justice, for its part, affirmed its competence to examine the constitutionality of Decree N°2.323 and by means of its ruling on 19 May 2016, declared its constitutionality and that it had been pronounced in compliance with the provisions of the Constitutional text, the aforementioned Organic Law and other applicable instruments, preserving human rights and protecting the Fundamental Text, the State, its institutions and its people. For these reasons, it declared that Decree 2.323 entered into force on the date that it was pronounced and that its legitimacy, validity and constitutional-legal effectiveness remained irrevocably unharmed, in clear contradiction with that stated by the National Assembly two days before (Ruling 411/2016)

### **Amnesty and National Reconciliation Act**

Each law that is now adopted by the National Assembly is opposed by Government in the Constitutional Chamber, which has become the means for nullifying the effects of any legal instrument emerging from the Assembly which is contrary to Government's interests. A clear case is the statement of the Supreme Court of Venezuela on the Amnesty and National Reconciliation Act, approved in early April by the Assembly.

President Nicolás Maduro had the choice of sending the law back to the Assembly so that his observations could be added before it was



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published in the Official Gazette. Instead, he chose the harshest option granted to him by the Constitution, that is, to send the law to the Supreme Court for a review of its constitutionality and thereby oppose the release of political prisoners. By means of ruling 264/2016 of 11 April 2016, the Constitutional Chamber declared the Amnesty and National Reconciliation Act unconstitutional.

**Ruling of the Supreme Court of Justice (Constitutional Chamber) on an Eventual Constitutional Amendment to Shorten the Exercise of an Elected Office (Ruling 274/2016)**

On March 15, 2016, Mr. Johnny Leonidas Jiménez Mendoza and Ms. Elsy Leonarda Silva Grimán asked the Supreme Court of Justice to interpret Article 340 of the Constitution of the Bolivarian Republic of Venezuela in light of a possible amendment to abbreviate the term of office of the President of the Republic.

The request was based on the fact that the majority bloc in the National Assembly had announced, through various media, the eventual departure of President Maduro through the constitutional amendment established in the aforementioned Article 340 of the Constitution and an abbreviation of the presidential term, thus altering Article 230 which currently provides for a presidential term of 6 years.

According to the petitioners, there would be an overlap between the popular and sovereign institution of the recall referendum established in Article 72 and the perpetration of a constitutional fraud on all voters who, in the exercise of their sovereign rights, elected Nicolás Maduro as President of Venezuela.

The petitioners asked the Constitutional Chamber whether it was constitutional to revoke the President's term of office by means of the amendment; if by so doing wouldn't it diminish the exercise of sovereignty established in Article 5 of the Constitution?; what was the scope and limit of the amendment to modify articles of the Constitution that do not touch, affect or impair the fundamental structure of the Constitution?; whether an abbreviation of the presidential term would not represent constitutional fraud?; whether it would not infringe on Article 72 of the Constitution to use the constitutional amendment to revoke the presidential term; and if such



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an amendment was effectively made, if this would not constitute a partial violation of the Constitution by means of a seemingly legal act?

The Constitutional Chamber declared its competence to hear the request for an interpretation, declared the action admissible, and deemed it appropriate to begin considering the matter without further ado, since it concerned a simple matter of law. Its ruling was delivered very quickly, on 21 April 2016, that is, little more than a month after the original request had been submitted.

The Constitutional Chamber stated that, in effect, the President of the National Assembly, as well as several deputies belonging to the political majority of said Assembly, had openly stated, through diverse means of social communication, their intention to amend the Constitution. An intention partially realized with the approval on first reading, of the draft Constitutional Amendment N° 2 which sought to cut, with immediate effect, the constitutional duration of the presidential term.

The Chamber pointed out that initially, the amendment of the constitutional term for public authorities was perfectly possible through the amendment mechanism, as long as all procedures were complied with, in similar fashion to the creation of laws but subject to public approval.

Nevertheless, it indicated that such an amendment could not be retroactive, or be immediately applicable, since this would constitute an unquestionable breach of the sovereignty provided in Article 5 of the Constitution, as it would ignore the will of the people, expressed either through the results of a voting process or the selection of other public authorities by the National Assembly. In this regard, such an amendment would only be applicable to future electoral or selection processes, just as the framers of the Constitution had historically understood in Venezuela.

Applying the new regulation to circumstances that were already established or in progress would result in unconstitutional retroactivity.



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Therefore, the Constitutional Chamber concluded that trying to use a constitutional amendment in order to immediately shorten the exercise of an elected office, such as the President of the Republic, would be a clear fraud on the Constitution, which provides an effective political mechanism for such purposes, that is the recall referendum referred to in Article 72 of the Constitution.

**Ruling of the Supreme Court of Justice (Constitutional Chamber) Nullifying the Partial Amendment of the Internal Rules and Debates of the National Assembly (Ruling 269/2016)**

On December 23, 2010 a Partial Amendment of the Internal Rules and Debates of the National Assembly was approved, and in this respect, on 9 March 2011, the deputies of said National Assembly, Juan Carlos Caldera, Eduardo Gómez Sigala, María Corina Machado, Alfonso Marquina, Miguel Pizarro and Edgar Zambrano filed a suit for nullification on constitutional grounds, along with an application for precautionary measures.

From the deputies' point of view, the defects in the Amendment entailed the violation of constitutional principles such as the principle of democracy, the principle of political pluralism, the principle of Rule of Law and the principle of progress.

They claimed that the amendments were destined to lessen the opportunities for deputies to participate in debates; expand the powers of the Presidency of the National Assembly to the detriment of the plenary or instances of collaboration between various political forces; complicate the exercise of some control mechanisms; and eliminate certain guarantees of regular or continuous operation of the National Assembly and its Standing Committees during regular sessions, among others.

The aforementioned deputies also noted that the opposition was virtually absent from the National Assembly when the amendment was approved, and that said amendment had been promoted by the ruling party's powerful majority in order to limit possible interventions by the already elected, but absent deputies, whose voice and vote were not considered at all in the discussion of the internal rules and debates that would in future govern their actions.





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It was also argued that this violated the principle of citizen participation, since the spaces and means for their political participation through their representatives, were being reduced.

Recently, on 21 April 2016, after an extended wait and numerous requests for the appeal to be admitted, the Constitutional Chamber of the Supreme Court of Justice declared its competence to hear the request for nullification. Furthermore, it decided to refer the case to its Court of Proceedings, so that the President of the National Assembly could be summoned and the General Prosecutor, the Ombudsman and the Attorney General notified.

With regard to the precautionary measures, the Constitutional Chamber denied the suspension of the articles concerning the nature and the seat of the National Legislature (Article 1); the powers of the President of the National Assembly (Article 27, paragraphs 3 and 6); management reports and supply of information (Article 48, first section); the nature of meetings (Article 56, last section); and the procedure for sessions (Article 64, paragraph 4).

On the other hand, while it considered the appeal for nullification, it agreed to suspend the articles concerning immunity (Article 25), ordinary sessions (Article 57); procedure for sessions (Article 64, paragraphs 5, 6 and 8); length of statements and right of reply (Article 73); and the study of bills in committees (Rule 105).

It is worth noting that the Constitutional Chamber was reconstituted on 12 February 2015, by virtue of the designation of the Board of the Supreme Court of Justice, and established once more on 23 December 2015 as a result of the incorporation of Judges appointed by the General Assembly on the same date.

### **Erosion of Democracy and the Independence of Branches of Government by State Actors.**

In Venezuela there exists an alteration of the democratic constitutional order, derived from the gradual, continuous and systematic erosion of





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democracy. This fact, which is reflected in these pages, can be seen in the cases that have been reported regarding:

1. The use of State power to prevent the free association and activities of opposition groups and the media.
2. The violation of checks and balances which are maintain the separation and independence of the branches of government.
3. The arbitrary appointment of members of the judiciary in order to validate the unconstitutional actions of their benefactors
4. The unjustified use of states of emergency
5. The arbitrary, unconstitutional or unlawful interference in the deliberations of the judiciary or electoral authority
6. The arbitrary, unconstitutional or unlawful termination of the mandate of democratically elected officials.
7. The ongoing harassment and arbitrary decisions that affect branches of government or members of the political system.

The following statements by political actors from the governing party as well as from the opposition clearly reveal a fractured political system in the final stages of democratic erosion:

***President of the Republic:***

*May 17, 2016*

“The National Assembly of Venezuela has lost political validity; its disappearance is a matter of time, that’s what I believe. It is disconnected from the national interests. Source: <http://www.panorama.com.ve/politicayeconomia/Maduro-Es-cuestion-de-tiempo-para-que-la-Asamblea-Nacional-desaparezca-20160517-0049.html>



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***April 12, 2016***

During the broadcast of his program “*En Contacto con Maduro*” (In contact with Maduro) on 12 April, the President accused opposition mayors and governors of not helping Venezuela recover and of being “autistic”. “No. They are autistic. They do not want to see, hear or talk. They have simply divorced themselves from the country. They only plot. And create one problem, and another problem, and unrest. Source:

[http://www.el-nacional.com/politica/Oposicion-declaraciones-Maduro-solidarizo-comunidad\\_0\\_829117105.html](http://www.el-nacional.com/politica/Oposicion-declaraciones-Maduro-solidarizo-comunidad_0_829117105.html)

***April 8, 2016***

In the context of the Amnesty Law promoted by the National Assembly, which was intended to free those who are considered political prisoners and end their court cases, he said: “We will gather, at least, 10 million signatures of national consciousness; here is the signature therefore approved. We won’t allow a law of criminal amnesia” Source:

[http://www.diariolasamericas.com/4848\\_venezuela/3736763\\_m Maduro-pide-al-supremo-que-declare-inconstitucional-la-ley-de-amnistia.html](http://www.diariolasamericas.com/4848_venezuela/3736763_m Maduro-pide-al-supremo-que-declare-inconstitucional-la-ley-de-amnistia.html)

“If someday somebody did something to me, let God protect me for a hundred years and more, and if you saw something is done to Maduro, lead a popular, revolutionary, Bolivarian and socialist-civil-military uprising.” Source:

<http://www.lavanguardia.com/politica/20160408/40965757250/maduro-pide-a-sus-seguidores-una-insurreccion-popular-si-le-hacen-algo.html>

***February 4, 2016***

The President of the Republic warned that he is prepared to impede “by hook or by crook”, the seizure of power by the opposition, at a time in which the majority parliamentary opposition is seeking a mechanism to shorten his mandate. “That’s what we are preparing for, not to allow it by one way or another, by hook or by crook” Source:

<http://www.infobae.com/2016/02/04/1787877-nicolas-maduro-advirtio-que-impedira-por-las-buenas-o-las-malas-que-la-oposicion-llegue-al-poder>



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*PSUV deputy by the State of Monagas Diosdado Cabello*

*May 4, 2016*

“We, the deputies of the Motherland (Chavismo) will file a complaint with the Public Prosecutor’s Office for treason against the motherland by all these people who go around speaking ill of this country”.

Source: <http://www.noticiasrcn.com/tags/diosdado-cabello>

*March 7, 2016*

“They won’t get rid of the ‘Bolivarian Revolution’ as they think they are going to (...). Start believing that (Maduro) will resign tomorrow, that’s absurd.”

“I say it today, March 7, tomorrow January 6 (2017) Ramos Allup won’t be president of the National Assembly, and on January 15 comrade Nicolás Maduro will be delivering his Report and Accounts (Annual management report), and the murderers of the misnamed ‘exit’, including Leopoldo López, will still be prisoners”.

Source:

<http://www.eluniversal.com.mx/articulo/mundo/2016/03/7/des-carta-cabello-renuncia-de-maduro-pese-presion-opositora>

*February 29, 2016*

On February 29 he predicted the failure of opposition proposals to terminate President’s Nicolas Maduro term. “We have no doubt that in face of what is coming, none of the initiatives will succeed”.

Source: <http://www.lanacion.com.py/2016/02/29/numero-dos-del-chavismo-preve-fracaso-de-iniciativas-para-desplazar-a-maduro/>



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*January 20, 2016*

He reported an “abhorrent” plan from the opposition prisoner Leopoldo López together with his wife Lilian Tintori, to acquire “conveniences” in the Ramo Verde military prison where he is serving a sentence of nearly 14 years. “It’s a campaign, a disgusting, abhorrent intrigue as they are, deviant, that’s why I’m here defending Coronel Vilorio and the armed forces.” It’s the Coronel we have to defend, because these people are murderers”. Source: <http://www.elnuevoherald.com/noticias/mundo/america-latina/venezuela-es/article55762560.html>

*January 5, 2016*

“They have sworn to defend the Constitution and today have violated the internal rules and debates. The country’s legislators cannot allow and at the same time participate in the violation of these regulations. This is not a mere whim”. Source: <http://www.diariolasamericas.com/4848-venezuela/3546098-di-oscado-cabello-retira-asamblea-nacional-trata-capricho.html>

*President of the National Electoral Council, Ms. Tibisay Lucena*

*May 4, 2016*

When asked about the commission selected by President Nicolas Maduro and led by revolutionary leader, Jorge Rodriguez, with the objective of examining the signatures submitted by the opposition, she assured that this process is a right of the Head of State. “It is the President’s right to designate a representative and commission to represent him before the CNE (National Electoral Council) in a process whose only purpose is to remove him from office”.

Source: <http://elsiglo.com.ve/2016/05/04/esta-declaraciones-tibisay-lucena/>

*April 8, 2016*

Tibisay Lucena, president of the National Electoral Council (CNE), confirmed, on the TV program “*Vladimir a la 1*” that the Democratic Unity Roundtable (MUD) has not complied with the established requirements and regulations of 2007 to activate the recall referendum. “These rules are from 2007 and are well known (...) they must have



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the voters' request that the party asks for and the Assembly approves, become the mediator of that organization (...) they have been told expressly what they should do and they have still submitted them in the same way”.

Source: <http://elsiglo.com.ve/2016/04/08/video-tibisay-lucena-causo-polemica-con-estas-declaraciones/>

*Armed Forces*

*Commander in Chief and Defense Minister of the Republic,  
Vladimir Padrino López.*

*April 24, 2016*

“It is a lie that the Bolivarian Armed Forces (FANB) are propping up the government (...). The institutions of democracy are guaranteed through the Armed Forces. The FANB observes what the threats are, then acts.”

“There’s a coup d’état in the works and the President of the Republic has already reported it, just seeing the media corporations act is enough”.

Source: <http://www.lapatilla.com/site/2016/04/24/padrino-lopez-hay-un-golpe-de-estado-en-proceso-video/>

*April 6, 2016*

He qualified the Amnesty Law as "an ethical, moral, legal monstrosity, which, in his opinion, "legalizes the violation of Human Rights". This is a bill that widely promotes impunity; it would be a huge mistake if (...) we were here kind of applauding an ethical, legal and moral monstrosity which is seeking to become law”.

Source: [http://www.el-nacional.com/politica/Padrino-Lopez-Ley-Amnistia-adesio\\_0\\_824917642.html](http://www.el-nacional.com/politica/Padrino-Lopez-Ley-Amnistia-adesio_0_824917642.html)





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*March 9, 2016*

"I'm very sorry to be seeing these crude accusations against the leaders of the armed forces. It is an affront to the institutions. We know their intentions but we won't fall into the provocations of these political actors of old school politics".

Source: <http://www.noticierodigital.com/2016/03/padrino-lopez-aqui-no-hay-cupula-militar-aqui-hay-un-alto-mando-militar-junto-al-pueblo/>

**Retired Major General Cliver Alcalá Cordones**

*May 16, 2016*

"The economic war is caused by an exchange difference that promotes corruption. The economic war causes lots of operations and discretion in public administration". Regarding the recall referendum, he pointed out that "Maybe its effects are not favorable for the Chavismo movement, but it could unify it". Source:

<http://www.eluniversal.com/noticias/politica/alcala-cordones-guerra-economica-genera-desde-seno-del-gobierno-309944>

**Major General and former minister of the Interior and Justice, Miguel Rodríguez Torres**

*March 29, 2016*

"Basically, I believe that things are not being done. We need to understand that Chávez is not here and there is a need for change. One could see this coming since 2013; it was in that moment that Nicolás Maduro should have taken economic action".

Source: [http://www.el-nacional.com/politica/Rodriguez-Torres-Debemos-entender-Chavez\\_0\\_820118111.html](http://www.el-nacional.com/politica/Rodriguez-Torres-Debemos-entender-Chavez_0_820118111.html)

**Frigate Lieutenant of the Venezuelan Army, Carlos Denis Rodríguez**

*November 8, 2015*

"Every day they try to convince us to dismiss the 6D outcomes if they are unfavorable to the government". Source:

<http://www.miamidiario.com/politica/patricia-poleo/teniente-de-fragata-/fuerza-armada-venezolana-/carlos-denis-rodriguez/348961>





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**President of the National Assembly, Henry Ramos Allup**

*January 7, 2016*

“I don’t want to see any painting here that is not the classic portrait of the Liberator (Simón Bolívar). I don’t want to see Chávez or Maduro. Take this entire nuisance to Miraflores (Executive branch’s seat) or throw it away” Source:

[http://www.bbc.com/mundo/noticias/2016/01/160106\\_venezuela\\_asamblea\\_retratos\\_hugo\\_chavez\\_polemica](http://www.bbc.com/mundo/noticias/2016/01/160106_venezuela_asamblea_retratos_hugo_chavez_polemica)

*December 9, 2015*

“Maduro cannot keep leaders and students prisoners after the Amnesty Law is passed, neither can Cabello give away public goods”.

Source:

[http://www.diariolasamericas.com/4848\\_venezuela/3504047\\_ramos-allup-responde-maduro-ley-amnistia.html](http://www.diariolasamericas.com/4848_venezuela/3504047_ramos-allup-responde-maduro-ley-amnistia.html)

“If Maduro were conscious- as he has already said ‘I won’t resign’, and if he resigns we would have elections in 30 days and in any democratic country elections are the means of settling conflicts, and here, after 17 years of government, each time there’s an election we end up with more trouble!”

Source:

<http://www.noticias24.com/venezuela/noticia/305429/ramos-allup-acusa-a-capriles-de-estar-en-su-propia-campana/>

“We must straighten out the Assembly’s payroll. Those who are being paid without coming to work will have to get out! (...) Those who work in ANTV will remain, but the idle people cannot continue to be paid”.

Source: <http://globovision.com/article/diputado-electo-henry-ramos-allup-estara-este-miercoles-en-vladimir-a-la-1>



“Hold on because when the time comes we'll get into Conatel to investigate what is happening with the information”.

“People voted for us because they were very angry and blamed the government. Hopefully the government will deliver results” Source: [http://www.sienteamerica.com/posts/15150-henry-ramos-allup-a-favor-o-en-contra-opine?fb\\_comment\\_id=775007029292773\\_775028709290605](http://www.sienteamerica.com/posts/15150-henry-ramos-allup-a-favor-o-en-contra-opine?fb_comment_id=775007029292773_775028709290605)

Objectively, considering all the issues inside and outside the government, the economic and political situation, and what just happened (in the polls), I do not see this government completing its term, which would be the presidential elections of 2019; I just don't see it, because, what is holding up this government?” Source: <http://www.efe.com/efe/america/portada/diputado-opositor-venezolano-electo-sugiere-la-renuncia-de-maduro/20000064-2785805>

### **Henrique Capriles**

*May 20, 2016*

In an interview with the Spanish journal *El País*, the opposition leader made the following statements:

“That along the way there could be a social explosion and, as we have said before, a coup. We don't want a coup. Venezuela's solution is not a military uprising. That would be even worse than what we have now.”

“I am worried about this resulting in a military uprising. In the event of a social explosion, who will contain it? - the armed forces. And what will the armed forces do? Kill people or take control and tell Maduro to step aside because they are not going to kill the people? The conditions are there, which is why I insist on the recall, it is the solution to the political crisis the country is living.”

“The armed forces are coming to the crunch time: decide whether they are with the Constitution or with Maduro, who is moving farther away from it every day. We have to do everything we can to make Maduro follow the Constitution.”



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“He has been told that the opposition, which is in the majority, wants to dialogue. There has to be dialogue if we want the country to be governable. Because we are sure that in Venezuela a change is about to come, we want there to be a climate of governability.”

Source:

[http://internacional.elpais.com/internacional/2016/05/20/america/1463711529\\_331407.html](http://internacional.elpais.com/internacional/2016/05/20/america/1463711529_331407.html)

*December 23, 2015*

On December 23, 2015, the journal *TalCual* published an interview conducted by the journalist Victor Amaya with ex presidential candidate Henrique Capriles Radonski.

“*La Salida* (the “exit”) must be included in the list of big national failures, just like the strike. It gave narrative to the government for a year and still does. Had we gone through that path we wouldn’t have had the 6D (December 6<sup>th</sup>) victory.”

“The party with the largest number of deputies has always been the first one to pick the posts. It is true, though, that there will only be one group. I insist that those regulations should be in force for five years and complied with by all the parties.”

Source: <http://www.lapatilla.com/site/2015/12/26/esta-es-la-entrevista-a-henrique-capriles-que-provoco-la-polemica-en-las-filas-de-la-mud/>

“The priority is to stabilize the economy”

Source:

<http://www.ultimasnoticias.com.ve/noticias/actualidad/politica/capriles-encendio-el-avispero-en-la-mud.aspx>

## VIII. DEMOCRACY AND JUDICIAL BRANCH

As we have pointed out, there is currently no clear separation and independence of the branches of government in Venezuela, with the co-opting of the Judicial branch by the Executive branch being one of the clearest cases of this.



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Since 2009, the Inter-American Commission of Human Rights has reiterated in its annual reports, information regarding irregularities in the appointment of judges and prosecutors, which taint the guarantees of judicial independence in Venezuela. **The Commission has noted that regulations in terms of appointment, removal and suspension of magistrates, expressed in the Organic Law of the Supreme Court of Justice, lack adequate provisions to prevent other branches of government from affecting the independence of the Court.**

Specifically, the Commission has warned that the fact that magistrates may be elected by a simple majority of the National Assembly **eliminates the requirement for broad consensus in the selection of magistrates.** For instance, in 2004, a simple majority of the Chavista dominated National Assembly appointed 49 new magistrates, 17 incumbents and 32 alternates. Among those replaced was the magistrate who had decided not to prosecute the members of the armed forces that had participated in the events of April 2002 and the members of the Electoral Chamber that had voted in favour of the presidential recall referendum.

Recently, in December 2015, the official majority of the National Assembly approved the appointment of 13 incumbent and 21 deputy magistrates of the Supreme Court of Justice, without the support of the opposition, which argued that 13 of the 32 magistrates had been pressured into leaving in order to ensure the government's control of the Supreme Court, before the opposition became the majority in the National Assembly.

Currently, over 60% of the first-instance judges may be removed from their posts without due process if a commission of the Supreme Court decides to do.

### **Opinions of the Inter-American Court of Human Rights Regarding the Independence of Venezuela's Judicial Branch.**

On May 26<sup>th</sup> 2014, the Inter-American Court of Human Rights rendered a judgement in the case of *Brewer Carías vs Venezuela* in which two judges of the Court provided dissenting views regarding Venezuela's Judicial Branch.



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The case is related to the “alleged lack of judicial guarantees and safeguards in the case against attorney Allan R. Brewer Carías for the crime of conspiracy to violently change the constitution, in the context of the events of the 11<sup>th</sup> and 13<sup>th</sup> of April, 2002, especially regarding his supposed connection to the drafting of the so-called “Carmona Decree”, which ordered the dissolution of the branches of government and the establishment of a “government of democratic transition”.

In a previous stage of the case, the Inter-American Commission on Human Rights had considered that “the fact that three temporary judges were in charge of the preliminary stage of the criminal proceeding against Allan Brewer Carías was itself a violation of the judicial guarantees in this specific case”. Furthermore, the Commission considered that “the guarantees of independence and impartiality of the judges were affected as was the right to judicial protection, given that one of the temporary judges was suspended and replaced two days after he filed a complaint for the failure to comply with an order he issued which would have allowed the defendant access to his entire case file. The regulations and practices concerning the status of provisional judges, and the appointment and dismissal of judges in Venezuela were also affected”.

The Inter-American Court of Human Rights considered, on the other hand, that the State of Venezuela was right to invoke a preliminary exception based on the fact that domestic legal recourse had not been exhausted given that the criminal proceedings against Mr. Brewer were still in an intermediate phase (the preliminary hearing had not been conducted yet because Mr. Brewer was not in Venezuela and he claimed he had no intention of going back because of the lack of impartiality of Venezuela’s Judicial Branch). Hence, because the case was still in this “early stage”, the Court of Human Rights could not “analyse the negative impact a legal decision could have in early stages, if the decision could be subsequently rectified or corrected through remedies or actions stipulated in the legal system”.

Notwithstanding this decision, the judges Manuel Ventura Robles and Eduardo Ferrer Mac-Gregor Poisot emitted dissenting opinions, the most relevant aspects of which had to do with the issue of the independence of the Judicial Branch.





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The dissenting opinions suggest that the Court should have dismissed the preliminary exception (based on the fact that domestic legal recourse had not been exhausted) and focused instead on solving the merits of the case all the while taking into consideration the arguments of the IACHR concerning the structural problems affecting the independence and impartiality of the Judicial Branch. The dissenting opinions also indicate that the sentence fails to consider the “provisional situation” of Venezuela’s judges and prosecutors as a relevant fact, despite it being a core aspect and one especially debated between the parties.

It also indicates that that specific issue had been previously addressed by the Court in other cases against Venezuela (Apitz Barbera case and others, Reverón Trujillo and Chocrón Chocrón vs. Venezuela), and that it is closely linked to issue of legal remedies in domestic jurisdiction. The Court had even ruled on series of events in connection with the main aspects of the judicial reorganization process in the country. The dissenting opinions indicate that, in this case, it would have been appropriate to do as the Court has done on other occasions and consider the analysis of the preliminary exception (based on the fact that domestic legal recourse had not been exhausted) jointly with the analysis of the substantive arguments. In other words, the analysis of the issue cannot be separated from the analysis of the merits of the case, and, therefore, the Court should have analysed the preliminary exception filed by the State along with the substantive arguments presented by the parties, in accordance with the historic case-law of the Court.

For the purposes of this report, it is important to emphasise that in the context of the examination of this case, the IACHR noted that the list of appointments and transfers made by the Judicial Commission of the Supreme Court Justice during the year 2012, shows that all the judges held temporary (mainly), interim or provisional positions. In addition, and in relation to the provisional position of prosecutors, the Commission noted that the Republic’s Attorney General acknowledged in October 2008, that: “prosecutors whose appointments are provisional are at a disadvantage because their provisional status exposes them to the influence of pressure groups,





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which would undermine the constitutionality and legality of the judicial system.

Provisional status in the exercise of public office is contrary to Article 146 of the Constitution of the Bolivarian Republic of Venezuela, which provides that positions in government are career service and won by public competition”.

In its report on the Allan R. Brewer Carías vs Venezuela case, the Commission spoke about the impact that making various changes in the law-enforcement officials working on a criminal investigation can have, as a result of their provisional status. In this regard, the Commission indicated that multiple appointments of different provisional prosecutors in one same case may have a negative impact on the pursuit of the investigation when, for instance, the need for a consistent collection and ongoing assessment of the body of evidence is taken into account.

The IACHR considered that a situation such as the one pointed out has negative consequences for the rights of victims in the context of criminal proceedings related to human rights’ violations.<sup>27</sup>

The IACHR also noted that the authorities which had adopted decisions that could be deemed as positive for the defendant had been removed from the Judicial Commission. In addition, it noted the effect brought by the temporary nature of the appointments of the judges and prosecutors in this case, given that all the authorities from the Public

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<sup>27</sup> The dissident vote brings up some figures that illustrate the temporariness of the judges and prosecutors, including the following: when assessing the situation of temporariness of the judges in Venezuela, in the case *Reverón Trujillo*, the Court showed that at the time of the events of said case (between 2002 and 2004), “the percentage of provisional judges in the country reached about 80%”. Furthermore, “in the years 2005 and 2006 a program was implemented in which the provisional judges themselves obtained tenure. The number of provisional judges was then reduced to approximately 44% by the end of 2008”. In August 2013, according to a witness introduced by the State, the situation of the Judicial Branch was the following: 1095 provisional judges, 50 special alternate judges, 183 temporal judges, 657 incumbent judges, and 12 vacancy spots for judges”. By 2013 only 33% of the judges had tenure and 67% were appointed or removed by the Judicial Commission due to their lack of tenure.

Likewise, regarding the provisional status of the prosecutors assigned to the Public Office, up until 2005, 307 provisional, interim and substitute prosecutors had been appointed, so that approximately 90% of the prosecutors had a provisional status – with no stability in their position and with the possibility of being appointed or removed by the Attorney General of the Republic. In 2008, 638 prosecutors were appointed with no competitive process whatsoever, with no tenure, and therefore also free to be appointed and removed. In 2011, 230 prosecutors were simply chosen and appointed without any explanation. In 2011 and 2013 activities were undertaken under the Public Contest of Merit process for the entry to the Prosecutor’s career, which included the appointment of the first four non-provisional prosecutors. A witness presented by the State specified that, in respect of the Training Programme for the Entry to the Prosecutors’ Career, in 2011-2012, 88 students graduated, and during 2012-2013 the graduation of 102 more was expected.



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Prosecutor's Office and from the judiciary which were involved in the case held temporary positions.

At least four provisional prosecutors investigated the facts related to the events of the 11th, 12th and 13th of April 2002, including those related to the drafting of the *Carmona Decree*.

These judges also had provisional and temporal status and many of them were removed from their positions by resolutions issued during Mr. Brewer's criminal proceedings.

The provisional status became clear in at least two situations, namely, "i) after a court ruled against the prohibition to leave the country because they considered it groundless, two of its members were fired" and "ii) the judge responsible for due process requested the case file from the Public Prosecutor's Office, and after that Office declined to respond, he complained to this supervisor only to be removed from his position with no disciplinary process nor any reason whatsoever given by the Judicial Commission". According to the Judicial Commission, this would have sent a message that "has managed to achieve the effect of discouraging any unbiased and independent action by the judicial authorities", who will continue to review the process holding a provisional-status.

The dissenting opinions of the judges of the Inter-American Court of Human Resources clearly prove that the examination of the question concerning the exhaustion of the domestic recourse, specifically regarding the exception under article 46.2.a, is closely related to the **issue of the judges and prosecutors' provisional status**. This is at the same time, related to article 8.1 of the American Convention – the right to a competent, independent and impartial judge or court – considering that the allegations are plausible and that, should they be proven true, they might constitute a breach to the San José Pact.

In their view, the Court's ruling wrongfully uses as one of its core arguments the contrived theory of the "early stage" of the process, in order to avoid going into the analysis of the alleged violations of human rights protected under the Pact of San José. In their opinion this "constitutes a clear step back in the historic case-law of this Court, due to the fact that the precedent that is being created may lead to



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negative consequences for the alleged victims in the exercise of the right to Access to Justice; this right is a fundamental one in the Inter-American System as a whole, being that it constitutes in itself a guarantee to all the other rights of the American Convention at the expense of the useful effect of said instrument.”

Other emblematic cases in which the Court confirms the situation of the Judicial Branch of Venezuela are: *Apitz Barbera and others vs Venezuela* (2008)<sup>28</sup>, *María Cristina Reverón Trujillo vs Venezuela* (2009)<sup>29</sup> and *Mercedes Chocrón Chocrón vs Venezuela* (2011)<sup>30</sup>.

The judicial system has also been used to punish the mass media and critics of the Government, among them opposition leaders such as Leopoldo López. One characteristic of the Rule of Law is having fair and lawful trials. In the case against Leopoldo López, the officials in charge of his prosecution were clearly trying to incriminate him.

In the midst of the protests of 2014, a criminal complaint was opened against the leader of the opposition party *Voluntad Popular*, Leopoldo López, after high-level spokespersons of the Government publicly held him accountable for the events that had taken place during the demonstrations of Wednesday, February 12<sup>th</sup> of the same year. López is still deprived of freedom and was sentenced, in 2015, to 14 years in prison for the crimes of “public incitement” and “unlawful association”.

The Special Rapporteur for Freedom of Expression has warned that Leopoldo López’s sentence was given because he exercised his freedom of expression regarding matters of public interest by using social networks.<sup>31</sup> In this connection, the IACHR has repeated its grave concern over the alleged use of punitive power by the State to criminalize defenders of human rights, the holding of peaceful social protests, and to persecute political dissidents and critics.<sup>32</sup>

<sup>28</sup> See ruling at [http://www.corteidh.or.cr/docs/casos/articulos/se-riec\\_182\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/se-riec_182_esp.pdf).

<sup>29</sup> See ruling at [http://www.corteidh.or.cr/docs/casos/articulos/se-riec\\_197\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/se-riec_197_esp.pdf).

<sup>30</sup> See ruling at [http://corteidh.or.cr/docs/casos/articulos/se-riec\\_227\\_esp.pdf](http://corteidh.or.cr/docs/casos/articulos/se-riec_227_esp.pdf).

<sup>31</sup> Public Office. Public Office’s accusation against Leopoldo López. Cause N° C-16-17936-2014. Pp. 185-186. Available for consults at [http://cdn.eluniversal.com/2014/06/02/ACUSACION\\_LEOPOLDO.pdf](http://cdn.eluniversal.com/2014/06/02/ACUSACION_LEOPOLDO.pdf).

<sup>32</sup> Inter-American Commission of Human Rights (IACHR). February 21, 2014. *Comunicado de Prensa No. 17/14. CIDH manifiesta profunda preocupación por situación del derecho a la protesta pacífica, de asociación y libertad de expresión en Venezuela.*



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According to the text of the ruling, the events started during a large demonstration held in response to a call made by Leopoldo López and other political leaders of the party *Voluntad Popular*.

These individuals, expressing themselves through different social networks, asked people to take to the streets, which resulted in a series of violent events, disregard for legitimate authority, and unlawful behaviour, also unleashing an uncontrolled attack upon the Public Prosecutor's Office as well as upon seven cars, six of which were patrol cars, as well as acts of vandalism committed with blunt and incendiary instruments.

The Public Prosecutor's Office claimed that all these events took place given Leopoldo López's persuasion and determination to take the power in Venezuela. Leopoldo López was convicted of arson and property damage, for being responsible for public incitement and conspiracy to commit crimes.

In this particular case, the prosecution was not able to prove incitement or any association with the crime of arson or property damage and, therefore, the only conclusion that could have been drawn was that the defendant was innocent. The judge in charge accused him, amongst other things, of having used "the art of words" despite the fact that there was no phrase presented that Leopoldo López had directly used to call for violence.

To sum up, the ruling was based on very subjective judicial interpretations of the political speeches of the opposition and of association with political movements. The right to protest and the right of association for political purposes are expressly recognized in the American Declaration of Rights and Duties of Man (articles XXI and XXII), just as any person has the right of freedom of expression and dissemination of thoughts (article III). Though it is true that the foregoing stands only when carried out in a peaceful way, in this case, because they failed to prove the instigation or criminal association, the link between the political leader's words and the violent events ceased to exist.



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### **The Appointment of Magistrates to the SCJ**

On October 5, 2015, the Nominations Committee of the Supreme Court of Justice (SCJ) published an official call for the selection of five Magistrates. At the beginning of the selection process there were no vacancies to fill. On October 14, 2015 the SCJ approved the early retirement of 13 magistrates. Their 12 year mandate, as established by the Organic Law of the Supreme Court of Justice, was not taken into consideration. The President of the outgoing National Assembly, Mr. Diosdado Cabello, announced on December 8, 2015 that the Legislative Branch would appoint 13 magistrates for the SCJ before the date of the inauguration of the Legislative Branch, recently elected by the sovereign people.

The second session of the outgoing National Assembly last year ended on December 15, 2015. According to article 99 of the Internal Rules and Debates of the Assembly, between that date and January 4, 2016, the National Assembly could have only held extraordinary sessions to address exceptional, unexpected or urgent matters. The Constitutional Chamber of the SCJ enabled the National Assembly on December 22, 2015 to take action in extraordinary sessions.<sup>33</sup>

The National Assembly appointed and swore-in 13 principal magistrates and 21 alternate magistrates in extraordinary sessions. Because they couldn't achieve the supermajority required by the Constitution during the first three ballots, the Government's Party in the Assembly, during a fourth ballot, decided to approve the appointments by a simple majority. Both the Organic Law and the Constitution state that 2/3rds of the votes of the Assembly are required for the removal of magistrates, but there is a legal void regarding the threshold for their appointment.<sup>34</sup>

Venezuela's Academy of Political and Social Sciences warned that the election of the magistrates did not constitute a public, objective, transparent, independent and impartial selection and election of the candidates, because it failed to comply with the 40 day minimum

<sup>33</sup> Supreme Court of Justice. Sentence 1758. <http://historico.tsj.gob.ve/decisiones/scon/diciembre/184220-1758-221215-2015-2015-1415.HTML>

<sup>34</sup> *Ibíd.* Art. 265. The magistrates of the Supreme Court of Justice may be removed by the National Assembly by a qualified majority of two thirds of their members, after having granted a hearing to the interest party in cases of serious offences found by the Citizen Branch, in the provisions established by law.





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period established in the Organic Law of the Supreme Court of Justice, and because it closed the avenues for objecting to the candidates established in the regulations.<sup>35</sup>

As a result, in its 2015 report, the IACHR included Venezuela under Chapter 4, in light of “a serious breach of the core requirements and institutions of representative democracy mentioned in the Inter-American Democratic Charter, which are essential means of achieving human rights, including: i. there is discriminatory access to or abusive exercise of power that undermines or denies the rule of law, such as systematic infringement of the independence of the judiciary or lack of subordination of State institutions to the legally constituted civilian authority....”<sup>36</sup>

At least five of those thirteen sworn magistrates are apparently party-political activists and have held positions in the National Government. These are Cesar Sanguinetti (congressman elected by the PSUV), Lourdes Suárez Anderson (Public Defender), Juan Luis Ibarra (magistrate of the Criminal Chamber and responsible for sentencing for Raúl Emilio Baduel y Alexander Tirado to 8 years of prison after the protests of February 2014), and Calixto Ortega (in charge of Businesses in United States and deputy Minister of the Ministry of Foreign Affairs for Europe).<sup>37</sup>

In its edition of Wednesday December 23, 2015<sup>38</sup> (Number 40.816) the Official Gazette published the list of principal and alternate magistrates of the SCJ appointed during the extraordinary session that took place on December 23, 2015 (the same day the Gazette was published). The magistrates appointed (13 principal and 21 alternates) were the following:

<sup>35</sup> Ibid. Art. 264. The magistrates of the Supreme Court of Justice will be elected for one sole period of 12 years. The law will determine the election process. In every case, applicants shall apply before the Judicial Nominating Committee on their own initiative or through organizations linked to judicial activity. Having heard the opinion of the community, the Committee shall make a preselection of the candidates to present them to the Citizen Branch, which will carry out a second preselection to be presented to the National Assembly, which will make the definite selection. Citizens may make well-founded objections to any of the candidates before the Judicial Nominating Committee or the National Assembly.

<sup>36</sup> IACHR. Annual Report 2015. Chapter IV.B Venezuela. <http://www.oas.org/es/cidh/docs/anual/2015/doc-es/InformeAnual2015-Cap4-Venezuela-ES.pdf>

<sup>37</sup> Ibid. Art. 256. With the purpose of ensuring the impartiality and independence in the exercising of their functions, the magistrates, judges and prosecutors of the Public Office and the Public Defenders, since the date of their appointment and until the date of their dismissal, shall not carry out any political-party, labour and trade union, or any similar activities – aside from voting -, they shall not carry out any private profitable activity inconsistent with their position, neither by themselves nor by means of an intermediary, nor shall they exercise any other public function whatsoever, unless they are educational activities.

<sup>38</sup> [http://www.mpp.gob.ve/c/document\\_library/get\\_file?p\\_l\\_id=29946&folderId=10513904&name=DLFE-10701.pdf](http://www.mpp.gob.ve/c/document_library/get_file?p_l_id=29946&folderId=10513904&name=DLFE-10701.pdf)





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#### Constitutional Chamber

##### *Principal Magistrates*

1. Calixto Antonio Ortega Ríos ID.: 3.264.031
2. Luis Fernando Damiani Bustillos ID.: 2.940.803
3. Lourdes Benicla Suárez Anderson ID.: 6.726.793

##### *Alternates*

1. Federico Sebastián Fuenmayor Gallo ID.: 13.966.607
2. Celeste Josefina Liendo, ID.: 6.492.846
3. Juan Carlos Valdez González, ID.: 9.413.228
4. René Alberto Degraes Almarza, ID. 7.844.117

#### Political Administrative Chamber

##### *Principal Magistrates*

1. Marco Antonio Medina Salas, ID.: 9.349.642
2. Eulalia Coromoto Guerrero Rivera, ID.: 6.374.305

##### *Alternates*

1. José Leonardo Requena Cabello, ID.: 6.917.750
2. Emilio Antonio Ramos González, ID.: 6.973.119
3. Cesar Alejandro Sanguinetti Mayabiro, ID.: 8.947.858
4. Ismetda Luisa Rincón De Oliveros, C I: 7.707.701
5. Suyling Violeta Olivares García, ID.: 9.793.551

#### Electoral Chamber

##### *Principal Magistrates*

1. Fanny Beatriz Márquez Cordero, ID.: 6.272.864
2. Ctristlan Tyrone Zerpa, ID.: 11.952.639

##### *Alternates*

1. Leixa Elvira Collns Rodríguez, ID.: 9.282.811
2. Grisell De Los Ángeles López Quintero, ID.: 10.335.012
3. Carmen Eneida Alves Navas, ID.: 6.960.029
4. Mary Tiblsay Ramos Duns, ID.: 8.188.696

#### Civil Cassation Chamber

##### *Principal Magistrates*

1. Vilma María Fernández González, ID.: 10.059.945
2. Francisco Ramón Velázquez Estévez, ID.: 11.757.290
3. Iván Darío Bastardo Flores, ID.: 9.893.129

##### *Alternates*

1. José Ángel Armas, ID.: 8.168.127



2. Aurides Mercedes Mora, ID.: 5.946.458
3. Ana Endrina Gómez (su nombre no aparece en la lista de la Gaceta Oficial Número 40.816, pág. 425.593)

Criminal Cassation Chamber

*Principal Magistrates*

1. Juan Luis Ibarra Verenzuela, ID.: 6.865.372
2. Yanlna Beatriz Karabin De Díaz, ID.: 7.449.705

*Alternates*

1. Juan Carlos Cuenca Vivas, C I: 10.110.577
2. Jacqueline Del Sosa Mariño, ID.: 5.612.667
3. Maggien Katíusca Sosa Chacón, ID.: 11.711.769

Social Cassation Chamber

*Principal Magistrate*

1. Jesús Manuel Jiménez Alfonso, ID.: 10.285.798

*Alternates*

1. Sonla Coromoto Arias Palacio, ID.: 5.155.306
2. Betty's Del Valle Luna Aguilera, ID.: 8.394.050

**It is fundamental that the President of the National Assembly of the Bolivarian Republic of Venezuela, Henry Ramos Allup, be authorized to testify in this evidentiary framework. This constitutes an indispensable element to allow for a full understanding the situation regarding the lack of balance between the branches of government in the country. This testimony should be given on the same day the session is convened.**

**IX. PERIODIC ELECTIONS, FREE, FAIR AND BASED ON UNIVERSAL SUFFRAGE AND CONFIDENTIALITY AS THE EXPRESSION OF THE PEOPLES' SOVEREIGNTY: RECALL REFERENDUM.**

In this section, the main provisions in terms of Venezuela's electoral law are outlined. These provisions ensure the people's sovereignty and the elected government's legitimacy on the basis of that popular will. To these effects, the characteristics of the December 2015 legislative



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elections and the variables of electoral integrity associated with it will be analysed. The legal framework and the process for using a recall referendum as described in the Constitution will also be analysed. Thus far, it is understood that the National Electoral Council has not provided the necessary guarantees for the referendum.

## **BACKGROUND – LEGISLATIVE ELECTIONS 2015**

### **Electoral Integrity**

The 6D (6<sup>th</sup> of December) elections occurred peacefully and with high citizen participation (74.25%). Secrecy of the vote was respected and vote-counting was done correctly, thus accurately reflecting the popular will.

Nonetheless, the electoral process faced challenges in terms of electoral integrity:

- During the election of December 2015, four out of five members of the National Electoral Council were in some way related to the PSUV. This fact, along with a supposed biased performance during the elections of 2010, called into question the electoral body for its lack of independence and impartiality.
- The electoral registry was criticized because of a lack of information on the location of the 1568 places designated for voters to register and update the electoral roll; the last audit of the roll was done in 2005.
- The lack of transparency in the definition of electoral circuits created concerns over changes (in relation to the elections of 2010) in the allotment of offices or seats in the Assembly in five electoral districts, due to movements or because additional seats were assigned in response to population projections. These changes were done less than five months before the elections, whereas before the elections of 2010, these changes had been made nine months before, and in two stages.



- The main criticism of the process was the uneven electoral competition, evidenced by the use of the State's resources, inequality in access to media, and the lack of regulation concerning political-electoral finance. The National Electoral Council (CNE by its Spanish initials) stated that it could not regulate the use of public resources for the campaign, prior to the official start of the campaign.
- In a letter to the President of the CNE, the General Secretariat of the OAS outlined especially the existence of: i) arbitrary disqualifications; ii) an absolutely unacceptable situation regarding freedom of expression and of the press; iii) complaints about the imprisonment of opposition political leaders; iv) the implementation of a system used to confuse voters as regards names and colors of the ballot papers; v) the Judicial Branch's interference of opposition political parties; vi) and, the declaration of a state of emergency as a mean to reduce civil and political rights during the electoral process. The letter in reference is attached.
- In terms of the right of political participation, the CNE was condemned for its decision to disqualify the registration of nine political parties by denying their provisional designation and the alternatives presented by each political organization. Several opposition leaders were also disqualified.
- The state of emergency that was declared in municipalities that border Colombia meant that the rights of inviolability of one's dwelling, of secrecy of private communications, of freedom of transit, freedom of assembly and association, economic freedom and right to protest, were restricted.

### **Recall Referendum**

**When it comes to it, political solutions are given by the people thought the ballot box.** To call a recall referendum according to the constitution is not a call to a coup d'état. However, to deny or delay or hinder the people the opportunity to express themselves is like supporting a coup. The same is true for insane formulas like the one proposed by Congressman Diosdado Cabello: the recall referendum



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takes place in March 2017, once Maduro loses, the vice-President becomes the President and Maduro takes over vice-presidency, and then, finally, the newly appointed President quits, so Maduro becomes President once again.

This proposal constitutes an absurd mechanism of violence against the popular will.

The political responsibility of having a President that has not been elected by the people always bears a high cost; it always carries with it weakness and doubts. The same happens when a clear political responsibility established in the Constitution regarding consulting the people during the term of office is eluded. This means holding on to the power by illegitimate means.

To respect and represent the decisions of the sovereign is the primary duty of the politicians. This applies to both the winners and the losers.

**The right to choose is inherent to democracy and liberty. It is the maximum right protected by the social pact, the Constitution and the laws.**

In a democracy, providing every guarantee of transparency in the handling of information and public administration is fundamental, and so is providing the corresponding mechanisms regarding accountability to the represented, or, in other words, to those who by means of universal suffrage in a democratic system decided who would run their country.

The right to choose and be chosen is the essence of every democracy. To guarantee its proper functioning, it is essential to respect the balance of power between the branches of government and be accountable for and to the sovereign. -To respect and ensure respect for the popular will is, then, the first duty of a people's representative, whether they are from the Judicial or Legislative Branch.

**Consequently, one should then assume that if the sovereign, the people, decides to question the administration of government by the President, who was chosen by the same people, then the President, guarantor of the popular will, given his responsibility**



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**and ethical conviction, must assume that there are enough elements to consider that the public order and rule of law are in danger if the requested popular referendum is not held or is delayed or hindered.**

In the context of this system of which he is a part of, he is also responsible for the decisions made by the people he helped choose and which he also represents. Just like the people are willing to stand by their decision, or change it, depending on their judgment of the person responsible for the executive administration of government, the President too must be willing to answer for his own acts and his responsibility in this context.

As I said at the beginning of this letter, **in cases of political polarization, the decision must go back to the people.**

Facing a process of this nature, in which the operation of the democratic institutionality of the country is also being questioned, it is imperative that every formal and substantive step indicated by the legislation be strictly complied with. In these circumstances it is essential to ensure an objective assessment of the substantive requisites presented, in concordance with the principles of justice and law, and free from any political considerations whatsoever.

It is an exceptional situation that demands that the President and the CNE act in the name of the people, who are trying to express themselves. **Having the power to both annul and confirm that popular will, it is paramount that the people speak out directly once again.**

No one is above the Constitution, a fact which we assume the President and the CNE will take into account when it comes to complying with it, because they carry the weight and the responsibility of maintaining the public order and enforcing the popular will.





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## Legal Framework

In Venezuela, every office and magistrate popularly elected can be recalled.<sup>39</sup> Article 72 of the National Constitution indicates that a recall referendum may be realized “once half of the term of office to which an official has been elected has elapsed”. In Nicolás Maduro’s case, half of his term was reached on January 10, 2016. A referendum could therefore be called by a number of voters comprising no less than 20% of the voters in the electoral registry.

This would not be the first time that Venezuela would hold a referendum of this type. On August 15, 2004, a recall referendum was held in order to decide whether President Hugo Chávez would continue acting in his capacity of Head of State or not. The result of that referendum was to maintain Chávez as President with a 59.1% majority of votes cast against his removal.

According to the Constitution, should a recall referendum result in a win for the opposition during the first four years of the constitutional period – which ends on April 19, 2017 – then “a new election by universal suffrage and direct ballot shall be held within 30 consecutive days (art. 233)., the Executive Vice-President of the Republic shall take charge of the presidency of the Republic pending the election and inauguration of the new President”. It is important to point out that if the plebiscite is delayed until after April 19, 2017 – the date upon which the first four years of the mandate have been reached – then the Executive Vice-President shall assume the presidency for the remainder of the term of office.

Venezuela does not today have a law that regulates referendums. They are regulated by resolutions adopted by the National Electoral Council (CNE). Because of the lack of a regulating law, and as a way of making the requirements, times, and methods for holding a recall referendum more transparent, on April 20, 2016, the National Assembly passed an Organic Bill on Referendums during a second reading.

The next step is for the Constitutional Court to approve of the Bill’s

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<sup>39</sup> Article 72, National Constitution.



“organic” nature, and then its enactment by the President of the Republic. The law would come into force once it is published in the Official Gazette, and could be applied to any recall referendum requested at the moment of its enactment. Members of the Government’s party and the CNE have stated that the Bill is unconstitutional, claiming that such an initiative corresponds solely to the Electoral Branch. These comments seem to indicate that the bill would not pass a revision by the Supreme Court of Justice.

At the time this report was drafted, the request for a recall referendum filed by the Democratic Unity Roundtable (*Mesa de Unidad Democrática*) would be regulated by resolution number 070906-2770, published in electoral Gazette number 405 on December 18, 2007. The referendum itself would be regulated by the Organic Law of Electoral Processes and by resolution 070327-341 of the CNE, published in Gazette number 369 of April 13, 2007.

### **Procedures**

The procedure for holding the recall referendum may be divided in three stages:

#### **1. Constitution of the Promoting Group.**

The initiative for a referendum is triggered by the voters through political organizations or groups. In either case, at least 1% of the voters registered in the Electoral Rolls must support the initiative. The procedure to comply involves gathering evidence of the will of 1% of the voters, recorded on canvassing sheets provided by the Political Participation and Funding Commission of the CNE. Following this, the number of voters is verified, followed by the validation of the corresponding signatures.

#### **2. Requesting a Presidential Recall Referendum**

In accordance with Article 72 of the Constitution, the request for a referendum must be supported by at least 20% of the voters registered in the Electoral Rolls. Once the phase relative to the constitution of the promoting group has been completed, the group shall request from the CNE the opportunity to gather the minimum 20% of signatures



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necessary for calling the referendum. Should the request be deemed justified, the National Electoral Board must propose to the CNE the locations where the signatures can be collected. Once this is accomplished, then the timeframe during which the signatures can be collected will be established. The will of the voter shall be recorded by collecting the voter's fingerprint through a biometric identification platform, and his signature.

The National Electoral Board shall verify and quantify the requests, and if they comply with the 20% requirement, then the CNE shall call for a Presidential recall referendum.

### **3. Holding the Presidential Recall Referendum**

The voting process for the referendum is similar to other elections. To revoke the presidential term, the following requirements shall be met:

- At least 25% of the entire electorate participates.
- The number of valid votes in favor of the referendum must be equal or higher to the number of votes with which the president was chosen.
- The number of votes in favor of the referendum must be higher than the number of votes against it.

### **Timetable for the Presidential Recall Referendum**

#### **Deadlines**

**There are numerous claims by supporters of the recall referendum of an apparent deliberate attempt to delay the process of calling for a referendum, primarily due to lack of clarity regarding the deadlines established in Resolution No. 070906-2770.** In this regard, on May 24, Luis Emilio Rondón, the Rector of the National Electoral Council, declared<sup>40</sup> that consensus does not exist within NEC regarding the deadlines, and that different interpretations have been offered regarding the provisions of the resolution that regulates the proceedings of and requests for recall referenda of elected officials.

<sup>40</sup> Interview with Luis Emilio Rondón in Vladimir at 1:  
<https://www.youtube.com/watch?v=vTXmH3AnoIU&index=4&list=PLqFRIr55wNZBMSLcOrIV-W2L1aHShBR6z>



This situation violates the guiding principles of administrative law such as speed, clarity and temporality, as well as the general principle of simplified administrative procedures. Detailed below are some of the concerns regarding the schedule of the recall process.

**a) Delivery of the Form approved by the NEC's Political Participation Commission to collect the needed statements of intention to promote the recall referendum:** The Democratic Unity Roundtable (MUD by its acronym in Spanish), a political organization, first asked the NEC for the form on March 9, 2016. In the absence of a response by the Electoral Authority, two additional requests were made on March 15 and April 7. The NEC presented the Form on April 26, 48 days after the MUD's initial request. It should be pointed out that Resolution No. 070906-2770 does not refer to the Electoral Authority's rate of response to this request. The delay of the NEC's response violates the right to petition, which specifies that any request must be addressed in a timely manner.<sup>41</sup>

**b) Collection of statements of intention (1%) and verification phase:** Resolution No. 070906-2770 establishes a *maximum* of 30 days for verification requests to be presented, which includes the collection of 1% of the statements of intention. This process officially began on April 27 and concluded 6 days later (on May 2) with the request presented to the NEC, including approximately 1,850,000 statements of intention. In this regard, and given the remarkable speed with which this process was carried out, NEC Official, Tania D'Amelio, declared that "30 days *must elapse* to collect the 1% of the statements of intention in order to proceed to the verification phase". This interpretation of the regulated period in the Resolution has been strongly questioned by the opposition.

**c) Validation of the Request:** the Resolution that regulates this process determines that once the "verification request is received [...], within a period of (05) continuous days, the Regional Electoral Offices or the Commission of Political Participation and Financing, whichever the case may be, shall determine if the number of *statements of intention* received fulfills the minimum requirement" (Art. 10.5). This

<sup>41</sup> The Right to Petition in Venezuela is established in Articles 28, 31, 51, 58 of the Constitution of the Bolivarian Republic of Venezuela (1999) and in Articles 7 and 8 of the Public Administration Act, considered to be the right to petition and timely response, and through which is determined the public entities which are obliged to solve individual requests.



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step only confirms fulfillment of the necessary percentage, regardless of the subsequent validation process of the signatures. To date (23 days after the request was filed) it has not been verified if the number of statements of intention received has fulfilled the requirement.

d) **Digitization, transcription of signatures and form audits:** NEC Official, Socorro Hernández, described a timetable to various media that included the “transfer of boxes on May 13; the auditing of the code to apply the digitization process beginning May 16; digitization from May 16 through 20; transcription of the forms on the following day; and auditing of the forms between May 18 and June 2.” Ignorance and confusion exist regarding these processes because they are not detailed in Resolution No. 070906-2770. The criteria used by the Principal in setting the timeline are not public knowledge.

e) **Consultation of signatures received:** the NEC announced that, in the spirit of maintaining transparency, an online database will be created to provide citizens with a way to see if their identity was used when filling out the forms. This procedure, which is not specified in the regulatory resolution of the referendum, has generated complaints regarding the confidentiality of personal data and could be used to politically discriminate against those opposed to the government. It is important to note that a similar situation occurred in 2004 when some officials were unfairly dismissed after having signed a recall referendum of the presidential term of then-President Chávez. This case (12.923) was presented by the Inter-American Commission on Human Rights to the Inter-American Court of Human Rights.<sup>42</sup>

f) **Timetable:** Article 31 of Resolution No. 070906-2770 stipulates that the NEC shall establish a timeframe for the process of forming groups of citizens to promote and request the recall referenda. As of the date this report was prepared, no such schedule had been made available.

g) **Obstacles to the recall referendum and its activation process.** The possibility of a recall referendum has been contemplated in the Constitution of the Bolivarian Republic of Venezuela since 1999, in Article 72. It was one of the great innovations of the constitutional

<sup>42</sup> Inter-American Commission on Human Rights, <http://www.oas.org/es/cidh/prensa/comunicados/2016/035.asp>





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architecture presented by President Chávez during his proposed Constitutional Assembly in 1999, and emblematic of what was then the new form of democracy that should reside not in representation but rather in a “participatory and protagonist democracy”.

In this spirit, the Venezuelan Constitution, in its Article 72, allows for a recall referendum in the following terms:

**Article 72:** All magistrates and other offices filled by popular vote are subject to revocation.

**Once half of the term of office to which an official has been elected has elapsed, a number of voters constituting at least 20% of the voters registered in the pertinent electoral district may extend a petition for the calling of a referendum to revoke such official’s mandate.**

When a number of voters equal to or greater than the number of those who elected the official vote in favor of revocation, provided that a number of voters equal to or greater than 25% of the total number of registered voters have voted in the revocation election, the official’s mandate shall be deemed revoked, and immediate action shall be taken to fill the permanent vacancy in accordance with the provided for in this Constitution and by law.

The revocation of the mandate for the collegiate bodies shall be performed in accordance with the law.

During the term to which the official was elected, only one petition to recall may be filed.

The Constitution is clear in establishing only two requirements for activating the recall referendum:

- i) that half of the term of office of the official subject to revocation has elapsed;
- and ii) that no fewer than 20% of the voters can make the request. Now, with regards to the case presented by the Venezuelan opposition to revoke the mandate of President





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Nicolas Maduro, it is clear that the first requirement has been fulfilled since the first half of his mandate concluded on January 10, 2016.

With regards to the second requirement, here is where we begin to see signs of delay in complying with the periods established in the resolution in question.

It should be noted that a referendum law has not been enacted for 17 years. Accordingly, this process is governed by a resolution issued in 2007 by the Electoral Authority, identified as No. 070906-2770.

This resolution establishes a new requirement—collection on the canvassing sheets issued by the Electoral Authority of the signatures of 1% of the electorate, indicating their support for initiating the process to recall a public official. These signatures are to be used to form a citizens' promoting group, a requirement of the resolution in question.

On March 9, 2016, the Venezuelan opposition requested the simplest aspect of the procedure: to receive the canvassing sheet on which to collect the signatures of 1% of the electorate indicating their support for the recall. It then took the Electoral Authority some 48 days to provide that canvassing sheets. By May 2, 2016, the opposition indicated that signatures of more than 1% of the electorate had been collected on canvassing sheets.

Under Article 10.5 of Resolution No. 070906-2770, once these recall support signatures had been submitted to it, the Electoral Authority, "within a period of no more than five (5) calendar days," had to verify whether "the number of electors indicating support for the recall meets the minimum number required."

In fact, Article 10.5 provides that:

Once the request to form a citizens' promoting group has been received, **within a period no longer than five (5) calendar days**, the Regional Electoral Offices or the Political Participation and Finance Board, as applicable, **shall verify whether the number of signatures submitted meets the required minimum**. They shall then inform those promoting the recall that they are to convene the citizens wishing to be members of the citizens' group **so that within a period no longer than five (5) working days after the promoters are so**



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**informed**, the citizens appear before the Regional Electoral Office where they registered for inclusion on the Electoral Register **to validate their signatures**. In the event the request to form the group does not obtain the minimum required number of signatures within the established period, the recall request shall be rejected within a period not to exceed three (3) working days (our emphasis).

In accordance with the foregoing, once the canvassing sheets have been submitted containing the signatures of 1% of the electorate in support of the formation of citizens' groups, the Electoral Authority only has to establish or verify, within the five following calendar days, whether the number of signatures submitted to it met the minimum 1 percent, i.e., slightly less than 200,000 signatures.

That verified, i.e., having counted whether the signatures in support of at least 1% of the electorate had been obtained, the only next step would be the control mechanism, i.e., bringing this information within five (5) working days to the citizens or electors for their personal validation of their signatures on the canvassing sheets. However, no progress has been possible, since requirements have arisen that were not stipulated in the resolution adopted in 2007.

In that regard, we may note:

**1. Collection of the 1% once the canvassing sheets have been provided by the Electoral Authority:**

The opposition had to collect the signatures of 1% of the electorate indicating their support for the recall "within the thirty days" after the date the canvassing sheets were provided, in accordance with Article 10.4 of the Resolution.

However, the Electoral Authority has interpreted this to mean that this period must be allowed to fully lapse. As we have seen, this is a period, not a term. Once the recall support signatures have been entered on the canvassing sheets, it is absurd to wait until the end of this period. Let us recall that the opposition obtained the signatures of 1% of the electorate in support of the recall in less than a week.



## **2. Review of the 1% recall support signatures obtained by the opposition to trigger the recall referendum**

The CNE is not complying with the period of five calendar days stipulated in Article 10.5 of the Resolution, since it did not count the signatures within that period. The Electoral Authority failed in its duty to reply regarding the fulfillment of the 1% minimum requirement within that period.

## **3. New requirements created by the Electoral Authority not stipulated in the Resolution**

The Electoral Authority is seeking in-depth verification of the signatures, when the rule only requires it to verify whether the signatures of at least 1% of the electorate have been collected. A simple count, since as mentioned above, each citizen must subsequently personally appear to validate his or her signature.

The Electoral Authority has established a new procedure not included in Resolution No. 070906-2770. In this regard, it indicated that all canvassing sheets would be digitized, a procedure which took until May 20.

Anyone reading Resolution No. 070906-2770 will be able to see that digitization is not a procedure it stipulates.

We should note that this procedure is unnecessary, since the control of the reliability of the data on the canvassing sheets is the sole responsibility of the elector via the validation procedure governed by Article 10.6 and 7 of the Resolution.

## **4. Creation of the Signature Verification Board**

The Electoral Authority has allowed the formation of a "Signature Verification Board" not envisaged in the regulations on signature verification.

It should be noted that the Resolution in question only provides for verification of the intent of the elector, not his or her signature. To that end, the Resolution regulates the validation procedure in which the elector, in a process controlled by the CNE, confirms his or her intent



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as provided in Article 10.5, among many other references in the Resolution.

#### **5. Transcription of the canvassing sheets**

Following digitization, the canvassing sheets will be transcribed until June 1. Again, the CNE has created a procedure not stipulated in the Resolution and that is also unnecessary, as indicated above.

#### **6. Audit procedure**

The CNE has created an "audit" of the recall support signatures, which is to begin on June 2. The Resolution does not provide for such an audit.

Once the canvassing sheets have been recorded that contain the signatures of 1% of the electorate in support of the formation of citizen's groups, the only validation possible is something akin to an election: a process controlled by the CNE, wherein each elector expresses his or her support for the recall. Each elector becomes the sole comptroller of his or her own indication of intent.

That control, through validation, is the only procedure regulated in the Resolution. This is being ignored and the four procedures (digitization, verification, transcription, and audit) which, in addition to not being envisaged in the Resolution, are procedures that unnecessarily delay the exercise of the right enshrined in Article 72 of the Constitution.

#### **Adherence to Guiding Principles of Electoral Matters**

The principles and standards of electoral justice are not only tools to settle electoral disputes and guarantee the political rights of citizens, but also to develop complex electoral schemes as an element of peacekeeping by providing legal solutions to political problems. In that regard, adherence to the principles of legality, legitimizing the process to be carried out according to a clearly established legal framework; certainty, derived from the proper conduct of the judges comprising the electoral authority; impartiality, ensuring equitable consideration of the parties; and transparency, ensuring adequate access to



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information regarding the activities of the State, is fundamental in Venezuela.

Without prejudice to all that has been noted, the decision for a recall referendum is entirely political in nature and has the intent of achieving a political solution. Therefore, attempts to ensnare this solution through new procedures and delays, as has been done, constitute a flagrant attack to democracy.

#### **X. CIVIL AND POLITICAL RIGHTS. FREEDOM OF EXPRESSION AND PRESS**

In addition to the humanitarian crisis described above, which jeopardizes the respect for and fulfillment of economic, social and cultural human rights, variables of dysfunctionality threaten the enjoyment and exercise of civil and political rights, including freedom of expression and press, according to analyses carried out by the Inter-American Human Rights System and the Rapporteur for freedom of expression.

Regarding freedom of expression and press, flagrant violations have been identified, ranging from criminal and administrative proceedings against journalists and the press to indirect censorship, harassment and verbal stigmatization, repression and criminalization of social protest, as well as violations to the right to access public information.

All of this is evidenced by the ignorance of, and in compliance with, subsequent decisions and recommendations of the Inter-American Human Rights System and is aggravated by the Venezuelan government's denunciation of the American Convention and its separation from the system in 2014.

#### **Situation of Civil and Political Rights<sup>43</sup>**

There is no democratic State that effectively protects the enjoyment of human rights by all Venezuelans. According to the 2015 Annual

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<sup>43</sup> For a better understanding of the civil and political rights situation in Venezuela, refer to the Inter-American Commission on Human Rights (IACHR) 2015 Annual Report, particularly Chapter IV.B.



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Report of the Inter-American Commission on Human Rights, and its Chapter IV.B on Venezuela, structural issues affect the human rights situation in the country.

One of the structural failures mentioned in the report is the provisional or temporary nature of judges and prosecutors, which leads to a fragile judiciary authority and its lack of independence and impartiality. The Commission considers that "... this structural failure negatively impacts the exercise of the right of access to justice and due process, which is why it constitutes one of the weakest points in Venezuelan democracy."<sup>44</sup>

In addition, the Commission identified the Judicial Authority's lack of independence and autonomy from political power as one of the greatest weaknesses. The Commission therefore expressed concern regarding the State's use of punitive power "to harass and stigmatize human rights defenders, and journalists, and to prosecute political dissidents and disable several of its leaders."

According to the Commission, the high levels of impunity that are reported in the country, coupled with citizen insecurity and violence in prisons "are elements that affect the exercise of the rights of humans to life, personal integrity and access to justice, among others."

*The Commission has indicated that political rights, understood to be those that recognize and protect the right and duty of all citizens to participate in the political life of their country, are rights that serve to strengthen democracy and political pluralism.<sup>45</sup> Along the same lines, the TSJ HDI has expressed that the effective exercise of political rights constitutes an end in itself and, at the same time, a fundamental means that democratic societies possess to guarantee the other human rights under the Convention.<sup>46</sup>*

*Regarding the persistent persecution of political dissidents during the hearing on the general human rights situation in March 2015, civil society organizations indicated that this entails, in turn, new forms of*

<sup>44</sup> <https://www.oas.org/es/cidh/docs/annual2015/indice.asp>

<sup>45</sup> IACHR. *Democracy and Human Rights Report in Venezuela*. December 30, 2009, Chapter II, paragraph 18.

<sup>46</sup> TSJ IDH. *Castañeda Gutman Vs. México*. Judgment of August 6, 2008. Series C No. 184, paragraph 143.





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violation of rights.<sup>47</sup> They also denounced the lack of institutional spaces for the State to act as a true defender of the rights and interests of its citizens.<sup>48</sup>

*In this regard, in June the Centre for Justice and Peace (CEPAZ) presented its systematic patterns of persecution of political dissidence before the Human Rights Committee of the UN, which has documented 34 examples of political persecution in Venezuela against representatives of the opposition before the Legislative Branch, authorities of the National Executive Branch, Municipal Legislative Powers, other political leaders of the opposition, students and other leaders.<sup>49</sup> Among the patterns used for persecution, CEPAZ<sup>50</sup> has identified the opening of legal proceedings, the persecution through means of communication, the dismissal of public officials to political dissidents, irregular raids on private property, removal of parliamentary immunity, political disqualification, usurping public functions and acquiescence of violent acts against political leaders.<sup>51</sup>*

Torture continues to be a regular means for obtaining confessions from political actors in the same way that persons were tortured during

<sup>47</sup> Information presented by civil society during the *Hearing on the General Situation of Human Rights in Venezuela*, 154 regular period of sessions of the IACHR, March 17, 2015.

<sup>48</sup> Information presented by civil society during the *Hearing on the General Situation of Human Rights in Venezuela*, 154 regular period of sessions of the IACHR, March 17.

<sup>49</sup> CEPAZ has documented the cases of Richard Mardo, María Aranguren, Julio Borges, María Corina Machado, Juan Carlos Caldera, Henrique Capriles, Daniel Ceballos, David Smolansky, Gerardo Blyde, Gustavo Marcano, Vincenzo Scarano, Darío Ramírez, Guisepppe Di Fabio, Carlos García, Leopoldo López, Raúl Baduel, Carlos Vecchio, Óscar López, Hernando y Sandra Garzón, Alexander Tirado, Rosmit Mantilla, Gaby Arellano, Enrique y Javier Sierra, Renzo Prieto, Rodolfo González, Gerardo Resplandor, Sariam Rivas, Julio César Rivas, Vilca Fernández, Ricardo Hausmann y Antonio Rivero. Political persecution in Venezuela. Sistematization of patterns of persecution for Venezuelan political dissidents. Report to the United Nations Human Rights Committee on the occasion of the 4th Periodic Report of the State of Venezuela during the 114 Period of Sessions of June 2015 regarding the international pact of Civil and Political Rights, Geneva, June 2015.

<sup>50</sup> Political persecution in Venezuela. Sistematization of patterns of persecution for Venezuelan political dissidents. Report to the United Nations Human Rights Committee on the occasion of the 4th Periodic Report of the State of Venezuela during the 114 Period of Sessions of June 2015 regarding the international pact of Civil and Political Rights, Geneva, June 2015 registers the following examples: Daniel Ceballos and Leopoldo López. Political persecution in Venezuela, pages 115 and 116; CEPAZ registers these two examples, among others: Henrique Capriles was accused by the President of the Republic of "being an accomplice to a network of corruption and gay prostitution" and María Corina Machado was accused on radio and TV by the President of the Republic: "I don't exaggerate when I say she is an assassin. She was planning violence and death in this country", pages 16 y 17. CEPAZ registers as examples María Corina Machado, Daniel Ceballos, Vincenzo Scarano, Judge María Lourdes Afuni, and Judge Edgar Aliza Macia, pages 18 y 19.

<sup>51</sup> CEPAZ registers as examples Richard Mardo, Deputy of AN, who had been given parliamentary immunity with simple majority instead of the majority of the the required two-thirds. Sistematization of patterns of persecution for Venezuelan political dissidents. Report to the United Nations Human Rights Committee on the occasion of the 4th Periodic Report of the State of Venezuela during the 114 Period of Sessions of June 2015 regarding the international pact of Civil and Political Rights, Geneva, June 2015. Page 21. CEPAZ registers as examples David Uzcátegui (2013-2018), Carlos Arocha (2008-2013) y Leopoldo López (2008-2014), page 22; with regard to usurpation of public functions, CEPAZ registers Oswaldo Álvarez Paz, ex-Governor of the State of Zulia and Ricardo Hausmann, ex Minister of Planning, page 23. CEPAZ registers as an attack against Julio Borges, political activist, during the AN April 30, 2014 session, page 24.



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Leopoldo Lopez's proceeding. Torture has been used to try to boost allegations against Deputy Lester Toledo.

This is in addition to the permanent violence exercised by the Government's party militants against authorities of the National Assembly or members of opposition parties in public spaces.

In the Permanent Council session activating the mechanism identified in Article 20, video testimony will be presented on the cases of Marcos Coello, Efrain Ortega, Jose Santamaria, Rony Navarro, Angel Contreras and Jarvin Gabriel Sandoval Prado.

### **Freedom of Expression and Press**

On several occasions the IACHR's Special Rapporteur for Freedom of Expression has expressed grave concern at the serious and repeated violations of the right to freedom of expression in Venezuela. In recent years, this office has drawn attention to the deterioration of the right to freedom of expression in Venezuela as a result of the continued imposition of severe restrictions, by the authorities of the Venezuelan State, on the exercise of this right, in order to exclude critical or dissenting voices from public debate.<sup>52</sup>

**The Rapporteur has criticized, in particular, the restrictions imposed on journalists and press who publish editorials and news with independent guidelines or with a critical view of government, including criminal and administrative proceedings initiated by senior government officials of journalists that disseminate information of public interest; layoffs of journalists and media workers; signage, surveillance and ongoing defamation, assaults and even exile.**

### **Criminal and Administrative Proceedings Against Journalists and the Media**

The initiation of criminal proceedings against journalists who cover news about state corruption has been accompanied by legal

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<sup>52</sup> IACHR Special Report on Freedom of Expression. Press Release R 107-14. September 22, 2014. Special Rapporteur expresses concern regarding the situation on freedom of expression in Venezuela. September 2, 2014.



restrictions, such as bans on leaving the country, which disproportionately limits their possibility to continue exercising the right to freedom of expression. Critical national journalists with lengthy careers, such as Teodoro Petkoff, director of *Tal Cual*, and Miguel Enrique Otero of *The National Journal*, have been particularly affected by the initiation of criminal proceedings against them.<sup>53</sup>

The Rapporteur has also noted the initiation of discretionary administrative proceedings against broadcast media based on the Law of Social Responsibility in Radio, Television and Electronic Media (Ley Resorte) that have led to unlawful restrictions on exercising freedom of expression. This legislation contains ambiguous and disproportionate terms for controlling content,<sup>54</sup> which has enabled the application of clauses on “hate speech”, “intolerance” or “calls to violence” to initiate administrative proceedings against journalists and press who disseminate information contrary to government interests.<sup>55</sup>

These measures have created a climate of self-censorship among journalists and media directors that impedes the free dissemination of views that are critical of, or adverse to, the government, or information on matters of public interest that could offend public officials. In fact, the Special Rapporteur has reiterated that such measures seek to send a message to other Venezuelan media and journalists about the consequences of not following the publishing and editorial guidelines established by the government. All this occurs in a context where there is a lack of independence and autonomy between the Judicial Power and the Executive Power.

### **Indirect Censorship Mechanisms**

The situation of journalists and the media is exacerbated by the implementation of mechanisms to restrict the right of expression by indirect means, such as the abuse of official controls of radio frequencies and paper for newspapers, which is expressly prohibited by the American Convention on Human Rights.

<sup>53</sup> IACHR. Press Release 93/15. IACHR and Special Rapporteur express deep concern regarding stigmatization and judicial hostility against three media outlets in Venezuela. August 24, 2015.

<sup>54</sup> IACHR. Press Release 13/14. IACHR expresses deep concern for violent acts in Venezuela and urges the State to guarantee democratic security. February 14, 2014.

<sup>55</sup> IACHR. 2013 Annual Report. Report of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the state of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013. Paragraphs 876 and 877.



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Indeed, in Venezuela, hundreds of private radiobroadcasters operate under judicial insecurity with licenses that have been expired for over a year due to the competent authority's lack of response to renewal requests. The IACHR and the Special Rapporteur have asserted that the renewal of radio frequencies has not been carried out in a clear, transparent and objective manner that is compatible with a democratic society.<sup>56</sup> This has allowed the government to exert undue pressure on media with the purpose of limiting the exercise of independent journalism and the free flow of information in the country. Similarly, the Inter-American Court determined that in Venezuela, the legitimate power conferred to the State to administer radio frequency is used in order to editorially align the media with the positions of the government, which implies an incompatible discrimination regarding the exercise of the right to freedom of expression.<sup>57</sup>

In the case of print media, the state company Corporación Maneiro controls the newsprint market. It has been reported that distribution discriminates in favor of state media or pro-government media. The objective fact is that this control has led to the temporary closure or reduction of print editions of major regional newspapers, which sensitively affect the dissemination of information on matters of public interest and the right to information inside the country.

In addition, businessmen who are presumably linked to the government are buying media outlets. Journalists and civil society organizations have complained that the acquisition of various media, such as the daily newspapers *Ultimas Noticias* and *El Universal*, has led to a shift from an editorial perspective to one that is complacent with that of the government,<sup>58</sup> and has caused layoffs or forced resignations of scores of journalists.<sup>59</sup>

## Harassment and Defamation

<sup>56</sup> IACHR. 2015 Annual Report. Report of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the state of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Paragraph 1131.

<sup>57</sup> Inter-American Court on Human Rights. *Granier and others Case (Radio Caracas Televisión) vs. Venezuela*. Official summary issued by the Inter-American Court of the judgment of June 22, 2015. (Preliminary Exceptions, Fund, Reparations)

<sup>58</sup> IACHR. 2015 Annual Report. Report of the Special Rapporteur of Freedom of Expression. Chapter II (Evaluation of the state of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Paragraphs 1130 y 1131.

<sup>59</sup> IACHR. 2014 Annual Report. Report of the Special Rapporteur of Freedom of Expression. Chapter II (Evaluation of the state of Freedom of Expression in the Hemisphere). OEA /Ser.L/V/II. Doc. 13. March 9, 2015. Paragraph 1138.



Public debate has also been affected by constant defamatory statements directed at media and critical journalists by public officials,<sup>60</sup> including current President Nicolas Maduro and former President of the National Assembly, Diosdado Cabello,<sup>61</sup> setting a restrictive environment that inhibits the unrestricted exercise of freedom of expression as a condition for a democracy founded on pluralism and public debate. Public media have been used for government propaganda to highlight, harass and scorn journalists, human rights defenders and political opponents, in many cases divulging sensitive surveillance and intelligence information.

The IACHR has noted with concern the acts of violence or police repression that have been carried out against various “opposition” groups and civil society organizations after their denouncement by high-level Venezuelan authorities.

### **Repression and criminalization of social protest**

Undue restrictions to social protest, the excessive use of force against demonstrators, and the criminalization of opponents and dissidents are yet other examples of actions undertaken by the current Venezuelan government. Similarly, it was reported that there was a news blackout in the country during the course of these demonstrations and during the subsequent news coverage.

The Venezuelan Criminal Forum (VCF) reported that between February 4, 2014 and May 31, 2015, 3,758 demonstrators were arrested, of which 372 were children and adolescents. The VCF also noted that of those detained, 296 were deprived of liberty by court order and were or still are imprisoned. The others were detained for 1-4 days, later being released by court order.<sup>62</sup>

FPV also reported that as of May 2015, there were 2,048 people whose liberty was restricted or were under precautionary measures; that 767

<sup>60</sup> IACHR. Press Release 13/14. IACHR expresses deep concern over violent acts in Venezuela and urges the State to guarantee democratic security. February 14, 2014.

<sup>61</sup> IACHR. 2014 Annual Report. Report of the Special Rapporteur of Freedom of Expression. Chapter II (Evaluation of the state of Freedom of Expression in the Hemisphere). OEA /Ser.L/V/II. Doc. 13. March 9, 2015. Paragraph 978.

<sup>62</sup> *FPV. Detentions for political motives, torture and other cruel, inhumane and degrading treatment, assassinations. Summary as of May 2015.*





detainees were granted full freedom; and that at least 638 people were released without being brought before a court.<sup>63</sup> FCF further reported that as of May 31, 2015, 31 people were still imprisoned as a result of the demonstrations and 46 others due to political motives. Of the 77, 12 are students and 6 are women.<sup>64</sup>

The Centre for Human Rights of the Catholic University Andres Bello (CDH-UCAB) also reported a number of violations committed during detention and judicial proceedings against protesters, such as: restricted communication from detainees who are injured in detention centers and in military hospitals, secrecy regarding their health and hindered access to family members; pressures put on victims whose rights to physical integrity were violated, and who were forced to sign declarations and statements that denied their having been subjected to ill-treatment; obstacles to private interviews between detainees and lawyers; the use of the Public Defender as a mechanism during court hearings to prevent victims from exposing the circumstances in which their injuries occurred; court appearance of persons visibly injured or in poor health, without the judges reflecting their condition on record; the lack of forensic medical reports on file; intent to convert victims into perpetrators by alleging that their injuries occurred in response to their having allegedly injured officials; and the filing of subjective medical reports that were carried out by health professionals affiliated with the detention center.<sup>65</sup>

In addition to these alarming facts, the IACHR noted with particular concern the decision of the Constitutional Chamber of the Supreme Court of April 24, 2014 that prohibits demonstration without authorization --which is in itself incompatible with international law and best practices--, and further determines that those who demonstrate without authorization are committing a criminal offense.<sup>66</sup>

<sup>63</sup> *FPV. Detentions for political motives, torture and other cruel, inhuman and degrading treatment, assassinations. Summary as of May 2015.*

<sup>64</sup> *VCF. Detentions for political motives, torture and other cruel, inhuman and degrading treatment, assassinations. Summary as of May 2015.*

<sup>65</sup> Catholic University "Andres Bello". Human Rights Center. "Que no quede rastro. *El ocultamiento de evidencia médica y legal en el marco de manifestaciones y detenciones*". April 2015.

<sup>66</sup> IACHR. 2014 Annual Report. Report of the Special Rapporteur of Freedom of Expression. Chapter II (Evaluation of the state of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 13. March 9, 2015. Paragraph 1096.





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According to a report by the Centre for Human Rights at the Catholic University Andres Bello (CDH-UCAB), following the Supreme Court's decision "there has been a resurgence of the repression of peaceful protest and an increase in the severity of the measures requested by public prosecutors against demonstrators."<sup>67</sup> "More than 350 detentions in only two episodes" were noted, along with an "increase in the number of persons sent to court".

Another issue of extreme concern for the IACHR and the Special Rapporteur is the publication of the "Rules on the performance of the National Bolivarian Armed Forces of Venezuela in maintaining public order, social peace, and peaceful coexistence in public meetings and demonstrations" (Resolution 8610 of 2015 of the Ministry of People's Power for Defense, January 27, 2015).

**These rules explicitly authorize the use of firearms to control public gatherings and peaceful protests.** Paragraphs 3 and 9 of Article 15 establish the possible use, with extreme caution, of chemical agents and the use of firearms in controlling public gatherings and demonstrations.<sup>68</sup> It is worth noting that said Resolution contradicts the country's own Constitution, which establishes the right to peaceful protest and prohibits the use of firearms and toxic substances in controlling peaceful demonstrations.<sup>69</sup>

During 2016, a series of demonstrations took place in Venezuela due to citizen discontent and to protest of the shortage and/or lack of food, medicine, water and electricity. According to publicly available information, members of the armed forces were deployed in cities across the country and approximately 100 people were arrested for their participation in said protests.

Furthermore, the media reported that the Secretary of Security and Public Order of the Ministry of the Interior of State of Zulia warned that: "if we see that the protests are becoming political, we will use force against the demonstration".

<sup>67</sup> Catholic University "Andres Bello". Human Rights Center. "Licencia para protestar". June 2014.

<sup>68</sup> IACHR. 2015 Annual Report. Report of the Special Rapporteur of Freedom of Expression. Chapter II (Evaluation of the state of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Paragraph 1138.

<sup>69</sup> IACHR. 2015 Annual Report. Report of the Special Rapporteur of Freedom of Expression. Chapter II (Evaluation of the state of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Paragraph 1140.



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In its most recent annual report from 2015, the IACHR and the Special Rapporteur identified the lack of mechanisms for accessing public information regarding the State's management bodies, as well as figures to assess the effective enjoyment of human rights, as one of the greatest challenges to the exercise of democracy in Venezuela. The Commission and its Special Rapporteur noted that "Venezuela still has not adopted a law on access to public information and it has not published or provided information on matters of undeniable public interest, such as health or the progress of public accounts.

Venezuelan justice officials have rejected appeals to guarantee the right of access to information, based on motives contrary to the international principles that inform this right."<sup>70</sup>

A top concern is the recent ruling of the Court of Administrative Disputes of Venezuela that prohibits protests in the vicinity of the National Electoral Council. On May 18, 2016, the Second Court of Administrative Disputes of Venezuela accepted a motion for constitutional protection by NEC officials to prevent opposing political parties from marching to the NEC to demand that the Recall Referendum's deadlines be met.

In its decision, the Court ruled "to protect invoked rights and to promote an atmosphere of social and citizen peace, as well as to prevent a situation of psychological disturbance to the public at large, particularly the workers and NEC officials.

Specifically, the Court ordered:

FIRST: TO THE COMMANDER OF THE NATIONAL BOLIVARIAN GUARD and the DIRECTOR OF THE NATIONAL BOLIVARIAN POLICE, to adopt the security measures necessary to permanently protect the headquarters of the NEC and vicinities, throughout the nation, in order to impede unauthorized acts, marches, protests, unpermitted gatherings and violent demonstrations organized

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<sup>70</sup> IACHR. 2015 Annual Report. Report of the Special Rapporteur of Freedom of Expression. Chapter II (Evaluation of the state of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Paragraph 1128.



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by political and civilian organizations that can limit workers' access to, and disturb the normal functioning of, the NEC.

With regard to the granting of licenses, municipal authorities are urged to comply with legal requirements in order to avoid violent gatherings.

The National Executive Branch is urged to evaluate, in accordance with Articles 47 and 48 of the Security Law of the Nation, the security of the zones adjacent to the site of the Electoral Power.

### **Violations to the Right to Access Public Information**

The IACHR and the Special Rapporteur have expressed concern over permanent restrictions on the right to access public information under state control. In addition to the lack of appropriate administrative and judicial resources, judicial interpretations are being developed that restrict the exercise of said right and ignore the principle of maximum disclosure, even on issues of major public interest for a democracy.

According to the criteria developed by the Supreme Court of Justice, as of 2010, in order to access information, it is necessary "i) for the person requesting the information to provide the reasons or purposes for said request; and ii) for the amount of information requested to be proportionate to how the requested information will be used".<sup>71</sup>

In applying these restrictive criteria, Venezuelan courts ruled that various writs of protection brought to the Court by members of civil society were inadmissible due to the refusal to provide access to information of public interest, such as: i) information on alleged oil spills by Petroleos de Venezuela;<sup>72</sup> ii) information on care plans and prevention of violence against women to the Ministry of Popular Power for Women and Gender Equality,<sup>73</sup> iii) information on investing

<sup>71</sup> Espacio Público requested information regarding salary and other expenditures of the Comptroller General, as well as the remuneration of personnel in that institution. Supreme Court of Justice. Constitutional Chamber. July 15, 2010. [745-15710-2010-09-1003](#).

<sup>72</sup> Espacio Público. March 16, 2012. Juzgado Sexto de lo Contencioso Administrativo Región Capital Caracas. [Expediente 12-3217](#). Parte *in fine*; Espacio Público. Information presented to the IACHR. 146 Period of Sessions. November 1, 2012. Hearing on the Right of Freedom of Expression in Venezuela. Available in IACHR archives.

<sup>73</sup> Constitutional Chamber of the Supreme Court. May 23, 2012. Decision [No. 679. Expediente 12-0389](#); Espacio Público. Information Presented to the IACHR. 146 Period of Sessions. November 1, 2012. Hearing on the Right of Freedom of Expression in Venezuela. Available in IACHR archives.



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in government advertising by the Ministry of Popular Power for Communication and Information;<sup>74</sup> iv) information on the import, storage and distribution of medicines by the People's Ministry for Health;<sup>75</sup> v) crime rates;<sup>76</sup> vi) information on the blocking of and communicational restrictions imposed on Internet services during the protests that took place in this country in 2014<sup>77</sup>; vi) 2015 inflation rate.<sup>78</sup>

In addition, the Commission and the Special Rapporteur have been particularly concerned about the promulgation of decrees and regulations that impose undue restrictions on the access to information for reasons of national security. For example, in 2013, the Government of Venezuela officially announced, through Decree N°458, the creation of the Strategic Centre for Homeland Security and Protection (CESPPA),<sup>79</sup> a body that would be responsible for requesting, organizing, integrating and evaluating “from all of the State’s law enforcement and intelligence agencies and other public and private entities, information of interest to the Nation’s strategy, as it relates to internal and external enemy activity, and as needed by the Political-Military Leadership of the Bolivarian Revolution.”<sup>80</sup>

Civil organizations have rejected the creation of CESPPA because of the negative effects it could have on access to public information,<sup>81</sup>

<sup>74</sup> Constitutional Chamber of the Supreme Court. June 5, 2012. Decision No. 782. [Decisión No. 782. Expediente 12-0281](#); Espacio Público. Information Presented to the IACHR. 146 Period of Sessions. November 1, 2012. Hearing on the Right of Freedom of Expression in Venezuela. Available in IACHR archives.

<sup>75</sup> Constitutional Chamber of the Supreme Court. June 18, 2012. Decision No. 805. [Expediente 12-0355](#); Espacio Público. Information Presented to the IACHR. 146 Period of Sessions. November 1, 2012. Hearing on the Right of Freedom of Expression in Venezuela. Available in IACHR archives.

<sup>76</sup> Second Court of Administrative Matters (*Corte Segunda de lo Contencioso Administrativo*). October 2, 2012. [Case file number AP42-O-2012-000070](#); Public Prosecutor's Office of the Bolivarian Republic of Venezuela. Law on the Scientific, Penal and Criminalistic Agency (*Ley del Cuerpo de Investigaciones Científicas, Penales y Criminalísticas, CICPC*) (G.O. 38.598 del 05/01/07). According to Article 11.3, the CICPC is responsible for “drafting, analyzing and in coordination with the National Statistics Institute, present crime statistics, when these may be required, to the Ministry responsible for interior and justice matters with the purpose of adopting prevention policies and implement the necessary measures to guarantee the State’s purposes on matters of security”.

<sup>77</sup> Supreme Court. Political Administrative Chamber. December 2, 2014. Case File Number 2014-1142. Available at: <http://www.tsj.gov.ve/decisiones/spa/diciembre/172301-01636-31714-2014-2014-1142.HTML>.

<sup>78</sup> Information submitted by civil society organizations within the framework of the Hearing celebrated during the 156 Regular Period of Sessions of the IACHR, available for consultation in the Special Report on Freedom of Expression of the IACHR .

<sup>79</sup> Official Gazette of the Bolivarian Republic of Venezuela, N° 40.266. October 7, 2013. [Decreto N° 458 que crea el Centro Estratégico de Seguridad y Protección de la Patria \(Cesopa\)](#).

<sup>80</sup> Official Gazette of the Bolivarian Republic of Venezuela, No. 40.279. October 24, 2014. Decree No 458 that creates the Strategic Center for Homeland Security and Protection (CESPPA).

<sup>81</sup> Espacio Público. 25 de octubre de 2013. [Modificaron decreto que crea el Cesopa](#); Reporteros Sin Fronteras (RSF). October 11, 2013. [El decreto de creación de un nuevo organismo de inteligencia pone en riesgo el acceso a la información](#); Colegio Nacional de Periodistas (CNP).





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particularly Article 9 of the Decree,<sup>82</sup> which authorizes the director of CESPPA to determine “that any information, fact or circumstance it receives can be considered reserved, classified or have limited disclosure.”<sup>83</sup>

### **Failure to Comply with the Decisions and Recommendations of the IACHR**

**Finally, the Commission has repeatedly stated that the position taken by Venezuela to not accept or enforce certain decisions and recommendations of international human rights organizations, particularly of the inter-American human rights system, by arguing that they violate national sovereignty, does not correspond to the principles of applicable international law.**

The Commission noted with concern that in 2015, the Constitutional Chamber of the Supreme Court of Justice issued a new decision in which it declared the judgment of the Inter-American Court in the *Granier and others* case (Radio Caracas Television) against Venezuela “unenforceable”.<sup>84</sup> In this judgment, the Inter-American Court declared the State of Venezuela responsible for the violation of various rights following the closure of the television station Radio Caracas Television (“RCTV”) on May 27, 2007.

The State then decided not to renew the license assigned to RCTV and thereby hindered a media outlet’s participation in administrative proceedings because it expressed criticism of the government.

In particular, the Court decided that that situation created an indirect restriction on the right to freedom of expression of media executives and journalists, as well as a violation of the right to freedom of expression in relation to non-discrimination. The arguments put forward by the Chamber reaffirmed its position that the actions of international human rights bodies undermine national sovereignty, when in reality the State committed itself to the provisions of the

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October 14, 2013. [CNP Caracas denuncia y rechaza contundentemente la creación del Cesppa](#); Instituto Prensa y Sociedad (IPYS). October 7, 2013. [Venezuela: Ejecutivo constituye mecanismos de restricción a la información pública](#).

<sup>82</sup> Official Gazette of the Bolivarian Republic of Venezuela, No. 40.279. October 24, 2014. Decree No 458 that creates the Strategic Center for Homeland Security and Protection (CESPPA).

<sup>83</sup> Espacio Público. October 25, 2013. [Modificaron decreto que crea el Cesppa](#).

<sup>84</sup> TSJ. Constitutional Chamber. Sentence Number 1175 of September 10, 2015. [Case file number 15-0992](#).



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international treaties protecting human rights and that grant jurisdiction in these instances. According to the Commission, Venezuela registers a serious precedent in this area because the State has not substantially complied with the judgments issued by the Inter-American Court and its organs of justice have declared that certain decisions issued by said Court are unenforceable because they are contrary to the Constitution.

**The weakening of the protection of human rights of the people of Venezuela was also reflected in the denunciation of the American Convention by the State on September 10, 2012, which entered into force on September 10, 2013.**

**XI. SUMMARY OF THE STATEMENT BY THE MINISTER OF POPULAR POWER FOR FOREIGN AFFAIRS OF THE BOLIVARIAN REPUBLIC OF VENEZUELA, DELCY RODRIGUEZ GOMEZ**

It is considered vitally important that special attention be paid to the statements made by Minister Delcy Rodriguez during her recent visit to the Permanent Council. Although her statements were widely disseminated, it is important to include a summary of her speech in this document. And while the Permanent Mission of the Bolivarian Republic of Venezuela will expand on the arguments made, we offer here a summary of the statement made:

- Large corporations do not give room for the truth about Venezuela.
- In the Organization of American States, there are two clashing models: that of imperialist expansion versus that of the sovereign equality of States.
- Reaffirms the principle of non-intervention in matters within the domestic jurisdiction of the Member States.
- There is an imbalance between one of the most powerful empires that humanity has ever seen and the Member States that defend that the sovereignty of our countries.
- An operation to subvert the democratic order in Venezuela has been noted.
- The threat of using the Inter-American Democratic Charter against





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Venezuela is serious and laughable.

- Undemocratic factors sought out the coup d'état in Venezuela in 2002.
- There are only three countries in the world that include the recall referendum in its legal system.
- In 17 years of Bolivarian Revolution, there have been more than 20 electoral processes.
- 2008 marked the beginning of the financial aggression against Venezuela.
- At the same time of this aggression, the Bolivarian Revolution consolidated its social inclusion project.
- Venezuela has received awards from UNESCO as well as FAO and its work for social inclusion of the disadvantaged has been highlighted.
- In 2013, the Venezuelan opposition did not recognize the electoral results and called for violence in the streets.
- Since April 2013, the destabilization campaign by imperial interests has intensified.
- The US Embassy in Caracas seeks to overthrow the legitimate government of Venezuela.
- In the last 3 years, Venezuela has paid off over 30 billion dollars. So far in 2016, it has paid more than 2 billion dollars. It has the largest oil reserves in the world with the 5<sup>th</sup> largest gas reserve in the world and assets of over 70 billion dollars. What exists in Venezuela is an embargo, a financial boycott and a campaign of falsehood.
- Last month, the Washington Post dedicated six editorials against Venezuela, a world record.
- All media wars precede the imperial occupation and international intervention.
- A photo appearing in more than 300 international media outlets showing the alleged short supply of provisions in supermarkets in Venezuela, actually corresponds to New York before Hurricane Irene.
- The former mayor of Bogota took a photo of a Venezuelan supermarket's filled shelves showing the falsity of shortages.
- A virtual reality is being developed to construct a supposed intervention



- There have been low blows carried out by the General Secretariat of the OAS.
- Venezuela has imported enough food to feed three countries the size of Venezuela.
- The opposition generated the destruction of the Public Ministry, burned down schools, committed ecocide with the destruction of more than 2000 trees; there were 4 deaths and over 900 wounded.
- The truth is that since 1999, the revolution has been permanently threatened.
- The US executive order against Venezuela constitutes an aggression against a member country and gained the solidarity of the countries of the world.
- It is a violation of the international rule of law, a flagrant violation of the sovereign jurisdiction of States, of pure interventionism.
- The Venezuelan opposition has combined legal and illegal measures of fighting, but mostly illegal. However, the media and the Secretary General of the OAS have not maintained impartiality by coordinating the agenda of the General Secretariat with the agenda of the opposition with instructions we know are received from the US. We have the evidence to show his support for the opposition and its deviation of functions.
- The response of the State of Venezuela has been to strengthen the mechanisms for political dialogue.
- Peace Dialogue in December 2014.
- Venezuela is experiencing an economic situation like so many other countries. In the case of Venezuela, it is linked to falling oil prices. The Venezuelan opposition planned the shortage of basic commodities, medicines and food.
- The price drop has the geopolitical intent of hegemony.
- The strategy has been the coup d'état, the oil, financial, and socioeconomic boycott.
- 59 US oil companies went bankrupt.
- We have called for the finding of cordial political solutions.
- The Secretariat of Legal Affairs of the OAS published an interpretation trying to justify the invocation of the Inter-American



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Democratic Charter.

- The Venezuelan opposition has accompanied to overthrow the constitutional government.
- Last year, it was said that there would not be legislative elections in Venezuela, or that there would be fraud, or that the results would not be recognized. None of that happened.
- We have the best-automated electoral system in the world. Nobody analyzed the media campaign of lies.
- The new National Assembly took office and the first words of its president were that in 6 months President Maduro would be removed.
- Approval of unconstitutional law of self-forgiveness of offenses. Past and present as well as future. They distort the image of amnesty. They call to overthrow the government, undermine the Rule of Law and the Judiciary Power. The world has become accustomed to imperial centers that distort the Rule of Law. It is a global embarrassment and the OAS has failed. It is a clash between Bolivarianism and imperialism.
- There is no humanitarian crisis in Venezuela. The socio-economic indexes of ECLAC prove it. Rating the humanitarian situation in Venezuela a crisis is disrespectful in facing the crisis of climate change produced by imperialist centers. We offend the humanitarian crisis in the Mediterranean, as a result of interventionism.
- We will not allow the US, the Secretary General of the OAS and the opposition to intervene in Venezuela.
- I know there are well-intentioned concerns about Venezuela.
- Participatory democracy and representative democracy are contemplated in the Constitution of Venezuela. Also, the promotion and protection of human rights. I invited the Secretary of State Kerry to a public debate on human rights.
- In Venezuela, there is democracy and dialogue, the State must respond to criminal actions and preserve the Rule of Law.
- There is conceptual confusion in that we have asked to come to the Permanent Council to present the truth, not to find a solution.
- The OAS has an interventionist past. Interventions in Panama, Grenada, Dominican Republic among others.
- In Venezuela, artificial problems are created in the economy. The



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US promotes shortages. We have proof that companies are boycotting and generate shortages. Unprecedented contraband.

- We came to inform and to denounce.
- US power is characterized by double standards. The Human Rights Council has made 348 recommendations to the US. It has requested to end the detention of children and migrant families, there are 48 million people under the poverty line, it has requested to end torture, there is food insecurity, undocumented parents, undocumented farm workers, the largest number of persons deprived of liberty on the planet, mostly of Latin and African descent.
- Large corporations run US public policy.
- Venezuela is not responsible for climate change.
- We are living the effects of El Nino, yet the Venezuelan opposition urges the consumption of more electricity. As in the coup d'état against Allende, contrived situations of social hardship are created. There is no humanitarian crisis, one million houses have been distributed to citizens benefiting the most disadvantaged.
- The government has preserved peace and has done its best to preserve human development.
- Our Constitution provides mechanisms of checks and balances.
- UNSASUR, Alba, CELAC, Petrocaribe are mechanisms for integration.

## **XII. CONCLUSIONS**

The primary role of the Secretary General of the OAS is to ensure compliance with inter-American standards, beginning with those set out in the Charter and General Assembly resolutions.

Specifically, the Secretary General must be the guardian of the guiding principles of the system, which include respect for human rights, the promotion and strengthening of democracy and cooperative relations among its members.



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**Numerous provisions confer upon him this right: the Charter of the OAS in its second paragraph of Article 110, in cases where peace and security of the Continent or the development of member States could be affected; Resolution 1080 of 1991 in situations where there is a sudden or irregular interruption of the democratic political institutional process or the legitimate exercise of power in a member country; the Inter-American Democratic Charter, in cases of the alteration of the constitutional regime that seriously impairs the democratic order.**

The norms that regulate this last situation, as well as the procedure to be followed, have been detailed in a study by the Secretariat of Legal Affairs entitled “Legal Considerations for Invoking the Inter-American Democratic Charter, (CP/INF. 7394/16 dated May 5, 2016).

It is therefore clear that these are the inescapable duties of the Secretary General, as recognized by the rules that he must follow.

In a situation such as this, the duty of the Secretary General is to analyze and present his findings. With regards to the current situation in Venezuela, after analyzing the facts, it must be concluded that we are facing serious disruptions of the democratic order, as defined by numerous regional and subregional instruments. We also clearly state opposition to any possible coup d'état in Venezuela against a legitimate government or armed intervention, as was denounced by the Minister of Foreign Affairs.

### **Recommendations**

As previously expressed, this document is the result of an impartial analysis, based on facts and circumstances that have been determined to be truthful.

A minimum set of recommendations is needed to resolve the situations identified throughout this text.

**These recommendations seek to contribute to a solution that, as said from the outset, must be Venezuelan and by Venezuelans.**



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It is for this reason that the following ideas are intended to bring normalcy to some of the situations identified and that, having been analyzed in a most objective manner, were not compatible with the provisions of the OAS Charter, the American Convention of Human Rights and Inter-American Convention on Human Rights and the Inter-American Democratic Charter.

Normal democratic functioning must be urgently addressed, and in a manner consistent with the key elements and fundamental components of representative democracy as expressed in Articles 3 and 4 of the Inter-American Democratic Charter. There will be no possible institutional solution for Venezuela if these issues are not addressed:

1. - Recall Referendum - The eventual realization of a recall referendum cannot be addressed by any party with a purely administrative or procedural perspective. The eventual realization of this process of popular consultation is one of great political importance for the country (and the region) and should therefore be considered as such. From an ethical standpoint this requires that both the supporters of the recall and those opposed to it work with greater institutional rigor and with the highest political standards. **This is the political solution for Venezuela – I repeat - given that when the political system of a country is extremely polarized, the only solution may arise from a sovereign decision.**

The decision to carry out or not the recall referendum corresponds solely to the sovereign. No administrative proceeding can obstruct the decision of the people. This recall does not belong to the Government or to the opposition, but rather to the Venezuelan people. It is the duty of all leaders to respond.

We ask for the full acceptance by the government, by the opposition, by political and social actors, as well as by the international community, of the 2016 recall referendum, upon whose realization lies the fate of democracy in Venezuela.

The General Secretariat of the OAS reiterates its commitment to impartial collaboration in any task related to the process leading to the eventual implementation of the recall referendum. The technical





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capabilities of the OAS in this matter have been amply demonstrated in different types of elections throughout the hemisphere.

2. - We call for the immediate release of all those who are still imprisoned for political reasons, as indicated in this report.

3. - We call on the Executive Branch of Venezuela and the Legislature of Venezuela to solve, jointly and immediately, and in accordance with their obligations, the vulnerable situation of the population's basic rights, such as access to food and health services.

4. - We urge Venezuela's Executive and Legislative branches to work together to comply with the State's duty to provide adequate security for its citizens.

5. - We urge the Executive Branch of Venezuela to eliminate all forms of violations of the constitutional and political precepts regarding the balance between the branches of government. In that regard, we request that there be an immediate halt in the Executive Branch's permanent blocking of the laws adopted by the National Assembly and that the laws that have been approved so far be enforced.

6.- We request a new composition of the Supreme Court of Justice for which the Executive and the Legislature must work together, in accordance with their obligations, given that the current composition is completely flawed both in the appointment process as well as in the political bias of virtually all its members.

7. We encourage the creation of an independent mechanism to combat corruption, composed of independent international experts supported by the United Nations system (characteristics of CICIG) and / or OAS (MACCIH).

8.- We call for greater technical support to the Truth Commission, as well as representation of the United Nations High Commissioner of Human Rights.

The General Secretariat of the Organization of American States will continue to cooperate with authorities, political sectors and social actors in Venezuela to support this urgent need.



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The General Secretariat of the OAS makes known its willingness to collaborate directly and to be actively involved in all ways possible to help achieve these objectives.

The General Secretariat of the OAS considers that the institutional crisis in Venezuela demands immediate changes in the actions of the Executive Branch, as was previously indicated, in order to avoid falling into a situation of illegitimacy. The continued violations of the Constitution, particularly with regard to the balance between the branches of government, functioning and integration of the Judicial Branch, human rights violations, procedure for the recall referendum and lack of responsiveness regarding the serious humanitarian crisis in the country, which affects the full enjoyment of the social rights of the population, all imply that the hemispheric community must assume its responsibility for moving forward with the procedure outlined in Article 20 in a progressive and gradual manner that does not dismiss any hypothetical resolution, be it constructive or severe.

In addition to the urgent attention to and correction of the matters raised in the preceding paragraph, democratic normality cannot exist in Venezuela without the willingness of government, political parties, social partners and Venezuelan society to cohabit and coexist in the broadest of terms.

As indicated throughout the text, whatever may be the outcome of an eventual recall referendum, all actors must espouse a national ethical commitment to political coexistence.

From the standpoint of inter-American democratic principles, no situation would be acceptable in which political parties or social groups, by the mere fact of having obtained circumstantial electoral majorities, curtail the rights of opponents or sectors of Venezuelan society.

Currently, Venezuela needs the fullest respect and complete commitment of the Executive Branch to comply with the Constitution and with its international democratic commitments.



This constitutes a unilateral requirement for the Executive Branch, and it does not require a discussion table to do so; only respect for the Rule of Law. The elements exist and they are very clear; we do not believe that the Government is unfamiliar with them as they have been clearly and publicly expressed on many occasions. The only thing missing is a lack of commitment.

In addition to the stipulations already made regarding the participation of the OAS General Secretariat in the work contemplated by Article 20, it would also be a very good idea for ex-Presidents to participate in the process, as suggested by UNASUR Secretary General, Ernesto Samper. The Permanent Council's support for this initiative could include the integration of 2 or 3 additional ex-Presidents who have previously expressed concern for the Venezuelan situation, such as Jose Maria Aznar, Felipe Gonzalez Luis Alberto Lacalle, Enrique Pastrana, Enrique Piñera or Jorge Quiroga (those who are interested and able, naturally). This would give critical support for Article 20 proceedings. The Permanent Council's approval of this initiative would signal even greater levels of confidence. Coordination with the UNASUR Secretary General is essential and would demonstrate the capacity for cooperation among regional organizations.

This would also give momentum to resolve those institutional aspects (such as the date of the referendum, the establishment of humanitarian channels, and freedom for political prisoners) that must be resolved prior to dialogue, and to support dialogue once initiated. However, it is not acceptable that there be vetoes against members of negotiating delegations. The solution to these problems would resolve the situations that impeded the meeting between the Parties in Santo Domingo.

The problems created by a lack of dialogue must be resolved or more dialogue must be created. There is no worse sign of a malfunctioning political system than when there are no fundamental premises for dialogue between political parties, the government, the opposition and social actors; when the equation of 50 percent plus one vote equals 100 percent and when 50 percent less one vote equals 0.

Dialogue and national unity create solutions and solve problems. They also avoid problems. To dialogue is not to sit down and talk; it is to



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demonstrate commitment to democracy. Dialogue would have avoided situations such as the one that occurred in Santo Domingo this weekend.

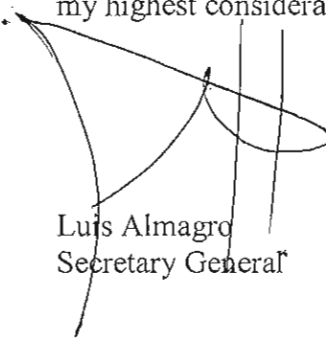
The commitment to democracy and the Rule of Law are requirements a priori for demonstrating good faith in any dialogue; it is the most ethical thing to do. Otherwise mistrust (which has been widely highlighted throughout this document) will make dialogue impossible.

Jose Antonio Marina's saying "rabies don't spread from a dead dog", doesn't even apply to dogs. What is important is that the rabies bacillus disappears. A problem is only solved when you save values for coexistence. Otherwise, it will grow back.

Once again, the General Secretariat of the Organization of American States extends to the State and people of Venezuela its experience and know-how, as demonstrated on multiple occasions throughout different countries of the region.

I would be grateful if this communication, together with its appendices, could be distributed among the Member States.

I take this opportunity to renew to Your Excellency, the assurances of my highest consideration.



Luis Almagro  
Secretary General